

HAJJ HEALTH ISTITA'AH FROM THE PERSPECTIVE OF HEALTH DECENTRALIZATION

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Abstract: This study aims to analyse the implementation of hajj health istiṭa'ah at the district/city level. Based on Minister of Health Regulation Number 15/2016 concerning the Health istiṭa'ah of hajj Pilgrims, the examination and health guidance of hajj pilgrims to meet the hajj health istiṭa'ah has been mandated to the District/City hajj health organizing team. Hajj health examination and guidance at the first and second levels is not only the responsibility of individual prospective pilgrims, but also the government and the community. This study collected and analysed data using a qualitative legal approach. The findings of this study identified both supporting and inhibiting factors affecting the implementation of hajj health istiṭa'ah provisions. These factors are primarily associated with the absence of regulations at the regency/city level governing the organization of the Hajj. Most local governments have enacted regional regulations pertaining solely to Hajj transportation. In contrast, the security system for the Hajj in these areas relies solely on the technical guidelines provided by Permenkes No. 15/2016. This study highlights the critical need to enhance Hajj health istiṭa'ah regulations by establishing district/city-level regulations.

Keywords: Istiṭa'ah, Hajj Health, Decentralization

Abstrak: Studi ini bertujuan menganalisis implementasi pemenuhan istiṭa'ah kesehatan haji pada level kabupaten/kota. Berdasarkan Permenkes Nomor 15/2016 Tentang istiṭa'ah Kesehatan Jemaah Haji, pemeriksaan dan pembinaan kesehatan jemaah haji supaya memenuhi istiṭa'ah kesehatan haji telah diamanatkan kepada tim

penyelenggara kesehatan haji Kabupaten/Kota. Pemeriksaan dan pembinaan kesehatan haji di level pertama dan level kedua bukan hanya menjadi tanggungjawab individu calon jemaah haji, melainkan pemerintah dan juga masyarakat. Dari data yang dihimpun dan dianalisis menggunakan pendekatan hukum kualitatif dalam studi ini dideskripsikan adanya faktor pendukung dan faktor penghambat implementasi ketentuan istita'ah kesehatan haji. Faktor-faktor itu berhubungan dengan minimnya pemerintahan daerah di tingkat kabupaten/kota yang memiliki peraturan penyelenggaraan haji di daerah. Mayoritas pemerintahan daerah hanya memiliki peraturan daerah tentang transportasi haji, sementara dalam sistem survielan kesejatan haji di daerah hanya mengacu kepada petunjuk teknis (Juknis) Permenkes No. 15/2016. Studi ini merekomendasikan pentingnya penguatan aturan istita'ah kesehatan haji yang diatur dalam regulasi daerah kabupaten/kota.

Kata Kunci: Istita'ah, Kesehatan haji, Desentralisasi

INTRODUCTION

The government, along with various Islamic Community Organizations (CSOs), has underscored the necessity of assessing health capability (istita'ah) as a prerequisite for the payment of Hajj Travel Expenses (BPIH) and the subsequent departure of pilgrims. This intervention by the government in the matter of hajj health istita'ah is deemed critical due to the significantly high, albeit fluctuating, morbidity and mortality rates among pilgrims. Since 2015, the death toll of Indonesian pilgrims in the holy land has been recorded as follows: 624 individuals in 2015, 342 in 2016, 658 in 2017, 385 in 2018), 473 in 2019), 89 in 2022, and 773 in 2023.¹ It is noteworthy that there were no reported deaths in 2020 and 2021, as the Saudi Arabian government suspended the admission of international pilgrims, including those from Indonesia, in response to the global COVID-19 pandemic.

In the 2023 Indonesian Hajj Muḍakarah event, both the government (represented by the Ministry of Religious Affairs and the Ministry of Health) and Islamic mass organizations (including NU, Muhammadiyah, FK KBIHU, and the PPIU/PIHK Association) reached a consensus on issuing nine recommendations. These recommendations aim to provide comprehensive support, protection, and guidance to pilgrims, ensuring they can perform the Hajj in a manner that is comfortable, safe, smooth, and free from harm (muḍarat).²

The nine recommendations are: (1) Hajj pilgrims who will depart to the holy land must fulfil the Health Istitha'ah (badaniyyah), which is part of fulfilling the mandatory requirements for performing Hajj; (2) health istita'ah is a condition for BPIH repayment and departure of Hajj pilgrims; (3) The Ministry of Religious Affairs (Kemenag) to formulate BPIH Repayment Guidelines to regulate the requirements for health istita'ah in BPIH repayment; (4) The Ministry of Health (MoH) implements health istita'ah based on the Regulation of the Minister of Health (Permenkes) No. 15/2016 concerning the Health Istita'ah of Hajj Pilgrims/its Amendments and other examinations covering mental health, cognitive, and activity daily living (ADL) health; (5) The Ministry of Health perfects the application of Siskohatkes for the determination of health istita'ah for Hajj pilgrims; (6) The Ministry of Religion and the

1 Cindy Mutia Annur, '773 Jemaah Haji Indonesia Meninggal Di Arab Saudi Pada 2023, Terbanyak Sejak 2015' (*databoks.katadata.co.id*, 2023).

2 Reni Susanti, 'Istitha'ah Jadi Syarat Pelunasan Biaya Haji 2024 Halaman All Diakses 30 Oktober 2023 - Kompas.Com' (*Kompas.com*, 2023).

Ministry of Health in stages provide education and socialization about Hajj health *istiṭā'ah* to pilgrims through health counselling, as well as guidance on Hajj management and involving the participation of the community/KBIHU and Islamic mass organizations; (7) The District/City MORA shall form a joint team consisting of elements of the District/City MORA, the District/City Health Office, and other relevant elements to provide education and understanding to Hajj pilgrims who are declared not to meet the health *istiṭā'ah*; (8) Health *istiṭā'ah* material and elderly Hajj jurisprudence to be included in the Ministry of Agriculture's Hajj management guidance guidebook; (9) To ease the burden of medical examination costs, the Ministry of Agriculture, Ministry of Health, and BPJS Healthcare are asked to discuss the financing scheme for medical examination of Hajj pilgrims borne by BPJS Healthcare.³

The existence of the *Istiṭā'ah* recommendation for prospective hajj pilgrims strengthens the Minister of Health Regulation Number 15/2016 concerning the health *istiṭā'ah* of hajj pilgrims. It stipulates that that all pilgrims must be subjected to health examination and guidance to achieve the condition of hajj health *istiṭā'ah*. The mandate of the Minister of Health must be applied at every level (the central, provincial, and district/city levels) according to standards implemented by involving various parties, including community participation. In other words, to realize the Hajj health *istiṭā'ah* is not only the obligation of prospective hajj pilgrims but also an obligation of the government and society.

Hajj medical examination procedures include identifying the health status of prospective hajj pilgrims as a basis for characterizing, predicting, and determining ways to eliminate health risk factors holistically. The standard examination and guidance of hajj health *istiṭā'ah* is carried out in several stages. The first stage of the medical examination when registering for hajj is carried out at the Sub-District Level Community Health Centre and the waiting period health examination after obtaining the hajj portion number. The second stage is medical examination at district/city hospitals in the year of departure and health guidance for the departure period after paying the hajj fare. The third stage of medical examination organized by the Hajj Organizing Committee (PPIH), specifically the health team, at the Embarkation.

The examination and formation of hajj health *istiṭā'ah* is considered an important issue because the physical and mental health condition of the pilgrims is fundamentally underpins their ability to perform the entire series of hajj pillars. Generally, there are two factors affecting the health condition of Indonesian hajj pilgrims. Predominantly, two categories of factors influence the health status of Indonesian hajj pilgrims. Firstly, internal risk factors encompass age, educational background (with a notable proportion of Indonesian pilgrims having completed only elementary or secondary education), comorbidities (predominantly degenerative and chronic conditions), and the pilgrims' behavior. Secondly, external risk factors that impact disease occurrence and exacerbate health issues among pilgrims include environmental elements (such as air temperature, humidity, and dust exposure), social and psychological factors, and other conditions that may compromise the immune system of the pilgrims.

3 'Kementerian Pendayagunaan Aparatur Negara Dan Reformasi Birokrasi - Hasil Mudzakarah Perhajian Indonesia 2023, *Istitha'ah* Jadi Syarat Pelunasan Biaya Haji' (menpan.go.id, 2023).

Safety, health and death of pilgrims in the holy land can be predicted by paying attention to the behavioural and disease indicators of pilgrims.⁴ Behaviour and disease are more dominant as internal risk factors for pilgrims. Meanwhile, 49.2% of all deaths in Indonesian pilgrims are due to cardiovascular disease⁵, with pilgrims dying from cardiovascular disease were mostly over 60 years old (76.7%).

Risk factors, particularly internal ones, are closely associated with the characteristics or profile of Indonesian Hajj pilgrims. Over the last decade, there has not been a significant shift in the profile of Indonesian Hajj pilgrims. Approximately 55 to 56 percent of Indonesian Hajj pilgrims are housewives with low to secondary education levels. According to data from Siskohatkes, almost every year, around 60 to 67 percent of pilgrims who travel to the Holy Land belong to the High-Risk group (Risti). This situation poses a potential threat to the safety and health of the pilgrims during their pilgrimage to the holy land.

However, there is a challenge regarding the accessibility of the names of prospective Risti pilgrims in the Siskohat data for health workers at the Community Health Center. This issue was highlighted in the Health Examination Report of prospective hajj pilgrims in the Ciledug Health Centre Area, Tangerang. Additionally, research conducted by Krisnita Dwi Jayanti in sub-district health centres in Surabaya also identified obstacles in implementing Siskohat due to internet network limitations. Another problem related to Hajj health surveillance is the migration of prospective pilgrims from other regions to local Community Health Center areas. Considering these challenges, Siswanto, Hari Basuki Notobroto, Chatarina Umbul Wahyuni, Krisnita Dwi Jayanti (2019), recommended the development of a database of Hajj health surveillance systems.

The implementation of the Hajj health surveillance system at the first and second levels carried out in sub-district health centres and district/city hospitals, still faces numerous obstacles. In addition to the Siskohat problem highlighted by previous researchers, another contributing factor is the absence of regulations from district/city governments governing hajj health supplies in the regions. While regulations are in place, they typically focus on the transportation logistics of pilgrims to and from the Hajj embarkation points. However, regulations in the form of regional ordinances that specifically address the health surveillance system of pilgrims in the regions are crucial and serve as a legal framework for the district/city Hajj health organizing teams in fulfilling their duties. Additionally, to realize the hajj health istita'ah, the district/city government is responsible for allocating funds for the implementation of regional hajj through the regional revenue and expenditure budget (APBD).

Hence, this study considers it essential to explore the opportunities and challenges of implementing health istita'ah in Indonesia's health decentralization context. The study aims to analyse the supporting and inhibiting factors affecting the fulfilment of health

4 Dwi Handayani, Chatarina Umbul and Santi Martini, 'Indeks Prediksi Risiko Kematian Jemaah Haji Di Provinsi Jawa Timur' (2016) 3 Nomor 2 Jurnal Wiyata 133.

5 Ali Sakti and others, 'Karakteristik Mortalitas Jemaah Haji Indonesia Akibat Penyakit Kardiovaskular' (2020) 6 Jurnal Penyakit Dalam Indonesia 178. See also, Cekli Setya Pratiwi, 'Indonesia's Legal Policies Amid Covid-19' [2022] Journal of Southeast Asian Human Rights; Vol 6 No 2 (2022): December 2022DO - 10.19184/jseahr.v6i2.27799 <<https://jurnal.unej.ac.id/index.php/JSEHR/article/view/27799>>.

istiṭā'ah among pilgrims in the regions from the perspective of legislation and legal politics.

Methods

This study employed the normative juridical approach method. It was conducted through literature reviews, examining secondary data such as laws and regulations, legal documents, and other legal norms, as well as study results or other references. Additionally, the normative juridical method was complemented by observation, interviews, and discussions (focus group discussions). The strategic steps included (a) Analyzing various laws and regulations related to the Hajj Pilgrim Service, (b) Conducting academic reviews through discussions, interviews, and documentation to assess crucial issues in fulfilling hajj health istiṭā'ah. Qualitative analysis techniques were utilized in this study, specifically analytical models involving data reduction, data presentation, and logical and systematic conclusion drawing/verification.

Results and Discussions

Istiṭā'ah Health Between Ta'abbudi And Ta'aqquli

Istiṭā'ah, etymologically, denotes power (al-qudrat) over something and the capability to perform a task. In terminology, istiṭā'ah refers to the physical and financial capacity, varying according to an individual's circumstances, to perform the Hajj.⁶ A prospective pilgrim is deemed to possess physical istiṭā'ah (badaniyyah istiṭā'ah) if they are physically fit to drive or sit as a passenger in a mode of transportation or tools. Those who are unable to do so due to physical limitations are considered lacking in istiṭā'ah.⁷ Financial istiṭā'ah, on the other hand, pertains to the pilgrim's possession of adequate wealth for sustenance, transportation, and the needs of their family both during their absence and upon their return from Hajj.

Unlike physical istiṭā'ah, the discussion among scholars of different schools of thought predominantly focuses on financial istiṭā'ah. However, there are varying interpretations regarding its definition and prerequisites. According to the Hanafiyyah school, istiṭā'ah involves the pilgrim's ability to afford provisions, transportation, and lodging during the journey. It is also required that this ability exceeds the basic needs of the pilgrims.⁸ In contrast, the Malikiyya school emphasizes physical ability, where the pilgrim must be capable of reaching Mecca and performing the Hajj rituals, with no obligation to provide sustenance or transportation. Prospective pilgrims who are willing to walk to Mecca are considered to have fulfilled *istiṭā'ah*.⁹

For the Shafi'iyah school, istiṭā'ah encompasses essential supplies, accommodation expenses, transportation, and ensuring the safety of the journey.¹⁰ The Hanabilah school stresses providing adequate supplies and transportation, along with surplus provisions for daily needs and ensuring safety during travel.¹¹

6 Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuh* (Dar Al-Fikr 1997).

7 Al-Fayumi, *Al-Misbah Al-Munir Fi Gharib Al-Syarh Al-Kabir* (Dar al-Kutub al-Ilmiyyah) p.414.

8 Abdurrahman Al-Jaziri, *Al-Fiqh 'Ala Al-Mazahib Al-Arba'Ah* (Dar al-Fikr) p.577.

9 Al-Jaziri (n 8). Joas Wagemakers, *The Muslim Brotherhood in Jordan* (Cambridge University Press 2020) <<https://www.cambridge.org/core/product/identifier/9781108884778/type/book>>.

10 Majmu'at min Al-muallifin, *Kitab Al-Mawsu'at Al-Fiqhiyyat Al-Durar Al-Saniyyat* (Wizarah al-Awqaf wa al-Sy'un al-Islamiyyah 2016) p.106.

11 Al-muallifin (n 10).

In general, Scholars who discuss istiṭā'ah from a financial perspective focus on living arrangements/logistics (al-zad) and transportation (al-rahilah).¹² This emphasis stems from hadith narrations attributed to the Prophet Muhammad PBUH, particularly one the companion Anas b. Malik narrated. *It is mentioned that there is someone who asks: What is meant by a person who is able to walk in QS. Ali Imran verse 97? The Prophet replied: (one who can afford it) for the cost of living (al-zad) and transportation (al-rahilah).*

Regarding physical istiṭā'ah, scholars assert that if a prospective pilgrim lacks physical ability but possesses financial means, they are still obligated to perform Hajj, albeit through the proxy of another person (badal Hajj).¹³ Among the scholars focusing on discussing istiṭā'ah physically were Ibn al-Arabi, al-Qurtubi, and Ibn Taymiyah. In particular, al-Qurtubi argued that a person who is to no extent able to ride a vehicle and drive far is in the same position as a person who has lost some limbs. This argument suggests that both groups are exempt from the obligation to perform Hajj, albeit with varying opinions among scholars regarding the extent of the exemption.

One of the physical istiṭā'ah propositions is the hadith of the Prophet Muhammad PBUH: From Abdullah b. Abbas narrated from the Prophet Muhammad PBUH: *that he was visited by a woman from the tribe of Khats'am who asked for his opinion. The woman asked: O Prophet verily Allah has obliged his servants to perform Hajj, while I have an old father who is unable to sit on a vehicle, then am I obliged to perform Hajj for him? The Prophet replied, yes!"* (HR. Bukhari and Muslim)

The Prophet's response to this question was comprehended by al-Qurtubi from two perspectives simultaneously. Firstly, the obligation of Hajj remains incumbent upon elderly parents, even if it is fulfilled through a substitute, known as "badal" in Hajj terminology. Secondly, while the obligation still rests upon elderly parents, but they are obliged to pay kafarat in the form of finances given to others for the cost of performing Hajj. This latter perspective is akin to the legal principle applied when an elderly cannot fast and thus provides "fidyah" as compensation for the missed fasts.

Thus, Therefore, physical and financial capacity are essential considerations in Islamic jurisprudence, termed "ta'abbudi," meaning accepting legal obligations obediently according to teachings derived from the Qur'an and hadith.¹⁴ The concept of "ta'abbudi" implies adherence to legal obligations without the necessity of istidlal (rational justification) beforehand. In contrast, "ta'aqquli" refers to the application of Islamic law after rational deduction (istidlal), interpretation (istinbat), and jurisprudential reasoning (ijtihad).

The criteria for physical and mental "istiṭā'ah" (capacity) are derived from the laws of ta'aqquli based on the Qur'an and hadith. Scholars and experts in the field have extrapolated these principles to accommodate the health concerns of pilgrims¹⁵ Thus, the laws about "istiṭā'ah" have been adapted to ensure that pilgrims possess the

12 Abdullah b Shalih Al-Qashir, *Zad Al-Hujjaj Wa Al-Mu'tamirin* (Maktabah Annur 2020) p.5.

13 An-Nawawi, *Al-Majmu' 'ala Syarh Al-Muhazzab Jilid 7* (Dar al-Fikr 2005) p.94; Ibn Qudamah, *Al-Mughni Jilid 3* (Dar al-Fikr) p.222; al-Kamal ibn Al-Humam, *Fath Al-Qadir Jilid 2* (Dar al-Fikr) p.416.

14 Hasan Mustafawi, *Misbah Al-Syari'at* (Anjuman Islami Hukumat) p.236.

15 Asrorun Ni'am Sholeh, 'Fatwa Mui Bidang Kesehatan Haji'. See also, Robert W Hefner, 'What Is Religious Authority?: Cultivating Islamic Communities in Indonesia By Ismail Fajrie Alatas' (2023) 34 *Journal of Islamic Studies* 140 <<https://doi.org/10.1093/jis/etac025>>.

physical and mental fortitude necessary to undertake the rites of Hajj by Islamic law. All pilgrims must be subjected to health examination and guidance in order to achieve the condition of hajj health *istiṭā'ah*.

The establishment of *istiṭā'ah* as an indicator of the achievement of Hajj health development aims to ensure that each pilgrim has the physical and mental ability to carry out the entire series of Hajj completely. Indonesian Hajj Community Health Centers, hospitals, and medical personnel are tasked with identifying and addressing potential health issues among pilgrims. The results of the medical examination will be the basis for health coaching with a five-level prevention approach: Health Promotion, Specific Protection, Early Diagnostic and Prompt Treatment, Disability Limitation, Rehabilitation. This five-level prevention approach is carried out both during the pre-departure, travel, worship period (Makkah, Medina and Armina), and return.¹⁶

The implementation of rigorous health examinations for prospective pilgrims serves to mitigate risks and maximize benefits. Notably, statistics from the Hajj Health Center indicate a persistently high morbidity and mortality rate among Indonesian Hajj pilgrims in Saudi Arabia from 2017 to 2023. The provision of inpatient services for over 4,000 pilgrims annually, on average 2 pilgrims died per mile, underscores the urgency of improving medical examinations and subsequent health interventions to ensure the fulfilment of health *istiṭā'ah*

The fulfilment of health *istiṭā'ah* for prospective pilgrims is seen as part of the law of *ta'aqquli*, which is the result of legal findings in *ijtihad*iyah. It is pertinent to note that every discovery of law by means of *ijtihad* is in principle relative (*zdanniyah*)¹⁷ and is non-binding (*ghair mulzim*), except for the person who issued them and those who adhere to his ruling.

According to Habibah Abu Zayd,¹⁸ there is a way to make the *ijtihad* law of *ta'aqquli* into *mulzim* (binding), namely by strengthening the *Shar'iyah siyasah* through legalization and promulgation. Thus, the law of hajj health *istiṭā'ah*, originally *ta'aqquli/ijtihad*i, can be binding if it is supported by an adequate legal umbrella. In Indonesia, the Law on Hajj and Umrah (Law No. 8/2019) has been issued stipulating that pilgrims departing for the holy land are those who have fulfilled health requirements. This is confirmed by the Regulation of the Minister of Religious Affairs (PMA) No. 13/2021 concerning the Implementation of Regular Hajj, stating that the requirement for a pilgrim to pay off the travel costs of the Hajj or BIPIH is to have met health requirements. It is suggesting that in the Indonesian government, the hajj health is decentralized. However, the hajj health *istiṭā'ah* regulation should also be covered by laws and regulations at the district/city level.

Decentralization And Regulation Of Hajj Health Istiṭā'ah

One of the areas decentralized by the central government to local governments is healthcare. Decentralization, as defined by Law No. 32/2004 on Regional Government, involves the transfer of authority by the central government to autonomous regions within the framework of the Unitary State of the Republic of Indonesia. In health

16 Kementerian Kesehatan RI, *Petunjuk Teknis Pemeriksaan Dan Pembinaan Kesehatan Haji* (Pusat Kesehatan Haji 2018) p.4.

17 Alauddin Abi Bakr Al-Kasani, *Badai' Al-Sana'i' Fi Tartib Al-Syarai' Juz 1* (Dar al-Kutub al-'alamiyyah) p.51.

18 Habibah Abu Zaid, *Al-Ijtihad Al-Fiqhi Al-Muashir Fi Al-Siyasah Al-Islamiyyah* (Dar al-Kutub al-'alamiyyah 2011) p.219.

decentralization, it means that the central government provides greater opportunities for regions to determine their own health development programs and allocations in their regions. The decentralized system aims to enhance the effectiveness and efficiency of healthcare development programs.¹⁹

However, health decentralization by many is considered ineffective due to its failure to yield significant improvements in healthcare development performance, as evidenced by public health indices and the equitable distribution of public health services. Experts highlight challenges in implementing central government policies within the context of decentralization. For example, in the issue of health funding, there are unresolved problems concerning: fiscal decentralization in the health sector, repositioning of roles between central and regional governments, and the public health insurance program (JKN).²⁰ Health funding remains in question because Indonesia only allocates less than 3 percent of the total state budget. In contrast, the World Health Organization (WHO) recommends that countries allocate 5 percent of their budgets to health.²¹

Another challenge of healthcare decentralization is the inadequate availability of healthcare workers and facilities across Indonesia. One doctor in Indonesia serves approximately 4000 people, whereas the ideal ratio is 1 doctor per 2000-2500 individuals. Furthermore, Community Health Centers (CHCs) distribution nationwide is uneven. For example, West Java (with 1,100 units), East Java (with 969 units), and Central Java (with 880 units) have the highest number of CHCs. In contrast, North Kalimantan (with 57 units) and Bangka Belitung (with 64 units) have the fewest.²²

If health decentralization is considered to be less effective, there is concern that it will impact on efforts to fulfill health istiṭa'ah for prospective pilgrims. This concern arises from the fact that the examination and guidance of Hajj health towards istiṭa'ah are primarily conducted at the Community Health Center, clinic, or hospital within the district or city and are the responsibility of the district or city's Hajj health organizing team. Subsequently, at the departure stage of prospective pilgrims, a third stage of health examination is carried out, typically held at embarkation points by Hajj health workers who are part of the Hajj Embarkation Organizing Committee (PPIH).²³ Thus, according to the principles of health decentralization, the region's role and responsibility are crucial in fulfilling health istiṭa'ah for prospective pilgrims.

19 Jane Kartika Propiona, 'Otonomi Bidang Kesehatan Yang Setengah Hati' (2010) 12 *Jurnal Masyarakat dan Budaya* 363; Ali, Siti Mawar and Nurdin Syah, 'Dampak Pemekaran Daerah Pada Pelayanan Publik Ditinjau Menurut Sistem Hukum Indonesia' (2020) 3 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah* <<http://petita.ar-raniry.ac.id/index.php/petita/article/view/50>>.

20 Propiona (n 19). See also, Muhammad Zulhilmi, Winny Dian Safitri and Nadlia Ariyati, 'Public Preferences On Factors Affecting Maqashid Shariah-Based Health Insurance Services In Aceh Province' (2023) 8 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah* <<https://petita.ar-raniry.ac.id/index.php/petita/article/view/222>>.

21 K Cardwell and others, 'Lessons Learnt from the COVID-19 Pandemic in Selected Countries to Inform Strengthening of Public Health Systems: A Qualitative Study' (2023) 225 *Public Health* 343 <<https://www.sciencedirect.com/science/article/pii/S003335062300392X>>; B Yuan, 'The Application of Policy Composite Indicators to Predicting the Health Risk and Recovery: A Global Comparative Investigation' (2023) 224 *Public Health* 209 <<https://www.sciencedirect.com/science/article/pii/S0033350623003335>>.

22 Dimas Bayu, 'Ada 10.292 Puskesmas Di Indonesia Pada 2022'.

23 RI (n 16).

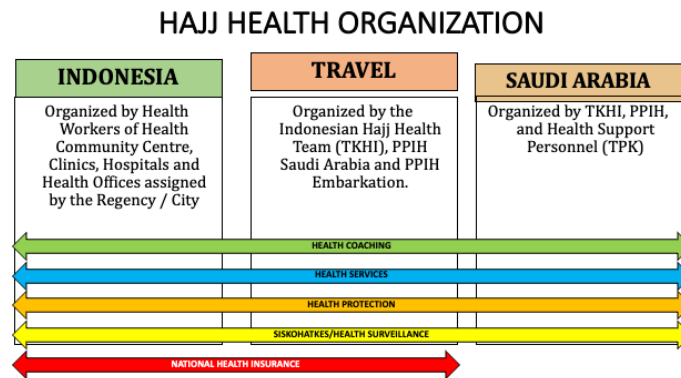


Figure 1. Hajj Health Administration

The capacity of local governments to be actively involved in pursuing hajj health istiṭā'ah has been regulated in the regulation of the minister of health (Permenkes) No. 15/2016, Permenkes No. 62/2016, Circular Letter of the Minister of Home Affairs No. 450/1816/SJ, Circular Letter of the Minister of Health No. HK 02.01/Menkes/33/2020 concerning the Category of Permanent Illness in the Implementation of Hajj Health, and most recently the Decree of the Minister of Health of the Republic of Indonesia No. HK.01.07/MENKES/2118/2023 concerning Technical Standards for Health Examination in the Framework of Determining the Status of Health Istita'ah Pilgrims published on November 9, 2023. All local governments are required to be responsible for Hajj health checks and guidance in their respective regions. Especially the examination and monitoring of the health of prospective pilgrims to fulfil istiṭā'ah carried out at sub-district health centers and district/city hospitals. This is due to the dispersed nature of the list of prospective Indonesian hajj pilgrims across 416 regencies and 98 cities, including one district with the status of a regency administration and five cities with the status of an administrative city, totaling 514 regencies/cities.²⁴

Procedurally, every process of examination and health guidance of pilgrims towards istiṭā'ah is carried out by the hajj health organizing team in the district/city. The team involves Community Health Centre, hospitals, surveillance programs, health promotion, family health, environmental health, nutrition, physical fitness coaching, primary and secondary health services, non-communicable disease control, communicable disease control, and mental health. The organizing team consists of specialists, doctors, nurses, health extension workers, pharmacy personnel, health analysts, health information systems, and other health workers.²⁵

24 JDIH, 'Peraturan Menteri Dalam Negeri Nomor 137 Tahun 2017 Tentang Kode Dan Data Wilayah Administrasi Pemerintahan' (2017). See also, Muhammad Siddiq et all Armia, 'Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?' (2022) 7 JILS 525; Muhammad Siddiq Armia, 'Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience' [2018] Intellectual Discourse.

25 RI (n 16). See also, Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Maintaining the Constitutional Rights to Create a Better Society' (2023) 8 Petita : Jurnal Kajian Ilmu Hukum dan Syariah 69; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Form Over Substance, Achieving Objectives While Preserving Values' (2023) 8 Petita : Jurnal Kajian Ilmu Hukum dan Syariah i.

The Hajj health organizing team in the district/city is a health team responsible for conducting Hajj health examination and guidance programs in its area. Therefore, the regent/mayor and/or head of the health office must annually appoint and evaluate their work in accordance with the Decree. To facilitate the organization and management of the Hajj health organizing team, the individuals in charge are appointed, consisting of the Head of the district / city health office, the Head of the field that manages Hajj health in the district / city, the district / city Hajj health manager and Community Health Center, hajj health examiners (doctors and nurses of Community Health Centre/clinics and specialists at referral hospitals), Health analyst personnel, Data management personnel/Siskohatkes, Hajj and Umrah organizing work unit of the district/city Ministry of Religious Affairs Office.²⁶

This study reveals that local governments in districts or cities throughout Indonesia primarily focus on forming Hajj health organizing teams, as mandated by the Technical Guidelines for Hajj Health Examination and Development by the Indonesian Ministry of Health. The appointment process varies, sometimes determined by the regent/mayor and at other times by the district or city health office, especially in areas with limited Hajj quotas such as in Papua. In executing their duties, the Hajj health organizing team heavily relies on the active involvement of the community, coordination with local governments, and collaboration with relevant agencies.

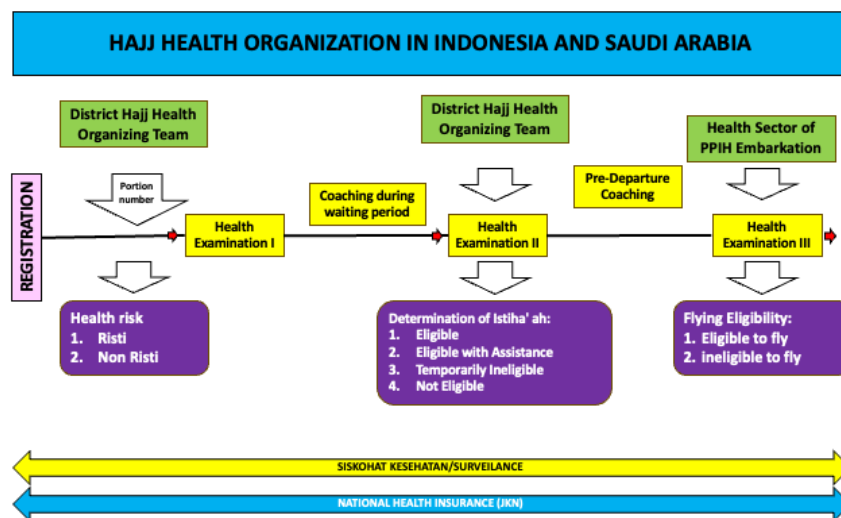


Figure 2. Hajj Health Implementation in Indonesia and Saudi Arabia

In the initial phase of the medical examination, the denominator indicator, representing 90% of prospective pilgrims, used to determine the hajj health istiṭa'ah, generally proceeded smoothly. However, according to several reports, internet connectivity issues sometimes arise while recording health examination data and recommendations on Siskohat, conducted by Community Health Center officers.²⁷ The achievement of the denominator indicator in the first stage of the medical examination is closely linked to the prerequisite for individuals intending to register and obtain a hajj portion number, which involves undergoing a medical check-up recorded in

26 RI (n 16). Muhammad Siddiq Armia and others, 'Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice' (2022) 17 AL-IHKAM: Jurnal Hukum & Pranata Sosial 113; Muhammad Siddiq Armia, 'Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)' [2019] Qudus International Journal of Islamic Studies.

27 Ani, 'Laporan Pemeriksaan Kesehatan Calon Jemaah Haji' (*id.scribd.com*, 2023).

Siskohat. The results of the first stage of the medical examination were then used by the Hajj health organizing team in the district/city to map the level of health risk, namely high health risk (Risti) or not high risk (non-Risti). In addition, risk factors and parameters of health risk factors in Hajj pilgrims can also be controlled or prevented.

Generally, the obstacles faced by the district/city Hajj health organizing team are after the medical examination of prospective pilgrims in the first stage, namely monitoring and medical examination of waiting periods that do not meet the denominator indicators (90%). Among the factors are: (1) the development of the health condition of prospective pilgrims based only on the results of medical check-ups recorded in Siskohat; (2) Internet network constraints to access Siskohat; (3) the movement or mutation of prospective pilgrims from one region to another; (4) Inaccuracies in the timing of the issuance of national and per-regional Hajj quota provisions in recent years that affect the estimation of pilgrims who meet the Hajj health *istiṭā'ah*; and (5) the looseness of medical examination for prospective pilgrims.

Hajj Health Istiṭā'ah Coverage In Local Regulations

Law No. 8/2019 concerning the Implementation of Hajj and Umrah has mandated the participation of local governments (Pemda), especially in organizing Hajj in each region. However, to date, not local governments in Indonesia have issued Hajj regulations in the form of regional regulations (Perda), as happened in all districts/cities in North Sulawesi province,²⁸ Papua and West Papua provinces.²⁹ Supposedly, at least for the implementation of article 36 of Law No. 8/2019, there is a legal umbrella of the local government in carrying out the responsibility of organizing Hajj in each region which is charged to the regional revenue and expenditure budget (APBD).

The existence of Hajj Regional Regulations in the regions is paramount as the central and regional government are responsible to provide religious freedom services for the community, guaranteed by the constitution. Even in the context of deconcentration, the pilgrimage is a religious affair and an absolute government affair (in addition to foreign, defence, security, judicial, monetary and fiscal, and national affairs). Based on the provisions of article 10 paragraph (2) of Law No. 23/2014 on Regional Government, it is stated that in carrying out absolute government affairs, the Central Government can conduct itself or delegate authority to vertical agencies or governors as representatives of the central government based on the principle of deconcentration.

Local governments, both provincial and regency/city levels, with reference to laws and regulations regarding Hajj basically have four responsibilities, namely: (1) forming regional hajj officers; (2) collaborating with the Office of the Ministry of Religious Affairs and related agencies; (3) providing transportation of pilgrims from the area to

28 Kanwil Kemenag, 'Dukung Perda Standarisasi Biaya Haji Di Sulawesi Utara, Ini Kata Fabian Kaloh' (*sulut.kemenag.go.id*, 2023). Johari Ab Latiff, 'Halal Certification Procedure In Malaysia And Indonesia' (2020) 5 PETITA: Jurnal Kajian Ilmu Hukum dan Syari'ah <<http://petita.ar-raniry.ac.id/index.php/petita/article/view/102>>; Zulfakar Ramlee Saad, 'Prosecuting Shariah Offences in Malaysia: Evidentiary Issues' (2019) 4 Petita : Jurnal Kajian Ilmu Hukum dan Syariah; Nurmasiyithah Ziauddin, 'Tinjauan Hukum Islam Terhadap Perlindungan Konsumen Pada Transaksi Jual Beli Online' (2017) 2 PETITA: Jurnal Kajian Ilmu Hukum dan Syari'ah.

29 Yan, 'Hanya 4 Daerah Di Papua Barat Tanggung Biaya Transportasi Jemaah Haji Ke Makassar' (*merdeka.com*, 2022).

embarkation and from debarkation to the area; and (4) conducting medical examinations.

This study reveals that in districts/cities where local regulations have been compiled and issued, there exist regulations governing the implementation of regional Hajj, covering: (1) regional Hajj organizers; (2) transportation financing, operational departure and repatriation of pilgrims from the area of origin to embarkation and/or from debarkation to the area of origin, and (3) operational costs of TPHD and TKHD in organizing regional hajj. However, up to the present year, there has been no regional regulation addressing the responsibility of local governments in conducting hajj examinations, which includes regulating medical examinations to determine the health status (*istiṭa'ah*) of pilgrims, coordinating networking, and forming partnerships.

Coordination, networking, and partnerships required to ensure the health *istiṭa'ah* of prospective pilgrims in the regions should also be a priority for the local government, alongside transportation, operational matters of departure and return of pilgrims from the area of origin to embarkation and / or from debarkation to the area of origin and the improvement and development of technical capacity. By incorporating health *istiṭa'ah* services for prospective regional pilgrims into Regional Regulations, the Hajj health organizing teams at the district/city level can be strengthened to coordinate, network, and form partnerships in areas such as: (1) identifying, recording, and reporting health issues related to the health *istiṭa'ah* of prospective regional pilgrims; (2) enhancing and developing technical capacities and human resource management; and (3) improving the success of medical examinations and providing guidance on health *istiṭa'ah* for prospective regional pilgrims.

Especially with the issuance of KMK RI No. HK.01.07/MENKES/2118/2023, the responsibilities of the district/city Hajj health organizing teams have expanded. These include: (1) conducting basic medical examinations, such as anamnesis, physical examination and SRQ-20 tests; (2) conducting cognitive examinations, assessing mental health, and evaluating daily living activities (ADL) abilities; (3) providing communication, information, education, and referrals for additional medical examinations and follow-up services at health facilities, including hospitals and laboratories; (4) following up on the results of basic medical examination for certain diseases that require further medical examination (advanced medical check-up); (5) establishing a diagnosis of the disease based on the medical examination results; (6) evaluating treatment for manageable diseases; and (7) entering the medical examination results into Siskohatkes.³⁰

In addition, in KMK RI it is also stated that health service facilities designated for health examination for Hajj pilgrims are those appointed by the head of the district / city regional health office. Health service facilities in the regions are Community Health Centre and state hospitals that can be reached by the community. However, given the current conditions of health decentralization, it is worth questioning whether all health facilities in the regions are adequately prepared to meet the success indicators for health examinations and the development of health *istiṭa'ah* among prospective regional pilgrims.

30 Puskes Haji, 'Telah Terbit Standar Teknis Pemeriksaan Kesehatan Dalam Rangka Penetapan Status Istita'ah Kesehatan Jemaah Haji - PUSKES Haji' (*puskeshaji.kemkes.go.id*, 2023).

The formulation of a regional regulation encompassing health examination services and guidance on health *istiṭā'ah* for prospective regional pilgrims is paramount to ensure that local governments proactively allocate funds in their state budgets. The benefits derived from this initiative extend beyond the provision of Hajj health services to positively impact the overall health of the regional community.

Conclusion

The central government oversees the Hajj pilgrimage; however, in meeting the health *istiṭā'ah* criteria, significant involvement from the community and regional governments is observed. The Hajj health organizing teams established in each district or city are responsible for conducting health examination and monitoring the health status of prospective pilgrims during the waiting period or prior to BPHI payment. Prospective pilgrims are deemed fit or unfit, considering the indicators of health *istiṭā'ah*, based on the recommendations of these district or city Hajj health organizing teams. To fulfil their duties effectively, regional hajj health organizing teams require coordination, networking, and partnerships to ensure the health *istiṭā'ah* of prospective pilgrims in their respective regions. Mere strengthening of their roles and responsibilities through decrees from the Regent/Mayor or the district/regional health office is insufficient; it necessitates regional regulations. This policy should be accorded equal priority by local governments alongside transportation logistics and the operational aspects of pilgrim departure and return from the area of origin to the embarkation and debarkation points. The establishment of regional regulations concerning the fulfilment of hajj health *istiṭā'ah*, coupled with enhancements in technical capacity and human resource management within the health sector, can significantly enhance the success of health examinations and the coaching of prospective pilgrims' health *istiṭā'ah* in each district or city.

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