

**HAJJ FUND INVESTMENT IN INDONESIA: ITS REGULATION
AND IMPEMENTATION**

THESIS



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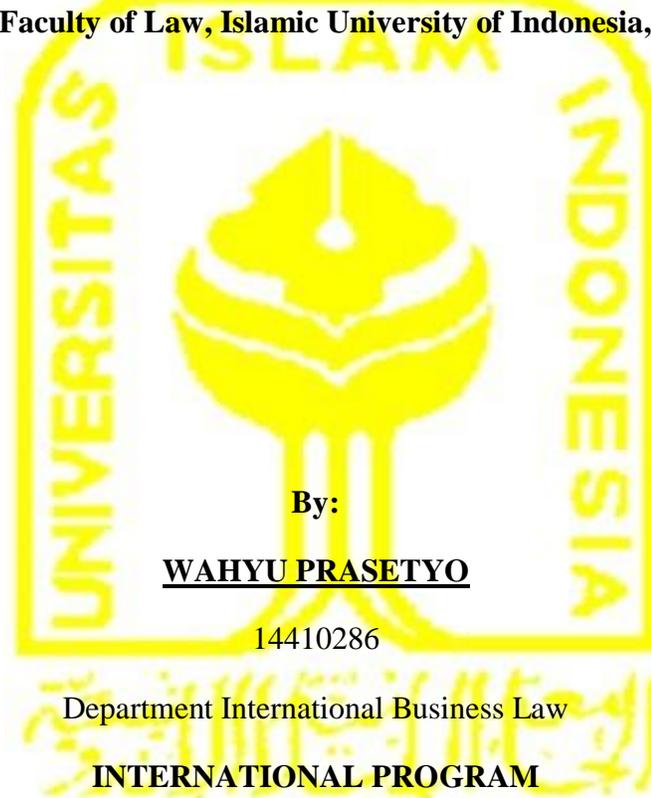
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**HAJJ FUND INVESTMENT IN INDONESIA: ITS REGULATION
AND IMPEMENTATION**

A BACHELOR DEGREE THESIS

**Presented as Partial Fulfillment of the Requirements to Obtain the Bachelor
Degree at the Faculty of Law, Islamic University of Indonesia, Yogyakarta**



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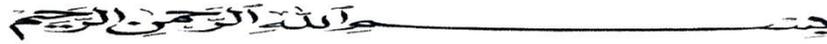
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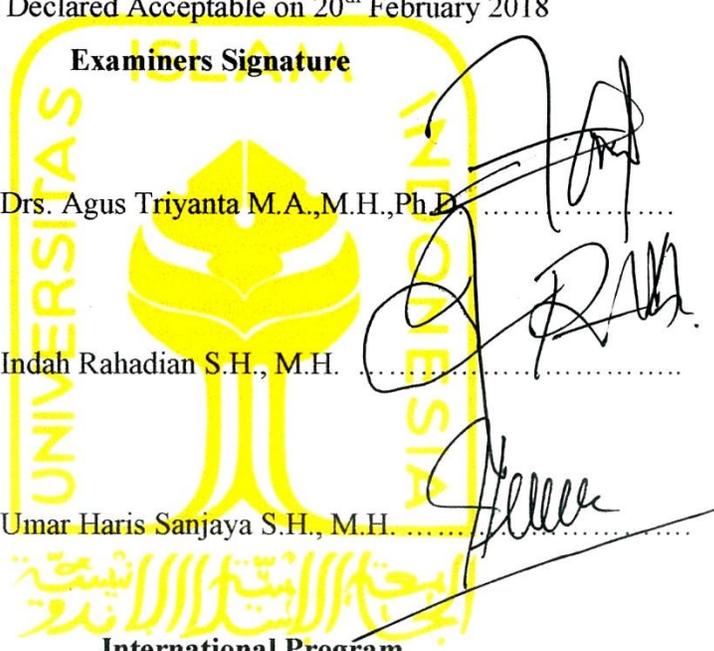
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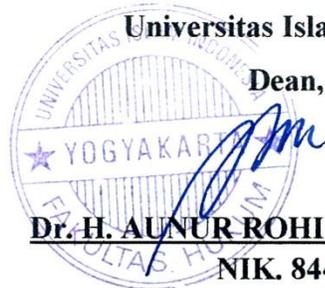


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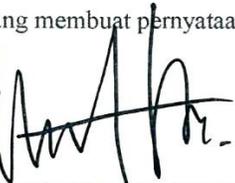
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MOTTO

“Bring your heart, mind, and soul into even the smallest of actions. This is the secret of success”.

Swami Sivananda

“How foolish man is, He destroys the present while worrying about the future, but cries in the future by remembering his past”.

Ali bin Abi Thalib

“Anyone who stops learning will age, whether it's 20 or 80. Anyone who keeps learning will stay young.”

Henry Ford

“Take it Slow, Kawan”

Marga and Bufallo

“Dia punya risky Dia Makan,Kamu punya Rizky Kamu makan. Lalu apasalahnya makan sama-sama”

Anonym singh

“Sekali Layar Terkembang Surut Kita Berpantang”

DEDICATIONS

This Thesis is dedicated to:

My Beloved Mother, Ida Nurhayati,

My Beloved Father, Sutarjo

My Beloved sisters, Anisa wulandari and Cindy sintyana,

All of My Beloved Family in Kepulauan Riau, Johor Bahru and Yogyakarta

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Yogyakarta, March 15 2018

Author

Wahyu Prasetyo

ABSTRACT

Hajj funds are funds for the payment of hajj pilgrimage fees, hajj efficiency funds, endowment of the ummah, and the value of benefits controlled by the state in order to organize the pilgrimage and the implementation of the program activities for the benefit of Muslims. Hajj fund categorized as a "specific" fund which means the Hajj fund is a sacred fund whose usefulness is for the religious field and should not be misused and it cannot collide with Sharia law. government through the Ministry of Religion issued Act Number 13 of 2008 about the organizing of Hajj pilgrims it manage hajj fund based on Sharia Law that manage Hajj fund through deposit Bank and Sharia bonds or sukuk. Unfortunately the regulation does not have good progress, the problem such us not transparency from the minister to the Hajj pilgrim, the result of the investment do not maximum and also the abuse of power that did by minister of religion. Through the Act Number 34 of 2014, BPKH was established by the president as the function to execution of Hajj fund and Manage Hajj fund with maximum progress such us Transform Hajj fund into Sharia deposit, gold Investment, capital market and Sharia bank. BPKH assigned to manage Hajj fund with the quality of Hajj organize, the rationality and efficiency of usage and manage Hajj funding itself and the benefit of Muslim People. For the implementation, based on Act Number 13 of 2008, Hajj fund investment result could be transformed into the subsidy of BPIH for the Hajj pilgrimage and as the accommodation of Hajj pilgrims in Mecca. And Act Number 34 of 2014, BPKH through government regulation Number 5 of 2018 have agenda to Manage Hajj fund such us established the virtual Account for Hajj pilgrimage, and create the instrument of banking finance in Deposit Bank, state debentures, gold and Capital Market.

Keywords:

Hajj fund, BPKH, Investment, Pilgrimage

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LIST OF ABBREVIATION

BPKH	Badan pengelola Keuangan Haji
DSN-MUI	Dewan Syariah Nasional – Majelis Ulama Indonesia
ONH	Ongkos Naik Haji
BPIH	Biaya Pelunasan Ibadah Haji
SPPH	Surat Pendaftaran Pergi Haji
TH	Tabung Haji
DAU	Dana Abadi Umat
SBSN	Surat berharga Syariah Negara

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CHAPTER I

INTRODUCTION

1. Context of study

In Islam Hajj categorizes as Rukun Islam (Islamic pillars) which become obligation that need to be fulfilled by the followers, Indonesia as a State that majority Muslim has regulation to accommodate their citizen to conduct their worship, and the regulation of Hajj itself authorized by Minister of religion, such as organize Hajj and manage of the Hajj fund.

Indonesia is part of big invitation Muslim people conduct Hajj in the world, it calculate for 250.000¹ people a year who allowed by Saudi Arabia government as the receiving country, it means that State managed all the conduct of Muslim participant related to Hajj. Related to the data that I found, Muslim people who conduct Hajj should be waiting the queue until 45 years the longest.

In Hajj Indonesian government through the president initiated to use Hajj funding as the tools become the State Investment that convert become Bonds or Sukuk in Sharia perspective, it will become the commodity aspect of Investment to running the infrastructure as the main program of our

¹ Accessed from <https://keMinistry.go.id/berita/read/506507/keMinistry-usulkan-tambahan-kuota-haji-1439h-2018m> About the amount of Hajj pilgrims for a year, Date March, 10 2018 on 10.25 AM

government,² Related to BPKH the Hajj fund that already collected by our government almost 96 trillion rupiah.³

In Islamic perspective, the usage of Hajj fund that use as Investment commodity does not violate the rule of Sharia, provided of the function of Investment should be as Sharia matter, for an instance as the benefit of the people and avoid from *haram* project that violated by Islam⁴ on the other hand, from the other State party, legislative party reject the program that issued by executive or president. Hajj fund cannot be disturb by State because as the function, it become people funds as the service of Hajj conduct and the activity, so State should get approve from the participant to use their funds as Investment tools and guarantee them. But in the fact, it's hard for the state to get approve from Hajj pilgrim that is so much of amount.

State declare that they already used this system since 2009,⁵ it was state convert Hajj fund into Sukuk (bonds in Sharia matter), and State already has regulation about bonds in Sharia treatment which is regulated in Act Number 19 year 2008 (Surat berharga Syariah Negara), "*Surat Berharga*

² Ihsanudin, "jokowi inginkan dana haji diinvestasikan untuk infrastruktur," access from <http://nasional.kompas.com/read/2017/07/26/12145401/jokowi-ingin-dana-haji-diinvestasikan-untuk-infrastruktur>, date 24 October 2017 on 14.13.

³ BPKH (Badan Pengelola Keuangan haji) /keMinistry /haji.go.id based on the amount of Investment funding by BPKH

⁴ Juli hantoro, "dana haji boleh diinvestasikan, ini kata MUI", access from <https://nasional.tempo.co/read/897517/dana-haji-boleh-diinvestasikan-ini-syarat-dari-mui>, date 24 October 2016 on 14.18.

⁵ Srihandriatmo Malau, "Dana haji sudah lama digunakan untuk infrastruktur", access from <http://www.tribunnews.com/nasional/2017/07/31/ternyata-dana-haji-sudah-sejak-2010-diinvestasikan-untuk-infrastruktur> date 24 October 2016 on 14.21.

Syariah Negara selanjutnya disingkat SBSN, atau dapat disebut Sukuk Negara, adalah surat berharga negara yang diterbitkan berdasarkan prinsip syariah, sebagai bukti atas bagian penyertaan terhadap Aset SBSN, baik dalam mata uang rupiah maupun valuta asing".⁶ It mentions all the regulation that should by the State to sell their assets to the people in Sharia terms.

Bonds known as debt securities are essentially a form of issuer debt to investors. The debt is evidenced by evidence of debt that issued by the issuer. Both of that are *government bonds* and *corporate bonds*. In debt securities listed that the issuer of securities to repay before maturity.⁷ If we conclude from the definition above we can know that bonds is prohibited by Islam, as the instrument of payment the bonds is consist of *riba (usury)*.an addition taken in a transaction in the absence of an 'iwadh (substitute /balancer) justified by the Sharia of such additions.⁸

Bonds or Sukuk actually already prepared by Securities Company to accommodate investing activity by Indonesia people who avoid the conventional and try to use Sharia matter which the object for Muslim People, on the other hand, the activity record who conduct by Indonesia people still low, in Asia noted that Malaysia is the biggest of Sharia market

⁶ Act No 19 year 2008 section 1 about *Surat Berharga Syariah Negara*

⁷ Inda rahadiyan, *Pokok-pokok hukum pasar modal di Indonesia*, Yogyakarta; UIIpress, 2016, pg18.

⁸ Direktorat pembiayaan syariah, *Tanya jawab surat berharga Syariah Negara*, Jakarta: DJPU (kemenkeu), 2010, pg 1.

share for 10, 5%⁹, In Indonesia the capital market activity still low¹⁰, we can faces towards the track record of economic growth rate consist of that consumption still become higher than Investment in stock activity.

Hajj fund regulation was regulated in Act Number 34 year 2014, it contains the subject of supervise, regulated and managed the Hajj funding, from the Article 3 Act Number 34 year 2014 mention that the usage of Hajj funding for the *first, the quality of Hajj organize, second, the rationality and efficiency of usage and manage Hajj funding itself, and third, benefit for the Muslim people*,¹¹ the meaning of benefit for the Muslim people about service activity of Hajj itself, Education, Da'wah, Health, religious social, economy of the people as well as the construction of religious facilities and infrastructure. According to the minister of planning and national development Statement mention *that Hajj fund have the same characteristics as Infrastructure projects, which are long-term, therefore, the government considers the best Hajj fund to finance infrastructure projects*.¹²

The **legal problem** that occurred in this case related to the Sharia law treatment that handles by Indonesia legal body to settled Hajj fund, Hajj

⁹ Bank Indonesia *through the development of Sharia system in Asia*

¹⁰Jackie Hornie, “*The 50 biggest managers of Islamic funds*” Accessed from ASIAN INVENTOR date March,3 2018 on 11.02 AM

¹¹ Act Number 34 year 2014 section 3

¹² Safyra primadhyta, “Dana haji untuk infrastruktur bertentangan dengan uu”, accessed from <https://www.cnnindonesia.com/ekonomi/20170728212133-7231135/dpr-dana-haji-untuk-infrastruktur-bertentangan-dengan-uu/> date 24 October 2017 on 02.31 PM

as the sacred fund which bound by the Muslim people that has an aim to run Hajj worship. In Sharia law related to fiqh knowledge mention that Hajj fund as the sacred fund should be use and handle by sharia treatment which do not violate the law of Sharia.

In the concept of muamalah there is the term ihtikar which means the prohibition of hoarding, including the prohibition of hoarding capital. Islam advocates that money is not idle and continue to move to support economic activity. Moving money will move the real sector marked by increased purchasing power and create industrial sector spirit in production and can overcome unemployment problems.

Further permissibility is in the principle of ta'awun or help. The use of hajj funds for infrastructure rather than the government should increase the debt then this can be said a positive thing. Hajj funds used for infrastructure are of course better than those funds left idle. Because the funds that flow will have an economic impact and also benefit the community.

As we know that the Hajj fund itself would like to transform by the state into the bonds instrument and saving account which found *riba* system in that. It's absolutely avoided by the Islamic law that mentions to avoid *riba* in the system of economical aspect.

In the other side we should compare the system with the other State who has same characteristic with us as majority Muslim; commonly the

Islamic State majority applied the rule of Sharia to their rule of State as reason to do not contradict with the habit and conduct of their people. In the context of successful State that applied Hajj fund as the pillar of their Investment structure is Malaysia. They use this system since 1980 and not only for infrastructure, but also for plantation Investments, capital markets and others,¹³ as reason that the structure of the people and Indonesia economical approach is same, Hajj activity in Malaysia crowded same as Indonesia.

Malaysia government established the legal body who authorized to settled Hajj fund in Malaysia, this legal body running their system based on Sharia aspect, **Lembaga Tabung Haji** Malaysia, the asset of the legal body reach 180 trillion rupiah and the profit is 8 trillion rupiah a year,¹⁴ they do not only invest in domestic area, they should invest in overseas.

Meanwhile, the balance of Indonesia's Hajj funds of Rp 96 trillion and the endowment of the Ummah (society) reached Rp 3 trillion. The total balance of pilgrim funds collected amounted to Rp 99 trillion,¹⁵ According to the Statement of vice president of Indonesia that Hajj fund should be movable thing, it means that to avoid the inflation that always happened in

¹³ Arimbi ramadhianai, "malaysia sudah pakai dana haji untuk infrastruktur" access from <http://properti.kompas.com/read/2017/08/01/160000621/malaysia-sudah-pakai-dana-haji-untuk-infrastruktur-sejak-1980-an>, date 24 October on 14.35

¹⁴ Yoga sukmana, "diinvestasikan sejak 1963 dana haji malaysia rembah berbagai Negara" access from <http://ekonomi.kompas.com/read/2017/08/07/093021926/diinvestasikan-sejak-1963-dana-haji-malaysia-rambah-berbagai-negara->, date 24 October on 14.35

¹⁵ *Ibid*

economical aspect, the participant should approved the regulation benefit for the people.¹⁶

Based on the Statement above it can conclude that State wanted to decrease the payment of Hajj that charge by State, State want to suspend the subsidy of the cost, because every year State always subsidy the cost of the participant who registered Hajj reach 50%.as usual the participant who committed Hajj need to pay 30 million rupiah, actually the amount of the cost related to the rill payment, the participant of Hajj should prepare 70 million rupiah related to all accommodation, it means that the State shall bear all accommodation costs of the pilgrims by subsidy program¹⁷.

Compared to Malaysia regulation to manage Hajj funding, they do not regulate the cost of the subsidy, their citizen should pay all the cost for 60 million rupiah. But, when the due date of Hajj conduct their government will be give back the 50% of the amount. Different with Indonesia, Malaysia applied Hajj fund is not only in bonds aspect like Indonesia, but already in *capital market and oversea Investment*.

Until from now on, besides Indonesia, no one State who made specific law about Sharia bonds or Sukuk, In Malaysia Sharia bonds publish through the *Malaysian government Investment act or the government*

¹⁶ Muhammad taufiqurrahman, "jk:investasi dana haji Rp 90 T biar tak kena inflasi", Access from, <https://finance.detik.com/berita-ekonomi-bisnis/3577799/jk-investasi-dana-haji-rp-90-t-biar-tak-kena-inflasi>, date 24 October 2017 on 14.44

¹⁷Presidential decree Number 8 year 2017 about appointment cost of Hajj legal providing year 2017

funding act 1983 allowed the government to publish the certificate without paying the interest (non-interest bearing certificate),¹⁸

The main point of this case we can know if still there is a regulation and policy who become obstacle, Hajj fund is the assets of Muslim people and it is hard for the State to use and transform it as what they want, they need to *communicate and coordination with the owner of the assets and the allocation of the funds who running by State*, Indonesia should learn from Malaysia about the rule and regulation, Malaysia almost 40 years running this system and success.

Moreover there is issue that mentions State will be use the Hajj fund as the reason that State already through limited borrowing money from other State to run the project of State infrastructure, reach almost 3%¹⁹ and to pay State's debt with foreigner because the due date of payment. Other sides this effort of use Hajj fund as economical pillar will be support Indonesia economical aspect and become the main income of the State.

According to the context study that has been declared above, mentioned that there is still unclear regulation who provided the context of Hajj fund itself, and Hajj fund as source of State Investment that collide with State regulation which Stated in Act Number 34 year 2014. The

¹⁸ Direktorat pembiayaan syariah, *Tanya jawab surat berharga Syariah Negara*, Jakarta: DJPU (kemenkeu), 2010, pg. 6.

¹⁹ Ambaranie kemala nadia movantie, "dana haji dikhawatirkan untuk tambal utang pembangunan infrastruktur", access from, <http://nasional.kompas.com/read/2017/08/06/17575371/dana-haji-dikhawatirkan-untuk-tambal-utang-pembangunan-infrastruktur>, date 24 October 2017 on 15.27

implementation of the allocation that Hajj fund as source of State Investment still unorganized, State still use the old system and only use Sukuk, and try to find out the similarities and the differences of Hajj fund Regulation between Indonesia and Malaysia or other state as the subject of State who conduct to manage Hajj fund as source of Investment.

2. Problem Statement

1. How is the Regulation of Hajj fund in Indonesia?
2. How is the Implementation of Hajj fund Investment in Indonesia?

3. Research Objectives

Based on the problem Statement, therefore the objectives of this thesis are:

1. To analyze the implementation and allocation of Hajj fund as source of State Investment.
2. To analyze the system that done by other State which successful applied this system as their Investment source.

4. Theoretical Review

Investment in Indonesia terms, Investation act 2007 uses the terms of *Investment*.²⁰ Related Black's Law Dictionary, Investment means as: “expenditure to acquire property or assets to produce revenue; a capital

²⁰ In Indonesia term, capital Investment is defined as “*penanaman modal*”

outlay.” According to Ida Bagus Rahmadi Supancana, the terms Investation and Investment are known terms, both in daily business activities and in the language of legislation. The term Investment is a term that is more popular in the business world, while the term Investment is more widely used in the language of legislation. However, in essence both terms have the same meaning so that it is sometimes used interchangeably. Both terms are translations of the word "Investment". Among the wider community, the word Investment has a broader understanding because it can include both direct Investment and portfolio Investment, whereas the word Investment has more connotations to direct Investment²¹

Investment has broad sense because consist of *Direct Investment* and portfolio Investment (Indirect Investment) whereas capital Investment has more connotation to *Direct Investment*, ²²generally Investation or Investment defines as an activity or conduct did by personal (*natural person*) as well as legal entities (juridical person) I n an effort to increase and / or maintain their capital value, in the form of cash money, equipment, fixed assets, intellectual property rights and expertise²³.

²¹ Ida bagus rahmadi supancana, *kerangka hukum dan kebijakan investasi langsung di Indonesia*, Jakarta: GI, 2006, pg 1.

²²Dhaniswara K, Harjono, *Hukum Penanaman modal, Tinjauan Terhadap undang – undang Nomor 25 Tahun 2007 Tentang Penanaman Modal*, Raja Grafindo Persada, 2007, Pg 10.

²³Ana Rokhmatussa'dyah and Suratman, *Hukum Investasi dan Pasar Modal*, Sinar Grafika, 2010, Pg 1.

From the definition and concept above we can put the most Important Element of any Investment activity, i.e.

1. The existence of a motive to increase or at least maintain its capital value;
2. That the "capital" not only confesses things that are visible and (*tangible*), but also includes something that is invisible and (*intangible*), *Intangible* includes skills, network knowledge, and so on various joint ventures (*joint venture agreements*) are usually called *valuable services*²⁴.

According to the above explanation we can conclude that the Investment means any form of Investment activity, either by domestic investors or foreign investors to do business²⁵, which have elements that divide into increase of *Capital value* and consist of *tangible* and *intangible* as Capital. And those measures as an activity or conduct did by personal (*natural person*) as well as legal entities (juridical person).

It can be concluded that Investment in procedure and conduct consist of *Riba (application of interest)* and uncertainty about the profit and such other which prohibited by Islamic law (Sharia), prohibited all the measures or conduct applied interest, gambling, and uncertainty which considered could make both parties get losses.

²⁴Ida Bagus Rahmadi suprancana, *Op.cit*, pg 2

²⁵ Act Number 25 year 2007 Article 1 about the defines of Investment

In Islam there is regulation or rule who mentioned all kind about people conduct and made it as guidance for Islamic People as known as **Sharia**, Sharia is the rule of Islamic law which sources from al Qur'an and al Hadiths,²⁶ Sharia Investment is an invest activity based on Sharia principle, be it the financial sector Investment or the real sector, where in this case Islam teaches profitable Investments for all parties and forbids people to seek and earn sustenance through speculation or various other ways that are detrimental to others.²⁷ The Function of Sharia in economic perspective is to manifest goodness, benefit and human welfare especially in economy / finance, with reference to main purpose of Sharia (*maqashid Sharia*).²⁸To conduct Investment based on Sharia, there is principle that should be following.²⁹

1. The prohibition on the application of interest (*Riba/usury*).
2. Prohibition against economic activity containing gambling / speculation (*maysir*) uncertainty / fraud (*gharar*) and production of goods and services contrary to Sharia Islam.
3. Advice on the implementation of profit-sharing system (profit loss sharing)
4. Encourage productivity and distribution justice.

²⁶ Iggi H. Achsien, *Investasi syariah di pasar modal*, Gramedia, 2003, pg 45

²⁷ Muhammad Nafik H.R related the defines and conduct of Investment activity

²⁸ *Ibid*

²⁹ *Ibid*

In Qur'an there is a verse which talks about appeals to Invest:

O ye who believe! Be fearful of Allah, and let everyone see what it has done for tomorrow (hereafter); and fear Allah, Allah is well acquainted with what you do (QS. Al-Hasyr: 18)

From the verse it can be understood that the verse contains moral advice to Invest as stock of life in the world and in the hereafter³⁰ because in Islam all kinds of activities if the intention as worship will be worth the hereafter also like this Investment activity³¹.

The Definition of *Riba* (usury/interest) is an extras taken in a transaction in the absence of an iwadh (replacement / balancer) justified by the Sharia of such additions. *Gharar* means *Uncertainty*, or contain uncertainty, doubts or acts has an aimed to harming others. *Maysir* means speculation, gambling, all the principle prohibited by Sharia term.³² Investment in Sharia commonly use the concept of *Musyarakah* and *Mudharabah*³³

The Hajj (حَجَّ) or visiting in Islamic term is an annual Islamic pilgrimage to Mecca, the holy city of Muslims, and a mandatory obligation for Muslims to be practiced at least once in their lifetime by all adult

³⁰ Hereafter means the day of responsibility (Akhirat) in Indonesian term

³¹ Sakinah, *Investment in Islam*, Fiqh lintas Mazhab, 2014, pg. 251

³² *Op cit*

³³ Musharaka is a type of joint effort between two parties or More with profit and loss shared while mudaraba is a type of musharaka where one party as rabbul-mall (Parties who have capital) and as mudharib (The party responsible for management). (Usmani, 2004)

Muslims who physically and financially capable of traveling, and can support their families during their absence. This is one of the five Pillars of Islam, in addition to the Shahadat, Salat, Zakat, and Sawm.³⁴

Hajj fund as the source of Investment already done by the State since the era of president SBY,³⁵ it prove as the establishment of Act Number 19 year 2008 about Sharia bonds, it mention about the regulation and the allocation of Sharia bonds, as it function for the State to fulfill the source of Investment by bonds of the State assets.

Sharia bonds is not new terms in Islam history, that term popular since middle age, where is the Muslim people in that time use it in the context of international trading. Sukuk has same meaning with certificate or note. It used by the trading in that time as document to show the financial obligation which appears from the trading activity and other commercial activity.³⁶

Based on the standard of Sharia the *accounting and auditing* organization for Islamic financial institutions about Sukuk Investment, Investment Sukuk are certificate of equal value representing undivided shares in ownership of tangible assets, usufruct and services or(in the

³⁴ Access from <https://keMinistry.go.id/berita/read/506507/keMinistry-usulkan-tambahan-kuota-haji-1439h-2018m> related Hajj term and definition date November 8 2017 on 09.55 related to Hajj definition and the background

³⁵ Harja saputra, "Dana haji sudah lama digunakan untuk infrastruktur", access from https://www.kompasiana.com/harjasaputra/dana-haji-sudah-lama-digunakan-untuk-infrastruktur_597bec8eb11da10594538913 date 24 October 2017 on 14.21.

³⁶ Adrian sutedi, *Aspek hukum obligasi dan Sukuk*, Jakarta;sinar grafika,2009,pg 95.

ownership of)the assets of particular projects or specific Investment activity.³⁷

Based on decision by head of capital market supervisory body and financial institutions, Sukuk has definition as Sharia securities which formulated as certificate or ownership evidence which is the same value and represent inseparable or undivided share which consist:³⁸

1. Assets ownership
2. Value of benefits and services for the project assets or current intervention activity
3. Ownership of the assets project or current of invest activity

Based on the fatwa of the national Sharia council – Indonesia Council of Ulama (DSN – MUI) No. 32/DSN-MUI/IX/2002 about Sharia bonds, Sukuk (Sharia bonds) has definition as long-term securities based on Sharia principle who issued by the issuer (Emiten) to the Sharia bondholder which obligate the issuer to paid the payment for the Sharia bondholder in the form of profit sharing/margin/fee and paid the bonds funds at the maturity.³⁹

³⁷ Direktorat pembiayaan syariah, *Tanya jawab surat berharga Syariah Negara*, Jakarta: DJPU (kemenkeu) 2010, Pg 8.

³⁸ *Ibid*

³⁹ *Op cit*

Akad means the agreement between both party about agreement or transaction and *riba* means blow up the amount or the cost, and *ghararr* is something that prohibited in Islam, *Maysir* is such kind like Gambling

Sharia bonds characteristic;⁴⁰

1. The evidence of ownership for the assets, benefit right, services or current invest activity;
2. The income given in the form of rewards, margin, share profit, based on *akad* or agreement which used in publishing;
3. Free from the element of *riba*, *gharar* and *maysir*;
4. Necessitate the underlying assets of publishing;
5. The usage of proceeds should base on Sharia principle.

Different with bonds or Obligasi term in Indonesia that is particular securities that available in capital market which include stock and other securities, through the definition of bond is long-term debt issued by the borrower, with an obligation to pay to bond holders a fixed amount of fixed interest, bonds constitute one of the most widely circulated securities in capital market activities in Indonesia.⁴¹

From the definition term of bonds and Sukuk above, the writer tried to described and explained that Hajj fund in Indonesia cannot be separated from bonds in the term of formulation that done by State as an effort to accommodate State needs. Most of Islamic State did this system as an effort to decrease the lending system from other State. Bonds is the effort that always done by State majority, because bonds give benefit from both party.

⁴⁰ *Ibid*

⁴¹ Arthur J.Keown, *Basic financial management*, 7th edition, (prentice Hall International, 1996) pages. 252.

Bonds in general use the terms of interest as the profit who get by the debtor as the conduct of lend money, that formulation is not prohibited in common people, but in Islam is prohibited that contains *Riba*, to solve the problem, majority Islamic State conduct Sharia approach to solve it, for an instance Sukuk term that has function for the State to find fresh money from domestic invest.

Sources of State income:⁴²

1. Tax (compulsory levies paid by the people to the state and will be used for the benefit of the government and the general public.
2. Natural wealth (everything that comes from nature that can be used to meet the needs of human life)
3. Customs (state levies imposed on certain goods with certain characteristics and characteristics)
4. Retribution (regional levies as payment for services or granting specific permits specifically provided and / or provided by the
5. Profit from SOE BUMN (Stated owned enterprise) (income from Stated Owned Enterprise)
6. Other sources

⁴² Erly suandi, *hukum pajak*, Yogyakarta, Salemba Empat, 2002, pg 2.

State as legal subject has obligation to serve and protect their citizen as their function, including Hajj that become main principle of Islam that should be accommodate by the State, in this step State as head of organize of the services accommodate Society interest, include the effort and facilitate

In Indonesia Hajj determined by Act Number 13 year 2008 on Hajj organize by Minister of Religion and managing the financial of Hajj which consist in Act Number 34 year 2014, both regulation become the background of State enforcement related to Hajj treatment, Act Number 34 2014 defines the pilgrimage as a combination of the people's endowment funds (DAU) and the cost and efficiency of Hajj implementation.⁴³ Meanwhile, the law defines Endowment fund as the result of development and the remaining operational cost of Hajj implementation.

In Indonesia the institution that authorized to manage Hajj fund is Hajj financial management agency which assigned by the presidential decree Number 74 / P Year 2017(BPKH), and related to article 23 in Act Number 34 year 2014 mention that about the function of BPKH itself which consist:⁴⁴

1. Planning of acceptance, development and expenditure of Hajj Finance;

⁴³ Act Number 34 year 2014 about *fund manager of Hajj finance* article 1 section 2

⁴⁴ *Ibid*

2. Implementation of acceptance, development and expenditure of Hajj Finance;
3. Control and supervision of acceptance, development and expenditure of Hajj Finance; and
4. Reporting and accountability of acceptance, development and expenditure of Hajj Finance.

In the past that body or institution who authorized to control and managed Hajj fund conducted by minister of religion, it has function to manage Hajj fund as source of State invest. Actually Indonesia has an independence body that regulated all the aspect in Islamic perspective that named Indonesia council of Ulama (MUI) they have sovereign to analyze and issued the policy (fatwa) as the rule of Muslim people in Indonesia.

Fatwa is an explanation of Sharia law on a problem of existing problems, supported by arguments derived from the Qur'an, Sunnah Nabawiyah, and ijtihad. Fatwa is a very urgent matter for man, because not everyone is able to explore the laws of Sharia.⁴⁵ In Indonesia fatwa becomes the guidance for the Islamic follower of Islamic conduct and activity.

In Islam known as Sharia, as *god's laws* or Islamic laws, manage and regulated all kinds of worship and *Muamalah*, *Sharia* is a set of *do's* or *don'ts*, governing the permissible and the forbidden, the Sharia foundation

⁴⁵ M. sugiono, *kedudukan Sharia dalam fatwa Islam* ,Jakarta:PT Gramedia,2005

is the wisdom and happiness of man in the world and the hereafter. This welfare lies in justice, affection, welfare, and wisdom⁴⁶.

5. Research Method

The method of writing is used in this research is as follows:

1. Research Approach

The approach in this research is using normative approach. Which will be centering on statute approach, conceptual approach, analytical approach, historical approach, philosophical approach and Regulation approach, as well as sociological approach related to the regulation and implementation of manage Hajj fund. And also it use the comparative approach that compare Malaysia system of Hajj toward Lembaga Tabung Haji and BPKH as the legal body that authorized of the Hajj fund by use the Data of the annual report from both party.

2. Object

- a. The regulatory framework of Hajj fund Investment in Indonesia
- b. The Implementation of The Investment of Hajj fund in Indonesia

3. Sources of Data

- a. Primary legal sources

It is the source which has legally binding, those are Act Number34 of 2014 about management of pilgrim funds, Act Number 25 of 2007 about Investment, Act Number8 of 1995 about capital market, the

⁴⁶ Iggi H. Achsien, *Investasi syariah di pasar modal*, jakarta:PT Gramedia, 2003 pg 1

government funding act 1983 (Malaysian), Tabung Hajj regulation (Malaysian) and Indonesia Council of Ulama decision or fatwa related function of Hajj fund as Investment.

b. Secondary legal sources

It is the source which is not legally binding, in this matter, it is from the literatures and books

c. Tertiary legal sources

It is supporting sources, such as Legal Dictionary and Economic Dictionary

4. Method of collecting Data

Literature research, it is examining the books, literatures, books and related materials which examine the law and regulation which are related to the Investment law, Qur'an and hadith and Hajj fund regulation.

5. Data analysis

Data analysis is done qualitatively, it means the data which are acquired then presented descriptively and analyzed with the procedure as follow:

a. Identification Data

Finding the theory of regulation and the implementation related Hajj fund and Investment as method of Sharia that applicable to implement as source of State Invest and the interest of Hajj Pilgrim.

b. Interpretation Data

Grouping and summarize the data that could be research and find the meaning that could be analyzed and conclude it.

c. Analysis Data

Interpreted the regulation and historical background that to be analyzed and find the different and similarities toward the research.

d. Conclusion

The analysis will be ended by conclusion that answers the problem statement.

CHAPTER II

GENERAL OVERVIEW ON THE REGULATION OF HAJJ IN INDONESIA AND HAJJ FUND IN INTERNATIONAL EXPERIENCES

A. Regulation of Hajj and Hajj fund

1. The Meaning of Hajj and its Regulation

The Hajj (حَجَّ) or visiting in Islamic term is an annual Islamic pilgrimage to Mecca, the holy city of Muslims, and a mandatory obligation for Muslims to be practiced at least once in their lifetime by all adult Muslims who physically and financially capable of traveling, and can support their families during their absence. This is one of the five Pillars of Islam, in addition to the Shahadat, Salat, Zakat, and Sawm⁴⁷.

Hajj is the worship of the pillars of Islam which is carried out at a certain time and in a certain area and only obliged only held once in a lifetime⁴⁸. Mentioned in Law No.13 of 2008 article (1) verse (1) the pilgrimage is the fifth pillar of Islam which is a lifetime obligation for every Islamic person who can do it. So its implementation requires some requirements both of birth and inner.

Hajj fund mechanism in Indonesia use term or *akad* Wakalah (al-Wakalah) it means *authorization*, in this hectic time, it is often the case that

⁴⁷“ *Kitab ul Hajj*” Accessed from <https://www.missionislam.com/knowledge/books/HajjBook.pdf> about the definition of Hajj date January, 15 2018 on 3.25 PM

⁴⁸ *Ibid*

a certain person does not have the opportunity to carry on his or her own affairs, not only because of a lack of time, but the lack of knowledge to face it, for example, to conduct a trial in court, therefore he needs the services of others to carry out his affairs, the surrender of personal affairs to others for his name is termed "authorization".

The authorization of power to others to carry out a matter is usually related to a legal act, in which the act breeds a "legal consequence", authorization or Al-Wakalah meaningful: At Tafwidh (submission = delegation = mandate)⁴⁹.

The general understanding of this power of attorney is an agreement whereby a person delegates or surrenders an authority (power) to another person to administer something of affairs, and the other person accepts it, and exercises it for and on behalf of the authorizer⁵⁰. It should be noted,

However, that the authorization of this power is merely a representative acts of law, and usually all covenants or contracts made by men. if it concern work that is not made alone, such as prayer cannot be represented to others. Because the purpose of the prayer is to carry out the individual's obligations to his god, and not be targeted if done by others.

⁴⁹ Sayyid sabiq, 13, 1988 : 56 *related to the definition of authorization*

⁵⁰ Chairuman Pasaribu, Suwardi K, Lubis, *Hukum perjanjian dalam Islam*, Sinar Grafika, 2004, pg 19.

The legal basis for the release of power or al-Wakalah may be taken from the Qur'an verse in Surah al-Kahf verse 19,

“...then has one of you go to town with your silver money,”⁵¹

Cause authorization is an agreement (Akkad) so in its implementation should be has “ijab” and kabul” between giver and receiver of power itself⁵², authorization itself could be done orally or in writing, which found in our daily life.

While for the validity of a power of attorney must be fulfilled the following conditions⁵³:

1. The terms of the authorizer and the proxy

The authorized person is the person who has the authority or authority for it, and he is competent to engage in a legal act, while the proxy is a person capable of acting in law

2. Things that may be authorized

Muwakkal fih, that is known by the recipient of power, and can be authorized, because in Islamic law not all deeds can be authorized to other parties.

Hajj pilgrimage according to the Act Number 13 of 2008 article 1 clause (2) mentions the implementation of the pilgrimage is "a series of

⁵¹Surah al-kahf verse 19.

⁵²*Ibid*

⁵³Sayid sabiq,13,1988 pg 60

activities of pilgrim's pilgrimage that includes coaching, service and protection of pilgrims".

In the Act Number 13 of 2008 article 4 paragraph (1) every Muslim citizen is entitled to perform the pilgrimage on the condition that: the minimum age is 18 years old or married, and able to pay BPIH⁵⁴. Also contained in the law, Act Number 34 of 2009 Article 7 contains: "Hajj pilgrims are entitled to receive guidance, service and protection in performing the Hajj which includes⁵⁵:

- a. The guidance of the rituals of Hajj and / or other materials, either in the homeland, on the way, or in Saudi Arabia
- b. Accommodate the accommodation, consumption, transportation and health services, both in the country, during travel and in Saudi Arabia
- c. Protection as a citizen of Indonesia
- d. The use of ordinary passports and other documents needed for the conduct of the Hajj, and
- e. Provision of convenient transportation and accommodation in the country, in Saudi Arabia, and when returning home.

⁵⁴ Act Number 13 of 2008 article 4 paragraph 1 which amend into act Number 34 of 2009

⁵⁵ Act Number 34 of 2009 article 7

The obligation of pilgrims according to the Act Number 13 of 2008 article 5 “every citizen who will perform the pilgrimage is obliged as follows”:

- a. Apply to the organizers of the Hajj pilgrimage office of the local district / municipal religious department.
- b. Pay BPIH⁵⁶ deposited through depositors' deposit bank, and
- c. Comply with and comply with the terms and conditions applicable in the organization of the Hajj.

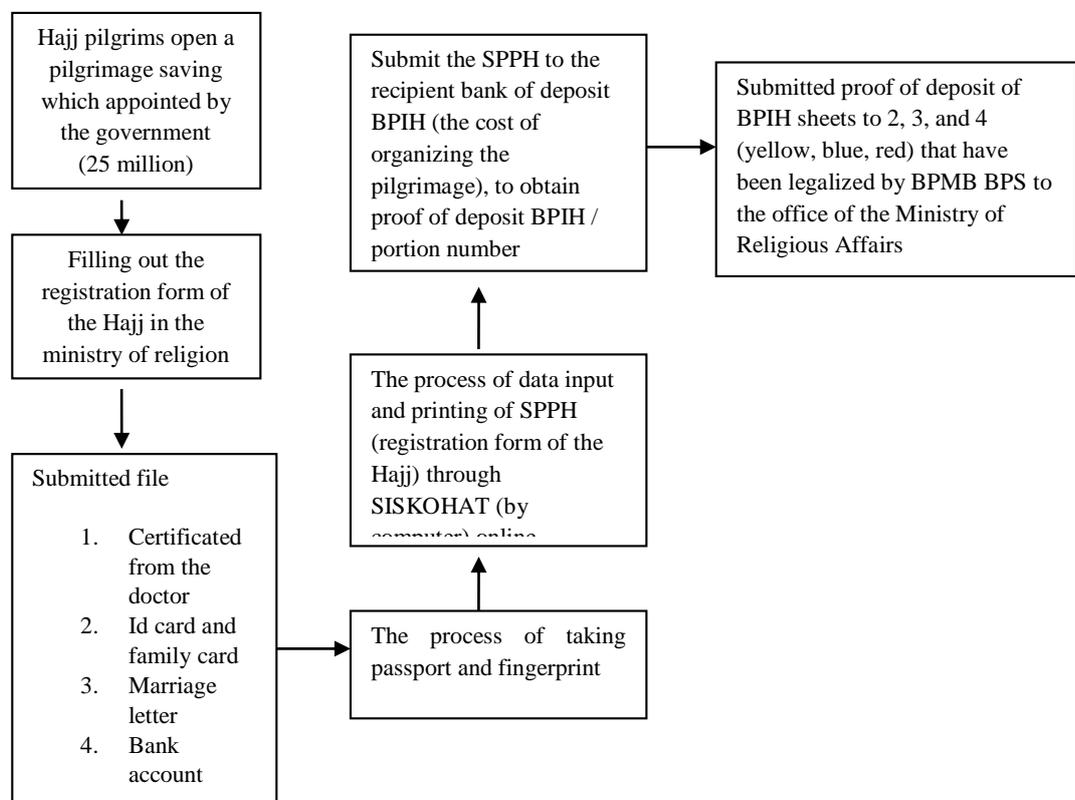
There are some requirements and conditions that must be fulfilled are arranged by Minister of Religion Regulation No. 14 of 2012 on the holding of regular Hajj and Minister of Religion Regulation number 23 year 2016 about the implementation of *specific Hajj*, While the obligation of the government itself has been contained in the law number 13 of 2008 on article 6: "the government is obliged to conduct coaching, health services, security and others needed by pilgrims”.

For the Amount of cost of Hajj that convert into BPIH was contained in Article 21 mentioned that (1) the quantity of BPIH shall be stipulated by the President on the proposal of the Minister after the approval of the DPR. (2) The BPIH as meant in paragraph (1) shall be used for the

⁵⁶BPIH(Biaya Penyelenggaraan Ibadah Haji) means the Cost of Hajj pilgrims that issued by Ministry of Religion and agreed by head of state and Legislative

cost of Hajj Implementation (3) Further provisions on the management of BPIH shall be regulated by Ministerial Regulation⁵⁷.

Chart 3.1 Procedure for registration Hajj pilgrimage⁵⁸



Basically the government appoints the recipient bank of deposit to accommodate the pilgrims or BPIH with initial deposit worth 25 million

⁵⁷ Article 21 of the Act Number 13 of 2008

⁵⁸“Scheme of registration Hajj in Indonesia” Accessed from https://keMinistry.go.id/berita/info_grafis_read/8/tata-cara-dan-persyaratan-pendaftaran-haji-reguler date March 13 2018 on 10.25 PM

rupiah, Based on the process and it flow of Hajj registration based on article 22 Act Number 13 year 2008 mention *that a national public Bank that can be appointed as a recipient bank of deposit BPIH is a commercial bank that has services that are national and have Sharia services*⁵⁹.

In the *first stage* is the prospective pilgrims to open the savings pilgrimage and initial deposit in which the Hajj candidates get validation number from the bank in question and then in the *second stage* the candidate of Hajj pilgrim bring document from the bank that has been deposited and then register to get documents registration Hajj (SPPH) portion Number in the office of the Ministry of Religion⁶⁰.

2. The meaning of Hajj fund and it Regulatory framework

Table 2.1 Regulatory framework of Hajj fund in Indonesia

Number of Regulation	Aspect of Regulation
Act Number 13 year 2008	regulating the implementation of Hajj, both payment mechanism and Hajj registration
Act Number 34 year 2014	Managing Hajj Finances
Government regulation (PP) Number 5 of 2018	Mechanism of manage Hajj Fund

⁵⁹ Article 22 Act Number 13 year 2008

⁶⁰ *Ibid*

a. Hajj fund based on Act Number 13 year 2008

Hajj fund based on Act Number 13 year 2008 are divided into two, namely *initial deposit fund (BPIH)* and *efficiency fund*. BPIH is deposited to the account of the minister of religion through a Sharia bank and or a national bank appointed and managed by the minister by considering the value of the benefit, and then some of the funds are invested in the State Sharia Securities (SBSN) or state Sukuk. Furthermore, the value of benefits (optimization results) is used to pay various operational expenses of pilgrims in Saudi Arabia⁶¹.

The results of the efficiency of the pilgrimage into the account of the endowment fund and used for services of pilgrimage, education and Da'wah, health, religious social, and the construction of facilities and infrastructure of worship which mention in Act Number 34 of 2009 Article 7 contains: "Hajj pilgrims are entitled to receive guidance, service and protection in performing the Hajj which includes⁶²:

- a. The guidance of the rituals of Hajj and / or other materials, either in the homeland, on the way, or in Saudi Arabia
- b. accommodation, consumption, transportation and health services, both in the country, during travel and in Saudi Arabia

⁶¹ Accessed from <http://www.republika.co.id/berita/koran/opini-koran/14/06/20/n7gb8840-pengelolaan-dana-haji> in 13 February 2018 in 11: 27 AM

⁶² Act Number 34 of 2009 article 7

- c. Protection as a citizen of Indonesia
- d. The use of ordinary passports and other documents needed for the conduct of the Hajj, and
- e. Provision of convenient transportation and accommodation in the country, in Saudi Arabia, and when returning home.

During this time. Hajj fund itself managed on behalf of the account of the minister of religion. It means the data of in and out of fund, the value of optimization of the pilgrimage funds, only the minister of religion and or officials / officials related to the management of pilgrim funds knows about it, and In Article 21 to 23 of the Act number 13 of 2008 there is a rule concerning the cost of holding the pilgrimage such us the amount of cost of Hajj determined by president, the fund itself will be deposited into account of minister to the bank of Sharia that appointed by minister⁶³,

Based on Act Number 13 year 2008, ministry of religion has authority to organized Hajj fund, such as BPIH and efficiency fund or endowment fund, Ministry of religion act as regulator, executor and as supervise, its proof from the body that established under Ministry of Religion, BP DAU (supervise body) of endowment fund that has structure under the Ministry of Religion. Until the deposit receiving bank or BPS is appointed directly by the ministry of religion, which concern in Article 22 section (1) BPIH shall be deposited to the account of the Minister through

⁶³Act number 13 of 2008 article 21, 22 and 23 about the rule of cost and mechanism of Hajj pilgrims

an Islamic bank and / or a national commercial bank appointed by the Minister⁶⁴.

There are 3 Instruments that contain in Hajj investment that has a basic of Sharia matter, Based on Act Number 13 year 2008 namely state debentures, Sharia deposits, and Sharia state securities (SBSN) Sukuk or Sharia bonds⁶⁵.

While related to the provisions of a number of articles in the Hajj Financial Management Law, according to the Government the management of Hajj finance aims to improve the quality of Hajj, rationality and efficiency of the use of BPIH, and benefits for the benefit of Muslims. Therefore, its management is divided by the basis of revenue, expenditure, and wealth.

b. Hajj fund based on Act Number 34 year 2014 and Government Regulation (PP) Number 5 year 2018

The mechanism of management of Hajj fund, that should be manage by Sharia principles, prudential principles, benefits; non-profit, transparent and accountable which contain in article 2 Act Number 34 year 2014 article 2 ⁶⁶, and also Financial Management of Hajj has an aims to improve the quality of Hajj, rationality and efficiency of BPIH usage; and benefits for

⁶⁴Act Number 13 of 2008 Article 22 section (1)

⁶⁵Act Number 13 year 2008

⁶⁶Act Number 34 year 2014 in article 2

Muslims⁶⁷. In article 3 Act number 34 year 2014 mention that the usage of Hajj funding for the first, *the quality of Hajj organize*, second, *the rationality and efficiency of usage and manage Hajj funding itself*, and third, *benefit for the Muslim people*.

Based on Act Number 34 year 2014 about manager of Hajj finance, regulated that in article 22 through BPKH which legal Body has authorized to charge of managing Hajj Finance which includes acceptance, development, expenditure, and accountability of Hajj Finance⁶⁸. Hajj financial management paid into account on behalf of Hajj Financial Management Agency (BPKH) due to its position as legitimate representative of pilgrims on pilgrimage. It is done solely financial management of pilgrimage can be managed properly with rationality and efficiency, and beneficial to the benefit of Muslims⁶⁹.

In performing the duties referred to in Article 22, BPKH is authorized:

1. placing and investing Hajj Finance in accordance with Sharia principles, prudence, security, and value of benefits; and

⁶⁷*Ibid*

⁶⁸Act Number 34 year 2014 about manager of Hajj finance that regulated in article 22

⁶⁹“UU Haji memiliki kepastian hukum” accessed from

<http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=10654#.WqqBax3wZdh>

Date March 10 2018 on 11.15 AM

2. Cooperate with other institutions in order to manage Hajj Finance⁷⁰.

The sources of Hajj fund mentioned In article 8 of the government regulation Number 5 of 2018 contained that BPKH manage the Hajj fund based on five (5) sources which contained deposits of BPIH and / or Special BPIH, benefit value of Hajj Finance, efficiency fund of Hajj Operation, DAU(endowment funds); and / or other legitimate and non-binding sources.

In Article 48 Paragraph (1) mentioned the placement and / or financial Investment of Hajj can be done in the form of *banking products, securities, gold, Investment direct and other Investments*. The following paragraph explains that the placement and / or financial Investment of Hajj as referred to in Paragraph (1) shall be conducted in accordance with the principles of *Sharia* by considering the aspects of security, prudence, value of benefits, and liquidity⁷¹, since the use of Hajj fund for Investment will be done with the principle of prudence (prudent)⁷². After all, the money belongs to the people, not the government.

The mechanism or process of Hajj funds itself which done by BPKH contained in Act Number 34 year 2014 article 46⁷³:

⁷⁰ Act Number 34 year 2014 article 24

⁷¹ *Ibid* Article 48

⁷² *Prudent* meant in carrying out its functions and business activities shall apply the Prudential Principles in order to protect the public funds entrusted to it

⁷³ Act Number 34 year 2014 article 46

1. Hajj Finance shall be managed at Sharia Commercial Bank and / or Sharia Business Unit.
2. Hajj Finance as referred to in paragraph (1) may be placed and / or invested.
3. In placing and / or investing as referred to in paragraph (2) shall be in accordance with Sharia principles and considering the aspects of security, prudence, value of benefits, and liquidity.

Recently, BPKH has authority to manage Hajj fund which before handled by ministry of religion through the provisions are stated in Government Regulation (PP) No. 5 of 2018⁷⁴.

In the government regulation BPKH does not only holding funds for the implementation of Hajj, BPKH also will manage the efficiency of Hajj pilgrimage fund. And also, for the cost of this pilgrimage will be collected into the banks that appointed as the Recipient Bank Deposit Fees Hajj Operation (BPS BPIH)⁷⁵. BPS-BPIH will be functioned not only receipt of initial deposit, cancellation and payment of Hajj paid for the pilgrims, but

⁷⁴ Galih gumelar "BPKH resmi kelola dana haji", accessed from <https://www.cnnindonesia.com/ekonomi/20180302173453-532-280019/bpkh-resmi-kelola-dana-haji> Date march 6 2018 on 4.30 PM

⁷⁵ *Ibid*

also for placement, liquidity, operational, benefit value and Investment partner⁷⁶.

In addition, these funds can also be placed BPKH for Sharia financial instruments in the form of *banking products* and *Sharia Investment*. The Sharia banking products include *demand deposits (giro)*, *time deposits (deposito)* and *savings accounts*.

Meanwhile, Investment instruments that can be used by Hajj fund, namely the National Sharia Securities (SBSN), Sharia securities issued by Bank Indonesia, as well as Sharia securities regulated by the Financial Services Authority, such as stocks, sukuk (bonds), mutual funds, and securities backed securities Sharia assets.

From the regulation itself, the placement of funds in banking instruments is only 50 percent of total managed funds. However, three years after BPKH operates, then the placement of products in sharia banking at most only 30 percent of total funds under management⁷⁷.

Not only that, Investment in gold was limited to a maximum of five percent of the total Hajj financial placement. In fact, BPKH could place its funds in direct Investment at most 20 percent of the total Hajj fund placement. However, this direct Investment has five criteria, namely owning

⁷⁶ Zulkarnain "BPKH tetapkan BPS", accessed from <https://www.hidayatullah.com/berita/info-haji-umrah/read/2018/02/28/136722/bpkh-tetapkan-31-bank-sebagai-bps-bpih.html> Date march 6 2018 on 8.30 PM

⁷⁷ PP (government regulation) Number 5 year 2018

own business, equity participation, Investment cooperation, and other direct Investment⁷⁸.

B. Regulatory framework of Investment in Indonesia and Sharia Investment

1. Investment Regulation

Investment in Indonesia terms, Investation act 2007 uses the terms of *Investment*.⁷⁹ Related Black's Law Dictionary, Investment means as: “expenditure to acquire property or assets to produce revenue; a capital outlay.” According to Ida Bagus Rahmadi Supancana, the terms Investation and Investment are known terms, both in daily business activities and in the language of legislation. The term Investment is a term that is more popular in the business world, while the term Investation is more widely used in the language of legislation. However, in essence both terms have the same meaning so that it is sometimes used interchangeably.

Both terms are translations of the word "Investment". Among the wider community, the word Investment has a broader understanding because it can include both direct Investment and portfolio Investment, whereas the word Investation has more connotations to direct Investment⁸⁰.

⁷⁸ *Op cit*

⁷⁹ In Indonesia term, capital Investment is defined as “*Penanaman modal*”

⁸⁰ Ida bagus rahmadi supancana, *kerangka hukum dan kebijakan investasi langsung di Indonesia*, Jakarta:GI, 2006,pgs 1.

Investment has broad sense because consist of *Direct Investment* and portfolio Investment (Indirect Investment) whereas capital Investment has more connotation to *Direct Investment*,⁸¹ generally Investation or Investment defines as an activity or conduct did by personal (*natural person*) as well as legal entities (juridical person) I n an effort to increase and / or maintain their capital value, in the form of cash money, equipment, fixed assets, intellectual property rights and expertise⁸².

From the definition and concept above we can put the most Important Element of any Investment activity, i.e.

- a. The existence of a motive to increase or at least maintain its capital value;
- b. That the "capital" not only confesses things that are visible and (*tangible*), but also includes something that is invisible and (*intangible*), *Intangible* includes skills, network knowledge, and so on various joint ventures (*joint venture agreements*) are usually called *valuable services*⁸³.

According to the above explanation we can conclude that the Investment means any form of Investment activity, either by domestic

⁸¹Dhaniswara K, Harjono, Hukum Penanaman modal, Tinjauan Terhadap undang – undang Nomor 25 Tahun 2007 Tentang Penanaman Modal, Raja Grafindo Persada, 2007, Pg 10.

⁸²Ana Rokhmatussa'dyah and Suratman, Hukum Investasi dan Pasar Modal, Sinar Grafika, 2010, Pg 1.

⁸³Ida Bagus Rahmadi suprancana, *Op.cit*, pg 2

investors or foreign investors to do business⁸⁴, which have elements that divide into increase of *Capital value* and consist of *tangible* and *intangible* as Capital. And the measures as an activity or the conduct did by personal (*natural person*) as well as legal entities (juridical person).

2. Sharia Investment

An independent Shari'ah scholar, Shaykh Yusuf Talal DeLorenzo mentioned that, "Investing is one way in which Muslims can be good stewards of their money, as promoted by the teachings of Islam."⁸⁵ Align with the increasing level of awareness and interest in investing in modern financial markets among Muslims worldwide, for the past few years, Investment strategies that honor Islamic beliefs were apparently growing in the financial industry.⁸⁶ Hence, it was reported in the year 2000 that there were over \$150 billion worth of Islamic Investment market worldwide.⁸⁷

The conventional Investment follow the rules of maximizing profits and usage of available capital, while minimizing risk and loss; whereas for Islamic Investment, the rules go beyond the conventional Investment rules to include divine considerations, meaning that, Islamic Investment must be guided by Qur'an and Prophetic injunctions that will maximize benefits (in

⁸⁴ Act Number 25 year 2007 Article 1 about the defines of Investment

⁸⁵ Shaykh Yusuf Talal DeLorenzo said this in a press release of a book titled Guide to Understanding Islamic Investing, New York, and August 31st, 2001 at http://www.lightbulbpress.com/pr_islamic/pressrelease.html.

⁸⁶ Accessed from http://www.lightbulbpress.com/pr_islamic/pressrelease.html.

⁸⁷ As mentioned by Hasnita Dato Hashim, head of IslamiQ.com, Accessed from <http://forbes.com>

the form of profits and social welfare) and minimize harms (including losses and social ills)⁸⁸.

In Islamic Investment, the aim is not just to collect as much wealth as possible for own personal use, but rather, it specifies that the Investments must be aligned with the teachings of Qur'an and *Sunnah*, and the Investments will give rise to benefits, not only to the investor, but also to the society and *Ummah* as a whole. The Islamic Investment thus incorporates within it the sense of brotherhood and wanting to help one another for the benefit of all, as Allah had mentioned in the Qur'an:

*“...Help ye one another in righteousness and piety, but help ye not one another in sin and rancor...”*⁸⁹

The most common forms of Sharia compliant Investment funds are equity funds, real estate funds and money market funds. These Investment funds employ Islamic contracts which ensure that the terms and rights of all parties are safeguarded in conformity with Islamic principles (examples and definitions are given below)⁹⁰:

- a. Musharakah: A partnership where profits are shared according to a pre-agreed ratio, while losses are shared in proportion to the capital Investment of each partner. This

⁸⁸ *Ibid*

⁸⁹ Al-Qur'an, Al-Maidah: 2

⁹⁰ Accessed from “Introduction to Islamic Investing” on HSBC Amanah journal pg 4

equity financing arrangement is widely regarded as the purest form of Islamic financing.

- b. Mudarabah: An Investment partnership under which the investor (the “Rab-ul-Mal”) provides capital to the Investment manager (the “Mudarib”) in order to undertake a business or an Investment activity. While profits are shared on a pre-agreed ratio, losses are borne only by the investor.
- c. Ijarah: An Islamic lease agreement. Instead of lending money and earning interest, Ijarah allows the investor to earn profits by charging rentals on the asset leased to the user.
- d. Murabahah: Purchase and resale of an asset. Instead of lending money, the Investor purchases the desired asset from a third party and resells it at a predetermined higher price to the user. By paying this higher price over installments, the user of the asset has effectively obtained credit without paying interest⁹¹.

The classical equity instruments in Islamic commercial law (*Musharakah* and *Mudarabah*) require partnership and profit sharing. In financial markets, investing in stocks and equity funds is permitted but must conform to certain guidelines. Conventional interest-based lending or bonds

⁹¹ *Ibid*

are ruled out in Islamic finance because it relies on interest. Instead, asset-backed financing is encouraged with the risk being shared by the provider and the user of the asset.

Hajj fund mechanism in Indonesia use term or *akad Wakalah* (al-Wakalah) it means *authorization*, in this hectic time, it is often the case that a certain person does not have the opportunity to carry on his or her own affairs, not only because of a lack of time, but the lack of knowledge to face it, for example, to conduct a trial in court, therefore he needs the services of others to carry out his affairs, the surrender of personal affairs to others for his name is termed "authorization".

The authorization of power to others to carry out a matter is usually related to a legal act, in which the act breeds a "legal consequence", authorization or Al-Wakalah meaningful: At Tafwidh (submission = delegation = mandate)⁹².

The general understanding of this power of attorney is an agreement whereby a person delegates or surrenders an authority (power) to another person to administer something of affairs, and the other person accepts it, and exercises it for and on behalf of the authorizer⁹³. It should be noted,

However, that the authorization of this power is merely a representative acts of law, and usually all covenants or contracts made by

⁹² Sayyid sabiq, 13, 1988 : 56 *related to the definition of authorization*

⁹³ Chairuman Pasaribu, Suwardi K, Lubis, *Hukum perjanjian dalam Islam*, Sinar Grafika, 2004, pg 19.

men. if it concern work that is not made alone, such as prayer cannot be represented to others. Because the purpose of the prayer is to carry out the individual's obligations to his god, and not be targeted if done by others.

The legal basis for the release of power or al-Wakalah may be taken from the Qur'an verse in Surah al-Kahf verse 19,

“...then has one of you go to town with your silver money,”⁹⁴

Cause authorization is an agreement (Akkad) so in it implementation should be has “ijab” and kabul” between giver and receiver of power itself⁹⁵, authorization itself could be done orally or in writing, which found in our daily life.

While for the validity of a power of attorney must be fulfilled the following conditions⁹⁶:

1. The terms of the authorizer and the proxy

The authorized person is the person who has the authority or authority for it, and he is competent to engage in a legal act, while the proxy is a person capable of acting in law

2. Things that may be authorized

⁹⁴ Surah al-kahf verse 19.

⁹⁵ *Ibid*

⁹⁶ Sayid sabiq,13,1988 pg 60

Muwakkal fih, that is known by the recipient of power, and can be authorized, because in Islamic law not all deeds can be authorized to other parties.

Hajj pilgrimage according to the Act Number 13 of 2008 article 1 clause (2) mentions the implementation of the pilgrimage is "a series of activities of pilgrim's pilgrimage that includes coaching, service and protection of pilgrims".

C. Hajj fund Development in international experiences : Case of Malaysia

Hajj fund international experience that happened in Islamic state, both of them has their policy or regulation to handle their Hajj fund and their pilgrimage such us:

1. Hajj fund in Malaysia

a) Lembaga Tabung Haji Malaysia

The movement of pilgrims on such a large scale raises a number of issues to be solved by the host country as well as those countries from where the pilgrims come. It is a source of great solace that Islamic Ummah is establishing modern institutions to deal with these problems. For example two important institutions dealing with the problems emanating from the management of *Hajj* are the *Hajj* Research Center at the *Umm al Qura* University in

Makkah al Mukarramah (Saudi Arabia) and Pilgrims Management and Fund Board of Malaysia⁹⁷.

The pilgrim Management and Fund Board of Malaysia popularly known as Tabung Haji was established in 1969. The *Tabung Haji* is a corporation whose aims include enabling Muslims to save in order to provide for their *Hajj* expenses as well as to participate in Investment in industry, commerce, plantation and real estate and to provide for the protection and welfare of Muslims on pilgrimage through various facilities and services of *Tabung Hajj*⁹⁸.

Although, *Tabung Haji* is not an Islamic bank, in mobilizing and utilizing financial resources, it works very much the same way as an Islamic bank does. It accepts deposits and makes Investment in a manner approved by the Islamic *Shari 'ah*. *Tabung Haji* is a good example how a specialized financial institution can work successfully in accordance with the Islamic principles.

The Pilgrims Management and Fund Board of Malaysia, popularly known as Tabung Haji was established in 1969 under the laws of Malaysia, although the Pilgrims Savings Corporation was first introduced in 1962 and were subsequently merged with the

⁹⁷ Accessed from "Islamic socioeconomic institutions and mobilization of resources with special reference to Hajj management of Malaysia journal" pg 7

⁹⁸ *Ibid*

office of the Pilgrims Affairs Office. Its purpose is to provide an appropriate Islamic means of mobilizing savings gradually, investing them in economic activities in conformity with *Shari 'ah*, thereby assisting Muslims to perform the pilgrimage in Makkah at the least possible cost⁹⁹.

Based on his research in the 1950's, Royal Professor Ungku Abdul Aziz observed that Muslims saved money in pillows, under mattresses and floors, in cupboards, in earthen jars, etc. to meet expenses of their journey to the Holy Land to make it completely free of interest ("Riba"). This is savings in any bank or financial institution at that time (before the formation of Bank Islam Malaysia) would involve *riba*. Thus his study indicated that these traditional methods of saving were not only detrimental to rural development, but also inconsistent with the *Shari 'ah*. As such in 1959, he submitted a number of recommendations to the then Government in which it was stressed that future pilgrims should be provided institutional cover under which they can invest in diverse lawful activities out of which dividends can be paid, and this would assist them financially in meeting their expenses for the Hajj in an efficient way¹⁰⁰.

⁹⁹ *Ibid* pg 21

¹⁰⁰ See the working paper presented on the occasion of the award for Tabung Hajj winning the IDB Prize in Islamic Banking for 1410H (1990AD) by Tuan Hajj Wan Mohd. Ismail Bin Wan Hussain, Deputy Director General (Finance) on 28th May at IDB Headquarters in Jeddah, Saudi

Subsequently, this Corporation was *merged* with the Pilgrims Affairs Office which had been in operation since 1961 to give birth to the present. Pilgrims Management and Fund Board in 1969 or more popularly known as *Tabung Haji* under the Laws of Malaysia Act 8¹⁰¹:. Over the years the Tabung Haji emerged as an institution for mobilization of savings and Investments¹⁰².

1. Tabung Haji mobilization of savings and Investments

Tabung Haji as an organization started a on modest scale with 1,281 depositors and a total of M\$46,600 in deposits collected through its three branch offices in 1963¹⁰³. Tabung Haji has now grown into a big corporate body with over 83 branch offices throughout the country with a clear plan for further growth. The financial functions of "Tabung Haji" are classified into two major activities. The first concerns financial management including savings and withdrawal of funds by the depositors, and the second concerns the Investment carried out upon their savings¹⁰⁴.

In implementing its functions as a saving institution, *Tabung Haji* works in the way an Islamic bank operates in dealing with depositors. Here depositors give consent to *Tabung Haji* to manage their deposits for the purpose of Investment. The profits derived from

Arabia, 28 May, 1992.

¹⁰¹ Act 8 *lembaga urusan dan tabung haji* is regulated and managed lembaga tabung Haji in Malaysia

¹⁰² *Ibid*

¹⁰³ *Ibid*

¹⁰⁴ *Op cit* pg 22

the Investment are the distributed among the depositors in the form of bonus¹⁰⁵.

In order to attract the savings, *Tabung Haji* has made all possible efforts in simplifying the saving procedure and expanding its retail collection network to ensure easy accessibility to deposit source. Also as in the case of withdrawals of deposit, *Tabung Haji* provides a level of withdrawal convenience comparable, if not better than those of competing financial institutions.

In a competitive market environment efficient and fast services to the depositors play an important role in attracting deposit. Membership of *Tabung Haji* is limited to Malaysian Muslims only. No age limit is imposed. In order to ensure a steady growth both in the number of new depositors and deposits, *Tabung Haji* yearly sets a "target" expected from its branch offices. The long term target is to achieve at least 50% of the Malaysian Muslim population to be members of *Tabung Haji*¹⁰⁶.

2. Withdrawal of Deposit

Depositors can withdraw any amount up to 100% of their credit balance. *Tabung Haji* allows depositors to withdraw his/her saving once in 6 months¹⁰⁷, but unless it is for some urgent and important needs additional request for

¹⁰⁵ *Ibid*

¹⁰⁶ *Ibid* pg 23

¹⁰⁷ Part 5 in *finance* of act Number 8 about Lembaga Tabung Haji

withdrawal of saving can be considered. Withdrawal of deposits is encouraged primarily by the need to incur pilgrimage expenses rather than other purposes. *Tabung Haji* also provides withdrawal services for pilgrims while they are at the Holy Land performing the Hajj and has started computerizing fully in order to facilitate administrative, Hajj, Investments and accounts matters.

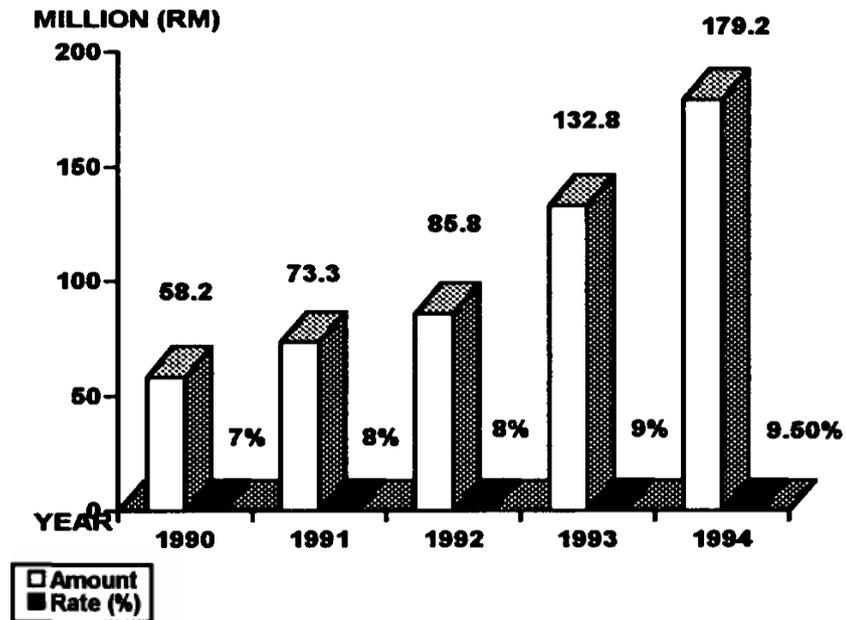
The computer system operations cover membership, Hajj, ledger, salary deduction for its depositors, bank reconciliation, personnel, shares, land and building, rental collection, budgeting, cash withdrawal at headquarters and state offices, and cash withdrawal in Saudi Arabia, since its inception there has been a steady increase in number of new depositors of *Tabung Haji*. The yearly percentage increase was about 16% to 20% from 1986 to 1994¹⁰⁸.

3. Deduction of Zakat

As an Islamic institution, *Tabung Haji* before distribution of dividend (bonus) to its members pays, zakat at the rate of 2.5% which is deducted from the profits earned during the zakat year and the amount of working capital at the end of the zakat financial year (Hijrah). The following bar chart-I shows the steady increase of zakat collection from 3.04 million R.M. (Malaysian dollars) in 1990 to 6.5 million in 1994.

¹⁰⁸ “*Hajj management of Malaysia*” journal pg 23

**PILGRIMS MANAGEMENT AND FUND
BOARD PAYMENT OF ZAKAT**



Source: Tabung Haji Report (1995)

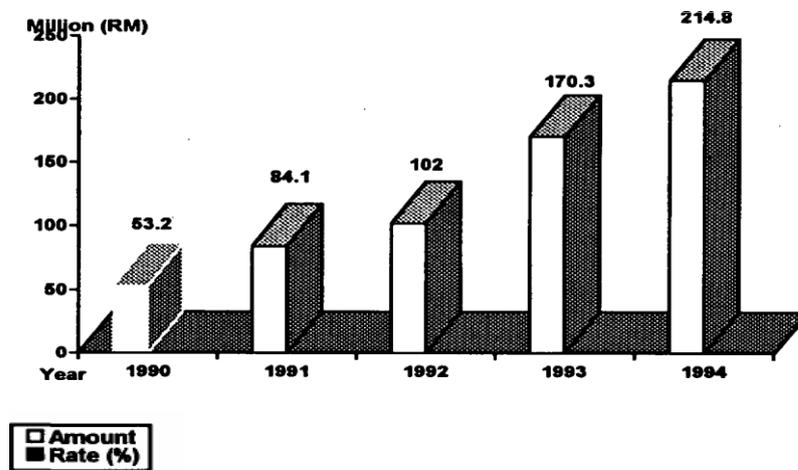
Tabung Haji pays business zakat on behalf of its depositors based on "Aqad Izin" where depositors are considered as a fund provider for the business and Investment activities of Tabung Haji. Subsidiary companies of Tabung Haji are also paying zakat using the same formula as above.

4. Profit and Bonus

Tabung Haji has made a substantial profit during the last five years (1990- 1994). The profit made in 1994 was RM 214.8 million compared to RM 170.3 million in 1993 after deduction of zakat.

The bonuses paid to depositors are based on the principle of profit sharing which differentiates the bonus from the concept of 'Riba'. Bonus will only be paid if Tabung Haji makes profit. The value of bonus depends on the profits derived in the particular year. In 1994, the rate of bonus paid to the depositors was 9.5% compared to 9.0% in 1993. The trend shows that Tabung Haji has maintained a steady rate of return as indicated in the Appendix IV¹⁰⁹. However, it is reported that this rate is not very competitive enough compared to other financial institutions in Malaysia resulting in funds switching over to other financial institutions.

PILGRIMS MANAGENT AND FUND BOARD PROFIT



Source: Tabung Haji Report (1995)

¹⁰⁹ Appendix IV of the Act Number 8

CHAPTER III

THE IMPLEMENTATION OF HAJJ FUND MANAGEMENT IN INDONESIA, OBSTACLES OF IT AND IT'S COMPARATIVE BETWEEN MALAYSIA AND INDONESIA

A. The Implementation of Hajj fund management in Indonesia

The president intends to use the hajj funds for infrastructure development. This statement becomes a debate of the some people. Some of those who disagree want this pilgrimage for the benefit of pilgrims such as hotel rent, airplane rental, catering, and trinkets of Hajj. But, many also agree to hajj funds for infrastructure, given all along, the government built infrastructure by way of debt.

Hajj fund categorized as the sacred fund that can only use by the sharia treatment, from the description above, we found that Hajj fund itself will be transform into the investment matter. In Indonesia, Investment settled by the economic knowledge that got profit from the interest and *Riba* which prohibited by Islam. Hajj fund should be settled by the Sharia treatment. the validity of the sharia and to ensure validity in terms of syara,' can be seen below;

First, in the concept of muamalah known term (احد نكر) ihtiqar is the prohibition of hoarding, including in it is stockpiling capital. Therefore Prophet Muhammad SAW encouraged to be generous, because in the generosity in

addition there is a value of worship also makes the funds circulate among the community.

Thus, it is clear Islam advocates that money or capital can move in the economic activities of society, because it will give positive impacts in the real sector. In addition, it can increase purchasing power and certainly can stimulate the industrial sector and can cope with unemployment.

During this time the pilgrims fell sound asleep. In fact, if driven will provide economic benefits to owners and also to the community. Therefore the use of hajj funds for infrastructure is in fact in harmony with the principle of muamalah.

Secondly, in Islam there is an element (تعاون) ta'awun ie help that is then formulated in the concept of mudaraba, musharaka and others. Thus, the use of haj funds for infrastructure is something positive because the government needs capital even to pile up debt for infrastructure development. Thus, the use of government Hajj funds for infrastructure is something positive as a reflection of mutually beneficial cooperation. It's just a matter of how to organize it, the concept of cooperation should be able to provide a sense of security and benefit to both parties defend.

Third, in theory muamalah there is a provision (راض) which is willingness of the owner of the fund. This becomes very important to be formulated for security guarantees, so the government must guarantee the

pilgrimage is really safe, thus encouraging the owners of capital to give up their funds used for infrastructure.

Therefore, it is necessary to regulate the mechanism and the pattern of its management in order to be completely safe and secure. For example poured in the state budget, budgeting the annual pilgrimage, so there is certainty that the pilgrimage funds are maintained and safe. Once again this security assurance can motivate pilgrims to give up their funds for infrastructure.

Fourth, in the concept of fiqh theory is known as the principle of manfaah and it is in line with the concept of fiqh aulawiyah which is the principle of virtue, hence the use of haj funds for infrastructure is certainly more useful than the funds are left to accumulate.

Fifthly, the use of hajj funds for infrastructure meets the concept of maqshid shari'ah that is oriented towards the benefit of the people, and all understand that infrastructure gives economic impact and welfare in various sectors of community life.

From the above explanation it becomes clear that the use of Hajj funds for infrastructure needs to be appreciated, it must involve all parties and good arrangements for the pilgrimage in it can accommodate dimensions of ubudiah, ijtimai'iyah (community) and iqtishadiyah (economy) simultaneously, of course this is ideal because it can meet the maqashid or sharia objectives, especially in strengthening the utilization of maximum wealth for the common good

Act Number 13 of 2008 about organizing Hajj regulated about all the kind of Hajj Aspect from the registration of Hajj and the manager of Hajj fund finance, all of the Hajj activity regulate and also supervised by Ministry of religion, such us, the management of BPIH¹¹⁰ conducted by the Ministry of Religious Affairs, where the minister of religion as Budget User, Directorate General Hajj and Umroh Organizer is always the Budget User Authority as well as General Treasurer of Hajj Pilgrimage, Director of Hajj Fund Management as the General Treasurer of Hajj and Hajj in Saudi Arabia also acting as Committing Officer at the Indonesian Hajj Affairs Office in Saudi Arabia.

The management of Endowment fund (DAU) is done by the Agency of Management (BP) DAU¹¹¹ in which the minister of religion as chairman / person in charge of BP DAU. So, both the management of BPIH and DAU is entirely under the Ministry of Religious Affairs¹¹². Before the Act Number 13 2008 on the implementation of the Hajj was issued, the Ministry of Religious Affairs has included DAU (endowment funds) into three investment instruments, namely *government bonds*, *syariah deposits*, and state *sharia securities (SBSN) sukuk or syariah bonds*¹¹³.

¹¹⁰ BPIH meant *Biaya penyelenggara ibadah haji*

¹¹¹ DAU meant *Dana abadi umat* has function as Muslim fund to contribute Hajj or other worship activity

¹¹² Act Number 13 year 2008 about who authorized in Hajj fund before state established BPKH

¹¹³“Lima Hal Tentang Dana Haji dan Kontroversinya” Accessed from <http://www.bbc.com/indonesia/indonesia-40778194> Date on January 12 2018 on 09.08 AM

The Ministry of Religious Affairs has used the results of Hajj investment as a subsidy to cover the total cost of hajj and payments paid by candidates to the government. As a result, now the pilgrims just pay 50 percent of the actual funds. The total cost of Hajj that should be paid Rp 68 million per candidate, with the subsidy, reduced by half, to Rp 34 million. Considering the potential of Hajj fund is very high, BPKH will add Investment instrument that is in infrastructure sector¹¹⁴.

State declare that they already used this system since 2009,¹¹⁵ and State already has regulation about bonds in Sharia treatment which is regulated in Act Number 19 year 2008 (*Surat berharga Syariah Negara*)¹¹⁶, “*Surat Berharga Syariah Negara selanjutnya disingkat SBSN, atau dapat disebut Sukuk Negara, adalah surat berharga negara yang diterbitkan berdasarkan prinsip syariah, sebagai bukti atas bagian penyertaan terhadap Aset SBSN, baik dalam mata uang rupiah maupun valuta asing*”.¹¹⁷ It mentions all the regulation that should by the State to sell their assets to the people in Sharia terms.

Act Number 34 year 2014, it contains who supervise, regulated and managed the Hajj funding, through BPKH in article 48 paragraph (1) mentioned the placement and/or financial Investment of Hajj that can be done in the form of *banking products, securities, gold, direct investment and*

¹¹⁴ *Ibid*

¹¹⁵ Srihandriatmo Malau, “Dana haji sudah lama digunakan untuk infrastruktur”, access from <http://www.tribunnews.com/nasional/2017/07/31/ternyata-dana-haji-sudah-sejak-2010-diinvestasikan-untuk-infrastruktur> date 24 October 2016 on 14.21.

¹¹⁶ Act Number 19 year 2008 about the definition of Sukuk

¹¹⁷ Act No 19 year 2008 section 1 about *Surat Berharga Syariah Negara*

other investments. According to article 3 Act number 34 year 2014 mention that the usage of Hajj funding for the first, *the quality of Hajj organize,* second, *the rationality and efficiency of usage and manage Hajj funding itself,* and third, *benefit for the Muslim people,*¹¹⁸ the meaning of benefit for the Muslim people about service activity of Hajj itself, education, Da'wah, health, religious social, economy of the people as well as the construction of religious facilities and infrastructure.

Hajj fund have the same characteristics as Infrastructure projects, which are long-term, therefore, the government considers the best Hajj fund to finance infrastructure projects,¹¹⁹ and also in article 24 mention about placing and investing Hajj Finance in accordance with Sharia principles, prudence, security, and value of benefits which means state allowed to used and contributed with Hajj fund with prudent principle and allowed base on Sharia principle.

Actually in 2018, BPKH will have the authority to manage Hajj fund which before handled by ministry of religion which the provisions are stated in Government Regulation No. 5 of 2018¹²⁰.

¹¹⁸ Act Number 34 year 2014 Article 3

¹¹⁹ Safyra primadhyta, "Dana haji untuk infrastruktur bertentangan dengan uu", accessed from <https://www.cnnindonesia.com/ekonomi/20170728212133-7231135/dpr-dana-haji-untuk-infrastruktur-bertentangan-dengan-uu/> date 24 October 2017 on 14.31

¹²⁰ Galih gumelar "BPKH resmi kelola dana haji", accessed from <https://www.cnnindonesia.com/ekonomi/20180302173453-532-280019/bpkh-resmi-kelola-dana-haji> Date march 6 2018

In the government regulation BPKH does not only holding funds for the implementation of Hajj, BPKH also will manage the efficiency of Hajj pilgrimage fund. And also, for the cost of this pilgrimage will be collected into the banks that appointed as the Recipient Bank Deposit Fees Hajj Operation (BPS BPIH)¹²¹. BPS-BPIH will be functioned not only receipt of initial deposit, cancellation and payment of Hajj paid for the pilgrims, but also for placement, liquidity, operational, benefit value and Investment partner¹²².

In addition, these funds can also be placed BPKH for Sharia financial instruments in the form of *banking products* and *Sharia Investment*. The Sharia banking products include *demand deposits (giro)*, *time deposits (deposito)* and *savings accounts*.

Meanwhile, Investment instruments that can be used by Hajj fund, namely the National Sharia Securities (SBSN), Sharia securities issued by Bank Indonesia, as well as Sharia securities regulated by the Financial Services Authority, such as stocks, sukuk (bonds), mutual funds, and securities backed securities Sharia assets.

From the regulation itself, the placement of funds in banking instruments is only 50 percent of total managed funds. However, three years

¹²¹ *Ibid*

¹²² Zulkarnain “BPKH tetapkan BPS”, Accessed from <https://www.hidayatullah.com/berita/info-haji-umrah/read/2018/02/28/136722/bpkh-tetapkan-31-bank-sebagai-bps-bpih.html> Date march 6 2018

after BPKH operates, then the placement of products in Sharia banking at most only 30 percent of total funds under management¹²³.

Not only that, Investment in gold was limited to a maximum of five percent of the total Hajj financial placement. In fact, BPKH could place its funds in direct Investment at most 20 percent of the total Hajj fund placement. However, this direct Investment has five criteria, namely owning own business, equity participation, Investment cooperation, and other direct Investment¹²⁴.

The management of pilgrim funds in Indonesia is regulated in Law no. 34 Year 2014 on Financial Management of Hajj. This law is enacted with the consideration that the financial management of Hajj can be done effectively, efficiently, transparently and accountably. According to Article 1 paragraph (2) the meaning of the pilgrim fund is

"Funds for the payment of the costs of pilgrimage, funds for the efficiency of pilgrimage, endowment of the Ummah, and the value of the benefits controlled by the state in order to organize the pilgrimage and the implementation of the program activities for the benefit of Muslims."

Act Number 34 of 2014 actually has clearly regulated how the management of pilgrim funds should be done. In order to guarantee the loyalty in the management of pilgrim funds, the pilgrims must be managed

¹²³ PP (government regulation) Number 5 year 2018

¹²⁴ *Op cit*

in Islamic banks and / or Sharia business units. Hajj funds may be invested in accordance with Sharia principles by considering the security, prudence, benefit, and liquidity aspects¹²⁵. The placement and / or investment of pilgrims may be made in the form of banking products, gold securities, direct investments and other investments¹²⁶.

Hajj funds to be invested should be conducted in accordance with sharia, prudential, benefit, non-profit, transparent and accountable principles Investment hajj is based on sharia principles by requesting a DSN-MUI fatwa and should be done carefully by way of investing in businesses that are minimal risk, so that losses can be avoided.

Profits derived from pilgrimage investments should be used to improve operational quality of Hajj pilgrimages, such as reducing the cost of hajj considered expensive compared to other countries, increasing hotel facilities and consumption during Mecca and Medina. This is often a problem and should be corrected along with the huge profits derived from the Hajj investment so it feels the benefits are true. In addition, the Hajj funds invested must be managed transparently and accountably, should not be used for personal or corrupted purposes as has happened in the previous case.

¹²⁵ Article 46 paragraphs (2 & 3)

¹²⁶ *Ibid* Article 48

Hajj financial management is also expected to be better with the inauguration of BPKH officials, which in Act 34 of 2014 is given full task to manage the hajj finances. Hajj financial management tasks include: acceptance, development, expenditure and financial accountability of Hajj¹²⁷. In addition, under Article 22, BPKH is also authorized to¹²⁸:

"Placing and investing Hajj finances in accordance with sharia principles, prudence, security, and value of benefits; and cooperate with other institutions in the context of Hajj financial management. "

Based on the above explanation, it is understood that Act number 34 of 2014 allows the Hajj funds to be invested. This law also explicitly states that Hajj investments are allowed to be invested based on Sharia principles, prudence, security and value-added benefits,

BPKH given the task and authority in managing the Hajj finances has a central role to ensure that the investment of pilgrim funds is in accordance with the principles of Sharia¹²⁹.

The mechanism of BPKH itself regulated on Act Number 34 of 2004 and government regulation Number 5 of 2018, from the interview that the author did from the member committee of BPKH explained that before the regulation of Management of Hajj financial established by state through Act

¹²⁷ Article 22

¹²⁸ *Ibid*

¹²⁹ Act Number 34 of 2014 about the Authority of BPKH

Number 34 of 2014. Hajj fund itself regulated by Minister of religion which role as legislator, executor and the supervisor¹³⁰.

Hajj fund regulated by the Act Number 13 of 2008 which implemented about the organizing of Hajj and also the mechanism of Hajj fund, it stated about the mechanism that should be followed by the pilgrimage, like BPIH that settled by ministry of religion and legislative party, and also the appointment of Bank that receive the BPIH itself settled by Ministry of religion.

As the responsibility by the state and the situation that force minister to manage Hajj fund, one of which is that the pilgrimage funds that have been deposited has accumulated. To manage that, minister use instrument that can be invested by Hajj fund namely state debentures, Sharia deposits, and Sharia state securities (SBSN) Sukuk or Sharia bonds¹³¹.

Hajj fund that managed by Minister can use as subsidy of Hajj pilgrim that run Hajj, the real cost of Hajj itself that explained by the member committee of BPKH itself reach 70 million rupiah (include the transportation, accommodation) and through the Hajj fund managing, it convert into 25 million rupiah. And the building of infrastructure also handles by the efficient mechanism of Hajj fund.

¹³⁰ Interview from the Committee of BPKH Dr. M. Akhyar Adnan, MBA. Ak., CA

¹³¹ Act Number 13 year 2008

The problems that cause of change regulation from Act Number 13 of 2008 into 34 of 2014 come into three aspects, *first* the abuse of power that conduct by the Minister as the executor, legislator and supervise, *second* not transparency about the fund that incoming to the Hajj pilgrimage as the owner of funds, and then not optimal manage the Hajj fund into the investment aspect¹³².

After several years that Hajj fund manage by Ministry of Religion, State found if the Minister progress in running Hajj fund did not optimal in investment aspect. Therefore state established Act Number 34 of 2014 and BPKH as the legal body that regulatory Hajj fund mechanism and to get optimal result on Hajj fund in investment aspect.

According to article 3 Act number 34 year 2014 mention that BPKH has function to manage the usage of Hajj funding for the first, *the quality of Hajj organize*, second, *the rationality and efficiency of usage and manage Hajj funding itself*, and third, *benefit for the Muslim people*,¹³³ and also to transparency for the development of Hajj fund Investment through the mechanism of investment¹³⁴.

Hajj Financial Management Agency (BPKH) is the representative of the pilgrim candidate. Thus, BPKH can perform its role and function properly as a representative that manages the hajj finances. This has been

¹³² Interview from the Committee of BPKH Dr. M. Akhyar Adnan, MBA. Ak., CA

¹³³ Act Number 34 year 2014 Article 3

¹³⁴ article 3 Act number 34 year 2014

regulated in Article 20 Act Number 34 Year 2014. BPKH also has duties which mention in article 22 "BPKH is in charge of managing Hajj finance which includes revenue, development, expenditure and financial accountability of Hajj"¹³⁵. While the functions contained in Article 23 include the first, planning, implementation, control and supervision, reporting and financial accountability of the pilgrimage. Thus BPKH has the authority as Article 24 of "placing and investing Hajj finances with the principles of Sharia, caution, security and value of benefits"¹³⁶.

BPKH get the mandate as the representative of Hajj candidate hence BPKH has function as its position as the representative. Thus BPKH can perform its functions to manage the hajj finances. This function is also set in the Act as mentioned above. This revenue function indicates that Hajj funds from customers will be collected and collected by BPKH. This fundamental change that was previously collected by Minister and now switched to be collected by BPKH will facilitate the management of pilgrim funds.

In the government regulation BPKH does not only holding funds for the implementation of Hajj, BPKH also will manage the efficiency of Hajj pilgrimage fund. And also, for the cost of this pilgrimage will be collected into the banks that appointed as the Recipient Bank Deposit Fees Hajj

¹³⁵ Article 22

¹³⁶ Article 24

Operation (BPS BPIH)¹³⁷. BPS-BPIH will be functioned not only receipt of initial deposit, cancellation and payment of Hajj paid for the pilgrims, but also for placement, liquidity, operational, benefit value and Investment partner¹³⁸.

Basically the government appoints the recipient bank of deposit to accommodate the pilgrims or BPIH with initial deposit worth 25 million rupiah, Based on the process and it flow of Hajj registration based on article 22 Act Number 13 year 2008 mention *that a national public Bank that can be appointed as a recipient bank of deposit BPIH is a commercial bank that has services that are national and have Sharia services*¹³⁹.

BPKH has a development function. BPKH has the authority to allocate and produce hajj finances. Although nonprofit, but the aspect of producing and placing funds in infrastructure development is not prohibited. Provided by the principles of Sharia, and have benefits for pilgrims and have value benefits as a yield.

This expenditure function is divided into two, first, the operational expenditure of BPKH which must be separated from the account and

¹³⁷ *Ibid*

¹³⁸ Zulkarnain “BPKH tetapkan BPS”, accessed from <https://www.hidayatullah.com/berita/info-haji-umrah/read/2018/02/28/136722/bpkh-tetapkan-31-bank-sebagai-bps-bpih.html> Date march 6 2018 on 8.30 PM

¹³⁹ Article 22 Act Number 13 year 2008

reporting from the funds to the pilgrims. The second is the expenditure of customers to send pilgrims to Mecca to run the Hajj.

The process of the implementation of Hajj fund belong to the BPKH, they started to settle Hajj fund from the transfer of fund from Minister. BPIH was settled by Minister of religion and legislative and also it supervise by BPKH, in this term Minister as the regulator of Hajj mechanism in worship perspective, BPKH as the executor of manage Hajj fund and State as the supervisor through BPK and KPK¹⁴⁰.

BPKH authorized to regulate Hajj fund through the Government Regulation Number 5 of 2008 which become the implementation from the Act Number 34 of 2014. BPKH on Hajj fund itself transform the fund into the deposit bank, Bonds, and Gold in Investment aspect¹⁴¹.

Hajj fund is divided into 2, namely the fund of Hajj (Hajj organize) and endowment fund, and both of them transformed into the fund that namely efficiency funds. The function of efficiency fund as a tool to transform the fund into the investment aspect, either it direct or indirect Investment¹⁴².

The result efficiency fund itself should be implemented into subsidy of the amount of BPIH that can be use for the pilgrimage, for the information, the real cost of Hajj pilgrimage itself should be reach 70

¹⁴⁰ *Ibid* "Interview BPKH"

¹⁴¹ Government Regulation Number 5 of 2008

¹⁴² *Ibid*

Million rupiah, but through the efficiency funds it can be decrease into 25 million rupiah, after the subsidy, it transformed into share profit with the pilgrimage which categorized as the waiting list of Hajj and then it use by BPKH as operational fund of BPKH with maximum 5% usage¹⁴³. And last it transfer to the endowment funds as the function to the benefit of Ummah.

The running agenda of BPKH itself for the 5 years later as the aim to optimal the function of BPKH as the executor of Hajj fund, such as, the established of virtual account for each pilgrimage as function to report the upcoming information and share profit for the result of Hajj fund Investment, and then reduce the cost of Hajj for the Hajj pilgrimage that can be done by all the people as the one of the pillar that believed by Muslim people, And also improve the quality of the Hajj facilities in overseas (Mecca and Medina) for the enjoyment of Hajj worship¹⁴⁴.

And the closes approach that will be done by BPKH as their agenda, to socialization BPKH to the public through public figure and then and BPKH also want to open branches in various cities in Indonesia to facilitate the reach of their investment. How about the infrastructure investment?? As we know that one of the obstacle that inhibit the progress of establishment BPKH itself by the rejection about the state program to use Hajj fund as state investment in infrastructure, Mr Akhyar Adnan as the committee of BPKH mention that “it’s not problem for state to use Hajj fund as the

¹⁴³ *Ibid*

¹⁴⁴ Interview from the Committee of BPKH Dr. M. Akhyar Adnan, MBA. Ak., CA

building infrastructure, But it's not the priority of the instrument that could be done to investment, based on regulation we should followed that transform Hajj fund into deposit bank and State debentures¹⁴⁵.

In Islamic law, the rules of fiqh are one of the methods of decision making which are designed as the philosophical foundation of all legal formulations which are done by ulama'di wherever they are, so that every ulama 'who master and deepen the rules of fiqh will find easiness in undergoing the provisions which is set Allah on earth and able to provide solutions and innovations -a new invasion for the community in answering any changes and challenges that exist.

Hajj fund mechanism in Indonesia use term or *Akad Wakalah* (al-Wakalah) it means *authorization* Related on Act Number 34 year 2014 about manage of Hajj finance that regulated in article 22 through BPKH which legal Body has *authorized* to charge of managing Hajj Finance which includes acceptance, development, expenditure, and accountability of Hajj Finance¹⁴⁶.

In the concept of **muamalah** there is the term ihtikar which means the prohibition of hoarding, including the prohibition of hoarding capital¹⁴⁷.

Islam advocates that money is not idle and continue to move to support

¹⁴⁵Interview from the Committee of BPKH Dr. M. Akhyar Adnan, MBA. Ak., CA

¹⁴⁶Act Number 34 year 2014 about manager of Hajj finance that regulated in article 22

¹⁴⁷ Prof.Dr.Abdullah bin Muhammad, *Ensiklopedi fiqih Muamalah*, Martabah al Hanif, 2004, pg 42

economic activity. Moving money will move the real sector marked by increased purchasing power and create industrial sector spirit in production and can overcome unemployment problems.

Further permissibility is in the principle of ta'awun or help. The use of hajj funds for infrastructure rather than the government should increase the debt then this can be said a positive thing¹⁴⁸. Hajj funds used for infrastructure are of course better than those funds left idle. Because the funds that flow will have an economic impact and also benefit the community.

The idea related to the use of hajj funds for infrastructure should ideally be appreciated as it does not conflict with sharia principles. However, in the jurisprudence rule there is one rule that is ridho (element of willingness). The element of community resistance may be triggered by the attitude of the government which in some policies tend not to accommodate the interests of Muslims.

The government must be able to take the hearts of Muslims and ensure that the fund management process is indeed prudent. The government's greatest work in succeeding the use of the pilgrimage fund is basically the missing variable of trust from the community.

¹⁴⁸ *Ibid*

In the concept of muamalah known term (احد تكرر) ihtiqar is the prohibition of hoarding, including in it is stockpiling capital. Therefore Prophet Muhammad SAW encouraged being generous, because in the generosity in addition there is a value of worship also makes the funds circulates among the community¹⁴⁹.

Thus, it is clear Islam advocates that money or capital can move in the economic activities of society, because it will give positive impacts in the real sector. In addition, it can increase purchasing power and certainly can stimulate the industrial sector and can cope with unemployment.

During this time the pilgrims fell sound asleep. In fact, if driven will provide economic benefits to owners and also to the community. Therefore the use of hajj funds for infrastructure is in fact in harmony with the principle of muamalah.

Secondly, in Islam there is an element (تعاون) ta'awun help and formulated in the concept of mudaraba, musharaka and others¹⁵⁰. Thus, the use of hajj funds for infrastructure is something positive because the government needs capital even to pile up debt for infrastructure development. Thus, the use of government Hajj funds for infrastructure is something positive as a reflection of mutually beneficial cooperation. It's

¹⁴⁹ Muhammad, "Aspek hukum dalam Muamalat", GRAHA ILMU, pg 15

¹⁵⁰ *Ibid*

just a matter of how to organize it; the concept of cooperation should be able to provide a sense of security and benefit to both parties defends.

Third, in theory muamalah there is a provision (تراض) which is willingness of the owner of the fund¹⁵¹. This becomes very important to be formulated for security guarantees, so the government must guarantee the pilgrimage is really safe, thus encouraging the owners of capital to give up their funds used for infrastructure.

Therefore, it is necessary to regulate the mechanism and the pattern of its management in order to be completely safe and secure. For example poured in the state budget, budgeting the annual pilgrimage, so there is certainty that the pilgrimage funds are maintained and safe. Once again this security assurance can motivate pilgrims to give up their funds for infrastructure.

Fourth, in the concept of fiqh theory is known as the principle of advantage and it is in line with the concept of fiqh aulawiyah that is the principle of virtue, hence the use of hajj funds for infrastructure is certainly more useful than the funds are left to accumulate.

Fifthly, the use of hajj funds for infrastructure meets the concept of maqshid shari'ah that is oriented towards the benefit of the people, and all

¹⁵¹ *Ibid*

understand that infrastructure gives economic impact and welfare in various sectors of community life.

From the above explanation it becomes clear that the use of Hajj funds for infrastructure needs to be appreciated, it must involve all parties and good arrangements for the pilgrimage in it can accommodate dimensions of *ubudiah*, *ijtima'iyah* (community) and *iqtishdiyah* (economy) simultaneously, of course this is ideal because it can meet the *maqashid* or sharia objectives, especially in strengthening the maximum utilization of property for the common good.

الم فاس من الأدنى فارتكب المفسد تراحم و ضده

“As for the opponent if colliding between *mudharat* one with the other then taken *mudharat* the smallest and lightest.”

B. The Obstacles of Hajj fund Implementation

Since the government issued Act Number 13 of 2008 about organizing Hajj, and also regulate the mechanism of Hajj fund that transform into instrument of Investment, such as Sukuk or Sharia bond and depository bank. There are some obstacles that can be defined from the implementation of Hajj fund itself:

a. Improved management

There are several problems in the management of pilgrim funds. First, management mechanism. Hajj funds are divided into two, namely initial deposit fund (BPIH) and efficiency fund. BPIH shall be deposited into account of the Minister of Manpower through Sharia banks and / or national commercial banks designated and managed by ministers by considering the value of benefits, and then some of the funds are invested in State Sharia Securities (SBSN) or Sukuk¹⁵².

Furthermore, the value of benefits (optimization results) is used to pay various operational expenses of pilgrims in Saudi Arabia. The results of the efficiency of pilgrimage into the account of endowment fund (DAU) and used for services of pilgrimage, education and Da'wah, health, social religious, and the construction of facilities and infrastructure of worship.

During this time pilgrimage is managed on behalf of the account Ministry. That knows how the value of optimization of the pilgrim funds is only Ministry and or officials / officials related to the management of pilgrim funds. The pilgrimage as the rightful owner of the funds never know what the optimization value of the invested Hajj funds, including if the concerned hajj subsidized financing subsidy from the optimization results because it departs earlier than other pilgrimage who waiting list is still long. Therefore, it should be considered whether the management of pilgrimage funds using one account on behalf of Ministry as now or need to be made

¹⁵² Act Number 13 of 2008

a kind of *virtual account*, so that each pilgrimage know how much the existing funds in each pilgrimage account¹⁵³.

b. Legal entity of body that controlling Hajj fund

During this time the management of BPIH conducted by the Ministry of Religious Affairs, where Ministry as Budget User, and The management of endowment fund (DAU) is done by the Agency of Management (BP) DAU in which Ministry as chairman / person in charge of BP DAU. So, both the management of BPIH and DAU is entirely under the Ministry of Religious Affairs.

Therefore, from the institutional aspect there are three alternatives that need to be considered:

- a) Retain the institution as it is now where the Ministry of Religious Affairs functions as a regular, executor, and supervisor. Consequently all responsibilities in the management of pilgrim funds are in Ministry ;
- b) new semi-autonomous institutions, such as the Public Service Board (BLU) or Hajj Finance Management Body (BPKH), in which Ministry functions as regulator and supervisor, while BLU or BPKH as executor; and

¹⁵³ Based on the mechanism of the Registration of Hajj

- c) Established an autonomous (independent) institution such as Tube Hajj Institution and responsible to the president. All choices have consequences; there are both positive and negative sides.

c. Regulation

The management of Hajj fund starting from the receipt of initial deposit, placement, investment (fertilization), expenditure, utilization of efficiency result requires regulatory framework- UU, PP, Kepres (presidential decree), PMA,. With good, comprehensive, and prudent regulation, it is expected that the management of pilgrim funds can be done properly, correctly, professional, transparent and trustworthy, and avoid the dispute (legal problems) and also the slow formation of laws established by the government made inhibit implementation of BPKH as the legal body to execute Hajj fund.

C. The Comparative between Malaysia and Indonesia toward Hajj fund

Hajj fund mechanism in Indonesia use term or *Akad Wakalah* (al-Wakalah) it means *authorization* Related on Act Number 34 year 2014 about manage of Hajj finance that regulated in article 22 through BPKH which legal Body has *authorized* to charge of managing Hajj Finance which

includes acceptance, development, expenditure, and accountability of Hajj Finance¹⁵⁴.

In performing the duties referred to in Article 22, BPKH is authorized:

1. Placing and investing Hajj Finance in accordance with Sharia principles, prudence, security, and value of benefits; and
2. Cooperate with other institutions in order to manage Hajj Finance¹⁵⁵.

Investment of Hajj can be done in the form of *banking products, securities, gold, Investment direct and other Investments* and shall be conducted in accordance with the principles of *Sharia* by considering the aspects of security, prudence, value of benefits, and liquidity¹⁵⁶, since the use of Hajj fund for Investment will be done with the principle of prudence (prudent)¹⁵⁷ and BPKH should create *virtual account* for the Hajj pilgrims as a choice to do transparency system through the activity of Hajj fund itself.

Through the government regulation Number 5 year 2018, BPKH does not only hold funds for the implementation of Hajj, BPKH also will

¹⁵⁴ Act Number 34 year 2014 about manager of Hajj finance that regulated in article 22

¹⁵⁵ Act Number 34 year 2014 article 24

¹⁵⁶ *Ibid*

¹⁵⁷ *Prudent* meant in carrying out its functions and business activities shall apply the Prudential Principles in order to protect the public funds entrusted to it

manage the efficiency of Hajj pilgrimage fund. These funds can also be placed by BPKH for Sharia financial instruments in the form of *banking products* and *Sharia Investment*. The Sharia banking products include *demand deposits (giro)*, *time deposits (deposito)* and *savings accounts*.

And also, Investment instruments that can be used by Hajj fund, namely the National Sharia Securities (SBSN), Sharia securities issued by Bank Indonesia, as well as Sharia securities regulated by the Financial Services Authority, such as stocks, sukuk (bonds), mutual funds, and securities backed securities Sharia assets.

And when the mechanism comparative between Malaysia and Indonesia we can found that Hajj fund

1. Hajj pilgrimage management by *Tabung Haji* is managed by individual account, while Indonesia (ONH)¹⁵⁸ is managed collectively. In the different ways of managing this there are some weaknesses that exist in the Indonesia (ONH) model than *Tabung Haji*, namely:

- a. Occurrence of injustice on Indonesia (ONH) deposit between regions. On the Indonesia (ONH) system, between regions receiving a waiting list for 3 years are required to pay at the same nominal value as those who have earned a list for 7 years. In fact, if calculated with the deposit value of Rp 25

¹⁵⁸ ONH is Indonesia treatment matter of Hajj

million and the average return of 7 percent per year, there will be a difference of almost Rp 10 million, a very significant value (Rp 25 million after 3 years will be worth Rp 30.626.075 and after 7 years will worth Rp 40,144,536). Thus there has actually been a subsidy among fellow pilgrims. Areas with longer waiting list subsidize waiting areas faster. It should be faster waiting list, the more expensive the cost, not vice versa. On the *Tabung Haji*, the deposit is managed individually account, so the longer the deposit will also the greater the dividend earned.

- b. There is no transparency of the use of Indonesia (ONH) deposit investment returns. Although there is a statement from the manager (Ministry of Religious Affairs) that the return of Investment is returned to the pilgrims, but the pilgrims cannot know how much the investment, how much the cost of Hajj riel, allotment for anything, and so forth. In the management of *Tabung Haji*, clearly known by the pilgrims / customers how much dividends earned, the cost of Hajj riel, and the amount of subsidy given by the manager.

2. Institutional management in the form of government institutions under the ministry makes it impossible to move flexibly, both in terms of budgeting, operations, and investment, compared to the institutionalized Hajj T-shaped Corporation.

3. Comparison of nominal value of Hajj cost to be paid between Indonesia (ONH) and *Tabung Haji* is as follows:
- a. The nominal amount paid, Indonesia (ONH) is more expensive around Rp 2.5 million, and On Indonesia (ONH) there is a return in the form of living cost SR 1500, so if this value is taken into account then Indonesia (ONH) will be cheaper Rp. 1.2 million.
 - b. However, Indonesia (ONH) does not include eating and drinking in Makah for 30 days. If this quantity is taken into account, then the Indonesia (ONH) will become more expensive for more than Rp. 2 million.
 - c. The above calculation has not included quality and accessibility factors, such as *Tabung Haji* lodge which is all less than 1000 meters from harem mosque, whereas Indonesia (ONH) cottage is generally above 2.5 km from harem mosque.
 - d. Although the value of Indonesia (ONH) is more expensive with lower quality, this calculation does not indicate the level of management efficiency, because the *Tabung Haji* actually provides a subsidy of RM 4.360 on all pilgrims who first perform the pilgrimage.

CHAPTER IV

CONCLUSION AND RECOMENDATION

A. Conclusion

Hajj funds as Muslims' funds have their own way of "treatment", Hajj fund is a fund that allocated to Muslim people performing the Hajj. But the large number of pilgrims raises a polemic. *Firstly* waiting list of Hajj pilgrim that become so long and *second* related to the hajj fund that collected by minister become amass, related to the hajj fund, the risk that will be face by government if it problem continues to be allowed this fund will be in vain and also will be subject to inflation, Unfortunately, to manage the Hajj fund is not easy. Because the Hajj fund is a "specific" fund in sense that defines as fund that provide to Muslim people to perform Hajj/worship, therefore abusing this fund is very serious in religious terms

First The government through the Ministry of Religion outsmart it by managing the Hajj fund which is regulated through Act Number 13 of 2008, where the Hajj funds that have amass can be used to managed generate profit, in Act Number 13 of 2008 stated that the Hajj can be managed into the investment project through the field of banking such as deposits and also Sukuk (Sharia bonds). But this rule raises a complex problem such as the lack of benefits from the management of pilgrim funds which conducted by the Ministry of Religious Affairs, which is believed to be the result of the management of pilgrim funds can be more and even can

be matched with the management of Hajj in Malaysia. And also the raise abuse of power from the ministry of religion who act as execution. Legislation and it's supervised. And the absence of transparency related to incoming and outgoing funds reported to participants of Hajj funds (as the owner of funds) whose funds are used for investment

In 2014 state issued Act Number 34 of 2014 related to the management of Hajj funds with the establishment of an independent body of BPKH (Hajj financial management agency), with the function that contain in Article 3 that is improving the implementation of Hajj, efficiency of funds and also for the benefit of the people .BPKH as executor of pilgrim funds assigned to manage the pilgrim funds to the maximum. Such as the addition of instruments to be invested and also the transparency of pilgrim funds to the owners of pilgrim funds through virtual accounts. Therefore, BPKH as an independent body is engaged in managing Hajj funds through Investment.

Second the Implementation, The management of Hajj funds in Indonesia is still relatively minimal contribution to State investment. Through Act Number 13 of 2008, the Ministry of Religious Affairs converts Hajj funds through Sukuk and deposits which result from it can be used as the closing of the pilgrims' money, which actually the real costs of pilgrimage organized; reach Rp. 70 million and it convert into Rp 25 million as a BPIH. Then related Act Number 34 of through BPKH that established and the appointment of the committee in 2017 and then this year just issued

a government regulation (PP Number 5 of 2018) which became the working tool of the BPKH. They have agenda to Manage Hajj fund such us established the virtual Account for Hajj pilgrimage, and create the instrument of banking finance in Deposit Bank, state debentures, gold and Capital Market.

B. Recommendation

State should be more consistent with the rules that regulated Hajj fund mechanism to avoid from the legal problem. BPKH should treat the Hajj fund which is the Islamic Ummah with the Sharia system. Ministry of Religious Affairs and also BPKH must work together in management of Hajj funds in order to create a good pilgrimage and can provide comfort for the participants of Hajj. BPKH should be able to find opportunities of the instrument that can be invested through the Hajj funds for the purpose of investing Hajj funds can reduce the cost of pilgrimage.

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Interview

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