

# The Bureaucracy and Financial Management of Hajj in Indonesia: An Analysis of the Legal Standing and Institutional Structure of the Badan Pengelolaan Keuangan Haji (BPKH)

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**Abstract:** This article scrutinizes the legal standing and institutional analysis of the Hajj Financial Management Agency (BPKH) within the constitutional framework in Indonesia. Through a literature review, the author investigates and re-examines the legal standing and institutional structure of BPKH, employing a normative-empirical legal study approach that explores legal norms, regulations, or secondary legal data along with an assessment of the effectiveness of norm application. The findings and conclusions are as follows: 1) Regarding legal standing, Law Number 34 of 2014 on the Management of Hajj Finances serves as the foundation and mandate for establishing BPKH. However, a disharmony exists between Law Number 34 of 2014 on the Management of Hajj Finances and Law Number 8 of 2019 on the Implementation of Hajj Worship. 2) In terms of institutional aspects, BPKH is an independent institution as stipulated in the Law on Hajj Financial Management. Nevertheless, BPKH's independence differs from other independent institutions, leading to the conclusion that BPKH is functionally independent but not structurally independent. This research aims to serve as a reference for policymakers to strengthen and consolidate the position of BPKH.

**Keywords:** *Hajj; BPKH; Financial Hajj Management*

**Abstrak:** Artikel ini membahas bagaimana Badan Pengelolaan Keuangan Haji (BPKH) dalam telaah legal standing dan kelembagaannya dalam ketatanegaraan di Indonesia. Melalui artikel ini penulis menelusuri dan menelaah kembali bagaimana legal standing serta kelembagaan BPKH. Penelitian ini merupakan penelitian pustaka, yang merupakan penelitian hukum normatif empiris yaitu merupakan penelitian terhadap norma peraturan perundang-undangan atau data sekunder hukum yang digabungkan dengan penelitian terhadap efektivitas penerapan norma. Artikel ini mengungkapkan temuan dan kesimpulan, 1) secara legal standing Undang-Undang Nomor 34 tahun 2014 tentang Pengelolaan keuangan haji merupakan hal yang mendasari dan menjadi amanat dalam pembentukan BPKH, akan tetapi secara legal standing, Undang-Undang Nomor 34 tahun 2014 tentang Pengelolaan keuangan haji, telah terjadi disharmonisasi terhadap Undang-Undang Nomor 08 Tahun 2019 Tentang Penyelenggaraan Ibadah Haji. 2) Secara kelembagaan BPKH merupakan lembaga Independen sebagaimana tertuang dalam Undang-Undang Pengelolaan Keuangan Haji, akan tetapi independensi BPKH memiliki perbedaan dengan lembaga Independen lainnya, sehingga dapat disimpulkan BPKH hanya independen secara fungsional namun tidak secara struktural. Penelitian ini memiliki tujuan dan harapan sebagai rujukan, pembuat kebijakan dalam memperkuat dan memperkokoh posisi BPKH.

**Kata Kunci:** *Hajj; BPKH; Keuangan Haji*

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## Introduction

The Badan Pengelolaan Keuangan Haji (BPKH) was established in July 2017 by President Joko Widodo, in line with the mandate of Law No. 34 of 2014. Presidential Regulation No. 110 of 2017 formalized BPKH as a public legal entity, operating independently and reporting directly to the President through the Minister.<sup>1</sup>

The enactment of Law No. 34 of 2014 was prompted by a surge in Hajj registrants in Indonesia, leading to increased fund accumulation. Mismanagement concerns under the Ministry of Religious Affairs, which held multiple roles in Hajj implementation, necessitated a legislative change. The concentrated authority in the Ministry facilitated mismanagement and political influence over Hajj finances.

The BPKH's establishment aimed to address weaknesses in Hajj financial management, marked by corruption cases. Anticipated as an independent, professional, and transparent institution, BPKH's role evolved from the Badan Pengelola Dana Abadi Umat (BP-DAU) initiative.<sup>2</sup>

Despite five years of efforts (2018-2022) in optimizing Hajj fund management, potential challenges arise from legal and institutional overlaps. Law changes, particularly Law No. 8 of 2019 on the Implementation of Hajj, create disharmony with Law No. 34 of 2014. Maintaining trust among the faithful and becoming a reliable financial manager is a crucial challenge for BPKH.<sup>3</sup>

The investment discourse for Hajj funds, discussed since BPKH's inauguration, faces both support and opposition.<sup>4</sup> While Tabung Haji Malaysia's innovative

management is cited as successful, BPKH encounters debates over infrastructure investments, revealing the complexity of navigating financial strategies for Hajj funds.<sup>5</sup>

Table 1. Factors Leading to UU PKH and Challenges Faced

| Factors   | Influence   |
|---|---|
| Increased Hajj registrants  | Triggered initiation of UU PKH                      |
| Public enthusiasm for Hajj participation                            | Led to a surge in funds under management            |
| Concerns over mismanagement under the Ministry                      | Highlighted weaknesses in financial management      |
| Issues and Challenges   | Impact  |
| Concentration of authority within the Ministry of Religious Affairs | Weaknesses in financial management                  |
| Politicization of Hajj finances                                     | Scrutiny from policymakers, economists, and experts |

Table 1 highlights the factors driving UU PKH's creation and its challenges. Rising Hajj registrants and public enthusiasm prompted UU PKH, but concerns about financial mismanagement revealed weaknesses. Challenges include centralized authority and politicized finances, leading to increased scrutiny and management issues.

Through the exposition above, the five years of BPKH functioning as an independent body managing Hajj finances are not without challenges. The identified problems, such as those in legal standing that can impact the institutional existence, authority, and responsibilities of BPKH itself, indicate that there are challenges in BPKH's efforts to improve and innovate in the management of Hajj finances.<sup>6</sup> In the context of legal

<sup>1</sup> Muhammad Aziz Zakiruddin, Kamsi, and Ahmad Bahiej, "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022), <https://doi.org/10.29240/jhi.v7i2.5310>.

<sup>2</sup> AN Zain et al., "Implementation of the Use of DAU through the BPKH Benefit Program to Improve Hajj Services," *Researchgate.Net* 2, no. 2 (2022).

<sup>3</sup> Zainur Ridho, "PENGELOLAAN KEUANGAN DANA HAJI DI MASA PANDEMI COVID-19 Zainur," *Haramain* Vol. 01 No (2021).

<sup>4</sup> Hulwati Hulwati, Roni Andespa, and Slamet Mujiono,

"Hajj Fund Investment Management in Indonesia," *At-Tijarah: Jurnal Ilmu Manajemen Dan Bisnis Islam* 8, no. 1 (2022), <https://doi.org/10.24952/tijarah.v8i1.5189>.

<sup>5</sup> Munifah Syanwani et al., "PERFORMANCE OF HAJJ FUND IN INDONESIA AND MALAYSIA," *Hamdard Islamicus* 43 (2020), <https://doi.org/10.57144/hi.v43iSpecialIssue.233>.

<sup>6</sup> Roikhan Mochamad Aziz et al., "Faktor-Faktor Yang Mempengaruhi Investasi Pengelolaan Dana Haji," *Jesya* 6, no. 1 (2023), <https://doi.org/10.36778/jesya.v6i1.1009>.

standing, there is ambiguity that may affect the existence, authority, and responsibilities of BPKH.<sup>7</sup> Furthermore, the exposition above also demonstrates problems in BPKH's efforts to make improvements and innovations in Hajj financial management.<sup>8</sup>

Table 2. Research Data Overview

| Year | Key Events   |
|------|--|
| 2017 | Inauguration of BPKH by President Joko Widodo            |
| 2018 | Establishment of BPKH as a public legal entity           |
| 2019 | Emergence of Law No. 8 of 2019 affecting UU PKH          |
| 2022 | Ongoing efforts of BPKH for optimal financial management |

Table 2 summarizes key events related to BPKH and UU PKH. The inauguration of BPKH in 2017 and its establishment as a public legal entity in 2018 marked significant milestones. The introduction of Law No. 8 of 2019 in 2019 impacted UU PKH, with ongoing BPKH efforts in 2022 aimed at optimizing financial management. Previous studies, such as those by Endang Jumali, Muhammad Ali Mubarak, and Eka Rachmawati, laid the groundwork for understanding Hajj fund management. However, this study distinguishes itself by offering fresh insights into regulatory challenges and BPKH's institutional position in Indonesia.<sup>9</sup>

The research aims to address two main questions. Firstly, it explores the legal standing of Hajj Financial Management in Indonesia, scrutinizing potential ambiguities or overlaps in relevant legislation. Secondly, it delves into the institutional framework of BPKH within Indonesia's constitutional system. This involves analyzing BPKH's role, responsibilities, and connections with other government agencies in Hajj financial management. Future research could further evaluate BPKH's performance, identifying

areas for improvement and providing recommendations for enhanced management of Hajj finances in Indonesia.

Table 3: Key Issues in BPKH Research

| Research Questions                          | Focus Areas  |
|---|--|
| Legal Standing of Hajj Financial Management | Identify legal ambiguities and overlaps affecting the institution              |
| Institutional Framework of BPKH             | Analyze BPKH's role, responsibilities, and interconnection with other agencies |
|   | Evaluate BPKH's performance and provide  |

Table 3 outlines key issues in BPKH research. The focus includes identifying legal ambiguities affecting Hajj financial management and analyzing BPKH's role and responsibilities within its institutional framework. Additionally, the research evaluates BPKH's performance and its interactions with other agencies.

## Method

This research employs a normative-empirical legal research approach, combining the study of legal norms, regulations, and secondary legal data with a practical assessment.<sup>10</sup> The focus is on evaluating the adequacy of existing legal principles within the context of Hajj financial management.

The normative aspect centers on Laws Number 34 of 2014 (Hajj Financial Management) and Number 8 of 2019 (Implementation of Hajj). Empirically, the study examines the Badan Pengelolaan Keuangan Haji and the Ministry of Religious Affairs.

For data analysis, a qualitative approach with a descriptive language is used. The methodology involves content analysis,

<sup>7</sup> A Amalia, "Kepastian Hukum Investasi Dana Haji Oleh Badan Pengelola Keuangan Haji," *Repository.Uinjkt.Ac.Id*, 2021.

<sup>8</sup> Muhamad Rosyid Jazuli, "Manajemen Dana Abadi Umat Untuk Kewirausahaan Berbasis Pesantren: Potensi Manfaat Dan Tantangannya," *Jurnal Manajemen Dan Bisnis Madani* 3, no. 1 (2022), <https://doi.org/10.51353/jmbm.v3i1.534>.

<sup>9</sup> Endang Jumali, "Management of Hajj Funds in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018).

<sup>10</sup> Abdul Hakim, "Maxim Law Fiqh And Its Application During The Covid-19 Pandemic," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (n.d.): 1–8, <https://juna.nusantarajournal.com/index.php/juna/article/view/11>.

emphasizing objectivity, systematicity, generalization, and interpretability. Diverse sources, including official government websites, social media, newspapers, magazines, annual reports, and academic materials, undergo content analysis.

## Results and Discussion

### Legislative Process of Establishing BPKH

Through the legislative process of the Draft Law on Hajj Financial Management (RUU PKH), the Vice Chairman of Commission VII provided several crucial notes on the proposed government-initiated bill. These notes revolved around the establishment of a special body to manage Hajj finances, the management of the endowment fund as a surplus from organizing the Hajj rituals, issues concerning fund optimization, and the allocation of funds directly for pilgrims versus those that are not.<sup>11</sup>

Regarding the form of the special body managing Hajj funds, the Vice Chairman of Commission VII expressed that the parliament tends to prefer a separate entity independent from the organization of Hajj rituals conducted by the Ministry of Religious Affairs. This stance contrasts with the government's proposal or desire to keep the management of Hajj finances under the purview of the Ministry of Religious Affairs.<sup>12</sup>

The public's perception of the poor management of Hajj finances, with the dominant role of the Ministry of Religious Affairs, has been acknowledged and thoroughly examined by the Indonesian Parliament (DPR) and the government through the Ministry of Religious Affairs. The role and enthusiasm of the Indonesian Parliament, particularly through Commission VII, have been evident in the positive reception of government-initiated proposals

through the Ministry of Religious Affairs.<sup>13</sup>

However, there are some concerns regarding the Ministry of Religious Affairs in incorporating public aspirations into the Draft Law on Hajj Financial Management (RUU PKH). Despite the expectations that the Ministry of Religious Affairs would bring the public's aspirations for better management of Hajj finances and limitations on its central role, these expectations were not reflected in the proposed RUU PKH by the Ministry of Religious Affairs.<sup>14</sup>

The Ministry of Religious Affairs still proposed institutional management of Hajj finances to remain under its authority and only separated from the Directorate General of Hajj and Umrah. In the proposed RUU PKH, the Ministry of Religious Affairs suggested maintaining centralization in the organization of Hajj rituals, suggesting that the Hajj Fund be kept in the account of the Minister of Religious Affairs at the Central Bank. The appointment of BPS-BPIH and operational expenditures of BPKH were also determined by the Minister of Religious Affairs.<sup>15</sup>

The Parliament, as a legislative body, asserted its dominance in this matter. It perceived that the proposal was far from meeting the expectations of the public. Therefore, the Parliament did not agree with the government's proposal and decided to break the Ministry of Religious Affairs' dominance by replacing every mention of the Minister of Religious Affairs with BPKH, from the account name to the appointment of BPS-BPIH.

The democratic nature of the government was then demonstrated by supporting and approving the options proposed by the Indonesian Parliament. Both the government through the Ministry of

<sup>11</sup> Muhammad Aziz Zakiruddin, "DYNAMICS OF HAJJ FINANCIAL MANAGEMENT REGULATION IN EFFORTS TO GOOD GOVERNANCE," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 8, no. 2 (2021), <https://doi.org/10.29300/mzn.v8i2.5387>.

<sup>12</sup> Hulwati Hulwati et al., "Unveiling the Benefits of Hajj Funds Investment in Indonesia," *Share: Jurnal Ekonomi Dan Keuangan Islam* 12, no. 1 (2023), <https://doi.org/10.22373/share.v12i1.16082>.

<sup>13</sup> Mira Munira and Shinta Budi Astuti, "Indonesian Hajj

Fund Management: An Overview," *Asian Journal of Accounting and Finance* 1, no. 1 (2019).

<sup>14</sup> Aziz et al., "Faktor-Faktor Yang Mempengaruhi Investasi Pengelolaan Dana Haji."

<sup>15</sup> Nova Tuhfah Nabelah, "The Responsibility of Deposit Insurance Corporations to Hajj Funds Invested Based on Mudharabah Muqayyadah Contracts," *JURNAL HUKUM ISLAM* 19, no. 1 (2021), <https://doi.org/10.28918/jhi.v19i1.3628>.



Religious Affairs and the Parliament did not provide space for Islamic civil society and participation in the drafting process of the RUU PKH. The dynamics observed from the initiation of the Ministry of Religious Affairs' proposal in 2012 to the enactment of the Hajj Financial Management Law in 2014 involved discussions and interactions primarily among state institutions and bodies. Despite the Parliament's dominance in rejecting the Ministry of Religious Affairs' proposal, the legislative heavy approach demonstrated a democratic character by breaking the centralization efforts in the management of Hajj finances.<sup>16</sup>

### **Legal Standing and Disharmony in Laws Governing the Implementation of Hajj and Management of Hajj Finances**

The foundation for the management of Hajj finances is provided by Law Number 34 of 2014 on Hajj Financial Management, which mandates the establishment of the special body, BPKH. This law serves as the basis for subsequent regulations, including Presidential Regulation Number 110 of 2017 and Government Regulation Number 5 of 2018, both addressing the Hajj Financial Management Body.<sup>17</sup>

According to Article 2 of Presidential Regulation Number 110 of 2017, the Hajj Financial Management Body (BPKH) is established as a public legal entity with independent characteristics, directly accountable to the President through the Minister. In 2017, President Joko Widodo inaugurated and appointed seven Supervisory Board members and seven

Executive Board members for BPKH.<sup>18</sup>

The legal foundation for BPKH lies in Law Number 34 of 2014 on Hajj Financial Management and Presidential Regulation Number 110 of 2017. Government Regulation Number 5 of 2018 further outlines the regulations governing Hajj financial management, covering aspects such as financial management planning, implementation, accountability and reporting, and closing provisions.<sup>19</sup>

Government Regulation Number 5 of 2018 is elaborated in the Regulation of the Minister of Religious Affairs of the Republic of Indonesia, addressing various aspects, including the Cost of Hajj Implementation (BPIH) and the allocation of twice the BPIH. Through Presidential Decrees and Government Regulations, the regulatory framework for BPKH is established, encompassing provisions on governance, compliance, human resources, welfare, fund placement, BPS-BPIH, investment procedures, legal matters, planning and budgeting, institutional structure, procurement of goods and services, risk management, and others.

#### **1. Disharmony in Terms of Norms and Definitions in the Law**

This title suggests a comparative analysis between Law No. 34/2014 and Law No. 8/2019, with a particular focus on the management of Hajj finances. The study aims to explore both harmony and discord between these laws, examining differences, especially in terms of norms and definitions related to the provisions for the organization of Hajj.<sup>20</sup>

<sup>16</sup> Hasan Ali, "Disharmonization of Wakalah Agreement in Law Number 34 of 2014 and The DSN-MUI Fatwa Number 122/DSN-MUI/II/2018," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* 11, no. 1 (2019), <https://doi.org/10.15408/aiq.v11i1.11144>.

<sup>17</sup> Erry Fitrya Primadhany, "TINJAUAN TERHADAP TANGGUNG JAWAB BADAN PENGELOLA KEUANGAN HAJI (BPKH) DALAM MELAKUKAN PENEMPATAN DAN/ATAU INVESTASI KEUANGAN HAJI," *JURISDICTIE* 8, no. 2 (2018), <https://doi.org/10.18860/j.v8i2.4447>.

<sup>18</sup> Rachman Sundjaya and Andi Muhammad Akram, "TINJAUAN YURIDIS ATAS PENGELOLAAN DANA CALON JAMAAH HAJI PERSPEKTIF MAŞLAHAH,"

*VERITAS* 6, no. 1 (2020), <https://doi.org/10.34005/veritas.v6i1.588>.

<sup>19</sup> Agung Sri Hendarsa et al., "Pengantar Manajemen Pengelolaan Nilai Manfaat Dana Abadi Umat Melalui Program Kemaslahatan BPKH Untuk Kemaslahatan Umat Islam," *Inovator: Jurnal Manajemen* 11, no. 1 (2022).

<sup>20</sup> Arif Setyawan, Hendro Wibowo, and Mustafa Kamal, "Analysis of Optimization Model of Haji Financial Investment Portfolio in BPKH RI (Haji Financial Management Agency of the Republic of Indonesia)," *Jurnal Ekonomi Dan Perbankan Syariah* 8, no. 1 (2020), <https://doi.org/10.46899/jeps.v8i1.173>.

Table 4. Comparative Analysis of Legal Provisions on the Management of Hajj Finances in Indonesia: A Focus on Laws No. 34/2014 and No. 8/2019

| Legal Provisions                            | Law No. 34/2014  | Law No. 8/2019   |
|---|--|--|
| <b>Title Translation</b>                    | "Implementation of Hajj Worship: A Series of Managed Worship Activities Covering Planning, Guidance, Service, Organization, and Protection for Execution, Pilgrims Organized Supervision, by the Government" | "Implementation of Hajj and Umrah Involves Planning, Service, Organization, and Evaluation, and Reporting"   |
| <b>Article Number vs. Article Number 13</b> | Cost of Organizing Hajj (BPIH): The Amount of Funds to be Paid by Citizens Performing the Hajj Pilgrimage.   | Cost of Organizing Hajj (BPIH): A Sum of Funds Designated for the Operational Aspects of Hajj Worship.   |
| <b>Unregulated vs. Article Number 12</b>    | Unregulated.   | Pilgrimage Travel Cost (BPIH): The Amount of Money to be Paid by Citizens Undertaking the Hajj Pilgrimage.   |
| <b>Article Paragraph (1) vs. Article 44</b> | BPIH Deposit from Bipih, State and/or Special BPIH Revenue as Stated in Pasal 5, Letter a, is a Budget, Pilgrim's Deposited Benefits, Fund for the Implementation of Hajj Worship.                           | BPIH Originates from Bipih, State and/or Special BPIH Revenue and Expenditure is a Budget, Value of Pilgrim's Deposited Benefits, Funds, and/or Other Legitimate Sources According to Regulations. |

Table 4 compares the legal provisions on Hajj financial management between Laws No. 34/2014 and No. 8/2019. The table highlights differences in the definitions and management of Hajj costs and funds, with Law No. 8/2019 introducing more detailed regulations on the operational aspects and funding sources compared to Law No. 34/2014.

Secondly, Law No. 34/2014 mandates the Badan Pengelola Keuangan Haji (BPKH)

to manage Hajj finances, including BPIH as part of the Hajj financial revenue. However, Law No. 8/2019 does not provide space for BPKH to be involved in proposing and determining the amount of BPIH. In fact, the existence of BPKH is not mentioned at all in this law. Law No. 34/2014 empowers BPKH to enhance the rationality and efficiency of BPIH utilization.<sup>21</sup>

Article 24 of Law No. 34/2014 grants BPKH authority to: (i) place and invest Hajj Finance in accordance with Sharia principles, prudence, security, and benefit; and (ii) collaborate with others in the framework of managing Hajj Finance. Conversely, Law No. 8/2019 does not mention BPKH as an institution managing Hajj finances. Broadly speaking, Law No. 8/2019 explains the mechanism of proposing the Biaya Penyelenggaraan Ibadah Haji (BPIH) until its determination. BPIH is proposed by the Ministry of Religious Affairs (Kemenag), approved by the DPR, and then determined by the President.<sup>22</sup>

Articles 46, 48, and 48 of Law No. 8/2019 grant full authority to the Ministry of Religious Affairs in organizing the Hajj pilgrimage. These articles outline a mechanism for determining BPIH that starts with a proposal from the Minister, approval by the DPR, and then determination by the President. Law No. 8/2019 does not mention the involvement of BPKH in planning and determining BPIH. However, referring to Article 4 of Law No. 34/2014, the expenditure of PIH is one of the three activities in the category of Hajj finances that is the task and authority of BPKH.

Based on the provisions in Law No. 8/2019 and Law No. 34/2014, the role of BPKH in determining BPIH is not emphasized. Meanwhile, the Ministry of Religious Affairs has broad authority in planning and organizing the operational aspects of Hajj finances without involving BPKH. BPKH is not given the authority to propose, consider in

<sup>21</sup> Zakiruddin, "DYNAMICS OF HAJJ FINANCIAL MANAGEMENT REGULATION IN EFFORTS TO GOOD GOVERNANCE."

<sup>22</sup> Muh Arafah Ali and Siska Mandalia, "DIRECT INVESTMENT STRATEGY IN DOMESTIC HAJJ

FINANCIAL GOVERNANCE," *Imara: JURNAL RISET EKONOMI ISLAM* 5, no. 1 (2022), <https://doi.org/10.31958/imara.v5i1.2421>.

planning, and regulate the operational aspects of Hajj finances. This is counterproductive to its founding spirit, where BPKH is entrusted with the task of managing Hajj finances. BPKH should be given the authority to propose, consider in planning, and regulate the operational aspects of Hajj finances.

### Disharmony and Overlapping Authority Between the Ministry of Religious Affairs and BPKH in Managing the Community Endowment Fund (DAU)

This section initiates the discourse by examining the evolving role of the Community Endowment Fund (DAU) in Hajj finance, delineating its evolution from the enactment of Law No. 17 of 1999 on the Organization of Hajj and Umrah to the implementation of Law No. 8 of 2019 on the Organization of Hajj and Umrah. While the definition of DAU has remained relatively consistent, its sources and placement within Hajj finance have undergone various transformations and differentiations,<sup>23</sup> as depicted in the subsequent table:

Table 4. Evolution of Community Endowment Fund (DAU) in Hajj Finance Legislation

| N | Law/Regulation                         | Definition of DAU   | Authorized Entity | Amendment |
|---|--|---|-------------------|-----------|
| 1 | Law No. 17 of 1999                     | A certain amount of funds obtained from BPIH and other efficiency sources.                              | BP-DAU            | -         |
| 2 | Law No. 13 of 2013 / PP No. 79 of 2012 | A certain amount of funds obtained from DAU development and/or remaining operational costs of Hajj, and | BP-DAU            | -         |

| N | Law/Regulation                        | Definition of DAU  | Authorized Entity | Amendment  |
|---|---------------------------------------|--|-------------------|--|
| 3 | Law No. 34 of 2014 / PP No. 5 of 2018 | DAU (previously) is a fund from DAU development and/or remaining operational costs of Hajj, and other sources. | BPKH              | -<br>"Separation of efficiency funds from DAU."<br>"Efficiency Fund and Benefits Value kept in the Hajj Fund (BPKH account)."<br>"DAU becomes a separate allocation within PKH, placed and invested as per Presidential Regulation." |
| 4 | Law No. 8 of 2019                     | -  | BPKH/Minister     | -<br>"Elimination of the term DAU; retention of Benefits Value and Efficiency Fund."   |

Table 4 outlines the evolution of the Community Endowment Fund (DAU) in Hajj finance legislation. It details how the definition and management of DAU have changed across various laws and regulations, with Law No. 8 of 2019 marking the elimination of the term DAU and a shift to new frameworks for managing Hajj funds

The disharmony in Law No. 34 of 2014 regarding the Community Endowment Fund

<sup>23</sup> Zain et al., "Implementation of the Use of DAU through the BPKH Benefit Program to Improve Hajj Services."

(DAU) within Hajj finance is evident in its definitions and positioning. Despite the enactment of Government Regulation No. 5 of 2018 designating DAU as a separate fund, Law No. 34 places it within Dana Haji. This inconsistency requires clarification on DAU's position and funding sources to avoid impacting Hajj event organization.<sup>24</sup>

This study examines institutional disharmony in managing DAU under Law No. 8 of 2019, replacing Law No. 13 of 2008. The formulation process, spanning President Joko Widodo's administration and involving Law No. 34 of 2014, highlights ineffective harmonization efforts. The proposed institutions in the bill, including Hajj Trustees Assembly (MAH), Indonesian Hajj Organizer Agency (BPHI), and Hajj Savings Fund, lack clarity, feasibility, and utility, raising concerns about operational costs and overlap. Despite updates, the bill's approval in 2019 excluded key agencies like MAH and BPHI, leading to horizontal inconsistency in the legal framework.

The enactment of the PIHU Law presents challenges to BPKH's authority, as responsibilities are transferred to the Minister of Religious Affairs, contradicting Law No. 34 of 2014. The absence of crucial agencies and the dissolution of the National Endowment Fund Management Body for the Welfare of the People further highlight horizontal inconsistencies between Law No. 34 of 2014 and Law No. 8 of 2019.

Legislation inherently carries the potential for legal disharmony, influenced by factors like excessive regulations, differences in interests and interpretations, and challenges in implementation. The disharmony between Law No. 8 of 2019 and Law No. 34 of 2014, governing the General Allocation Fund (DAU) management, stems from multiple causes:

1. **Excessive Legislation:** The proliferation of regulations, from Law No. 13 of 2008 to subsequent enactments, led to conflicting authorities and varying terms, such as DAU in PKH Law and Benefit

Value/Efficiency Fund in PIHU Law.

2. **Differing Drafting and Interests:** The formation of BPKH, proposed during President SBY's term but established under Jokowi, resulted in drafting discrepancies and differing interests, influencing the harmonization process.
3. **Delay in BPKH Establishment:** Law No. 34 of 2014 mandated BPKH's establishment within a year, but its official inauguration in 2017 delayed competency implementation, hindering discussions on the PIHU Draft Bill.
4. **Rushed Legislative Process:** The expedited approval of the PIHU Draft Bill from 2016 to 2019, influenced by DPR's productivity goals and the approaching elections, left unresolved issues, evident in the law's quality.

The dual regulation in managing the Permanent Fund for the People causes disharmony and inconsistency, impacting BPKH's role in Hajj finances. This disharmony leads to several effects:

1. **New Mechanism Establishment:** The Ministry of Religious Affairs becomes the main organ, and BPKH, the auxiliary organ in managing the Permanent Fund for the People, disrupting BPKH's role defined in Law No. 34 of 2014.
2. **Revival of Old Mechanism:** The Ministry of Religious Affairs regains central authority in organizing the Hajj pilgrimage, conflicting with the effort to limit its centralization through BPKH.

To address this, the government proposed a swift amendment to Law No. 34 on the Management of Hajj Finances, crucial for preventing the impacts of disharmony and maintaining consistency between BPKH and the Ministry of Religious Affairs.

In summary, the observed disharmony in Law No. 8 of 2019 reflects shortcomings in legal legacy principles and good legislative practices. This disharmony not only invites criticism but also jeopardizes the existence and authority of BPKH. Urgent efforts are needed to establish an independent BPKH

<sup>24</sup> Ali, "Disharmonization of Wakalah Agreement in Law Number 34 of 2014 and The DSN-MUI Fatwa Number 122/DSN-MUI/II/2018."



and harmonize regulations, potentially through judicial review or the issuance of Government Regulation in Lieu of Law (Perppu). The government's current effort involves drafting a bill for the amendment of the Law on the Management of Hajj Finances, outlined in the 2020-2024 National Legislation Program (Prolegnas).

### **Hajj Financial Management Agency (BPKH) in the Indonesian State Administration System**

In the Indonesian state system, the national financial structure encompasses state revenue, including non-tax revenue. The government, as the entity responsible for organizing the Hajj pilgrimage under its public service obligation, ideally delegates the management of Hajj finances to a state institution. The complexity arises due to the quota system in Hajj organization, leading to an annual increase in cumulative Hajj finances. Aiming for accountable, transparent, and professional Hajj financial management becomes imperative for good governance of public finances.

Presidential Regulation No. 110 of 2017, the implementing regulation of Law No. 34 of 2014 on the Management of Hajj Finances, designates BPKH as an independent public legal institution accountable to the President through the minister.

Theoretically, independent state institutions like BPKH respond to societal demands for democratic, accountable, and trustworthy operations. John Alder categorizes such institutions into Regulatory (rule-making and supervision of private relationships) and Advisory (providing advice to the government). BPKH falls under the Regulatory category, holding authority over regulatory and administrative activities in Hajj financial management. This aligns with the state's effort to curb the dominance of the Ministry of Religious Affairs.

The establishment of BPKH as an independent institution stems from public dissatisfaction, particularly among Hajj pilgrims, criticizing the chaotic governance and corruption in Hajj financial management. The disappointment with previous

institutions, marked by corruption, collusion, and nepotism, contributes to the formation of independent state institutions, reflecting a crisis of trust.

The institutional and jurisdictional separation in organizing the Hajj aims not only to limit the Ministry of Religious Affairs' authority but also to allow it to focus on organizing and servicing the pilgrimage. This is emphasized by Nahwan Effendi, the Chairman of the Hajj Development and Advocacy Section, Ministry of Religious Affairs of Bengkulu Province. BPKH's establishment facilitates optimal management of Hajj finances, ensuring maximum benefits for pilgrims.

While BPKH brings advantages in optimizing services and improving the Ministry of Religious Affairs' image, challenges arise. Funding-related obstacles hinder the Ministry's focus on services, with financing from third parties causing administrative delays. Quick responses to changes, such as an increased Hajj pilgrimage quota, face bureaucratic delays, impacting the Ministry's funding and leading to cancellations.

The proliferation of independent state institutions in Indonesia, formed reactively to national problems, introduces ambiguity in their roles and positions within the state system. This lack of clarity extends to the definition of "independence" and accountability mechanisms. Different patterns of institutional independence exist among state institutions, categorized into Functionally Independent and Structurally Independent or Only Functionally Independent or Structurally Independent.

BPKH, intended to be an independent institution resolving issues faced by the Ministry of Religious Affairs, is deemed compromised due to its structural ties to the Ministry, particularly in the Supervisory Board. Article 31 of Law No. 34 of 2014 establishes a Supervisory Board, including a member from the government sector, namely the Ministry of Religious Affairs. This influence compromises BPKH's full autonomy.

In conclusion, BPKH's structural

independence is not firmly established, and its overlapping authority, coupled with limitations, impedes functional independence, contrary to the government's goals.

Table 5. Key Aspects of BPKH in the Indonesian State Administration System

| No. | Information   |
|-----|---|
|     | <b>Position of BPKH in the National Financial System</b>  |
| 1.  | <ul style="list-style-type: none"> <li>Manages national financial system, including non-tax revenue.</li> <li>✓ Responsible for Hajj pilgrimage organization, ideally delegated to a state institution.</li> </ul>            |
|     | <b>Legal Basis and Status of BPKH</b>   |
| 2.  | <ul style="list-style-type: none"> <li>Governed by Presidential Regulation No. 110 of 2017.</li> <li>Recognized as an independent public legal institution accountable to the President.</li> </ul>                           |
|     | <b>Classification of BPKH as an Independent State Institution</b>   |
| 3.  | <ul style="list-style-type: none"> <li>Categorized as a Regulatory institution according to John Alder</li> <li>Holds authority in regulatory and administrative Hajj financial management activities.</li> </ul>             |
|     | <b>Triggers for BPKH Establishment</b>  |
| 4.  | <ul style="list-style-type: none"> <li>Formed in response to public dissatisfaction, particularly among Hajj pilgrims</li> <li>Reaction to chaotic governance and corruption in Hajj financial management.</li> </ul>         |
|     | <b>Advantages and Challenges of BPKH</b>  |
| 5.  | <ul style="list-style-type: none"> <li>Optimizes Ministry of Religious Affairs' services and improves image</li> <li>Obstacles in funding hinder Ministry's focus on services, causing administrative delays.</li> </ul>      |
|     | <b>Connection Between BPKH and Ministry of Religious Affairs</b>  |
| 6.  | <ul style="list-style-type: none"> <li>Structural: Supervisory Board includes a member from the Ministry of Religious Affairs.</li> <li>Functional: Funding-related obstacles affect the Ministry's service focus.</li> </ul> |
|     | <b>Independence Patterns Across State Institutions</b>  |
| 7.  | <ul style="list-style-type: none"> <li>Varying definitions and patterns of independence in Indonesian constitutional framework.</li> <li>BPKH faces challenges due to structural ties and overlapping authorities.</li> </ul> |
| 8.  | <b>Conclusion on BPKH Independence</b> <ul style="list-style-type: none"> <li>Structural independence not firmly</li> </ul>   |

| No. | Information   |
|-----|---|
|     | established, conflicting with government goals.   |
|     | <ul style="list-style-type: none"> <li>Overlapping authority and limitations may impede functional independence.</li> </ul> |

Table 5 highlights the key aspects of BPKH within the Indonesian state administration system. It covers BPKH's role and status, its legal basis, and its classification as an independent state institution. The table also discusses the factors leading to BPKH's establishment, its advantages and challenges, and the connections between BPKH and the Ministry of Religious Affairs. Lastly, it addresses the independence patterns of BPKH and concludes that while BPKH is designed as an independent body, structural and functional independence remains complex and conflicted.

## Conclusion

The formation of BPKH has been a subject of considerable debate, with discussions centering around its legal status—whether it should function as an independent entity or operate under the Ministry of Religious Affairs. Despite initial proposals suggesting BPKH's inclusion as a sub-organization of the Ministry, the Parliament opted for its establishment as an independent institution, leading to both support and opposition.

In terms of legal standing, Law No. 34 of 2014 on the Management of Hajj Financials serves as the foundational mandate for creating BPKH. This law paved the way for the issuance of subsequent regulations, including Presidential Regulation No. 110 of 2017 and Government Regulation No. 5 of 2018, solidifying BPKH's role in managing Hajj finances. As outlined in Article 2 of Presidential Regulation No. 110 of 2017, BPKH is established as a public legal entity, independent, and directly accountable to the President through the Minister. President Joko Widodo, in 2017, inaugurated seven Supervisory Board members and seven BPKH Executive Board members.

However, despite its legal foundation, Law No. 34 of 2014 reveals points of disharmony with Law No. 8 of 2019 on the

Organization of Hajj Worship. These discrepancies, particularly in the management of Hajj finances, involve variations in definitions and overlapping authorities between BPKH and the Ministry of Religious Affairs.

This study concludes that the term "independent" within the Indonesian legal system lacks a clear and definite definition, resulting in different patterns observed across independent institutions. Independent institutions in Indonesia can be categorized into two groups: Functionally and Structurally Independent, and Functionally or Structurally Independent Only. The first category includes institutions like the Corruption Eradication Commission (KPK), the General Election Commission (KPU), the National Commission on Human Rights (Komnas HAM), which operate independently without external interference. The second category comprises institutions like BAZNAS and BPKH, facing challenges due to structural ties and overlapping authorities, potentially impeding their functional independence.

#### Credit Authorship Contribution

Muhammad Aziz Zakiruddin: study design, investigation, manuscript drafting, supervision.

#### Declaration of Competing Interest

The author declares no competing interests related to this study. There are no financial or personal conflicts of interest.

#### Data Availability

Data are not available for sharing.

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