

# An Analysis of Investment for Hajj Funds from Islamic Law Perspective

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## Abstract

*Being the largest Muslim country with some 250 million Muslims, Indonesia faces a huge demand from its citizens eager to perform Hajj and then it will impact to the huge offunds to perform Hajj (Pilgrim). Initially, any surplus funds held by the Department of Religion are supposed to be paid to the Islamic Community Perpetual Funds (Dana Abadi Umat). Currently, the government is now eyeing the country's hajj (Muslim pilgrimage) fund as a potential source of infrastructure finance. By that arises some debate whether the hajj funds can be used or no to finance Indonesia infrastructure project. Therefore, the study intends to analyse the investment of hajj funds from Islamic law perspective. However, findings of the study are that the use of the hajj funds for investment is permissible in Islam with some condition such as the benefit gained from it is used for infrastructures abd facilities of hajj performance.*

**Keywords:** Hajj Funds, Investment, Islamic Law

## Introduction

Being the largest Muslim population, Indonesia faces a huge demand from on performing *Hajj* (Pilgrim) by its citizens, and then it will generate a big accumulation of *hajj* fund. The fund is owned by Muslim individuals to be used for the purpose of performing pilgrim, which is saved in the bank. The Minister of Religious Affairs delegates some State-Owned bank (BUMN) as providers of saving fund service. The *hajj* funds managed by the Minister of Religious Affairs are used to be allocated for registration fee for their names in advance to be included on the government hajj list. Beside that any surplus funds held by the Department of Religion are supposed to be paid to the Islamic Community

Perpetual Funds (Dana Abadi Umat).<sup>1</sup>

Historically, the establishment of the Islamic Community Perpetual Funds (Dana Abadi Umat) has been done in the time of Tarmidzi Taher, the Minister of Religious Affairs in 1993. However, the idea was originated from a seminar on *Hajj* held in Jakarta in 1994, which discussed the theme of *Hajj* savings (Tabung Haji).<sup>2</sup> In this seminar, a speaker from Malaysia delivered his speech about Hajj saving (Tabung Haji). DAU was established to help with the Hajj implementation, education, the development of house of worship, and poverty eradication.<sup>3</sup> Then, it was followed by Presidential Decree No. 35 Year 1996 No. 52 Year 1995 issued by Suharto concerning the body responsible for fund management for Hajj in Indonesia, and this responsibility was held by a minister of Religion (Article 6).<sup>4</sup> Furthermore, Act No. 17 of 1999 about the implementation of Hajj pilgrimage serves as the initial pillar of Hajj pilgrimage implementation in reformation era. This Presidential Decree also extends the function of DAU in term of education and propaganda, health, social and economic purpose, development of the house of worship and its infrastructure, and the implementation of pilgrimage.<sup>5</sup> In time of President, Abdurrahman Wahid, Presidential Decree No. 22/2001 on management of funds that concerns to the body of DAU.

Currently, the government is now eyeing the country's *hajj* (Muslim pilgrimage) fund as a potential source of infrastructure finance. The National Development Planning Agency, known as Bappenas, proposed in January that the Finance Ministry should use the proceeds of sukuk sales to the hajj fund to finance infrastructure projects, or channel the funds toward infrastructure spending in some other way.<sup>6</sup> Director of *Hajj* Fund Management

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<sup>1</sup> M.B Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: ISEAS Publishing, 2008), 208.

<sup>2</sup> Ahmad Ifham Sholihih, *Buku Pintar Ekonomi Syariah* (Jakarta: PT Gramedia Pustaka Utama, 2010), 212.

<sup>3</sup> Rahmat Junaidi, Thohir Luth, M. Ridwan, Sihabuddin, "Policy Design In Professionalism-Based Implementation Of Hajj Pilgrimage", *Journal Of Humanities And Social Science* (IOSR-JHSS) (2014): 79.

<sup>4</sup> Rahmat Junaidi, Thohir Luth, M. Ridwan, Sihabuddin, 76.

<sup>5</sup> Ibid, 80.

<sup>6</sup> Ardi Wirdana, *Plan to tap Indonesia hajj fund for infrastructure challenged*, viewed 5 October 2017, <https://asia.nikkei.com/Politics-Economy/Economy/Plan-to-tap-Indonesia-hajj-fund-for-infrastructure-challenged>

Agency, Ramadhan Harisman said that the allocation of hajj fund will be put in sovereign wealth fund (SBSN) amounts 35,65 trillion rupiah, bank Shari'ah deposit amounts 54,57 trillion rupiah, Shari'ah obligation amounts 136 million and DAU amounts around 3 trillion.<sup>7</sup>

Consequently, Vice Chairman of the House of Representatives (DPR) Fadli Zon criticized the wishes of President Joko Widodo who wants to use the *hajj* funds for infrastructure development of Indonesia. According to him, the *Hajj* fund should be used according to the allocation and the use of hajj fund for infrastructure project is not proper.<sup>8</sup> It is supported by the Advocacy Team of the National Movement of the fatwa MUI (GNPF-MUI) emphasizes that the *hajj* investment is not allowed, because it uses a public funds.<sup>9</sup> Conversely, chairman of the Council of Indonesian Ulama (MUI), Ma'ruf Amin does not question if the government uses *hajj* funds for infrastructure.<sup>10</sup> There are many fatwa issued by National Shari'ah Board-MUI pertaining investment instruments such Shari'ah obligation (Surat Berharga Syariah Negara: SBSN), Shari'ah commodities future, etc.. By then, it is needed to further analyse investment of *hajj* funds from Islamic law perspective to obtain clear understanding on this matter.

## Investment from Shari'ah Perspective

### The Concept of Shari'ah Investment

Investment can be defined as the act of putting money, effort, time, etc. into something to make a profit or get an advantage. In Arabic the term is known as *istismâr* which is derived from word *tsamara*.<sup>11</sup> Moreover, Islamic investment can be defined as the act

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<sup>7</sup> Dedy Priatmojo, *Investasi Dana Haji, Setoran Jama'ah atau Dana Abadi Umat?*, viewed 20 August 2017, <http://www.viva.co.id/berita/nasional/893978-investasi-dana-haji-setoran-jemaah-atau-dana-abadi-umat>

<sup>8</sup> Fadli Zon: *Dana Haji untuk Infrastruktur Membahayakan dan Tidak Tepat*, viewed 21 August 2017, <http://www.tribunnews.com/nasional/2017/08/01/fadli-zon-dana-haji-untuk-infrastruktur-membahayakan-dan-tidak-tepat>

<sup>9</sup> Akhdi Martin Pratama, *Dana Haji Boleh Diinvestasikan untuk Infrastruktur*, viewed 21 August 2017, <http://nasional.kompas.com/read/201707/31/17453421/ketua-mui-dana-haji-boleh-diinvestasikan-untuk-infrastruktur>

<sup>10</sup> Ibid.

<sup>11</sup> Mona Juraige, *Glossary of Commercial, Economic and Financial Terms* (Lebanon: Maktabah Lubnan Nasyirun, 2000), 91.

of putting money, effort, reputation to earn halāl (lawful) profit strict conformity with the precepts of Shariah. Under the principles of Shariah, in addition to prohibition of interest, investment is also disallowed in businesses that deal with alcohol, pork, gambling, tobacco, media, pornography and anything else which is deemed “Haraam” (unlawful).

In Fiqh literature, Islamic investment was formed in partnership structures between fellow believers, the traditional Muslim business enterprise being based on the concepts of *shirkah*, which also implies fellowship beyond the realm of business into common worship. Musharakah investment is often equated with private equity placement, or even venture capital, although the structures can be quite flexible.<sup>12</sup>

There are five types of musharakah arrangement in Islamic law: 1) *Shirkah-al-Muwafadah* (Universal Partnership), 2) *Shirkah-al-‘Inan* (General Partnership), 3) *Shirkah-al-‘mal*, 4) *Shirkah-al-Wujuh*, and 5) *Shirkah-al-Mudharabah*. Firstly, according to the Hanafi jurists, *Shirkah-al-Muwafadah* is where two persons, being the equal of each other in respect of property, privileges and religious persuasion, enter into a contract of partnership.<sup>13</sup> But, this form is not supported by Imam Shafi’I, Imam Hanbal, Imam Malik and the Ja’fari jurists. Secondly, *Shirkah-al-‘Inan* is where two persons become partners in any particular business or partners in all matters of commerce indifferently.<sup>14</sup> This form is supported by all Islamic jurists.

Thirdly, *Shirkah-al-‘mal* is a situation where two persons become partners by agreeing to work jointly, and to share their earnings in partnership such as medical practitioners, teachers, farmers, etc.<sup>15</sup> Fourthly, *Shirkah-al-Wujuh* is where two persons become partners by agreeing to purchase goods jointly, upon their personal credit (without immediately paying the price) and to sell these goods on their joint account.<sup>16</sup> This form is not supported by Shafi’i and Maliki jurists.

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<sup>12</sup> Rodney Wilson, “Islam and Business”, *Thunderbird International Business Review*, Vol. 48(1) (2006): 111.

<sup>13</sup> Muhammad Ayyub, *Understanding Islamic Finance* (England: John Wiley & Sons Ltd, 2008), 310.

<sup>14</sup> *Ibid*, 310.

<sup>15</sup> *Ibid*.

<sup>16</sup> *Ibid*.

Fifthly, *Shirkah-al-Mudharabah* is a contract partnership in which one party is entitled to profit on account of its mal, while the other party is entitled to profit account of its labour.<sup>17</sup> This form is also supported by all Islamic jurists like *Shirkah-al-'Inan*, which is suitable and adaptable to any situation and practicable in the present commercial practices. One of the most significant features of *mudharabah* is that while the profits are shared between the investor and the agent, any loss in the investment or business is borne solely by the capital - owner, unless such loss is caused by the misconduct or negligence of the *mudharib*.<sup>18</sup> All these explanation can be summarized in the table 1.

**Table 1:** Model of Investment based on *Shirkah* Contract

No	Type of <i>Shirkah</i>	Portion of Share	Islamic Legal Aspect
1.	<i>Shirkah-al-Muwafadah</i>	It must be equal on capital, management, profit and risk	This is form in only supported by Hanifiyyah
2.	<i>Shirkah-al-'Inan</i>	It might be equal on capital, management, but not in profit	This form is supported by all Islamic jurists
3.	<i>Shirkah-al-'mal</i>	The profit share is based on work contribution agreed among the parties	This form is supported by all Islamic jurists
4.	<i>Shirkah-al-Wujuh</i>	The share is great reputation, integrity and honour and the profit earned is distributed between them at an agreed ratio	This form is only supported by Hanafi and Hanbali jurists
5.	<i>Shirkah-al-Mudharabah</i>	Capital is provided by one party and labour is provided by other party, which the profit will be shared based agreed ration between them	This form is supported by all Islamic jurists

**Source:** Author

<sup>17</sup> Ibid, 311.

<sup>18</sup> Zamir Iqbal and Abbas Mirakhor, *An Introduction to Islamic Finance: Theory and Practice* (Singapore: John Wiley & Sons Ltd, 2011), 91.

## The Evidences of Investment in Islam

There are many verses of the Qur'an pertaining the investment activities. For instances, Allah commands us do not leave weak offspring either on spiritual and material aspects, which can be through saving or investment to help them later on. Allah Says in Surah al-Nisa, 9:

واليحش الذين لو تركوا من خلفهم ذرية ضعافا خافوا عليهم فليتقوا الله واليقولوا قولا

سديدا

And let those [executors and guardians] fear [injustice] as if they [themselves] had left weak offspring behind and feared for them. So let them fear Allah and speak words of appropriate justice.

It is clearly supported by Surah Yusuf, 47-49, which people should aware for the investment for future life that cannot be predicted what will happen.

قال تزرعون سبع سنين داباج فما حصدم فذروه في سنبله إلا قليلا مما تأكلون

{ ٤٧ } ثم يأتي من بعد ذلك سبع شداد يأكلن ما قد متم هن إلا قليلا مما

تحصنون { ٤٨ } ثم يأتي من بعد ذلك عام فيه يغاث الناس وفيه يعصرون { ٤٩ }

(Yusuf) said: "You will plant for seven years consecutively; and what you harvest leave in its spikes, except a little from which you will eat. Then will come after that seven difficult [years] which will consume what you saved for them, except a little from which you will store. Then will come after that a year in which the people will be given rain and in which they will press [olives and grapes]."

Pertaining investment in hadith, as narrated by Prophet Muhammad PBUH:

عن عمرو بن شعيب عن أبيه عن جده أن النبي ص.م: خطب الناس فقال: { ألا

من ولي يتيما له مال فليتجر فيه ولا يتركه حتى تأكله الصدقة }

Amr ibn Shu'ayb reported from his father from his grandfather that the Prophet pbuh gave a talk to the people [in which he said]: "If anyone is a guardian of an orphan who owns property, he should trade with it and not leave it until the Zakaah consumes it." (Tirmidzi)

The above hadith contains a command from the Prophet Muhammad PBUH to manage the wealth of the orphans in proper way by investing it. The purpose is to avoid the wealth from being decreased or depleted. If the wealth is managed wisely by involving it in investment, it can be multiplied and secure the benefit of the orphans.<sup>19</sup>

### Previous Study

There are some researches pertaining the fund management of *hajj* for investment in various sectors of economic. Nazri (2013) proposed the idea of establishing of Islamic financial institution called as '*Bank Haji Indonesia (BHI)*'.<sup>20</sup> To him, the most challenge of the establishment of that bank is capital, which can be used as an alternative by the Islamic Community Perpetual Funds (Dana Abadi Umat).

Ismail and Riza (2014) proposed the implementation of wealth management in *hajj fund* in Indonesia. The *hajj* fund can be implemented in Indonesian Islamic banking to contribute to economic development of ummah by using three elements of it, namely: wealth accumulation, protection, distribution and purification.<sup>21</sup>

Specifically, investment of the *hajj* funds will also support the Indonesian economic development. In act no. 34 of 2014 opens investment opportunity directly and non-directly by selecting more profitable, yet sharia-compliant investment instruments. The profit of investment must be used for benefit of *hajj* performace. Then, it is needed to clarify the permissibility of investment using the *hajj* funds.

### The use of Hajj Funds from Islamic legal Aspect

The phase of *hajj* registration in Indonesia can be through this process: 1) Candidate open an account in the bank; 2) The

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<sup>19</sup> Razaly, M.Z., Redzuan, M.A., Mustaffa, M.Z., Saja, M., Nawi, S.M., Hatta, M.F.M. and Raffi, N.E.N.M., Managing Investment in The Light of Quran and Sunnah: Textual Analysis. *Procedia Economics and Finance*, 2015, (31), 382.

<sup>20</sup> Riko Nazri, Bank Haji Indonesia: Optimalisasi Dana Haji untuk Kesejahteraan Jamaah Haji Indonesia. *Khazanah*, 2013 ,(6) 1, 13-26.

<sup>21</sup> Nurizal Ismail and Muhammad Riza, A Proposed Model of Wealth Management in Indonesian Islamic Banking. *Jurnal Ekonomi Islam-UNIDA Gontor*, 2014, 2, 235-256.

candidate transfers money to the account of Minister of Religious Affair of the Republic of Indonesia; 3) The candidate gives all documents related to *hajj* performance; and 4) the candidate get number of *hajj* portion.

There are certain conditions for the use of the *hajj* funds in Indonesia. Firstly, it must be known what the contract used between government and society who want to perform *hajj*. In this case, those people who want to perform *hajj* put their money in the banks delegated by the government. Hence, the government will provide all facilities related *hajj* performance later on. By then, the contract can be categorized as a service given by the government to Indonesian people who want to perform *hajj*. Secondly, the object of contract is service of *hajj* such as accomodation, transportation, etc.

For sale contract (*bai'*) either goods or services is not always paid in cash but also deferred way, as mentioned in many explanation on fiqh that delivery of object transaction can be categorized into three:

- a. Goods/services in cash and money in cash. This is called as *bai' al-mutlaq*.
- b. Goods/services in credit and money in cash. This practice is known as the contract of *salam*.
- c. Goods/services in cash and money in credit. This practice can be seen in the contract of *murâbahah* or *bai' bi al-tsaman 'ajil*.

Based on the explanations, the essence of *hajj* performance is the sale contract between the candidate of *hajj* and the government. When the candidate transfers the total amount of *hajj* to the goverment account, he/she will get the portion of *hajj* and the government will own the *hajj* funds. As a result, the government has the right to use the *hajj* funds in diversification of investment and the candidate has the right to get the turn of *hajj* performance.

Moreover, risk of the investments is born by the goverment. Profit gained from the investment should be used for benefit of *hajj* performance and facilities as one of the requirements.<sup>22</sup> Other requirements are that the investment should be complied with Shari'ah principles, prudence and liquidity.

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<sup>22</sup> MUI Halalkan Dana Investasi Haji Asal Memenuhi Empat Syarat, viewed 5 October 2017, <https://tirto.id/mui-halalkan-investasi-dana-haji-asal-memenuhi-4-syarat-ctK6>



## Conclusion

It can be concluded that the use of the *hajj* funds for the investment is permissible from Islamic law perspective. The condition of investment contract for the use of the *hajj* funds is valid (*shahih*). There are two parties involved in this condition: the society as user and the government as a seller of the *hajj* service. The object of service are all facilities such as accomodation, transportation, catering, etc. So, the ownership of fund is transferred from the society to the government. But, it must be taken into consideration that all benefit gained from the investment should be used for the purpose of *hajj*.

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