



Legal Protection of Pilgrims on Health Istithaah Standards in Indonesia

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Abstract Hajj pilgrims are obliged to carry out their worship in accordance with the provisions of Islamic law, for this reason it is necessary to carry out health checks and health guidance for Hajj pilgrims in the concept of regulating Hajj health istithaah, namely Minister of Health Regulation Number 15 of 2016. Learn from the implementation of the Hajj in 2023 where the death rate for Hajj pilgrims is high, the government is drafting new regulations strengthening standards for determining Hajj health istithaah. This research is normative legal research and is descriptive analytical in nature. The results of the research show that this new regulation does not fulfill the aspect of legal protection for Hajj pilgrims because some of the Hajj pilgrims who are determined to not meet the Hajj health istithaah requirements while not having enough time to improve their health conditions in order to achieve istithaah. Specific and intensive health guidance is needed to prepare the Hajj pilgrims' health istithaah.

Keywords: Legal protection, Health Istithaah, Hajj

1. INTRODUCTION

A Muslim who will perform the Hajj pilgrimage to the holy land must have the ability or be physically and mentally healthy. This is very important because the Hajj pilgrimage is a series of physical acts of worship such as tawaf, sa'i, wukuf, spending the night in Muzdalifah, throwing the jamrah, and spending the night in Mina. Apart from that, long journeys and extreme weather can affect the health condition of a pilgrim, so that a pilgrim who will depart for Hajj must not only be financially capable but must also be able from a health perspective to carry out the Hajj pilgrimage. The implementation of the Hajj pilgrimage in Indonesia is based on Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage. In this law, it is explained that the aim of organizing the Hajj pilgrimage is to provide the best possible guidance, service and protection to the Hajj pilgrims so that the Hajj pilgrims can carry out their pilgrimage in accordance with the provisions of Islamic religious teachings.

Hajj is a worship that requires ability (istithaah) in its implementation. Istithaah is the ability of the Hajj pilgrims physically, spiritually, equipped and safely to carry out the Hajj without neglecting their obligations to their family. Among the istithaah that must be fulfilled is health, where healthy physical and spiritual abilities are factors that must be considered for prospective Hajj pilgrims. Article 5 of Law Number 8 of 2019 states that the requirements for Hajj pilgrims are to fulfill health requirements, in this case the health requirements are regulated by the

Minister of Health, which is determined after coordinating with the Minister of Religion. Minister of Health Regulation Number 15 of 2016 regulates the health of Hajj pilgrims. It was explained that Hajj pilgrims' health *istithaah* means the Hajj pilgrims' ability in terms of health which includes physical and mental health as measured by examination. Implementation of Minister of Health Regulation Number 15 of 2016 starts from inspection to guidance at the district/city level.

In holding the Hajj in 2023, Indonesia will receive the full quota of Hajj pilgrims as well as an additional quota from the Government of the Kingdom of Saudi Arabia so that the total number of Indonesian Hajj pilgrims is 229,000 people. This quota is open without any age limit, so that elderly Hajj pilgrims who were postponed to 2022 can depart this year. This has an impact on the number of elderly pilgrims in 2023 becoming very large, namely 43.78% of the total Hajj pilgrims. Based on the results of the health examination of Hajj pilgrims during the departure period in 2023, 74.67% of Hajj pilgrims are included in the high risk category. Congregants who are included in the high risk category are elderly pilgrims and pilgrims who suffer from comorbidities, such as hypertension, hyperlipidemia, diabetes mellitus, heart disease, asthma and chronic lung disease and so on (Hajj Health Center, 2023).

Various factors can influence the morbidity and mortality of Hajj pilgrims during the Hajj pilgrimage, such as weather factors, food intake and physical activity which can trigger an exacerbation of the disease they are suffering from, thereby making the disease worse and even causing death. Data from the Ministry of Health's Hajj Health Center states that during the 2023 Hajj, the number of Hajj pilgrims who died in Saudi Arabia was 774 people, with the ratio of pilgrims dying this year being 3.38 per mile. This number is the highest number of pilgrims who died when compared to 2017–2022. Reflecting on this, this research will examine the government's efforts as the person responsible for organizing the Hajj to realize legal protection in the health standards of Hajj pilgrims.

2. METHOD

This type of research is h normative legal research by studying positive legal norms. This kind of research is research carried out by examining library materials or secondary data (Soekanto & Sri Mamudji, 2010). This research is descriptive analytical in nature. Descriptive analysis is a method that describes a particular situation or symptom in order to provide as precise data as possible regarding a particular condition or symptom (Soekanto, 2015).

3. DISCUSSION

Hajj Health Istithaah Arrangements

Hajj pilgrims are obliged to carry out their worship in accordance with the provisions of Islamic law, for this reason it is necessary to carry out health checks and health guidance for Hajj pilgrims in the concept of regulating Hajj health istithaah. The regulation that specifically regulates Hajj health istithaah is Minister of Health Regulation Number 15 of 2016. This regulation states that the health examination of Hajj pilgrims is a series of activities to assess the health status of Hajj pilgrims which is carried out comprehensively, while the Hajj health istithaah development is a series of integrated, planned activities, structured and measurable, starting with a health check when registering as a Hajj pilgrim until departure to Saudi Arabia. Health checks are carried out to ensure that pilgrims do not have medical conditions that could endanger themselves or others during the Hajj pilgrimage.

Health checks carried out on Hajj pilgrims go through 3 stages, namely: first stage; second stage; and the third stage (Minister of Health Regulation Number 15 of 2016, n.d.). Health checks carried out by the Regency/City Hajj Health Organizing Team are the first and second stages. The third stage of examination was carried out by the Health Sector Embarkation Hajj Organizing Committee (PPIH). The first stage of health examination is carried out when pilgrims register to get a portion number. At this stage, the health status of the Hajj pilgrims is determined as high risk or not high risk. Hajj pilgrims with high risk health status are pilgrims who are aged 60 years or more and/or have risk factors and health problems that have the potential to cause limitations in carrying out the Hajj pilgrimage. However, the health risks of Hajj pilgrims can change due to the dynamics of the health and lifestyle of the Hajj pilgrims. This is due to the estimated waiting period for the regular Hajj in Indonesia which is very long, namely between 11-47 years (Harbani, 2023).

The second stage of health checks is carried out when the government has determined the certainty of departure of the Hajj pilgrims in the current year. This stage aims to determine the health istithaah of the Hajj pilgrims. Hajj pilgrims' health requirements include:

- a. Fulfill the Hajj Health Istithaah Requirements;
- b. Fulfill the Hajj Health Istithaah Requirements with Assistance;
- c. Not Fulfilling the Hajj Health Istithaah Requirements Temporarily; or
- d. Not Fulfilling the Hajj Health Istithaah Requirements.

Hajj pilgrims are said to meet the Hajj Health Istithaah Requirements if the pilgrims are able to follow the series of Hajj pilgrimage processes without the help of medicine, equipment and/or other people. Meanwhile, pilgrims who fulfill the Hajj health istithaah requirements with assistance are pilgrims aged 60 years or more; and/or suffer from certain diseases but not diseases that fall into the category of Not Fulfilling Temporary Istithaah Requirements and/or Not Fulfilling Istithaah Requirements.

Hajj pilgrims who are determined to not meet the Hajj Health Istithaah Requirements for the Temporary are Hajj pilgrims who have health conditions that can be corrected or suffer from diseases that have the potential to be cured within a certain period of time. If the health condition or illness suffered can improve or be cured, the pilgrim's status can change to Fulfilling the Hajj Health Istithaah Requirements or Fulfilling the Hajj Health Istithaah Requirements with Accompaniment.

Hajj pilgrims who are determined not to meet the Hajj Health Istithaah Requirements are Hajj pilgrims who, during a health examination, are found to have life-threatening illnesses, serious mental disorders and illnesses from which it is difficult to hope for a cure. Congregants who are determined not to meet the Hajj Health Istithaah Requirements cannot depart for Saudi Arabia because it is considered that their lives will be endangered if they carry out the Hajj pilgrimage.

The implementation of Hajj health istithaah regulations in organizing the Hajj still needs to be strengthened. This can be seen from the implementation of the Hajj in 2023 where the morbidity and death rates for Hajj pilgrims are very high, in fact the highest figures for the Hajj implementation in 2017-2023. Strengthening health requirements is very important in reducing the death rate of Hajj pilgrims.

Strengthening the Hajj health istithaah policy is also in line with the recommendations of the Hajj Mudzakarrah UN 2023, which is a discussion forum involving pilgrimage practitioners, religious scholars, health experts, and Hajj ritual guides (Basir, 2023). The 2023 Hajj Mudzakarrah recommendation was followed up by the Ministry of Religion with changes to the payment system for Hajj travel costs (Bipih). Where pilgrims for the 2024 Hajj before paying off the Bipih must first fulfill health requirements or be declared istithaah in terms of health, as stated in the Minister of Religion Regulation Number 13 of 2021 concerning the Implementation of the Regular Hajj Pilgrimage Article 13 paragraph (2) letter c which reads:

"Congregation Regular Hajj who are entitled to pay Bipih must meet health requirements" (Regulation of the Minister of Religion Number 13 of 2021, n.d.)

The Ministry of Health, as the person responsible for Hajj health affairs, followed up on strengthening the Hajj health istithaah by issuing policy Decree of the Minister of Health Number HK.01.07/MENKES/2118/2023 concerning Technical Standards for Health Examinations in the Context of Determining the Health Istithaah Status of Hajj Pilgrims which serves as a guideline for the Hajj health team in districts/cities and provinces to carry out health checks in order to determine the health status of Hajj pilgrims. This policy changes several standards in determining Hajj health istithaah in Minister of Health Regulation Number 15 of 2016.

Some of the new concepts in this policy are technical examinations and disease criteria related to the status of Not Fulfilling the Temporary Hajj Health Conditions. This new concept is that apart from medical check-up (MCU) examinations, Hajj pilgrims also undergo mental health examinations, cognitive health, as well as an assessment of the level of independence in daily activities. Mental health examinations are carried out to identify dementia, memory orientation and concentration. Meanwhile, cognitive examination is needed to identify thinking abilities in the elderly. Apart from that, several examination results must be followed up with further examinations and evaluations at referral hospitals.

In terms of determining the status of Not Fulfilling the Temporary Hajj Health Istithaah Requirements, there are changes in the criteria for conditions and diseases, including anemia with hemoglobin < 8.5 g/dL; suffering from TB disease with a positive bacteriological examination; uncontrolled diabetes mellitus with HbA1c value $> 8\%$; stage 3 hypertension (blood pressure $\geq 180/110$ mmHg); stage 3 renal failure with uncontrolled comorbidities (uncontrolled hypertension and diabetes mellitus); suffered a broken leg without complications. Hajj pilgrims with these conditions need to be treated and evaluated after 1 (one) month of treatment. If the evaluation results show a controlled health condition marked by improvement with certain criteria, the Hajj pilgrim is declared to have fulfilled the Hajj Health Istithaah Requirements. However, if the health condition is not under control, the Hajj pilgrim is given the opportunity until the final deadline for the Hajj health examination. If the health condition remains uncontrolled then the congregation concerned is declared not to meet the Hajj health istithaah requirements and their departure will be postponed or followed up according to the provisions (KMK NUMBER HK.01.07/MENKES/2118/2023 Concerning

Technical Standards for Health Examinations in the Context of Determining the Health Istithaah Status of Hajj Pilgrims, n.d.).

Legal Protection Efforts in Hajj Health Istithaah Standards

Law Number 8 of 2019 in article 41 paragraph 2 letter b explains that the government is responsible for providing legal protection for Hajj pilgrims. The legal protection in question is a guarantee of the certainty of departure and return of Hajj pilgrims as well as legal aid services. So it is the government's duty to provide certainty to Hajj pilgrims to go on the Hajj pilgrimage (Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, 2019).

Fitzgerald explained Salmond's theory of legal protection, that law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting interests on the other side (Satjipto Rahardjo, 2014). Optimizing Hajj health istithaah regulations that integrate the interests of Hajj pilgrims and the interests of the government as the person responsible for organizing the Hajj needs to be carried out. The interests of Hajj pilgrims who have the right to fulfill their health are so that they can carry out the Hajj pilgrimage in accordance with Islamic law, while on the other hand the government has an interest in ensuring that the Hajj runs in an orderly, safe and smooth manner, including ensuring that Hajj pilgrims do not experience health problems while carrying out their pilgrimage. The new regulations regarding Hajj health istithaah requirements with the implementation of KMK Number HK.01.07/MENKES/2118/2023 are one of the efforts made by order to bridge these interests to provide legal protection for Hajj pilgrims.

To protect the health interests of Hajj pilgrims, this new regulation regarding health istithaah requirements provides restrictions on interests, namely that pilgrims who do not meet the specified health istithaah standards are not allowed to depart. This aims to protect them from serious health threats that can result in death. From a health perspective, this regulation is actually quite rational, but on the other hand, it has bad consequences for some Hajj pilgrims who feel disappointed, because they have been queuing for decades, but apparently did not pass the health examination. so they cannot pay off the costs of the Hajj pilgrimage according to Minister of Religion Regulation Number 13 of 2021.

Based on article 32 of Law Number 8 of 2019, Hajj pilgrims have the right to receive health guidance. In accordance with Minister of Health Regulation Number 15 of 2016, from

the results of health checks, Hajj pilgrims receive health guidance by the Regency/City Hajj Health Team as an effort to prepare for Hajj health istithaah. Health istithaah guidance for Hajj pilgrims is carried out during the waiting and departure periods. Waiting period coaching is coaching carried out for all Hajj pilgrims after obtaining a portion number. However, with the very long waiting period and the dynamics of changes in the health conditions of Hajj pilgrims, this coaching period is not effective.

Health istithaah guidance for Hajj pilgrims during their departure period is guidance carried out for Hajj pilgrims who will depart in the current year. Guidance during the departure period is carried out for Hajj pilgrims who are determined to meet the Hajj Health Istithaah Requirements, Fulfill the Hajj Health Istithaah Requirements with Accompaniment and Do Not Fulfill the Hajj Health Istithaah Requirements Temporarily. Health coaching is carried out in an integrated manner with health programs at Community Health Centers such as Posbindu, Posyandu for the Elderly and others by involving stakeholders in the community (Rustika et al., 2020). However, this health coaching model is too broad and therefore does not specifically address the targets of Hajj pilgrims.

Determination of the quota and list of Hajj pilgrims for 2024 which was launched in early January 2024 (Salma, 2024) and the first stage of Bipih repayment period in February and the second stage in March (Qodar, 2024) resulted in several pilgrims with the status of Not Fulfilling Istithaah Requirements While not can make Bipih payments and their rights to go on Hajj this year are not fulfilled. This is because treating and controlling diseases, especially chronic diseases which are most commonly found in Hajj pilgrims, such as diabetes and hypertension, takes a long time. In theory, people with uncontrolled diabetes mellitus need regular evaluations every 3-6 months to assess the response to therapy given (National Guidelines for Medical Services for the Management of Adult Type 2 Diabetes Mellitus, n.d.). Likewise, hypertensive patients require a minimum treatment evaluation time of 4-6 weeks (National Guidelines for Medical Services for the Management of Hypertension in Adults, 2021).

Coordination between interested parties is the key to implementing effective legal protection, in this case coordination between the Ministry of Religion and the Ministry of Health. To support legal protection for Hajj pilgrims with health istithaah standards, coordination is needed between the Ministry of Religion in terms of determining Hajj pilgrims early, namely before the year of departure so that the Ministry of Health can carry out health

checks early to maximize health guidance. Health training that is carried out intensively and specifically will be more effective in preparing the Hajj pilgrims' health istithaah so that certainty of departure and guarantees of safe, orderly and sharia-compliant worship can be felt by the Hajj pilgrims.

Discussion

Government policies have been outlined in various regulations in order to provide legal protection for Hajj pilgrims such as Law Number 8 of 2019, Minister of Health Regulation Number 15 of 2016, and Minister of Religion Regulation Number 13 of 2021. From the research results it is known that the implementation of these policies has not been able to provide legal protection for the Hajj pilgrims to the maximum. This can be seen from the high morbidity and mortality rates for Hajj pilgrims during the 2023 Hajj. In the 2023 Hajj Mudzakarrah, the Government coordinated with Hajj practitioners, religious scholars, health experts and Hajj ritual instructors to produce recommendations for strengthening health istithaah for Hajj pilgrims. . The Ministry of Health prepared KMK regulation Number HK.01.07/MENKES/2118/2023 as a new standard for health examinations of Hajj pilgrims in the context of determining health istithaah. However, this regulation was felt to be disappointing for some of the Hajj pilgrims determine that he does not meet the Hajj Health Istithaah Requirements temporarily, because he does not have enough time to improve his health condition in order to achieve istithaah.

Minister of Health Regulation Number 15 of 2016 article 19 states that health guidance for Hajj pilgrims during the waiting period is carried out after the Hajj pilgrims receive a portion number, however, with the very long waiting period and the dynamics of changes in the health conditions of Hajj pilgrims, this coaching period is not effective. Meanwhile, article 20 states that guidance for the departure period is guidance carried out for Hajj pilgrims who will depart in the current year. The health training carried out in the current year is not specific enough to prepare health istithaah for Hajj pilgrims with temporary non-istithaah status because of the limited time between determining the list of names of Hajj pilgrims and paying off the Bipih so they do not get the right to carry out the Hajj pilgrimage that year, even though they have enough long wait for calls with queues of more than 10 years.

Several research findings illustrate that the government's efforts to establish Hajj health istithaah standards have not met the aspects of legal protection for Hajj pilgrims.

4. CONCLUSIONS AND RECOMMENDATIONS

The government's efforts to strengthen health istithaah as a condition for performing the Hajj pilgrimage is a positive policy taken by the government to provide health protection for citizens wishing to perform the Hajj pilgrimage. With the publication of KMK Number HK.01.07/MENKES/2118/2023, it is hoped that it can reduce the morbidity and death rates of Hajj pilgrims during the Hajj. However, it is necessary to consider fulfilling the health rights of Hajj pilgrims who are determined not to meet the temporary health istithaah requirements in order to obtain the same rights and opportunities.

In order to provide legal protection for Hajj pilgrims according to health standards, the government through the Ministry of Religion and the Ministry of Health needs to make policy changes. The Ministry of Religion should make policy changes in determining quotas and congregation lists before the current year, while the Ministry of Health needs to make policy changes in the second stage of health examinations which are carried out early before the current year so that health guidance can be carried out intensively and specifically by district/city governments as legal protection efforts for prospective Hajj pilgrims to prepare for health Istithaah.

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