

SYAKHSHIYAH VISA IN THE IMPLEMENTATION OF INDEPENDENT HAJJ: A PERSPECTIVE FROM SADD AL-DZARĪ'AH

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Abstract

This research aims to explain and analyze the implementation of the independent Hajj using the Syakhshiyah visa from a sadd al-dzarī'ah perspective. This research is qualitative legal research, using an empirical juridical approach. Data sources in this research are divided into two, namely primary and secondary. Primary data was obtained from field research through observation. Meanwhile, secondary data includes all statutory documents, government regulations, as well as all bibliographic references related to research. Data from field and library research were analyzed qualitatively using descriptive analytical techniques. This research proves that carrying out the Hajj independently using a shakhshiyah visa from a sadd al-dzarī'ah perspective is Haram. This is proven by: first, the pilgrims' lack of understanding of the Hajj regulations. Second, some congregations still do not comply with the statutory regulations. Third, there is no security guarantee for pilgrims. Fourth, it can cause damage to pilgrims using official visas. The findings in this research indicate that carrying out the independent Hajj using a Syakhshiyah visa is not in line with Maqāshid Al- Syarī'ah in Islam.

Keywords: Haji Mandiri, Visa Syakhshiyah, Sadd al-dzarī'ah

INTRODUCTION

The policy of setting regulations for prospective Hajj pilgrims is a fundamental issue that arises every Hajj season, as it often triggers dissatisfaction among pilgrims regarding the services and facilities provided. This dissatisfaction has even led to casualties. The Saudi government's policies are critically important as they affect Muslims globally, not only influencing the satisfaction, safety, and comfort of pilgrims during the Hajj but also ensuring their lives are protected. Hajj, being the fifth pillar of Islam, is a vital act of worship for Muslims worldwide and is often seen as a dominant life goal compared to other aspirations.

Saudi Arabia's policies ensure the safety and comfort of pilgrims while preventing casualties. In 2024, Colonel Talal Al-Shalhoub, spokesperson for the Saudi Ministry of Interior, stated that the success of the Hajj security plan was due to the leadership's guidance and continuous supervision by the Minister of Interior and Chairman of the Supreme Hajj Committee, Prince Abdulaziz bin Saud bin Naif. This involved coordination among various security, military, and government agencies to ensure a peaceful, safe, and smooth Hajj experience for the pilgrims.

Additionally, Saudi Arabia prioritizes pilgrims' health. The Minister of Health, Fahad Al-Jalajel, explained that the Kingdom provided free healthcare services even before pilgrims arrived. These services included open-heart surgery, cardiac catheterization, dialysis, and emergency care, with over thirty thousand ambulance services and ninety-five air ambulance operations offering advanced medical services across the Kingdom. The healthcare system also provided nearly six thousand five hundred beds and medical facilities.

Saudi Arabia welcomed a diverse group of pilgrims in 2024. Pilgrims from Arab countries accounted for a significant portion, while others came from Africa, Europe, the Americas, Australia, and other regions. Most pilgrims arrived by air, with others traveling via land and sea routes.

Despite continuous evaluation of security measures, challenges persist during peak Hajj times, such as fatalities among pilgrims worldwide. According to BBC News in June 2024, at least one thousand three hundred one pilgrims died, primarily due to extreme heat, with temperatures exceeding fifty-one degrees Celsius. Most of these fatalities involved illegal pilgrims walking long distances under the scorching sun. Many of the deceased were

elderly or had chronic illnesses, and more than three-quarters lacked proper authorization to be present.

Illegal pilgrims are those not using official visas, despite Saudi embassies worldwide offering facilities for visa applications. Travelers to Saudi Arabia must obtain visas relevant to the purpose of their visit, such as electronic visas for short-term stays, business, or tourism. For Hajj, the embassies issue specific visas. However, Saudi policies have not entirely curbed the influx of unauthorized visitors. Some pilgrims, particularly those using syakhshiyah visas, aim to perform Hajj due to differing perspectives on Saudi regulations and the obligations of Hajj itself. Many believe that Hajj visas are not part of the essential requirements of the pilgrimage. These pilgrims are motivated by a strong desire to fulfill the Hajj obligation, claiming to meet the necessary physical and financial prerequisites.

Indonesia, with the largest Muslim population globally, faced challenges in accommodating its Hajj pilgrims. By 2023, Indonesia's Muslim population reached over two hundred forty million, representing a significant portion of the nation's total population. This led to a Hajj quota provided by the Ministry of Religious Affairs that could not meet the demand, resulting in long waiting lists. In some regions, the waiting period extended for decades. For instance, in Aceh, the waiting time was over three decades, while in Bali, it reached almost four decades. This situation prompted some individuals to seek alternative means to perform the Hajj without waiting.

Travel agencies have also facilitated this demand, offering services for pilgrims to perform Hajj through various means, despite the associated risks. Many pilgrims, unaware of the visa type used, mistakenly believe they are traveling under appropriate documentation. Reports revealed that Saudi security forces expelled thousands of unauthorized pilgrims from Mecca, emphasizing the government's strict enforcement of regulations.

The phenomenon of independent Hajj has gained popularity as an option outside the regular or special Hajj quotas. This approach, often termed "backpacker Hajj," involves pilgrims organizing their pilgrimage independently, bypassing official procedures. This practice has been perceived as a means to perform Hajj without adhering to government regulations, relying instead on personal or group arrangements.

Islamic scholars have not explicitly detailed administrative requirements, such as Hajj visas, in their discussions of Hajj prerequisites. This has led many to believe that performing Hajj using non-Hajj visas does not affect the validity of the pilgrimage. Scholars emphasize the essential rites of Hajj, including ihram, tawaf, sa'i, and wuquf, as core components. As long as these are fulfilled, the pilgrimage is considered valid.

وأركان الحج أربعة: الإحرام، والوقوف، والطواف، والسعي. وواجباته: الإحرام من الميقات، والرمي، والوقوف بعرفة إلى الليل في أحد القولين، والمبيت بالمزدلفة في أحد القولين، والمبيت ليالي منى في أحد القولين، والعلق في أحد القولين، وطواف الوداع في أحد القولين. وسننه: الغسل، وطواف القدوم، والرمي، والاضطباع في الطواف، والسعي، والاستلام، والتقبيل، والارتقاء على الصفا. وقيل: إنه واجب، والمبيت بمنى ليلة عرفة، والوقوف على المشعر الحرام، والخطب، والأذكار، والإسراع في موضع الإسراع، والمشى في موضع المشى.

The state of ihram for Hajj can be performed during the months of Hajj, which are Shawwal, Dhu al-Qa'dah, and the first ten days of Dhu al-Hijjah. This allows pilgrims to easily prepare for the pilgrimage. Similarly, the next pillar of Hajj, standing at Arafah, takes place in an area approximately two miles wide, with a total area of about ten square kilometers. This plain is located southeast of the Grand Mosque, about twenty-one kilometers from Mecca, ten kilometers from Mina, and six kilometers from Muzdalifah. It can accommodate approximately two million pilgrims.

Based on this understanding, many pilgrims perform Hajj without adhering to the quotas set by the government. Consequently, the number of pilgrims exceeds the capacity of Arafah. In practice, some pilgrims adopt an initiative called safari wuquf, where they visit Arafah briefly during the designated period. This involves entering the area for a relatively short duration, choosing a time between the decline of the sun on the ninth day of Dhu al-Hijjah and before dawn on the tenth day of Dhu al-Hijjah. The pilgrims may stand, walk, or remain in vehicles during this time.

From a legal perspective, such practices are considered valid. Scholars from the Shafi'i school of thought argue that standing at Arafah is valid as long as one is present during the designated period, which begins at the decline of the sun on the ninth day of Dhu al-Hijjah and ends before dawn on the Day of Sacrifice. Even if a person is present for only a

brief moment, the standing at Arafah is deemed sufficient. Abdurrahman Al-Jaziri elaborates on this view in the Shafi'i school of thought.

الشافعية قالوا: للوقوف بعرفة شروط، وسنن؛ أما شروطه فهي: أولاً: أن يكون ذلك الحضور في وقته؛ ووقته من زوال شمس اليوم التاسع من ذي الحجة إلى فجر يوم النحر. ويكفي الحضور من ذلك الوقت ولو لحظة

For the performance of wukuf, there are certain conditions and sunnah practices. One of the conditions is that pilgrims must be present at the designated time. The time for wukuf begins from the moment the sun passes its zenith on the 9th of Zulhijjah and continues until dawn on the 10th of Zulhijjah. Presence within this specified time is deemed sufficient, even if only for a brief moment.

The claim by some individuals regarding the validity of performing an independent pilgrimage using a syakhshiyah visa does not reflect the quality of a true Muslim. This issue highlights a decline in the overall quality of Muslim adherence. Pilgrims using syakhshiyah visas might claim their pilgrimage as valid to fulfill their obligation and foster a sense of pride. However, in reality, such pilgrimages face numerous risks, including a lack of security guarantees, and they contribute to overcrowding at pilgrimage sites. This increases the likelihood of adverse outcomes for both users of non-hajj visas and legal pilgrims.

Given these issues, this study aims to analyze the implementation of independent pilgrimage using syakhshiyah visas from three perspectives: the nature of independent pilgrimage itself, the indicators of its benefits and harms, and its evaluation through the lens of Sadd Al-Dzarī'ah. The title of this thesis is The Implementation of Independent Pilgrimage Using Syakhshiyah Visa from the Perspective of Sadd Al-Dzarī'ah.

REVIEW OF LITERATURE

The practice of independent Hajj using a syakhshiyah visa has gained attention as a contemporary issue in the administration of Islamic pilgrimage. This concept involves individuals organizing their pilgrimage independently, bypassing the conventional systems established by the government or authorized travel agencies. The discussion of this practice intersects with legal, religious, and administrative dimensions, particularly in the context of

Sadd al-Dzarī‘ah, a principle in Islamic jurisprudence aimed at preventing actions that could lead to harm or illicit outcomes.

Scholars argue that the principle of Sadd al-Dzarī‘ah serves as a preventive mechanism to safeguard the integrity of religious practices and the welfare of the broader community. The application of this principle in the context of independent Hajj raises concerns about potential risks, including regulatory violations, safety issues, and mismanagement of the pilgrimage process. These risks are viewed as possible sources of harm that justify the implementation of stricter controls or restrictions.

Government policies on pilgrimage management play a significant role in ensuring the safety and well-being of pilgrims. Legal frameworks established by the state aim to maintain order and uphold the sanctity of the pilgrimage. Independent Hajj practices challenge these regulations, as they often operate outside the structured guidelines set by the authorities. This has led to debates on the permissibility and implications of such practices from both a legal and ethical standpoint.

From a religious perspective, the performance of Hajj requires adherence to specific conditions, including the obligation to ensure the safety and proper conduct of the journey. Independent arrangements using syakhshiyah visas may compromise these conditions, particularly if they result in logistical challenges or incomplete fulfillment of the pilgrimage rituals. Islamic jurisprudence emphasizes the importance of *maslahah*, or public benefit, which aligns with the objectives of Sadd al-Dzarī‘ah in preventing harm and fostering collective well-being.

The principle of Sadd al-Dzarī‘ah also addresses potential exploitation in the implementation of independent Hajj. Unregulated travel arrangements can open opportunities for fraud, overpricing, or neglect of the pilgrims’ needs. By restricting practices that pose such risks, the principle aims to protect individuals from harm while preserving the sanctity of the pilgrimage.

In conclusion, the practice of independent Hajj using syakhshiyah visas presents complex challenges that necessitate careful consideration from legal, administrative, and religious perspectives. The application of Sadd al-Dzarī‘ah provides a framework for evaluating the potential risks and benefits of such practices, ensuring that the implementation

of Hajj aligns with the principles of Islamic jurisprudence and the objectives of public welfare.

RESEARCH METHOD

Research Type

Research is a step-by-step process to uncover the truth about a particular object of study, formulating questions, and seeking answers to address these questions. To examine the status of performing Hajj using a syakhshiyah visa from the perspective of sadd al-dzarī'ah, this thesis employs field research to observe and investigate issues with a focus on the selected subject. This is a descriptive qualitative research method used to describe the implementation of Hajj using syakhshiyah visas, enabling an understanding of the legal status of such Hajj practices. The researcher will analyze and interpret data, facts, and information about the performance of Hajj with syakhshiyah visas. This study falls under legal research, using an empirical juridical approach that starts from legal rules including Islamic law, national law, and applicable international law, and correlates them with real-world implementation.

Data Sources

The data sources for this thesis research consist of primary field data obtained through interviews conducted via personal contact between the data collector (interviewer) and the data source (interviewee). Additionally, the research relies on primary documents such as fatwas signed by several members led by the Grand Mufti of Saudi Arabia, Abdul Aziz Al-Sheikh and Saleh Fawzan, as well as Law No. 8 of 2019 concerning the organization of Hajj and Umrah. Secondary data is derived from literature studies, including books, journals, articles, newspapers, internet sources, seminar results, publications, and other materials relevant to the research. This aims to provide a deeper understanding, comparison, and refinement of the thesis.

Research Subjects

The subjects of this research are individuals performing independent Hajj using syakhshiyah visas. Additionally, the research requires regulatory documents related to Hajj. Data collection is conducted purposively, targeting specific respondents intentionally.

Data Collection Method

The data collection methods used include library research and field research. The library research involves collecting and analyzing books, Islamic jurisprudence texts, journals, Indonesian legislation, and Saudi Arabian fatwas related to the research theme. Field research involves conducting interviews with several individuals who performed Hajj. The interviews are unstructured, allowing the researcher to ask questions freely without being confined to a fixed set of questions.

Data Analysis Method

The data obtained will be studied and analyzed to address the question of how the implementation of independent Hajj using syakhshiyah visas aligns with the perspective of sadd al-dzarī'ah. Data analysis is conducted qualitatively by interpreting processed data and correlating it with the theoretical and conceptual frameworks established, ultimately leading to conclusions that answer the research questions. Critical analysis is also applied using a descriptive-analytical technique, which processes data based on field studies and integrates it with data from the literature review. The focus of this thesis is to analyze the implementation of independent Hajj using syakhshiyah visas from the perspective of sadd al-dzarī'ah. The data obtained is not only analyzed but also interpreted by comparing it with or assessing its continuity with the ideal implementation of Hajj. This critical analysis will allow conclusions to be drawn.

RESULTS AND DISCUSSION

The evaluation of the legal status of performing Hajj independently using a Syakhshiyah visa begins by examining the resulting indicators. An official Hajj visa is a prerequisite for the legal recognition of Hajj. Without meeting this requirement, an individual cannot be considered as fulfilling the criterion of Istitha'ah (capability). The Indonesian Minister of Religious Affairs Regulation (KMA) No. 660 of 2021 defines Istitha'ah as not only physical and financial capability but also compliance with governmental policies and obtaining permission from relevant authorities in Indonesia and Saudi Arabia.

The involvement of the government in regulating Hajj aims to ensure the safety, order, security, and comfort of pilgrims. Article 2 of Law No. 8 of 2019 on the

Implementation of Hajj and Umrah establishes the principles of Hajj management as follows: 1) Shariah: Hajj and Umrah are conducted in accordance with Islamic law; 2) Trustworthiness: Implementation with full responsibility; 3) Justice: Upholding fairness without bias or arbitrariness; 4) Public Interest: Ensuring the welfare of pilgrims; 5) Utility: Providing benefits to pilgrims; 6) Safety: Safeguarding the pilgrims' well-being; 7) Security: Maintaining order and protection for pilgrims; 8) Professionalism: Ensuring expert management; 9) Transparency: Open access to information on Hajj management, including financial aspects.

Fatwas on the Obligation of Hajj Permission

Prominent scholars, including Grand Mufti Abdul Aziz and Saleh Fawwaz of Saudi Arabia, have emphasized that: 1) Sharia Compliance: The requirement for Hajj permission aligns with Islamic law to ease religious obligations and prevent difficulties; 2) Order and Safety: Permission helps manage the number of pilgrims, ensuring safe and peaceful Hajj rituals; 3) Obedience to Authority: Obtaining permission is part of adhering to legitimate rulings by Islamic leaders.

Similarly, the 2024 deliberations of Nahdlatul Ulama's leadership concluded that performing Hajj using a non-Hajj visa, including Syakhshiyah visas, is legally valid but flawed (sah but sinful). This conclusion is based on: 1) The comprehensive understanding of Istitha'ah, includes physical, financial, and safety considerations; 2) Adherence to Law No. 8 of 2019, which only recognizes Indonesian Hajj visas such as the Regular, Special, or Mujamalah visas; 3) The potential harm to oneself and other pilgrims.

Analysis Using Sadd Al-Dzari'ah

Sadd Al-Dzari'ah, or "blocking the means to harm," involves preventing actions that may lead to forbidden outcomes. Applying this principle, performing Hajj with a Syakhshiyah visa is prohibited due to numerous indicators of harm and the lack of fundamental benefits (maslahah), such as: 1) Failure to Uphold Religion: Violating government and Saudi regulations contravenes the Islamic directive to obey leaders, undermining religious principles; 2) Jeopardizing Lives: Unauthorized pilgrims exacerbate crowding and strain limited resources during Hajj seasons, increasing risks to health and safety; 3) Non-compliance with Istitha'ah: Unauthorized Hajj fails to meet the basic

requirements of legal and physical capability; 4) Disruption to Official Pilgrims: Unauthorized participants hinder the experience of pilgrims with official visas; 5) Encroachment (Ghasb): Unauthorized pilgrims occupy spaces meant for legal participants; 6) Increased Health Risks: Overcrowding elevates health issues, particularly for vulnerable pilgrims; 7) Legal Consequences: Saudi authorities impose strict penalties, including deportation, fines, and bans from entering the Holy Land.

Scholarly Perspectives

Al-Qarafi: Legal actions (wasilah) that lead to forbidden outcomes are equally prohibited. Official documentation, including a valid Hajj visa, is essential to achieving the goal of a lawful Hajj. 1) Abd Rahman Dahlan: Actions causing harm (mafsadah) is prohibited regardless of the actors' intent. Using a Syakhshiyah visa poses significant risks, making the act impermissible; 2) Ibn Qayyim: A valid Hajj is contingent upon fulfilling its administrative prerequisites, such as obtaining an official visa. Violating these requirements undermines the validity of Hajj preparations.

CONCLUSION

The purpose of al-dzari'ah is none other than to achieve maqasid al-shariah, which is based on the principle of maslahah, namely taking everything that brings benefit (masalih) and avoiding everything that brings harm or detriment (mafasid). It also rests on the principle of caution (ihtiyath), particularly in cases where there is a contradiction between maslahah and mafasadah. This does not only consider benefits or harms to oneself but also takes into account benefits and harms that affect others, especially since Islam is a religion that teaches universality and interconnectedness in the genealogical life of humanity in social, cultural, economic, and political realms, as well as in connection with all of God's creations.

Independent Hajj refers to the performance of Hajj conducted independently by individuals or groups without joining any official travel agency's Hajj group. The pilgrims manage the entire Hajj process themselves, from preparation, transportation, and accommodation to performing the rituals in the holy land. It is also referred to as "Backpacker Hajj" or non-procedural Hajj because it is carried out independently and allows for departure

in the current year without waiting in a queue. Independent Hajj is sometimes equated with Hajj Furoda by the public, although there are distinctions between the two.

The implementation of the Independent Hajj differs somewhat from the regular Hajj, particularly in fulfilling the obligatory and mandatory rituals. Independent Hajj pilgrims may face challenges in performing wuquf in Arafah, staying overnight (mabit) in Muzdalifah and Mina with proper facilities, and performing the mandatory Hajj ritual at the designated miqat makani. They may also face restrictions in performing tawaf qudum.

Performing an Independent Hajj using a Syakhshiyah visa can result in harm (mafsadah) to both the pilgrims using such visas and to others, making it a prohibited action. It can thus be concluded that the implementation of Independent Hajj using a Syakhshiyah visa, from the perspective of sadd al-dzari'ah, is prohibited (haram) because the potential harm it causes outweighs the benefits it provides.

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