

ANALYSIS OF THE APPLICATION OF ADVOCATE SUCCESS FEES IN HANDLING INHERITANCE DISPUTE CASES ACCORDING TO THE THEORY OF *AL- JI'ALAH*

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Abstract

An advocate is a person whose profession is to provide legal services to the public, both inside and outside the court. The types of advocate honorarium can generally be divided into 3 three types, namely lawyer fees, operational fees, and success fees. Legally, the application of success fees in the process of handling cases or providing legal services by advocates is not regulated in legislation. In practice, the success fee is requested by the advocate from the client as a form of reward for the advocate's victory. The research method employed is a qualitative approach with an analytical descriptive design. Data collection techniques include interviews, documentation, literature studies, and regulations relevant to this research. The results showed that the success fee practice carried out by advocates at the IM and Partners Law Office underwent a series of processes, starting from the agreement stage, where the percentage of the success fee between the client and the advocate was determined, and concluding with the signing of the advocate's legal services. In practice, success fee payments are not only paid in cash, but also in the form of payments in the form of movable or immovable objects. The application of the amount of the success fee by the advocate at the IM and Partners Law Office is under the concept of the *ji'alah* contract. The success fee received by the advocate in handling the inheritance dispute case is a form of compensation for the advocate's efforts in resolving the client's legal problems. **Keywords:** Advocates, inheritance dispute, *Ji'alah* contract, success Fee,

Abstrak

Advokat adalah orang yang berprofesi memberi jasa hukum kepada masyarakat, baik di dalam maupun di luar pengadilan. Jenis-jenis honorarium advokat secara umum dapat dibedakan menjadi 3 (tiga) jenis, yaitu lawyer fee, biaya operasional, dan success fee. Secara hukum, penerapan success fee dalam proses penanganan perkara atau pemberian jasa hukum oleh advokat tidak diatur dalam peraturan perundang-undangan. Dalam praktiknya,

success fee diminta oleh advokat kepada klien sebagai bentuk imbalan atas kemenangan advokat. Metode penelitian yang digunakan adalah pendekatan kualitatif dengan desain deskriptif analitis. Teknik pengumpulan data yang digunakan adalah wawancara, dokumentasi, studi kepustakaan, dan peraturan-peraturan yang relevan dengan penelitian ini. Hasil penelitian menunjukkan bahwa praktik success fee yang dilakukan oleh advokat di Kantor Hukum IM and Partners mengalami serangkaian proses, dimulai dari tahap kesepakatan, dimana persentase success fee antara klien dan advokat ditentukan, dan diakhiri dengan penandatanganan jasa hukum advokat. Dalam praktiknya, pembayaran success fee tidak hanya dibayarkan dalam bentuk uang tunai, tetapi juga dalam bentuk pembayaran berupa benda bergerak maupun tidak bergerak. Penerapan besaran success fee oleh advokat di Kantor Hukum IM and Partners telah sesuai dengan konsep akad *ji'alah*. Success fee yang diterima advokat dalam menangani perkara sengketa waris merupakan bentuk imbalan klien kepada advokat karena telah membantu menyelesaikan permasalahan hukum klien.

Kata kunci: Advokat, Sengketa Waris, Akad *Ji'alah*, Success Fee,

INTRODUCTION

Advocates are individuals whose profession is to provide legal services to the community, both in and outside of the court. Based on the term, an advocate is someone who carries out advocacy activities, which are activities or efforts carried out by a person or group of people to facilitate and fight for rights, obligations, or the receipt of legal services, both individuals and groups, based on statutory provisions.¹

Legal services are provided by advocates in the form of legal consultation, assistance, exercising power of attorney, representation, accompaniment, defense, and taking other legal actions to protect the legal interests of the client/authoriser. A client is a person, legal entity, or other institution that receives legal services from an attorney or advocate.²

The emergence of a co-operative relationship between advocate and client is usually outlined in the form of a power of attorney. By type, power of attorney is divided into 2 two types, namely general power of attorney and special power of attorney. A general power of attorney refers to a legal relationship that exists between the power of attorney and the recipient, allowing the recipient to represent the power of attorney's legal interests in

¹ Sartono and Bhakti Suryani, *Basic Principles of the Advocate Profession*, (Jakarta: Dunia Cerdas, 2013), pp. 1.

² Munir Fuady, *In the Noble Profession (Legal Professional Ethics for Judges, Prosecutors, Advocates, Notaries, Curators, and Administrators)*, (Bandung: Citra Aditya Bakti, 2005), pp. 33-34

general legal matters. While a special power of attorney is given by the grantor to the recipient of the power of attorney in a more specific and detailed legal action, this form of power of attorney can be the basis for granting power of attorney to act before the court in terms of defending the legal interests of the grantor as the principal party.³

A special power of attorney is a fundamental basis for the relationship between advocates and clients. This is because an advocate is a legal service professional who acts on behalf of clients in litigation and/or non-litigation matters. For this action to be carried out, an advocate must have obtained power of attorney from the client. Therefore, the position of power of attorney in the cooperation relationship between advocates and clients is a necessity in the advocate profession.⁴

The consequence of the advocate profession as a legal service provider in carrying out its duties, especially in providing legal services to clients, is undoubtedly receiving a fee. The agreement regarding the service fee is contained in a written contract that outlines the substance of the rights and obligations of advocates and clients in the case handling process. Legally formal provisions regarding advocate honoraria are explained in Article 21 of Law Number 18 of 2003 concerning Advocates, which states that "advocates are entitled to receive honorarium for legal services provided to their clients."

The types of advocate honorarium in general can be divided into 3 (three), namely *lawyer fees* which are generally paid in advance as advocate professional fees, *operational fees* as costs during case handling, and *success fees* are rewards given by clients to advocates if advocates win cases authorised by clients, the amount or percentage of *success fees* is mutually agreed between advocates and clients and stated in the work agreement.⁵

One type of case that is often resolved by Advocates domiciled in Banda Aceh and Aceh Besar is inheritance disputes, which are resolved at the Syar'iyah Court. Inheritance disputes are disputes that occur between heirs regarding the division of the testator's estate, both before and after the division.

In handling inheritance cases, the existence of *success fees* is a common thing applied by advocates, this is based on the fact that the process of

³ Sopian, "Study on the Analysis of Special Power of Attorney (Review of Concepts and Principles of Islamic Law Acad)", Madani: *Multidisciplinary Scientific Journal*, Vol 1 No 5, 2023, pp. 444-454.

⁴ Ari Yusuf Amir, *Advocate Services Business Strategy*, (Yogyakarta: Niaga swadaya, 2005), p. 180.

⁵ Ari Yusuf Amir, *Advocate Services Business Strategy, ...*, p. 180

handling inheritance cases takes quite a long time, such as land dispute cases which can take as long as 6 (six) months for the first level, in addition to the long and complicated case handling process, another consideration in the application of *success fees* in inheritance cases is that the object of inheritance disputes contains material values such as houses, land, cars, and others. So that if won, it will have a significant impact on the client's legal position on the object. Based on this, the application of *success fees* in an advocate's legal services agreement can be categorized as a reward or gift if the advocate can win or fulfill the client's or authorizer's legal wishes.

In Islamic law, the concept of *al-ji'alah* is known. This concept in *muamalah* is a form of *ta'awun alal birri wa taqwa* (helping in goodness and piety) for the benefit of the people. So, *al-ji'alah* means a wage or gift given to someone because the person does or performs a specific job.⁶ According to scholarly opinion, *al-ji'alah* contract is defined as a promise to give a gift (bonus, commission or certain wages), so *al-ji'alah* means a contract or commitment with the will of one party.⁷

Professionally, advocates in carrying out their duties have received an honorarium (*lawyer fee*) as referred to in Article 21 of Law No. 18 of 2003 concerning Advocates. However, in practice, some advocates apply *success fees* in the process of handling inheritance cases, the percentage of which is determined by the advocate and must be agreed upon by the client. Legally formal application of Advocate *success fees* in the process of handling inheritance cases is not regulated in any laws or regulations. In practice, the *success fee* is requested by the advocate himself from the client as a form of *reward* for the advocate's victory.⁸

Based on this description, a hypothesis is obtained that the advocate in Islamic law has made two contracts in one job, the first contract regarding the professional honorarium (*lawyer fee*) received by the advocate for the legal services provided or in Islamic law known as the concept (*ujrah al-a'mal*), and the second contract is a *success fee* agreement requested by the advocate to the client if the authorised case is won. In Islam, the practice of *success fees* can be correlated with the concept of (*al-ji'alah*).

⁶ Haryono, "The Concept of *Al Ju'alah* and Its Application Model in Daily Life", *Al Mashlahah Journal of Islamic Law and Social Pranata*, Vol 5 No 9, 2017, p. 643. 643.

⁷ Wahbah az-Zuhaili, *al-Fiqh al Islami wa adillatuhu*, (Beirut: Dar al Fikr, 2011), p. 432. 432.

⁸ Chairul Fahmi, "The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia," *Jurnal Ilmiah Peuradeun* 11, no. 2 (May 30, 2023): 667-86, <https://doi.org/10.26811/peuradeun.v11i2.923>.

Furthermore, this practice does not follow the provisions of Supreme Court Regulation Number 2 of 2008 concerning KHES and Fatwa DSN-MUI, which do not regulate the existence of two contracts in one job, especially advocates. Because advocates have received honorarium as mandated in Article 21 of Law Number 18 of 2003 concerning Advocates.

Based on the description of the problem above, it is interesting to study further with an analytical approach to find answers regarding how the practice of *success fee* advocates in handling inheritance dispute cases in Banda Aceh City and the perspective of akad *al-ji'alah* on the application of *success* fees by advocates in handling inheritance dispute cases in Banda Aceh City.

RESEARCH METHODS

In this study, the authors employed qualitative research methods. The qualitative approach aims to understand the phenomenon in depth by focusing on the meaning, value, and interpretation of the data collected.⁹ In the context of this research, a qualitative approach is employed to examine the application of advocate success fees in handling inheritance dispute cases at the IM and Partners Law Office, from the perspective of *Akad al-Ji'alah*.

The type of research used in this research is descriptive-analytical. Descriptive research aims to provide a clear and detailed description of the object of research. In this study, the object of investigation is the application of advocate success fees in handling inheritance dispute cases at the IM and Partners Law Office, from the perspective of *Akad al-Ji'alah*.

Descriptive-analytical research not only describes facts but also analyses and interprets these facts based on relevant theoretical frameworks. In this context, researchers describe the practice of *success fee* advocates in handling inheritance dispute cases at the IM and Partners Law Office, as well as the perspective of *Akad al-Ji'alah* on the application of success fees by advocates in these cases.

The data used in this study comprise both primary and secondary data. Primary data is data obtained directly from the source, either through interviews, observations, or reports in the form of documents which researchers then process. The primary data in this study consist of informants, including advocates and clients, from the IM and Partners Law Office. Secondary data is data collected directly by researchers as support for primary

⁹ Lexy Jennis Moleong, *Qualitative Research Methodology* (Bandung: Remaja Rosdakarya, 2018), p. 157. 157.

data, or can also be defined as a data source that is capable of providing additional information or data that can strengthen the primary data.¹⁰

The data collection techniques used were interviews and documentation. Interview and documentation techniques are appropriate methods for empirical research because they allow researchers to gather information from multiple sources, including both respondents and informants. In this study, researchers also examined classical fiqh books to understand the concept of *al-ji'alah* contracts. In addition, this study also examines contemporary literature, such as *fiqh muamalah* books and journals, that discuss the application of advocate success fees in handling inheritance dispute cases from the perspective of akad *al-ji'alah*. The data obtained is then analysed descriptively and linked to the theory of *fiqh muamalah*.

RESULTS AND DISCUSSION

A. The Practice of *Success Fee* Advocates in Handling Inheritance Dispute Cases at the IM and Partners Law Office

The first step that the client must take to obtain legal services from an advocate is to sign a special power of attorney. The signing of a special power of attorney marks the initial stage of the client or authoriser delegating their legal interests to an advocate to be resolved through litigation in court or non-litigation means.

In substance, an extraordinary power of attorney contains the identity of the client or authoriser, the identity of the recipient of the power of attorney or advocate, the legal domicile chosen by the client or authoriser, the action taken by the advocate against the legal interests of the client or authoriser, the authority of the advocate for the action, and the signature of the client or authoriser and advocate as the recipient of the power of attorney affixed with stamp duty.¹¹

Simultaneously, during the signing process of the extraordinary power of attorney, both parties agree to and approve the agreement letter for the payment of advocate fees, which consist of lawyer fees, operational fees, and *success fees*. The signing of an extraordinary power of attorney and a legal services contract must first be agreed upon by both parties. With an attitude

¹⁰ Sumardi Suryabrata, *Research Methodology*, (Jakarta: PT. Raja Grafindo Persada, 1997), p.84

¹¹ Iwandi Iwandi, Rustam Efendi, and Chairul Fahmi, "THE CONCEPT OF FRANCHISING IN THE INDONESIAN'S CIVIL LAW AND ISLAM," *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 4, no. 2 (September 29, 2023): 14-39, <https://doi.org/10.22373/al-mudharabah.v5i2.3409>.

of openness, honesty, and mutual trust between the two parties. This needs to be done so that when the case handling process is completed and has permanent legal force, no party is harmed, both the client and the authoriser and the advocate as the recipient of the power of attorney.¹²

Based on the results of interviews with Zamharir, the Staff of the IM and Partners Law Office explained that the success fee given by the client to the advocate is a form of *reward* for the results of the case handled by the advocate. Advocates first brief the client about the *success fee* that the client must pay if the contested inheritance dispute case has a value or nominal value on the object of the lawsuit. Both parties must agree upon this during the process of signing an extraordinary power of attorney and legal services contract agreement.¹³

Furthermore, Iqbal Maulana, Managing Partner of the IM and Partners Law Firm, also explained that a success fee is a measure of success in handling inheritance dispute cases. If you lose or the client's legal wishes are not fulfilled, then the *success fee* is not given. The percentage of the success fee is relative to the object of the case being sued, such as in an inheritance dispute case with a value of Rp 1,000,000,000 (one billion rupiah). The percentage of the success fee taken from the asset's value is 10%, so the amount of the success fee that the client must pay to the advocate if the case is won is Rp—100,000,000 (one hundred million rupiah). The percentage of the *success fee* on the value of assets varies based on the management pattern of the advocate's office, so there is no standard determination of how much a success fee an advocate can receive when winning a case due to the absence of laws and regulations governing this matter by advocate organisations.¹⁴

Based on the results of these interviews, it can be concluded that the *success fee* is the reward obtained by the advocate if the case they handled is won. The existence of the success fee is known to the client and is based on an agreement between the two parties, as outlined in the advocate work agreement contract. The amount of the *success fee* ranges from 5% to 10% of the

¹² Jarmanisa et al., "ANALYSIS OF RISK COVERAGE AGREEMENT BETWEEN PT. J&T AND AN INSURANCE COMPANY FOR DELIVERY OF CONSUMER GOODS IN THE CONTEXT OF KAFALAH CONTRACT," *JURISTA: Jurnal Hukum Dan Keadilan* 5, no. 2 (October 1, 2021): 126–46, <https://doi.org/10.22373/jurista.v5i2.11>.

¹³ Zamharir, Staff of IM and Partners Law Office, *Interview*, Banda Aceh, Monday, 20 January 2025.

¹⁴ Iqbal Maulana, *Managing Partners of IM and Partners Law Firm*, *Interview*, Banda Aceh, Monday, 20 January 2025.

asset's value, which is dynamic and can change based on the type of case and the parties' agreement.¹⁵

The advocate's success fee for legal services provided depends on the advocate's personality; some advocates apply success fees, while others do not. However, the existence of a *success fee* as one of the advocate's honoraria is a reality every day. Therefore, the *success fee* can also be categorized as an essential aspect of advocates providing legal services to clients. However, it still returns to the agreement of both parties, namely between the advocate and the client.

In this regard, if the client agrees to the existence of a success fee, the percentage of the *success fee* is discussed and at the same time agreed upon if both parties reach an agreement, then stated in the advocate work agreement letter at the time of signing the extraordinary power of attorney based on mutual consent between the client and the advocate.

Based on the results of interviews with clients, FH explained that he faced legal problems related to inheritance disputes, and he was in the position of Plaintiff. He is an heir and wants to fight for the inheritance that is his right. Previously, he had attempted to settle in the village and with his family but was unsuccessful, so he took the initiative to file a lawsuit at the Banda Aceh *Shari'iyah* Court and utilized the legal services of an advocate at the IM and Partners Law Office.

The amount of costs incurred in the payment of advocate services (*lawyer fee*) of Rp. 25,000,0000 (twenty-five million rupiah), *operational fee* of Rp. 500,000 (five hundred thousand rupiah), which must be paid by the client when the advocate convenes at the Banda Aceh *Syar'iyah* Court. Because the object of the inheritance dispute is more than one object and has an asset value, the advocate requires a success fee if the authorized case wins at the Banda Aceh *Syar'iyah* Court. Cumulatively, the value of the asset or object of the inheritance dispute is Rp 15,000,000,000 (fifteen billion rupiah). The percentage of *success fee* agreed by the client and the advocate is 10% of the asset value. The agreement is contained in the advocate's legal service agreement, made with the consent of both parties.

Furthermore, with regard to the payment mechanism of honorarium (*lawyer fee*), it is divided into two terms. FH pays the first term at the time of signing the extraordinary power of attorney at 50% and FH pays the second

¹⁵ Chairul Fahmi and Syarifah Riyani, "ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT," *Wahana Akademika: Jurnal Studi Islam Dan Sosial* 11, no. 1 (July 17, 2024): 89-104, <https://doi.org/10.21580/wa.v11i1.20007>.

term at the time of entering the conclusion of the trial agenda at 50%. Regarding the operational fee paid by the FH when the advocate convenes at the Banda Aceh Syar'iyah Court, the amount of the operational fee is relative to the number of trial agendas set by the Banda Aceh Syar'iyah Court.

FH carries out the success fee payment mechanism after the advocate wins the case and has obtained permanent legal force (*inckracht*). FH pays the advocate's *success fee* after the asset that is the object of the lawsuit is sold, so that the advocate receives a success fee of Rp 1,500,000,000 (one billion five hundred million rupiah).

In practice, there are also inheritance dispute cases that do not apply *success fees* because the value of the assets/object of the lawsuit is not too high, and the client does not have the financial ability, so the advocate does not apply a *success fee* to the case.

It is understood that advocates do not always apply *success fees* to clients based on various considerations such as the client's background and ability. If the client has financial constraints, then the advocate will direct to use legal aid services. If the client uses legal aid services, the cost to be paid is only the usual advocate services, which include *lawyer fees* and *operational fees*, amounting to 90% of the agreed-upon amount. The other 10% is covered by the government (*prodeo*).

The fees that advocates receive for legal aid services provided to clients consist of:

- a. Operational costs are costs that are charged as a whole to the client. Advocates use operational costs for correspondence, accommodation, transportation, and other expenses.
- b. Government subsidised fees, government subsidised fees are fees provided by the government to people who need legal services but are financially constrained. People can obtain government subsidised fees by completing an application file and a poor certificate from the village head or another official.
- c. Success fee, a fee that the client must pay to the advocate if the case is won. The award and determination of the success fee is based on an agreement between the client and the advocate.

Each client has its limitations and constraints in paying success fees to advocates, which is influenced by the different economic backgrounds of clients. Therefore, the client negotiates with the advocate regarding the success fee, so that the advocate later provides relief to the client for payment of the

success fee. Before signing the power of attorney, the client and advocate must discuss openly the obstacles both in terms of legal services, operations, and *success fees*. This is done as a preventive measure to avoid problems when the case handling process is completed, on the pretext that the advocate does not openly disclose the cost of legal services charged to the client.

In reality, it is not uncommon for clients to believe that advocates are a profession that receives a salary from the state, so they assume that the legal services provided by advocates are free. So that at the initial consultation, the advocate provides the client with a comprehensive understanding of the advocate profession, including the cost of legal services. This is done to prevent any misunderstanding between the client and the advocate regarding the cost of legal services. Regarding the *success fee*, the advocate also provides an understanding to the client, that if the case consulted to the advocate there is a success fee because the object of dispute has an asset value. Still, if the client does not agree to a success fee, then the decision is on the advocate whether to accept the case or reject it.

The amount of the success fee in each inheritance dispute case ranges from 5% to 10%. In general, the percentage of success fees applied by advocates at the IM and Partners Law Office ranges from 10%. However, some advocates apply a success fee of 5%, this is because the client objects and is unable to pay a percentage of 10%, so the client asks for relief in paying the *success fee*, after the advocate considers the object being sued and does not object to the reduction in the percentage of the *success fee*, the case handling continues.

The percentage of the success fee depends on the agreement between the client and the advocate; some advocates even apply a success fee of 30%. The application of a *success fee* of 30% is charged to clients who do not have the financial ability but the object of the case to be sued has a high asset value, so that advocates in providing legal services do not apply legal services fees and operational fees, so that if the case handled by the advocate wins, the client is obliged to provide 30% of the *success fee* to the advocate. Against these conditions, the advocate will consider the position of the case and the client's position, assessing whether there is a chance to win or not. If not, then the advocate will not take the risk of providing free legal services to the client.

Against this condition, there is a client with the initials AN who is experiencing legal problems regarding inheritance disputes. He wanted to make legal efforts to claim inheritance at the Jantho Syar'iyah Court because one of the heirs was uncooperative by not giving his rights. All settlement

efforts have been made with both the family and the village, but there has been no settlement. Therefore, he took the initiative to pursue legal action for inheritance lawsuits at the Jantho Syar'iyah Court.

In making legal efforts, he realised that he had a lack of legal knowledge. So, he tries to consult with advocates at the IM and Partners Law Office to resolve the legal problems he faces.

After signing the power of attorney and work agreement, an agreement was reached between the advocate and the client with an advocate service fee of Rp. 5,000,000 (four million rupiah), but payment was not made in one stage. The usual payment for the advocate's legal services in the inheritance dispute case was made in three instalments. The first term, the client paid 30% at the time of signing the power of attorney. The second term was paid 30% when the trial process entered the evidentiary stage. The third term was paid 40% upon completion of the case.

Then, for the *success fee* that must be paid based on the agreement of both parties, which is 10% if the case handled wins. However, if you lose, the advocate does not get the *success fee* that was agreed upon at the beginning.

The basis of consideration in determining the *success fee* that the client must pay to the advocate is the value of the object of the dispute/case sued by the client to be won by the advocate. Additionally, another consideration is the complexity of the case handled by the advocate. Furthermore, the form of payment of the *success fee* itself does not have to be in the form of money; it can also be in the form of movable or immovable objects. This is often applied to inheritance and property disputes. Clients who advocate for themselves usually provide success fees to their advocates in the form of tangible items, such as cars, motorbikes, or televisions. However, it is very rare to find payment of success fees for movable or immovable objects; usually, success fees are paid in cash.

Clients can make *success fee* payments to advocates after the case has been handled and has won permanent legal force (*inkracht*) or has been executed up to the time determined by both parties in this case mutually agreed upon when signing the power of attorney. Based on the results of the interview, some advocates leave the *success fee* payment mechanism to the client, but it must have been agreed upon and agreed by both parties, whether it is paid in cash or non-cash (instalments). For example, waiting until the object of the lawsuit is sold and the client gets part of his rights, then the advocate receives a success fee or gives an advance payment first and then is

repaid after getting all his rights from the object of the lawsuit. The agreement is flexible as long as it is neither burdensome nor detrimental to either party.

However, some advocates stipulate that success fee payments must be made in cash, but still, in practice, give deadlines to clients, but are required to pay in cash. This is because there are no instalment payments for *success fees*. If the client does not have the financial ability to pay the success fee in money, it can also be paid in kind, such as the advocate receiving a small portion of the land plot that is the subject of the dispute. The land parcel, then, if deemed less strategic, will be sold by the advocate independently, without involving the client, as it is already his property.

In implementing the practice of *success fee* advocates in inheritance dispute cases, there are various factors that support and inhibit it. The supporting factors in the application of the advocate's *success fee* practice are as follows:

- a. Before the court decided the lawsuit, there was an initiative from the client to immediately make *the success fee* payment first.
- b. If the object of the lawsuit is movable and immovable objects, before the object of the lawsuit is sold, the client has paid the success fee to the advocate in cash.

The inhibiting factors in the application of the practice of *success fee* advocates in inheritance dispute cases are as follows:

- a. The client did not have good faith by refusing to pay the percentage of the success fee agreed upon at the beginning of the power of attorney and legal services agreement;
- b. Advocates are often deceived by clients who promise to pay at a predetermined time when they have been given relief with instalment payments, but the client runs away / disappears so that the client does not pay the agreed amount of success fee.
- c. The client does not have the financial capacity after winning the case, the client only has goods, even though the client has agreed to pay the *success fee* when the case handled by the advocate wins.

These factors are obstacles to the implementation of *success fees* at the IM and Partners Law Office. Based on this description, it is known that the *success fee* practice carried out by advocates at the IM and Partners Law Office goes through a series of processes starting from the agreement stage of determining the percentage of *success fees* between clients and advocates, and signing

advocate legal services. In practice, *success fee* payments are not only paid in cash, but also in the form of payments in the form of movable or immovable objects. Furthermore, there are also clients who do not have good faith to pay the *success fee*, resulting in the non-realisation of the advocate legal services agreement that has been mutually agreed upon.

B. Perspective of Akad *Al-Ji'alah* on the Application of *Success Fee* Advocates in Handling Inheritance Dispute Cases at the IM and Partners Law Office

Wages (*ji'alah*) in language means something given to someone because of something he does. But in terms of *ji'alah*, namely giving a gift or giving someone a certain amount to someone who does a special deed, known or unknown.¹⁶

ji'alah means that the lost item asks to be returned for a specified fee. For example, if a person loses a horse, they say: "Whoever finds my horse and returns it to me will pay me this much." While *al-Ju'l* means giving a reward for a benefit that is expected to be realised, such as requiring healing from a doctor, or intelligence from a teacher, or finding a runaway slave.¹⁷

Thus, it can be concluded that *ji'alah* is the provision of wages to others who can find lost items, or because they can do special actions, or a promise to provide commissions/rewards for the services of a person if he has succeeded in doing specific work for the benefit of the first party.

In *ji'alah* there is also a commitment by a legally capable person to give a specific reward for certain or unspecified work to a particular or unspecified person. The commission mentioned is known at the beginning of the agreement, if the work is not successful then the promise of reward can be cancelled and the second party does not get any benefit.¹⁸

The Maliki school of thought defines *ji'alah* as a wage promised in return for a service that no one is certain they can perform. The Shafi'i school of thought explains that a *ji'alah* contract is a transaction between two or more people with the object of an agreement for a specific fee to a person who can

¹⁶ Afriani, Ahmad Saepudin, "Implementation of Akad Jualah in Islamic Financial Institutions", *EKSISBANK Journal*, Vol 2 No 1, pp. 59.

¹⁷ Ibn Ruysd, *Bidayatul Mujtahid: An Analysis of the Jurisprudence of the Mujtahids*, (Jakarta: Pustaka Amani, 2007), pp. 101.

¹⁸ H. Ismail Nawawi, *Classical and Contemporary Muamalah Jurisprudence*, (Bogor: Galia Indonesia, 2012), pp.189-191.

provide certain services to him.¹⁹ The Shafi'i school of thought explains that a *ji'alah* contract can only be realised if the party who is given a specific task succeeds in discovering the achievements that must be carried out and have been stipulated in the contract. In this case, this *ji'alah* contract contains uncertainty because the wage giver can only be made if a particular party, *maj'ul lah*, carries out the work or achievement that has been determined.²⁰

In the National Sharia Council Fatwa No. 62/DSN-MUI/XII/2007 in its general provisions, it states that the *ji'alah* contract is an agreement to provide certain rewards between the rewarder and the rewardee for work / services that have been fulfilled by the rewarder for the benefit of the rewardee.²¹

In a *ji'alah* contract, some pillars and conditions must be fulfilled to realise the validity of the contract. The pillars of the *ji'alah* contract are as follows:

- a. The word *ji'alah* means permission to do the work, and it does not specify a time. If the *ji'alah* is done without the permission of the one who ordered the work, then he is not entitled to a reward if the goods are found. 2 (two) people have a contract in *ji'alah*, namely *ja'il* as a person who gives work provided that he is *mukallaf* in the sense of *baligh*, intellect, and intelligence and *ma'jul* is the person who does the job with no specific conditions or free;
- b. The person who promises to pay may be the person who lost the item or another person;
- c. The work or something that the owner requires of the goods in the work; and
- d. Wages that must be clear and have been determined and known by someone before carrying out work.²²

Furthermore, the conditions of the *ji'alah* contract are as follows:

- a. The party performing the *ji'alah* must be legally competent, i.e., have a sound mind, be an adult, and not be under a representative (*rashid*). *Ji'alah* is not valid for the insane and young children.

¹⁹ Abdul Aziz Dahlan, *Encyclopedia of Islamic Law*, (Jakarta: Ichtiar Baru van Hoeve, 2003), p. 821. 821.

²⁰ Dimyauddin Djuwaini, *Introduction to Fiqh Muammalah*, (Yogyakarta: Student Library, 2008), p. 165. 165.

²¹ Indonesian Ulema Council, *Fatwa of the National Sharia Council No. 62/DSN-MUI/XII/2007 on the Ju'alah Agreement*, (Jakarta: MUI National Sharia Council), pp. 4.

²² Dianidza Arodha, "The Existence of Ji'alah Akad in the World of Transportation", *Journal of Sharia Economics*, Vol 1 No , 2022, pp. 26

- b. The promised wage must be clearly stated in the amount and the promised wage must not be a prohibited item such as alcohol, etc;
- c. The work performed is permissible and does not contradict *shar'i* law, such as using black magic, stealing, killing, etc.; and
- d. The compensation (gift) given must be clearly known in type and amount (*ma'lum*) besides of course it must be halal.²³

In Fatwa DSN-MUI No. 62 of 2007 concerning *Ji'alah* Agreements in the provisions of the contract states that *ji'alah* agreements may be made to fulfil the needs of service services as with the following provisions:

- a. The *ja'il* party must have legal capacity and authority (*muthlaq al-tasharruf*) to make a contract;
- b. The object of *ji'alah* (*mahal al-'aqd/maj'ul 'alaih*) must be work that is not prohibited by sharia, and does not cause prohibited consequences;
- c. The results of the work (*natijah*) as intended must be clear and known by the parties at the time of bidding;
- d. The *ji'alah* reward (*reward/ 'iwadh/ ju'l*) must be determined by the *ja'il* and known by the parties at the time of the offer; and
- e. There must be no condition that the reward is given in advance (before the implementation of the object of *ju'alah*).

The legal provisions are that the *ji'alah* reward is only entitled to be received by the *ma'jul lahu* party if the results of the work are fulfilled, and the *ja'il* party must fulfil the promised reward if the *ma'jul* party completes the work / achievement as agreed.²⁴

An advocate is someone whose profession is to provide legal services, both in litigation and non-litigation. In Indonesia, an advocate is one of the private legal professions; therefore, if people experience legal problems and want to use the services of an advocate, they must pay a fee to cover the legal services provided by the advocate to the client.

Regarding the advocate's honorarium, it is determined reasonably in principle, based on the agreement between the advocate and their client. Advocate honorarium can be divided into 3 (three), namely *lawyer* fee, which is a professional fee for legal services provided by advocates to clients, *operational fee* is the cost used by advocates while resolving client cases and

²³ Afriani, Ahmad Saepudin, "Implementation of Akad Jualah in Islamic Financial Institutions", *EKSISBANK Journal*, Vol 2 No 1, pp. 60.

²⁴ Indonesian Ulema Council, Fatwa of the National Sharia Council No. 62/DSN-MUI/XII/2007 on the *Ju'alah* Agreement, (Jakarta: National Sharia Council MUI), pp. 4-6.

success fee is a reward/gift given by clients to advocates if they win the case they handle. The percentage of the *success fee* is based on the agreement between the advocate and the client.

The *success fee* agreement between the advocate and the client is included in the *ji'alah* contract, because it is something that provides known work in exchange for a *success fee* if the client's legal problem is resolved/won by the advocate. This is based on the advocate's legal services agreement with the client, which is mutually agreed upon at the beginning. Essentially, the advocate legal services agreement outlines the rights and obligations of advocates and clients throughout the case handling process. One of the contents of the agreement regulates the honorarium received by the advocate from the work performed. The advocate's honorarium stipulated in the agreement consists of *lawyer fees*, *operational fees*, and *success fees*.

Success fee is the amount of cost estimated as a percentage of the object of the case to be sued, the advocate gets a share of the object if he wins the lawsuit in court. The amount and existence of the *success fee* in the advocate's honorarium is based on an agreement between the parties (advocate and client). Not all cases can be assigned a *success fee* based on considerations: the material value of the object being sued, the financial capacity of the client, and the complexity of the case. Payment of the *success fee* is made by the client to the advocate after the case is won, if it does not win then the advocate does not get a *success fee*.

In the concept of *ji'alah* (wages/rewards) that *ja'il* will get if the promised work is completed, but if it is not completed, then *ja'il* is not entitled to the reward. If correlated with the practice of advocating success fees, this aligns with the concept of *ji'alah*. Advocates will not get a *success fee* if the case handled does not win, the right to *success fees* will only be obtained by advocates if the case handled wins in court and has permanent legal force (*inkracht*).

The determination of the *success fee* as one of the advocate's fees aims to encourage the advocate and the team. To resolve inheritance disputes, advocates must work extra hard and involve *partners* (associates). So that with the *ji'alah* will provide work motivation to advocates and partners. Therefore, the *success fee* is allowed because it will provide *maslahah* value to clients and advocates.

In determining the *success fee* / reward, the client and advocate openly discuss the amount of *success fee* agreed upon by the client after an agreement on the percentage of *success fee*, the advocate will pour the results of the deal

in the advocate's legal services agreement. To ensure transparency between the client and the advocate regarding the amount of the *success fee*. This is by the concept of a *ji'alah* contract which requires clarity regarding the amount of compensation received by the advocate, otherwise the contract becomes void due to unclear compensation.

As for the specific target or time limit in the implementation of the *ji'alah* contract, the Malikiyah scholars do not allow a particular limit of time, but other scholars allow an estimated period with the existing work. In the *al-ju'al* transaction, if the recipient of the reward (*maj'ul*) fails to bring the benefits stipulated in the reward transaction, they will not receive anything. If the reward giver takes the work of the *maj'ul* without any reward for labour or service, it means that he has committed an injustice.²⁵ In the practice of applying *success fees*, the agreed time limit is when the case handled has been decided by the Court and won, the time of the case settlement process is relative depending on the severity of the case so there is no detailed time limit.

Based on the Advocates' Legal Services Agreement, there is a suitability of advocate performance in relation to the concept of *ji'alah*. As stipulated in the *ji'alah* contract in DSN Fatwa No. 62 of 2007 in fulfilling service needs, the client becomes the *ja'il* party or as a party who has the authority with the object of *ji'alah* in the form of success by winning a lawsuit in court (*natijah*) the victory of the lawsuit has an impact on the client's legal position on the disputed object, such as a land dispute when the advocate wins the dispute, the land legally belongs to the client. The reward received by the advocate for the work is a *success fee* that is clearly known by the client when the signing of the legal services agreement is carried out with the payment mechanism made after the work is completed and won and not paid in advance.

In terms of cancellation of the *ji'alah* contract, it is allowed by each party. The achievement of the *ji'alah* charity or the completion of the work on the advocate's work is based on the advocate's success in winning the lawsuit. If the advocate does not *succeed* in winning the lawsuit given by the client, the amount of the *success fee* that has been agreed upon between the advocate and the client is automatically cancelled. However, the client may not unilaterally cancel the amount of the *success fee* that has been contained in the agreement when the case handling process is ongoing and has not been completed as agreed in the agreement.

²⁵ Ibn Rushy, *Bidayatu 'l-Mujtahid*, (transl. Abdurrahman and A. Haris Abdullah) (Jakarta: Pusaka Amini, 2007), pp. 102.

This is reinforced by the opinion of Imam Shafi'I who states that someone who does work will get paid for what he does, because *ji'alah* is work that is promised in return. If a job is not completed before the work is made a *ji'alah charity* then he is not entitled to a reward, but if the cancellation of the contract occurs after the completion of the work then the agent is entitled to get a wage or *ji'alah* according to what has been done.²⁶

Imam al-Nawawi also believes that the *ji'alah* contract is permissible by prioritising the success of the work, not the time limit for completion or the method of workmanship. The reward of the contract should not be required to be given in advance because the *ji'alah* reward is only entitled to be received by the agent when the results of the work have been fulfilled. This is in contrast to the opinion of the Hanafi Mazhab, which rejects the use of the *ji'alah* contract due to the existence of *gharar* because it is not known exactly what work is being done and the timing of the work.

The Hanafi school of thought also states that the *ji'alah* contract should specify exactly what work is to be done, the purpose of the work, and the time when it is to be done, so that the agent feels that it is commensurate with the terms promised.²⁷

Based on the description of the concept of a *ji'alah* contract, it is known that the application of the amount of *success fees* by advocates at the IM and Partners Law Office is in accordance with the concept of a *ji'alah* contract, the *success fee* received by advocates in handling inheritance dispute cases is a form of client reward for advocates for helping to resolve client legal problems. Furthermore, the application of *success fees* by advocates also does not conflict with the Fatwa DSN MUI regarding *al-uqud murakabah* (two contracts in one job). Because the *success fee* is part of the *ji'alah* (reward) for the work done by the advocate, it is not an absolute contract that must be fulfilled by the client such as buying and selling, leasing, etc.

CONCLUSION

Based on the results of the research, it is known that the *success fee* practice carried out by advocates at the IM and Partners Law Office goes through a series of processes starting from the agreement stage of determining

²⁶ Afriani, Ahmad Saepudin, "Implementation of Akad Jualah in Islamic Financial Institutions", *EKSISBANK Journal*, Vol 2 No 1, pp. 64.

²⁷ Mohammad Fairuz Tamjis, Buerah Tunggak, "The Concept of Akad Al-Ju'alah in a Sharia Compliant Multi-Level Marketing (MLM) Company", *UMRAN Journal- International Journal Of Islamic And Civilizational Studies*, Vol 2 No 1, 2015, p. 42. 42.

the percentage of *success fees* between clients and advocates and signing advocate legal services. In practice, *success fee* payments are not only paid in cash, but also in the form of payments in the form of movable or immovable objects. Furthermore, there are also clients who do not have good faith to pay the *success fee*, resulting in the non-realisation of the advocate legal services agreement that has been mutually agreed upon.

The application of the amount of *success fee* by advocates at the IM and Partners Law Office is in accordance with the concept of *ji'alah* contract, the *success fee* received by the advocate in handling the inheritance dispute case is a form of client reward for the advocate for helping to resolve the client's legal problems. Furthermore, the application of *success fees* by advocates also does not conflict with the Fatwa DSN MUI regarding *al-uqud murakabah* (two contracts in one job). Because the *success fee* is part of the *ji'alah* (reward) for the work done by the advocate, it is not an absolute contract that must be fulfilled by the client such as buying and selling, leasing, etc.

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