

Exploring The Prophetic Values Contained In The Advocate Profession

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Article Info

Received:

Revised:

Accepted:

Keywords:

Advocate;

Prophetic Value;

Wakalah

Abstract

The advocate profession in the early Islamic treasury is not formally institutionalized so that it needs to explore prophetic values in the history of Islamic civilization and objectified into the advocate profession. This study aims to reveal the advocate profession from the perspective of prophetic science and trace prophetic values into the foundation of the advocate profession. This study uses a normative research model through library materials or literature literature as a written source. The results of the study show, first, Islam respects human rights in defending their interests in court. Islam guarantees justice in a trial, equality of rights, and guarantees the right to defend the rights both alone and through legal counsel in accordance with the wakalah system. Second, prophetic values as the foundation of the advocate profession are upholding justice, being a peacemaker, the concept of submitting affairs to the experts leave the matter to the expert / knowledgeable, the concept of mutual help, and advocate ethics. These values are not only human dimensions but also transcendental.

I. Introduction

Based on the Constitution, Indonesia is a state of law. Consequently, the establishment of the rule of law is a necessity that must be fought for, especially those in the legal profession. Advocates as one of the most flexible legal professions are one of the law enforcement agencies required to participate in realizing a law enforcement process that is honest, fair, integrity and in accordance with the spirit of defense of Human Rights.

As a law enforcer, an advocate should also be a guardian of the constitution, especially the values contained in Pancasila and the Preamble to the 1945 NRI

Constitution.¹ One of the main values that advocates strive for is fairness. The advocate as an adviser and representing the legal interests of his client is in charge of upholding the correctness of the law and creating fair conditions for all parties who fight for their rights. In this realm, advocates are equivalent in position to law enforcement officers who serve in judicial proceedings such as judges and prosecutors. All of them are obliged to uphold the rule of law.

The development challenge for human rights defenders – in this case advocates – in Indonesia is to strive to establish a proper status, function and authority in their interaction with society and the state. Under ideal conditions, the community will guarantee such legitimacy in the form of trust in the public obligations carried out by advocates in carrying out their duties in order to produce legal certainty, justice and efficiency, while the state will ensure that the public interest is respected in the legal/judicial process.²

Lawyers are a growing profession today. When human rights values take a high place in line with the development of modern civilization, it develops faster. Historically, the legal aid profession was not a product of the legal culture of Indonesian society. This profession existed only through official courts organized by the Colonial Government.

It can be said that in 1848, according to the principle of concordance in the Dutch colony, when a new law in the Netherlands was promulgated, namely on May 16, 1848, then directly the rule was also used as a colony in Indonesia (at that time a colonial country called the Dutch East Indies). These rules include the composition of the judiciary and the rules of the courts (*Reglement op de Rechterlijke Organisatie en het Beleid der Justitie*), or commonly abbreviated as RO.³

While lawyers are only used for European groups in the trial of *Raad van Justitie*. However, as it developed, legal aid and lawyers were also extended to other groups such as indigenous peoples and foreign eastern communities. The provision of legal aid is subject to the availability of lawyers in Indonesia graduating and holding a law degree alumni of law education at law colleges in the Netherlands or Jakarta, but the provision of legal aid is limited to helping Indonesians who cannot use Dutch lawyers. After independence, the institutionalization of these lawyers or advocates became crucial. The requirement in the Criminal Code to provide lawyers/legal counsel in certain criminal cases confirms the existence of advocates as law enforcement. Then the most notable thing was the birth of the Representative Act in 2003.

¹ Solehoddin, Menakar Hak Imunitas Profesi Advokat, *Rechtidee Jurnal Hukum*, Vol. 10. No. 1, Juni 2015, p. 92

² Solehuddin, Quo Vadis Independensi Advokat dalam Sistem Peradilan di Indonesia, *Perspektif*, Volume XVI No. 2 Edisi April 2011, p. 96

³ Arifin Rada, Esensi Keberadaan Advokat Menurut Hukum Islam, *Ahkam*: Vol. XIV, No. 1, Januari 2014, p. 115

The views of the general public on the profession of advocate are certainly diverse. Advocates can be seen as a noble profession when appearing as defenders of those who are weak. However, if faced by advocates as defenders of major crimes, the public can certainly think this profession is a bad profession. This is coupled with the rampant reporting of the advocates who are caught bribing, defending clients in fraudulent ways, arrogant advocate attitudes, and other news stories featuring advocates who have a despicable nature.

The profession of advocate in the early Islamic traditions was not known to be formally institutionalized, however, there is a tradition in society used to represent or authorize the speaker or the parties to the dispute. This is certainly a challenge to explore prophetic values in the history of Islamic civilization that can be applied and become the basis for the foothold of the advocate profession. The prophetic science developed by Kuntowijoyo in the social sciences integrates the thinking that has developed in the Western world with Islam which is the majority religion embraced by Indonesian citizens. Islam is expected to be a source of knowledge, not just for the reason for the adoption of Islam by the majority of the population. Islam is expected to be a mercy not only for followers of Islam, but also for adherents of all religions around the world.

This research, based on the description of the problem above, intends to reveal the formulation of the problem as follows: first, how is the advocate profession from a prophetic law point of view? Second, how do prophetic values become the basis for the advocate profession?

2. Research Method

Normative research models were used in this study. This research is carried out through library records or articles as written material. Library information is regularly analyzed and presented to inform the results of research and discussion. This analysis is arranged by grouping, comparing, and contrasting according to the flow of discussion.

3. Results and Discussion

1. The profession of advocate from the point of view of prophetic science

The term prophetic was originally popularized by Boulding who distinguished between "clerical religion" from "prophetic religion".⁴ At first, according to Boulding monotheist religions became the drivers of social change in society, it was in that position that religion was said by Boulding to be prophetic, but then after religion was institutionalized, religion was nothing more than a routine, and even became a component of conservative power.⁵

⁴ *Ibid*

⁵ *Ibid*

The word prophetic was later used by Kuntowidjoyo, a Muslim historian, as a proposed new approach to the correlation and tug-of-war between religion and science. The relationship between god and revelation, religion and science, and reason and belief has long been at odds, especially in the Western scientific community. ⁶ The main purpose of the relevant prophethood on the relationship between religion and science is to objectively incorporate and explain the normative teachings in the Qur'an. Objectification begins with internalization, followed by externalization using structural transcendental methods as well as synthetic analytical methods.

The science of Prophetic seeks to make religion (revelation) the basis of subjective and social transformation of the ummah, thus making religion as the basis of science and theory, by means of objectification (not directly applying religious law). ⁷ In an effort to make Islam a paradigm, science and theory with the path of internalization and objectification, prophetic builds a method of transcendent structure, revelation occupies the highest pyramid in structure. Using synthetic and analytical approaches, science is directed towards the ethical mission of humanization, liberation and humanization, liberation, and making transcendents.

Wardiono tried to define prophethood as the endeavor of a person/group that tries to prepare himself or herself and ensure that he is able to read and understand God's messages, learn meaning from them, and then try to apply these divine messages in his daily life. It is expected to have an influence both on itself and on society and the universe as a whole. ⁸

According to Kuntowidjoyo, revelation is important. It separates Islamic knowledge by major industries in Western philosophy (such as rationality or experimental). Positivist Western philosophy, which recognizes only the source of thought or observation. ⁹ In Islamic science, the highest guiding element of revelation is also considered one of the guidelines of truth, which is an important source of knowledge, because the so-called "revelation of God" guides the thoughts and actions of Muslims. The most complete and reliable revelation is the Qur'an.

The prophetic science mentioned above is used in this study to explore one of the functions of law, namely the lawyer / advocate profession. The word Advocate comes from the Latin *advocare*, a verb meaning "to defend, to call one's aid, to vouch to warrant". "Advocate" means: "to speak in favor of or depend by argument, to support,

⁶ Absori, Khudzaifah Dimiyati dan Ridwan, Makna Pengelolaan Perspektif Etik Profetik, *Al-Tahrir*, Vol. 17, No. 2 November 2017, p. 337

⁷ Khudzaifah, *Loc.cit.*

⁸ Kelik Wardiono, 2016, *Paradigma Profetik Pembaruan Basis Epistemologi Ilmu Hukum*, Genta Publishing, Yogyakarta, p. 88

⁹ Heddy Shri Ahimsa-Putra, *Pardigma Profetik – Mungkingkah? Perlukah?-,* Makalah disampaikan dalam "Sarasehan Profetik 2011", diselenggarakan oleh Sekolah Pascasarjana UGM, di Yogyakarta, 10 Februari 2011, p. 8

indicate, or recommended publicly." ¹⁰. The definition of the lawyer in this word is a person who acts as a representative of the power to carry out legal actions, that is, actions or efforts made by a person or group of people to fight for and advocate for the rights and obligations of a person or group of clients under applicable laws¹¹.

Indonesia's legal system places advocates in the courts as part of the law enforcement system and representatives of public interest. Meanwhile, judges, prosecutors and police also represent the state. This concept makes the profession of advocate a crucial institution to maintain the pendulum of equilibrium between individual interests and the state. In every court of criminal, civil, religious cases even in cases in the Constitutional Court the advocate always has an equal role with other legal authorities. ¹²

The effective and efficient implementation of the law, which is one of the criteria for the development of the state, seeks to improve the dignity of the state in the field of law, especially in the field of guaranteeing legal protection for its citizens. It also means that the law has a real promise to the public so that people can feel safe in their lives and be protected by their rights. This can also be an indicator of whether the state can provide full legal protection to its citizens. Another aspect is for example; in criminal law related to the rights of suspects or known as *Miranda rules*, which regulate the rights of people facing the law at every stage of the litigation process¹³.

Before the advent of Islam, representative institutions were not known in Arab life, but the practice that existed in society at the time was the speaker in a dispute or the representation or approval of the conflict. The one who becomes the deputy is called *haji* or *haji*, being the representative (*al-muwakkil*) of the person who authorizes. ¹⁴ It continued in the time of the prophet Muhammad. Representative practice in Arab societies could then become the foundation for the legal profession. In history, the prophet Muhammad also once asked a man to be his power in the delivery of camels that should be done by him. ¹⁵

There is also the story of the Prophet Moses being accused of murder by Pharaoh, and the Prophet Moses asking someone to accompany him, protect him, and be a spokesman, namely the Prophet Aaron, to defend him from the murder charge. In this case, prophet Moses assumed that Prophet Aaron had the ability to speak so that he could convey his arguments systematically and logically. This suggests that

¹⁰ Henry Campbel Black, 1990, *Black's Law Dictionary*. St. Paul, MN, Web Publishing Co., p. 55

¹¹ Abdullah Gofar, 2003, *Profesi Advokat bagi Sarjana Syariah dan Standar Kualifikasi Bidang*, Jakarta: al- Hikmah dan Ditbinpera, p. 20

¹² Satjipto Rahardjo, *Negara Hukum yang Membahagiakan Rakyatnya*, Genta Publishing, Yogyakarta, 2009, p. 2.

¹³ ,Meldrik B. Pattipeiluhu, Penerapan Prinsip Miranda Rule dalam Pemeriksaan Terhadap Tersangka, *Lex Crimen* Vol. IV/No. 6/Ags/2015, p. 16

¹⁴ Arifin Rida, *Op.cit.* p. 119

¹⁵ *Ibid*

the concept of *wakalah*, which means representative. The *wakalah* system in court has much in common with the institution of advocates.¹⁶

Regarding law enforcement, the Islamic religion prioritizes the rights of a person who uses judicial channels to protect and fight for their rights and interests. Therefore, the rights that arose as a result of self-defense in court were those that were recognized and given a major place in the history of Islamic civilization. In other words, the guarantee of justice, equal rights and protection of rights in trials in Islam are commonplace and are given a place both directly and indirectly through their representatives (with the concept of *wakalah*).

According to *mahdzab syafi'i*, the concept of *wakalah* is a word that means to give delegates of authority from someone to others, with this delegation, the other party can perform an action on behalf of the person who gave the delegation. According to the *Malikiyyah* cleric, *wakalah* is the granting of the right by oneself to others to do what is right for his interests, and this law does not include the granting of authority after the heir dies. Hashbi Ash-Shidiqi explains that a *wakalah* is a representative agreement in which one person practically appoints another person as his deputy. Meanwhile, according to Sabiq, *wakalah* is the transfer of rights/duties/obligations from a person to another party to another party to the extent related to matters that are justified to be delegated.¹⁷

2. Prophetic values as the basic values of the advocate profession.

This research explores the prophetic values that exist in Islamic teachings and then developed in accordance with the advocate profession. The prophetic values obtained in this study include:

a. Justice enforcers

Justice is a very important thing. The court contains the judges in whom justice is upheld. In Islam one of the teachings that is fundamental and universal is the teaching on the values of justice. The Islamic idea of justice stems from Divine justice. In the Quran the word for the word *adil* is *Al-adl* and *Al-qisth*, which means straight, same and mid.¹⁸ In addition, *Al-'adl* also means convert which means conscious, because a just person is a person who is consciously and fully aware of the problem being faced in its comprehensive context, so that the attitude or decision he takes towards it becomes appropriate and correct.¹⁹

The word "*adil*" can be used in four meanings, namely, balance, equality and disclaimer of any distinction, maintaining rights and maintaining the right to the continuation of the existence of Pancasila also mandates the value of social justice for all Indonesians. In the context of legal science, the value of social justice for all

¹⁶ *Ibid*, p. 43

¹⁷ *Ibid*

¹⁸ Yunus Bureni, *Moralitas Pembentukan Peraturan Daerah dalam Upaya Mencapai Keadilan Substansif*, *Jurnal Legislasi Indonesia*, Vol. 10 No. 02 - Juni 2013 : 123 – 132, p. 123

¹⁹ *Ibid*

Indonesians is termed as substantive justice, namely justice that is as real as felt by society.

John Rawls defines justice as equality. According to him, justice is a basic virtue in social institutions and in systems of thought.²⁰ Justice in Islam comes from a just God, because God is the source of justice, so it is necessary to believe that God does not persecute His servants. Therefore, every human action will be counted on the day of judgment. This also means equality, no matter who he is in the sense of equal rights, even a suspect who is accused of committing a crime and is arrested for accountability Peacemaker

Peace is a priority in conflict resolution, including in the courts. In civil cases in court, a mediation process must be carried out which is an effort from the court so that both parties get an agreement to reconcile. An advocate, especially in a civil case, is also required to be able to seek peace. The peace process ensures that disputes between the parties are resolved quickly and to the satisfaction of the parties. The court proceedings take a long time and the result may not satisfy all parties. Islam is a religion that promotes peace, including in the event of a legal dispute.

Ghulen asserts that the evidence of Islam as a religion that is a mercy for all nature is the passing down of the Prophet and the descent of the Qur'an which can help man in solving various problems that cannot be answered only by reason.²¹ The concept of peace in Islam is very clear and strong, because the word Islam itself comes from a word that means surrender, and also peace or which means perfect piety to God and peace with others. Problems/conflicts/disputes are part of human life, their existence is systematically mentioned in the Qur'an, so "conflict" is not something that can be avoided in human life. Conflicts often require outsiders. The presence of an outside party or a third person is necessary to prevent the occurrence of disputes. The spirit of the Qur'an that brings solutions to conflicts, is very important in modern times, because everyone in conflict expects a solution that works, and justice does not come only those who are in conflict. conflicts, but they often need other parties besides neutral ones capable of reconciling the two sides.

In terms of issues of blood, wealth and honor, or in the field of politics and war strategy, Islam seeks to improve relations in the event of disputes/conflicts so that relations between people can be re-established.²² The Qur'an defines the concept of peace and *islah*. Surah Al Furqan (25), verse 63 teaches a form of humility and avoids blasphemy/incitement. By making the Qur'an as the guideline, Islam is

²⁰ Agus Romdlon Saputra, Keadilan Menurut Al Quran dan Para Filosof, *Dialogia Jurnal Studi Islam dan Sosial*, Vol. 10 No. 2 2012, p. 186-187

²¹ Akhmad Rifa'i, *Konflik Dan Resolusinya Dalam Perspektif Islam*, Millah Edisi Khusus Desember 2010, p. 181

²² Fikri, Transformasi Nilai-Nilai Al-Islah terhadap Keberagaman Konflik : Epistemologi Hukum Islam dalam Al-Quran, *Al-Risalah* Vol. 16, No. 2, Desember 2016, p. 204

called the religion of peace.²³ The implication of the Qur'an is necessary in life, especially in situations of conflict / problem, as a way to implement the content of the Qur'an which is a guide for life for humans.

b. Handing over affairs to knowledgeable

Science is the standard for doing things. Without knowledge, the thing that is done can be wrong or futile. The profession of advocate is a profession that requires the perpetrator to be a knowledgeable person, in this case legal science. So the community should leave and consult their legal issues to those who really have an understanding of the problem at hand.

In this case, a lawyer is seen as someone who has the ability to help people who need legal help. For people who do not have a legal knowledge base in a legal dispute faced, especially related to litigation, they should be able to use the services of an advocate. It is feared that if not, there may be things that are not wanted, such as the loss of these rights because they are won by the opposing party.

c. Help each other in kindness

An advocate does not get a salary from the government, so the advocate makes his legal services an effort to earn income. Of course, the provision of these legal personnel and professionals is related to the service fees that the client must pay to the attorney. If the legal services provided related to the case in court, the costs will certainly be large. This is due to the length and winding of the proceedings in the courts. Because of this, the client will be charged a fee that includes operational and honorarium costs from the advocate, so it is not surprising that each case costs a lot of money even up to billions of rupiah.²⁴ This obstacle has existed for a long time and is still felt today. .

If the entire process of obtaining legal aid is too expensive, it indirectly hinders many from accessing justice that is expected to be born from the judicial path. The concept of legal aid is the answer to this question. This idea is certainly closely related to the implementation of efforts to bring closer access to justice, especially for underprivileged people. Even the concept of legal aid is one of the ways introduced to protect the weak from the strong (to hold back the strong from oppressing the weak).²⁵

The disposition of mutual tolerance, respect, ethics/civility, honesty, unbiased/fairness, and help is a mirror of the basic disposition of the heterogeneous Indonesian nation, and that is the order of personality values of Indonesians that are rooted in local wisdom and religious values. Islam has a deep

²³ Saidah, Konsep Islah dalam Hukum Islam (Perspektif tafsir Maudhu'iy), *Jurnal Hukum Diktum*, Volume 10, Nomor 2, Juli 2012, hlm 120-127, p. 121

²⁴ Akmal Adicahya, Pengakuan Terhadap Pihak Non-Advokat Dalam Pemberian Bantuan Hukum (Politik Hukum Bantuan Hukum Dalam Peraturan Perundang-Undangan Di Indonesia), *Jurnal Hukum dan Peradilan*, Volume 6 Nomor 3, November 2017, p. 402

²⁵ *Ibid*, p. 403

commitment to brotherhood in order to equally guarantee and help. Bearing each other in Islam is very much the priority and bearing each other in Islam is known as the concept of takaful.²⁶

In essence, a human being is a social being and on the certain hand as an individual being. Individuals always need the help of others in fulfilling their basic needs, be it clothing, food, and residence. So fundamentally, this need requires each person, party or circle to adjust together, interact and associate with each other.²⁷ Living in a social atmosphere requires mutual help behavior in order to be able to produce a comfortable, peaceful and peaceful social environment.

d. Advocate Ethics

Husaini quoted al-Attas as saying that the loss of moral values is the key word of all the problems of Muslim society and the world today. So if these Muslims want to rise up and be free from the various problems they face, then understand the adab/ethics of Islam and teach these people to become civilized human beings.²⁸ The prophetic role that Muhammad carried out should be an example for his people. In terms of earthly life and in terms of spiritual, social, political, economic (commercial), security and cultural life. Here it is revealed that what is done from childhood to the end of prophethood, until his death, is to truly be an example for every Muslim to do all his activities.²⁹

Ethics in Islam is the equivalent of what is called Akhlaks. Etymologically, Akhlaks is defined as disposition and character. According to Imam Al-Ghozali "Morals are an ingrained nature of the soul, from which deeds arise easily and easily without requiring thought and consideration. If that trait is ingrained in the soul then it produces good and praiseworthy deeds according to reason and sharia."³⁰ All Lawyers must maintain the dignity and reputation of their profession, be honest and abide by the Code of Ethics and Oaths. Freedom has an advocacy task of course the task of all representatives and professional organizations that focus on this must be fulfilled.³¹ In the provisions of the Advocates Act, it is emphasized that advocacy efforts must be carried out in order to uphold law and justice. An example that can be found is the oath of advocate that every advocate utters at the time of being sworn in and taken the oath before the High Court. It is this ethics of advocates that is the concept of adab.

²⁶ Uswatun Hasanah: Asuransi dalam Perspektif Hukum Islam, *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum* Vol. 47, No. 1, Juni 2013, p. 241

²⁷ Lely Nisvilyah, Toleransi Antar Umat Beragama dalam Memperkokoh Persatuan dan Kesatuan Bangsa, *Kajian Moral dan Kewarganegaraan* Nomor 1 Volume 2 Tahun 2013, p. 389

²⁸ Adian Husaini, Negara Adil dan Beradab, *Islamia: Jurnal Pemikiran Islam Republika*, Kamis 30 Oktober 2014, p. 24.

²⁹ Johan Arifin, Dialektika Etika Islam dan Etika Barat dalam Dunia Bisnis, *Millah* Vol. VIII, No. 1, Agustus 2008, p. 151

³⁰ *Ibid*, p. 155

³¹ Rosdalina, Peran Advokat dalam Penegakan Hukum di Pengadilan Agama, *Jurnal Politik Profetik* Volume 6 Nomor 2 Tahun 2015, p. 121

That is why the Advocate Code of Ethics is a reference in the practice of speech, which regulates relations, guarantees and protects every lawyer and his client, court, state or society, and in particular, the fulfillment of his obligations, as well as being responsible for himself. Currently advocates in carrying out their activities are guided³² by the philosophical principles of law, namely Law Number 18 of 2003 concerning Advocates and the Indonesian Advocate Code of Ethics (KEAI) of 2002.

4. Conclusion

Advocates in the prophetic era are not yet formally known. However, there was a practice that prevailed in society at that time when it was to represent or accommodate a spokesperson or representative in a dispute. This continued during the time of the Prophet Muhammad. The practice of representation in the arab community is one form of practice applied to the profession of advocate. Islam respects the rights of man in defending his interests before the courts. Islam guarantees justice in a trial, equal rights, and guarantees that it is allowed to defend rights either alone or through legal counsel in accordance with the wakalah system.

Prophetic values as the foundation of the advocate profession are studied from the sources of revelation, namely the Koran and sunnah, supported by the treasures of fiqh / Islamic law thinking. These values are not only human in dimension but also transcendental. These values are the enforcement of justice, being a peacemaker, the concept of handing over affairs to the expert / knowledgeable, the concept of mutual help, and the concept of civilized / ethical advocates.

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³² Jefry Tarantang, Menggali Etika Pengacara dalam Alquran, *Jurnal Studi Agama dan Masyarakat* Volume 11, Nomor 2, Desember 2015, p. 146

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