

LEGAL POLICY OF IMPLEMENTATION OF ORGANIZING UMRAH WORSHIP IN INDONESIA

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Abstract

Umrah is a worship for Muslims in the Holy Land of Mecca. The provision of umrah worship in Indonesia is stipulated in Law of Republic of Indonesia Number 8 of 2019 concerning the Implementation of Hajj and Umrah Worship and amended under Law Number 11 of 2020 concerning Job Creation. The hope of being able to perform worship safely and comfortably does not always go well, because in fact there are still many problems that would have to be faced by umrah pilgrims. Referring to the Directory of Supreme Court's of Indonesia, every year there are cases registered in the Court regarding the Umrah Worship Travel Organizer, both in the civil lawsuit and criminal cases, this shows that there is still weak protection for umrah pilgrims. This research aims to explore and analyze regulations regarding the conduct of umrah worship in Indonesia, implementation of regulations, as well as the ideal arrangement of umrah worship in Indonesia. Methodology of this study is based on normative legal research which carried out several approaches such as statutory approach, case approach and comparative approach. In this paper, normative legal research is also supported by empirical research. The results of this study essentially show the potential problems in the Umrah worship arrangement that result in disadvantages for Umrah pilgrims who are not get they right to assigned to holy land Macca, the weak protection provided for Umrah worship shows potential problems in the umrah worship arrangement, therefore an alignment and amendment to the implementing regulations of the Umrah worship arrangement is required, the application of the obligation to provide insurance protection of departure certainty for all umrah pilgrims with any travel package is expected to provide protection and certainty of departure umrah.

Keywords: *Umrah Pilgrims; Implementation of Regulations; Protection of Departure*

1. INTRODUCTION

In etymologically the word of umrah it's means visiting, while according to the terminology, umrah worship means visiting the Kaba in Holy Land Macca to perform a series of worship services under the stated conditions¹. In efforts to provide protection, security, and certainty for the people of Indonesia in their departure on carrying out Umrah,² the Government regulates its efforts through laws and implementation³ regulations regulated by the Ministry of Religion. Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah Worship (hereinafter referred as Law 8/2019 Hajj Umrah) in conjunction with Law no. 11 of 2020 concerning Job Creation (hereinafter referred as Law 11/2020 Job Creation) stipulates that the Umrah Worship Travel Organizer (from now on referred to as PPIU). PPIU is a Travel Bureau with a special permit from the Ministry of Religion. As regulated in the Umrah Hajj Law, PPIU must meet the requirements, as follows:⁴

¹ Oyo Sunaryo Mukhlis Mukhlis, *Pranata Sosial Hukum Islam* (Bandung: PT. Rafika Aditama, 2015), 49.

² Government Regulation No. 38 of 2021 concerning the Escrow Account for Umrah Travel Expenses explains the meaning of Umrah worship as visiting the Baitullah outside the Hajj season to carry out Umrah, followed by performing tawaf, sai, and tahalul.

³ Organizing Umrah Travel is a series of Umrah pilgrimage activities outside of the Hajj pilgrimage which includes guidance, service, and protection of the congregation, which is carried out by the organizers of the Umrah pilgrimage and/or the Government. Article 1 PMA 6/2021.

⁴ The requirements for being the Organizer of Umrah Worship regulated in Article 89 in Law 8/2019 Hajj Umrah

- 1) owned and managed by Indonesian citizens who are Muslim;
- 2) registered as a legal travel agency;
- 3) have managerial, technical, personnel competence, and financial capabilities to perform Umrah with bank evidence and guarantees;
- 4) has a partner bureau for Umrah in Saudi Arabia that has obtained official permission from the Government of the Kingdom of Saudi Arabia;
- 5) has a track record as a quality travel agency with experience in organizing trips abroad; and
- 6) Commit to fulfilling the integrity pact to organize Umrah pilgrimages following the minimum service standards set by the Minister while continuously improving the quality of Umrah services.

As the organizer of Umrah prayers, PPIU should follow the Law in carrying out operations for accepting registration of prospective Umrah pilgrims, collecting funds, managing departure administration, and dispatching Umrah pilgrims.⁵ PPIU itself has obligations to Umrah pilgrims, including:⁶

- 1) provide at least one worship supervisor for every 45 Umrah pilgrims;
- 2) provide travel documentation services, accommodation, consumption, and transportation to the pilgrims by the written agreement agreed upon between the PPIU and the Umrah Congregation;
- 3) have a working agreement with health care facilities in Saudi Arabia;
- 4) dispatching and returning Umrah pilgrims by the visa validity period of the Umrah visa in Saudi Arabia;
- 5) dispatching registered Umrah pilgrims in the current Hijri year;
- 6) follow minimum service standards and reference prices;

PPIU's obligations are set so that the implementation of Umrah can be carried out properly, and the community can carry out Umrah worship solemnly and return to their homeland safely. However, in Indonesia, there are still many people who are victims of the PPIU and were not sent to the holy land. Various cases occurred, which resulted in significant losses to tens of thousands of peoples who were not dispatched by PPIU.

Two major cases in Indonesia in 2017 were the driving factors for the enactment of Law 8/2019 Hajj Umrah, replacing Law No. 13 of 2008 concerning the Implementation of Hajj Worship, which has been in effect for more than ten years. The positive note in Law 8/2019 stipulates criminal provisions for PPIU that intentionally cause the failure of the departure, abandonment, or failure of the Umrah congregation to return.⁷ However, prior to Law 8/2019, the Government amended Law 8/2019 through Article 68 of Law 11/2020 concerning Job Creation. Where Article 68 of the Job Creation Law regulates changes and additions to articles in Law 8/2019, it is interesting to examine Article 68 of the Job Creation Law which amends Law No. 8/2019 where the amendments between Article 119 and Article 120 are added to one Article, which are Article 119A wherein the Article regulates administrative sanctions in the form of (1) temporary suspension of activities; (2) administrative fines; (3) government coercion; (4) freezing of business licenses; and or (5) revocation of business license. This Article applies to PPIU's failure to the departure, abandon, or failure of the return to the Umrah Congregation. In addition to adding an article regarding the application of administrative sanctions, in Law 11/2020 concerning Job Creation also changes Article 126 so that Article 126 stipulates that if the PPIU takes action as referred to in Article

⁵ the implementation of umrah worship arrangements is stipulated in the Implementing Regulations: the *Ministerial Decree of Minister of Religion* No. 5 Year 2021 on Business Activity Standards for Umrah Travel Organization and Special Hajj Organization, and Regulation of the *Ministerial Decree of Minister of Religion* No. 6 Year 2021 on the Provision of Umrah Worship and Special Hajj Worship.

⁶ Right of Umrah pilgrims prescribed in Article 94 in Amendments to the Umrah Hajj Act Enacted in Article 68 of Law 11/2020 concerning Job Creation

⁷ Relating to criminal regulations against PPIU prescribed in Articles 119 and 126 of the Law 8/2019 Hajj Umrah

119A within a maximum of 5 (five) days does not return the Umrah Congregants to their homeland. The PPIU shall be sentenced to a maximum imprisonment of 10 (ten) years or a maximum fine of Rp. 10,000,000,000 (ten billion rupiah).

closer look at the regulation, in Article 126 in two different laws, Law 8/2019 on the Implementation of Hajj and Umrah and Law 11/2020 concerning Job Creation in protecting prospective Umrah pilgrims. This raises the question of whether this Article can provide legal protection and certainty for prospective Umrah pilgrims who are victims because of the firmness of Law 8/2019 Article 126 regarding the punishment for the PPIU that intentionally causes the failure of the departure, abandonment, or failure the return of the Umrah Congregation. The firmness of criminal sanctions has changed in Law 11/2020 Amendment Article 126, with criminal sanctions on severe punishment for PPIUs who do not return Umrah pilgrims for more than 5 (five) days. However, this still does not reflect justice for Umrah pilgrims who were not dispatched by PPIU because, in practice, the problems regarding the non-departure of prospective Umrah pilgrims are far more than the problems of not being returned on time for Umrah pilgrims from the Holy Land to Indonesia.

This problem in the organization of umrah worship is a problem that is often the concern of researchers who write scientific works, but this problem can be seen from various sides, such as research on specific matters that specifically discuss and analyze court settlement from this case, such as the case study of PT. First Anugrah Karya Wisata to Jemaah As a result of acts against the law⁸, there are also studies that discuss the nature of the State's constitutional responsibility to protect the religious rights of citizens⁹ who are concerned with the state's responsibility to guarantee their rights to arranging umrah trip and appoint it in the event of an extraordinary thing (especially a massive departure). There has not been a similar legal study that raised the issue of legal policy and protection of prospective Umrah pilgrims in Indonesia, which refers to the latest regulations as Law 8/2019 Hajj Umrah and its amendments to Law 11/2020 on Job Creation, making it an opportunity for researchers to conduct research and found solutions related to the problems formulated. The need for this issue to be examined is due to its relevance to protection and legal certainty for prospective pilgrims in Indonesia.

Despite the existing laws and the Government's efforts to protect the community in carrying out Umrah, there is still no precise mechanism or system, or regulation that guarantees the departure of Umrah. In short, various regulatory reforms set by the Government still have not accommodated the granting of rights for prospective Umrah pilgrims who have paid the cost of the Umrah pilgrimage to continue to be sent to the holy land if the PPIU does not carry out its obligations to dispatch Umrah pilgrims. As a result, there is no certainty about the departure of Umrah pilgrims, the number of peoples who become victims from year to year, the large number of losses to victims of PPIU fraud, uncertainty in the case settlement process, and the absence of a database that the public can access on integrated Umrah information that records the names of pilgrims. PPIU, which is responsible for organizing Umrah trips and the mechanism for checking the departure preparation process. These shortcomings lead to the need for further studies, which are defined as the following research question, first, how does the Law regulate the implementation of Umrah in Indonesia?; second, how is the implementation of regulations regarding the implementation of Umrah in Indonesia, and what problems are faced by prospective Umrah pilgrims?; and third, what is the ideal arrangement for organizing Umrah for the people of Indonesia?

From a theoretical point of view, this legal research uses Gustav Redbruch's theory of three fundamental legal pillars in enforcing the Law, which are justice, legal certainty, and expedience. The

⁸ Diaz Pratiwi Mukti, "Analisis Pertanggungjawaban PT. First Anugrah Karya Wisata Kepada Jemaah Akibat Perbuatan Melawan Hukum (Studi Putusan 209/Pdt.G/2017/PN.Dpk)" (Universitas Lampung, 2018), <http://digilib.unila.ac.id/37252/>.

⁹ Tahir Musa Luthfi Yazid, "Hakikat Tanggung Jawab Konstitusional Negara Dalam Melindungi Hak Keagamaan Warga Negara" (Universitas Mataram, 2020).

basis of the use of Gustav Radbruch's theory is that this theory does not allow a conflict between justice, certainty, and expediency. Certainty and benefit must not only be placed within the framework of justice but also placed as an integral part of justice itself. Legal certainty is no longer just a certainty of legality but the certainty of justice¹⁰. Likewise, the matter of benefit is no longer a benefit without a benchmark. Justice is expected to be the basis for making regulations related to the implementation of the Umrah pilgrimage so that these regulations not only facilitate and provide space for investment and businesses to organize Umrah pilgrimages but also to have a fair value for prospective Umrah pilgrims. Legal certainty is expected not only in the form of court decisions but also in the context of court decisions that reflect a sense of justice for PPIU victims.

2. RESEARCH METHOD

As explained in the background above, the focus of this research is the legal protection of the rights of prospective Umrah pilgrims to perform Umrah worship regardless of the various obstacles that may occur due to negligence or intentional negligence of the Umrah Travel Organizer. This is important because the Hajj and Umrah Law does not explicitly regulate the certainty of departure for prospective Umrah pilgrims. To analyze these problems, the methodology used in this study is normative legal research¹¹, with focus on reviewing the law and regulation supported by empirical legal research. Therefore, the object of research is the legal regulations themselves, focusing on reviewing the laws and their implementation regulations related to the implementation of the Umrah Worship. Various approaches can be chosen in the research, including the statute approach, case approach, historical approach, comparative approach, conceptual approach, analytical approach, and philosophical approach¹². In this study, the approach used is a case approach and a comparative approach.

3. Analysis and Discussion

3.1. Regulations regarding the Implementation of Umrah in Indonesia

Umrah worship is the implementation of worship carried out by Muslims based on the pillars of Islam,¹³ which oblige Muslims who able to do, According to the Ministry of Religion, refers to *istitha'ah* (capable of performing Hajj and Umrah) in terms of physical, spiritual, economic and security¹⁴ in order to perform umrah worship perform the pilgrimage. Umrah is the choice of worship to the holy land of Mecca for Muslims. In Indonesia it self is not easy to be able to perform hajj worship because of the very long waiting period for the departure of Hajj. Besides that, the Hajj can only be performed 1 (one) time a year. a large number of Hajj registrants is a factor in the number of Hajj queues that are getting longer, which is reach 44 Years of Hajj departure waiting period in Sidrap – South Sulawesi¹⁵, as well as the limited quota for Hajj provided by the Government of Saudi Arabia.¹⁶ Umrah worship is an alternative to worship

¹⁰ Heather Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher," *Washington University Journal of Law & Policy* 2 (2000): 74, https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1516&context=law_journal_law_policy.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Revisi. (Jakarta: Kencana, 2010), 93.

¹² Valerine J. L. Kriekhoff, *Metode Penelitian Hukum* (Jakarta, 2015), 180.

¹³ The 5 Pillars of Islam : 1. The Profession of Faith (The Shahada); 2. Daily Prayers (Sholat); 3. Alms-Giving or Charity (Zakat); 4. Fasting during Ramadhan (Saum); 5. Pilgrimage to Mecca for who can afford (Hajj). Umrah worship is often carried out as an application of Islamic law because it is carried out as a pilgrimage

¹⁴ Departemen Agama, *Bimbingan Manasik Haji* (Jakarta: Dirjen Penyelenggaraan Haji dan Umrah, 2006), 10–11.

¹⁵ Kementerian Agama Republik Indonesia, "Estimasi Waiting List Jamaah Haji," *Website Haji Dan Umrah*, last modified 2022, accessed April 15, 2022, <https://haji.kemenag.go.id/v4/waiting-list>.

¹⁶ the Hajj quota for each country is determined by the Saudi Arabian government, so the length of waiting time for the Hajj departure is affected from the good relationship between Indonesia and Saudi Arabia in determining the number of Hajj quotas given by the Saudi Arabian government every year.

in the holy land because the implementation of Umrah can be done at any time, with no limited quota and a shorter time of the pilgrimage.

The implementation of Umrah in Indonesia was initially regulated in Law Number 17 of 1999 concerning the Organization of the Hajj Worship, which was later refined by the enactment of Law Number 13 of 2008 concerning the Organization of the Hajj Worship. In both laws, Umrah is included in the sub-regulation of the Hajj and does not regulated independently. In 2009 Law no. 13/2008 was amended by Law Number 34 of 2009 concerning the Stipulation of Government Regulation in place of Law Number 2 of 2009 concerning Amendments to Law Number 13 of 2008 concerning the Organization of the Hajj into a Law which amended 4 (four) articles in the Act. 13/2008. After approximately 10 (ten) years, it became a regulation for implementing the Hajj and Umrah pilgrimages. Finally, Law 13/2008 was declared no longer valid and replaced by Law 8/2019 concerning the Implementation of Hajj and Umrah Worship. In this Law, changes can be seen as positive vibes by stipulating in a more detailed and firm manner regarding the implementation of the Umrah worship and also providing criminal sanctions for PPIU who do not carry out their responsibilities to dispatch, manage and also return Umrah pilgrims to Indonesia. Law 8/2019 is included in the Law, which changed along with dozens of laws that also changed in Law 11/2020 concerning Job Creation.¹⁷ Law 8/2019 was amended to provide convenience for the public, especially business sectors, in obtaining business permits from the religious sector.¹⁸

The Law on the Implementation of Umrah has changes, improvements, and developments in society to accommodate the community's needs in carrying out Umrah in a comfortable, safe and orderly manner following Islamic Law; however, problems experienced by prospective Umrah pilgrims still often occur. Referring to the Directory of Decisions of the Supreme Court of Republic of Indonesia, which contains online court decisions and is integrated with decisions from all Courts in Indonesia¹⁹, as well as various media reports about cases of fraud and the non-departure of Umrah pilgrims are serious issues that must be analyzed so the main problems can be formulated to found the right solutions.

To implementing the mandate of Law 8/2019 concerning Hajj and Umrah in conjunction with Law 11/2020 concerning Job Creation, the Government issued an implementing regulation as stated in Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing regulates business licensing (hereinafter referred as PP 5/2021) in the religious sector as well as the application of administrative sanctions against business actors who commit violations. Furthermore, in the same year, Government Regulation No. 38 of 2021 concerning the Escrow Account for Umrah Travel Expenses (hereinafter referred as PP 38/2021). This regulates the provisions for opening a bank account²⁰ in specific propose intended to accommodate deposit fees for Umrah pilgrimages. In addition to regulating storage accounts in PP 38/2021, it also regulates the application of reference Umrah fees which will be determined periodically, as well as the use of Umrah pilgrims' deposit fees, which are for the provision of transportation, accommodation, consumption, guidance for Umrah worship, health, protection, administration, and documents. Furthermore, in addition to the two Government Regulations stipulated regarding Umrah worship, the Ministry of Religion assign 2 (two) Regulations for the Minister of Religion (PMA). Firstly, Ministerial Decree of Minister of Religion Number 5/2021 concerning Standards for Business Activities for Organizing Umrah Worship and Organizing Special Hajj Worships

¹⁷ there are 78 Law Acts amended in Law No. 11 of 2020 on Job Creation or often referred to as Omnibuslaw

¹⁸ Amendments to Law 8/2019 Hajj Umrah are stipulated in Paragraph 14 of the Religious Sector, Article 68 of Law 11/2020 Job Creation

¹⁹ Mahkamah Agung Republik Indonesia, "Direktori Putusan," last modified 2022, accessed April 15, 2022, <https://putusan3.mahkamahagung.go.id>.

²⁰ Article 1 and Article 3 of the PP No. 38/2021 regulates that the Shelter Account is an account in the name of the PPIU at the Payment Receiver Bank (BPS) used to house umrah pilgrimage funds for the organization of umrah worship trips that are separate from the PPIU operational funds account outside of umrah activities.

(hereinafter referred as PMA 5/2021) regulates the standard guidelines for business activities for Umrah Travel Organizers (PPIU) and Special Hajj Service Organizers (PIHK). Secondly, Ministerial Decree of Minister of Religion Number 6/2021 concerning the Organization of the Umrah Worship Trip and the Implementation of the Special Hajj (hereinafter referred as PMA 6/2021), which regulates the registration and reporting of Umrah pilgrims by the PPIU to the Ministry and arrangements for depositing the cost of the Umrah pilgrimage to fulfill the Umrah pilgrimage.

The Government's efforts to harmonize laws and regulations related to providing protection, security, and comfort in carrying out Umrah worship to the community while still providing convenience for business actors to do business in the PPIU field by providing more specific requirements than the previous requirements as Law 11/2020 concerning Job Creation, is not an easy to implement. The main problem, which are the large number of prospective Umrah pilgrims who are not dispatched, shows that there are still weaknesses from the aspect of legal certainty. From a normative point of view, there is a misalignment between Article 119A and Article 126, where Article 119A regulates administrative sanctions for PPIUs that intentionally do not send pilgrims, abandon, or do not return pilgrims. Whereas Article 126 regulates the punishment for the PPIU who commits as stated in Article 119A, this is ambiguous from the purpose of the application of the sentence so that it can lead to multiple interpretations, multiple penalties, and uncertainty in the application of the Law. In the Islamic law itself, the application of the sentence is for Al-Jaza (revenge), Al-Jazru (entrepreneurship), Al-Ishlah (recovery/improvement), Al-Istiadah (restoration)²¹m.

3.2. Implementation of Provision on Umrah Worship for Prospective Umrah Pilgrims

Performing Umrah for Muslims in Indonesia is not as easy as doing daily pray, need specific preparation because Umrah can only be performed in Mecca - Saudi Arabia, and there are inherent rights and obligations between prospective Umrah pilgrims as consumer and PPIU as travel agent. Currently, only PPIU and the Government can carry out Umrah travel arrangements, the Government it self can only perform umrah in an emergency condition,²² so it can be said that people who want to carry out Umrah must choose PPIU, the agent that accommodates the trip. Problems occur when the PPIU does not carry out its obligations to send prospective Umrah pilgrims to Mecca. legal certainty, justice, and benefits are obtained by the people who are victims of the PPIU.

In the ideal legal perspective, prospective Umrah pilgrims who have registered and paid for the umrah fee will be registered by the PPIU no later than 3 (three) working days from receiving the BPIU deposit in the online data collection of the Ministry of Religion through the application of the Computerized Integrated Management System for Umrah and Special Hajj (hereinafter referred as SISKOPATUH). PPIU is also obliged to protect prospective Umrah pilgrims in the form of sharia-based travel insurance, which must also be reported in SISKOPATUH. However, prospective Umrah pilgrims cannot access the system information whether they are registered or not in the Ministry of Religion data because only PPIU can access the existing integrated information system, so Umrah pilgrims cannot monitor the process of registration.

Law 8/2019 provides positive changes by implementing an insurance system to protect Umrah pilgrims. This is also stated in the implementation regulations in the PMA 5/2021. However, the insurance system provided focuses on travel insurance that the protection start from Departure to Mecca until arriving back to Indonesia. With the basic insurance protection that start valid from Departure time, its still not give solution while the main problem is the risk of not being dispatched by the PPIU, so they

²¹ Mardani, *Hukum Pidana Islam* (Jakarta: Prenada Media Group, 2019), 7.

²² Article 2 of the PMA 6/2021 regulates that the Umrah Worship Travel Organization may be conducted by the Government in exceptional circumstances or emergency conditions prescribed by the President.

cannot perform Umrah. Further referring to Article 97 and Article 98 of the Law 8/2019 Haji Umrah, concerning the provision of insurance to Umrah pilgrims, the Government provides the flexibility for PPIU to determine the insurance package that can be chosen. The insurance protection clause does not require the guarantee of departure or refund from pilgrims who are not dispatched. Furthermore, to find out how the rights of prospective Umrah pilgrims are protected, an evaluation is carried out from an empirical perspective by conducting case studies on 2 (two) significant cases that occurred in the last five years, which are the case of PT. First Anugerah Karya Wisata (First Travel) and the case of PT. Amanah Bersama Umat (Abu Tour), as follow:

1) PT. First Anugerah Karya Wisata / First Travel case has permanent legal force (Inkrah)

1. District Court Decision: No. 83/Pid.B/2018/PN.Dpk
2. High Court Decision: No. 195/PID/2018/PT.BDG
3. Supreme Court Decision: No. 3096 K/Pid.Sus/2018

Defendant 1: Andika Surachman (President Director)

Defendant 2: Anniesa Desvitasari Hasibuan (Director)

Number of Victims: 63,310 (sixty-three thousand three hundred ten) prospective Umrah pilgrims who were not departed

Total Loss: Rp 905,333,000,000- (nine hundred five billion three hundred thirty-three million rupiah)

The outline of the Decision of the Panel of Judges at the district court, appeal, and cassation level is as follows:

1. Defendants 1 and 2 were found guilty of committing the crime of "Together Committing Fraud and Money Laundering as a Continuing Action."
2. The defendant 1 was sentenced to imprisonment for 20 (twenty) years and a fine of Rp. 10,000,000,000,- (ten billion rupiah)
3. Defendant 2. Anniesa Desvitasari Hasibuan with imprisonment for 18 (eighteen) years and a fine of Rp. 10,000,000,000,- (ten billion rupiah)
4. Determine evidence, 1 to 529 consisting of objects that have economic value and several original documents and photocopies confiscated by the State
5. Refused the appeal request from the Public Prosecutor and the Defendants and upheld the Depok District Court Decision No. 83/Pid.B/2018/PN.Dpk, May 30, 2018
6. Rejecting the Cassation Application from the Cassation Petitioner I/Public Prosecutor at the Depok District Attorney and also Rejecting the Cassation Application from Cassation Petitioner II/Defendant I and Defendant II

2) The case of PT. Amanah Bersama Umat / Abu Tour has permanent legal force (Inkrah)

1. District Court Decision: No. 1235/Pid. B/09/2018/PN.Makassar
Defendant: Muhammad Hamzah Mamba as President Director
2. District Court Decision: 1377/Pid.B/2018/PN.Makassa
Defendant: H. Muh. Kasim Sunusi Bin Sunu Dg. Nompo as Finance Manager
3. District Court Decision: 1378/Pid.B/2018/PN.Makassa
Defendant: Chaerudin or Pak Heru Bin M. Latang as Commissioner
4. Commercial Court Decision: 4/Pdt.Sus-PKPU/2018/PN Mks
Bankruptcy Respondent: PT. Amanah Bersama Umat / Abu Tour, Muhamamad Hamzah Mamba, Nursyariah Mansyur

Total Number of Victims: 96,976 (Ninety-six thousand nine hundred and seventy-six) prospective Umrah pilgrims who were not departed

Total Losses: 1,214,091,220,242,- (one trillion two hundred fourteen billion ninety-one million two hundred twenty thousand two hundred forty-two rupiah).

The outline of the Decision of the Panel of Judges at the district court and Commercial Court Judges is as follows:

1. The Defendants were proven legally and convincingly guilty of committing the crime of "Embroidery and Money Laundering Together as Continuing Actions."
2. Defendant Muhammad Hamzah Mamba, as the President Director, was sentenced to 20 (twenty) years in prison and paid a fine of Rp. 500,000,000.- (five hundred million rupiah), Defendant H. Muh. Kasim Sunusi Bin Sunu Dg. Nompo, as Finance Manager, was sentenced to 16 (sixteen) years in prison and paid a fine of Rp. 100,000,000.- (one hundred million rupiah), the Defendant Chaerudin alias Pak Heru Bin M. Latang as Commissioner was sentenced to 14 years imprisonment. (fourteen) years and pay a fine of Rp. 100,000,000.- (one hundred million rupiah)
3. Evidence in the form of objects of economic value, money, and valuable documents returned to the rightful through the Curator appointed based on the Makassar Commercial Court Decision Number 4/Pdt.Sus-PKPU/2018/PN.Mks dated September 20, 2018
4. In the Decision of the Commercial Court Number 4/Pdt.Sus-PKPU/2018/PN.Mks dated September 20, 2018, which states that the Respondent has postponed the Obligation of Payment of Debt (PKPU) PT. Trust with the Ummah (Abu Tours), Muhammad Hamzah Mamba, and Nursyariah Mansyur, bankrupt with all the legal consequences;

Analyzing the two decisions through a case study, the case decision in the First Travel case is much different from the decision in the Abu Tour case, while the owners of the two PPIUs are both proven to have committed criminal acts that resulted in losses to hundreds of thousands of Umrah pilgrims who were not dispatched with a loss value of hundreds of thousands billions of rupiahs. However, it is felt that the victims still have not received justice because hundreds of thousands of pilgrims who have been harmed have lost their right to perform Umrah, lost their money for the payment of Umrah fees, some victims did not get their money back and some received a small refund for the bankruptcy decision. Following the bankruptcy rules and a relatively long process in settlement of the bankruptcy bundle and different rights priorities between concurrent, separatist, and preferred creditors. From the analysis of this decision, it can be seen the shortcomings that exist in Indonesian Law regarding the protection of the rights of Umrah pilgrims in the implementation of Umrah worship, which are:

1. Where is the legal certainty fair for the Umrah pilgrims who are victims of not being dispatched by the PPIU? Because, in reality, they carry out the same process, which are registering and paying the Umrah fees. However, the Umrah pilgrims must accept the results of court decisions that are much different due to differences in the legal process adopted, the articles being prosecuted, and the decisions handed down.
2. There is no standard mechanism regarding the problem-solving process for prospective Umrah pilgrims whom the PPIU does not dispatch. So each person, either individually or collectively, chooses their respective legal steps, such as making police reports, civil lawsuits, bankruptcy lawsuits, or other legal steps they deem appropriate because the Government has not implemented a standard mechanism for resolving PPIU problems.
3. There is no solution to the main problems felt by Umrah pilgrims who are not dispatched. Which are, the main goal is to carry out Umrah worship to the Baitullah. Because in the end, from the two decisions, the community still did not get their right to go for Umrah because the concepts of justice, legal certainty, and benefit, as reflected in the decision, were sentencing certainty. At the same time, the community desires to carry out Umrah so that the decision does not reflect justice and expediency.

3.3. THE IDEAL ARRANGEMENT FOR ORGANIZING UMRAH IN INDONESIA

Research on a problem is not only carried out to find out the cause of the problem but is also expected to provide a solution to the existing problems so that the solution is expected to anticipate the recurrence of the same problem, reduce the risk of losses caused by the problem, and provide benefit to others.

A comparative study was conducted to see and learn how other countries regulate the implementation of the Umrah pilgrimage to provide a broad perspective. Comparative studies were conducted by comparing the mechanism for problem-solving in organizing Umrah in Indonesia, Malaysia, and Singapore. It has been discussed in the juridical analysis and case studies in this discussion regarding problem-solving in Indonesia. As a comparative study of the implementation of Umrah in Malaysia and Singapore, it can be explained as follows:

1. Malaysia

Malaysia is a country with a majority of Muslims, just like Indonesia. The implementation of the Umrah pilgrimage in Malaysia is overseen by Majesty Kawal Selia Umrah (hereinafter referred as MKSU), which was established on August 28, 2014, under the Ministry of Travel, Arts & Culture²³. MKSU, with the Department of Waqf Zakat and Hajj Malaysia (hereinafter referred as JAWHAR), issued an Umrah Package Fraud Awareness Guide regulation. In the regulation regarding the Umrah Package Fraud Awareness Guide, the Malaysian Government provides information that there are 3 (three) primary forms of fraud that occur in Malaysia, which are²⁴:

1. Fraud with the intention of not performing Umrah worship or not sending Umrah pilgrims;
2. Umrah worship is not following the agreement;
3. Other fraudulent methods related to Umrah packages include lucky draws, lifetime cards, Multi Level Marketing (MLM), and Sponsors.

The Malaysian Ministry of Travel, Arts & Culture issued a directive for compensation for user complaints through the Malaysian User Claims Tribunal (hereinafter referred as TTPM). TTPM is a Dispute Settlement / Remedy Act imposed by the Malaysian Government for prospective Umrah pilgrims or users to make demands easily, low cost, and fast and get free & fair decisions. The requirements for submitting a claim to the TTPM are that the claim is filed with a claim value of not more than RM 25,000.00 - (twenty-five thousand Malaysian Ringgit).

2. Singapore

Regulations related to Muslims in Singapore are regulated in the Administration of Muslim Law Act (hereinafter referred as AMLA). AMLA is a law relating to Muslims in Singapore and contains provisions governing Islamic religious affairs²⁵. The implementation of the Hajj and Umrah pilgrimages in Singapore is regulated by the Islamic Religious Council of Singapore or the Singapore Islamic Ulema Council (hereinafter referred as MUIS). It was established as a legal entity in 1968 when the AMLA came into force. Under AMLA, MUIS is authorized to advise the President of Singapore on all matters relating

²³ "Information on Umrah and Pilgrimage," *Malaysian Government Portal*, accessed March 18, 2020, <https://www.malaysia.gov.my/portal/content/30453>.

²⁴ "Penipuan 3 Bentuk Utama," *Majlis Kawal Setia Umrah*, accessed March 18, 2020, <http://umrahmksu.motac.gov.my/panduan/kesedaran-penipuan-pakej-umrah>.

²⁵ *Singapore Administration of Muslim Law Act* (Chapter 3), original Enactment: Act 27 of 1966, Revised Edition 31 October 2009.

to Islam in Singapore. The role of MUIS is to regulate and safeguard the interests of the Singapore Muslim community²⁶.

All Singaporean travel agent companies that handle the implementation of the Umrah pilgrimage are members of the Association of Muslim Travel Agents Singapore (AMTAS). AMTAS was founded in 1996 and currently consists of 49 (forty-nine) Muslim Travel Agents who are members. AMTAS supports and cooperates with the Embassy of the Kingdom of Saudi Arabia to ensure that Umrah visas for Singaporean pilgrims are applied, processed, and issued on time and by the requirements set by the Saudi authorities.

Singapore establishes a mechanism for registering prospective pilgrims through a Travel Agent determined by MUIS and published to the Singaporean public. The determination of the travel agent is based on the proposal and presentation of the travel agent company and travel consortium presented to MUIS. The information submitted to MUIS includes the price of the Hajj package and all accommodations that will be provided based on the price offered. From this proposal, MUIS examines and determines Authorized Travel Agents For 2019 – 2020 (1440h – 1441h) And Approved Packages For Haj 2020 (1441h)²⁷. Publication and disclosure of clear and easily accessible information for Singaporean Muslims is one of the keys to the successful implementation of Umrah in Singapore.

Looking at the three countries, which are Indonesia, Malaysia, and Singapore, in organizing Umrah worship and overcoming its problems, it can be seen that in Indonesia, there is still no standard for problem-solving mechanisms as Malaysia who protect prospective umrah pilgrim with dispute settlement by the Malaysian TPPM. Information disclosure about the packages offered strictly important in Singapore, but is not a priority in Indonesia. The flexibility provided and the opportunity for PPIU to offer Umrah package prices below the reference from the Ministry of Religion is again a way for untrusted PPIU to setting the crime by promoting very low price of umrah Package as promotion trick. Moreover, low prices attract prospective Umrah pilgrims, as is often the case in Indonesia.

Adapting the other country regulation regarding implementation umrah will give the other view of dispute resolution to increase the problem of umrah pilgrims in Indonesia. with strict dispute settlement apply, all the victim of PPIU can follow the government instruction to settle the problem with PPIU, also insurance protection that provide for all prospective umrah pilgrims to ensure every person who registered as umrah pilgrims will get the right to do umrah worship with PPIU services or by the arrangement from the insurance protection cover.

4. CONCLUSION

Considering the above discourse analysis with the conclusion:

4.1. Amendments to Law 8/2019 concerning the Implementation of Hajj & Umrah, which are amended in Article 68 of Law 11/2020 concerning Job Creation, seem rushed and undeveloped in considering changing the provisions of Article 119 and Article 126 well as the addition of Article 119A. Furthermore, the implementation of Law 8 /2019 has not been regulated yet until amended with Law 11/2020, so it cannot be evaluated whether the application of criminal sanctions in violations committed by the PPIU is appropriate and creates a deterrent effect for PPIUs in Indonesia so that they are more responsible and careful in managing the money deposited by umrah pilgrims. Furthermore, administrative sanctions overlap with criminal sanctions, which can lead to different perspectives and the application of Law to the problems carried out by the PPIU.

²⁶ “Rule and Functions of Majelis Uagama Islam Singapura,” *MUIS Official Website*, last modified 2020, accessed April 23, 2020, <https://www.muis.gov.sg/About-MUIS/Roles-Functions>.

²⁷ “Authorised Travel Agents For 2019 – 2020 (1440h – 1441h) And Approved Packages For Haj 2020 (1441h),” accessed April 23, 2020, <http://www.muis.gov.sg/Haj>.

- 4.2. From case studies conducted on several court decisions related to 2 (two) significant cases in Indonesia. Which are, in the First Travel case and the Abu Tour case, it can be concluded that Indonesia still does not have a standard mechanism for resolving the Umrah problem. So, the two cases resulted in 2 (two) different decisions due to different legal processes, which are criminal and bankruptcy. Furthermore, the court's decision may fulfill the element of justice in giving an appropriate punishment in imprisonment for an extended period, which is more than 10 (ten) years for PPIU perpetrators. However, true justice is still not felt for prospective Umrah pilgrims because they do not get their rights to be able to perform the Umrah worship. The insurance clause required as protection for prospective Umrah pilgrims does not regulate the protection to coverage umrah pilgrim certainly of umrah departure, so it focuses more on minimum facilities within the scope of travel insurance. Still, it does not provide departure guarantee protection for Umrah pilgrims.
- 4.3. The results of the comparative study show that there are differences in the mechanism for organizing the pilgrimage in Indonesia, Malaysia, and Singapore. On the one hand, Malaysia has a particular dispute settlement for umrah issues, and Singapore chooses to prioritize supervision and information disclosure through the publication of all packages offered by umrah travel so that the public knows the standards set and permitted by the Government. On the other hand, in Indonesia, based on the latest regulations, Law 11/2020, which applies administrative sanctions and criminal sanctions, the integrated information system SISKOPATUH is also used for government monitoring of the registration of prospective Umrah pilgrims. However, unfortunately, this information data can only be accessed by the PPIU and also the Ministry of Religion, so the public does not can access information related to their umrah data collection.
- 4.4. From the normative legal research conducted on the laws on the implementation of the Hajj and Umrah pilgrimages, a comparative study of the implementation of the Umrah pilgrimage in Indonesia, Malaysia, and Singapore, as well as case studies that occurred. In connection to the conclusion as mentioned earlier, it is advisable to do as follows:
 1. Amend the provisions on Umrah insurance which previously gave the PPIU flexibility access to determine a protection clause. Amended by requiring a clause on protection for the guarantee of the departure of Umrah pilgrims. This insurance aims to divert the risk of not being handed out umrah, so the insurance cover the risk and provide umrah services to all prospective umrah pilgrims who cover by the insurance. With this method the prospective umrah pilgrims are guaranteed in the certainty of their departure if the PPIU does not carry out its obligations to dispatch Umrah pilgrims by the Umrah departure time limit as stipulated in law.
 2. Establish a mechanism for dispute settlement in specific for umrah problems stipulated in the legal system in Indonesia to provide justice, certainty of the law and benefit of society.
 3. Creating an integrated information database that can be accessed by all people in Indonesia, where the database contains information that provide the information about prospective umrah pilgrims, information about PPIU who organizes the umrah, the date of registration, the price of packages, and facilities obtained, and the estimated time of departure. With this information disclosure, the public will easily monitor the process of organizing their Umrah until the departure time to avoid a reoccurrence of departure delays that lead to the absence of prospective Umrah pilgrims.

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