

# Health Administration in Organizing Indonesian Hajj from the Legal and Managerial Perspective of Good Corporate Governance: A Systematic Study

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## ABSTRACT

This study seeks to analyze health administration in the hajj pilgrimage in Indonesia. Taking a quite different landscape, this study combines health administration in the context of the interests and obligations of the state to provide protection and safety for pilgrims. This protection is related to aspects of regulations and laws as the basic norms for policymaking at the operational level in the administration of Hajj, especially in the context of the health of the pilgrims. Meanwhile, the safety aspect is related to the fulfillment of managerial aspects to improve service functions and improve quality. By taking an interlinked dialogue from various theoretical outlooks, this study provides a perspective on the relationship between legal and management aspects through good corporate governance and total quality management in the administration of hajj and its basis for pilgrimage health administration.

**Keywords:** Health Administration, Hajj Pilgrimage, Good Corporate Governance, Legal System, Quality Management

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## INTRODUCTION

Deductively, freedom of religion and worship according to one's religion as part of human life is protected by human rights. As an inherent derivation of this obligation is in the hajj management. The administration of Hajj in Indonesia is the responsibility of the government, in this case the Ministry of Religious Affairs as the regulator as well as the operator, which is regulated in Law No. 13 of 2008 in lieu of Law No. 17 of 1999 regarding the implementation of the pilgrimage. The implementation of the haj pilgrimage by the government, according to the explanation of Law No. 13/2008, is based on the consideration that the Hajj is national because in addition to the physical and mental well-being of pilgrims, it also concerns the good name and dignity of Indonesians abroad, especially in Saudi Arabia. The government's involvement in various aspects of individual life is essentially in accordance with the objectives of the Indonesian nation as stated in the Preamble to the 1945 Constitution, which is more directed to the Welfare state principle. Based on this principle, the government can carry out its role in the field of public law based on its duties and authorities, as well as in the private field because it has rights and obligations, with the aim of improving public welfare.

The development of a nation's law is the embodiment of the legal ideals adopted by the community concerned into various sets of positive legal rules, legal institutions and the process of their application/implementation. The ideal of law means that in essence law as a rule of behavior of society is rooted in ideas, feelings, intentions, creativity and thoughts regarding law or the perception of the meaning of law, which in essence consists of three elements of justice, usability and legal certainty. The ideals of law are formed in the minds and hearts of humans as a product of a combination of life views, religious beliefs and social realities which are projected on the process of these three elements. In the dynamics of social life, the ideals of law will influence and function as a guiding principle, critical norms (evaluation rules) and motivating factors in law administration (formation, discovery, application of law) and legal behavior.

The legal principles that develop globally directly and indirectly affect the basic principles of national law in the country concerned, for example in the economic sector, the principles or principles of Good Corporate Governance (GCG) (Susilo, 2015). Initially, this principle was not recognized or has not been recognized in Indonesian economic law in an academic and systematic manner, however, in the era of globalization, this principle is a requirement to be applied by all countries in business transactions or business activities, if they wish to maintain cooperative relations in the business sector with other countries and international financial institutions. Globalization as a historical determination that cannot be avoided for every nation and country, so that whether we want it or not, like it or not, whether we are ready or not, it seems that we have to go with the flow (Didik, 2001; Hirst et al., 2009; Chandra et al., 2004; Bashri, 2003; Hassan, 1999).

In principle, in the context of hajj management, Good Corporate Governance is the principles that form the basis for the relationship between all parties with an interest in the company, both managers, shareholders, other stakeholders in order to manage the company. This study seeks to analyze health administration in the hajj pilgrimage in Indonesia. Taking a quite different landscape, this study combines health administration in the context of the interests and obligations of the state to provide protection and safety for pilgrims. Likewise, with the implementation of a good pilgrimage, a relationship between parties is needed parties involved in the management of the haj pilgrimage, and the legal relationship with the client both institutional and prospective hajj pilgrims which needs to be regulated in such a way so that all parties are harmonious and protected, not harming each other.

## LAW AND GOOD CORPORATE GOVERNANCE IN PUBLIC SERVICES

The ideal of law is formulated and understood to facilitate its translation into various sets of rules of authority and rules of behavior and to facilitate consistency in the

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administration of law (Sidharta, 2000). Rosabeth Moss Kanter (1990), and Suhanadji & Wasposito (2004) describe globalization as a world that has become a global shopping center, in which ideas and production are available in every place at the same time. Emanuel Richter (1997) states that globalization is a global network that simultaneously brings people who were previously scattered and isolated on the Earth into mutually beneficial dependence and world unity. The bondage of countries in the world to the global economy after an agreement was made to form an international trade institution. Since Indonesia ratified the 1994 Uruguay Round Agreement on General Agreement on Tariffs (GAT) and the establishment of the World Trade Organization (WTO), the Indonesian state is directly bound by the agreed provisions and all relevant legal rules must be adjusted. One of the agreed terms is in the service sector, including the provision of public service businesses in organizing the haj pilgrimage.

There are at least two theories in GCG that can be used to discuss and examine how to regulate the relationship between parties with an interest in the company, especially regarding the implementation of the pilgrimage, namely Stewardship Theory and Agency Theory. Stewardship Theory is built on a philosophical assumption about human nature, namely that humans are intrinsically trustworthy, able to act responsibly, have integrity, and be honest with others. This is implied in the fiduciary relationship that shareholders want. In other words, stewardship theory views professional management as being trusted to act in the best possible way for the public interest in general and stakeholders in particular (Daniri, 2005). Meanwhile, Agency Theory developed by Michael Johnson, a professor from Harvard, views that company management as an agent for shareholders will act with full awareness of its own interests, not as a party who is wise and prudent and fair to shareholders as assumed in the stewardship model.

Agency Theory bases the contractual relationship between the members of the company, the principal and the agent as the main actors. Principals are parties that are mandated by the agent to run the company. The agent is obliged to be responsible for what has been mandated by the principal (Arifin, 2005). According to Eisenhard (1989) and Arifin (2005), agency theory is based on 3 interlinked assumptions about human nature, organization, and information. The assumptions about human nature emphasize that humans have self-interest, have limited rationality, and have no risk (risk aversion). Organizational assumptions are the existence of conflict between organizational members, efficiency as a criterion of productivity, and the existence of conflict between members of information between principals and agents, while the assumption about information is seen as a commodity that can be traded.

One of the causes of Agency Problem is the existence of Asymmetric Information. Asymmetric Information is unbalanced information due to the unequal distribution of information between the principal and the agent which results in two problems due to the principal's difficulty in monitoring and controlling the agent's actions.

In principle, the two theories explain how to resolve conflicts of interest between parties and stakeholders in business activities that have a detrimental impact. To avoid conflicts and losses, it requires the basic principles of good corporate management, namely the principles of GCG. GCG is a system that regulates, manages and

oversees the process of controlling business to increase share value, as well as a form of concern for stakeholders, employees, creditors, and the surrounding community. GCG seeks to maintain a balance between the achievement of economic goals and community goals. The challenge in corporate governance is finding ways to maximize the creation of welfare in such a way that it does not impose improper costs on third parties or society at large. Thus the principle of GCG is a cycle that runs on an ongoing basis, namely starting with corporate governance arrangements, then the formation of a corporate body or structure, assignment of corporate bodies or agents, monitoring management and assessing the performance of the company's management body (Tangkilisan, 2003). The results of the monitoring and assessment will have an impact on stakeholders or parties with an interest in the company.

In principle, in the activities of organizing the Hajj, where there is an economic value that occurs is how the relationship between economic or business actors, such as producers and consumers and the government as a regulator. Regulation functions to regulate all business activities in order to create healthy business activities and ultimately create prosperity for all parties. Likewise, the activity of organizing the haj pilgrimage is one of the important sectors and is very closely related to the behavior of businesspeople and consumers. It is for this purpose that Good Corporate Governance was created. The GCG Guidelines stipulate that the purpose of the preparation of these guidelines including (Alias 2004) maximizing the value of the company and the value of the company for shareholders by enhancing the principles of transparency, accountability, trustworthiness, responsibility, and fairness so that the company has strong competitiveness; promoting professional, transparent and efficient management of the company; and encouraging shareholders, members of the Board of Commissioners and members of the Board of Directors to make decisions and carry out actions based on high moral values and compliance with laws and regulations as well as being responsible to other interested parties.

### LEGAL AND ETHICAL NORMS IN THE IMPLEMENTATION OF GCG

Good GCG implementation is one of the actions based on high moral values and compliance with related laws and regulations. Good company management/hajj management (in this case the Ministry of Religious Affairs) requires legal arrangements as outlined in the legal aspect so that they have a juridical-normative and juridical-sociological character. The legal arrangement in the Hajj is carried out in accordance with the purpose of establishing a legal arrangement to provide order, stability, and justice (Soekarwo, 2004). The existence of law becomes something that is very substantial theoretically and paradigmatically for the assurance of the management of the haj pilgrimage. In other words, through good institutional legal instruments in the Ministry of Religious Affairs, it is expected to have and guarantee the development of a condition filled with order, certainty and justice in business activities.

Gény (1921) in his book entitled 'Scien et technique en droit prive positif', has taught that law is purely aimed at achieving justice, as an element of justice, it is stated that the interests of effectiveness and benefit (Emirzon, 2002; Van Apeldoorn et al., 1978). This is in accordance with the basic elements of the objective (principle) of law in

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philosophical thought and discussion as stated by [Notohamidjojo \(1975\)](#) that law has a regular aspect. This means that law comes to create legal order and certainty, curb chaos, the opposition of all its opponents. Without the law, a life in cooperation on the basis of "*la solidarite par divicion du travail*" would be impossible.

Law has an ethical element, namely that the law has a goal to be achieved or the ultimate goal, namely towards justice, justified in the scope of "provide justice". With legal arrangements, it is scheduled that a service activity, namely the implementation of the haj pilgrimage, has order, certainty and justice. With legal arrangements, it can also be understood that the activities of organizing the haj pilgrimage must be set forth in a positive legal order that contains norms.

Currently, there are various causes related to the business of organizing the haj pilgrimage, which are a reality that cannot be ignored. It needs laws and regulations governing these activities that are established normatively and empirically. So far, Law No. 13 of 2008 is not enough to protect the Hajj Candidates while in their homeland and in Saudi Arabia. In this case, it is only fitting that the law should be used as a means of creating order in governance in the field of carrying out the pilgrimage. Therefore, it is necessary to build an ideal law to regulate business activities, especially in organizing the pilgrimage.

In building an ideal law, a legal construction based on legal theory is needed. The theoretical framework used to examine in this research is the Theory of Law as an Integrative Mechanism by [Bredemeier \(1962\)](#) which examines the concept of input-output which by some experts is considered a development of Talcott Parsons' Cybernetics. According to [Bredemeier \(1962\)](#), there are four major functional processes as part of the social process, namely adaptation, achieving goals, maintaining patterns and integration. [Bredemeier's \(1962\)](#) work shows that law takes place in a mutual influence between law and other subsystems found in society.

In addition, the theory developed by [Roscoe Pound \(1997\)](#) is also used, namely law as tool of social engineering, in which law can function as a tool for engineering society. This theory was introduced and developed by [Mochtar Kusumaatmadja \(1976\)](#) that law is not enough to only act as a tool, but also as a means of community hunting. Furthermore, it is also used as an analytical tool known as the *Volkgeist* theory by [Friedrich Karl von Savigny \(2002\)](#) explaining that law is first born from the habits and general awareness of the public then from the judge's decision. However, society is created by internal forces that work secretly and not by the will of the lawmakers ([Rahardjo, 1991](#)).

In the future, it is hoped that the development of economic law, especially the law on organizing the haj pilgrimage, must have comprehensive enforcement. This can be related to law as a system and can be accounted for in accordance with [Rahardjo \(1991\)](#), which states that a legal system can be called that because it is not just a collection of rules. The link that unites them to create such a pattern of unity is the question of its validity. Regulations are accepted as valid if issued from the same source or sources such as legal regulations, jurisprudence and customs. Such sources automatically involve institutions such as courts and legislators. This system bond is also created through the practice of implementing these legal regulations. This practice guarantees the creation of a unified arrangement of these regulations in

the time dimension. The means used to carry out the practice, such as interpretation or uniform patterns of interpretation, cause the creation of this system of fish.

### HEALTH ADMINISTRATION IN INDONESIAN HAJJ MANAGEMENT

The basis for the discussion will use the theory of the legal system proposed by Friedman. According to [Rahardjo \(1991\)](#) the legal system has 3 elements of structure, substance, and culture. In this connection, [Rahardjo \(1991\)](#) further stated that law is a social institution whose existence is needed by humans to fulfill their needs. One of the most important needs is justice. It is hoped that justice can be obtained through law enforcement. Thus, law is a tool of equipment for society in order to achieve its needs (justice). In its position, role and function as a means of apparatus for this society, the law contains the meaning of order, meaning that justice as a community need must be met carefully. Law that can fulfill its position, role and function as a social institution contains the characteristics of stability, social framework, legal forms as norms, and inter-institutional links.

In terms of hajj administration as a basis for health administration, The Ministry of Religious Affairs also prepares some for the hajj such as bracelets, coordinates the use of uniforms, and insurance for pilgrims. The government provides health services from the sub-district Public health center, which are then followed up at the district health office. The next health check is carried out at the embarkation Hajj hostel before departure. The government through the Ministry of Health also provides a meningitis vaccine. The Indonesian government through the Ministry of Health has also prepared health services for pilgrims in Saudi Arabia, namely the Indonesian Hajj Medical Center (BPIH) established in Mecca and Medina, equivalent to type C patients, with a total capacity of 200 patients and 28 ambulances equipped. Those who are sick who cannot be treated by the Center are referred to the nearest Saudi Arabian hospital.

In articles 2 and 3 of Law No. 13 of 2008 concerning the Implementation of Hajj, it is stated that the implementation of the Hajj is aimed at providing the best possible guidance, service and protection for the pilgrims so that they can perform their worship in accordance with the provisions of Islamic teachings based on principles of justice, professionalism, and accountability with non-profit principles. The essence of the two articles places more emphasis on three main elements, namely guidance, service and protection for the pilgrims. These three elements show the importance of good management aspects of the leading sector, together with the Indonesian Parliament, the Ministry of Health, the Ministry of Transportation, the Ministry of Justice and Human Rights, and the Ministry of Foreign Affairs. From a modern management perspective, the haj pilgrimage which has many elements and involves many agencies must be managed professionally. One approach that has been recognized worldwide is the total quality management (TQM) model. TQM is a philosophy that involves every organizational actor in a continuous improvement effort to improve quality and achieve customer satisfaction, in this case the pilgrims. There are at least three main keys in implementing TQM in hajj pilgrimage. First, continuous improvement and continuous improvement. Second, the involvement of all members in the organization. Third, service user

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satisfaction (an effort to meet or even exceed the expectations of users).

The TQM model emphasizes the development of the organization's processes, products and service quality in a systematic and continuous manner. This approach seeks to involve all relevant parties and ensure that their experiences and ideas have a contribution to quality development. TQM is directed to open a steep path to a new paradigm of thinking that emphasizes satisfaction, innovation and improving the quality of service to customers on an ongoing basis. However, the concept of implementing the TQM model is a long-term process such as the administration and implementation in hajj pilgrimage takes place continuously, because it involves aspects of organizational culture that are very difficult to change. Factors that shape organizational culture, such as power structures, administrative systems, work processes, leadership, employee pre-disposition and other management practices have the potential to become an inhibiting factor for the changes to be addressed. In fact, not infrequently, the factor of power intervention in organizational culture often affects a much-needed strategic policy, especially in a bureaucracy in the context of in hajj pilgrimage that does not yet have a good system.

Apart from these obstacles, there are other obstacles that are unique to the organization in hajj pilgrimage, namely the lack of accountability for services, unclear vision and mission of the implementers in the field, resistance to change and weak commitment among administrators at the technical level to implement TQM. However, it is better if TQM can be implemented properly in hajj pilgrimage that involves all elements of stakeholders, then the success of hajj pilgrimage will be visible.

### CONCLUSION

A form of normative regulation on the law is always planned to be able to provide clarity about the steps and efforts to carry out the business activities of the hajj pilgrimage if it is developed in accordance with the level of the context. The management of the hajj pilgrimage cannot be implemented on a moral-voluntary basis, such as a code of ethics, without paying attention and is framed in a legal format. This means that law is an important instrument in the management of business activities. Thus, through a contextual legal arrangement and following developing business activities, it is clear that a business management for organizing the Hajj will be in accordance with the needs of the business community. The pouring of legal norms for organizing the hajj pilgrimage is in essence also in line with some of the advantages possessed by statutory regulations compared to other norms, at least in the future there will be legal certainty in the business activities of the hajj pilgrimage business services. Currently, there are various causes related to the business of organizing the hajj pilgrimage, which are a reality that cannot be ignored. It needs laws and regulations governing these activities that are established normatively and empirically.

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