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Research Article

Perlindungan Hukum di Indonesia Terhadap Penipuan Badal Haji

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Legal Protection In Indonesia Against Badal Hajj Fraud

Abstract. This study aims to find out more deeply about badal haji in order to avoid badal haji fraud and legal steps that can be taken when fraud has occurred in the implementation of badal haji. Using normative legal research methods. Data collection is done by literature study which is researched by conducting a review of legislation and literature on the subject under study. Prudence is one of the things that needs to be prioritized, in order to be careful in determining something, in this case related to badal haji, so as not to be deceived by unscrupulous people who seek profit in narrowness. By knowing the conditions, pillars and obligations of Hajj as well as the law and mechanism of badal haji, is also one way to avoid fraud. As for the case of fraud that has befallen a person who in this case is a participant in badal haji, whether there is a default or an act against the law and so on, legal protection

in Indonesia can be a solution because then a person can know what steps to take in this case, such as; reporting to the police or by filing a civil lawsuit.

Keywords: Legal Protection, Fraud, Badal Hajj.

Abstrak. Penelitian ini bertujuan untuk mengetahui lebih dalam tentang badal haji agar terhindar dari penipuan badal haji dan langkah hukum yang dapat ditempuh apabila telah terjadi penipuan dalam penyelenggaraan badal haji. Menggunakan metode penelitian hukum normatif. Pengumpulan data dilakukan dengan cara studi kepustakaan yang diteliti dengan melakukan telaah terhadap peraturan perundang-undangan dan pustaka terhadap pokok bahasan yang diteliti. Kehati-hatian merupakan salah satu hal yang perlu diutamakan, agar dapat berhati-hati dalam menentukan sesuatu, dalam hal ini terkait dengan badal haji, agar tidak tertipu oleh oknum-oknum yang tidak bertanggung jawab yang mencari keuntungan dalam kesempitan. Dengan mengetahui syarat, rukun dan kewajiban haji serta hukum dan mekanisme badal haji, juga menjadi salah satu cara agar terhindar dari penipuan. Adapun kasus penipuan yang telah menimpa seseorang yang dalam hal ini adalah peserta badal haji, baik itu wanprestasi atau perbuatan melawan hukum dan lain sebagainya, maka perlindungan hukum di Indonesia dapat menjadi solusi karena dengan demikian seseorang dapat mengetahui langkah apa saja yang harus ditempuh dalam kasus tersebut, seperti; melapor ke kepolisian atau dengan mengajukan gugatan perdata.

Kata Kunci: Perlindungan Hukum, Penipuan, Badal Haji.

INTRODUCTION

Hajj is one of the pillars of Islam that has a very special position in Islam. To perform it is a direct command from Allah Swt. addressed to Muslims who are physically and financially able. Every year, millions of Muslims from different parts of the world gather in the Holy Land of Makkah to perform the Hajj.

As time goes by, there are a number of circumstances that prevent someone who is able to fulfill the obligation of Hajj from doing so. In order for a person to still be able to fulfill their obligation to perform Hajj, badal Hajj can be a solution.

Replacing the Hajj of another person who is obliged to perform Hajj but is unable to do so, such as sickness, old age or death, is called badal Hajj in the contemporary world.

Nowadays, badal Hajj is a common practice and is widely known by people all over the world, which opens up many opportunities for those who cannot fulfill their Hajj obligations to do so. However, with the opening of many opportunities, it will also open up opportunities that pose a threat to the implementation of badal Hajj. Opportunities for some unscrupulous individuals to profit through fraud.

Being a careful badal haji participant is a must in order to see indications of fraud so as to avoid it. However, if fraud has befallen someone then of course there is legal protection because Indonesia is a state of law where every citizen and their dynamics are protected and based on the constitution in this country which if violated, of course there are also legal consequences.

RESEARCH METHODS

This research is a normative legal research which is basically an activity to examine aspects of positive law that aims to solve problems. Data collection is carried out by literature study which is researched by conducting a review of legislation and literature on the issues under study. Data analysis is carried out qualitatively and described descriptively.

RESULTS AND DISCUSSION

Hajj literally means to make an effort to visit the Kaaba to worship Allah swt, by fulfilling the conditions, pillars, obligations, and doing it at a certain time (Jalaludin, 2009, p. 89), It is intended for capable Muslims only who have fulfilled all the requirements (Malik, 2016, p. 18).

Sayyid Sabiq in his Fiqh Sunnah defines Hajj as heading to Makkah to perform tawaf, sa'i, wukuf in Arafat and other acts of worship to fulfill Allah's command and seek His pleasure (Sabiq, 2006, p. 371).

As for the term, it means worshipping Allah by performing the rituals of Hajj, which are certain actions performed at a certain time and place in a certain way. This is different from Umrah which is usually done at any time (Malik, 2016, p. 19). Badal is a substitute (especially for a pilgrim); representative; hajj one who performs the pilgrimage in the place of another (such as in place of a deceased person); vice hajj (Nijam et al., 2004, p. 43).

From the above definitions, it can be concluded that badal Hajj means the mandate of Hajj or serving another person who is categorized as obliged to perform Hajj (especially from an economic point of view) but is unable to do it himself because of an obstacle legalized by Islamic law. So the person is served by someone else as a substitute for himself to carry out the worship (Malik, 2016, p. 19).

In the results of the mudzakah of the Ministry of Religious Affairs of the Republic of Indonesia, it is explained that badal Hajj is the activity of serving a deceased person (who has not performed Hajj) or serving a person who is physically unable to perform it (physically) due to an excuse, such as an illness for which there is no hope of recovery (Kemenag RI, 2016, p. 5).

According to Nurdin, badal Hajj is the performance of the Hajj pilgrimage by a person on behalf of another person who has died (since embarkation and before the wukuf). Also for pilgrims who are physically and mentally disabled (cannot be expected to recover medically, sick dependent on equipment, and mental disorders), so they cannot perform wukuf in Arafat (Nurdin & Rajab, n.d., p. 4).

The obligation to perform Hajj for Muslims who are categorized as capable is based on the words of Allah Swt. in QS: Al-imran verse 97

فِيهِ آيَاتٌ بَيِّنَاتٌ مَّقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا وَاللَّهُ عَلَى النَّاسِ حَجُّ الْبَيْتِ مَنْ اسْتَطَاعَ
إِلَيْهِ سَبِيلًا وَمَنْ كَفَرَ فَإِنَّ اللَّهَ غَنِيٌّ عَنِ الْعَالَمِينَ

“There are clear signs, (among them) the station of Ibrahim. Whoever enters it (the House of Allah) is secure. And (among) the obligations of man towards Allah is to make the pilgrimage to the House of Allah, for those who are able to travel there. Whoever denies (the obligation) of Hajj, then know that Allah is All-Rich (in need of nothing) of all the worlds.” (Kementrian Agama RI, 2012)

However, there are differences in the views of the mazahib scholars regarding the ruling on performing badal Hajj. The majority of scholars allow badal Hajj or in fiqh terms it is called al-hajj 'an al-ghair. Among the scholars of the four madhhabs who ruled that it is permissible to perform badal Hajj are Imam Hanafi, Imam Shafi'i and Imam Hanbali. The difference is in the opinion of Imam Maliki, who does not allow the performance of badal Hajj, except for a person who before his death had made a will to be served with his estate, so long as it does not exceed one-third (al-Jazairi, 1986; al-Zuhaili, n.d.). The majority of Indonesian Muslims adhere to the opinion of the Shafi'i Mazhab.

Badal Hajj is permitted in two groups, namely: al-ma'dlub and al-mayyit (Umar, 1997, p. 388).

- Al-Ma'dlub is a person whose physical condition does not allow him to go to the Holy Land, so he needs the services of another person to perform Hajj. Al-Ma'dlub, who has the financial means, is obliged/allowed to perform Hajj if his residence is far from the Holy Land of Makkah and the distance is more than masafatul qashr. Whereas al-ma'dlub who is already in the Haram Makkah or another place close to the Haram Makkah may not be bailed out, but must perform Hajj himself or be bailed out after death. But if it is not possible for him to do it on his own, then according to some scholars he may be rewarded for it while he is still alive.
- Al-Mayyit is Hajj that is not performed or not completed because the person concerned dies first. This is divided into 2 (two) types, namely; Obligatory Hajj (Islamic Hajj, votive Hajj, and testamentary Hajj) and Sunnah Hajj. There are several opinions among the scholars about who is obliged to perform Hajj and dies before performing it.

The conditions that make a person can be burdened with the obligatory Hajj are: being Muslim, puberty, reason, freedom and ability. Performing the pillars of Hajj, namely; ihram accompanied by intention, wukuf in arafah, tawaf in the temple, sa'i between the hills of shafa and marwa and tahallul and carried out in an orderly manner. Performing the obligatory Hajj, namely; dressing ihram from miqat, staying overnight in Muzdalifah, staying overnight in Mina, stoning the Jamrah and tawaf wada' (Mulyono et al., 2013, pp. 27–32).

The procedure for performing badal Hajj is the same as performing Hajj in general, the difference is in the intention, namely when in the condition of badal Hajj, the intention used is for the person whose Hajj is being canceled (Nasikhin et al., 2021, p. 23).

The executor of badal hajj is the Indonesian government (Decree of the Hajj Technical Staff of the Consulate General of the Republic of Indonesia Number 858 of 2015 Concerning the Implementation of Badal Hajj, n.d.; PMA Number 14 of 2012 Concerning the Implementation of Hajj, n.d.). The badal Hajj officer must meet

requirements such as; already having performed Hajj and not canceling someone else's Hajj (Syaukani, 2009, p. 65).

Fraud committed by hajj/umrah travel agencies can be criminally prosecuted. To find out whether a travel agency is committing fraud or not, it is necessary to know the elements of a criminal act of fraud.

The provisions regarding the alleged acts of fraud that have been confirmed in the provisions of the old Criminal Code that are still valid at this time and Law 1/2023 which came into force 3 years from the date of promulgation, (article 624 of law number 1 of 2023 concerning the criminal code), namely in 2026.

Article 378 of the Indonesian Penal Code states that any person who, with intent to unlawfully benefit himself or another, by using a false name or false dignity, deceit or a series of lies, induces another person to deliver any property to him, or to give a debt or to cancel a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of 4 years.

Article 492 of Law 1/2023 states that any person who, with the intent to unlawfully benefit himself or another person by using a false name or false position, using deception or a series of false words, induces a person to deliver goods, to give debts, to make acknowledgment of debts, or to cancel receivables, shall be punished for fraud with a maximum imprisonment of 4 (four) years or a maximum fine of category V, namely IDR 500 million.

According to R. Soesilo in his book *Kitab Undang-Undang Hukum Pidana (KUHP) and its Complete Article-by-Article Comments*, this crime is called "fraud". The fraudster's job (Soesilo, n.d., p. 261) :

- Inducing people to give goods, create debts, or cancel receivables;
- The purpose of the inducement is to benefit oneself or others against their rights;
- Persuade him by means of: a false name or a false pretense; a subterfuge (trick); or a fabricated falsehood.

Referring to Article 378 of the Criminal Code and Article 492 of Law 1/2023, if the party organizing the Hajj/umrah trip unlawfully by deception and/or a series of lies moves the prospective Hajj/umrah pilgrims to hand over something to him, such as a sum of money with the intention of benefiting themselves or others against their rights, then the legal steps that can be taken by the injured party are to criminally prosecute the organizer of the Hajj/umrah trip on the basis of fraud.

The legal steps that can be taken are;

- Reporting to the Ministry of Religious Affairs

Article 111 of Law 8/2019 explains that:

- The public can report and complain about violations of the implementation of the Hajj and Umrah pilgrimages to the minister of religion or a designated official;
- The procedures for reporting, complaints, and follow-up are carried out in accordance with the provisions of laws and regulations.
- Reporting to the Police/PPNS(Puspita, 2021)

If it contains elements of a criminal offense, then the police and civil servant investigators (PPNS) within the Ministry of Religious Affairs can conduct an investigation. This is explained in Article 112 paragraph (1) of Law 8/2019, which reads:

- In addition to investigators of the Indonesian National Police, certain civil servants within the ministry that organizes government affairs in the field of religion are given special authority as investigators in accordance with the provisions of laws and regulations concerning criminal procedure law.

- Class action lawsuit

In addition to administrative and criminal law enforcement, initial lawsuits can also be carried out in class action conditions if the aggrieved are massive. (Pramesti, 2023)

CONCLUSION

Prudence is one of the things that needs to be prioritized, if only to be careful in determining something in this case related to badal Hajj so as not to be deceived by unscrupulous people who seek profit in narrowness.

Knowing the conditions, pillars and obligations of Hajj, as well as the laws and mechanisms of badal Hajj, is also one of the ways to avoid fraud; knowing these things makes it easier to identify cases of fraud.

As for the case of fraud that has befallen a person who in this case is a participant in the Hajj badal, whether there is default or tort and so on, legal protection in Indonesia can be a solution because with it a person can know what steps to take in this case, such as; reporting to the police or by filing a civil lawsuit.

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