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### PREVENTION PROTECTION OF PROSPECTIVE HAJJ PILGRIMS THROUGH THE OPERATIONAL LICENSES IN THE GUIDELINES KBIH (HAJJ GUIDANCE GROUP)

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#### **ABSTRACT**

Providing Hajj services requires a valid operational permit. Control of operational permits for the KBIH (Hajj Guidance Group) is delegated to the Head of the Regional Office of the Ministry of Religion. In fact, there is often abuse of authority by KBIH which actually harms the community who perform worship at this time. Hence, this study aims to analyse the efforts to protect prospective pilgrims through an operational permit on KBIH. This study was compiled by using a normative juridical method supported by two approaches namely the statute and the conceptual approach. The results showed that the legal relationship between KBIH and the Government related to the implementation of Hajj has been regulated in Law Number 13 of 2003. In granting operational licenses to KBIH, the Regional Office of Religion has provided many procedures that must be fulfilled. Thus, the law enforcement protects prospective pilgrims delegated entirely to the Regional Office of the Ministry of Religion which has the right to exercise control in the form of supervision and control of KBIH. The study concluded that KBIH operational permits related to public services have been regulated in accordance with the applicable laws so, if there are irregularities they will be immediately resolved legally.

#### **INTRODUCTION**

The Ministry of Religion is one of the institutions in Indonesia that has the function of guiding and managing religious activities. One of them relates to the Religious Affairs Office which has the authority in binding services and guidance in the field of study. The task of organizing this pilgrimage is national

which has been established through Law Number 13 of 2008 concerning the Organization of Hajj (hereinafter referred to as Law 13 of 2008).

Through these activities the Government, the Ministry of Religion gives space to the community to participate in helping the implementation of the Hajj which is one of them in the guidance of the Pilgrims. In this condition, the community is allowed to make a pilgrimage guidance group. Guidance Group that is commonly called KBIH (Hajj Guidance Group) is a legal entity group with a foundation in the realm of Islam.

Hajj guidance groups are known to provide assistance to prospective pilgrims to get to know the worship they will live. The existence of KBIH (Hajj Guidance Group) must also have permission from the Ministry of Religion because the organizers of the Hajj become part of the substance of the Ministry of Religion's duties. KBIH is only tasked to assist the guidance of the Hajj, not as a Hajj organizer. This was stated in the Decision of the Director General of the Implementation of Hajj and Umrah Number D/799 of 2013 concerning Guidance Group Operational Guidelines.

While KBIH performed its duties in accordance with Decree of the Minister of Religion of the Republic of Indonesia Number 371, KBIH cannot conduct the registration of pilgrims. KBIH does not have the authority to regulate the pilgrim group and the administration of living costs. On the other hand, KBIH also has no right to arrange accommodation while in Saudi Arabia. Thus, when conducting guidance to the prospective pilgrims, they are fully supervised by the Ministry of Religion. This is due to KBIH having a permit that must be directly accountable to the Ministry of Religion.

Based on the Minister of Home Affairs Regulation No. 24 of 2006 Article 1 paragraph 8, permits are documents issued by the government as proof of legality or the permissibility of a person or entity to conduct business such as the pilgrimage guidance group. In addition to having a KBIH permit, it must pay attention to the general principles of good governance thus, there is no abuse of authority. The existence of responsibility, clarity, discipline, courtesy, friendliness, and comfort are very considered in the principles of good public service, the validity of the KBIH permit is highly considered to help the implementation of the pilgrimage. The validity of KBIH licensing in public services aims for the government to oversee the implementation of the pilgrimage to be in accordance with the principles that are run.

However, there is currently often abuse by KBIH related to the authority that is undertaken. There are some KBIH that are not appropriate in performing their duties. They even tend to interfere the distribution of groups which tends to be detrimental to the government. On the other hand, there are also KBIH who do not have permission to participate in the Hajj. This gives rise to a warning from the public. One of them is related to cases of embezzlement of money that occurred some time ago which was conducted by one of the KBIH namely First Travel. This certainly provides a significant loss for the community. Some even threatened that they could not worship on schedule.

The problems that occur tend to raise questions related to the validity of the hajj pilgrimage business license owned. Due to permits that are owned, law enforcement can certainly be processed in accordance with the provisions (Soekanto, 1996). In this case Hadjon (2002) also argued that law enforcement can function as a means of preventive protection and repressive protection which can provide a final solution related to the problems faced. According to this elaboration, this study was prepared with the aim of analysing the legality of KBIH operational permits and reviewing the law enforcement in controlling KBIH operational permits in the administration of public services.

## **RESEARCH METHODS**

Based on these problems, the method used in this study was normative juridical. The method was chosen because it was able to find a rule of law, legal principles, and legal doctrines to address the legal issues faced (Marzuki, 2010). The writer will discuss the difference between *das sollen* and *das sein* in this study. It means that there is a non-conformity of the norms that have been set (what should have happened) with the concrete events that occur. Besides that, this study also used two approaches namely the statutory and the conceptual approach.

While the sources of legal research used were primary and secondary legal materials. The primary legal material in this study was the statutory regulations, namely Law Number 25 of 2009 concerning Public Services, Law of the Republic of Indonesia No. 13 of 2008 concerning the Organization of Hajj, and Decree of the Director General of Islamic Community Guidance and Hajj Affairs No. D/799 of 2013, concerning the Implementation Guidelines for Organizing Hajj and Umrah. In addition to primary legal materials, secondary legal materials also helped in solving this problem formulation. Secondary legal materials used were reading books, legal journals, and textbooks. Furthermore, through the legal material that has been owned by the writer by the process of interpretation or interpretation and argumentation methods, both of them were used to interpret the Law as part of the whole system (Mertokusumo, 1993).

## **RESULTS AND DISCUSSION**

### ***The Validity of the KBIH Operational License as a Public Service Provider***

As the licensor of the Hajj Guidance Group (KBIH), the Regional Office of the Ministry of Religion has the authority. One of authorities is issue permits for the KBIH (Hajj Guidance Group) in which the delegation of power is also followed by the delegation of responsibilities. Based on Article 5 and Article 12 of the Decree of the Director General of Hajj and Umrah Administration Number D/799 of 2013 concerning operational guidelines for the guidance group, it has been explained that the Head of the Regional Office determines the operational permit of the guidance group and the Head of the Regional Office has the right to impose administrative sanctions on Guidance Groups who commit violations. This makes KBIH (Hajj Guidance Group) must have permission to help service the community as a manifestation of guaranteed and safe public services.

Based on this article, the government has the duty to conduct administrative services, as well as services for goods and services, all of them must be enjoyed by the community. This obligation has a legal basis that has been stipulated in Article 18 of the 1945 Constitution and Law Number 25 of 2009 concerning Public Services. It is stated that the public service provider is every State-run institution, corporation, independent institution established under the law for public service activities, or a legal entity that organizes public services in conducting the State's mission.

On the other hand, it has also been explained in Article 18 A paragraph (2) that the service is a relationship between the service of the central government and regional governments which is carried out fairly and in harmony according to the Law. The article also formulates that the rule of law is part of the Welfare State in which the whole relationship has been organized and not impartial. The provision was also elaborated in Law Number 25 of 2009 concerning Public Services (Hadjon., 2012). The enactment of the Act should also provide legal certainty for the public and community service providers. The organizer will feel obliged to provide services to the community, while the community will feel the rights he will get from the organizer.

Moreover, to achieve quality public services, the government must provide space or broad authority to the regions in order to satisfy the community. Hence, the one who will go first and deal directly with the community is the regional government apparatus. For instance, if a new KBIH operational permit is proposed, the KBIH must obtain a recommendation letter in advance from the Ministry of Religion in their respective regions. This will facilitate the people in the area to get services. The success of a service is based on the satisfaction from the community.

Furthermore, in conducting Hajj services, the Government through the Ministry of Religion issues operational licenses to the Hajj Guidance Group. Basically, licensing is a law that regulates public relations with the State (Orr, 2019). Licensing in this case forms the approval of the authorities based on the Law. The authorities themselves are intended as officials who are authorized to issue permits, such as the Head of the Office of the Ministry of Religion over the Minister of Religion. The licensing is known to be a form of State Administration. Licensing also includes the general principles of permit issuance procedures which include requests, preparatory events and participation, decision making, and announcement of decisions (Djatmiati, 2004).

It is known that the general principles of permit issuance are the basic foundation for each agency in determining the procedure for issuing permits in all their needs (Grillo, 2007). Permission is an important aspect in an activity, the submission of a permit in accordance with the Act will facilitate the licensor in terms of control. Permission was not issued for something that is independent (Guttridge, 1946). As stated by Afsharipour (2016) that the permit is in charge of something big, namely responsibility, decision and authority. KBIH itself

before conducting guidance on prospective pilgrims must obtain permission from the Head of the Regional Office of the Ministry of Religion as explained in Article 3 of the Decree of the Director General of Hajj and Umrah Administration Number D/799 of 2013.

Not only that, but also each KBIH which already has a permit must also help the government in terms of public services to the community, especially prospective pilgrims. Thus, the license has a purpose relating to the provision of services to the community, which is structured in Law Number 25 of 2009 through Article 3, such as first, the realization of clear boundaries and relationships about the rights, responsibilities, obligations, and authorities of all parties related to public service providers. Second, the realization of a proper public service delivery system in accordance with the general principles of good governance. Third, the requirement of the delivery of public services in accordance with the regulations by law. Fourth, the realization of protection and legal certainty for the community in the administration of public services.

Furthermore, related to the issuance of operational licenses to KBIH Regional Offices need to have a Minimum Service Standard for KBIH in performing their duties. Based on Government Regulation Number 65 of 2005 concerning Guidelines for the Preparation of Minimum Services, describes the types and quality of basic services which are mandatory regional functions are the minimum rights of citizens to obtain services. Obligatory functions are conducted by the regional government include matters such as, obligatory affairs, and optional affairs.

On the other hand, each of these matters needs to be set standards. These standards are useful as guidelines and tools for measuring the level of quality of services, goods and / or business services provided to local governments in improving the welfare of the community. It is supposed to be as same as the Office of Religious Affairs which has the task of drafting the standards for organizing the Hajj pilgrimage to be able to have quality public services.

Thus, it can be known that the existence of the KBIH will be valid if it already has a permit from the government which is the Ministry of Religion through the respective Regional Religious Offices. Moreover, according to this permit, each KBIH has the right to hold any activities and events relating to assisting prospective pilgrims in their departure for the Holy Land. Because all activities and their operations have been protected by law and statutory provisions. However, if violations occur and things that are not desirable, then the relevant KBIH will immediately receive punishment in accordance with the applicable legal provisions.

### ***Law Enforcement in the Control of KBIH Operational Permits in Providing Public Services***

It is known that the KBIH as a government partner in organizing the pilgrimage also has several regulations related to permits. The government also has a hierarchy of laws and regulations for KBIH in the regulation. This regulation

hierarchy was issued by the government by the Ministry of Religion which is useful for overseeing the guidance activities conducted by KBIH. This regulation was raised in order to prevent abuse of authority by KBIH. This guidance group only has the authority to conduct guidance to prospective pilgrims. While the regulatory hierarchy related to the KBIH operational permit is: first, the Constitution of the Republic of Indonesia. Second, Law No. 34/2009 concerning the Stipulation of Government Regulations in lieu of Law No. 2/2009 concerning amendment to Law No. 13/2008 concerning the Implementation of Pilgrimage into Laws. Third, the Decree of the Director General of the Implementation of Hajj and Umrah Number D/799 of 2013. It is these regulations which underlie and regulate the existence of KBIH. This guidance group in helping the Ministry of Religion has a function to guide prospective pilgrims to get an optimal understanding of the hajj, as well as they can adjust to the surrounding environment.

In order to exercise control over KBIH, the government basically has a form of law enforcement on these permits. This law enforcement is also strengthened with regulations and permits in the name of the law that have been made previously. Law enforcement that is intertwined in relation to KBIH is administrative law which has the scope of covering preventive administrative law enforcement and repressive administrative law enforcement.

The form of preventive law enforcement in the field of administration is permit. The permit (*verguning*) is an agreement from the authorities based on the Law or Government Regulation used in certain circumstances. It is used if there is a deviation from the provisions of the prohibition of the legislation. So the permit is in principle as a dispensation or release from a ban (Sutedi, 2010).

Furthermore, administrative sanctions are part of repressive administrative law enforcement. The target of administrative sanctions is violating administrative law norms, not to perpetrators. Thus, the purpose of administrative sanctions is stopping the violation or restoring to its original state (Pudjiastuti, 2004). Repressive Legal Protection is the final protection in the form of sanctions such as fines, imprisonment, and additional punishment given if a dispute has occurred or a violation has been committed.

Regarding the validity of permits, the test can be through the State Administrative Court, while the mechanism of the Public Service Commission and / or Ombudsman is focused on the Malleviation Administration in issuing permits (Pudjiastuti, 2004). The Government through the Head of the Regional Office in public services in the field of religion has a great responsibility related to public services, especially regarding the pilgrimage. Thamrin (2013) mentioned that in developing good public services, the government through the Ministry of Religion needs to adhere to general principles of state administration such as the principle of legal certainty, the principle of orderly state administration, the principle of legal interest, the principle of openness, the principle of proportionality, the principle of professionalism, the principle of accountability, the principle of efficiency, and the principle of effectiveness.

Referring to the description, the government through the Head of Regional Office is obliged to provide guidance, service, supervision, and protection. The government engages the community in organizing public services, where community organizations appear to assist in the organization of the pilgrimage which is expected to be able to provide guidance to pilgrims before departure to, travel to, and while in Saudi Arabia. In addition, the responsibilities that is held by the Head of the Regional Office are the responsibilities of the office related to the issuance of permits and the responsibilities of validity in issuing permits. Both authority defects, defects in substance and procedural defects, it should be accounted for through the State Administrative Suit Liability which examines the element of validity in issuing permits (Djatmiati, 2004).

Furthermore, as stated in the previous description, one of the cases that appeared before the public was embezzlement of money by the Hajj and Umrah travel agency, First Travel. In this case, First Travel grabs public attention because it has harmed people who want to perform worship. The validity of the permit was questioned. On the other hand, the community also asked questions related to law enforcement that must be accepted by First Travel. Therefore, the solution that can be done is by implementing repressive law enforcement.

In accordance with the Decree of the Director General of Hajj and Umrah Administration Number D/799 of 2013 concerning Guidance Group Operations, First Travel received administrative sanctions in the form of license revocation. The Head of the Regional Office has prepared several administrative sanctions as a form of accountability for the permits that have been issued, so that the supervision and control of KBIH operational permits can be carried out properly. However, it is known that the existence of First Travel has been unable to assist the Ministry of Religion in Hajj Implementation. Even the presence of the travel agency actually harms many parties and does not provide maximum public services. Thus the need for revocation of permission for First Travel. On the other hand, First Travel is also required to pay losses from each prospective pilgrim who has entrusted his pilgrimage funds to them.

## **CONCLUSION**

The legal relationship between the KBIH (Hajj Guidance Group) and the Government through the Ministry of Religion related to the implementation of Hajj has been regulated in Law Number 13 of 2003 concerning the Operation of Hajj. KBIH is a party that helps the delivery of public services, especially the organization of the Hajj. Besides that, the existence of KBIH does not stand alone, but rather the organization is under the supervision of the Ministry of Religion. This is in accordance with the permits that they get which are in accordance with the provisions of the legislation, thus if there are things detrimental to the prospective pilgrimage, then the relevant KBIH will be summoned to proceed with the law enforcement process.

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