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FACILITATING INDONESIAN PILGRIMS WHOSE DEPARTURE IS LIABLE
TO FAIL USING OTHER COUNTRY'S HAJJ QUOTA

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ABSTRACT

This research revolves around the liability of pilgrims who use quotas from other countries, which causes the rights of other prospective pilgrims as consumers to be harmed. The purpose of this study is to determine the travel agency's liability to consumers towards the failure of their departure and to seek whether the Government of the Republic of Indonesia provides legal protection to pilgrims who use *Hajj* quotas from other countries. The researcher applied *statute approach* and *conceptual approach* to show that the liability of *Hajj* organizers is based on article 19 of the consumer protection law. In this case, the pilgrims of Indonesia who use the quota of another countries will not be provided by legal protection of the government. Both the consumers and the *Hajj* and *Umrah* Travel Bureau should be able to understand and respect their respective rights. The government also has a pivotal role in preventing violations of the law regarding *Hajj*.

INTRODUCTION

Hajj is one of the religious services performed by Muslims. In performing the pilgrimage, Muslims are confronted with two main problems, namely costs and limited quotas. This causes a buildup of waiting lists of prospective pilgrims. The prospective pilgrim from Indonesia is considered to be the largest congregation in the world. So that many prospective pilgrims who use other methods, namely by using the *Hajj* and *Umrah* travel agency, as their best solution. Using a travel agency can simplify the process and needs during the trip since the agency provides a variety of information needed for *Hajj* and *Umrah*. This includes the cost, destination, lodging, and guide for the trip.

The system and implementation of *Hajj* pilgrimage in Indonesia is regulated in the Law of the state. Regulations on Regular *Hajj* and Special *Hajj* pilgrims are stipulated in Act Number 13 of 2008 concerning the Operation of the *Hajj*, while the implementation is regulated in the Government Regulation Number 79 of 2012 concerning the Implementation of Law Number 13 of 2008 concerning the Operation of *Hajj*.

Special *Hajj* Service (SHS) is a pilgrimage in which special services, management and financing are provided for the pilgrims. The services and management of the special pilgrimage include the scheduling, accommodation, consumption, transportation, healthcare, and guidance of the pilgrimage. Unlike the implementation of regular *Hajj* pilgrims who are the responsibility of the government through the Ministry of Religion, the one who manages the special *Hajj* pilgrims process is a travel agency that obtains permission from the Ministry of Religion which is then mandated with legal norms in the form of conditions, rights, and obligations that must be obeyed to ensure that the services to their congregation are fulfilled in accordance with the regulations. In general, *Hajj* organizers must obey the rules relating to the dimensions of guidance, service, and protection. Aside from providing regulations for the regular *Hajj* pilgrims, the government also does the institutional arrangement for the Special *Hajj*.

However, in practice, most of the special *Hajj* agencies do not reveal that the special *Hajj* they book is, in fact, on the waiting list, and are still in the form of proposals to the Ministry of Religion which can be approved or rejected. In addition, prospective pilgrims are less careful in choosing travel agents. As a result, problems occurred, one of which was the incident of pilgrims who were detained at Manila airport, because Indonesian pilgrims were proven to have used Filipino passports to depart. They use this method because there are still many *Hajj* quotas left in the Philippines.

This causes disadvantage for the clients of travel agency; thus efforts on consumers rights protection should be done. What is desperately needed is a holistic perspective that unites not only consumer law and sustainability but that also analyses the role and function of the digital economy and society (Mathios et al, 2020). The most difficult problem is introducing an effective system of applied legislation and jurisdiction (Elena et al, 2016). Consumer rights that are neglected by businesses need to be examined carefully. Consumers must be aware of their rights that are protected by Law No. 8 of 1999 concerning consumer protection in Indonesia. The government is obliged to provide guidance, services and the best protection for the pilgrims through the system and management of *Hajj* so that the rights of prospective pilgrims as consumers are not violated. Consumer sentiment and consumer confidence were measured based on economic condition in the future expectation (Hartini et al, 2017).

The purpose of this study is to determine the liability of travel agents against consumers for the cancellation of the special pilgrims' departure, and to find out legal protection for pilgrims who use quotas from other countries.

It is hoped that this research can show that the liability of *Hajj* organizers is stipulated on article 19 of the consumer protection law. In this case, the pilgrims of Indonesia who use the quota of another countries will not be provided by legal protection of the government.

RESEARCH METHODS

This research applies *statute approach* by examining all the laws relating to the legal issues being handled. While the *conceptual approach* in this research studies the views and doctrines that relates to law with the aim of finding legal understandings, legal concepts, and legal principles that are relevant to the issues at hand (Marzuki, 2010).

Definition of Liability

Many people do not know the difference between responsibility or liability. Responsibility is the state of being obliged to bear everything (if anything happens, the party may be prosecuted, blamed, sued, etc.). The Indonesia dictionary only listed the term responsibility, while the definition of liability can not be found. Hence, the difference between responsibility and liability is only known among the legal terms in which the term is the result of the adoption of legal workers.

The distinction between the terms responsibility and liability is greatly influenced by the difference in meaning between *responsibility* and *liability*. Broadly speaking, responsibility is applied for criminal law, while liability is for civil law. In criminal law there is criminal responsibility and civil liability in civil law. Thus, in criminal law there is no lawsuit, but a claim by the public prosecutor. Whereas in civil law there is a lawsuit by the plaintiff against the defendant, causing liability to be applied in civil law (Yusuf Shofie, 2008).

The difference between the terms responsibility and liability is only known in the British legal system. The French legal system uses the terms *responsabilite*, Spanish *responsabilidad* and Italian *responsabilita* which includes the notions of liability and responsibility as well. Responsibility itself is a general concept that can be related to morals, religion, society in general and the legal context. Etymologically, responsibility is a combination of two words response and able, which means the ability to respond or the ability to answer or respond (Muru and Yodo, 2010).

Liability of Both Parties

In the Consumer Protection Law (CPL) there is a special article regulating the accountability of business actors in articles 19, 23, 24, 25, 27 and 28. Based on Article 19 paragraph (1) that the responsibilities of business actors include: a).

Liability for loss due to damages; b). Liability for loss due to pollution; and c). Liability for compensation of consumer losses. The compensation can only be carried out within a period of 7 (seven) days after the transaction date, this duration is considered to be short and unable to provide maximum protection to consumers without ignoring the interests of business actors. If the consumer suffers a loss after a period of 7 (seven) days following the transaction date, the consumer can submit a consumer complaint to the Consumer Dispute Resolution Agency. The CPL regulates that the compensation can be done through several mechanisms: a). Money refund; b). Replacement of goods and or services of similar type or equivalent value; c). Health care; and D). Providing compensation in accordance with the provisions of the applicable laws and regulations.

Consumers, in principle, have rights that are regulated in Act Number 8 of 1999 concerning Consumer Protection. These consumer rights appear as obligations imposed on business actors because their products may cause injury or the services provided are detrimental to consumers because they are not in accordance with what was promised, even though they are not based on contracts between business actors and consumers. This consideration arises because businesses actors have the obligation to meet established service standards.

Based on Law Number 8 of 1999, consumers are also bound to responsibility, namely: a) reading or following information instructions and procedures for the use or utilization of goods and/or services, for security and safety. b) have good intentions in making purchases of goods and/or services. c) pay according to the agreed exchange rate. d) follow the efforts to resolve consumer law disputes appropriately. This obligation is crucial as to protect business actors from mistakes made by consumers.

Building a relationship between the Special *Hajj* Service (SHS) provider with consumers of the service requires the participation of all parties to provide consumer value before and after the agreement process on the service usage. The legal relationship of SHS service users with the Special *Hajj* Organizer, based on the agreement, must be in accordance with the provisions stipulated in Article 1320 of the Civil Code (*Burgerlijk werboek*).

The relations between this needs are is continuous; thus, it may create an interdependence that is in accordance with the level of dependence on uninterrupted needs. The series of activities is a series of legal actions that have no legal consequences and/or which have legal consequences apply for all or certain parties only (Kristiyanti, 2008). Hence, consumer protection law is needed to balance the position of consumers and business actors.

Indonesian Hajj Regulations

The high demand for *Hajj* drives people to do every possible way in order to be able to depart instantly using a special organizing agency. The waiting list of the

regular *Hajj* quota almost reaches years of waiting, the fears of the pilgrims in regards to old age causes them to choose *Hajj* through a special *Hajj* travel agency. As time goes on and the waiting list gets longer, the operational system and management are more complicated, this is seen to be detrimental to the community, physically and materially.

Regulations related to the organization of *Hajj* in Indonesia is regulated in the law. Regulations on the Regular and Special *Hajj* are stipulated in Act Number 13 of 2008 concerning *Hajj* and its implementation through Government Regulation Number 79 of 2012 on the Implementation of Law Number 13 of 2008 regarding the Operation of *Hajj*.

Hajj pilgrimage registration is declared valid after the concerned party gets a portion number that can only be used by the prospective pilgrim concerned and cannot be replaced. Before registering, prospective pilgrims must open a *Hajj* savings account at the *Hajj* Fee Deposit Bank. There are only a few banks that serve this function, namely: Bank Mandiri Syariah, Bank Muamalat, Bank Mega Syariah, BRI Syariah Bank, BNI Syariah Bank, Panin Syariah Bank, BTN Bank, Permata Bank, CIMB-Niaga Bank, North Sumatra Bank, DKI Bank, Central Java Bank, Jatim Bank, Kepri Bank, Sumselbabel Bank, Nagari Bank, Aceh Bank.

The pilgrimage payment is made in the year of departure after the announcement of the amount of the *Hajj* fee and the list of prospective pilgrims who are entitled to pay to the bank in the year of departure. If the number has already been received with a proof of initial deposit, prospective pilgrim is expected to go to the Ministry of Religion. All of these processes can be done alone and free of charge without going through a broker.

Legal Consequences of Indonesian Hajj Departure through Other Countries

Performing *Hajj* through other countries is quite different from departure from Indonesia, since the Indonesian congregation is not listed in the *Hajj* system of Indonesia. For Indonesian citizens, departing for *Hajj* from other countries in general is not too difficult, provided the prospective pilgrims have an official *residence permit* of the country. The residence permit can be obtain because the prospective pilgrims are working or studying on the country; thus, it does not only depend on a visitor visa. With the ownership of residence permit, the prospective pilgrims who would perform pilgrimage are registered in the population data of the country and are entitled to apply for a pilgrimage visa there. The regulations to acquire *Hajj* or pilgrimage visa vary from countries to countries according to the policies of each country.

Hajj departure queues in countries with low Muslom population causes the prospective pilgrims to be able to depart without being put on waiting list. This is because the pilgrimage quota imposed by the government of Saudi Arabia is the same for all countries. Another case can be seen in country that has a large Muslim

population, such as: Malaysia, Morocco, etc. The conditions are almost the same as Indonesia. For countries with minor Muslim population, the *Hajj* pilgrimage is very rarely done when compared to Indonesian pilgrims who has to prepare many months before leaving.

Another difference is the length of worship in the holy land, if Indonesian regular pilgrims spend at least 40 days in Saudi Arabia, this is different from pilgrims who depart from abroad. The European pilgrims on average only takes only 20 days, shorter than the time of Indonesian pilgrims. Each country has its own length of worship, this difference is based on the allocation of the number of worshipers, to avoid congestion in one place at a very long time. The high number of prospective pilgrims causes the allocation of worship time to be longer than that of other countries.

A very fundamental difference in departing for *Hajj* from other country is that the government does not take part in its regulation. *Hajj* registration is done at travel agents who then deal directly with the Saudi Arabian Embassy. With the current e-*Hajj* system, travel agents have a passport scan machine and can send the electronic data directly to the Ministry of *Hajj* in Saudi Arabia. Only travel agents that have been specifically verified by the Embassy can conduct *Hajj* affairs.

For pilgrims who use quota of other countries, the government does not provide legal protection. In the case of the departure of prospective pilgrims who use Philippines passport, the government only provides legal protection to the extent that the bureaucracy only issued from prisons in the Philippines and provided facilities at Embassies located in the Philippines and sought for them to be returned to Indonesia. Losses suffered by prospective pilgrims are in the form of material and non-material losses. Material losses include the time wasted due to not leaving for the pilgrimage, additional costs, while non-material losses include the shame that comes their cancelled departure.

CONCLUSION

Liability for the failure of the departure of special *Hajj* pilgrims by the travel agency to consumers is stipulated in Article 19 paragraph (1) of the CPL which requires business actors to be held responsible for losses as a result of using goods/services in the form of material and physical losses. The liability of the travel agency against the consumer for the cancellation of the departure of the special pilgrims can cause the travel agency to be sued by both civil and criminal law. This is inseparable from the responsibility of the travel agency as a business actor that has been entrusted by consumers in fulfilling services.

The form of liability given by the organizers of the special *Hajj* service is by returning the costs and its losses due to the cancelled departure special *Hajj* pilgrims or giving priority to the pilgrims who failed to depart the following year. The Government of the Republic of Indonesia will only provide protection for pilgrims

who take part in the registration process in accordance with provisions that have been regulated by the Ministry of Religion.

Organizers of the regular *Hajj* and special *Hajj* must obtain the number first before they can officially leave the *Hajj*. The registration of the *Hajj* pilgrimage is declared valid after the person receives the portion number and only applies to the prospective pilgrims concerned, in which it cannot be substituted. Indonesian government does not protect illegal pilgrims. Regulations relating to the system of organizing the *Hajj* pilgrimage in Indonesia are regulated starting from the Law up to the implementing regulations. Regulations on the Regular and Special *Hajj* are stipulated in Act Number 13 of 2008 concerning *Hajj* and its implementation through Government Regulation Number 79 of 2012 on the Implementation of Law Number 13 of 2008 regarding the Operation of *Hajj*.

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