

# Hajj, *Istitā'ah*, and Waiting List Regulation in Indonesia

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**Abstract:** *Hajj, Istitā'ah, and Waiting List Regulation in Indonesia.* This study examines the concept of *istitā'ah* (capability) and the problems faced by pilgrims in Indonesia with the departure regulation that implements a waiting list system. This research is purely a literature study using a normative juridical approach. Islamic law stipulates that one of the conditions that must be met by someone who will perform the pilgrimage is *istitā'ah* (capable) which includes aspects of physical and spiritual health, financial ability, and safe situation. Unfortunately, even though these conditions have been met, it does not necessarily allow someone to go directly to Mecca to perform the pilgrimage. The reason is that there is a quota system set by the Saudi Arabian Government to balance the coming pilgrims with the capacity of the holy cities of Mecca and Medina. As a result of this quota system, prospective pilgrims in Indonesia have to queue waiting for departure, with a waiting time of tens of years. This study finds out that the waiting list system, although aimed at ensuring the smooth and comfortable performing pilgrimage, turned out to be an obstacle, because there is no guarantee that a person, in such a long waiting period, will remain healthy, even many. Some of them had died before the time of departure arrived. Therefore, the government must find a solution to suppress the waiting list so that it does not continue to extend, by setting certain criteria for individuals who will register, for example, the age limit and whether or not the person has performed *hajj* before.

**Keywords:** hajj regulation, *istitā'ah*, waiting list system

**Abstrak:** *Regulasi Haji, Istitā'ah, dan Sistem Daftar Tunggu.* Penelitian ini mengkaji konsep *istitā'ah* (kemampuan), dan permasalahan yang dihadapi jemaah haji di Indonesia dengan adanya regulasi keberangkatan yang menerapkan sistem daftar tunggu. Penelitian ini murni studi kepustakaan dengan menggunakan pendekatan yuridis normatif. Hukum Islam menetapkan bahwa salah satu syarat yang harus dipenuhi oleh seseorang yang akan menunaikan ibadah haji adalah *istitā'ah* (mampu) yang meliputi aspek kesehatan jasmani dan rohani, kemampuan finansial, dan keadaan yang aman. Sayangnya, meski syarat tersebut sudah terpenuhi, tidak serta merta memungkinkan seseorang dapat langsung pergi ke Makkah untuk menunaikan ibadah haji. Pasalnya, ada sistem kuota yang ditetapkan Pemerintah Arab Saudi untuk menyeimbangkan jemaah haji yang datang dengan daya tampung kota suci Makkah dan Madinah. Akibat sistem kuota ini, calon jemaah haji di Indonesia harus mengantri untuk menunggu waktu keberangkatan, dengan rentang waktu tunggu puluhan tahun. Penelitian ini menemukan bahwa sistem daftar tunggu, meskipun bertujuan untuk menjamin kelancaran dan kenyamanan pelaksanaan ibadah haji, ternyata menjadi kendala,

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karena tidak ada jaminan bahwa seseorang, dalam masa tunggu yang begitu lama, akan tetap sehat, bahkan banyak. diantaranya justru telah meninggal sebelum waktu keberangkatan tiba. Oleh karena itu, pemerintah harus mencari solusi untuk menekan daftar tunggu agar tidak terus bertambah, antara lain dengan menetapkan kriteria tertentu bagi individu yang akan mendaftar, misalnya batasan usia dan pernah/tidaknya orang tersebut menunaikan ibadah haji sebelumnya.

**Kata kunci:** regulasi haji, *istitā'ah*, sistem daftar tunggu

## Introduction

*Hajj* is special worship that not all Muslims have the opportunity to perform. This is because to be able to perform the pilgrimage, one must not only have sufficient material but also must have a healthy physical condition.<sup>1</sup> However, even though the two conditions have been met, it does not necessarily mean that someone may leave immediately because there are still other problems facing them, namely those related to technical and regulatory aspects.<sup>2</sup>

As it is widely known, the interest of the Muslims to perform the *hajj* continues to increase every year while the capacity of the Holy city of Mecca as the center of pilgrimage activities is limited. This prompted the Government of Saudi Arabia to set a quota for all prospective pilgrims who will perform the *hajj* from all countries in the world. For the Indonesian Muslims, this policy creates complicated problems because the quota given to Indonesian *hajj* pilgrims is only around 100-200 thousand people whereas the number of *hajj* candidates who have registered is more than 2 million people. It is at this point that a person who has registered for *hajj* must follow the procedures laid down by the Indonesian government.

The imbalance between the number of registrants and the available quota resulted in almost 90% of prospective Indonesian *hajj* pilgrims not

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<sup>1</sup> M. Sulthoni, Muhlisin Muhlisin, and Mutho'in Mutho'in, "Haji dan Kegairahan Ekonomi: Menguak Makna Ibadah Haji Bagi Pedagang Muslim di Yogyakarta," *JURNAL PENELITIAN* (2013): 50-53.

<sup>2</sup> Nur Aeni Hidayah, Meinarini Catur Utami, and Apris Tri Suhendar, "Rancang Bangun Sistem Informasi Pelayanan Haji dan Umroh Berbasis Web (Studi Kasus : KBIH Al- Karimiyah Depok)," *Studia Informatika: Jurnal Sistem Informasi* (2015): 3-4.

being able to leave and having to postpone their departure for the next few years. For this reason, the Indonesian government then issued a policy to create a waiting list system and include all prospective *hajj* candidates on the departure sequence list. Through this waiting list, prospective pilgrims can estimate when they can depart and make preparations well in advance of the scheduled departure.

Unfortunately, the waiting time in the queue was not short. The abundance of registrants has resulted in queues reaching up to tens of years; some even reach 40 years.<sup>3</sup> This creates new problems, especially for applicants who are in their 50 years, because when the time of departure arrived, their physical condition and health will no longer be excellent because they have reached 70 or 80 years of age or even had died before the time of departure arrived.<sup>4</sup> This situation becomes a dilemma because, on the one hand, a Muslim has sufficient conditions to perform the pilgrimage, but, on the other hand, he is hindered by the waiting list procedure. The determination of quotas by the Saudi Arabian government implies many aspects, ranging from the amount of quota given, the increasing number of annual *hajj* registrants, regulations made by the government, the problem of *hajj* funds, and many other aspects, including the arrival of the Covid-19 pandemic, which makes the waiting list for hajj even longer.

The Government's regulation of the departure schedule of prospective pilgrims through a waiting list system has attracted the attention of many researchers. Some of them focus on the mechanism and procedural aspects.<sup>5</sup> There are researchers who observe the criteria

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<sup>3</sup> Based on data released by the Directorate General of Hajj and Umrah Implementation of the Ministry of Religion of the Republic of Indonesia in 2019, the shortest waiting list for the pilgrimage (10 years) is in the Maybrat Regency of West Papua Province, while the longest (46 years) is in the Regency of West Papua, Bantaeng, South Sulawesi Province. <https://haji.kemenag.go.id/v4/waiting-list>.

<sup>4</sup> Nida Farhan, "Problematika *Waiting List* dalam Penyelenggaraan Ibadah Haji di Indonesia," *Jurnal Studi Agama dan Masyarakat* (2017): 60-63.

<sup>5</sup> Purbasa Indah Noer, "Pelayanan Ibadah Haji di Kantor Kementerian Agama Kota Samarinda Berdasarkan Peraturan Menteri Agama Nomor 14 Tahun 2012 Tentang Penyelenggaraan Ibadah Haji," *eJournal Administrasi Publik* (2017): 7-8.

set by the government in the regulation.<sup>6</sup> There are also researchers who relate the implications of this rule to the concept of *istitā'ah* (capability) in the *Haji*.<sup>7</sup> There are researchers who focus on the *mudārabah* contract on government-managed *hajj* savings.<sup>8</sup> There are also researchers who specifically discuss the policy of *hajj* bailouts and the disagreements between DSN-MUI and the Persis Hisbah Council regarding it.<sup>9</sup> There are also researchers who try to offer solutions through certain models to speed up the departure of pilgrims for the vulnerable ages.<sup>10</sup> Even some researchers raise rumors circulating in the community related to these regulations.<sup>11</sup>

This paper specifically examines the concept of *istitā'ah* in two scopes, namely related to *hajj* regulations and the waiting lists system in Indonesia. These two aspects are important in determining whether or not a person can perform the pilgrimage from the perspective of religious teachings and Indonesian government regulations as well. The concept of *istitā'ah* (capability) itself covers three aspects of the pilgrimage requirements, namely physical, material, and spiritual abilities as performing pilgrimage requires a strong physical, a lot of funds, knowledge, as well as psychological-spiritual preparation.<sup>12</sup>

This article is based on an argument that the ability to perform the pilgrimage or *istitā'ah* needs to get support from existing regulations.

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<sup>6</sup> Mariani, *Regulasi dan Kriteria Calon Jemaah Haji Wating List di Indonesia*, (Banjarmasin: Antasari Press, 2020), 2-6.

<sup>7</sup> Nazra Hafizatul Hasana, "Istitha'ah dalam Ibadah Haji Serta Implikasinya Terhadap Penundaan Keberangkatan Jamaah Haji di Sumatera Barat," *Ijtihad* (2019): 14.

<sup>8</sup> Dyah Ayu Paramitha Diah Nurdiwaty, "Implementasi Akad Mudharabah pada Produk Tabungan Haji," *ISTITHMAR: Jurnal Pengembangan Ekonomi Islam* (2018): 24-25

<sup>9</sup> Jaih Mubarak and M Hasanuddin, "Fatwa Tentang Pembiayaan Pengurusan Dana Haji dan Status Dana Calon Haji Daftar Tunggu," *Al-Iqtishad: Journal of Islamic Economics* (2015): 29-30.

<sup>10</sup> Nabih Ibrahim, Yuni Nurfiana W, and dan Nur Hera Utami, "Mabrur OK (Model Antrian Bijak Prioritas Usia Rentan Orientasi Keefektifan): Solusi Akselerasi Pemberangkatan Jamaah Haji Nasional," in *Prosiding Seminar Nasional Penelitian, Pendidikan Dan Penerapan MIPA, Fakultas MIPA, Universitas Negeri Yogyakarta* (Yogyakarta, 2011), 243-252.

<sup>11</sup> Muhammad Farid Ibrahim, Andi Alimuddin Unde, "Desas Desus Informasi Haji dalam Hubungannya dengan Daftar Tunggu Bagi Calon Jemaah Haji di Kabupaten Gowa," *Jurnal Komunikasi KAREBA* 4, no. 3 (2015): 287-299.

<sup>12</sup> Muhammad Noor, "Haji dan Umrah," *Jurnal Humaniora Teknologi* (2018): 39-41.

With the support, registrants for the pilgrimage will have clarity about the timing, and the procedures of the pilgrimage, as well as, by the same token, those who are vulnerable and elderly persons will have priority to depart immediately.

## Method

The method used in this research is a literature study with a normative juridical approach. The sources used are Islamic law and Indonesian government regulations. The data collected was analyzed using various legal perspectives to answer the question of whether the regulations for *Hajj* in Indonesia are under existing legal norms and legal principles or not.

## The Concept of *Istitā'ah* in Islamic Law

*Istitā'ah* (capability), in the study of Islamic law, is an obligatory condition for *Hajj* besides other conditions such as Muslim, mature, sensible, and free.<sup>13</sup> The linguistic meaning of *istitā'ah* is “capable” while in general term is “ability to arrive at Mecca”. The term *istitā'ah* in *hajj* is taken from Surah Ali Imran verses 97 which mentions the word *istitā'ah* in the form of the past verb “*man istatā'a ilaihi sabīlā*”.

*Istitā'ah* or the ability (to perform *hajj*) has been discussed in detail by previous muslim scholars, especially when they discussed the issue of *hajj*. In interpreting the meaning of *istitā'ah*, however, fiqh scholars have different opinions. Some commentators interpret the meaning of *istitā'ah* as the ability to provide and be safe on the journey. Others interpret it as the body's health and ability to travel. In addition, some interpret it as having the body healthy, and provisions, and is an absence of fear from enemies or wild animals.<sup>14</sup>

<sup>13</sup> Abd. ar-Rahman al-Jaziri, *Kitāb Al-Fiqh 'Alā Al-Madzāhib Al-Arba'ah*, 1st ed. (t.tp.: al-Maktabah al-Taufiqiyah, n.d.), Juz 1, 572.; As-Sayyid Sabiq, *Fiqh As-Sunnah*, 1st ed. (Mesir: Dar al-Hadits, 2004), 420.

<sup>14</sup> Ahmad Mustafa Al-Maraghi, *Tafsir Al-Marāghī* (Beirut: Dar Ihya' al-Turats al-'Arabi, 1985), vol. 4, p. 9.

Among the scholars of four schools of thought (Hanafites, Malikites, Shafi'ites, and Hanbalites), there is a unanimous agreement about the general meaning of *istitā'ah*, aside from their differences in scope. The majority of fiqh scholars, except for the Shafi'ite, divide the scope of *istitā'ah* into three parts, namely *al-istitā'ah al-badāniyah* (physical ability), *al-istitā'ah al-māliyah* (financial ability), and *al-istitā'ah al-āminah* (security).<sup>15</sup>

According to the Hanafi school, what is meant by *al-istitā'ah al-badāniyah* (physical ability) includes health conditions and age. Health includes the ability to travel to Mecca, either on foot or by car.<sup>16</sup> *Hajj* is not obligatory for a person who suffers from diseases, such as permanent disability, and paralysis, the blind and elderly, unless there is a companion who can guide him, including a person who is in detention by the authorities and is prohibited from going abroad.<sup>17</sup>

Furthermore, what is meant by *al-istitā'ah al-māliyah* (financial ability), according to Hanafites scholars, is having property as a provision for travel, going, and returning, including costs for staying in Mecca and Medina as well as costs for the family left. As for the meaning of ability in a safe situation, it means the existence of security guarantees during the journey and the performing pilgrimage.<sup>18</sup> So important is this security issue that some Hanafite scholars allow bribery (*riswah*) to obtain security guarantees if the implementation of the pilgrimage cannot be carried out without it. The form of security guarantee for a woman on pilgrimage is in the presence of an accompanying *mahram* (close relatives). The *mahram* must have reached maturity and be reasonable. It is also permissible for a *mahram* who is approaching puberty (*murahiq*) as long as he is trustworthy and not wicked. If a woman performs the pilgrimage without a *mahram* then her performance is considered *makrūh tanzīh* (strongly dislike).<sup>19</sup> Hanafite scholars also added that

<sup>15</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 25.

<sup>16</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 26.

<sup>17</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 25-26.

<sup>18</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 26.

<sup>19</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 27.

*istitā'ah*, as a condition for *hajj*, is the ability to carry out obligations to avoid things in the way, such as diseases.<sup>20</sup>

Among the scholars of the Maliki school of thought (Malikites), the notion of *istitā'ah* means anything that according to custom makes it possible to get to the city of Mecca, either by foot or by car.<sup>21</sup> They divide the form of *istitā'ah* into three kinds.<sup>22</sup> First, having a healthy body that allows traveling, either on foot, driving, by land, or by sea, without any obstacles that make it difficult/dangerous. The ability to walk is the main requirement that even a blind person if he can walk under guidance is still obligated to perform the pilgrimage.<sup>23</sup> Second, having *istitā'ah* (ability) in the form of having sufficient provisions that are following one's conditions and habits, being not burdensome for pilgrims, and can meet their needs. Malikiyah scholars have different views about the scope of *al-istitā'ah al-māliyah*. According to them, the ability to travel is sufficient only for departure costs, not including return trip costs; unless a person is not allowed to settle in the city of Mecca or the nearby area.<sup>24</sup> Third, traveling by land and sea is generally considered safe for both themselves and their property. If the journey is deemed unsafe, then *hajj* is not obligatory.<sup>25</sup>

Among the Syafi'iyah scholars, *istitā'ah* is divided into two kinds, namely being able by oneself and being able with others.<sup>26</sup> Being able by himself applies to someone whose residence is 89 kilometers from Mecca, a distance allowed to combine prayers.<sup>27</sup> Syafi'iyah scholars set seven kinds of *istitā'ah* conditions: First, a healthy body that is the ability to travel without experiencing serious difficulties. For a blind person, it is obligatory for *hajj* if there is a companion who accompanies him during the *hajj*. Second, having provisions for the

<sup>20</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*.

<sup>21</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*.

<sup>22</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 28.

<sup>23</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*.

<sup>24</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*.

<sup>25</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 29.

<sup>26</sup> Abd. ar-Rahman al-Jaziri, *Kitāb Al-Fiqh 'Alā Al-Madzāhib Al-Arba'ah*, p. 575.

<sup>27</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 29-32.

return trip to Mecca, including provisions for his family.<sup>28</sup> Third, there is a vehicle as a means to Mecca. This vehicle is especially for someone who lives at a distance of *marhalatani* (90 Kilometers) from Mecca. Fourth, having water and food supplies, and food-carrying goods animals. This is adapted to the conditions and circumstances of the times. Fifth, there is a guarantee of safety during the trip. If it is suspected that insecurity or danger is lurking while there is no other way but to go through that road, then it is not obligatory to perform the pilgrimage.<sup>29</sup> Sixth, a woman must be accompanied either by her husband, relatives (*mahram*), or a woman who can be trusted. It is forbidden for a woman to perform *hajj* alone without a *mahram* accompanying her.<sup>30</sup> Seventh, the time to travel for *hajj* is possible, that is between the month of Shawwal and the 10th of Dhulhijjah. If the duration of Shawwal until the 10th of Dzulhijjah is not possible, then it is not obligatory to perform *hajj*.<sup>31</sup>

Among Hanbali scholars, *istitā'ah* is understood as having provisions (*al-zad*) and the ability to travel (*al-rāhilah*).<sup>32</sup> The requirements for supplies according to Hanabilah are similar to Syafi'iyah, which includes provisions in the form of food, drinks, and clothes for leaving and returning, including provisions for the family left.<sup>33</sup> As for the ability to travel, it includes the availability of riding animals either by buying or renting.

### **Hajj Regulations in Indonesia**

The implementation of the pilgrimage in Indonesia is regulated by several regulations. The main regulation is Law Number 8 of 2019 concerning the Implementation of *hajj* and *umrah* which was stipulated on April 26, 2019, which is a revision (amendment) to Law Number 13

<sup>28</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 30.

<sup>29</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 31.

<sup>30</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 31-32.

<sup>31</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 32; Abd. ar-Rahman al-Jaziri, *Kitāb Al-Fiqh 'Alā Al-Madzāhib Al-Arba'ah*, 575.

<sup>32</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 33.

<sup>33</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*.



of 2008 concerning the Implementation of the *Hajj*. Another regulation is Law Number 34 of 2014 concerning *Hajj* Financial Management, which is followed up by several other implementing regulations including Regulation of the Minister of Religion of the Republic of Indonesia (PMA) Number 14 of 2012, and PMA Number 29 of 2015 concerning the Implementation of Regular *Hajj*; PMA Number 23 of 2016 concerning Implementation of Special *Hajj*; PMA Number 36 of 2016 concerning Management of *Hajj* Property; Regulation of the Minister of Health of the Republic of Indonesia Number 15 of 2016 concerning Health *Istitā'ah* of *Hajj* Pilgrims; Presidential Regulation of the Republic of Indonesia Number 110 of 2017 concerning the *Hajj* Financial Management Agency; etc. These regulations are set to ensure the smooth implementation of the *Hajj* and *Umrab* pilgrimages as well as a guide for the Indonesian people, especially those who wish to perform the pilgrimage.

In general, the implementation of the *hajj* regulation refers to PMA number 14 of 2012 concerning the Implementation of Regular *Hajj*. The regulation describes 11 (eleven) matters which include, *Hajj* registration requirements and procedures, *Hajj* quotas, *Hajj* guidance, PPIH, officers accompanying *Hajj* Pilgrims, *Hajj* document and identity services, *Hajj* pilgrims transportation services, *Hajj* accommodation and consumption services, guidance and health services for *Hajj* Pilgrims, protection of pilgrims and *Hajj* Officers, and coordination of the implementation of the pilgrimage.<sup>34</sup>

There are several important aspects in the regulations for the implementation of the pilgrimage especially those related to health. It includes accommodation and consumption, as well as transportation. Concerning physical health, this issue has been regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 15 of 2016 concerning the Health *Istitā'ah* of the *Hajj* Pilgrims.<sup>35</sup> According to the regulation, the health *istitā'ah* of the *hajj* pilgrims is the ability of

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<sup>34</sup> *Peraturan Menteri Agama Nomor 14 Tahun 2012 Tentang Penyelenggaraan Ibadah Haji Reguler.*

<sup>35</sup> *Ibid.*, tentang *Istitā'ah Kesehatan Jemaah Haji.*

the pilgrims from the health aspect which includes measurable physical and mental health under an accountable examination, so that the *hajj* pilgrims can carry out the worship without any difficulties.<sup>36</sup> In addition, the regulation also mentions that in the context of protecting the *hajj* pilgrims, so that they can carry out their worship following the provisions of Islamic law, it is necessary to provide guidance and health services for the *hajj* pilgrims from an early stage.<sup>37</sup> Besides, it also regulates health standards that must be met by prospective pilgrims, all of which are covered in the meaning of the term *Hajj* health *istitā'ah* including age and free from types of dangerous diseases that can prevent a person from performing the pilgrimage. So what is called *healthy*, in the context of *hajj*, is someone who is declared healthy both physically and mentally by an authoritative party.

Considering this healthy condition becomes an important factor for the success of the *hajj* performance, the health checks for prospective pilgrims are carried out strictly and in layers. As mentioned in Article 6, the medical examination related to *hajj istitā'ah* is carried out in three stages. The first stage of examination, as described in article 6 paragraph (2), is carried out by the Regency/City *Hajj* Health Organizing Team at the Puskesmas (health center) and/or hospital when the *hajj* pilgrims register to get a portion number.<sup>38</sup> The second stage of examination, as explained in Article 6 paragraph (3), is carried out by the Regency/Municipal *Hajj* Health Organizing Team at the Puskesmas and/or hospitals when the government has determined the certainty of the *Hajj* pilgrims' departure in the current year. Meanwhile, the third stage of inspection, as explained in Article 6 paragraph (4), is carried out by the Health Sector Embarkation PPIH at the departure embarkation before the departure of the pilgrims.<sup>39</sup> Based on the results of the first stage of the examination, two types of the health status of the *hajj* pilgrims will be determined, namely High-Risk status or not High-Risk status.<sup>40</sup>

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<sup>36</sup> Peraturan Menteri Kesehatan Nomor 15 Tahun 2016, n.d.

<sup>37</sup> Peraturan Menteri Kesehatan Nomor 15 Tahun 2016, n.d.

<sup>38</sup> Peraturan Menteri Kesehatan Nomor 15 Tahun 2016. Pasal 6.

<sup>39</sup> Peraturan Menteri Kesehatan Nomor 15 Tahun 2016. Pasal 6

<sup>40</sup> Peraturan Menteri Kesehatan Nomor 15 Tahun 2016. Pasal 6, bk. article 7.

The Minister of Health's regulation also details the criteria for *istitā'ah* in health which is divided into four criteria, namely: healthy, healthy with conditions, unhealthy but still has hope of health, and no hope of health because of a serious illness.

As mentioned earlier, in addition to the health aspects of prospective pilgrims, regulations in Indonesia also regulate the issue of accommodation and consumption of *hajj* pilgrims. Provisions regarding accommodation and consumption of *hajj* are regulated in PMA Number 14 of 2012 Article 34 which states, "Accommodation and consumption of *hajj* pilgrims in Indonesia and Saudi Arabia is the responsibility of the government".<sup>41</sup>

According to the regulations, food services for *hajj* pilgrims are provided in two places, namely when the pilgrims are still in the territory of Indonesia, and when they are in Saudi Arabia. While they are still in Indonesia, accommodation and food services were provided at the Embarkation Hajj Dormitory, and when they are in Saudi Arabia, accommodation and consumption were provided in the areas of Mecca, Madina, Mina, and Arafah. As serving food for more than 200 thousand *hajj* pilgrims is not a simple matter, then, starting in 2019, the Government of Indonesia, through the Ministry of Religion for *Hajj* Services, has published a guidebook on food Services for Indonesian *hajj* pilgrims while they are in Saudi Arabia. In this book, it is explained about the schedule, frequency, and places of food services, which are intended to guarantee that pilgrims while in the holy land can be served properly.

The next description is related to transportation. Transportation is an important element that will support the smooth and easy implementation of the pilgrimage. The provision of transportation for *hajj* pilgrims is based on the principles of being effective,<sup>42</sup> efficient,<sup>43</sup>

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<sup>41</sup> Peraturan Menteri Agama Nomor 14 Tahun 2012 Tentang Penyelenggaraan Ibadah Haji Reguler., n.d.

<sup>42</sup> The provision of air transportation for *hajj* pilgrims must be following the needs that have been determined and provide the maximum benefit following the targets set (article 3 sub 2), n.d.

<sup>43</sup> The provision of air transportation for *hajj* pilgrims must strive to get optimal and best results by using minimal and reasonable funds and ability (article 3 sub 3), n.d.

transparent,<sup>44</sup> accountable,<sup>45</sup> security,<sup>46</sup> safety,<sup>47</sup> comfortable,<sup>48</sup> and in the national interest.<sup>49</sup> All of these principles are expected to be applied to provide maximum service guarantees for pilgrims who are carrying out the pilgrimage. To minimize transportation problems, the Government has issued PMA No. 25 of 2015 which in Article 2 states, "The provision of air transportation for *hajj* pilgrims aims to obtain air transportation operators who can provide services and protection for *hajj* pilgrims starting from Indonesia to Saudi Arabia and vice versa".<sup>50</sup> This transportation service includes transportation for the pilgrims when departing from the district capital to the embarkation airport, air transportation from the embarkation airport to Saudi Arabia, including land transportation while in Saudi Arabia, both during the pilgrimage and outside the pilgrimage.<sup>51</sup> To support the mobility of pilgrims in Saudi Arabia, the government provides a mode of transportation in the form of buses serving 24-hour non-stop.

### Waiting List System for *Hajj* in Indonesia

The waiting list is the waiting period for a prospective pilgrim from the time he registers until the time of departure. The existence of this waiting list is related to the quota set by the government of Saudi Arabia due to the limited capacity of the area of the Grand Mosque of Mecca in receiving pilgrims from various countries in the world. The waiting

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<sup>44</sup> All provisions and information regarding the provision of air transportation for *Hajj* pilgrims are open to participants in air transportation providers and the public (article 3 sub 4), n.d.

<sup>45</sup> The provision of air transportation for *Hajj* pilgrims must achieve the target and can be accounted for following applicable regulations (article 3 sub 5), n.d.

<sup>46</sup> Guaranteed aviation security following international aviation safety standards (article 3 sub 6), n.d.

<sup>47</sup> Guaranteed aviation security following national aviation safety standards (article 3 sub 7), n.d.

<sup>48</sup> Guaranteed aviation security following national, bk. article 3 sub 8.

<sup>49</sup> Guaranteed aviation security following national, bk. article 3 sub 9.

<sup>50</sup> *Peraturan Menteri Agama Nomor 25 Tahun 2015*, n.d., bk. tentang Penyediaan Transportasi Udara Bagi Jemaah Haji Reguler.

<sup>51</sup> Hartono dan Ahmad Sudiro, *Aspek Hukum Transportasi Udara Jemaah Haji Indonesia*, 1st ed. (Jakarta: Raja Grafindo Persada, 2013).

list system for Indonesian pilgrims has been implemented since 2004 and will continue for years to come. This system is strengthened by Law no. 8 of 2019 which in article 8 states "*Hajj* pilgrims are dispatched based on the Indonesian *Hajj* quota".<sup>52</sup> According to this law, Indonesia's *hajj* quota is divided into two types, namely regular and special *hajj* quotas. The regular *hajj* quota consists of pilgrims and *hajj* officers (article 8 paragraph 4), while the special *hajj* quota consists of special *hajj* pilgrims and special *hajj* officers (article 8 paragraph 5).<sup>53</sup> To ensure that this *hajj* quota is carried out transparently and proportionally, the determination of the *hajj* quota is regulated every year through a Decree of the Minister of Religion of the Republic of Indonesia.<sup>54</sup> The yearly quota from the Saudi Arabian government for Indonesian *Hajj* is different. For example, in 2020 the Government of Indonesia through the Decree of the Minister of Religion Number 121 of 2020 set a *hajj* quota of 221,000 people which was divided into two parts, namely the regular *hajj* quota of 203,230 people and the special *hajj* quota of 17,680 people.<sup>55</sup> The total *hajj* quota that has been set by the Ministry of Religion is then divided into all provinces of Indonesia<sup>56</sup> with the ratio of the total quota for each province calculated based on the formula 1:1000 of the total Muslim population.<sup>57</sup> The basis of the distribution, as stated in Article 13 paragraph 8, is the proportion of the Muslim population between provinces or the proportion of waiting lists for *hajj* pilgrims in each district<sup>58</sup> including the ratio of the Muslim population and the proportion of the waiting list for *hajj* in the province.<sup>59</sup> In 2020, the three provinces that received the most quotas were West Java (38,723), East Java (35,152), and Central Java (30,377) considering that these three regions have a large Muslim population and the waiting list period for *hajj* is also long, although not the longest.

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<sup>52</sup> Law number 8 of 2019 article 8., n.d.

<sup>53</sup> Law number 8 of 2019 article 8., n.d.

<sup>54</sup> Law number 8 of 2019 article 8., n.d.

<sup>55</sup> *Keputusan Menteri Agama Nomor 121 Tahun 2020 Tentang Penetapan Kuota Haji Indonesia Tahun 1441 H/2020 M.*, n.d.

<sup>56</sup> Law number 8 of 2019 article 12., n.d.

<sup>57</sup> Hartono dan Ahmad Sudiro, *Aspek Hukum Transportasi Udara Jemaah Haji Indonesia*, 26.

<sup>58</sup> Law number 8 of 2019 article 13 sub 2., n.d.

<sup>59</sup> Law number 8 of 2019 article 13 sub 2., n.d.

According to article 14 of the same regulation, prospective pilgrims who are elderly (65 years above) will get top priority and a certain percentage.<sup>60</sup> If the *hajj* quota in the regency/city is not fulfilled up to the specified limit, the Minister may extend the filing of the *hajj* quota to a limit of 30 (thirty) days which is devoted to; 1). Pilgrims separated from the *mahram* or family; 2). Pilgrims with disabilities and their companions; 3). Pilgrims paid off the delay; 4). The companion of elderly pilgrims; and 5). Pilgrims in the next queue.<sup>61</sup>

The determination of quotas in Law Number 8 of 2019 is an improvement from the rules for setting quotas in the previous *Hajj* Law (Law Number 13 of 2008). In the old law, it was stated that the government did not give priority to prospective pilgrims who received the remaining quota. The law only states that "the minister sets a national quota, a special *hajj* quota, and a provincial quota with due regard to principles and proportions".<sup>62</sup> Concerning the provision for additional quotas by the Minister, article 28 paragraph 3 states that "if the national quota as referred to in paragraph (1) is not fulfilled on the closing day of registration, the Minister may extend the registration period by using a free quota nationally".<sup>63</sup> It was only after the issuance of the new *Hajj* Law (Law No. 8 of 2019) that the provision of quotas for priority groups began to be implemented considering that the waiting list for prospective *Hajj* pilgrims in Indonesia is getting longer from year to year.

### Some Issues with the Waiting List System

The first issue that has become a topic of discussion among contemporary *fiqh* experts is the time between the month of Shawwal and the 10th of Dhulhijjah. This timeframe, according to the Shafi'i scholars, made it possible to travel for *hajj*. However, if in the period of Shawwal to the 10th of Dzulhijjah the conditions are not possible,

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<sup>60</sup> Law number 8 of 2019 article 14 sub 1 n.d.

<sup>61</sup> Law number 8 of 2019 article 15., n.d.

<sup>62</sup> Law number 13 of 2008 article 28 sub 1., n.d.

<sup>63</sup> Law number 13 of 2008 article 28 sub 1., n.d.

then the obligation to perform *hajj* is gone.<sup>64</sup> Thus, even though a person already has sufficient provisions but because he is outside the time for the implementation of the pilgrimage, he is considered not *istitā'ah* which implies the abolishment of the obligation to perform the pilgrimage. If this opinion is implemented in Indonesia, however, it will encounter difficulties and discrepancies because the economic condition of the Indonesian people allows them to carry out the pilgrimage, but due to the short duration of the *istitā'ah*, the obligation becomes invalid.

The second topic of discussion is the waiting list system. As previously stated, the waiting list system has been established by the Government of Indonesia through the Ministry of Religion since 2004 and is closely related to the *hajj* quota given by the Government of the Kingdom of Saudi Arabia to Indonesian pilgrims. With this queue system, prospective pilgrims can find out when their turn comes and at the same time get a guarantee that in that year they can be dispatched. The duration of waiting time for prospective *hajj* pilgrims is different for each region, depending on the number of Muslim residents in the area and the number of prospective pilgrims who have registered.

The waiting list has become one of the problems in the implementation of the pilgrimage in Indonesia from a few years ago to the next few years. With this system, a person who registers for *hajj* cannot automatically depart to Mecca in the year of registration but must wait for several years later. In other words, although a person at a certain time or age has met financial and physical abilities, he still cannot immediately perform the pilgrimage because he has to wait in line. The problem that arises within this relatively long time is that there is no certainty whether the prospective pilgrim will still be able to perform the *hajj* on account of deteriorating health factors or related to his death. Thus uncertainty due to the long waiting affects the *istitā'ah* meaning as a requirement of a person in carrying out the pilgrimage. Based on the opinion of madzhab scholars, *istitā'ah* in the implementation of *hajj* is more individual, meaning that when

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<sup>64</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatub*, 32.

a prospective pilgrim has fulfilled the terms and conditions of this *istitā'ah*, he can perform the pilgrimage right away.<sup>65</sup> Such a notion, however, when applied in social reality in Indonesia creates differences in concepts and practices. In Indonesia, even though a person has fulfilled all three kinds of *istitā'ah*, he may not necessarily be able to perform the pilgrimage, because he has to follow the queue line set by the government through the waiting list system. The question now is whether queuing issues can get in the way of something mandatory? Can this queuing problem be equated with the notion of security which is one aspect of *istitā'ah*? These questions require answers and solutions, considering that the pilgrimage is obligatory worship and is one of the pillars of Islam.

Another problem that arises related to the regulation of the pilgrimage is related to the management of *hajj* savings funds. *Hajj* savings is a policy prepared by the government to help prospective pilgrims to obtain relief in meeting the costs of *hajj* trips. This *hajj* savings must be owned by every prospective *hajj* pilgrim and become a requirement in obtaining a portion of *hajj* departures. Each prospective pilgrim who will register must deposit a certain amount of money to a bank appointed by the government and pay off the shortfall when he departs. The funds deposited are then managed by the government through investments, deposits, or other productive businesses where the profits are not given to the saver but are managed by the government in the interest of improving the quality of *hajj* services. Considering that the funds collected from the *hajj* savings funds are quite large, even approaching two hundred trillion, the management of these funds must be carried out transparently and openly, accompanied by strict and routine supervision to prevent irregularities that will inflict loss for the government and the wider Muslim community.

These are problems that arise around the regulation of *hajj* in Indonesia. It must be admitted that the regulation was made to ensure the service and smooth implementation of the pilgrimage, but if it is

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<sup>65</sup> Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa 'Adillatuh*, 25.; Abd. ar-Rahman al-Jaziri, *Kitāb Al-Fiqh 'Alā Al-Madzāhib Al-Arba'Ah*, 572.; Sabiq, *Fiqh As-Sunnah*, 520.



not accompanied by monitoring and evaluation at the implementation stage, the regulation will eventually cause problems. If that happens, the party who will suffer the most is, of course, the prospective pilgrims.

## Conclusion

The quota given by the Government of Saudi Arabia to each country is motivated by the consideration of the limited capacity of the Holy city of Mecca in receiving pilgrims whose number continues to increase from year to year. The determination of the quota has in turn led to a waiting list policy in some countries and resulted in the emergence of the phenomenon of long queues with a series of new problems. The objectives of the regulation have so far been achieved. Some weaknesses at the application level, however, still need to be studied carefully so as not to cause new, more complex problems. For this reason, the government needs to find a solution to suppress the waiting list so that it does not continue to grow by setting certain criteria for registrants such as age limit or whether or not someone has performed the *hajj* before.

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