

Indonesia Hajj Fund Investment:

A Perspective of Islamic and National Law

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Abstract—Hajj funds is fund for depositing the costs of organizing the Hajj, an efficiency fund for the implementation of Hajj, an endowment fund for the people, as well as the value of benefits controlled by the state in the context of organizing the Hajj and implementing an activity program for the benefit of the Ummah. This study aims to determine the investment of Hajj funds in Indonesia which has a value that is not small, so that from the large number of deposits in Islamic banks it has the potential to be invested in other sectors that do not conflict with Islamic law and national law, and can generate other benefits from the funds. This study uses a normative juridical method, using primary legal data sources in the form of laws and regulations in Indonesia, the Qur'an, hadith and other legal rules, as well as secondary legal sources such as related journals, articles and books. Data were collected by literature study method and analyzed using descriptive analysis method. The results of this study indicate that investment in Hajj funds can be carried out in several financial and infrastructure sectors in accordance with applicable regulations, both Islamic law and national law to achieve greater benefit.

Keywords—fund, hajj, invest, law

I. INTRODUCTION

Indonesia, as the largest Muslim-majority country in the world, is part of the demographic bonus for the large amount of hajj funds. In May 2020 the number of waiting lists for Indonesia's regular Hajj reached 4,677,176 people, and the Hajj funds per May 2020 amounted to Rp. 132 trillion and the Benefit Fund of Rp. 3.4 trillion [1].

The requirements and obligations that must be paid as a sign of being someone who will perform the pilgrimage are approved by making a payment as an advance for Hajj registration, this fund is as much as 25 million and will be deposited directly to the Hajj financial management agency or commonly known as BPKH, which where BPKH will take on the role of representative of legitimate pilgrims when depositing hajj cash funds which is carried out through a bank that accepts deposits for hajj financing or known as BPS BPIH. The initial Hajj funds deposited are in the form of an initial deposit of Hajj funds, the value of the benefits that will later be obtained, as well as the people's endowment fund. It is

obligatory at the beginning of registration for every Indonesian as a candidate for Hajj to deposit initial funds considering the Hajj financing that will be felt when performing the worship later, these funds are deposited in the financing of Hajj funds held by Islamic banks [2].

Exchange rate risk in determining the cost of Hajj can be faced if the initial deposit funds from prospective pilgrims can be managed effectively and efficiently, one of which is by making Hajj Financial Investments in various appropriate investment instruments, which in 2017 will be managed by the Management Agency. Hajj Finance (BPKH).

In accordance with Article 46 Paragraph 2 of Law no. 34 of 2014, Hajj Finance can be placed and/or invested. Where, Hajj Financial Investment is carried out by the BPKH Implementing Body, especially Members of the Investment Implementing Body. The Implementing Body is the BPKH organ that carries out the Hajj Planning, Implementation, Accountability, and Financial Reporting. Meanwhile, Investment Implementing Members are members of the BPKH Implementing Body who are obliged to execute Hajj Finance investments, namely members of the Investment Executive Board together with members of the Development Implementing Body.

In 2020, the proportion of Hajj investment funds placed in savings/deposits will again be reduced to only 30% and shift this proportion to sukuk investment and direct investment [3].

This is an opportunity to innovate investment in Hajj funds with the aim of benefiting both Hajj funds and waqf assets in Indonesia. One of them is for public welfare considering the high poverty rate in Indonesia, especially after the Covid 19 pandemic. The Central Statistics Agency (BPS) noted that the poverty rate as of March 2020 had increased to 26.42 million people, with a percentage of 9.78 percent compared to the previous year [4]. This study is to determine the views of national law and Islamic law regarding investment in Hajj funds in Indonesia.

In previous research, it has not been found specifically that discusses the concept and legal basis related to investment in Hajj funds in the perspective of Islamic and national law in Indonesia. This study aims to determine the investment of Hajj

funds in Indonesia which has a value that is not small, so that from the large number of deposits in Islamic banks it has the potential to be invested in other sectors that do not conflict with Islamic law and national law, and can generate other benefits from the funds.

II. METHODS

The method used in this study is a qualitative method with a normative juridical approach. The data collection used in this research is library research, which is a type of research whose data is obtained from books, books, magazines, newspapers, journals and other records that are relevant to this research. In this legal research, secondary data used includes, among others: binding legal materials, namely: Law No. 34 of 2014 concerning the financial management of Hajj and other regulations, the Qur'an, the Book of Hadith and the Book of Fiqh, MUI Fatwa, Journals or scientific papers related to legal issues of Hajj fund investment and the Hajj Financial Management Agency (BPKH).

In this normative legal research, data processing is only aimed at qualitative descriptive data analysis, namely the material or legal materials for further study and analysis of their contents, so that the level of synchronization and the feasibility of norms can be known.

III. RESULTS AND DISCUSSION

A. Investment of Hajj Funds According to National Law

The definition of Hajj funds based on Article 1 point 1 of Law No. 34 of 2004 is a fund for depositing the costs of organizing the Hajj, an efficiency fund for the implementation of Hajj, an endowment fund for the people, as well as the value of benefits controlled by the state in the context of organizing the Hajj and implementing an activity program for the benefit of the Ummah. The number of waiting lists for prospective pilgrims is very large, causing the amount of Hajj funds stored in government accounts to continue to increase [5].

Hajj Financial Investment is defined as the activity of placing the financial resources of the Hajj Financial Management Agency in business activities that do not conflict with sharia principles and applicable laws and regulations to obtain returns after considering an in-depth study of the potential risks and benefits that will be obtained as a result of business activities [6]. In accordance with Article 46 Paragraph 2 of Law no. 34 of 2014, Hajj Finance can be placed and/or invested. Where, the Hajj Financial Investment is carried out by the BPKH Implementing Agency.

The implementation of Hajj fund investment by BPKH also cannot be separated from Government Regulation (PP) No. 5 of 2018 which provides constraints on the allocation of Hajj fund investment [7], as follows:

- 1) Investment in Gold is a maximum of 5% of the total placement and/or Hajj Finance investment

- 2) Direct Investment of a maximum of 20% of the total placement and/or investment of Hajj Finance.
- 3) Other Investments maximum 10% of the total placement and/or Hajj Finance investment.
- 4) Investment in Sharia Securities is the remainder of the total placement of Hajj Finance minus the amount of investment in the form of Gold, Direct Investment, and Other Investments.

In addition, Hajj Financial Investments in the form of securities include:

- 1) State Sharia Securities (SBSN) issued by the central government;
- 2) Sharia Securities issued by Bank Indonesia;
- 3) Sharia Securities regulated and supervised by the Financial Services Authority. (Article 28 Paragraph 1 PP No. 5 of 2018), including: (1) sharia shares listed on the stock exchange; (2) sukuk; (3) sharia mutual funds; (4) Islamic asset-backed securities; (5) Islamic real estate investment funds; and (6) other sharia securities. (Article 28 Paragraph 2 PP No. 5 Year 2018).

Based on Article 29 Paragraph 1 of PP No. 5 of 2018 Hajj Financial Investment in the form of gold can only be made in the form of Certified Gold Bars that are produced and/or sold domestically; and/or the form of a Gold Account managed by a sharia financial institution that is regulated and supervised by the Financial Services Authority [7].

Based on Article 29 Paragraph 1 of PP No. 5 of 2018 Hajj Financial Investment in the form of gold can only be made in the form of Certified Gold Bars that are produced and/or sold domestically; and/or the form of a Gold Account managed by a sharia financial institution that is regulated and supervised by the Financial Services Authority.

In addition, according to Article 30 Paragraph 2 of PP No. 5 of 2018, direct investment can be carried out in the form of cooperation between BPKH and domestic and/or overseas business entities and/or institutions in accordance with the provisions of laws and regulations. , among others by:

- 1) Owning Your Own Business;
- 2) Equity Participation;
- 3) Investment Cooperation;
- 4) Other Direct Investments.

What is meant by Other Investments in Article 22 Paragraph 1 of PBKH No. 5 of 2018 are investments that do not belong to the Sharia Securities investment group, Gold investment, and Direct investment. Meanwhile, the things that are prohibited in BPKH investment are as follows:

- 1) BPKH is prohibited from conducting transactions on investment instruments that are not in accordance with sharia principles (Article 25 Paragraph 1 PBKH No. 5 of 2018). In the event of a change from the investment instrument which originally included the criteria for Sharia Investment to Non-Sharia, BPKH must

immediately divest (Article 25 Paragraph 2 PBKH No. 5 of 2018).

- 2) BPKH is prohibited from conducting derivative transactions or owning derivative instruments, unless the derivative instrument is obtained by BPKH as an instrument attached to shares or bonds traded on the Indonesia Stock Exchange (Article 26 Paragraph 1 PBKH No. 5 of 2018).
- 3) BPKH is prohibited from investing in companies that are in a legal process or have a legal case in court that has the potential to materially affect the potential for the company's business continuity and/or affect the company's ability to earn profits in the future (Article 26 Paragraph 1 PBKH No. 5 of 2018).

Taking into account PP No. 5 of 2018, BPKH has set a plan for the placement and investment of hajj funds. As an illustration, in 2017, Hajj funds were only placed in two investment instruments, namely savings/deposits (65%) and Sukuk (35%). In 2018, referring to PP No. 5 of 2018, BPKH plans to differentiate the investment of Hajj funds in gold (5%), direct investment (15%), and other investments (10%).

In addition, the proportion of fund placements in savings/deposits was reduced to 50% and placements in sukuk to 20%. Then, in 2020, the proportion of fund placements in savings/deposits was reduced to only 30% and shifted this proportion to sukuk investment and direct investment.

B. Investment of Hajj Funds According to Islamic Law

Hajj funds in Law Number 34 of 2014 Article 1 number (2) are defined as funds for depositing the costs of organizing the pilgrimage, funds for efficiency in organizing the pilgrimage, endowment funds for the people, as well as the value of benefits controlled by the state in the context of organizing the pilgrimage and implementing programs. activities for the benefit of Muslims. This law defines the Hajj fund as a combination of the people's endowment fund (DAU) and the cost deposit and efficiency of the implementation of Hajj [8].

Based on the decision of the Ijtima Ulama of the Indonesian Fatwa Commission IV of 2012 concerning the status of ownership of BPIH deposit funds that are on the waiting list, that BPIH deposit funds for Hajj candidates who are included in the waiting list in the account of the Minister of Religion, may be assigned for certain matters. productive (providing profits), including placement in Islamic banking or to be invested in the form of sukuk.

Referring to the provisions in Law no. 34 of 2014 and the results of the Ijtima Ulama IV Commission B-2 Fatwa Commission of the Indonesian Ulema Council (MUI) in 2012, the management of hajj funds for investment purposes in the productive sector such as infrastructure development is still possible. The conditions are that the investment has a low level of risk, has a benefit value for the pilgrims, and its management is based on sharia principles [9].

Also in the Fiqh Rules:

“الأصل في المعاملات الإباحة إلا أن يدل دليل على تحريمها

"Basically, all forms of muamalah can be done unless there is evidence that forbids it"

Differences of opinion regarding the development of waqf forms are unavoidable, especially regarding risk management mechanisms in investment.

Remembering the hadith of Amr bin 'Auf that the Messenger of Allah said:

الصُّلْحُ جَانِبٌ بَيْنَ الْمُسْلِمِينَ إِذَا صَلَّحَا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِذَا شَرَطُوا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا

"Maintaining peace with fellow Muslims is permissible, except for peace that permits something that is unlawful or forbids something that is lawful. And the Muslims must fulfill the conditions that they have agreed upon except the conditions that forbid something that is lawful or make something lawful that is unlawful." (HR. Tirmidhi)

This gives rise to the following fiqh rules:

الأصل الشرط المعاملات الحلال الإباحة لا ليل

"The law as long as it stipulates the conditions in mu'amalah is lawful and permissible unless there is evidence (forbidding it)"

This rule provides an explanation that it is permissible to make innovations in the field of muamalah, especially to make certain conditions in the form of waqf innovation and its development in investment as long as it does not justify what is haram or vice versa.

The benefit that is presented through Islamic philanthropy instruments is a new hope to achieve the economic welfare of the community, especially in Indonesia. According to Jalal al-Dn 'Abdu al-Rahmân, in his book al-Mashalih al-Mursalah, defines maslahah from the point of view of Arab customs, as follows:

المصلحة وردت في لغة العرب الأعمال الباعثة على نفع الإنسان

"Maslahah that applies in Arabic language means that all forms of charity that are born contain benefits for humans [7]"

So that the value of mashlahah with the aim of community welfare becomes the main goal in the development and management of cash waqf in Indonesia. The approach to the concept of mashlahah mursalah as one of the postulates of Islamic law. The goal of sustainable community benefit as a progressive effort to achieve the goals of Islamic law (maqâshid ash-syari'ah), namely protecting waqf property and also the assets of the people in the pilgrimage funds entrusted by the community.

IV. CONCLUSION

Investments in Hajj funds in Indonesia according to Islamic law may be carried out based on the value of the *maslahah* generated by the investment, as well as the trust in its management. However, it needs to be considered is the form of the contract in the investment that must not violate sharia and needs to be supervised by the competent authorities such as the national sharia board and sharia supervisory board in every line so that the investment process and the results still meet sharia elements. In addition, in the perspective of national law, investment in Hajj funds in Indonesia can be carried out and has a legal basis, namely in the Hajj Financial Management Law No. 34 of 2014 which is an important note in the regulations that have been in effect is the socialization related to the rules of the mechanism, and transparency of funds to the public at large in order to avoid fake news or hoaxes.

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