

Fiqh al-Mu'assasāt in Contemporary Muslim Society: A Socio-Political Analysis of the Establishment of Indonesia's Ministry of Hajj

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Received: 31-10-2025 | Revised: 09-12-2025, 11-02-2026 | Accepted: 25-02-2026

Abstract

The Ministry of Hajj was formally established as a governmental institution in Indonesia in September 2025, prompting critical inquiries and ongoing debates among the country's Muslim community. Employing the theoretical lenses of governmentality and the *maqāṣid al-sharī'ah* (the higher objectives of Islamic law) framework, this study investigates the bureaucratization of the religious pilgrimage as articulated by the state within the broader context of governance and contemporary power structures. This institutionalization process simultaneously intensifies administrative oversight of religious practices, thereby generating tensions between normative protections and the rationalities characteristic of modern power. Through a qualitative socio-political analysis, the findings reveal that the hajj pilgrimage cannot be understood solely as an individual religious obligation; rather, it constitutes a state-led institutional project aimed at protecting pilgrims and promoting public welfare. In this capacity, the Ministry of Hajj operates as a *maqāṣid* agent, safeguarding pilgrims' physical safety, financial security, dignity, and the proper performance of religious rituals through mechanisms grounded in public law. Theoretically, this article contributes by advancing a novel interpretation of *istiṭā'ah* (capability) as a social construct conditioned and mediated by the state, and by proposing *fiqh al-mu'assasāt* (institutional *fiqh*) as an analytical framework for understanding the operationalization of Islamic legal norms within contemporary governance structures. This study enriches socio-political scholarship in Islamic studies by elucidating the dynamic relationship among religion, the state, and citizens in the governance of mass religious practices in contemporary Muslim societies.

[Kementerian Haji secara resmi dibentuk sebagai lembaga pemerintahan di Indonesia pada September 2025, yang memunculkan berbagai pertanyaan kritis dan perdebatan berkelanjutan di kalangan umat Islam di tanah air. Dengan bertumpu pada konsep governmentality (pemerintahan) dan kerangka *maqāṣid al-sharī'ah* (tujuan hukum Islam), penelitian ini mengkaji proses birokratisasi ibadah haji sebagaimana dirumuskan oleh negara dalam konteks tata kelola pemerintahan dan struktur kekuasaan modern. Proses institusionalisasi ini secara bersamaan memperkuat pengawasan administratif terhadap praktik-praktik keagamaan, sekaligus melahirkan ketegangan antara perlindungan normatif dan rasionalitas yang melekat dalam kekuasaan modern. Melalui analisis kualitatif sosio-politik, temuan penelitian menunjukkan bahwa ibadah haji tidak lagi dapat dipahami semata-mata sebagai kewajiban keagamaan individual, melainkan sebagai proyek institusional yang dipimpin oleh negara dengan tujuan menjamin perlindungan jemaah dan mendorong kemaslahatan publik. Dalam konteks ini, Kementerian Haji berfungsi sebagai agen *maqāṣid* yang

berperan menjaga keselamatan fisik, keamanan finansial, martabat, serta ketertiban pelaksanaan ritual keagamaan para jemaah melalui mekanisme kebijakan publik. Secara teoretis, artikel ini berkontribusi dengan mengajukan tafsir baru atas konsep istiṭā'ah (mampu) sebagai konstruksi sosial yang dikondisikan dan dimediasi oleh negara, serta dengan menawarkan fiqh al-mu'assasāt (fikih politik kelembagaan Islam) sebagai kerangka analitis untuk memahami operasionalisasi norma-norma hukum Islam dalam struktur tata kelola pemerintahan kontemporer. Studi ini memperkaya kajian sosio-politik dalam studi Islam dengan menjelaskan relasi dinamis antara agama, negara, dan warga negara dalam pengelolaan praktik-praktik keagamaan massal di masyarakat Muslim kontemporer.]

Keywords: *Fiqh al-Mu'assasāt*, Governmentality, Indonesia, *Istiṭā'ah*, *Maqāsid al-Sharī'ah*, Ministry of Hajj.

Introduction

Hajj governance has become a prominent subject in international academic discourse, particularly regarding the intersection of religious obligations, state regulation, and institutional accountability in contemporary Muslim societies.¹ As the world's largest annual religious gathering, the hajj presents multifaceted challenges, including logistical, legal, financial, and political challenges.² An expanding body of scholarship demonstrates that Muslim-majority states have progressively centralized the management of the hajj, thereby transforming a form of worship that was historically communal and decentralized into a public service administered by modern bureaucratic institutions.³ This transformation has sparked ongoing debates regarding the extent to which state intervention improves pilgrims' welfare or risks politicizing a sacred ritual.⁴ Countries such as Saudi Arabia, Malaysia, Turkey, and Pakistan are frequently analyzed as case studies in discussions of regulatory reform, quota systems, digitalization of services, and public–private partnerships in hajj administration.⁵ Concurrently, international organizations and transnational Islamic forums continue to negotiate standards related to safety, equitable access, and service quality. Within this global context, the hajj regulation transcends mere technical administration, reflecting deeper tensions among religious authority, modern governance, and socio-legal transformation in Muslim societies.⁶

¹ Cédric Jourde, Muriel Gomez-Perez, and Marie Brossier, “The Political Management of the Hajj in Contemporary Times: An Introduction,” in *The Politics of the Hajj from a Comparative Perspective*, ed. Muriel Gomez-Perez, Cédric Jourde, and Marie Brossier, Palgrave Studies in Religion, Politics, and Policy (Cham: Springer Nature Switzerland, 2024), 1–25.

² See: Shanti Nair, “Political Ecologies of Religious Pilgrimage,” in *The International Handbook of Political Ecology*, ed. Raymond L. Bryant (Cheltenham: Edward Elgar Publishing, 2015); Safran Safar Almakaty, “Transformations of Hajj Throughout History: An Analytical Reading of Its Civilizational, Humanitarian, and Administrative Dimensions: A Comprehensive Qualitative Historical Analysis,” preprint, Social Sciences, November 6, 2025.

³ See: F. E. Peters, *The Hajj: The Muslim Pilgrimage to Mecca and the Holy Places* (Princeton, NJ: Princeton University Press, 1994).

⁴ See: Robert Richard Bianchi, *Islamic Globalization: Pilgrimage, Capitalism, Democracy, and Diplomacy* (Singapore: World Scientific Publishing Co Pte Ltd, 2013).

⁵ See: Robert Bianchi, *Guests of God: Pilgrimage and Politics in the Islamic World* (New York: Oxford University Press, 2004).

⁶ Song Niu and Gamil Metwally, “Hajj and Its Impact on International Relations,” *Journal of Middle Eastern and Islamic Studies (in Asia)* 10, no. 4 (December 2016): 39–65.

In the international context, Indonesia occupies a highly significant position as the country with one of the largest Muslim populations worldwide and as one of the foremost contributors of hajj pilgrims. The scale of this participation has long necessitated extensive institutional coordination across legal regulation, financial management, and public service delivery mechanisms.⁷ Historically, the administration of the hajj in Indonesia has been embedded within broader ministerial frameworks, most notably under the Ministry of Religious Affairs.⁸ However, recent institutional reforms mark a new phase in the state's approach to hajj governance, particularly through the establishment of a dedicated Ministry of Hajj as a distinct, specialized governmental entity.⁹ As a relatively new institution, the Ministry of Hajj represents a strategic effort to enhance efficiency, transparency, and professionalism in the management of the hajj. Concurrently, its emergence has engendered a range of significant socio-legal issues, including the allocation of authority, potential overlaps in regulatory frameworks, and the restructuring of religious bureaucracy.¹⁰ Consequently, the Indonesian case provides a unique empirical context for examining how contemporary state structures reconfigure the governance of a fundamental Islamic ritual within an evolving legal and institutional landscape.

The institutionalization of hajj governance in Indonesia has been marked by considerable controversy and scholarly debate.¹¹ Advocates of bureaucratic reform contend that creating a specialized institution is essential to address persistent challenges, including prolonged waiting lists, inadequate accountability in fund management, service delivery disparities, and logistical inefficiencies.¹² Conversely, critics question whether expanding bureaucratic structures can effectively resolve these systemic issues or merely introduce additional layers of administrative complexity.¹³ Furthermore, discussions focus on the appropriate balance between religious authority and state control, particularly concerning quota allocation policies, determination of hajj costs, and the selection of service providers. Some scholars interpret the centralization of hajj management as an inevitable outcome of modern governance. In contrast, others caution against the significant influence of Saudi

⁷ Mirjam Lücking, "Management and Pilgrims' Encounters with the State in Contemporary Indonesia (2013–2021)," in *The Politics of the Hajj from a Comparative Perspective*, ed. Muriel Gomez-Perez, Cédric Jourde, and Marie Brossier, Palgrave Studies in Religion, Politics, and Policy (Cham: Springer Nature Switzerland, 2024), 181–209; Didi Subandi and Yon Machmudi, "The Role of the Governments of Indonesia and Saudi Arabia in Organizing the Hajj Pilgrimage 2015 – 2021," *Journal of Strategic and Global Studies* 5, no. 1 (January 2022).

⁸ Syafiq Hasyim and Norshahril Saat, *Indonesia's Ministry of Religious Affairs under Joko Widodo* (Singapore: ISEAS Publishing, 2021); Naufal Ibrahim, "Hajj Administration Procedures at the Ministry of Religion in Indonesia," *Lead Journal of Economy and Administration* 1, no. 1 (August 2022): 14–19.

⁹ "Indonesian Presidential Regulation No. 92 of 2025 on the Ministry of Hajj and Umrah," September 8, 2025, <http://peraturan.bpk.go.id/Details/331574/perpres-no-92-tahun-2025>.

¹⁰ Muhammad Farid Aljawi and Faisal Santiago, "Reconstructing the Governance of Hajj and Umrah Administration in Indonesia," *Greenation International Journal of Law and Social Sciences* 3, no. 3 (November 2025): 822–32.

¹¹ M. Rizal Abdi, "Indonesia's New Ministry of Hajj: Public Service Innovation or Religious Favoritism?," ICRS: Indonesian Consortium for Religious Studies, Yogyakarta, September 29, 2025, <https://www.icrs.or.id/news/indonesias-new-ministry-of-hajj-public-service-innovation-or-religious-favoritism>.

¹² M. Razi Rahman, "Why Indonesia Is Creating a Hajj and Umrah Ministry," Antara News, August 28, 2025, <https://en.antaranews.com/news/376313/why-indonesia-is-creating-a-hajj-and-umrah-ministry>.

¹³ "Does Indonesia Need a Standalone Hajj Ministry?," with Calvin Sipahutar et al., Jakarta Globe, June 19, 2024, <https://jakartaglobe.id/news/does-indonesia-need-a-standalone-hajj-ministry/>.

policy changes on administrative arrangements, ongoing corruption that undermines service quality, and bureaucratic inefficiencies that weaken governance and pilgrim preparedness.¹⁴ Within the Indonesian context, the establishment of a dedicated ministry intensifies these debates, as it signifies a deeper shift toward state institutional dominance over religious practices. This tension between modernization and normative Islamic values constitutes a critical analytical framework for understanding the interplay between legal structures and social expectations in contemporary Muslim governance.

Building upon these dynamics, this study critically examines the socio-political and legal foundations, as well as the institutional implications, of the Ministry of Hajj in Indonesia through the conceptual framework of *fiqh al-mu'assasāt* (institutional *fiqh*) to understand the governance of contemporary Islamic institutions. The research investigates the translation of normative Islamic principles into state bureaucratic structures, the influence of legal regulations on institutional authority, and the responses of social actors to these transformations. By addressing issues of legitimacy, regulatory coherence, institutional effectiveness, and religious accountability, this study provides a comprehensive analysis of the evolving relationship between Islamic legal thought and state administration in the organization of the hajj. The significance of this research lies in its contribution to bridging normative Islamic jurisprudence (*fiqh*) scholarship with contemporary institutional realities, while offering theoretical insights for the study of Islamic law and practical recommendations for policymakers. Through this approach, the study engages with global debates on religious governance by situating its analysis within Indonesia's socio-legal context and offering a robust empirical perspective.

Research Methodology

This study utilizes Michel Foucault's theory of power, with particular emphasis on the concept of governmentality, to examine the governance of hajj administration in Indonesia via the Ministry of Hajj. Governmentality highlights how modern states exercise control over society not merely through formal legal frameworks but through governing rationalities, administrative techniques, and regulatory mechanisms that influence collective behavior.¹⁵ Within the context of hajj administration, regulation is conceptualized as a technology of power that transforms religious practice into an object of state management through quota systems, standardized administrative procedures, digitalization of services, and institutional oversight mechanisms. The creation of a dedicated ministry signifies an intensification of governmental rationality, extending state control into the religious domain and situating the hajj within a broader management agenda. This framework elucidates how bureaucracy engenders compliance through administrative routines, pilgrim classification, data collection, and multi-layered surveillance, thereby indirectly shaping religious subjects to conform to state systems.

¹⁴ A'an Suryana, "Challenges Await Indonesia's New Ministry of Hajj and Umrah," *ISEAS Perspective* (Singapore), no. 5 (January 2026): 1–9.

¹⁵ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, ed. Colin Gordon (New York: Pantheon Books, 1980), 87–104.

This study integrates the scholarship of Muslim scholars on *maqāṣid al-sharīʿah* (the higher objectives of Islamic law) as a normative evaluative framework to analyze institutional policies and practices within contemporary state administration.¹⁶ It conceptualizes the Ministry of Hajj not merely as an administrative entity but as an instrument for realizing the overarching objectives of Islamic law, particularly the protection of religion, life, property, and the dignity of pilgrims. Within this framework, the Ministry of Hajj's policies are examined in terms of their contributions to ritual safety, equitable access, financial transparency, and the quality of public services. Furthermore, the *maqāṣid* framework facilitates critical reflection on regulatory practices that emphasize good governance, potentially at the expense of the public welfare (*maṣlaḥah*) of the Muslim community.¹⁷ By combining Foucault's theory of governmentality with the *maqāṣid*-based perspective of Muslim scholars, this study elucidates the tensions between modern governmental rationalities and Islamic normative values, while also evaluating the social and legal legitimacy of the increasingly institutionalized system of hajj governance.

This study employs a critical socio-political framework that conceptualizes law as both a mechanism of power and a domain of contemporary governmental practice. It combines normative legal analysis with an investigation of the politics of policy and the state's administrative structures in the regulation of religion. The political dimension is used to elucidate the governing rationalities that underpin the establishment of the Ministry of Hajj, which is viewed as a strategy to enhance state control over the organization of worship. The social dimension examines the consequences of the bureaucratization of religion for access to religious rites, the lived experiences of pilgrims, and the relationship between the state and Muslim society. The analysis is further reinforced by the application of governmentality theory and the *maqāṣid al-sharīʿah* framework as normative evaluative tools to assess the justice and welfare-oriented aims of public policy. Through this integrative approach, the study provides a comprehensive understanding of how hajj governance functions as a site of convergence among state power, modern bureaucracy, and the values of Islamic law within contemporary Muslim societies.

Governmentality of the Hajj Pilgrimage in Indonesia

The research findings suggest that the establishment of the Ministry of Hajj signifies an intensification of governmental practices in the administration of pilgrimage in Indonesia. On September 8, 2025, President Prabowo Subianto promulgated Presidential Regulation No. 92 of 2025, which formally established the Ministry of Hajj and Umrah.¹⁸ This ministry assumes responsibility for managing governmental affairs related to hajj and umrah, supplanting the Directorate General of Hajj and Umrah Organization (PHU) previously housed within the Ministry of Religious Affairs. The new institution is scheduled to

¹⁶ See: Jamāl al-Dīn ʿAtīyyah, *Nahwa Tafʿil Maqāṣid al-Sharīʿah* (Damascus: Dār al-Fikr, 2001); Mohammad Hashim Kamali, *Goals and Purposes of Shariah: Theory and Applications* (New York: Oxford University Press, 2025); Imam Feisal Abdul Rauf, "The Maqasid, Reform and Renewal," in *Defining Islamic Statehood*, by Imam Feisal Abdul Rauf (London: Palgrave Macmillan UK, 2015), 200–73.

¹⁷ Azni Azni et al., "Pseudo-Maṣlaḥah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts," *Jurnal Ilmiah Peuradeun* 13, no. 2 (May 2025): 1399–420.

¹⁸ "Indonesian Presidential Regulation No. 92 of 2025 on the Ministry of Hajj and Umrah."

commence full operations in 2026.¹⁹ This institutional restructuring marks a shift whereby the state transitions from a mere technical facilitator to the principal actor regulating the entire pilgrimage process, including registration, quota allocation, financing, and on-site services in the holy land. The increasingly detailed regulatory framework exemplifies the rationality of modern governance, which aims to administer the pilgrim population as an object of administrative control. Mechanisms such as the quota system, digitalization of services, and multi-layered procedures illustrate how the state employs regulatory techniques that prioritize efficiency, orderliness, and predictability.²⁰ From a Foucauldian perspective, these practices transcend the provision of public services and constitute a form of governance over religious life through regulatory mechanisms that shape pilgrims' behavior in accordance with state-defined institutional norms.

The analysis further demonstrates that the bureaucratization of the pilgrimage establishes a disciplinary framework that limits the religious autonomy of both individuals and communities.²¹ By categorizing pilgrims by age, socioeconomic status, and service classification, the state systematically constructs administratively regulated religious subjects. Administrative procedures, including document verification, timely fee payments, and adherence to official schedules, operate as mechanisms of disciplinary power that enforce conformity to state systems. This dynamic exemplifies how a form of worship that is inherently personal and spiritual is transformed into an activity governed by the principles of modern bureaucracy.²² Consequently, the pilgrimage shifts from being a collective religious experience to a standardized object of public administration.

Nevertheless, normative analysis based on *maqāṣid al-sharī'ah* reveals an inherent ambiguity within this policy orientation. On one hand, centralization and standardization enhance pilgrim protection by improving safety measures, health monitoring, and financial management. These aspects align with the objectives of Islamic law, which aim to safeguard life and property. On the other hand, excessive bureaucratization may hinder vulnerable populations' access to pilgrimage due to complex procedures, higher costs, and longer waiting times.²³ Such conditions are inconsistent with the principles of justice and facilitation in worship, which are fundamental components of the *maqāṣid* framework.²⁴ Therefore, the governance of pilgrimage generates a persistent tension between the state's administrative efficiency and the normative goal of advancing *maṣlaḥah*.

¹⁹ Lintang Budiyantri P and Resinta Sulistiyandari, trans., "Ministry Begins 2026 Hajj Planning with Thorough Evaluation," Antara News, July 26, 2025, <https://en.antaranews.com/news/368977/ministry-begins-2026-hajj-planning-with-thorough-evaluation>.

²⁰ Hasmiyati Hasmiyati and Ummu Saad Ramadhani, "Public Policy Theory Analysis of the Distribution of Hajj Pilgrim Quotas in Indonesia," *Al-Bayyinat* 8, no. 2 (December 2024): 260–75.

²¹ Moch Nur Ichwan, "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era," *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (June 2008): 125–51.

²² See: Ismatu Ropi, *Religion and Regulation in Indonesia* (Singapore: Springer Singapore, 2017).

²³ Refer to "Syariah in the Bureaucracy: The Department of Religion and the Hajj" in M. B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: Institute of Southeast Asian Studies, 2008), 205–42.

²⁴ Muhammad Aziz Zakiruddin, Kamsi Kamsi, and Ahmad Bahiej, "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia," *Al-Istinbat: Jurnal Hukum Islam* 7, no. 2 (December 2022): 547.

The findings further suggest that the creation of a specialized ministry legitimates state control over the religious domain by invoking narratives of professionalization and public service reform. Discourses emphasizing efficiency, transparency, and modernization serve as the principal justifications for expanding bureaucratic authority. However, underlying these narratives is a consolidation of power that centralizes decision-making within state institutions, thereby marginalizing the roles of religious communities and non-state actors.²⁵ From a Foucauldian perspective, this phenomenon illustrates how power operates through discourses of technocratic rationality, which, while ostensibly neutral, effectively extend institutional control. Consequently, the pilgrimage transitions from a solely spiritual practice to a site of governmental intervention characterized by regulation, administration, and social discipline.

Overall, the findings indicate that the governance of the hajj in Indonesia exemplifies a model of pilgrimage governmentality, wherein the state administers religious rituals through modern bureaucratic mechanisms that systematically regulate the pilgrim population. Although these practices yield benefits in terms of orderliness and security, they also raise normative challenges regarding justice, accessibility, and religious autonomy. The integration of Foucauldian analysis with the framework of *maqāṣid al-sharī‘ah* reveals that institutional reforms extend beyond technical administration, representing broader power dynamics that reshape the relationship between the state and religion in contemporary Muslim societies.²⁶

Protecting Pilgrims: The Ministry of Hajj as a *Maqāṣid* Agent

Within the tradition of Islamic political jurisprudence (*fiqh al-siyāsah*) and the overarching legal maxims of Islamic jurisprudence (*qawā‘id fiqhīyah*), a foundational principle asserts that public policy must be oriented toward the promotion of public welfare.²⁷ This principle, known as *taṣarruf al-imām ‘alā al-ra‘īyah manūṭ bi al-maṣlaḥah*, dictates that all actions and policies implemented by the ruler concerning the populace should be grounded in the pursuit of the public interest.²⁸ Consequently, the state is conceptualized not merely as an administrative authority executing technical governmental functions but as a moral and legal agent responsible for ensuring the realization of the objectives of Sharia within social life.²⁹ In the specific context of pilgrimage governance, the establishment of the Ministry of Hajj

²⁵ Mirjam Künkler, “The Bureaucratization of Religion in Southeast Asia: Expanding or Restricting Religious Freedom?,” *Journal of Law and Religion* 33, no. 2 (August 2018): 192–6.

²⁶ Muhammad Taufiq, Muhammad Fauzinudin Faiz, and Ziyad Ravaṣdeh, “Between Sharia and State: Fatwa Authority and Pandemic Responses in Indonesia, Turkey, and Morocco,” *De Jure: Jurnal Hukum dan Syari‘ah* 17, no. 1 (June 2025): 377–94.

²⁷ Sulastri Caniago et al., “Gender Integration in Islamic Politics: Fiqh Siyasah on Women’s Political Rights since Classical to Contemporary Interpretations,” *MILRev: Metro Islamic Law Review* 3, no. 2 (December 2024): 411–31; Dodi Afriyanto, Febrian Febrian, and Iza Rumesten, “The Quasi-Judicial Authority of Bawaslu in the Perspective of Das Sollen and Fiqh Siyasah,” *Nurani: Jurnal Kajian Syari‘ah dan Masyarakat* 25, no. 2 (October 2025): 462–72.

²⁸ Nassir bin Muhammad Mashri al-Ghamdi, “Qā‘idah al-Taṣarruf ‘alā al-Ra‘īyah Manūṭ bi al-Maṣlaḥah (Dirāsah Ta‘shīliyyah Taṭbīqīyyah Fiqhiyyah),” *Journal of Umm Al-Qura University for Shari‘ah and Islamic Studies* 46, no. 1 (2009): 155–218.

²⁹ Abū al-Ḥasan al-Māwardī, *Al-Aḥkām al-Sulṭāniyyah*, in *Al-Aḥkām al-Sulṭāniyyah* (Cairo: Dār al-Hadīth, 2006), 172–8; Achmad Siddiq et al., “Restrictions on Hajj Pilgrimage for Indonesian Congregation from the Perspective of Sadd al-Dzari‘ah,” *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 7, no. 1 (June 2024): 35–51.

can be understood as a tangible expression of the state's evolving role as a *ḍāmin* (guarantor) of pilgrims' safety, welfare, and the continuity of worship. Thus, the state transcends its traditional function as a logistical coordinator or administrative regulator, assuming comprehensive responsibility for safeguarding the fundamental interests of pilgrims as both legal and religious subjects.

This transition signifies a shift from a normative framework that was formerly more individualistic and community-based toward a systemic model formalized through contemporary bureaucratic institutions. In classical frameworks, the safeguarding of pilgrims was typically regarded as a moral duty assumed by individuals, families, or religious communities.³⁰ However, within the context of the modern nation-state—characterized by large pilgrim populations, complex transnational logistics, and heightened health and safety concerns—such responsibilities cannot be assigned exclusively to non-state actors.³¹ The state, equipped with regulatory, administrative, and financial capacities, emerges as the principal entity capable of systematically achieving the objectives of *maqāṣid al-sharī'ah*. Consequently, the establishment of a specialized ministry represents the institutionalization of pilgrim protection as a public obligation rather than a supplementary service.

Within the framework of *maqāṣid al-sharī'ah*, the organization of the pilgrimage is intrinsically linked to the fundamental objectives of Islamic law, which include the protection of life (*ḥifẓ al-nafs*), property (*ḥifẓ al-māl*), human dignity (*ḥifẓ al-'ird*), and religion (*ḥifẓ al-dīn*).³² These dimensions serve as normative criteria for evaluating the legitimacy and efficacy of state policies.³³ A state that fails to protect pilgrims from physical harm, economic exploitation, inhumane treatment, or inadequate religious practice neglects its Sharia-mandated responsibilities within the context of contemporary governance.³⁴ As illustrated in Table 1, the protection of pilgrims across the various *maqāṣid* dimensions should be regarded not as a discretionary policy option but as a normative obligation grounded in Islamic law, integral to the state's role in modern hajj administration.

³⁰ Taher Yahya Mohamed Abdel-Jubouriy and Wael Abdel Karim al-Hajj, "Methods of Hajj and Its Interest and Development through the Ages," *Journal of Tikrit University for Humanities* 29, nos. 1, 3 (January 2022): 1–22.

³¹ See: Eric Tagliacozzo and Shawkat M. Toorawa, eds., *The Hajj: Pilgrimage in Islam* (New York, NY: Cambridge University Press, 2016).

³² Muhammad Jazil Rifqi et al., "Children's Legal Identity at Stake: Reconstructing Maqasid al-Syari'ah through Marriage Isbat Applications by the Second Generation in Pasuruan," *El-Mashlahab* 15, no. 1 (June 2025): 125–48; Nasrullah Nasrullah et al., "Reconstructing Mining Governance through Maqasid al-Sharia: Towards Natural Resource Management Public Welfare Oriented," *Syariah: Jurnal Hukum dan Pemikiran* 25, no. 1 (August 2025): 97–112; Uthman Mehdad al-Turabi and Jasser Auda, "Toward a Maqāṣid-Based Legal Reform: Systemic Thinking for Social Transformation in the Modern Muslim World," *Indonesian Journal of Islamic Law* 8, no. 2 (December 2025): 209–28; Agustin Hanapi, Sarina Aini, and Cut Endang Puspa Sari, "Bridging Fiqh and Positive Law: A New Paradigm for Child Legality and the Best Interest of the Child in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (October 2024): 293–308.

³³ Fathurrohman Husen and Mukhlishin Mukhlishin, "Balancing Faith and Fairness: A Maqāṣid al-Sharī'ah Perspective on Regulating Repeated Hajj in Indonesia," *Al-Abkam: Jurnal Ilmu Syari'ah dan Hukum* 9, no. 2 (December 2024): 171–94.

³⁴ Kabir Usman Lamido et al., "The Maqasid al-Shariah (Objectives of Islamic Law) of Hajj Rites in Light of Contemporary Challenges," *International Conference on Islamic Studies (ICIS)*, 2025, 1970–6.

Table 1
Maqāṣid-Based Framework of State Responsibility in Hajj Governance

No.	Maqāṣid Dimension	Focus of Protection	Role of the Ministry of Hajj	Implications for Hajj Governance
1.	<i>Hijz al-nafs</i> (Protection of life)	Pilgrims' safety and health	Regulation of transportation, accommodation, healthcare services, insurance schemes, and international coordination	Prevention of death, injury, disease outbreaks, and failures in crowd management. Safety policies are not merely technocratic measures but direct realizations of Sharia obligations.
2.	<i>Hijz al-māl</i> (Protection of property)	Financial security of pilgrims and hajj funds	Management of hajj funds, cost regulation, transparency, and oversight of service providers	Prevention of fraud, corruption, cost manipulation, and exploitative economic practices. Financial bureaucratization of hajj constitutes a normative Sharia duty.
3.	<i>Hijz al-'ird</i> (Protection of dignity)	Human dignity and humane treatment of pilgrims	Regulation of service standards, protection of vulnerable groups, and complaint mechanisms	Prevention of discrimination, harassment, and inhumane services. Protection of dignity is integral to safeguarding fundamental rights in Islamic law.
4.	<i>Hijz al-dīn</i> (Protection of religion)	Validity and quality of religious practice	Provision of religious guidance, ritual facilities, and proportionate administrative regulations	Facilitation of lawful worship and prevention of deviant practices. The state must balance administrative control with the facilitation of religious obligations.

Source: Author's elaboration.

The protection of pilgrims' lives (*hijz al-nafs*) represents the most vital aspect of hajj governance. Historical accounts of pilgrimage administration document numerous tragedies characterized by mass casualties, disease outbreaks, and deficiencies in crowd management systems, all of which have led to significant loss of life.³⁵ In this context, the state is responsible for enforcing stringent safety standards through regulation of transportation, accommodation, and healthcare services, as well as through international coordination with Saudi authorities.³⁶ The creation of a specialized ministry facilitates the integration of safety policies within a dedicated and professional institutional framework. From a *maqāṣid* perspective, every administrative action aimed at preventing death, injury, and health hazards constitutes a fundamental element of Sharia implementation.³⁷ Therefore, state investment in pilgrim healthcare systems, travel insurance schemes, and safety protocols should be regarded not merely as technocratic measures but as tangible realizations of the Sharia imperative to preserve life.

³⁵ Hassan Taibah and Sudha Arlikatti, "An Examination of Evolving Crowd Management Strategies at Pilgrimage Sites: A Case Study of 'Hajj' in Saudi Arabia," *International Journal of Mass Emergencies & Disasters* 33, no. 2 (August 2015): 188–212; Yasser A. Alaska et al., "The Impact of Crowd Control Measures on the Occurrence of Stampedes during Mass Gatherings: The Hajj Experience," *Travel Medicine and Infectious Disease* 15 (January 2017): 67–70.

³⁶ Sri Hartini Rachmad et al., "Empowering the Disabled in Hajj Pilgrimage: A Sustainable Approach for SDGs Progress in Indonesia," *Journal of Disability & Religion* 28, no. 3 (July 2024): 409–36; Najim Z. Alshahrani et al., "International Health Regulations (IHR) and the Success Story of Public Health Preparedness during Hajj in Saudi Arabia," *Mass Gathering Medicine* 3 (September 2025): 100017.

³⁷ See: Aasim I. Padela, *Maqasid Al-Shariah and Biomedicine: Bridging Moral, Ethical, and Policy Discourses* (Herndon, VA: International Institute of Islamic Thought, 2024).

Beyond the protection of life, the protection of pilgrims' property (*ḥifẓ al-māl*) occupies a central role within the *maqāṣid* framework. The organization of the hajj requires substantial financial resources, including funds from the state and contributions made directly by pilgrims.³⁸ In the absence of effective regulation, this sector is highly susceptible to fraud, corruption, and exploitative business practices that disadvantage pilgrims.³⁹ By establishing a specialized ministry, the state assumes responsibility for supervising and managing hajj funds to ensure financial transparency, accountability, and security.⁴⁰ Measures such as regulating pilgrimage costs, managing pilgrims' savings, and overseeing service providers serve to protect communal wealth.⁴¹ From a *maqāṣid* perspective, any policy that prevents financial loss, cost manipulation, or economic uncertainty fulfills the Sharia obligation to preserve both individual and collective property.⁴² In summary, the bureaucratization of hajj financial management can be understood as a normative response to the significant demand for economic protection of pilgrims.

The third dimension, specifically the protection of pilgrims' dignity and honor (*ḥifẓ al-'ird*), has often been underemphasized in public policy discussions, despite its critical importance within *fiqh*. Pilgrims—especially vulnerable populations such as women, the elderly, and individuals with disabilities—are frequently exposed to risks of inhumane treatment, harassment, or discrimination during the pilgrimage journey and related service processes.⁴³ It is the responsibility of the state, through regulatory frameworks and oversight mechanisms, to ensure that all pilgrims are treated with dignity in accordance with both humanitarian principles and Islamic values.⁴⁴ Providing adequate facilities, support systems, and accessible complaint mechanisms is essential to achieving this protection. From the perspective of *maqāṣid al-sharī'ah*, safeguarding human dignity is integral to protecting fundamental rights, which must not be compromised.⁴⁵ Accordingly, state policies aimed at enhancing service quality and protecting pilgrims' rights represent a direct realization of the objectives of Islamic law.

³⁸ Samsudin et al., "Hajj Funds Management Based on Maqāṣid al-Sharī'ah; A Proposal for Indonesian Context," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (December 2023): 544–67.

³⁹ Nanang Setiawan and Noorlailie Soewarno, "Protection of Hajj and Umrah Pilgrims from Fraud: Evidence from Indonesia," *Share: Jurnal Ekonomi dan Keuangan Islam* 13, no. 1 (February 2024): 276–98.

⁴⁰ Jaenal Aripin, "Hajj Fund Investment: A Comparative Contemporary Fiqh Study on Maslahah and Public Policy Perspectives in Indonesia," *MILRev: Metro Islamic Law Review* 4, no. 1 (June 2025): 360–88.

⁴¹ Nanang Setiawan, "Ponzi Schemes in the Hajj and Umrah Business: Causes, Methods, Consequences and Prevention," *Journal of Financial Regulation and Compliance* 33, no. 5 (October 2025): 743–59.

⁴² Mohammad Hashim Kamali, "Ethics and Finance: Perspectives of the Shari'ah and Its Higher Objectives (Maqasid)," *ICR Journal* 3, no. 4 (July 2012): 618–36; Norashikin Ahmad, Mohd Shukri Hanapi, and Yusma Fariza Yasin, "Maqasid Shariah and Islamic Fintech Research: Trends, Topics and Collaborations," *Jurnal Ilmiah Peuradeum* 13, no. 3 (September 2025): 2271–310.

⁴³ Osama Samarkandi et al., "Health Risk Behaviors and Associated Factors Among Hajj 2024 Pilgrims: A Multinational Cross-Sectional Study," *Risk Management and Healthcare Policy* Volume 18 (July 2025): 2233–45; Sitti Asiqah Usman Ali et al., "From Text to Policy: Contextualizing the Maḥram Ḥadīth for Women Pilgrims within Indonesian Hajj Management," *El-Usrah: Jurnal Hukum Keluarga* 8, no. 2 (December 2025): 793–811.

⁴⁴ See: Bianchi, *Guests of God*.

⁴⁵ Tuba Erkoç Baydar, "Human Dignity from an Islamic Perspective: Concepts and Theoretical Base," *Mission Studies* 41, no. 3 (December 2024): 348–60.

The final component, namely the *ḥifẓ al-dīn*, constitutes a fundamental element of hajj administration. The state is responsible for ensuring that the pilgrimage is conducted lawfully and safely, in accordance with Sharia principles. This responsibility encompasses the provision of qualified religious guides, appropriate facilities to support ritual observance, and the implementation of regulations designed to prevent deviant practices that could compromise the validity of worship.⁴⁶ In the context of modern bureaucratization, the protection of religion further requires that administrative procedures not impede the substantive fulfillment of religious duties. If regulations become excessively complex or discriminatory, thereby obstructing certain groups from performing the pilgrimage,⁴⁷ the state would fail to achieve the *maqāṣid* objective of preserving religion. Consequently, striking a balance between administrative regulation and the facilitation of worship emerges as a critical concern in contemporary hajj governance.⁴⁸

Within the theoretical framework of governmentality, the expansion of the state's role as the protector of pilgrims can be understood as a strategy to enhance administrative control over religious practices.⁴⁹ The state employs narratives centered on protection and public welfare to justify the extension of regulation, surveillance, and standardization. While many of these policies align with the objectives of *maqāṣid al-sharī'ah*, there is a potential risk that technocratic rationality and vested power interests may redirect policy priorities away from genuine public welfare toward mere bureaucratic efficiency.⁵⁰ For example, quota systems initially designed to ensure safety may transform into mechanisms of social exclusion that limit access for certain groups.⁵¹ Likewise, the centralized management of hajj funds may generate opportunities for politicization and the advancement of state fiscal agendas.⁵²

The tension between the state's function as an agent of *maqāṣid* and its role as a modern political actor represents a central finding of this analysis. On one hand, the establishment

⁴⁶ Ahmad Nabilul Maram, Imam Ghazali Said, and Titik Triwulan Tutik, "Fatwā on The Ruling of Hajj Without Taṣrīh; The Case of Indonesian Hajj Pilgrims in 2024," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 2 (December 2024): 413–43.

⁴⁷ Nizma Armila and Mega Satria Nurul Falah, "Negotiating Text and Context: The Hadith on the Prohibition of Women's Travel Without a Maḥram in the Social and Legal Histories of Saudi Arabia and Indonesia," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 20, no. 1 (January 2026): 131–56; Subkhani Kusuma Dewi and Muhammad Akmaluddin, "Broadcasting Umrah through the Hadith of Hajj Badal in the COVID-19 Pandemic Era," *Jurnal Studi Ilmu-Ilmu Al-Qur'an dan Hadis* 24, no. 2 (July 2023): 231–52; Moh Hafid Effendy et al., "Cultural Traditions of Hajj and Umrah: A Comparative Study of Madurese Communities in Indonesia and Malaysia," *Jurnal Ilmiah Peuradeun* 14, no. 1 (January 2026): 77–96; Hilmi Muhammadiyah and Siti Sara binti Haji Ahmad, "Social Mobility of The Bugis Female Hajj Pilgrims," *Al-Albab* 13, no. 1 (July 2024): 3–18.

⁴⁸ Mohammad Adnan, Badrah Uyuni, and Mahfuz Mahfuz, "Modern Applications of Fiqh in Hajj: Analyzing Islamic Legal Responses to Contemporary Issues," *Journal of Mujaddid Nusantara* 1, no. 3 (September 2024): 138–57.

⁴⁹ Saran Ghatak and Andrew Stuart Abel, "Power/Faith: Governmentality, Religion, and Post-Secular Societies," *International Journal of Politics, Culture, and Society* 26, no. 3 (September 2013): 217–35.

⁵⁰ See: Amr Mohamed Hassan Ellithy, "Structuring the Muslim Pilgrimage to Mecca: The Role of Monarchs Revisited" (Dissertation, Middle East Technical University, 2024).

⁵¹ Lailatul Qadariyah and Umar Faruq, "Legal and Human Rights Violations in the Hajj Quota Diversion Policy in Indonesia," *At-Taḥkīr* 18, no. 1 (December 2025): 91–102.

⁵² See: Muriel Gomez-Perez, Cédric Jourde, and Marie Brossier, eds., *The Politics of the Hajj from a Comparative Perspective: States, Entrepreneurs, and Pilgrims*, Palgrave Studies in Religion, Politics, and Policy (Cham: Palgrave Macmillan, 2024).

of a specialized ministry dedicated to pilgrim protection exemplifies the tangible implementation of Sharia objectives on a broad scale. On the other hand, this development concurrently contributes to the bureaucratization of religion, which may undermine the autonomy of religious communities and the individual spiritual experience. From a *maqāṣid* perspective, the success of policy should not be evaluated solely in terms of administrative efficiency but rather by the degree to which such policies genuinely promote the holistic welfare of pilgrims.⁵³ In this context, conceptualizing the state as an agent of *maqāṣid* provides a critical analytical framework for assessing the normative legitimacy of expanding state involvement in the governance of the hajj. The modern state, endowed with institutional capacities, possesses considerable potential to realize Sharia objectives that were previously challenging to achieve through traditional means.⁵⁴ Nevertheless, this potential requires ongoing critical scrutiny to prevent it from transforming into bureaucratic domination that neglects principles of justice and human dignity. The protection of pilgrims must remain focused on substantive public welfare rather than mere procedural compliance.

The Ministry of Hajj and Pilgrim Rights: Reinterpreting *Istīṭāʿ* as a Social Condition-Based Structural Governance

In classical *fiqh*, the concept of *istīṭāʿ* holds a pivotal role in determining the obligation of hajj as a *fard ʿayn* (individual duty) for every Muslim who meets the conditions of ability and capability.⁵⁵ Jurists from the four principal schools of Islamic law conceptualized *istīṭāʿ* as a multifaceted capacity that governs the obligation to perform the hajj. The Ḥanafī school defined *istīṭāʿ* in terms of physical ability, financial sufficiency—including provisions and transportation—and the security of travel, emphasizing the necessity of sustaining both the pilgrim and any dependents left behind. Similarly, the Mālikī school underscored physical capacity and adequate provisions but adopted a more flexible stance regarding travel, permitting even arduous journeys on foot provided that reaching Mecca remained feasible. The Shāfiʿī School required physical ability, sufficient financial resources for the journey and for post-pilgrimage livelihood, and access to transportation. In contrast, the Ḥanbalī school primarily emphasized the availability of provisions and appropriate means of travel, alongside ensuring family support during the pilgrimage.⁵⁶

The understanding of pilgrimage practices has been significantly influenced by the socio-historical context in which these journeys occurred, particularly under state intervention during the contemporary period.⁵⁷ Within this context, the hajj was not perceived solely as a personal act of worship for which the individual assumed full

⁵³ See: Basma I. Abdelgafar, *Public Policy: Beyond Traditional Jurisprudence (A Maqāṣid Approach)* (London: IIIT, 2018).

⁵⁴ Rauf, “The Maqasid, Reform and Renewal,” 200–73; Bambang Wahyudi et al., “Ecological Justice in Islamic Family Law: Integrating Maqasid al-Shariʿah with Environmental Ethics in Post-Pandemic Societies,” *Islamic Law and Social Issues in Society* 1, no. 2 (October 2025): 160–84; Ramlah and Cantik Tri Rahajeng, “Studi Analisis Konsep Maqāṣid al-Syarīʿah Jasser Auda dan Relevansinya dengan Hukum Islam Kontemporer,” *Santara: Journal of Islamic Law and Humanity* 1, no. 1 (June 2025): 25–37.

⁵⁵ See: Nūr al-Dīn ʿItr, *Al-Ḥajj wa al-ʿUmrah fi al-Fiqh al-Islāmī* (Bayrūt: Muʿassasat al-Risālah, 1984).

⁵⁶ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuh* (Damascus: Dār al-Fikr, 1985), 25–33.

⁵⁷ See: Bianchi, *Islamic Globalization*; Jourde, Gomez-Perez, and Brossier, “The Political Management of the Hajj in Contemporary Times,” 1–25.

responsibility; rather, the state or governing authority played a crucial role by ensuring legal oversight, securing travel routes, and facilitating pilgrims through various comprehensive measures. Moreover, contemporary social, political, and technological developments have fundamentally transformed the organization of the hajj and its impact on international relations.⁵⁸ The transnational movement of millions of pilgrims annually, the implementation of mass transportation systems, large-scale accommodation management, and complex immigration regulations have rendered the pilgrimage no longer comprehensible as a purely individual endeavor.⁵⁹ The capacity to undertake the hajj extends beyond individual physical and financial means to encompass a form of social capacity reliant upon collective systems administered by states and formal institutions.⁶⁰

This reinterpretation marks a paradigm shift from an individualistic understanding of worship to a collective, structural conception. In classical *fiqh*, an individual was considered capable of performing worship provided they possessed the necessary provisions and means of transportation. However, in the contemporary context, an individual cannot be deemed genuinely capable if transportation systems are unsafe, accommodations are inadequate, or there is a significant risk of fraud and violence.⁶¹ Consequently, the concept of *istiṭāʿah* has evolved to encompass not only personal capacity but also the quality of public governance. The state and organizing institutions thus become critical determinants in the realization of such capability.⁶² Within this framework, the relationship among Sharia, the state, and citizens undergoes a profound transformation. The state no longer functions as a passive observer external to religious practice but emerges as a central actor shaping the structural conditions that enable or constrain worship. Through the regulation of pilgrimage quotas, management of pilgrims' funds, establishment of service standards, and engagement in international cooperation aligned with state authorities,⁶³ the concept of *istiṭāʿah*—as a form of capability—is shaped by social conditions and operates as a mechanism of structural governance. Accordingly, an individual's capacity to perform the pilgrimage is now largely determined by public policy rather than solely by personal will and resources.

The normative implications of this transformation are significant. If *istiṭāʿah* depends on systems managed by the Ministry of Hajj, then the responsibility for its realization cannot rest solely with individuals. In the contemporary context, the organization of the hajj pilgrimage becomes *wājib ʿalā al-dawlah*—a duty incumbent upon the state. The Ministry of Hajj is therefore obligated to establish conditions that are safe, just, and affordable, thereby enabling Muslim citizens to perform the pilgrimage in a proper and dignified manner. The state's failure to provide adequate systems constitutes not merely an administrative deficiency

⁵⁸ Niu and Metwally, "Hajj and Its Impact on International Relations," 39–65.

⁵⁹ See: David E. Long, *The Hajj Today: A Survey of the Contemporary Makkah Pilgrimage* (Albany: State University of New York Press, 1979).

⁶⁰ See: Almakaty, "Transformations of Hajj Throughout History."

⁶¹ See: Gomez-Perez, Jourde, and Brossier, *The Politics of the Hajj from a Comparative Perspective*.

⁶² Robert Bianchi, "Reimagining the Hajj," *Social Sciences* 6, no. 2 (March 2017): 36.

⁶³ Achmad Irwan Hamzani, Siswanto Siswanto, and Havis Aravik, "Legal Protection for Hajj Pilgrims Through Regional Regulation," *Mazāhib* 17, no. 2 (December 2018): 61–88; Qomarul Huda and Ilham Dwitama Haeba, "Hajj, Istita'ah, and Waiting List Regulation in Indonesia," *Al-'Adalah* 18, no. 2 (December 2021): 193–212; Faisal Abdulrhman Osra et al., "Environmental and Economic Sustainability in the Hajj System," *Arabian Journal of Geosciences* 14, no. 20 (October 2021): 2121.

but a normative failure to fulfill its religious responsibility toward its citizens. This perspective aligns with the principles of *al-siyāsah al-shar‘iyyah*, which regard political authority as the custodian of public welfare.⁶⁴ When an individual’s religious obligation cannot be fulfilled without structural intervention, responsibility shifts accordingly to the public authority. In the context of the modern pilgrimage, individuals cannot independently ensure the safety of international travel, negotiate visa arrangements, or manage accommodation for millions of pilgrims. Such tasks require the state’s institutional capacity. Consequently, the obligation to perform the pilgrimage is, in practical terms, transformed into a collective responsibility administered by the state on behalf of the Muslim community.⁶⁵

The reinterpretation of *istiṭā‘ah* as a condition rooted in social structures and governance carries profound implications for the conceptualization of justice in access to worship. Traditionally, financial incapacity was regarded as a valid exemption from the obligation to perform hajj.⁶⁶ However, in the contemporary context, the costs associated with pilgrimage are significantly influenced by state policies, subsidies, administrative efficiency, and financial transparency.⁶⁷ When these costs increase due to mismanagement or corruption, the state effectively generates structural incapacity among economically disadvantaged individuals. Consequently, incapacity transcends a purely personal condition and may be understood as a product of unjust public policy. This reconceptualization creates a critical framework within contemporary Muslim societies to hold the Ministry of Hajj accountable. The Ministry cannot justify its position by asserting that hajj is obligatory only for those who are capable when its policies actively hinder citizens’ ability to fulfill this religious duty. Therefore, understanding *istiṭā‘ah* as a social condition necessitates that the state actively dismantle structural obstacles and promote equitable access to pilgrimage. In this regard, subsidies, cost regulation, and consumer protection mechanisms are not merely social policies but integral components in fulfilling religious obligations at the state level.⁶⁸

From a socio-political standpoint, the reinterpretation of *istiṭā‘ah* exemplifies the transformation of religious concepts in response to the modern state. Religious law no longer exclusively governs the relationship between individuals and the divine; rather, it increasingly

⁶⁴ Abdul Rashid Moten, “Al-Siyāsah al-Shar‘iyyah: Good Governance in Islam,” in *Qur’anic Guidance for Good Governance*, ed. Abdullah al-Ahsan and Stephen B. Young (Cham: Springer International Publishing, 2017), 55–81; Hasanuddin Yusuf Adan et al., “Islam and the Foundation of the State in Indonesia: The Role of the Masyumi Party in the Constituent Assembly the Perspective of Fiqh al-Siyāsah,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (March 2023): 377–98; Muhammad Taufiq et al., “Tengka, Identity Politics, and the Fiqh of Civilization: The Authority of Madura’s Kiai in the Post-Truth Era,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 24, no. 1 (July 2024): 139–65; Efa Rodiah Nur et al., “Reinforcing the Role of the Gakkumdu Center in Electoral Law Enforcement: A Contemporary Analysis from the Perspective of Fiqh Siyasah Dusturiyah,” *MILRev: Metro Islamic Law Review* 4, no. 2 (November 2025): 1281–96.

⁶⁵ Marjo Buitelaar, “The Hajj and the Anthropological Study of Pilgrimage,” in *Hajj: Global Interactions through Pilgrimage*, ed. Luitgard E. M. Mols and Marjo Buitelaar, Mededelingen van Het Rijksmuseum Voor Volkenkunde, Leiden, no. 43 (Leiden: Sidestone Press, 2015), 9–25.

⁶⁶ See: ‘Itr, *Al-Hajj wa al-‘Umrah fī al-Fiqh al-Islāmī*.

⁶⁷ Sylvia Chiffolleau, “Economics: Agents, Pilgrims, and Profits,” in *The Hajj: Pilgrimage in Islam*, ed. Eric Tagliacozzo and Shawkat M. Toorawa (New York: Cambridge University Press, 2016), 155–74.

⁶⁸ See: Zafar Iqbal and Mervyn Lewis, *An Islamic Perspective on Governance*, New Horizons in Money and Finance (Cheltenham, UK ; Northampton, MA: Edward Elgar, 2009).

intersects with structures of power and public administration.⁶⁹ The state emerges as the principal mediator in fulfilling religious obligations, thereby obscuring the distinction between religious duties and civic responsibilities. Citizens perform acts of worship through state-regulated mechanisms, while the state derives moral legitimacy from facilitating these religious obligations.⁷⁰ Within the theoretical framework of governmentality, this phenomenon can be understood as the state's governance of citizens' religious lives through administrative techniques. By regulating quotas, schedules, costs, and procedures, the state not only provides services but also actively shapes religious subjects who conform to institutional systems. The reinterpretation of *istiṭā'ah* as a form of social capacity thus reinforces the state's role in producing the conditions of religiosity. The state determines who is considered "capable" and when an individual may undertake the pilgrimage. Consequently, a theological concept is redefined within the parameters of administrative categorization and the pilgrimage process.⁷¹

Theoretically, this analysis illustrates the adaptability of Islamic law in addressing socio-political transformations in the contemporary era. Concepts originally conceived as individual can be reinterpreted as collective without compromising their normative essence. Indeed, such reinterpretation enables the objectives of Sharia—to facilitate worship and promote public welfare—to be more effectively actualized within the modern context. However, this flexibility requires caution to prevent religious law from being wholly subsumed by the state's administrative logic, thereby marginalizing its theological and spiritual dimensions.⁷² Ultimately, the reconceptualization of *istiṭā'ah* as a social condition fundamentally alters the understanding of the obligation of hajj in contemporary Muslim societies. The pilgrimage is no longer solely an individual endeavor contingent upon personal capacity but rather a collective undertaking reliant on the capacity and commitment of the state,⁷³ thereby engendering a novel relationship among citizens, religion, and power. Within this framework, the effective administration of hajj serves as an indicator not only of individual piety but also of the quality of state governance in promoting public welfare.

Sharia Norms and the Ministry of Hajj: From *Fiqh al-Afrād* to *Fiqh al-Muassasāt*

Within the classical Islamic tradition, juristic discourse predominantly focused on the personal conduct of Muslims, especially in the performance of acts of worship (*'ibādāt*) and in economic transactions (*mu'āmalāt*).⁷⁴ The role of the state or ruling authority was addressed only marginally, without a systematic analysis of institutional frameworks akin to those found

⁶⁹ Stephen M. King, "Religion, Spirituality, and the Workplace: Challenges for Public Administration," *Public Administration Review* 67, no. 1 (January 2007): 103–14.

⁷⁰ See: Robert W. Hefner and Patricia Horvatic, eds., *Islam in an Era of Nation-States: Politics and Religious Renewal in Muslim Southeast Asia* (Honolulu, Hawaii: University of Hawai'i Press, 1997).

⁷¹ See: Part Two: Journey in Tagliacozzo and Toorawa, *The Hajj*, 87–154.

⁷² Wael B. Hallaq, "Juristic Authority vs. State Power: The Legal Crises of Modern Islam," *Journal of Law and Religion* 19, no. 2 (2003): 243–58.

⁷³ N. Green, "The Hajj as Its Own Undoing: Infrastructure and Integration on the Muslim Journey to Mecca," *Past & Present* 226, no. 1 (February 2015): 193–226.

⁷⁴ See: Al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuh*, 25–33; Itr, *Al-Hajj wa al-'Umrah fī al-Fiqh al-Islāmī*.

in modern governance.⁷⁵ This focus reflects the historical context of pre-modern Muslim societies. However, the advent of the modern nation-state, characterized by complex administrative structures, has fundamentally altered the operation of Islamic law within the public sphere.⁷⁶ The state has evolved from a mere guardian of public order to a central actor responsible for providing public services, managing resources, and regulating social life. Consequently, many religious obligations that were previously individual in nature now require institutional support for effective realization. The hajj pilgrimage exemplifies this transformation: with millions of participants, transnational regulations, and extensive logistical systems, the performance of these rituals can no longer be accomplished solely through individual efforts or informal communal arrangements.⁷⁷

One of the most significant developments in contemporary Muslim societies is the shift from *fiqh al-afrād*—jurisprudence focused on individual obligations and responsibilities—to *fiqh al-mu'assasāt*, a jurisprudential framework governing the roles of institutions and collective structures in achieving the objectives of Sharia. In the classical paradigm, Sharia was often understood as a legal system operating with relative autonomy from political authority; however, in the modern context, it interacts extensively with state policy and governance regulations.⁷⁸ This interaction does not necessarily involve the literal implementation of Islamic legal rules; more commonly, it manifests as the internalization of Sharia values within public regulations. In contemporary Islamic legal scholarship, this process is referred to as *taqnīn al-fiqh*—the codification of *fiqh* into the state legal system.⁷⁹ In the Indonesian context, as a nation-state rather than a religious state, *taqnīn al-fiqh* does not imply positioning Sharia as the sole source of law. Instead, it operates by integrating Islamic values into a pluralistic national legal framework. The constitutional recognition of religious freedom and the right to perform acts of worship serves as a primary mechanism for incorporating Sharia norms into public policy. Consequently, state-regulated hajj administration exemplifies how citizens' constitutional right to worship aligns with the Islamic legal concept of human rights (*ḥuqūq al-'ibād*).⁸⁰

The concept of *ḥuqūq al-'ibād* underscores the human rights that must be protected and fulfilled by both individuals and public authorities.⁸¹ Within this framework, the state assumes moral and legal responsibilities to ensure the safe, just, and dignified conduct of

⁷⁵ See: Hugh Kennedy and Fanny Bessard, eds., *Land and Trade in Early Islam: The Economy of the Islamic Middle East 750-1050 CE* (New York: Oxford University Press, 2021).

⁷⁶ Hijriyan Angga Prihantoro, Noorhaidi Hasan, and Mohammad Yunus Masrukhin, "Islamic Law and the Politics of Nation-State: Debating Citizenship Fiqh through the al-Maskut 'Anhu Discourse," *Abkam: Jurnal Ilmu Syariah* 23, no. 2 (December 2023): 307–28.

⁷⁷ Shadia Taha, "Sacred Journeys," *Journeys* 20, no. 1 (August 2019): 7–30.

⁷⁸ See: Maria Wilhelmina Buitelaar and Richard Louis Anton van Leeuwen, eds., *Narrating the Pilgrimage to Mecca: Historical and Contemporary Accounts*, Leiden Studies in Islam and Society, Volume 16 (Leiden; Boston: Brill, 2023).

⁷⁹ See: Muhammad Zaki Abdilbar, *Taqnīn al-Fiqh al-Islāmī: Al-Mabda' wa al-Manhaj wa al-Taṭbīq* (Doha: Idarah Ihya' Turath Islamiy, 1986).

⁸⁰ Muhammad Farid Aljawi and Zaenal Arifin Hoesain, "Harmonisation of Islamic Law and National Law in Implementasion of Hajj and Umrah in Indonesia," *Journal Evidence of Law* 4, no. 3 (November 2025): 1255–60.

⁸¹ Syed Mohammed Anwar, "Normative Structure of Human Rights in Islam," *Policy Perspectives* 10, no. 1 (2013): 79–104.

religious worship.⁸² Consequently, the establishment of the Ministry of Hajj can be understood as a concrete institutional mechanism through which the state fulfills these rights. The protection of pilgrims extends beyond mere administrative service; it represents the practical application of the principles of justice and public welfare central to Islamic teachings. However, it is important to recognize that *fiqh al-mu'assasāt* does not uncritically delegate religious obligations to the state. Instead, it provides an analytical framework to examine how state institutions manage religious rituals and spatial order in practice.⁸³ From this perspective, the Ministry of Hajj functions not only as an ideal normative institution but also as a site of complex interactions among Sharia, the state, the market, and pilgrims. The state enacts regulations, the market supplies services and infrastructure, and pilgrims act simultaneously as both subjects and objects of policy. These interactions often create tensions among the imperatives of public welfare, economic efficiency, and political interests.⁸⁴

Moreover, the establishment of a specialized ministry exemplifies the adaptation of Sharia to the modern state framework characterized by bureaucratic specialization. Traditionally, religious affairs were typically centralized under the authority of a single ruler or religious scholars; however, in contemporary states, these responsibilities are allocated among various institutions with distinct mandates.⁸⁵ The Ministry of Hajj serves as a case of institutional specialization aimed at enhancing professionalism and accountability. From the perspective of *fiqh al-mu'assasāt*, this specialization can be interpreted as a form of *taṣarruf al-imām* tailored to contemporary requirements to promote greater *maṣlaḥah*. Nonetheless, bureaucratic specialization carries the potential risk of fragmented responsibility and administrative complexity, which may impose burdens on pilgrims.⁸⁶ Lengthy procedures, complex requirements, and ineffective inter-agency coordination can impede access to religious observance.⁸⁷ Within the normative framework of Islamic law, such obstacles merit critical examination, as they contravene the principle of facilitation (*taysīr*), a fundamental objective of Sharia. Figure 1 demonstrates that *fiqh al-mu'assasāt* not only legitimizes the role of the state but also advocates for institutional reforms aimed at substantive public welfare rather than mere procedural adherence.

⁸² Naseem Gul and Habib Bilal, "Rights and Duties: An Islamic Perspective," *International Journal of Humanities & Social Science Studies (IJHSSS)* 11, no. 6 (November 2025): 91–103.

⁸³ Juan Eduardo Campo, "Authority, Ritual, and Spatial Order in Islam: The Pilgrimage to Mecca," *Journal of Ritual Studies* 5, no. 1 (1991): 65–91.

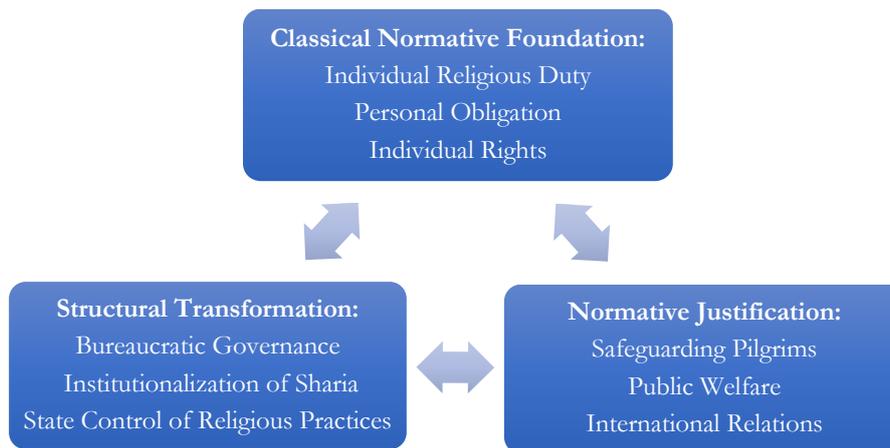
⁸⁴ See: Gomez-Perez, Jourde, and Brossier, *The Politics of the Hajj from a Comparative Perspective*, Chiffolleau, "Economics: Agents, Pilgrims, and Profits," 155–74; Buitelaar and Leeuwen, *Narrating the Pilgrimage to Mecca*.

⁸⁵ See: Bryan S. Turner, *The Religious and the Political: A Comparative Sociology of Religion* (Cambridge: Cambridge University Press, 2013).

⁸⁶ See: Bianchi, *Islamic Globalization*; King, "Religion, Spirituality, and the Workplace," 103–14; Gomez-Perez, Jourde, and Brossier, *The Politics of the Hajj from a Comparative Perspective*.

⁸⁷ Muchimah et al., "Legal Culture and the Dynamics of Religious Interaction in Ritual Practices among Interfaith Marriage," *Al-Manabij: Jurnal Kajian Hukum Islam* 18, no. 2 (November 2024): 333–48; Putri Umairoh et al., "Brokered Marriage Administration: Rational Strategies of Muslim Communities in Navigating the Bureaucratization of Marriage in Indonesia," *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 2 (2025): 193–212; Sheila Fakhria et al., "Securing Muslim Children's Civil Rights: Debate on State Legal Policy towards the Issuance of Family Cards for Unregistered Marriage Couples," *El-Maslahah* 14, no. 2 (December 2024): 303–22.

Figure 1
Fiqh al-Mu'assasāt of Hajj Governance



Source: Author's elaboration.

In the context of Indonesia's Islamic legal politics, the integration of Sharia into state law has predominantly followed a pragmatic and contextual approach. Rather than formally adopting Islamic law as a comprehensive legal framework, the state selectively incorporates values that align with constitutional principles and societal needs.⁸⁸ The governance of the hajj exemplifies one of the most readily integrated areas, as it directly pertains to the constitutionally recognized right to religious observance. The protection of pilgrims, enhancement of service efficiency, and promotion of financial transparency serve as moral and political justifications for state intervention in this domain. This legitimacy is significant because it illustrates how the modern nation-state derives authority not solely from political power but also from moral claims as the guardian of citizens' religious interests.⁸⁹ By assuming responsibility for organizing the hajj, the state positions itself as the custodian of Muslim public welfare.⁹⁰

In a Muslim-majority society such as Indonesia, this role holds significant symbolic and political significance, reinforcing the relationship between the state and society through narratives centered on the provision of religious services.⁹¹ However, this narrative may also function as a mechanism of power. From a critical standpoint, the institutionalization of Sharia within the state apparatus potentially extends governmental control over religious practices.⁹² When stringent legal frameworks regulate acts of worship, the state acquires the

⁸⁸ See: Arskal Salim et al., eds., *Shari'a and Politics in Modern Indonesia*, ISEAS Series on Islam (Singapore: Institute of Southeast Asian Studies, 2003).

⁸⁹ Hijriyan Angga Prihantoro, "Islam and the Humanity of the State: From Fiqh of Politics to Fiqh of Citizenship," *Ulul Albab: Jurnal Studi Islam* 20, no. 2 (December 2019): 364–87.

⁹⁰ See: Gomez-Perez, Jourde, and Brossier, *The Politics of the Hajj from a Comparative Perspective*; Bianchi, "Reimagining the Hajj," 1–26.

⁹¹ Aljawi and Hoesein, "Harmonisation of Islamic Law and National Law in Implementasion of Hajj and Umrah in Indonesia," 1255–60.

⁹² See: Hallaq, "Juristic Authority vs. State Power," 243–58; 'Abd Allāh Aḥmad Na'īm, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge, Mass: Harvard University Press, 2008).

authority to determine access, timing, and procedural conditions of religious observance.⁹³ Within the framework of governmentality, this process can be interpreted as the administration of citizens' religiosity through bureaucratic techniques. Consequently, in practice, *fiqh al-mu'assasāt* not only facilitates public welfare but also produces religious subjects who are disciplined and shaped by state systems.

The tension between the normative role of Sharia and its function as an instrument of governance represents a central issue in the analysis of the relationship between Islamic law and the modern nation-state. On one hand, the institutionalization of religious obligations through state mechanisms facilitates the large-scale realization of *maqāṣid al-sharī'ah*, which was previously difficult to achieve.⁹⁴ On the other hand, this process has the potential to curtail individual and communal autonomy in religious practice.⁹⁵ Consequently, *fiqh al-mu'assasāt* should be conceptualized as a dialectical field wherein religious values interact with the rationalities of modern governance. In the Indonesian context, this dialectic is manifest in public debates concerning the efficiency of hajj bureaucracy, the transparency of pilgrimage funds, and the equity of access to worship. Critiques of state practices frequently invoke religious discourse, calling for policies that more closely align with Islamic principles of *maṣlaḥah* and justice (*'adālah*).⁹⁶ It illustrates that, despite the institutionalization of Sharia within state structures, it continues to serve both as a source of legitimacy and as a framework for social critique.

Theoretically, the transition from *fiqh al-afrād* to *fiqh al-mu'assasāt* signifies the adaptation of Sharia to the realities of the modern nation-state. This adaptation does not diminish Sharia's normative character; rather, it broadens its scope of application in the public sphere. The state emerges simultaneously as a partner and a novel arena for implementing Islamic values. The governance of the hajj through a dedicated Ministry of Hajj exemplifies how religious obligations can be administered via public law without transforming the state into a religious polity. This analysis highlights the dynamic and contextual nature of the relationship between Sharia norms and the modern nation-state. *Fiqh al-mu'assasāt* provides a conceptual framework for understanding how Sharia may be actualized through state institutions in contemporary contexts. The Ministry of Hajj serves as a concrete illustration of how Sharia obligations are operationalized within bureaucratic structures, legitimized by both *maqāṣid al-sharī'ah* and citizens' constitutional rights. Nonetheless, the efficacy of this approach is heavily contingent upon the quality of state governance. In the absence of transparency, accountability, and a substantive commitment to public welfare, the institutionalization of Sharia risks devolving into the bureaucratization of religion, devoid of its ethical spirit of justice. Therefore, *fiqh al-mu'assasāt* not only

⁹³ See: Tim Lindsey and Simon Butt, "State Power to Restrict Religious Freedom: An Overview of the Legal Framework," in *Religion, Law, and Intolerance in Indonesia*, ed. Tim Lindsey and Helen Pausacker, Routledge Law in Asia 15 (London; New York: Routledge, Taylor & Francis Group, 2016).

⁹⁴ See: 'Atiyyah, *Naḥwa Taf'īl Maqāṣid al-Sharī'ah*.

⁹⁵ See: Campo, "Authority, Ritual, and Spatial Order in Islam", 65–91; Buitelaar, "The Hajj and the Anthropological Study of Pilgrimage," 9–25; Aharon Layish, "Islamic Law in the Modern World: Nationalization, Islamization, Reinstatement," *Islamic Law and Society* 21, no. 3 (June 2014): 276–307.

⁹⁶ See: Muhammad Asad, *The Principles of State and Government in Islam* (Berkeley and Los Angeles: University of California Press, 1961).

legitimizes the role of the state but also necessitates ongoing institutional reform to ensure that state structures genuinely function as instruments for realizing the objectives of Sharia rather than merely serving as administrative apparatuses or instruments of power.

Conclusion

This study examines the establishment of the Ministry of Hajj in Indonesia to elucidate the fundamental transformation of the hajj pilgrimage within contemporary Muslim society. It highlights the evolution of hajj from an individually oriented religious practice to a complex, state-centered institutional system. Utilizing an analytical framework that integrates governmentality and *maqāṣid al-sharī'ah* (the higher objectives of Islamic law), the article demonstrates that the state has transcended its role as a mere administrative facilitator to become an agent of *maqāṣid* and a central actor in shaping the social conditions of *istiṭā'ah* (capability), safeguarding pilgrims, and actualizing the objectives of Sharia through public law. The creation of the Ministry of Hajj represents a paradigm shift from *fiqh al-afrād* to *fiqh al-mu'assasāt*, in which religious obligations are institutionalized within modern bureaucratic structures. These findings contribute to contemporary discourse on hajj jurisprudence by illustrating that classical concepts such as *istiṭā'ah* and public welfare (*maṣlahah*) should be understood not solely in individualistic terms but as socially constructed conditions contingent upon state governance.

This article offers a substantial theoretical contribution to contemporary socio-political studies of Islamic law by reconceptualizing the governance of the hajj through the intersection of governmentality and *maqāṣid al-sharī'ah*. Moving beyond traditional normative analyses in hajj jurisprudence, the study demonstrates how classical legal concepts such as *istiṭā'ah* and religious obligation are reinterpreted as socially constructed conditions mediated by state institutions. By proposing an analytical shift from *fiqh al-afrād* to *fiqh al-mu'assasāt*, the article provides a novel framework for understanding the operationalization of Islamic legal norms within the structures of the modern nation-state, without necessitating the formal transformation of state law into a religious legal system. Moreover, the incorporation of Foucauldian power analysis reveals the dual nature of institutionalized religious governance as both a protective mechanism and a technology of control. This theoretical synthesis advances the existing literature by situating the management of the hajj as a critical site where religious normativity, bureaucratic rationality, and state authority converge, while also suggesting new avenues for research on the institutional transformation of Islamic law in contemporary Muslim societies.

This study is subject to several limitations. The analysis predominantly employs a normative-critical approach and a review of policy documents, without incorporating empirical field data such as the lived experiences of pilgrims or the everyday practices of bureaucracy at the operational level. Consequently, this restricts the understanding of the concrete dynamics between regulation and social reality. Furthermore, the exclusive focus on the Indonesian context precludes systematic comparison with other Muslim-majority countries that utilize different models of hajj governance. Future research should therefore integrate socio-legal approaches with empirical methods, including observation, comparative policy analysis, and interviews with key stakeholders. Cross-national studies are also

necessary to capture variations in the implementation of *fiqh al-mu'assasāt* within contemporary nation-state contexts. An interdisciplinary approach that combines Islamic law, political science, and public administration would further enhance understanding of how the hajj is governed both as a religious practice and as a project of state governance.

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