

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

## **Investment Arrangements in The Hajj Fund Which Marginal Community Participation Are Reviewed from The Principles of Islamic Contract to Realize Legal Goals**

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**Abstract.** *The absence of means of participation from prospective Hajj pilgrims, regarding approval for initial deposit funds to be used as an investment object, is an interesting discussion in this article. Islamic engagement emphasizes the values of equality, equality, fairness and consent as a reference for implementing engagements according to Islamic law. In fact, the absence of participation facilities for prospective Hajj pilgrims has created a perception that sharia principles as stated in Article 2 of Law Number 34 of 2014 concerning Hajj Financial Management are not being fulfilled, which is the main motivation for the material review of Articles 24 and 46 of Law Number 34 of 2014. The direction of legal politics regarding the regulation of investment in Hajj funds has not equalized the position between the government as the organizer of Hajj facilities and prospective Hajj pilgrims as the stakeholders. Law is more appropriately placed as a validity that is in line with morals. In other words, morals become the guiding corridor of law which is implemented by legal subjects.*

**Keywords:** *Community Participation; Hajj Funds; Islamic Ties, Legal Objectives.*

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## 1. Introduction

The legal paradigm always has classic problems that arise from the defects of the law itself, especially if politics is more determinant than the law. This leads public opinion that the law is controlled by the political elite. The view that the formation of legal products must be full of accompanying political configurations or interests.<sup>1</sup>It needs to be criticized, that legal products always aim at the interests of their makers which are of course influenced by various political determinations. Politics is a strong factor that has a big influence on law in terms of its creation and implementation.

In fact, law and politics are mutually determinant and influence each other, there are even times when politics determines law, so that law is a political product.<sup>2</sup>There are times when political determination has a decisive direction in achieving the goals of the political will of the dominating party. This reality makes law a political domain, right up to its concretization in the norming of statutory regulations. This domain occurs in the regulation of investment in Hajj funds which raises questions about the extent of political determination in the rules of these laws and regulations. Law Number 34 of 2014 concerning Hajj Financial Management and its derivative regulations in Government Regulation Number 5 of 2018 concerning Implementation of Law Number 34 of 2014 concerning Hajj Financial Management, Presidential Regulation Number 110 of 2017 concerning the Hajj Financial Management Agency, Regulation of the Minister of Religion Republic of Indonesia Number 47 of 2017 concerning Management of Hajj Funds, as well as Regulation of the Minister of Religion of the Republic of Indonesia Number 11 of 2018 concerning Procedures for Expending Hajj Finances for Organizing the Hajj Pilgrimage are studies to answer these questions.

The absence of means of participation from prospective Hajj pilgrims, regarding approval for initial deposit funds to be used as an investment object, is an interesting discussion in this article. Islamic engagement emphasizes the values of equality, equality, fairness and consent as a reference for implementing engagements according to Islamic law. In fact, the absence of means of participation for prospective Hajj pilgrims has created a perception that sharia principles as stated in Article 2 of Law no. 34 of 2014 concerning Hajj Financial Management, which is the main motivation for the material review of Articles 24 and 46 of Law no. 34 of 2014. Based on the description above, the problem formulation can be drawn as follows:

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<sup>1</sup>Raja Faisal Sulaiman, 2017, Indonesian Legal Politics, Thafa Media, Yogyakarta, p. 48.

<sup>2</sup>Mahfud MD 2012, Legal Politics in Indonesia, Raja Grafindo Persada, Jakarta, p. 20.

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1. What is the Political Direction in the Investment Regulations for Hajj Funds?
2. How is the Legal Function Placed in Overseeing the Implementation of Investment Regulations for Hajj Funds to Realize Legal Objectives?

## **2. Research Methods**

This research is legal research, using normative (juridical) legal research methods. This legal research uses a statutory and regulatory approach and a comparative approach. This research was conducted using primary legal materials, namely in the form of statutory regulations and secondary legal materials in the form of legal books and legal journals related to the problem under study. This research uses library and internet studies in collecting legal materials. The legal material analysis technique used is syllogism using deductive logic.

## **3. Results and Discussion**

### **3.1. Forms of Political Direction Regarding Hajj Fund Investment Regulations**

Political direction in its concrete form, namely political determination, can influence a legislative regulation so that it is no longer consistent or even becomes incompatible with the function in the welfare state paradigm, namely improving the welfare of society. This fact can be understood that politics through its political will can become a strong factor that is more dominant than law. Therefore Satjipto Rahardjo<sup>3</sup>said that law is actually a political product.

The definition of Hajj funds according to Article 1 point 2 of Law Number 34 of 2014 is funds for paying the costs of organizing the Hajj, efficiency funds for organizing the Hajj, endowment funds for the people, as well as the value of benefits controlled by the state in the context of organizing the Hajj and implementing activity programs for the benefit of the Muslim Ummah. . It is emphasized that the value of the benefits is the focus of the description, so that the government can pursue the value of these benefits in the form of business so as to increase the value of these benefits. One way is to manage Hajj funds. The general explanation of Law Number 34 of 2014 explains that the accumulation of Hajj pilgrims' funds has the potential to increase the value of its benefits which can be used to support the implementation of a quality Hajj pilgrimage. For this reason, derivative regulations were created from the definition of Article 24 of Law Number 34 of 2014.

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<sup>3</sup>Raja Faisal Sulaiman, 2017, Indonesian Legal Politics, Thafa Media, Yogyakarta, p. 49.

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#### **Article 24**

*In carrying out the duties as intended in Article 22, BPKH has the authority to:*

- a. Implement and invest Hajj Finance in accordance with sharia principles, prudence, security and value of benefits; And*
- b. Collaborating with other institutions in the context of managing Hajj Finance.*

From the description of the article above, it becomes the juridical basis for the statutory regulations which are a derivative of Law No. 34 of 2014, which is then realized in PP No. 5 of 2018 concerning the Implementation of Law No. 34 of 2014 concerning Hajj Financial Management, Presidential Decree No. 110 of 2017 concerning the Hajj Financial Management Agency, Minister of Religion Regulation Number 47 of 2017 concerning Hajj Fund Management. This is a direct form of management of Hajj funds to add value to the benefits of the Hajj funds in question.

These laws and regulations make it possible for BPKH, as an extension of the government, to carry out investment mechanisms for Hajj funds. However, in this case BPKH only does what is regulated in the statutory regulations, which is clear if understood, these statutory regulations do not accommodate participation in the form of community approval, considering that this is important in Islamic engagement. With the consent of the prospective Hajj pilgrims, the values of consent, equality, equity and justice can be fully accommodated for the prospective Hajj pilgrims in particular, who in this case are the main funding subjects in the Hajj financial fund.

This form of participation in the form of agreement clearly must be realized. The absence of this agreement is tantamount to marginalizing the prospective Hajj pilgrims who, in this case, are parties to the Islamic commitment. This fact is clearly not in accordance with the principles of Islamic engagement, especially the principles of equality, justice, fairness and justice. Therefore, steps are needed to truly realize the prospective Hajj pilgrims' agreement if their Hajj deposit funds will be used as an investment object using sharia principles which aims to provide an increase in the value of benefits to the prospective pilgrims' Hajj funds.

Political dynamics continue to change and have a massive influence on law making and on the application of the law. Law is not autonomous, law cannot stand independently without influence from outside the law, such as economic, political, social and cultural factors and even morality. Therefore, in developing law, it is vulnerable to forms of political determination against it. The direction of legal politics in regulating investment in Hajj funds, if we look at the description and facts of the legal regulations, can be said to not have the right form to

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accommodate the consent of prospective Hajj pilgrims. Therefore, the author believes that the direction of legal politics regarding the regulation of investment in Hajj funds has not equalized the position between the government as the organizer of Hajj facilities and prospective Hajj pilgrims as the stakeholders. This clearly marginalizes or marginalizes the position of prospective Hajj pilgrims because through the initial deposit they are deemed to agree if the funds are used as an investment object.

### **3.2. Placement of Legal Functions in Overseeing the Implementation of Investment Regulations for Hajj Funds to Realize Legal Objectives**

The function of law is identical to the role of law as a method in solving certain problems. In this case, first find out the options offered by the law regarding its function. This function concerns its placement, whether the law is placed as an order from the ruler (Law is the order of the Law Giver), which is interpreted as an order from the holder of power. Will it be placed as a legal system rule that influences each other as M. Friedmann thought, or will it be interpreted as a tool for control and social engineering like Roscoe Pound. It is also possible that the law can be positioned as that the government has the responsibility to guarantee the greatest happiness (or well-being) for as many of its citizens as Bentham intended.<sup>4</sup>

According to the author, by applying the function of law in overseeing the implementation of investment regulations for Hajj funds, law is more appropriately placed as a validity that is in line with morals. In other words, morals become the guiding corridor of law which is implemented by legal subjects. Morals guide humans in every activity of their lives, which provides truth according to ratio. Aristotle explained that the core of humans is rational morals, which views truth (theoria, contemplation) as the primacy of life (summum bonum).<sup>5</sup>In the process it is guided by human reason and morals. Previously, the belief that the law must be compatible with morals was more about failures to explain, many of which described an incompatibility between law and morals.<sup>6</sup>According to his belief, there is one element that is very essential, to lead means to serve, to lead means to serve, without this element of service the other elements of leadership only allow people to become skilled leaders, and capable leaders (capable leaders). and cannot provide qualifications as a true leader (true leader).<sup>7</sup>

<sup>4</sup>Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage, 2010, Legal Theory of Human Order Strategy Across Space and Generations, Genta Publishing, Yogyakarta, p. 90.

<sup>5</sup>Bernard L. Tanya, 2011, Law Enforcement in the Light of Ethics, Genta Publishing, Yogyakarta, p. 103.

<sup>6</sup>M. Ali Safa'at, 2016, Legal concept of HLA Hart, Constitution Press, Jakarta, p. 192.

<sup>7</sup>Bernard L. Tanya, 2011, Law Enforcement in the Light of Ethics, Genta Publishing, Yogyakarta, p. 103.

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The pattern of the relationship between law and morals (Conceptual Relationship Between Law and Morality) is largely determined by the view regarding the source of law, including the acceptance of morals into positive law. The concrete function of the relationship between moral rules as a legal guide through human reason can be realized by monitoring the implementation of laws and regulations that regulate investment in Hajj funds so that they do not deviate from the principles of sharia and accommodate Islamic values.

Concretely, first, moral rules must be attached to the implementer, in this case the BPKH (Hajj Financial Management Agency), so that it has the authority to carry out its authority functions and can act in accordance with its rules. BPKH must be the implementing end of the Hajj fund investment regulations, which is not an easy role because it must be consistent in achieving the goal of increasing the value of benefits to Hajj funds.

Second, there must be a moral responsibility to prospective Hajj pilgrims as providers of Hajj funds which are used as investment objects. This moral responsibility is to accommodate the participation of prospective Hajj pilgrims in making approvals for their Hajj funds through initial deposits which are used for investment. This can provide Islamic values of engagement, such as consent, equality, equality and justice.

Third, is to build a control system for the implementation of laws and regulations governing investment in Hajj funds. The mechanism can be in the form of control from prospective Hajj pilgrims and from the Minister of Religion as the environment who has authority in the field of religion. Control can be implemented to maintain implementation in accordance with the principles used. Therefore, the implementation of investment in Hajj funds must clearly be focused and refer to the principles as stated in sharia in Article 2 of Law no. 34 of 2014 concerning Hajj Financial Management. Basically, the function of a principle is as a critical touchstone (*Critique Toetsteen*) or assessment rules (*waarderingnormen*) to a legal norm.<sup>8</sup> It is hoped that participation in the form of approval from prospective Hajj pilgrims will be able to facilitate government policies. A policy will clearly be able to be implemented well if it accommodates community participation, so that the policy has a basis for legitimacy, because the community feels they have a responsibility to realize this participation. Various concrete forms of moral rules as legal guides both in their function and implementation through ratios

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<sup>8</sup> Arief Sidharta, 2015, *Reflections on Law*, Aditya Bakti, Bandung, p. 122. (Translated from the book JJH Bruggink, *Rechts-Reflecties*, Utrecht : Kluwer, 1993).

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will provide legal objectives. It is hoped that morals can become a guideline for implementing regulations on investment in Hajj funds so as to achieve the values of justice, certainty and benefit as are the basic legal values which are the objectives of the law.

#### 4. Conclusion

Based on the description above, the following conclusions can be drawn:

The direction of legal politics regarding the regulation of investment in Hajj funds has not equalized the position between the government as the organizer of Hajj facilities and prospective Hajj pilgrims as the stakeholders. This clearly marginalizes or marginalizes the position of prospective Hajj pilgrims because through the initial deposit they are deemed to agree if the funds are used as an investment object. Bearing in mind that in Islamic engagements the word agreement or agreement from the party entering into the engagement is part of the legal conditions for the engagement. With the consent of the prospective Hajj pilgrims, the values of consent, equality, equity and justice can be fully accommodated for the prospective Hajj pilgrims in particular, who in this case are the main funding subjects in the Hajj financial fund. In accordance with the decision of the Constitutional Court. The relation to the legal function in overseeing the implementation of investment regulations for Hajj funds is that First, moral rules must be attached to the implementer, in this case the BPKH (Hajj Financial Management Agency), so that they have integrity in carrying out their authorized functions and can act in accordance with its rules. Second, there must be a moral responsibility to prospective Hajj pilgrims as providers of Hajj funds which are used as investment objects. Third, is to build a control system for the implementation of laws and regulations governing investment in Hajj funds. This control can be carried out with participation from the community and related ministries.

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