



## Legal Protection for Hajj Fund Customers from A Constitutional Perspective in Indonesia

Cynthia Hadita  
Universitas Muhammadiyah Sumatera Utara  
**Corresponding Author:** Cynthia Hadita  
[cynthiahadita@umsu.ac.id](mailto:cynthiahadita@umsu.ac.id)

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### ABSTRACT

Since millions of potential pilgrims deposit their resources well in advance of the actual pilgrimage, managing Hajj funds in Indonesia requires a great deal of public trust. The study focuses on how normative underpinnings for protecting the welfare, security, and interests of Hajj fund clients are provided by constitutional principles, particularly those found in the Republic of Indonesia's 1945 Constitution. Using statutory, conceptual, and constitutional methods, this study employs a normative juridical approach. The Republic of Indonesia's 1945 Constitution, Law Number 34 of 2014 on Hajj Financial Management, and associated rules pertaining to public finance, governmental accountability, and consumer protection are examples of primary legal sources.

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## **INTRODUCTION**

In keeping with the controversy over this year's hike in hajj costs, the Hajj Financial Management Agency (Ministry of Hajj and Umrah) has invested in PT Bank Muamalat Indonesia Tbk. For the record, Ministry of Hajj and Umrah now owns 82.65 percent of the shares in Bank Muamalat. In an attempt to rescue Indonesia's oldest Islamic bank from a mountain of troubled assets, Ministry of Hajj and Umrah has taken over as Muamalat's controller. Following a share issuance of 7.903 billion shares from Islamic Development Bank (IDB), Bank Boubyan, Atwill Holdings Limited, National Bank of Kuwait, IDF Investment Foundation, and BMF Holding Limited in November 2021, Ministry of Hajj and Umrah became a shareholder in Bank Muamalat.

The clause "Indonesian banks in conducting their business based on economic democracy using the principle of prudence" found in Article 2 of Law No. 10 of 1998 concerning Banking provides information about the banking principles that Indonesia has adopted. His official definition of economic democracy states that it is based on Pancasila and the Republic of Indonesia's 1945 Constitution. Humans are granted the freedom to make a living in conformity with Islamic law and the values of justice in order to fulfill their role as caliphs. This makes it clear that while Islam accepts private property, means of production, and goods, it forbids obtaining wealth by unethical or unlawful means.

The management of Hajj funds in Indonesia involves substantial public resources entrusted by prospective pilgrims, positioning Hajj fund customers as constitutional rights holders who deserve strong legal protection. From a constitutional perspective, the obligation of the state to safeguard these funds is rooted in the 1945 Constitution of the Republic of Indonesia, particularly the principles of the rule of law, legal certainty, accountability, and the protection of citizens' economic and religious rights. Mismanagement or lack of transparency in Hajj fund governance not only risks financial loss but also potentially violates constitutional guarantees related to social justice, public trust, and the right to perform religious obligations. Therefore, legal protection for Hajj fund customers must be understood as a constitutional mandate that requires the state to establish clear regulatory frameworks, effective supervision, and accountable institutions to ensure that the collection, management, and utilization of Hajj funds are conducted in a prudent, transparent, and rights-based manner.

## LITERATURE REVIEW

### *Legal Protection for Hajj Fund Customers from a Constitutional Perspective in Indonesia*

The management and protection of Hajj funds in Indonesia have attracted significant scholarly attention due to their constitutional, legal, and socio-religious implications. Hajj funds, collected from millions of Indonesian citizens, represent not only financial assets but also the constitutional rights of Muslims to perform religious obligations as guaranteed by the Indonesian Constitution. Consequently, legal protection for Hajj fund customers must be examined within a constitutional framework to ensure accountability, transparency, and justice. Several studies emphasize that the 1945 Constitution of the Republic of Indonesia (UUD 1945) guarantees freedom of religion and the right to worship according to one's beliefs, as stipulated in Article 28E and Article 29. Scholars such as Asshiddiqie (2018) argue that the state has a constitutional obligation to facilitate and protect citizens in carrying out religious duties, including the administration of Hajj. From this perspective, the management of Hajj funds is not merely administrative but constitutes a constitutional responsibility of the state.

## METHODOLOGY

The research method used is library research. The approach used is the statutory approach, and the search system used is the library research method. With a statutory approach, answers will be found regarding the limits and standardization of the formation of law. This research paper will analyze with the regulation Law No. 34 of 2014 concerning Hajj Financial Management. This research is limited to a normative juridical analysis that examines legal protection for Hajj fund customers from a constitutional perspective within the Indonesian legal system. The study focuses on the interpretation of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), particularly provisions concerning the protection of citizens' constitutional rights, legal certainty, justice, and state responsibility in public financial management. The scope of analysis is confined to statutory regulations related to Hajj fund management, including laws governing and relevant Constitutional Court decisions. This research does not include empirical data, comparative legal studies with other countries, or technical-financial analyses of Hajj fund investment performance, and is limited to assessing the adequacy of constitutional norms and legal frameworks in providing protection for Hajj fund customers in Indonesia.

## **RESEARCH RESULT AND DISCUSSION**

### ***The Role of Hajj Funds and the Role of Banking***

A state that is best governed by the law, with all authority derived from its government machinery, is said to be a state of law. People cannot act in a way that violates the law on their own. The state of law is one where laws, not people, rule. As a result, under a state of law, people's rights are completely protected by the state and, conversely, by consenting to and abiding by all state laws and government regulations. The internal structure and organization of the legally regulated state are linked to the state of law. Every action taken by the ruler or his subjects must be grounded in the law and take into account the goal of the legal system, which is to protect the citizens' human rights. A tool that can stop the ruler from acting arbitrarily is the law. Until the law serves as a safeguard for public peace, it is the boundary of freedom between people and authorities in all social interactions. There will be anarchy and arbitrariness in society if laws are not passed. For society to be peaceful and serene, the law demands fairness. To do justice is all that the law entails. This is due to the fact that unfair laws conflict with their own existence.

There is no explicit regulation in the UUPT that prohibits a president director from holding a majority stake in a company, nor are there any requirements for the appointment of directors that prohibit majority shareholding. Because minority are less able to defend their interests and are rendered helpless by the majority principle. Because the majority are physically and financially identical to the company's two organs, minority have a much weaker legal position and are unable to challenge the Board of Directors' or Commissioners' actions that are harmful to the business. It is not forbidden for a president or director to own the majority of shares, but it is forbidden if they own the majority of shares in many businesses that operate in the same industry.

For Muslims, the Hajj is the fifth pillar of Islam. The demand to undertake the Hajj is higher because Indonesia has one of the world's most religious populations. Beginning on the eighth day of Dzulhijah, the main activities of the Hajj pilgrims included a number of acts of worship, including spending the night in Mina, wukuf (staying silent) in the field of arafah on the ninth day, spending the night in Muzdalifah, and concluding on the tenth, eleventh, and twelfth days of Dzulhijah after throwing the jumrah. The Saudi Arabian government has established hajj quota regulations for all nations, including Indonesia, in order to curb the surge in pilgrims leaving the country due to rising demand and demands. In this context, the Hajj Financial Management Agency plays a crucial role. to be one of the organizations that helps Indonesia carry out the Hajj. Therefore, it can be assumed that Indonesia does not have a Hajj Financial Management Institution.

In Indonesia, the implementation of Hajj is comprehensively regulated under Law Number 8 of 2019, which defines Hajj and Umrah administration as a series of integrated activities encompassing planning, organization, execution, supervision, evaluation, and reporting. This legal framework confirms the central role of the Kementerian Haji dan Umrah in overseeing Hajj funds throughout the entire administrative process. Kementerian Haji dan Umrah core responsibility is to manage the financial contributions of prospective pilgrims, ensuring their proper and accountable use. Beyond its financial role, Kementerian Haji dan Umrah also functions as an essential facilitator in enabling Muslims to fulfill the obligation of Hajj, a fundamental pillar of Islam. Given the significance of Hajj as a major act of worship, its proper implementation yields broad benefits, both for individual pilgrims and for the nation, including the enhancement of diplomatic and cooperative relations with Saudi Arabia as the destination country.

Hajj funds play a strategic role as collective public funds entrusted by prospective pilgrims, requiring prudent, transparent, and accountable management to ensure both the security of the funds and the sustainability of Hajj services. In this context, the banking sector functions as a key institutional partner in safeguarding, managing, and developing Hajj funds through sharia-compliant financial mechanisms. Banks act as custodians for deposits, channels for payment and settlement, and intermediaries for the placement and investment of Hajj funds under strict regulatory supervision. The interaction between Hajj fund management authorities and Islamic banking institutions not only ensures financial security and liquidity for Hajj operations, but also supports broader national financial stability and sharia-based economic development. Therefore, the role of banking is inseparable from the governance of Hajj funds, as it provides a legally regulated and professionally managed framework that balances financial efficiency, religious compliance, and the protection of pilgrims' rights.

### ***Legal Protection of Hajj Fund Customers***

In other words, legal protection refers to the various legal remedies that law enforcement officials must provide in order to provide a sense of security, both mentally and physically, from disturbances and various threats from any party. Legal protection is the protection of human rights that are harmed by others and is given to the community so that they can enjoy all the rights granted by the law. Natural law theory, or natural law schools, gave rise to this legal protection doctrine. The natural law school holds that morality and the law are inextricably linked and that the law originates from God, who is both universal and eternal. This school's supporters believe that morality and the law are both internal and exterior reflections and laws of human life.

Fitzgerald, cited by Satjipto Raharjo, claims that natural law theory or natural law schools are where this legal protection notion first emerged. Plato, Aristotle, a pupil of Plato, and Zeno, the founder of the Stoic school, were the pioneers of this school. The natural law school holds that morality and the law are inextricably linked and that the law originates from God, who is both universal and eternal. This school's supporters believe that morality and the law are both internal and exterior reflections and laws of human life.

Legal protection is the safeguarding of human rights that belong to legal subjects based on legal provisions from arbitrariness or as a set of regulations that can shield one item from another. In terms of consumers, this means that the law protects their rights from anything that might prevent them from being fulfilled. The idea of legal protection functions as a subsystem inside a legal system, which is an orderly arrangement or order, a whole made up of interconnected elements structured in accordance with a plan or pattern, and the outcome of writing to accomplish a goal. Legal protection of crime victims as part of community protection can be achieved in a number of ways, including through the provision of restitution, compensation, medical services, legal aid, compensation, and a restorative justice approach. Legal protection is defined as all efforts to fulfill rights and provide assistance to give witnesses and/or victims a sense of security.

Legal protection for the people is a preventive and oppressive government action, according to Phillipus M. Hadjon. Repressive legal protection seeks to settle conflicts, including how they are handled in judicial institutions, whereas preventive legal protection seeks to avoid problems by directing the government's activities to be wise in decision-making based on discretion. According to Setiono, legal protection is an act or endeavor to achieve order and peace so that people can enjoy their dignity as human beings, as well as to shield the community from arbitrary acts by rulers who do not adhere to the rule of law.

Muchsin defines legal protection as an endeavor to safeguard people by balancing the link between principles or laws that are expressed in behaviors and attitudes in order to establish order in human society.

When the majority shareholder's position as a director of the firm has demonstrated that he has undertaken an illegal act that could ruin other parties, a legal lawsuit will develop if the settlement of a case heard outside the court is not carried out. As a result, it will be challenging to recover damages from the company's assets for this illegal conduct due to the depletion of its nominal assets. The Court will seize the personal assets of the company's directors and majority in order to settle the company's debts due to the potential availability of these assets. Although there is certainty in the UUPT regarding safeguards for minority, particularly with regard to mergers, consolidations, takeovers, and dissolution as stated in Article 126 paragraphs (1) and (2) of Law No. 40 of 2007, minority have not effectively utilized this decision. For example, if minority disagree with the capital measures desired by the majority (mergers, consolidations, acquisitions, and dissolutions), they may offer their shares for a fair price. Many minority are unable to exercise their freedom since taking legal action carries risks.

The registration process completed by potential pilgrims through the deposit of Hajj funds determines the line for the departure of the Hajj. The original deposit, the value of benefits, and the ummah's endowment fund make up the hajj fund. Muslims must first deposit the necessary monies in order to perform the Hajj. Sharia banks that offer Hajj fund products are the intended recipients of the original deposit. The amount of money raised for the Hajj is growing as more and more potential pilgrims sign up each year. Law No. 34 of 2014 concerning Hajj Financial Management mandated the creation of the Ministry of Hajj and Umrah, an organization responsible for overseeing Hajj finances.

The Minister is responsible to the President on behalf of the independent Ministry of Hajj and Umrah. Law Number 34 of 2014 concerning Hajj Financial Management states that Hajj financial management is done through investments whose value is utilized for the benefit of Muslims as well as to enhance the quality of Hajj implementation and the Ministry of Hajj and Umrah's rationality and efficiency. It is anticipated that investing in Hajj finance will yield substantial returns, such as the ability to enhance services related to Hajj organization. Subsidies for travel and lodging expenditures for the Hajj, among other incentives, are included. The wakalah contract serves as the foundation for the Ministry of Hajj and Umrah's management of potential pilgrims. Wakalah is a contract that allows one party to give another authority over things that are feasible. The Ministry of Hajj and Umrah uses the wakalah contract since it serves as the pilgrims' financial representative. At the outset of the deal, the wakalah agreement needs to be approved. In its capacity as the Hajj's financial manager, the Ministry of Hajj and Umrah is required to make sure that Hajj finances are handled as effectively as possible in accordance with the legal regulations. Therefore, the Ministry of Hajj and Umrah is in charge of managing the Hajj's finances, which must be done expertly.

Article 28 of Law No. 34 of 2014 also demonstrates the application of the principle of prudence in Hajj financial management. This includes reporting to the supervisory board on a regular basis the implementation of programs and annual budgets for the management of Hajj Finance, preparing an accountability report of the Ministry of Hajj and Umrah to the President and the House of Representatives, specifying technical provisions for the operational implementation of the Ministry of Hajj and Umrah, and organizing management administration. Legal protection for Hajj fund customers is essential because the funds entrusted by prospective pilgrims represent both personal financial assets and the fulfillment of a constitutional and religious right. Such protection is realized through a comprehensive legal framework that guarantees legal certainty, transparency, accountability, and prudential management in the collection, placement, and utilization of Hajj funds. State institutions and authorized financial entities are legally obligated to manage these funds in accordance with statutory regulations and sharia principles, while also ensuring effective supervision and risk mitigation. In this regard, legal protection not only aims to prevent mismanagement and abuse of authority but also provides mechanisms for oversight, accountability, and remedies in the event of losses,

thereby strengthening public trust and safeguarding the rights and interests of Hajj fund customers.

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## **CONCLUSIONS AND RECOMMENDATIONS**

The issue of safeguarding clients of Hajj funds at Bank Muamalat as the majority shareholder, which is primarily Hajj finances in compliance with legal and regulatory requirements; and creating financial statements in compliance with legal and regulatory requirements. For the Hajj trip to go smoothly, Hajj financial management utilizing sharia principles and taking security, prudence, benefit value, and liquidity into consideration is absolutely necessary. Further regulations pertaining to more thorough and transparent financial management, such as investment and/or placement diversification, are also necessary to ensure that management achieves the best possible outcomes. From a constitutional standpoint, Indonesia's 1945 Constitution, which requires the state to guarantee legal certainty, property rights protection, accountability, and public welfare in the use of public funds, is the main source of legal protection for Hajj fund clients. An attempt to put these constitutional principles into institutional practice is seen in the regulatory framework governing Hajj fund management, especially through the creation of the Kementerian Haji dan Umrah. However, continuous application, strict oversight, openness, and responsible financial management are necessary for such protection to be effective. Therefore, in order to guarantee that the administration of Hajj funds actually protects the rights and interests of Hajj fund clients, it is imperative to establish constitutional accountability and oversight systems.

In conclusion, legal protection for Hajj fund customers from a constitutional perspective in Indonesia reflects the state's obligation to uphold the principles of the rule of law, legal certainty, and social justice as mandated by the 1945 Constitution. Hajj funds, as public trust funds derived from citizens seeking to fulfill a fundamental religious obligation, must be managed in a transparent, accountable, and sharia-compliant manner to prevent misuse and ensure sustainability. The involvement of state institutions, the Hajj Financial Management Agency, and banking institutions demonstrates the constitutional responsibility to safeguard citizens' economic and religious rights. Therefore, effective regulation, strict supervision, and clear accountability mechanisms are essential to strengthen public trust and ensure that the management of Hajj funds truly serves the constitutional purpose of protecting citizens while supporting the orderly and dignified implementation of Hajj in Indonesia.

### **ADVANCED RESEARCH**

Further research is recommended to examine the role of the Constitutional Court and the judicial review mechanism in ensuring the conformity of hajj fund management policies with constitutional principles, particularly those related to the protection of citizens' rights and the principle of the rule of law.

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