



## Civil Liability of Umrah Organizers Who Fail to Dispatch Umrah Pilgrims

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Article	Abstract
<p><b>Keywords:</b> Civil Liability; Umrah Travel; Umrah pilgrims</p> <p><b>Article History</b> Received: Jan 11, 2021; Reviewed: Feb 11, 2021; Accepted: Mar 11, 2021; Published: Mar 31, 2021;</p>	<p><i>This article discusses the civil liability of umrah travel organizers who fail to dispatch Umrah pilgrims and legal remedies from prospective Umrah pilgrims who fail to be dispatched by umrah travel organizers. This research is empirical or sociological juridical research. The approach used is an empirical juridical approach method with primary data sources consisting of the Head of the Bengkulu Provincial Ministry of Religion Office, Umrah Travel Bureau Leaders, and pilgrims who fail to leave. As for secondary data sources from books, reading materials, and laws and regulations. Data collection is carried out using Observation, Interviews, and Documentation. Data processing and analysis are grouped and classified and then examined and analyzed. Responsibility of umrah travel agency PT. BMP (Bumi Minang Pertivi) and PT. Madinah Iman Wisata Bengkulu is regulated in Articles 1236 and 1246 of the Civil Code, PT. BMP (Bumi Minang Pertivi) and PT. Madinah Iman Wisata Bengkulu must refund all umrah travel costs along with losses or give the priority to be dispatched the following year. The legal remedy of prospective Umrah pilgrims who failed to be dispatched by umrah travel organizers in Bengkulu City is to resolve it through a lawsuit using mediation, conciliation, and arbitration.</i></p>



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### INTRODUCTION

The number of Umrah pilgrims from Indonesia is recorded in the year 2018-2019 on average every month reaching 12,871 (twelve thousand eight hundred and seventy-one) people or on average there are 423 (four hundred and twenty-three) Umrah pilgrims who fly to Saudi Arabia every day. The number of Umrah pilgrims is predicted to increase during the fasting month, the beginning of Eid al-Fitr and other Islamic religious holidays, as well as school holidays.

Many parties of the bureau for the implementation of Umrah even though they have permits, in their implementation are not following the provisions that have been stipulated in the laws and regulations governing the implementation of Hajj and Umrah. This can result in losses for prospective pilgrims who use the service bureau. For example, in practice, many bureaus of umrah worship provide *prospectuses* that promise conveniences but are not poured into Umrah agreements.

The agreement is usually done with a verbal agreement that promises that if this year registers, then next year it will leave or with the promise of low cost and get satisfactory facilities. So that if the rights and obligations of the parties are not fulfilled, there is no authentic evidence to sue and there is no limitation of liability. In the implementation of the departure of prospective Umrah pilgrims carried out by the bureau of umrah worship organizers with prospective Umrah pilgrims, an agreement is used.

Thus, the covenant is the source of engagement, in addition to other sources. (Oktaviani, 2018) The agreement between the umrah worship organizing bureau and prospective Umrah pilgrims is then preceded by an agreement between the parties, which contains the terms, rights, and obligations of the parties.

The Civil Code gives the meaning of a contract following Article 1313 of the Civil Code which reads, namely: "An agreement is an act by which one or more persons bind themselves to one or more persons". In the event of a *default*, the law is in charge of providing compensation through the legal subject contained in the agreement in terms of being obliged to merit, against other legal subjects contained in the agreement in their right to merit (Sinaga, 2018).

For approximately the last three years of 2017-2020, there have been many cases of non-departure of Umrah pilgrims which eventually boils down to reporting to individuals and leaders of Hajj and Umrah organizers as in the example of the PT case. BMP (Bumi Minang Pertiwi) with suspect an. Nanang and Dirut Bumi Minang Pertiwi an. Edi.

The second case is the case that occurred in PT. Medina Iman Wisata, with 46 victims, losses of up to Rp. 2.5 M with 1 suspect. Candra Simamora, and suspect 2 an. Fuad Muchtar. The case was decided in the Bengkulu District Court in 2018. Another case is the one that happened to pilgrims who failed to leave for Umrah through the organizing agent of First Travel which took a lot of casualties in Bengkulu.

This matter must certainly get serious attention from the government, both Provincial and Bengkulu City, especially from agencies in charge of this issue such as the Ministry of Religion. In addition to criminal liability, companies can also be held civilly liable through a lawsuit to the court. The act of punishment imposed on Umrah organizers who fail to dispatch pilgrims has a weakness, namely not providing compensation for victims.

Based on the background above, the author is interested in studying more deeply the problems regarding the legal liability of the Hajj and Umrah Bureau/Travel Organizers

to their pilgrims with several research questions related to the civil liability of travel umrah organizers who fail to dispatch Umrah pilgrims and legal remedies from prospective Umrah pilgrims who fail to be dispatched by umrah travel organizers.

## METHOD

The type and nature of this research are classified into the type of empirical or sociological juridical research (Bambang Sunggono, 2007), namely research conducted directly at the research site through interviews and questionnaires with informants who are used as samples to collect data (Sugiyono, 2010). As for the approach used is the empirical juridical approach method (Asikin & Amiruddin, 2008) (Asikin & Amiruddin, 2008). The primary data sources from this study consisted of the Head of the Office of the Ministry of Religion of Bengkulu Province, Two (2) Leaders of Umrah Travel Agents / Agencies in Bengkulu City, and Twenty (20) pilgrims who failed to depart for Umrah in Bengkulu City. Meanwhile, secondary data sources are obtained from books, reading materials, and laws and regulations. Data collection is carried out with three techniques, namely Observation, Interview, and Documentation. Data processing and analysis are carried out by grouping and classifying according to the subject matter (Yusuf, 2014), then researched and re-examined at the stage of data processing that will be carried out by researchers to examine field data (Soerjono Soekanto, 1986) which has been collected through interviews with informants. Furthermore, it is processed based on existing theories and verses from the Quran.

## RESULTS AND DISCUSSION

According to the Big Indonesian Dictionary (KBBI) responsibility is the obligation to bear everything when anything happens, it can be sued, blamed, and disputed. In the legal dictionary, responsibility is a must for a person to carry out what has been obliged to him. (Rifai, 2014)

Etymologically, *liability* is often exchanged for *responsibility*. The *Black Law Dictionary* states that the terminology liability has a broad meaning. The definition of *legal liability* is *a liability that courts recognize and enforce between parties*. (Prakoso, 2019).

The concept of legal responsibility is related to the concept of a legal obligation, that a person is legally responsible for certain acts or that he bears legal responsibility means that he is responsible for a sanction if his actions conflict ((H.S, 2008) Legal liability can be distinguished over individual liability and collective liability. Individual liability is a person's responsibility for a violation committed by himself, while collective liability is the responsibility of an individual for an offense committed by another person (Lasut et al., 2021).

### Travel Law Relationship with Umrah Pilgrims

A legal relationship is a relationship between two or more legal subjects (Susanti, 2014). Legal relations can occur between fellow legal subjects and between

legal subjects and objects. Relationships between fellow legal subjects can occur between people, people with legal entities, and between fellow legal entities (Marks, 2008). The legal relationship between the subject of law and the object is in the form of what rights the subject of the law has over the object, whether a tangible object, a movable object or an immovable object. (Rosadi, 2010) In this legal relationship, the rights and obligations of one party are confronted with the rights and obligations of the other party. The legal relationship between BMP (Bumi Minang Pertiwi) travel and Medina Iman Wisata with Pilgrims is a legal relationship between business actors and consumers.

Following the positive law in force in Indonesia, a consumer if harmed in consuming goods or services can sue the party who caused the loss. The party here can mean producers/factories, *suppliers*, wholesalers, retail traders/sellers, or parties who market products, depending on who does or does not do actions that cause losses to consumers (Ridwan, 2013).

Based on Law Number 8 of 1999 concerning Consumer Protection, there is an article that describes the product responsibility system in Indonesian consumer protection law, namely the provisions in Article 19 of Law Number 8 of 1999 as follows:

- a) Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consumer goods and/or services produced or traded.
- b) Compensation as referred to in paragraph (1) can be in the form of refunds or replacement of goods and/or services of similar or equivalent value, or health care and/or compensation under the provisions of the applicable laws and regulations.
- c) The award of compensation is carried out within a grace period of 7 (seven) days after the transaction date.
- d) The award of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence of the existence of an element of guilt.
- e) The provisions as referred to in paragraphs (1) and (2) do not apply if the business actor can prove that the error is the fault of the consumer.

From the civil aspect, travel BMP (Bumi Minang Pertiwi) and Madinah Iman Wisata have defaulted not to dispatch prospective Umrah pilgrims, as well as having committed unlawful acts (*onrechtmatige daads* in Dutch and *Tort* in English). Therefore, travel BMP (Bumi Minang Pertiwi) and Medina Iman Wisata can be required civilly to fulfill the agreement, namely sending prospective pilgrims for Umrah to the holy land.

The fulfillment of this obligation must not be done alone by BMP (Bumi Minang Pertiwi) and Medina Iman Wisata travel because the operational license as an Umrah worship organizer has been revoked by the Ministry of Religion. The fulfillment of BMP (Bumi Minang Pertiwi) and Medina Iman Wisata travel obligations

can be organized by other Umrah Travel Agencies but at the expense of BMP (Bumi Minang Pertiwi) and Madinah Iman Wisata travel. Alternatively, BMP (Bumi Minang Pertiwi) and Medina Iman Wisata travel can be prosecuted by canceling the engagement so that they must return the money that has been deposited by prospective Umrah pilgrims to leave for the holy land.

### **Legal Remedies from Umrah Pilgrims Who Failed to Be Dispatched**

Overcome dispute resolution in the event of violations between the parties, it can be done through two patterns of dispute resolution, namely first dispute resolution through court channels (litigation) and the second dispute resolution through alternative dispute resolution (non-litigation) (Retna, 2012).

The failure of PT. BMP (Bumi Minang Pertiwi) and PT. Medina Iman Wisata in dispatching prospective Umrah pilgrims is a form of default. Prospective Umrah pilgrims who are consumers of these business actors have been protected by laws and regulations in the form of Law Number 8 of 1999 concerning Consumer Protection (UUPK).

PT. BMP (Bumi Minang Pertiwi) and PT. Medina Iman Wisata who has failed to dispatch prospective Umrah pilgrims, then prospective Umrah pilgrims in good faith must be given sufficient legal protection because they have paid or have completed all their obligations as a consumer who will use the services of business actors engaged in the implementation of Umrah worship.

As for civil legal remedies for prospective Umrah pilgrims who are harmed both immaterially, especially materially, of course, the choice of the author's civil channel is very appropriate (Hidayat & Sarono, 2022). The solution that prospective Umrah pilgrims can do is to donate PT Travel, the umrah organizer. If the company still ignores its responsibilities, then the next effort is to file a lawsuit in the Commercial Court. Even furthermore, the plaintiff can ask the Commercial Court through the plaintiff's lawyer so that PT Travel, the organizer of the Umrah service, is bankrupted as stated in the Insolvency Law. If the tribunal decides that the PT is bankrupt, the curator will confiscate the assets belonging to the company. So it is expected that the proceeds from the confiscation of the company's assets can later be distributed proportionally to the aggrieved parties.

The theory of maqoshid sharia, regarding consumer protection, the legal basis has been regulated in the Consumer Protection Law Number 8 of 1999 (Fauzi, 2019). Meanwhile, Islamic law in regulating consumer protection is based on the main rule in the holy book of the Quran surah Al-Baqarah verse 279 It means: "If you do not carry it out, then announce war from Allah and His Messenger. But if you repent, then you are entitled to the principal of your treasures. You do not do zalim (harm) and are not dizalimi (harmed)."

In addition, Umrah pilgrims as consumers are entitled to legal protection, as stipulated in Article 4 of the UUPK, which is as follows:

- 1) The right to comfort, security, and safety in consuming goods and or services;
- 2) The right to choose goods and or services and obtain such goods and or services following the exchange rate and the conditions and guarantees promised;
- 3) The right to true, clear, and honest information regarding the conditions and guarantees of goods and or services;
- 4) The right to be heard for their opinions and complaints about the goods and or services used;
- 5) The right to appropriate advocacy, protection, and resolution of consumer protection disputes;
- 6) The right to be treated or served properly and honestly and non-discriminatory;
- 7) The right to consumer coaching and education;
- 8) The right to compensation, indemnity, and or reimbursement if the goods and or services received are not following the agreement or as appropriate; and
- 9) Rights stipulated in the provisions of other laws and regulations.

Based on the rights of the consumers mentioned above, prospective Umrah pilgrims in their position as consumers have the right to be given consumer protection to protect consumers from dishonest business actors (Suwandono, 2016).

The settlement of compensation disputes can be carried out amicably between PT. BMP (Bumi Minang Pertiwi) and PT. Medina Iman Wisata with prospective Umrah pilgrims who fail without the intercession of other parties, but if efforts peacefully fail to be achieved, then the dispute resolution of prospective Umrah pilgrims who fail to leave can be carried out outside the judiciary (Mukhlis, n.d.) , namely prospective Umrah pilgrims who fail to go to sue for compensation to business actors through non-judicial bodies or institutions, such as the Consumer Dispute Resolution Agency (hereinafter abbreviated as BPSK) in Indonesia.

Article 45 paragraph (1) of the UUPK states;

"Any aggrieved consumer can sue the business actor through the institution in charge of resolving disputes between the consumer and the business actor or through the judiciary located in the public environment."

The article above explains that prospective Umrah pilgrims who fail to leave can file a lawsuit against PT. BMP (Bumi Minang Pertiwi) and PT. Medina Iman Wisata because his rights as a consumer have been violated through institutions that have competence in the field of consumer protection. Because the consumer is harmed by the services provided by the travel.

The form of application for settlement of consumer disputes is submitted orally or in writing to BPSK through the local BPSK Secretariat by consumers. Prospective Umrah pilgrims who fail to leave, submit their lawsuit to BPSK through the local BPSK secretariat (Oktaviani, 2018).

The act of default carries consequences for the arising of the right of the aggrieved party to sue the defaulting party to claim compensation. Thus, by law, it is expected that no one party will be harmed because of the default (Rustika & Oemiati, 2017). Default begins when the Umrah travel agency does not perform its obligations following the agreement and neglects to carry them out. So a default of the Umrah travel agency, a legal act that causes one of the parties to be harmed and is in a state of negligence following Article 1238 of the Civil Code and a negligent situation on the part of the umrah worship organizer with a negligent statement and has been given a written warning about the fulfillment of its obligations to the agreement (Dyani, 2017).

In this case, the legal consequences that occur due to the failure to depart of prospective Umrah pilgrims caused by umrah travel agencies, namely Umrah travel agencies, have violated Article 65 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 79 of 2012 concerning the Implementation of Law Number 3 of 2018 concerning the Implementation of Hajj Ibadah, regulated regarding the prohibition for umrah travel organizers.

In business dispute cases, cases filed with the Court are generally in the field of default and tort. Normatively, the two causes of business disputes have been regulated in the Civil Code Article 1365 of the Civil Code (Civil Code) Any act that causes harm to another person, requires the person who is guilty of causing the loss, to compensate the loss (Thohir Luth Mariani & Fadli, 2018).

For prospective pilgrims and Umrah pilgrims who are abandoned or fail to leave in dispute resolution, they can choose two ways of dispute resolution, namely dispute resolution in court or through judicial institutions, and can use dispute resolution outside the court.

## CONCLUSION

Responsibility of umrah travel agency PT. BMP (Bumi Minang Pertiwi) and PT. Madinah Iman Wisatam Bengkulu for prospective Umrah pilgrims who fail to leave, as stipulated in Articles 1236 and 1246 of the Civil Code, PT. BMP (Bumi Minang Pertiwi) and PT. Madinah Iman Wisata Bengkulu must refund all umrah travel costs and losses due to failure to depart following their obligations or give priority to prospective Umrah pilgrims who fail to depart in the following year. The legal remedy of prospective Umrah pilgrims who failed to be dispatched by umrah travel organizers in Bengkulu City is to resolve it through a lawsuit using mediation, conciliation, and arbitration.

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