

Disharmonization of *Wakalah* Contract in Law Number 34 of 2014 and DSN-MUI Fatwa Number 122/DSN-MUI/II/2018

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Abstract. *BPKH, as a Hajj financial management institution in Indonesia, plays an essential role in evolving the Hajj Fund. With the biggest potential of the Muslim population in the world, Indonesia can administrate hajj finances in a larger scope by investing them on business lines, which are in accordance with sharia principles. However, the wakalah contract, as the foundation of agreement between the prospective pilgrims and the BPKH institution, is interpreted differently by Law Number 34 of 2014 and the DSN-MUI Fatwa Number 122/DSN-MUI/II/2018. As a consequence, the difference causes disharmony between the two laws. The different interpretations of these regulations have led to some legal consequences. These are related to the determination of the responsible parties in the case of the failure in investment, which involve the government or BPKH as the hajj fund administrators. This paper is based on a qualitative inquiry, using regulations as the primary sources, supported by non-legal materials. Content analysis with normative juridical themes is used to analyze the legal system and principles.*

Keywords: *Disharmonization, Contract, wakalah, BPKH, legislation*

Abstrak. *BPKH sebagai lembaga pengelola keuangan haji di Indonesia memiliki peranan penting dalam mengembangkan Dana Haji. Dengan potensi umat Islam terbesar di dunia, Indonesia dapat mengelola keuangan haji dalam ruang lingkup yang lebih besar dengan menginvestasikan keuangan haji pada lini usaha yang sesuai dengan prinsip-prinsip syariah. Namun akad wakalah sebagai dasar yang digunakan antara para calon jamaah haji kepada lembaga BPKH diinterpretasikan berbeda antara Undang-Undang No. 34 Tahun 2014 dengan Fatwa DSN-MUI No. 122/DSN-MUI/II/2018 sehingga menimbulkan disharmonisasi pada kedua perundang-undangan tersebut. Perbedaan interpretasi peran wakil pada kedua perundang-undangan ini menimbulkan konsekuensi hukum berupa perbedaan penerima tanggung jawab yang melibatkan pemerintah maupun BPKH selaku pengelola keuangan haji apabila mengalami kegagalan investasi. Penelitian ini menggunakan metode kualitatif dengan data sekunder berupa peraturan perundang-undangan, buku terkait, dan bahan non hukum. Teknik yang digunakan adalah content analysis dengan tema penelitian yuridis normatif yang menganalisis asas-asas dan sistematika hukum.*

Kata kunci: *Disharmonisasi, akad, wakalah, BPKH, perundang-undangan*

Introduction

After the issuance of Law Number 34 of 2014 regarding *Hajj* Management, the administration of *Hajj* fund which was initially carried out by the Ministry of Religion has been currently shifted into a public legal entity known as BPKH (*Hajj* Financial Management Agency). All this time, prospective pilgrims deposit some funds to BPIH and sign a wakala contract to secure their pilgrimage departure seat. Subsequently, the fund is managed and developed by BPKH.

The administration of *Hajj* fund itself consists of four aspects: the deposit of *Hajj* expenses, the development of *Hajj* fund, *Hajj* service funds, and the Community Perpetual Fund (DAU). Of the four things that are still managed by the Ministry of Religion is the *hajj* service financing. (Harisman, 2017)

The *Hajj* service costs consist of three main elements, specifically direct costs, or in the form of BPIH (*Hajj* Travel Costs), indirect costs, or the benefits of the *Hajj* funds investment, and APBD (regional budget)/ APBN (national budget). Direct costs consist of airfare, airport taxes, and aeroplane passenger services during the pilgrimage trip, accommodation in Makkah and living allowances.

Meanwhile, indirect costs are used to add to the accommodation cost both in Makkah and Medina. Also, there are operational costs from the APBD/APBN, which are used for pilgrim officers and health services during the pilgrimage. (Atho'illah, 19 Mei 2017)

Three other *Hajj* management roles are carried out by BPKH (*Hajj* Financial Management Agency). The complete roles of BPKH include the reception, investment, expenditure, and accountability report of *Hajj* funds.

The management of *Hajj* fund by growing it through investment has been done since the issuance of Presidential Decree No. 35 of 1996 concerning the Indonesian *Hajj* Costing Fund Management Agency. In Article 4 of this Presidential Decree, it Funds that the *Hajj* Fund is to be spent for pilgrimage. The remnant of the fund can be used for matters related to education, Islamic proselytization, poverty alleviation, and other benefits for muslims. The fourth *ijtima* of the *ulama* of Indonesian fatwa commission in 2012 discussed the ownership status of funds deposited to BPIH by the prospective pilgrims from Cipasung, who were in the waiting list. The fund from BPIH was deposited to the bank account of the Ministry of Religion (currently to BPKH) and is allowable to be used for productive matters (benefiting) such as the deposit in Islamic banks or the investment in the form of *sukuk*.

If previously the investment of *Hajj* fund was in Islamic banking or the form of *sukuk*, currently the investment, based on the Law No. 34 of 2014, can be in the

form of gold, securities, as well as direct investment. The provision related to the investment choice certainly risks the development of *Hajj* fund. As a consequence, they should be responsible parties for the loss in the investment.

Article 20 and 53 of Law No. 34 of 2014 state that the BPKH, as the *Hajj* Financial Management Agency, is a public legal entity. This means that if a loss occurred, the implementing body members and members of the supervisory board are jointly and severally responsible (*tanggung renteng*) for the losses in investment. Article 6 paragraph 2 of this Law also states that the fund from BPIH and Special BPIH to be deposited to the account of BPKH, as the legal representative of the pilgrims. Meanwhile, the DSN-MUI Fatwa No. 122/DSN-MUI/II/2018 about the Financial Management of BPIH and Special BPIH Based on *Sharia* Principles says that BPIH Funds are managed and developed by the Government as the representative of the prospective pilgrims by taking into account the aspects of security, prudence, and benefits, The Government may guarantee all BPIH funds.

The provision regarding the responsible parties to govern *hajj* fund in the Law No. 34 of 2014 and the Fatwa of DSN-MUI No. 122/DSN-MUI/II/2018 has led to legal uncertainty. The law determines that the BPKH is the responsible party, whereas the fatwa states that the responsible party is the government, and the government assign BPKH as their representative to govern the *Hajj* fund. Further research is needed to investigate this legal disharmony.

From the above explanation, there are two questions posed in this article: What is the principle of *wakalah* according to Law No. 34 of 2014 pertaining to Management of *Hajj*? What is the principle of *wakalah* according to the Fatwa of DSN-MUI No. 122/DSN-MUI/II/2018 concerning the Financial Management of BPIH and Special BPIH Based on *Sharia* Principles? What are the forms of disharmony in the wakala contract caused by the differences in Law No. 34 of 2014 and DSN-MUI Fatwa No. 122/DSN-MUI/II/2018?

Research Methods

This article is based on the study of Law No. 34 of 2014 concerning Management of *Hajj* and the Fatwa of DSN-MUI No. 122/DSN-MUI/II/2018 about Financial Management of BPIH and Special BPIH Based on *Sharia* Principles.

Legal Entity Theory

Build upon Article 20 paragraph (2) of Law No. 34 of 2014; it was stated that the BPKH was a public legal entity. Hence, there is a need to explain the theory of legal entity.

Legal subject is anything that basically has rights and obligations in legal traffic. Two matters included in the legal subject are humans (*naturlijke persoon*) and legal entity (*rechtspersoon*). PT. (Limited Liability Company) PN (State Company), Foundations, Government Bodies, and so on are parts of the legal entity (Halim, 1985). The legal entity is known as *rechtspersoon* (in Dutch terms), *persona morals* (in Latin terms), or legal persons (in English terms).

According to Black's Law Dictionary, a legal person is defined as “*an entity such as a corporation, created by law given certain legal rights and duties of a human being: a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being.*” (A.Gamer, 2004).

Based on the definition from Black's Law Dictionary, a legal entity can be a company, created by law and given certain legal rights and obligations by humans: legal entities can be real or imaginary, and have legal considerations and are treated more or less like humans.

Utrecht stated that a legal entity (*rechtspersoon*) is an institution which has the power (authority) to be a supporter of rights, whose neither have a soul nor precisely a human (Imaniyati, 2009). While Molengraff, in a complete way, said that legal entities are basically the rights and obligations of members collectively with undivided shared assets. Each member is not only the owner of certain part the undivided assets but also the owner of the assets as a whole. This means that every individual is the owner of the assets organized in the legal entity (Asshiddiqie, 2006, p. 68).

Thus it can be said that a legal entity is an independent institution that has rights and obligations realized together with its members because of the similar vision and mission.

Wakalah Theory

Fundamentally, the management of the *Hajj* fund has been carried out using the *wakalah* contract. The fatwa of DSN-MUI No. 10/DSN-MUI/IV/2000 mentions that *wakalah* is the authority delegation by one party to another party for matters that are representable. Furthermore, the Fatwa of DSN-MUI Number 122/DSN-MUI/II/2018 states that *wakalah* agreement is the authority delegation from the prospective pilgrims to the government to manage the given objects.

Wakalah is pronounced in two ways: *wakalah* and *wikalah*. Terminologically, *wakalah* has two meanings: *al-hifdh* (protection) and *al-tafwid* (surrender) (al-Husaini,). *Wakalah* or *wikalah* means surrender, delegation, or giving a mandate. In Arabic, this can be understood as *al-tafwid*. For example, the sentence, “I leave my business to God” represents the meaning of the term (Antonio, 2001).

Etymologically, scholars define *wakalah* into different terminologies. Generally, there are two groups of scholars: Hanafi and Shafi'i scholars: (Hasanuddin, Fiqih Muamalah Maliyyah : Akad Tabarru' , 2017)

1. The books of *Takmilah Fath al-Qadir* (6/3), *al-Bada'i al-Shana'i* (6/19), *Radd al-Muhtar* (4/417), and *Tabyin al-Haqa'iq* (4/254) explained that *wakalah*, according to Hanafi scholars, is:

“a legal act of a person in order to place another party in his position to carry out certain legal actions which are permissible and known (without *gharār*).”

2. In the book of *Mughni al-Muhtaj* (2/217), it is explained that the meaning of *wakalah*, according to Shafi'i, is:

“the giving of authority over matters that can be carried out by him/herself, and (including) matters that can be authorized to other parties as long as the authorized person is still alive.

Legal basis for *wakalah* comes from the Qur'an and the Sunna of Prophet Muhammad, and *ijma'*, which are:

1. Sura al-Kahf (18): 19:

“Then ask one of you to go to the city with your silver money, and better food should be seen, and bring some of that food to you;” this verse is the story of the inhabitants of Gua Hira when doing a *wakalah* to purchase foods;

2. Surah al-Nisa (4): 35:

“Then send a peace (*hakam*) from a male family and a peacemaker from a female family;” *hakam* in this verse is the representative of each family (husband and wife);

3. *Fi'liyah* hadith (acts of the Prophet) narrated by Imam Abu Daud and al-Tirmidhi mentions that:

“The Prophet Muhammad represented Urwan al-Bariqi to buy a goat, and the Prophet prayed for him to get a blessing in his buying; then said: if only (al-Bariqi) buys dust (for sale), it gets profit. “

4. *Fi'liyah* hadith (acts of the Prophet), history of Imam Bukhari and Muslim; that is:

“That the Prophet Muhammad sent officers to collect *zakat*.”

In the book of *al-Mughni* (5/79), the book *Takmilah Fath al-Qadir* (6/3), the book *Mughni al-Muhtaj* (2/217), *Al-Muhadbdhab* book (1/348), and the book *al-Mabsuṭ* (19/2) give the explanation that the people had agreed (*ijma'*) about the permissibility of *wakalah* contract. Wahbah al-Zuhaili explained as follows: “The people have agreed on whether or not the *wakalah* contract is permissible; because of the need (*al-hajjah*) to do it; sometimes a person is unable to enforce his

overall prosperity; *wakalah* contract is permitted because it is part of (actions which include) help in kindness and piety.”

Thus, the basic law of *wakalah* contract is permissible; however, it can turn into *sunnah* and *wājib* (obligation) or *makrūh* even *harām*; because its existence depends on the object of its time. Ibn Rushd asserted that *wakalah* contracts come under contracts that require a statement of acceptance (*qabūl*) in addition to a statement of the offer (*Ijāb*). Moreover, Ibn Rushd also emphasized that the *wakalah* contract belongs to a contract of *Jā'iz* (a contract which can be cancelled unilaterally), except the *wakalah* contract that is done by *ujrah* (*wakalah* contract *bi al-ujrah*) or *ju`l* (contract *wakalah bi al-ju`l*) since the *dhawābith* and *hudūd* in agreement are the *Ijārah* contract or the *ju`alah* contract (Hasanuddin, Fiqih Muamalah Maliyyah: Akad Tabarru', 2017).

Discussion

The *Wakalah* Principle According to Law Number 34 of 2014

In Article 1 of Law Number 34 of 2014, it is stated that BPKH is an institution that conducts financial management of *Hajj*. Furthermore, in Article 22, it is also said that the BPKH is in charge of managing *Hajj* finances, including the reception, development, expenditure, and financial accountability of the *Hajj* funds.

Hajj fund receptions come from deposit payments, both initial deposits and repayment deposits made by prospective pilgrims using the *Wakalah* contract as a way to get the *Hajj* seat. The pilgrimage fund is then managed and developed by the BPKH for the operational costs in organizing the *Hajj*.

For this reason, as the executor of the *Hajj* financial manager, Article 23 determined that the BPKH has the following functions:

- a. To plan the acceptance, development, and spending of *Hajj* funds;
- b. To administer the acceptance, development, and spending of *Hajj* funds;
- c. To control and supervise the acceptance, development, and spending of *Hajj* funds.
- d. To provide reports and be responsible for the administration of reception, development, and spend of *Hajj* funds.

In carrying out these duties and functions, BPKH is obliged to administer *Hajj* Funds transparently and be accountable for the greatest interest of the pilgrims and the benefit of Muslims by providing information through the media regarding its performance, financial conditions and wealth, and the results of investment regularly every six months. Then, BPKH also has to provide information to the

pilgrims regarding the benefits of BPIH and/ or Special BPIH through the virtual account of each pilgrim by providing bookkeeping that is in accordance with the applicable accounting standards and reporting the *Hajj* funds management periodically every six months to the Minister and People's Representative Council. Furthermore, the BPKH also pays the value of BPIH and/or Special BPIH deposit benefits to the virtual account of each pilgrim and returns the excess of the BPIH and/or Special BPIH deposits (See Anggito Abimanyu in BPKH responding critics of Hajj Fund, and the Explanation of Law Number No 34 of 2014 concerning The Management of *Hajj* Fund, 19th October 2018).

Moreover, Article 24 states that the authority of BPKH is: (a) to locate and invest *Hajj* funds by considering the *sharia* principle, prudence, security and value of benefits, and (b) To cooperate with other institutions in the context of *Hajj* financial management.

In terms of the procedures for *Hajj* funds management, Article 46 also states that:

- (1) *Hajj* funds must be managed in a *Sharia* Commercial Bank and/or *Sharia* Business Unit.
- (2) *Hajj* funds, as referred to in paragraph (1) can be located and/or invested.
- (3) In conducting the placement and/or investment as referred to in paragraph (2), BPKH must comply with *sharia* principles and consider aspects of security, prudence, the value of benefits, and liquidity.

The *sharia* principle in this Law means that all and every management of *Hajj* funds is based on strict (*kāffah*) Islamic principles. Whereas the definition of "security aspect" is that the management of *Hajj* funds must be carried out by prioritizing security aspects in anticipating the risk of loss in the management of *Hajj* funds to guarantee the implementation of *hajj* financing. In addition, the investment of *hajj* funds also considers aspects of risk, including risks of default, reputation, market, and operations. Furthermore, the "value of benefits", in this Article, can be interpreted as that a portion of the *Hajj* Funds in BPKH can be placed and/or invested according to *sharia* principles and by considering risk factors and liquidity (considering the ability and smooth payment in the implementation of the ongoing and upcoming *Hajj* funds) (See the explanation of law number 34 of 2014 About The Management of *Hajj* Fund). The level of liquidity itself must be equal to the need for two times the cost of conducting the *hajj* service in tone with the provisions in paragraph (1) of Article 47.

By following these principles, BPKH has special stipulations related to the investment, as stated in paragraph (1) Article 48 that financial placement and/or

investment of *Hajj* funds can be done in the form of banking products, securities, gold investments, direct investment, and other investments. The portion that is allowed in the investment of each of these products is explained as follows: (See Article 26-32 of Government Regulation Number 5 of 2018 Concerning the Implementation of Law Number 34 of 2014 pertaining to The Management of *Hajj* Fund)

1. Banking products include (a) demand deposits, (b) savings, (c) time deposits (50% of total BPKH placements, after three years 30% of total BPKH placed in banking).
2. Securities consist of: (a) SBSN (State Islamic Securities) issued by the central government, (b) SBS (Islamic Securities) issued by the Bank of Indonesia, and (c) *Sharia* Stocks supervised by OJK, including: Islamic Stocks, *sukuk*, *sharia* mutual funds, Islamic asset-backed securities, *sharia* real estate investment funds and other *sharia* securities.
3. Investment in the form of gold bars is at most 5% of the total investment placement of Financial *Hajj*.
4. Direct investment includes: (a) private business, (b) equity participation, (c) investment cooperation, (d) other direct investments. (direct investment is at most 20% of the total investment placement of *Hajj* funds).
5. Other investments are at most 10% of the total investment placement of Financial *Hajj*.

From the whole investment products, it is known that a maximum of 75% of the investment portion is developed in banking products (a maximum of 50%), gold investment (a maximum of 5%), and direct investment (by 20%). Meanwhile, the other 25% is invested in unknown products. If it is invested in SBSN, it certainly does not pose a big risk. When it is invested in Islamic securities, it can have considerable risk. Thus, there is a possibility of losses in the development of this *Hajj* fund.

For this reason, if a loss occurs, as is stated in Article 53, BPKH is jointly and severally responsible (*tanggung renteng*) for the loss of the overall *hajj* financial investment placement caused by the fault and negligence of its administrator.

The joint liability (*tanggung renteng*) results in BPKH to bear full responsibility if a loss occurs. This is stipulated in the Article 20 paragraph (3) - (5) which stated that the BPKH is an independent public legal entity that is responsible to the President through the Minister by managing *hajj* funds cooperatively and without taking any profits.

The definition of corporate in this Article is that the principle of financial

management is based on the exploitation pattern as carried out by companies or corporations, by emphasizing on efficiency (Look at the explanation of law number 34 of 2014 in respect of The Management of *Hajj* Fund). Whereas the position of BPKH as an independent public legal entity indicates that the delegation of responsibility for pilgrimage financial management is carried out entirely by the BPKH without the government interference.

***Wakalah* According to the DSN-MUI Fatwa Number 122/DSN-MUI/II/2018**

The general provisions of Article 1 DSN-MUI Fatwa Number 122/DSN-MUI/II/2018 determine that the body formed by the state is based on laws and regulations to carry out the functions and duties of the *Hajj* financial manager, namely the *Hajj* Financial Management Agency (BPKH). Furthermore, in Article 5 mentions that the contract used by the prospective pilgrims is a *wakalah* contract. This means that the prospective pilgrims give authority to the government to carry out duties to manage the authorized objects. Regarding this *wakalah* contract, the following is the further and detailed explanation about the contract:

1. The contract used is the *wakalah* agreement, which is valid until the BPIH and Special BPIH funds belonging to the prospective pilgrims are spent by the government in the context of the pilgrimage organization;
2. The prospective pilgrims agree with and approve the Government to delegate the fund management to the fund Manager.
3. The manager, mentioned above, receives funds from BPIH and BPIH Special from the prospective Pilgrims;
4. The authorized object (*Mahall al-wakalah*) to the Government, which is managed by its representative, must be clear and certain, which includes:
 - a. The Development of BPIH and Special BPIH Funds through limited placement and investment (*al-muqayyadah*), with investment activities that are in tone with Islamic principles, prudential and security principles;
 - b. The Distribution of investment returns to *Hajj* Pilgrims;
 - c. The Payment of the *Hajj* organization cost;
 - d. The returns of the excess of funds to the prospective pilgrims when the balance of the BPIH or Special BPIH Fund is bigger than the stipulated cost for BPIH and the Special BPIH in the current year.
 - e. The return of all BPIH or BPIH Special Funds if prospective pilgrims die or cancel the departure.

In terms of the guarantee of BPIH funds, it is determined that in order to provide confidence and trust to the pilgrim candidates, BPIH funds are managed and developed by the Government as the representative by taking into account the security, prudence and the value of benefits. In this case, the government may guarantee all and BPIH.

By observing the terms contained in DSN-MUI Fatwa Number 122/DSN-MUI/II/2018, it can be sum up that the government is the main representative as the *Hajj* financial manager whereas BPKH is the government's representative in managing *Hajj* funds. Thus, the government is responsible for any loss in the investment made to grow the funds represented by the pilgrims.

Disharmonization of *Wakalah* Agreement in Law Number 34 of 2014 and DSN-MUI Fatwa Number 122/DSN-MUI/II/2018

From the two descriptions above, there are differences in the interpretations of *wakalah* agreement both in Law Number 34 of 2014 and the Fatwa of DSN-MUI Number 122/DSN-MUI/II / 2018. In the Law Number. 34 of 2014. It is avowed that the direct representative of the financial pilgrimage management is BPKH. So, if there is an investment loss, BPKH is fully responsible for its settlement. Whereas DSN-MUI Fatwa Number 122/DSN-MUI/II/2018 mentions that the representative of the management of *Hajj* is the government, while the BPKH is the government representative to manage the *Hajj* finances. Thus, in accordance with this fatwa, the government is obliged to be responsible for any losses.

With the existence of differences in interpretation, legal disharmony arises in the two regulations. Thus, this can lead to legal uncertainty regarding the responsible party in the case of loss in the investment. Hence, it could also disadvantage to prospective pilgrims.

In order to obtain a solution for the disharmony between the two laws and regulations, a SWOT analysis can be carried out. A SWOT analysis is an analysis that includes efforts to recognize strengths, weaknesses, opportunities, and threats that determine company performance.

According to Freddy Rangkuti, SWOT is the systematic identification of various factors to formulate service strategies. This analysis is based on logic which can maximize opportunities, yet can simultaneously minimize shortcomings and threats. The SWOT analysis compares the external factors and internal factors (Rangkuti, 2002). This external factor influences the formation of opportunities and threats (O and T). Where this factor is concerning the conditions that occur outside the company and affect the company's decision making. This factor covers

the industrial environment and the macro business environment, economic, political, legal, technological, population, and socio-cultural.

Meanwhile, internal factors affect the formation of strengths and weaknesses (S and W). These factors are related to the conditions of the company, and also influence the company’s decision making. These internal factors consist of all functional management: marketing, finance, operations, human resources, research and development, management information systems, and corporate culture (Daf, 2010).

From the legislation in Law Number 34 of 2014 and DSN-MUI Fatwa Number 122/DSN-MUI/II/2018 a SWOT matrix can be formed as follows:

The SWOT matrix is the task and function of the BPKH by following the rules in Law Number 34 of 2014.

<p>Internal</p> <p style="text-align: right;">External</p>	<p>STRENGTH (S)</p> <ul style="list-style-type: none"> • Be able to maximally perform management efforts by investing in the products allowable by the Law Government as a representative of pilgrims (guaranteed by the government) 	<p>WEAKNESS (W)</p> <ul style="list-style-type: none"> • No guarantee from the government
<p>OPPORTUNITY (O)</p> <ul style="list-style-type: none"> • The benefits of investment have an impact on the operational costs of the following year, which are even cheaper 	<p>SO Strategy</p> <ul style="list-style-type: none"> • By running the management to the fullest, the investment profits are maximally obtained. 	<p>WO Strategy</p> <ul style="list-style-type: none"> • Because the government does not guarantee it, the investment should consider the risks to minimize them.
<p>THREAT (T)</p> <ul style="list-style-type: none"> • Investment losses result in the threat of loss of <i>Hajj</i> funds 	<p>ST Strategy</p> <ul style="list-style-type: none"> • Investing in safe investment products (with minimum risk) to omit the threat/ / reduction of <i>hajj</i> funds can be avoided 	<p>Strategi WT</p> <ul style="list-style-type: none"> • Because the BPKH is an independent public legal entity, the BPKH must limit its investment in products that have a low-risk value

The SWOT matrix of the BPKH duties and functions by following the rules on DSN-MUI Fatwa Number 122/DSN-MUI/II/2018 is as follows:

<p>Internal</p> <p style="text-align: right;">External</p>	<p>STRENGTH (S)</p> <ul style="list-style-type: none"> • Be able to maximally perform management efforts by investing in the products allowable by the Law Government as a representative of pilgrims (guaranteed by the government) 	<p>WEAKNESS (W)</p> <ul style="list-style-type: none"> • Can be detrimental to the state budget if the investment fails
<p>OPPORTUNITY (O)</p> <ul style="list-style-type: none"> • The benefits of investment have an impact on the operational costs of the following year which are even cheaper 	<p>SO Strategy</p> <ul style="list-style-type: none"> • By running the management to the fullest, the investment profits are maximally obtained. • With the guarantee from the government, BPKH does not need to be afraid of investment failures. 	<p>WO Strategy</p> <ul style="list-style-type: none"> • Because there is a possibility of a state budget loss if there is a failed investment, then the funds must be invested by considering the risks involved so that the risk can be minimized.
<p>TREAT (T)</p> <ul style="list-style-type: none"> • Investment losses result in the threat of loss of <i>Hajj</i> funds so the government must replace them 	<p>ST Strategy</p> <ul style="list-style-type: none"> • Investing in safe investment products (minimal risk) so that the threat of loss/reduction in <i>Hajj</i> funds does not occur even with a guarantee from the government. 	<p>Strategi WT</p> <ul style="list-style-type: none"> • Investment losses can be detrimental to the state budget, so the BPKH must limit its investment in the products that have a low-risk value

From the two SWOT matrices, it can be concluded that according to Law Number 34 of 2014 considering that the BPKH is an independent public legal entity that runs a non-profit business, so the maximum profit is returned to the management of *hajj* finances. The profits resulted from the investment can avoid the increase or reduce the cost of *hajj* in the following year. However, investment failure can result in the loss of the *Hajj* funds managed by the BPKH. Thus, that BPKH must be jointly and responsibly (*tanggung renteng*) for this matter. To overcome this, the investment should be carefully selected to the investment that gives good returns but minimal risks.

According to the DSN MUI Fatwa Number 122 / DSN-MUI / II / 2014, the role of BPKH is as the representative of the government to manage the finances of prospective pilgrims and pilgrims to be managed optimally for the benefit of the pilgrims. To support this, the government provides guarantees shall the investment

failure occur. However, guarantees provided by the government can have an impact on the state budget loss if there is a loss of investment. For this reason, according to this fatwa, there is also a thorough consideration of the selection of investment products that provide maximum benefits with low risk.

Conclusion

By analyzing the two laws, it can be concluded that the application of the *wakalah* contract, both in the Law Number 34 of 2014 and the DSN MUI Fatwa Number 122/DSN-MUI/II/2014 has a different impact on the *Hajj* fund management representation to BPKH.

In Law Number 34 of 2014, the contract of *wakalah* occurs between pilgrims and BPKH. BPIH deposited by the pilgrims is sent directly to the BPKH account. Thus, BPKH is fully responsible for the management of *Hajj* finances. In this Law, it is also said that BPKH, which is a public legal entity, is jointly and severally responsible for losses of the investment. According to the DSN MUI Fatwa Number 122/DSN-MUI/II/2014, *wakalah* contract occurs between the pilgrims who make the government as their representatives. After that, the government makes BPKH as their representative so that the *Hajj* funds can be managed and developed. The existing *wakalah* contract between the pilgrims and the government makes the government guarantees investment management and development by BPKH. As a result, the failure in the investment leads to the loss of the state budget.

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