

# The Nature, Function and Authority of Regional Government for Services for Purposes in the Implementation of The Hajj and Umrah Worship in the Province of Maluku Indonesia

Yamin<sup>1\*</sup>, M.J Sapteno<sup>2</sup>, J.Tjiptabudy<sup>3</sup>, J.J.Pieterz<sup>4</sup>

<sup>1</sup>Graduate Student PhD, Study Program : Science Of Law. Pattimura University, Ambon, Indonesia

<sup>2,3,4</sup>Faculty Of Law. Pattimura University, Ambon, Indonesia

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**Abstract :** This research aims to know, study and analyze the essence, function and authority of the Regional Government for guidance, service and legal protection for the congregation in the implementation of the Hajj and Umrah pilgrimage in Maluku province, Indonesia. This research is normative legal research with statutory, case, historical, comparative and conceptual approaches. The sources of legal materials used are primary, secondary and tertiary legal materials. Collecting legal materials uses library research and interviews. Then it is described and analyzed qualitatively. The research results show that; The nature, function and authority of the Regional Government for service, guidance and protection of the congregation in carrying out the Hajj and Umrah pilgrimage is contained in Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, namely: a) providing guidance, service and protection for the congregation Hajj and Umrah so that they can carry out their worship in accordance with the provisions of the Shari'a; and b) realizing independence and resilience in organizing the Hajj and Umrah pilgrimages. That; legal regulations related to the function and authority of the Regional Government for services, guidance and legal protection for pilgrims in the implementation of the Hajj and Umrah pilgrimages as regulated in Law no. 8 of 2019, PMA no.8 of 2018, and PMA No. 13 of 2018 which is a guide that fully regulates the implementation of the Hajj and Umrah starting from the departure destination, departure, accommodation services, return, supervision, to sanctions for violations that occur in the procession of holding the Hajj and Umrah.

**Keywords:** *Essence, Function and Authority, Regional Government, Development, Services, Protection, Hajj and Umrah Pilgrims.*

## 1. INTRODUCTION

Law has an important function in social life, namely as a tool to create justice, order, peace and order but also to guarantee legal certainty. The next level, the law is directed as a means of progress and welfare of society which is formed based on the wishes and awareness of each individual in society, with the aim that the law can operate as envisioned by the society itself, namely wanting harmony and peace in social life together. Article 29 paragraph 2 of the 1945 Constitution of the Republic of Indonesia states that the state guarantees every resident to embrace their own religion and to worship according to their religion and beliefs. The basic norms contained in the Constitution provide a guarantee that there is state recognition for the Indonesian population to freely embrace their respective religions and beliefs. Therefore, the government is responsible for regulating and managing everything related to the rights of the population so that it does not cause problems in its implementation.

The government's responsibility turns out to be very broad in scope, both regarding guidance, supervision and legal protection. This is a juridically normative guarantee of legal certainty for citizens, especially Hajj and Umrah pilgrims who will carry out the Hajj and Umrah pilgrimage every year.

The Umrah and Hajj pilgrimages are the fifth pillars of Islam after the shahada, prayer, zakat and fasting which must be carried out by every Muslim who fulfills the iIstihah requirements, namely the ability to carry out the Umrah or Hajj pilgrimage physically, mentally and physically. The implementation of the Umrah and Hajj pilgrimages in Indonesia has been carried out since the arrival of Islam to Indonesia, during the Dutch colonial era until now. From time to time the implementation of the Umrah and Hajj pilgrimages experiences many dynamics which lead to the main issue, namely regulations concerning bilateral relations between 2 (two) countries that have social and cultural differences.

During the colonial period, the main problems were security and limited facilities. Now that the world is safe and facilities are increasingly sophisticated, the large number of Umrah and Hajj pilgrims due to limited quota and capacity of

facilities and infrastructure is a major problem. The Hajj is an annual ritual carried out by Muslims throughout the world by visiting and carrying out various activities in several places in Saudi Arabia at a time known as the Hajj season or only carried out in the month of Dzulhijjah. This is different from the Umrah pilgrimage which can be carried out at any time and at any time.

Organizing the Hajj or Umrah is not only a religious obligation but also the responsibility of the Muslim individual or community, apart from that, it is also a national duty and concerns the dignity and good name of the nation, therefore Umrah and Hajj activities are also an inseparable part of the implementation management system. Umrah and Hajj pilgrimages.

The state recognizes the freedom of religion of each individual according to their respective beliefs. This confirmation is intended to regulate the implementation of worship for each individual in order to create order and order in society. The substance is the freedom to embrace religion and practice worship according to one's own religion and belief, which is a basic right for all Indonesian people because every individual has the same rights in carrying out worship based on the methods of each religion involved.

With the diversity of religions recognized in Indonesia, the logical consequence is the realization of the freedom of every citizen to carry out worship according to the religion he adheres to. The government facilitates and accommodates this in real implementation through comprehensive and systematic regulations in the form of the 1945 Constitution of the Republic of Indonesia. Other laws and regulations, including the Islamic religion. For example, regulations regarding procedures for zakat, infaq, alms, grants and arrangements for the implementation of the Hajj and Umrah pilgrimages. One of the goals is to ensure orderly processes in the heterogeneous Indonesian society.

Specifically, the regulation of the implementation of the Hajj and Umrah for Muslims is important and currently amidst the many problems related to the implementation of the Hajj and Umrah pilgrimage, starting from the Hajj and Umrah registration process with a ton of homework for the government in dealing with the overflowing waiting list of prospective pilgrims which increases every year to with the repatriation process from Saudi Arabia with a guarantee of safety from our country as the hajj operator.

In Indonesia, the implementation of the Hajj and Umrah pilgrimage is under the Ministry of Religion of the Republic of Indonesia (hereinafter referred to as the Ministry of Religion of the Republic of Indonesia). The Indonesian Ministry of Religion as the operator of the Hajj and Umrah certainly has a very important task, apart from the fact that the Hajj is an obligatory pillar in Islam, the implementation of the Hajj and Umrah also has many series which are of course important for the government to pay serious attention to. Currently, Hajj organizers are based on the juridical basis regulated in Law Number 8 of 2019 concerning Organizers of the Hajj and Umrah (hereinafter abbreviated to Law No. 8 of 2019). The government, through the Indonesian Ministry of Religion, is of course obliged to realize the main objectives of organizing the Hajj and Umrah, this is as stated in Chapter I Article 3 of Law no. 8 of 2019 emphasized that: "1). The implementation of the Hajj and Umrah pilgrimage aims to provide guidance, service and protection for Hajj and Umrah pilgrims so that

they can carry out their worship in accordance with the provisions of the Sharia"; 2). Realizing independence and resilience in organizing the Hajj and Umrah pilgrimages.

The aim of the best possible guidance, service and protection in this article is not just an empty article but is a guideline for every implementation of the Hajj and Umrah pilgrimage in our country. In efforts to improve the implementation of the Hajj and Umrah pilgrimages, the Indonesian government certainly has a reference. The reference is to three principles as the basis for organizing the Hajj and Umrah according to Law no. 9 of 2019. First: is the principle of Islamic Sharia, this principle according to the Indonesian government is the management of the Hajj and Umrah which are managed professionally in accordance with religious teachings. ; Second: the principle of trust, what is meant by "principle of trust" is that the implementation of the Hajj and Umrah is carried out with full responsibility. Third: the principle of Justice, namely that the implementation of the Hajj pilgrimage adheres to truth, is impartial, impartial and not arbitrary in the implementation of the Hajj pilgrimage; Fourth: the principle of benefit, namely that the implementation of the Hajj and Umrah must be carried out in the interests of the congregation. Fifth: the principle of benefit, namely that the implementation of the Hajj and Umrah is carried out to provide benefits to the congregation. Sixth: the principle of safety, namely that the implementation of the Hajj and Umrah must be carried out for the safety of the congregation. Seventh: the principle of professionalism, is that the implementation of the Hajj and Umrah must be carried out taking into account the expertise of the managers. Eighth: the principle of professionalism, namely that the implementation of the Hajj and Umrah must be carried out taking into account the expertise of the managers. Ninth: the principle of transparency, namely that the implementation of the Hajj and Umrah pilgrimage is carried out openly and makes it easier for the public to access or obtain information related to the implementation of the Hajj and Umrah pilgrimage, financial management and assets. Tenth: the principle of Accountability, namely that the Hajj and Umrah are carried out with full responsibility both ethically and legally.

Based on the objectives and basic principles above, it is the basis for the Ministry of Religion and Regional Government for the registration process, determining annual Hajj and Umrah quotas, departure, up to repatriation. Furthermore, in Article 30 paragraph (1) of Law no. 8 of 2019 emphasizes that "Regular Hajj Pilgrimage Registration is carried out throughout the year every day in accordance with the procedures and requirements determined by the Minister", then in Article 30 paragraph (2) it is further emphasized that: "Registration as intended in paragraph (1) is carried out in the office of the Ministry of Religion in the Regency/City where the Hajj Pilgrimage is located." Then in article 30 Paragraph (3) Registration as referred to in paragraph (1) is carried out based on the service principle in accordance with the registration serial number. Article 30 paragraph (4) The registration serial number as intended in paragraph (3) is used as the basis for departure services for the Hajj Congregation. Article 30 paragraph (5) excludes elderly Hajj pilgrims as referred to in Article 14. This is also supported by Minister of Religion Regulation Number 6 of 2010 concerning Procedures and Requirements for Registration of Hajj Pilgrims, regarding this matter in article (1) it is emphasized that "Registration of Hajj pilgrims is carried out throughout the year with the principle of departure service according to the registration sequence number (portion number)." Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage.

For Hajj and Umrah pilgrims in Indonesia, registration to carry out the Hajj and Umrah pilgrimage is carried out through the Indonesian Ministry of Religion office in the district/city of origin of each prospective Hajj and Umrah pilgrim. This applies to all Hajj programs, whether regular Hajj programs, ONH plus or special Hajj programs. Even though in reality the special Hajj program that takes care of it is ONH plus travel or the Hajj and Umrah guidance group (KBIHU), registration is still carried out through the Indonesian Ministry of Religion. Basically, the Hajj registration mechanism carried out by the Indonesian Ministry of Religion is intended to bring order and ease to the administrative system that will be carried out. In terms of determining the Hajj quota, the Indonesian Ministry of Religion complies with regulations which should receive special attention in determining the Hajj quota. In article 12 paragraph (3) Law no. 8 of 2019 confirms that: "The Minister determines the National Hajj quota, special Hajj quota and Provincial Hajj quota by taking into account the principles of transparency and proportionality", furthermore in Article 13 paragraph (3) it is emphasized, "The Governor can divide and determine the provincial Hajj quota as intended in paragraph (1) into the regency/city Hajj quota is based on considerations of: (a) the proportion of the Regency/City's Muslim population; or (b) the proportion of the number of Hajj pilgrims waiting list in each district/city."

The governor as the coordinator of hajj organizers at the provincial level can distribute quotas in accordance with what is mandated in Law no. 8 of 2019 of course must pay attention to the principles of organizing the Hajj and Umrah pilgrimage so that it can be carried out based on the principles of professionalism, transparency, accountability and sharia. Based on the above, the quota is distributed to the City Districts fairly and no one feels disadvantaged. This is very important because the Hajj and Umrah are obligations according to the pillars of Islam, which can be carried out by every Muslim. The following is data on the quota of Hajj pilgrims for the last 5 (five) years who wish to go for Umrah, which can be proven by the following data:

**Table 1. Regency/City Hajj Quota for Maluku Province**

NO	DISTRICT/CITY	REGULAR HAJJ QUOTA YEAR					
		2008	2009	2010 -2012	2013 -2016	2017 - 2019	2020
1	Ambon		359	328	246	368	361
2	Central Maluku		72	76	64	135	135
3	Southeast Maluku		102	111	42	70	70
4	Spooky Western Part		9	60	48	100	98
5	Spooky Eastern Part		12	50	38	100	98
6	Aru Islands		11	25	21	45	45
7	southeast West Maluku			2	3	10	10
8	Hurry		47	53	38	100	98
9	Tual City				52	105	103
10	South Buru				12	45	45
11	Southwest Maluku				0	4	4
12	Elderly						11
13	Tphd	6	6	5	5	8	8
<b>TOTAL</b>		<b>618</b>	<b>618</b>	<b>710</b>	<b>569</b>	<b>1,090</b>	<b>1,086</b>

Regarding the factual conditions in efforts to provide guidance, supervision and legal protection for Hajj pilgrims during the Hajj and Umrah pilgrimages, the framework of thought in writing this dissertation can be stated as follows:

The 1945 Constitution, especially article 29 paragraph 2, provides constitutional guarantees for the Indonesian population, including Indonesian Hajj pilgrims who are entitled to their constitutional rights.

This is further regulated in various organic regulations which are an elaboration of these constitutional rights, and provide certain powers to the Regional Government as the representative of the central government in the region to provide legal protection guarantees for Hajj pilgrims in carrying out the Hajj and Umrah pilgrimages.

In its implementation, it turns out that various things are still found that do not provide a guarantee of fair legal protection for Hajj pilgrims, so they need to be studied theoretically and conceptually to provide justification for its implementation. Various issues were found related to the function, role and authority of the Regional Government, in this case the Governor, who legally normatively has the authority to guide, supervise and protect legally, Hajj pilgrims in the implementation of the Hajj and Umrah pilgrimages.

To answer these legal issues, various related legal theories are used. In order to dissect them, the theories put forward are the theory of justice, the theory of the rule of law, the theory of authority, the theory of law enforcement and the theory of legal utility. This theoretical basis can provide normative and substantial juridical solutions, to realize the implementation of the Hajj and Umrah pilgrimages fairly, thereby providing a sense of security for Hajj pilgrims in obtaining their rights as human rights, as residents and citizens of Indonesia. This frame of mind can be depicted in the chart above.

The distribution of Hajj quota for prospective Hajj and Umrah pilgrims is not based on justice in Indonesia, namely on the issue of values. The value problem is that there is no good understanding or systemic understanding of the substance of justice in other related laws. The lack of understanding of the Substance of Justice has given rise to weaknesses in the legal structure that handles issues related to the fair distribution of Hajj allowances. Fairness in fulfilling the distribution of Hajj quota is part of the rights given by the State to its citizens. The law covers the rights that every human being has when harmed by another human being. So that through the distribution of Hajj quota, prospective Hajj and Umrah pilgrims can experience the rights available from the applicable law. Laws can be aimed at realizing Hajj quotas that are transparent, adaptive and flexible, as well as predictive and anticipatory.

The Hajj and Umrah quota distribution system is based on considering the overall Muslim population by taking into account the number of waiting lists. The distribution of Hajj and Umrah quotas provided is not evenly distributed according to the portion of the population of each city.

Therefore, it can be said that the law functions to provide justice to every citizen and is a means of realizing prosperity for all people. Entitled to a fair distribution of Hajj quota; It is possible to obtain a Hajj quota using formal (legal) or informal procedures. As in the theory of legal protection, namely forming a rule (by giving regulation), with the aim of facilitating or providing rights and obligations, providing guarantees for legal subjects as well as enforcing a rule (by law enforcement), by means of establishing regulations governing Hajj quotas and Umrah based on the value of justice includes population structure, accessibility and waiting lists. The problem that can be formulated in this research is what is the nature, function and authority of the Regional Government for service, guidance and protection of pilgrims during the Hajj and Umrah pilgrimages?

### **Research purposes**

The aim of this research is : To find out, study and analyze the nature, function and authority of the Regional Government for services to pilgrims in the implementation of the Hajj and Umrah pilgrimages.

### **Benefits of research**

#### 1. Theoretical Benefits

Theoretical benefits are as input in the development of legal science, especially constitutional law and state administration

#### 2. Practical Benefits

The benefits of parktis are as input for the Regional Government and related agencies in the context of services, guidance and legal protection for pilgrims in carrying out the Hajj and Umrah pilgrimages.

## **2. RESEARCH METHODS**

### **Types of research**

This research is normative legal research. Normative legal research is carried out to study and analyze various issues in the legal field, related to legal principles, legal norms and legal concepts and laws in their implementation.

### **Research Approach**

The approaches in normative legal research are the statutory approach, the conceptual approach, the historical approach, the comparative approach and the case approach.<sup>1</sup> Regarding the research for writing this dissertation, the approaches taken are the statutory approach, the conceptual approach and the case approach.

### **Legal Materials**

The legal materials used in this research are primary legal materials and secondary legal entities. Primary legal materials consist of various legal theories, legal principles and legal norms in various laws and regulations, as well as legal concepts, which are collected from various textbooks and official sources published by competent state institutions. Secondary legal materials consist of various legal documents found in various legal journals, legal magazines, dissertations in the field of law, and various other sources.

### **Legal Material Collection Techniques**

The collection of legal materials is carried out by browsing and reading various official documents stored in several libraries and related official institutions, which are official sources, both government and private. Searching for legal materials is also carried out using the internet or other available media.

### **Legal Material Analysis Techniques**

Primary legal materials and secondary legal materials, after being collected, are then analyzed by elaborating or explaining, linking or linking one theory with another. bro other theories, between theory and principles, principles and norms, theory with norms, and theory, principles and norms with concepts, comprehensively, so that appropriate conclusions can be drawn, based on the problems or issues that have been formulated.

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<sup>1</sup>Peter Mahmud Marzuki; Legal Research, Kencana Perdana Media Group, Jakarta, 2005 p.133

### 3. RESULTS AND DISCUSSION

#### A. The essence, function and authority of regional governments for services, guidance and protection of pilgrims during the Hajj and Umrah pilgrimages

Talking about authority is actually talking about power received from the law or power based on applicable rules. The scope of authority varies, but one source is law.

The institutionalization of law in society has an important aspect, namely as a means of controlling and limiting people's desires for power. The relationship between law and power is as a means of controlling the power that exists in people. Law not only limits power, it also gives power to people. The law is a source of power, because it is through it that power is distributed in society.<sup>2</sup>

Law is a source of power or authority, because law contains norms, including moral and ethical messages, which grant rights and regulate obligations to legal subjects, namely people and legal entities. Therefore, law must be an important instrument capable of providing a sense of security, peace and justice, as well as true protection for people seeking justice.

According to Gustav Radbruch, the basic values of law are justice, usefulness and legal certainty.<sup>3</sup>Chainur Arrasjid is of the opinion that although these three are called basic legal values, in reality these three basic values each have *spannungs-verhältnis*, a tension with each other.<sup>4</sup>

What is the essence, function, role and authority of regional governments for guidance, services and legal protection for Hajj pilgrims in carrying out the Hajj and Umrah pilgrimages. According to the mandate of Law No. 8 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage. Article (3) states that the implementation of the Hajj and Umrah has the aim of: a. provide guidance, service and protection for Hajj and Umrah pilgrims so that they can carry out their worship in accordance with the provisions of the Shari'a; and b. Realizing independence and resilience in the implementation of the Hajj and Umrah pilgrimages. In terms of Hajj guidance, article 32 (1) states that the Minister (Religion) is responsible for providing Hajj guidance to Hajj pilgrims. In paragraph (2) the Minister is responsible for developing the health of Hajj pilgrims before, during and after carrying out the Hajj pilgrimage. In this article it is clearly stated that Hajj guidance is carried out in all phases including the phases before, during and after (post) the Hajj pilgrimage. In the first two phases, before and during the Hajj, the government program has experienced significant developments from year to year. In these two phases, various coaching and mentoring activities are carried out by the Ministry of Religious Affairs to ensure that the Hajj can run smoothly. In these two phases, coaching is carried out both in the managerial aspects of implementation and aspects of *fiqh* guidance such as Hajj rituals.

Meanwhile, for the post-hajj phase, there are relatively no planned activities for the implementation of coaching and programs that provide guidance to Hajj alumni. In fact, this phase, like the first two phases, is an important part in the series of implementation of the Hajj ritual as an effort to realize and maintain the harmony of the Hajj so that the Hajj pilgrimage not only fulfills the demands of *syariyyah* but also has real benefits in the midst of it. public. Basically, the chaos of a worship ritual, including the Hajj, does not only lie in the practice of carrying out the worship itself according to sharia, but also in the impact that the worship has on individual and social life in society. In many foundations (*dalil naqli* and '*aqli*) it is explained that one of the indicators of the chaotic implementation of the Hajj lies in the period after the implementation of the Hajj (*ba'da al hajj*). Like training, the Hajj is an exercise for Muslims in order to organize themselves into better people individually and socially. In other words, after returning from the Hajj pilgrimage, pilgrims can ideally increase their level of social piety which will benefit the lives of the surrounding community.

This hope is something natural because in the traditions of Indonesian society, people who have carried out the Hajj pilgrimage, apart from having carried out the last pillar of Islam, will also socially occupy a respectable position in the community where they take part. This can be seen in the title given by the community as "hajj" for those who have carried out the pilgrimage. This honorable cultural status encourages the social mobility process of those who make the Hajj to an honorable status which indirectly also provides additional social roles in society (Farida 1999).

The manifestation of the expansion of the social role of Hajj pilgrims has been proven in many historical records and research where, for example, many heroes and initiators of change in the country have Hajj backgrounds. In fact, specifically, Bruinessen, an Indonesianist from the Netherlands, noted that the process of social transformation carried out by the founders of Islamic religious organizations in the archipelago actually gained the energy of social change after they carried out the Hajj. In his paper *Seeking Knowledge and Rewards*

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<sup>2</sup>Satjipto Rahadjo, *Legal Studies*, Cipta Adhya Bakti Bandung, 2014, 146-147.

<sup>3</sup>Quoted from Chainur Arrasjid; *Basics of Legal Science*, Sinar Graphics, 2000, p.17. <sup>4</sup>Chainur Arrasjid *Ibid*.

in the Holy Land: Indonesian People on the Hajj, Bruinessen refers to several national heroes and founding figures of religious organizations such as Ahmad Dahlan, founder of Muhammadiyah, and KH. Hasyim Asy'ari, founder of the NU mass organization, experienced a process of social transformation after carrying out the Hajj. In his analysis, Bruinessen saw that there was a process of "learning" through interactions between people carrying out the Hajj and interacting with Muslim pilgrims around the world which ultimately provided reform ideas when Indonesian Hajj pilgrims returned to their homeland. Because of the experience of national figures and also the founders of Islamic organizations at that time, the colonial government at that time needed to pay attention to Muslims who had performed the Hajj, including by identifying the term "hajj" in the names of those who had carried out the Hajj at that time. The purpose of labeling Hajj by the colonial government at that time was not to give special status to these people, but to identify people who had the potential to bring about social change in the form of resistance to colonialism. Snouck Hurgronje's notes as reviewed by Bruinessen show the process of social transformation experienced by Muslims after carrying out this worship.

In this case, the Hajj and Umrah are rituals that are able to change a Muslim's personality from being just pious or good individually but able to transform into a person who is socially pious (muslih) through various initiations and roles in the social environment after they return to their homeland. As is known, in certain Islamic communities, the Hajj and Umrah are rituals of worship that have spiritual and social dimensions. Spiritually, the priority of the Hajj and Umrah is reflected in the Naqli arguments in both the Koran and Al-Hadith which place the position of people who perform the Hajj in *mabrur* as candidates for heaven. Meanwhile, socially, privilege is formed as a form of public respect for those who have performed the Hajj and Umrah, especially the Hajj, so that they occupy a special position in their religious life. This encourages people's enthusiasm for the Hajj which is proven by the great interest of the people in carrying out the Hajj and Umrah every year. Statistical data available from the Hajj Affairs Office shows a significant increase every year. The Hajj pilgrimage is considered a rite of life for Indonesian Muslims (Vandenbregt, 1991: 45). In fact, Indonesians have had a high level of interest in performing Hajj since independence. In Snouck Hurgronje's notes as quoted by Bruinessen (1990) that among all Hajj pilgrims, Indonesians during the last century and a half constituted a very prominent proportion. In the late 19th and early 20th centuries, they made up between 10 and 20 percent of all foreign Hajj, although they came from more distant regions than others. In fact, in the 1920s about 40 percent of all Hajj came from Indonesia. Until now, the enthusiasm of Indonesian Muslims remains high and they are willing to join the waiting list for up to 1 year. In the context of social status, the Hajj does not only have meaning as a religious doctrine, but has experienced an expanded perception as an institution capable of maintaining local values (Farida, 1999: 37-38). As a social doctrine, Hajj has also provided a set of institutions that can raise social status in society. This happened to the Betawi trading community. The most popular choice among traders who want to increase their social status is to make the pilgrimage. Regardless of whether the title is related to their religious qualities or not. In the Betawi trading community, the Hajj is able to increase social status on a par with other religious elites, such as *kiai* or *ulama*. Currently, it is hoped that the title "hajj" will also legitimize the "religious logic" of the social role in resolving several problems in society. In the social realm, various kinds of social ills often occur in people's lives, such as high crime rates, the rise of pornography and pornographic action, drug trafficking, human rights violations, and other forms of social deviation. Apart from that, what is also worrying is the existence of corrupt behavior habits that continue to occur among society. Corruption almost occurs at all levels and aspects of society. Starting from arranging Building Construction Permits (IMB), procurement projects in government agencies, to law enforcement processes. In 2005, according to Political Economic and Risk Consultancy (PERC) data, Indonesia ranked first as the most corrupt country in Asia.<sup>5</sup> Until now, this corrupt behavior cannot be eliminated even though Indonesia already has a special institution for handling corruption, namely the Corruption Eradication Commission (KPK). Until now, the mass media still reports a lot of corruption cases which not only involve officials in the executive branch, but also in the legislative and judicial institutions, both in the central and regional governments. Even though Muslims are required to carry out social services such as *zakat*, *infaq* and *alms*, however, many Muslims today are still in the poor category.<sup>6</sup> Underdeveloped, and with low education, even though *zakat* services are more organized and receive support from the government. With the title and increasing social status of the pilgrims, they were expected to assume these social roles. This means that the degree of social piety of the congregation after returning from the Hajj (post-Hajj) will increase with the attachment of titles and social status in society. This research on the social role of post-Hajj pilgrims is directed at seeing how the Hajj pilgrimage encourages the formation of the socio-religious status and role of post-Hajj pilgrims in forming individual and social piety. By understanding the role of Hajj and Umrah in encouraging the formation of social piety, it is hoped that policies to increase substantive religious awareness can be born from this research. The aims of this

<sup>5</sup>Many other survey institutions state the same thing, such as Transparency Indonesia (2002) which states that Indonesia is the 6th most corrupt country out of 102 countries.

<sup>6</sup>Based on BPS data in 2006, the number of poor people in Indonesia reached 39.05 million people or 17.75 percent of the total 222 million population of Indonesia. Meanwhile, BPS data for 2007 shows that the number of poor people decreased by 37.17 million or 16.58 percent, Source: [www.bps.go.id/releases/files/kemiskinan-01sep08.pdf](http://www.bps.go.id/releases/files/kemiskinan-01sep08.pdf)

research are: a) To find out the knowledge of pilgrims after Hajj regarding social worship b) To know the pattern of relationships between knowledge with social piety among pilgrims after returning from Hajj c) Knowing the causality pattern between social status after returning from Hajj and social piety d) Knowing the increase in substantive awareness of Hajj pilgrims regarding social piety. In addition, this research aims to understand how the Hajj pilgrimage is perceived by the Muslim community both as a theological worship (mahdhah) and also as worship with a social dimension (ghair mahdhah). By finding out how the public understands the Hajj pilgrimage, it is hoped that a pattern can be found in the care and development of pilgrims who have made the Hajj so that they can provide benefits from the Hajj ritual both in their individual lives and in the social environment of the Hajj pilgrims. To achieve this goal, this research uses a qualitative, phenomenological approach, in order to gain an in-depth understanding and interpretation of the community regarding the Hajj pilgrimage.

In this research, three data collection techniques were used. First, observations were made by participating in various community activities, such as community meetings, recitations and other social activities where the social roles of the Hajj pilgrims could be seen in their various roles in social activities in their environment. Second, interview. To explore various findings in observations, this research also includes interviews. Through an in-depth interview process, it is possible to obtain explanations regarding the various forms of social roles of Hajj pilgrims in society. This interview was addressed to several informants related to the theme of this research. Among the informants were, first, community leaders including informal figures in the community, then the Chair of the Mosque Prosperity Council. So the informant was the Head of the Hajj Division at the Ministry of Religion of Maluku Province. No less important informants are the congregation themselves. In this research, several informants were selected who were grouped into the categories of community leaders and ordinary people. Community figures mean those who have made the Hajj and have an important position in the social status of their community, for example a kyai or ustads. Meanwhile, for the category of ordinary people, it is carried out for Hajj and Umrah pilgrims from among non-community figures, but ordinary people who have already made the Hajj and did not have a position or social status before they went on the Hajj. The final informants are the actors in the Hajj pilgrimage service, namely the Hajj and Umrah travel agents. The third data collection technique is literature review. This technique is carried out by examining several references in the form of books or journals that discuss the Hajj. This research was conducted in two regions in West Java, namely Kab. Bandung and Kab. Garut. The selection of these two regions was based on regional characteristics that depict different cultures.

In this research, residents in Maluku Province will represent the typology of society with an urban character and residents in the Maluku Province region will represent the typology of society with an urban character. This categorical division is not understood in an administrative geographic context as a division of cities and villages, but rather in a sociological concept as urban cultural communities and urban cultural communities. This typological division departs from the argument that Hajj as a social status and role in society will be influenced by the typology of the relevant society. Perceptions of the Hajj and Umrah as a social concept are shaped by the typology of society itself. Apart from that, the argument for choosing this area is because the two locations in the research area are areas with quite a lot of Hajj and Umrah pilgrims. This illustrates indirectly how society understands the Hajj and Umrah pilgrimages themselves.

## **B. Legal Protection of Indonesian Hajj and Umrah Congregants**

Legal protection for Hajj and Umrah pilgrims is an action that protects the interests of Hajj and Umrah pilgrims. What is meant by interests here are the rights that must be accepted by Hajj and Umrah pilgrims as consumers of public services, before discussing efforts or The legal protection measures provided by the Maluku Provincial government to Hajj and Umrah pilgrims, it is necessary to know in advance the types of rights of Hajj and Umrah pilgrims. The rights of Hajj and Umrah pilgrims are rights as consumers of public services and are also the government's obligations in terms of carrying out the Hajj and Umrah pilgrimages, which are carried out by the central and regional governments, in the form of a series of guidance, services and protection for the implementation of the Hajj and Umrah pilgrimages.

In providing Hajj and Umrah services, Hajj and Umrah pilgrims as consumers of public services must obtain consumer protection, where in the implementation the right to these services is divided into 2 (two), namely;

- a. The right to primary services, namely services related to worship specifically in the form of Hajj and Umrah rituals, training for Hajj and Umrah candidates and guidance on Hajj and Umrah pilgrimages. It is for this service that Hajj and Umrah pilgrims are willing to pay Hajj pilgrimage organizer fees (BPIH) which amount to millions of rupiah. This service is carried out by providing routine guidance in the form of rituals and other forms of practical training for the Hajj and Umrah pilgrimages, with the aim of ensuring the safety, order and welfare of Hajj and Umrah pilgrims as well as for the perfection of the Hajj and Umrah pilgrimages without charging additional fees outside the BPIH that has been determined. in Law Number 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage.

- b. The right to supporting services, namely services related to facilities and infrastructure supporting the smooth running of the Hajj and Umrah pilgrimages in particular, is divided into 4 (four);
- 1) Public services are in the form of government actions in service efforts which include; accommodation transportation and catering.<sup>7</sup> Article 33 states that transportation services for Hajj and Umrah pilgrims to Saudi Arabia and their return to their original embarkation place in Indonesia are the responsibility of the Minister and coordinate with the minister whose scope of duties and responsibilities are in the field of transportation.
  - 2) Health services in this health service, Hajj and Umrah candidates/pilgrims have the right to receive medicines and medical services when Hajj or Umrah candidates/pilgrims are sick. In article 41 number (2) of Law Number 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, it is explained that Hajj health services are carried out both during the preparation and implementation of the Hajj and Umrah pilgrimage, which at the Maluku Province level is the responsibility of health. Hajj candidates/congregants fall within the scope of duties and responsibilities of the Maluku Provincial Health Service, where this service is tasked with being responsible for the health of the Hajj ritual committee, departure and return of Maluku Province Hajj and Umrah candidates/congregants in terms of the Regional Office of the Ministry of Religion.
  - 3) Administrative services include services both domestically and abroad (Saudi Arabia) starting from registration of prospective Hajj and Umrah pilgrims, travel and immigration administration are the rights of Hajj and Umrah candidates/congregants without any additional fees charged outside BPIH. In this service there must be principles of public service, namely equal rights, non-discriminatory treatment of Hajj and Umrah candidates/congregants with each other, openness, accountability, professionalism and public legal certainty. Principles of public service based on Law Number 25 of 2009 concerning Public Services.
  - 4) Other services include the rights of Hajj and Umrah pilgrims to obtain services in terms of obtaining information and services by Hajj officers.<sup>8</sup>The right of Hajj and Umrah pilgrims to obtain guarantees in accordance with the principle of public service with transparency, meaning that it is open, easily accessible to parties who need it and provided adequately and easily understood, this principle is in line with the aim of consumer protection which contains elements of legal certainty and information transparency. and access to information.

Hajj Organization Number D/377 of 2002 concerning Guidelines for the Implementation of the Hajj and Umrah, explains the methods used in carrying out Hajj and Umrah counseling and information tasks including: First, directly conveyed to the public through lectures, sermons, consultations, questions and answers, demonstrations and other similar methods. Second, indirectly conveyed to the public through electronic media such as television, radio, newspapers, magazines, book exhibitions, etc.

It is hoped that the various types of methods above can ensure that Hajj pilgrims receive good and correct information ranging from matters of worship to technical matters, for example travel costs for the Hajj and Umrah, Hajj registration, and so on. The rights of Hajj pilgrims as consumers of public services in accordance with article 4 point (c) of Law Number 8 of 1999 concerning Consumer Protection explains that Hajj and Umrah pilgrims as consumers receive correct, clear and honest information regarding the conditions and guarantees of services. paid for the Hajj and Umrah.

The important thing that you need to know regarding the provision of Hajj and Umrah pilgrims is that the provision of pilgrims here is in the form of luggage that has been determined by the organizers of the Hajj and Umrah pilgrimages. Every Hajj and Umrah pilgrim has the right to bring free baggage to Saudi Arabia in the

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<sup>7</sup>Accommodation for Hajj and Umrah pilgrims includes accommodation in the country, namely transit and embarkation Hajj dormitories, as well as accommodation in Saudi Arabia, namely accommodation in Makkah, Medina, Madinatul Hujjaj and campsites in Arafah and Mina. Hajj dormitory management takes the form of activities that include planning, securing, maintaining and optimally utilizing land and buildings as well as facilities, infrastructure and facilities that support the function of the Hajj dormitory for Hajj operational services, where this management is the responsibility of the Maluku Provincial Management Agency, in this case the Ministry of Religion as responsible for the Hajj transit dormitory, namely the place for providing services for Hajj and Umrah candidates/pilgrims in readiness for departure/return to the embarkation dormitory directly from their respective homes. Procurement of accommodation which is the right of Hajj and Umrah pilgrims must meet the health, comfort, convenience and security requirements of Hajj pilgrims and their luggage.

<sup>8</sup>Hajj officers are officers appointed and appointed by the Minister to provide guidance, service and protection to Hajj and Umrah pilgrims in Indonesia and Saudi Arabia. There are several levels of Hajj and Umrah officers, where at the city/district regional level it is called the Regional Hajj Guide Team. (TPHD) which is appointed and appointed by the district or city government through the regional head, while the Indonesian Hajj Guiding Team (TPHI) and the Indonesian Hajj Guiding Team are appointed and appointed by the Minister of Religion through the respective Provincial Ministry of Religion. What needs to be criticized here is that they are not there are requirements or qualifications to become a TPHD so that the services provided can be doubted even though Hajj officers in providing services to Hajj and Umrah candidates/pilgrims must implement service principles in accordance with Law Number 25 of 2009 concerning Public Services, namely the principles for service officers public by fulfilling the requirements of discipline, politeness and friendliness, service providers must be disciplined, courteous and courteous, friendly, and provide services sincerely, apart from that they must understand their duties. Meanwhile, TPHI and TPIHI in this case must also be criticized and supervised, even though both of them have gone through the requirements to become Hajj officers, so far TPHI and TPIHI have only taken advantage of the time and opportunities to be able to go on Hajj, even though they have little to do with this right.

amount of 1 (one) suitcase and 1 (one) handbag provided free of charge by the airline implementing air transportation. Hajj and Umrah pilgrims also receive supplies that are the right of Hajj and Umrah pilgrims, consisting of:

1. Forms for organizing Hajj and Umrah;
2. Hajj and Umrah passports;
3. ID bracelet;
4. Face mask;
5. Medicines and medical devices;
6. Meningitis vaccine, syringes and pregnancy tests;
7. Guidance book for Hajj and Umrah pilgrims.

### **C. Legal Regulations Concerning the Functions and Authorities of Regional Governments for Services, Guidance and Legal Protection for Congregants in the Implementation of the Hajj and Umrah Pilgrimage**

The Indonesian state is a state that is run based on law or in other words, the Indonesian state is a legal state, as contained in the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) which states that "the Indonesian state is a legal state", so that the state Indonesia is not run based on mere government power. In a legal state, all state equipment can only be carried out based on laws and regulations that have been formed so that there is no abuse of power because all forms of government action and state equipment in carrying out government must be based on law.

Because Indonesia is a country of law, it is necessary to form regulations that regulate all actions of the Indonesian government and people. The regulations formed must be based on Pancasila and the 1945 Constitution of the Republic of Indonesia 5, and arranged from the central to regional levels based on hierarchy. Based on Article 7 paragraph (1) of Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislative Regulations, the types and hierarchy of Legislative Regulations consist of: a. The 1945 Constitution of the Republic of Indonesia; b. Decree of the People's Consultative Assembly; c. Law/Government Regulation in Lieu of Law; d. Government regulations; e. Presidential decree; f. Provincial Regional Regulations; and g. Regency/City Regional Regulations. Based on Article 7 paragraph (1) of Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislative Regulations, provincial regional regulations and district regional regulations are included in the hierarchy of statutory regulations, where provincial regional regulations and district regional regulations are formed based on the granting of authority both in terms of attribution or delegation of higher statutory regulations to regional governments to form regulations related to the implementation of higher statutory regulations to be implemented in the regions and formed by regional governments based on regional autonomy for the interests of their regions. However, with the large number of regional regulations being formed, both provincial regional regulations and district regional regulations as well as regional head regulations which are prepared based on the granting of regional autonomy, this has resulted in an obesity of legislative regulations, which is caused by overlapping legislative regulations, content regulations which are repeatedly re-arranged. In regional regulations, both provincial regional regulations and district regional regulations after previously having been regulated in detail in higher statutory regulations, as well as the formation of regional regulations that are not based on the granting of authority but for reasons of regional needs, thus adding to the long list of regional regulations which is the cause of obesity according to legislation in Indonesia.

Likewise what happens to the legal regulations regarding the function, role and authority of the Regional Government for guidance, supervision and legal protection for Hajj pilgrims in carrying out the Hajj and Umrah pilgrimages in Indonesia. There are 3 (three) legal theories that underlie this, namely the Theory of Justice, the Theory of the Rule of Law and the Theory of Authority.

### **D. Analysis of the Regulations for Organizing the Hajj and Umrah from a Legislative Theory Perspective**

Talking about the law on the implementation of the Hajj pilgrimage cannot be separated from Law Number 17 of 1999 concerning the Implementation of the Hajj and Umrah as the first law that regulates the implementation of the Hajj and Umrah pilgrimage. This law was passed in Jakarta, on May 3 1999 by the President of the Republic of Indonesia, namely Bacharuddin Jusuf Habibie. This law consists of 14 chapters and 29 articles which are accompanied by explanations. The systematics of Law Number 17 of 1999 concerning the Implementation of the Hajj Pilgrimage are as follows:

Chapter I concerning general provisions consists of 3 articles, namely Articles 1 to 3. Chapter II consists of 2 articles, namely Articles 4 and 5, which regulate the principles and objectives of organizing the Hajj and Umrah pilgrimages. Chapter III regulates organization. This chapter consists of 3 articles, namely Articles 6 to

8. Chapter IV regulates the costs of organizing the Hajj and Umrah pilgrimages, which consists of 3 articles. Chapter V regulates registration which consists of 3 articles. Next, Chapter VI is the chapter that regulates health. This chapter consists of 1 article. Chapter VII regulates immigration which consists of 1 Article. Chapter VIII regulates transportation which consists of 3 articles. Chapter IX regulates luggage which consists of 1 Article. Chapter X regulates accommodation which consists of 1 Article. Chapter XI regulates the implementation of the special Hajj pilgrimage which consists of 2 articles. Chapter XII regulates the implementation of the Umrah pilgrimage which consists of 2 articles. Chapter XIII regulates criminal provisions which consist of 2 articles. Chapter XIV regulates transitional provisions consisting of 1 article and the final chapter is the closing provisions consisting of 1 article.

Based on the systematicity of the Law above, issues related to optimal implementation appear to be accommodated in the Law. However, this does not mean that this law is perfect. There are several weaknesses in norms and substance in the issue of organizing the Hajj which are not emphasized in it. The problem is as follows:

1. There is still a need to balance the roles of government and society.
2. Make a strict separation between regulators, implementers and supervisors.
3. Creating open, transparent management patterns and public accountability, both regarding financial management and procurement of goods and services. Creation of a more organized and standardized system for discussing Hajj travel costs.
4. Creating a professional Hajj organization system.
5. Building the image, credibility and honor of the Indonesian nation in the eyes of other nations, especially those present in the holy lands of Mecca and Medina.<sup>9</sup>

It is an important note in efforts to improve the contents of the letter above, even though number 2 in the letter states that Law Number 17 of 1999 actually accommodates the principles of justice in obtaining opportunities, protection and legal certainty,

walk safely, orderly, smoothly and comfortably in accordance with religious guidance and Hajj and Umrah pilgrims can carry out their worship independently so that they can obtain the Mabrur Hajj. The spirit that arises from the principle of justice in obtaining opportunities is a very important principle in accommodating selective mechanisms for determining criteria for prospective Hajj pilgrims. These principles, especially the principle of justice in obtaining opportunities, are contained in Chapter II concerning Principles and objectives as follows: Article 4

The implementation of the Hajj and Umrah pilgrimages is based on the principles of justice in obtaining opportunities, protection and legal certainty in accordance with Pancasila and the 1945 Constitution.  
Article 5

The implementation of the Hajj and Umrah pilgrimage aims to provide the best possible guidance, service and protection through good implementation systems and management so that the Hajj pilgrimage can run well.

#### **E. Juridical Review of Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage.**

The implementation of the Hajj and Umrah pilgrimages throughout history in Indonesia has a very strong foundation. One of the foundations for organizing the Hajj pilgrimage in Indonesia is legitimized based on statutory regulations, namely Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah which was ratified in Jakarta on April 28 2019 by the President of the Republic of Indonesia, Joko Widodo, registered in the State Gazette of the Republic Indonesia Year 2019 Number 60. Supplement to State Gazette No. 4845. A brief systematic explanation of this Law consists of 14 chapters and 132 articles, namely:

Chapter I describes general provisions consisting of 3 articles. Chapter II regarding the Hajj congregation which consists of 7 articles. Chapter III concerning the Implementation of the Regular Hajj Pilgrimage which consists of 33 Articles. Chapter IV concerning Costs of Organizing the Hajj and Umrah Pilgrimage which consists of 8 Articles. Chapter V concerns the Hajj and Umrah Guidance Group which consists of 5 articles. Chapter VI concerning the implementation of the special Hajj which consists of 5 articles. Chapter VII concerning the implementation of the Umrah pilgrimage which consists of 21 articles. Chapter VIII concerning coordination which consists of 3 articles. Chapter IX concerning community participation consists of 2 articles. Chapter X concerning investigations consisting of 1 Article. Chapter XI describes accommodation consisting of 1 article. Chapter XI describes prohibitions consisting of 5 articles. Chapter XII outlines criminal provisions consisting of 7 articles. Chapter XIII describes the transitional provisions which consist of 1 Article. Chapter XIV outlines the closing provisions consisting of 5 articles. The enactment of this law has opened up the role of the government. The presence and strengthening of its implementation is a political step and strategy to improve

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<sup>9</sup>Letter of submission of initiative proposal for Bill regarding amendments to Law Number 17 of 1999 concerning the implementation of the Hajj and Umrah pilgrimage dated 25 August 2005 addressed to the leadership of the DPR RI in Jakarta. Minutes of discussion and academic texts of Law number 13 of 2008 concerning the implementation of the Hajj pilgrimage, p. 3.

the function of the government and organs organizing the Hajj and Umrah pilgrimage in improving the quality of Hajj and Umrah services.

Even though the principles in organizing the latest Hajj and Umrah pilgrimages have accommodated the principles of justice, professionalism and non-profit, this is not a guarantee that the implementation of the Hajj and Umrah pilgrimage in Indonesia has been carried out according to the objectives of the Hajj and Hajj pilgrimages, namely professional and mabrur. This is caused by various obstacles that still surround the organization of the Hajj and Umrah pilgrimages in Indonesia. One of them is that the latest Law on the implementation of the Hajj and Umrah does not clarify the principles of justice. This can be seen in Law Number 13 of 2019 concerning the implementation of the Hajj and Umrah pilgrimages<sup>10</sup> that is:

Section 2

The Hajj pilgrimage is carried out based on the principles of justice, professionalism and accountability with non-profit principles.

What is meant by "principle of justice" is that the implementation of the Hajj and Umrah pilgrimages is truthful, fair, impartial and just. Although the explanation of Article 2 above is oriented towards the principle of justice, which is to be impartial and impartial. This is very different if it is related to the principle of justice achieving equality as the principle in Law Number 17 of 1999 concerning the Implementation of the old Hajj Pilgrimage.

Apart from that, the most crucial thing that has not been accommodated in the Law on the implementation of the Hajj and Umrah is related to the clause determining the criteria for prospective Hajj pilgrims based on selective justice.

#### **F. Law in Determining Criteria for Candidates for Hajj and Umrah Pilgrims in Indonesian Legislation**

Due to the fact that legal protection is not regulated for prospective non-quota Hajj pilgrims and prospective Hajj pilgrims on the waiting list, it shows that there is a normative-judicial problem, namely in the form of a legal vacuum. The lack of legal protection regulations for prospective Hajj pilgrims on the Waiting List can be seen in the latest Law as a refinement of the previous Law, PP No 73 of 2012, PMA No 14 of 2012, PMA No 15 of 2012, and PMA No 63 of 2013. PMA RI No. 29 T 2015 concerning Amendments to PMA No. 14 of 2012 concerning the Implementation of the Regular Hajj Pilgrimage, State Gazette of the Republic of Indonesia of 2015 Number 804, PMA no. 6 of 2019 as an amendment to PMA number 13 of 2016 concerning the Implementation of the Regular Hajj Pilgrimage, absolutely not yet accommodate and regulate how the law protects them.

The mention of protection in the Hajj Implementation Law No. 13 of 2008 and Law No. 8 of 2019 concerning the implementation of the Hajj and Umrah is actually accommodated if you look at Article 1 number 2 in the UUPIH. The idea of legal protection has actually been fulfilled in the Law on the Implementation of the Hajj and Umrah, but the continuity of the idea of protection established in the legal construction of the Law on the Implementation of the Hajj and Umrah is not yet comprehensive, because it is the target of protection for Hajj pilgrims in Article 1 number 2 of the Law -The Hajj Implementation Law seems to only focus on protection for prospective Hajj and Umrah pilgrims who carry out the Hajj and Umrah pilgrimage in the current year, not for waiting list prospective Hajj pilgrims and non-quota prospective Hajj pilgrims.

The legal vacuum can be seen in PP No. 79 of 2012 concerning the Implementation of Law No. 13 of 2008 concerning the Implementation of the Hajj Pilgrimage. In this regulation, the formulation of legal protection is stated in article 29, namely:

- (1) The form of protection provided to Hajj pilgrims and Hajj officers is insurance and other things if needed.
- (2) The source of funds for the insurance budget and other needs is taken from BPIH.
- (3) The source of funds for the insurance budget and other needs for Hajj and Umrah officers is taken from the government budget.

The formulation of legal protection is also in Article 3 UUPIH No. 13 of 2013, namely:

The implementation of the Hajj and Umrah pilgrimage aims to provide the best guidance, service and protection for Hajj and Umrah pilgrims so that Hajj and Umrah pilgrims can carry out their worship in accordance with the provisions of Islamic religious teachings.

Hajj and Umrah pilgrims as mentioned in Article 3 of the Law on the Implementation of the Hajj and Umrah as stated in Article 1 point 3 of the Law on the Implementation of the Hajj are Indonesian citizens who are Muslim and have registered to perform the Hajj and Umrah in accordance with the stipulated requirements. Referring to Article 1 number 3, it can be ascertained that prospective Hajj and Umrah pilgrims, even though prospective Hajj and Umrah pilgrims have been registered as participants in the waiting list, are not yet entitled to receive the same protection, because the definition of Hajj and Umrah pilgrims is limited by certain requirements stipulated by regulations. below it is the Regulation of the Minister of Religion regarding the

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<sup>10</sup>Supplement to the Republic of Indonesia State Gazette No. 4845

departure of Hajj and Umrah pilgrims which is determined every year. Like PMA No. 63 of 2013 concerning Departure Criteria for Hajj and Umrah Pilgrims in 1435 H/2013 AD which is contained in Article 1 as previously discussed, where prospective Indonesian Hajj and Umrah pilgrims, especially waiting list and non-quota Hajj pilgrims, do not receive such protection. Hajj and Umrah pilgrims departing in the current year, for example, health insurance, insurance coverage, even when prospective Hajj pilgrims are forced to cancel their departure due to illness, because they are too old and waiting in long queues. This also doesn't get any attention and they don't even get any services unless they are canceled as prospective participants for the Indonesian Hajj pilgrimage. Indeed, in the latest law, Law No. 8 of 2019, it is possible to transfer it to his family by fulfilling several requirements. That is if he has a family, or there is a family who can replace him. If there isn't, it means there's nothing they can do, just leave their fate to the existing provisions. This can be seen in PMA RI No. 29 of 2015 concerning Amendments to PMAgama No. 14 of 2012 concerning the Implementation of Regular Hajj Article 11 which states:

- (1) Hajj registration is declared invalid if the pilgrim:
  - a. Died;
  - b. The person concerned withdraws due to health problems or for some reason;
  - c. I haven't been able to go for two years in a row;
  - d. There are regulations that prohibit the person concerned from going abroad.

The government has tried to overcome the problem of queues for departure of prospective Hajj pilgrims. This can be seen by the issuance of PMA RI No. 29 of 2015 concerning Amendments to PMA No. 14 of 2012 concerning the Implementation of the Regular Hajj, article 8 states:

- (1) There are several conditions that must be met in order to be able to pay the Hajj departure fee after the government decree is issued by Hajj pilgrims whose queues have arrived to depart in the current year, including the next queue reserve, namely:
  - a. Never implemented the fifth pillar of Islam.
  - b. Age has reached 18 years at the time of departure/married. (Article 14)

reads:

- (1) If by the deadline for repayment of the BPIH Provincial Hajj quota there is still remaining, then, it becomes the remaining national quota.
- (1a) The central government will hand over the remaining national quota back to the provinces by adjusting the remaining quota
- (2) The remaining quota is intended for Hajj pilgrims with the following criteria:
  - a. Congregants who are unsuccessful are accommodated by the system when paying off the initial phase of repayment; Congregants who have reached their queue number in the current year but have previously performed the Hajj;
  - b. Be at least 75 years old and have submitted a request to the competent authority;
  - c. Reunification of separated married couples by submitting marriage certificate extracts and family cards as evidence;
  - d. Unification of the child's/parent's mahram by submitting proof of birth certificate or birth identification letter;
  - e. Reserve congregations whose BPIH has been paid off in the current year,
  - f. Hajj pilgrims next portion number.

The latest Hajj Law in article 15 also provides a portion for filling quotas that have not been fulfilled by increasing the quota filling time by one month for:

- a. congregation who are not members of a mahram/family;
- b. Congregation Which need special with who accompanied him;
- c. Congregants who have paid but are delayed;
- d. Those who accompany the elderly;
- e. The congregation is next in line.

This regulation did help reduce the queue for departure of prospective Hajj pilgrims a little, but because public interest was so high, the long queue could not be resolved.

Likewise, the criteria for special Hajj pilgrims are also determined as the criteria above. The determination of criteria as stated in Article 11 of PMA No. 29 of 2015 certainly does not reflect the existence of protection and fairness in the implementation of the Hajj pilgrimage in determining Hajj pilgrims who depart for Mecca. The rise of banking services that offer products and services such as for Hajj down payments has also added to the long list of Hajj departures. This is what causes legal uncertainty when the concept of legal protection has not been formulated concretely for the waiting list of Hajj pilgrims whose numbers continue to increase day by day.

To form legislation, rules should be formed and formulated based on the formation and procedures for formulating good and correct rules. This formulation not only formulates in terms of the substance of the text, but also takes into account the social dynamics that have developed both in the past and now and in the future.

In the past context, the queue for the Hajj in Indonesia was not as long as the current condition, reaching 31 years and over. This is an example of how social and economic development conditions are closely related to the development of laws and articles that will be formulated. Therefore, forming and reformulating the law on the implementation of the Hajj and Umrah pilgrimages is absolutely necessary to protect the group of prospective Hajj and Umrah pilgrims.

#### 4. CONCLUSION

The nature, function and authority of the Regional Government for service, guidance and protection of the congregation during the Hajj and Umrah pilgrimage is contained in Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, namely: Providing guidance, service and protection for the Hajj Congregation and Umrah Congregation so that they can carry out their worship in accordance with the provisions of the Shari'a; and realizing independence and resilience in the implementation of the Hajj and Umrah pilgrimages.

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### **AUTHOR**

First author : Yamin, Graduate Student PhD, Study Program : Science Of Law.  
Pattimura University, Ambon, Indonesia : Email : yaminhukum123@gmail.com  
The second author : M.J.Sapteno:: Faculty of Law. Pattimura University, Ambon, Indonesia  
The third author : J. Tjiptabudy: Faculty of Law. Pattimura University, Ambon, Indonesia  
The fourth author : J.J. Pieterz: Faculty Of Law. Pattimura University, Ambon, Indonesia