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[1]Widodo, [2]Maryano, [3]Pataree Hansanontha
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Criminal Responsibility For Embezzlement Of Hajj and Umrah Pilgrimage Funds

[1]Widodo, [2]Maryano, [3]Pataree Hansanontha
[1,2]Jayabaya University, Indonesia
[3]Rajamangala University of Technology Krungthep-Thailand
[1]widodowsw47@gmail.com, [2]maryano.myn@gmail.com, [3]phansanontha@hotmail.com

ABSTRACT

This study aims to analyse the criminal liability of the perpetrators of embezzlement of Hajj and Umrah funds in the Indonesian criminal justice system and evaluate the effectiveness of legal sanctions applied to tackle these criminal acts. This research uses a normative juridical method with a descriptive qualitative approach, which focuses on analysing the laws and regulations and their application in cases of embezzlement of Hajj and Umrah funds. The results show that although there are clear regulations related to the embezzlement of Hajj and Umrah funds, law enforcement is still hampered by various factors, such as the lack of supervision of worship trip organisers and the less-than-optimal sanctions applied. This research suggests the need to strengthen supervision, increase the capacity of law enforcers, enforce firmer sanctions, and improve the regulation of Hajj and Umrah fund management. Thus, this study contributes to the improvement of the legal system and management of Hajj and Umrah funds in Indonesia.

Keywords: *Embezzlement of funds, Hajj and Umrah, Criminal liability.*

Introduction

The implementation of Hajj and Umrah is one of the religious activities that has an important value in the lives of Muslims. Therefore, Law Number 8/2019 on the Implementation of Hajj and Umrah (Hajj & Umrah Law) regulates in detail the basic principles that must be adhered to in the implementation of these two worship services. Article 2 of the Hajj & Umrah Law affirms that the implementation of the Hajj and Umrah pilgrimage must be based on the principles of sharia, trustworthiness, justice, benefit, benefit, safety, security, professionalism, transparency, and accountability. These principles are expected to ensure that worship is carried out in accordance with religious teachings and provide protection and certainty for pilgrims (Hajj & Umrah Law, Article 2).

However, despite the existing regulations, the practice of embezzlement of Hajj and Umrah funds in Indonesia remains a serious problem. Cases of fraud and embezzlement of funds by irresponsible umrah or hajj travel agents continue to occur, harming thousands of prospective pilgrims, and causing great psychological impact on victims. One of the most notable cases is the First Travel case that occurred in 2018, in which more than 63,000 prospective umrah pilgrims suffered losses of up to IDR 905 billion (BBC News, 2018). The founders of the company, Andika Surachman and Anniesa Hasibuan, were involved in the practice of embezzling funds by diverting pilgrims' money for personal interests, including buying luxury assets and going on holiday abroad. In addition, in 2023, PT Naila Syafaah Wisata Mandiri (NSWM) was also in the spotlight after being involved in a scam that left many Umrah pilgrims stranded in Saudi Arabia with losses reaching Rp 91 billion (Andrios, 2023). The furoda Hajj fraud case in Gresik in 2024 also added to the long list of similar crimes, where a travel agent collected IDR 1.4 billion in funds but did not dispatch the pilgrims who had paid (HIMPUH, 2024).

The crime of embezzlement of Hajj and Umrah funds can be charged under various articles in the Criminal Code (KUHP), such as Article 378 of the Criminal Code on fraud and

Article 372 of the Criminal Code on embezzlement, each of which carries a maximum imprisonment of 4 years. In addition, the Hajj & Umrah Law also provides a stronger legal basis for prosecuting perpetrators of embezzlement, through several articles that regulate sanctions for organisers who cause failure to depart, neglect, or failure to return pilgrims (Hajj & Umrah Law, Article 118 and Article 119).

In response to fraudulent practices that harm the public, the Indonesian government, through the Ministry of Religious Affairs and the police, has taken concrete steps to address this issue. Coordination between the authorities is carried out to supervise and ensure the professionalism of Umrah Travel Organisers (PPIU) and Special Hajj Organisers (PIHK). The government also provides education to the public to be more careful in choosing Hajj and Umrah travel agents (Ulum, Sriwidodo & Paparang, 2023). The establishment of a legal travel agency through strict licensing procedures is one of the steps to ensure transparency and accountability in the organisation of Hajj and Umrah. The Hajj & Umrah Law requires PPIU and PIHK to obtain an operational licence issued by the Ministry of Religious Affairs after verification and fulfilment of various administrative requirements (Hajj & Umrah Law, Article 111). In addition, to improve professionalism, PPIUs and PIHKs are required to join relevant associations and obtain certification in accordance with Minister of Religious Affairs Decree No. 1251 of 2021 on the scheme and accreditation of Umrah and Special Hajj travel arrangements. However, despite stricter regulations, embezzlement and fraudulent practices continue to occur, especially with the potentially confusing application of multiple sanctions, which can include both administrative and criminal sanctions (Law No. 11/2020 on Job Creation, Article 118A and Article 119A).

Thus, despite a number of legal and administrative measures taken to tackle fraudulent practices in the organisation of Hajj and Umrah, major challenges still remain. This article will further analyse the liability of perpetrators of Hajj and Umrah fraud in the context of the Indonesian criminal justice system, as well as evaluate the effectiveness of existing regulations. This research aims to analyse in depth the criminal liability of perpetrators of embezzlement of Hajj and Umrah funds in the Indonesian criminal justice system. By examining the legal processes involved in handling these embezzlement cases, this study aims to identify the extent to which the legal sanctions applied are able to provide a deterrent effect for the perpetrators and at the same time protect the rights of the pilgrims. In addition, this research also aims to evaluate the effectiveness of existing regulations in preventing fraud and embezzlement of Hajj and Umrah funds in the future. Based on the objectives that have been formulated, the hypothesis of this research is proposed in the form of questions that become the basis of analysis, namely: How is the criminal liability of the perpetrators of embezzlement of Hajj and Umrah funds in the Indonesian criminal justice system, and to what extent is the effectiveness of legal sanctions applied to tackle such criminal offences? This question will be answered by examining the normative juridical application of the applicable law, as well as identifying potential weaknesses and obstacles in law enforcement against perpetrators of fraud and embezzlement of Hajj and Umrah funds.

This research is expected to make a significant contribution both theoretically and practically. Theoretically, the results of this research will enrich the repertoire of criminal law studies, especially related to criminal liability in the context of embezzlement of Hajj and Umrah funds. This research is also expected to contribute new insights regarding the mechanism of effective criminal sanctions in providing protection to the community, as well as improving the existing legal system. Practically, the results of this research can be a reference for policy makers and law enforcement officials in formulating more effective policies in tackling fraudulent practices and embezzlement of Hajj and Umrah funds. In addition, this research is also expected to provide education to the public to be more careful in choosing Hajj and Umrah travel organisers.

The conceptual framework of this research is built using two main theories, namely Criminal Justice System Theory and Theory of Punishment. Criminal Justice System Theory is used to comprehensively analyse how the law enforcement process works in handling cases of embezzlement of Hajj and Umrah pilgrimage funds, including the role of each party in the criminal justice system, such as the police, prosecutors, and courts. Meanwhile, the Theory of Punishment is used to evaluate the type and effectiveness of criminal sanctions applied to the perpetrators of the embezzlement. This research will examine whether the current legal sanctions are sufficient to provide a deterrent effect for the perpetrators, as well as how much protection is provided to pilgrims within the framework of Indonesian criminal law. Thus, this conceptual framework provides a strong basis for the research to identify existing problems in the handling of embezzlement cases of Hajj and Umrah pilgrimage funds and provide recommendations for the improvement of the applicable legal system. Criminal justice system theory and punishment theory are two important aspects in understanding how the law is enforced in the criminal context. Criminal justice system theory refers to a comprehensive framework that regulates the entire process of law enforcement in the criminal field. This system includes various components, including the police, prosecutors, courts and correctional institutions, which function synergistically to uphold justice. Each component of the criminal justice system has clear roles and responsibilities, starting from the investigation stage, prosecution, to the court and correctional processes (Marzuki, 2023). This legal process provides a structured procedure to handle criminal cases while respecting the rights of suspects, defendants and victims. One of the main objectives of the criminal justice system is to create social order, prevent crime, and provide opportunities for the rehabilitation of offenders, in accordance with the principles of restorative justice.

In line with the theory of the criminal justice system, the theory of punishment explains the philosophical basis and purpose of imposing punishment on criminals. Punishment is not only about retribution for criminal acts committed, but also includes efforts to prevent, rehabilitate, and protect the community. Some of the main theories of punishment include absolute, relative, and integrative theories. The absolute or retributive theory emphasises that punishment is an appropriate form of retribution for the criminal act committed by the offender. The main focus in this theory is on the crime itself, without considering rehabilitation efforts for the offender. In other words, the purpose of punishment in this theory is to provide appropriate punishment as a form of justice (Lacey, 2001). On the other hand, the relative or utilitarian theory is orientated towards the goal of crime prevention, both generally and specifically. In this theory, punishment is imposed not only as retribution, but also as an effort to prevent offenders from repeating their actions in the future. This prevention is divided into two types, namely general prevention, which aims to prevent the wider community from committing crimes, and specific prevention, which aims to prevent offenders from repeating their actions (Cook, 1980). This theory considers that punishment must have a deterrent effect that can prevent future crimes, both against individual offenders and society in general.

The combined or integrative theory combines elements from the absolute and relative theories. This theory recognises that punishment has a dual purpose, namely as retribution for the wrongdoing committed by the offender, as well as an effort to protect society from the threat of crime. As such, the combined theory emphasises the need for a balance between retribution and offender rehabilitation (Duff, 2005). This approach seeks to integrate deep aspects of justice with broader preventative and rehabilitative goals, so that punishment is not only interpreted as retribution, but also as a means to correct offender behaviour and prevent similar crimes in the future. These theories are interrelated and provide a strong foundation for understanding the objectives and principles underpinning the criminal justice system. An in-depth understanding of these theories is critical to building a justice system that is effective, fair, and can provide a sense of security for the community. In addition, the application of these theories in legal practice also relies heavily on the approach used by law enforcers, including judges, prosecutors and police officers, who must be able to balance various aspects of justice in every judicial process. In the Indonesian context, the application of theories of punishment that prioritise rehabilitation and prevention is very relevant, especially in cases involving perpetrators of embezzlement of Hajj and Umrah funds, where justice is not only seen from the aspect of retribution, but also from efforts to restore public confidence in the legal system (Pujinoto et al., 2020).

Methods Research

This research uses the normative juridical method supported by empirical data to analyse the relationship between positive law and the problems studied. The normative juridical approach focuses on literature studies and secondary data obtained through empirical activities, especially primary data research. This research is qualitative in natureQualitative research, as described by Creswell, looks at phenomena in a complex manner, prioritising the analysis of words and detailed reports from respondents in the context of natural situations. The type of research used is descriptive, which aims to describe symptoms, events, or occurrences that occur today without giving special treatment to the phenomenon. The collection of legal materials is done by collecting relevant primary, secondary, and tertiary legal materials, in accordance with the topic of the problem that has been formulated. The data obtained was analysed systematically and comprehensively to answer the problem formulation. The processing of legal materials is carried out interpretatively to draw conclusions regarding the ideal concept of punishment of perpetrators of embezzlement of Hajj and Umrah funds in the Indonesian criminal law system. Furthermore, the existing legal materials are analysed to see law enforcement and the perspective of applicable laws and regulations.

Result and Discussion

The implementation of Hajj and Umrah in Indonesia requires transparent and accountable management, given the large amount of funds involved in both rituals. However, the practice of embezzlement of funds by actors involved in organising Hajj and Umrah trips (PPIU and PIHK) is still a serious problem. Hajj and Umrah organisers that do not comply with the existing provisions, both in terms of permits and obligations, may be subject to sanctions in accordance with applicable laws and regulations. Law No. 8/2019 on the Implementation of Hajj and Umrah regulates strict sanctions for actors who violate these provisions. Based on the articles in Law No. 8/2019, there are several provisions that regulate sanctions for organisers who violate their obligations. Article 86 states that Umrah worship can be performed either individually or in groups through a registered and licensed PPIU.

Fraud and embezzlement of funds in the Hajj and Umrah sector are not only detrimental to pilgrims, but also damage the image and trust in the institution that organises the worship trip. Research conducted by Nasution and Faruqi (2019) revealed that poor management of Hajj funds, including in terms of transparency and accountability, is the main factor that causes misuse of funds and fraud by organisers. In addition, pilgrims' trust in Hajj and Umrah organisers continues to decline due to the high frequency of fraud that occurs. Ruwiah (2023) notes that the compromised trust of pilgrims not only affects the reputation of travel agencies, but also their business continuity. This erosion of trust poses a major challenge to the sustainability of Hajj and Umrah services, given that these services have a very strong religious and emotional dimension for pilgrims. Therefore, it is important for organisers to rebuild this trust by implementing more transparent and accountable practices.

Criminal Liability of Perpetrators of Embezzlement of Hajj and Umrah Funds in Indonesia

Criminal liability of perpetrators of embezzlement of Hajj and Umrah funds can be traced through several legal provisions governing the implementation of Hajj and Umrah in Indonesia. Law No. 8/2019 on the Implementation of Hajj and Umrah provides a clear legal basis regarding the obligation of worship trip organisers to manage pilgrims' funds with trust. Article 115 and Article 117 regulate the prohibition for parties who do not have a PPIU permit to collect and/or dispatch pilgrims, as well as the prohibition to take pilgrims' funds illegally. These provisions provide the basis for criminal prosecution of organisers proven to have embezzled Hajj and Umrah funds. In addition, in the Criminal Code (KUHP), there are provisions on embezzlement and fraud that can be used to prosecute perpetrators who embezzle pilgrims' funds. Article 372 regulates embezzlement committed by anyone who deliberately takes someone else's property, while Article 378 regulates fraud, which is an act committed by deceit to obtain unlawful gain. These provisions indicate that embezzlement of Hajj and Umrah funds can be charged with criminal sanctions, either in the form of imprisonment or fines. However, despite this clear legal basis, the biggest challenge in law enforcement against embezzlers is the supervision factor and the effectiveness of law enforcement. Bahri (2020) revealed that although there are adequate legal provisions, implementation in the field is often hampered by the lack of supervision of worship trip organisers. The lack of clarity of responsibilities between related institutions, such as the Ministry of Religious Affairs and the Hajj Financial Management Agency (BPKH), also often leads to misuse of funds. This shows that although the legal aspects related to criminal liability against perpetrators of fund embezzlement already exist, their application is still limited to a number of administrative and supervisory obstacles.

Effectiveness of Legal Sanctions to Tackle the Crime of Hajj and Umrah Fund Embezzlement

Although Indonesia has established clear legal sanctions for perpetrators of Hajj and Umrah fund embezzlement, the effectiveness of these sanctions is often questioned. Sanctions stipulated in Law No. 11/2020 on Job Creation, which strengthens administrative and criminal sanctions for offending Hajj and Umrah travel organisers, include revocation of business licences, administrative fines, and even imprisonment of up to 10 years or a fine of up to IDR 10 billion (Articles 118A, 119A, 125). These sanctions are quite severe, but often not applied optimally. The effectiveness of legal sanctions in tackling the criminal offence of embezzlement of Hajj and Umrah funds is highly dependent on effective law enforcement and transparency in fund management. Strict supervision by authorised institutions, such as BPKH, is crucial in ensuring that pilgrims' funds are used in accordance with the purpose and are not misused by the organisers. Indriani (2023) revealed that despite the existence of adequate regulations, many cases of embezzlement of Hajj and Umrah funds do not reach the court due to the limited resources of law enforcement officials and related institutions. In addition, corruption and conflicts of interest between government agencies and Hajj travel organisers are also inhibiting factors in stricter law enforcement.

The application of stricter criminal sanctions will provide a deterrent effect that is expected to reduce criminal acts of embezzlement of Hajj and Umrah funds. However, to achieve this, there needs to be improvements in the supervisory system, especially in terms of financial transparency and accountability of fund management. Zakiruddin (2021) also argues that strengthening supervision by BPKH and other related institutions will be very helpful in ensuring that Hajj and Umrah funds are not misused. In this case, administrative sanctions that are more stringent and consistently applied can encourage organisers to be more transparent and accountable in managing pilgrims' funds.Overall, although legal sanctions against perpetrators of embezzlement of Hajj and Umrah funds already exist and are regulated in legislation, the effectiveness of these sanctions has not been optimal. This is due to challenges in terms of supervision, transparency of fund management, and limited capacity of law enforcement. Therefore, to increase the effectiveness of legal sanctions, it is necessary to improve efforts in the areas of supervision, law enforcement, and revamping the bureaucracy involved in the management of Hajj and Umrah funds.

Conclusion

Based on the results of the research conducted, it can be concluded that the criminal liability of the perpetrators of embezzlement of Hajj and Umrah funds in the Indonesian criminal justice system is clearly regulated in the legislation, especially in Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah, as well as the Criminal Code (KUHP). The perpetrators of fund embezzlement can be charged with the criminal offences of embezzlement and fraud, which are regulated in Article 372 and Article 378 of the Criminal Code, with severe criminal sanctions. However, despite the clear legal basis, law enforcement against perpetrators of embezzlement of Hajj and Umrah funds is often hampered by various factors, such as the lack of supervision of religious travel organisers, as well as problems in coordination between related institutions. In addition, the effectiveness of the legal sanctions applied still needs to be improved, especially in terms of supervision and transparency of fund management, in order to provide a maximum deterrent effect and prevent future embezzlement.

Suggestion And Recommendation

Based on the findings in this study, several suggestions and recommendations can be made. First, there is a need to strengthen the supervisory system for the implementation of Hajj and Umrah, especially in relation to the management of pilgrims' funds. Institutions such as the Hajj Financial Management Agency (BPKH) must be more active in conducting supervision and ensuring transparency in fund management to avoid misuse. Second, it is necessary to increase the capacity of law enforcement in handling cases of embezzlement of Hajj and Umrah funds. This includes special training for law enforcement officials and increased resources in handling cases involving pilgrims' funds. Third, there is a need for a firmer and more consistent enforcement of sanctions, both criminal and administrative sanctions, to provide a deterrent effect for perpetrators of fund embezzlement. Fourth, revamping existing regulations, especially those relating to the management of Hajj and Umrah funds, is essential to create a more transparent and accountable system. Finally, to prevent future fraud and embezzlement, education to prospective pilgrims on their rights and how to identify legitimate travel agents needs to be improved.

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