

**ADVOCATE HONORARIUM IN AN IJĀRAH BIL 'AMĀL CONTRACT**  
**Research Study at Law Firm Banda Aceh**

**Mary George**  
University of Malaya, Malaysia  
Email:maryg@um.edu.my

**Mufadhal**  
Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia  
Email: mufadhal@ar-raniry.ac.id

**Abstract**

In this modern era, advocates are needed as legal advisors or legal services for people or clients who face existing problems. This research wants to know the mechanism for determining the advocate honorarium at the advocate office in Banda Aceh? The research method in this study uses a qualitative approach with the type of field research. The results showed that: First, the mechanism for determining the advocate's honorarium is the same in every advocate office that the author has researched, such as an agreement in the form of cash at the beginning or a contract system, payment in stages, there is also a payment paid by a percentage system according to what agreement will be applied by both parties. Second, the advocate profession itself in muamalah fiqh is included in ijārah bil 'amāl because it provides services in the form of legal services and service users provide rewards and must be in accordance with the agreement of both parties either in writing or not. Based on the description above, it can be concluded that the mechanism for providing honorarium and the review of the ijārah bil 'amāl contract on the mechanism for determining advocate honorarium in several advocate offices in Banda Aceh that the author has researched is in accordance with the value of wages in the ijārah bil 'amāl contract.

**Keywords:** Advocate, Economics, Ijarah bil Amal, Law, Indonesia

## Abstrak

Di era modern ini advokat sangat dibutuhkan sebagai penasihat hukum atau layanan hukum bagi publik atau klien yang berurusan dengan masalah eksistensial. Penelitian ini ingin mengetahui mekanisme penetapan honorarium terhadap advokat pada law firm di Banda Aceh? Metode penelitian dalam penelitian ini menggunakan pendekatan kualitatif dengan jenis penelitian lapangan (*field research*). Hasil penelitian menunjukkan bahwa: *Pertama*, mekanisme penetapan honorarium yang sama terhadap advokat pada setiap kantor advokat yang telah penulis teliti seperti kesepakatan dalam bentuk uang tunai di awal atau sistem kontrak, pembayaran bertahap, ada juga pembayaran dibayarkan dengan sistem persentase sesuai dengan kesepakatan apa yang akan di terapkan oleh kedua belah pihak. *Kedua*, Profesi advokat sendiri dalam fiqh muamalah termasuk dalam *ijārah bil 'amāl* kerana memberikan jasa dalam bentuk pelayanan hukum dan pengguna jasa memberikan bayaran sebagai balasan dan harus sesuai dengan kesepakatan kedua belah pihak baik tertulis maupun tidak. berdasarkan uraian di atas dapat disimpulkan bahwa mekanisme pemberian honorarium dan tinjauan akad *ijārah bil 'amāl* terhadap mekanisme penetapan honorarium advokat pada beberapa kantor advokat di Banda Aceh yang telah penulis teliti sudah sesuai dengan nilai upah dalam akad *ijārah bil 'amāl*.

**Kata Kunci:** Advokat, Ekonomi, Ijarah Bil Amal, Hukum, Indonesia

## INTRODUCTION

Lawyers are needed as legal advisors or legal services for the public or clients dealing with existential issues. An advocate is a legal service provider who serves and functions as a companion, legal advisor or acts as a legal representative for and on behalf of his client. When he or she provides legal services, he or she may do so free of charge or on a fee basis from his or her client. In carrying out his duties, the advocate must maintain a good relationship with his client.<sup>1</sup>

In Islamic law, a lawyer's honorarium can be called *Ijarah* or salary. If *Ijarah* is a job, then the obligation to pay wages is at the end of the job. Wage (*ujrah*) is something that must be paid by the tenant in return for the

---

<sup>1</sup> Rahmad Rosyidi, dan Sri Hartini, *Advokat dalam Perspektif Islam & Hukum Positif*, (Jakarta: Ghalia Indonesia, 2003), p. 17.

benefits obtained. Judging from the advocate's *fee*, there are things that need to be discussed, it turns out that there are not many scholars who discuss whether the advocate's *fee* is permissible or not if the *fee* is obtained from a client who is undergoing criminal proceedings or other cases that according to Islamic law make money with impropriety, because the client, after all, earns money in the wrong way by forcibly and unlawfully taking the rights of others.

In Indonesia, the journey of the legal profession is a respectable ethical behavior and personality of an advocate. Lawyers belong to a professional circle, which requires coaching and guidance in carrying out their profession to establish ethical standards to carry out their profession and avoid professional misconduct.<sup>2</sup> The Advocate Code of Ethics relates to the personality of an Advocate in general, which includes the Advocate-Client relationship. The Indonesian Legal Profession Code of Ethics Regulation and Article 21 of Law No. 18 Year 2003 regulate the unlimited fee, including clients suspected of committing criminal offenses or other matters. In addition, the Lawyers' Code of Ethics also states the confidentiality of lawyers towards their clients.<sup>2</sup> This confidentiality indicates the closeness between the advocate and his client, which makes it difficult for the advocate to disclose his client's assets suspected of being the proceeds of a criminal offense.<sup>3</sup>

In Islamic law it is explained that the origin of human actions is bound by shara' law. Shari'a law on human actions is a law that is understood in the form of requests or choices. This is the scope of the division of the lawsuit against human action, which consists of five kinds (*al-ahkam al-khamsah*), namely *ijab* (obligatory), *nadb* (sunnah), *ibahah* (allowed), *karahah* (abandoned), *tahrim* (prohibition). Paying someone for their hard work is generally permissible (*ibahah*) in Islamic law.<sup>4</sup> Allah emphasizes wages in the Qur'anic letters at-Taubah: 105, an-Nahl: 97. The MUI National Sharia

---

<sup>2</sup> Michael Wood. "Introductory Remarks by Michael Wood", *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 106 (March 2012), p. 154.

<sup>3</sup> Dr. Rohidin, S.H, M.Ag., *Ajar Pengantar Hukum Islam: Dari Semenanjung Arabia hingga Indonesia*, (Yogyakarta: Lintang Rasi Aksara, Cet.1 2016).

<sup>4</sup> Ahmad Abu Sarhan wa' Ali ' Abd Allah Abu Yahya, *Faskh al-ijarah bil al-'Uzr fi al-Fiqh al-Islami, Ulum al-Shari'ah wa al-Qanun*, (2013), p. 112.

Council Fatwa on Ijarah Funding also states that it is permissible to make honorarium payments to obtain the services of another party who performs certain work.<sup>5</sup> According to Al-Sadiq 'Abd al-Rahman al-Gharyani, renting out salaries for *litigation* services (lawyers) is permissible because it falls under the category of *ijarah* (rent) where the amount of salary paid depends on the duration of the dispute and the frequency of hearings. It can also fall under the category of *ju'alah* (competition) if it wins the case and settles the dispute.<sup>6</sup>

*Ijarah* is a contract in which the benefits of something are exchanged for a certain agreed upon reward. In this case there are differences of opinion among scholars about the definition of *ijarah*. First, the Ash-Shafi'iyah scholars explain that *Ijarah* is a contract for certain intended and permissible benefits in exchange for certain rewards. Secondly, the Malikiyah scholars argue that *Ijarah* is a contract for granting property rights to the benefits of an item that is authorized for a certain period of time in return for something that is not derived from its benefits. Third, *Ijarah* is a contract of implementation in the form of property.<sup>7</sup>

Some translate *Ijarah* as buying and selling services (wages and salaries), which is the profit from human labor, while others translate rent, which is the profit from goods. The legal purpose of *ijarah* is to facilitate the social life of the community. There are people who have money but cannot work, instead there are people who have labor and need money. With *ijarah*, both parties benefit from each other. With *ijarah*, both parties can benefit. From the various definitions above, it can be concluded that leasing (*ijarah*) is a contract that is *implicit or the* benefits of exchanging something by providing some agreed considerations someone working for them. Then you will bear all the expenses incurred during the legal process.<sup>8</sup>

In line with Muslim Muhammad Yusuf, from the perspective of

---

<sup>5</sup> National Sharia Council Writing Team, Fatwa of the National Sharia Council No: 09/DSN-MUI/IV/2000 on Ijarah Financing, (Jakarta: PT. Intermasa, 2003), pp. 59.

<sup>6</sup> al-Sadiq ' Abd ar-Rahman al-Gharyani, *Fatawa al-Mu'amalat al-Sha'i'ah*, (al-Qahirah: Dar al-Salam, 2003), p. 32.

<sup>7</sup> Taqiyuddin Abu Bakar bin Muhammad, *Kifayah Al-Akhyar fi Hilli Ghayah Al-Ikhhisar*, (Surabaya: Dar Al-ilmu, tth), Juz. 1, p. 249.

<sup>8</sup> Nurul Etika, *Posisi Yuridis Honorarium Advokat Terdakwa Korupsi*, (Ciputat Timur: A Empat, 2015).

Indonesian positive law, Muhammad Rustamaji said that an advocate is entitled to compensation for his efforts in assisting clients. The activities of advocates who receive honoraria in accordance with the provisions of the law on advocates cannot be included in the scope of criminal legal entities. According to the provisions of criminal law, a person as a legal subject can be prosecuted based on unwritten norms, there is no criminal offence if there is no fault. This basis is closely related to the ability to be responsible for the actions taken.<sup>9</sup> There are no specific rules for setting lawyer's fees for legal services. However, in general, the purpose of legal services is determined based on several variables, such as the complexity of the case and the value of the case itself. There is no specific component or percentage in the calculation of fees. The cost of handling a case is essentially an agreement between the lawyer and the client. The agreed amount of fees must be paid by the client regardless of whether the case is won or lost.

In 2020, two cases were handled by law firm Jeb Law Firm Batoh office. While in 2021 there was only 1 case. The payment mechanism for advocate fees at Jeb Law Firm Batoh goes through several stages in its implementation. The first payment is made by the client during the exam and is paid in part, then another portion is paid during the process and, for the final judgement, the fee is paid in full. Factors affecting the size or amount of the fee result from the weight of the case. The more witnesses that must be heard and the more complex the case, the higher the fee. On the other hand, if the witnesses are few and far between, and the case is less complex, the fee will be lower.<sup>10</sup>

Another factor that affects lawyer fees is influenced by the lawyer's experience in handling cases. Law firms provide different rates for prospective lawyers. The level of reputation of each law firm in the legal world also affects the mechanism of forming a lawyer's honorarium. Therefore, the determining factor of how much a lawyer's fee is, so that the client is sure to reach an agreement is to look at the lawyer's flying hours.

Referring only to article 21 of Law No. 18 of 2013 concerning Advocates which stipulates the amount of fees, which is based on an agreement between the advocate and the client and there is no clear

---

<sup>9</sup> Prof. Dr. Adi Sulistiyono, S.H., M.H., *Sistem Peradilan Indonesia Dalam Teori Dan Praktik*, (Depok: Prenada Media Group, 2018).

<sup>10</sup> Interview with Junaikar, Advocate and Legal Consultant of Jeb Law Firm Batoh, on 23 March 2022, in Batoh.

regulation in the law that applies the fee mechanism and determines the amount rationally charged by advocates to their clients, leading advocates, legal service users, and the author both question the mechanism for providing honoraria to advocates paid by legal service users. This is very important because it affects the continuity of the use of legal services by clients. With clear implementation guidelines by lawyers in applying fees to be paid by clients, it will make it easier for clients to consider and use the legal services of lawyers. On the other hand, the application of a clear mechanism will also benefit legal service users to minimise discrimination between legal service users.

Based on the above problems, the main focus of this research is the mechanism for providing honorarium to lawyers and how the *ijārah bil 'amāl* contract is reviewed. Based on the description above, the researcher examines more deeply through research with the title "Advocate Honorarium in the *Ijārah Bil 'Amāl* Agreement".

## RESEARCH METHOD

The research method used by the author is a qualitative research method, namely the descriptive analysis method, which is a method that aims to make a systematic description in terms of facts, characteristics and relationships between the phenomena studied using analytical data, pictures or images.<sup>11</sup> As well as utilising existing theories as supporting material and producing a theory in this study the author investigates the income of advocates for providing legal services to their clients. The data sources obtained to examine the object of study are primary and secondary data sources.

## RESULTS AND DISCUSSION

### Definition and Legal Basis of *Ijārah Bil 'Amāl Akad*

*Al-ijarah* is one form of transactional activity in *Fiqh Muamalah* that can be used to fulfil various needs of human life both in terms of services

---

<sup>11</sup> Muhammad Siddiq Armia, *Penentuan Metode Pendekatan Penelitian Hukum* (Banda Aceh: Lembaga Kajian Konstitusi Indonesia (LKKI), 2022), <https://repository.ar-raniry.ac.id/id/eprint/22862/>.

and benefits such as: Rent, labour contracts and other objects whose objects belong to others. Ijarah comes from the word al-ajru which means substitute, so ats-ts | awabu is also called al-ajru in relation to reward. Ijarah is a rental fee given to someone who has done a job in return for his work.

For this definition, the terms Ajr, Ujrah and Ijarah are used. The word Ajrahu is used when one appreciates the work of others. The term is only used for positive things, not negative things. The word al-ajr (reward) is usually used for rewards in the hereafter, while the word ujrah (rent) is used for rewards in the world. In the teachings of Islamic law, the party who does the work is called ajir, while the party who benefits from the work of the ajir (employer) is called musta'jir. However, from a terminological point of view, the author of Mughni Al-Muhtaj who belongs to the Shafi'i school of thought defines ijarah as a transaction to gain profit from something known, which can be sold and given away, in exchange for a reward.<sup>12</sup>

In general, this ijarah contract can be interpreted in two ways, namely as a rental contract related to the use of the benefits of an object/good, also known as ijarah al-ain, and it can also be considered as an ijarah contract which is understood as a contract of work or labour in the dimension of using one's services for the benefit of another party, also known as ijarah ad-dzimah or commonly known as ijārah bil `amāl.<sup>13</sup>

Ijarah transactions are almost the same as ju`alah transactions, which are fees for obtaining benefits or services. However, there are some differences between ju`alah and ijarah transactions. First, ju`alah is a binding transaction when the worker starts doing his work. At that time, neither party can cancel the transaction unilaterally. Whereas Ijarah is a binding transaction since the transaction is completed. Secondly, in a ju`alah transaction, the wage becomes the worker's right after he completes his work and the hiring party benefits from the work he does. Meanwhile, the wage or rent in an Ijarah transaction becomes the right of the renter if the renter gives the renter the opportunity to use the goods that are the object of the transaction.<sup>14</sup>

---

<sup>12</sup> Ghuftron Ihsan. dkk, *Fiqh Muamalat*, (Jakarta: Kencana, 2010), p. 101.

<sup>13</sup> Harun Nasroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2007), p. 228

<sup>14</sup> *Ibid*, p. 230

## Legal Basis of Ijārah Bil `Amāl

The fuqaha have different views on how to define the meaning of ijarah. Here the author describes the importance of Ijarah among the fuqaha. The Shafi'iyah scholars define ijarah as a contract for a benefit that contains a specific intention, is permissible, and can be given with a specific and halal substitute. The Malikiyah scholars define ijarah as the granting of property rights to the benefits of something that is allowed within a certain time, accompanied by a reward without benefits. The Hanbalis define ijarah as a service contract that can be validated by saying ijarah for the purpose of using the rental property. The Hanafiyah scholars define ijarah as a contract for a valuable reward, which is in the form of property. The opinion of the Hanafiyah scholars is very simple but has a meaning that covers all Ijarah transactions. Some scholarly reports lead to the conclusion that leasing is a contract for valuable consideration. Therefore the object of the lease is the use of something. Basically, Ijarah is a contract for the purpose of using something, be it a service or a good.<sup>15</sup>

The legal basis of wages in Ijārah bil `amāl is the fundamental thing that makes something appear to be a guideline for a problem to be resolved. We find many rulings on wages in Ijārah bil `amāl contracts in the texts of the Qur'an and As-Sunnah and can be learnt through Ijma' and Qiyas by the scholars of fiqh. The majority of scholars are of the opinion that ma`jur is determined in Ijarah al-amal contracts based on the Qur'an, as-sunnah and ijmah.<sup>16</sup> The majority of scholars allow honorarium wages in ijārah bil `amāl contracts based on the Qur'an, Sunnah and Ijma'.

### a. Quran

The legal basis that allows ijarah is the word of Allah SWT in the Qur'an letter al-Thalaq verse 6 which reads:

وَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ... {6}

Then if they nurse your children for you, then give them their wages.  
(al-Thalaq: 6)

---

<sup>15</sup> Ahmad Wardi Muslich, *Fiqh Muamalat*, (Jakarta: Amzah 2013), p. 316.

<sup>16</sup> Rachmat Syafei, *Fiqh Muamalah*, (Bandung: Pustaka Setia, 2000), p. 123.

Allah SWT has said that the perfect period for breastfeeding is two years. Allah SWT also commands men whose children are breastfed by other women (other than their mothers) to pay wages. This breastfeeding fee must come from the man's wealth for a predetermined period of time. This means that there is no obstacle to handing over breast milk to someone other than the mother, provided that it has been transferred to the (other) mother, the wages or fees that must be adjusted to the custom are paid. The above verse is the legal basis for the existence of the rental system in Islamic law as it states in the verse that a person can hire another person to take care of his child. This is generally applicable to leases and wages/rental agreements of any kind as the previous paragraph states that services are rendered because of the obligation to pay wages fairly.<sup>17</sup>

Then in QS At-Taubah: 105 Allah SWT says:

وَقُلْ اَعْمَلُوا فَسَيَرَى اللّٰهُ عَمَلَكُمْ وَرَسُولُهُ وَالْمُؤْمِنُونَ وَسَتُرَدُّونَ اِلَىٰ عَالَمِ الْغَيْبِ وَالشَّهَادَةِ فَيُنَبِّئُكُمْ  
بِمَا كُنْتُمْ تَعْمَلُونَ {105}

And say: "Work, and Allah and His Messenger and the believers will see your work, and you will be returned to the One who knows the unseen and the manifest, and He will tell you what you have done (QS. At-Taubah: 105).<sup>18</sup>

The hadeeth above explains that wages should be paid according to the amount of labour expended. Thus, the conditions for wages are the same as the conditions for selling and buying prices, because this wage is essentially the price of the services consumed in the Ijarah contract.

#### **b. Sunnah**

In another hadith narrated by Ibn Abbas, the Prophet Muhammad said:

عن ابن عباس رضي الله عنهما قال: ان الله تعا لي اذا حرم ثمنه. (رواه الدروقطن وابن حبان)

<sup>17</sup> Syaikh Ahmad bin Musatafa Al- Farran, *Tafsir Imam Syafi'i (Surah Al-Fatihah Surah Ali Imran)*, (Jakarta: Al-Mahira, 2008), p. 248.

<sup>18</sup> Al Imam Asy-Syaukani, *penerjemah Amir Hamzah fahrudin, dan Asep Saefullah, Mukhtasar Nailul Authar*, (Jakarta : Pustaka Azam, 2006), p. 206.

"Verily, if Allah has forbidden something, then He has forbidden its reward" (narrated by Ad Daruquthni 3:7 and Ibn Hibban 11:312). Shaykh Shu'aib al Arnauth said that the sanad of this hadeeth is saheeh.)"<sup>19</sup>

This hadith argues that the thing to be endorsed should not be a forbidden object. Because if the item is forbidden, the contract that has been agreed upon becomes invalid. Hadith narrated by Imam Al-Bukhari, Muslim, and Ahmad from Anas bin Malik which reads:

عن انس ابن ملك ان النبي صل الله عليه وسلم احتجم حجه ابو طيبة او عطاءه صا عين  
من طعام وكلم موالية فخففوا عنه. (رواه البخاري ومسلم واحمد)

Anas Ibn Malik (may Allah be pleased with him) reported that the Prophet (peace and blessings of Allah be upon him) used to do cupping for a fee of two saa' of food, and he told his mawalis to give him leniency, so they gave him leniency." (HR. Al-Bukhari, Muslim, and Ahmad)<sup>20</sup>

This hadith explains that at the time of the Prophet there was already an *ijarah* contract relating to services paid for with wages, and the Prophet recommended that assistance be given and wages according to the results of his sweat.

### c. *Ijma'*

There are no scholars who dispute this *ijma* arrangement. At the time of the Companions, Muslims agreed that wages/fees in *ijarah bil 'amāl* contracts are permissible as long as they are in accordance with the provisions of the Shariah, because people do not benefit from the services of those in need. In Islam, there are arguments regarding the Islamicisation of the *ijarah bil 'amāl* contract so that *ijarah bil 'amāl* contract transactions can be carried out, these arguments are related to clear arguments such as the Quran, hadith and scholarly consensus, which are *qaṭ'i* arguments so that humanity can carry out *ijarah bil 'amāl* contract transactions.

---

<sup>19</sup> Ibnu Hajar Al-Asqalani, *Bulugh Al-Maram*, (terj. A Hasan, jilid II, cet. XIII), (Bandung: Cv. Diponegoro) 1987, p. 357.

<sup>20</sup> Muhammad, *Himpunan Hadits-hadist yang disepakati oleh Bukhari dan Muslim*, (Surabaya: IKPI, 1996), p. 93.

### **Scope and Conditions of Validity of Advocate Honorarium in the Ijārah Bil `Amāl Agreement**

As part of the Advocate occupies a position as a provider of legal aid or legal services to the community (client) facing legal problems whose existence is urgent for the community along with the growth of public legal awareness and the complexity of legal procedures. problem. Advocates are part of law enforcement, alongside other law enforcement agencies. Advocate Law No. 18 Year 2003 confirms that advocates have the status of free and independent law enforcement officers guaranteed by laws and regulations. The authority of an advocate as a law enforcement officer is to provide legal assistance to clients with legal problems they face. The authority of an advocate is like a law enforcement agency outside the government. The role of advocates in an integrated criminal justice system is needed to ensure the protection of human rights.<sup>21</sup>

The legal profession plays an important role in law enforcement. Every judicial process, whether criminal, civil or state, always involves the legal profession whose position is equal to other law enforcement agencies. In efforts to eradicate corruption, especially the practice of judicial mafia, advocates can play an important role in breaking the chain of emerging judicial mafia practices. Whether or not this role is carried out depends on the legal profession and judicial organisations, whose independence and freedom are guaranteed by the law on lawyers. Advocates' role in providing legal services to clients' interests is interpreted based on how advocates carry out their profession in accordance with their duties and functions as well as the code of ethics and the advocate's oath. Except for the lawyer's oath. Advocates must also explore the role of lawyers with a code of ethics. Thus, in order to clearly understand what an advocate should follow and respect, the Code of Ethics of Advocates provides its members with clearer information on the practice of the profession that should be practised.<sup>22</sup>

The aim or goal is for the code of ethics to be respected and implemented by professionals in the exercise of their profession and at the same time be a pillar of law and justice. In its first role, the defence took a

---

<sup>21</sup>Roeslan Saleh Mengutip Antonie A.G. Peter, *Asas Hukum Pidana Dalam Perspektif, Aksara Baru*, ( Jakarta, 1981), p. 68.

<sup>22</sup>Ignatius Ridwan Widyadarma, *Etika Profesi Hukum dan Keperanannya*, (Semarang: Undip, 2001), p. 24.

stand against the judiciary. The aim is none other than to defend the rights of its clients. The defender's position must be autonomous and independent. He must also be careful not to fall into an atmosphere of compromise.

The second role of the advocate is the provider of legal aid, according to Satjipto Rahardjo, a defender must more or less "cooperate" with judges and prosecutors. This is done to keep the defender and law enforcement officials in good standing. He cannot always react the other way round to them. The aforementioned opinion confirms that advocates should cooperate with prosecutors and judges to maintain a positive relationship with government officials whose main goal is to uphold truth and justice. Advocates should also realise that their position is different from government employees as advocates and defenders provide services to others in exchange for honoraria from clients.<sup>23</sup>

Advocates are the only law enforcement officers outside of government agencies in the criminal justice system. As a result, Advocates operate independently and without direct supervision. Advocates are in the same position as prosecutors, judges and police even though they do not work for government agencies. This is regulated in Article 5 of the Advocates Law which reads. "*Advocates have a status as law enforcers, free and independent guaranteed by laws and regulations.*"<sup>24</sup>

Although Advocates are not employed by a government agency, their position as a pillar of the law must be treated the same as other law enforcement officers. In this case, it has a lot to do with the rights possessed by law enforcement is very important, the right of immunity to carry out its responsibilities and perform its functions as a law enforcement agency. As a result, law enforcement officers will be able to work optimally without interference from external factors. The following is an explanation of the advocate's immunity rights based on Article 16 of the Advocates Law: "*Advocates cannot be prosecuted for carrying out their professional duties in good faith for the benefit of the client's defence in court proceedings*"<sup>25</sup>

According to the previous explanation, advocates only have immunity rights when acting as a defender in court. However, advocates

---

<sup>23</sup> Rahmat Rosyadi, *Advokat dalam Perspektif Islam dan Hukum Positif*, Ghalia Indonesia, (Bogor, 2002,) p 89.

<sup>24</sup> Lihat Pasal 5 ayat (1) UU No. 18 Tahun 2003 tentang Advokat

<sup>25</sup> Amir Syamsuddin, *Integritas Penegak Hukum; Hakim, Jaksa, Polisi dan Pengacara*, (Jakarta: PT. Kompas Media Nusantara, 2008), p. 129-132.

are required to be free to carry out their professional responsibilities while adhering to the code of ethics in other articles. It can be concluded that advocates are still protected by the law while carrying out their responsibilities outside the court. As one of the provisions in fiqh muamalat, wages or honorariums are known because Islamic provisions are mainly focused on the benefits of the world and the great hereafter, so that the satisfaction of the conditions for such wages is absolute in Islamic provisions.<sup>26</sup>

Advocates' fees for providing legal services must fulfil the above requirements in order to be recognised as Islamically valid. In addition, because wages are one of the main arrangements of muamalah fiqh, they must also adhere to the guidance of muamalah. In muamalah, the following principles must be observed:

1. Basically, all forms of muamalah are permissible, unless otherwise specified by the Qur'an and the Sunnah of the Prophet,
2. Muamalah is carried out without coercion and on a voluntary basis.
3. Muamalah is practiced with the aim of improving people's lives and minimising their suffering.
4. Muamalah is carried out by maintaining the value of justice, avoiding persecution, and avoiding taking advantage of opportunities in narrow constraints.<sup>27</sup>

Therefore, the profession of an advocate is recognised because of the legal requirements or principles on the advocate's honorarium. Working as an advocate is permissible as long as it is done in the interest of truth and preventing injustice. In addition, receiving remuneration for legal services rendered does not violate sharia because it falls under the category of ijarah (lease), which in this case is the lease of services.

---

<sup>26</sup> Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, alih bahasa Abdul Hayyi al-Kattani dkk, cet. I (Jakarta: Gema Insani, 2011), p. 409.

<sup>27</sup> Ahmad Azhar Basyir, *Asas-Asas Hukum Muamalat* (Hukum Perdata Islam), ed. revisi (Yogyakarta: UII Press, 2000), p. 15-16.

### **Honorarium Determination Mechanism for Advocates at Law Firm in Banda Aceh**

The population's need for advocates is growing as a result of the rule of law. Given the complexity of life's problems and the increase in criminal activities and conflicts between fellow citizens, this profession is very important because anyone dealing with the law will need a defender or advocate to help them win their case. The Advocate profession is an occupation that is free and independent, yet responsible for the interests of the public in seeking justice or for suspects and accused, including educating the public on the importance of upholding their fundamental rights before the law.<sup>28</sup>

Every advocate also has the right of substitution and retention, the right of substitution and retention rights are usually seen in the power of attorney made between the client and the advocate. The legal basis governing the granting of power of attorney is Article 1792 to Article 1819 of the Civil Code (hereinafter referred to as KUHPer), which also contains the right of substitution and the right of retention.

The right of substitution can be interpreted as the delegation of power or substitute power of attorney. The right of substitution is used by an advocate to transfer power of attorney from his client to another attorney or another advocate on the grounds that the advocate who was previously authorised is unable to attend the management or attend court proceedings. To distinguish between the two, the advocate who gives power of attorney can be referred to as the principal advocate and the advocate who receives the substitution is referred to as the substitute advocate.

Based on the explanation above, if we connect it with the concept of the Ijarah Bil Amal contract, it is appropriate. First, because of the presence of Aqid (the person in the contract) The agreement between the client and the advocate is made without any coercion based on the needs of the client and the advocate. Second, Shigat akad (sentence Ijab qabul) Shigat akad or sentence Ijab qabul on case handling is contained in the agreement form which states that the advocate provides his services to the client with mutually agreed terms and conditions. If the advocate transfers the power of attorney from his client to another attorney or another advocate on the grounds that the advocate who was given the previous power of attorney

---

<sup>28</sup> Rahmat Rosyadi dan Sri Hartini, *Advokat Dalam Prespektif Islam & Hukum Positif*, 84.

cannot be present in managing or attending court proceedings, it is permissible as long as the services provided to the client are fulfilled and the costs are fully borne by the first advocate and do not harm the client. Third, Ujroh (rental services) In handling cases, the amount of fees or Ujroh for each type of case has also been determined. The amount of the fee is determined by the advocate based on the length of the case being handled and this is stated in the case agreement form.<sup>29</sup>

The results of the interview with Mr Fatchullah, S.H as the head of the Advocate-Legal Advisor office, the determination of honorarium in criminal cases is not relative because it must be in accordance with the agreement between the advocate and his client both lawyer fees, operational costs and success fees. In contrast to the determination of honorarium in civil cases, the acceptance of honorarium applied in this office in civil cases applies honorarium in the form of cash at the beginning or contract system. The Indonesian Advocate Code of Ethics (KEAI), which states that advocates are not permitted to burden clients with unjustified fees, allows clients to choose whether to receive honoraria at the outset of a civil case or a full cash payment. With the contract system in place, the client or person seeking legal services does not have to pay a bill for each trial or case.<sup>30</sup>

By setting up this system, clients can find out what costs will be incurred during case resolution by setting a system operating fee. The use of this system makes it easier for people who need legal assistance because the fees paid can be paid in instalments until the case is resolved by mutual agreement between the client and the attorney.

The following factors are taken into consideration by the Advocates & Legal Consultants office when deciding what is a reasonable fee amount:

### **1. The complicate or easy case handled**

The severity or lightness of the case is one of the considerations made by advocates in determining the amount of honorarium to be paid because in carrying out their duties, advocates handle a variety of cases and problems faced by clients. When a case is handled, a lot of preparation must be done before it can be resolved successfully. As a result, the honorarium

---

<sup>29</sup> Suhendi Hendi, *Fiqh Muamalah*, (Jakarta: Rajawali Pers, 2011), p. 89.

<sup>30</sup> Interview with Mr Fatchullah S.H as Head of the Banda Aceh Legal Advocate Office on 1 March 2023.

received from the client will automatically be high compared to how complicated or serious the case is. A corruption case or dispute is one illustration of a situation that is considered complex or serious. Since the client has to be assisted until the case is decided by the court, the handling of the settlement of the case requires a lot of money. Advocates take into consideration the complexity of the case or a reasonable case they are handling when determining how much honorarium to charge their clients. This is practical considering that lawyers need resources such as time and money to handle complicated cases.

## **2. The duration to handle the case**

Time taken is the period of time needed to complete a case. Advocates' responsibilities are not only inside the courtroom but also outside the court, consequently, they are not limited to the courtroom when performing their duties. Because handling a case will take a lot of time and expenses involved in handling the case.

Criminal and civil cases are handled over different lengths of time. The longer a case is handled by an advocate, the more time and expenses will be required because the case is handled for a longer period of time.

## **3. Complexity of the case**

The complexity of the case handled is a consideration factor in determining the amount of honorarium fees to be paid by the client. complex or very complicated cases certainly require large costs to handle, both in terms of operational costs and financial costs.

## **4. Senior or junior of the lawyer**

Rating or flying hours are determined by how many cases they handle at once, because the time available is tight. The complexity of managing time in several cases that collide and occur at the same time is a consideration in this system.<sup>31</sup>

Based on the results of the author's interviews, several advocate offices in Banda Aceh have several applications of honorarium financing both in receiving honorarium in criminal and civil cases. In criminal cases, it is applied through mutual agreement and contract system as well as payment

---

<sup>31</sup> Wawancara dengan bapak junaikar, S.H selaku kepala kantor Advocates & Legal Consultants banda aceh pada tanggal 9 maret 2023.

in stages. While in civil cases using a cash system in the form of cash, percentage system, lawyer fee system and operational costs.

The application of honorarium is also seen from a number of other factors, including the severity of the problem handled, the time needed to handle it, the complexity of the case handled and so on. Therefore, the amount of honorarium fees for each user of advocate services has a different rate. Legal service users or clients benefit from the implementation carried out by advocate offices in Banda Aceh because there is legal certainty or a clear flow in the application of honoraria that clients will pay to advocates.

### **Perspective of *Ijarah bil Amal* on the Mechanism for Determining Advocate Honorarium at Law Firm in Banda Aceh**

*Ijārah bil `amāl* or also known as *ujrah* is carried out in accordance with the guidelines and principles contained in *fiqh muamalah*. The validity of the *ijarah* contract is strongly influenced by the terms and conditions that have been determined. The existence of *aqid* or better known as the party making the agreement, *shighat* contract, *ujrah* or wage, and benefits are among the prerequisites. The conditions of *ijarah*, on the other hand, are divided into four categories as the conditions in buying and selling, namely: *al-inqad* (the occurrence of the contract), condition *an-nafadz* (the condition for making the contract), valid condition, and *lazim* condition. One of the applications of the *ijarah bil amal* contract is in the advocate profession. being an advocate is a noble profession, but there are several honorarium issues that must be questioned. In fact, only a few scholars discuss the standardisation or appropriateness of providing honoraria in accordance with Islamic law. But according to Islamic law this advocate honorarium can be said to be *ijarah* or wages. When *ijarah* (work) ends, there is an obligation to pay wages that must be paid. Abu Hanifah asserted that wages must be paid in stages according to the benefits received if there is no other work available if the contract has already taken place and if there is no payment condition and there is no provision for deferral.<sup>32</sup>

In Islamic *fiqh*, wages are something that the client is obliged to give to legal services as payment for the benefits he receives. *Ijarah* payments can

---

<sup>32</sup> Sohari Sahrani, dan Ru'fah Abdullah, *Fikih Muamalah*, (Bogor: Ghalia Indonesia, 2011), p. 172.

be made with anything that can be used as a medium of exchange in buying and selling or ijarah payments, wages or payments must be known even if they are still owed in arrears such as dirhams, goods that can be measured, weighed and goods that can be counted. Therefore, the type, nature and size must be explained. If the benefit has been obtained by the hirer, he is obliged to pay the prevailing wage, which has been determined by an expert in the field. Regardless of whether the community is well-off or poor, everyone is entitled to justice and assistance where the provision of advocate fees is based on an agreement between the two parties according to the client's financial situation, does not burden either party and works honestly and fairly because of the rights and obligations of advocates.<sup>33</sup>

In Islamic law, it is explained that any business that uses any means to attract customers is haram, because there is an element of manipulation or an element of oppression that prevents other parties from getting their rights. Whereas the aim is to help, the law is halal. It is acceptable while protecting the legal rights of the suspect or other parties involved in the case. The ruling on advocates' fees indicates that it is essentially lawful if you strongly believe that your efforts to uphold the truth are legitimate, then it is lawful. And it is haram if you think or suspect that your efforts are against the truth. It does not matter if the advocate is defending from the side of ta'awun (asking for help). When an advocate defends the rights of a citizen, his personal rights if it is from his ta'awun, there is no problem.

The role of advocates in providing legal services to clients with the aim of providing peace with the parties in dispute or problems is very important. Especially when it comes to giving honorariums. The differences in honorarium for each advocate are based on various factors, such as the severity or lightness of the problem being handled, the length of time required to handle the problem, the level of difficulty of the case, and so on, stated clearly according to mutual agreement. If the client objects to the proposed honorarium, the advocate will negotiate again until both parties agree and there is no compulsion and there is also no system of cheating or deception.

Based on the description above, it can be understood that from several advocate offices that the author examined, the application of the honorarium, if viewed from the perspective of its benefits, can be applied

---

<sup>33</sup> Rahmat Rosyidi, dan Sri Hartini, *Advokat dalam persefektif Islam & hukum positif*, (Jakarta: Ghalia Indonesia, 2003), p. 17.

because it provides benefits for the majority of people and benefits everyone who seeks legal assistance and is carried out in accordance with mutual agreement. there is transparency or clarity in each ijarah contract that will be carried out by both parties, both in terms of the type of agreement that will be made, such as gradual payments, payments at the beginning or at the end. All of this is needed so that in the future there will be no misunderstandings or conflicts when carrying out the ijarah agreement. The profession of advocate itself in muamalah fiqh is included in ijarah bil-amal, namely providing services in the form of legal services and the service user provides payment in return. Advocates in ijarah fall into the category of musytarak workers (ajir). Workers who work by providing legal services to legal service users.

## **CONCLUSION**

The mechanism for determining the honorarium for advocates at law firms in Banda Aceh is based on mutual agreement, both criminal and civil. The implementation of receiving honorariums at the office of Advocate Bahadur Satri, S.H & Partners, in criminal cases, honorariums are determined based on the agreement of both parties and with oral or written agreements. And also in civil cases the honorarium is paid using a percentage system. The implementation of receiving honorariums at the Advocates & Legal Consultants office, payment of honorariums is carried out according to mutual agreement and usually payment of honorariums is carried out in two ways, the first is by using the services of an advocate when the advocate receives a power of attorney at the beginning of the contract or better known as the contract system, the second is by using operational (operational fee). Review of the *ijārah bil `amāl* contract regarding the mechanism for determining the honorarium for advocates at Law Firms in Banda Aceh is in accordance with the wages in the provisions of the *ijārah bil `amāl* contract because the award of the honorarium for advocates is carried out based on an agreement between both parties in accordance with the client's financial situation, does not burden anyone one party and work honestly and fairly because of the rights and obligations of advocates. And also the factors that are taken into consideration in several of the advocate offices above include: the severity or lightness of the case being handled, the time period required to handle the case, the complexity of the case, the rating or

flying hours, and also still based on article 21 of law number 18 of the year 2003 concerning advocates with client agreements and determined reasonably.

## REFERENCE

- Abdul Rahman Ghazaly., *Fiqh Muamalat*, Jakarta: Kencana, 2010.
- Ahmad Abu Sarhan., *Faskh al-ijarah bil al-Uzr fi al-Fiqh al-Islami, Ulum al-Shari'ah wa al-Qanun*, 2013
- Ahmad Azhar Basyir, *Asas-Asas Hukum Muamalat (Hukum Perdata Islam)*, ed. Revisi, Yogyakarta: UII Press, 2000
- Ahmad Khatib, *Tinjauan Hukum Islam Terhadap Honorarium Advokat Atas Pemberian Jasa Hukum Kepada Kliennya yang Sedang Menghadapi Perkara Tindak Pidana Pencucian Uang*, Penelitian, Yogyakarta, UIN Sunan Kalijaga, 2015
- Ahmad Wardi Muslich, *Fiqh Muamalat* Jakarta: Amzah, 2015
- Ahmad Wardi Muslich, *Fiqh Muamalat*, Jakarta: Amzah, 2013
- Asy-Syaukani, *penerjemah Amir Hamzah fahrudin, dan Asep Saefullah, Mukhtasar Nailul Authar*, Jakarta : Pustaka Azam, 2006
- Abd Rahman al-Gharyani, *Fatawa al-Mu'amalat al-Sha'lah*, alQahirah: Dar al-Salam, 2003
- Amir Syamsuddin *Integritas Penegak Hukum; Hakim, Jaksa, polisi dan Pengacara*, Jakarta: PT. Kompas Media Nusantara, 2008
- Amir Syarifuddin, *Garis-Gari Besar Fiqh*, Jakarta: Kencana, 2003
- Ari Yusuf Amir, *Strategi Bisnis Jasa Advokat*, Yogyakarta: Navila Idea, 2010
- Astura Mumtaz, *Penetapan tarif Imbalan Jasa Advokat Ditinjau Menurut Kode Etik Advokat Indonesia dan Relevansinya Dengan Konsep Ujrah dalam Fiqh Muamalah (Studi Kasus Law firm di Kota Banda Aceh)*, Penelitian, (Banda Aceh: UIN Ar-Raniry, 2019).
- Chairul Fahmi, "Analysis Of Legal Aspects on Debt Transfer From Conventional Bank To Sharia Bank Post The Application Of Qanun Aceh No. 11 Of 2018". *Jurnal Al-Mudharabah*. Vol. 5, Edisi 1, 2023.
- Chairul Fahmi, "The Impact of Regulation on Islamic Financial Institutions Toward The Monopolistic Practices In The Banking Industrial In Aceh, Indonesia". *Jurnal Ilmiah Peuradeun: The Indonesian Journal of the Social Sciences*. Vol. 11, No. 2, May 2023.
- Chairul Fahmi, 'TRANSFORMASI FILSAFAT DALAM PENERAPAN SYARIAT ISLAM (Analisis Kritis terhadap Penerapan Syari'at Islam di Aceh)' (2012) 6 *Al-Manahij: Jurnal Kajian Hukum Islam* 167-76

- Chairul Fahmi, 'Revitalisasi Penerapan Hukum Syariat di Aceh (Kajian terhadap UU No.11 Tahun 2006)' (2012) 8 TSAQAFAH295-310
- Chairul Fahmi, 'KONSEP IJMAK MENURUT FAZLUR RAHMAN DAN PEMBAHARUAN HUKUM ISLAM' (2017) 11 Jurnal Ilmiah Islam Futura35-49
- Chairul Fahmi, 'The Snouck Hurgronje's Doctrine in Conquering the Holy Revolts of Acehnese Natives' (2021) 10 Heritage of Nusantara: International Journal of Religious Literature and Heritage248-73
- Chairul Fahmi, and W. Afrina, 'ANALYSIS OF LEGAL ASPECTS ON DEBT TRANSFER FROM CONVENTIONAL BANK TO SHARIA BANK POST THE APPLICATION OF QANUN ACEH NO. 11 OF 2018
- Eka Martiana Wulansari, "Perkembangan, Peranan dan Fungsi Advokat dan Organisasi Advokat Indonesia," Jurnal Legislasi Indonesia. Vol. 10 No.1 - Maret 2013
- Ghufro Ihsan. *Fiqih Muamalat*, Jakarta: Kencana, 2010
- Harun Nasroen, *Fiqh Muamalah*, Jakarta: Gaya Media Pratama, 2007
- Hendi Suhendi, *Fikih Muamalah*, Jakarta : Rajawali Pers, 2014
- Husaini Usman dan Purnomo Setiady Akbar, *Metodologi Penelitian Sosial*, Jakarta:PT Bumi Aksara, 2009
- Husein Umar, *Metode Penelitian Untuk Penelitian Dan Tesis Bisnis*, (Jakarta:Rajawali Pers, 2011
- Ibnu Hajar Al-Asqalani, *Bulugh Al-Maram*, (terj. A Hasan, jilid II, cet. XIII), Bandung: Cv. Diponegoro, 1987
- Ignatius Ridwan Widyadarma, *Etika Profesi Hukum dan Keperanannya*, Semarang: Undip, 2001
- Ismantoro Dwi Yuwono, *Jasa Advokat*, Yogyakarta: Medpress Digital, 2011
- Juita Julianti Timbuleng, *Hak Substitusi Penerima Kuasa Dalam Perkara Perdata*, *Jurnal Lex Privatum*, Vol. II, No. 3, 2014
- Lasdin Wlas, *Cakrawala Advokat Indonesia*, Yogyakarta: Liberty, 1989
- M. Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan dan keserasian Al-Qur'an*, Volume 7, Jakarta: Lentera Hati, 2002
- Michael Wood. "Introductory Remarks by Michael Wood", *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 106 March 2012
- Muhammad Ismail Yusanto, dan Muhammad Karebet Widjajakusuma, *Menggagas Bisnis Islami* , Jakrta: PT Mizan Publika, 2002
- Muhammad, *Himpunan Hadits-hadist yang disepakati oleh Bukhari dan Muslim*, Surabaya: IKPI, 1996
- Nurul Etika, "Posisi Yuridis Honorarium Advokat Terdakwa Korupsi", Tesis, Jakarta, UIN Syarif Hidayatullah, 2015

- Nurul Etika, *Posisi Yuridis Honorarium Advokat Terdakwa Korupsi*, (Ciputat Timur: A Empat, 2015)
- Prof. Dr. Adi Sulistiyono, S.H., M.H., *Sistem Peradilan Indonesia Dalam Teori Dan Praktik*, Depok: Prenada Media Group, 2018
- Puspitasari “*Tinjauan Hukum Islam Terhadap Honorarium Advokat*”, Penelitian, Banten: UIN Maulana Hasanuddin, 2018
- Rachmat Syafei, *Fiqh Muamalah*, Bandung: Pustaka Setia, 2000
- Rahmad Rosyidi, dan Sri Hartini, *Advokat dalam Perspektif Islam & Hukum Positif*, Jakarta: Ghalia Indonesia, 2003
- Rahmat Rosyadi, *Advokat dalam Perspektif Islam dan Hukum Positif*, Ghalia Indonesia : Bogor, 2002
- Roeslan Saleh Mengutip Antonie A.G. Peter, *Asas Hukum Pidana Dalam Perspektif Aksara Baru*, Jakarta, 1981
- Syaikh Ahmad bin Musatafa Al- Farran, *Tafsir Imam Syafi’i (Surah AlFatihah Surah Ali Imran)*, Jakarta: Al-Mahira, 2008
- Syaikh Ahmad bin Musatafa Al- Farran, *Tafsir Imam Syafi’i (Surah Al-Fatihahsurah an-nahl)*, Jakarta: Al-Mahira, 2008
- Taqiyuddin Abu Bakar bin Muhammad, *Kifayah Al-Akhyar fi Hilli Ghayah Alikhhisar*, (Surabaya: Dar Al-ilmu, tth), Juz. 1.
- Tim Penulis Dewan Syariah Nasional, *Fatwa Dewan Syariah Nasional No: 09/DSN-MUI/IV/2000 tentang Pembiayaan Ijarah*, Jakarta: PT. Intermedia, 2003
- V.Harlen Sinaga, *Dasar-dasar Profesi Advokat*, Jakarta: Erlangga, 2011
- WahbahAz-Zuhaili, *Fiqh Islam Wa Adilatuhu:Jilid 7, (terj. Abdul Hayyie alKattani,dkk)*, Jakarta: Gema Insani, 2011
- Wildan Ansori Nasution, “*Penerapan Penerimaan Honorarium Advokat Berdasarkan Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat*”, Penelitian, Malang: UIN Maulana Malik Ibrahim, 2019