

Address: Faculty of Sharia and Law  
Universitas Islam Negeri Ar-Raniry Banda Aceh  
Jl. Lingkar Kampus Kopelma Darussalam Banda Aceh, Indonesia 23111  
Email: [admin@jurnal-jurista.org](mailto:admin@jurnal-jurista.org)

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## Letter of Acceptance

Dear Mr. Haris Munandar

Thank you for submitting your paper which is entitled "ANALYSIS OF THE APPLICATION OF ADVOCATE SUCCESS FEES IN HANDLING INHERITANCE DISPUTE CASES ACCORDING TO THE THEORY OF AL- JI'ALAH" for the JURISTA: Jurnal Hukum dan Keadilan. The reviewer has reviewed your paper and the editor suggested that it is ACCEPTED for publication at Vol.9 No.1, 2025.

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Chairul Fahmi  
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A R - R A N I R Y

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

**Haris Munandar**

Universitas Islam Negeri Ar-Raniry Banda Aceh  
Email: 180102196@student.ar-raniry.ac.id

### 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 to the client as a form of reward for the advocate's victory. The research method used is a qualitative research method with an analytical descriptive approach, data collection techniques are carried out by interviews and documentation as well as literature studies and regulations related to this research. The results showed that the success fee practice carried out by advocates at the IM and Partners Law Office went through a series of processes starting from the agreement stage of determining the percentage of the success fee between the client and the advocate and signing 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 in accordance with the concept of the *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.

**Keywords:** Advocates, inheritance dispute, *Ji'alah* contract, success Fee,

### INTRODUCTION

Advocates are people whose profession is to provide legal services to the community, both in court and outside the court. Based on the term advocate means someone who carries out advocacy activities, which is an

activity or effort carried out by a person or group of people to facilitate and fight for rights or obligations or receipt of legal services, both individuals and groups based on statutory provisions.<sup>1</sup>

Legal services are services provided by advocates in the form of legal consultation, legal assistance, exercising power of attorney, representing, accompanying, defending, and taking other legal actions for the legal interests of the client / authoriser. Client is a person, legal entity, or other institution that receives legal services from an advocate.<sup>2</sup>

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. General power of attorney means a legal relationship that exists between the power of attorney and the recipient of the power of attorney to represent the legal interests of the power of attorney in general legal actions. 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.<sup>3</sup>

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 profession that acts on behalf of clients in litigation and / or non-litigation, for that action can only be carried out by an advocate if he has obtained power of attorney from the client. Therefore, the position of power of attorney in the cooperation relationship of providing legal services by advocates to clients is a necessity in the advocate profession.<sup>4</sup>

The consequence of the advocate profession as a legal service provider in carrying out its duties, especially in providing legal services to clients, is certainly getting a fee. The agreement regarding the service fee is contained in a contract agreement made in writing as for the substance regarding the rights

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<sup>1</sup> Sartono and Bhekti Suryani, *Basic Principles of the Advocate Profession*, (Jakarta: Dunia Cerdas, 2013), pp. 1.

<sup>2</sup> 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

<sup>3</sup> 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.

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

and obligations of advocates and clients in the case handling process. Legally formal provisions regarding advocate honorarium are explained in Article 21 of Law Number 18 Year 2003 concerning Advocates which explains "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.<sup>5</sup>

One type of case that is often resolved by Advocates domiciled in Banda Aceh and Aceh Besar is inheritance disputes 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 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 legal services agreement can be categorised as a reward or gift, if the advocate can win or fulfil the legal wishes of the client / authoriser.

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 certain job.<sup>6</sup> 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.<sup>7</sup>

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<sup>5</sup> Ari Yusuf Amir, *Advocate Services Business Strategy*, ..., p. 180

<sup>6</sup> 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.

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

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 there are advocates who 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 and regulations. In practice, the *success fee* is requested by the advocate himself to the client as a form of *reward* for the advocate's victory.<sup>8</sup>

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*).

Furthermore, this practice is not in accordance with 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 Year 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 how 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 used qualitative research. The qualitative approach aims to understand the phenomenon in depth by focusing on the meaning, value and interpretation of the data collected.<sup>9</sup> In the context of this

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<sup>8</sup> 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>.

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

research, a qualitative approach is applied to examine the application of advocate *success fees* in handling inheritance dispute cases at the IM and Partners Law Office according to 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 studied is the application of advocate *success fees* in handling inheritance dispute cases at the IM and Partners Law Office according to 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 and the perspective of akad *al-ji'alah* on the application of *success fees* by advocates in handling inheritance dispute cases at the IM and Partners Law Office.

The data used in this study consist of primary data and secondary data. Primary data is data obtained directly from the source, either through interviews, observations or reports in the form of documents which are then processed by researchers. Primary data in this study are informants consisting of advocates and clients at the IM and Partners Law Office. Secondary data is data collected directly by researchers as support for primary data or can also be defined as a data source that is capable or can provide additional information or data that can strengthen the main data.<sup>10</sup>

The data collection techniques used were interviews and documentation. Interview and documentation techniques are appropriate methods for empirical research, because they allow researchers to explore various information from the source, both respondents and informants. In this study, researchers also studied classical fiqh books, in order 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 according to the perspective of akad *al-ji'alah*. The data obtained is then analysed descriptively and linked to the theory of fiqh muamalah.

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

## RESULTS AND DISCUSSION

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

The first stage that must be done by the client to obtain legal services from an advocate is by signing a special power of attorney. The signing of a special power of attorney is the initial stage of the client or authoriser delegating his legal interests to an advocate to be resolved by litigation in court or non-litigation.

In substance, a special 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.<sup>11</sup>

Simultaneously during the signing process of the special power of attorney, both parties agree and approve the agreement letter for the payment of advocate fees consisting of *lawyer fees*, *operational fees*, and *success fees*. The signing of a special power of attorney and legal services contract must first go through the agreement of both parties. With an attitude 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 as the authoriser and the advocate as the recipient of the power of attorney.<sup>12</sup>

Based on the results of interviews with Zamharir, Staff of the IM and Partners Law Office explained that the *success fee* given by the client to the advocate as a form of *reward* or *reward* for the results of the victory of the case handled by the advocate. Advocates first brief the client about the *success fee* that must be paid by the client if the contested inheritance dispute case has a value or nominal on the object of the lawsuit. This must be agreed by both

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<sup>11</sup> 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>.

<sup>12</sup> 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>.

parties during the process of signing a special power of attorney and legal services contract agreement.<sup>13</sup>

Furthermore, Iqbal Maulana, *Managing Partner of the IM and Partners Law Firm* also explained that a *success fee* is a thing or action that is considered a *success or 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 *success fee* is relative based on the object of the case being sued, such as an example of an inheritance dispute case that has a value of Rp. 1,000,000,000 (one billion rupiah), the percentage of *success fee* taken from the value of the asset is 10%, so that the amount of *success fee* that must be paid by the client to the advocate if the case handled wins 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 *success fee* an advocate can get when winning a case due to the absence of laws and regulations of advocate organisations governing this matter.<sup>14</sup>

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 handled wins, the existence of the *success fee* is known by the client and is made based on an agreement between the two parties contained in the advocate work agreement contract. The amount of the *success fee* ranges from 5%-10% of the value of the asset, which is dynamic and can change based on the type of case and the agreement of the parties.<sup>15</sup>

The position of the advocate's *success fee* for legal services provided by the advocate depends on the personality of the advocate, some apply *success fees* and some do not. However, the existence of a *success fee* as one of the advocate's honorariums is something that is common. Therefore, the *success fee* can also be categorised as something important in terms 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

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

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

<sup>15</sup> 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>.



an agreement is reached by both parties, then stated in the advocate work agreement letter at the time of signing the special power of attorney on the basis of 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, 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 taken a settlement in the village and family but was unsuccessful, so he took the initiative to file a lawsuit at the Banda Aceh Shari'iyah Court and would use 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. 25,000,000 (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 inheritance dispute is more than one object and has an asset value, the advocate requires a *success fee* if the authorised case wins at the Banda Aceh Syar'iyah Court, cumulatively the value of the asset or object of 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. The first term is paid by FH at the time of signing the special power of attorney at 50% and the second term is paid by FH at the time of entering the conclusion of the trial agenda at 50%. In relation to 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 depending on the number of trial agendas set by the Banda Aceh Syar'iyah Court.

The *success fee* payment mechanism is carried out by FH 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 gets 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 agreement. The other 10% is covered by the government (*prodeo*).

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

- a. Operational costs, operational costs are costs that are charged as a whole to the client. Operational costs are used by advocates for correspondence, accommodation, transport and so on.
- 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 name.
- c. Success fee, success fee is a fee that must be paid by the client 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 own limitations and constraints in paying *success fees* to advocates, this is influenced by different economic backgrounds between clients one to another. Therefore, the client negotiates with the advocate regarding the *success fee*, so that later the advocate provides relief to the client for the payment of the *success fee*. Before signing the power of attorney, the client and advocate must discuss openly about obstacles both in terms of legal services, operations, and *success fees*. This is done as a preventive effort to cause problems when the case handling process has been 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 think that advocates are a profession that receives a salary from the state, so clients assume that legal services provided by advocates are free. So that at the initial consultation the advocate provides an understanding to the client about the advocate profession including the cost of legal services of advocates comprehensively this is done so that there is no 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, but 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 *success fee* in each inheritance dispute case ranges from 5%-10%. In general, the percentage of success fees applied by advocates at the IM and Partners Law Office ranges from 10%. However, there are also advocates who 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 *success fee* depends on the agreement between the client and the advocate, there are even advocates who 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* (*prodeo*), 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 position of the client whether it has 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 both family and village, but there is no settlement so that he took the initiative to take 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 that he tries to consult with advocates at the IM and Partners Law Office to be able to solve the legal problems faced.

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 of advocate legal services for the inheritance dispute case was paid in three terms. 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 had entered the evidentiary agenda and the third term was paid 40% when the case was completed.

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 must be paid by the client to the advocate is the value of the object of the dispute/case sued by the client to be won by the advocate. In addition, another consideration is the difficulty 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 are assisted by advocates in resolving their cases provide *success fees* to advocates in the form of objects such as cars, motorbikes, or televisions. However, it is very rare to find payment of *success fees* with movable or immovable objects, usually the payment of *success fees* in the form of cash.

Clients can make *success fee* payments to advocates after the case handled 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, there are advocates who 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 gets 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 not burdensome and detrimental to each other.

However, there are also advocates who stipulate that *success fee* payments must be made in cash, but still in practice will 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 cash, it can also be paid in kind, such as the advocate getting a small portion of the land plot that is the object of the dispute. The land parcel then if it is deemed less strategic will be sold by the advocate independently without involving the client because it is already his property.

In implementing the practice of *success fee* advocates in inheritance dispute cases, there are various supporting and inhibiting factors. The

supporting factors in the application of the advocate's *success fee* practice are as follows:

- a. Before the lawsuit was decided by the court, 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 *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 agreed amount of *success fee* is not paid by the client.
- 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 in 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.<sup>16</sup>

*ji'alah* means that the lost item asks to be returned for a specified fee. For example, if a person loses a horse, he says: "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.<sup>17</sup>

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 certain work for the benefit of the first party.

In *ji'alah* there is also a commitment by a legally capable person to give a certain reward for certain or unspecified work to a certain 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.<sup>18</sup>

The Maliki school of thought defines *ji'alah* as a wage promised in return for a service that no one is certain to be able to 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 certain fee to a person who is able to provide certain services to him.<sup>19</sup> In fact, the Shafi'i school of thought explains that a *ji'alah* contract can only be realised if the party who is given a certain task succeeds in realising 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 certain party, *maj'ul lah*, carries out the work or achievement that has been determined.<sup>20</sup>

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

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

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

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

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

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

certain rewards between the rewarder and the rewardee for work / services that have been fulfilled by the rewarder for the benefit of the rewardee.<sup>21</sup>

In a *ji'alah* contract, there are pillars and conditions that 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. There are 2 (two) people who 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 work 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 is required by the owner 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.<sup>22</sup>

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;
- 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*.<sup>23</sup>

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<sup>21</sup> 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.

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

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

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 in accordance with the agreement offered.<sup>24</sup>

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 there are people who experience legal problems and want to use the services of an advocate, of course they have to pay a fee to pay for the legal services provided by the advocate to the client.

Regarding the advocate's honorarium, in principle, it is determined reasonably based on the agreement between the advocate and his 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 *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. Substantially, the

<sup>24</sup> 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.



advocate legal services agreement contains the rights and obligations of advocates and clients in the case handling process. One of the contents of the agreement regulates the honorarium received by the advocate from the work performed, the advocate honorarium stipulated in the agreement consists of *lawyer fees, operational fees, and success fees*.

*Success fee* is the amount of cost estimated by per cent on 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 advocate *success fees*, this is in accordance 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 (*inckracht*).

The determination of the *success fee* as one of the advocate's fees aims to encourage the advocate and the team. Because to solve a problem of inheritance disputes advocates must work extra 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 agreement in the advocate's legal services agreement. So that there is transparency between the client and the advocate regarding the amount of the *success fee*. This is in accordance with 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 specific time limit, but other scholars allow an estimated period of time with the existing work. In the *al-ju'al* transaction, if the recipient of the reward (*maj'ul*) fails to bring benefits,

as stipulated in the reward transaction, he will not get 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.<sup>25</sup> 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 advocate legal services agreement, there is a suitability of advocate performance with 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 dispute is won by the advocate, 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.

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.<sup>26</sup>

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

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

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

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.<sup>27</sup>

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 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

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<sup>27</sup> 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.

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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