

Analysis of The Concept of *Ji'alah* in Determining Success Fees For Civil Lawyers: Case Study of Lawyers in Banda Aceh

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Abstract

The practice of setting success fees for civil law attorneys in Banda Aceh often sparks debate, particularly regarding its compatibility with professional ethics and Islamic economic principles. This study aims to analyse this practice from an Islamic law perspective, using the concept of *ji'alah* as a theoretical framework. Using a normative-empirical approach, this descriptive-analytical study collected data through interviews and documentary studies. The results show that solicitors in Banda Aceh systematically set success fees, with compensation generally ranging from 10% to 25% of the value of the assets recovered. The main findings show that this practice substantially reflects the elements of *ji'alah*, including an agreement at the outset and the provision of compensation based on the success of the work. Furthermore, this practice is considered to be in accordance with the principles of muamalah, including justice (*'adl*), willingness (*tarādhi*), and the prohibition of *gharar*, because compensation is only given if the work is successful.

Keywords: Success fee, *Ji'alah*, Advocate, Islamic Law, Civil Case.

Introduction

The practice of using advocates in civil dispute resolution is common in Banda Aceh as a means of seeking justice through legal channels. The agreement between the advocate and the client generally includes a variable fee payment scheme, including a success fee, which is paid if the advocate wins the case. This scheme differs from a fixed fee because the reward depends on the outcome of the case being handled. Therefore, this practice needs to be examined more deeply to understand how the mechanism and its legal basis are applied in practice.

The phenomenon of success fees often sparks debate on both professional ethics and the law. Remuneration that is only given if the solicitor

wins the case can lead to conflicts of interest or even contradict the principle that solicitors are obliged to provide the best service without conditions, regardless of the outcome. This is different from standard fees paid for the professional service itself, not for the outcome. As a result, this practice requires a strong foundation to ensure legal and ethical accountability.

Various literature has examined the practice of solicitors' fees from an Islamic law perspective, but there is no consensus on the most appropriate contract. Most studies tend to identify solicitors' fees as *wakalah bil ujah* (representation with remuneration) or *ijarah* (service rental) contracts. However, both concepts have limitations when applied to conditional success fees. For example, research conducted by Haniatul Mas'udah examined this practice from the perspective of *ijarah*,¹ While Irfan Ulin Nuha analysed it as a *wakalah bil ujah* contract.² Both studies show that there is an academic debate about the appropriate name for *success fees*. Therefore, the existing approaches do not yet provide a strong justification for results-oriented payment models.

However, previous studies rarely examine in depth the relationship between success fees and the concept of *ji'alah*. Most research still focuses on the debate between *wakalah* and *ijarah*, which is less relevant because payments under both contracts do not depend on results. Consequently, the validity of success fees from *Ji'alah's* perspective is often overlooked. For example, Mufadhhal's research specifically discusses lawyers' fees as *ijarah bil' amal* in Banda Aceh, without touching on *ji'alah*.³ Similarly, other studies focusing on professional ethics have not provided an in-depth comparative analysis. This limitation creates an important research gap. Thus, this study is crucial to fill this gap in the literature.

To answer this debate, the concept of *ji'alah* in Islamic law offers a relevant analytical framework. *Ji'alah* is defined as an agreement that contains a promise of reward for the completion of a certain job or result that is not bound by time.⁴ For example, someone promises a reward to anyone who

¹ Haniatul Mas'udah "An Islamic Legal Review of the Practice of Success Fees for Advocates in Civil Cases (Case Study at the Law Office of M. Nurudluha, SF., S.Ag., S.H., & Partners, and the Law Office and Mediator Hidayatun Rohman AM, S.H., M.H., & Partners)." *Thesis*, Salatiga: State Islamic Institute of Salatiga, 2021.

² Irfan Ulin Nuha, "Analysis of the Application of the Concept of Wakalah Bil Ujah to the Practice of Determining Attorney Fees: A Case Study of Peradi and APSI Attorneys in Ponorogo Regency," *Thesis*, Ponorogo: State Islamic Institute (IAIN) Ponorogo, 2023

³ Mufadhhal, "Attorney Fees in Ijarah bil 'Amal Contracts: A Study of Research at the Banda Aceh Law Firm", *Thesis*, Banda Aceh: UIN Ar-Raniry Banda Aceh, 2023

⁴ Muhammad al-Idrisi, *Al-Fiqh al-Maliki wa Adillatuhu*, Juz 2, (Beirut: Dar al-Kutub al-Ilmiyyah, 1999), p. 285.

successfully finds their lost item. Therefore, the concept of *ji'alah* has the potential to serve as a strong theoretical basis for justifying the practice of success fees in Islamic law.

This research is of high urgency given Banda Aceh's status as a region that formally implements Islamic law. It is important for legal practices in this region to not only be legally valid but also in line with the Islamic principles embraced by the community. By examining success fees from Ji'alah's perspective, this study can provide a deep understanding of their compatibility with Islamic values. Thus, public trust in the legal profession will increase because the practices carried out have a clear and accountable basis.

Academically, this study is expected to fill a gap in the literature that specifically examines success fees in the context of Islamic law in Indonesia, particularly in Banda Aceh. Most studies on lawyers' fees tend to focus on legal aspects without addressing the dimensions of Sharia law. For example, there are studies on professional ethics, but few relate them deeply to contracts in muamalah. Thus, this study makes a significant contribution by offering a new perspective that can enrich the scientific knowledge in the field of Sharia law and economics.

On a practical level, the results of this study can serve as a guide for lawyers and clients in drafting *success fee* agreements that are transparent, fair, and in accordance with Sharia principles. With a clear understanding of the concept of *ji'alah*, both parties can avoid potential disputes in the future. For example, this understanding can help determine a reasonable success fee and a payment mechanism that does not disadvantage either party. Therefore, these findings are highly relevant to creating a healthier legal ecosystem grounded in justice.

Data and Method

This study adopts a normative-empirical approach to analyse the compatibility between the concept of *ji'alah* in Islamic law and the success fee practices applied by civil lawyers in Banda Aceh. This study uses two main data types. Primary data was obtained through in-depth interviews with advocates practising at several law firms in Banda Aceh, namely DSI Law Firm, Yulfan & Partners Law Firm, and Nourman & Partners Law Firm. These interviews aimed to obtain first-hand information about their mechanisms and experiences in determining success fees.

Meanwhile, secondary data were collected through document studies of scientific literature, positive legal regulations (such as the Advocate Law and the Professional Code of Ethics), and relevant sources of Islamic law, such as the Qur'an and hadith on *ji'alah*. All collected data was then processed qualitatively, where primary data from interviews was compared and analysed within a conceptual framework constructed from secondary data. Thus, this study provides a comprehensive overview of how the concept of *ji'alah* can serve as a theoretical basis for the practice of success fees in Banda Aceh.

Results and Discussion

A. The Practice of Setting Success Fees for Civil Lawyers in Banda Aceh

The practice of setting success fees for civil lawyers in Banda Aceh generally begins with a written agreement between the lawyer and the client. This agreement serves as the legal basis for the parties' obligations; without it, success fees cannot be requested. In practice, the process begins with an initial consultation, during which the lawyer analyses the case to assess its level of difficulty and potential for success. Based on this analysis, the solicitor then submits a *success fee* offer for negotiation with the client until an agreement is reached. The agreement is then set out in a power of attorney or in a separate agreement, signed by both parties. Thus, the initial agreement is a crucial stage in determining a valid and transparent success fee.

Various qualitative and quantitative factors influence the determination of the success fee amount. These factors reflect the complexity and risks borne by the solicitor in handling a case, as the higher the complexity, the greater the potential success fee. Based on field findings, the main factors that influence the amount of *the success fee* include the complexity of the case, the number of parties involved in the dispute, the location of the trial, and the value of the dispute.⁵ In addition, the seniority and reputation of the solicitor are also taken into consideration, with senior solicitors tending to set higher *success fees*. This combination of factors shows that fee determination is not based solely on the value of the dispute, but also on the solicitor's expertise and experience. Therefore, the amount of *the success fee* is determined by a comprehensive assessment of the case and the solicitor's capacity.

⁵ Interview with Nourman, at the Nourman & Partners Law Office, 19 March 2025, in Ulee Kareng District, Banda Aceh City.

The success fee is generally calculated as a percentage of the value of the assets or claims successfully recovered for the client. This percentage method is considered fair because the fee paid is proportional to the economic benefits the client would obtain if the case is successful. Clients do not have to pay a large amount if there is no significant victory. The results of the interviews show that the commonly agreed range for success fees is 10% to 25% of the value of the assets subject to the dispute.⁶ For example, if a client wins a property dispute worth £1 billion, an agreed *success fee* of 10% would amount to £100 million. This percentage varies and depends heavily on the terms of the negotiation. Thus, the percentage of the dispute value is the main benchmark for determining the amount of *the success fee*.

The success fee is paid only after the solicitor has successfully won the case or achieved the results agreed in the agreement. This condition makes the payment conditional, unlike a fixed fee that is paid regardless of the outcome. This also provides more motivation for solicitors to work hard to achieve victory. Documentation data show that in many agreements, the success fee payment clause applies only after a court decision becomes final and binding (*inkracht van gewijsde*).⁷ In fact, in some cases, payment can be made in instalments, in cash, or by bank transfer after the decision is issued. Therefore, the payment of success fees is closely linked to a positive outcome.

In addition to technical factors and economic value, the determination of *success fees* is also influenced by non-legal factors, such as personal relationships and empathy. A good relationship between the solicitor and the client can influence negotiations and the fee amount. The client's emotional state, which is under pressure due to their case, can also be a consideration. In-depth interviews reveal that solicitors often consider the client's economic circumstances and the level of emotional distress they are experiencing.⁸ For example, in cases involving highly sensitive personal issues, solicitors may be willing to reduce their *fees*. This consideration shows that the legal profession is not only profit-oriented but also values humanity. Thus, emotional factors and human values play an important role in *success fee* negotiations.

The flexible determination of *success fees* also indicates that there are no rigid rules governing the amount of lawyers' fees. The absence of standard

⁶ Interview with Ikhsan Fajri, at the DSI Law Firm, on 8 November 2024, in Syiah Kuala District, Banda Aceh City.

⁷ Interview with Sofyanizar, on 12 March 2025, in Banda Aceh City.

⁸ Interview with Yulfan, at the Yulfan & Partners Law Office, on 6 March 2025, in Banda Raya District, Banda Aceh City.

regulations gives lawyers and clients the autonomy to reach mutually beneficial agreements. Article 21, paragraph (1) of Law Number 18 of 2003 concerning Advocates states that advocates have the right to receive fees for their professional services, and Article 21, paragraph (2) further states that the amount is determined based on agreement.⁹ This provision gives the parties the freedom to negotiate. This practice does not violate the professional code of ethics, provided it upholds the principle of propriety. The agreed percentage also takes into account the client's ability to pay. Thus, the existence of *success fees* is supported by a legal basis that facilitates agreements between advocates and clients.

The conditional nature of *success fee* payments creates an ethical and professional incentive for advocates to perform at their best. This motivation stems from the awareness that their remuneration depends entirely on their success in fighting for their clients' rights. This is in contrast to fixed fees, which may not provide as strong an incentive to work hard. Lawyers who apply this system are naturally encouraged to analyse cases more carefully, develop more mature legal strategies, and negotiate more persistently. They will proactively communicate every development in the case to their clients. Client trust will grow along with the dedication shown. Therefore, *success fees* are not merely a payment scheme, but a mechanism that encourages professionalism and accountability among lawyers.

B. The Concept of Ji'alah in Islamic Law

The concept of *ji'alah* in Islamic law offers a relevant analytical framework for reviewing the practice of *success fees*. This contract is very different from an *ijarah* (service lease contract) because payment does not depend on effort, but on the agreed results. In *ijarah*, payment must still be made even if the objective is not achieved, whereas in *ji'alah*, payment is only made if the work is completed. Fiqh scholars define *ji'alah* as an agreement containing a promise of reward for the completion of a job or the attainment of a result that is not time-bound. A classic example often given is the promise of a reward for anyone who successfully finds a lost item. Thus, *ji'alah* is a more appropriate basis for results-oriented practices such as *success fees*.¹⁰

To be considered *ji'alah*, an agreement must fulfil the pillars and conditions established in muamalah fiqh. The pillars of *ji'alah* consist of *ja'il*

⁹ Law No. 18 of 2003 on Advocates.

¹⁰ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuh*, Volume 5 (Damascus: Dar al-Fikr, 1985), p. 389.

(the person promising the reward), *'amil* (the person performing the work), and *ju'l* (the promised reward), and the existence of these pillars is an absolute prerequisite for the agreement to be valid. In addition, some conditions include clarity of work (*ma'lum al-'amal*) and clarity of reward (*ma'lum al-ju'l*). According to the Shafi'i and Hanafi schools of thought, *ju'l* must be in the form of assets that have economic value, such as cash, property, or valuables. Without fulfilling these pillars and conditions, an agreement cannot be classified as a *ji'alah*.¹¹

Success fees that depend on winning a case may potentially contain elements of *gharar* if not managed properly, but the concept of *ji'alah* can eliminate this. *Gharar* is an element of uncertainty that can invalidate a contract in Islam, as it has the potential to harm one of the parties. In the case of *success fees*, the uncertainty lies in the outcome of the case, which cannot be ascertained and, at first glance, resembles *gharar*. However, scholars argue that *ji'alah* intrinsically contains an element of permissible *gharar* (*gharar yasir*). This element is considered reasonable because the success of the work cannot be guaranteed. Since the reward will only be given if the work is successful, there is no loss to the party promising the reward. Thus, *ji'alah* is a valid contract even though it contains an element of uncertainty, because this element does not harm any party.¹²

An analysis of the practice of *success fees* among civil lawyers in Banda Aceh shows substantial conformity with the principles of *ji'alah*. This is evident in the promise of remuneration and payment based on the outcome, both of which are central to the *ji'alah* contract. The practice in the field begins with a written agreement between the lawyer and the client specifying the percentage of the fee if the case is won. Payment will only be made after the court decision has permanent legal force (*inkracht van gewijsde*). If the lawyer fails, the client does not have to pay the *success fee*. Therefore, the practice of *success fees* in Banda Aceh has practically adopted the *ji'alah* model in its payment system.¹³

Applying the concept of *ji'alah* as the basis for *success fees* not only affords Islamic legal validity but also strengthens advocates' professional ethics. This concept encourages advocates to work professionally and to the best of their ability because the rewards they receive are highly dependent on their success.

¹¹ Abdul Rahman Ghazali, *Fiqih Mua'malah* (Jakarta: Kencana Prenada Media Group, 2010), p. 141.

¹² Ibn Qudamah, *Al-Mughni*, Volume 4 (Beirut: Dar al-Kutub al-'Ilmiyah, 1997), p. 364.

¹³ Afriani and Ahmad Saepudin, "Implementation of Sale Contracts in Sharia Financial Institutions," *EKSISBANK Journal*, Vol. 2, No. 1, p. 60.

It also ensures fairness for clients, as they only pay for successful results. With the *Ji'alah Foundation*, the practice of *success fees* is in line with muamalah principles such as justice (*'adl*) and mutual consent (*tarādhi*). Clients do not feel burdened to pay if there is no significant victory. This shows that *success fees* are a fair and ethical scheme.¹⁴

Furthermore, the concept of *ji'alah* also provides a strong theoretical basis for the development of modern contracts in Islamic law and business practices. In various Islamic financial institutions, the *ji'alah* contract has been adopted for results-based schemes, such as rewards or bonuses for achieving certain goals. This demonstrates the flexibility of *ji'alah* as an instrument that is compatible with contemporary needs without losing its classical fiqh foundation. Therefore, its application to solicitors' success fees is an innovation rooted in Islamic legal tradition.¹⁵

Furthermore, the legitimacy of *ji'alah* in the context of *success fees* can also be seen as a bridge between positive law and Islamic law. On the one hand, the regulation of the legal profession recognises results-based fees, provided they are set out in a written agreement. On the other hand, *Ji'alah* provides sharia legitimacy by emphasising the principles of willingness (*tarādhi*) and justice. With this compatibility, the practice of *success fees* is not only legally valid but also acceptable under Sharia, thereby strengthening the position of Muslim lawyers in the practice of their profession.¹⁶

C. Analysis of the Compatibility of Success Fee Practices with the Concept of Ji'alah

The practice of *success fees* among civil lawyers in Banda Aceh is substantially in line with the basic principles of *ji'alah* contracts. This alignment lies in the main element of *ji'alah* contracts: the promise of compensation upon the completion of a job or the achievement of a result. This difference is crucial because it distinguishes it from *ijarah*, where services are paid for regardless of the outcome. In practice, *success fee* agreements always specify the amount of remuneration to be paid *if* the case is won. This payment is only activated after the court decision becomes final and binding (*inkracht van gewijsde*), indicating that the result is the only prerequisite. Clients are not

¹⁴ M. Ali Hasan, *Various Types of Transactions in Islam (Fiqh Muamalah)* (Jakarta: PT. Raja Grafindo Persada, 2003), p. 265.

¹⁵ Rozalinda, *Sharia Economic Fiqh* (Jakarta: PT Rajagrafindo Persada, 2016), p. 149.

¹⁶ V. Harlen Sinaga, *Fundamentals of the Legal Profession* (Jakarta: Erlangga, 2018), p. 112.

required to pay a *success fee* if the case is lost. Thus, this payment model directly adopts the essential structure of the *ji'alah* contract.

The pillars of *ji'alah* (*ja'il*, *'amil*, *ju'l*) are perfectly fulfilled in the existing practice of *success fees*. The existence of these three pillars is an absolute requirement for the validity of the *ji'alah* contract. Without one of these pillars, the contract will be void. In the case of a *success fee*, the client acts as *the ja'il* (the party promising the reward), the solicitor acts as *the 'amil* (the party performing the work), and the agreed percentage becomes *the ju'l* (the reward). All of these elements exist and are clearly defined in the agreement. These pillars exist from the moment the agreement is signed. Therefore, the practice of *success fees* fulfils the basic requirements for the validity of a *ji'alah* contract under its pillars.

The *success fee* practice successfully avoids the harmful element of *gharar*, in accordance with the concept of *ji'alah*. *Gharar* is an element of uncertainty that can invalidate an agreement in Islam, as it has the potential to harm one of the parties. In the case of *success fees*, the uncertainty lies in the outcome of the case, which cannot be ascertained and, at first glance, resembles *gharar*. However, scholars argue that *ji'alah* intrinsically contains an element of forgivable *gharar* (*gharar yasir*). This element is considered reasonable because the success of the work cannot be guaranteed. Since the reward will only be given if the work is successful, there is no loss to the party promising the reward. Thus, *ji'alah* is a valid contract despite its element of uncertainty, as this element does not cause harm to any party.

The *success fee* agreement reflects the principles of justice (*'adl*) and mutual consent (*tarādhī*), which are important pillars in muamalah. Fairness is achieved because advocates receive compensation proportional to the benefits they provide to clients. Mutual consent arises from a negotiation process that results in an agreement without coercion. Fees calculated as a percentage of the dispute value (proportional fees) are considered fair because they are commensurate with the results obtained for the client. The transparent negotiation process allows both parties to agree on a reasonable *fee*. Clients agree to pay a large fee because they recover assets of much greater value. This *success-fee practice is, therefore, a fair contract* based on the mutual consent of both parties.

A comprehensive analysis shows that *success fees* are not only similar to, but in fact a substantial implementation of, the *ji'alah* contract in a modern context. All the key elements of *ji'alah*, from the pillars and conditions to the principle of fairness, are well fulfilled in this practice. The application of this

concept provides Sharia legal validity. The practice in Banda Aceh clearly shows a promise of a reward whose amount is uncertain at the outset but is tied to the success of the work, namely, winning the case. The existence of a written agreement strengthens this contract as a valid *ji'alah*. Clients do not pay if the advocate loses. Thus, the concept of *ji'alah* can serve as a strong and valid theoretical basis for the practice of success fees by civil advocates.

Conclusion

Based on the analysis and discussion, several important conclusions can be drawn about the practice of setting *success fees* for civil lawyers in Banda Aceh. This practice is substantially in line with the concept of *ji'alah* in Islamic law. This alignment is evidenced by the fulfillment of all the pillars of *ji'alah*, namely the existence of *ja'il* (client), *'amil* (lawyer), and *ju'l* (compensation in the form of a percentage of the value of the dispute). In addition, this practice successfully avoids the harmful element of *gharar*, because the payment of fees depends entirely on the lawyer's success in winning the case. Thus, the *success fees* applied in Banda Aceh not only fulfil the legality of the agreement, but are also in line with muamalah principles such as justice (*'adl*) and mutual consent (*tarādhi*).

As a recommendation, it is suggested that advocates in Banda Aceh continue to strengthen this practice by ensuring that every *success fee* agreement is set out in a clear, written agreement, to avoid any doubt from a legal or ethical perspective. For further research, it is recommended that a comparative study be conducted with similar practices in other regions, or that *success fees* be analysed from the perspective of the advocate profession under law, to gain a more comprehensive understanding.

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