

RISK COVERAGE ACCORDING TO DSN-MUI FATWA NO. 39 OF 2002 CONCERNING HAJJ INSURANCE: A STUDY AT THE MINISTRY OF RELIGIOUS AFFAIRS OF BANDA ACEH CITY

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Abstract

This article aims to analyse the practice of Hajj insurance at the Ministry of Religious Affairs of Banda Aceh City with a review according to Fatwa DSN-MUI Number 39 of 2002 concerning Hajj insurance. The role of the government in the management of Hajj insurance and the mechanism for submitting Hajj insurance claims are analysed. The problems in this study focus on how is the practice of Hajj insurance for pilgrims and the mechanism for submitting Hajj insurance claims at the Ministry of Religious Affairs of Banda Aceh City with relevance to the DSN-MUI Fatwa Number 39 of 2002 concerning Hajj Insurance Practices. The primary data is gathered from interviews and observations. While secondary data is obtained from the results of research related to this study. The results showed that, first, the insurance practice at the Ministry of Religious Affairs of Banda Aceh City is only limited as a facility provider who proposes to the Central Ministry of Religion Office as a policy holder, so that the insurance claim process occurs at the central level and can be confusing for pilgrims. Nevertheless, the Hajj insurance used by pilgrims is considered in accordance with Islamic teachings because it is sharia-based. Second, the mechanism for submitting insurance claims, families can apply for insurance to the provincial ministry of religion office which will then be submitted to the centre while carrying a number of requirements. Some of the requirements include a death certificate (SKK), a statement letter of heirs from the sub-district and the account number of the deceased or heirs. Third, in the review of the DSN-MUI fatwa No.39 of 2002 concerning Hajj insurance, the practice of Hajj insurance that occurs at the Ministry of Religious Affairs of Banda Aceh City is still less than optimal. Hajj pilgrims do not even know at all about the insurance claim process. Especially for pilgrims from the regions, the process of submitting claims is considered difficult to understand. In fact, the heirs of pilgrims often do not know how to submit insurance claims used by pilgrims, the absence of representatives from PT Asuransi Takaful Keluarga in the regions is also an obstacle in the process of submitting claims, so that the families of pilgrims face challenges in submitting claims with a long procedure.

Keywords: *Fatwa DSN-MUI, Hajj insurance, Indonesia, Islamic Economic Law, Risk Management*

Abstrak

Artikel ini bertujuan untuk menganalisis praktik asuransi haji di Kementerian Agama Kota Banda Aceh dengan tinjauan menurut Fatwa DSN-MUI Nomor 39 Tahun 2002 tentang asuransi haji. Analisis dilakukan terhadap peran pemerintah dalam pengelolaan asuransi haji dan mekanisme pengajuan klaim asuransi haji. Permasalahan dalam penelitian ini yaitu mengkaji praktik asuransi haji bagi jamaah haji dan mekanisme pengajuan klaim asuransi haji pada Kementerian Agama Kota Banda Aceh dan relevansinya dengan Fatwa DSN-MUI Nomor 39 Tahun 2002 Tentang Praktik Asuransi Haji. Adapun pendekatan yang penulis lakukan adalah penelitian yuridis-empiris. Data yang digunakan adalah data primer yang merupakan hasil dari wawancara dan observasi. Sedangkan data sekunder didapat dari hasil penelitian terkait dengan penelitian ini. Hasil penelitian menunjukkan bahwa, pertama, praktik asuransi pada Kemenag Kota Banda Aceh hanya sebatas sebagai penyedia fasilitas yang mengusulkan kepada Kantor Kementerian Agama Pusat sebagai pemegang polis, sehingga proses klaim asuransi terjadi di tingkat pusat dan dapat membingungkan bagi jamaah haji. Meskipun demikian, asuransi haji yang digunakan oleh jamaah haji dianggap sesuai dengan ajaran Islam karena berbasis syariah. Kedua, mekanisme pengajuan klaim asuransi, keluarga dapat mengajukan asuransi kepada kantor kementerian agama provinsi yang kemudian akan disampaikan ke pusat sambil membawa sejumlah persyaratan. Beberapa persyaratan yang diberlakukan di antaranya surat keterangan kematian (SKK), surat pernyataan ahli waris dari kecamatan serta nomor rekening almarhum atau ahli waris. Ketiga, Dalam tinjauan fatwa DSN-MUI No.39 tahun 2002 tentang asuransi haji bahwasanya praktik asuransi haji yang terjadi di Kemenag Kota Banda Aceh masih kurang optimal. Jamaah haji bahkan tidak mengetahui sama sekali terkait proses klaim asuransi yang dijalankan. Terutama bagi jamaah haji dari daerah, proses pengajuan klaim dianggap sulit dipahami. Bahkan, ahli waris jamaah haji pun sering kali tidak mengetahui cara mengajukan klaim asuransi yang digunakan oleh jamaah haji, tidak adanya perwakilan dari PT. Asuransi Takaful Keluarga di daerah juga menjadi kendala dalam proses pengajuan klaim, sehingga keluarga jamaah haji menghadapi tantangan dalam mengajukan klaim dengan rantai informasi yang Panjang.

Kata Kunci: *Asuransi haji, Fatwa DSN-MUI, Hukum Ekonomi Islam, Indonesia, dan Manajemen Resiko*

INTRODUCTION

Hajj is the fifth pillar of Islam, forming the perfecting act of worship for Muslims. Hajj is also a specific type of worship, with provisions both regarding the place, time, and procedures for its implementation. Therefore, Hajj is one of the main pillars of Islamic teachings. While in Shara', Hajj is a form of worship that directs Muslims to the *Temple of Allah* and certain locations to carry out a series of special worship practices, because Hajj is different from other worship, where its implementation requires precise timing.¹

The implementation of Hajj requires efficient, organised, safe, and smooth management. All of this aims to provide optimal protection and ensure security and safety for prospective pilgrims in order to achieve a mabrur hajj, which is the hope of all prospective pilgrims. Therefore, every individual Muslim is expected to be able to fulfil the requirements of *istitha'ah*, both in material, physical, and mental aspects.²

Istitha'ah, etymologically, refers to the ability or readiness to perform an action. While in terms, *Istitha'ah* refers to the ability of pilgrims in terms of health, including physical and mental aspects that can be measured through examination. This is to ensure that the pilgrims have the ability to perform the pilgrimage in accordance with the teachings of Islam. *Istitha'ah* includes physical readiness, mental health, and financial resources to make the pilgrimage to Mecca.³

According to the fatwa of the Indonesian Ulema Council (MUI), a person is considered to have *Istitha'ah* in performing the Hajj pilgrimage if his physical, spiritual, and financial preparation allow him to perform the pilgrimage without neglecting his responsibilities to his family.⁴

Indonesia is one of the countries that sends a large number of pilgrims every year. Although the hajj quota given by the government of the Kingdom of Saudi Arabia in 2023 reached 221,000 pilgrims, the large number of participants still resulted in a long queue, even for the next dozen years. Considering the large number of pilgrims, the government has issued regulations concerning the safety and protection aspects for pilgrims who experience accidents or die. One of the

¹ Ahmad Sanusi and Sohari, "*Ushul Fiqh*", (Jakarta: Rajawali Pres, 2015), p. 245. 245.

² Akh Minhaji, *Islamic Law and Local Tradition:: A Socio-Historical Approach* (Kurnia Kalam Semesta, 2008).

³ Ahmad Kartono, *Legal Solutions to Manasik Problems in Hajj According to the Four Mazhabs*, (Jakarta: Pustaka Cendikiamuda, 2016), p. 16. 16.

⁴ Asrorun Ni'am Sholeh, *Istitha'ah Health in Hajj Perspective of MUI Fatwa*, (Jakarta: Bidakara, 2017), p. 9.

responsibilities in Hajj protection is to provide insurance for prospective pilgrims and Hajj officers.⁵

This Hajj insurance product can be found at the Ministry of Religious Affairs of Banda Aceh City. The Ministry of Religious Affairs is responsible for organising and managing the implementation of Hajj as regulated and explained in the Indonesian Ulema Council (MUI) Fatwa Number 39/DSN-MUI/X/2002 on Hajj insurance. This fatwa explains that hajj insurance uses a *tabbaru* contract, with the aim of mutual assistance among pilgrims as *tabbaru* givers. Sharia insurance acts as a grant fund manager in the implementation of Hajj insurance. In addition, the fatwa also mentions in a special provision that Hajj pilgrims have the obligation to pay premiums as *tabarru'* funds, which are part of the Hajj Implementation Fee (BPIH).⁶

Based on an interview with Mr Muhammad Iqbal, Section Head of the Hajj and Umrah section of the Banda Aceh City Ministry of Religion, the number of pilgrims registered at the Banda Aceh City Ministry of Religion Office in 2023 was 1,172 people and for those who departed for the hajj in that year were 513 people who were covered by insurance. The insurance company that covers the insurance of pilgrims is PT Asuransi Takaful Keluarga. All prospective pilgrims registered at the Ministry of Religious Affairs of Banda Aceh City who depart for Hajj have received Hajj insurance coverage. Hajj insurance has become part of the cost of organising the pilgrimage (BPIH) paid by prospective pilgrims through the Ministry of Religion.⁷ Because the implementation of conventional insurance is considered incompatible with sharia principles, the insurance used must comply with Islamic rules.⁸

The Ministry of Religious Affairs has a dual role as a regulator in the implementation of the Hajj pilgrimage and at the same time as a manager, including providing insurance for prospective pilgrims. Therefore, prospective pilgrims have the opportunity to understand the provisions related to Hajj insurance provided by the government. Prospective pilgrims also need to know the process of implementing the insurance provided by the government,

⁵ Chairul Fahmi, Uswatun Hasanah, and Yusriaina Yusuf, 'Marriage Law Reform: Efforts in Achieving Gender Equality', *Media Shari'ah* : 25, no. 1 (30 June 2023): 121-34, <https://doi.org/10.22373/jms.v25i1.16514>.

⁶ MUI National Shari'ah Council, Fatwa of the National Shari'ah Council No. 39/DSN-MUI/X/2002 on Hajj insurance

⁷ Interview with Muhammad Iqbal, Section Head of the Hajj and Umrah Section (PHU) of the Ministry of Religious Affairs of Banda Aceh City, on 11 January 2023 at 11.00 am.

⁸ Chairul Fahmi, 'PHILOSOPHICAL TRANSFORMATION IN THE APPLICATION OF ISLAMIC SYARIAT (Critical Analysis of the Implementation of Islamic Shari'at in Aceh)', *Al-Manahij: Journal of Islamic Legal Studies* 6, no. 2 (2012): 167-76.

including whether it is in accordance with the principles of Islamic law rooted in the Quran, as regulated in Fatwa DSN MUI Number 39 of 2002 concerning Hajj insurance. The Akad commonly used in Islamic insurance is the Akad *tijarah* for commercial purposes, for example *wadiah*, *mudharabah*, and *wakalah*. While *tabarru'* Akad is done for the purpose of kindness and help, without commercial orientation.⁹

The rapid development of science and technology today has a significant impact on people's lives. Although the Ministry of Religious Affairs and PT Asuransi regulate insurance for pilgrims, information about Hajj insurance has never been socialised. One of the problems that arise in the field is the lack of knowledge or understanding of Hajj insurance participants about the insurance products they have. A common obstacle faced by Hajj insurance participants is that they are often unaware of the type of insurance used and provided by the government.¹⁰ Especially for pilgrims from the regions, the process of filing claims is considered difficult to understand due to the lack of information to the families of pilgrims.

This creates an element of uncertainty (*gharar*) because it is not always clear whether or not a person will actually perform the Hajj pilgrimage, nor is it certain when or how a claim will be made in a given situation. Hajj insurance must consider the principle of *gharar* to ensure that the transaction does not violate Shariah principles that avoid excessive uncertainty. Transactions that contain *gharar* usually involve excessive uncertainty or lack of sufficient information for one or both parties involved in the transaction. This uncertainty in the insurance contract leads to uncertainty regarding the claims procedure, premium payments, or benefits to be received.

This also applies to pilgrims in the Ministry of Religious Affairs of Banda Aceh City. In DSN MUI Fatwa No. 39 of 2002, it is stated that the Minister of Religious Affairs acts as the master policy holder and is responsible for all insurance implementation in the Hajj pilgrimage, but prospective pilgrims and heirs do not even know the mechanism for filing insurance claims. So if a person is registered with Hajj insurance but ultimately cannot perform the Hajj pilgrimage for certain reasons such as deteriorating health or sudden financial problems. In this case, there is uncertainty (*gharar*) in the transaction because at the time of purchasing the insurance, there is no guarantee that the party will actually perform the Hajj. In addition, if a person submits an insurance claim for

⁹ Muhammad Nejatullah Siddiqi, *Insurance in Islam* (Bandung: Pustaka, 1987), pp. 39.

¹⁰ Interview with M. Yusuf Hamid, prospective pilgrim, 7 January 2023, in Ulee Kareng Sub-district.

Hajj without sufficient evidence or with unclear reasons, it can also lead to uncertainty regarding the mechanism in the claim submission process.

Although the government has regulated the existence of Hajj insurance in Fatwa DSN-MUI Number 39 of 2002, many pilgrims are not fully aware or understand these aspects. The absence of representatives from PT Asuransi Takaful Keluarga in the regions is also an obstacle in the process of submitting claims. Moreover, the process of processing Hajj insurance claims takes too long, so that insurance participants face financial difficulties or do not get the funds needed at the right time, which can interfere with the implementation of the Hajj pilgrimage. These difficulties make the families of pilgrims face challenges, especially in filing claims with a long chain of information.

DATA AND METHODS

This article uses a conceptual approach, namely an approach from views or doctrines that are in accordance with the legal issues studied, so that the views or legal doctrines are used as a basis for analysing the legal issues studied.¹¹ The legal issues discussed in this research are legal issues related to Hajj insurance contained in DSN-MUI Fatwa Number 39 of 2002. The research was conducted at the Ministry of Religious Affairs of Banda Aceh City. This type of research leads to *doctrinal* legal research. The data sources of this research are primary data and secondary data. Primary data has a very strong relationship with the research topic under study.¹² The primary data in this study are the results of interviews from the Ministry of Religion of Banda Aceh City, Regional Office of the Ministry of Religion of Aceh, prospective pilgrims, and PT Takaful Family Insurance. While secondary data is data that is obtained indirectly but has been available in various forms. The data sources that will be used in this thesis are in the form of books, documents, books, hadith, verses of the Koran and notes related to the issue of Hajj insurance based on the provisions of the DSN-MUI Fatwa.¹³ In this research, data collection techniques carried out through library research and field research are observation, interview, and documentation techniques.

¹¹ Peter Mahmud Marzuki, *Legal Research*, Cet. 13, (Jakarta: Kencana Prenada Media Group, 2017), p. 133

¹² Mohammad Nazir, *Research Methods* (Jakarta: Ghalia Indonesia, 2005), p.174.

¹³ Nur Indrianto, Bambang Sopomo, *Business Research Methodology for Accounting & Management* (Yogyakarta: BPFE, 2013), p.142.

RESULTS AND DISCUSSION

A. Definition and Legal Basis of Hajj Insurance

Hajj insurance is a form of financial protection provided to pilgrims to anticipate various risks that may occur. Usually, the cost of Hajj insurance is included in the total Hajj travel cost paid to the ministry of religion. This means that the Hajj travel fee paid also includes the insurance premium.¹⁴ Hajj insurance plays an important role in reducing financial risks for pilgrims, especially in the event of death. Through insurance, at least they can leave an inheritance for their family after death. Hajj insurance aims to provide financial protection to pilgrims and their families, so that they can cope with various contingencies that may occur during the Hajj journey without having to worry about the financial impact that may occur.¹⁵

In the Quran, Allah SWT tells His servants to prepare themselves for the future. Therefore, it is advisable for some of us to make efforts to save and take insurance. Taking insurance is a step to be prepared for the possibility of calamities that can befall us.¹⁶ Allah SWT says in the Quran, in Surah Al-Hasyr (59) verse 18:

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَلْتَنْظُرْ نَفْسٌ مَّا قَدَّمَتْ لِغَدٍ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ.

"O you who believe! Fear Allah and let every man consider what he has done for tomorrow, and fear Allah. Verily, Allah is Exhaustive of what you do."¹⁷

Thus, the number of pilgrims who die during the Hajj pilgrimage is caused by various factors, including fatigue due to tiring activities and the high number of elderly pilgrims. Therefore, the use of Hajj insurance services is the right step, along with the maximum protection needed during the trip. The importance of Hajj insurance that is in accordance with sharia principles also gives confidence

¹⁴ Uswatun Hasanah, *Insurance in the Perspective of Islamic Law*, (Asy-Syir'ah: Journal of Shari'ah and Legal Sciences, 2013, p.47.

¹⁵ Minhaji, *Islamic Law and Local Tradition*.

¹⁶ Muhammad Syakir Sula, *Sharia Insurance (Life and General): Concepts and Operations* (Jakarta: Gema Insani Press, 2004, Cet 1), p 86.

¹⁷ Sunarjo, *Al-Qur'an and translation, Ministry of Religious Affairs* (Jakarta, 1971), p. 623.

to prospective pilgrims that the use of such insurance does not violate the rules of Islam.¹⁸

The law governing insurance for prospective pilgrims is contained in Law No. 13/2008 on the Organisation of Hajj in Article 51 paragraphs 1-2, which reads:

- a. Hajj pilgrims and officers are insured for permanent disability due to accidents and death.
- b. Insurance as referred to in paragraph (1) is given to pilgrims and hajj officers with a coverage period from the time the pilgrims depart from their place of residence until they return to their place of residence.¹⁹

Hajj insurance has also been regulated and is indeed recommended. This is confirmed through the fatwa of the Indonesian Ulema Council (MUI) Number 39/DSN-MUI/X/2002 concerning Hajj insurance, which is the first general provision:

1. Hajj insurance is not justified according to Sharia is insurance that uses a conventional system.
2. Hajj insurance that is permitted according to Sharia is insurance based on Sharia principles.
3. Hajj insurance based on Sharia principles is ta'awuni (mutual help) between fellow pilgrims.
4. The insurance agreement is a *tabarru'* (grant) agreement that aims to help fellow pilgrims who are affected by a disaster. The agreement is made between the pilgrims as *tabarru'* givers with Sharia insurance acting as grant fund managers.

The second is a special provision:

1. The Minister of Religious Affairs acts as the master policyholder of all pilgrims and is responsible for the implementation of the Hajj, in accordance with applicable regulations.
2. Hajj pilgrims are obliged to pay a premium as a *tabarru'* fund which is part of the cost component of the Hajj pilgrimage (BPIH).
3. Hajj insurance premiums received by Sharia insurance must be separated from other insurance premiums.

¹⁸ Darmawati, 'Islamic Law and Copyright in Academic World: The Dynamic Debates between Privatization and Distribution of Knowledge', *Mazahib*: 17, no. 1 (2018), <http://dx.doi.org/10.21093/mj.v17i1.948>.

¹⁹ Law No 13 of 2008 Concerning Hajj Organisers

4. Sharia insurance can invest *tabarru'* funds in accordance with DSN fatwa Number 21/DSN-MUI/X/2001 concerning general guidelines for Sharia insurance, and the investment returns are added to the *tabarru'* fund.
5. Sharia Insurance is entitled to get *ujrah* (fee) for managing *tabarru'* funds whose amount is determined in accordance with fair and reasonable principles.
6. Sharia insurance is obliged to pay Claims to pilgrims as insurance participants based on the Agreement agreed at the beginning of the agreement.
7. Operational surplus is the right of pilgrims whose management is mandated to the Minister of Religious Affairs as the holder of the master policy for the benefit of the people.

This fatwa is effective from the date of its stipulation, with the affirmation that if any mistakes are made in the future, they will be corrected as needed. The benefit of this MUI fatwa is that it emphasises the need for safety protection against risks such as accidents or death during the long pilgrimage period and the associated potential risks.

B. Requirements and management of Hajj Insurance

Special requirements for Hajj insurance users used by pilgrims are having a Hajj savings account. To open a Hajj savings account, you can open it at banks that have collaborated with the Ministry of Religious Affairs of the Republic of Indonesia to handle Hajj departure matters, as well as premium payments that must be paid by pilgrims and prospective pilgrims. For insurance companies that have cooperated with banks that provide Hajj savings, the insurance fee is included in the payment of the Hajj fee. For this case, each premium will differ in value, all depending on the Hajj savings product that the pilgrims and prospective pilgrims choose.²⁰ Pilgrims need to understand the Hajj insurance claim process well. Usually, Hajj insurance claims will be taken care of by the family of the pilgrim concerned. Therefore, it is important for the pilgrims and their families to understand how to file the claim.²¹

²⁰ Abdurachman Rochimi, *Everything About Hajj and Umrah*. (Jakarta: PT. Gelora Aksara Pratama, 2010). Page 9.

²¹ Ahmad Luqman Hakim and Irfa Munandar, 'THE LEGALITY OF MURABAHAAH CONTRACTS SYSTEM IN ISLAMIC FINANCING INSTITUTIONS: An Analysis of Muḥammad BinṢāli Ṣālih Al-UAl-Uṣaimīn's Thought', *JURISTA: Journal of Law and Justice* 7, no. 1 (2023): 24–36, <https://doi.org/10.1234/jurista.v7i1.66>.

The general requirements for Hajj insurance may vary depending on the insurance company or financial institution that administers the insurance programme. However, here are some common requirements that are often encountered:

1. **Hajj Pilgrim Status**, Usually, Hajj insurance is only available to those who have registered as official pilgrims who will perform the Hajj in the relevant year.
2. **Age**, There is an age limit to get Hajj insurance. Usually, the minimum age is 18 years old, but it may vary depending on the terms of the insurance provider.
3. **Health**, Some insurance companies may require health checks or health forms to be filled out by prospective participants. This can affect premiums or eligibility for insurance.
4. **Premium Payment**, Prospective participants must pay insurance premiums in accordance with applicable regulations. This premium payment can be made in cash or through a payment method determined by the insurance provider.
5. **Time of Purchase**, Hajj insurance should usually be purchased before the predetermined departure date. Purchasing insurance late may reduce the benefits or availability of cover.
6. **Identity Documents**: Candidates must provide a valid identity document, such as an ID card or passport, as proof of identity to apply for Hajj insurance.
7. **Trip Information**, Candidates may also be asked to provide information related to their Hajj trip, such as departure date, flight schedule, and other information required by the insurer.
8. **Cancellation and Claims Policy**, Candidates must understand and agree to the terms and conditions of cancellation and claims procedures that apply in the Hajj insurance policy.

C. Protection for Hajj Insurance Users

Protection through insurance for Hajj pilgrims and officers is a financial effort provided to protect them from risks that may occur during the Hajj pilgrimage. The Ministry of Religious Affairs has three main responsibilities in

managing the Hajj: guidance, service, and protection. One part of the Hajj protection duty is to provide life insurance for pilgrims and Hajj officers.²²

The provision of life insurance for pilgrims and hajj officers is regulated by Law No. 13/2008 on the Implementation of Hajj and contained in Fatwa DSN-MUI No. 39/2002 on hajj insurance. It is also regulated in Government Regulation (PP) No. 79/2012, specifically in Article 29, which confirms that the cost of insurance for prospective pilgrims is included in the Hajj Implementation Fee (BPIH).²³

Hajj pilgrims do not need to pay the insurance premium directly because the cost has been included in the BPIH component. Meanwhile, the government has provided insurance for hajj officers. In its implementation, the Ministry of Religious Affairs (MoRA) partners with the company PT Takaful Family Insurance. During the 1445H/2024M Hajj pilgrimage, according to the agreed contract, the insurance recipients are divided into four groups.

1. Firstly, for pilgrims who die naturally or without a previous accident, they will receive an insurance benefit of IDR 18.5 million.
2. Second, for pilgrims who die due to accidents, they will receive insurance compensation of IDR 37 million. Including those who died on the plane, will receive additional "extra cover" compensation in addition to life insurance. The heirs of pilgrims who died on the plane will receive an additional Rp125 million from the airline.
3. Third, for pilgrims who experience total permanent disability, which means permanent loss of limbs or limb functions, they will receive insurance compensation of IDR 18.5 million. As for those who experience partial permanent disability while performing the Hajj pilgrimage, the highest compensation provided is IDR 12.95 million.²⁴

Hajj insurance as a form of protection for pilgrims who want to ensure safety and comfort against possible calamities during the Hajj pilgrimage is already attached to the pilgrim when he makes a payment on the cost of organising the Hajj pilgrimage (BPIH) for those who have entered the Hajj hostel, as stated in the SPMA (Letter of registration for entering the Hajj hostel) which

²² Ova Uswatun Nadia and Chairul Fahmi, 'COMPENSATION ON COPYRIGHT DUPLICATION IN PERSPECTIVE OF THE CONCEPT OF ḤAQ AL-IBTIKR: A STUDY ON PT ERLANGGA BANDA ACEH CITY', *JURISTA: Journal of Law and Justice* 4, no. 2 (20 December 2020): 211–79, <https://doi.org/10.1234/jurista.v4i2.27>.

²³ Government Regulation No 79 Year 2012 on the Implementation of Law No 13 Year 2008

²⁴ Ministry of Religious Affairs.go.id, *There is life insurance for pilgrims and hajj officers*, (Jakarta: national, 2019), accessed on 20 April 2024 at 17:58, <https://kemenag.go.id/nasional/kemenag-ada-asuransi-jiwa-untuk-jemaah-dan-petugas-haji-s5vaqb>.

has been counted as a candidate for the Hajj hostel, then if unwanted things happen such as illness and death, the insurance is covered until he returns to the homeland. For pilgrims who die at the Hajj boarding house, the deposit money can be withdrawn. The insurance claim process begins when the pilgrims leave their homes to the place of departure, and is valid until they return home after completing the Hajj journey. Therefore, pilgrims who depart must already have BPJS, and claims can be made through BPJS.²⁵

D. Analysis of Hajj Insurance Practices at the Ministry of Religious Affairs of Banda Aceh City

The practice of Hajj insurance for pilgrims at the Ministry of Religious Affairs of Banda Aceh city covers various aspects, such as life insurance and accident insurance. The Ministry of Religious Affairs provides accident insurance for pilgrims who have an accident during the pilgrimage.²⁶ This insurance starts from the time the pilgrims enter the Hajj dormitory, during departure, and while they are still in the dormitory at the time of return.²⁷ In this case, the Ministry of Religious Affairs cooperates with the company PT Asuransi Takaful Keluarga as the Hajj insurance provider.

In the Ministry of Religious Affairs of Banda Aceh City, the practice of Hajj insurance organised by the Ministry of Religious Affairs is an integral part of the preparation of pilgrims in carrying out the Hajj pilgrimage. Pilgrims who have registered and entered the provincial or district / city quota allocation for departure in the current year's Hajj season are entitled to pay off the BPIH within the time set by the minister, for pilgrims who do not pay off the BPIH, the person concerned automatically becomes a waiting list pilgrim for the next Hajj season. In this case, Hajj insurance plays an important role in providing financial support to the families left behind by the pilgrims, at least the pilgrims' families can receive financial compensation that can help them overcome the economic difficulties arising from the departure of the pilgrims.

Thus, the practice of Hajj insurance in Banda Aceh City not only aims to protect pilgrims from financial risks that may occur during the Hajj journey, but

²⁵ Interview with Muhammad Iqbal, Section Head of the Hajj and Umrah Section (PHU) of the Ministry of Religious Affairs of Banda Aceh City, on 11 January 2023 at 11.00 am.

²⁶ Aceh.Kemenag.go.id, Inmas Aceh, "Hajj Pilgrims Insurance at BRI", Accessed on 21 April 2024.

²⁷ RRI.co.id., Fitratun Komariah, "Prime, Government Provides Accident Insurance for Hajj Pilgrims", <https://www.rri.co.id/nasional/312892/perdana-pemerintah-beri-asuransi-kecelakaan-bagi-jemaah-haji> (Accessed on 21 April 2024, 21:12 WIB).

also provides protection and support to their families in difficult situations. In Hajj insurance, the principle of *gharar* (uncertainty) arises because it is not always clear whether or not someone will actually perform the Hajj pilgrimage, and it is uncertain when or how a claim will be submitted in a particular situation. Thus, the practice of Hajj insurance must take into account the principle of *gharar* to ensure that the transaction does not violate Shariah principles that avoid excessive uncertainty. Transactions that contain *gharar* usually involve excessive uncertainty or lack of sufficient information for one or both parties involved in the transaction because at the time of purchasing the insurance, there is no guarantee that the party will actually perform the Hajj.

Based on the results of interviews with Mr Iqbal, as the Head of Hajj and Umrah, the Ministry of Religious Affairs of Banda Aceh City only focuses on the registration, cancellation, departure, repatriation, and Hajj rituals, as well as a list of who has received Hajj insurance. For pilgrims who die in the Hajj dormitory, the money can be withdrawn, if they die on the plane the claims can all be fulfilled. Therefore, pilgrims who depart must have BPJS, so health claims can be made through BPJS, the Ministry of Religious Affairs of Banda Aceh City itself is not given the authority to take care of matters relating to the hajj insurance. In the sense that if the pilgrims have returned all the data is in the Regional Office.

Therefore, many of the pilgrims do not understand the existence of Hajj insurance, as a result, when something unwanted happens, they feel difficulties. This is because the Ministry of Religious Affairs and PT Takaful Family Insurance have never provided information or even socialisation about Hajj insurance. During the Hajj *manasiq* there is also no notification about Hajj insurance, because what the pilgrims focus on and think about is only to worship, where they can leave and return safely. The pilgrims think of insurance if there is a disaster against them.²⁸ The Ministry of Religious Affairs will provide assistance in managing the data required for the pilgrims' insurance claim process, including the claim submission procedures that must be completed. And this is where the pilgrims or their families are not aware of the insurance used by the pilgrims.

From the above statement, it can be understood that in practice, problems related to insurance for pilgrims in the field arise because the role of the Banda Aceh City Office of the Ministry of Religious Affairs is limited to being a facility provider who proposes to the Central Office of the Ministry of Religious Affairs as the policy holder. The complete claim requirements are submitted to the District/City Ministry of Religious Affairs to be verified and submitted to the

²⁸ Interview with Muhammad Iqbal, Section Head of the Hajj and Umrah Section (PHU) of the Ministry of Religious Affairs of Banda Aceh City, on 11 January 2023 at 11.00 am.

Provincial Office of the Ministry of Religious Affairs. The further process related to the claim is fully managed by the Central Ministry of Religious Affairs and the money will be transferred directly to the pilgrim's bank account where he saves.

From the author's observations, it appears that the insurance used by pilgrims has been adjusted to the principles of Islamic teachings. This is because PT Takaful Keluarga is sharia-based, not conventional insurance regulated by the central government. Thus, the insurance owned by pilgrims and prospective pilgrims is guaranteed in accordance with Islamic religious principles, so that they can perform the pilgrimage without worry while in the holy land.²⁹

However, in daily practice, the understanding of insurance is less than optimal among pilgrims. This is because they do not fully understand the aspects of the insurance they use. In fact, with a good understanding of the applicable insurance, prospective pilgrims can carry out their worship more calmly and solemnly without confusion or fear while in the holy land.

1. Mechanism for Submitting Hajj Insurance Claims at the Ministry of Religious Affairs of Banda Aceh City

Hajj insurance provides a guarantee to protect against various risks that may arise during the Hajj pilgrimage, such as illness, accident, or even death. For pilgrims who have participated in the Hajj insurance programme, the process of filing a claim becomes very important if a situation occurs that requires recovery or compensation. In Banda Aceh City, the Ministry of Religious Affairs plays an important role in managing the Hajj insurance claim process. The following is a claim submission mechanism that is usually carried out by the Ministry of Religious Affairs of Banda Aceh City:

a. Document Collection

The initial step in the process of filing a Hajj insurance claim is the collection of the necessary documents. Pilgrims who want to submit a claim must provide documents such as:

- 1) A copy of the Hajj insurance policy.
- 2) Valid proof of identity (ID card or passport).
- 3) Death certificate, if the claim relates to recovery or compensation over death.

b. Claim Form Filling

Once the documents are collected, pilgrims must fill out a claim form provided by the Ministry of Religious Affairs of Banda Aceh City. This

²⁹ Ministry of Religious Affairs and PT Takaful family NO: b.256006/DT.II.2.SK.02.7/06/2019.

claim form contains detailed information about the claim being submitted, including:

- 1) Pilgrims' personal information (name, address, contact number, etc.).
- 2) Hajj insurance policy details (policy number, name of insurance provider, etc.).
- 3) A description of the event that led to the claim (for example, the type of illness or type of accident that occurred).
- 4) Details about the losses suffered and the amount of the claim filed.

c. Claim Submission

After the claim form is filled out completely, pilgrims can submit the claim to the Ministry of Religious Affairs of Banda Aceh City. The claim submission process can be done directly at the Ministry of Religious Affairs office or through *online* procedures that may be available. At this stage, pilgrims should ensure that all necessary documents have been included with the claim form.

d. Claims Verification and Evaluation

Once a claim is submitted, the Ministry of Religious Affairs will verify the validity of the claim and evaluate the documents submitted. The Ministry of Religious Affairs may conduct additional communication with pilgrims or insurance providers if necessary to obtain clarification or additional information.

e. Claims Processing

Once the verification and evaluation process is complete, the Ministry of Religious Affairs will process the claim. At this stage, pilgrims can be informed about the progress of their claim and the estimated time of completion.

f. Claim Disbursement

Once the claim has been processed, the Ministry of Religious Affairs will issue a decision regarding the claim. If the claim is declared valid, the Ministry of Religious Affairs will arrange the disbursement of the claim in accordance with the provisions of the Hajj insurance policy. Claim funds can be transferred directly to the pilgrims' bank accounts or submitted in other forms in accordance with applicable policies. The claim disbursement process is usually carried out within a reasonable time after the claim is declared valid.

The Hajj insurance claim process is generally taken care of by the insurer from the direction of the Ministry of Religious Affairs in the claim process.

Policyholders should contact the insurance company where they purchased their Hajj policy to report the claim and start the submission process. If a pilgrim does not experience any claim-eligible obstacles or events during the Hajj journey, there is usually no refund of the insurance premium. Hajj insurance operates on the principle of premiums paid as a form of protection against certain risks that may occur during the journey.

The process of submitting a Hajj insurance claim through the Ministry of Religious Affairs of Banda Aceh City involves several important steps, from document collection to claim disbursement. However, in practice there are obstacles during the process of submitting insurance claims, including involving:

- a. Incomplete Documents: Completeness of claim documents is often a major obstacle.
- b. Slow Claims Process: Sometimes the claims process can take a long time, causing inconvenience.
- c. Valuation of Indemnity: Valuation differences between policyholders and insurance companies can be a source of disagreement.
- d. Ineffective Communication: Lack of good communication between the policyholder and the insurance company can complicate the claims process.
- e. Unclear Policy Provisions: Unclear understanding of the policy terms can lead to misunderstandings.

Hence, it is important for pilgrims to understand the proper procedures and provide all the necessary documents for a smooth claim process. By following the correct claim mechanism, pilgrims can obtain the recovery or compensation they need in the event of a needy situation during their Hajj journey.

2. Review of DSN-MUI Fatwa Number 39 of 2002 concerning Hajj Insurance Practices at the Ministry of Religious Affairs of Banda Aceh City

The DSN-MUI Fatwa No. 39/2002 on Hajj insurance emerged as a response to the growth of the Hajj insurance industry in Indonesia at that time. The fatwa stipulates that Hajj insurance is halal and allowed as long as the insurance products offered fulfil sharia principles, such as the absence of *riba* (interest), *gharar* (uncertainty), and *maysir* (gambling).

In Fatwa DSN-MUI No.39/DSN-MUI/X/2002 on Hajj insurance. First, the general provisions. The first point, Hajj insurance is not justified according to sharia is insurance that uses a conventional system. The second point is that Hajj insurance that is permitted according to Sharia is insurance based on Sharia

principles. The third point is that Hajj insurance based on Sharia principles is *ta'awuni* (mutual help between fellow pilgrims). The fourth point is that the insurance contract is a *tabarru'* (grant) contract that aims to help fellow pilgrims who are affected by a disaster. The contract is made between the pilgrims as *tabarru'* givers with Sharia insurance acting as grant fund managers.

When associated with the practice of Hajj insurance at the Ministry of Religious Affairs of Banda Aceh City, the insurance provided to pilgrims is in accordance with sharia principles because PT Asuransi Takaful Keluarga in collaboration with the Ministry of Religious Affairs is also a Sharia-based insurance company, not conventional insurance regulated by the central government. This ensures that the insurance owned by pilgrims does not conflict with the teachings of Islam.

Second, the special provisions. The first point states that, the Minister of Religious Affairs acts as the master policyholder of all pilgrims and is responsible for the implementation of the Hajj pilgrimage, in accordance with the applicable provisions in this provision, The meaning of this statement is that the Minister of Religious Affairs acts as the party that regulates and is responsible for the financial and administrative aspects related to insurance and the implementation of the Hajj pilgrimage for all pilgrims. As the master policyholder, the Minister of Religious Affairs or a designated institution plays an important role in managing the insurance for pilgrims, which includes premium payments, claims management, and handling various related administrative needs. In practice, the Ministry of Religious Affairs of Banda Aceh City regarding Hajj insurance has never been explained and mentioned even in the Hajj *manasiq*, as a result many of the pilgrims feel still confused about it if something unwanted happens one day. The lack of understanding on the part of the pilgrims and the families of the pilgrims makes the practice of Hajj insurance less effective.

The second point is that pilgrims are obliged to pay a premium as a *tabarru'* fund which is part of the Hajj Travel Cost (BPIH) component. Premium payments for each insurance company vary according to the provisions of the company. For PT Asuransi Takaful Keluarga, which has collaborated with banks that provide Hajj savings, the premium paid by pilgrims is Rp. 50,000, which is a component of the Hajj Travel Cost (BPIH). This travel cost includes various components, including transport, accommodation, food, daily expenses, and also insurance.

The third point is that Hajj insurance premiums received by Islamic insurance must be separated from other insurance premiums. By separating Hajj insurance premiums, Islamic insurance companies can ensure that funds received from Hajj participants are used specifically for purposes related to the

protection and benefits associated with the Hajj pilgrimage. For example, the funds can be used for the payment of health-related claims or asset protection during the Hajj journey.

The fourth point is that Sharia Insurance can invest *tabarru'* funds in accordance with DSN Fatwa No. 21/DSN-MUI/X/2001 concerning general guidelines for Sharia insurance, and the investment returns are added to the *tabarru'* fund. Generally, the management of insurance funds (premiums) can be carried out with a *mudharabah* contract, where the profit of the Islamic insurance company is obtained from the profit share of the funds from investment. The Islamic insurance participants are the owners of the capital and the Islamic insurance company functions as the party that runs the capital. The profits obtained can be divided between the participants and the Company according to the agreed terms.

The fifth point is that Sharia Insurance is entitled to get *ujrah (fee)* for managing *tabarru'* funds, the amount of which is determined in accordance with fair and reasonable principles. In this case, PT Asuransi Takaful Keluarga is entitled to compensation in accordance with the agreed agreement. Participants authorise the company to manage their funds, including in terms of administration, fund management, claim payment, under-writing, portfolio risk management, and industry sector.

The sixth point states that sharia insurance has the responsibility to pay claims to pilgrims in accordance with the initial contract agreement. The claim process is generally handled by the insurance company based on instructions from the Ministry of Religious Affairs. Although the premium funds that have been paid are not returned, in practice Islamic insurance participants can receive back some of the *tabarru'* funds if no claims are filed, through the *underwriting surplus*. When a claim is filed, participants are also entitled to receive payment from the *tabarru'* fund, which comes from participants' *tabarru'* fund contributions. The last point states that the operational surplus is a right for pilgrims, and its management is handed over to the Minister of Religious Affairs as the master policyholder for the benefit of the people. If participants do not incur losses during a certain period, a portion of the *tabarru'* fund may be returned to them as "surplus" or "result of operations" in accordance with the principle of fairness.

Based on the description above, the author concludes that the responsibility of the Minister of Religious Affairs also includes regulating and monitoring the implementation of the Hajj pilgrimage in accordance with applicable regulations, both in terms of worship procedures and the comfort and safety of pilgrims. However, although the Ministry of Religious Affairs and PT Asuransi organise

insurance for pilgrims, information to pilgrims about insurance has never been done. In fact, many of the pilgrims do not know at all about the insurance claim process. Especially for pilgrims from the region, the process of filing a claim is considered difficult, especially the heirs of pilgrims often do not know how to file an insurance claim used by pilgrims.

CONCLUSIONS

The practice of Hajj insurance for pilgrims in the Ministry of Religious Affairs of Banda Aceh City shows that Hajj insurance is an integral part of the preparation for the Hajj journey, which is intended to protect pilgrims from financial risks that may occur during the Hajj journey, as well as provide protection and support to their families in difficult situations. In this context, the Ministry of Religious Affairs cooperates with PT Asuransi Takaful Keluarga as the Hajj insurance provider. However, the practice of Hajj insurance in the field faces several challenges. One of them is the lack of understanding and socialisation of Hajj insurance among pilgrims. This has led to many pilgrims not realising that they have insurance or not understanding the benefits and procedures of insurance claims. In addition, the role of the Banda Aceh City Office of the Ministry of Religious Affairs is limited to being a facility provider who proposes to the Central Office of the Ministry of Religious Affairs as the policy holder, so that the insurance claim process occurs at the central level and can be confusing for pilgrims. Nevertheless, the Hajj insurance used by pilgrims is considered in accordance with Islamic teachings because it is sharia-based. If a prospective pilgrim who has paid the initial deposit of 25 million then he dies, then there are two ways that can be done, first cancelled and the money can be taken back and processed at the Ministry of Religious Affairs of Banda Aceh City which will be sent to the regional office of the Ministry of Religious Affairs to be processed to the center and transferred to the Bank to where he saved for the pilgrimage within a deadline of 15 days. The insurance compensation will be channelled via bank transfer to the Hajj savings account in whose name the relevant pilgrim is registered. Furthermore, the second stage is delegated, for example, death, then it can be delegated to children, husbands, wives, siblings, which later he who can be delegated will depart in the seat of the person who was delegated. So if he dies and has not entered the Hajj hostel, he does not get any insurance, only the money that was returned when he deposited. But if he dies at the Hajj boarding house, he will be insured.

In the review of DSN-MUI Fatwa No.39 of 2002 concerning Hajj insurance, the practice of Hajj insurance that occurs in the Ministry of Religious Affairs of Banda Aceh City is still less than optimal as contained in the provisions of the fatwa. This is explained in the provisions of the first point in the special provisions that, the Ministry of Religious Affairs acts as the parent policy holder and is responsible for all insurance implementation in the Hajj pilgrimage, but in reality the pilgrims do not even know at all about the insurance claim process that is carried out. Especially for pilgrims from the regions, the process of filing claims is considered difficult. In fact, the heirs of pilgrims often do not know how to submit insurance claims used by pilgrims, the absence of representatives from PT Asuransi Takaful Keluarga in the regions is an obstacle in the process of filing claims, so that the families of pilgrims face challenges in filing claims with a long chain of information.

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