

## **Organization Of Hajj and Umroh Worship In Islamic Law (Perspective of Law Number 8 Of 2019)**

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### **Abstract**

*The Hajj is the fifth pillar of Islam which is a once-in-a-lifetime obligation for every Muslim who is able to fulfill it. Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah as a form of implementation of the Hajj and Umrah, which is a series of religious services as guaranteed and mandated in the 1945 Constitution of the Republic of Indonesia, Article 29 Paragraph (2). This research is included in library research, namely research carried out using literature. The author reads and takes theories from books related to the problem being researched and then concludes the results of various kinds of research. Based on its nature, this research includes analytical descriptive research which is a method of researching an object which aims to create a systematic and objective description, picture, of facts, properties, characteristics and relationships between existing elements and phenomena. certain. It can be concluded that the Islamic Law Review of the implementation of Hajj registration based on Article 5 letter d. The Islamic Law Review of the Hajj registration based on Article 5 letter d can be concluded that this does not conflict with Islamic law, because the aim of law in Islam is to realize the benefit of servants both individual or collective. The benefit of the people is something central in the study of Islamic law, so that any policies or legislation that the authorities wish to implement must always consider and pay attention to the consequences that will arise. So, realizing the benefit of servants is the goal to be achieved by the existence of legal provisions in Islam.*

*Keywords: Worship, Islamic law, implementation of Hajj and Umrah, law number 8 of 2019*

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## **I. INTRODUCTION**

Hajj and Umrah are a series of pilgrimages that involve the largest and largest number of people from all over the world. As stated in the word of Allah SWT in QS. Ali Imran/3:97 which means: (El-Qurtuby, 2016) "... And (among) human obligations towards Allah is to carry out the pilgrimage to Baitullah, namely for people who are able to travel there (Baitullah)..." Obligations which Allah mentioned in one of the verses of the Qur'an was then confirmed by the hadith of Rasulullah SAW on the website muslim.or.id (accessed on 21 December 2023), which means: From Abu Hurairah Radhiallahuanhu, Rasulullah Shallallahu'alaihi Wasallam said, " The next Umrah pilgrimage is an atonement for the sins between the two. "And a successful

pilgrimage has no reward (for the perpetrator) except heaven" (HR. al-Bukhari and Muslim).

In terms of terminology, the Hajj is a pilgrimage to visit the Kaaba and its surroundings in the city of Mecca to perform various rituals such as tawaf, sa'i, wukuf at Arafah and so on. The Hajj pilgrimage must be performed by every able-bodied Muslim (istitha'ah), once in their lifetime. The Hajj is a special worship. It is not surprising that almost all Muslims who can afford it want to do it. Indonesian Muslims are no exception. In historical records, it has not been discovered who and how many Indonesian Muslims were the first to travel to Mecca to perform the Hajj. Available records explain that since the beginning of the 16th century, Indonesian Muslims had already traveled to Hejaz to trade and then had the opportunity to perform the Hajj. Data from the Ministry of Religion explains that since 1949 this ministry has dispatched 9,892 Hajj pilgrims by sea. Until now, the number of Indonesian Muslims who wish to perform the Hajj pilgrimage continues to increase, in fact the number of Hajj registrants is greater than the quota given by the Saudi Arabian government to Indonesia.

The implementation of the Hajj pilgrimage is not only related to a series of ritual activities, but is also related to a series of other activities such as registration, Hajj guidance, accommodation services, catering, land and air transportation, health and protection of the congregation both carried out in the homeland and abroad. in Saudi Arabia. The entire series of activities must be organized so that the congregation can carry out their Hajj smoothly, comfortably and safely so that they can return to their homeland and obtain the Mabrur Hajj. Because it involves a large number of Hajj pilgrims and a series of activities carried out both in Indonesia and in Saudi Arabia, organizing the Hajj pilgrimage requires complex and interrelated governance and systems for organizing the pilgrimage.

Because of this need, the implementation of the Hajj 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, then refined with Law Number 13 of 2008 concerning the Implementation of the Hajj pilgrimage. Hajj is a once-in-a-lifetime obligation, as was the case with the Prophet Muhammad. He only carried out the Hajj once, namely in the tenth year of the Hijriah.<sup>1</sup> Even though at that time he had the opportunity to perform Hajj every year and perform Umrah many times. Historical records state that the Prophet Muhammad

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<sup>1</sup> Karsayuda (ed), Fiqh Syafi'e Excerpts From Sabilal Muhtadin (Banjarmasin: Borneo Press, 2007), h. 220.

SAW perform the Umrah pilgrimage 4 (four) times. The Prophet Muhammad SAW performed Umrah four times, all of which were in the month of Dzul'qaidah except for the Umrah which he performed with his Hajj. Namely his Umrah from Al-Hudaibiyah, the Umrah the following year, the AlJi'ranah Umrah when he distributed the ghanimah (spoils of war) hunain and Umrah during his Hajj and the last Umrah carried out together with his first and last Hajj. The term is called hajj wada'.<sup>2</sup>

Hadis Nabi Muhammad Saw:

*"Has told us Hudbah, has told us Hamman, and he said: "He Saw. performed Umrah four times, all of which were in the month of Dzul'qaidah except for the Umrah which he performed with his Hajj. "Namely his Umrah from Al-Hudaibiyah, the Umrah the following year, the Umrah Al-Ji'ranah when he distributed ghanimah (spoils of war) hunain and Umrah during his Hajj." (H.R. Bukhari).*

Maintaining the preservation of faith is the main principle that must not be tampered with. All sharia tools are deployed to maintain its existence. Even if necessary, life must be given up. In ushul fiqh it is explained, this term is called hifdz al-din, which is ranked first in the order of things that Islam really cares about.

The implementation of the Hajj pilgrimage is not only related to the series of Hajj rituals, but more than that it is also related to aspects of public service governance. This aspect is actually seen as the aspect that really determines the success of the Hajj pilgrims in carrying out the Hajj rituals. Organizing this is a national task and the main responsibility lies with the government, in this case the Ministry of Religion of the Republic of Indonesia, because the number of Indonesian Hajj pilgrims is very large so it must involve various government organs and institutions. A number of new rules have been set by the government regarding the conditions for going on the Hajj and various regulations related to Hajj regulations. The changes made include all aspects that support a safe and comfortable Hajj pilgrimage, this is done so that the Hajj pilgrimage can be carried out well through the best service and simplify the administrative process for prospective Hajj pilgrims who are performing the Hajj pilgrimage and ensure the service of all employees to prospective Hajj pilgrims. has been carried out comprehensively, quickly and with quality with a team spirit and using the latest technological facilities to ensure a superior work ethic and good quality of work.

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<sup>2</sup> Nida Farhanah, "Problems of Waiting Lists in Organizing the Hajj Pilgrimage in Indonesia" Vol. 12, Nomor 1 (June 2016): h. 57.

## II. LITERATURE REVIEW

### Understanding the Hajj Pilgrimage

Etymologically, Hajj comes from the Arabic al-hajj which means to visit or come. Meanwhile, in terms of fiqh terminology, Hajj is defined as a trip to visit the Ka'bah to perform certain acts of worship, or traveling to the Ka'bah in certain months to perform tawaf, sa'i, wukuf, and other rituals to fulfill the call of Allah SWT. . and hope for His pleasure. Meanwhile, according to Sharia, Hajj is to go to the Ka'bah to worship by performing several actions, namely: Ihram, Wukuf, Tawaf, Sa'i, and others. Article 1 paragraph (1) of Law No. 8 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage confirms that the Hajj is the fifth pillar of Islam for Muslims who are able to carry out a certain series of worship in Baitullah, Masyair, as well as certain places, times and conditions. The Hajj pilgrimage is one of the pillars of Islam that must be recognized and carried out by people who have fulfilled the mandatory requirements.

Legal Basis for Hajj The Hajj law is obligatory, the basis of its revelation is several words of Allah SWT. who demands to perform the Hajj pilgrimage. As the Word of Allah SWT, which means

*There are real signs on it, including (Maqam Ibrahim). Whoever enters it (the Temple) will be safe; Performing the Hajj is a human obligation to Allah SWT. namely for people who are able to travel to Baitullah. Whoever denies (the obligation of Hajj) then surely Allah is Rich (does not need anything) from the universe." (Q.S Ali-Imran: 97).*

Apart from that, it is also explained in the Hadith of the Prophet Muhammad:

*"From Anas r.a. He said that someone asked the Messenger of Allah. O Messenger of Allah, what is sabil (capable of Hajj)? he answered, "capable in terms of provisions and vehicles." (H.R Ad-Daruquthni).*

The Qur'an, Hadith and consensus of the ulama stipulate that Hajj is fardhu 'ain for Muslims and Muslim women who are able to do it. The Qur'an and the Hadith mentioned above show that being able is a mandatory requirement for Hajj. There must be conditions for being able to afford it because it is related to worship that involves long journeys. In general, bodily or physical abilities, provisions and transportation are the most important things in a person's Istita'ah, both during Hajj and Umrah.

### Types of Hajj and How to Perform It

The Hajj is divided into three types; Hajj Ifrad, Hajj Tamattu' and Hajj Qiran. This division is based on the hadith of the Prophet SAW:

*"Has told us 'Uthman said, has told us Jarir from Mansur from Ibrahim from AL Aswad from 'Aisyah r.a.; "We went with the Prophet SAW. and as far as we know, he did not leave but to perform the Hajj. When we arrived (in Mecca), we performed Twaaf at Baitullah, then the Prophet SAW. ordered anyone who did not bring a sacrificial animal to be tahallul. "So those who do not bring sacrificial animals are in tahallul as well as their wives who are not bringing their sacrificial animals are in tahallul" 'Aisyah r.a. said: "Then I experienced menstruation while I had not yet performed Tawaf in Baitullah. When on the night when the hujjaj came out of (Makkah after the days of Tasyriq,) 'Aisyah r.a, said: "O Messenger of Allah, people returned with 'umrah and hajj while I only returned with hajj". He said: "Did you perform Tawaf on the nights of the Hajj month when you arrived in Mecca?" I answered: "no". He said: "Go with your brothers to Tan'im and start from there doing the ihram for 'Umrah then your place will be like this." Syafiyah said: "You don't see unless she („Aisyah r.a.) has made people detained (on their way home)". He Saw. said: "wretched" or "did you not do twaaf on the day of Nahar". „Aisyah r.a. answered: "That's right" he said: "It's okay, nafarlah (leave Mina after completing the Hajj rituals)". „Aisyah r.a. said: "Then I met the Prophet SAW. when he arrived from Mecca, while I had already stopped by or I had just arrived while he had already stopped by from Mecca." (H.R. Bukhari).*

Based on the hadith above, the following briefly explains the meaning of the three types of Hajj:

Ifrad Hajj, Ifrad in Arabic means to be alone, it is called ifrad hajj because a person performs Hajj and Umrah individually or one by one, not doing both at the same time. Procedures for carrying out the Hajj pilgrimage by prioritizing Hajj over Umrah. When wearing the ihram clothing of the miqat, someone who performs the Hajj ifrad intends to perform the Hajj with the recitation of labbaika bi hajj (I have come to fulfill Your call with the intention of Hajj). After completing the Hajj, he intended to perform the Umrah again if he wanted to do it that year.

- 1) Hajj Tamattu' In the language, tamattu means having fun, while in the context of Hajj, tamattu' is defined as a form of performing the Hajj, namely starting the Umrah in the months of the Hajj and after that doing the Hajj in the year when one performs the Umrah. Hajj is tamattu' because you perform two pilgrimages (Hajj and Umrah) in the Hajj months in the same year without returning to your home country first. The way to do this is to perform ihram for Umrah from the miqat with the intention of labbaika bi umrah (I come to fulfill Your call with

the intention of Umrah). Then he goes to Mecca to perform tawaf in Baitullah, sa'i between Shafa and Marwah, shave or cut his hair, and remove his ihram clothes and wear normal clothes, so that he is free to wear normal clothes until the time comes for him to perform the Hajj. After the time for Hajj arrives, he performs the ihram for Hajj and carries out all the provisions of the Hajj until it is completed. This means that the two acts of worship have been completed independently.

- 2) Hajj Qiran, Qiran in Arabic is defined as including or combining, while in the context of Hajj, qiran is defined as Hajj and Umrah whose intentions are combined during ihram with the pronounciation labbaika bi hajj wa 'umrah (I have come to fulfill Your call with the intention of Hajj and umrah).

Since ihram from miqat he remains in the state of ihram clothing until all the obligations of the Hajj and Umrah are completed or until tahallul by shaving and cutting the hair of the head after throwing the pilgrimage to the aqabah. Fiqh scholars agree on the permissibility of performing the Hajj using one of the three methods mentioned above, but among them there is no agreement as to which one is preferable. Based on the three types of Hajj mentioned in the hadith above, it turns out that the Prophet SAW. choose to perform ihram for Hajj which is also called Hajj ifrad. This, according to them, shows that the Ifrad Hajj is more important.

### **Pillars and Conditions for Hajj**

The pillars are something that cannot be left behind at all, in the sense that if one of the specified pillars is left behind, the Hajj is invalidated and therefore must be repeated the following year. The legal basis for this harmony is strong evidence from the Qur'an or mutawatir Hadith. Fiqh experts agree to define the pillars of Hajj as follows:

Ihram Ihram is the intention to start performing the pilgrimage (hajj and umrah), it is called ihram because with this intention a person has entered a state where several actions that were previously permissible become forbidden. This intention is usually accompanied by taking off clothes (which is prohibited) and starting to say talbiyah. Ihram in the sense of the intention to perform Hajj or Umrah is one of the pillars of the Hajj which, if abandoned, makes the Hajj pilgrimage invalid. Ihram is performed during the Hajj months, namely Shawwal, Zulqa'dah and Zulhijjah. The time for carrying out the intention or ihram is called miqat saati. This intention is realized by removing ordinary clothes and wearing ihram clothes. People who have dressed in ihram are subject to several prohibitions, if one of these prohibitions is violated, a person is obliged to pay a dam (fine) ranging from giving alms, fasting, to slaughtering animals. Ihram or the intention to perform the Hajj pilgrimage is carried out in certain



places called miqat makani. Rasulullah SAW. has established miqats for Hajj pilgrims who come from various corners through his words, namely:

*"Has told us Ahmad bin Abdullah bin Yunus has told us Malik from Nafi' from Ibn Umar, he said; Rasulullah SAW. has made Dzal Hulaifah the miqat of the people of Medina, Juhfah the miqat of the people of Syria, Qarnul Manazil the miqat of the people of Najed." Ibn Umar said; "As for these three places, I have heard about them from Rasulullah SAW. and it has come to me that he made Yalamlam a miqat for the people of Yemen." Ahmad bin Abdullah has told us Malik from Abdullah bin Dinar from Ibn Umar as in the above hadith." (H.R. Bukhari).<sup>3</sup>*

Based on the provisions of the hadith above, information can be received regarding the miqats of makani that have been determined by the Prophet SAW. for every Hajj pilgrim from various regions, namely:

- 1) The miqat for pilgrims coming from Medina is Zulhulaifah, located approximately 450 km northwest of Mecca.
- 2) The Miqat Makani for pilgrims coming from the direction of Najed is Qarnumanazil, located approximately 94 km east of Mecca.
- 3) Miqat makani for pilgrims from the direction of Yemen is Yalamlam, located approximately 54 km south of Mecca.
- 4) The Miqat Makani for Hajj pilgrims coming from Iraq is Zatu Irqin, located 94 km north-east of Mecca.

Tawaf according to the language means going around or turning around, while in the context of Hajj, tawaf is defined as one of the pillars of Hajj which is carried out by walking around or around the Ka'bah up to seven times. In its implementation, tawaf starts from the Black Stone and the position of the Ka'bah is always to the left of the tawaf. The Tawaf is performed seven times; The first three rounds went rather quickly and the next four times went normally. If possible, in the seventh round, kiss the Black Stone, if this is not possible, just touch it with your hand, and if not, just signal with your hand or stick.

Fiqh experts agree on tawaf as one of the pillars of Hajj based on the words of Allah SWT:

*"Then, let them remove the dirt that is on their bodies and let them complete their vows and let them perform tawaf around the old house (Baitullah)." (Q.S. al-Hajj: 29).*

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<sup>3</sup> Hadith Narrated By Bukhari

During the tawaf trip around the Ka'bah, you should increase your prayers and dhikr to Allah SWT. After the tawaf is completed, the circumcission performs two rak'kaat prayers at the maqam of Ibrahim. There are three types of tawaf prescribed for the Hajj: tawaf qudum, tawaf ifadah, and tawaf wada'. Tawaf qudum is a tawaf of respect for the Ka'bah (Baitullah) like praying two rak'ahs to honor the mosque for those who enter it. What is meant by tawaf ifadah is tawaf which is done by walking quickly around the Ka'bah seven times. Fiqh experts define it as a pillar of Hajj, while the other two types of tawaf are not pillars but are circumcission or obligatory. Tawaf wada' is the tawaf performed when one wants to leave the city of Mecca to return to one's home country.

General Policy for Organizing the Hajj Pilgrimage According to the political dictionary, it is stated that:

- 1) Policy is a series of concepts and principles that form the outline and basis of plans in implementing work, leadership in government or organizations;
- 2) Policy is also defined as a statement of ideals, goals, principles or intentions as guidelines for achieving targets.

Regarding general policy making by the government in administering the state, it is necessary to pay attention to several elements that can be categorized as state administration actions, because the general aim of policy is satisfaction or peace and the interests of policy makers and decision makers in relation to satisfaction and peace and the interests of those affected. This policy means that the people in the context of the general policy for organizing the Hajj pilgrimage are Muslims. Policy implementation must contain elements of government action. According to Muchsan, the elements of government action are as follows:

These acts are carried out by government officials in their position as rulers or as government equipment who have their own initiative and responsibility;

1. The act is carried out in the context of carrying out government functions;
2. The action is intended as a means to give rise to legal consequences in the administrative sector;
3. The act in question is carried out in the context of maintaining the interests of the state and the people;
4. This act prioritizes the principle of legality in accordance with applicable laws and regulations.

The implementation of the Hajj pilgrimage after fulfilling the elements of government action in the realization of general policy then of course needs to prioritize general principles that have been outlined by law and other regulations. This general policy is a guideline in organizing the Hajj pilgrimage, the implementation of which is very



complex and requires government strength. The general policy for organizing the regular Hajj pilgrimage is that the minister coordinates with the relevant ministries/agencies. General Explanation of Law Number 8 of 2019 explains that general policies for the implementation of the Hajj pilgrimage must be implemented by prioritizing the principles of justice, transparency and public accountability. The implementation of the Hajj pilgrimage must be managed by prioritizing the interests of the congregation in accordance with their rights and obligations so that they can carry out the Hajj pilgrimage in accordance with the demands of the Shari'a and its implementation can proceed safely and comfortably. b. Activities for Carrying out the Hajj Pilgrimage Activities for carrying out the regular Hajj pilgrimage consist of several components which form the basis of the implementation. Components of activities for carrying out the Hajj pilgrimage in accordance with Article 10 of Law Number 8 of 2019.

Policies for organizing the Hajj pilgrimage include:

1. Preparation, financing and determination of BPIH (direct & indirect costs).
2. Determine national, provincial and special hajj quotas.
3. Payment of BPIH for regular Hajj and special Hajj.
4. Guidance on Hajj rituals.
5. Preparation and determination of PPIH and group officers.
6. Hajj document and identity services.
7. Hajj embarkation boarding services.
8. Air transportation services.
9. Smart Hajj application.
10. Provision of accommodation (Mecca and Medina).
11. Consumption in Saudi Arabia.
12. Land transportation in Saudi Arabia.
13. Armina's service.

#### **Hajj Guarantee in Law No. 8 of 2019**

- a) Human Rights The term human rights comes from English (human rights). A term that is more widely used in every mention of human rights. Etymologically, rights are normative elements that function as guidelines for behavior, protecting freedom, immunity and guaranteeing opportunities for humans to maintain their dignity. As for basics, they mean those that are most basic or fundamental. Human rights as stated in the formulation of Article 1 number 1 of Law no. 39 of 1999 concerning Human Rights is a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts which must be respected, upheld and protected by the legal state, government and every person,

for the sake of respect and protection of human dignity. Human rights mean the most basic rights that humans have as a matter of nature, so that no creature can intervene or revoke them, for example the right to life, where no human being has the authority to take away the life of another human being. According to Todung Mulya Lubis, this is actually examining the totality of life, the extent to which our lives provide a natural place for humanity. Every human being has the right to have these rights, meaning that apart from maintaining their validity in human existence, there is also a serious obligation to be understood, comprehended and responsible for maintaining them. The existence of a person's rights means that he has a "special privilege" which opens up the possibility for him to be treated in accordance with the "special privilege" he has. The existence of an obligation to someone means that an attitude is required from him that is in accordance with the "privileges" that exist in other people. . Human nature is universal, so these rights are not only given to all individuals but there is also a universal obligation for all individuals to treat well individuals who have lost their rights. This obligation is not based on conditions or other material requirements such as looking at a person's background or physical characteristics, but must be carried out with the principle of equal rights for fellow human beings. Government policies to improve human living standards through development must also pay attention to aspects of human rights. This is because it is development for the welfare of a country.

- b) **Citizens' Rights** One element of the state is the people, namely the humans who inhabit the territory of the state, they are considered as one unit. The state only has one territory, likewise the state only has one people, and territorial unity is a legal unity. This unity is formed by the unity of the legal order that applies to individuals who are considered the people of that country. The state is a forum and institution in which individuals, community groups and ethnic groups reside, called citizens. The state is not just in the sense of government, the state is a fact of domination of one or several groups of society for a certain purpose. Therefore, the state must implement the aims and objectives and interests of its citizens. The people of the state are individuals whose actions are regulated by the national legal order, that is, the field of personal validity, like the field of territorial validity of the national legal order, is limited, and so is the field of personal validity. A person is a citizen of a particular state if he or she falls within the realm of personal validity of its legal order. Citizen's rights are rights that belong to every person who lives in a country, and the state recognizes them with various principles of citizenship that are generally adhered to by every country.

These rights include the right to obtain recognition of citizenship, the right to move freely within the country, the right to leave and return to one's country, and the right to political asylum. The definition of citizens is native Indonesians and people of other nations who are legalized by law as citizens. According to the 1945 Constitution after the Amendment, the rights and obligations of citizens are as follows:

- 1) Equal standing in law and government, Article 27 paragraph (1) states that all citizens have the same position in law and government and are obliged to uphold that law and government without exception. This article shows that apart from the balance between rights and obligations, there is also no discrimination between citizens in law.
- 2) The right to work and a decent living, Article 27 paragraph (2) every citizen has the right to work and a decent living. This article exudes the principles of social justice in the context of efforts to defend life (right to life);
- 3) Rights and obligations to defend the country, Article 27 paragraph (3). Every citizen has the right and obligation to participate in efforts to defend the country.
- 4) The right to freedom/independence of association and assembly, expressing thoughts verbally and in writing as stipulated by law. This article stipulates the rights of citizens and residents to associate and assemble, express their thoughts verbally and in writing and as regulated by law. This reflects democratic principles that can be returned to basic human rights to freedom, which in turn can be political rights.
- 5) Rights and obligations to participate in defense and security efforts, Article 30 emphasizes:
  - a. Every citizen has the right and obligation to participate in national defense and security efforts.
  - b. State defense and security efforts are carried out through the universal people's defense and security system by the Indonesian National Army and the National Police of the Republic of Indonesia, as the main force and the people as supporters.
  - c. The conditions for citizen participation in national defense and security efforts are regulated by law.
- 6) The right of citizens to receive education, Article 31 paragraph (1): every citizen has the right to receive education. This article shows that the right to teaching and education is a development of social and cultural human rights.

7) The rights of citizens to obtain welfare, these rights are realized in Articles 33 and 34 of the 1945 Constitution of the Republic of Indonesia, on the basis of these articles every citizen is expected to be able to enjoy prosperity and prosperity through an economic system directed by the state. If the people become poor, the state must bear the burden. In accordance with the mandate of Article 34, the poor and neglected children are cared for by the state, Article 33 mandates that:

The economy is structured as a joint effort based on kinship.

- a. Production branches that are important for the state and that affect the lives of many people are controlled by the state.
- b. The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.
- c. The Right to Freedom of Religion and Belief. The Qur'an contains many verses that describe the concept of religious freedom, that there is no compulsion to convert to Islam, one of which is in surah al-Baqarah verse 256 which reads:

*“There is no compulsion to (enter) religion (Islam); In fact, the right path is clearer than the wrong path. Therefore, whoever disbelieves in taghut and believes in Allah, then indeed he has held on to a very strong rope that will not break. And Allah is all-hearing, all-knowing.” (Q.S. Al-Baqarah: 256).*

Religion in Arabic, namely Din, is agreed by most dictionary writers with al-Musthafawi that its primary meaning is obedience. It is not easy to define religion, especially in this world where we find that religions are very diverse. A person's view of religion is determined by their understanding of the teachings of the religion itself. The Islamic view is that diversity is nature (something inherent in humans that is carried over from birth).

This means that humans cannot escape from religion, God created this because religion is a necessity for life. Indeed, humans can postpone it for a long time, perhaps until they die. In the end, before the soul becomes a body, humans will feel that need. Likewise, the human need for religion can be suspended, but not forever. William James emphasized that, as long as humans still have the instinct to worry and hope, as long as they are religious (connected with God)," that is why feelings of fear are one of the biggest drives for religion. When approaching religious freedom from an internal religious perspective, we take the polemic case of the emergence of several new trends in Islam. The emergence of sects is not something new, in fact it has started since the arrival of Islam. For example, this phenomenon can be seen in the emergence of several frictions in theology, jurisprudence and other dimensions in Islam. The concept of the relationship

between the government and citizens, religious freedom, emphasizes the absence of intervention or prohibition by the state on religious freedom for its citizens. Religious freedom for citizens must not be interfered with either by policies taken by the government or even legislative products. Practices that contain elements of interference with individual freedom must pay attention to the principle of proportionality to avoid discriminatory practices. Therefore, the freedom to have all the rights regulated in human rights must be given by the state to all individuals within its sovereign territory. In relation to freedom of religion, every individual has freedom as regulated in international instruments such as the right to adhere to, change, maintain or not adhere to any beliefs as regulated in international instruments concerning the right to freedom of religion.

- d. Freedom of Religion in the Indonesian Legal System Indonesia as a legal state guarantees the rights of every citizen in terms of freedom of religion and belief. One of the state responsibilities that state administrators must carry out towards their people or citizens is respecting, protecting and fulfilling human rights. This is mandated by the 1945 Constitution, especially in Article 28 I paragraph (4) as a result of the 2nd amendment, namely: the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.

The 4th amendment to the 1945 Constitution has the most complete legal regulations regarding human rights including the right to freedom of religion. This amendment, especially regarding legal regulations regarding religious freedom, shows that the Indonesian government is paying special attention to guaranteeing this right. More specifically, these amendments were made before the government ratified the civil and political rights covenant. This means that the government no longer needs to amend the state constitution because it is in accordance with the spirit of the covenant. Legal regulations regarding freedom of religion or forum internum in the fourth amendment to the 1945 Constitution are regulated in Chapter IX A concerning Human Rights. Article 29 paragraph (2) of this chapter reads: "The state guarantees the freedom of every resident to embrace their own religion and to worship according to their religion and beliefs." Article 28 E paragraph (1) of the 1945 Constitution also regulates that every person is free to embrace religion and worship according to his religion. Article 28 E paragraph (2) also explains that: "everyone has the right to freedom of belief, expression of thoughts and attitudes, in accordance with his conscience." This article is in accordance with the spirit of the civil and political rights covenant where the right to religion is regulated simultaneously with the right to conscience and express

one's thoughts. These three rights are regulated simultaneously because they have the same elements to become jus cogens norms even though there is no international consensus which says that freedom of religion is jus cogens.

In line with this article, the People's Consultative Assembly (MPR) through its decision no. VII/MPR/1998 concerning the Human Rights Charter Article 113 also confirms that: "every person is free to embrace their own religion and to worship according to their religion and beliefs." Meanwhile, Article 22 paragraph (1) of Law no. 39/1999 concerning Human Rights confirms that: "every person has the right to freely choose his or her own religion and to worship according to the teachings of that religion and belief." Article 55 of the Law also regulates: "the right of every child to worship according to his religion and beliefs under the care of his parents or the guidance of other parties." Based on the explanation above, the rules regarding freedom of religious belief are in accordance with the elements regarding freedom of religion and belief as regulated in Article 18 of the Covenant on Civil and Political Rights and the Declaration of Human Rights.

The words the right to freely choose one's beliefs in the 1945 Constitution and the Human Rights Charter and freedom to choose one's religion and beliefs are referred to in Law no. 39/1999 clearly includes elements of the right to freely choose or have a religion or belief as regulated in the Covenant on Civil and Political Rights. First, Indonesia has ratified the Covenant on Civil and Political Rights which regulates religious freedom. Based on the covenant, all national legislative products in a country must be adapted to the legal rules contained in the covenant. Second, because international instruments are complementary in nature. For example, religious freedom in the Universal Declaration is explained in more detail in the civil and political rights covenant and the 1981 declaration. Therefore, Indonesian national legislation must pay attention to all legal provisions regarding religious freedom in all international instruments since the government ratified binding international instruments.

### **III. METHODOLOGY**

This research is included in library research, namely research carried out using literature. The author reads and takes theories from books related to the problem being researched and then concludes the results of various kinds of research. Based on its nature, this research includes analytical descriptive research which is a method of researching an object which aims to create a systematic and objective description,



picture, of facts, properties, characteristics and relationships between existing elements and phenomena. certain.

#### **IV. RESULT AND DISCUSSION**

The Umrah Hajj Law no. 8 of 2019 is no longer relevant because it does not follow changes in Hajj Umrah regulations and policies in Saudi Arabia. That in Saudi Arabia there have been very significant changes in the implementation of the Hajj and Umrah which have the potential to pose a threat to the implementation of Umrah and Hajj pilgrimages in domestically That in the 1443H/ 2022M Hajj season, the Saudi Government provides additional quotas beyond the initial national quota which cannot be accommodated by the current law. That from 2020 to early 2022, due to the Covid-19 pandemic, Saudi Arabia has stopped holding the Hajj for Muslims who is outside the territory of Saudi Arabia, the event of the cancellation of the Hajj due to force majeure has not been regulated in the current law. Vision 2030 implemented by the Saudi Government could eliminate the role of the Indonesian Government and Umrah and Hajj Organizers in organizing Umrah and Hajj trips. The determination of a special Hajj quota of 8% needs to be reviewed and discussed jointly between the Ministry of Religion, the DPR RI and the Hajj Organizers Association.

The implementation and sale of Hajj travel program packages in Indonesia must follow the existing rules and regulations in Indonesia and involve the participation of the Government and the Association. together. The law needs to contain provisions for an international relations agreement between the Indonesian Government and the Saudi Government, so that policies in organizing the Hajj and Umrah between the two governments can run synergistically in bilateral and multilateral forms. The Umrah Hajj Law is currently considered to provide provisions and regulations that are very strict and detrimental to PPIU and PIHK in the country, while the Saudi government's recent policies are very aggressive and open and even threaten the existence of PPIU and PIHK businesses.

The domestic Umrah Hajj Law must be adaptive to the need for digitalization and inclusiveness in the Hajj Umrah implementation ecosystem. The current law does not yet regulate the provisions for the digital transformation process that occurs in the implementation of Indonesia's Umrah and Hajj. The Hajj and Umrah Law could ideally regulate digitalization in the field of organizing Umrah and Hajj in order to make things easier for organizers and society at large. The state, in this case the Ministry of Religion, in coordination with the Ministry of Communication and Information and other related institutions, is obliged to protect the data and rights of the Indonesian

people in general and Umrah and Hajj pilgrims in particular from the emergence of digital-based marketing applications originating from abroad.

The need for relationships with the B to B scheme in the Hajj Umrah ecosystem is still the best scheme for Indonesia because Hajj Umrah is an activity that has the value of worship and the Indonesian Hajj Umrah ecosystem still needs protection in ensuring the rights of Hajj Umrah pilgrims. There needs to be provisions governing the G to G relationship between the Indonesian Government and Saudi Arabia at the regulatory level and the B to B relationship between PPIU / PIHK and service providers in Saudi Arabia at the operational level. Hajj Ecosystem; Hajj quotas are not in line with the number of permits granted;

Revise the position of PPIU-PIHK to no longer be a high-risk business group because in essence Umrah and Hajj trips are not much different from other international trips. Based on PP No. 5 of 2021, PPIU PIHK is not included in the high risk business category because it is not related to the PP. Special Hajj and Umrah trips are the same as other international trips. The special Hajj financial risk has been taken over by BPKH, the Umrah financial risk has been included in the digital transformation process. There must be simplification in the PHU Law No. 8 of 2019 by removing criminal articles and making sufficient provisions in the Criminal Code. To realize the principle of protection for the community, it is enough to place PPIU PIHK as a medium-low risk business.

- a) B to B relations in the future Hajj will increase the costs of organizing the regular Hajj, so it is necessary to open an exit gate for the government so that regular Hajj pilgrims can migrate to special Hajj as has been done by Malaysia so that the cost burden can be overcome by pilgrims by improving services by PIHK. In order to reduce the government's subsidy burden, it is necessary to open opportunities for migration of regular pilgrims in the current year's quota to receive special Hajj services with the consequence that these pilgrims do not receive subsidies from the government. With a very long waiting period and having financial capabilities or special needs, the pilgrims need special Hajj services using regular quotas. The law can accommodate provisions governing the migration of regular Hajj pilgrims to special Hajj pilgrims.
- b) Arrangement of the remaining quota and additional unused quota due to limited time to utilize it is left to special Hajj services; It is necessary to create a policy to reduce the waiting period by maximizing the utilization of remaining quota and additional quota. The high desire to perform the Hajj pilgrimage

The Umrah Hajj Association needs to be present in the Umrah Hajj Law so that it can exist in carrying out guidance and supervision functions for its members.

Strengthening the definition and main tasks and functions of associations in Indonesia. It needs to be included in the general provisions in Law No. 8 of 2019. Associations are associations/associations of PPIU and PIHK in Indonesia which have the authority to supervise, develop and protect their members.

The Ministry of Religion should only act as a regulator and no longer act as a regular Hajj operator. Changes in regulations in Saudi Arabia which already function as the Ministry of Hajj as a regulator and muassasah as a sharia, the role of the Ministry of Religion is simply as a regulator. The KSA government's policy direction in organizing the Hajj and Umrah is only focused on quotas and visas. Meanwhile, the technical aspects of implementation are completely carried out by the private sector. The unification of operator regulator and supervisor functions in one control creates a lot of subjectivity.

## **V. CONCLUSION**

Changes in regulations in Saudi Arabia which already function as the Ministry of Hajj as a regulator and muassasah as a sharia, the role of the Ministry of Religion is simply as a regulator. The KSA government's policy direction in organizing the Hajj and Umrah is only focused on quotas and visas. Meanwhile, the technical aspects of implementation are completely carried out by the private sector. The unification of operator regulator and supervisor functions in one control creates a lot of subjectivity. Organizing the Hajj pilgrimage aims to provide the best possible guidance, service and protection for the Hajj pilgrims so that the Hajj pilgrims can carry out their worship in accordance with the provisions of Islamic religious teachings. This ideal goal is difficult to achieve at the practical level, because the implementation of the Hajj pilgrimage is always plagued by various problems that are almost the same from year to year. These problems include the Hajj pilgrims not understanding the rituals involved in the Hajj, inconvenience of transportation, accommodation and catering services, and the inability of officers to serve the Hajj pilgrims. All these problems make it difficult for Hajj pilgrims to carry out their pilgrimage in accordance with the provisions of Hajj jurisprudence. This condition, of course, cannot be allowed to continue and a solution needs to be found so that the Hajj pilgrimage can be carried out in accordance with its ideal goals. The question then is why do the problems that plague the organization of the Hajj always recur every year? how these problems can be handled well by the government.

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