

Original Research Article

Liability of the Umroh and Hajj Travel Bureau (Case Study on PT. Musafir International Indonesia)

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Abstract: There are cases that happen to Indonesian people who perform the Hajj pilgrimage by some Umrah and Hajj Travel Bureaus, so this article aims to study and analyze the responsibility of travel agents who do not carry out their obligations in positive Indonesian legal agreements and arrangements for violations of obligations by travel agents, especially travel agents Umrah and Hajj. The research method used is a normative legal research method with a case and statutory approach. The results show that one of the travel bureaus, namely PT Musafir Internasional, has committed an act of default, because the 2023 Independent Hajj Program Cooperation Agreement (Furoda Haji) Number: 243/KTR/HF/1021 dated October 22 2021 was not fulfilled. The provisions violated by PT Musafir Internasional Indonesia against Hajj pilgrims who did not comply with the agreement were Article 118 of Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah, Articles 19 and 60 of Law Number 8 of 1999 concerning Consumer Protection, Article 1243 of the Civil Code, and Article 378 of the Criminal Code (KUHP). Responsibility of the Umrah and Hajj travel agency PT. Indonesian International Travelers who are in default towards their congregation are in accordance with article 1243 of the Civil Code (KUHP) which essentially states that if one party is negligent in carrying out its obligations then the negligent party is obliged to reimburse costs, compensation and interest. Efforts to resolve by holding mediation.

Keywords: Liability, Agreement, Default, Hajj, and Umrah.

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1. INTRODUCTION

Indonesia has the fourth highest population density in the world and the majority of the population is Muslim. Along with rapid development and development, population data collection has also increased (Ahsanicka *et al.*, 2024). This has led to an increase in the desire of Muslims to perform the Umrah and Hajj. Umrah is a sunnah worship in Islam that can be performed at any time in the holy land of Mecca, following a series of pillars stipulated in Islamic teachings. Meanwhile, the Hajj is a pillar of Islam and an obligatory worship service for Muslims who are physically and financially able. The Hajj pilgrimage is only carried out in the month of Dzulhijjah (Cindy, 2023).

A travel agency is a travel service that provides facilities for someone to travel. Currently, there are many Hajj and Umrah travel agencies in Indonesia that offer Umrah and/or Hajj pilgrimage trips by providing good to premium services as well as offering excessive packages

and promotions. Which makes potential pilgrims interested. That the relationship between prospective Hajj or Umrah pilgrims and travel agents is based on an agreement that binds both of them (Candra, 2021).

Agreements between travel agents and prospective Hajj pilgrims must be in accordance with Article 1320 of the Civil Code (KUHP) which regulates the conditions for the validity of the agreement. The agreement must meet conditions that do not violate the law, decency and public order (Fathya *et al.*, 2024). Agreements made by Hajj and Umrah organizers do not violate the roots of freedom of contract, because prospective pilgrims are still given the freedom to choose to agree or reject the conditions determined by the travel agency (Anita *et al.*, 2024).

However, cases of fraud experienced by prospective Hajj pilgrims have caused prospective pilgrims to feel unprotected. For example, the Abu Tours fraud case in 2018 which caused losses for 86,000 pilgrims, and the Solusi Balad Lumampah fraud case in

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2012 which resulted in losses for 12,645 congregations and 58,862 pilgrims. The facilities provided by the travel agency include making Umrah and Hajj visas, plane tickets, hotel accommodation, pick-up and drop-off transportation, meals, Indonesian language tour guides, worship equipment, and spiritual guides. Hajj is the fifth Islamic law and is mandatory for all Muslims who fulfill the mandatory requirements to carry it out. Umrah is a complete pilgrimage and both require a visa, with the validity period increasing from 30 days to 90 days as of August 2022. Departures for the Hajj and Umrah pilgrimages in Indonesia are carried out through Hajj travel agencies supervised by the Ministry of Religion.

Special Hajj is organized by the private sector with the supervision of the Ministry of Religion of the Republic of Indonesia, varying in terms of price, waiting list for departure, accommodation and accommodation, location of accommodation, length of stay in the holy land, guide while there, and intensive guidance. The price can be eight times more than the Hajj pilgrimage. One of the Hajj and Umrah travel agencies in Indonesia is PT. Musafir International Indonesia, in this case PT. Musafir International Indonesia provides its services to prospective Furoda Hajj pilgrims for departure in 2023.

The chronology of events is as follows: when the Hajj pilgrims departed they should have departed from Jakarta for Saudi Arabia. However, what happened was PT. Indonesian International Musafir sends Hajj pilgrims from Jakarta to Malaysia. Then the travel accommodation was borne personally by the pilgrims when they arrived in Saudi Arabia and the travel agency had the excuse of borrowing money from them and promising to return it after arriving in Mecca. However, upon arrival in Riyadh, the pilgrims were left without a hotel, so they had to take a bus to Mina. Congregants who had not paid off their hotels were evicted and had to move hotels. The pilgrims then travel to Arafat, where they pay *tasreh* for tents which are quite expensive per person. They remained on the bus for the second and third Hajj pilgrimages, as the Saudi Arabian government increased the Hajj quota but did not add tents. This results in Hajj pilgrims having to sleep on buses rather than in tents. After the Hajj pilgrimage is completed, the pilgrims travel to Medina at their own expense for travel and accommodation. The Hajj and Umrah travel agency used is PT. Indonesian International Traveler. From this series of events due to the actions of PT. The Indonesian International Pilgrims of the 2023 Furoda Hajj pilgrims experienced both material and non-material losses. In the case above, this article aims to determine the responsibility of travel agents who do not carry out their obligations in agreements and positive Indonesian legal arrangements for violations of non-fulfillment of obligations by travel agents, especially Umrah and Hajj travel agents.

2. METHODOLOGY

This research uses a type of normative legal research and the type of approach used is the Statute Approach and case approach. This research uses primary and secondary legal materials. The primary legal material used is the 2023 Independent Hajj Program Cooperation Agreement (Furoda hajj) Number: 234/KTR/HF/1021 dated 22 October 2021.

3. RESEARCH RESULT

3.1 Provisions Violated by PT. Indonesian International Travelers in the Implementation of the Agreement

PT. Indonesian International Musafir based on the facts did not fulfill its obligations as in Article IV regarding facilities in the 2023 Mandiri Hajj Program Cooperation Agreement (Furoda Haji) Number: 243/KTR/HF/1021 dated 22 October 2021 which resulted in the First Party as prospective Hajj pilgrims experiencing losses. That due to non-fulfillment of PT's obligations. Indonesian International Travelers by not providing facilities as promised has resulted in Hajj pilgrims being abandoned by the travel agency. The form of neglect carried out by PT. Indonesian International Travelers did not fulfill what was promised, namely: The provisions of Article IV paragraph (3) point 2 regarding the granting of official Hajj visas. However, the official Hajj visa is not given to Hajj pilgrims by PT. Indonesian International Traveler. Provisions of Article IV paragraph (3) point 5 regarding the provision of direct round trip flight tickets from Jakarta to Saudi Arabia. However, PT. Musafir International Indonesia provides flight tickets from Jakarta to Kuala Lumpur. This leaves the Hajj pilgrims stranded at Kuala Lumpur Malaysia Airport and having to continue their journey using personal funds to Saudi Arabia. Provisions in Article IV paragraph (3) points 6, 7 and 8 concerning the provision of hotel, school and transit apartment facilities. However, this facility is not provided by PT. The Indonesian International Traveler who made the Hajj pilgrims confused when they wanted to rest and experienced neglect.

3.2 Indonesia's Positive Legal Regulations against Violations of Non-Fulfillment of Obligations by Travel Agents, Especially Umrah and Hajj Travel Agents

Regarding the implementation of the Hajj and Umrah in Indonesia, the government has made regulations and policies regarding the rights and obligations of the parties. The obligations of the parties are regulated in several regulations as follows:

3.2.1 Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah

The consequences of abandonment of Hajj pilgrims if related to the facts experienced by Hajj pilgrims due to the actions of PT. Indonesian International Travelers can be declared to have neglected the implementation of worship. This act of neglect may

be subject to the provisions of Article 125 of Law Number 8 of 2019 concerning the Organization of Worship and Umrah which states that: Organizers of Special Hajj Pilgrimages (PIHK) who intentionally cause failure to depart, abandonment or failure to return home for Special Hajj Pilgrims, as intended "In Article 118, he is punished with a maximum imprisonment of 10 (ten) years or a maximum fine of IDR 10,000,000,000 (ten billion rupiah)."

PT. Indonesian International Travelers may also be subject to administrative sanctions such as the provisions in Article 63 of Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah which states that PIHKs who do not carry out their obligations in organizing the Hajj will be subject to administrative sanctions in the form of written warnings, administrative fines, freezing of business permits. or revocation of business permits.

3.2.2 Civil Code

The implementation of the independent Hajj through a travel agency is based on an agreement that binds the travel agency and the prospective Hajj pilgrims. Based on this agreement, each party must carry out its obligations and provide the rights of each party in accordance with what has been agreed (Fatih, 2020). Failure to fulfill the contents of the agreement by one party can cause losses to the other party and it can be stated that the party who does not fulfill the contents of the agreement has been negligent in carrying out the agreement which can be called an act of breach of contract (Hamidah & Purwaningsih, 2024). As Article 1243 of the Civil Code explains about the legal consequences of acts of breach of contract, namely: Compensation for costs, losses and interest due to non-fulfillment of an obligation will only begin to be required, if the debtor has been declared negligent in fulfilling his obligation, continues to neglect it or if he has to give or do something, can only be given or made within the time limit that has passed (Husna, 2024).

In connection with the act of default on the agreement carried out by PT. Indonesian International Traveler which resulted in losses for the congregation. A lawsuit can be filed with the local district court based on Article 1243 of the Civil Code, which essentially states that a party who is negligent in carrying out an agreement resulting in losses for the other party is obliged to pay compensation, fines or interest (Kasudarman & Ahmad, 2024).

3.2.3 Law Number 8 of 1999 concerning Consumer Protection

Reviewing the agreement between PT. Indonesian International Traveler with prospective Hajj pilgrims. There is also a relationship between business actors and consumers, where PT. Musafir International Indonesia acts as a business actor that provides Hajj and Umrah travel services and prospective Hajj pilgrims are

consumers who use the services of business actors (Palasara *et al.*, 2024). Also provisions in the Consumer Protection Law as in Article 19 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection explains that: Business actors are responsible for providing compensation for damage, pollution and/or losses to consumers resulting from consuming goods and/or services produced or traded (Priyadi, 2024).

Furthermore, the actions of PT. Musafir International Indonesia causes losses to consumers and may be subject to sanctions in the form of providing compensation for actions of business actors that harm consumers. This can be done with a refund or something of equivalent value. As regulated in Article 19 paragraph (2) Law Number 8 of 1999 concerning Consumer Protection which states that: Compensation as intended in paragraph (1) can be in the form of a refund or replacement of goods and/or services of the same or equivalent value, or health care and/or provision of compensation in accordance with the provisions of the applicable laws and regulations. The provisions of Article 60 of Law Number 8 of 1999 concerning Consumer Protection which states that the Consumer Dispute Resolution Agency has the authority to impose administrative sanctions on business actors who violate article 19 paragraph (2) and paragraph (3), article 20, article 25 and article 26. That the administrative sanction referred to is the determination of compensation of a maximum of Rp. 200,000,000 (two hundred million rupiah).

3.2.4 Criminal Code

In addition to liability for compensation by business actors as regulated in the Consumer Protection Law, it also does not rule out the possibility of liability for business actors who cause harm through criminal prosecution. This is confirmed in Article 19 paragraph (4) of Law Number 8 of 1999 concerning Consumer Protection which states that: Providing compensation as intended in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding there is an element of error (Putri *et al.*, 2024).

Criminal charges that can be carried out as intended by Article 19 paragraph (4) of Law Number 8 of 1999 concerning Consumer Protection regarding the implementation of the Hajj and Umrah are fraud against prospective Hajj and Umrah pilgrims. Whereas the Criminal Code regulates fraudulent or deceptive acts as stated in article 378. The connection with the actions of PT. Indonesian International Travelers who do not carry out their obligations in accordance with the agreement can be declared a criminal act of fraud because PT. Musafir International Indonesia as a business actor who provides services to organize Hajj and Umrah pilgrimages unlawfully through deceit and/or a series of lies to encourage prospective Hajj or Umrah pilgrims to hand over something to him, such as a sum of money

with the intention of benefiting themselves or others by violating rights, the legal step that can be taken by the aggrieved party is to criminally sue the organizer of the Hajj and/or Umrah pilgrimage on the basis of a criminal act of fraud.

Existing problems can be resolved using the principle of *Lex Specialis Derogat Legi Generali* which prioritizes specific laws over general laws (Triasih *et al.*, 2024). This is because PT. International Traveler has the same legal status. The settlement is through mediation, if no agreement is reached, filing a lawsuit at the local District Court. The injured party may receive compensation, fines, or interest. Reports can also be submitted to authorized agencies such as the Ministry of Religion, consumer protection agencies and the police.

3.2.5 Liability of the Umrah and Hajj Travel Bureau PT. Indonesian International Traveler Who Defaulted to His Congregation

An agreement is made by the parties to do or not do something agreed upon by the parties. In the agreement there has been a reciprocal relationship between the parties which if there is a violation of the agreed agreement will give rise to legal consequences. When linked to the 2023 independent Hajj program cooperation agreement (furoda hajj) number 243/KTR/HF/1021. That the agreement has fulfilled the meaning of the agreement according to the subject matter when viewed from the aim and purpose of entering into an agreement. Where in the 2023 independent Hajj program cooperation agreement letter (furoda hajj) number 243/KTR/HF/1021 there are 2 parties who promised, namely TBS as the first party and Sri Jayanti Alqodri as the second party acting on behalf of PT. Indonesian International Traveler.

Regarding the elements of an agreement, according to Article 1313 of the Civil Code, an agreement is defined as an act by which one or more people bind themselves to one or more other people (Widodo & Midia, 2024). So that when it is broken down, the elements of the agreement will be known. The elements in the agreement which, when linked to the 2023 Mandiri Hajj Program Cooperation Agreement (Furoda hajj) Number: 234/KTR/HF/1021 dated 22 October 2021 are as follows: There are parties that in the Hajj program cooperation agreement letter Mandiri (furoda hajj) in 2023 number 243/KTR/HF/1021, there are 2 parties, namely TBS as the first party and Sri Jayanti Alqadri who acts for and on behalf of PT. Musafir International Indonesia as the second party. Agreement of the parties That in the 2023 Independent Hajj Program (Furoda Haji) cooperation agreement letter number 243/KTR/HF/1021 the parties have agreed to enter into an independent Hajj/furoda program agreement which was agreed on October 22 2021 in Surabaya. The independent hajj/furoda program will be implemented in 2023. Achievements implemented are that the 2023 independent hajj program (furoda hajj) cooperation

agreement letter number 243/KTR/HF/1021 regulates the rights and obligations of each party as stated in article I up to article V.

If summarized, it is known that the first party has the right to receive facilities for the departure, implementation and return of the Hajj pilgrimage. And is obliged to provide a certain amount of funds to finance the Hajj pilgrimage program. Meanwhile, the second party has the right to obtain funds for the management of the Hajj pilgrimage and is obliged to provide facilities for the departure, implementation and return of the Hajj pilgrimage in accordance with the provisions of Article IV concerning management and facilities. In a certain form, the Cooperation Agreement for the Independent Hajj Program /Furoda is carried out in writing in the 2023 Independent Hajj Program Cooperation Agreement (Furoda Hajj) number 243/KTR/HF/1021 which is made in writing. There are certain conditions that in the 2023 Independent Hajj Program Cooperation Agreement (Furoda Hajj) number 243/KTR/HF/1021 consists of 12 articles which regulate the rights and obligations of each party, dispute resolution, and sanctions imposed if one of them the party violates the agreement that has been agreed upon. 6) There is a goal that has been achieved: namely to implement the independent/furoda hajj program in 2023.

An agreement can be declared a valid agreement if it meets the provisions of Article 1320 of the Civil Code. The conditions for the validity of the agreement related to the 2023 Independent Hajj Program Cooperation Agreement (Furoda Haji) Number: 234/KTR/HF/1021 dated 22 October 2021 are as follows: Agreement of the parties. That as in the 2023 Independent Hajj Program Cooperation Agreement (Furoda Haji) number 243/KTR/HF/1021, each party has agreed to enter into a Cooperation Agreement for the Independent Hajj/Furoda Hajj Program. Skills in action. A person can be said to be competent if he has the ability to carry out legal actions. Article 330 of the Civil Code explains that a person can be said to be an adult if he is 21 years old or married and not under guardianship. Whereas in the 2023 Independent Hajj Program Cooperation Agreement (Furoda Hajj) number 243/KTR/HF/1021, this agreement is carried out by legally competent parties because the first party is an adult because the first party is 65 years old and the second party is director acting for and on behalf of PT. Indonesian International Traveler so that the second party has competent authority.

There is a certain thing. An agreement occurs because there is a certain intention that binds the parties to act or not do something. This is related to the 2023 Independent Hajj Program Cooperation Agreement (Furoda Hajj) number 243/KTR/HF/1021, namely that the agreement contains an agreement to implement the Hajj program which is managed by a second party as a travel agency. d) There is a lawful cause. In the

provisions of article 1335 of the Civil Code, if an agreement occurs without cause or an agreement is made for false or prohibited reasons, then the agreement has no legal force. As stated in the 2023 Independent Hajj Program Cooperation Agreement (Furoda Haji) Number 243/KTR/HF/1021 which states that the agreement contains halal reasons because the 2023 Independent Hajj Program Cooperation Agreement (Furoda Haji) Number 243/ KTR/ HF /1021 does not have false or prohibited intentions and does not contain causes that are contrary to law, morality and public order. That with the fulfillment of the elements of the agreement and the legal conditions of the agreement, the 2023 Independent Hajj Program Cooperation Agreement Letter (Furoda Haji) number 243/KTR/HF/1021 has legal force.

In implementing the contents of the agreement, it does not rule out the possibility of violations committed by one or both parties (Sinaga & Darwis, 2020). According to Munir Fuady, an act of breach of contract is a failure to carry out achievements or obligations by certain parties. According to Subekti, acts of default consist of four types, namely: a) Not doing what was promised to be done; b) Carrying out what was promised but not as promised; c) Did what he promised but was late; and d) Doing something that according to the agreement must not be done (Subekti, 2007). If it is related to the 2023 Independent Hajj Program Cooperation Agreement (Furoda Haji) number 243/KTR/HF/1021, he has committed an act of breach of contract in the form of not doing what he promised to do. This is in accordance with the provisions in Article IV concerning Management and Facilities in the agreement letter, causing the First Party as a prospective Hajj pilgrim to experience losses.

As many as 13 of the 14 facilities promised were fulfilled by PT. Indonesian International Musafir (second party) is not carried out by PT. Musafir International Indonesia as the second party caused the first party to experience significant losses. The provisions in article IV paragraph (3) concerning management and facilities, one of the facilities is the provision of direct return flight tickets (Jakarta-Saudi Arabia). not fully implemented because PT. Musafir International Indonesia only provides flight tickets for Hajj departures for Hajj pilgrims, and the provision of departure tickets is also not in accordance with what was promised, namely tickets on a direct route (Jakarta-Saudi Arabia). The first party as a Hajj pilgrim is given a flight ticket departing for the Hajj on the route (Jakarta-Kuala Lumpur). Although it is true that PT. Musafir International Indonesia has carried out its obligation to provide departure flight tickets. However, it did not comply with what had been promised, namely providing flight tickets for the route (Jakarta-Kuala Lumpur) instead of flight tickets for the route (Jakarta-Saudi Arabia) as promised.

4. CONCLUSIONS

The actions of PT. Musafir Internasional who do not fulfill their obligations as stated in article IV of the agreement and cause losses to the First Party, without further proof, can be said to be PT's actions. Musafir International Indonesia in breach of contract. (Article IX of the agreement). Thus, the responsibility of the second party as the travel agency PT. Musafir Internasional Indonesia towards the first party as Hajj pilgrims who did not comply with the agreement was to provide compensation in accordance with their obligations which were not carried out, namely PT. Musafir International Indonesia as the second party is obliged to provide compensation in the form of a refund for the failure to provide facilities for the Hajj pilgrimage. The statutory provisions violated by PT Musafir Internasional Indonesia against Hajj pilgrims who did not comply with the agreement were Article 118 of Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah, Article 19 and Article 60 of Law Number 8 of 1999 concerning Consumer Protection, Article 1243 of the Civil Code, and Article 378 of the Criminal Code.

Responsibility of the Umrah and Hajj travel agency PT. Indonesian International Travelers who are in default towards their congregation are in accordance with article 1243 of the Civil Code which essentially states that if one party is negligent in carrying out its obligations then the negligent party is obliged to reimburse costs, compensation and interest. Advice for prospective Umrah and Hajj pilgrims, ensure that the travel agent has official permission from the Ministry of Religion of the Republic of Indonesia and has a good reputation, make a written agreement with clear details, provide complete information about the travel package, verify the travel agent before leaving, and use an official officer. visa in accordance with statutory regulations. If a default occurs, the aggrieved party can hold discussions, summon, sue, or report a criminal fraud case. These measures help prevent fraud and ensure the safety of pilgrims during their journey.

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