

# Jurnal\_al- Risalah\_Roswati\_Rajab.pdf

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**Submission date:** 29-Apr-2021 09:34AM (UTC+0700)

**Submission ID:** 1572952978

**File name:** Jurnal\_al-Risalah\_Roswati\_Rajab.pdf (824.18K)

**Word count:** 7920

**Character count:** 40938

## THE PRACTICE OF HAJJ SUBSTITUTION IN INDONESIA: The Search for Legal Certainty through *Uşūl al-Fiqh* Approach

Roswati Nurdin & H. Rajab

Institut Agama Islam Negeri (IAIN) Ambon, Indonesia

Jl. Dr. H. Tarmizi Taher, Sirimau, Kota Ambon, Maluku, 97128, Indonesia

email: roswati.nurdin@iainambon.ac.id; rajabzeth@iainambon.ac.id

DOI: 10.30631/al-risalah.v20i2.576

Submitted: June 06, 2020; Revised: August 24, 2020; Accepted: August 31, 2020

**Abstract:** This article discusses the issue of legal certainty of the practice of hajj substitution (*badal haji*) in Indonesia for the prospective pilgrims who have died before the pilgrim season or have suffered from chronic diseases hindering them from performing the planned hajj from the perspective of *uşūl al-fiqh* approach. Despite the fact that Hajj substitution has been widely practiced, there are problems with regards to both legal basis and actual practices. From *the fiqh* point of view, the issue is subject to dissent between the scholars and jurists. As for its actual practice, there is a wide opportunity for abuse from irresponsible parties. Along with this background, in seeking for legal certainty, this article employs *bayānī* (textual), *ta' lili* (causation), and *istişlāhī* (public interest) reasoning of *uşūl al-fiqh* upon the relevant literature. Through *bayānī* reasoning, this article concludes that hajj substitution is obliged by some texts of hadith. *Ta' lili* reasoning reveals that the obligation applies only to the people who are at some point had reached the level of *istiṭā'a* in their life. Finally, *istişlāhī* reasoning unveils a number of adverse situations that one should take into consideration when planning for a hajj substitution on behalf of another, such as the issue of trust with the substitute of the hajj. Accordingly, this article argues that hajj substitution is allowed to be performed under the specific provision and trustworthiness.

**Keywords:** Hajj substitution, Indonesia, *Bayānī*, *Ta' lili*, *Istişlāhī*

**Abstrak:** Tulisan ini akan mencari kepastian hukum badal haji di Indonesia atau haji pengganti karena seseorang telah meninggal dunia sebelum sempat melaksanakan ibadah haji atau karena sakit yang tidak dapat diharapkan kesembuhannya dengan menggunakan penalaran *uşūl al-fiqh*. Meskipun badal haji telah menjadi praktik umum, namun tidak dapat dipungkiri bahwa ia memiliki permasalahan baik dari dasar hukum maupun praktiknya. Dari sisi fiqh, masih terjadi perbedaan pendapat di kalangan ulama. Sementara dalam praktiknya, sangat rentan terjadinya berbagai penyimpangan oleh oknum yang tidak bertanggungjawab. Oleh karena itu, untuk menemukan kepastian hukum tersebut, tulisan ini menggunakan penalaran *bayānī*

(tekstual), *ta'lili* (sebab), dan *istiṣlāḥi* (kemaslahatan) dalam *uṣūl al-fiqh* terhadap sumber-sumber pustaka yang relevan. Melalui penalaran *bayāni* diperoleh keterangan bahwa badal haji diperintahkan oleh teks-teks hadis yang menunjukkan kewajibannya. Penalaran *ta'lili* menunjukkan bahwa kewajiban tersebut hanya bagi orang yang selama hidupnya pernah memenuhi syarat *istiṭā'ah* (mampu) untuk melaksanakan haji. Sedangkan melalui penalaran *istiṣlāḥi* diketahui bahwa ada beberapa mudārat dalam pelaksanaan badal haji yang harus diperhatikan oleh setiap orang atau keluarga yang ingin membadalhajikan orang tua atau keluarganya, seperti keterpercayaan orang yang akan melaksanakan badal haji tersebut. Dengan demikian, tulisan ini berargumentasi bahwa badal haji boleh dilaksanakan oleh umat Islam dengan ketentuan tertata dengan amanah.

**Kata Kunci:** Badal haji, Indonesia, *Bayāni*, *Ta'lili*, *Istiṣlāḥi*

## Introduction

Performing hajj on behalf of an individual who has died, known as *badal haji* or hajj substitution, is a common practice in society. The children or the relatives of this late individual would gather the necessary financial resources for a hajj visit, and hand it over to a person assigned to perform the hajj. Usually, the idea comes from an initiative of the children who wish to dedicate themselves to their parents, despite their passing away. Nevertheless, the actual practice is never as easy as it seems. From the perspective of Islamic law, there is an issue of the existence for an obligation to manage a hajj substitution for a late family member. Also, there is a problem of who could substitute the hajj; because such person should be the one who performed the hajj for him/herself in the past and the hajj substitution he would perform at one hajj season should be the hajj that he has been assigned for, not the hajj for him/herself or the other. Accordingly, finding the right person as the hajj substitute is a tricky task. On the one hand, the initiator has to find a trustworthy person who is sincerely willing to perform hajj for another person. On the other hand, hajj substitution costs a great fortune. Referring to the provision of the Indonesian government in 2018, the cost of hajj substitution is 1,500 reals of Saudi; more or less equal to 6,000,000 rupi-

ahs (with the rate of 1 real = 4,000 rupiahs).<sup>1</sup> Conducting hajj substitution through a particular Hajj Guidance Group (*Kelompok Bimbingan Ibadah Haji*, KBIH) or another party could even cost up to 15,000,000 rupiahs. This number is less than the cost of the regular hajj from Indonesia, which is around 35,000,000 rupiahs, excluding the government subsidies.

It should be noted that a person who has registered and paid off the financial requirements (*Ongkos Naik Haji*, ONH) for a hajj visit in a particular hajj season, and for a particular reason he/she could not fully perform the hajj, the government is obliged to complete his/her hajj through a substitution procedure, either for all the hajj ritual series or some of them. This hajj substitution, which is conducted by the government, is more trustworthy because it would usually be performed by the government officers prepared and supervised for it.<sup>2</sup> Nevertheless, the hajj substitution that is not supervised by the government works organi-

<sup>1</sup> Achmad Fardiansyah, "Pemerintah Gratiskan Badal Haji Bagi Jamaah Yang Wafat Dan Sakit," *Okezone.com*, 2018, <https://haji.okezone.com/read/2018/07/31/398/1929864/pemerintah-gratiskan-badal-haji-bagi-jamaah-yang-wafat-dan-sakit>.

<sup>2</sup> Hanni Sofia, "Amirul Hajj Tegaskan Petugas Pembadal Haji adalah Orang-orang Pilihan," *Antarnews.com*, 2019, <https://www.antarnews.com/berita/989288/amirul-haji-tegaskan-petugas-pembadal-haji-adalah-orang-orang-pilihan>.

cally and is based only on trust between the substitute (*mubdil*) and the initiator of the hajj substitution.

The task of hajj substitution becomes more complicated because the entry to 'Arafah is highly restricted during the *hajj* season, making unregistered people could not enter the town for a main ritual of hajj, be it the local inhabitants or Indonesian citizens living in Mecca or other surrounding cities (*mukimīn*). Accordingly, assigning a hajj substitution to a local inhabitant or a *mukim* is almost impossible. Everyone that wants to perform the hajj should follow the prevailing regulation. That is also the case for Indonesian workers (TKI) or *mukimīn* living in Saudi; many Indonesian workers in the Saudi could not perform hajj because they do not have *tasrih*. Additionally, those workers would also need permission from their employers.<sup>3</sup>

In practice, the hajj substitution that is widely performed in Indonesia takes form as one of the family members handing in the necessary financial requirements to one particular pilgrim so he/she could substitute the hajj, to a hajj officer so that he can find someone in Mecca who is able to be a substitute, or to a Shaikh in Mecca who could be trusted to perform a hajj substitution. Eventually, Hajj Guidance Groups take part in many hajj substitution practices. They propose to perform hajj substitution to the people, making sure that they will follow the prevailing regulation and with a proper and professional contract (*aqd*). Nevertheless, there is no supervision for this practice. Accordingly, this opens up a great opportunity for abuse and fraud for it promises a great economic benefit for those who dare to exploit.

This article discusses the practice of hajj substitution in Indonesia and seeks the legal

<sup>3</sup> Ani Nursalikah, "Kadaker Madinah: Aturan Ketat, - Haji Ilegal Sulit Masuk," *Ihram.Co.Id*, 2017, <https://www.ihram.co.id/berita/jurnal-haji/berita-jurnal-haji/17/08/15/ouoxvo313-kadaker-madinah-aturan-ketat-haji-ilegal-sulit-masuk>.

certainty of it through the *uṣūl al-fiqh* approach, *bayānī* (textual), *ta' līlī* (causation), and *istiṣlāḥī* (public interest) reasoning. The research question is the following: how is the legal certainty of hajj substitution practice in Indonesia?

## The Definition and the Legal Basis of Hajj Substitution

The term *badal haji* is not recognized in classical Islamic literature, either in *tafsīr*, *sharḥ*, or *fiqh*. In those books, the idea of hajj substitution is called *al-ḥajj 'an al-mayyit* (performing hajj for the deceased) or *al-niyābat 'ala al-ḥajj* (substituting a person for hajj). *Badal haji*, therefore, seems to be a specific term recognized in Indonesia as the translation for both terminologies. The word *badal* means to change, to alter, or to substitute.<sup>4</sup> As for *ḥajj*, according to al-Jazīrī, it lexically means going to a particular place for a visit.<sup>5</sup> When a term *badal* is combined with *hajj*, it would then mean to substitute a person for a hajj visit.

Based on this lexicographical overview, scholars define *badal haji* as the hajj performed on behalf of a deceased or a person hindered by the justified excuses (*'udhr*) from doing it by him/herself for physical or mental obstacles making hajj visit impossible.<sup>6</sup>

The Ministry of Religious Affairs, through *Muzakarah Perhajian Nasional* (The Conference on Hajj Affairs) in 2016 defines hajj substitution as follows:

<sup>4</sup> A.W. Al-Munawwir, *Kamus Al-Munawwir* (Surabaya: Pustaka Progresif, 2011), p. 65-66.

<sup>5</sup> Engku Nurul Solihah E. Zainudin and Wan Mohd Hairul Firdaus Wan Khairuldin, "The Concept of Istita Ah in Hajj According to Four Madhhab (Schools Of Thought)," *International Journal of Academic Research in Business and Social Sciences* 7, no. 4 (2017): 44-57.

<sup>6</sup> Said Agil Husin Al-Munawar, *Fiqh Haji: Menuntun Jama'ah Haji Mencapai Haji Mabruur* (Jakarta: Ciputat Press, 2003), p. 196.

1. Hajj substitution is an act of performing hajj on behalf of a deceased (who had not performed hajj) or a person who is hindered from conducting it physically for the justified excuses (*'udhr*), such as suffering from an incurable disease.
2. Hajj substitution is the hajj perform by a substitute on behalf of another person that has died (in between the embarkation and the *wuqūf* ritual). (It is also on behalf of the pilgrims who suffer from physical and mental challenges (which are incurable from the medical perspective, independent from medical instruments, or suffering from mental illness) so that completing *wuqūf* in Arafa is unlikely.<sup>7</sup>

Based on this definition, two factors justify hajj substitution: *al-ma'dūb* and *al-mayyit*. *Al-Ma'dūb* refers to an individual whose physical condition does not allow him/her to undertake the journey to the Holy land, making him/her in need of another person to do it on his/her behalf. As for *al-Mayyit*, it signifies to an individual who cannot perform or complete the hajj rituals because of passing away.<sup>8</sup>

Performing hajj is an obligation in Islam, as written in QS. Āli Imrān [3]:97, that says: "Pilgrimage to the House is a duty owed to God by people who are able to undertake it." This verse shows that the people who are able to undertake (*istiṭā'a*) hajj to *Baytu-llāh* are obliged to perform it while they are alive.

Engku Nurul Solihah E. Zainuddin and Wan Mohd Khairul have classified the elements of *istiṭā'ah* according to the four schools of law (*madhhab*), as follows:

1. According to the Maliki school of law:
  - a. Physical health
  - b. Adequacy of supplies
  - c. Availability of means of transportation by which one could reach Mecca safely.
2. According to the Shāfi'ī school of law:
  - a. Physical capability
  - b. Obtaining conveyance or means of transportation
  - c. Financial stability
  - d. Adequacy of supplies for him/herself and the pet
  - e. Journey safety warrant
  - f. Participation of husband or male guardianship
  - g. Ability to conduct the journey previous to the hajj ritual series.
3. According to the Hanbali school of law:
  - a. Obtaining conveyance or means of transportation
  - b. Ability to prepare the necessities for the journey
4. According to the Hanafi school of law:
  - a. Physical capability
  - b. Financial capability
  - c. Capability for the safety of the journey.<sup>9</sup>

Despite the difference, there is a convergence in the aforementioned required resources, which are; physical (*badaniyya*) and financial (*māliyya*) resources. The physical resource is the capability of individuals to perform the rituals of the hajj, whereas the financial resource refers to the capability of affording all the necessary costs of the hajj, the living in Mecca for the pilgrim, and the dependents' daily needs during the hajj leave.

When an individual happens to be unable to perform the planned hajj for the justified excuses (*'udhr*) or his/her passing away, his/her physical (*badaniyya*), the obligation might be alleviated. Nevertheless, his/her financial (*māliyya*) obligation is not. He/she or the representative should find an individual to perform the hajj on his/her behalf. That is the rationale behind the practice of hajj substitution.

<sup>7</sup> Kementerian Agama RI, *Hasil Mudzakah Perhajian Nasional Tentang Badal Haji* (Jakarta: Direktorat Jenderal Penyelenggaraan Haji dan Umrah, 2016), pp. 4-5.

<sup>8</sup> Kementerian Agama RI, pp. 9-10

<sup>9</sup> Engku Nurul Solihah E. Zainudin and Wan Mohd Khairul Firdaus Wan Khairuldin, "The Concept", p. 54.

The idea that an individual could perform hajj as a substitute for another individual is justified by the Prophet Muhammad himself, as displayed by the following texts:

Al-Faḍl narrated that a lady from Khaṭ'am once spoke to the Prophet that her father had fulfilled the required position to perform hajj, nevertheless he was very old and unable to take on a conveyance. The Prophet then guided her to perform the hajj for him.<sup>10</sup>

This hadith, narrated by Muslim, displays an order from the Prophet Muhammad to the lady to perform the hajj for her father. The reason behind his order was that, according to her report, her father had an unfulfilled obligation for hajj. This hadith shows that hajj substitution is conducted if an individual is unable to perform the hajj by him/herself, but she/her once had fulfilled the required position (*istiṭā'ā*) for hajj. As for the substitute, it is suggested to assign the child or one of his/her relatives, and there is no restriction for gender parity.

Ibn 'Abbās narrated that a lady from Banī Juḥainah came to the Prophet Muhammad and asked: "O Prophet, my mother once vowed to perform hajj, but until she passed away, she had not performed it. Could I perform for her?" The Prophet answered: "Yes, perform the hajj for her; if she also had debts, you should also pay for her, shouldn't you? Pay the debt to Allah, because the right of Allah is more entitled to be fulfilled."<sup>11</sup>

This hadith, narrated by al-Bukārī, explains that the hajj that could be substituted is not only the regular hajj, which is the obligation for every Muslim individual who is able to undertake it but also the hajj that is bound to a vow (*nadh'r*) that is yet to be fulfilled until death. In

this context, the prophet Muhammad ordered the lady from Banī Juḥainah to perform the hajj on behalf of her late mother who in her life once vowed to perform the hajj. The prophet made an analogy between the hajj and the debt to Allah, for which reason it is more entitled to be fulfilled than the debts to other beings.

Ibn 'Abbās narrated that when performing the hajj, the Prophet Muhammad heard of an individual speaking: "*Labbayk 'an Shubrumah*" (I fulfilled your call, O the Mighty, for Shubrumah). The Prophet asked him, "Who is Shubrumah?" "He is my brother/relative", he answered. "Did you perform hajj?", the Prophet further asked. "I did not." he answered. "Do the hajj for yourself, and then do it on behalf of Shubrumah." the Prophet said.<sup>12</sup>

Unlike the previous hadiths, on this occasion, which is narrated by Abū Dāwūd, the Prophet Muhammad prohibited an individual from doing hajj on behalf of another. In this particular hadith, the Prophet encountered an individual who was doing hajj for his brother (in another hadith it was his relative). The prophet asked whether he did a hajj for himself, for which he answered that he did not. The prophet then explained that before doing a hajj on behalf of another, one should previously perform hajj for him/herself. Based on this hadith, scholars are in agreement that the requirement for an individual to be able to be a hajj substitute is that he/she did the hajj for him/herself in the past and that the hajj substitution could only be conducted for one person per one hajj season. It is forbidden for an individual to perform the hajj for him/herself and another individual simultaneously in one hajj season, let alone that a hajj substitute conducts the hajj for several individuals at once; it is inconsistent with the hadith of the Prophet Muhammad PBUH.

<sup>10</sup> Muslim ibn al-Ḥajjāj Al-Naisabūrī, *Ṣaḥīḥ Muslim*, II (Bairut: Dār Ihyā al-Turāth al-Arabī, n.d.), p. 972.

<sup>11</sup> Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*, III (Dār Tūq al-Najāh, n.d.), p. 18.

<sup>12</sup> Abū Dāwūd al-Sijistānī, *Sunan Abī Dāwūd*, II (Bairut: al-Maktabat al-Aṣriyyah, n.d.), p. 162.

## Hajj Substitution: Seeking for Legal Certainty

Finding an accurate legal provision on hajj substitution is conducted through *ijtihād*, which is one of the issues in *uṣūl al-fiqh*. According to al-Zuhaylī, the object of *uṣūl al-fiqh* is the following:

1. The source of sharia law
2. The issues of *ijtihād*
3. Seeking a solution for contradictive *dalīl*
4. The issues of sharia law
5. The issue of the ontology of Islamic law, the subject of law, the object of the law, etc.
6. The issue of law derivation and the way of implementing it.<sup>13</sup>

Al-Dawālibī, as cited by Mahrus Munajat, suggests that there are three modes of reasoning or *ijtihād* that were conducted by the companions of the Prophet Muhammad, despite its terminologies were yet to be established; namely the *ijtihād al-bayānī*, *ijtihād al-qiyāsī*, and *ijtihād al-istiṣlāḥī*.<sup>14</sup> Al-Yasa Abū Bakr calls these kinds of *ijtihād* as *bayānī* reasoning, *ta'līlī* reasoning, and *istiṣlāḥī* reasoning in order to avoid ambiguity of the criteria proposed by al-Dawālibī, because *istiḥṣān*, from one perspective, falls under the category of *qiyās*, but from another perspective, falls under the category of *istiṣlāḥī*.<sup>15</sup>

*Ijtihād al-bayānī*, known as well as *al-lughawī* reasoning, a legal inquiry method that relies upon linguistic principles (semantic) that are developed in such a way through *al-qawā'id al-lughawiya* or *al-qawā'id al-istinbāṭiyya*, which could be translated freely as "the se-

mantic principle for *fiqh* reasoning." As for *ijtihād al-qiyāsī*, also called *al-ta'līlī*, it is a legal inquiry method that seeks for *'illa* (ratio legis) that works behind the provisions of the Qur'ān and/or the hadiths. According to the scholars, every Divine provision has *'illā*, for it is unreasonable that Allah would decide a provision without good intention. The *'illa* of some provisions is mentioned explicitly in the Qur'ān and/or the hadiths. Nevertheless, not a few provisions whose *'illas* are implicitly indicated, or even fully unmentioned, making the comprehensive and in-depth analysis is inevitable. On the other hand, *ijtihād istiṣlāḥī* is a legal inquiry method that works through an analysis upon the textual references that are based on the consideration of the *maṣlaḥa*, either to obtain the needs, to protect the public interest, to bring about benefits, and to avoid harms.<sup>16</sup>

### 1. Bayānī (Textual) Reasoning

Concerning the hajj substitution for the deceased, the scholars made a distinction between individuals who had fulfilled the required position to perform hajj during their lifetime and who had not. The reason for this is that even though hajj is obliged to every Muslim, the nature of its obligation is bound to a condition, namely *istiṭā'a*. The meaning of *istiṭā'a* is to be physically, mentally, and financially capable of performing the hajj. The physical capability means that someone is in good health and not having any hardship of doing the hajj. The mental capability refers to a state of maturity (*bāligh*), knowing what to do and not do during the hajj (*mumayyiz*), intelligent, and mentally prepared. Finally, financial capability means that a pilgrim has to be able to afford the journey to Mecca, their stay during

<sup>13</sup> Nasrullah, "The Manāsik Of Hajj In Indonesia : Looking for Legal Certainty through the Reasonings Uṣūl Al-Fiqh," *Al-Risalah* 20 No. 1 (2020): 31-46.

<sup>14</sup> Mahrus Munajat, "Metode Penemuan Hukum Dalam Perspektif Filsafat Hukum Islam" *Asy-Syir'ah* 42, no. 1 (2008).

<sup>15</sup> Devi Oktari, Gunarto, Muhtarom HR "The Construction Of Compilation Of Islamic Law Principles In Determining The Condition Of Substitute Heirs Based On Justice Value," *Journal of Islamic, Social, Economics and Development* 3, no. 14 (2018).

<sup>16</sup> Husni Mubarrak, "Penalaran *Istiṣlāḥī* Dalam Kajian Fikih Kontemporer: Studi Kasus Fatwa Hukum Imunisasi di Aceh," *AHKAM: Jurnal Ilmu Syariah* 17, no. 1 (2017).

the hajj for both him/herself and the dependents left behind, and the life after the hajj.<sup>17</sup>

Hajj substitution is strongly connected to Muslim individuals who had fulfilled the required position during their lifetime and had the opportunity for hajj but failed to perform it until their death. In this case, al-Shanqīṭi suggests that some hadiths of the Prophet Muhammad explicitly demand the hajj substitution for a *ma'dūb* and the deceased. The obligation of the hajj is required to be immediately fulfilled. When an individual had decided to postpone a hajj while he/she was capable of performing it and eventually dies before he/she could finally do the hajj, he/she becomes a subject for hajj substitution, the cost of which is taken from the wealth they have left behind. That is because the obligation that he/she had decided to delay becomes a debt, and fulfilling the debt to God should be prioritized, as provisioned by the hadith mentioned before. Nevertheless, for individuals who has passed away before reaching *tamakkun* (opportunity for a hajj), there would be no sin and debt for him/her.<sup>18</sup>

There is an apparent contention concerning the legal status of hajj substitution for the deceased. Ibn Qudāma from the Hanbali school of law supports a view that obliges hajj substitution. He suggests that for an individual who has fulfilled the required position for hajj and fails to perform it either for his/her negligence or the other reasons is required a hajj substitution whose costs are taken from his/her wealth. Ibn Qudāma suggests that al-Ḥasan (al-Baṣrī), Ṭawus, and al-Shāfi'ī are also in the same view.<sup>19</sup> Furthermore, he expresses that the obligation of hajj would not come off due to death, for it is the right of God whose

performance could be assigned to another individual, similar to debts. As mentioned, the financial resources for the hajj and umrah visit are taken from the wealth that the deceased has left behind.<sup>20</sup>

The compulsory nature of hajj substitution for those who has not performed hajj in his/her life is also a viewed from the Shafi'ī school of law. Al-Nawāwī, one of the prominent scholars in this school, suggests that an individual who during his/her lifetime had fulfilled the required position for hajj but died before the hajj is performed should be substituted for a hajj from his/her wealth, either for his/her bequeath or not. This view is held by Ibn 'Abbās and Abū Hurayra.<sup>21</sup> Ibn Ḥajar supports this view, saying that from the perspective of the Shafi'ī madhhab, the guardian or the heir of an individual who passed away with an unfulfilled hajj obligation has to look for a substitute of hajj, the cost of which is taken from the wealth he/she left behind, as it is obliged for him/her to pay off his/her debts (if any).<sup>22</sup>

Nevertheless, this view from Hanbali and Shafi'ī madhhabs seems to be different from that of the Maliki and Hanafi madhhabs. The latter schools view that the hajj substitution is forbidden for an individual who passed away without a bequeath of it because his obligation comes off for his/her death.<sup>23</sup> Imam Mālik says: "It is forbidden to perform hajj on behalf of another, and it is forbidden to perform 'umra for another, either he/she is dead or alive unless he/she bequeaths for it. This view

<sup>17</sup> Hendri Tanjung, "Hikmah Ibadah Haji Terhadap Ekonomi" *al-Infāq: Jurnal Ekonomi Islam*, 1, no. 1 (2010): 6-20.

<sup>18</sup> Abū al-Ḥasan Al-Mubārakfūrī, *Mir'āt Al-Mafātīḥ Sharḥ Mishkāt Al-Maṣābīḥ*, VII (India: Idārat al-Buḥūth al-Ilmiyyah, n.d.), p. 401.

<sup>19</sup> Ibn Qudāmāh Al-Maqdisī, *Al-Sharḥ Al-Kabīr*, VI (Cairo: Hajr, 1995), p. 71.

<sup>20</sup> Ibid., p. 72.

<sup>21</sup> Abū Zakariyā al-Nawawī, *al-Majmū' Sharḥ al-Muhadhdhab*, VII (Bairut: Dār al-Fikr, n.d.), p. 112.

<sup>22</sup> Badruddīn al-Ainī, *Umdat Al-Qārī Sharḥ Ṣaḥīḥ Al-Bukhārī*, X (Bairut: Dār Ihyā al-Turās al-Arabī, n.d.), p. 214.

<sup>23</sup> Abd al-Karīm ibn Muḥammad al-Rāfi'ī Al-Qazwīnī, *Fath al-'Azīz bi Sharḥ al-Wajīz*, VIII (Bairut: Dār al-Fikr, n.d.), p. 44.



bases on an assumption that hajj is a physical ritual (*‘ibāda badaniyya*).<sup>24</sup>

The base of this disagreement seems to lie on the different ways of classifying what kind of worship hajj is. The scholars have divided worships into three kinds: *‘ibāda māliyya*, *jasadiyya/badaniyya*, and *māliyya-badaniyya*. The first kind of *‘ibāda* is the ritual that relies on wealth, such as *zakāh*. For this kind of *‘ibāda*, the scholars consider that *al-niyāba* (substitution) is permitted. *Tbāda badaniyya* is the rituals that are strongly connected to physical movements, such as prayer and fasting. The scholars are in agreement that for this kind of rituals, *al-niyāba* (substitution) is not permitted. *Tbāda māliyya-badaniyya* combines financial and physical resources, such as *jihād* and hajj. For this category, *al-niyāba* is permitted.<sup>25</sup> In general, the scholars classify hajj to the third category, for which reason hajj substitution is possible. Nevertheless, Imam Mālik considers hajj as merely *badaniyya*, making hajj substitution to not be permitted, similar to the daily prayers.

At this point, we can see the convergence between the different views of those schools. For the Hanbali and Shāfi‘i schools, the obligation is emphasized on paying out the relevant amount of wealth for an individual who has failed to fulfill his/her obligation of hajj. In other words, the financial resources that an individual should have spent on hajj in his/her lifetime need to be expended after his/her death for the same allocation. Similar to *zakāh*; an individual that has fulfilled the required position for *zakāh* brings this duty with him until it is paid off, even after his/her death.

As for the *badaniyya* aspect of hajj that an individual has failed to conduct in his/her lifetime, according to the Hanbali and Shāfi‘i madhhabs, the legal status of substituting the

hajj is permitted, but not compulsory. Al-Nawāwī reveals that, for al-Shāfi‘i and the majority (*jumūr*), it is permitted to substitute a hajj for a deceased in order to pay off his/her unfulfilled hajj obligation or vow (*nadhhr*), either from his bequeath or not. As for the financial resources for this hajj substitution, it should be taken from his inheritance.<sup>26</sup> Mālik, in this context, views that it is illegitimate to substitute a hajj of another. With this view, he suggests that the hajj performed on behalf of individuals would not set them free from their unobserved duty.

Accordingly, Mālik does not actually prohibit hajj substitution. Some *riwāyahs* reveal that Mālik allows performing hajj for the deceased. However, for him, it is illegal, in the sense that it would not pull off that unfulfilled duty. Al-Qurtubī says that one is not allowed to perform hajj for another unless that other individual has died and left with him/her unperformed hajj (*hajjat al-Islām*)<sup>27</sup> Furthermore, Ibn al-Qassār clarifies Mālik’s view that dismisses the legality of hajj substitution. With the meaning of Mālik’s views, Ibn al-Qassār suggests, that a late individual for whom a hajj substitution is performed would only gain the reward for providing the financial resources needed for the hajj if he had bequeathed it. If another individual (be it the child or relative) initiates the hajj substitution on behalf of him/her as *tatawwu‘*, he/she would only gain the reward from the prayer of the substitute hajj. That is the reward from what the hajj substitution would be.<sup>28</sup>

The Hanafi school is essentially in agreement with the Hanbali and Shāfi‘i schools with regard to the obligation of paying out the financial resources a late individual owes for his/her unperformed hajj. On the other hand,

<sup>24</sup> Al-Khaṭṭāb al-Ru‘ainī al-Mālikī, *Mawāhib al-Jalīl fī Sharḥ Mukhtaṣar al-Khalīl*, II (Dār al-Fikr, 1992), p. 3.

<sup>25</sup> Abū al-Walīd al-Bājī, *Al-Muntaqā Sharḥ al-Muwāḡa‘*, II (Mesir: Matba‘at al-Sa‘ādah, n.d.), p. 271.

<sup>26</sup> Abū Zakariyā al-Nawawī, *Al-Minhāj Sharḥ Ṣaḥīḥ Muslim bin al-Ḥajjāj*, II (Bairut: Dār Iḥyā al-Turāth al-Arabī, n.d.), p. 98.

<sup>27</sup> Abū ‘Amr Al-Qurtubī, *Al-Istīzkār*, IV (Bairut: Dār al-Kutub al-Ilmiyyah, 2000), p. 167.

<sup>28</sup> Abū al-Walīd al-Bājī, *al-Muntaqā*, p. 271

this school also agrees with the Māliki school that the reward he/she would gain from hajj substitution would only be from the financial resources allocated, whereas the reward for the actual performance of hajj would go to the one who actually performs it, despite being a substitute. Al-Sharakhsī, one of the prominent figures in this madhhabs, conveys:

What would be achieved by a late individual for whom a hajj substitution is conducted would be the rewards for funding the hajj, whereas the reward for hajj would be given to the actual performer. That is because hajj is classified as a *badaniyya* ritual, for which substitution is not possible. The obligation of the hajj includes two aspects: paying out the necessary financial resources for the hajj and the actual performance of the hajj. If an individual is not able to actually perform it, one other obligation remains, namely paying out the necessary financial resources; he/she is obliged to fund a hajj visit for another individual that would do it for him/her.<sup>29</sup>

In summary, hajj substitution is obliged for a situation in which an individual had been capable of performing hajj at some point during his/her life fails to perform it until passing away, referring to the view of the Hanbalī, Shāfi'ī, and Hanafī schools. Nevertheless, the notion of obligation in this case is limited to paying out the necessary funding for a hajj on behalf of his/herself, not actually performing the hajj. The only difference at this point comes from the Māliki school of law, that they consider paying another individual to perform hajj on one's behalf is *makrūh*, because it would fall into gaining worldly interest from the deeds that should have been dedicated to the afterlife.

In general, it seems that all of the schools agree that hajj substitution is essentially permitted but contradict on the legal status of

how it should be performed. The Hanafī school views that the hajj substitution is valid, but the reward from it goes to the performer, not to the one for whom it is performed for. The Māliki and the Hanafī schools view that the late individual for whom the hajj is performed would gain the reward for the funding taken from his/her wealth. Finally, the Shāfi'ī and the Hanbalī school suggest that the hajj substitution would pay off the unperformed hajj of a late individual during his/her life because for them the obligation of hajj does not come off from death.

## 2. *Ta'īlī* (Causation) Reasoning

In addition to *bayānī* reasoning, *ta'īlī* reasoning would also be meritorious in seeking for the legal certainty of the practice of hajj substitution. *Ta'īlī*, also called causation, is reasoning that investigates and identifies the 'illa in order to develop, widen, and even nullify a particular law.<sup>30</sup> Because of the importance of *ta'īlī*, 'Abd al-Wahhāb al-Kallaf recommends its use in advance to other rational (*ra'yī*) reasoning.<sup>31</sup>

In the case of hajj substitution, the 'illa of the obligation of hajj is "having fulfilled the required position for hajj." An individual who in his lifetime had reached the necessary resources for hajj, that he had fulfilled the criteria of *istiṭā'a*, but did not perform hajj until passing away, is subject to the obligation of hajj substitution. On the contrary, it is not necessary for a hajj substitution of an individual who had never reached *istiṭā'a* in his life; he/she was not required for a hajj during his lifetime, let alone after passing away. This is the summary of the explanation from scholars

<sup>29</sup> Muḥammad ibn Aḥmad Al-Sarakāsī, *al-Mabsūt*, IV (Bairut: Dār al-Ma'rifah, 1993), p. 147.

<sup>30</sup> Mukhammad Nur Hadi, "Mahar Produktif Dalam Penalaran Ta'Lili," *Qolamuna* 4, no. 2 (2019): 171-194.

<sup>31</sup> 'Abd al-Wahāb al-Khallāf, *Maṣādir al-Tashrī al-Islāmī Fī Mā Lā Naṣṣ Fīh* (Kuwait: 'Abd al-Wahāb al-Khallāf, 1993), p. 19.

such as al-Sanqīṭī, Ibn Qudāma, and al-Nawāwī, as mentioned.

Along with the previous background, the children or the family members left behind by a late individual who had never reached the obligatory position for hajj should not push for a hajj substitution on his/her behalf. This point seems to be widely misunderstood by the Muslim communities, as though they must manage a hajj substitution for their late family member who never had one, especially parents, while they are also yet to go for a hajj. It is preferable to perform hajj for themselves first before attempting to manage a hajj substitution for others. During the hajj, there are wide opportunities for praying to God in *mustajab* places and times for the safety of their late parents or other family members, as well as also the opportunity to perform *‘umra* on behalf of them.

It does not mean that performing hajj for an individual who had never done one is not permitted; it is an allowed and even a considerably noble act. Accordingly, if an individual pass away in poverty, which means he/she was not a subject to hajj obligation, but then his/her children are wealthy enough to initiate and manage a hajj substitution for the late parents, the hajj substitution, in this case is permitted and not obliged, unless the parents had bequeathed for it.

### 3. *Istiṣlāḥī Reasoning (Public Interest)*

Another method to seek the legal certainty of hajj substitution is *istiṣlāḥī* reasoning. This reasoning delves into Islamic laws through the principles of public interests that are derived from the Qur’ān and hadiths. Public interests, in this context, are more or less unable to be traced directly from the Qur’ān and hadiths, either through *bayānī* or *ta’līlī* methods.<sup>32</sup> Ac-

<sup>32</sup> Asafri Jaya Bakri, *Konsep Maqasid Al-Syariah Menurut Al-Syatibi* (Jakarta: Raja Grafindo Persada, 1996), p. 2.

cordingly, the *istiṣlāḥī* method is also called the study of *maqāṣid al-sharī‘a*.<sup>33</sup>

In the case of hajj substitution, the interest is fulfilled when the hajj is performed by the children who substituted the hajj. That is because the hajj substitution of this method would not need paying out another individual for the hajj, and it could be guaranteed that the hajj is properly conducted. Nevertheless, if the substitute comes from another individual, let alone an unfamiliar one, there needs to be intense alertness of the potential abuse. It should be noted that the requirements of hajj substitution are many, such as the substitute should have performed hajj for him/herself previously, the hajj substitution could only be performed on behalf of one person per a single hajj time, the substitute does not perform hajj for himself while doing the substitution, and the substitute should perform all the rituals of the hajj.

A Saudi mufti, Shaykh ‘Abd al-‘Azīz ibn Bāz, warns that hajj substitution should not turn into a business affair for it is a sacred ritual. The compensation received by the substitute from should only cover the necessary cost for the travel and life supplies during the hajj. Furthermore, Ibn Bāz suggests that it is preferable if the substitute is the children of whom the hajj is conducted. The solemnity of the hajj

<sup>33</sup> Hanik Latifah, “Arrisalahli Asy-Syafi’i Dalam Kerangka Ushul Fiqh,” *At TAhdzib: Jurnal Studi Islam Dan Muamalah* 2 (2) (2016): 89–113. For more information on *maqāṣid al-sharī‘a* see, Edi Kurniawan, “Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari’ah Review,” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 20, no. 1 (2020): 8; Edi Kurniawan, “Distorsi Terhadap Maqasid Al-Syari’ah Al-Syatibi Di Indonesia,” *Al-Risalah* 18, no. 2 (2018): 189–90; Busyro, “Using *Zakāh* for the Establishment of Islamic Centers and *Maqāṣid al-Syari’ah*’s Relativities,” *Al-Risalah* 19, no. 1 (2019): 75–80; Eko Saputra and Busyro Busyro, “Kawin Maupah: An Obligation to Get Married After Talak Tiga in the Tradition of Binjai Village in Pasaman District: A Maqasid Al-Shari’ah Review,” *QIJIS (Qudus International Journal of Islamic Studies)* 6, no. 2 (2018): 181–220.

substitution should also be achieved if it is conducted by the child. If indeed the substitute should be other than the family member, Ibn Bāz suggests looking for a trustworthy and pious individual, who does not look for economic benefits from it.<sup>34</sup>

Nowadays, there is a suspicion that there are mafias of hajj in every hajj season. They take economic benefits from hajj substitution, in that they received orders from many people to perform hajj substitution, but do not perform it well. The Director of Rumah Fiqh Indonesia, Ustaz Ahmad Sarwat, unveils that Indonesian Muslims should be wise in searching for a hajj substitute, otherwise it would end in fraud.<sup>35</sup> Furthermore, the Minister of Religious Affairs, Lukman Hakim Syaifuddin, also alerts people to not be the victim of hajj fraud.<sup>36</sup> These substitutes think that performing hajj substitution is a simple affair, while it is not; because there are requirements to fulfill for a hajj substitution.<sup>37</sup>

Accordingly, even though the scholars conclude that hajj substitution is permitted, the actual realization of this practice is not as easy as it seems. For this reason, the Muslim community deserves to know the reality of this issue, either from the aspect of its legal status or its actual practice in reality. From the legal point of view, they should be educated that hajj substitution is permitted, not obliged. For this reason, the people who had not reached

the level of *istiṭā'a* in their life does not need a hajj substitution from their children or family members.

## Conclusion

The above elaboration concludes that the legal status of hajj substitution is permitted as long as it is conducted in a good manner and with trustworthiness. This conclusion is the result of the analysis using the *uṣūl al-fiqh* approach, namely *bayānī* (textual), *ta'līl* (causation), and *istiṣlāḥī* (public interest) reasoning. Through *bayānī* reasoning, it is found that hajj is classified into *'ibāda badaniyya* and *māliyya*. The death of an individual who at some point had reached the level of *istiṭā'a*, from the perspective of *badaniyya*, cancels his hajj obligation, and hence, cannot be substituted by another. Nevertheless, his/her obligation remains from the perspective of *māliyya*. As a consequence, the children or the family members he/she left behind should fulfill his/her unperformed hajj. Shāfi'ī and Hanbalī school of law view that hajj substitution could pay off an unfulfilled hajj obligation of a late individual. For Māliki and Hanafī school of law, however, the view that the reward of the hajj would go to the actual performer of the hajj, whereas the individual for whom the hajj is performed would gain only reward for providing necessary financial resources of the hajj.

From the perspective of *ta'līl* reasoning, it is known that the *'illa* (cause) of the obligation of hajj is having reached the level of *istiṭā'a*. A late individual who at some point in his life had reached the required position of hajj but failed to perform one owes a hajj, and hence, for him/her is required a hajj substitution. On the other hand, there is no obligation for hajj substitution for a late individual who had never reached *istiṭā'a* across his/her life. Nevertheless, it does not mean that hajj substitution for such individual is prohibited; performing a hajj for the parents is one act of dedication that they deserve.

<sup>34</sup> Hanan Putra, "Ini Pahala Badal Haji," *Republika.co.id*, 2015, <https://republika.co.id/berita/dunia-islam/fatwa/15/10/02/nvl864313-ini-pahala-badal-haji>.

<sup>35</sup> Mabruroh, "Hatihati Penipuan Di Balik Kedok Badal Haji," *Republika.Co.Id*, 2020, <https://republika.co.id/berita/qcug2x366/hatihati-penipuan-dibalik-kedok-badal-haji>.

<sup>36</sup> Fakhrial Fakhri, "Menag Sebut Banyak Jamaah Menjadi Korban Penipuan Badal Haji," *Okezone.Com*, 2016, <https://nasional.okezone.com/read/2016/08/02/37/1452493/menag-sebut-banyak-jamaah-menjadi-korban-penipuan-badal-haji>.

<sup>37</sup> Abdul Malik, "Badal Haji," *Raudha* 4 no. 1 (2016): 97-105.

From the *istiṣlāḥī* point of view, considering the tricky situation of seeking for a trustworthy substitute of the hajj, even though from individuals living in the Saudi, and that the cost of the hajj continuously rises, there needs to be extra alertness in deciding the substitute. In fact, it is preferable not to manage a hajj substitution, unless for an individual who at some point had reached *istiṭā'a* in his/her life; in this case it is also preferable for the hajj is performed by a child or a relative. The reason for this is that nowadays the hajj substitution has been exploited for economic benefits by some irresponsible parties.

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