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THE TRAINING, APPOINTMENT, AND SUPERVISION OF ISLAMIC LAWYERS IN INDONESIA

Ratno Lukito[†]

Abstract: Lawyers who practice before Islamic courts play a crucial role in framing and presenting the issues for decision and in mediating between the courts that apply Islamic law and the public who have recourse to the state's official Islamic legal institutions, but research on the professional training and governance of these lawyers is almost entirely lacking at present. This article offers a descriptive overview of the training, work, and professional regulation of Islamic lawyers in contemporary Indonesia. This material is presented in a clear format, structured to highlight key aspects of how these lawyers are trained, accredited, and organized. In doing so, this article not only presents new empirical data on an increasingly important class of legal professionals, but also facilitates comparative reflections on their work in relation to that of their colleagues practicing before Shari'a courts in the neighboring countries of Malaysia and Singapore.^{††}

I. THE EVOLUTION OF ISLAMIC LAWYERING

The history of Islamic lawyering in Indonesia is inseparable from the history of Indonesian lawyering in general. The Islamic legal tradition is primarily concerned with substantive aspects of the law, and the legal practice and the role of lawyers is not the subject of extensive treatment in classical sources.¹ As a result, the birth of Islamic lawyering in Indonesia was largely incidental to the development of lawyering in other parts of the legal system.

The development of a system of advocacy in Indonesia resulted primarily from encounters between state institutions and judicial traditions existing in society. In this regard, the experience of the Islamic courts differs little from the experience of the secular courts; in both systems, the

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^{††} In accordance with the policies of the *Pacific Rim Law & Policy Journal*, foreign words that have entered common English usage will not be italicized. Foreign words that are not in common usage will be italicized. Arabic words will not use diacritical marks such as macrons. However, apostrophes and reverse apostrophes will be employed to signal the letters *hamza* and *'ayn*, respectively.

¹ The functions that are performed by lawyers in modern legal systems were at one time mainly handled by judges. In Islamic legal theory, the judge not only decides cases brought before the courts but also provides litigants with assistance in what we understand as the law of procedure.

appeal of ideas and institutions that originated in the West proved irresistible. As a result, the Western tradition of lawyering has largely shaped the practice of law in Indonesia. Furthermore, because both systems are based on the same model, lawyering in the Islamic courts and the secular courts is very similar.²

The Dutch brought modern lawyering to Indonesia, but the Western tradition of lawyering did not become established in the Islamic courts until many years after the end of colonial rule. The Dutch policy of legal pluralism resulted in the creation of a dual judicial system—one for those designated as Dutch or European and another for those designated as indigenous (*inlander*). Cases involving European parties were processed before the *raad van justitie*, while cases involving indigenous parties were heard by the *laandrad*.³ The *raad van justitie* used the procedural law contained in Reglement op de Strafvordering (“SV”)⁴ for criminal matters and Reglement op de Rechtsvordering (“RV”)⁵ for civil matters. The *laandrad*, however, applied the Herzein Indonesisch Reglement (“HIR”), a law of procedure specifically for Indonesians. In contrast to the SV and the RV, the HIR did not recognize the use of lawyers. The premise underlying this arrangement was that the culture of modern lawyering was not suited to indigenous judicial institutions, which emphasized discretionary decision-making rather than procedural regularity and the implementation of uniform rules of general application.

The logic of a modern court system that governed the *raad van justitie* gave birth to a modern lawyering system for cases involving the colony’s European inhabitants. Notably, however, the *landraad* system also produced a practice of lawyering despite the fact that the use of lawyers was not officially sanctioned in the *landraad*. In the *landraad*, the figure who performed functions similar to those of lawyers in the *raad van justitie* was called the *pokrol bambu*. While the lawyer in the Dutch courts, typically a Dutchman, had a formal degree in law, the *pokrol bambu* was from the

² The principal difference between the two systems is that they apply different bodies of substantive law. The conduct of the proceedings, including the role played by lawyers, is very similar.

³ See DANIEL S. LEV, *ISLAMIC COURTS IN INDONESIA* 11-13 (1972).

⁴ See Reglement op de Strafvordering [Rules of Criminal Procedure], Stb. 1847, No. 40 (Neth.), amended by Stb. 1849, No. 63, reprinted in W.A. ENGELBRECHT & E.M.L. ENGELBRECHT, *KITAB-KITAB UNDANG-UNDANG DAN PERATURAN-PERATURAN SERTA UNDANG-UNDANG DASAR 1945 REPUBLIK INDONESIA: DE WETBOEKEN WETTEN EN VERORDENINGEN BENEVENS DE GRONDWET VAN 1945 VAN DE REPUBLIEK INDONESIA 1628-1699* (Les Editions A. Manteau S.A. & A.W. Sijthoff’s Uitgeversmaatschappij N.V., 1960) (1950).

⁵ See Reglement op de Rechtsvordering [Rules of Procedure], Stb. 1847, No. 52 (Neth.), amended by Stb. 1849, No. 63, reprinted in ENGELBRECHT & ENGELBRECHT, *supra* note 4, at 1135-92.

indigenous population and did not have a formal legal education. The Dutch government took note of this practice and responded with Staatsblad No. 496 of 1927,⁶ which was specifically intended to differentiate the *pokrol bambu* from formal lawyers who were subject to a separate regulation, the Reglement op de Rechterlijke Organisatie.⁷

The *pokrol bambu* also practiced in the Islamic courts, and the lawyering practice that developed in the *landraaden* thus became established in the Islamic courts as well. However, while the use of non-professional advocates was not limited to the Islamic courts, practice in the Islamic courts began to diverge from practice in the civil courts after Indonesian independence.⁸ In the civil courts, the use of formally trained lawyers began to increase around the 1960s. In the Islamic courts, however, the use of *pokrol bambu* remained common until about the 1970s.⁹ Although *pokrol bambu* appeared in only a small percentage of cases in the Islamic courts, there was a persistent need for their services because of the specialized character of the law applied by the courts. Many of those who appeared as *pokrol bambu* in the Islamic courts were scholars of Islamic law (*ulama*), and their expertise was useful to the judge in resolving substantive legal issues.

The lawyering practice in the Islamic courts received a boost with the promulgation of the Religious Judicature Act in 1989.¹⁰ Although the Act does not address the matter of lawyering directly, it nevertheless marks a turning point in the development of advocacy in the Islamic courts. The importance of the Act for lawyering practice arises from the fact that it puts the Islamic courts on an equal footing with the civil courts and completes the transformation of the Islamic courts into a modern judicial system. The modern character of the courts demands a certain standard of legal expertise.

⁶ Regeling Van Den Bijstand en Van De Vertegenwoordiging Partijen In Burgelijke Zaken Voor De Landraden [Assistance and Representation to Parties in Civil Cases at the Landraad], Stb. 1927, No. 496 (Neth.).

⁷ See Reglement op de Rechterlijke Organisatie [Court Rules], Stb. 1847, No. 23 (Neth.), reprinted in ENGELBRECHT & ENGELBRECHT, *supra* note 4, at 1742.

⁸ The policy of the post-independence Indonesian government on Islamic law was not materially different from the colonial policy. Although Dutch policy on Islamic legal institutions was complicated, the Dutch were not disposed to place the Islamic courts within their understanding of a modern court system. The Dutch promulgated a number of statutes on the Islamic courts, but none related to the practice of lawyering. The colonial government viewed the Islamic courts as traditional institutions and felt no need to equip them with a modern lawyering system like that applied in the Dutch raad van justitie. If needed, the traditional *pokrol bambu* was considered sufficient for such work in the Islamic courts.

⁹ See generally LEV, *supra* note 3, at 8-61 (explaining the phenomenon of the *pokrol bambu* and related issues in Islamic courts).

¹⁰ Religious Judicature Act, Act No. 7 of 1989.

This has had a positive impact by reinforcing the perception that lawyers working in the Islamic courts should have a formal legal education, thus eliminating the *pokrol bambu* from the courts.

Although the Indonesian legal system has supported the development of modern advocacy in the Islamic courts, the lawyering practice in the Islamic courts has nevertheless been slow to change. There are a number of factors that have contributed to this situation. First, many within the Indonesian Muslim community have been reluctant to accept the idea of modern lawyering, which was regarded as foreign to the Islamic tradition and, it was feared, would have a detrimental impact on the implementation of Islamic law. Second, the Syariah¹¹ faculties in the Islamic system of higher education were generally unprepared to respond to the need for modern Islamic lawyers trained specifically to practice in the Islamic courts. Many Indonesian Syariah students are not interested in pursuing a career as a lawyer. This seems to have resulted from the view within the Syariah faculties that the work of advocates is not particularly important.¹² Third, practicing law in the Islamic courts is not particularly lucrative, as the cases that are heard in the Islamic courts generally do not have a very high economic value.¹³

The evolution of the Islamic bar reached its highest point in 2003 with the establishment of the Indonesian Association of Syariah Advocates (Asosiasi Pengacara Syariah Indonesia or “APSI”). The importance of APSI derives from its position as the only officially recognized professional bar organization dedicated to the enhancement of advocates practicing in Indonesia’s Islamic courts. The existence of the organization has helped foster an image of Syariah advocates as lawyers and professionals and lends credibility to Syariah advocates as a component part of the larger Indonesian bar. As such, the organization serves many Indonesian Muslims’ long-standing objective to modernize the country’s Islamic bar. With the

¹¹ “Syariah” is the common spelling of “Shari’a” or “Sharia” in Bahasa Indonesia, the Indonesian language.

¹² Interview with Taufik Ch., General Director, Asosiasi Pengacara Syariah Indonesia [“APSI”] (Nov. 28, 2009).

¹³ There have, however, been occasional efforts to improve the lawyering practice in the Islamic courts. One important example is a program developed in the 1980s by the Indonesian Legal Aid Foundation (Lembaga Bantuan Hukum Indonesia or LBHI) to engage law students, including students in Syariah faculties, to work as volunteer advocate assistants in the courts. The primary objective of the program is to provide law students with experience practicing the law to prepare them for careers as lawyers. Although the program was not intended to generate interest among Syariah students in becoming legal practitioners, it nevertheless had the effect of inculcating a more positive view of the role of lawyers, which in turn may have prompted participants to include law as a possible career choice. The author worked as a volunteer advocate in the Yogyakarta branch office of LBHI from 1989 to 1991.

inclusion of APSI as one of eight professional advocates organizations recognized in the Advocates Act of 2003,¹⁴ Syariah advocates now share equal standing with other practicing lawyers in Indonesia.

The Advocates Act enshrines the principle of equality among all advocates engaged in the practice of law. As a result, Syariah advocates are not limited to practicing before the Islamic courts, but can practice in the general courts as well. Similarly, general advocates can practice in any of the country's courts, provided they possess the legal expertise necessary to handle the case. Thus, the lawyers who appear in the Islamic courts fall into one or more of three categories: 1) any professional advocate who represents clients before the Islamic courts; 2) professional advocates with degrees from Syariah faculties rather than secular faculties; and 3) members of APSI who have significant Islamic court practice.

II. WHAT ARE THE FORMAL LEGAL REQUIREMENTS TO PRACTICE BEFORE ISLAMIC COURTS?

The Advocates Act of 2003 contains the requirements for practicing law in Indonesia.¹⁵ The Act requires that an advocate have a license issued by an official bar association in order to practice before the Islamic courts (as well as in any other courts). The Act further stipulates that an advocate must complete a program of legal education, pass the bar examination administered by the bar association, and complete a course of pre-service training to be licensed to practice before the courts. The official elucidation to the Act identifies four different post-secondary degree programs that qualify a person for law practice: a degree in law (*hukum*) typically offered by general universities; a degree in Syariah from Islamic institutions; a degree from a military law school; or a degree from the police academy.¹⁶ In addition, the person must be an Indonesian citizen, not be a member of the civil service or holder of state office, be at least twenty-five years old, never have been convicted of a crime punishable by five years or more, and have served an apprenticeship of at least two years in a law firm.¹⁷

¹⁴ Advocates Act, Act No. 18 of 2003.

¹⁵ *Id.*

¹⁶ *Id.* General Elucidation to art. 2(1). The original states, “[y]ang dimaksud dengan ‘berlatar belakang pendidikan tinggi hukum’ adalah lulusan fakultas hukum, *Syariah*, perguruan tinggi hukum militer, perguruan tinggi ilmu kepolisian” (emphasis added). *Id.*

¹⁷ *Id.* art. 3.

A. *May a Lawyer Qualified to Practice Before the Civil Courts Practice in the Islamic Courts, and May a Lawyer Qualified to Practice in the Islamic Courts Practice in the Civil Courts?*

The Advocates Act makes clear that there is a single set of requirements for admission to the practice of law and that persons licensed to practice law are thereby eligible to practice in any of the country's four court systems. The Act's equal treatment of lawyers practicing in the Islamic courts and those practicing in other courts is apparently premised on the belief that, although the Islamic and civil courts have different competencies and apply different bodies of substantive law, they are nevertheless similar in a fundamental way. While the Islamic courts deal exclusively with cases involving matters governed by Islamic law and the general courts deal with cases unrelated to Islamic law, licensed advocates can practice in both courts as long as they are capable of handling the cases.

By establishing a single set of standards for practicing before any of the nation's courts, the Advocates Act represents an important change from prior practice. Before the promulgation of the Act, only advocates who graduated from a general law school could practice before the country's general courts.¹⁸ Graduates from Syariah faculties who chose careers as legal professionals were limited to handling Islamic family law matters in the Islamic courts. The implementation of the Advocates Act thus produced a change in the structure of Indonesian legal pluralism. Prior to the passage of the act, both the court system and advocacy had a plural character. In addition to separate court systems, there were also separate categories of lawyers practicing in the various courts. With the passage of the Advocates Act, there is no longer a distinction, at least in theory, between lawyers qualified to practice in all courts and Syariah advocates eligible to practice before the Islamic courts only.

B. *Who Is Responsible for Establishing the Qualifications to Practice Before Islamic Courts?*

One of the primary purposes of the Advocates Act was to transfer the regulation of lawyers out of the hands of the state. Accordingly, the Act provides that advocates associations are granted the authority to appoint

¹⁸ This seems to have been based on an assumption that graduates of Syariah faculties at the Islamic institutions of higher education were not adequately prepared to practice law in common courts. Although this assumption might not square with the reality of lawyering in the country, it effectively impeded Syariah advocates from practicing before the civil courts.

advocates, inclusive of the administration of qualifying examinations and of other pre-service training requirements.¹⁹ The role of the state is limited to confirming the recognition of the advocates associations.²⁰

A second objective of the Advocates Act was to consolidate the regulation of lawyers under a single national bar association,²¹ now called the Indonesian Advocates Association (Perhimpunan Advokat Indonesia or “Peradi”). It was clearly understood, however, that this objective could not be realized immediately. In early 2000, when the Advocates Act was being drafted, there were already seven advocates associations in existence.²² By the time the law was promulgated in 2003, the number of the associations had increased to eight with the establishment of APSI. The Act established a two-year deadline for the establishment of Peradi.²³ In the interim, however, all eight of the existing organizations, including APSI, were granted authority to perform the functions assigned to Peradi.

Peradi was established in 2005, as required by the Advocates Act, but the goal of consolidating the regulation of Indonesian lawyers under a single national bar association has so far proved elusive. In 2007, two years after its creation, a dispute broke out within Peradi that resulted in a split in the organization and the creation of a new, competing body. This new organization, the Congress of Indonesian Advocates (Kongres Advokat Indonesia or KAI), also claims the authority to regulate the licensing of lawyers.²⁴ Additionally, the eight smaller bar associations in existence before the enactment of the Advocates Act did not disappear, though these groups do not seek to perform the licensing function assigned to the national advocates association.

C. *Is the Licensing of Islamic Lawyers Under State or Federal Authority?*

The geopolitical basis of Indonesia is a unitary archipelagic state. The

¹⁹ Advocates Act, Act No. 18 of 2003, art. 2(2).

²⁰ *Id.* art. 2(3) (instructing that copies of the letter of appointment for lawyers is to be sent to the Supreme Court and the Minister of Law and Human Rights).

²¹ See E. ANN BLACK & GARY F. BELL, *LAW AND LEGAL INSTITUTIONS OF ASIA: TRADITIONS, ADAPTATIONS AND INNOVATIONS* 290 (2011).

²² Those associations were the Indonesian Advocates Association (Ikatan Advokat Indonesia), the Association of Indonesian Advocates (Asosiasi Advokat Indonesia), the Indonesian Legal Advisors Association (Ikatan Penasehat Hukum Indonesia), the Indonesian Advocates and Lawyers’ Association (Himpunan Advokat dan Pengacara Indonesia), the Indonesian Lawyers’ Union (Serikat Pengacara Indonesia), the Association of Indonesian Legal Consultants (Asosiasi Konsultan Hukum Indonesia), and the Association of Indonesian Capital Markets Consultants (Himpunan Konsultan Hukum Pasar Moda).

²³ Advocates Act, Act No. 18 of 2003, art. 32(4).

²⁴ BLACK & BELL, *supra* note 21.

country has a uniform, national judicial system in which all of its courts are placed under a “single roof” (*satu atap*): the Indonesian Supreme Court.²⁵ As a result, the concept of federal legal authority is unknown in the Indonesian legal system.

The unitary structure of the Indonesian legal system is also manifest in the practice of lawyering. The licensing of lawyers, including Islamic lawyers, is organized on a national basis. As explained above, the authority to license lawyers is, in principle, centralized under a single national bar association, Peradi.

D. What Proportion of Litigants Is Represented by a Lawyer?

There is, as yet, no data on the proportion of litigants in the Islamic courts who are represented by a lawyer. Although the number of advocates practicing before the Islamic courts remains low compared to the civil courts, the lawyering tradition in the Islamic courts is increasing.²⁶

A number of factors influence the relative infrequency with which lawyers are used in the Islamic courts. First, the tradition of using lawyers to present a case in Islamic courts is a comparatively recent phenomenon in many Muslim countries. This holds true in Indonesia, where the lawyering culture within the Muslim community is generally weak, and many Indonesian Muslims do not understand the role that lawyers play in presenting a case in court. Second, the number of Syariah advocates in Indonesia is still relatively low. This may be affected by the low number of Syariah faculty graduates choosing to pursue a career in law. Third, economic factors may hinder the use of lawyers in the Islamic courts. Engaging a lawyer raises the costs of presenting a case in court, and this may cause some litigants to choose to present their cases themselves.

This situation is changing, however. The Director of APSI confirmed that the number of litigants in the Islamic courts who are represented by a lawyer is increasing as more Muslims are coming to realize the importance of using an advocate.²⁷ The membership of APSI has also increased significantly; in 2009 there were an estimated 500 Syariah lawyers with significant experience practicing in the Islamic courts.²⁸ These changes are

²⁵ EUIS NURLAELAWATI, *MODERNIZATION, TRADITION, AND IDENTITY: THE KOMPILASI HUKUM ISLAM AND LEGAL PRACTICE IN THE INDONESIAN RELIGIOUS COURTS* 63 (2010).

²⁶ This conclusion is based on interviews with Syariah advocates who commonly practice before the Islamic courts. One interviewee, for instance, reported there has been a significant increase in the number of cases he has represented in the courts over the past decade. Interview with Taufik Ch., *supra* note 12.

²⁷ *Id.*

²⁸ Interview with Nur Khoirin, Secretary General, APSI (Nov. 30, 2009).

occurring against the backdrop of improved economic conditions and rising levels of education throughout the country. Given these developments, as well as the fact that there are 343 Islamic courts across the country, leaving room for growth, we can fairly assume that the use of lawyers will increase in the Islamic courts.

E. Do Persons Who Are Not Licensed to Practice Law Provide Legal Services to Litigants in the Islamic Courts?

Historically, the practice of law in Indonesia was not limited to law graduates, and a diverse group of legal practitioners offered various types of services to parties with cases in Indonesian courts. Not all of these practitioners had legal training and not all of them had official authorization to practice law or appear in court. The use of unofficial lawyers equipped with some knowledge of the handling of judicial proceedings, but lacking formal training or official authorization, was perhaps particularly common in the Islamic courts.

The diversity of lawyering practice in Indonesia is evident in the variety of terms used to refer to legal practitioners. Before the promulgation of the Advocates Act in 2003, at least six different terms were used to denote the lawyering practice, depending on the nature of the services provided: 1) “*pokrol bambu*” referred to persons who practiced law before the courts but did not have degrees in law; 2) *pengacara praktek* (practicing lawyer) referred to persons authorized by a provincial court of appeal to practice law in that province only; 3) *advokat* (advocate) referred to those who were officially appointed by the Ministry of Law to practice law throughout Indonesia; 4) *konsultan hukum* (legal consultant) referred to individuals who, due to their expertise in a particular field, were hired to provide legal opinions in particular cases, especially in cases related to business law or corporations; 5) *penasehat hukum* (legal advisers) referred to individuals who acted as litigators without necessarily having official authorization; and 6) *kuasa hukum* (attorney at law) referred to persons who served as official litigators in particular cases.²⁹ The variety of positions shows that an official and uniform system of lawyering is a relatively recent phenomenon in Indonesia. Indeed, a modern lawyering system came into existence in Indonesia only with the promulgation of the Advocates Act in 2003, which eliminated this variety of terms and functions and adopted the term

²⁹ AFDAL DZIKRI, SUPREME COURT OF THE REPUBLIC OF INDONESIA, KEPENGACARAAN [Matters Dealing with Lawyers] (2009) (document used in training of judicial candidates at Ciawi, Bogor, Oct. 12-Nov. 22, 2009).

“advocate” (*advokat*) to denote professional lawyers practicing the law in the country.

III. ADMISSION TO PRACTICE BEFORE THE ISLAMIC COURTS

A. *What Are the Procedures for Licensing or Admission to Practice Before the Islamic Courts?*

As discussed above, the Advocates Act establishes a number of requirements that must be satisfied in order to license an individual to practice law.³⁰ This single set of requirements applies to all advocates in Indonesia, and there are no specific rules or procedures related to admission to practice before the Islamic courts. A lawyer who has been granted a license to practice under the Advocates Act may practice before any of the country’s courts.

The existence of two national bar organizations,³¹ both claiming authority to regulate the licensing of advocates, has undermined the objective of making the procedures for admission to the practice of law clear and certain. The two advocates associations use different qualifying exams and each conducts its own pre-service training program. In addition, while the two organizations have essentially the same requirements for obtaining a license, the procedures that must be followed to satisfy those requirements differ somewhat. The first step in the process for either organization is the completion of a degree in law, and both organizations require passage of a qualifying examination and completion of a training course. The two advocates associations differ, however, in the function and timing of the mandatory pre-appointment training. The Peradi regards the training program as preparation for the qualifying examination, and requires that candidates complete the program (Pendidikan Khusus Profesi Advokat)³² before taking the exam. The pre-service training program offered by KAI is intended for candidates who have passed the qualifying exam and are preparing to enter practice. Obtaining a law license through either of the associations requires completion of the two-year internship mandated by the Advocates Act.

³⁰ See *supra* text accompanying notes 15-17.

³¹ See *supra* Part II.B.

³² The training usually lasts one week and consists of thirty-eight sessions of one and a half hours each.

Lawyers licensed under either of the two groups are eligible to practice before the Islamic courts. However, the APSI has affiliated with KAI, indicating its preference to follow the KAI program.

B. Who Prepares the Examinations Administered to Prospective Lawyers?

In the past, the preparation of the qualifying examination for Indonesian lawyers was under the exclusive control of the Indonesian Supreme Court. The Supreme Court prepared the bar examination, which was then administered around the country by the provincial level courts of appeal.³³ This situation continued until the Working Committee of Indonesian Advocates (Komite Kerja Advokat Indonesia or “KKAI”) was created in 2000. The KKAI was comprised of the seven existing bar associations³⁴ and was intended as a precursor to the eventual establishment of a national bar association. After the creation of KKAI, the preparation and administration of the lawyers’ exam became the joint responsibility of KKAI, the Supreme Court, and the Department of Law and Human Rights.

The KKAI was intended as a first step toward the complete divestment of state control over the appointment of lawyers. To that end, the Advocates Act of 2003 stipulates that the only institution authorized to administer examinations for prospective lawyers is Peradi.³⁵ Although the Act was successful in transferring the responsibility for appointment of lawyers out of the hands of the state, Peradi has not been able to continue its exclusive control over the bar examination. Despite the fact that the Advocates Act stipulates that there shall be a single national bar association with authority to license lawyers, the KAI has received de facto recognition and, as a practical matter, both Peradi and KAI are now accepted as institutions authorized to administer bar exams.³⁶

C. What Subjects Are Tested?

The Advocates Act establishes a single licensing procedure to qualify

³³ It is interesting to note that although an Indonesian bar association (Ikatan Advokat Indonesia or IKADIN) was established as early as 1985, long before the creation of the Komite Kerja Advokat Indonesia (“KKAI”), the bar exam remained under the control of the Supreme Court.

³⁴ KKAI was made up of all the bar associations mentioned in Advocates Act, Act No. 18 of 2003, art. 32, except for APSI, which was not established until 2003.

³⁵ Advocates Act, Act No. 18 of 2003, art. 3(1)(f) (stating that prospective lawyers should pass the exam administered by the national “Organization of Advocates”).

³⁶ See BLACK & BELL, *supra* note 21.

one to practice before any of the country's courts, and the same qualifying exam is given to all prospective lawyers regardless of educational background. Additionally, while the creation of KAI in 2007 has resulted in two different qualifying exams, there are no meaningful differences in the subjects that are tested on the exams administered by Peradi and those administered by KAI.

Both agencies' bar examinations, which are structurally similar, currently consist of two parts.³⁷ The first part of the exam consists of multiple-choice questions. This segment is worth sixty points and focuses on procedural law and legal ethics. The subjects tested in this part of the exam are criminal procedure, civil procedure, the law of procedure for the religious courts, the law of procedure for the administrative courts, the procedural law of the industrial courts, and legal ethics as contained in the Code of Ethics for Indonesian advocates and the Advocates Act. The second part of the exam consists of essay questions, and is intended to test the examinee's legal knowledge and practical skills in the context of an actual situation. Typically, this section of the exam requires the examinee to draft court documents such as a complaint, an authorization letter, or a brief.³⁸ Essay questions are sometimes of a more theoretical nature. One question, for instance, required the examinees to evaluate the pros and cons of capital punishment in relation to the philosophy of Indonesian national law.³⁹

D. Does the Selection Process Include Performance Evaluations?

The current bar exam does not include a performance evaluation of the candidates.⁴⁰ As explained earlier, however, the Advocates Act requires that advocates work in a law firm for at least two years before being granted a license.⁴¹ This internship is intended to ensure mastery of the practical aspects of lawyering.⁴²

³⁷ Interview with Budi Ruhiatudin, Director of Yogyakarta Branch, APSI (Dec. 11, 2009) [hereinafter Interview with Budi Ruhiatudin, Dec. 11].

³⁸ The director of the Yogyakarta branch of APSI explained that the Congress of Indonesian Advocates (Kongres Advokat Indonesia or "KAI") is currently in the process of formulating a new bar exam that will include a type of performance test. *Id.* In an effort to respond to the development of law and legal practice in the country, the planned revision incorporates an oral exam in which a panel of lawyers and jurists examines the candidate's understanding of the law. The content of the exam will address both theoretical and practical aspects of the law.

³⁹ *Id.*

⁴⁰ See *supra* note 38 (discussing KAI's preparations to add a performance portion to its bar exam).

⁴¹ Advocates Act, Act No. 18 of 2003, art. 3.

⁴² Interview with Budi Ruhiatudin, Dec. 11, *supra* note 37.

IV. THE PEOPLE WHO DO ISLAMIC LAWYERING

A. *Are the People Doing Islamic Lawyering Organized? If So, How?*

For the most part, advocates in Indonesia are not specialized in particular practice areas; most work as jacks-of-all-trades handling an array of cases. Although the Advocates Act specifically authorizes specialization in the practice of law,⁴³ the majority of bar organizations that have been created thus far are not organized around a particular practice specialty. Of the eight associations mentioned in the Advocates Act,⁴⁴ only two can be said to reflect the logic of specialization, namely, the Association of Indonesian Capital Markets Consultants (“HKHPM”) and APSI. Moreover, of these two associations, only HKHPM can truly be said to focus on a particular area of law—business law. APSI, on the other hand, was developed not so much for the purpose of cultivating a particular practice area but to further the political goal of receiving equal recognition for lawyers who graduated from Syariah faculties.

It is apparent from the list of bar associations in the Advocates Act that a bar association within the meaning of the Act does not necessarily involve a group of lawyers affiliated on the basis of practice specialty. Indeed, while some lawyers practicing Islamic law are now affiliated with APSI, not all lawyers who practice before the Islamic courts are necessarily members of the organization. Many lawyers who practice Islamic law have joined bar associations other than APSI. In theory, every lawyer in the country is free to affiliate with any bar association, irrespective of the lawyer’s specialty or practice area.

Whatever its current composition or purposes, APSI was not initially conceived as a vehicle for promoting the interests of lawyers who practice before the Islamic courts. In considering the origins of APSI, it is helpful to understand that the term “Syariah lawyer” is used in two different ways by the organization. The term is used to refer to advocates who represent clients before the Islamic courts (some of whom belong to APSI and some of whom do not), but it also refers to advocates with degrees from Syariah faculties, irrespective of whether they practice in the Islamic courts. APSI was created in 2003 specifically to advance the interests of lawyers who had

⁴³ Advocates Act, Act No. 18 of 2003, art. 3(2).

⁴⁴ *See id.* art. 32(3).

graduated from Syariah faculties.⁴⁵ Although the effort to achieve equal treatment for Syariah graduates had been ongoing for some time, the formal creation of APSI on February 8, 2003 was a direct result of the Indonesian legislature's consideration of the Advocates Act. The legislative assembly passed the Advocates Act on March 6, 2003, less than one month after APSI was formed. The Act grants Syariah advocates the right to participate fully in the country's legal system and thus marks a major milestone in the long struggle of Syariah advocates to gain formal recognition by the state and to achieve equal treatment.⁴⁶ The Act expressly mentions APSI as one of eight legally recognized advocates associations, upholding the organization's right to organize the country's Syariah advocates.⁴⁷ This recognition boosted the confidence of Syariah advocates in handling cases related to Islamic law and lent support to the aspirations of the association to further improve the quality of Syariah advocates.⁴⁸

Finally, the Advocates Act's recognition establishes APSI's standing among the other bar associations. This in turn signals the state's formal recognition of Islamic law as a component of the country's legal system and the practice of religious law as inseparable from the practice of the country's other laws. Viewed from this perspective, the Advocates Act can be understood to extend formal state recognition not only to substantive aspects of Islamic law, but also to Islamic legal practice. Additionally, the formal recognition of APSI is intimately related to the achievement of the aspiration of its founders, since the recognition of Syariah advocates would hardly have been possible without also recognizing their association.

B. How Many Islamic Lawyers Are There?

While the precise number of Syariah advocates in the country is unavailable, it is nevertheless possible to obtain a general picture of the current state of the Islamic bar. According to the Director of APSI, there are now about 500 Syariah advocates around the country who are members of APSI, and the number is increasing. Advocates who practice before the

⁴⁵ The membership of the organization is not confined to Syariah graduates, and now includes advocates who are not Muslim. Interview with Taufik Ch., *supra* note 12; Interview with Budi Ruhiatudin, Dec. 11, *supra* note 37.

⁴⁶ See APSI DEWAN PIMPINAN PUSAT, PROFIL ASOSIASI PENGACARA SYARIAH INDONESIA 1 (on file with author).

⁴⁷ Advocates Act, Act No. 18 of 2003, art. 32(2). The eight listed advocates associations are APSI and the seven older organizations listed *supra* note 22. *Id.*

⁴⁸ See APSI, ANGGARAN RUMAH TANGGA APSI [APSI Bylaws], art. 1, *in* APSI DEWAN PIMPINAN PUSAT, ANGGARAN DASAR-ANGGARAN RUMAH TANGGA APSI 11 (on file with the author).

Islamic courts are currently concentrated mostly in large cities in the western and central parts of Indonesia.⁴⁹ Interestingly, the number of advocates who focus their practice before the Islamic courts are mostly general law graduates of secular universities. Lawyers educated in Syariah faculties make up only about fifteen to twenty percent of all APSI members.⁵⁰ This means that there are, at most, only about 100 APSI advocates with a background in Islamic law, while the remaining 400 come from non-Islamic law backgrounds. These numbers do not, of course, include Syariah advocates who have associated themselves with bar organizations other than APSI, so the total number of advocates in the country who have an educational background in Syariah is certainly larger.

There are a number of factors that may have influenced the relatively low number of Syariah advocates who have joined APSI. As noted, the Advocates Act does not require that Syariah advocates affiliate with APSI. The Act explicitly states that advocates may join any of the eight bar organizations listed in Article 32 and membership in APSI is not obligatory for Syariah advocates. Another factor that may affect APSI's membership numbers is the fact that the organization's offices do not yet exist in many parts of the country. It seems likely that APSI's membership will grow, albeit slowly, as understanding of the organization and its work spreads.

C. *What Credentials Do Islamic Lawyers Have?*

Under the Advocates Act of 2003, no distinction is made between Syariah advocates and other lawyers. The formal credentials that entitle one to practice law are the same for all Indonesian advocates. However, while educational background is not formally relevant to the eligibility to practice law, it continues to have relevance in common social understandings. The particular kind of faculty (law or Syariah) from which a lawyer graduates continues to be relevant here because graduates of law faculties use different titles from graduates of Syariah faculties. Law graduates use the title *Sarjana Hukum* (baccalaureate in law), which is indicated with the initials "SH" following the person's name. Lawyers who graduated from Syariah faculties are designated as *Sarjana Hukum Islam* (baccalaureate in Islamic law) and use the initials "SHI."⁵¹ Although the Advocates Act does not

⁴⁹ Interview with Taufik Ch., *supra* note 12.

⁵⁰ Interview with Budi Ruhiatudin, Dec. 11, *supra* note 37.

⁵¹ The use of the title "*Sarjana Hukum Islam*" is a comparatively recent development. Before 1993, all graduates of the Islamic higher education system were awarded the academic title of *doctorandus* without distinguishing the graduate's faculty or field of study. Syariah faculty graduates had the same title

distinguish lawyers by their educational background, many believe that the specification of Islamic law in the title has the effect of limiting Syariah advocates solely to the practice of law in the Islamic court system.

D. What Is the Demographic Profile of the Islamic Bar?

The national bar associations of Peradi and KAI do not have comprehensive data on the demographic statistics of their members,⁵² and it is therefore not yet possible to draw a complete or precise demographic picture of the Islamic bar. One can, however, generate a partial picture based on information supplied by APSI. There are now about 500 Syariah advocates officially registered as APSI members.⁵³ More than ninety percent of the membership is male. A majority of APSI members are under thirty years old,⁵⁴ and many are recent graduates. As mentioned above, as many as eighty percent of the members are Sarjana Hukum, meaning they are graduates of general law schools. About five percent of APSI's membership are recorded as non-Muslims, and some have degrees from Christian universities.⁵⁵

E. What Continuing Education Is Offered or Required for Islamic Court Lawyers?

There is no continuing legal education program offered or required for Syariah advocates in Indonesia. As discussed above, the Advocates Act only requires that before being licensed to practice law, an advocate must

as the graduates of other faculties within Islamic Institutes or Universities, and many Syariah advocates practicing today have the title of *doctorandus*. However, in 1993, the title given to graduates in any religion-related field was changed to Sarjana Agama (SAg.), again without any indication of academic specialty. Those Syariah advocates who graduated from 1993 on, therefore, have the title SAg. after their names. However, this was widely considered to be unsatisfactory. The title Sarjana Agama did not identify the graduate's field of specialty, and it was applied not only to graduates of Islamic educational programs but also to those who graduated from religious studies departments in non-Islamic institutions, such as Christian or Buddhism studies. It was based on these considerations that in 2002 the Director General of Islamic Institutions of the Department of Religious Affairs, through Decision Letter No. E/10 of 2002, issued a new academic title for graduates of Islamic higher educational institutions that distinguishes graduates based on their area of specialty. Thus, we now find that Syariah graduates have the title Sarjana Hukum Islam (SHI). This identifies the person as having studied Islamic law in an Islamic institution, as opposed to graduates of theology departments who take the title Sarjana Theologi Islam (SThI).

⁵² Queries by APSI to Peradi and KAI regarding the demographics of advocates have received no response. Interview with Nur Khoirion, Secretary General, APSI (Nov. 30, 2009).

⁵³ Interview with Taufik Ch., *supra* note 12; Interview with Nur Khoirion, *supra* note 52.

⁵⁴ Interview with Budi Ruhiatudin, Director of Yogyakarta Branch, APSI (Dec. 4, 2009).

⁵⁵ Interview with Budi Ruhiatudin, Dec. 11, *supra* note 37.

participate in a pre-service training program and serve a two-year apprenticeship in a law firm after passing the bar exam.⁵⁶

F. How Are Islamic Lawyers Regulated?

There is no law specifically regulating Syariah advocates. The Advocates Act regulates all advocates regardless of practice area.

G. Is There a Code of Ethics for Islamic Lawyers?

The Advocates Act mandates the preparation of a code of professional ethics that is to be applicable to all Indonesian advocates, regardless of educational background or practice area.⁵⁷ Responsibility for preparing the code is assigned to the national bar association. However, the ethics code mandated by the Advocates Act has not yet been written. When the Advocates Act was promulgated, the only existing code of ethics for lawyers was one written by the Working Committee of Indonesian Advocates (“KKAI”) in 2002. At the time, the KKAI functioned as the sole national-level umbrella organization for all Indonesian advocates groups, and the seven membership associations then in existence all approved the Code. Although APSI was created after the 2002 Code of Ethics was written and has not signed it, all of the country’s lawyers have been theoretically subject to the Code since the enactment of the Advocates Act in 2003.⁵⁸

However, in line with the schism between Peradi and KAI, KAI developed its own Code of Ethics in 2008, which is enforced only on its own members. The 2002 Code of Ethics has thus been enforced on Peradi advocates only. Interestingly, although each organization has worked with great zeal to differentiate itself from the other, the two different codes are substantially similar.⁵⁹

Both codes consist of twenty-two chapters and twenty-four articles regulating various aspects of the practice of law both in and out of court. The codes address standards of personal integrity for lawyers, attorney-client relationships, and the obligations and standards of conduct among lawyers.

⁵⁶ Advocates Act, Act No. 18 of 2003, art. 3.

⁵⁷ *Id.* art. 26.

⁵⁸ See KKAI, KODE ETIK ADVOKAT INDONESIA, art. 24 (2002) available at <http://www.peradi.or.id/admin/download.php?docid=1dd8b42e3dcc7fc592934b359e2c1469> (stating the Code of Ethics is to take effect after the Advocates Act becomes legally binding on the country’s advocates).

⁵⁹ See KKAI, KODE ETIK ADVOKAT INDONESIA, art. 24 (2002); KAI, KODE ETIK ADVOKAT INDONESIA (2008), available at <http://www.kongres-advokat-indonesia.org/pdfs/KodeEtik.pdf>.

The codes also provide for the creation of ethics boards (*dewan kehormatan*) to implement the ethical rules.⁶⁰

H. *What Are the Mechanisms for Disciplining Islamic Lawyers?*

As with other matters relating to the Indonesian legal profession, lawyer discipline is governed by a single uniform procedure applicable to all advocates in the country. The Advocates Act states that all advocates are subject to the code of ethics and assigns responsibility for ensuring compliance with the code to the national bar association.⁶¹ The Act further requires the creation of ethics boards, which have the authority to receive complaints about lawyer misconduct and to adjudicate alleged transgressions.⁶² Decisions by ethics boards at the regional level are subject to review by a central board in Jakarta.

Proceedings before the ethics boards are initiated by filing a complaint. The KKAI Code of Ethics, administered by Peradi, provides that complaints of misconduct can be submitted by clients, other advocates, government officials, members of society in general, and board members of the bar organization to which the advocate is a member.⁶³ The Code establishes a graduated scale of sanctions depending on the gravity of the violation.⁶⁴ Lawyers who commit minor transgressions receive an “ordinary admonition.”⁶⁵ More serious violations of the Code, repeated misconduct, or disregard of a prior admonition result in a “severe admonition.”⁶⁶ Lawyers who engage in more serious misconduct, are negligent or inattentive to the Code of Ethics, or engage in repeated misconduct after receiving a severe admonition are punished with temporary dismissal. The most severe punishment, permanent disbarment, is to be inflicted if an advocate transgresses the Code of Ethics with the purpose of destroying the image and dignity of advocacy as an honorable profession.⁶⁷ The Code requires that temporary dismissals and disbarments be reported to the Supreme Court, and lawyers who are subject to these actions are to be prohibited from engaging in all legal practice.⁶⁸

⁶⁰ KKAI, KODE ETIK ADVOKAT INDONESIA, ch. IX; KAI, KODE ETIK ADVOKAT INDONESIA.

⁶¹ Since there are currently two organizations functioning as national bar associations, we can assume that both Peradi and KAI have the authority to regulate the behavior of lawyers.

⁶² Advocates Act, Act No. 18 of 2003, art. 26(5).

⁶³ KKAI, KODE ETIK ADVOKAT INDONESIA, art. 11 (2002).

⁶⁴ *Id.* art 16(2).

⁶⁵ *Id.* art 16(2)(a).

⁶⁶ *Id.* art 16(2)(b).

⁶⁷ *Id.* art 16(2)(d).

⁶⁸ *Id.* art 16(3)-(4).

I. What Is the Role of Professional Organizations?

Following the promulgation of the Advocates Act, the precise role of professional organizations is uncertain. They have, however, become informal gathering places for the advocates involved in the organization. In particular, this has been the case since the successful creation of Peradi as the national bar association two years after the Act was promulgated. The national bar association that was mandated by the Advocates Act was intended to operate nationally and to supplant the existing organizations. Thus, legally speaking, the professional advocates organizations that existed before the creation of the national bar association should essentially be discontinued.

In practice, however, the role of professional organization for advocates in the country did not come to an end with the establishment of Peradi. This can be seen from the many activities and programs conducted by small professional organizations, such as APSI, in almost all provinces in Indonesia. As explained in the Advocates Act, professional organizations should take a role in supporting new advocates, upholding lawyer discipline, and maintaining standards of quality.⁶⁹ Thus, the primary concern of APSI's governing committee is improving the overall quality of Syariah advocates in the country.⁷⁰ This is done primarily through collaboration with Syariah faculties on various aspects of Islamic law.

As discussed earlier, APSI has also played a significant political role, particularly with respect to the Advocates Act. With the creation of Peradi in 2005, APSI no longer has the authority to license lawyers, but it has nonetheless been able to maintain its relationships with Syariah faculties as well as many governmental and non-governmental organizations and has continued to play an important role both in the practice of law and in the political arena. Clearly, the gains made by Syariah advocates in recent years would not have been possible without the active political engagement of APSI.⁷¹

⁶⁹ See Advocates Act, Act No. 18 of 2003, ch. X.

⁷⁰ See generally APSI, ANGGARAN RUMAH TANGGA APSI, *supra* note 48.

⁷¹ Interview with Taufik Ch., *supra* note 12.