

Legal and Human Rights Violations in the Hajj Quota Diversion Policy in Indonesia

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Abstract: *The restructuring of Hajj quota distribution in Indonesia has generated concerns regarding its alignment with human rights standards, particularly principles of equality, justice, and non-discrimination. Yet, scholarly assessment of these issues remains limited, creating a research gap in understanding the legal and human rights implications of the quota transfer policy. This study aims to critically examine whether Indonesia's Hajj quota transition policy constitutes a violation of domestic law and human rights norms. Employing a normative juridical method, the research utilizes a statutory and case-based approach, focusing on Law No. 8/2019 on the Implementation of Hajj and Umrah and other relevant regulations. The findings reveal that the Ministry of Religious Affairs' quota transfer mechanism is inconsistent with the governing legal framework and fails to uphold human rights principles of equality and justice. The study highlights the need for future quota allocation policies to ensure strict legal compliance, transparency, and the protection of fundamental rights, thereby promoting a more equitable and accountable Hajj management system.*

Keywords: Equality, Justice, Human rights, Hajj quota policy

Abstrak: *Restrukturisasi distribusi kuota haji di Indonesia telah menimbulkan kekhawatiran mengenai kesesuaiannya dengan standar hak asasi manusia, khususnya prinsip kesetaraan, keadilan, dan non-diskriminasi. Namun demikian, penilaian akademik terhadap isu-isu tersebut masih terbatas, sehingga menimbulkan kesenjangan penelitian dalam memahami implikasi hukum dan hak asasi manusia dari kebijakan pengalihan kuota tersebut. Penelitian ini bertujuan untuk mengkaji secara kritis apakah kebijakan transisi kuota haji di Indonesia merupakan pelanggaran terhadap hukum nasional dan norma hak asasi manusia. Dengan menggunakan metode yuridis normatif, penelitian ini menerapkan pendekatan perundang-undangan dan pendekatan kasus, dengan fokus pada Undang-Undang Nomor 8 Tahun 2019 tentang Penyelenggaraan Ibadah Haji dan Umrah serta peraturan relevan lainnya. Temuan penelitian menunjukkan bahwa mekanisme pengalihan kuota yang dilakukan oleh Kementerian Agama tidak sesuai dengan kerangka hukum yang*

berlaku dan tidak memenuhi prinsip hak asasi manusia mengenai kesetaraan dan keadilan. Penelitian ini menekankan perlunya kebijakan alokasi kuota haji di masa depan untuk memastikan kepatuhan hukum yang ketat, transparansi, dan perlindungan terhadap hak-hak fundamental, sehingga dapat mewujudkan sistem pengelolaan haji yang lebih adil dan akuntabel.

Kata Kunci: Kesetaraan, Keadilan, Hak Asasi Manusia, Kebijakan Kuota Haji

Introduction

Indonesia, as the country with the largest Muslim population in the world, guarantees the implementation of religious freedom as mandated by the 1945 Constitution. Article 29(2) of the Constitution affirms that the state guarantees the freedom of every citizen to embrace a religion and to worship according to their beliefs. Similar protections of religious freedom are also regulated under Article 28E (1), which states that every individual is free to embrace a religion and practice worship in accordance with their faith (Hanana & Putri, 2025). Furthermore, Article 28E (2) stipulates that every person has the right to freedom of belief, expression, and conscience. These constitutional provisions are consistent with the spirit of the International Covenant on Civil and Political Rights, which protects freedom of religion alongside freedom of conscience and expression (Hasmiyati & Ramadhani, 2024). Although there is no universal consensus designating freedom of religion as a *ius cogens* norm, it remains a fundamental right that cannot be violated under any circumstances and is essential for any state that recognizes religious plurality. These constitutional guarantees imply that the state must ensure the fulfillment of religious practices, including the observance of the Hajj pilgrimage (Wibowo & Mubarok, 2024).

Hajj is a form of worship that constitutes the fifth pillar of Islam and is obligatory for Muslims who are physically, mentally, and financially capable. The Hajj pilgrimage can only be performed at a specific time, namely during the month of Dzulhijjah (Husen & Mukhlisin, 2024). Therefore, the state must ensure the freedom of worship by providing guidance, services, and protection for citizens performing Hajj and Umrah in a safe, orderly, and compliant manner with religious norms and statutory regulations. In Indonesia, the administration of Hajj and Umrah falls under the authority of the Ministry of Religious Affairs, which is responsible for ensuring the safety and comfort of pilgrims traveling to Mecca to fulfill their religious obligations (Husna & Illahi, 2023).

The determination of Indonesia's Hajj quota has long been established through agreements between the Government of Indonesia and the Kingdom of Saudi Arabia, based on the decision of the Organization of Islamic Cooperation (OIC) Summit in Jordan in 1987. The Summit determined a formula of 1 quota per 1,000 Muslim residents in each country. This proportional system has consistently placed Indonesia as the recipient of the world's largest Hajj quota, followed by Pakistan, India, and Bangladesh.

The quota increases periodically, and in 2024 Indonesia received an additional 20,000 slots through bilateral cooperation with Saudi Arabia (Samsudin et al., 2023).

Hajj implementation in Indonesia consists of two categories: Regular Hajj administered by the government and Special Hajj administered by licensed travel agencies (Saputra, 2023). Law No. 8 of 2019 on the Implementation of Hajj and Umrah stipulates that 92% of the national quota must be allocated to Regular Hajj, while 8% is reserved for Special Hajj (Rosida, 2023). In 2024, Indonesia received 213,320 Regular Hajj slots and 27,680 Special Hajj slots. Additional regulatory instruments—including Minister of Religious Affairs Decree No. 130 of 2014 and Director General Regulation No. 118 of 2024—further outline the procedures for allocating additional quotas, resulting in a distribution of 10,000 additional seats for Regular Hajj and 10,000 for Special Hajj.

However, the actual allocation deviates from statutory requirements. Article 64(2) of Law No. 8 of 2019 clearly stipulates that the Special Hajj quota must not exceed 8% of the national allocation (Aljawi & Santiago, 2025). Based on this formula, the maximum Special Hajj quota should be 19,280 pilgrims, while Regular Hajj should receive 221,720 pilgrims. The 2024 quota distribution therefore contradicts the law, leading to adverse consequences, including prolonged waiting lists for Regular Hajj ranging from 16 to 36 years contrary to the intended purpose of quota increases, which is to reduce excessive waiting times (Abidin et al., 2023).

In addition, the revised quota distribution presented during the Working Meeting between Commission VIII of the House of Representatives and the Minister of Religious Affairs on March 13, 2024, further conflicts with the initial agreement reached in November 2023, which set the quota at 221,720 Regular and 19,280 Special Hajj seats. The subsequent redistribution to 213,320 Regular and 27,680 Special Hajj seats not only contradicts statutory provisions but also disregards Presidential Decree No. 6 of 2024 concerning Hajj operational funds (BPIH). This policy inconsistency indicates a breach of the established legal framework governing Hajj administration (Hikmah et al., 2025).

The implementation of Hajj must adhere to fundamental principles as mandated by law, including sharia compliance, trustworthiness, justice, welfare, benefit, safety, security, professionalism, transparency, and accountability. Deviation from these principles and from statutory regulations threatens public rights to perform worship in accordance with constitutional and legal guarantees (Januratmo & Vic, 2025).

This study presents an important novelty that has not been extensively explored in previous research. It introduces a new perspective by assessing the Hajj quota transfer policy not merely as an administrative matter but as a potential violation of human rights, particularly the principles of equality, justice, and non-discrimination. The normative juridical approach employed in this research provides an in-depth examination of the inconsistencies between the Ministry of Religious Affairs' practices and the governing legal framework, especially Law No. 8 of 2019 on the Implementation of Hajj and Umrah. This analysis fills a significant gap in the existing literature, which

has yet to address the legal shortcomings within the oversight and distribution mechanisms of the Hajj quota that may allow structural injustices to occur.

The uniqueness of this study lies in its strong relevance to a broad public issue, namely the constitutional right of citizens to perform the Hajj pilgrimage fairly and without discrimination. By examining quota transfer practices through the lens of human rights and constitutional law, this research provides a constructive critique of government policies that have long been treated as final and unquestionable. The findings offer normative recommendations emphasizing the importance of transparency, accountability, and legal compliance in future Hajj quota management. Through these contributions, the study becomes particularly significant as it provides both academic and juridical foundations for improving the quota distribution system to better uphold social justice and protect the fundamental rights of all citizens.

Method

This study employs a normative legal research design that conceptualizes law as a coherent system of written norms derived from legislation, judicial decisions, legal doctrines, and authoritative interpretations (Sukmawan & Damayanti, 2025). The analysis is grounded in both statutory and case-based approaches, enabling a comprehensive assessment of the legal framework governing the Hajj quota policy in Indonesia (Wiraguna, 2024). The statutory approach focuses on examining the 1945 Constitution, Law No. 8 of 2019 on the Implementation of Hajj and Umrah, relevant ministerial regulations, and presidential decrees, while the case approach evaluates factual developments, administrative decisions, and policy changes related to the diversion of Hajj quotas (Yanova et al., 2023).

The research relies on three categories of legal materials. Primary materials include binding legal sources such as the Constitution, statutes, official regulations, and agreements between Indonesia and Saudi Arabia concerning Hajj administration. Secondary materials consist of scholarly literature, academic articles, legal commentaries, and research reports addressing human rights, equality, and administrative law (Tan, 2021). Tertiary materials, such as legal dictionaries and encyclopedias, are used to clarify terminology and support accurate legal interpretation. Data collection is conducted through a structured and systematic document study, allowing for the identification, classification, and examination of relevant legal texts in a consistent and verifiable manner. The analysis employs a descriptive-qualitative technique, in which legal norms are interpreted, compared, and evaluated to determine the compatibility of the Hajj quota diversion policy with existing legal requirements and human rights principles. Through deductive reasoning, legal arguments are constructed to answer the research questions and assess the coherence of state policy with the normative framework governing the implementation of Hajj in Indonesia.

Results and Discussion

A Constitutional and Legal Analysis of Hajj Quota Distribution in Indonesia

The administration of the Hajj pilgrimage represents one of the most complex intersections between constitutional guarantees, religious obligations, and state regulatory authority in Indonesia. As a country with the world's largest Muslim population, Indonesia bears a significant responsibility to ensure that its citizens can fulfill the Hajj obligation in accordance with their religious beliefs. This responsibility is reinforced by the constitutional mandate that guarantees freedom of religion and worship, making the state not only a facilitator but also a guardian of equal access to religious practices. In this context, the management of Hajj quotas becomes a critical issue, as it directly affects the extent to which citizens can realize their constitutionally protected rights (Murnika et al., 2025).

Despite the existence of a comprehensive regulatory framework, the practical implementation of Hajj quota distribution continues to face challenges that raise concerns about fairness, transparency, and adherence to legal norms. Questions have emerged regarding the balance between regular and special Hajj quotas, the role of private organizers, and the degree to which state policies align with principles of justice and human rights. These concerns highlight the need for a deeper constitutional and legal examination of whether current quota management genuinely reflects Indonesia's commitment to equality before the law and the protection of religious rights. This study seeks to address these issues through a systematic analysis of constitutional provisions, statutory regulations, and their implementation in practice (Mobeen, 2021).

The guarantee of freedom of religion and worship, as regulated in Article 29 of the 1945 Constitution, provides a fundamental affirmation of Indonesia's commitment to protecting religious rights. Article 29 stipulates, first, that the State is based upon belief in the One and Only God; and second, that the State guarantees the freedom of every citizen to embrace a religion and to worship according to their faith and beliefs (Maram et al., 2024). These constitutional provisions clearly affirm that Indonesia is obligated to ensure the uninterrupted exercise of religious worship for all individuals in accordance with their religious convictions. The protection of religious freedom is not confined to the Constitution alone but is further reinforced through various statutory regulations. Law No. 39 of 1999 on Human Rights, for example, explicitly provides in Article 22(1) that every person is free to adhere to a religion and to worship according to their religion and beliefs. This statutory guarantee necessarily includes the freedom to carry out acts of worship mandated by each religion (Ibrahim, 2022).

Within the Islamic tradition, the Hajj is one of the Five Pillars of Islam and constitutes a compulsory form of worship for Muslims who are physically, mentally, and financially capable. Although the essence of Hajj can be understood as an individual religious obligation, the complexities of modern international travel and the involvement of two sovereign nations—Indonesia and Saudi Arabia—make it impossible for the pilgrimage to be conducted without state involvement. To fulfill this

mandate, Indonesia provides legal and institutional support for Hajj administration through Law No. 8 of 2019 on the Implementation of Hajj and Umrah, which serves as the principal legal framework ensuring effective, safe, and orderly management of the pilgrimage (Pane et al., 2019).

Despite this regulatory framework, significant challenges persist, particularly in the distribution of Hajj quotas. Inequitable quota allocation has raised concerns about discriminatory treatment and violations of the principle of equality, thereby undermining the human rights of Muslims seeking to fulfill their obligation to perform the Hajj (Darmadi, 2013). The extremely long waiting period—ranging from 20 to more than 30 years in several regions—illustrates the state's structural inability to fully accommodate the religious needs of its citizens, despite growing public demand for Hajj participation. Given that Hajj may only be performed once a year during the month of Dhu al-Hijjah, the State bears a critical responsibility to guarantee the freedom and safety of pilgrims by providing adequate guidance, services, and protection that comply with Islamic law and statutory regulations.

The annual organization of the Hajj continues to encounter recurring issues, particularly in determining the proportional distribution of regular and special Hajj quotas. As mandated by Law No. 8 of 2019, the government administers two categories of Hajj services: the regular Hajj, organized by the State, and the special Hajj, managed by licensed private travel agencies. In practice, these categories are allocated distinct quotas—213,320 for regular pilgrims and 27,680 for special Hajj pilgrims—based on the Minister of Religious Affairs Regulation No. 130 of 2014 and the Directorate General of Hajj and Umrah Regulation No. 118 of 2024. Both categories were further granted an additional quota of 10,000 each for the 1445 H/2024 pilgrimage season (Setiawan & Soewarno, 2024).

However, the distribution of these additional quotas contravenes Article 64(2) of Law No. 8 of 2019, which explicitly limits the special Hajj quota to 8% of the national total. The deviation from this statutory requirement resulted in a reduction of approximately 8,400 slots from the regular Hajj quota to accommodate excess allocations for the special Hajj. This discrepancy not only reflects a clear violation of existing legal provisions but also introduces substantial inequities for prospective regular pilgrims who have already endured excessively long waiting periods. The inconsistency between statutory norms and administrative practice thus poses serious concerns regarding legal conformity, fairness, and the protection of citizens' constitutional right to perform religious worship.

Equality and Justice in Hajj Administration: A Constitutional and Human Rights Analysis of Indonesia's Quota Policy

As the country with the largest Muslim population in the world, Indonesia holds a unique responsibility in ensuring that the administration of the Hajj pilgrimage is carried out in accordance with constitutional guarantees and fundamental human rights principles. The obligation of the state to safeguard freedom of religion and worship, as mandated by the 1945 Constitution, includes facilitating equitable access

for citizens to perform the Hajj. Within this constitutional mandate, the annual distribution of Hajj quotas becomes a significant instrument through which the state must demonstrate fairness, non-discrimination, and justice. Thus, the management of quota allocation is not merely an administrative process but a fundamental reflection of Indonesia's commitment to equality and the protection of religious rights.

Despite the existence of legal frameworks intended to regulate the Hajj system, concerns continue to arise regarding disparities in quota distribution, lack of transparency, and practices that may undermine equal access for prospective pilgrims. Questions have been raised as to whether current quota policies fully align with constitutional principles and international human rights standards, particularly in guaranteeing fairness for all individuals regardless of social, economic, or institutional affiliation. These ongoing issues highlight the need for a critical and comprehensive analysis of Indonesia's Hajj quota administration to determine the extent to which it upholds the values of equality and justice that the law seeks to protect (Wulandari et al., 2023).

The improper implementation of Hajj administration poses a serious risk of violating fundamental human rights. As a religious duty guaranteed by the Constitution, the Hajj continues to face recurring problems related to governance, service quality, departure mechanisms, long waiting periods, failed departures, and overall management. Because the Hajj is a constitutional right, its administration must ensure transparency, accountability, and the protection of citizens' rights. These principles are crucial in managing the Hajj quota system, which must comply with constitutional guarantees (Saridi et al., 2021). Citizens have the right to obtain clear and accessible information in accordance with legal provisions, while fair and impartial decision-making must be upheld through a quota system that does not discriminate on the basis of economic or social status.

The guarantee of fundamental rights is mandated not only at the national legal level but also in international human rights instruments that protect the right to practice religion without discrimination. The state therefore has a constitutional obligation to act as a facilitator, as stated in Article 29 of the 1945 Constitution and Article 22 of the Human Rights Law, both of which guarantee the freedom to worship according to one's beliefs. This right is categorized as a non-derogable right, which means that it cannot be restricted under any circumstances. This demonstrates the fundamental importance of protecting religious freedom (Abdal, 2021).

Kansil and Christine Kansil explain that the right to religious freedom is not a gift from the state or any group. Instead, it is an inherent right that must be respected by all individuals. Every person must be able to embrace and practice their religion freely without interference. The Vienna Declaration and Programme of Action of 1993 also confirms that human rights are universal, indivisible, interdependent, and interrelated. Foundational human rights principles, including universality, indivisibility, equality, non-discrimination, human dignity, and state responsibility,

serve as guidelines for ensuring that the Hajj is administered in accordance with human rights standards and legal norms (Manulang et al., 2024).

In practice, these guarantees are weakened when individuals with greater influence or financial capacity, such as public officials or those who can afford special Hajj services, are granted preferential access. Significant disparities arise between regular and special Hajj arrangements, particularly in terms of economic ability and social standing. This unequal access violates the principle of non-discrimination and harms regular Hajj pilgrims who face extremely long waiting times, including many elderly individuals who should be prioritized.

The principles of public service regulated in Law Number 25 of 2009 require that public services be delivered based on public interest, legal certainty, equal rights, a balance of rights and obligations, professionalism, participation, equal treatment, openness, accountability, timeliness, and affordability. However, the implementation of Hajj services does not fully reflect these standards. Inequality in access and prolonged waiting periods continue to occur, especially due to the distinction between regular and special Hajj schemes. Law Number 8 of 2019 on the Implementation of the Hajj and Umrah also emphasizes justice, benefit, professionalism, transparency, and accountability. Despite these provisions, weaknesses in supervision allow the transfer of regular quotas to special Hajj services, resulting in practices similar to quota smuggling.

Ideally, the implementation of the Hajj should guarantee equal opportunity for all Muslims who wish to perform the pilgrimage. As a public institution with the authority to provide essential services, the state must ensure that all individuals receive equal access to religious services. The transfer of regular Hajj quotas to special quotas without following established regulations clearly reflects an unequal system that restricts opportunities for many people.

John Rawls's Theory of Justice provides a useful analytical framework to evaluate these inequalities (Soleh, 2004). Rawls presents two main principles. The first is the Principle of Liberty, which states that everyone has an equal right to the widest range of basic liberties that are compatible with similar liberties for others (Faiz, 2009). The second is the Principle of Difference, which allows social and economic inequalities only if they provide benefits to the least advantaged members of society. In addition, positions and opportunities must be open to all individuals under fair conditions. When applied to the Hajj quota system, it becomes clear that the current implementation does not align with Rawls's principles. The inequality created by the system benefits the privileged rather than the least advantaged.

Rawls argues that fairness requires a just social structure where every individual has an equal opportunity to participate in social and economic life. Inequality is acceptable only if it improves the conditions of those who are worst off. However, the transfer of regular Hajj quotas to special arrangements contradicts this principle, because it benefits individuals with greater economic resources while harming those who are already disadvantaged and have waited for many years. Rawls's concept of

justice as fairness also distinguishes between distributive justice, which concerns the fair distribution of resources, and retributive justice, which concerns the fair treatment of law violators. In the context of Hajj governance, distributive justice is violated when the quota system systematically favors certain groups.

This perspective highlights that Hajj quota management is not merely a technical issue. It reflects deeper constitutional values of justice and equality. By prioritizing the protection of individual rights in the implementation of the Hajj, Indonesia can become an example of a system that is efficient and rooted in fairness and humanity.

Public services, as regulated in Law Number 25 of 2009, must uphold principles of public interest, legal certainty, equal rights, non-discrimination, openness, accountability, special facilities for vulnerable groups, timeliness, convenience, and affordability. Similarly, Law Number 8 of 2019 requires the Hajj and Umrah administration to ensure justice, benefit, professionalism, transparency, and accountability. These principles must serve as the foundation for improving the implementation of the Hajj.

The universal principles of human rights, including universality, indivisibility, interdependence, equality, non-discrimination, and state responsibility, are essential to ensuring justice and equal opportunity for all Muslims in fulfilling the religious obligation to perform the Hajj.

Conclusion

The analysis of Indonesia's Hajj quota system through the lens of John Rawls's theory of justice demonstrates that the allocation mechanism must always be grounded in the protection of human rights and the prioritization of fairness for individuals who are most entitled and deserving. Rawls's framework emphasizes the principles of fairness, equality, and justice, which in this context should operate in harmony with statutory regulations governing Hajj administration. Ideally, the quota distribution system should ensure equal access for all citizens to perform the Hajj pilgrimage without discrimination. The selection and allocation process must therefore be transparent and accountable in order to allow public participation and oversight, thereby preventing practices of corruption, nepotism, and arbitrary decision-making.

Justice in the administration of the Hajj pilgrimage requires the recognition of every individual's equal right to worship, while still acknowledging the limitations imposed by available quotas and regulatory frameworks. The application of equality, fundamental human rights, and transparency reflects the foundational principles of democracy and social justice, which must serve as the normative basis for Hajj governance in Indonesia. These principles are anchored in the prevailing legal framework, particularly Law No. 8 of 2019 on the Administration of Hajj and Umrah, which provides the juridical foundation ensuring legal certainty in Hajj management.

Based on the assessment of statutory provisions and human rights standards, this study finds that Indonesia's current Hajj quota policy exhibits legal inconsistencies, particularly concerning quota transfers and distribution mechanisms.

The unilateral transfer of quotas without adherence to established legal procedures indicates a deviation from statutory mandates. Although the legislation clearly outlines the registration and quota allocation mechanisms, implementation in practice continues to reveal significant discrepancies, resulting in unmet guarantees of the public's right to worship. These inconsistencies underscore the urgency of reforming the quota distribution system to align with principles of equality, justice, transparency, and strict legal compliance.

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