

Revitalizing Sharia Advocates: Reforming the Law on Advocates in Strengthening the Role of Islamic Law in Indonesia

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Abstract

This study aims to evaluate the urgent need to restore the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates (UUA) to position Sharia advocates as the exclusive legal representatives in religious courts. The research uses a normative juridical method, focusing on the examination of legal norms, rules, and relevant literature. Data were collected through a comprehensive review of legal documents, statutes, and academic sources, and analyzed qualitatively to interpret and critique the legal provisions and their implications. The findings reveal that the current lack of specificity in the advocate profession, particularly in religious courts, has led to the involvement of advocates who may lack the necessary background in Sharia law, potentially harming the legal interests of Muslim clients. The conclusion emphasizes that restoring the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates to recognize only Sharia advocates in religious courts aligns with the nature of these courts and does not violate human rights. This restoration is vital for protecting the legal interests of Muslims and enhancing the professionalism of Sharia advocates in religious courts, including preparing students of the Faculty of Sharia for specialized legal roles. By promoting legal

reforms, the study improves the efficiency of religious courts and ensures better access to justice for Muslim communities.

Keywords: Role of Islamic law; sharia advocate; reforming the law

Introduction

The profession of advocate is one of the oldest in human civilization, often regarded as a noble profession (*officium nobile*) that provides essential legal services to society.¹ The primary principle guiding this profession is the prioritization of clients' interests while upholding justice and legal certainty for society at large. As a noble profession, advocates play a crucial role in helping to deliver justice for the clients they defend, ensuring that cases are handled honorably, and upholding the integrity of the legal system.² However, a significant legal issue arises concerning the representation of Muslim clients in Indonesia's religious courts. Despite the specialized nature of these courts, which primarily handle cases related to Islamic law—such as inheritance, divorce, and Sharia economic disputes—there is no legal requirement that the advocates representing clients in these courts possess a background in Sharia law. This gap has led to instances where advocates lacking adequate knowledge of Sharia, or even non-Muslim advocates, represent clients in religious courts, potentially compromising the legal interests of Muslim clients.³

The urgency of this issue is compounded by the fact that the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates (UUA) does not specifically mandate that only Sharia-trained advocates represent clients in religious courts. This has resulted in a lack of specificity and specialization within the advocate profession, particularly in cases that require a deep understanding of Islamic law. The absence of such a requirement contradicts the very nature of religious courts as specialized forums for resolving disputes among Muslims, as outlined in Article 1, number 1, and Article 2 of the Law on Religious Courts. This study aims to evaluate the urgent need for the restoration of the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates (UUA) to position Sharia advocates as the exclusive legal representatives in religious courts. By doing so, it seeks to protect the legal interests of Muslim clients and ensure that the advocates handling their cases possess the necessary expertise in Islamic law.⁴

¹ Jefry Tarantang, "Buku Ajar Etika Profesi Advokat" (K-Media, 2021). hlm.54.

² Diyan Putri Ayu and Wahyudi Wahyudi, "Etika Profesi Advokat Dalam Perspektif Hukum Islam," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 3, no. 1 (2021): 138–63.

³ Budi Sastra Panjaitan and M SH, *Dari Advokat Untuk Keadilan Sosial* (Yogyakarta: Deepublish, 2022). hlm.37.

⁴ Yusefri Yusefri, Mu'adil Faizin, and Wahyu Abdul Jafar, "Protecting Child Labor Rights: Maqasid Sharia Framework and Policy Recommendations," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (July 31, 2024): 1188, <https://doi.org/10.22373/sjhh.v8i2.24559>.

In the realm of practice, for example, specialization is needed for advocates; it is not generally considered that advocates can handle all matters (able to handle all things). For example, cases of inheritance, divorce, or grants among Muslims who use religious courts as a place for resolution, in fact sometimes some lawyers do not have a legal education background from the Faculty of Sharia who are advocates for the parties or even quite a few are handled by advocates who are not Muslim, for example, in this case from now on referred to as sharia advocates. Another thing is the cases related to Sharia's economic disputes. Indeed, legally, there is no prohibition on certain lawyers not being able to handle cases of Muslims in the Religious Courts.⁵

However, in terms of "specificity," it seems there are no longer any advocates with legal education backgrounds from the Sharia Faculty, even though, in practice, there are quite a few advocates with legal education backgrounds from the Sharia Faculty in Indonesia. Legally, it has been confirmed in Article 1 number 1 of Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts, "Religious Courts are courts for people who are Muslim," in Article 2 The law also reiterates, "The Religious Courts are one of the actors of judicial power for people seeking justice who are Muslims regarding certain cases as intended in this Law."⁶

As a special court for those seeking justice who are Muslim, advocates who are involved in handling cases in the Religious Courts should also be advocates who are Muslim, primary alumni of the Faculty of Sharia, because alumni of the Faculty of Sharia, specifically in their education system understand the laws relating to Islam, only a small part of legal understanding is national in nature.⁷ This is where justice is demanded in treatment; on the one hand, there is legal treatment that religious justice is a special court for people seeking justice who are Muslim, but on the other hand, there is treatment that is not in line with the words of Article 1 number 1 and Article 2 of the Religious Justice Law with Advocates who handle cases in religious courts, should be because the nature of religious courts is specifically for people seeking justice who are Muslims, advocates who handle cases in religious courts must also be sharia advocates.⁸

⁵ Mutiara Nora Peace Hasibuan and Mujiono Hafidh Prasetyo, "Kedudukan Advokat Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Ius Constituendum* 7, no. 1 (2022): 159–76.

⁶ Claire D Advokat, Devan Guidry, and Leslie Martino, "Licit and Illicit Use of Medications for Attention-Deficit Hyperactivity Disorder in Undergraduate College Students," *Journal of American College Health* 56, no. 6 (2008): 601–6.

⁷ Fiska Maulidian Nugroho, "Integritas Advokat Dan Kebebasannya Dalam Berprofesi: Ditinjau Dari Penegakan Kode Etik Advokat," *Rechtidee* 11, no. 1 (2016): 14–29.

⁸ Setyo Langgeng, "Peran Advokat Sebagai Penegak Hukum Dalam Mendukung Terwujudnya Sistem Peradilan Pidana Terpadu Dalam Penegakan Hukum Pidana Di Indonesia," *Jurnal Daulat Hukum* 1, no. 1 (2018). hlm.46.

Previous studies on the advocate profession in Indonesia have largely focused on general legal frameworks,⁹ the role of advocates in preventing crimes like money laundering,¹⁰ and the provision of legal aid.¹¹ However, these studies have not thoroughly examined the need for Sharia expertise in religious courts or the implications of restoring the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates (UUA) to recognize Sharia advocates. This research fills these gaps by emphasizing the importance of specialized competencies for advocates in religious courts and exploring how legal reforms can enhance their role without violating human rights. By addressing these gaps, this study aims to make a significant contribution to strengthening the role of Islamic law in Indonesia through the reform of the UUA and ensuring more competent and fair legal representation for Muslims in religious courts.

The research adopts a normative juridical approach, focusing on legal norms, statutes, doctrines, and jurisprudence. This method analyzes existing laws, particularly the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates (UUA), as well as proposed amendments. The study seeks to answer the research question: How can the revision of Law No. 18 of 2003 to exclusively recognize Sharia advocates in religious courts improve the quality of legal representation for Muslim clients? Legal materials were collected through library research, including an examination of the current Advocates Law, the Draft Law on Advocates, and relevant literature. Data analysis involved interpreting legal texts and doctrines to address the issue of reforming advocate laws to enhance the role of Islamic law in Indonesia.¹² The urgency of this research is underscored by the current legal framework's inadequacy in safeguarding the legal interests of Muslim clients, necessitating an immediate review and restructuring of the UUA to address this gap.

Discussion

The Role, Ethics, Professionalism, and Condition of Advocates in Religious Courts

The advocate profession is a job, but the word profession only shows a small part of the job; only some who work are said to be doing a profession.

⁹ Nur Solikin and Anis Rohmatullah, "The Regulatory Reform of Advocate Organizations in Proposing Oath of Prospective Advocates in Indonesia," *Jurnal Kajian Pembaruan Hukum* 2, no. 2 (August 31, 2022): 133, <https://doi.org/10.19184/jkph.v2i2.23400>.

¹⁰ Rendy Ardy Septia Yuristara, "Pertanggungjawaban Advokat Sebagai Gatekeeper Dalam Kaitannya Dengan Tindak Pidana Pencucian Uang," *Media Iuris* 1, no. 2 (2018): 350, <https://doi.org/10.20473/mi.v1i2.8835>.

¹¹ Suparno Suparno and Qorib Qorib, "Strengthening the Role of Advocates in Providing Legal Assistance to Indonesian Society," *Jurnal Indonesia Sosial Sains* 5, no. 1 (2024): 1387–94, <https://doi.org/10.59141/jiss.v5i1.943>.

¹² Derita Prapti Rahayu, M SH, and Sesi Ke, "Metode Penelitian Hukum," *Yogyakarta: Thafa Media*, 2020. hlm.56.

""A profession is a job that a person is engaged in. However, not all jobs can be classified as professions¹³. ""In other words, work has a broader connotation than profession. A profession is a job, but not all jobs are professions "" it requires educated knowledge to provide its services. As a profession in the legal field, the advocate profession cannot be separated from professional ethics. Professional ethics are a bulwark for people in any profession, including the advocate profession. "Profession cannot be separated from ethics; ethics is a real form tied to expertise and is then accountable to society." A profession is "a field of work based on certain educational expertise (skills, vocations, etc.)."¹⁴ Meanwhile, profession means "having a profession." Professional work involves people with special skills obtained through specific education and are subject to professional ethics. With these acquired skills, experienced workers will work better than jobs not tied to a particular code of ethics and not obtained through special education. Franz Magnis Suseno differentiates professions into two types, namely professions in general and noble professions.¹⁵

Table 1. Differentiation Between General Professions and Noble Professions

Aspect	General Professions	Noble Professions
Primary Motivation	Earn a living	Serve society
Main Principles	Profit-oriented	Prioritizing clients' interests
Ethical Requirements	Varies	High morality, integrity
Service to Society	Not primary focus	Core element
Example	Business executive	Advocate, doctor

The difference between professions in general and noble professions lies in the element of service to society. A noble profession is a service to humans or society, and the primary motivation is not to earn a living from one's work. For a noble profession (*officium nobile*), there are two essential principles, namely:¹⁶ 1) Putting the interests of the person being helped first, whether it is a client or patient, and 2) Dedicated to the noble demands of the profession. An example of the latter, for example, is that an advocate may not deceive the judge by saying that the person he is defending is not fighting to win the case and get a high fee from his client.

¹³ Baren Sipayung, Julius Ibrani, and Henri Wilson Lubis, "Performa Profesi Advokat Sebagai *Officium Nobile* Menurut Pandangan Netizen (Studi Kasus Sdr. RAN)," *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 1, no. 3 (2023): 263–75.

¹⁴ Budi Sastra Panjaitan, "Profesi Advokat Sebagai Profesi Yang Mulia," *Jurnal Tectum* 1, no. 1 (2019). hlm.35.

¹⁵ Nur Farah Hana, Mughni Hafilla, and Fauziah Lubis, "Etika Profesi Advokat Dalam Perspektif Hukum Islam," *Journal on Education* 5, no. 2 (2023): 2383–89. hlm.26.

¹⁶ Hamdani Hamdani, "PANDANGAN HUKUM TERHADAP PROFESI ADVOKAT DALAM SEGI HUKUM ISLAM DAN HUKUM POSITIF," *Jurnal Review Pendidikan Dan Pengajaran (JRPP)* 7, no. 1 (2024): 1310–24.

Franz Magnis Suseno stated that to carry out a noble profession well, high morality is required from practitioners of that profession; three characteristics of high morality include:¹⁷ 1) Dare to act with determination by the demands of the profession; 2) Aware of his obligations; 3) Has high idealism. Historically, the provision of legal services by advocates in Indonesia cannot be separated from the history of colonialism carried out by the Dutch; at that time, the opportunity was given to patrol bamboo (*zaak warmer*), lawyers, and advocates to practice defending the interests of their clients in court. The existence of *bamboo pokrol*, lawyers, and advocates lies in their educational background; bamboo pokrol are case defenders who have yet to graduate from law school, while lawyers and advocates have education from law school. "The function of bamboo *pokrol* and lawyers or even advocates is not much different, namely bridging the legal interests of the community."¹⁸ With the ratification of the UUA, there are no longer the terms poker bamboo, lawyer, or advocate; everyone is called an advocate and must have a legal education background in legal services covering litigation and non-litigation.

Table 2. The Role of Advocates in the Indonesian Legal System

Category	Details
Law Enforcement System	The overarching system that includes various legal professions working to uphold law and order.
Core Legal Professions	<ol style="list-style-type: none"> 1. Police 2. Prosecutors 3. Judges
Advocates' Role	Unique Positioned alongside other core legal professions, advocates specialize in representing clients.
Client Legal Representation	The primary function of advocates, focusing on defending and protecting clients' legal rights.
Legal Services Provided by Advocates	<ol style="list-style-type: none"> 1. Legal Consultation 2. Legal Assistance 3. Representation in Court

The existence of advocates in the Indonesian legal system is equal to that of other law enforcement officers. "The advocates' position is the same as that of other law enforcers, namely police, prosecutors, judges, and chess wangsa." If the police, public prosecutors, and judges come from the state

¹⁷ Fadilah Raskasih, "Batasan Kebebasan Berpendapat Melalui Media Elektronik Dalam Perspektif HAM Dikaitkan Dengan Tindak Pidana Menurut UU ITE," *Journal Equitable* 5, no. 2 (2020): 147–67.

¹⁸ Budi Sastra Panjaitan, "Profesi Advokat Sebagai Profesi Yang Mulia", *Jurnal Tectum*, Volume 1, Nomor 1, November 2019, hlm. 139.

sector, then advocates come from the private sector.¹⁹ Even though they come from the private sector, the existing advocates are still recognized as law enforcement officers who carry out their duties freely and independently, are guaranteed by law and statutory regulations, and have working areas throughout the territory of the Republic of Indonesia by providing legal services in the form of providing legal consultations, legal assistance, exercising power of attorney, representing, assisting, defending, and carrying out other legal actions for the client's legal interests. As law enforcement officials, "advocates as law enforcers are required to be professional in carrying out their duties and functions."²⁰ The professionalism of advocates in carrying out their duties and functions is demonstrated by attitudes and actions that continue to uphold the law and professional ethics and do not abuse the authority they have for hidden interests. As a component of law enforcement in Indonesia, the function of advocates cannot be separated from providing access to justice for all components of society, both rich and poor, in this case, serving the community to obtain justice, not vice versa being served by the community. "Advocates who are oriented towards "going forward without being afraid to defend the cases they are paid for" have shown that they have consciously lost their conscience towards justice, especially justice for all parties, including the poor."²¹

Even though it is not necessary for court proceedings to use the services of an advocate, having an advocate present at the trial for the benefit of the client can help the trial be held better and the client's legal rights to be fulfilled. Therefore, in the legal service process, advocates are required to always be professional, remain ethical, needed to know, and required to maintain client trust. As an honorable profession, one form of honor for advocates is to keep clients' trust, not to disappoint clients just because they disappoint them. The need for advocate services will continue due to many factors; industrialization, digitalization, and even developments in time provide opportunities for advocate services to be increasingly needed by all parties.²² "The development of this increasingly modern era has made the public's need for advocate services in Indonesia essential to resolve legal problems. what happens in society."²³

¹⁹ Siti Malaiha Dewi et al., "Islamic Revivalism: Dynamics of Islamic Parties in Legalizing Islamic Law Policies in Indonesia and Malaysia," *Al-Istinbath: Jurnal Hukum Islam*, 9, no. 1 (2024): 231–58.

²⁰ Vidi Galenso Syarief, "Kedudukan Organisasi Advokat Dalam Sistem Kekuasaan Kehakiman," *Jurnal Ilmiah Publik* 11, no. 1 (2023): 42–51.

²¹ Gladwin Lukman, Indra Kho, and Edric Victori, "Batas Tanggung Jawab Hukum Dan Etis Atas Perilaku Tercela Advokat Dalam Persidangan," *Jurnal Hukum Samudra Keadilan* 15, no. 1 (2020): 86–98.

²² Irma Suryani et al., "Integration of Islamic Law in Regional Development in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (April 30, 2023): 1, <https://doi.org/10.31958/juris.v22i1.8770>.

²³ Muh Nasir, "Analisis Hukum Terhadap Kriminalisasi Advokat Dalam Menjalankan Profesinya Yang Termuat Dalam Pasal 16 Undang Undang No. 18 Tahun 2003 Tentang Advokat," *Nobel Management Review* 2, no. 4 (2021): 523–31.

Professional or not professional will then determine whether the advocate in question is successful in carrying out the mandate of the advocate profession or not. Suppose you need to become more experienced in carrying out the mandate of the advocate profession. In that case, the advocate in question can be abandoned "consciously" by many parties; only the name of the lawyer being an advocate remains, and he or she handles almost no legal disputes. If the advocate concerned is professional, "consciously," he will also become an idol for many parties, so the disagreement being handled will have to be spilled simply because the burden being faced is too significant.²⁴

Apart from the judicial process, better known as litigation, the role of the advocate profession is also clearly visible and increasingly needed in non-litigation channels. The demand for legal services provided by advocates outside the judicial process is rising, particularly with the introduction of restorative justice, which emphasizes resolving legal disputes through peaceful means. This shift has significantly increased the need for legal services from advocates. To prevent the abuse of authority by certain parties, many private agencies now display the phrase "This agency is under the protection of a law office," indicating a reliance on legal expertise. This trend reflects a paradigm shift, where, for matters related to the legal field, many parties prefer the services of advocates. This represents both a challenge and an opportunity for the development of the advocate profession in Indonesia.²⁵

Through litigation and non-litigation legal services, the advocate profession contributes significantly to community empowerment and the reform of Indonesian law. It is not an exaggeration if the profession of advocate is called the biological child of the people,²⁶ wahyuborn from the womb of the people, to defend the interests of the people. The intended interest is to be a defender of society and guardian of the implementation of law and justice.²⁷ "It is no exaggeration to say that advocates are the institution closest to the people compared to other institutions related to the judiciary."²⁸

²⁴ Suranta Menda Ginting, Ghina Aqila Marenza, and Syawal Amry Siregar, "Pertanggung Jawaban Advokat Terhadap Klien Berdasarkan Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat," *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 4, no. 1 (2022): 606–19.

²⁵ Miftah Ulumudin Tsani, "Tumpang Tindih Regulasi Advokat Di Indonesia," *Al-Adl: Jurnal Hukum* 13, no. 1 (2021): 153–67.

²⁶ Wahyu Abdul Jafar et al., "The Childfree Phenomenon Based on Islamic Law and Its Respond on Muslim Society," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 (November 9, 2023): 389, <https://doi.org/10.29240/jhi.v8i2.7865>.

²⁷ Malthuf Siroj, Ismail Marzuki, and Elkhairati, "Transformation and Future Challenges of Islamic Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 93–116, <https://doi.org/10.29240/jhi.v8i1.6618>.

²⁸ M Lutfi Rizal Farid, "Tentang Advokat: Ringkasan UU No. 18 Tahun 2003," *Opini Hukum Dan Hak Asasi Manusia* 1 (2021): 69–76.

"The law itself is just a tool or means to achieve a goal." the purpose of establishing the UUA for advocates is to protect advocates' profession. Article 16 of the UUA has emphasized that a lawyer cannot be prosecuted civilly or criminally for carrying out his professional duties in good faith for the benefit of client defense in court hearings. The provisions of Article 16 of the UUA were then further emphasized through the Constitutional Court Decision Number 26/PUU-XI/2013 dated May 14, 2014, so that it reads: "Advocates cannot be prosecuted either civilly or criminally for carrying out their professional duties in good faith for the benefit of client defense inside or outside court." The aim of granting immunity rights is to provide guarantees and protection for advocates carrying out their professional duties to defend the legal interests of their clients, both in litigation and non-litigation. "This right to immunity is solely aimed at protecting advocates in carrying out their professional functions, especially about defending and providing advice to clients."²⁹ The right to immunity is given by the state to the advocate profession with the main aim of supporting the smooth running of advocates' duties in law enforcement. With the right to immunity, the advocate profession is free to speak and act, both inside and outside the court, without worrying about retaliation from anyone who can directly or indirectly influence the smoothness of the advocate's defense of his client's interests.³⁰

Providing immunity for advocates with the aim of not being afraid when defending. Advocates must be protected by the state when carrying out their professional duties. Therefore, advocates are given immunity protection provided they do not violate laws and regulations."³¹

The immunity rights of advocates, as regulated in Article 16 of the UUA and the Constitutional Court Decision Number 26/PUU-XI/2013 dated May 14 2014, are provisions that further explain the freedom of the advocate profession to defend cases for which they are responsible while adhering to the professional code of ethics. And statutory regulations previously regulated through Article 15 UUA. An advocate's right to immunity is limited to the advocate's good faith in carrying out his profession. The definition of "good faith" is based on the explanation of Article 16 of the UUA, which states that he is carrying out professional duties to uphold justice based on the law to defend his client's interests. Legally, professional work can only be carried out by people bound by and subject to a professional organization. That's how it should be because professional organizations legitimize people who hold professional jobs. However, this does not seem to be the case in the advocate profession; outside of the membership of the advocate profession, we can still find several parties

²⁹ Putusan MK Nomor 52/PUU-XVI/2018, hlm. 16.

³⁰ Raihan Baihaqi, Hasrat Dihati, and Fauziah Lubis, "Peran Dan Fungsi Advokat Sebagai Penegak Hukum," *Journal on Education* 5, no. 2 (2023): 3958–69.

³¹ Pardamean Harahap dan Sidi Ahyar Wiraguna, "Hak Imunitas Advokat Setelah Putusan Mahkamah Konstitusi", *Lex Jurnalica*, Volume 18, Nomor 2, Agustus 2021, hlm. 186.

acting as if they were advocates and directly involved in providing legal services, even though the person concerned is not an advocate and is also not a provider of legal aid as mandated by Law Number Number 16 of 2011 concerning Legal Aid.³²

The presence of certain parties providing legal services as if they were official advocates, even though they are illegal, cannot be separated from the influence of the Constitutional Court Decision Number 006/PUU-II/2004 dated December 8 2004. The Constitutional Court's decision is annulled, so it does not have binding legal force Article 31 UUA. As a result, the protection strengthening of the advocacy profession and the hope that the advocacy profession has been waiting for are related to law enforcement against people who act as if the official practitioners of the advocacy profession are fading,³³ accessible without any legal sanctions that can be applied, the consequences of which can damage the advocacy profession.³⁴

In religious courts, advocates play a crucial role in representing clients in matters related to Islamic law, such as marriage disputes, inheritance, and waqf issues. However, there is a significant gap in the availability of Sharia-trained advocates. Many cases that require expertise in Islamic law are handled by general advocates, which can affect the quality of legal services provided.

Table 3. Case Distribution in Medan Religious Courts Based on Advocate Expertise (2023)

Case Type	Handled by General Advocates	Handled by Sharia Advocates	Total Cases
Marriage Disputes	40	25	65
Inheritance Matters	32	20	52
Waqf and Zakat Issues	5	10	15
Financial Disputes	15	7	22
Total	92	62	154

³² Difa Setyo Mayrachelia and Irma Cahyaningtyas, "Karakteristik Perbuatan Advokat Yang Termasuk Tindak Pidana Obstruction of Justice Berdasarkan Ketentuan Pidana," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 121–32.

³³ Khamami Zada et al., "Constitutionalizing Sharia: Identity and Independence of Islamic Politics Among Students," *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022): 195–206, <https://doi.org/10.31958/juris.v21i2.6954>.

³⁴ Henry Gerardus Komansilan, "Kajian Putusan Mahkamah Konstitusi Nomor 006/Puu-Ii/2004 Ditinjau Dari Pasal 378 Kuhp Dan Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat," *Lex Administratum* 7, no. 1 (2019). hlm.12.

As shown in the table, a large number of cases are handled by general advocates, even in areas where Sharia knowledge is essential, such as inheritance and waqf disputes. This gap underscores the need for reforms that would exclusively recognize Sharia advocates in religious courts to ensure that clients receive specialized legal services in accordance with Islamic law. Furthermore, the presence of individuals providing legal services as if they were official advocates—despite lacking proper legal status—poses a threat to the advocacy profession. This issue stems from the Constitutional Court Decision Number 006/PUU-II/2004, which annulled Article 31 of the Law on Advocates (UUA). As a result, illegal practitioners are able to offer legal services without facing legal consequences, undermining the professionalism and integrity of the advocacy field

The data shows that the majority of advocates in religious courts possess only a general legal education, while a smaller group is specifically trained in Sharia law. In the context of this shortage of qualified Sharia advocates, the proliferation of unlicensed practitioners further weakens the advocacy profession. The lack of legal sanctions for these individuals not only jeopardizes the quality of representation but also diminishes public trust in the profession. In conclusion, religious courts face two major challenges: the shortage of Sharia-trained advocates and the presence of unauthorized individuals providing legal services. Addressing these issues requires reforms that not only strengthen the recognition of Sharia advocates but also ensure strict enforcement against illegal practitioners. By doing so, the quality of legal representation in religious courts can be significantly improved, better serving the Muslim community and upholding the principles of Islamic law

UUA renewal strengthens Sharia Advocates

Social change is a characteristic that is very inherent in people's lives; social change is inevitable and always occurs; when social change happens, only time determines. Social change needs to be responded to positively and followed up positively because, in essence, no one can resist the occurrence of social change. Islamic law is a tool that carries out social engineering functions. It will also not be separated from factors of social change because Islamic law is very influential and effective in shaping the social order and life of the Muslim community.³⁵ Islamic law is a law that has been tested, and its presence is still needed. Islamic law has been present since its emergence in history and continues to endure to this day. One significant social change within the framework of Islamic law is the strengthening of religious courts as institutions. This development reflects how Islamic law has influenced and transformed the legal structure and culture in Indonesian society. For example, previously,

³⁵ Amir Mu'allim, "Yusdani, Konfigurasi Pemikiran Hukum Islam," *Jogjakarta: UII Press*, 1999. hlm.56.

religious courts had no authority to handle cases related to sharia economic disputes, but now they have the authority to handle them.³⁶

The revision of the Advocates Law (UUA) has become increasingly urgent, given the importance of more specific regulations regarding advocates who can litigate in religious courts. Just as tax and commercial courts have specialized regulations for advocates with specific expertise, religious courts also require advocates with competence in Sharia law. This is crucial to protect the interests of the Muslim community seeking justice and to prevent potential harm caused by the lack of competence of general advocates in Sharia law. As Mahatma Gandhi once said, "Justice delayed is justice denied," and restricting incompetent advocates in religious courts can delay justice for those in need. From a legal standpoint, the current UUA has not yet fully accommodated the specific needs of religious courts, as evidenced by the ongoing judicial reviews at the Constitutional Court. This highlights gaps in the regulation that necessitate revision. The legal basis for restricting Sharia advocates should not be limited to the UUA but also aligned with the Religious Courts Law, particularly Law No. 50 of 2009. This regulation needs to be clarified and refined to avoid legal uncertainty and the potential for human rights violations.

Additionally, social and demographic changes today further emphasize the need for advocates who are truly experts in Sharia law. The increasing complexity of cases brought before religious courts requires advocates who are not only knowledgeable in general law but also deeply understand religious law. Through the revision of the UUA, it is hoped that Sharia advocates will become more professional and competent, enabling them to provide optimal legal services. As Nelson Mandela once said, "Education is the most powerful weapon which you can use to change the world," and in this context, the education and competence of Sharia advocates are key to strengthening justice in religious courts.

The harm experienced by Muslim clients when represented by advocates who do not understand Sharia law can be significant, both materially and non-materially. In cases related to marriage, inheritance, and property disputes, for instance, Islamic law has provisions that differ from the general positive law in Indonesia. If an advocate lacks a proper understanding of Sharia principles, clients may lose rights that are actually guaranteed under Islamic law. This can result in outcomes that do not align with the client's religious beliefs or needs, causing moral and spiritual harm in addition to financial losses. Moreover, an advocate without a deep knowledge of Sharia law may fail to present strong arguments or develop effective legal strategies in religious courts. Sharia law has its own principles and rules, which may differ from conventional legal approaches. If an advocate is not competent in this area, they may provide

³⁶ Mohammad Daud Ali, "Hukum Islam: Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia," 2007. hlm.39.

incorrect or irrelevant advice to their client, resulting in the client not receiving the best possible outcome in the legal process. This not only harms the client's rights but also undermines the trust of the Muslim community in the legal system of religious courts.

In the long term, the lack of advocates proficient in Sharia law can create systemic injustice for Muslim clients. They may feel unfairly treated or misunderstood in religious courts, which are supposed to protect their rights based on Islamic principles. This highlights the importance of specific provisions in the Advocates Law (UUA) that only allow Sharia advocates to represent clients in religious courts, ensuring that Muslim clients are served by advocates with a deep understanding of the laws governing their lives, and thus achieving true justice in accordance with Islamic teachings.

The strengthening of religious courts as special courts for people who are Muslim is also inseparable from the Decision of the Constitutional Court of the Republic of Indonesia Number 93/PUU-X/2012; this decision of the Constitutional Court of the Republic of Indonesia increasingly solidifies the absolute jurisdiction of the authority of religious courts in Indonesia as Islamic courts. for people who are Muslim or for certain parties who submit themselves to Islamic law by means of *choice of law* as an effort to resolve the dispute they are facing. As evidence that religious courts are independent actors of judicial power to administer justice to uphold law and justice for the Indonesian Muslim community, it can be seen from the definition of religious courts, applicable law, the authority of religious courts, and the personnel in religious courts as regulated in Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.³⁷

As a consequence, the religious court is a special court for people who are Muslim; it is suitable and appropriate if the settlement of marriage, inheritance, will, grant, endowment, zakat, infaq, sadaqah, and sharia economic matters are carried out in a³⁸ substantive court environment. in charge of issues related to Islamic law, in this case, the religious courts. If it is handed over to the general justice system, what will emerge is a discrepancy between Islamic practices and dispute resolution. As a result, legal certainty will be difficult to uphold, what will arise is legal chaos and disparity in decisions, and it is also possible that there will be oddities between the governing law and the sound of the decision due to two factors:

³⁷ Rahman Hasima, "Implikasi Hukum Terhadap Akad Yang Memuat Klausula Penyelesaian Sengketa Perbankan Syariah Melalui Pengadilan Negeri Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012," *Sasi* 26, no. 3 (2020): 286–96.

³⁸ Susanto Susanto, Muhamad Iqbal, and Wawan Supriyatna, "Menciptakan Sistem Peradilan Efisien Dengan Sistem E-Court Pada Pengadilan Negeri Dan Pengadilan Agama Se-Tangerang Raya," *JCH (Jurnal Cendekia Hukum)* 6, no. 1 (2020): 104–16.

1. General judicial competence does not cover Islam.
2. Human resource competency in general justice is also outside the field of Islamic law.

Therefore, assigning absolute competence to other than religious courts is a deviation from the principle of legal certainty regulated in the 1945 Constitution, namely Article 28D paragraph (1): "Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law." Apart from being related to the principle of legal certainty, the benefit of the people is also the primary basis for placing the settlement of marriage cases, inheritance, wills, grants, endowments, zakat, infaq, sadaqah, and sharia economics carried out by religious courts, because "Islamic law is a law created to the benefit of human life."³⁹

It becomes unfortunate and hurts feelings, the religious court whose presence is specifically for people of various Islamic backgrounds in resolving cases of marriage, inheritance, wills, grants, endowments, zakat, infaq, sadaqah, and sharia economics; however, in practice, it is the advocates who are involved in assisting His clients in religious courts are still found not to be sharia advocates.⁴⁰ This shows that there has been a discrepancy between legal facts and reality. The legal fact that religious courts are special courts for people who are Muslim is that, in reality, the advocates involved in them are not sharia advocates, something strange that happens in the practice of law enforcement in Indonesia. The absence of restrictions on advocates who can carry out proceedings in religious courts cannot be separated from the contents of the UUA, which does not regulate these restrictions; this then contradicts the sound of Article 1 number 1 and Article 2 of the Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to the Law -Law Number 7 of 1989 concerning Religious Courts. It should also be regulated in the UUA regarding the ability of advocates to litigate in religious courts, or at least regulated in Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.⁴¹

Considering that religious courts are special courts, this limitation is necessary so that the Muslim community as justice seekers in religious courts does not have their rights impaired just because the advocate concerned does

³⁹ Sudirman L Sudirman L, "Hukum Acara Peradilan Agama" (IAIN Parepare Nusantara Press, 2021). hlm.18.

⁴⁰ Agus Hermanto, Iman Nur Hidayat, and Syeh Sarip Hadaiyatullah, "Peran Dan Kedudukan Mediasi Di Pengadilan Agama," *As-Siyasi: Journal of Constitutional Law* 1, no. 2 (2021): 34–59.

⁴¹ Muhammad Jazil Rifqi, "Perkembangan Dan Pemanfaatan Teknologi Informasi Pengadilan Agama," *Jurnal Al-Qadun: Peradilan Dan Hukum Keluarga Islam* 7, no. 1 (2020): 70–82.

not understand Islamic law correctly,⁴² completely, and comprehensively. Herein lies the necessity of sharia advocates as the only advocates who can handle disputes in religious courts, the main aim of which is the benefit of the Islamic ummah as seekers of justice in religious courts. Is it then that by limiting only sharia advocates who can litigate in spiritual courts, human rights are being violated? Or are the human rights of people in the advocate profession being violated? The answer is no; Article 70 of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights has regulated it so that it becomes a formal juridical basis for restrictions on human rights that are recognized by law, Article 70 of the Human Rights Law reads:⁴³

"In exercising his rights and freedoms, every person is obliged to comply with the restrictions stipulated by law to ensure recognition and respect for the rights and freedoms of other people and to fulfill fair demands in accordance with considerations of morals, security, and public order in a society democratic⁴⁴".

The restrictions contained in Article 70 of the Human Rights Law are the basis for legality, namely that limiting the profession of advocates who can litigate in religious courts to only Sharia advocates does not indicate that there has been a violation of human rights; these restrictions are legal restrictions. Likewise, Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts has also provided formal legal restrictions, which include:⁴⁵

1. The limitation of the juridical competence of religious courts, which function as state judicial institutions, restricts their scope of authority.
2. Juridical restrictions apply only to Muslim individuals or to certain parties who voluntarily submit to Islamic law by choosing it as the governing law for resolving their disputes in religious courts.

Suppose the restrictions on advocates who can litigate in religious courts are only sharia advocates. In that case, it is considered a decision contrary to the law or at least contrary to human rights. What about the restrictions on legal representatives (advocates) who can act in the tax court? Through the Regulation of the Minister of Finance of the Republic of Indonesia Number

⁴² Safrin Salam and Andi Marlina, "Testing the Existence of Religious Courts in Resolving Sharia Economic Disputes," *Indonesian Journal of Criminal Law* 3, no. 1 (2021): 24–32.

⁴³ Mahrus Ali and Irwan Hafid, "Kriminalisasi Berbasis Hak Asasi Manusia Dalam Undang-Undang Bidang Lingkungan Hidup," *Jurnal USM Law Review* 5, no. 1 (2022): 1–15.

⁴⁴ Khamami Zada, "Sharia and Islamic State in Indonesia Constitutional Democracy: An Aceh Experience," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (May 15, 2023): 1–18, <https://doi.org/10.18326/ijtihad.v23i1.1-18>.

⁴⁵ Dhea Kinanty, Pramestia Andini Putri, and Fauziah Lubis, "Peranan Advokat Dalam Pemberian Bantuan Hukum Kepada Orang Yang Tidak Mampu Berdasarkan UU No 16 Tahun 2011 Tentang Bantuan Hukum," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 2 (2023): 451–61.

184/PMK.01/2017 concerning Requirements to Become a Legal Attorney at the Tax Court and Regulation of the Head of the Tax Court Number Per-01/PP/2018 regarding Procedures for Requesting a Legal Attorney Permit at the Tax Court, legal representatives are regulated Those who can proceed in tax court, apart from having a legal representative's license, must also have extensive knowledge and expertise regarding tax laws and regulations. Are restrictions on lawyers who can act in tax courts then declared a violation of human rights? The answer is also no because, legally, it is regulated by specialist lawyers who can litigate in tax courts.

With the above legal considerations, the limitation of only Sharia advocates as legal representatives who can act in religious courts cannot be called a violation of human rights for the advocate profession. These restrictions must be implemented solely to benefit the Islamic ummah, mainly to protect clients' legal interests as parties seeking justice from prolonged losses due to incompetent lawyer services. The great hope that Sharia advocates can litigate in religious courts must be supported by their willingness to push for changes to the UUA. These changes are needed on a juridical basis; apart from that, it is time for the UUA to be restored, considering that the UUA for advocates has yet to be free from testing at the Constitutional Court. Apart from restoring the UUA, another thing that is needed to position Sharia advocates as the only advocate profession that can act as legal counsel in religious courts is to participate in restoring the Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to the Law Number 7 of 1989 concerning Religious Courts. So legally, positioning Sharia advocates as the only profession of advocates who can act as legal representatives in religious courts is not only regulated in the UUA but is also regulated through the Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.

Conclusion

This article concludes the urgency of updating the Advocates Law (UUA) in Indonesia to designate Sharia advocates as the sole legal representatives in religious courts. One of the key findings of this study is the urgent need to introduce Sharia advocates in religious courts due to the current lack of specification in the profession of advocates in these courts. This situation may lead to cases being handled by advocates who are less experienced in Sharia law, which in turn can harm the legal interests of Muslim clients. The restoration of the UUA to position Sharia advocates as the sole advocates in religious courts is a crucial step. This placement not only aligns with the existence of religious courts as special institutions for Muslims but also does not violate human rights. To realize the restoration of the UUA, which positions

Sharia advocates as the sole advocates who can act in religious courts, all Islamic components in the Republic of Indonesia must unite. With strong and united support, efforts to strengthen the position of Sharia advocates through the restoration of the UUA can be successfully realized. As a comparison, we can look at the regulation of special advocates in tax courts, which shows that the restriction of advocates in religious courts cannot be considered a violation of human rights. In conclusion, the renewal of the Advocates Law (UUA) is highly necessary to establish Sharia advocates as the sole advocates who can act as legal representatives in religious courts. Without the restoration of the UUA, efforts to strengthen the position of Sharia advocates and protect Muslims will be in vain. The restriction of Sharia advocates as the sole advocates in religious courts does not violate human rights but rather aligns with the existence of religious courts as special courts for Muslims. Therefore, all Islamic components in the Republic of Indonesia must unite to achieve the restoration of the UUA that positions Sharia advocates as the sole advocates who can act in religious courts. With the unity of all Islamic components, efforts to strengthen the position of Sharia advocates through the UUA can be well realized and provide more representative and competent legal protection for Muslims in religious courts.

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