

THE AGREEMENT OF UMRAH PILGRIMAGE WITH UMRAH TRAVEL OPERATORS (According to PMA Number 8 Year 2018 and Sharia Economic Law)

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Abstrak

Minat masyarakat untuk melaksanakan ibadah umrah semakin meningkat. Pelayanan perjalanan ibadah umrah menjadi bisnis yang menjanjikan. Pemerintah telah menetapkan PMA No 8 tahun 2018 tentang Penyelenggaraan Perjalanan Ibadah Umrah (PPIU). Namun kasus penipuan terhadap Jemaah umrah oleh PPIU semakin meningkat. Tulisan ini memaparkan hasil penelitian mengenai perjanjian antara jemaah umrah dengan PPIU menurut Peraturan Menteri Agama dan Hukum Ekonomi Syariah serta perjanjian antara jemaah umrah dengan PPIU dihubungkan dengan Prinsip Syariah. Penelitian dilakukan dengan pendekatan yuridisnormatif, sifat penelitian deskriptif analitis, data sekunder, teknik pengambilan data dengan studi pustaka dan analisis data kualitatif. Hasil penelitian menunjuk kanbahwa PMA No 8 tahun 2018 tidak menetapkan jenis perjanjian antara Jemaah dengan PPIU. Dari aspek Hukum Ekonomi Syariah perjanjian Jemaah dengan PPIU termasuk perjanjian *Ijarah musytarak*. Dihubungkan dengan Prinsip Syariah, perjanjian tidak boleh mengandung unsur *riba*, *ghahar*, *maisir*, *haram*, dan *zalim*.

Kata kunci: Perjanjian, Jemaahumrah, Ekonomi Syariah

Abstract

The community interest to perform umrah is increasing and resulting the existence of umrah service becomes as a promising business. The government determines PMA No. 8 year 2018 on Umrah Travel Operators (PPIU). However, the case of fraud toward Umrah pilgrims by PPIU is increasing. This paper aims at describing the agreement between Umrah pilgrims and PPIU based on the regulation of Religious Affairs Minister and Sharia Economic Law and the agreement between Umrah pilgrims and PPIU based on Sharia Principles. The research is conducted by normative juridical approach consisting of descriptive analytical research and

secondary data type. Data collection technique uses literature study and qualitative data analysis. The result shows that PMA No. 8 year 2018 does not specify the type of agreement between Umrah pilgrims and PPIU. Based on Sharia Economic Law, the agreement between Umrah pilgrims and PPIU is Ijarahal 'amal musytarak. Related to Sharia Principles, the agreement should not contain the elements of usury, ghahar, maisir, haram, and zalim.

Keywords: Agreement, Umrah Pilgrims, Sharia Economics

INTRODUCTION

The concept of Sharia Economic Law was introduced and applied to almost every business and strata. Initially, it was applied to microeconomics, which later developed in all sectors and business fields. Islamic economic activities rely on the provisions of Islamic law, namely about how people should behave. By the arrival of the Islamic economic system, it is hoped that Indonesian economic law will experience positive developments that build togetherness to create prosperity for the state and nation towards fair and prosperous society⁴⁴. The emergence of Sharia Economic Law phenomenon is the result of the interaction of Islamic Law with National Law System, which was initially limited to family law or in the field of special civil law⁴⁵.

The term Sharia Economics can be seen in the laws and regulations, namely Law on Religious Courts. According to the explanation of Article 49 letter i of Law Number 3 Year 2006 concerning Religious Courts, what is meant by Islamic Economics is

“acts or business activities carried out according to sharia principles, including Sharia Banks, Sharia Microfinance Institutions, Sharia Insurance, Sharia Reinsurance, Sharia Mutual Funds, Sharia Bonds and Sharia Futures, Sharia Securities, Sharia Financing, Sharia Pawnshop, Sharia Financial Institution Pension Funds Sharia, and Sharia Business”.

Sharia economics is an integral part of Islamic teachings. Islamic economics and finance are not new. Islamic economics has existed since the emergence of Islam itself⁴⁶. Broadly speaking, Islamic teachings are classified into three parts, namely *aqidah* (Islamic creed), moral, and sharia. Sharia aspects are further divided into two parts, namely the field of worship and the field of muamalah (social duties). The field of worship emphasizes all aspects related to self-worship to Allah SWT. Meanwhile, the field of muamalah is related to the relationship between humans and each other as the implementation of *hablumminannas* (the relationship among human beings), which is a command from Allah

⁴⁴ Sri Redjeki Hartono, *Hukum Ekonomi*, Bayu Media Publishing, Malang, 2007, hlm. 25.

⁴⁵ Amin Suma dalam Neni Sri Imaniyati, *Asas dan Jenis Akad dalam Hukum Ekonomi Syariah : Implementasinya pada Usaha Bank Syariah*, *Mimbar Unisba*, Vol. XXXVII, No. 2 Desember 2011, hlm. 151.

⁴⁶ Darsono, Ali Sakti, Ascarya, dll, *Perbankan Syariah di Indonesia : Kelembagaan dan Kebijakan serta Tantangan ke Depan*, Raja Grafindo Persada, Jakarta, 2017, hlm. 31

SWT⁴⁷. Implementing and developing the field of muamalah in daily life cannot be separated from the elements of Islamic economics sourced from the Koran and As-Sunnah. Values that are relevant to economic activities are derived from *hudanlinnas* (consistent) Islamic values and the implementation of Islam as *rahmatanlilalamin* (a blessing for the universe).

One of the promising business activities at the moment is the Umrah (minor hajj) Travel Operators. This is because the interest of Indonesian population to carry out Umrah is quite large; especially due to being able to carry out the Hajj requires queues for decades. At a cost of around Rp. 20 million, the community has been able to carry out Umrah without having to enter the waiting list⁴⁸. Indonesian Umrah pilgrims are one of the largest in the world. According to Saudi Arabia Ministry of Hajj and Umrah, the number of Umrah visas issued to Indonesia in 2016 reached 699,600 pilgrims, increased 7.2 percent from the previous year and in 2017 were 800,000 pilgrims. This number made Indonesia as the country with the third largest Umrah pilgrims in the world⁴⁹.

Umrah business in Indonesia is very attractive for business people. According to HeppyTrenggono - President Indonesian Islamic Business Forum -, Umrah business belongs to the category of 'high potential business' meaning businesses that promise profit and growth if it is conducted by competent people. He said that the Umrah business is easy to create sales figures, the profits are clear with cash payments in front. Unfortunately, this industry is headed for damage because many adventurers who do not understand doing business⁵⁰.

The observers of Sharia Economists, Rangkuti said that Umrah industry has the potential to generate state revenues of up to Rp 7.2 trillion per year, even two to three times as much. This will be achieved if there is national industry strengthening towards this Umrah-related industry⁵¹.

Unfortunately, many people take advantages of Umrah seeking profit. They tarnish the sanctity of Umrah by justifying all means, including deception of First Travel's case, which is currently still being examined in the Court. Not only this case, but also the cases around Umrah business have frequently occurred. Losses are not experienced by unregistered pilgrims and the operators invited to cooperate only, but also other travel operators who carry out their business properly are affected by this adverse impact. Some Umrah Travel

⁴⁷ Hamid Arfin, *Hukum Ekonomi Islam (Ekonomi Syariah) Indonesia*, Ghalia Indonesia, Makasar, 2007, hlm. 36.

⁴⁸ <https://databoks.katadata.co.id/datapublish/2017/03/03/berapa-jemaah-umrah-indonesia> Berapa Jemaah Umrah dari Indonesia? Jum'at, 3 Maret 2017. Diunduh 9 April 2018, pukul 21.00.

⁴⁹ Adapun visa umrah terbanyak yang diterbitkan Pemerintah Arab Saudi pada 2016 kepada Mesir dengan jumlah 1,3 juta jemaah. Diurutkan kedua Pakistan dengan jumlah visa mencapai 991 ribu jemaah. Total visa umrah yang telah diterbitkan pada 2016 mencapai 6,39 juta jemaah, naik 7,5 persen dari tahun sebelumnya sebanyak 5,9 juta jemaah. <https://databoks.katadata.co.id/datapublish/2017/03/03/berapa-jemaah-umrah-indonesia> Berapa Jemaah Umrah dari Indonesia?. Ibid. Diunduh 9 April 2018, pukul 21.00.

⁵⁰ Kasus First Travel: Peringatan keras bagi Jemaah, Pengusaha Umroh, dan Pemerintah, <http://www.voa-islam.com/read/world-analysis/2017/08/18/52674/kasus-first-travel-peringatan-keras-bagi-jemaah-pengusaha-umroh-dan-pemerintah/#sthash.vAVfpi7X.dpbs>. Diunduh 9 April 2018, pukul 21.10.

⁵¹ <https://tirto.id/komersialisasi-umrah-ketika-ibadah-bernilai-bisnis-Gelimang> **Bisnis Umrah**. Diunduh 9 April 2018, pukul 21.10.

Operators (PPIU/*Penyelenggaraan Perjalanan Ibadah Umrah*) are now deserted because they are afraid of being tricked as the travel agency did⁵².

The Indonesian Consumers Foundation (YLKI/*Yayasan Lembaga Konsumen Indonesia*) received many complaints about the problematic Umrah bureau. Of the many problematic Umrah bureaus, there are six most widely reported Umrah bureaus. This shows that the Umrah bureau problem is like an iceberg because similar complaints about the Umrah bureau are emerging. The Head of YLKI Daily Board, Tulus Abadi said that until June 2017 his party received 6,778 complaints about the problematic Umrah bureau. The most complained is First Travel, which reached 3,825 complaints. The most complaints are the prospective pilgrims who have not yet or not departed by the relevant Umrah bureau⁵³.

The conducted several studies were related to the legal aspects of Umrah travel operators, among others Dian Cahyaningrum wrote about First Travel Legal Liabilities in the Case of Fraud, Embezzlement, and Money Laundering with the Umrah Modus. Dian Cahyaningrum reviewed the liabilities of First Travel in civil, criminal, and administrative for the alleged crime⁵⁴.

In addition, Ari Prasetyo and Intan Kusuma Dewi wrote about the Umrah travel operators from the aspect of business ethics entitled Islamic Business Ethics Implementation Marketing Communication of Haji/Umrah Travel Agency "X" Surabaya. They studied the application of Islamic business ethics by using the SIFAT reference, namely *Shiddieq, Istiqamah, Fathanah. Amanah, and Tabligh*⁵⁵.

Nur Afrila conducted a research for the preparation of a thesis entitled *Analisis Yuridis Tanggung Jawab Perusahaan Penyelenggara Ibadah Umroh Terhadap Jamaahnya (Studi Pada Pt. Makkah Wal Madinah Tour Cabang Medan)* or Juridical Analysis of the Umrah Travel Operators' Liabilities against The Pilgrims (Study at Pt. Makkah Wal Madinah Tour Medan Branch). The focus of Nur Afrila in this research was on the legal agreement, especially Article 1320 of the Civil Code and Article 45 of Law Number 13 Year 2008 concerning the obligation of Umrah operators in providing services to pilgrims in accordance with a written agreement agreed between the parties⁵⁶.

This research was conducted by focusing on the legal relationship between the pilgrims and PPIU. To facilitate the research, the problem was formulated as follows: How is the agreement between Umrah and PPIU according to the Minister of Religion Regulation

⁵²<https://shandydwiantoromakrub.blogspot.co.id/2017/11/studi-kasus-hubungan-hukum-first-travel.html>
studi Kasus Hubungan Hukum (First Travel). Diunduh 9 April 2018, pukul 21.10.

⁵³YLKI. Pengaduan Terhadap Biro Umrah Semakin Banyak. <http://www.ihram.co.id/berita/jurnal-haji/berita-jurnal-haji/17/06/13/orgu5o-ylki-pengaduan-terhadap-biro-umrah-semakin-banyak> Diunduh 10 April 2018, pukul 11.15

⁵⁴http://berkas.dpr.go.id/puslit/files/info_singkat/Info%20Singkat-IX-16-II-P3DI-Agustus-2017-191.pdf. Diunduh 10 April 2018, pukul 13.00

⁵⁵Ari Prasetyo dan Intan Kusuma Dewi, judul Islamic Business Ethics Implementation Marketing Communication of Haji/Umrah Travel Agency "X" Surabaya. *Allqtishad. Journal of Islamic Economics* (Volume 81) Januari 2018, p.81. Diunduh 10 April 2018, pukul 13.10

⁵⁶Nur Afrila, *Analisis Yuridis Tanggung Jawab Perusahaan Penyelenggara Ibadah Umroh Terhadap Jamaahnya (Studi Pada Pt. Makkah Wal Madinah Tour Cabang Medan)*, <https://media.neliti.com/media/publications/161887-ID-none.pdf> Diunduh 11 April 2018, pukul 11.05

Number 8 Year 2018 and Sharia Economic Law? and How is the agreement between Umrah pilgrims and PPIU linked to Sharia Principles?

RESEARCH METHODS

This research was analytical descriptive⁵⁷ in which its nature is in accordance with the characteristics of law as a prescriptive and applied science. As a prescriptive science, legal science studies the purpose of law, the values of justice, the validity of legal rules, legal concepts, and legal norms. Meanwhile, as an applied science, legal science sets standards for procedures, provisions, rules in implementing the rule of law⁵⁸.

This research used a normative jurisdictional approach that made it possible to fully use secondary data⁵⁹. Thus, this research used a type of secondary data. The normative juridical approach was conducted through a philosophical, systematic, and critical analysis. According to Rony Hanityio cited in Soetandyo⁶⁰, there are three types of legal research that can be categorized as normative legal research. This research used the research related to legal principles and norms. Data collection was conducted using document study techniques and library research. This technique was carried out to obtain secondary data in the form of primary legal materials⁶¹, namely basic norms and basic regulations. Data analysis was carried out using qualitative analysis through systematic legal interpretation.

RESEARCH AND ANALYSIS RESULTS

The Agreement between Umrah Pilgrims and Umrah Travel Operators according to PMA Number 8 Year 2018 and Sharia Economic Law

One of the obligations of Moslem in worshipping included in the five Pillars of Islam (Rukun Islam) is the Hajj. Muslims who are capable are encouraged to carry out Hajj. In Indonesia, managing Hajj is regulated in Law Number 13 Year 2008 concerning Hajj Managements. In addition to the Hajj, there are recommended worship services namely Umrah. In the explanation of the law, it is stated that in addition to performing the Hajj, every Indonesian citizen who is Moslem is advised to perform Umrah for those who are able to improve the quality of their faith. Umrah is also recommended for those who have fulfilled the obligation of Hajj.

In connection with Umrah management, the Minister of Religion issued PMA Number 8 Year 2018 as an amendment from PMA Number 18 Year 2015. According to the PMA 1:

⁵⁷Soerjono Soekamto, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, RajaGrafindo Persada, Jakarta, 1995, hlm. 70

⁵⁸Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media Grup, Jakarta, 2005, hlm. 22.

⁵⁹Soerjono Soekamto. *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1984, hlm. 53.

⁶⁰Roni Hanityo. *Penelitian Hukum dan Yirimetrik*, Alumni, Bandung, 1986, hlm. 10.

⁶¹Rony Hanityio, *Ibid.* 24-25

1. Umrah Travel Operator is a series of Umrah travel activities outside the Hajj season including coaching, service, and protection of the pilgrims, conducted by the government and/Umrah travel agencies.
2. Umrah Travel Operator, hereinafter abbreviated as PPIU, is a travel agency that has obtained permission from the Minister to organize Umrah trip.
3. The Umrah pilgrims, hereinafter referred to as pilgrims, are anyone who is a Moslem and has registered to perform Umrah according to the stipulated requirements.

PMA Article 2 stipulates principles in the managing Umrah:

The implementation of the Umrah trip is carried out based on the principles of professionalism, transparency, accountability, and sharia. These principles are a amendment from the principle contained in PMA Number 18 Year 2015. Article 2 of PMA Number 18 Year 2015 that the Umrah Travel Operators is carried out based on the principles of justice, professionalism, transparency, and accountability.

The addition of sharia principles to PMA Number 8 Year 2018 confirms that the implementation of Umrah Travel Operators must be carried out in accordance with sharia principles. PMA Number 8 Year 2018 does not provide an explanation of sharia principles. For this reason, it is necessary to explore what is meant by sharia principles. Although it is not related to Umrah worship, the regulation of sharia principles is contained in Law Number 21 Year 2008 concerning Sharia Banks. As a comparison, it is necessary to review sharia principles according to that law.

Article 1 number 12 of Law Number 21 Year 2008 Sharia Principles:

The Sharia Principle is the principle of Islamic law in banking activities based on a fatwa issued by an institution that has authority in the stipulation of a fatwa in the field of sharia.

From the above provisions, according to Law Number 21 Year 2008, sharia principles are the principle of Islamic law. The principle of Islamic law that will be used in banking activities must first be established in the Fatwa, which in this case is the Fatwa of National Sharia Council (DSN/*Dewan Syariah Nasional*) of the Indonesian Ulema Council (MUI/*Majelis Ulama Indonesia*)⁶².

Since the contract between pilgrims and PPIU is outside the context of Sharia Banking, the key word that must be taken is “the principle of sharia is the principle of Islamic law”. Thus, in the implementation of Umrah travel must be in accordance with Islamic law. This means that Islamic law is not only applied in the pilgrimage but also in its administration.

In connection with the use of Islamic law in the Umrah travel operators, this theory needs to be examined about the implementation of Islamic law by Moslems. One of them is the theory of credo in which the credo theory or the theory of shahada is a theory that requires the implementation of Islamic law by those who pledged two creeds as a logical consequence of the recitation of the creed.

⁶²Neni Sri Imaniyatidan Panji Adam, *Pengantar Hukum Perbankan*, Refika Aditama, Bandung, 2016, Hlm. 75

This theory is taken from the Koran, among others:

Q.S. Al-Fatihah (1) verse 5:

نَسْتَعِينُ وَإِيَّاكَ نَعْبُدُ وَإِيَّاكَ

Meaning:

It is You we worship and You we ask for help.

Q.S al-Nisa (4) verse 14:

مُهَيَّنٌ يَعْصِي اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَ اللَّهِ وَلِيْلَهُمْ فِيهَا وَعَذَابٌ

Meaning:

And whoever disobeys Allah and His Messenger and transgresses His limits - He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment.

According to Juhaya S Praja, the theory or credo or shahada is actually a continuation of monotheism principle in the philosophy of Islamic law. The principle of monotheism requires everyone who declares himself to be faithful to the unity of Allah, so he or she must worship and obey the command from Allah and His Messenger. It means that a Moslem carries out the laws taken from both sources⁶³.

This theory is almost the same as the theory of legal authority as stated by H.A.R Gibb. Based on this theory, if Moslems, have accepted Islam as their religion, they accept Islamic legal authority over themselves. Sociologically, people who are Moslem accept the authority of Islamic law, obeying Islamic law. This theory illustrates that in Islamic societies, there are Islamic law in which in Islamic society because Islamic law is obeyed by Moslem. In other words, Moslems obey Islamic law because it is commanded by Allah and His Messenger⁶⁴.

Furthermore, how is the legal relationship between the pilgrims and PPIU? Article 45 of Law Number 13 Year 2008 concerning Hajj Implementation stipulates that PPIU is obliged to provide services to the pilgrims in accordance with the written agreement agreed between the organizers and the pilgrims. Article 11 of PMA Number 8 Year 2014, which regulates registration of pilgrims, stipulates that:

Registration of pilgrims is carried out by the prospective congregation concerned at the PPIU in accordance with the registration format and agreement stipulated by the Director General.

Thus, the legal relationship between the pilgrims and PPIU is a legal relationship based on the agreement. The stipulation regarding the agreement between the pilgrims and PPIU has been arranged since PMA Number 18 Year 2015. However, until now the General Director of Hajj and Umrah Management has not arranged in more detail about this agreement yet. For this reason, it is necessary to examine the type of agreement between the pilgrims and

⁶³Juhaya S Praja, *Filsafat Hukum Islam*, YayasanPiara, Bandung, 1997, hlm. 133.

⁶⁴TjunSumardjan (ed), *Hukum Islam di Indonesia: PerkembangandanPembentukan*, Rosdakarya, Bandung, 1991, hlm. 114-115.

PPIU. To be able to see the type of agreement between the pilgrims and PPIU, it must be seen the functions and responsibilities of PPIU according to the applicable provisions.

Regarding the responsibilities of PPIU stipulated in Article 13, PPIU is responsible for providing the following services:

- a. Umrah guidance;
- b. transportation of pilgrims;
- c. accommodation and consumption;
- d. pilgrimage health;
- e. protection of pilgrims and Umrah officers; and
- f. Umrah administration and documentation.

Thus, the responsibility of PPIU is to provide Umrah travel services for the pilgrims and the responsibility of Umrah pilgrims is to pay for the services of the Umrah trip and implement the provisions set by PPIU. The right of PPIU is to receive payment for the services and trip of Umrah from the pilgrims and the right of pilgrims is to receive the services of Umrah trip to carry out Umrah in accordance with the sharia provisions by looking at the rights and responsibilities of the parties above, it can be determined the type of agreement between the pilgrims and PPIU according to Sharia Economic Law. In Sharia Economic Law, each transaction must have a clear Underlying Transaction; hence money cannot bring profit by itself, without any underlying transaction. As for example, the contract of sale and purchase will generate margin. A lease contract will produce a fee. The contract of capital investment will obtain a profit sharing⁶⁵.

The agreements in Islamic law are known as “*akad* or contract”. The word *Akad* comes from the word *al aqd*, which means to tie, link, or connect (*ar-rabt*). According to Syamsul Anwar, *Akad* is a meeting of *Ijab* and *Kabul*(handover statement) as a statement of the will of two or more parties to generate a legal consequence on its object⁶⁶.

From this definition, Syamsul Anwar revealed that there are three things in the contract. *First*, the contract is a link between *Ijab* and *Kabul*, which results in the emergence of legal consequences. *Ijab* is an offer submitted by one party, while the *Kabul* is the answer of the agreement given by the contract partner in response to the offer. A contract will not occur if the statements of each party are not related to each other. *Second*, the contract is a legal act of two parties because the contract is a meeting of *Ijab*, which represents the will of one party and *Kabul*, which states the will of the other party. *Third*, the purpose of contract is to produce a legal consequence. More explicitly, the purpose of contract is the shared purposes that are intended and realized by the parties through the creation of a contract⁶⁷.

⁶⁵Fathurrahman Djamil, Penerapan Hukum Perjanjian dalam Transaksi di Lembaga Keuangan Syariah, Sinar Grafika, Jakarta, 2012, hlm. v

⁶⁶Syamsul Anwar, Hukum Perjanjian Syariah Studi tentang Teori Akad dalam Fikih Muamalat, Rajawali Pers, Jakarta, 2007, hlm. 38

⁶⁷Syamsul Anwar, Ibid, hlm.40.

The definition of contract is contained in Article 20 paragraph (1) of Sharia Economic Law Compilation (KHES/*Kompilasi Hukum Ekonomi Syariah*):

A contract is a deal in an agreement between two or more parties to conduct and or not conduct certain legal actions.

The types of contract in Sharia Economic Law, in terms of the existence or absence of compensation, based on *fiqh muamalah*, are *tabarru* and *ijarah/muawadah*⁶⁸. The contract of *tabarru'* (gratuitous contract) is any agreement regarding a non-profit transaction. This transaction is essentially not a business transaction to seek commercial profit. *Tabarru'* is conducted with the aim at helping to do good things. The examples of *tabarru'* are *qardh, rahn, hiwalah, wakalah, kafalah, wadiah, grants, waqf, shadaqah, gifts*, etc. Meanwhile, the contract of *ijarah/mu'awadah* (compensational contract) is all kinds of agreements regarding a profit transaction. This program is conducted with the aim at seeking profit, because it is commercial. The examples of *ijarah* are *murabahah, salam, istisna* and *ijarah*⁶⁹. The meaning of *ijarah* etymologically shows the following things⁷⁰:

1. Rewards for certain actions, both in the terrestrial dimension (*ujrah*) and afterlife dimension (said/reward).
2. Works as the reason for the right to *mu'jirto* get *ujrah*, namely the benefits of goods or services and energy.
3. Contracts or statements of the will of the parties in which one party provides goods or services for the benefit and is responsible for paying compensation to the perpetrator or owner of the goods whose benefits are taken.

Below are the definition of *ijarah* according to the scholars⁷¹:

- a. Shafi'i Ulema: The contract for intended, known, and permissible benefits with known services;
- b. Malikiyah and Hambaliah Ulema: The contract for transferring ownership of benefits that is permissible within a known period of time and with rewards;
- c. Umar Abdullah Kamil: The *ijarah* contract in terms is a contract of benefit with an In the literature of *muamalah maliyah fiqh*, *ijarah* law (buying and selling) belongs to the exchange of property with benefits. *Ijarah* is divided into two, namely⁷²:
 - a. *Ijarah* for goods (*ijarah al a'yan*) and
 - b. *Ijarah* for services (*ijarah al a'mal* or *ijarah al asukhas*) that is the *ijarah* contract for activities conducted by a person to carry out certain jobs and

⁶⁸Adiwarman A Karim. *Bank Islam : Analisis Fiqh dan Keuangan Edisi Keempat*, Raja Grafindo Persada, Jakarta, 2010, hlm. 66

⁶⁹Adiwarman A Karim, *ibid*. Berbedadengan Adiwarmankarim, Juhaya S. Prajamembagijeniskadmenjaditiga, yaitu akad-akad perniagaan (*uquudu Tijarah*), yaitu akad yang berorientasi bisnis, akad utangpiutang (akad tadhayun), yaitu akad saling memimjamkan dan akad kebaikan (*uquudu tabarru*). Juhaya S. Praja, *Ekonomi Syariah, Pustaka Setia*, Bandung, 2012, hlm. 85.

⁷⁰Jaih Mubarak dan Hasanudin, *Fikih Mu'amalah Ma'liyah : Akad Ijarah dan Jualah*, Simbiosis Rekatama Media, Bandung, 2017, hlm 4.

⁷¹Jaih Mubarak dan Hasanudin, *ibid*, hlm. 4

⁷²Jaih Mubarak dan Hasanudin, *ibid*, hlm, 16.

therefore entitled to the *ujrah* (wages, such as *ujrah* for teaching and learning activities in schools, *ujrah* for car/motorcycle washing activities, or *ujrah* for goods transportation activities. *Ijarah* for services consist of *Ajrkhas* (special workers)⁷³ and *Ajrmusytarak* (general workers).

Seeing the description relating to the *ijarah* contract, the agreement between Umrah pilgrims and PPIU can be included in the category of *Ijarahal 'amalmusytarak* or *Ijarah* contract with the object in the form of unspecific services (general) because the responsibility of PPIU is not only doing one job but some works, namely carrying out Umrah guidance, providing counselors, transportation, pilgrimage accommodation and others that support and relate to the service of the pilgrimage of Umrah.

The Agreement between Umrah Pilgrims and Umrah Worship Organizers Linked to Sharia Principles

As already stated, PMA Number 8 year 2018 stipulates that the Umrah Travel Agency must use the principles of professionalism, transparency, accountability, and sharia. However, the PMA do not provide an explanation of sharia principles. Based on Article 1 point 12 of Law Number 21 year 2008, sharia principle is an Islamic law principle established by the institution based on a fatwa issued by an institution that has authority in establishing a fatwa in sharia. Therefore, the principle of Islamic law in the agreement between the pilgrims and PPIU must be stipulated in the form of a fatwa made by an institution that has the authority, in this case DSN-MUI. However, until now, MUI has not issued a fatwa on this matter.

DSN-MUI has issued a DSN-MUI Fatwa relating to *ijarah* contract that is Fatwa DSN Number 09/DSN-MUI/IV/2009 concerning *Ijarah* Financing and DSN Fatwa Number 27/DSN-MUI/III/2002 concerning *Al Ijarah Al Muhtahiyah Bi Al Tamlik (IMBT)*⁷⁴. However, these two fatwas do not specifically regulate the *ijarah* contract on financial institutions so that they cannot be used for *ijarah* contract in agreement between the pilgrims and PPIU. Likewise with KHES, Chapter XI Article 295 to Article 333 of KHES regulates the *Ijarah Contract*. However, *ijarah* contract regulated in KHES is limited to the *ijarah* contract whose object benefits goods/objects called rent (*al Ijarah*), while *ijarah* contract between the pilgrims and PPIU, its object is service (*Ijarah al 'amal, musytarak*).

Sharia Economic Law regulates comprehensive *ijarah* contract about limits, understanding, types, and terms and conditions. After the understanding and types of *ijarah* contract have

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kajian Fikih Pondok Pesantren Sidogiri telah menerbitkan hasil kajian berkaitan dengan *ujrah* atas jasa keagamaan, diantaranya sewa untuk menjadi Imam masjid, pencari biaya pembangunan masjid, gaji panitia pembangunan masjid, upah mengajar agama. Hasil kajian menetapkan untuk jasa tersebut diperbolehkan menetapkan *ujrah*. Jaih Mubarak dan Hasanudin, *ibid.* hlm. 242-246.

⁷⁴ Ichwan Sichwan Sam, dkk, *Himpunan Fatwa Dewan Syariah Nasional Edisi 2006*, Dewan Syariah Nasional MUI, Gaung Persada, Jakarta, 2006, hlm. 55 – 61 dan 160-164.

been explained in this section, the terms and conditions of the *ijarah* contract will be reviewed. The pillars of *ijarah* contract according to Jumhur Ulama are⁷⁵:

1. The two parties who do contract,
2. Statement of approval (offer and acceptance),
3. *Ujrah*,
4. Benefits

Ijarah's requirements according to Abd.Hadi consists of the following five requirements⁷⁶:

1. the two parties who do contracts (*al muta'qidain*) have been *baligh* and understanding,
2. both parties declare their willingness to carry out *ijarah* contract,
3. the benefits that become the object of *ijarah* must be known perfectly,
4. the object has been submitted and is not defective, and
5. the object is something that is validated by *syara'*.

Article 296 of KHES establishes the form of *ijarah* contract, namely:

- 1) Shigat of *ijarah* contract must use a clear sentence
- 2) *Ijarah* contract can be conducted in verbal, written, and or gestures.

Although *ijarah* contract can be conducted in verbal, written, or gestures, but for a contract in Umrah Worship Service, Article 45 paragraph (1) c of Law Number 13 year 2008 concerning Hajj Implementation stipulates that PPIU in providing services to the pilgrims is in accordance with a written agreement agreed between the organizer and pilgrims. In addition, PMA Number 8 year 2018 stipulates that:

- 1) The pilgrim registration is carried out by the prospective pilgrims to the PPIU in accordance with the registration and agreement format stipulated by the General Director.
- 2) The content of agreement as referred to in paragraph (2) shall at least contain the rights and responsibilities of both parties.
- 3) PPIU is obliged to explain the contents of agreement as referred to in paragraph (2) to prospective pilgrims before being signed by both parties.

Its association with sharia principles, its analysis can be carried out by referring to the Elucidation of Article 2 of Sharia Banking Law stipulating Sharia Principles in bank business activities that is business activities that do not contain the following elements:

- a. *Riba*, which is the addition of unauthorized income (*batil/vanity*), among others, in the exchange of similar goods which are not the same quality, quantity, and time of delivery (*fadhl*), or in a lending-borrowing transaction that requires the customer as recipient of facility to return the funds over the loan principal because of time (*nasi'ah*);
- b. *Maysir*, which is a transaction that is dependent on an uncertain and chancy state;
- c. *Gharar*, which is a transaction whose object is unclear, not owned, unknown whereabouts, or cannot be submitted when the transaction is carried out unless otherwise stipulated in sharia;
- d. Haram, which is a transaction whose object is prohibited in sharia; or

⁷⁵Jaih Mubarak dan Hasanudin, *Op. Cit.*, hlm 12

⁷⁶Abd.Hadi, *Dasar-dasar Hukum Ekonomi Islam*, Putra Media Nusantara, Surabaya, 2010, hlm. 199-200.

- e. *Zalim*, which is a transaction that causes injustice to other parties.

The aforementioned five criteria can be used as a reference to assess whether the *ijarah* contract carried out by the pilgrims with PPIU is in accordance with sharia principles or not. If it is detailed in connection with the PPIU contract, the contract may not contain the following elements:

- a. *Riba* or usury, which is the addition of unauthorized income (*batil/vanity*), for example the pilgrim's fund is saved or invested in a financial institution that contains elements of usury, namely interest in conventional financial institutions.
- b. *Maysir*, which is a transaction that is dependent on an uncertain and chancy condition, for example there is no clarity on the departure time, there is no clarity on the use of funds deposited by the pilgrims to PPIU and there is no clarity regarding provisions for fund withdrawal if the pilgrims fail to depart.
- c. *Gharar*, which is a transaction whose object is unclear, not owned, unknown whereabouts, or cannot be submitted when the transaction is carried out unless otherwise stipulated in sharia, for example there is no clear guide and guidance during Umrah in Mecca and Medina, transportation facilities, accommodation, consumption, and others.
- d. *Haram*, which is a transaction whose object is prohibited in sharia. For this reason, it is unlikely happened because Umrah worship itself is worship recommended in Islamic law.
- e. *Zalim*, which is a transaction that causes injustice to other parties, for example funds collected from pilgrims are used for luxury living expenses for travel owners while many pilgrims suffer from delays or fail to carry out Umrah.

To avoid the elements that contradict the aforementioned sharia principles, the agreement or contract with the PPIU must be made in written with the clauses at least consisting of definitions, costs, representation & guarantee (guarantee of document validity), affirmative covenants (things that must be conducted by the pilgrims during agreement), negative covenants (things that should not be done), event of default (things that if they are done by one party, it is said to be in default and cause the other party decide the agreement), and other clauses include proof of negligence, applicable law (choice of law), jurisdiction and others.

CONCLUSIONS AND SUGGESTIONS

Conclusions

The agreement between Umrah pilgrims and UmrahTravel Operators according to the Minister of Religion Regulation Number 8 year 2018 does not stipulate the type of agreement or contract. However, if it refers to the principle of Umrah Worship Organization in Article 2 of PMA, namely the principles of professionalism, transparency, accountability, and sharia, the agreement must refer to Sharia Economic Law. By looking at the obligations of the parties to the agreement from the aspects of Sharia Economic Law, the agreement between the pilgrims and PPIU is included in the category of *akaqijarahal'amal - musytarak*,

namely *ijarah*(rent) for services whose the form of service is general services (some jobs). This contract has not been regulated either in DSN-MUI Fatwa or in the Compilation of Sharia Economic Law.

Sharia principles are not specifically regulated both in Law Number 13 year 2008 concerning Hajj Implementation and in PMA Number 8 year 2018. Referring to the Elucidation of Law Number 21 year 2018 concerning Sharia Banking, the agreements or contracts that are in accordance with sharia principles are agreements does not contain elements of *riba*(usury), *ghahar*, *maisir*, *haram*, and *zalim*.

Suggestions

The Government, namely the Ministry of Religion of Republic of Indonesia is expected to stipulate that the contract agreement between the pilgrims and PPIU is an agreement in accordance with Sharia Economic Law, namely the *ijarah* contract.

DSN-MUI is expected to make a fatwa regarding the contract, which specifically regulates the legal relationship between the pilgrims and PPIU, namely *ijarah* contract because DSN-MUI Fatwa concerning *ijarah* contract and the *Ijarah Al Muhtahiyah Bi Al Tamlik* contract cannot be used in the legal relationship of the pilgrims with PPIU.

Umrah Travel Operators is expected that the agreement of Umrah Worship Service with the pilgrims is made in written with reference to sharia principles in Sharia Economic Law, namely the agreements that do not contain the element *riba* (usury), *ghahar*, *maysir*, *haram*, and *zalim* in contract clauses.

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