



## **Termination of Hajj Initial Deposit Financing Products for Hajj Pilgrimage Organization Costs: Normative Legal Analysis**

**M. Taufiq<sup>1</sup>, Dewi Puspita Sari<sup>2</sup>, Ali Ridho<sup>3</sup>, Irwan Mohd Sobri<sup>4</sup>,  
Ongky Alexander<sup>5</sup>, Muhammad Ilham<sup>6</sup>**

<sup>1</sup>STAIN Sultan Abdurrahman Kepulauan Riau  
Email: [m.taufiq@stainkepri.ac.id](mailto:m.taufiq@stainkepri.ac.id)

<sup>2</sup>STAIN Sultan Abdurrahman Kepulauan Riau  
Email: [dewi290403@gmail.com](mailto:dewi290403@gmail.com)

<sup>3</sup>Institut Agama Islam Negeri (IAIN) Manado  
Email: [ali.ridho@iain-manado.ac.id](mailto:ali.ridho@iain-manado.ac.id)

<sup>4</sup>Universiti Sains Islam Malaysia  
Email: [irwan@usim.edu.my](mailto:irwan@usim.edu.my)

<sup>5</sup>STAI Bumi Silampari I  
Email: [ubuklinggauongkynhu@gmail.com](mailto:ubuklinggauongkynhu@gmail.com)

<sup>6</sup>STAIN Bengkalis  
Email: [ilham.zamar@gmail.com](mailto:ilham.zamar@gmail.com)

### **Abstract**

The authority to regulate Hajj initial deposit financing products in Islamic banking between OJK as a regulator and supervisor of financial institutions and the Ministry of Religion as the organizer of Hajj in Indonesia is interesting to study. The research aims to find efforts to harmonize the law of Hajj initial deposit financing in Tanjungpinang city for legal certainty in the community and contribute to the improvement of masalah policies. The research is a normative qualitative-legal research and the data is obtained through interview techniques and a collection of documents in the form of books and reputable scientific articles. The findings in the study are first, the practice of financing the initial deposit of Hajj in Tanjungpinang City was carried out by Bank Muamalat KC Tanjungpinang with the Pro Hajj multipurpose product in August 2020, then stopped because it violated the rules of the Indonesian Ministry of Religion and was replaced with the Pro Hajj Plus product. Second, harmonization of regulations is a must to be carried out with regulations from the OJK considering that the authority to regulate and supervise Islamic banking is with the OJK not the Ministry of Religion.

**Keywords:** Hajj Initial Deposit Financing, Bank Muamalat, Ministry of Religious Affairs

## Introduction

Following the dynamics of a society in meeting its needs, there will always be various tools and facilities available to meet these needs. The hope is that the law must be a companion to the dynamics of this evolving society, by continuing to move and not static in carrying out its function as a companion. The dynamic social composition of various interests has the potential to cause conflicts of interest, and it is necessary to immediately harmonize these interests so as not to cause social tension (Nofrianti and Muslim 2021). The important role of law as a tool to control various interests in social interaction is needed, and law can also be used as a tool to engineer society (Iriani 2016).

Evidence of social dynamics that need to be balanced with legal regulations is the birth of new innovations in the field of Islamic banking, one of which is the Hajj initial deposit financing product to answer the needs of people who want to perform the Hajj pilgrimage (Apriyanti 2018). This product was born in order to fulfill the requirements of *isthito'ah* (prospective pilgrims must be able to go on Hajj) which consists of physical, spiritual and financial capabilities. Based on this financial capability requirement, prospective pilgrims in the Hajj registration are required to be able to pay a deposit for the payment of Hajj Pilgrimage Costs (BPIH) to the account of the Hajj Financial Management Agency at a bank that has the status as a Hajj Pilgrimage Cost Deposit Receiving Bank (BPS BIPIH).

Hajj initial deposit financing products or formerly known as Hajj Talangan, from the beginning of their appearance have been very attractive to the public and continue to increase, so that the distribution of Hajj initial deposit financing products in banks continues to increase (Mubarok and Faizah 2022). Some of the policies that overshadow these products are Law Number 21 of 2008 concerning Islamic Banking which opens opportunities for Islamic banking to always innovate in its products to meet the needs of the community, the Financial Services Authority through the Financial Services Authority Regulation (POJK) Number 13 /POJK.03/2021 concerning the Implementation of Commercial Bank Products in basic bank products which are fund distribution activities, providing opportunities for financing Hajj arrangements through financing the initial deposit of Hajj (Arifin et al. 2023). In addition, the Fatwa of the National Sharia Council-Majelis Ulama Indonesia (DSN-MUI) Number 29/DSN-MUI/VI/2002 concerning Financing Hajj Management for Islamic Financial Institutions and Fatwa of the Indonesian Ulema Council Number: 004/MUNAS X/ MUI/XI/2020 concerning Payment

of Initial Hajj Deposits with Debt and Financing, further strengthens the policies that overshadow the initial Hajj deposit financing product in Islamic banking (Zakiruddin 2021).

However, from the other side, this product still leaves some debates in various circles, including: first, related to the validity of a person's Hajj in terms of *isthitho'ah* or the customer's financial ability if the Hajj is done with the help of Hajj initial deposit financing. Second, the prohibition of combining two contracts in the Hajj initial deposit financing, namely *ijarah* and *qardh* contracts in one contract. Third, the impact of Hajj bailout financing on the lengthening of the Hajj queue. Fourth, the imposition of *ujroh* to customers which is detrimental to prospective pilgrims. Fifth, the number of Hajj initial deposit financing loans that have exceeded the stipulation of the time period as a bailout fund (Subkhi 2020). The Ministry of Religious Affairs is implicitly mentioned in Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah as the duty and authority in regulating its implementation (Fawwaz and Liya Sukma Muliya 2023). Thus, based on the mandate of the law, the organization of Hajj is the responsibility of the Ministry of Religious Affairs. The Ministry of Religious Affairs as the person in charge of organizing Hajj in Indonesia considers that there are irregularities in the distribution of Hajj initial deposit financing by BPS BIPIH, there is still a period of Hajj initial deposit financing that is given too long exceeding one year, the ministry of religion considers *isthitho'ah* or the requirement to be able in this case is not fulfilled and seeing the high public interest in the existence of this product can lead to chaos in the Hajj queue system.

These problems became the basis for the Ministry of Religious Affairs to issue a series of regulations with the aim of curbing the financing of the initial Hajj deposit, including Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 13 of 2021 concerning the Implementation of Regular Hajj and Regulation of the Minister of Religious Affairs Number 24 of 2016 concerning Amendments to Regulation of the Minister of Religious Affairs Number 30 of 2013 concerning Deposit Receiving Banks for Hajj Costs. The Ministry of Religious Affairs clearly prohibits BPS BIPIH as Article 6A of PMA No. 24 of 2016 Concerning the Amendment to PMA No. 30 of 2013 Concerning Deposit Receiving Banks for Hajj Implementation Costs, expressly prohibits BPS BIPIH from channeling Hajj bailout financing directly or indirectly, as well as Article 4 of PMA No. 13 of 2021 Concerning Regular Hajj Implementation. (1) The initial deposit of BIPIH as referred to in Article 3

paragraph (1) is not a bailout or other name either directly or indirectly sourced from BPS BIPIH. (2) In the event that BPS BIPIH is known to provide bailout funds or other names as referred to in paragraph (1), the Minister may block and/or revoke the Siskohat user id after clarification.

In addition, there is a recommendation of the Indonesian Hajj Mudzakah in 2022 at point seven regarding "not tolerating the use of bailout funds and all forms of Hajj financing that are contrary to the fulfillment of the rules of istitha'ah and make the Hajj queue list longer" (Hafid et al. 2022). The Ministry of Religious Affairs' step in issuing a legal product in order to regulate the financing of the initial Hajj deposit or Hajj bailout is a step that is appropriate considering the many problems caused by the existence of such financing (Nurasiah Jamil dan Mulyana 2021). However, this still needs to be harmonized with other aspects that intersect with the financing of the initial deposit of Hajj, especially the banking aspects which are the authority of the Financial Services Authority which issues legal products, so that later the Ministry of Religion's very good steps in controlling the financing of the initial deposit of Hajj can be maximized and have legal certainty, do not cause problems in other sectors and provide benefits for the people.

Based on this, the author through this research seeks to provide an effort to harmonize the law of Hajj initial deposit financing, between the policies that oversee the Hajj initial deposit financing product in the context of developing Islamic banking product innovation in this case the regulations issued by the Financial Services Authority and the policy of the Ministry of Religion as the person in charge of organizing the Hajj in Indonesia, with the formulation of the problem: first, how is the practice of Hajj initial deposit financing in Tanjungpinang City; second, how is the effort to harmonize the law of Hajj initial deposit financing in Tanjungpinang City?

The type of research used by the author is normative legal research (Cope 2023). Jonny Ibrahim explained about the normative legal research approach, that the approach taken in a normative research will allow someone who conducts research to utilize the findings of empirical law and other sciences for the benefit and analysis and explanation of law without changing the character of legal science as a normative science (Negara 2023). This research, the author uses several approaches, including: Conceptual approach, philosophical approach, statute approach.

Normative legal research requires legal materials to be processed and then analyzed to find answers to the research problems submitted, in this

study, some of the primary legal materials used by the author are as follows: 1) Law Number 21 of 2008 concerning Islamic Banking. 2) Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2008 concerning the Compilation of Sharia Economic Law. 3) Financial Services Authority Regulation Number 13 /POJK.03/2021 concerning the Implementation of Commercial Bank Products. 4) Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 13 of 2021 concerning the Implementation of Regular Hajj. 5) Regulation of the Minister of Religion Number 24 of 2016 concerning Amendments to Regulation of the Minister of Religion Number 30 of 2013 concerning Deposit Receiving Banks for Hajj Pilgrimage Costs. 6) Fatwa of the National Sharia Council-Majelis Ulama Indonesia (DSN-MUI) Number 29/DSN-MUI/VI/2002 concerning Financing Hajj Management for Sharia Financial Institutions. 7) Fatwa of the Indonesian Ulema Council Number: 004/MUNAS X/ MUI/XI/2020 Regarding Payment of Initial Hajj Deposits with Debt and Financing.

Secondary legal materials are legal materials consisting of legal books or journals containing basic principles (legal principles), views of legal experts (doctrine), legal research results, legal dictionaries and legal encyclopedias related to the financing of the initial deposit of Hajj. Meanwhile, tertiary or non-legal legal materials are materials that provide support for primary legal materials and secondary legal materials in the analysis process. (Rahmad 2019) As for tertiary or non-legal legal materials in this research such as Linguistic Dictionaries, Islamic Encyclopedia and tertiary or non-legal legal materials related to the problems of this research. (Adiyanta 2019)

This research is also supported by primary data obtained from the field. This research was conducted in the city of Tanjungpinang, considering the institutional system of Islamic banking in this case Bank Muamalat Tanjungpinang branch office and the Ministry of Religion in this case the Regional Office of the Ministry of Religion Riau Islands, has the same style and characteristics as other cities, so the determination of the region or location is determined by considering time and cost. Primary data in question is obtained from sources and informants selected by researchers, namely: head of the Muamalat bank branch KC Tanjungpinang, Head of the Regional Office of the Ministry of Religion of Riau Islands, and people who have done the initial deposit financing of Hajj and who have not done the initial deposit financing of Hajj in Tanjungpinang city.

Given that this research is normative legal research, the author uses data collection techniques for legal materials by means of library research (Song et al. 2023). The data collected in this literature research are primary, secondary and tertiary legal or non-legal materials as described above. In addition, this research is also supported by interview data collection techniques to several sources and informants, including the head of the Tanjungpinang KC Muamalat bank branch, the Head of the Riau Islands Regional Office of the Ministry of Religion, and people who have made initial Hajj deposit financing and who have not made initial Hajj deposit financing in Tanjungpinang city. After all the data is collected, the authors then process and analyze the data. Data analysis is a series of activities to examine, group, systematize, interpret and verify data so that a phenomenon has social, academic and scientific value. Miles and Huberman suggested three stages that must be done in analyzing qualitative research data, namely: data reduction, data presentation, and verification (Paasch and Paulsson 2021).

Data collection began with a document study of legal materials on Hajj initial deposit financing and continued with interviews with sources and informants. The analysis of legal materials was poured in the form of descriptive narratives so as to produce the right conclusions. For the interview data, the researcher conducted a data processing process starting from making interview transcripts, and then the author reduced the data in the form of narrative descriptions related to the issues raised and then sought conclusions. This flow of analysis allows researchers to formulate conclusions that are correct and can be methodologically accounted for.

### **Hajj Initial Deposit Financing Practices in Tanjungpinang City**

This research makes Bank Muamalat as an object to see the practice of financing the initial Hajj deposit in Tanjungpinang City which has the status of a Hajj Implementation Fee Deposit Receiving Bank (BPS BIPIH) which re-launched a ProHajj Multipurpose Financing product in August 2020. According to the statement of the Head of the Bank Muamalat KCP Tanjungpinang Branch, the beginning of this product was launched with the number of customers reaching dozens of initial customers, then in 2021 there was a decline in customer interest with a dozen customers, due to the prolonged Covid-19 which made every marketing activity and other activities limited, so that the government issued a policy of prohibition in performing the hajj pilgrimage at that time. This is in accordance with the decision of the minister of Religion

which stipulates the cancellation of the departure of pilgrims on the 1442H/2021M pilgrimage for Indonesians who use the Indonesian hajj quota and other hajj quotas, this decision takes effect on the date set, namely June 05, 2021. However, in early 2022, customer interest increased until it reached dozens of customers again (Interview with Branch Head of Bank Muamalat Tanjungpinang Branch Office on April 13, 2023).

ProHajj Multipurpose Financing is a superior product of Bank Muamalat focusing on financing used for the number of seats (booking seats) for the customer's pilgrimage and must have been paid off by the customer before performing the pilgrimage. Hajj management services provided by Bank Muamalat to customers from preparation or financial planning consultations, registration and input of the Computerized Integrated Management System for Umrah and Hajj (SISKOHAT), as well as management of obtaining Hajj portions at the Ministry of Religion, so that prospective Hajj customers can leave for the holy land with strong and healthy conditions *wal afiat* as said by Relationship Manager Bussines Bank Muamalat KCP Tanjungpinang (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 23, 2023).

ProHajj Multipurpose Financing at Bank Muamalat is intended to provide financing for the Hajj portion with the terms submitted are not too complicated, so it aims to help Muslim communities who want to register for Hajj but do not have the funds to register for Rp. 25,000,000, - through this program Bank Muamalat is ready to help provide Hajj fund financing for the community in order to get a Hajj portion as soon as possible, then the customer concerned can install installments of the fund in accordance with the predetermined period based on ability. In the same statement by Relationship Manager Bussines Bank Muamalat KCP Tanjungpinang that ProHajj Multipurpose financing products have a period ranging from 12 to 60 months (1-5 years). This product uses two contracts, namely the *wakalah bil ujroh* and *qardh* contracts (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 23, 2023).

Bank Muamalat, which has been officially acquired by the Hajj Financial Management Agency (BPKH) together launched the latest product, namely the ProHajj Multipurpose financing product, where this product has been reviewed and approved by the Sharia Supervisory Board (DPS) and the Financial Services Authority (OJK). ProHajj Multipurpose Financing is a financing product for the initial Hajj deposit given to customers with the aim of immediately obtaining a

Hajj portion. This program is long-term, namely 1-5 years (12-60 months) for depositing monthly installments, so that customers can pay off installments in advance and have no debt when performing the pilgrimage as explained by the Branch Manager of Bank Muamalat KCP Tanjungpinang. (Interview with Branch Head of Bank Muamalat Tanjungpinang Branch Office on April 13, 2023).

The ProHajj Multipurpose product uses a multiservice *ijarah* contract which is financing in collaboration with the Ministry of Religion of the Republic of Indonesia in carrying out the management of the Hajj pilgrimage using two contracts, namely a *wakalah bil ujroh* contract which is the granting of power to an agency in the form of money and a *qardh* contract which is a loan given to customers with the condition that they must pay according to the specified time and agreed nominal. Where the legal basis for *qardh* and *ijarah* is in accordance with the Fatwa of DPS and DSN-MUI (No. 112/DSN-MUI/IX2017) concerning multiservice *ijarah* contracts, emphasizing the rules in *ijarah* contracts, including that the contract or transaction is not in an act of sin, which means that Multiguna ProHajj financing is not classified as a usury product because financing uses a *wakalah bil ujroh* contract and settlement using a *qardh* contract. Where *ujroh* (admin fee) at the beginning worth Rp. 1,000,000, - paid by the customer to get the Hajj portion and financing Rp. 25,000,000, - from Bank Muamalat for customers directly deposited to the Ministry of Religion and monthly installments paid to Bank Muamalat up to a total of Rp. 40,000,000, -. The difference from the payment will be deposited directly from Bank Muamalat to the Hajj Financial Management Agency (BPKH) to subsidize the departure of the next pilgrimage as explained by Relationship Manager Bussines Bank Muamalat KCP Tanjungpinang (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 23, 2023).

The effort was made by Bank Muamalat to help ease the burden of costs that must be incurred by prospective pilgrims who want to perform the pilgrimage who do not have enough funds to register with the Ministry of Religion to get a portion of the hajj departure. The existence of this product helps build intentions and answer the longing of the Indonesian Muslim community to perform the pilgrimage in the holy land of Makkah and Medina. In the same statement by Relationship Manager Bussines Bank Muamalat KCP Tanjungpinang that the hajj solution with Bank Muamalat is: opportunity to get Hajj quota as soon as possible/early (21-55 years old); financing fund of IDR



25,000,000; and make a sincere intention, *Insha'Allah*, Allah will make it easy for you to perform Hajj (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 28, 2023).

According to the statement of Relationship Manager Bussines Bank Muamalat KCP Tanjungpinang that the advantages of Multiguna ProHajj financing products are: hajj registration can now only be done at an Islamic Bank; only with an ujroh fee of Rp. 1,000,000, - the customer already has a Hajj portion or Hajj queue number at the Ministry of Religion; hajj pilgrims only need to come once to Bank Muamalat and the Ministry of Religion to register for Hajj; can cover or invite 4 members of the nuclear family including parents, spouses, siblings, biological children and in-laws; for the elderly can apply for accelerated departure after waiting for at least 3 years; and he estimated waiting period for Hajj in Tanjungpinang city is 20-25 years. The more Hajj enthusiasts in a region or city, the longer the waiting period determined by the Government of Indonesia and Saudi Arabia (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 28, 2023).

Relationship Manager Bussines Bank Muamalat KCP Tanjungpinang also provides further explanation that the terms of Multiguna ProHajj financing are: Indonesian citizen (WNI); individuals with minimum age at the time of financing is 21-55 years old; for employees, young entrepreneurs, professionals, prepare ID card files, NPWP, mutasi rek last three months; for Civil Servants (PNS), prepare ID card, NPWP and salary slip. For (PNS) who are 50 years old and above, they must prepare a certificate of active period or retirement, because financing at Bank Muamalat has an age limit of up to 55 years; for Bank Muamalat customers who want to take part in the ProHajj Multipurpose program, who do not have a Bank Muamalat account and are civil servants are required to make a certificate of income. And vice versa, if the customer already has an ATM or Bank Muamalat account then it can include a KTP only; sign an account debit authorization letter for payment of principal financing and fees; debit power of attorney for payment of qard and ijarah installments, administrative fees and other fees if any (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 29, 2023).



Figure 1. Hajj Multipurpose Financing

Then, the benefits and risks of Multiguna ProHajj financing are also explained by the Relationship Manager of Bank Muamalat KCP Tanjungpinang. Customers will get the benefits of Multiguna ProHajj, namely: customer rights and obligations, for the customer's right to get Hajj financing funds of Rp. 25,000,000, - and get Hajj registration services while the customer's obligation must pay the agreed installments of course by paying principal installments and insurance; rights and Obligations of Bank Muamalat, serving Hajj financing customers, receiving and storing Hajj Information Management Agency (BPIH) and the original Asset Disclosure Notice (SPPH) as collateral from the customer until the repayment of Hajj financing funds. Hajj fund financing products that as long as the customer is treated with good service starting from providing information, the flow of applications until getting a Hajj portion at the Ministry of Religion. Hajj installment deposits can also be made at the Bank Muamalat office or through the mobile banking application.

Then, in his further statement, Relationship Manager Bussines Bank Muamalat KCP Tanjungpinang said that what happens if the customer is in arrears in his installments, namely: customers get their Hajj portion faster; no fixed asset collateral; there is a life insurance cover, according to terms and conditions; If the customer has paid installments for 3 years and dies at that time then: status at Bank Muamalat is the cost of Rp. 25,000,000, - PAID; status at Kemenag is the heirs have the right to withdraw funds or continue without

paying and only waiting for the call for Hajj (paying repayment); continue by waiting for departure without starting to wait from the beginning; the cost of Hajj is Rp. 80,000,000, - up to Rp. 100,000,000, -. But currently the cost charged to the congregation is only half, the other half is subsidized by BPKH which comes from the customer's ujroh payment every month through the ProHajj Multipurpose Financing program (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 29, 2023).

Then, in his further statement, Relationship Manager Bussines Bank Muamalat KCP Tanjungpinang which occurs if the customer is in arrears in his installments, namely: if for 1 month (30 days) the customer does not pay the installment then, the bank will sanction the collectibility, meaning that the customer is included in the classification of the possibility of receiving back funds. If for 3 months the customer does not pay the installment, the bank will sanction by withdrawing or canceling the Hajj portion sheet that has been given to the customer (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 23, 2023).

Furthermore, there are several financing products at Bank Muamalat KCP Tanjungpinang that can be enjoyed by customers who will register to become Hajj candidates including: Hijrah Multipurpose (ProHajj). Hijrah Multiguna financing product is a financing facility to meet consumptive needs. Multipurpose financing applications that comply with Sharia Principles with flexible installments. One of the objectives of this product is financing for the initial Hajj deposit given to customers with the aim of helping prospective Hajj customers to get their Hajj portion as soon as possible (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 23, 2023).

SIMULASI ANGSURAN MULTIGUNA HAJI						
Ujroh Awal		1.000.000				
YANG MAMPU BELUM TENTU TERPANGGIL, YANG TERPANGGIL INSYAALLAH DIMAMPUKAN						
plafond	porsi	TAHUN				
		1	2	3	4	5
5.000.000	1	631.125	420.854	354.930	337.343	322.325
10.000.000	1	1.047.791	629.187	493.819	441.510	405.658
15.000.000	1	1.464.458	837.520	632.708	545.677	488.991
20.000.000	1	1.881.125	1.045.854	771.597	649.843	572.325
25.000.000	1	2.297.791	1.254.187	910.486	754.010	655.658
50.000.000	2	4.595.125	2.508.145	1.820.819	1.507.906	1.311.225
75.000.000	3	6.892.458	3.762.104	2.731.152	2.261.802	1.966.791
100.000.000	4	9.189.791	5.016.062	3.641.486	3.015.697	2.622.358

**TANPA JAMINAN !!!**

Hubungi  
0813 6403 4401 Sivi

OTORITAS JASA KEUANGAN  
**OK**  
Bank Muamalat

Figure 2. Hajj Multipurpose Installment Simulation

KPR Hijrah is a home ownership financing that makes it easy for you to realize a dream home that InsyaAllah is more blessed, easy, comfortable and in accordance with sharia. As for some Hajj products at Bank Muamalat including: Number one Hajj cash is when prospective pilgrims register for Hajj using personal funds or paid in cash to the Hajj deposit receiving bank. Cash Hajj is like doing Hajj savings with very easy conditions, just attach a KTP/SIM and submit a minimum initial deposit in accordance with the provisions of each bank. The cost of cash Hajj is cheaper than Hajj plus around Rp. 25,000,000, but the waiting period is longer, around 10-25 years of departure (Interview with Relationship Manager Bussines Bank Muamalat Tanjungpinang Branch Office on June 23, 2023).

Then, Hajj savings a sharia savings account that is intended as funding for Hajj purposes. This savings account uses Wadiah contract. Whenever customers want to go on Hajj, Tabungan Muamalat iB will help customers plan easily. Minimum deposit of Rp 50,000, Free administration fee, and SISKOHAT Ministry of Religion to get certainty to get quota / portion of Hajj departure. Then the last one is Hajj Plus is a special Hajj where the registration is facilitated by banks and travel companies that have registered to run Hajj plus. However, it is more expensive than regular Hajj at around 5,000 dollars (IDR 78,000,000) but the waiting time is shorter at around 5-7 years.

Based on an interview with the head of Bank Muamalat KC Tanjungpinang that Bank Muamalat again dismissed Multiguna ProHajj financing products on November 22, 2022 through the memorandum of the President Director of Bank Muamalat to the branches of Bank Muamalat regarding the dismissal of Multiguna Prohajj financing products. The Head of Bank Muamalat KC Tanjungpinang regretted the termination of this Multiguna Prohajj product again because it was one of the mainstay products of Bank Muamalat. This is inseparable from the Ministry of Religion as the person in charge of organizing the Hajj in Indonesia assessing that there are irregularities in the distribution of financing for the initial deposit of Hajj by BPS BIPIH, there is still a period of financing for the initial deposit of Hajj given too long exceeding one year as per the Financial Services Authority Regulation No. 13 /POJK.03/2021 concerning the Implementation of Commercial Bank Products. The Ministry of Religious Affairs also considers that the *isthito'ah* or capability requirement in this case is not fulfilled and seeing the high public interest in this product can result in chaos in the Hajj queue system (Nandavita and Islahuddin 2022).

Bank Muamalat in order to increase the financing portfolio in the retail segment, especially consumer products such as multipurpose financing. Multiguna ProHajj initial hajj deposit financing that stops is then replaced with Multiguna ProHajj Plus financing. Multiguna ProHajj Plus is a financing product for the management of special Hajj portion registration or commonly known as ONH Plus. Customers who register for Hajj using ProHajj Plus will immediately get a special Hajj portion number in the current year. The ProHajj Plus application process is very easy and the portion management will be assisted by the Special Hajj Organizer (PIHK) who has collaborated with Bank Muamalat.

ProHajj Plus is in accordance with sharia principles where the basis is the DSN-MUI fatwa (No. 112/DSN-MUI/IX2017) on Multijasa Ijarah Akad. In addition, this product has also been reviewed and approved by the Sharia Supervisory Board (DPS) of Bank Muamalat. The presence of ProHajj Plus is also a form of Bank Muamalat's commitment to support the BPKH program, namely MINA (Let's Hajj While Young) or known as the Young Hajj Movement. By using ProHajj Plus, the departure time will be much faster than the regular Hajj which is only about 6-7 years (Pazeroma 2023).

### **Efforts to Harmonize Hajj Initial Deposit Financing Law in Tanjungpinang City**

The formation of a legal product, there are various things that need to be considered, including paying attention to the hierarchy of laws and regulations, the principles of the formation of laws and regulations, content material, and other legal principles so that the legal products to be formed do not contradict each other or do not overlap arrangements with other laws and regulations. In other words, it is necessary to harmonize and synchronize in the formation of a legal product. The implementation of harmonization and synchronization of a legal product is not limited to the formation of a legal product, but the implementation of harmonization and synchronization is also carried out on legal products that have been formed. Synchronization and harmonization are carried out because of the legal dynamics of the formation or promulgation of a new legislation that causes some legal products to be disharmonious or out of sync with the newly promulgated legislation. Regarding the law of Hajj initial deposit financing products, researchers found several policies that overshadow this product, namely Law Number 21 of 2008 concerning Islamic Banking article 19 paragraph 1 of the business activities of Islamic Commercial Banks,

which opens opportunities for Islamic banking to always innovate in its products to meet the needs of the community, the Financial Services Authority through the Financial Services Authority Regulation (POJK) Number 13 /POJK.03/2021 concerning the Implementation of Commercial Bank Products in basic bank products which are fund distribution activities, provides an opportunity to carry out Hajj management financing through Hajj initial deposit financing (Rizal and Humaidi 2021).

In addition, the Fatwa of the National Sharia Council-Majelis Ulama Indonesia (DSN-MUI) Number 29/DSN-MUI/VI/2002 concerning Financing Hajj Management for Islamic Financial Institutions and Fatwa of the Indonesian Ulema Council Number: 004/MUNAS X/ MUI/XI/2020 concerning Payment of Initial Hajj Deposits with Debt and Financing, further strengthens the policies that overshadow the initial Hajj deposit financing product in Islamic banking, namely: First, General Provisions. In this fatwa what is meant by: 1) Debt is property obtained by someone with the stipulation that he will return the value of that property to the debtor. 2) Financing is a facility to provide funds obtained from financial institutions.

Second, Legal Provisions. The legal provisions in this fatwa are: 1) Payment of the Hajj Initial Deposit with money from debt is permissible (mubah), provided that: a. it is not a ribawi debt; and b. the person who owes has the ability to repay the debt, among others, as evidenced by the ownership of sufficient assets. 2) Payment of the Hajj Initial Deposit with the proceeds of financing from a financial institution is permissible under the following conditions: a. using a sharia contract; b. not made at a Conventional Financial Institution; and c. the customer is able to repay, among others proven by ownership of sufficient assets. 3) Payment of the initial Hajj deposit with debt and financing funds that do not meet the conditions as referred to in numbers 1 (one) and 2 (two) is haram; Third, Recommendations. This fatwa provides recommendations, namely: 1) The government together with stakeholders in the management and organization of the Hajj pilgrimage need to synergize in the preparation of policies for Hajj registration for the community. 2) The government needs to anticipate and administer the Hajj registration so that the very long Hajj queue will not cause madharat. 3) Muslims should perform Hajj after *istitha'ah* and not force themselves to perform Hajj before they are truly *istitha'ah*; Fourth, Closing Provisions. This fatwa contains several concluding provisions, namely: 1) This fatwa shall come into effect on the date of its enactment, provided that if in the future it turns out that there is an error, it will

be corrected and improved accordingly. 2) In order that every Muslim and those who need it may know about it, all parties are encouraged to disseminate this fatwa.

In addition, the Financial Services Authority Regulation No. 13 /POJK.03/2021 concerning the Implementation of Commercial Bank Products. Number II. Basic Bank Products which are Fund Disbursement Activities, in table Number 11, namely Hajj Management Financing is financing provided by the Bank for customers in the context of managing Hajj with the contracts used *Ijarah* and *Qardh*. The requirements in this product are: a.) The bank has been designated as BPS BPIH by the competent authority, b) the bank in providing Hajj management services may not require the provision of Hajj registration financing; c) in the event that the Bank provides Hajj registration financing: 1) the amount of Hajj management fee should not be based on the amount of Hajj registration financing provided by the Bank to the customer. 2) The Bank conducts customer analysis which, among others, includes personal aspects in the form of character analysis and/or financial aspects; d) The Bank and the customer put the financing agreement in a written agreement and can also be done verbally and documented actions/actions and can be done electronically based on the agreement of the parties in accordance with Sharia Principles and the provisions of laws and regulations; e) The Bank applies product information transparency and customer protection in accordance with applicable regulations; f) The Bank has policies and procedures for risk mitigation; g) The Bank has an adequate account recording and administration system.

Some characteristics of this product are: a) The Bank can charge *ujrah* for Hajj arrangements. b) For Hajj arrangements, the Bank can provide Hajj registration financing or not provide Hajj registration financing. In the event that the Bank provides Hajj registration financing, then: 1) the maximum period is 1 (one) year and cannot be extended; 2) the customer is obliged to repay the Hajj registration financing provided before the time of Hajj departure; 3) repayment of Hajj registration financing can be done periodically or all at once at the end; 4) the Bank may request collateral in the form of proof of Hajj registration and/or power of attorney for cancellation of Hajj registration; and 5) the Bank may charge an administration fee to the customer in nominal form and is not linked to the amount and period of Hajj bailout.

Some Fatwas that need to be considered in this product, namely: a) Fatwa DSN-MUI Number 19/DSNMUI/IV/2001 on *Al-Qardh*. b) Fatwa DSN-MUI Number 29/DSNMUI/VI/2002 on Financing Hajj Management of Islamic



Financial Institutions. c) Fatwa DSN-MUI Number 79/DSNMUI/IV/2001 on Qardh by Using Customer Funds. d) DSN-MUI Fatwa Number 43/DSNMUI/VIII/2004 concerning Compensation (*Ta'widh*). e) DSN-MUI Fatwa Number 129/DSNMUI/VII/2019 concerning Real Costs as *Ta'widh* Due to Default.

The author based on interviews with the Head of the Office and Employees of the Ministry of Religious Affairs of Riau Islands Province, stated that the Ministry of Religious Affairs still prohibits providing bailout funds or other names such as financing the initial deposit of Hajj in Islamic banking, because the Ministry of Religious Affairs considers that the *isthito'ah* or ability requirement in this case is not fulfilled and high public interest in these products can result in long queues and problems such as the settlement of Hajj bailout financing that has not been completed (Interviews with the Head of Office and Employees of the Ministry of Religious Affairs of Riau Islands Province on April 12, 2023, June 22, 2023, and July 03, 2023). These problems became the basis for the Ministry of Religious Affairs to issue a series of regulations with the aim of curbing the financing of the initial Hajj deposit, including Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 13 of 2021 concerning the Implementation of Regular Hajj and Regulation of the Minister of Religious Affairs Number 24 of 2016 concerning Amendments to Regulation of the Minister of Religious Affairs Number 30 of 2013 concerning Banks Receiving Deposits of Hajj Pilgrimage Costs.

The Ministry of Religious Affairs clearly prohibits BPS BIPIH as Article 6A of PMA No. 24 of 2016 concerning Amendments to PMA No. 30 of 2013 concerning Banks Receiving Deposits for Hajj Implementation Costs, expressly prohibits BPS BIPIH from channeling Hajj bailout financing directly or indirectly, as well as Article 4 of PMA No. (1) The initial deposit of BIPIH as referred to in Article 3 paragraph (1) is not a bailout or other name either directly or indirectly sourced from BPS BIPIH. (2) In the event that BPS BIPIH is known to provide bailout funds or other names as referred to in paragraph (1), the Minister may block and/or revoke the Siskohat user id after clarification (Hasan et al. 2024). The Ministry of Religious Affairs is implicitly mentioned in Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah as the duty and authority in regulating its implementation. So that based on the mandate of the law, the organization of Hajj is the responsibility of the Ministry of Religion. In addition, there are Recommendations of the Indonesian Hajj



Mudzakarah in 2022, for the implementation of a better and quality Hajj, we all participants of the Indonesian Hajj Mudzakarah 1444 H / 2022 AD. Recommend: the government should make early preparations for the 1444 H./2023 M Hajj, both in the preparation of services and the guidance of rituals to pilgrims; improving services to pilgrims with program innovations and improving the quality of services, both general services, worship guidance and health; the government will improve the quality of Hajj officers' skills thoroughly through a competency-based selection process; encourage the government to seek the return of the normal quota in the organization of the Hajj in 1444 H/2023 M. in order to reduce the length of the Hajj queue (waiting list); to protect and ensure the implementation of DAM payments in accordance with fiqh provisions, the government needs to regulate these payments through a designated institution; give special attention to elderly pilgrims to get priority departure in order to reduce the risk of withdrawing the initial deposit of BIPIH; not tolerating the use of bailout funds and all forms of Hajj financing that contradict the fulfillment of istitha'ah principles and make the Hajj queue list longer; considering the large use of the benefit value of Hajj funds in Hajj operations in 1443 AH / 2022 AD for the sustainability of the Hajj pilgrimage in the future and the fulfillment of istitha'ah requirements, it is necessary to adjust the cost of Hajj travel (BIPIH); in order to convey correct and comprehensive information related to the implementation of Hajj and Umrah to the public, the government needs to conduct massive socialization by involving relevant stakeholders (Khair, n.d.).

Based on the above, it appears that there is disharmonization or unsynchronized existing laws and regulations. A regulation must be made by an institution that is authorized to make such regulations.. Based on the Theory of Authority from Philipus M Hadjon, there are only two ways to obtain authority, namely Attribution (delegation of authority that occurs in general as original authority obtained from law) and Delegation (authority resulting from delegation of previous authority) (Fuadi and Diniyanto 2022). From this theory of authority, the material regulated, namely the prohibition of financing the initial deposit of Hajj or Hajj bailout, is the realm of banking operations where according to Article 1 paragraph (25) of Law Number 21 of 2008 concerning Sharia Banking, the definition of financing is as follows:

Financing is the provision of funds or bills that are equated with it in the form of: profit sharing transactions in the form of *mudharabah* and *musyarakah*; lease transactions in the form of *ijarah* or lease purchase in the form of *ijarah*

*muntahiya bittamlik*; sale and purchase transactions in the form of *murabahah*, *salam*, and *istishna'* receivables; borrowing and lending transactions in the form of *qardh* receivables; and lease transactions in the form of *ijarah* for multi-service transactions based on agreements or agreements between Sharia Banks and / or UUS and other parties that require the party being financed and / or given funding facilities to return the funds after a certain period of time in exchange for *ujrah*, without reward, or profit sharing.

The limitation of financing, which is the domain of banking, is the basis that the prohibition of financing the initial deposit of Hajj or Hajj bailout is the domain of the authority of the Financial Services Authority as stipulated in Article 6 of the Financial Services Authority Law Number 21 of 2011 concerning the Financial Services Authority (OJK): "OJK carries out the task of regulating and supervising: a. financial services activities in the Banking sector; b. financial services activities in the Capital Market sector; and c. financial services activities in the Insurance sector, Pension Funds, Financing Institutions, and Other Financial Services Institutions". Based on this article, the prohibition of the financing of initial Hajj deposits or Hajj bailouts, which is one part of the financial services activities in the banking sector, is the task of the Financial Services Authority. The duties of the Ministry of Religious Affairs in relation to the implementation of the Hajj pilgrimage are only around the implementation stage of the Hajj pilgrimage as stipulated in Article 30 to Article 42 of Law Number 8 of 2019 which includes Hajj Registration activities, Hajj Travel Document Services, Guidance, Health Services, Transportation Services, Accommodation Services, Provision of Consumption, and protection of pilgrims.

Articles 30 to 42 of Law No. 8/2019 do not regulate the mechanism of Hajj bailout financing. Instead, Article 41 paragraph (3) states that in the context of protecting pilgrims, the Ministry of Religious Affairs must coordinate with relevant institutions (in this case the OJK), as formulated in Article 41 paragraph (3) of Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah as follows: "In providing protection to Hajj pilgrims and Hajj officers as referred to in paragraph (1), the Minister shall coordinate with relevant ministries and institutions."

So that the regulations issued by the Ministry of Religion regarding the prohibition of bailouts or financing of the initial deposit of Hajj must be balanced with regulations from the Financial Services Authority (OJK) which has the authority in the realm of regulation and supervision of Islamic banking

in order to have legal certainty and create the benefit of the people. Efforts to regulate the prohibition of Hajj initial deposit financing through a Minister of Religion Regulation according to the theory of I.C Van Der Vlies and A. Hamid S. Attamimi and according to the Principles of the Formation of Legislation stipulated in Article 5 of Law Number 12 of 2011 concerning the Formation of Legislation, there are several things that must be harmonized or synchronized and addressed, especially in the formal requirements of the Minister of Religion Regulation which is not made by an authorized institution as according to the theory of authority from Philipus M. Hadjon which states that the attributive authority to regulate banking activities is in the Financial Services Authority. This is important to be addressed because the authority here is very crucial as the theory stated by F.A.M. Stroink in Abdul Rasyid Thalib which states that there is no correct regulation if it is not based on the appropriate authority (Farid, Husni, and Pakarti 2022).

## **Conclusion**

This study concluded that the practice of financing the initial deposit of Hajj was re-launched by Bank Muamalat in August 2020 through the ProHajj Multipurpose Financing product. However, then on November 22, 2022, the termination of the ProHajj Multipurpose financing product was carried out through the memorandum of the President Director of Bank Muamalat to the branches of Bank Muamalat regarding the termination of the Prohajj Multipurpose financing product including KCP Tanjungpinang. This is inseparable from the Ministry of Religion regulations which clearly prohibit BPS BIPIH from issuing Hajj Initial Deposit Financing products.

Harmonization steps in the formal requirements of the regulation of the Ministry of Religion of the Republic of Indonesia are a must based on the theory of authority, regulations issued by the Ministry of Religion regarding the prohibition of financing the initial deposit of Hajj or bailout funds must be balanced with regulations from the OJK which has the authority in the realm of regulation and supervision of Islamic banking in order to have legal certainty and the creation of the benefit of the people. So, in the end, the Muslim community who will register themselves as Hajj candidates will get clarity of information and law without any feelings arising. In addition, the clarity of the rules is also considered to make the community / Hajj candidates not confused.

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### **Interview**

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