

## **Legal Study of Organizing Umrah Pilgrimage Trips Without Permits from a Criminological Perspective (Study of Medan District Court Decision Number: 1216/Pid.B/2019/PN.Mdn)**

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### **ABSTRACT**

*The aim of this research is to: examine and analyze the causes of organizing Umrah pilgrimage trips without permission and to examine and analyze the criminal law policy in organizing Umrah pilgrimage trips without permission. The approach that will be applied in this research uses a normative approach (Legal Research), namely the Statute Approach and the case approach with qualitative methods. The results of the research show that there are several reasons behind the implementation of the Umrah pilgrimage without permission, especially due to the factor of deviation from legal behavior, which is a person's ability to restrain themselves from achieving their needs by violating the norms that apply in society, the factor of the desire to fulfill their daily needs by means of -a method that is considered easier and faster; the pressure of high living needs; difficulty in finding a better income so they take shortcuts; the family knows about this incident (in this case the husband) but does not give a warning that the action is wrong; and the opportunities created due to the large number of Muslim communities in Indonesia who want to undertake the Umrah pilgrimage. The criminal law policy is an effort to deal with organizers of Umrah pilgrimages without permission from non-penal and penal policies. This non-penal policy can be implemented with crime prevention efforts in the form of administrative sanctions such as warnings, fines, freezing of business permits and revocation of business permits, apart from that, preventive efforts can also be carried out by providing socialization regarding officially registered PPIU and carrying out massive reporting about the rise of criminal acts. especially organizing Umrah trips without permission. Penal policy is a criminal sanction/punishment that places greater emphasis on corporal sanctions.*

**Keywords :** Umrah, Permit, Criminology

### **INTRODUCTION**

Umrah is one of the laws in the Islamic religion with the aim of getting closer to Allah SWT which is stated in Article 1 paragraph (9) of Government Regulation Number 79 of 2012 concerning the Implementation of Law Number 13 of 2008 concerning the Implementation of the Hajj Pilgrimage (PP No. 79/2012 ) stated that the Umrah pilgrimage is an Umrah carried out outside the Hajj season, which since the beginning of January 2022 has seen the realization of Umrah pilgrims departing for Saudi Arabia reaching 4,674 people

Based on data from the Muslim Association of Hajj and Umrah Organizers of the Republic of Indonesia (AMPURI), the number of Umrah pilgrims from Indonesia reached 948 thousand in 2018-2019 or 1440 Hijriah out of a total of 4.4 million pilgrims, where Indonesia is in second place in contributing to Umrah pilgrims. 21.44%, making it an opportunity for many people to become entrepreneurs in the Umrah travel sector, which if we look back, in the 2015-2016 period, reached 677,509 people; then in the 2016-2017 period it increased again by 876,246 people; in the 2017 - 2018 period it reached 1,005,336 people; and experienced a slight decrease in the 2018-2019 period as many as 974,650 people. Meanwhile in 2020, there were around 50,000 prospective Umrah pilgrims who canceled their departure due to the Covid-19 pandemic conditions for an indefinite period of time and 530,898 Umrah pilgrims who departed before the pandemic hit Indonesia.

Seeing the large population of Muslims in Indonesia and especially in the Medan city area, North Sumatra Province, based on data from BPS North Sumatra Province, the population of Medan City who are Muslim is 1,641,401 people<sup>6</sup> which makes Muslims the majority in the Medan City area. The Indonesian government issued a regulation to regulate the Umrah pilgrimage, namely Law No. 13 of 2008 concerning the Implementation of the Hajj Pilgrimage which was later changed to Law No. 8 of 2019 concerning the Implementation of the Hajj and Umrah which regulates the implementation of Umrah pilgrimage trips where the organizer of the Umrah pilgrimage must be registered as an authorized travel agent and there are also criminal sanctions for Umrah pilgrimage organizers (Umrah travel agents) who do not carry out their obligations.

Of course, the Umrah pilgrimage requires a lot of money, where the cost is around Rp. 28,000,000 (twenty eight million rupiah)<sup>7</sup> for 1 (one) Umrah pilgrim so we need to be alert to the presence of individuals who try to take advantage in ways that violate the law, one example of which is the case that occurred in Medan, North Sumatra where The defendant has been found guilty by the Medan District Court through decision number: 1216/Pid.B/2019/PN.Mdn.

In the Medan District Court Decision number: 1216/Pid.B/2019/PN.Mdn it is known that the Defendant is Debby Sinta Dewi Sinaga as Director of PT. Farnaz Utama Islamic Tour & Travel has been found guilty of committing the crime of "intentionally and without the right to act as an organizer of the Umrah pilgrimage" where the defendant did not have a permit to organize the Umrah pilgrimage, causing the victim Rita Nazmah Damanik to suffer a loss of Rp. 102,000,000,- (one hundred and two million rupiah).

The aim of this research is to: examine and analyze the causes of organizing Umrah pilgrimage trips without permission and to examine and analyze the criminal law policy in organizing Umrah pilgrimage trips without permission.

## **METHODS**

The approach that will be applied in this research uses a normative approach method (Legal Research), namely the Statute Approach and the case approach method. Data retrieval and collection used is literature study to look for concepts, theories, opinions or discoveries that are closely related to the subject matter which can be in the form of statutory regulations, scientific works of scholars and so on. Processing, analysis and construction of normative legal research data is carried out by analyzing legal rules followed by the construction stage by inserting articles into categories based on the meanings of the legal system. The data that has been collected will then be analyzed using qualitative methods.

Inductive qualitative methods are used in research that examines or analyzes decisions in cases of criminal fraud because conclusions are drawn from existing data and not from theory or testing theories. This approach will provide an in-depth description of the situation or process being studied as it really is. This research still has initial assumptions as a description of the problem, but this approach will examine efforts to solve the problem by creating a hypothesis.

## **RESULTS AND DISCUSSION**

**Factors causing Umrah services to occur without permission in the Medan District Court Decision Number: 1216/Pid.B/2019/PN.Mdn**

Looking at the Medan District Court Decision Number: 1216/Pid.B/2019/PN.Mdn in the case of organizing an Umrah pilgrimage trip without a permit, several reasons can be analyzed for the criminal perpetrator (or in this case the defendant) committing a criminal act by using the mode of travel agency. Umrah, namely:

1. Desire Factor. The desire factor is a very strong will that drives a person to commit a criminal act which arises from the inner intentions of the perpetrator/defendant himself. The desire factor is often rooted in the perpetrator's desire to commit a crime to improve his life or meet his living needs in a way that is considered easier and faster.
2. Family Environmental Factors. As the most influential part in forming a person's character and individuality, the family has an important role in maintaining and regulating a person's behavior. However, in the Medan District Court Decision Number: 1216/Pid.B/2019/PN.Mdn, it is known that the person acting as the owner of PT. Farnaz Utama Islamic is the defendant and the defendant's husband. This company is not registered and does not have an official permit as an Umrah Pilgrimage Organizer (PPIU) from the Ministry of Religion of the Republic of Indonesia. The existence of the defendant and her husband as company owners illustrates that the family (in this case the husband) has a strong role in this crime. As a family, when they find out that one of their family members has committed a crime, they should prohibit or prevent the action. There is a possibility that this will not be done because of the pressure of life's needs or daily needs that must be met.
3. Economic Factors. Poverty is the main factor in someone committing a crime. The occurrence of criminal acts using the PPIU bureau mode can be triggered by economic needs that must be met and the increasingly expensive prices of necessities from time to time. The previous income was deemed insufficient to meet the defendant's needs and the defendant had to rack his brains and work harder to meet these needs. Difficulty in finding a better and sufficient income makes the defendant take a shortcut by committing a crime.
4. Environmental factor. The environment in which a person lives is a major influence on a person's ability to commit a crime. Domiciled in a country where the majority religion is Islam is one of the supporting factors for the defendant in committing a crime under the guise of being an Umrah agent because many Muslims want to carry out the Umrah pilgrimage as a form of perfection of worship. However, as stated in the decision, PT. Farnaz Utama Islamic, which is owned by the defendant and her husband, is apparently not registered and does not have an official permit as an Umrah Pilgrimage Organizer (PPIU) from the Ministry of Religion of the Republic of Indonesia.
5. Community Factors. The community in this context is the victim of carrying out Umrah trips without permission. People who are Muslim and have good economic capabilities will definitely want to carry out one of the religious rites of Islam, namely Umrah. The great desire of the Muslim community to carry out the Umrah pilgrimage is one of the triggers for the idea of criminal acts under the guise of a fake PPIU bureau or PPIU without official permission from the government.

## **Criminal Law Policy in Organizing Umrah Pilgrimage Trips Without Permit Penal Policy**

Penal policy is a policy that empowers the criminal justice system which focuses on repressive actions after a criminal act occurs. Efforts to combat crime through penal means are operationally carried out through a criminal justice system. Two central problems in criminal policy using penal means (criminal law) are the problem of determining what actions should be made into criminal acts, and what sanctions should be used or imposed on the offender. Analysis of these two central problems cannot be separated from the integral conception between criminal policy and social policy or national development policy. This means that solving these problems must also be directed at achieving certain goals of socio-political policies that have been determined using a policy-oriented approach. This integral policy approach is not only in the field of criminal law, but also in legal development in general.

The policy of using these penal policy tools to tackle the criminal act of organizing Umrah pilgrimage trips without permission basically focuses heavily on repressive measures. The threat of imprisonment is given to perpetrators of the crime of organizing an Umrah pilgrimage without permission, this is also an effort to prevent other people who may have the intention to commit the criminal act of organizing an Umrah pilgrimage without permission so that they abandon their intentions and will not dare to do anything. This is because there are severe penalties that will be given.

Penal measures in organizing the Umrah pilgrimage are regulated in several laws, namely:

1. Law number 13 of 2008 concerning the Implementation of the Hajj  
Law number 13 of 2008 concerning the Implementation of the Hajj regulates criminal provisions in CHAPTER BPIH payments as intended in Article 22 paragraph (1) and/or as a recipient of Hajj Jemaah registration as intended in Article 26 paragraph (1) shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of a maximum of Rp. 500,000,000.00 (five hundred million rupiah). Paragraph (2): Every person who intentionally and without right acts as an Umrah pilgrimage organizer by collecting and/or dispatching Umrah pilgrims as intended in Article 43 paragraph (2) shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine maximum Rp. 500,000,000.00 (five hundred million rupiah).  
Article 64 of Law number 13 of 2008 concerning the Organizing of the Hajj reads: Paragraph (1): Organizers of the special Hajj pilgrimage who do not implement the provisions as intended in Article 40 shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah). Paragraph (2): Umrah pilgrimage organizers who do not implement the provisions as intended in Article 45 paragraph (1) will be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR. 1,000,000,000.00 (one billion rupiah).
2. Law number 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage  
Law number 13 of 2008 concerning the Implementation of the Hajj has been revoked and since April 29 2019 Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage where the articles governing criminal provisions for

Umrah pilgrimage activities are regulated in Article 122, Article 124 and Article 126. Article 122 of Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, namely: Every person who without the right acts as a PPIU by gathering and/or dispatching Umrah pilgrims, as intended in Article 115 shall be punished with a maximum imprisonment of 6 (six) years or a maximum fine IDR 6,000,000,000.00 (six billion rupiah). In Article 115 of Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage states that every person is prohibited without the right to act as a PPIU to collect and/or dispatch Umrah pilgrims.

Article 124 of Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, namely: Any person who without the right takes part or all of the Umrah Congregation's deposit, as intended in Article 117, shall be punished with a maximum imprisonment of 8 (eight) years or a maximum fine of IDR 8,000,000.000.00 (eight billion rupiah). In Article 117 of Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage states that every person is prohibited without the right to take any or all of the deposits of the Umrah congregation. Article 126 of Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, namely: PPIU who deliberately causes failure to depart, abandonment or failure to return for Umrah pilgrims, as intended in Article 119 shall be punished with imprisonment for a maximum of 10 (ten) years or a fine of a maximum of IDR 10,000,000,000.00 (ten billion rupiah). In Article 119 of Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage states that PPIU is prohibited from carrying out actions that cause failure to depart, abandonment or failure to return for Umrah pilgrims.

3. Law number 11 of 2020 concerning Job Creation

Since November 2 2020, Law number 11 of 2020 concerning Job Creation has been implemented, which in Article 68 of this law also regulates the implementation of the Umrah pilgrimage as well as criminal sanctions. In Law number 11 of 2020 concerning Job Creation there are several changes and insertions of articles to Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, including regarding criminal sanctions are:

Amend the provisions of Article 126 to be as follows: In the event that the PPIU who carries out the action as intended in Article 119A does not return the Umrah congregation to their homeland within a maximum period of 5 (five) days, the PPIU will be punished with imprisonment for a maximum of 10 (ten) years or criminal a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

The provisions in Article 119A are as follows:

1. PPIUs who deliberately cause failure to depart, abandonment or failure to return to the Umrah congregation as intended in Article 119 are subject to administrative sanctions.
2. The administrative sanctions referred to may be in the form of:
  - a. Temporary suspension of activities;
  - b. Administrative fines;
  - c. government coercion;
  - d. freezing of business permits; and/or
  - e. revocation of business license.



3. In addition to the obligations as referred to in paragraph (1), PPIU is subject to sanctions in the form of an obligation to return the amount paid by the Umrah Congregation as well as other immaterial losses.
4. Further provisions regarding the criteria, amount of fines, and procedures for imposing administrative sanctions as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated in a Government Regulation.

In the Medan District Court Decision number: 1216/Pid.B/2019/PN.Mdn it is known that the Defendant is Debby Sinta Dewi Sinaga as Director of PT. Farnaz Utama Islamic Tour & Travel has been found guilty of committing the criminal act of "intentionally and without the right to act as an Umrah travel organizer" violating Article 63 paragraph (2) of Republic of Indonesia Law no. 13 of 2008 concerning Hajj Organizers where the Defendant did not have a permit to organize the Umrah pilgrimage, causing the victim Rita Nazmah Damanik to suffer a loss of Rp. 102,000,000,- (one hundred and two million rupiah) which in the facts of the trial revealed that PT. Farnaz Utama Islamic Tour with the Defendant Debby Sinta Dewi Sinaga as the Main Director does not have a permit as an Umrah pilgrimage organizer (PPIU) as stated in letter No. B-3412/kk.02.15/3/hj.00/08/2018 dated 28 August 2018 from the Ministry of Religion of the Republic of Indonesia which was signed by H. Ahmad Qosbi, S.Ag., MM which explained that PT. Farnaz Utama Islamic Tour is not registered and does not have official permission as an Umrah Travel Organizer (PPIU) from the Ministry of Religion of the Republic of Indonesia.

Looking at the examples of cases in the Medan District Court, if such a case occurs in 2022 then the law that will be used is Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage Article 122 of Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, namely:

"Every person who acts as a PPIU without the right to collect and/or dispatch Umrah pilgrims, as intended in Article 115, shall be punished with a maximum imprisonment of 6 (six) years or a maximum fine of Rp. 6,000,000,000.00 (six billion rupiah)."

Meanwhile, the words of Article 115 of Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage states that "Every person is prohibited without the right to act as a PPIU to collect and/or dispatch Umrah pilgrims". The penal policy is repressive in nature, but actually also contains a preventive element, because with the threat and imposition of a criminal offense, it is hoped that there will be a preventive/deterrent effect on a crime.

### **Non Penal Policy**

Non-penal policies refer to actions taken by the state or an organization that do not involve imprisonment or other punishment for criminals, which in this case include rehabilitation, probation, community service, non-punitive work assignments. The concept of an integral crime prevention policy contains the consequence that all rational efforts to overcome crime must be an integrated unit. This means that policies to tackle crime using criminal sanctions must also be combined with other non-penal businesses. Non-penal policies have better prospects or tendencies to prevent crime. Non-penal crime prevention is fundamental and vital because it focuses on preventive aspects, where the main target is to address the conducive factors that cause crime to occur.

Combating crime by only providing criminal sanctions is only temporary, because it is

possible that the crime will reappear whether it is committed by the same person or a different person. Therefore, what must be sought is the original source of the crime. By knowing the situation and causes of crime, we can try and strive to eliminate this crime, at least reduce it. Therefore, to reduce crime, we should not only use penal means, but use a non-penal approach in the form of social policies and include the community in efforts to prevent and control crime. Non-penal businesses can cover very broad fields throughout the social policy or national development sectors. The main aim of this non-penal is to improve certain social conditions which indirectly have a preventive effect on crime. Thus, seen from the perspective of criminal politics, all non-penal preventive activities actually have a very strategic position. Non-penal businesses hold a key position that is intensified and made effective. Failure to work position. This strategy will actually have consequences fatal for crime prevention efforts.

In preventive efforts, the most important thing is to carry out positive efforts, as well as creating conditions such as economic conditions, the environment and community culture that become a dynamic force in development and not the other way around, such as creating social tensions that encourage deviant behavior. Apart from that, preventive efforts are needed to increase public awareness and participation that security and order are a shared responsibility. Crime prevention is basically any action whose specific aim is to limit the spread of violence and crime, whether through reducing opportunities to commit crime or by influencing potential perpetrators and the general public.

In organizing Umrah pilgrimage trips, if an Umrah pilgrimage organizer (PPIU) does not carry out its obligations, then it can be subject to administrative sanctions as regulated in statutory regulations, namely in Law number 13 of 2008 concerning the Implementation of the Hajj in Article 45 paragraph (1) there are sanctions. administratively according to the level of error, in the form of:

1. warning;
2. suspension of operating permits; or
3. revocation of operating license

Furthermore, in Law no. 08 of 2019 concerning the Implementation of the Hajj and Umrah Pilgrimage, the article which regulates the provisions for administrative sanctions for Umrah pilgrimage activities is regulated in Article 95 with 3 (three) types of administrative sanctions, namely:

- a. written warning;
- b. license suspension; or
- c. license revocation.

But there are differences in Law no. 11 of 2020 concerning Job Creation regarding administrative sanctions, namely as follows:

- a. written warning;
- b. administrative fines;
- c. freezing of Business Licensing; or
- d. revocation of Business License

Non-penal efforts aim to prevent crimes or violations from occurring by eliminating the opportunity factor. In this regard, there is an assumption that a crime or violation will occur if the intention factor meets the opportunity factor. Apart from using administrative sanctions, non-penal policies can also be implemented by the government by carrying out preventive efforts involving elements of government and society, in a way that the

government cantake a stand by influencing people's life patterns through systematic efforts to raise public awareness of the consequences of criminal acts and the penalties that may be imposed. For example, law enforcers are tasked with providing outreach regarding the importance of obeying applicable laws and the Ministry of Religion collaborates with community leaders to provide outreach regarding PPIU which is officially registered on their database. Apart from involving elements of law enforcement and community leaders, this preventive effort can also use mass media, both print and electronic, by carrying out massive reporting about the rise of criminal acts, especially the implementation of Umrah trips without permits so that the public mindset will slowly be formed not to compromise with criminal acts or crime.

## CONCLUSION

Based on the discussion above, it can be concluded that

1. There are several reasons behind the implementation of the Umrah pilgrimage without permission, especially due to the factor of deviation from legal behavior, which is a person's ability to restrain themselves from achieving their needs by violating the norms that apply in society, the factor of the desire to fulfill their daily needs in ways that are considered. easier and faster; the pressure of high living needs; difficulty in finding a better income so they take shortcuts; the family knows about this incident (in this case the husband) but does not give a warning that the action is wrong; and the opportunities created due to the large number of Muslim communities in Indonesia who want to undertake the Umrah pilgrimage.
2. Criminal law policy in an effort to overcome Umrah pilgrimage organizers without permission from non-penal and penal policies. This non-penal policy can be implemented with crime prevention efforts in the form of administrative sanctions such as warnings, fines, freezing of business permits and revocation of business permits, apart from that, preventive efforts can also be carried out by providing socialization regarding officially registered PPIU and carrying out massive reporting about the rise of criminal acts. especially organizing Umrah trips without permission. Penal policy is a criminal sanction/punishment that places greater emphasis on corporal sanctions.

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