



The Legal Politics of Hajj and Umrah Legislation: The Hybridity of Sharia Norms and the Response to Contemporary Dynamics

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Abstract

Background: The administration of *Hajj* and *Umrah* in Indonesia reflects the intersection between the state's obligation to guarantee religious freedom and the need for law to respond to social, economic, and technological developments.

Objective: This study analyzes the legal politics underlying Law Number 14 of 2025 concerning the Third Amendment to Law Number 8 of 2019 on the Administration of *Hajj* and *Umrah*, focusing on its legal-political foundation and normative hybridity.

Methods: This research employs a juridical-normative method with a prescriptive-analytical legal-political approach to examine the legal considerations, provisions, and elucidation of the law.

Results: The findings reveal two normative poles. Existing norms formalize *Sharia* values through *Sharia* principles, ritual definitions, standardization of *manasik*, and *dam* governance. New norms respond to contemporary developments through independent *Umrah*, regulation of non-quota visas, emergency mechanisms, and development of the *Hajj* economic ecosystem.

Conclusion: The coexistence of formalized religious norms and state-created regulatory norms constitutes a distinctive form of normative hybridity. It demonstrates an expansion of the state's role beyond administrative management toward substantive ritual regulation, economic ecosystem management, and risk governance. Indonesia's explicit legislative formalization of this hybridity also distinguishes its regulatory model from those adopted in Saudi Arabia, Malaysia, and Turkey.

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INTRODUCTION

Hajj and Umrah occupy a unique position in the Indonesian legal system because they represent an intersection between *ibadah mahdah* (ritual worship), public services, citizen protection, and the economic governance of the community. On the one hand, Hajj and Umrah originate from sharia norms that have long existed and been practiced by the Muslim community (living law) (Wulandari et al., 2023). On the other hand, their implementation within the context of a modern state cannot be separated from administrative requirements, international travel regulations, pilgrim protection, financial management, interstate diplomacy, and the utilization of digital technology. This complexity makes Hajj and Umrah legislation not merely an administrative instrument, but also a field of legal politics in which the state determines the scope, form, and direction of its involvement in religious affairs.

According to Mahfud MD, legal politics refers to the direction of the state's official policy in the field of law, both through the establishment of new laws and the replacement of existing laws, 429 | Journal of Law & Social Politics

which are directed toward achieving state objectives. Thus, legal politics can be understood as the state's choice in determining which laws will be enacted, amended, repealed, or no longer applied, while remaining oriented toward the goals of the state as stipulated in the Preamble to the 1945 Constitution. Law functions as an instrument for achieving national objectives, namely protecting the nation, promoting public welfare, educating the life of the nation, and participating in the establishment of world order. However, law does not emerge in a vacuum; rather, it is the product of political choices that reflect value orientations, ideological foundations, and social dynamics within society. Therefore, the study of legal politics is essential to understanding how legislative products not only contain legal norms but also embody the political vision underlying their formation ([Yuwandhana, 2022](#)).

In this context, legal politics as a form of official policy (legal policy) plays a crucial role in determining which laws are enacted and enforced, guided by Pancasila as the *rechtsidee* (ideal of law) and source of justice ([Kaban, 2023](#)). One of the most fundamental manifestations of this legal politics is the state's obligation to guarantee citizens' freedom of religion and right to worship, as stipulated in Article 29 of the 1945 Constitution. The implementation of Hajj and Umrah represents an important arena in which the state actively utilizes legislative instruments to facilitate, protect, and regulate the implementation of one of the pillars of Islam. Therefore, Hajj and Umrah legislation becomes a significant object of legal-political study.

The third amendment to Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah through Law Number 14 of 2025 concerning the Third Amendment to Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah demonstrates the expanding scope of state regulation in the administration of Hajj and Umrah. These amendments do not merely address norms rooted in sharia, such as sharia principles, *manasik* (ritual guidance), and *dam* management, but also introduce new regulatory arrangements concerning independent Umrah, non-quota Hajj visas, extraordinary circumstances or emergency conditions, and the economic ecosystem of Hajj and Umrah. The emergence of these norms raises important questions regarding the political direction of lawmaking: whether Law No. 14 of 2025 merely continues the state's role as a facilitator of worship or instead indicates an expansion of state authority in formalizing religious norms while simultaneously responding to social, technological, economic, and global risk dynamics.

Academic studies on Hajj and Umrah legislation in Indonesia have been conducted; however, they tend to focus on managerial aspects, such as cost-efficiency analysis, legal protection of pilgrims as consumers, or financial governance audits of the Hajj Financial Management Agency (BPKH). These studies are significant from the perspective of administration and public services, but they leave a research gap regarding the legal politics underlying the formation of legislative norms themselves.

For example, existing studies, such as those conducted by Izzati et al. ([2024](#)), have examined the political and legal aspects of Law No. 8 of 2019 concerning the Implementation of Hajj and Umrah. However, the focus of their analysis remains centered on the state's efforts to provide legal certainty and resolve specific issues arising from the previous legislation, namely Law No. 13 of 2008 concerning the Implementation of Hajj, including legal uncertainty regarding additional costs associated with Hajj Guidance Groups (*Kelompok Bimbingan Ibadah Haji* or KBIH). The study also emphasized that improvements introduced through the 2019 Law primarily focused on enhancing service quality and pilgrim security ([Izzati et al., 2024](#)). Although highly important, this study, which was published before the enactment of the 2025 Law, was naturally unable to analyze the normative architecture of Law No. 14 of 2025. More fundamentally, the novelty of the present study does not solely rely on the chronological novelty of the legislation but on the application of a distinct analytical perspective, namely the framework of normative hybridity, which enables the classification of norms based on their epistemological origins rather than merely their regulatory substance. This perspective reveals the dual legal-political orientation of the legislature, which previous studies have not systematically examined. Specifically, this framework enables the analysis of normative hybridity as the central focus of this research, particularly concerning progressive legal-political choices to institutionalize the Hajj Economic Ecosystem and Independent Umrah, which were newly introduced under Law No. 14 of 2025.

Studies investigating the origin of norms within Hajj legislation remain limited, particularly those examining how lawmakers balance two competing interests: the obligation to formalize

religious norms (living law) and the necessity to create new norms as instruments of social engineering to respond to contemporary dynamics.

This research addresses this gap by analyzing Law No. 14 of 2025 as an ideal case study. This legislation uniquely demonstrates a dual character, namely as a cultural product that incorporates existing sharia norms (*volksgeist*), such as definitions of rituals and sharia principles, while simultaneously acknowledging that its formation was driven by technological developments and societal needs. These considerations have resulted in the creation of new regulatory norms, including the recognition of Independent Umrah and emergency mechanisms. The novelty of this research lies in its analysis of legal politics through the lens of normative hybridity. In this study, normative hybridity is conceptually defined as a condition in which a single legislative product simultaneously contains two categories of norms with distinct epistemological origins: (1) old norms (formalized religious norms), which are substantive norms derived from established sharia principles that have been practiced as living law within the Muslim community and subsequently incorporated into positive law through legislative formalization; and (2) new norms (state-created regulatory norms), which are instrumental norms created *ex nihilo* by the legislature as a form of social engineering, in Roscoe Pound's terms, to address contemporary dynamics that are not accommodated by traditional religious jurisprudence. This concept differs from mere legal transplantation or legal reception because both normative elements originate within the same legal-political system and are integrated into a unified legislative structure. Through this approach, the study classifies the origins of norms to understand how the state expands its role from merely an administrative facilitator to a substantive regulator of religious practices and a manager of the Hajj and Umrah economic ecosystem.

Based on the context, research gap, and novelty presented above, the purpose of this research is to analyze the legal-political choices underlying the formation of Law No. 14/2025 as an instrument for achieving state objectives. More specifically, this study aims to identify, classify, and analyze the normative hybridity contained within the legislation by distinguishing between norms that represent formalizations of religious norms (old norms) and norms created in response to contemporary dynamics (new norms). The benefits of this research are threefold: theoretically, it contributes the concept of normative hybridity as an analytical framework for examining religious legislation; practically, it provides input for policymakers in designing implementing regulations that maintain a balance between formalized religious norms and newly created regulatory norms; and academically, it fills the gap in Hajj and Umrah legal studies by shifting the analytical focus from administrative and managerial concerns toward the fundamental legal-political choices underlying the formation of norms.

METHOD

This research employed a juridical-normative approach enriched by legal-political analysis. The nature of the research was prescriptive-analytical, operating at two distinct levels. At the descriptive level, the research systematically identified and cataloged the norms contained in Law No. 14/2025 by examining each article, its legislative history (considerations), and official elucidation. At the prescriptive level, the research critically evaluated the legal-political choices (*ratio legis*) underlying these norms by assessing whether they constituted the formalization of existing religious norms or the creation of new regulatory instruments. Thus, the analysis not only described the norms contained in the law but also examined the *ratio legis* (reasons for formation) and policy choices underlying the establishment of these legal norms.

The primary legal materials used in this research were Law Number 14 of 2025 concerning the Third Amendment to Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah and the 1945 Constitution of the Republic of Indonesia as the constitutional foundation.

Secondary legal materials included textbooks, academic literature, and scientific journals relevant to the fields of legal politics, legal sociology, legal anthropology, and Islamic law. These secondary legal materials were used to construct a theoretical framework concerning the dual functions of law, namely as social control and social engineering, as well as the concepts of *living law* and *Rechtsidee*.

The analysis was conducted qualitatively using content analysis techniques. The researcher examined the Considerations, the main body of the legislation (article-by-article provisions), and the

elucidation of Law No. 14/2025. The analytical process involved identifying and classifying the origins of norms based on the following classification criteria. A norm was categorized as an "old norm" (formalized religious norm) if it met at least two of the following indicators: (a) it had a direct textual basis in classical Islamic jurisprudence (*fiqh*) sources; (b) it had been practiced as *living law* within the Indonesian Muslim community prior to legislative codification; and (c) its substance regulated ritual-substantive aspects of worship (e.g., the definitions of Hajj and Umrah, *manasik*, and *dam*). A norm was categorized as a "new norm" (state-created regulatory norm) if it met at least two of the following indicators: (a) it addressed regulatory needs arising from contemporary technological, economic, or social developments; (b) it had no direct precedent in previous Hajj and Umrah legislation (Law No. 13/2008 or Law No. 8/2019); and (c) its substance was primarily instrumental-administrative rather than ritual-substantive (e.g., non-quota visas, *Independent Umrah*, and the Hajj economic ecosystem).

RESULTS AND DISCUSSION

The enactment of Law Number 14 of 2025 cannot be separated from the global socio-political and economic context that has developed rapidly over the past decade. Changes in pilgrim behaviour, advances in digital technology, and collective experiences during the COVID-19 pandemic have highlighted structural weaknesses in the legal framework governing the implementation of Hajj and Umrah in Indonesia. From a legal political perspective, this condition has created momentum for legislative reform, in which lawmakers utilise social pressures and technological developments as rationales for legal renewal.

The rules of law are essentially closely related to the social reality that they regulate. When this reality undergoes significant transformation, the law is required to adapt to remain effective. Without such adaptation, the law risks losing its relevance. This idea lies at the core of the Sociological Jurisprudence school, in which scholars such as Roscoe Pound, Eugen Ehrlich, and Benjamin Cardozo argue that good law is law that reflects the realities of life within society ([Fadillah et al., 2023](#)).

The enactment of Law No. 14/2025 represents a manifestation of this principle. The legal considerations explicitly recognise the need to adjust to "*legal developments, community needs, and the dynamics of implementation and technology*." This confirms that law is not merely a normative product, but also a social response to emerging realities. Thus, this law is not only an administrative revision but also a representation of adaptive legal politics, namely a legal political approach oriented towards responsiveness.

The direction of legal reform in Law No. 14/2025 needs to be understood within its continuity with previous legislation, particularly Law Number 8 of 2019. As analysed by Izzati et al. ([2024](#)), the legal politics underlying the 2019 Law remained primarily reactive, namely responding to problems arising from Law No. 13 of 2008. The main objective of the 2019 Law was to provide stronger legal certainty and address weaknesses in the "*policies, direction, services, and protection of pilgrims*." The political focus of the 2019 Law, as reflected in Izzati et al. ([2024](#)), was to rectify existing deficiencies, such as legal uncertainty regarding the costs associated with *Kelompok Bimbingan Ibadah Haji* (KBIH), while ensuring that Hajj implementation became safer and more comfortable ([Izzati et al., 2024](#)). However, the 2019 Law did not explicitly anticipate major disruptions, such as pandemics, the massive growth of backpacker Umrah trends, or the need to optimise Hajj funds through an integrated economic ecosystem.

This is where the political urgency of Law No. 14 of 2025 lies, which constitutes the focus of this research. If the legal politics of the 2019 Law was oriented towards resolving service-related problems (reactive), the legal politics of the 2025 Law represents a further step. It adopts a progressive and futuristic approach by not only addressing previous shortcomings but also establishing entirely new norms, such as the "*emergency mechanism*" and the "*Hajj economic ecosystem*," which were not identified in analyses of the 2019 Law.

Legal Politics of Law No. 14/2025 as a Choice of Instrument for Achieving Goals

The enactment of Law No. 14/2025 represents a manifestation of the conscious choice of lawmakers to employ formal legal instruments in regulating a field that is fundamental to the majority of Indonesian citizens. This choice can be analyzed through multiple layers.

The first layer concerns the choice to fulfill the mandate of the Constitution. The decision to enact this law is rooted in the constitutional obligations of the state. The *Menimbang* section letter a of Law No. 14/2025 explicitly states that the implementation of Hajj and Umrah constitutes “a form of implementing state guarantees for the freedom of each resident to embrace their respective religions and worship according to their religion” in accordance with the mandate of the 1945 Constitution. This provision directly refers to Article 29 and Article 28E paragraph (1) of the 1945 Constitution. From the perspective of legal politics, this represents the most fundamental policy choice: the state does not assume a passive or neutral position but instead adopts an active role as a guarantor and facilitator

([Islamiyati & Hendrawati, 2019](#); [Pebriana et al., 2026](#)). This approach aligns with the ideals of *Pancasila* law, particularly the First Principle, *Ketuhanan Yang Maha Esa* (Belief in One Almighty God), which is interpreted as the state's obligation to provide space, facilities, and protection for the implementation of religious worship. The 1945 Constitution, as the constitutional foundation, directs the formation of laws to achieve state objectives and establish fundamental principles, including the protection of the right to worship ([Noya & Walakutty, 2022](#)). According to Jimly Asshiddiqie, the Constitution functions as a *legal document*, a *political document*, and a *social document* that reflects the aspirations of the nation.

The second layer concerns the choice to respond to external dynamics. Legal politics does not operate in a vacuum. It is significantly influenced by social, economic, and technological realities ([Mahfuz, 2020](#); [Widodo et al., 2025](#)). For example, the COVID-19 pandemic compelled the state to formulate various regulations, while advances in information technology encouraged the state to establish laws concerning information and electronic transactions. A similar phenomenon can be observed in the consideration letters b and c of Law No. 14/2025. These considerations acknowledge that the previous law “has not accommodated legal developments, societal needs, and the dynamics of Hajj and Umrah implementation, both at the national and international levels, as well as technological developments.” The legal political choice was therefore to reform the legislation so that the law would remain relevant and functional. This indicates that the formation of this law was driven not only by ideological impulses (constitutional mandates) but also by pragmatic impulses (factual needs in society). Legal politics is indeed responsible for examining the changes required to ensure that law remains aligned with social reality ([Mahfuz, 2020](#); [Widodo et al., 2025](#)).

The third layer concerns the choice to formulate specific objectives. If the state objectives contained in the Preamble to the 1945 Constitution represent macro-level goals, then Article 3 (as amended) of Law No. 14/2025 reflects a political and legal choice in formulating the micro-level objectives to be achieved through this legal instrument. This article demonstrates a shift and expansion of policy orientation compared with the previous legislation. The first objective, as stipulated in Article 3(a), maintains the primary focus on the guidance, services, and protection of pilgrims so that they can perform worship in accordance with the provisions of *sharia*. This represents a conservative legal political choice, reaffirming the fundamental function of the state as a facilitator of religious worship. However, the subsequent objective in Article 3(c) introduces an entirely new and progressive orientation, namely “realizing and developing the Hajj and Umrah economic ecosystem that contributes to the Indonesian economy.” This constitutes a significant legal political choice. Lawmakers consciously expanded the scope of this legal instrument, which initially focused primarily on ritual and service dimensions, into the broader dimension of national economic development. This demonstrates that Hajj legislation is no longer viewed solely as administrative-religious law but also as part of economic law, which seeks to regulate and direct economic activities for the benefit of society.

Through this three-layered analysis, it can be observed that Law No. 14/2025 represents a complex product of legal politics, emerging from the combination of adherence to ideological-constitutional mandates, pragmatic responses to external pressures, and deliberate choices to pursue broader and more transformative objectives. This reflects a new face of religious legal politics in Indonesia: progressive, functional, and welfare-oriented.

The Political Historical Context of Hajj Law: The Trajectory of State Intervention

The complex political and legal choices embodied in Law No. 14/2025, including constitutional compliance, pragmatic responses, and new economic objectives, did not emerge

instantaneously. Rather, they represent the culmination, or the latest chapter, in a long trajectory of state intervention in the implementation of Hajj in Indonesia, in which the political character of the law has evolved over time.

The first stage was the legal politics of the colonial era. During this period, the legal politics of the Dutch East Indies government were not oriented toward facilitation but toward political control and suspicion. The Hajj was perceived as an activity that could stimulate *Pan-Islamism* sentiments and resistance. State intervention did not focus on religious rituals but rather on monitoring movements through instruments such as *Road Passes* (permits), restrictive resolutions, and the establishment of quarantine posts. The legal politics of this era were characterized as restrictive and defensive.

The second stage was the legal politics of the Old Order and New Order eras. After independence, legal politics shifted from political control to centralized administrative facilitation. Particularly during the New Order era, the state assumed the role of a sole organizer (monopoly holder). The legal politics of this period focused on administrative governance ([Gusli et al., 2025](#); [Muslim, 2020](#)). The objectives were the standardization of logistics, transportation efficiency, and ideological control, including *Pancasila* training for pilgrims. However, the state had not yet explicitly intervened in the realm of religious rituals or developed an economic ecosystem as explicitly as it does today.

The third stage was the legal politics of the Reform era (*Law No. 17/1999*, *Law No. 13/2008*, and *Law No. 8/2019*). During this period, there was a significant shift from state monopoly to market regulation. The legal politics emphasized deregulation and privatization, in which the role of the state (government) was positioned as a regulator and facilitator, while the private sector, namely Special Hajj Organizers (*Penyelenggara Ibadah Haji Khusus* [PIHK]) and Umrah Travel Organizers (*Penyelenggara Perjalanan Ibadah Umrah* [PPIU]), became service operators. The culmination of this era was the enactment of *Law No. 34/2014*, which separated the financial management function from the operational function through the establishment of BPKH (*Badan Pengelola Keuangan Haji*). The primary focus was transparency, accountability, and consumer protection for pilgrims (*jemaah*) ([Izzati et al., 2024](#)).

It is within this historical trajectory that the legal politics of Law No. 14/2025 become particularly distinctive. This law is no longer limited to political control (colonial era), administrative control (New Order era), or market regulation (Reform era). Instead, it marks the beginning of a fourth stage in which state intervention extends into new domains that were previously less regulated, namely ritual regulation (*manasik* standardization and *dam* governance), economic ecosystem management (through the expanded role of BPKH), and biopolitical crisis management (through emergency norms). This historical understanding confirms that the “norm hybridity” identified in this study represents both a logical evolution and an innovative transformation in the politics of Hajj law in Indonesia.

Identification and Analysis of Norm Hybridity

Law No. 14/2025 serves as a forum for the convergence of two types of norms with fundamentally different origins: norms derived from religious traditions that have existed for thousands of years and norms created to address the challenges of the 21st century. Within this framework, the state assumes a dual role: as a guardian of religious orthodoxy and, simultaneously, as a legal innovator. This discussion addresses the second research question.

Old Norms: Formalization of Religious Norms (Law as a Cultural Product)

Legal theory as a cultural product asserts that law is often a crystallization of ideas, actions, and habits that already exist within society. Koentjaraningrat defines culture as the entire system of ideas, actions, and works of human beings that are learned and developed within society. Law No. 14 of 2025 is a textbook example of this phenomenon, in which religious norms (*hukum Islam*) are elevated and granted the status of state legal norms, complete with sanctions that may be imposed. The law regulates human behavior and derives its legitimacy from societal values. Good law must be consistent with the values that live within society. Soerjono Soekanto explained that legal norms are one type of social norm, alongside religious norms and norms of morality or propriety. In this law, religious norms are transformed into formal legal norms.

This view is consistent with von Savigny's historical school of law, which states that law grows from the spirit of the nation (*Volksgeist*), as well as Eugen Ehrlich's concept of *living law* (law that exists and develops within society) ([Aulia, 2020](#); [Pahlevi, 2022](#)). Law is a social phenomenon and a reflection of culture. Law No. 14 of 2025 formalizes religious *living law*, transforming it from unwritten *ius constitutum* (customary or religious law) into written *ius constitutum* (state law).

The most fundamental legal political choice in this formalization can be observed in the placement of "sharia principles" as the primary foundation in the amended Article 2. The explanation of the article emphasizes that the implementation of Hajj and Umrah must be conducted in accordance with the provisions of Islamic law. This indicates that the entire normative structure of this law is philosophically positioned within the framework of religious values. Following this principle, the state does not create a new definition of Hajj and Umrah but adopts *fiqh* terminology regarding the fifth pillar of Islam, *tawaf*, *sa'i*, and *tahallul*, as reflected in Article 1 numbers 1 and 2. In this context, the state acts primarily as an institution that recognizes and regulates norms that have already existed within Muslim communities rather than as an institution that creates new religious norms.

This formalization does not only occur at the conceptual level but also extends to the technical implementation of religious rituals to establish administrative order. An example is the new Article 6A, which regulates "dam governance." *Dam* (compensation or ritual sacrifice) is a concept within Hajj *fiqh*. Through its regulation in statutory law, the state formalizes and transforms an act that was originally considered solely an act of worship (a vertical relationship between humans and God) into an act that also possesses a state administrative legal dimension (a horizontal relationship supervised by the state). The explanation of Article 6A paragraph (1) confirms this as "the service of *dam* or *hadyu* (compensation or ritual sacrifice)."

Furthermore, the formalization of religious norms can also be observed in aspects of guidance and *manasik*. The obligation to understand Hajj procedures constitutes an essential component of performing worship according to *sharia*. Law No. 14 of 2025 formalizes this requirement through Articles 32 and 76, which regulate the existence of standardized Hajj *manasik*. This arrangement demonstrates that the state does not merely regulate administrative aspects of Hajj implementation but also provides a legal framework for guiding pilgrims in performing religious rituals. Thus, *manasik*, which originally existed primarily within the domain of religious instruction, has also acquired a formal regulatory status within state law.

The legal political choice to formalize *living law* (*sharia*) into state law is not merely an act of recording existing norms but represents a conscious political-legal intervention ([Kholilullah & Mustakim, 2022](#)). In the context of Indonesia, which adopts legal pluralism, where state law, customary law, and religious law often coexist, this formalization represents a political choice involving both accommodation and authority construction ([Ali, 2021](#); [Sabriana et al., 2026](#)).

It can be considered an accommodation because it reflects the state's political and legal response to the aspirations of the majority Muslim population, who seek not only recognition of their religious practices but also facilitation and protection through state regulations based on *sharia* principles ([Al-Farisi, 2021](#); [Febriawan et al., 2026](#)). This strengthens the legitimacy of the state among religious communities.

However, this process may also be viewed as hegemonic in the Gramscian sense because, through the formalization of religious norms, the state effectively assumes a role in determining the authority of interpretation ([Saputra et al., 2026](#); [Siswati, 2017](#)). For example, the "standardization of *manasik*" illustrates this dynamic. Before the enactment of this law, Hajj *manasik* standards could vary among *KBIH* (Hajj Guidance Groups) and religious organizations. Through state-established standards, the state creates uniformity and positions itself as the ultimate authority in determining the "standard method of *manasik*" based on the state's official interpretation. This corresponds with critical analyses suggesting that the state may risk co-opting religious authority.

A deeper analysis of "dam governance" reveals a similar political rationale. Before being regulated, *dam* payments existed primarily within a private religious sphere that was vulnerable to disorder and potential exploitation. The legal political decision to formalize it as a state-supervised "service" represents the manifestation of law's function as a means of *social control*, a concept introduced by Roscoe Pound. The state intervenes to organize religious-social practices considered vulnerable to irregularities and integrates them into a rational, accountable, and administratively

regulated legal framework ([Sundari et al., 2024](#)).

The New Normal: The Creation of Responsive and Futuristic Norms

If the previous section demonstrated the conservative side of legal politics (stipulating *ius constitutum* rooted in *living law*), this section illustrates its progressive side ([Aji, 2026](#); [Rahyu & SH, 2018](#)). This is where legal politics plays an active role in creating *ius constituendum* (aspirational law) and transforming it into new positive law. These norms were formulated in response to “societal needs” and “technological developments” ([Jamaludin & Sukardi, 2026](#); [Miskari, 2019](#)).

The first new norm concerns the recognition and regulation of independent Umrah. The increasing trend of independent Umrah travel (*do-it-yourself* or backpacker-style journeys) conducted outside PPIU services has created a legal vacuum. Rather than prohibiting this practice, lawmakers have chosen to recognize and regulate it. Article 86 letter b (as amended) officially includes the term “independently” as one of the methods for conducting Umrah. This recognition is followed by the establishment of new administrative norms in Article 87A (new), which stipulates a series of requirements for independent Umrah actors, such as the obligation to possess a “visa and proof of purchase of a service package from a service provider through the Ministry’s Information System.” This approach represents a mechanism through which the state can continue to monitor activities and provide minimum protection.

The recognition and regulation of “independent Umrah” deserve deeper sociological examination because they reflect a paradigmatic shift in the relationship between the state and society. The backpacker Umrah phenomenon is not merely a travel trend but also a sociological symptom of the emergence of a new urban Muslim middle class that is digitally literate, individualistic, and seeking spiritual autonomy. Within the framework of the theory of religious individualization, this group is no longer entirely dependent on traditional institutions (such as PPIU or KBIH) as mediators of religious practices. Instead, they increasingly rely on digital platforms (visa applications and online travel agents) to design their own spiritual travel “authority.”

In responding to this social phenomenon (*agency*), the state faces a complex legal political choice. The state could have prohibited this practice in the name of protecting pilgrims or safeguarding the interests of the PPIU industry, which represents an influential sector. However, the legal politics of Law No. 14/2025 adopts a different approach: co-optation through bureaucratic rationalization. Instead of banning the practice, the state recognizes it while incorporating it “into the system” through new administrative obligations, namely reporting requirements through the “Ministerial Information System.”

This represents an example of Giddens’ Structuration Theory ([Achmad, 2020](#); [Baihaky et al., 2026](#)). Actors (independent pilgrims), through their emerging social practices, have succeeded in encouraging the Structure (law) to undergo transformation. Subsequently, the new Structure (Law No. 14/2025) returns to shape, limit, and facilitate the practices of Actors in the future. This legal political choice demonstrates the state’s transition from a rigid regulatory authority toward an adaptive risk management approach.

The second new norm involves the regulation of non-quota Hajj visas. For many years, the practice of performing Hajj using invitation visas from Saudi Arabia (known as *mujamalah* visas, *furoda* visas, or currently referred to as independent Hajj visas) existed within a legal gray area in Indonesian legal politics. The presence of Indonesian citizens performing Hajj using Saudi Arabian invitation visas (*mujamalah* or *furoda* visas) outside the national quota system was frequently unrecorded. Legally, these visas are valid because they are issued by another country (Saudi Arabia), but they operate entirely outside the national quota system regulated by the Indonesian government.

The socio-political implications of this practice are significant. Because it was previously unrecorded and unregulated, this practice was vulnerable to exploitation by irresponsible travel agencies (*non-PIHK*), potentially resulting in abandoned pilgrims in Saudi Arabia, inaccuracies in national pilgrim data, and perceptions of injustice due to individuals bypassing long-established waiting periods. In addressing this issue, lawmakers had several legal political options: (1) completely prohibit Indonesian citizens from using such visas (which would be difficult diplomatically and politically), (2) leave the practice unchanged (*status quo*), or (3) recognize and regulate it through state control (*co-optation*).

Law No. 14/2025 explicitly chooses the third option. This reflects another form of Weberian bureaucratic rationalization (Surur, 2019; Walahe et al., 2026), similar to the approach applied to independent Umrah. The law officially recognizes the existence of “non-quota Hajj visas,” whereby Article 18 (as amended) explicitly divides Hajj visas into “quota Hajj visas” and “non-quota Hajj visas.” The explanation of Article 18 further specifies that non-quota visas include “*mujamalah* Hajj visas, *furoda* Hajj visas, and independent Hajj visas.” However, this recognition is accompanied by new obligations, namely that visa holders must “depart through PIHK” (*Penyelenggara Ibadah Haji Khusus* or Special Hajj Organizers) or “report visas and service packages to the Minister.”

This legal political choice transforms practices that were previously considered “unregulated” and “private” into practices that are recorded, controlled, and administered by the state. The implication is that the state’s role has expanded. The state no longer only manages pilgrims within the national quota system but also actively regulates and supervises non-quota pilgrims to fulfill its responsibility of protecting citizens and maintaining administrative order.

The third new norm concerns the mechanism for extraordinary circumstances and emergency conditions. The COVID-19 pandemic demonstrated the absence of a strong legal framework for responding to global crises. Lawmakers subsequently created a legal “safety valve” through CHAPTER XA (new) concerning “EXTRAORDINARY CIRCUMSTANCES AND EMERGENCY CONDITIONS” and Article 112A (new). Article 112A grants new authority to the President to “determine extraordinary circumstances or emergency conditions” (including natural disasters, wars, pandemics, and other crises) and authorizes the Minister to “establish the scheme for the Implementation of Hajj and Umrah” following approval from the House of Representatives. This provision represents a futuristic legal norm derived from empirical experience.

The fourth new norm is the establishment of a “Hajj economic ecosystem.” Recognizing the significant economic potential generated by Hajj and Umrah activities, lawmakers have shifted the paradigm from merely providing services toward economic empowerment. Article 3(c) (as amended) introduces a new objective to “develop the economic ecosystem of Hajj and Umrah.” This objective is operationalized through Article 11 paragraphs (2) and (3) (as amended) and Article 94A (new), along with its explanation, which provides the legal basis for establishing Public Service Agencies (*Badan Layanan Umum* or BLU) or cooperation mechanisms, including examples such as optimizing Hajj dormitories and utilizing domestic raw materials. This represents a legal political choice that transforms Hajj institutions into strategic economic entities.

However, the legal political choice to implement this normative hybridity is not without potential implementation challenges. Normative tensions or friction may emerge between these two poles. For example, this law establishes “sharia principles” as the primary foundation of implementation (*old norm*), including principles of justice and non-profit orientation within the context of religious services. At the same time, the law progressively introduces a new objective to “develop the economic ecosystem of Hajj and Umrah” (*new norm*), which emphasizes asset optimization and economic development. This approach raises a critical question: How can the state balance the “principles of sharia” (*old norm*), which emphasize pure service orientation, with the demands of an “economic ecosystem” (*new norm*), which pursues efficiency, productivity, and economic value creation? There is a potential risk that this pragmatic-economic *new norm* may conflict with or gradually weaken the philosophical-doctrinal foundations of the *old norm* in governance practice.

The Implications of Legal Political Choices: The Shift in the Role of the State

The hybridity of norms in Law No. 14/2025 has significant implications for the state's role in the implementation of Hajj and Umrah. The political and legal choices embodied in the law demonstrate an increasingly complex transformation of the state's role, moving beyond the passive function of maintaining the status quo (*social control*) toward the active function of directing societal change (*social engineering*).

This transformation manifests in three forms. First, the state's role shifts from that of a facilitator to that of a regulator. By formalizing various aspects of worship, such as *dam* governance and *manasik* standardization, the state no longer merely provides facilities but also establishes standards and supervises the implementation of religious practices. Consequently, the function of law as *social control* becomes increasingly dominant. According to Soerjono Soekanto, social control

is a process that is planned or unplanned to educate, encourage, or compel citizens to conform to prevailing norms, habits, and values.

The shift in the state's role from facilitator to regulator, particularly in the aspects of "*manasik* standardization" and "*dam* governance," represents a political and legal choice with significant implications. On the one hand, this approach may be viewed as an effort by the state to exercise its *social control* function in protecting pilgrims from improper *manasik* practices or potential exploitation in *dam* payments. On the other hand, this choice risks extending state intervention into the sensitive and pluralistic theological-doctrinal domain. The legal establishment of *manasik* "standards" has the potential to generate public debate regarding which *fiqh* interpretation is adopted by the state and whether such intervention exceeds the appropriate boundaries of state authority over citizens' religious practices. This indicates that the political and legal choice to formalize *sharia* norms represents a bold step that inherently carries the risk of state co-optation of religious authority.

Second, the state's role has also shifted from a conventional supervisor to an ecosystem manager. The inclusion of the "economic ecosystem" norm transforms the state's function from merely supervising travel providers into managing the broader economic ecosystem. The state is tasked with ensuring that the circulation of Hajj and Umrah funds generates added value for the domestic economy. This reflects the function of law as an instrument for integrating public interests and achieving economic objectives through legal policy (Hudi, 2018; Pratama et al., 2025). This legal political choice explicitly formulates a new objective in Article 3(c), namely "developing the economic ecosystem of Hajj and Umrah," which exists alongside the primary objectives of serving and protecting pilgrims.

This transformation cannot be separated from the socio-political context surrounding the main institutional actor, namely the Hajj Financial Management Agency (BPKH). Since its establishment, BPKH has carried a complex dual mandate: as a trustee responsible for maintaining the security and integrity of pilgrims' funds, and as an investment manager required to generate optimal benefits from fund management (Wafa & Rofiah, 2025). The political and legal choices contained in Article 3(c) may be interpreted as an effort to strengthen and legitimize BPKH's role as an investment manager, particularly after facing public criticism concerning transparency and the management status of waiting funds.

This is where the critical analysis emerges: this choice has the potential to create an inherent conflict of interest. There is a risk that the state's focus may shift from the primary objective of pilgrim services (Article 3(a)) toward the pragmatic economic objective (Article 3(c)). The central political and legal question is which priority the state will uphold when economic efficiency conflicts with the quality of religious services provided to pilgrims.

This approach reflects the theory of *Law and Development* (Trubek & Galanter), which views law as a deliberate instrument for promoting economic development. However, the challenges highlighted within this theory remain relevant, as the use of law as an instrument of development may overlook aspects of distributive justice and public accountability (Maris & Alfath, 2024). The potential conflict of interest between BPKH's roles as a trustee and an investment manager has become increasingly institutionalized through the legal politics embedded in this legislation.

From the perspective of Max Weber's sociology of law, the establishment of a "Hajj economic ecosystem" and technical administrative regulations concerning non-quota visas represents a manifestation of legal rationalization. This legal political choice reflects a conscious effort to apply a *formal-rational* legal order within an area previously governed largely by traditional religious norms or informal practices, such as *furoda* visas (Yuliansyah et al., 2024). The state now employs modern bureaucratic instruments that are measurable, procedural, and oriented toward economic efficiency (*goal-oriented rationality*) to manage the substantial resources involved in Hajj and Umrah administration, transforming them from purely religious activities into strategic economic assets.

Third, there is a shift from reactive governance to anticipatory governance. This legal political choice appears idealistic and visionary, as demonstrated through the inclusion of CHAPTER XA (new) concerning "EXTRAORDINARY CIRCUMSTANCES AND EMERGENCIES." This provision explicitly seeks to establish a legal framework before crises occur, reflecting lessons learned from the COVID-19 pandemic rather than merely producing reactive regulations during emergency situations.

However, the critical analysis lies in the instruments employed to achieve these anticipatory

objectives. Article 112A grants broad discretionary authority to the executive branch, particularly the President and Ministers. The primary challenge is balancing the need for rapid response (*effectiveness*) in critical situations with the principles of the rule of law, particularly legality, legal certainty, and checks and balances. The authority to "determine the scheme for the Implementation of Hajj and Umrah" is considerably broad. Although the law requires approval from the House of Representatives, a critical question remains regarding whether such oversight is sufficiently strong, effective, and capable of limiting executive authority during emergency situations. Without detailed implementing regulations, these anticipatory provisions risk creating excessive discretion and weakening accountability under the justification of emergency response effectiveness.

Theoretical Deepening of Emergency Norms: *State of Exception* and *Biopolitics*

The political choice of law to create a (new) CHAPTER XA on "Extraordinary The political choice of law to create a (new) Chapter XA on "Extraordinary Circumstances" requires a deeper theoretical analysis rather than merely viewing it as an "anticipatory norm." The institutionalization of these crisis mechanisms lies at the core of classical debates in legal and political philosophy, particularly those discussed by Carl Schmitt and Giorgio Agamben.

Carl Schmitt, in *Political Theology* (2005), defined sovereignty (the supreme authority of the state) through his famous adage: "Sovereign is he who decides on a state of exception." For Schmitt, normal law can only function under normal conditions. When an existential crisis occurs (such as a pandemic, war, or disaster), ordinary legal frameworks may be suspended and replaced by the sovereign's political decision to preserve the state (Jansen, 2026).

Viewed through a Schmittian lens, Article 112A (new) represents a legal political attempt to institutionalize and formalize the *state of exception* itself. This provision consciously creates a legally recognized exception space, namely the discretionary authority of the executive branch to adjust or suspend the normal Hajj implementation scheme and replace it with an alternative scheme to ensure the effectiveness of crisis management.

The problem, as described by Giorgio Agamben in *Homo Sacer, State of Exception*, is that an exception that is initially temporary tends to become permanent and transform into a new paradigm of governance (Rachel MagShamhrain, 2022). Agamben argues that modern politics increasingly emphasizes *biopolitics*, namely the governance and management of "biological life" (*zoē*) of citizens (Rachel MagShamhrain, 2022).

In the context of Law No. 14/2025, the experience of the COVID-19 pandemic became the primary driving force behind this biopolitical orientation. The legal political choice to establish Chapter XA constitutes a biopolitical response aimed at protecting the "biological life" (physical safety) of pilgrims from pandemic threats. However, this is where the crucial trade-off emerges: to protect the biological life of pilgrims, the state obtains the authority to temporarily limit certain legal rights (*bios*) of pilgrims, such as the right to depart and the right to receive services according to the normal implementation scheme.

The risk of excessive discretion and insufficient accountability lies at the center of Agamben's criticism. The question of "how robust is the supervision of the DPR?" becomes highly relevant. When law transforms from a set of binding norms into a series of discretionary decisions, governance is no longer based on the rule of law but rather on the rule of individuals (*rule of man*). This "anticipatory" legal political choice, although motivated by the intention to provide protection, simultaneously creates the possibility of weakening the principle of the legal state (*rechtsstaat*) and legality itself.

This shift in the role of the state can be analyzed through the legal typology proposed by Nonet and Selznick. The enactment of Law No. 14/2025 indicates a transition from legal politics that previously tended toward autonomous law toward responsive law. Autonomous law, which is rigid, formalistic, and primarily focused on administrative procedural compliance, is no longer sufficient to accommodate emerging social realities, such as the increasing practice of *self-Umrah* (independent or backpacker Umrah) and the need to regulate non-quota visas that previously existed outside the formal system. This new legislation, by recognizing these practices and introducing future-oriented norms such as the "Hajj economic ecosystem," demonstrates a purposive orientation and commitment to substantive justice. This indicates that contemporary legal politics prioritizes functional adaptation to societal needs and substantive protection for pilgrims rather than merely maintaining formal compliance with outdated procedures.

CONCLUSION

Based on the legal political analysis, it can be concluded that Law No. 14/2025 functions as a dual instrument. First, this law fulfills constitutional mandates, particularly the First Precept of Pancasila and the constitutional guarantee of religious freedom, by ensuring citizens' rights to perform religious worship. Second, this law serves as a responsive instrument to accommodate new dynamics in Hajj and Umrah implementation, as reflected in the recognition of independent Umrah, the regulation of non-quota visas, emergency mechanisms, and the development of the Hajj economic ecosystem. The identification of the origins of these norms demonstrates that Law No. 14/2025 possesses a hybrid character because it incorporates existing norms that formalize religious norms (*living law*), such as the determination of Sharia principles, definitions of worship, and regulations concerning *manasik* and *dam*, while simultaneously creating new norms that are responsive and adaptive, including the recognition of independent Umrah, non-quota visa arrangements, emergency mechanisms, and the development of economic ecosystems. This finding confirms that the political character of Indonesian law in the religious sphere represents a politics of synthesis or a middle way. The state pragmatically combines symbolic functions (as an institutionalizer of Sharia norms) with functional-rational functions (as a modern ecosystem manager and risk manager). This hybridity constitutes both the primary contribution and the defining characteristic of the evolution of contemporary Indonesian religious law.

The implications of these findings require concrete follow-up measures. The government, particularly the Ministry of Hajj and Umrah, is advised to immediately prepare detailed and implementable regulations. This is essential because many newly introduced technical norms, such as independent Umrah regulation, non-quota visa arrangements, emergency schemes, and the Hajj economic ecosystem, require clear institutional designs and procedures to prevent operational legal gaps and ensure that the progressive objectives of this Law are achieved. For academics and legal researchers, further studies are recommended to examine the implementation of these new norms, such as sociological research on the effectiveness of the "Hajj economic ecosystem" or juridical-administrative studies on the implementation of the "emergency scheme," as a basis for evaluating the effectiveness of the legal political implementation of Law No. 14/2025.

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Fifidiana and Irfan Mas'ud Abdullah contributed collaboratively to the research process. Fifidiana was responsible for conceptualization, literature review, data collection, and preparation of the initial manuscript. Irfan Mas'ud Abdullah contributed to data analysis, interpretation of the findings, critical review, and refinement of the manuscript. Both authors participated in revising the manuscript and approved the final version for publication.

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