

The Determination of Waiting Listed Pilgrim Candidates Criteria in Hajj Enforcement System In Indonesia

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ABSTRACT

Article 1 number 2, the Law of the Republic of Indonesia Number 13 Year 2008 regarding the Hajj enforcement, (abbreviated UUPIH) states that the Hajj enforcement is a series of management activities of Hajj implementation that includes coaching, serving, and protection of pilgrims. That article is intended only for pilgrims candidate who will depart in the current year, while for pilgrims in waiting list do not get the same legal protection as pilgrims who departed in the current year. The government's responsibility normatively is addressing, protecting and resolving the main problem of why the build-up of queues pilgrims everywhere until today has not been visible. This is seen when regulations of UUPIH implementation, there is no article which manage the fate of the pilgrims in waiting list. Based on those problems, this paper analyzes the managing criteria for candidate of Waiting List pilgrims in Hajj enforcement system in Indonesia. The method used is normative research which is focused on legal materials. This research uses law, conceptual and philosophical approach. Based on the results of the research, it is known that managing criteria for pilgrims candidate in waiting list in the Hajj enforcement system in Indonesia either in law No. 17 year 1999 about Hajj enforcement or law Number 13 year 2008 about Hajj enforcement and its derivatives, juridical legislation has not yet regulated the selection of system pilgrims criteria based on pilgrims' capability, the limit of the minimum and maximum age of pilgrims and Hajj repetition. This has become one of the causes of the worst of care system in the Hajj registration.

Keywords : Determination, Criteria of Pilgrim Candidates, Hajj Enforcement System

INTRODUCTION

Policy about hajj in Indonesia based on the 1945 Constitution, Article (1) and article 29 paragraph (2), "The State guarantees the independence of each citizen to embrace their own religion and to worship according to their religion and beliefs". The assurance also affirmed on the Article 28 E UUDNRI year 1945 paragraph (1) and (2) which states that "Everyone is free to embrace religion and to worship according to their religion, choose education, employment, citizenship, place of residence in the territory of the country and also leaving the country and having a right to back" and "Everyone has the right of freedom of keeping their belief, express thoughts and attitudes, in accordance with their conscience".

Based on the mandate constitution, the state and the government is obliged to guarantee the protection, respect, shelter on the right of every citizen to embrace religion and to worship according to their religion, as well as providing facilities and services to fulfill the basic rights of citizens. Therefore, an aspect of the respect, protection, promotion, enforcement and fulfillment of the religious right becomes a basic foundation for the development of the religion field. Yet in order to protect the safety, order, health and public morality, as well as to protect the fundamental rights or freedoms of others, the manifestation of the freedom of the religion or belief restricted or regulated by the state.

Determination of is declared on article 28 J UUDNRI year 1945 (2) that is: "In implementing their rights and freedoms, everyone should obedient to the restrictions set forth Law solely to ensure recognition and respect for the rights and freedoms of others to meet the demands of the fair, based on the considerations of morality, religious values, security, public order of a democratic society."

Article 27 (1) UUDNRI year 145, states: "all of citizens with their status in law and government and government must uphold the law with no exception." Condition means equality of every citizen under the law including the implementation of the rights of confidence.

This is what brought the principle of "Equality before the law." And it is applied for all citizens, regardless of status, gender, and so on. The problem is then what happens to the Waiting List pilgrims' candidate and non-quota. Principle of "togetherness in this law does not apply because the law No. 13 year 2008 about the implementation of Hajj which is a refinement of Law No. 17 year 1999 and become a reference for quality improvement coaching, services, and protection for pilgrims do not regulate or touch the non-quota pilgrims and pilgrims who are in waiting list."

The increasing of the number of pilgrims' candidate is the fact that cannot be denied. it indicate that the interrelationship of various aspects characterized by fluctuations and dynamics of Indonesian history journey interplay the increasing of the number of pilgrims candidate which is scattered in each region. The number of pilgrims' candidate affects the neglect and piled pilgrims in long waiting list. The number of pilgrims and the long queue in waiting lists that are in turn triggered new problems especially regarding the lack of adequate legal protection against those and other issues.

Waiting list pilgrims candidate should receive the same legal protection as pilgrims who are delayed their departure. The government's responsibility in addressing normative, protect and resolve the main problem about the reason why the buildup of queues pilgrims everywhere until today has not been visible.¹ It is just because there is no article which cares about fate of the waiting list pilgrims which is set out in the UUPIH implementing regulations.

Yet he organized legal protection of the pilgrim candidates, of course, raises serious problems either in the philosophical, juridical, theoretic or sociological realm.

In the philosophical realm, Hajj enforcement should be accomplished in a glorious shade goal that is to realize the *mabrur* Muslim. *Mabrur* as the ultimate goal of the Hajj enforcement should become the spirit and principles in Hajj enforcement.

In addition to philosophical issues, the absence of law provisions against the criteria of non-quota and waiting list pilgrims in construction law of Hajj enforcement expose that there is normative-juridical problem in the form of a legal vacuum (*rechtsleemten*). It looks when Law Number 13 Year 2008, about the Hajj enforcement² and the relevant legislation are not accommodated the fate of waiting list and non-Hajj quota pilgrims candidate.

Viewed from a legal aspect, relationship and position of pilgrim candidates to the government are equal and balanced, and each of them has rights and obligations which are protected and respected by law.

In general, citizens, including pilgrims are in a weaker position in relation to the government either in economic terms, educational levels, and the capability or bargaining power. Therefore, to balance the position and protection of the rights of pilgrim candidates needed a protection for pilgrim candidates, not only for pilgrims who departed in the current year but also Waiting list pilgrims.

There is sociological problem. The high desire of Muslims to execute the Hajj with a limited quota which is given to Indonesia would cause its own problems. Stacking pilgrims occurred in every region while the place or area of Hajj in Saudi Arabia was fixed, that is Mecca, Mina, Arafat, Muzdalifah and Medina. Those areas are also not possible to accommodate the number of pilgrims which is growing from other countries.

Although the government is committed to carry out the maximum Hajj service based on the mandate of the law of Hajj enforcement, the years still reap a lot of attention from various parties. The Hajj enforcement² is considered still has many shortcomings and weaknesses, ranging from catering problem, lodging, transportation, to insurance which only involves one company.

¹ Explanation of the *Muqaddimah* (introduction) of UUPH stated that Hajj coaching realized in the form of tutoring, counseling, and informing to the public and the pilgrims. Services realized in the form of the provision of administrative services and documents, transport, health, as well as accommodation and meals. Protection embodied in the form of a guarantee the safety and security of pilgrims during Hajj

² Lembaran Negara Republik Indonesia (sheet of Republic Indonesia year 2008 No 60, addition of LN RI, No. 4845

To give the citizens' right, the problem of coaching the Hajj, society is also involved that is group of coaching the Hajj (KBIH) as well about the Hajj enforcement, the private service also should be involved that is special Hajj enforcement or *Penyelenggaraan Ibadah Haji Khusus* (PIHK) which is focused on pilgrims who have more funds but do not have the time enough for personal or business affairs official who is better known as pilgrims plus or special Hajj. While the provider of Umrah travel services/Umrah travel agency known as Umrah enforcement as in article 43 paragraph (2) of Law 13/2008, the government and / or the travel agency which is determined by the Minister.

There is also a travel agency called non-quota, namely Special Hajj enforcement which is officially registered in the Ministry of Religion but doing an offense by recruiting pilgrims exceeded from the quota or Hajj visas that they get from the Ministry of Religion. This type of Hajj does not have to wait long time until decades for Hajj because in terms of the material is more expensive than regular pilgrims. Non quota pilgrim candidate are not recognized by the government and does not receive legal protection. Law No. 13 year 2008 about Hajj enforcement, this type of Special Hajj enforcement should strive to obtain Hajj visas from the Kingdom of Saudi Arabia Government through their embassies in Jakarta.

On the one hands, non-quota Hajj is the remnants of an independent Hajj enforcement by individuals and religious groups before being taken over government and the other hands for Hajj travel business opportunities. The government has been trying to eliminate non-quota Hajj so that all pilgrim candidates are in the government's control. At the same cost, non-quota pilgrims can get better facilities than a special pilgrimage. The advantages of using the non-quota Hajj are one of them is that do not have to queue like regular Hajj and special Hajj, but the risk is that visas are not issued by the Embassy of Saudi Arabia, this would be fatal where pilgrim candidates could not leave sacred ground and of course the government cannot protect them.

In the year 2012/1433 H, there is an incident in which 19,000 pilgrims candidate could not leave because there is a failure in travel agency. Parliament members called the 3,500 pilgrim candidates because they do not get a visa from the embassy of Saudi Arabia.¹ Illegitimacy of non-quota Hajj and pilgrim candidates who followed unlicensed travel agency, if there is a problem, the government / Ministry of Religion cannot take action or impose sanctions, like to licensed travel agency, which is the authority to give warning, even to the revocation of permission to the travel agency who make offence. Pilgrim candidates who become victims of unlicensed travel agency and non-quota Hajj are not protected legally, especially in Law No. 13 year 2008.

One of the problems caused by private providers in both licensed and unlicensed is that failure to go to the holy land and the abandonment of the pilgrim candidates by the Hajj and Umrah Travel Agency managed by private providers. The loss experienced by the pilgrim candidates who failed to depart on the year that have been promised is not only involves the material, but the time, effort, pain and psychological burden. According to the Chairman of the enforcement of the association of Umrah and Hajj enforcement (HIMUH), Ahmad Basuki, is that in year 2010 itself, there were 6,000 Indonesian pilgrims who could not leave because of problems, such as because of Hajj travel agency.²

Relate to these problems, this research identifies legal issues as follows:

1. There is a weakness of Hajj enforcement arrangements that there are no any concrete norms yet related to legal arrangements for waiting list and non-quota Hajj pilgrim candidates. This make the government has no authority to take action directly to give sanctions, and others. This results that many victims of neglect and failure departure of pilgrim candidates who they do not get protection, justice and legality.
2. Lack of tight regulation related to the *istitha'* concepts and the concept of Hajj liabilities only once in a lifetime in the laws about the Hajj enforcement system.
3. Authority of comprehensive (multi-function) given to the government as a regulator and operator and evaluator caused Hajj enforcement is looked overlap functionally.

Based on the legal issue above, the researchers tried to formulate in a research focus related to law construction "Determination of the Waiting List Pilgrim Candidates Criterion in Hajj Enforcement System in Indonesia." To

¹ Bayu Dardias, *Tiga Jenis Ibadah Haji Reguler, Khusus dan Non Kouta*, <http://bayudardas.staf.ugmuac.ad/2013/1029> accessed on Monday, March 15, 2013.

² [www:http://finance.detik.com/read/2011/01/09//1601118/1542504/4/bisnis-travel-haji-di-Indonesia-banyak-yang-bermasalah](http://www.finance.detik.com/read/2011/01/09//1601118/1542504/4/bisnis-travel-haji-di-Indonesia-banyak-yang-bermasalah), accessed on November 22, 2014.

solve the problem above, researchers used several theories, namely the theory of *Maqasid al-Shariah*, and the theory of state responsibility.

RESEARCH METHOD

This research is normative research, which is a research from the law principles, the legal norms of the rule of law and the legal system.¹ This research uses several approaches, such as: legislation approach, conceptual approach and philosophical approach.² This research uses several theories as analysis materials includes: theory of *Maqasid Al Shari'ah*, and theory of states responsibility.

Etymologically, *maqasid al-Shari'ah* is the purpose of the law. Islamic law either in the normative or applicative concepts should be able to realize and harmony which is to realize the benefit, kindness, peace and prosperity. The *maslahah* is an advantage or goodness.

Al-Ghazali categorize *maslahah* in three levels namely *dharuriyat* (primary needs), *hajiyyat* (secondary needs) and *tahsiniyyat* (tertiary). Each those level needs are refined with the objects formulation or targets 3 levels of *maslahah* known as *usul al-khamsah* (5 basic principles of collateral) that is *hifdzu al-din*, *hifdzu al-nafs*, *hifdzu al-aql*, *hifdzu al-nasl* and *hifdzu al-mal*. Then, these five principles are refined again by Shihab al-Din by adding *hifdzu al-'ird* (honor).³ Theory of *maslahah* stated by Imam al-Ghazali, that the texts of the Qur'an and the Sunnah of the Prophet deliberately presented to create benefit for all mankind.⁴

The main point of this theory of *Maslahah* is to analyze and interpret the legal issues that *maslahah* is a key element of Islamic law foundation which binds other related elements. The advantage is the main substance of Islamic law. This theory is very appropriate to analyze the purpose of norm in the construction of the priority principle and the principle of legal protection in carrying out the Hajj enforcement in the future.

Then, in terms of the theory of states responsibility, Law No. 13 year 2008 about Hajj enforcement stated that: Hajj enforcement is a national duty. This law does not explain in detail the meaning of "responsibility" and what is meant by "national". The term "responsibility" is often synonymous with the term "obligations". Both of these terms are difficult to separate from each other. It is often associated with the concept of "responsibility" also. One cannot be responsible to others, if he has no responsibility to do something.

Responsibility has a broader meaning, because it is not just a liability (obligation) to respond (meeting) on what was once done related to the decision, someone's skill and ability, but also the obligation to "recover" (restitution) or pay reimbursement for losses caused by acts ever done. The term of "liability" means a condition to carry out specific legal obligations. The term of "responsibility" both in the sense of "responsibility" and "liability" cannot be separated from the meaning of "duty" (obligation). Based on this basis, it can be understandable if the use of the term "responsibility" is often synonymous and interchangeable use is with the term "duty" (obligation).

Hans Kelsen states that: "The State as a subject which act through its divisions is the personification from a rule of law".⁵ According to Miriam Budiardjo,⁶ there are three characteristics that only owned by countries that do not have any other organization, those are: (1) the state has a power to force, (2) the state has a characteristic can monopolize (3) the state power includes all aspects.

Law number 13 year 2008 Article 6 of Republic Indonesia Law No. 13 year 2013 about Hajj enforcement,⁷ asserted that the state has an obligation (liability); to do guidance, care and protection by providing administrative services, Hajj coaching, accommodation, transportation, healthcare, security, and other things needed by pilgrims.⁸ Chapter IV Article 8 mentions, among others, Implementation of Hajj includes elements of policy, implementation, and monitoring. Policy and Hajj enforcement are a national duty and responsibility of the

¹ Sudikno Mertokusumo, *Penemuan Hukum*, (Yogyakarta : Liberty, 2009, p. 29

² Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta : Kencana Prenada Media Group. 2008) p. 93

³ Shihab al-Din al-Qarafy, *Syarah Tanqih al-Fushul fi Ihtisar al-Mahsul fi Usul*, (Mesir: Maktabah al-Khairiyah, tth), p. 89.

⁴ Abu Hamid Muhammad bin Muhammad al-Ghazali, *Al-Mustasyfa min Ilmi al-Ushul, Tahqiq wa Tahliq Muhammad Sulaiman al-Asyqar*, (Beirut: Mu'assasat al-Risalah, 1997), Juz ke-I, p. 281.

⁵ Hans Kelsen, *General Theory of Law and State*, BEE Media Indonesia, Jakarta, 2007, p. 243.

⁶ Miriam Budiardjo, *op cit*, p. 40

⁷ Lembaran Negara RI Tahun 2008 No 60 Tambahan Lembaran Negara RI No 4845

⁸ Kementerian Agama RI, Dirjen Penyelenggaraan Haji dan Umrah, *Op cit*, p. 30,31

state in which, in the implementation, the Minister coordinate and / or work with the citizens, department / institution involved and the State of Saudi Arabia.

Under this provision, it appears that the issue of the Hajj enforcement is not just an obligation or responsibility of decision makers (state) but also an obligation or responsibility of society and the business owners.

RESEARCH FINDINGS AND DISCUSSION

Islamic Law Review relate to the Hajj Candidates criteria based on *Fikih* Perspective

There are several things of criteria or conditions for pilgrim candidates based on *Fikih* perspective. However, the most emphasized criteria is that the person is capable (*istitha'a*) doing a journey to the *baitullah*. Prophet Muhammad when he called fifth pillars of Islam which says, "*Hajj to the baitullah for those who can afford it*". This is because every person must be able to offer prayers and fasting, but is not necessarily able to go to the *baitullah*. Therefore, Hajj which is only required once in a lifetime is a blessing of God for the capability of both material and immaterial.

Allah does not burden His servants with a heavy burden and makes it difficult, but God provides convenience. Therefore, the load in Islam is according to their capability. Allah SWT says: "Allah does not burden a person but according to his or her capability" ... (Q.S. Al-Baqarah: 286).

The longer the queue of Hajj waiting list, the more it will add to the high age of Hajj Candidates (CJH) elderly. Therefore, one of the efforts to reduce old pilgrims is to prioritize them that sorts based on age and the oldest specific person.

Analysis of the Hajj reinforcement law based on the theory perspective

Law of the Republic of Indonesia Number 12 Year 2011 about the Establishment Regulation of Legislation stated that the legislators when making rules must observe the principle of the establishment of legislation and the principle of good content material.¹ I.C. van der Vlies in his book entitled "Handboek Wetgeving" split into two groups: Formal principles which include: The principle of clear objectives, the right institutions, the urgency of making arrangements, workable, consensus,² and the material principles which include: Principles of terminology and correct systematic, can be recognized, the same treatment in law, legal certainty, implementation of the law according to individual circumstances. In addition, also should pay attention to the principles of clarity of objectives, institutional or forming proper officials, the agreement between types, hierarchy, and material content, can be implemented, usability and usefulness, clarity of formulation, and transparent.

Meanwhile to the substance of legislation should reflect the principle of security, humanity, nationality, familiarity, *Bhinneka Tunggal Ika* (Unity), justice, equality in law and governance, order and legal certainty, balance, harmony, and conformity.

Those principles are the basis for forming rests legislation and policy makers in shaping the legislation. Another reference that needs to be considered by the forming of legislation is the theory of the norm level, where the rules are made to be based on the higher up to on the so-called basic norm.

Each substance of the legislation must not be inconsistent with the values of Pancasila (five principles of Indonesia) as the fundamental norm. Placement of Pancasila as the source of all sources of state law is in accordance with the Preamble to the Constitution of the Republic of Indonesia Year 1945 fourth paragraph.

Overview Based on Law No. 17 Year 1999 Concerning Hajj Enforcement

Talking about the Law of Hajj enforcement cannot be separated by Law No. 17 year 1999 about Hajj enforcement³ as the first Law which regulates the Hajj enforcement. This law consists of 14 Chapters and 29 Articles which are accompanied by explanations.

Based on the systematic of the Law about Hajj enforcement, matters relate to the Hajj enforcement which seems accommodated optimally in that Law. However, does not mean that this Law has been perfect. There are some

¹ Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

² Maria Farida Indrati Soeprapto, *Ilmu Perundang-undangan: Dasar-dasar dan Pembentukannya*,

³ Lembaran Negara tahun 1999 No 53 Tambahan Lembaran Negara No 3832

norms and substance disadvantages in Hajj enforcement problem which is not defined in that Law. The problem is as follows:

1. The need of the stability of the government's role and society is still needed.
2. Strict separation among regulators, operators and supervisors
3. Creating a pattern of open management, transparent, and accountable public either concerning the financial management or procurement of goods and services
4. Creating the discussion of Hajj costs system which is more organized and standardized
5. Creating the system of Hajj enforcement professionally
6. Build the image, credible and honor of Indonesia in the eyes of other nations, especially who are present in the holy land of Mecca and Medina.¹

Law No. 17 year 1999 has already accommodated the principles of justice of having the opportunity, protection and legal certainty as contained in Chapter II, Article 4 about the principle as follows: "Hajj enforcement is based on the principles of justice of having the opportunity, protection and legal certainty in accordance with Pancasila (five principles of Indonesia) and the Law year 1945".

Then in chapter 5 stated: "Hajj enforcement aims to provide guidance, care, and protection as well as possible through the system and the good management in order to the implementation of the Hajj can be run safely, orderly, smooth, and comfortable in accordance with the guidance of religion and pilgrims can carry out worship independently in order to obtain Hajj *mabrur*".

The spirit that appears on the principle of justice in getting the opportunity is a principle which is very important to accommodate the selective mechanism to the determinate the criteria of pilgrims.

Overview Based on the Law No. 13 year 2008 concerning to Hajj Enforcement

The implementation of Law No. 13 year 2008 on the Hajj enforcement has opened up the role of government. The presence and strengthening of the Hajj enforcement is a steps and political strategy in improving the function of government and organs of the Hajj enforcement in Hajj service quality improvement.

Although the latest principle in the Hajj enforcement which has accommodated the principles of justice, professional and non-profit, it do not a guarantee that the Hajj enforcement in Indonesia is going according to the purpose of the Hajj that are professional and *mabrur*. This is caused by a lot of obstacles that still envelops the setting of the Hajj enforcement in Indonesia. One of them actually in the recent Law of Hajj enforcement does not clarify the principles of justice. This can be seen in Law No. 13 year 2008 about the Hajj enforcement,² namely: Hajj enforcement is implemented based on principles of fairness, professionalism, and accountability with the non-profit principle (Article 2).

The definition of "fairness principle" is that Hajj enforcement is adhering to the truth, not biased, impartial, and not arbitrarily in Hajj enforcement. Although the explanation of Article 2 above has been oriented to the principles of justice to be impartial and not biased, it is much different if it is associated with the principles of justice gain equalization as principle in Law number 17 year 1999 about the previous Hajj enforcement.

In addition, the most crucial thing that has not been accommodated in the newest Law about Hajj enforcement relate to clause of to the criteria determination for pilgrim candidates based on selective justice.

Analysis of void juridical norms in Determination of the criteria for pilgrim candidates in the laws and regulations in Indonesia

Indonesian pilgrim candidates mainly waiting list and non-quotapilgrims do not get protection as pilgrims who depart in the current year, for example, health insurance, insurance coverage, even when the pilgrim candidates are forced to cancel the departure due to illness, for being too old and waiting the queues for so long. That also do not get the attention even they do not get any service unless canceled as Indonesian pilgrim candidate. This case can be seen on Minister of Religious Regulation No. 29 year 2015 about the amendment to the regulation of the Minister of Religion No. 14 Year 2012 about regular Hajj enforcement article 11 which

¹ Surat penyampaian usul inisiatif RUU tentang perubahan atas Undang-undang Nomor 17 tahun 1999 tentang penyelenggaraan ibadah haji tanggal 25 agustus 2005 yang ditujukan kepada pimpinan DPR RI di Jakarta. Risalah pembahasannya di dalam naskah akademik Undang-undang nomor 13 tahun 2008 tentang penyelenggaraan ibadah haji, p. 3.

² Tambahan Lembaran Negara RI No 4845

states that the registration of Hajj being canceled if the pilgrim dies, resigns for health reasons or other reasons, cannot depart in the past two times of the Hajj as referred to in article 9 paragraph (3), and are forbidden to leave the country under the provisions of the laws and regulations.

The government has been trying to solve the problem of queues departure of pilgrim candidates. This can be seen with the enactment of the Minister of Religious of the Republic of Indonesia No. 29 year 2015 on the amendment to the regulation of the Minister of Religion No. 14 Year 2012 about Regular Hajj enforcement Article 8 which states: pilgrims who have registered and entered the allocation of provincial or district / city quota for departure the Hajj time for the current year plus the portion of reserves derived from the serial number of the next portion, has the right to pay off BPIH with the following requirements:

- a. has never been doing the Hajj and
- b. been 18 years old at the time of the initial date of departure or have already married

Furthermore, Article 14 states:

- 1) The provinces Hajj quota referred to in Article 13 paragraph (1) which is not fulfilled at the end of the BPIH repayment period, it becomes the rest of the national quota.
(1a) the rest of the national quota as referred to in paragraph (1) may be returned to their provinces in accordance with the remaining quota.
- 2) Filling the rest of the national quota as referred to in paragraph (1) is used for pilgrims with the following criteria:
 - a. pilgrims when repayment on the previous stage has a system failure experience
 - b. have ever done the Hajj and included in quota allocation in the current year
 - c. at least 75 years old and have applied
 - d. incorporation husband / wife which is evidenced by an excerpt of marriage certificate & KK
 - e. Incorporation of child / parent which is proved by a birth certificate & SAKL
 - f. Pilgrims with the status of the reserve and have paid off in the current year
 - g. The next portion of pilgrims numbers

It is right that with this regulation little bit help reduce queues of the pilgrim candidates' departure but because the public interest is so high so that long queues cannot be resolved.

In the case of creating a law, a rule should be established and formulated based on the formation and the way in formulating the rules properly. The good and right formulation of legislation is not only to formulate the substance of the text, but also pay attention to the social dynamics that developed well in the past, the present and the future.

In the context of the past, the Hajj queue in Indonesia is not so long like the conditions currently which reach 25 years old and up. This is one example of how the conditions of social and economic development are strongly associated with the development of the law and the Articles to be formulated. Therefore, forming and reformulate the laws of Hajj enforcement is a must in order to protect the group of pilgrims.

The Law Principle in Determining Pilgrim Candidates Criteria in Hajj Enforcement System in Indonesia

The principle of the Hajj enforcement promotes the interests of the pilgrims business, giving a sense of fairness and certainty, efficiency and effectiveness, transparency and accountability, professionalism and nonprofit. In the implementation, Hajj enforcement is divided into two categories, namely regular Hajj which is fully implemented by the government, and a special Hajj which is undertaken by special Hajj enforcements who have received permission from the Ministry of Religion.

Here it can be seen that there is no legal arrangements to protect pilgrims and non-quota pilgrim candidates on the waiting list in law construction of Hajj enforcement. This shows that there is the existence of normative-juridical problem in the form of a legal vacuum.

A form of protection for pilgrims since the beginning of registration and registered in Information Systems and Integrated Computerized Hajj or *Sistem Informasi dan Komputerisasi Haji Terpadu* (Siskohat) Ministry of Religious Affairs that includes:

1. Certainty of departing for Hajj
2. A guarantee of health, safety and security of pilgrims during Hajj
3. Protection for the threat of disease through vaccination
4. Life insurance guarantee for pilgrims who had an accident or death.

This protection is only for CJH who will leave the current year instead of waiting list. The above provisions certainly did not reflect their protection and fairness in the Hajj enforcement particularly for waiting list pilgrims.

When Norm about setting determination on waiting list pilgrim candidates has not been accommodated, then in the reformulation that must be done is to establish a legal substance. Construction of legal substances on the legal Hajj enforcement which starts by adding the formulation of the principles of the Hajj enforcement which is the principle of the protection, the principle of priority and the development principle of selective justice.

The definition of the principle of legal protection that the pilgrims who get the legal protection is not just the pilgrims who depart Hajj but waiting list pilgrims must get a guarantee of legal protection, for example when they are sick, or died, or cancelled to depart because they are too old and physically is no longer possible to leave because eventually waiting so long to depart to the holy land. Then, what is meant by principle of priority above is that Hajj enforcement must prioritize certain pilgrim candidates such as taking account of age factor. While the principle of selective justice is that the determination of the pilgrims built on the principle obligation of Hajj only once in a lifetime.

Pilgrim Candidate Registration in the Public Service System

Hajj enforcement is a series of activities that include the supervision, care, and protection in the Hajj enforcement to the pilgrims / pilgrims candidates both at home and in Saudi Arabia, which consists of registration, the determination of Hajj fees (BPIH), passports and handling visa, coaching / mentoring to pilgrim candidates, personnel recruitment and organizing Hajj committee, special Hajj enforcement, food, accommodation, transportation, health care, until the coaching of post Hajj.

Based on the theory of public service, in the Hajj enforcement, the thing that should be note is the registration initial starting. Registration form of pilgrim candidates built on certainty procedure. In the registration, services for the Hajj enforcement is required to apply the principles of the Hajj enforcement as *istitha'ah* principle and the principles of necessity of Hajj once in a lifetime. Those principles will make the idea of the law of philosophy in the form of the formulation of selective principles in the realm of the age and the principle of priority for those who have never Hajj. Through these two principles, the fulfillment of the administrative responsibility of a state of the pilgrims is fulfilled.

Factors That Caused the Length of Hajj Waiting List or Queues

Factors that caused the length of Hajj waiting lists or queues is caused by three major dimensions. First, the dimension of the public understanding about the Hajj, the second, the spiritual dimension of the Hajj, and the third is the dimension of the commercialization of the Hajj.

Hajj spiritual movement seems increasingly shifted to the strong competition between the services of travel by providing the best service and reliable. Spiritual shift oriented to profit-oriented in the Hajj enforcement is inevitable when setting about Hajj enforcement is not clearly regulate the private sector travel agency position even position in the field of Religious Affairs in Hajj area as Hajj operator.

Effects of the Length of Hajj Waiting List (Injustice)

Large numbers of pilgrims which are not raised until those several decades bring negative impacts. Some of those negative impacts relate to the certainty of the time which is not clear, the potential misappropriation of funds advances Hajj, and the loss of time and psychological because the awaited moment arrived when something always shifted backward from the year that have been defined.

Factual Analyses of the Effects of Waiting list In Hajj Enforcement

The most causes lead to a waiting list Hajj in order to reformulate the next pilgrim candidates based on the several facts below:

1. Easiness for getting a portion of the Hajj because enrollment is opened throughout the year.
2. The proliferation of Islamic Banking which provides Hajj Bailout.

The State or Government Role in Determining Pilgrim Candidates Criteria in Indonesia

State is as bearers of rights and obligations of citizens also protect the rights of the community in running belief in worship. It is also required to be applied in the implementation and protection of the Hajj. State has role in determining the criteria for pilgrim candidates in Indonesia. Hajj enforcement in Indonesia nationally is under the authority of the Ministry of Religious Affairs. In such authority also contained a great responsibility for the implementation of the Hajj, so it is needed a good service. Considering that its implementation is massive and takes place in a limited period of time, then the Hajj enforcement require good management, so that the organization of the Hajj can be run in an orderly, safe and smooth.

One of the basic functions of management is “*pengawasan*” or controlling. The word “*pengawasan*” is derived from the word “*awas*” means “*penjagaan*” or in English is “*secure*”¹ The term “*pengawasan*” or “*controlling*” is known in management science and administration science is that as one element in the management activities. Controlling is an activity to assess an implementation of the task through de facto in which the aim is to match whether the activities carried out in compliance with the benchmarks that have been established previously or not. Henry Fayol stated that “*control* is to research whether everything was done according to plan, the commands and principles that have been set.”²

Although the Ministry of Religious Affairs has sought to maintain the function of controlling with as much as they can afford, but still the results are not maximum. Some of the obstacles found in the implementation of controlling, they are:

1. The absence of written data regarding the results of the Hajj service supervision.
2. The evaluation process is not going well because it is only done by the internal part of Ministry of Religious itself, so the lack of implementation of service in the implementation is known only to a several people.³

CONCLUSION AND SUGGESTION

Conclusion

Based on the analysis above, this study can be summarized as follows: the Determination of the waiting list pilgrims candidates in the system of Hajj enforcement in Indonesia both in Law No. 17 year 1999 about the Hajj enforcement and Law Number 13 year 2008 about the Hajj enforcement and its derivatives, legislation has not set the system selection to the criteria for pilgrims candidates by the capability of pilgrims candidates, the minimum and maximum age limits and repetition Hajj. This is the problem which has become one of the causes of care system in the registration of Hajj becomes worst.

Suggestion

1. The Government of the Hajj should be concretely carried out the functions of regulation and supervision function that is to affirm the principle of *istitha'ah* (capability) and the selective justice by ensuring the maintenance of the implementation of the Hajj as a mandate and religious orders of Islam (*hifdz al-Din*), guarantees orderly the implementation of the Hajj in order to avoid the buildup of Hajj waiting list and buildup of pilgrims in the holy land (*hifdz al-nafs*).
2. The Government concerns more on maximizing the formation of the licensed travel agency and problematic travel is the responsibility of the appropriate authorities for follow up, optimize the information to the public about the travel agency which get permission from Ministry of Religious Affairs. It is to minimize casualties caused by these two problems.
3. The need for renewal in the field of Hajj enforcement involves things as points above and makes principles and norms improvement up to the Articles of the UUPIH based on *istitha'ah* principle and selective justice, priorities, that are: emphasize that the criteria for pilgrims candidate are capable/able *mukallaf*, and they have never conducted Hajj yet unless the hajj supervising officer, and they who received an invitation from Saudi Arabia.

¹Anton M.Moetjonodkk, *Kamus Umum Bahasa Indonesia*, Balai Pustaka Jakarta, 1995, p.68

²*Ibid*, p. 89

³Laporan hasil pengawasan oleh Tim Pengawas DPR RI pada pelaksanaan penyeleggaraan ibadah haji tahun 1135 H/2011 M tanggal 20-28 september 2014. Tim Pengawas DPR RI, 2014.Hlm. 5.

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