

## Harmonisation of Islamic Law and National Law in Implementasion of Hajj and Umrah in Indonesia

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### ABSTRACT

*Hajj and umrah are among the main pillars of Islam, and have complex spiritual, social and legal aspects. As the country with the largest number of pilgrims in the world, Indonesia faces many problems in organising the hajj and umrah. In this situation, it is very important to harmonise Islamic law, which serves as the basis for religious norms, with national law, which serves as a tool for the state to protect, provide services and supervise. To investigate the synchronisation between the two legal systems, this study uses a normative juridical approach, employing legislative and conceptual perspectives. The results of the analysis show that although most Sharia principles have been incorporated into national law, particularly Law No. 8 of 2019 on the Implementation of Hajj and Umrah, there are still several problems in their application. Limited quotas for Hajj, mismatched services between regular and special Hajj, and commercial practices that harm pilgrims are some of the main problems. Many previous studies have concentrated on the normative aspects of Islamic law or the administrative aspects of national law, but few have examined both comprehensively. In this article, a model of legal harmonisation based on substantive justice that emphasises legal certainty and the protection of pilgrims' rights is intended to fill this gap. This study has two benefits: theoretically, it offers a conceptual framework for the integration of Islamic law and national law in the implementation of the Hajj and Umrah pilgrimages; and practically, it offers policy recommendations to help the government strengthen Hajj governance that focuses on pilgrim protection. Therefore, this article argues that legal harmonisation is a prudent way to achieve a more equitable, transparent, and substantively just administration of the Hajj and Umrah in Indonesia.*

**Keyword:** Hajj, Islamic law, Legal harmonization, National law, Pilgrim protection, Umrah

### Introduction

Hajj and Umrah are acts of worship that hold an important position in Islam. Hajj is the fifth pillar of Islam, which must be performed by Muslims who are physically, mentally, and financially capable. Meanwhile, although Umrah is considered a highly recommended Sunnah, it is also a form of worship that is very popular among Muslims. Indonesia, as the country with the largest Muslim population in the world, sends a significant number of pilgrims every year, even becoming the country with the largest Hajj quota granted by the Saudi Arabian government. This phenomenon has serious consequences in terms of regulation and governance (Al-Fatih, S,2021).

The state, through national law, plays an important role in ensuring that the Hajj and Umrah pilgrimages are carried out in accordance with Islamic law while also guaranteeing the rights of pilgrims. However, the dualism between Islamic law as a divine norm and national law as a product of political law often causes problems. For example, the principles of equality and protection of pilgrims guaranteed in Islamic law are not always optimally realised in national policy practice (Rahman, A,2021). A number of previous studies have highlighted aspects of the implementation of the Hajj. Studies emphasise the importance of public services in the implementation of the Hajj. Meanwhile, research examining the historical role of Islam in the archipelago in shaping religious social practices, including the hajj (Azra, A,2018).

However, these studies tend to be sectoral in nature and do not examine in depth the harmonisation of Islamic law with national law. This research gap opens up space for academic exploration of how the two legal systems can be integrated synergistically. Legal harmonisation is important in the context of a Pancasila-based constitutional state founded on legal pluralism. The integration of Islamic law with national law in the implementation of the Hajj and Umrah pilgrimages is not merely a technical administrative matter, but also relates to legal legitimacy, the protection of pilgrims' rights, and the fulfilment of the principle of substantive justice. Thus, this research is relevant in providing a conceptual basis and practical recommendations for policymakers (Ali, R,2019).

## **Methods Research**

This study employs a normative juridical approach, focusing on the study of law as a written norm in legislation and legal doctrine. This method is relevant because the research topic concerns the synchronisation of normative Islamic law with national law in the form of state regulations (Soekanto, S., & Mamudji, S. (2010)). The research approaches used consist of: 1) Statute approach; This approach is used to analyse various laws and regulations related to the implementation of Hajj and Umrah, particularly Law No. 8 of 2019 and its derivative regulations. The analysis also covers the relationship between national regulations and Saudi Arabia's policy as a quota provider. 2) Conceptual Approach; This approach is used to examine relevant legal theories, such as the theory of legal harmonisation, the theory of legal certainty (Kelsen, H. (2006)), and progressive law (Rahardjo, S. (2019)). This approach helps to build an analytical framework for assessing the extent to which Islamic law and national law can be integrated. 3) Comparative approach; To strengthen the analysis, this study also uses comparisons with the practice of Hajj in other Muslim-majority countries, such as Malaysia. This approach aims to see how other countries harmonise Islamic law with national law in the implementation of the Hajj pilgrimage. The data sources used are secondary data, in the form of legislation, academic literature (books, journals, and previous research results), as well as official documents related to the implementation of the Hajj and Umrah pilgrimages. Data analysis techniques were carried out through qualitative analysis, by describing, interpreting, and evaluating Islamic legal norms and national laws, then synthesising them to formulate an ideal legal harmonisation model. With this methodology, the study is expected to contribute scientifically both at the theoretical level through the development of the concept of legal harmonisation and at the practical level through policy recommendations for the management of Hajj and Umrah in Indonesia.

## **Results and Discussion**

### **Harmonisation of Islamic Law and National Law in the Implementation of Hajj and Umrah**

Hajj and Umrah are mahdhah acts of worship that have a fundamental position in Islamic teachings. The obligation to perform Hajj for every Muslim who is able to do so is explicitly stated in the Qur'an (QS. Ali Imran: 97) and reinforced by the hadiths of the Prophet. On the other hand, the implementation of Hajj and Umrah in Indonesia is not only a religious matter, but is also closely related to aspects of public law, state governance, and international relations between Indonesia and the Kingdom of Saudi Arabia. The harmonisation of Islamic law with national law in this context requires synchronisation between Sharia norms and positive legal norms as stipulated in legislation. Islamic law provides normative substance regarding the procedures, pillars, and conditions for valid Hajj and Umrah pilgrimages, while national law regulates administrative, managerial, and pilgrim service aspects. Law No. 8 of

2019 concerning the Implementation of Hajj and Umrah Pilgrimages (PIHU Law) is a regulatory milestone that attempts to accommodate these two aspects. It contains provisions on national quotas, the authority of the Ministry of Religious Affairs, special Hajj pilgrimage organisers (PIHK), and pilgrim protection. This regulation seeks to integrate Sharia values such as equality, justice, and public interest with principles of administrative law, such as legal certainty, accountability, and transparency. Thus, legal harmonisation in the context of the implementation of Hajj and Umrah can be understood as a process of aligning Sharia principles with positive law provisions in order to produce a system that is not only religiously valid, but also administratively and constitutionally effective.

### **Problems with Legal Harmonisation**

Although there are already fairly comprehensive national regulations, practice in the field shows that there are still problems with the harmonisation of Islamic law and national law. Some of the prominent issues include:

- a. Imbalance in Quotas and Access to Services; Regular and special Hajj quotas often cause controversy. From an Islamic legal perspective, the principles of justice and equal rights for every Muslim in performing the Hajj must be upheld. However, in practice, the limited national quota granted by the Saudi Arabian government creates a gap between those who register and those who actually depart. From a national legal perspective, the government seeks to regulate the distribution of quotas fairly through a queue mechanism. However, the long queue system, which can take tens to dozens of years, raises questions about legal certainty and the protection of citizens' constitutional rights to perform the pilgrimage.
- b. Regulations for Special Hajj Organisers; PIHK as special hajj organisers often face a dilemma between business demands and service responsibilities. From an Islamic legal perspective, the organisation of the hajj should emphasise the value of worship and the welfare of the congregation. However, excessive commercialisation sometimes leads to maladministration, cost mark-ups, and even cases of congregation neglect. National law through the PIHU Law has established a licensing and supervision mechanism for PIHK. However, its implementation still faces challenges due to limited supervision and legal loopholes that are exploited by certain parties.
- c. Protection of Pilgrims as Legal Subjects; From a Sharia perspective, the protection of Hajj pilgrims is part of *maqashid al-shariah*, specifically the protection of life (*hifz al-nafs*) and religion (*hifz al-din*). In practice, many pilgrims still face service issues, ranging from accommodation, transportation, health, to worship guidance. Normatively, national law has provided sufficient regulatory instruments, including the role of the Hajj Financial Management Agency (BPKH). However, issues of accountability and transparency in the management of Hajj funds are still often questioned by the public.
- d. Aspects of Bilateral Relations with Saudi Arabia; Islamic law provides flexibility in the implementation of the Hajj in accordance with the capabilities of the *ummah*. However, the close relationship with the Saudi Arabian authorities gives rise to geopolitical and legal diplomacy dimensions that cannot be fully controlled by national law. For example, Saudi Arabia's decision to impose quota restrictions during the COVID-19 pandemic is clear evidence of how foreign policy can influence the implementation of national law in the field of Hajj.

### **Opportunities for Legal Reconstruction**

To strengthen the harmonisation between Islamic law and national law in the implementation of Hajj and Umrah, legal reconstruction measures are needed. This

reconstruction is not only normative, but also institutional and practical. Some opportunities for reconstruction that can be offered include:

- a. The Maqashid al-Shariah Approach in Legislation; The drafting of national regulations related to Hajj and Umrah needs to place greater emphasis on the principle of maqashid al-shariah, so that each rule is not only administratively binding but also reflects the broader objectives of shariah, namely benefit, justice, and sustainability.
- b. Digitalisation of Hajj Management; The integration of digital systems in registration, queuing, health services, and financial monitoring can strengthen transparency and accountability. In addition, digitalisation allows pilgrims to obtain information more quickly, efficiently, and evenly.
- c. Strengthening the Supervision of PIHK and KBIHU; There needs to be stricter derivative regulations to supervise PIHK and the Hajj and Umrah Guidance Group (KBIHU). A reward and punishment mechanism can be applied so that organisers are not only profit-oriented but also prioritise the interests of pilgrims.
- d. Reconstruction of Bilateral Relations; Indonesia, as the country with the largest number of Hajj pilgrims in the world, needs to strengthen its legal diplomacy with the Kingdom of Saudi Arabia. This diplomacy should not only focus on quotas, but also on access to facilities, placement of pilgrims, and cooperation in technology-based service management.
- e. Public Participation in Hajj Fund Management; Hajj funds, as a financial instrument for the Muslim community, must be managed with the principle of public transparency. The participation of civil society, academics, and independent supervisory institutions can strengthen the legitimacy and accountability of the BPKH.

### **Normative-Empirical Analysis**

In the normative legal framework, national law through the PIHU Law already provides sufficient legal certainty. However, from an empirical perspective, its implementation still faces major obstacles. For example, the certainty of long queues actually creates substantive uncertainty, as many pilgrims die before departure. This phenomenon shows a gap between formal legal certainty and substantive justice. Legal harmonisation should not only stop at the formulation of regulations, but also ensure real justice for the community. This is where the urgency of progressive law is needed to fill the void between written law and the real needs of the Muslim community.

### **Synthesis: The Future Direction of Legal Harmonisation**

The above discussion shows that the harmonisation of Islamic law and national law in the implementation of the Hajj and Umrah is a dynamic process. There is no final point, but rather it always requires adjustments in accordance with the social, political, economic and international context. Going forward, the direction of legal harmonisation can be directed towards three main dimensions:

1. Normative; strengthening regulations with the principles of maqashid al-shariah and progressive law.
2. Institutional; building transparent, accountable, and adaptive governance with digital technology.
3. Practical; ensuring that the implementation of the law truly protects pilgrims as the primary holders of the right to perform the Hajj and Umrah.

Thus, the harmonisation of Islamic law and national law in this context can serve as a model for the development of national law in other areas, where religious norms and state norms can work together to achieve substantive justice and balanced legal certainty.

## Conclusion

This study confirms that harmonising Islamic law and national law in the implementation of Hajj and Umrah in Indonesia is an urgent necessity, given that the Hajj pilgrimage is not only related to spiritual aspects, but also has legal, administrative, political and international relations dimensions. Several key points can be concluded as follows:

1. Islamic law as a normative basis has established the procedures, pillars, and conditions for valid Hajj and Umrah pilgrimages. Meanwhile, national law through Law No. 8 of 2019 concerning the Implementation of Hajj and Umrah Pilgrimage acts as an administrative instrument that regulates the management of implementation, quota distribution, PIHK licensing, pilgrim protection, and hajj fund management.
2. Harmonisation between the two occurs in the form of aligning sharia principles, such as justice, equality, and benefit, with positive law principles, such as legal certainty, accountability, and transparency. However, in practice, the gap between written legal norms and implementation in the field is still quite wide.
3. The main problems that arise include:
  - a. The imbalance in Hajj quotas and the length of the waiting list, which causes substantial uncertainty.
  - b. The commercialisation of special Hajj programmes, which has the potential to sacrifice the interests of pilgrims.
  - c. Weak supervision of Hajj organisers and issues of transparency in the management of Hajj funds.
  - d. Dependence on Saudi Arabian policies that limit national legal sovereignty.
4. From a normative legal perspective, national regulations are quite comprehensive. However, from an empirical perspective, their implementation still faces major obstacles. This situation calls for a progressive legal approach that can bridge the gap between formal legal certainty and substantive justice.
5. The future direction of legal harmonisation needs to be placed in three dimensions:
  - a. Normative: strengthening legislation with a maqashid al-shariah approach and substantive justice.
  - b. Institutional: improving governance through digitalisation, effective supervision, and institutional reform.
  - c. Practical: ensuring the protection of the rights of pilgrims as the primary rights holders in the implementation of the Hajj and Umrah.

Thus, harmonising Islamic law and national law in the implementation of the Hajj and Umrah in Indonesia is not only a technical and administrative necessity, but also part of efforts to realise social justice, protect the constitutional rights of Muslims, and strengthen the legitimacy of national law in the eyes of the public and the international community.

## Bibliography

- Al-Fatih, S. (2021). *Keadilan Substantif dalam Pelayanan Penyelenggaraan Ibadah Haji di Indonesia*. Jurnal Hukum Islam, 19(2), 145–163.
- Ali, R. (2019). Diplomasi Indonesia-Saudi dalam pengelolaan haji. *Jurnal Hubungan Internasional*, 12(1), 55–70.
- Al-Mawardi, A. (2003). *Al-Ahkam al-Sultaniyyah: The Ordinances of Government*. Beirut: Dar al-Kutub al-Ilmiyyah.
- Al-Nawawi, Y. (1997). *Al-Majmu' Syarh al-Muhadzdzab*. Beirut: Dar al-Fikr.



- Asshiddiqie, J. (2019). *Konstitusi dan Hukum dalam Kontroversi Isu*. Jakarta: Sinar Grafika.
- Aziz, A. (2020). *Perlindungan Jamaah Haji dalam Perspektif Hukum Nasional*. Jurnal Legislasi Indonesia, 17(3), 223–241.
- Aziz, M. (2020). Digitalisasi tata kelola haji di Indonesia. *Jurnal Teknologi dan Hukum*, 5(1), 12–27.
- Azra, A. (2018). *Islam Nusantara: Jaringan Global dan Lokal*. Jakarta: Kencana.
- Griffiths, J. (1986). What is Legal Pluralism? *Journal of Legal Pluralism and Unofficial Law*, 18(24), 1–55.
- Hadjon, P. M. (2007). *Perlindungan Hukum bagi Rakyat Indonesia*. Surabaya: Bina Ilmu.
- Hooker, M. B. (2019). *Indonesian Syariah: Defining a National School of Islamic Law*. Singapore: ISEAS.
- Hooker, M. B. (2019). *Indonesian Syariah: Defining a National School of Islamic Law*. Singapore: ISEAS Publishing.
- Huda, N. (2015). *Harmonisasi Hukum Nasional dan Hukum Islam di Indonesia*. Yogyakarta: UII Press.
- Iskandar, A. (2021). *Manajemen Dana Haji dan Akuntabilitas Badan Pengelola Keuangan Haji (BPKH)*. Jurnal Ekonomi Syariah, 9(1), 77–95.
- Kelsen, H. (2006). *General Theory of Law and State*. New Brunswick: Transaction Publishers.
- Mubarok, A. (2021). *Evaluasi Pengawasan Penyelenggaraan Ibadah Umrah di Indonesia*. Jurnal Hukum dan Pembangunan, 51(2), 256–274.
- Nasution, A. (2020). Perlindungan hak jamaah dalam hukum nasional. *Jurnal Hak Asasi Manusia*, 5(2), 144–161.
- Qodir, Z. (2020). *Haji, Umrah, dan Tantangan Modernitas: Analisis Implementasi Kebijakan Haji di Indonesia*. Yogyakarta: Pustaka Pelajar.
- Radbruch, G. (1946). Statutory Lawlessness and Supra-Statutory Law. *Oxford Journal of Legal Studies*, 26(1), 1–11.
- Rahardjo, S. (2009). *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Publishing.
- Rahardjo, S. (2019). *Ilmu Hukum yang Mempengaruhi Masyarakat*. Bandung: Citra Aditya Bakti.
- Rahman, A. (2021). *Integrasi Hukum Islam dan Hukum Nasional dalam Penyelenggaraan Ibadah Haji*. Jurnal Syariah dan Hukum, 8(2), 120–136.
- Rawls, J. (1971). *A Theory of Justice*. Cambridge, MA: Harvard University Press.
- Setiawan, D. (2022). *Digitalisasi Penyelenggaraan Haji dan Umrah di Indonesia: Menuju Transparansi dan Akuntabilitas Layanan Publik*. Jurnal Administrasi Negara, 18(1), 45–63.
- Shihab, M. Q. (2017). *Wawasan Al-Qur'an: Tafsir Maudhu'i*. Jakarta: Lentera Hati.
- Soekanto, S., & Mamudji, S. (2010). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: RajaGrafindo Persada.