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Phone: +62281-635624 Fax: +62281- 636653
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Restrictions on Hajj Pilgrimage for Indonesian Congregation from the Perspective of *Sadd al-Dzari'ah*

Article

Authors

Achmad Siddiq^{1*}, Muhammad Ufuqul Mubin², Ismatul Maula³, Ahmad Rezy Meidina³, Muhammad Irsyad⁴.

¹ Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri Purwokerto, Indonesia

² Universitas Islam Negeri Sunan Ampel, Surabaya, Indonesia

³ Sekolah Tinggi Agama Islam Al-Hikmah 2, Indonesia

⁴ Universitas Al Azhar Cairo, Egypt

Corresponding Author:

* Achmad Siddiq, Email: siedqachmad@uinsaizu.ac.id

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Abstract

The Hajj queue in Indonesia, which extends up to 25 years, necessitates clear and effective policies to mitigate this issue. One such policy is encapsulated in the Regulation of the Minister of Religious Affairs of the Republic of Indonesia No. 29/2015, which amends the earlier Regulation No. 14/2012 on the Implementation of Regular Hajj. This regulation prohibits individuals who have already performed the Hajj pilgrimage from re-registering for a period of 10 years. This research employs the Ushul Fiqh approach. Data were collected by reviewing and analyzing pertinent literature, including documents and regulations of the Minister of Religious Affairs, as well as several ushul fiqh books and other relevant sources. The study aims to examine the restriction as a means to prevent potential unrest in the community, in line with the concept of *sadd al-dzari'ah*. This restriction is intended to benefit those who have not yet performed Hajj and to safeguard the rights of others to undertake this worship, adhering to the principle of *tasharruf al-imam ala al-ra'iyah manuth bi al-maslahah*. The implementation of this policy is expected to exchange the efficiency and effectiveness of Hajj pilgrimage management and reduce public unrest. Therefore, it is crucial that this policy is executed clearly and effectively to maximize its benefits for the community.

Keywords: *Hajj restrictions; Indonesian congregation; sadd al-dzari'ah*

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INTRODUCTION

Global challenges in the modern era have placed fiqh in a problematic and dilemmatic position. Fiqh not only struggles to address various social problems and issues but also continues to seek self-definition, especially in formulating viable legal methods to resolve these issues.¹ According to Coulson's, this problem is a significant cause of “conflict and tension” between theory and practice

¹ Ahmad Rafiq, “Dampak Media Sosial Terhadap Perubahan Sosial Suatu Masyarakat,” *Global Komunika: Jurnal Ilmu Sosial Dan Ilmu Politik* 3, no. 1 (2020): 18–29.

in the history of Islamic law research and application.² On the other hand, this acute issue has spurred various reform efforts in this field.

In contemporary times, Islamic law faces numerous challenges, including the increasing global population and the rise of various socio-religious problems. The high demand among Indonesian Muslims to perform the Hajj has resulted in an excessively long waiting list, extending up to twenty-five years.³

The waiting list policy has a political dimension that illustrates power relations, with the government, through the Ministry of Religious Affairs, holding dominant power over the populace, who have a weak bargaining position. As a political product, this policy also reflects various tensions and competing interests due to the strategic role of the Ministry of Religion. This research aims to elucidate the forms of state politics inherent in the waiting list system policy for organizing the Hajj.

Restrictions on the Hajj were implemented approximately ten years ago, given that Indonesia has largest Muslim population in the world, where public interest in performing the Hajj is exceedingly high, and even carries special prestige in certain areas. These restrictions are primarily intended to provide opportunities for those who have not yet undertaken the Hajj pilgrimage, due to constraints on the Hajj quota and the lengthy waiting period, which is around twenty-five years because of the large number of prospective pilgrims each year. The Hajj pilgrimage can be performed in two ways: regular and special Hajj packages. Organizing the Hajj has long been part of the state's duties, as mandated by Law of the Republic of Indonesia Number 13 of 2008 concerning the implementation of the Hajj, and Government Regulation Number 79 of 2012 concerning the Implementation of Law No. 13 of 2008 concerning the Implementation of the Hajj Pilgrimage.⁴

Restrictions on the Hajj have been articulated by the Inspector General of the Indonesian Ministry of Religious Affairs, Muhammad Jasin. He stated that without regulations or policies from the Ministry of Religious Affairs, such as prohibiting multiple Hajj pilgrimages, the queue for the Hajj would become even longer. For elderly applicants, this would mean no certainty about their opportunity to perform the Hajj. This discourse has garnered various opinions and support from Islamic mass organizations in Indonesia.

When asked whether restrictions on the Hajj pilgrimage violate citizens' freedom to practice their religious beliefs, the Inspector General responded that they do not. In fact, this discourse facilitates those who wish to perform the Hajj and are able to but have not yet fulfilled this pillar of Islam. Islam mandates only one pilgrimage for those who can afford it. The primary task of the Hajj Monitoring Commission is to oversee the government's readiness and ability to serve the pilgrims.

Therefore, many people are calling on the government to implement these restrictions, including prioritizing elderly Hajj pilgrims who have never performed the pilgrimage. The government must also prioritize elderly Hajj candidates because, biologically, their life expectancy is lower than that of younger people, even though ultimately, the length of one's life is determined by God.

² Noel J Coulson, "Conflict and Tension in Islamic Jurisprudence/Konflik Dalam Yurisprudensi Islam" (Fuad (terj.). Yogyakarta: Navila, 2001).

³ Ahmad Zayyadi et al., "Understanding of Legal Reform on Sociology of Islamic Law: Its Relevance to Islamic Family Law in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 20, 2023, 249–62, <https://doi.org/10.24090/mnh.v17i2.7584>.

⁴ iwan ampel, *Dasar Ibadah Haji* (Jakarta: kemenag, 2023).

According to data from the Ministry of Religious Affairs, every year, around 10 percent or 20 thousand people who have already completed the Hajj go on the pilgrimage a second time or more.

The initiative to limit the frequency of Hajj pilgrimage has been supported by various parties, including the DPR, community organizations such as NU and Muhammadiyah, the MUI, observers, and the public, who fundamentally agree with the policy proposed by the government, specifically the Indonesian Ministry of Religious Affairs.⁵

If this policy of limiting the number of Hajj pilgrimage is implemented, it may raise concerns. Given that the Hajj pilgrimage is an individual right for Muslims, the question arises: does the government's policy of limiting the frequency of Hajj pilgrimage infringe on an individual right to worship?

In the Law of the Republic of Indonesia number 13 of 2008, Chapter III detailing Rights and Obligations clarifies in Article 4, Paragraph (1), that every Muslim citizen has the right to perform the Hajj pilgrimage provided that:

1. Are at least 18 (eighteen) years old or are married
2. Have the financial capability to pay for BPIH

Paragraph (2) stipulates that further details regarding the prerequisites mentioned in paragraph (1) are governed by Ministerial regulations.

On May 27, 2015, the Government, represented by the Minister of Religious Affairs, introduced restrictions for those who had previously performed the Hajj. This was formalized through the Minister of Religious Affairs Regulation Number 29 of 2015, which amends Minister of Religious Affairs Regulation Number 14 of 2012 concerning the implementation of the Regular Hajj Pilgrimage. Article 3, paragraph 4 of this regulation states: "Hajj pilgrims who have previously performed the Hajj are eligible to register for the Hajj after ten (10) years from their last performance of the Hajj."

The imposition of restrictions on Hajj for individuals who have previously undertaken the pilgrimage presents an intriguing subject for analysis through the *ijtihad istislahi* perspective of *sadd al-dzari'ah*. As outlined by al-Syaukani, *al-dzari'ah* refers to an issue or matter which, while initially permissible, may lead to prohibited actions.⁶

In his work, *al-Wajiz fi Usul al-Fiqhi*, Al-Zuhaili defines *sadd al-dzari'ah* as the act of rejecting something permissible (*jâiz*) to prevent it from leading to harmful or dangerous outcomes.⁷ According to Mukhtar Yahya and Fatchurrahman, *sadd al-dzari'ah* involves eliminating or blocking paths that lead to forbidden actions.⁸ Ibn Qayyim al-Jauziyyah further adds that this path or intermediary might involve actions that are either prohibited or permitted.⁹

An illustration of the capacity of Islamic law to address modern challenges can be demonstrated by articulating the principles of Islamic law relating to the vertical order of life between humans and their God (worship) and horizontal interactions among people (*muamalat*).¹⁰ Islamic Sharia,

⁵ Fitriyan Zamzami, *Pembatasan-Haji-Dinilai-Perlu-Disegerakan* (Jakarta: Republika Penerbit, 2023).

⁶ Muhammad Ibn'Alî al Syaukânî, "Irsyâd Al-Fuhûl Ilâ Tahqîq Al-Haq Min 'Ilmi Al-Ushûl, Juz II," *Riyadh: Dâr Al-Fadhîlah*, 2000.

⁷ Wahbah Al-Zuhaili, *Al-Wajiz Fi Usul Al-Fiqhi* (damaskus: al-jami'ah damaskus, n.d.).

⁸ Mukhtar Yahya, "Fatchurrahman," *Dasar-Dasar Pembinaan Hukum Fiqh Islami. Bandung: PT Al-Ma'arif*, 1986.

⁹ Ibn Qayyim Al-Jauziyyah, "I'lâm Al-Muwaqqi'în 'an Rabb Al-'Âlamîn" (Mesir: Dâr al-Ja'îl, n.d.).

¹⁰ Jalaluddin Abdul Rahman As-Suyuti, "Al-Asybah Wa An-Nazha'ir," *Beirut: Dar Al-Fikr*, 1969.

in formulating its laws, places significant emphasis on preserving human welfare to ensure their happiness in this life and the hereafter by providing benefits and preventing harm.¹¹ Hence, in the context of safeguarding human welfare, the theory of legal adaptability (elasticity) to evolving and diverse situations and conditions is no longer a matter of debate in Islamic legal discourse. Nurcholis Madjid has highlighted that Islamic legal scholars often point out that strength of Islamic law lies in its flexibility to adapt to changing times and locations.¹² This principle of legal adaptability change is evident in rules of ushul fiqh.

Building on the discussion above, the research zeroes in on the restrictions imposed on Hajj for individuals who have previously performed the pilgrimage, specifically not prohibiting the Hajj but rather imposing a 10-year limit on those who have already undertaken it, viewed through the lens of *sadd al-dzari'ah*.¹³

The study of Hajj restrictions has emerged a prominent topic of discussion in recent times, particularly as numerous individuals have initiated conversation around the Hajj. Furthering this discussion, recent researchers, including Muhammad Nuri¹⁴, Muhammad Noor¹⁵, Zahrotun Munawaroh¹⁶, Budi Kisworo¹⁷, Wuryaningsih Dwi Lestari¹⁸, Nida Farhanah¹⁹, and others, have conducted studies on Hajj patterns.

Mostly study of the Hajj, which encompasses various forms of worship, can be better understood by categorizing the literature review into two sections: first, the Hajj in general, and second, the Hajj from various aspects.

Research related to Hajj in general has been conducted by Muhammad Nuri. This study analyzes the Hajj in Indonesia, revealing that its implementation over time has evolved various societal groups. During the Dutch East Indies government, the Hajj was conducted freely; however, due to the interests of certain groups, the government eventually intervened. Similarly, during the Republican government of Indonesia, multiple interests influenced the Hajj until the government established its authority directly under the Directorate General for Islamic Community Guidance and Hajj Organizing Ministry of Religious Affairs.

¹¹ Abu Ishaq Al-Syatibi, "Al-Muwafaqat Fi Ushul Al-Syari'ah," *Vol. II (Beirut: Dar Al Kutub Al Ilmiyah, Tt)* 1 (2003): 290.

¹² Nurcholish Madjid, "Sejarah Awal Penyusunan Dan Pembakuan Hukum Islam," *Kontekstualisasi Doktrin Islam Dalam Sejarah. Jakarta: Paramadina*, 1994.

¹³ Purnama Hidayah Harahap et al., "Religious Court Decisions Regarding the Revocation of Grant (Hibah) in the Perspective of Islamic Jurisprudence," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 17, 2023, 215–32, <https://doi.org/10.24090/mnh.v17i2.9767>. employing the viewpoint of Islamic jurisprudence and the maslahah theory. In this instance, the judicial panel overseeing the dispute related to the cancellation of the grant primarily invoked the provisions outlined in Article 35, Paragraph 1, and Article 36, Paragraph 1 of the Marriage Act (Law Number 1 of 1974

¹⁴ Muhammad Nuri, "Pragmatisme Penyelenggaraan Ibadah Haji Di Indonesia," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 1, no. 1 (2014).

¹⁵ Muhammad Noor, "Haji Dan Umrah," *Jurnal Humaniora Teknologi* 4, no. 1 (2018).

¹⁶ Zahrotun Munawaroh, "Efektivitas Sistem Informasi Dan Komputerisasi Haji Terpadu (SISKOHAT) Dalam Penyelenggaraan Ibadah Haji Di Kantor Wilayah Kementerian Agama Provinsi Jawa Tengah Tahun 2015," Semarang: UIN Walisongo, 2015.

¹⁷ Budi Kisworo, "Ibadah Haji Ditinjau Dari Berbagai Aspek," *Al-Istinbath: Jurnal Hukum Islam* 2, no. 1 June (2017): 75–98.

¹⁸ Wuryaningsih Dwi Lestari, Sri Murwanti, and Muhammad Sholahuddin, "Pembiayaan Ibadah Haji Pada Lembaga Keuangan Syariah," *Cakrawala: Jurnal Studi Islam* 12, no. 2 (2017): 141–50.

¹⁹ Nida Farhan, "Problematika Waiting List Dalam Penyelenggaraan Ibadah Haji Di Indonesia," *Jurnal Studi Agama Dan Masyarakat* 12, no. 1 (2016): 57–80.

Likewise, Muhammad Noor posits that many members of the general public, including farmers, traders, civil servants, and even successful businessmen, lack a proper understanding of the procedures for performing Hajj and Umrah according to Islamic law. Given these challenges, it is crucial to study the Hajj and Umrah to ensure that worship is performed correctly and in accordance with Islamic principles. The authors elucidate the pillars, conditions, obligatory aspects, and the sunnah practices in the Hajj and Umrah pilgrimages.

Contrasting with the research conducted by Zahrotun Munawaroh, this study focuses on two primary questions: 1) How effective is the implementation of the Hajj pilgrimage at the Regional Office of the Ministry of Religious Affairs of Central Java Province? and 2) What are the supporting and inhibiting factors in for implementing SISKOHAT? The findings indicate that the application of SISKOHAT significantly enhances the performance of Hajj pilgrimage services at the Regional Office of the Ministry of Religious Affairs in Central Java Province. SISKOHAT, integrated with 17 BPS BPIH and Ministry of Religious Affairs offices throughout Indonesia, and centralized at the Ministry of Religious Affairs, includes services such as registration and database management of pilgrims and Hajj officers, passport and visa documentation, issuance of Hajj Travel Administration Documents (DAPIH), online BPIH payments through BPS BPIH, implementation of the BPIH accounting system, flight scheduling and monitoring, health monitoring for Hajj, and oversight of Hajj operations both in Indonesia and Saudi Arabia.

Subsequent research delves into various aspects of the Hajj. In this vein, Budi Kisworo's study highlights that the Hajj serves as a spiritual monument, initially established by Prophet Ibrahim and his family, and further perfected by Prophet Muhammad. The research posits that the Hajj commemorates the contribution of four central figures, Ibrahim (p.b.u.h.), Siti Hajar, Ismail (p.b.u.h.), and Muhammad (p.b.u.h.). This spiritual heritage, according to Kisworo, can be metaphorically taken home by each Hajj pilgrim as a symbolic keepsake to share with the communities. It is not the title Sir Haji or Mrs. Hajjah, nor a white robe or white mukena symbolizing Hajj Mabrur, but rather a “white heart” signifying the complete surrender of faith to the Almighty. Nida Farhanah stated that the problem with the Hajj waiting list in Indonesia arises from juridical, philosophical, and sociological aspects. Among the causes of the long Hajj waiting list is a societal habit aimed at expediting the registration process, specifically the practice of Hajj social gatherings. These gatherings function similarly to general social gatherings where groups of people collectively pool money regularly over a specific period. Wuryaningsih Dwi Lestari discussed the financing of the Hajj pilgrimage through Sharia financial institutions. Although Sharia banks no longer offer this program, many Sharia financial institutions still fund Hajj pilgrimages, including Sharia People's Credit Bank, Baitul Mal Wat Tamwil, and Sharia Pawnshops.

By reviewing several previous studies, the research conducted by the authors aims to establish a unique position compared to prior research. While there are similarities, such as the discussion of Hajj issue, previous studies have explored various aspects of the Hajj. However, this research differentiates itself by addressing the limitation of the Hajj from the *sadd al-dzari'ah* perspective. The authors intend to complement prior research by presenting Hajj restrictions for those who have already performed Hajj, viewed from *the sadd al-dzari'ah* lens.

RESEARCH METHODS

This study employs a library research methodology, utilizing the Ushul Fiqh approach. Data collection involved the review and examination from various documents to gather obtain sources relevant to the object of study, including several ushul fiqh books and other supporting materials. After data collection, a constant comparative method was used for data analysis. This method involves the continuous comparison of data through the following stages:²⁰

1. Data Reduction: Selecting and sorting data according to the research object;
2. Data Display: Creating conceptual maps and typologies to clearly and systematically describe the data;
3. Conclusion Drawing: Formulating conclusions based on the analyzed data; and
4. Data Verification: Validating the findings to ensure their accuracy.

This structured approach ensures a comprehensive and systematic analysis of the collected data.

ANALYSIS AND DISCUSSION

Dynamics of the Hajj Pilgrimage in Indonesia

The Hajj, as the fifth pillar of Islam, is a mandatory act of worship for every Muslim who meets the requirements of *istita'ah*, encompassing financial, physical, and mental capabilities. It represents the zenith of Islamic ritual, encapsulating all levels of Sharia.²¹ In Indonesia, embarking on the Hajj pilgrimage is a deeply cherished aspiration for millions. In various regions, completing the Hajj transcends spiritual fulfillment, signifying an individual and communal standing. This fervor among the Indonesian Islamic community propels the country to consistently send the largest contingent of Hajj pilgrims annually, a statistic that aligns with Indonesia's status as the country with the world's largest Muslim population.²²

The institution of the Hajj predates Prophet Muhammad, tracing back to Prophet Ibrahim and Prophet Ismail. Prophet Ibrahim, revered as the patriarch of Prophets and Apostles, laid the foundations of this sacred tradition, which was perpetuated by Prophet Muhammad (p.b.u.h.) and continues to this day. The Hajj, as an integral pillar of Islam, is designated by Allah SWT to be performed in Arabia, underscoring its significance and eternal relevance to the Islamic faith.²³

The Hajj pilgrimage serves as a profound extension of the development of noble mental attitudes and morals. It represents a unifying declaration by Muslims worldwide, bonded by a shared creed.²⁴ The pilgrimage demands robust physical and mental strength, as both Hajj and Umrah require extensive preparation, significant financial resources, and the resilience to endure

²⁰ Lexy J Moelong, "Metodologi Penelitian Kualitatif," *Bandung: Remaja Rosdakarya*, 2007.

²¹ Idlofi Idlofi and Ahmad Rezy Meidina, "Konsep Amar Ma'ruf Nahi Munkar Dalam Tafsir Al-Munir Karya Wahbah Al-Zuhaili," *Jurnal Dirosah Islamiyah* 5, no. 3 (2023): 561–72.

²² Agus Riwanto and Sukarni Suryaningsih, "Realizing Welfare State and Social Justice: A Perspective on Islamic Law," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 30, 2022, 41–51, <https://doi.org/10.24090/volksgeist.v5i1.6430>.

²³ M Noor Matdawam, "Pelaksanaan Ibadah Haji Dan Umrah," *Yogyakarta: Yayasan 'Bina Karier' LP5BIP*, 1986.

²⁴ Deniansyah Damanik et al., "Religious Moderation By Organization Of Islamic Al-Jam'iyatul Washliyah (Character, Identity, And Attitude)," *Islamadina : Jurnal Pemikiran Islam* 24, no. 2 (September 22, 2023): 233, <https://doi.org/10.30595/islamadina.v24i2.17089>.

various challenges and temptations. Embarking on the Hajj cultivates a deep sense of sacrifice, encompassing not only financial resources and personal belongings but also a generous spirit, as well as the expenditure of energy and time.²⁵

For those who journey to the Baitullah to fulfill their obligations as Muslims, completing the pilgrimage often ignites a yearning to return. It stands as a beacon of monotheism, embodying the essence of faith and representing the earliest sanctuary erected by humanity. Pilgrims who visit are assured of blessings in both this life and the hereafter.²⁶

Therefore, the Hajj is a fundamental pillar of Islam, an obligation for those who are capable. The performance of Hajj involves specific pillars, rites, and prerequisites that must be met for it to be considered valid under Islamic law. To navigate the rituals of Hajj and address contemporary challenges in its execution, a thorough understanding of the legal foundations governing the Hajj pilgrimage is essential.²⁷

Hajj Restrictions for Repeat Pilgrims

Waiting lists have become a significant contemporary issue for Hajj, with the high demand among Indonesian Muslims resulting in waiting periods of up to 20 years. There has long been debate over imposing restrictions on those who have already completed the Hajj pilgrimage. Indonesia, home to the world's largest Muslim population, sees a substantial interest in performing Hajj.²⁸

The organization of Hajj has been a state responsibility, governed by Republic of Indonesia Law Number 13 of 2008 concerning the implementation of Hajj and Government Regulation Number 79 of 2012 concerning the Enforcement of Law No. 13 of 2008.²⁹

Data from the Ministry of Religious Affairs indicate that annually, around 10 percent or 20,000 people who have previously completed Hajj undertake the pilgrimage again. This recurring participation has prompted calls for regulatory measures to limit the frequency of Hajj. Various stakeholders, including the DPR, community organizations (NU and Muhammadiyah), MUI, observers, and the general public, have expressed support for the government's potential policy, which would be overseen by the Ministry of Religious Affairs.³⁰

However, if such a policy is implemented, it raises concerns about potential conflicts with the individual right of Muslims to practice their faith. The question arises: Does the government's policy to restrict the frequency of Hajj pilgrimages infringe upon a Muslim's individual right to worship?

²⁵ Misbahuddin Misbahuddin et al., "Normativism of Islamic Law in the Akkattere Hajj Ritual of South Sulawesi's Ammatoa Community," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (March 31, 2023): 629, <https://doi.org/10.22373/sjhk.v7i1.15987>.

²⁶ Ali Yahya Muhammad Taufiq, "Manasik Lengkap Umroh Dan Haji Serta Do'a-Do'anya" (Jakarta: Lentere, 2008).

²⁷ Irfan Ardyan Nusanto, "Analisis Terhadap Dualitas Peraturan Menteri Dalam Sistem Peraturan Perundang-Undangan Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 1 (June 23, 2021): 53–68, <https://doi.org/10.24090/volksgeist.v4i1.4245>.

²⁸ M Najibur Rohman and Daud Rismana, "Kebijakan Pemangkasan Struktur Birokrasi Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 2 (December 1, 2021): 2021–2232, <https://doi.org/10.24090/volksgeist.v4i2.5232>.

²⁹ iwan ampel, *Dasar Ibadah Haji*.

³⁰ Fitriyan Zamzami, *Pembatasan-Haji-Dinilai-Perlu-Disegerakan*.

On Tuesday, October 20, 2015, Fathul Hadi Usman and his associates filed a lawsuit with the Constitutional Court seeking to impose restrictions on the Hajj pilgrimage. The petitioners challenged Article 4, Paragraph 1 of Law No. 13 of 2008 concerning the Implementation of the Hajj, which states, “Every citizen who is Muslim has the right to perform the Hajj pilgrimage provided that the minimum age is 18 years and they are able to pay BPIH.” Additionally, they contested Article 5 of the same law, arguing that it potentially infringes upon their constitutional rights as prospective Indonesian Hajj pilgrims.³¹

The petitioners argued that the absence of restrictions on performing the Hajj pilgrimage could result in excessively long waiting queues, thus violating their constitutional rights. They requested that the Constitutional Court amend the law to stipulate that those who have already completed the Hajj should not be permitted to perform it again, except for government officials.

In his ruling, Chief Justice of the Constitutional Court, Arif Hidayat, explained that the petitioner's request contained constitutional contradictions. He noted that the PIH Law, which states, “Every citizen who is Muslim has the right to perform the Hajj pilgrimage provided that the minimum age is 18 years and they are able to pay BPIH,” aligns with the era of the 1945 Constitution. He emphasized that restricting the right to perform the Hajj pilgrimage for citizens who meet these criteria would be contrary to the 1945 Constitution.³²

Thus, the decision of the Judge of the Constitutional Court of the Republic of Indonesia expressly rejected the lawsuit filed by Fathul Hadi Usman and his associates, which sought to impose restrictions on the Hajj pilgrimage.³³

The national Hajj Muzakaroh, held from February 25-27, 2015, at the Pondok Gede Hajj dormitory in Jakarta, issued two recommendations regarding *Istita'ah* (ability): First Recommendation: The government should immediately enact regulations at the level of a joint decree (SKB) by three Ministers (Minister of Religious Affairs, Minister of Health, and Minister of Transportation) concerning restrictions on Indonesian Hajj pilgrims who fulfill *Istita'ah* (ability). Second Recommendation: The government should promote awareness of Hajj health *Istita'ah* (skills) to the public.

On May 27, 2015, the Government of the Republic of Indonesia, through the Minister of Religious Affairs, issued Minister of Religious Affairs Regulation No. 29 of 2015, which amended Minister of Religious Affairs Regulation No. 14 of 2012 concerning the Implementation of the Regular Hajj Pilgrimage.

Article 3, paragraph 4, states: “Hajj pilgrims who have previously performed the Hajj can register for the Hajj after ten (10) years since completing the last Hajj.”

Paragraph 5 specifies: “The registration provisions as referred to in paragraph (4) do not apply to supervisors.

Article 4 outlines the registration requirements for prospective Hajj pilgrims as follows:

1. Muslim;
2. At least 12 years old at the time of registration;

³¹ Mahkamah Konstitusi, *Tolak Pentasan Haji* (Jakarta: gresnews, 2016).

³² Konstitusi.

³³ Taufik Setyudin, “Paradigma Hukum Dalam Perspektif Taqi Al-Din Al-Subki,” *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, July 15, 2023, 201–12, <https://doi.org/10.56593/khuluqiyya.v5i2.109>.

3. In possession of a valid KTP according to domicile or other valid proof of identity;
4. In possession of a family card;
5. In possession of a birth certificate or birth certificate, marriage certificate, or diploma; and
6. Have savings in the name of the concerned individual at BPS BPIH.

Attention must be given to the limitations on the Hajj pilgrimage for individuals who have already undertaken the Hajj, as outlined in Article 4, paragraph 3, of the Minister of Religious Affairs Regulation No. 29 of 2015, which states: “Hajj pilgrims who have previously performed the Hajj may register for the Hajj again after ten (10) years since completing the last Hajj.”

This regulation restricts those who have already completed the Hajj from registering as pilgrims again within a decade, with the exception of official Hajj supervisors.³⁴ such restrictions do not infringe upon a Muslim's individual rights to worship. Ansari Yamamah, a lecturer at IAIN North Sumatra, posits that imposing limitations on multiple Hajj performances in an act of fairness, facilitating opportunities and convenience for other Muslims to undertake the pilgrimage.³⁵

Saifullah Yusuf, the Chairman of PBNU, asserts that performing the Hajj pilgrimage is a right for every believer and that no religious law prohibits undertaking the pilgrimage more than once, especially for those who are financially and physically able. However, he emphasizes the importance of tolerance and understanding, alongside the need to provide opportunities for Muslims who have yet to perform the Hajj pilgrimage.³⁶

Ali Mustafa Yaqub, who passed away on April 28, 2016, and was revered as a scholar of Ahlul Hadith, is remembered for his deep concern over the worship behaviors of Muslims, especially Indonesian Muslims. He criticized the tendency to prioritize prestige, image, and worldly status over the true nobility and essence of worship.³⁷

He remarked that performing the Hajj more than once, particularly beyond the obligatory instance, for the sake of social nobility or popularity, is not for the sake of Allah (*lillahi ta'ala*) but is rather influenced by Satan's whispers. “Which scripture instructs us to undertake the Hajj numerous times, especially when numerous other religious duties await us? Does our Hajj emulate that of Prophet Muhammad (p.b.u.h.)? When has Prophet Muhammad (p.b.u.h.) ever set such an example or issued such a command? Or are we succumbing to Satan's insinuations through our desires, aiming to be perceived as noble by others? If this is our motivation, then our Hajj is not performed for Allah, but for Satan.”

Ali Mustafa Yaqub observed that Muslims in Indonesia take pride in performing the Hajj multiple times. Yes, fundamentally, Prophet Muhammad (p.b.u.h.) completed the Hajj only once during his lifetime. “However, Prophet Muhammad (p.b.u.h.) did not undertake the Hajj in the 8th year after Hijrah, nor in the 9th. It was in the 10th year that Prophet Muhammad (p.b.u.h.) embarked on his pilgrimage. Three months later, he passed away. Hence, his pilgrimage is referred to as the *hajj wada'* (farewell pilgrimage). This indicates that although Prophet Muhammad had

³⁴ Samsudin et al., “Hajj Funds Management Based on Maqāsid Al-Sharī'ah; A Proposal for Indonesian Context,” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (December 31, 2023): 544–67, <https://doi.org/10.19105/al-lhkam.v18i2.7268>.

³⁵ pengamat, *Pembatasan-Berhaji-Bentuk-Keadilan-Umat* (Jakarta: antaranews, 2016).

³⁶ pengamat, *Dukung-Cegah-Pembatasan-Berhaji*, (Jakarta: global, 2016).

³⁷ Nasruddin Yusuf et al., “Islamic Legal Status on Hajj for Transgender People According to Muslim Scholars in North Sulawesi,” *Mazahib* 21, no. 1 (July 11, 2022): 29–62, <https://doi.org/10.21093/mj.v21i1.4280>.

the opportunity to perform the Hajj three times, he chose to do it just once.” He believed that the Prophet gave precedence to communal (*muta'ddiyah*) worship (worship that benefits others) over individual act of devotion (*qasirah*), signaling a higher regard for those engaged in acts of social worship.

Analysis of Hajj Restrictions for Those Who Have Already Performed Hajj from the Perspective of *Sadd al-Dzari'ah*'s

The Hajj, the fifth pillar of Islam, is a once-in-a-lifetime obligation for every Muslim who is physically and financially capable of undertaking the journey.³⁸ In Islam, it is a divine commandment from Allah SWT for those who have the means to perform Hajj at least once in their lifetime.³⁹ Allah SWT states, “In it, there are clear signs, (among them) the Station of Abraham. Whoever enters it (the Sacred House) shall be safe. It is a duty towards Allah for mankind to perform Hajj to the House, for those who can afford the journey. But whoever disbelieves, then indeed, Allah is the Most Rich (Free of need) from all the worlds.” (QS Ali Imran: 97).

Due to the significant interest among Indonesian Muslims in performing Hajj, the waiting list has extended to an estimated twenty-five years. In response to manage the influx and ensure equitable opportunities for those yet to perform Hajj, the Indonesian Government, specifically the Ministry of Religious Affairs, introduced restrictions for individuals who have already completed the pilgrimage. On May 27, 2015, the Minister of Religious Affairs issued Regulation Number 29 of 2015, amending the previous Minister of Religious Affairs Regulation Number 14 of 2012 regarding the management of regular Hajj pilgrimage. Article 3, paragraph 4 of the regulation stipulates: “Hajj pilgrims who have previously performed the Hajj may register for the Hajj after ten (10) years from completing the last Hajj.”⁴⁰

The discussion on implementing restrictions for the Hajj has been prevalent for a considerable time, especially since Indonesia is recognized as the largest Muslim-majority country globally. The desire to undertake the Hajj pilgrimage is exceptionally high among the population, with certain communities attributing special prestige to individuals who have completed the pilgrimage. Fundamentally, the imposition of Hajj restrictions aims to afford opportunities to those who have not yet been able to perform the pilgrimage, primarily due to the limited Hajj quota and the extensive waiting period, which currently stands at approximately 25 years owing to the high annual influx of pilgrims.⁴¹

The proposal for Hajj restrictions was initially introduced by Muhammad Jasin, the Inspector General of the Indonesian Ministry of Religious Affairs. He highlighted the necessity of such regulations or policies from the Ministry of Religious Affairs to prevent the Hajj waiting list from extending further. Without these measures, he argued, the waiting list would only grow longer,

³⁸ Syaikh Syaikh, “Istitha’ah Dalam Haji (Studi Tematik Tafsir Ahkam Surah Ali Imran Ayat. 97),” *El-Mashlahah* 10, no. 1 (June 29, 2020): 15–30, <https://doi.org/10.23971/maslahah.v10i1.1792>.

³⁹ Amalina Setiani and Muhammad Labib Syauqi, “The Perfection of Religion in the Qur’an,” *International Journal of Social Science and Religion (IJSSR)*, December 17, 2020, 213–32, <https://doi.org/10.53639/ijssr.v1i3.24>.

⁴⁰ Landy Trisna Abdurrahman, “Conflict in Islamic Jurisprudence: Noel J. Coulson’s Historical Approach and His Contribution to the Study of Islamic Law,” *JIL: Journal of Islamic Law* 3, no. 1 (February 9, 2022): 74–93, <https://doi.org/10.24260/jil.v3i1.495>.

⁴¹ iwan ampel, *Dasar Ibadah Haji*.

leaving elderly applicants without any assurance of their chance to perform the Hajj. The discourse has elicited a range of responses from various Islamic mass organizations in Indonesia.⁴²

Regarding concerns that limiting the Hajj pilgrimage to a single occurrence infringes upon individuals' freedom to practice their religion, the Inspector General clarified his position. Contrary to assertions of infringement on religious freedom, he stated that the proposed restrictions are designed to facilitate access to the Hajj for those who are willing and able but have not yet had the opportunity to fulfill this pillars of Islam.⁴³

Consequently, there is a growing call for the government to enforce these restrictions, which includes giving priority to elderly individuals who have not yet had the opportunity to undertake the Hajj pilgrimage. In addition, it is crucial for the government to also focus on elderly Hajj candidates who never participated in the Hajj. The rationale behind this is that the biological life expectancy of older individuals is generally shorter than that of younger ones, although ultimately, lifespan is determined by divine will.

According to information from the Ministry of Religious Affairs, each year approximately 10 percent, or 20,000 people, who have already completed the Hajj choose to perform it again. Implementing a policy that limits the number of Hajj pilgrimages could pose challenges, especially considering that the right to perform the Hajj is an individual's religious privilege as outlined in Law of the Republic of Indonesia number 13 of 2008 concerning the implementation of the Hajj pilgrimage. Chapter III on Rights and Obligations details in Article 4, Paragraph (1), that every Muslim citizen is entitled to perform the Hajj Pilgrimage under the following conditions:

1. Be at least 18 (eighteen) years old or of marital status; and
2. Have the financial capability to pay for the BPIH (Hajj Pilgrimage Cost).

Does the government's policy, specifically PMA number 29 of 2015, which restricts the Hajj pilgrimage to individuals who have already performed Hajj, infringe upon a person's individual right to worship? To evaluate the Hajj restrictions for those who have already undertaken the pilgrimage, it is essential to consider the reality of waiting lists that extend up to 25 years.⁴⁴ This situation necessitates an analysis through *ijtihad istislahi*, employing the perspective of *sadd al-dzari'ah*. Before proceeding with the *ijtihad istislahi* analysis from the *sadd al-dzari'ah* viewpoint, it is

⁴² Syarial Dedi and Sri Yuniarti, "Imam Ash-Shafi'i's Opinion on Hajj without a Mahram and Its Relevance to the Present Day," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (November 9, 2023): 535, <https://doi.org/10.29240/jhi.v8i2.7113>. and then see its relevance in today's times. Imam ash-Shafi'i has opinion that a mahram or husband is not obligatory for a woman in carrying out the pilgrimage, but on condition that the woman is protected from harming her body and soul and her honor. The majority of fiqh scholars are of the opinion that women must be accompanied by their mahram to perform the pilgrimage. According to the provisions of the Shari'ah, a woman may not travel alone but must be accompanied by her husband or mahram. Even the al-Hanafiyah school of thought argues that a mahram for women is a mandatory requirement for Hajj. This study is in the form of a character study categorized as library research. It used secondary data, either in the form of primary materials, tertiary secondary. Data analysis used heuristic, critics (internal and external

⁴³ Muhammad Aziz Zakiruddin, Kamsi Kamsi, and Ahmad Bahiej, "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (December 1, 2022): 547, <https://doi.org/10.29240/jhi.v7i2.5310>.

⁴⁴ EMK Alidar et al., "Juridical Provisions on Government Policies Towards Marginal Economic Actors in Indonesia in the Perspective of Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (March 31, 2023): 101, <https://doi.org/10.22373/sjhk.v7i1.14621>.

crucial to understand that the overarching objective of Islamic law is to secure human welfare by safeguarding their⁴⁵ *daruriyyah* (essentials), *hajiyyah* (needs), and *tahsiniyyah* (enhancements).⁴⁶

According to al-Shatibi, the objectives of sharia (*maqasid al-shari'ah*), or the divine intent behind the institution of sharia, encompass four aspects:⁴⁷ *first*, the realization of human welfare (*masalih al-ibad*) in both this world and the afterlife;⁴⁸ *second*, ensuring the texts of sharia are accurately comprehended; *third*, guiding humans to adhere to the obligations (*taklif*) they are bound to fulfill; and *fourth*, incorporating the *mukallaf* (those subject to Islamic law) under the protection of sharia.⁴⁹

Therefore, the primary aim of implementing Sharia is to achieve human welfare, while the latter three aspects serve to support this primary objective. Al-Shatibi identifies five critical elements (*al-kulliyat al-khams*) that must be preserved to realize and maintain human welfare: religion, life, progeny, intellect, and property. To achieve and uphold these five principal elements, al-Shatibi categorizes the objectives of sharia into three levels: first, *maqasid al-daruriyyah* (the essentials); second, *maqasid al-hajiyyah* (the needs); and third, *maqasid al-tahsiniyyah* (the enhancements).⁵⁰

Maqasid al-daruriyyah refers to the essential objectives that must be met to ensure the welfare of both religion and the world. Without these objectives being fulfilled, the stability of the world could be jeopardized, and the possibility of salvation in the afterlife could be lost. The preservation of this *maqasid* involves two key approaches: realization and maintenance.⁵¹

Maqasid al-hajiyyah encompasses the objectives necessary for providing ease and removing hardship. Neglecting these objectives may lead to difficulties, although failing to meet them does not compromise public welfare. For instance, in the realm of worship, concessions (*rukhsah*) are made for prayer and fasting for the ill; in customs, there is allowance for hunting; and in transactions (*muamalat*), there is flexibility in contractual agreements.

Maqasid al-tahsiniyyah focuses on adopting practices that align with the best customs and avoiding methods that are not liked by wise people, in worship such as removing impurity or purifying oneself and covering one's private parts, in customs there is modesty in eating and drinking, while in transactions, it forbids the sale of impure food.⁵²

Echoing a similar sentiment, Ibn Qayim al-Jauziyyah emphasized that the fundamental principle of Islamic Sharia is to secure the welfare of God's servants in both this world and the afterlife. This encompasses justice, mercy, welfare, and wisdom, all of which are integral part to Islamic Sharia.⁵³

In the Qur'an and al-Sunnah, a fundamental principle of Islamic law formation has been established: to alleviate hardship.⁵⁴ This embodies the concept of ease within Islam, although it is

⁴⁵ Abd Al-Wahhab, "Ilm Ushul Al-Fiqh," 2016.

⁴⁶ Nur Ali, "Konsep Imam Al-Juwaini Dalam Maqashid Al-Syari'ah," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, November 7, 2019, 1–14, <https://doi.org/10.56593/khuluqiyya.v1i2.36>.

⁴⁷ Al-Syatibi, "Al-Muwafaqat Fi Ushul Al-Syari'ah."

⁴⁸ Yahdi Dinul Haq, Hafizah Muchtia, and Zia Alkausar Mukhlis, "Bid'ah in Concept of Maslahah Mursalah and Istihsan According to Imam Asy-Syathibi," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (December 15, 2021): 225, <https://doi.org/10.31958/juris.v20i2.3352>.

⁴⁹ Al-Syatibi, "Al-Muwafaqat Fi Ushul Al-Syari'ah."

⁵⁰ Al-Syatibi.

⁵¹ Al-Syatibi.

⁵² Al-Syatibi.

⁵³ Ibn Qayyim Al-Jauziyyah, *I'lam Al-Muwâqî'in an Rabb Al-'Alamin* (bairut: dar- al-kutub al-ilmiyyah, 1996).

⁵⁴ Zakariyyah al-Bari, *Masadir al-Ahkam al-Islamiyyah* (ttp: Dar al-Itihad al-'Arabi li al-Tiba'ah, 1975), p. 126.

bounded by the prohibition of succumbing to one's desires. Specific verses in the Qur'an underscore this principle, such as: “*wa ma ja'ala 'alaikum fiddini min haraj*” (He has not placed upon you in the religion any difficulty)⁵⁵ and “*yuridullahu bikumul yusra wa la yuridu bikumul 'usr*” (Allah intends for you ease, and He does not want to make things difficult for you).⁵⁶

Hence, Islam's objective of extending mercy to humanity is evident. This is encapsulated in Allah's words: “*Wa ma arsalnaka illa rahmatal lil 'alamin*” (And We have not sent you, [O Muhammad], except as a mercy to the worlds). Islamic Sharia,⁵⁷ in formulating its laws, prioritizes the fundamental preservation of human welfare, aiming to bestow upon them happiness in this life and the hereafter by affording benefits and averting harm. Consequently, within the framework of upholding human welfare, the concept of legal adaptability—modifying laws in response to evolving situations and conditions—is a well-accepted notion in Islamic legal discourse.

Islamic legal scholars commonly assert that the resilience of Islamic law stems from its capacity to adapt to different times and locales.⁵⁸ This adaptability principle is encapsulated within the rules of *ushul fiqh* (principles of Islamic jurisprudence).⁵⁹

According to Wahbah az-Zuhaili, law subject to change over time are those of an *ijtihadi* nature, which are predicated on *maslahah* (public interest) and take into account the phenomenon of *'urf* (customary practices).⁶⁰

Restrictions on the Hajj for those who have already performed it, with a limit of 10 years, are implemented to benefit the ummah by prioritizing and providing opportunities for Muslims who have yet to fulfill this obligatory pilgrimage. Those who have already performed Hajj are required to restrain their desire to register again, as repeating the pilgrimage is not mandatory for them.⁶¹

This phenomenon of restricting Hajj for repeat pilgrims is well-suited for analysis using the *istinbat sadd al-dzari'ah* method. According to Wahbah al-Zuhaili, *sadd al-dzari'ah* involves actions that lead to prohibited outcomes or cause harm. Husain Hamid Hasan, quoting Al-Shatibi, explains *sadd al-dzari'ah* as preventing actions that, despite having initial benefits, ultimately lead to damage (*mafsadatan*).⁶²

Ash-Syaukani further clarifies that *al-dzari'ah* refers to issues or actions that are permissible but may lead to prohibited actions.⁶³ One of the principles of *sadd al-dzari'ah* is: “Anything that serves as an intermediary or path to something forbidden in Sharia is itself forbidden.”

In this context, *al-dzari'ah* is considered a *wasilah* (means) that can lead to both lawful and unlawful ends. Thus, a method leading to something haram (forbidden) is also haram, a method leading to something halal (permissible) is halal, and a method leading to something obligatory is likewise obligatory.

⁵⁵ Al-Hajj (22): 78.

⁵⁶ Al-Baqarah (2): 185.

⁵⁷ Al-Anbiya' (21): 107

⁵⁸ Madjid, “Sejarah Awal Penyusunan Dan Pembakuan Hukum Islam.”

⁵⁹ Al-Jauziyyah, *I'lam Al-Muwâqi'in an Rabb Al-'Alamin*.

⁶⁰ wahbah zuhaili, *Nazariyyah Ad-Darurah Al-Shari'ah Muqaranah Ma'`a Al-Qanun Al-Wad'i* (beirut: Mu'assasah al-Risalah, 1899).

⁶¹ Moh. Rosyid, “Dinamika Haji Indonesia Sejak Era Kolonial Dan Problematika Calon Haji Ilegal,” *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 17, no. 2 (February 24, 2018): 241, <https://doi.org/10.18326/ijtihad.v17i2.241-259>.

⁶² Husain Hamid Hasan, “Nazariyyah Al-Maslahah Fī Al-Fiqh Al-Islāmī,” *Kairo: Dār an-Nahdah Al-'Arābiyah*, 1971.

⁶³ Syaukânî, “Irsyād Al-Fuhûl Ilâ Tahqîq Al-Haq Min 'Ilmi Al-Ushûl, Juz II.”

From the definitions provided, it is evident that *sadd al-dzari'ah* is a method for deriving Islamic law that involves preventing, prohibiting, or obstructing pathways or means for actions that are initially permitted. This prohibition comes into place because such actions might lead to harm or forbidden outcomes.⁶⁴

The Hajj pilgrimage, being the fifth pillar of Islam, is obligatory for those who are financially and physically capable. While individuals have the right to perform Hajj more than once, the reality of long waiting times—some waiting for as much as 25 years—has prompted government intervention. In this context, the Minister of Religious Affairs of the Republic of Indonesia has imposed restrictions on repeat Hajj pilgrimages, allowing those who have already completed it to register again after a period of 10 years. This policy is designed for the benefit of the ummah (Islamic community) and aims to provide more individuals the opportunity to undertake the Hajj Pilgrimage. This aligns with the *sadd al-dzari'ah* method of *istinbat* (deduction), which seeks to prevent actions initially permitted but deemed by authorities to potentially cause community unrest. Hence, a 10-year waiting period for re-registration is established. The advantages of imposing limits on repeat Hajj pilgrimages include:

1. Offering opportunities to eligible Muslims who have not yet performed the Hajj pilgrimage.
2. Ensuring the rights of others to undertake the Hajj are protected.
3. Promoting tolerance in religious practices.
4. Prioritizing the prevention of harm to the community over individual benefits.⁶⁵

CONCLUSION

The Indonesian government's decision to restrict Hajj pilgrimages to those who have not performed Hajj in the past 10 years exemplifies the application of the *sadd al-dzari'ah* theory. From the perspective of *sadd al-dzari'ah*, such a restriction is justifiable if its objective is to safeguard the welfare and safety of all pilgrims and to enhance the overall quality of the Hajj experience. While this policy may appear to infringe upon individual rights, within the context of *sadd al-dzari'ah*, it is seen as a measure to optimize the Hajj pilgrimage's quality and ensure the well-being of the participants. This policy aims to alleviate lengthy waiting times and bolster the efficiency in Hajj organization in Indonesia. Furthermore, it is anticipated to foster general *maslahah* (public interest) by providing opportunities for those who have not yet performed Hajj and by minimizing community unrest. The Indonesian government's approach aligns with the principle of *tasharruf al-imam ala al-ra'iyah manuth bi al-maslahah* (the authority of the leader over the subjects is contingent upon the public interest). Therefore, this policy is expected to enhance the collective well-being of Indonesian Muslims, particularly in the administration of the Hajj pilgrimage.

⁶⁴ Yuhasnibar Yuhasnibar and Risna Wati, "The Law on the Tripple Talaq at Once in the View of Yusuf Al Qaradawi's in Contemporary Context: Analysis of Sadd Al-Žarī'ah Theory," *El-USrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 381–98.

⁶⁵ Imam Mustofa, Muhammad Iqbal Juliansyahzen, and Wildani Hefni, "Hijrah and Changing Religious Preferences in Contemporary Islamic Legal Practice," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (July 12, 2023): 115–38, <https://doi.org/10.18326/ijtihad.v23i1.115-138>.

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