

Analysis of Islamic Law on Consumer Protection in Hajj and Umrah Business in Indonesia

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Abstract: *Analysis of Islamic Law on Consumer Protection in Hajj and Umrah Business in Indonesia.* This research is motivated by the failure of thousands of *Umrah* pilgrims to go to Mecca since 2017 but do not get their rights as consumers. Several facts prove that although regulations related to *Hajj* and *Umrah* organizers as well as the Consumer Protection Act have explicitly regulated consumer rights, in reality, the pilgrims who are victims of hajj and umrah travel agency fraud are still not getting consumer protection. This research is descriptive qualitative using a normative juridical approach. The data used in this study are primary and secondary obtained from interviews and document studies. This study concludes that the presence of Law No. 8 of 2019 concerning the Implementation of *Hajj* and *Umrah* contains the spirit of upholding consumer protection in the *Hajj* and *Umrah* business. However, its success is largely determined by the extent to which the regulator empowers internal supervisors to prevent irresponsible practices of *hajj* and *umrah* travel agencies. On this side, unfortunately, the role of guidance, supervision, and legal protection carried out by the Indonesian Ministry of Religion as a regulator in protecting *Hajj* and *Umrah* pilgrims, seems still not optimal.

Keywords: *hajj* and *umrah* travel bureau, consumer protection, the role of the Ministry of Religion.

Abstrak: *Analisis Hukum Islam terhadap Perlindungan Konsumen dalam Bisnis Haji dan Umrah di Indonesia.* Penelitian ini dilatarbelakangi oleh kegagalan ribuan jemaah umrah untuk berangkat ke Mekkah sejak tahun 2017, namun tidak mendapatkan hak-hak mereka sebagai konsumen. Sejumlah fakta membuktikan bahwa meskipun regulasi terkait penyelenggara haji dan umrah serta Undang-Undang Perlindungan Konsumen telah secara tegas mengatur hak-hak konsumen, namun pada kenyataannya para jemaah korban penipuan biro perjalanan ibadah haji dan umrah masih belum mendapatkan perlindungan konsumen. Penelitian ini merupakan jenis penelitian kualitatif deskriptif dengan menggunakan pendekatan yuridis normatif. Sumber data yang digunakan dalam penelitian ini adalah data primer dan data sekunder yang diperoleh dari wawancara dan studi dokumen. Penelitian ini menyimpulkan bahwa kehadiran Undang-Undang No. 8 Tahun 2019 tentang Penyelenggaraan Ibadah Haji dan Umrah sesungguhnya mengandung *spirit* penegakan perlindungan konsumen dalam bisnis haji dan umrah. Namun, keberhasilannya sangat ditentukan oleh sejauh mana pihak regulator memberdayakan pengawas internal guna mencegah praktik biro perjalanan ibadah haji dan umrah yang tidak bertanggungjawab. Pada sisi ini, sayangnya, peran pembinaan, pengawasan dan perlindungan hukum yang dilakukan oleh Kementerian Agama Republik Indonesia sebagai regulator dalam melindungi jemaah haji dan umrah nampaknya masih belum optimal

Kata Kunci: biro perjalanan haji dan umroh, perlindungan konsumen, peran Kementerian Agama.

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Introduction

Worship in Islam is broadly divided into two categories, namely; *mahdah* dan *ghair mahdah* worship mahdah. *Mahdah* worship is purely a direct ritual to Allah swt, such as prayer, fasting, zakat, pilgrimage, and dhikr. While *ghair mahdah* worship is a worship that is non-ritual or related to relationships with fellow creatures such as alms, infaq, learning, teaching, da'wah, mutual assistance, cooperation, and other social worship. *Hajj* is one of the most important *mahdah* worships which are obligatory for Muslims at least once in a lifetime. Muslims who deny this pilgrimage are tantamount to denying Islam as a whole. This is confirmed by Allah Swt in QS 'Ali Imran/3: 97. The Messenger of Allah also motivates his followers to immediately perform the pilgrimage if they can. In the extreme, the Messenger of Allah, threatens people who delay *Hajj* and then die before fulfilling their obligations, then that person is likened to the death of a Jew or Christian.¹

Hastening to carry out the pilgrimage during the time of the Prophet Muhammad, especially after the *Fath of Makkah* (the liberation of Mecca to the authority of the Prophet Muhammad on 10 Ramadan 8 H, or January 11, 630 AD) did not experience any problems, because, at that time, Muslims who visit the *Baitullah* was still very small in number. But after 14 centuries later, the followers of Islam who inhabit this earth as of 2015 reached 1.8 billion or equivalent to 24% of the global population.² In 2019, for example, the number of pilgrims from all over the world reached 2,489,406 people. This number has increased by around 4.96 percent compared to the previous year which was recorded at 2,371,675.³ With this number, where the capacity of

عَنْ الْحَارِثِ. عَنْ عَلِيٍّ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ مَلَكَ زَادًا وَرَاحِلَةً تَبَلَّغَهُ إِلَى بَيْتِ اللَّهِ وَلَمْ يَحُجَّ فَلَا عَلَيْهِ أَنْ يَمُوتَ يَهُودِيًّا. أَوْ نَصْرَانِيًّا (رواه الترمذ)

Translation: From al-Haris, from 'Ali said, Rasulullah saw. said: "Whoever has provisions and a vehicle and then does not perform Hajj, then if he dies, please die as a Jew or a Christian Muhammad bin 'Isa bin Saurah al-Turmuzi, *Sunan Al-Turmuzi*, Hadith No. 826 (Bairut: Dar al-Ta'sil, 2016), II, p. 151.

² 'Islam Akan Menjadi "Agama Terbesar" Pada 2075 - BBC News Indonesia' <<https://www.bbc.com/indonesia/majalah-39510081>>.

³ 'Jamaah Haji Naik 4,96 Persen, Jumlah Total Capai 2,4 Juta Lebih' <<https://www>.

Padang Arafah and Mina as well as the Grand Mosque as the center of the pilgrimage in Saudi Arabia, is very limited, resulting in the limitation of the number of pilgrims who visit the sites each year.⁴ This restriction, when associated with the increasing number The Muslim population in the world, will have an impact on the increasing distance between the number of prospective pilgrims and the availability of yearly quotas from the Kingdom of Saudi Arabia.

The limitation of *Hajj* quotas each year causes the increasing number of pilgrims on the waiting list, ranging from 15 to 30 years, even to 42 years in some provinces in Indonesia. With this long queue, *Hajj* organizers are motivated to look for opportunities to depart via other routes, taking the non-quota pilgrimage route, for example, through the *furâdah* route.⁵ The *furâdah* route is one of the alternatives for the pilgrimage to the *Baitullah* which has been legalized by the government. Unfortunately, because the price of the packages offered is very high and even exceeds the price of *Hajj* plus, *Hajj* with this route can only facilitate rich people. Another alternative to being able to worship in the holy land is through the *'Umrah* trip. Although the status of *Umrah* is different from the *Hajj*, one can go directly without having to wait in queues for years. This is because *Umrah* can be performed at any time outside the *Hajj* season. The slack time to worship in the Holy Land of Mecca through the *'Umrah* worship route has made the number of prospective Indonesian registered *Umrah* pilgrims continue to increase every year. In 2019, the number reached one million people, the second-largest in the world after the Pakistani *Umrah* pilgrims.

The high interest of Muslims to carry out *Umrah* worship invites *Umrah* Travel Organizers (PPIU) to make it a promising business area. Every year *Umrah* travel bureaus appear, both official (registered in the

jawapos.com/nasional/24/08/2019/jamaah-haji-naik-496-persen-jumlah-total-capai-24-juta-lebih/.

⁴ According to the Pew Research Center located in Washington DC, the world's population will grow by 32 percent by 2060, while the Muslim population is expected to grow by 70 percent. This means that the number of Muslims in the world in 2060 is expected to exceed the number of adherents of other religions. See: 'Islam Akan Menjadi "agama Terbesar" Pada 2075 - BBC News Indonesia'.

⁵ Anik Farida, 'Penanganan Kasus Penyelenggaraan Haji Furodah (Kasus Jawa Barat)', *Penamas*, 32.1 (2019), 635–54 <<https://doi.org/10.31330/penamas.v32i1.305>>.

PPIU) and un-official (not registered in the PPIU). Unfortunately, due to increasingly fierce competition, several travel agencies, especially those that are not official, illegally recruit applicants intending to make profits without considering the possible negative impacts or losses that will be suffered by prospective pilgrims.

The methods they take are generally by offering packages at low prices either through a Ponzi scheme⁶ or a Pyramid scheme.⁷ The Ponzi *Umrah* system places more emphasis on recruiting pilgrims in large numbers to cover the expenses of the *Umrah* package that should be paid. *Umrah* Ponzi does not rely on profits from the price of packages sold, but the money that comes in from prospective new pilgrims. This Ponzi scheme has been openly carried out by some PPIUs in Indonesia which is indicated by the sale of cheap *Umrah* packages, even under Rp. 15 million.

The sale of *Umrah* in the Ponzi scheme is out of strict and firm control from the Government. As a result, there have been many cases of pilgrims failing to leave, which number in the hundred thousand applicants, such as the cases of First Travel⁸ and Abu Tour.⁹ The last victim of the 2019 *haji* pilgrimage occurred in South Kalimantan, where 53 prospective pilgrims plus failed to leave due to irresponsible PIHK.¹⁰

⁶ The Ponzi scheme is named after the main actor Carlo Ponzi. Carlo Pietro Giovanni Guglielmo Tebaldo Ponzi, also known as Charles Ponzi, was an Italian immigrant born on March 3, 1882. Ponzi was one of the biggest con artists in United States history with his bubble burst idea of paying old investors money out of new investors' money. Read Andrias Harefa Andrias Harefa, *Menapaki Jalan DS-MLM* (Yogyakarta: Gradien Books, 2007), p. 84.

⁷ The Pyramid Scheme is an illegal business system, where the profits obtained by some people who are in a position above the pyramid (old members) are paid out of the funds of many people who are in a position below the pyramid (new members) Andrias Harefa, p. 84.

⁸ The total number of cases of prospective Umrah pilgrims who failed to depart for the holy land was 63,000 with a loss of Rp 905.33 billion. See; 'First Travel, Awal Berdiri, Lakukan Penipuan Hingga Akhirnya Tumbang Halaman All - Kompas.Com' <<https://www.kompas.com/tren/read/2019/11/17/060000565/first-travel-awal-berdiri-lakukan-penipuan-hingga-akhirnya-tumbang?page=all>>.

⁹ Around 86,720 pilgrims who canceled their Umrah trip spread across 15 provinces in Indonesia have deposited travel expenses. In this case, the congregation's total loss reached IDR 1.2 trillion. 'Kasus Pencucian Uang Jemaah, Abu Tours Dihukum Denda Rp 1 Miliar' <<https://regional.kompas.com/read/2019/11/27/15323261/kasus-pencucian-uang-jemaah-abu-tours-dihukum-denda-rp-1-miliar>>.

¹⁰ Kompas Cyber Media, 'Gagal Berangkat, 53 Calon Haji Datangi Kantor Travel Agen', *KOMPAS.com* <<https://www.kompas.com/>>.

Starting from the many cases of pilgrims who failed to leave for *Hajj* and *Umrah*, coupled with the lack of maximum consumer protection for them, this research was conducted with the hope that it can be taken into consideration for the government/relevant agencies in carrying out the fulfillment of consumer rights protection in Indonesia, especially in terms of consumer rights. *Hajj* and *Umrah* business.

Research Methods

This type of research is descriptive qualitative field research. Descriptive research aims to accurately describe the characteristics of a particular individual, condition, symptom, or group, or to determine the spread of a symptom, or to determine whether there is a relationship between a symptom and other symptoms in society. While qualitative is intended to understand the phenomenon of what is experienced by the subject under study, for example, behavior, perception of action, etc.

In this study, the focus of the study is directed at disclosing facts about consumer protection in the *Hajj* and *Umrah* business that has been implemented so far in Indonesia. To obtain valid information related to consumer protection in the *Hajj* and *Umrah* business, the researchers conducted direct interviews with several relevant officials, ranging from Ministry of Religion officials who handle *Hajj* and *Umrah* Affairs, the Financial Services Authority, *Hajj* and *Umrah* travel bureaus, to several *Umrah* pilgrims who are victims of failing to leave. Data analysis is carried out not only based on the perspective of legislation but will also be related to the views of Islamic law, based on what is contained in the Qur'an, al-Hadith, and the scholars opinions.

Consumer Protection in the Perspective of Islamic Law and Positive Law

Islamic law stipulates that the purpose of consumer protection must be following *maqâsid al-syari'ah* (the purpose of the law being prescribed) which is for the benefit of mankind. Therefore, Islamic law stipulates that consumers are protected from various possibilities of abuse of weaknesses possessed by consumers that can occur: (1) before the sale and purchase

transaction takes place (pre-transaction), in the form of advertisements or promotions that are not true, (2) when the transaction is in progress. takes place, employing deception, (3) and when the transaction has taken place (post-transaction), in which the business actor does not know anything about the loss borne by the consumer.¹¹

In Islamic Law, the truth and accuracy of information when a person promotes his wares occupies a very significant study. Islam does not recognize the term buyer who must be careful or business actor who must be careful but applies the principle of balance (*al-ta'âdul*), where buyers and sellers must be careful. Therefore, in the concept of Islamic trade, a business actor is obliged to explain the defects of the goods to be sold to other people.

Islam teaches that the economic system of its people is based on the values of justice that must be upheld, and it is the main principle for carrying out economic activities. Every economic activity must contain an element of benefit and not persecute himself and others so that economic activity can create equitable community welfare.¹²

Islam does not prohibit the sale of *hajj* or *umrah* packages by taking advantage of the congregation, but if the profit is at the expense of the consumer, then in Islamic law it is categorized as a system of buying and selling *gharar*. Such a kind of buying and selling is prohibited in Islam.

In Islamic law, the act or criminal act is called *jarîmah* or *jinâyah*. Islam forbids all forms of crime (*jarîmah*) including all forms of fraud. Fraud is a crime committed by someone by deceiving other people to obtain greater benefits for himself, be it goods or money.¹³

¹¹ Muhammad & Alimin, *Etika & Perlindungan Konsumen dalam Ekonomi Islam* (Yogyakarta: BPFE, 2004), p. 196.

¹² It is stated in a hadith "It is not lawful for a person to sell an item unless he explains the qualifications of the item and it is not lawful for one who knows about it unless he explains its essence". See: Ahmad ibn Hanbal, *Musnad Imam Ahmad* (Beirut: Dar al-Kutub al-Ilmiyah, 2008), xxv, p. 394.

¹³ عن أبي هريرة رضي الله عنه قال: نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْحَصَاةِ وَعَنْ بَيْعِ الْعَرَرِ
Meaning: "From Abi Hurairah said: Rasulullah SAW. prohibits buying and selling *al-hasah* and buying and selling *gharar*. See: Abi al-Husain Muslim bin al-Hujjaj al Qusyairi an Naisaburiy, *Sahih Muslim* (Beirut: Darul Kitab al 'Immiyyah, 1995), ix, p. 133.

Jarimah is actions that are prohibited by *syara'* which are threatened by Allah with the *had* or *ta'zîr* punishments. *Ta'zîr*, is a form of punishment imposed based on the judge's discretion because it is not contained in the Qur'an and hadith. Al-Shirazi in the book *al-Tahzîb* defines *ta'zîr* as a punishment that is not determined by the Qur'an and Hadith related to crimes that violate the rights of Allah and the rights of servants whose function is to teach the perpetrators of criminal acts and prevent them from repeating similar crimes.¹⁴ Similarly, al-Mawardi defined *ta'zîr* as an educational punishment for sinful acts (immorality) whose punishment has not been determined by *syara'*.¹⁵

From the above definition, it can be understood that the *ta'zîr* punishment is a punishment imposed by the ruler (judge) against various forms of immorality, whether it violates the rights of Allah or the rights of servants that are detrimental or interfere with the benefit of the general public.¹⁶ *Syara'* does not stipulate the criminal penalty for *ta'zîr* with consideration of education, thus giving the government the authority to determine from the lightest punishment to the most severe.¹⁷ Thus, the government or *waliyul amri* is given the authority to carry out *ijtihad* related to giving sanctions or punishments to perpetrators of crimes.

The scope of *ta'zîr* punishment is very broad, not only because it relates to God's rights as well as personal rights but can also develop according to the types of immorality or violations throughout the ages and places, both violations of personal benefit and the benefit of society or the state.

On this basis, the determination of the *ta'zîr* punishment is not based on *Bayâni* (reasoning coming from the Qur'an, but is based on *Ta'lîlî* reasoning in certain cases). For example, in the case of *Nusyûz* (disobedient of wife), the husband was allowed to educate his wife in many ways until

¹⁴ Abu Ishak al-Syirazi, *Al-Tahzîb Fi al-Fiqhi al-Syâfiî*, 4 (Dimasyq: Dar al-Qalam, 1996), p. 462.

¹⁵ Abu al-Hasan Ali Ibn Muhammad Ibn Habib al-Mawardi, *Al-Abkâm al-Sultâniyah* (Qahirah: Dar al-Hadis, 2006), p. 344.

¹⁶ Ahmad Syarbaini, 'Teori Ta'zir dalam Hukum Pidana Islam', *Ius Civile: Refleksi Penegakan Hukum dan Keadilan*, 2.2 (2019) <<https://doi.org/10.35308/jic.v2i2.967>>.

¹⁷ Abdul Qadir 'Audah Abdul Qadir 'Audah, *Al-Tasyrî' al-Jinâ'i al-Islâmî Muqarranan Bi al-Qanûn al-Wad'i* (Beirut: Dar al-Katib al-'Arabi, t.t), 1, p. 80.

hitting. '*Illat* (reasons) used is because the wife is disobedient. However, the form of the beatings and the number of times they were hit was not explained. However, in cases of immorality or other criminal acts that are not indicated by the Qur'an and hadith, *Istislâhî* reasoning must be used in determining the *ta'zîr* punishment for non-criminal perpetrators. For this reason, the determination of *ta'zîr* punishment for criminal acts in a new form must take into account the following matters:¹⁸

- a. The form or type of crime is related to the rights of Allah or the rights of individuals.
- b. The size of the consequences caused by the perpetrators both for individuals, society, and the country.

If the above is considered, then it is the authority of the *ûlil amri* (government), or the judge to carry out the legal process of cases classified as *ta'zîr* and do *ijtihad* (legal findings) to determine the form or type of *ta'zîr* punishment. The consequences of determining the form and type of *ta'zîr* punishment by the leader are classified as obligatory to be obeyed by the people they lead.

There are three forms of crimes that can be sentenced to *ta'zîr* in the view of 'Abdul Qadir 'Auda.¹⁹

- 1) *Jarîmah ta'zîr* originating from *jarîmah hudûd* or *Qisâs*, but the conditions are not fulfilled, or there are doubts, such as the theft of goods that do not reach the *nisâb* (minimum), or the theft is carried out by the family itself.
- 2) *Jarîmah ta'zîr* whose type is mentioned in the *syara'* argument, but the type of punishment is not determined with certainty, such as usury, bribes, reducing the scales, and gambling.
- 3) *Jarîmah ta'zîr* in which both the type and the sanctions have not been determined by *Syara'*. This third type is fully under the authority of the government (*ûlil amri*) in determining the punishment, including consumer violations in the *hajj* and *umrah* business.

¹⁸ Misran Misran, 'Kriteria Jarimah Takjir', *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-Undangan dan Pranata Sosial*, 2.1 (2018), 84–95 <<https://doi.org/10.22373/justisia.v2i1.2648>>.

¹⁹ Abdul Qadir 'Auda, 1, p. 83.

In *ta'zîr* law, the term aggravating or mitigating punishment is known, and scholars differ on this issue, particularly regarding the addition of punishment to incriminate sanctions for the perpetrators. However, the majority of scholars agree on *dawâbit al-uqûbah al-ta'zîriyah* (the provision of *ta'zîr* legal sanctions) as guidance for judges before deciding the level of *ta'zîr* punishment. In principle, it is recognized that a judge's *ijtihâd* in determining sanctions is based on consideration of the condition of the perpetrator, his victim, his actions, and his words.

The majority of scholars have agreed that the *ta'zîr* punishment should not exceed the *had* penalty²⁰, because the *ta'zîr* punishment is generally lower than the *had* punishment. If you look at the kinds of *had* punishments, such as; death penalty, stoning, hand cutting, or whipping, then the death penalty and stoning can no longer be added to the punishment because it is considered the heaviest punishment. Thus, the additional punishment as stated in *dawâbit ta'zîr* is meant to be whipped and cut off hands. Scholars who argue that it is not permissible to add *ta'zîr* punishment to the punishments that already have had provisions refer to the hadith of the Prophet Muhammad:

عَنِ الضَّحَّاكِ قَالَ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "مَنْ بَلَغَ حَدًّا فِي غَيْرِ حَدِّ فَهُوَ مِنَ الْمُعْتَدِينَ" (رواه البيهقي)

*From al-Dabihak said, Rasulullah saw. said: Whoever increases the level of law outside of the provisions, is classified as a person who exceeds the limit.*²¹

The above hadith shows that there are limits that cannot be passed by a judge or government in imposing *ta'zîr* sanctions for perpetrators of a crime. The Shâfi'i, Hanâfi, and Hanbali schools tend to reject additional *ta'zîr* sanctions outside the established limits. However, the Mâliki school of thought differs. It is stated in the book of *al-Mughnî* that Imam Mâlik is allowed to increase the *ta'zîr* penalty beyond the

²⁰ Ibnu Qudamah Al-Maqdisy, *Al-Mughni*, (Beirut: Dâr al-Fikr. t.t.), p. 523.

²¹ Abu Bakar Ahmad bin al-Husain bin 'Ali Al-Baihaqi, *Sunan Al-Baihaqi*, VIII, (Qahirah: Dar al-Hadis, t.t.), p. 567.

had penalty if a judge sees certain considerations. This is confirmed by the actions of 'Umar bin Khattab who punished Ma'na bin Zaidah for stealing from Baitul Mal with a sentence of 100 lashes plus a prison sentence, but the perpetrator refused, so Umar added a sentence of 100 lashes and exiled him. Likewise, the action of 'Ali bin Abi Talib who punished a person who drank alcohol during the month of Ramadan with a sentence of 80 lashes for the violation of drinking *khamr* plus 20 lashes for violating the sanctity of the month of Ramadan.²²

In the context of legislation in Indonesia, legal protection, as stated by Setiono, is an effort or action taken to protect the community, to avoid bad actions (arbitrariness) from the owners of power for the sake of realizing security, order, and a sense of security. calm from society, to enjoy the dignity of the human being.

There are two kinds of legal protection, which are part of the rights granted by the state to its citizens, namely: preventive and repressive. Preventive legal protection aims to prevent disputes from occurring, while repressive legal protection is to resolve disputes. In the context of preventive legal protection for *Hajj* and *Umrah* pilgrims, the government has taken steps to prevent consumer protection violations through the issuance of consumer protection laws and several government regulations or ministerial decisions related to the implementation of the *Hajj* and *Umrah* pilgrimages. The legal protection is repressive or punitive, namely enforcing regulations that have been made through law enforcement institutions, such as the Indonesian police, courts, and prosecutors.

As a manifestation of the Government's concern for consumer protection, the Indonesian House of Representatives has ratified Law No. 8 of 2019 concerning the Implementation of *Hajj* and *Umrah*, which was signed by the President on April 26, 2019. In this regulation, 12 governance improvements are different from the previous law (Law No. 13 of 2008) which includes: (1) Priority of departure for elderly pilgrims, the

²² Al-Maqdisy, p. 525. See Abdul Qodir Zaelani, Politik Hukum 'Umar Bin Al-Khaththâb dan Relevansinya dengan Pengembangan Hukum Keluarga di Indonesia, (Diss. UIN Raden Intan Lampung, 2020); Konsep *Tâuqquli* dan *Tâ'abbudi* dalam Konteks Hukum Keluarga Islam, *Asas: Jurnal Hukum Ekonomi Syariah*, 6.1. (2014).

minimum age of 65 years. (2) The existence of special services for pilgrims with disabilities. (3) *Hajj* pilgrims' rights in terms of portion numbers and *Hajj* departures are not lost. (4) Delegation of the portion of the pilgrims on the waiting list who dies or is permanently ill to those appointed in writing by the family. (5) The existence of a guarantee of protection for the pilgrims who perform *Umrah*, to avoid acts against the law. Like, neglect or deception. (6) There is legal certainty in the function of monitoring and evaluating the implementation of *Hajj* and *Umrah* by giving the Minister the authority to form a coordination team for prevention, supervision, and prosecution of problematic PIHK and PPIU. (7) There is recognition of the status of civil servant investigators (PPNS) in conducting investigations regarding alleged criminal acts involving PIHK and PPIU (8) Guarantee of legal certainty for PPIU, PIHK, and *Hajj* and *Umrah* guidance groups in terms of permanent permits through a mechanism of supervision with accreditation, as well as the provision of administrative sanctions. (9) There is an arrangement that makes it easy to arrange refunds for pilgrims who have died. (10) A comprehensive supervisory system in the form of the obligation for *Umrah* organizers to have managerial, technical, and personnel competencies. (11) Arrangement of accommodation services and the importance of community participation through *Hajj* and *Umrah* guidance groups (KBIHU) in supporting the quality of services for *Hajj* and *Umrah* pilgrims. (12) Administrative and criminal sanctions for PPIU and PIHK who do not carry out their responsibilities.²³

Law number 8 of 2019 concerning the Organization of *Hajj* and *Umrah* has also explicitly regulated the necessity of *Umrah* organizers to have managerial, technical, personnel competence, and financial capabilities to organize *Umrah* as evidenced by bank guarantees in the form of bank guarantees or deposits on behalf of PPIU.²⁴ The new law also provides sanctions for *Umrah* and *Hajj* Travel Organizers who do not carry out their responsibilities properly in the form of administrative sanctions.²⁵

²³ 'Disahkan, 12 Hal Terbaru dalam UU Ibadah Haji dan Umrah' <<https://www.hukumonline.com/berita/a/disahkan--12-hal-terbaru-dalam-uu-ibadah-haji-dan-umrah-lt5c9ca6cf2117b>>.

²⁴ See; Law No. 8 of 2019 concerning the Implementation of *Hajj* and *Umrah* article 89.

²⁵ See; Law No. 8/2019 concerning the Implementation of *Hajj* and *Umrah* article 95.

Results and Discussion

Legal protection for *Hajj* and *Umrah* pilgrims as stated in Law No. 8 of 2019 concerning the Implementation of *Hajj* and *Umrah* has begun to be implemented in the implementation of the *Hajj* and *Umrah* pilgrimages in Indonesia. However, the effectiveness and success of these regulations are largely determined by supervision in the field. This issue of supervision becomes important because one of the causes for the emergence of cases of congregations failing to leave earlier is the lack of supervision from the relevant institutions. The Indonesian Ministry of Religion, as the regulator, has limited personnel to supervise the behavior of *Hajj* and *Umrah* Business Managers. For this reason, intensive coordination and cooperation with other parties are needed in conducting supervision. Although the regulations made are detailed and firm, this does not guarantee that the implementation of *Hajj* and *Umrah* in the future will be free from fraud or neglecting the congregation.

Furthermore, many *Umrah* pilgrims, as consumers, still do not know their rights to get products whose quality and quantity are commensurate with the financial burden they give to entrepreneurs. In an atmosphere of unfair competition, entrepreneurs can be short-minded to reduce service quality so that production costs can be suppressed.²⁶ The dishonesty of information displayed through advertising media also often misleads consumers so that consumers often do not realize that the information received about a product does not meet the actual reality.²⁷ This situation is an indication that selling products below the standard price has a high risk and will have a major impact on consumers.

The last part of the form of protection for consumers is the aspect of prosecution. Taking action is part of the government's responsibility to provide legal certainty to conflicting parties. In the context of organizing *Hajj* and *Umrah*, the actions were taken by the government, in this

²⁶ A. Zen Umar Purba, 'Perlindungan Konsumen: Sendi-Sendi Pokok Pengaturan', *Jurnal Hukum & Pembangunan*, 22.4 (1992), 393–408 <<https://doi.org/10.21143/jhp.vol22.no4.386>>.

²⁷ Abdul Halim Barkatullah, 'Perlindungan Hukum Bagi Konsumen Transaksi E-Commerce Lintas Negara di Indonesia' (unpublished Doctoral Dissertation, Universitas Islam Indonesia, 2006), p. 51.

case, the Ministry of Religion of the Republic of Indonesia, is to carry out consumer protection guidance to impose sanctions on some *Hajj* and *Umrah* travel agents who have committed violations especially concerning embezzlement of congregation funds that caused failures of the applicants to go to the Holy land. In the case of First Travel and Abu Tour, for example, the Ministry of Religion of the Republic of Indonesia has imposed administrative sanctions in the form of revocation of both licenses as PPIUs and at the same time undergoing a court process for claims from congregants who failed to leave (congregational embezzlement).²⁸ The revocation of problematic PPIU permits, including 12 PPIUs whose operational permits were revoked in 2020, is expected to be a lesson for other PPIUs not to do the same thing.²⁹

Actions in the form of criminal law for perpetrators of violations so far have also been enforced through legal processes in court, as seen in the verdicts of the three accused leaders and commissioners of First Travel who were sentenced to 15, 18, and 20 years in prison on May 30, 2018, due to embezzlement of congregational money.³⁰ Likewise, four high-ranking officials from Abu Tours who were also accused in the case of embezzlement and money laundering of the congregation, whose officials were sentenced to 14, 16, 19, and 20 years in prison on January 27, 2019.³¹

Unfortunately, the government's act of imposing civil law sanctions has not been fully implemented. carried out. This is shown by the number of pilgrims and travel agency agents who have problems, feel disappointed

²⁸ In the case of PT. Global Inspira Tour who embezzled more than Rp. 100 billion for failing to send around 6,300 pilgrims, the Indonesian Ministry of Religion cannot provide administrative sanctions, because the travel agency is a Non-PPIU who does not yet have an Umrah operational permit.

²⁹ Rosmha Widiyani, 'Kemenag Cabut Izin 11 Penyelenggara Umroh, Berikut Daftarnya', *detiknews* <<https://news.detik.com/berita/d-4854523/kemenag-cabut-izin-11-penyelenggara-umroh-berikut-daftarnya>>.

³⁰ 'Bos First Travel Andika Divonis 20 Tahun, Anniesa 18 Tahun Penjara' <<https://news.detik.com/berita/d-4044819/bos-first-travel-andika-divonis-20-tahun-anniesa-18-tahun-penjara>>.

³¹ 'Permohonan Banding Istri Bos Dan 2 Petinggi Abu Tours Ditolak Pengadilan Tinggi Makassar Halaman All - Kompas.Com' <<https://regional.kompas.com/read/2019/06/25/16493051/permohonan-banding-istri-bos-dan-2-petinggi-abu-tours-ditolak-pengadilan?page=all>>.

because the demands for compensation through civil legal processes are not fulfilled, even though the congregation's funds collected and deposited into travel reach five billion Rupiahs.³² Indeed, there have been attempts by some agents to sue the problematic PPIU. In the case of Abu Tour, for example, a civil legal process in the form of PKPU was submitted by 9 (nine) agents, with the hope that the PKPU process could provide an opportunity for travel parties to depart pilgrims. But again the law is not in favor of consumers, because a peace agreement was not reached until finally Abu Tour was sentenced to bankruptcy, unable to return the congregation's funds, even though the costs incurred by agents in the PKPU process reached 500 million Rupiahs.³³ The Indonesian Ministry of Religion itself cannot intervene in court decisions, considering that pilgrims who fail to leave are the responsibility of the travel party. If it turns out that the traveler is involved in a legal problem, the congregation must wait for a court decision to have legal force.³⁴

Basically, according to PMA No. 8 of 2018 concerning the Organizing of *Umrah* Worship Trips, the settlement of cases of *Umrah* pilgrims is within the policy area of the Ministry of Religion of the Republic of Indonesia, namely by examining reports received from congregations affected by cases by studying evidence from reports received by the Ministry of Religion. If evidence is found, the Ministry of Religion calls the relevant parties, in this case, the licensed *Umrah* or travel organizer, but if the travel is not licensed, the Ministry of Religion recommends that the congregation report it to the Police. This policy, from the point of view of consumer protection, looks ambiguous because unlicensed travel certainly cannot send *Umrah* pilgrims without assistance from licensed travel. After all, the Ministry of Religion has implemented a policy for the Integrated *Umrah* and Special *Hajj* Supervision Information System (Sipatuh) in 2018, which later changed. become the Computerized Integrated Management System for *Umrah* and Special *Hajj* (Siskopatuh)

³² Syalbiah, an agent of Abu Tour Makassar, 2020.

³³ Indriyani Rahayu, an agent of Abu Tour, Makassar, 2020.

³⁴ Director of Special Hajj and Umrah Development at the Ministry of Religion of the Republic of Indonesia, Arfi Hatim, 2020.

in 2019 which requires the issuance of an *Umrah* visa after being registered in the system run by the Indonesian Ministry of Religion. Therefore, in resolving the case of *Umrah* pilgrims failing to leave, it should be the full responsibility of the Ministry of Religion of the Republic of Indonesia, starting from supervision to enforcement.

Referring to the *ijtihad* of 'Umar bin Khattab and 'Ali bin Abî Thâlib, the *ta'zîr* punishment in the context of *hajj* and *umrah* business violations such as fraud is very appropriate to use. Because the crimes committed by the perpetrators involved not only deceived or embezzled congregational funds but also damaged the holy intentions of the congregation to go to worship in the holy lands of Mecca and Medina. Therefore, the additional punishment for business actors who have sacrificed the congregation, in particular victims of failing to leave and not returning the congregation's deposit funds, is proposed to be doubled in terms of prison sentences such as CEO Abu Tour from 20 years to 40 years in prison. If this kind of *ta'zîr* punishment is applied in Indonesia, especially in the case of *hajj* and *umrah*, it can be hoped that it will provide a deterrent and deterrent effect for naughty travelers.

Conclusion

Based on the results of the discussion above, the following conclusions can be drawn. In the perspective of Islamic law, consumer protection is part of the government's obligations that must be implemented, which include: providing consumer education, prohibiting fraudulent commercial practices, as well as taking strict action against the perpetrators. The presence of RI Law no. 8 of 1999 concerning Consumer Protection is the government's effort to provide guarantees of protection to pilgrims for *Hajj* and *Umrah* so that their rights as consumers can be fulfilled properly.

The fulfillment of consumer rights in the *Hajj* and *Umrah* business, especially in the last three years, has not been fully realized because there are still many PIHK (Special *Hajj* Organizers) and PPIU (*Umrah* Worship Travel Organizers) who fail to dispatch their congregations and do not provide compensation. loss to victims who fail to leave.

Apart from that, dispute resolution through the courts, as in the case of First Travel, is also impartial to the victims because their assets were confiscated by the State and not returned to the congregation. There is a possibility to impose sanctions on the Travel Bureau for *Umrah* Worship Travel, both PPIU, and Non-PPIU, which violate the provisions, causing the congregation to fail to leave or be abandoned in the country or abroad. In the form of additional punishment, or even double the punishment. Lack of knowledge about consumer protection and weak legal protection for consumers in the *hajj* and *umrah* business are two big homework that must be completed by the government, in particular, in this case, the Ministry of Religion of the Republic of Indonesia.

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