

# THE DEVOTION CEREMONY BY ADVOCATES IN ISLAMIC LEGAL PERSPECTIVES (ANALYSIS OF MINIMUMS SYARIAH ALUMNI ADVOCATE PROFESSION)

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**Abstract:** *Speaking in Indonesian law, we will think of a condition where people who are disputed or will have limitations in terms of a law, request proportional rights and obligations. A lawyer to provide legal assistance, both within the scope of the trial or outside the trial.*

**Key Words:** *defense, advocate, case, law, Islam.*

## 1. INTRODUCTION:

The new term that emerges in the context of Indonesian lawyers or syari'ah advocates, who lacks quantity of still-still in the Indonesian legal environment. The minimum existence of lawyers or syari'ah advocates is influenced by factors that are internal (individual) and external (general). In this paper, the author wants to try to contribute to lawyers in Indonesia along with an analysis of the lack of Shari'ah alumni who pursue the profession advocacy, which is important in terms of significance and significance in the justice system.

## 2. DEFINITION OF LAWYER OR ADVOCATE:

Lawyers or advocates are nouns, subjects. In practice, it is also known as the Legal Consultant. Can mean someone who gives or represents (representing) for others related to the settlement of a legal case.

The term lawyer connotes legal professional services that play a role in a dispute that can be resolved outside or in a court hearing. In the legal profession, there are known terminology related to the procedural law in the Criminal Procedure Code and the Civil Procedure Code. The term lawyer is distinguished by the term Legal Consultant, which is a legal consulting service in general.

The defense is carried out by lawyers against formal (judicial) and informal (discourse) institutions, or people who are certified to provide legal services, both inside (litigation) and outside (nonlitigation) courts. In Indonesia, a graduate organization that has a higher education background must take a special education and a professional examination carried out by a lawyer organization.

However, there is a difference between the term advocate and lawyer. Advocates are from the Supreme Court after receiving advice from the Supreme Court. The legal boundary of the task advocate is all provinces in Indonesia. Whereas the lawyer, who is someone who helps the plaintiff and the defendant and certain conditions are permitted in the jurisdiction of the Court of Appeal. This is also the case for the defendants and defendants not only before the High Court but also before all the District Courts within the jurisdiction of the Court of Appeal.

An application for the Supreme Court and the Supreme Court, who all advice on the application. The Supreme Court will be able to send a message to the Supreme Court. After passing the exam, the Minister of Justice, after receiving a report on the results of the exam, will appoint the applicant as a lawyer. The appointed lawyer before the High Court.

And there is a term that has a relationship with a lawyer or advocate is a legal consultant, namely someone who does not have a license to advocate or lawyer, but he must have sufficient knowledge about legal dispute resolution. Adequate knowledge has no strict criteria but at least a legal consultant must have a legal education background and experience resolving legal disputes, especially outside the court. In resolving the dispute a legal consultant only advice.

## 3. METHOD OF EXISTENCE OF ATTORNEY OR ADVOCATE IN INDONESIA:

In legal decisions in Indonesia, lawyers or advocates are the realization of the right to receive legal assistance from parties deemed capable of defending the problems being faced by the defendant / plaintiff or the suspect / defendant. The definition of legal aid is closely related to assistance or legal services for people who cannot afford it. This is confirmed in article 1 point 6 of Law No.18 of 2003 concerning advocates, which reads (the contents) are: "Legal assistance is a legal service provided by lawyers free of charge to clients who are unable, while those who are able to request legal services to advocates. Understanding advocates based on article 1 point 1 of Law No. 18 of 2003 is: "People who provide legal services, both inside and outside the court that meet the requirements based on the provisions of this Act".

Legal services by advocates can be grouped in litigation and non-litigation. Litigation is the provision of legal services for anyone who needs before and during the trial process in court. Non-litigation is the provision of advice and legal services for anyone who needs and is not in a court process in court.

In the Religious Courts a legal aid provider and legal services can assist the parties or can also represent the parties after receiving a special power of attorney. Furthermore, in article 2 paragraph 1 of Law No. 18 of 2003 it was explained that: "Those who can be appointed as advocates are scholars who have a background in legal higher education and after participating in special education in the advocate profession carried out by the organization".

In the explanation of article by article of this Law, it is explained that what is meant by "background in law education" is graduates of law faculties, syari'ah faculties, military law colleges and police science colleges.

Requirements to become an advocate include graduating from law higher education, taking part in the Advocate Professional Special Education, passing an advocate exam, and having been apprenticed for two consecutive years at the advocate's office. The implementation of special education and advocate examinations is the authority of professional organizations. In addition, professional organizations also carry out appointments, supervision (by the Supervisory Board) and take action, including dismissing advocates (by the Honorary Board).

So far, advocate organizations have joined the Indonesian Advocates Working Committee (KKAI) which was declared by Indonesian Advocates' professional organizations consisting of: Indonesian Advocates Association (IKADIN), Indonesian Legal Counsel (IPHI), Indonesian Legal Consultants Association (AKHI), Legal Consultants Association Indonesian Capital Market (HKHPM), Indonesian Lawyers Union (SPI), Indonesian Advocates and Lawyers Association (HAPI) and Indonesian Sharia Lawyers Association (APSI). According to the Law of Advocates, professional organizations must have been established no later than 2 years. The mandate of the Advocate Law has been realized with the establishment of the Indonesian Advocates Association (PERADI).

#### 4 ANALYSIS OF LEGAL AID RESULTS BY ADVOCATES:

Yahya Harahap in the book on the Position of Authority and Event of the Religious Courts, Law No.7 of 1989 outlines the boundaries of providing assistance, the assistance referred to in his description is legal assistance by judges to justice seekers needed before and during the proceedings in court. In Article 58 paragraph 2 of Law No.7 of 1989 in conjunction with Article 5 paragraph 2 of Law No. 14 of 1970 in conjunction with Article 5 paragraph 2 of Law No. 4 of 2004 which is a guideline for judges in carrying out the function of providing assistance. However, the provisions of this article only confirm the subject, namely "justice seekers".

There is an opinion stating that the words of justice seekers contain the connotation of the plaintiff. When viewed in terms of civil law, those who litigate before a court and jointly seek justice are the plaintiff and the defendant. Therefore, the opinion stating that the justice seeker is only the plaintiff is inappropriate. Based on this description, the words of justice seekers included the plaintiff and the defendant. And the judge provides assistance to the plaintiff and the defendant.

Another problem that needs to be explained is about the object of assistance that the judge can give. Regarding the object of assistance will be reviewed from two angles, namely in the form of general restrictions and in the form of details of problems that can be reached by judges in providing assistance or advice. Regarding the general limitation, it can be explained that the provision of assistance or advice is in accordance with the law as far as matters relating to formal problems. This means that the scope of the functions of giving advice and assistance is mainly related to the procedure for proceedings in front of court proceedings. Whereas matters relating to material or principal matters of the case are not included in the range of these functions. This is intended so that clear, directed and not deviating from the rules of procedure that are justified by the Law. In addition, so that formal mistakes do not compromise the certainty of law enforcement.

Next will be explained about the details of the formal problems covered by the object of the function of providing assistance and legal advice. The details include:

1. Making a lawsuit for the illiterate;
2. Give direction to the "prodeo" permit procedure;
3. Suggesting improvements to the power of attorney;
4. Encouraging repairs to claims;
5. Provide an explanation of valid evidence;
6. Provide an explanation of how to file a rebuttal and answer;
7. Assistance in formally calling witnesses;
8. Providing legal assistance;
9. Provide an explanation of procedures for verification and reconciliation;
10. Mobilize and help formulate peace.

With the development of legal services or lawyers and legal aid professions, the ten activities can be assisted by lawyers and legal aid providers, both out of court or non-litigation as well as in litigation in court or litigation in the provision of assistance.

The provisions of article 58 paragraph 2 of Act No.7 of 1989 in conjunction with article 5 of Law No. 14 of 1970 are guidelines for judges in carrying out the function of providing assistance. However, the provisions of this article only confirm the subject, namely "justice seekers". There is an opinion stating that the words of justice seekers contain the connotation of the plaintiff. If viewed in terms of civil law, those who litigate before a court hearing who are equally seeking justice are the plaintiff and the defendant.

Regarding the standard cost there is no standard. For inadequate legal seekers, the head of the court can order to provide legal assistance for free. To determine whether a justice seeker is entitled to free assistance, a summarized examination is required by the relevant District Court of residence, which can be handed over to several judges by the chairman of the court. People who are given free legal assistance can be plaintiffs or defendants in civil cases or a accused in a criminal case.

In addition, there is also the Legal Aid Institute (LBH) which also provides assistance to justice seekers who cannot afford to take a lawyer

## 5. CONCLUSION:

For example, advocates only use their clients to make money and moreover violate the professional ethics of advocates by not keeping the client's secrets. I sometimes think so too. When I saw the News Dot Com show (I forgot the date), there was a heated debate between Fajroel Rahman and HM Assegaf (a lawyer for the former ruler of Soeharto's new order). In the debate it was questioned how the "conscience" of the advocate clearly defended those who were in general view guilty; not only about corruption, but also crimes against humanity. But the advocate argued, in the world of advocates, it must uphold professionalism and truth. Professionalism is defined as an act of "protecting" clients from any group and the truth referred to as truth (for the theme "truth" actually has become a heated debate in the philosophy of law) in the court which is of course after the process of proof etc. In other words, for me, an advocate can be a good friend, but also has the potential to become a friend of bad people. Especially in the Islamic tradition, advocates are also still unclear (for some time to come I want to find the answer in detail). The existence of Law Number 18 Year 2003 concerning Advocates promulgated on April 5, 2006, not only provides legal certainty and legal status for lawyers as law enforcers, who provide legal services, (such as: providing legal consultations, exercising power, representing, assisting, defending and carrying out other legal actions for the interests of the client), but also demanding the birth of professional advocates for the sake of the creation of law and justice.

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