

Principles Of Sharia Compliance In The Making Of Deeds By Notary Partners Of Sharia Bank In Selatan Sulawesi Province

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Abstract

This study aims to analyze the application of Shariah Compliance Principles in making Shariah Contracts by Notaries in South Sulawesi Province and the legal implications of deeds made by Notaries who do not apply Shariah Compliance Principles in making Shariah Contracts. The research method is empirical research. In addition, interviews were also conducted with several Notaries in Makassar City, Maros Regency, Gowa Regency, PT. Bank Syariah Indonesia Sub-Branch Office (KCP) Makassar Panakkukang, PT. State Savings Bank (Persero), Tbk. Makassar Sharia Branch Office, PT. Bank Muamalat Indonesia, Tbk. Makassar Branch Office, and literature related to research. The entire legal material is analyzed qualitatively, which is presented in an analytical descriptive manner. The results of this study are (1) The use of the word "Bismillah" should not be used to maintain the authenticity of the deed because there is no clear legal basis. The application of Sharia Compliance Principles can be seen through the inclusion of postulates, hadiths, and Sharia Principles in the content of the deed. A certificate or PDPS is not enough to prove that the Notary understands Islamic Law. The participation of Non-Muslim customers in Sharia Deed transactions is not a problem because the Islamic Principle prioritizes "rahmatan lil alamin" (2) If there is a Sharia Deed that does not comply with the Sharia Compliance Principles, the legal implication is that the deed cannot be used in Sharia Banking transactions. However, there are no provisions governing the technical arrangement of the Sharia Deed; the basis for the application of the Sharia Compliance Principles by Islamic Banks is the Sharia Banking Law and the DPS-MUI Fatwa

Keywords: *Sharia Compliance, Sharia Contract Deed, Notary.*

INTRODUCTION

The growth of Sharia Banks in Indonesia is increasing rapidly, in line with the growing public understanding that interest and capital whose results have been determined in advance constitute usury, which Islamic Sharia prohibits. Based on this understanding, since 1950, many Muslim and Islamic economic scholars have wanted the existence of banks that are free from interest or usury (Fauzi & Rahardi, 2021)(Ahmad et al., 2023).

The sharia business contract practices currently implemented do not fully implement sharia principles. This, among other things, occurs

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in Sharia financing contracts held by Sharia banking institutions. The non-compliance with Sharia principles in financing contracts in Sharia banking must, of course, be seen comprehensively, namely covering the pre-contractual, contractual, and post-contractual stages (Irawan et al., 2022) (Mohieldin et al., 2015). Therefore, Islam firmly and clearly encourages every legal subject consisting of individuals and bodies when entering into various contracts (contracts) to be careful and always pay attention to the pillars and conditions for the validity of the contract as determined in Islamic Law.

Sharia banking in Indonesia began in 1992, marked by the promulgation of Law Number 7 of 1992 concerning Banking (Banking Law), which implicitly contains provisions that allow bank management based on the principle of profit and loss sharing, especially through Government Regulation Number 72 of 1992 concerning Banks Based on Profit Sharing Principles and then, based on Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (Amendment Banking Law), which differentiates banks based on their management, which consists of conventional banks and Sharia Banks, both commercial banks and rural banks. The regulation of Sharia Banks, in particular, can be seen based on Law Number 21 of 2008 concerning Sharia Banking (Sharia Banking Law), that Sharia Banks and their operational procedures are based on Islamic procedures which refer to the provisions of the Al-Qur'an and Al-Hadith.

Sharia banking is present for people who want an Islamic economic system in their financial activities. These financial activities are in the form of financing activities because of the role of banking as an intermediary institution, namely between owners of capital and recipients of capital, as is the case with Sharia banking, while the difference is that it uses Sharia principles. The Sharia principle in question is implementing banking that is free of usury (usury and interest), gharar (uncertainty), and maysir (speculative/gambling), as well as falsehood based on Islamic law (Kadi, 2023)(Lakmiti & Malainine, 2021).

Research conducted by Bakar et al. (2023) stated that Sharia Banking Transactions cannot be separated from the role of the Notary because every financing transaction between the bank and the customer is implemented in the form of a contract or agreement, whether in authentic or private form. Therefore, the role of a Notary is needed in Sharia Bank activities in relation to consolidating and constitutionalizing contracts or agreements into Authentic Deeds to guarantee the legal certainty of contracts carried out.

The authority of a Notary to make an Authentic Deed is obtained from Law Number 30 of 2004 concerning the Position of Notaries as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (UUJN), which strictly regulates the duties position, based on Article 1 paragraph (7) UUJN, a deed made before or by a Notary has the status of an Authentic Deed according to the form and procedures stipulated in UUJN.

Notaries and Sharia Banks must comply with Sharia compliance; this is in order to maintain public trust in Sharia Banks, and Sharia Banks avoid violating the law. Violations of the law resulting from Sharia Bank non-compliance with sharia compliance will result in the termination of the bank's operations. Sharia Bank financing to customers as a Sharia Bank business activity is a legal relationship between the Sharia Bank and the customer, which must be stated in writing in a contract based on Article 1 paragraph (13) of the Sharia Banking Law. Regarding the substance of the contract, it contains the rights and obligations of the parties, which do not conflict with Sharia principles. Therefore, if there are parties who agree to want their contract to be in the form of a Notarial Deed, then the Notary needs to pay careful attention so that the deed that will be formalized does not deviate in substance from the law and Islamic law.

A notary is a profession that supports Sharia banking activities with the main task of formalizing Authentic Deeds to maintain legal certainty. This provides security in transactions for Sharia Banks and customers because the law protects them through an Authentic Deed. Notaries must be competent in formalizing Sharia contracts in accordance with Islamic law for the effectiveness of their profession and to avoid the risk of losses in transactions. Transactions in an agreement are considered valid if they fulfill the requirements for the validity of an agreement based on civil law (Mutamimah et al., 2022)(Basoeki, 2020). However, in the context of Sharia transactions, they must fulfill Sharia requirements such as rukun and conditions and not contain elements of usury, maisir, gharar, haram, and unjust. The notary who ratifies the Sharia Contract must understand this well.

Yogyakarta Syariah Bank has special requirements for their partner Notaries, including sharia financing training certification. Although there are no absolute requirements regarding the Notary's religion, these banks will prefer to accept Notaries who are Muslim. A deep understanding of Sharia economics and Sharia principles is important in making Sharia deeds (Andy, 2017)(Suharsono, 2019). Ideally, the Notary who certifies Sharia banking deeds is a Muslim with a good understanding of Sharia principles. Although there are no regulations that stipulate that only Muslim Notaries can draw up Sharia Contract deeds, this is a practice that is considered ideal. The role of Notaries in implementing Sharia Compliance is very important, and this is an interesting research topic to be explored further.

LITERATURE REVIEW

Authority Theory

According to Bagir Manan, authority in law refers to rights and obligations. This authority is obtained in three ways: attribution, delegation, and mandate. In the context of government delegation, some conditions must be fulfilled, such as definitive delegation, based on statutory provisions, not to subordinates, with the obligation to provide

information, and policy regulations that regulate the use of this authority (Suladri & Wardoyo, 2015)(Fitriansyah, 2023).

In this research, the theory of authority will be applied to the role of Notaries in carrying out their duties, especially in making Authentic Deeds. Notaries have the authority granted by the Law on Notary Positions (UUJN) to carry out state duties in the field of civil law and make Authentic Deeds in accordance with UUJN requirements. Apart from that, in the context of Sharia banking, there are regulations governing financing based on Sharia principles, which are stated in an Authentic Deed made by a Notary. In this case, the Notary must pay attention to Sharia principles such as Maisir, gharar, usury, and the principles of agreement in the Sharia banking Notarial Deed. The use of the term "contract" is normatively regulated in the Sharia Banking Law, Bank Indonesia Regulations, and the Compilation of Sharia Economic Law (KHES). All of these provisions regulate the duties of a Notary in creating an Authentic Deed in the context of sharia banking in accordance with applicable sharia principles (Pardy, 2020).

Legal Certainty Theory

In law, some principles form the basis for the formation of legal regulations. These principles are considered the "heart" of legal regulations, so to understand legal regulations, we need to recognize the principles (Supriyadi, 2018). According to Gustav Radbruch, there are three basic ideas or objectives of the law, namely justice, expediency, and legal certainty. Justice is the most important of these three goals, but expediency and legal certainty are also important. A good law combines these three factors for the welfare of society. Legal certainty is an important legal goal because it ensures that the law can function as rules that must be followed, provide a framework for behavior, and protect individual rights (Borman, 2019).

Legal certainty also means that the law must be applicable in concrete situations and provide protection against arbitrary actions. This makes the law clear, consistent, and reliable so that subjective factors do not influence it. In the context of this research, there are no regulations governing the format for making Sharia Contract Deeds and the Sharia certification obligations for Notaries who make them (Widiyono & Khan, 2022)(Nguyen, 2021). Even though Notaries have the authority to make Sharia Contracts based on UUJN, this is not always supported by a uniform understanding of Sharia Compliance Principles. As a result, there is the potential for legal uncertainty in the preparation of a Sharia Contract Deed, which can result in conflict or doubt in its understanding and implementation.

Powers, Obligations, and Prohibitions of Notaries

UUJN regulates the authority possessed by Notaries in carrying out their duties. Based on Article 15 paragraph 1 UUJN, a Notary has the authority to issue an Authentic Deed regarding all deeds, agreements, and stipulations that are required by statutory regulations and that are

desired by interested parties to be stated in an Authentic Deed, guarantee the certainty of the date of doing the deed, store the deed, provide a grosse, copy and quotation of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

Financing based on Sharia Principles is outlined in the form of a financing agreement. This financing agreement is made in the form of an Authentic Deed. A financing agreement outlined in the form of an Authentic Deed requires the role of a Notary in the making process. This is in line with the opinion of Philipus M. Hadjon that the requirements for an Authentic Deed are: a) The form of the deed is determined by law (standard form), and b) Made by and in the presence of public officials (Alwi et al., 2021).

In general, a contract (aqad) is an agreement, engagement, or agreement made by two or more people to carry out a certain legal act that is justified by syara' (Sharia Principles). The broader limitations of contracts are based on Article 20 paragraph 1 KHES, namely, "aqad is an agreement in an agreement between two or more parties to perform and not perform certain legal acts." Thus, the agreement, in this case, applies to all Sharia economies. Based on Article 1, paragraph 13 of the Sharia Banking Law, it is regulated that: "A contract is a written agreement between a Sharia Bank or Sharia Business Unit and another party which contains the rights and obligations for each party in accordance with Sharia Principles."

Agreements in Islamic Law

Etymologically, agreement in Arabic is defined as Mu'ahadah Ittifa' or Agreement. A contract or agreement is an act in which one or more people bind themselves to another person or more. In the Qur'an, there are at least 2 (two) terms related to agreements, namely the word Akad (al-'aqadu), which means agreement or agreement, while the word 'ahd (al-Mahdi), which means time, message, consummation, and promise, or agreement.

The term contract can be equated with the term engagement, while the word Al-'adhu can be equated with the term agreement. Thus, these two terms can be interpreted as a statement from someone to do or not do something and have nothing to do with the will of another party. Promises are only binding on the person concerned, as indicated in the Al-Qur'an, Surah Ali-Imran verse (76), which is translated as meaning, "In fact, whoever keeps his promises and is devout, then indeed, Allah loves those who are devout."

Based on the explanation above, it is explained that the agreement must have an agreement between both parties aimed at binding each other regarding the actions that will be carried out in a specific matter after the Agreement has effectively come into force. The contract is realized through consent and Qobul, showing that there is a reciprocal desire or voluntariness towards the agreement carried out by both parties, which must be in accordance with Sharia Principles. All

agreements agreed by two or more parties are only considered valid if they do not conflict with Islamic Sharia as a whole. With the consent and Kabul based on the provisions of Islamic Sharia, a contract gives rise to legal consequences for the object of the agreement, namely the transfer of ownership or transfer of enjoyment or benefits to another party (Hidayat et al., 2012).

Islam requires another definition that provides a broader picture than the definition above, namely, including the meaning of contract as an action of a person with a strong will in his heart, even though it is done unilaterally, such as a gift, will, endowment, and so on. In line with this, according to Ahmad Azhar Basyir, a contract is an agreement between consent and acceptance in a manner justified by the Shari'a, which determines the existence of legal consequences for its object. The consent referred to in this case is the first party's statement regarding the desired content of the engagement, while Kabul is the second party's statement to accept it (Safitri & mukhibad, 2020)(Alam et al., 2019).

Classification of Sharia Agreements or Contracts

Islamic Contract Law presents various types of Contracts, which can be classified into several categories, creating a panorama rich in legal nuances. First of all, we look at it from the perspective of Taklifi Law. There is a Compulsory Contract that requires marriage for those who have the ability and provisions while worrying about sins outside of marriage. Then, there is the Sunnah Contract, which falls into this category and includes lending money and providing waqf, all of which are carried out based on the Sunnah. Mubah contracts are a common type, such as buying and selling and renting, which are the basis for transferring ownership of goods or services (Srairi, 2019)(Alqahtani & Boulanouar, 2017). On the other hand, there are Makruh Contracts, such as selling wine to someone who doubts they will use it for liquor, which is a source of moral uncertainty. Lastly, there is the Haram Contract, which includes usury trading, selling haram goods, prostitution practices, and transactions involving prohibited substances such as blood and pork.

General Overview of Sharia Banking

The word "Bank" comes from the Italian word "Banco," which literally means "bench." In the beginning, bankers used benches to serve customers. Sharia Bank is a financial institution that provides banking products and services based on Sharia principles, with the aim of supporting the social and economic growth of Muslims. There are several types of Sharia Banks, including Sharia Commercial Banks (BUS), Sharia Business Units (UUS), and Sharia People's Financing Banks (BPRS). Sharia Bank operates without relying on interest and develops its products and services in accordance with Islamic principles based on the Al-Qur'an and the Hadith of the Prophet. This differentiates it from conventional banks, which use interest in their operations. Sharia Banks also follow Islamic Sharia rules in all aspects of their operations so that

there are no products or services that conflict with Sharia principles (Basov & Bhatti, 2014)(Wulandari & Subagjo, 2015).

The meaning of Sharia Bank can be defined from three different points of view. First, in terms of statutory regulations, Sharia Banks follow the definition of banks regulated in the Sharia Banking Law and the Conventional Banking Law (Pepinksy, 2013)(Maswadeh, 2015). Second, from the perspective of services provided to consumers, banks are institutions that accept money deposits, distribute them to the public, and provide various financial services. Third, from an economic perspective, banks are financial institutions that collect funds from the public and channel them in the form of financing or loans, as well as providing other financial services (Trinugroho et al., 2021)(Biancone & Radwan, 2018). In the context of Sharia Banks, their operations have special characteristics, namely implementing Sharia principles, such as sharing profits and losses in all aspects of their activities. This is different from conventional banks, which use interest as the basis for collecting funds and distributing credit. Sharia banks and conventional banks have different legal foundations according to their principles (Ribadu & Rahman, 2019)(Menne et al., 2022).

Research Framework

In general, every research must always be accompanied by theoretical thinking or concepts used by the author, and the variables studied will describe the relationships between one variable and other variables. This research is limited to the relationship between the application of Sharia Compliance Principles (Shariah Compliance) in making Sharia Contract deeds by Notaries, who are not all Muslim, resulting in the possibility that the Sharia Contract deeds made are not truly in line with true Sharia principles. True syar'i (following the pillars, conditions, and principles in the Sharia Agreement).

This research was conducted using empirical legal research methods with statutory, conceptual, and comparative approaches. This approach serves to explain the point of view on (written) legislation as well as the views and doctrines that have developed in legal science, which help explain and emphasize these doctrines in solving the issues faced as well as several examples of comparisons between Notarial Deeds and Sharia Contract Deeds, in its application. To clarify the relationship between these variables, it is described in the following framework:

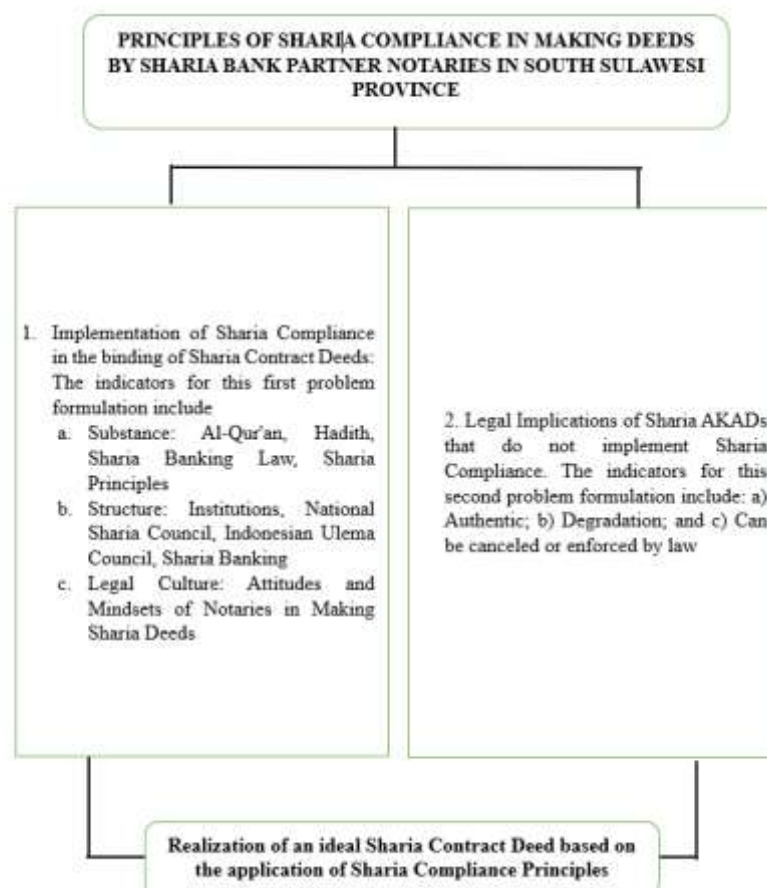


Figure 1. Research Framework

In this research, two indicator variables are applied that will be researched or analyzed, namely the independent variable, namely the application of Sharia Compliance Principles as contained in Law Number 21 of 2008 concerning Sharia Banking, and the second variable, namely the dependent variable (dependent variable) namely the Sharia Contract Deed by a Notary.

The first variable is the application of Sharia Compliance Principles. In this section, the author uses the theory of legal certainty as the basis for its application. This is because the object of research is the Sharia Contract Deed. The Theory of Legal Certainty also functions to explain the position and clarity of the Sharia Contract Deed as an Authentic Deed by a Notary. As for the second variable, namely, the concept of making a Sharia Contract Deed by a Notary, this section functions to explain the indicators of the validity of a deed made by a Notary, who is not all Muslim, using the theory of authority, namely covering legal substance (legislation), including consistency of provisions. With Sharia principles, which are truly syar'i (following the pillars, conditions, and principles in the Sharia Agreement), it is not just in the name (Shariah et al. banking).

METHOD

The approach method used in this research is a statutory and conceptual approach. The legal approach is carried out by reviewing all laws and regulations related to the legal issue being handled. The conceptual approach departs from the views and doctrines that have developed in legal science. Conduct a review of the norms contained in legislation, especially in Law Number 7 of 1992 concerning Banking, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Law Number 30 of 2004 concerning Notary Positions, Law Number 21 of 2008 concerning Sharia Banking, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, Bank Indonesia Regulation Number 9/19/PBI/2007 concerning Implementation Sharia Principles in Fund Collection and Fund Distribution Activities as well as Sharia Bank Services and the Compilation of Sharia Economic Law, Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law. This study was also carried out by connecting the problems with real conditions in the field, especially in legal practice, through interviews.

RESULT AND DISCUSSION

Application of Sharia Compliance Principles in Making Sharia Contracts by Notaries in South Sulawesi Province

Sharia Bank or Islamic Bank is an application of the Islamic Sharia economic system, which is part of the values of Islamic teachings that regulate the economic sector of the people and is inseparable from other aspects of comprehensive Islamic teachings and those which are Universal Banking. Based on the Sharia Banking Law, Sharia Banks conduct their business based on the principle of profit sharing. Sharia banking is a financial institution that, in carrying out its business activities, must comply with Sharia principles. Sharia banking functions as an intermediary institution, namely to mobilize funds from customers and redistribute these funds to customers in the form of financing.

Implementation of Sharia Compliance in Sharia Contract Deeds

Notaries are public officials who have the authority to make authentic deeds, especially in making financing contracts in Sharia banking. Therefore, for an agreement to gain legal force, it must be recorded before a Notary. Thus, every business, including Sharia business, always needs a Notary as a public official who makes Authentic Deeds in accordance with their duties as regulated in the UUJN.

Contracts in Sharia banking that are made notarially must follow the form determined by law. In this case, as regulated in Article 38 UUJN, namely that an Authentic Deed must consist of the beginning of the deed, the body of the deed, and the closing of the deed. Regarding this deed, the Notary has full responsibility regarding the truth and accuracy of the construction of the contract so that the subjective and objective requirements for the contract or agreement are fulfilled, so that the

contract made before the notary is correct and authentically very basic and becomes a deed that has perfect evidentiary value. The notary formulates a deed at the request of the parties based on the procedures or mechanisms or procedures for making a notarial deed.

Apart from that, there are still several differences of opinion that occur in applying Sharia principles in the making of Sharia Deeds by Notaries. This is because there is no clear legal mechanism in the laws and regulations that regulate the mechanism and format for making Sharia Deeds. According to Sharir Madeali, Notary and Land Deed Drafting Officer (PPAT) in Makassar City, the legal basis for making Sharia Deeds is still based on the UUJN, but several additions are not found in the UUJN, such as the use of the phrase "Bismillah" at the beginning and end of the deed. However, according to sources, this is not a problem because the deed is a Sharia agreement. Thus, doing a deed must follow positive law and sharia law (Sharir Madeali, Interview, Notary and PPAT, Makassar City, 06 June 2023).

On the other hand, according to Huswan Husain, Notary and PPAT in Gowa City, when it comes to Sharia compliance, it is true that there is no specific regulation regarding the making of Sharia Deeds; Notaries currently still adhere to UUJN. Thus, notaries still adhere to sharia products, which are submitted to the notary and then made into a deed. The aims and objectives of implementing Sharia Compliance Principles must all be based on Islamically regulated laws, but currently, the compliance principles have not been clearly regulated, so once again, you have to follow the UUJN. Regarding the inclusion of propositions and hadiths in Notarial Deeds, sources have so far never done this because it is not regulated in the UUJN. Thus, the source believes that this inclusion is not in line with the UUJN (Huswan et al., Gowa City, 25 January 2023).

Furthermore, according to Hustam Husain, Notary and PPAT in Makassar City, the notary's basis for making Sharia Contracts is to be guided by UUJN. Then, there is no regulatory content indicating the use of the word "bismillah" in the deed, but according to the source, this is not a problem because it represents the application of Sharia principles. Then, according to the source, writing propositions and hadiths on the deed may be used because the deed was made based on the decision of both parties, and this is also used to strengthen the contents of the deed included in the deed. Suppose there are no compliances, arguments, and hadiths in the Sharia Deed. In that case, it can be interpreted that there is no difference with the Deed made at a Commercial Bank because the inclusion of these things is what differentiates the Agreement at a Sharia Bank and a Conventional Bank (Hustam Husain, Interview, Notary and PPAT, Makassar City, 07 June 2023).

Then, according to Abdurrafai, Notary, and PPAT in Maros Regency, the Sharia Contract should include arguments or hadiths related to the deed, for example, if a sale and purchase deed should include arguments or hadiths relating to the sale and purchase so that it strengthens the contents of the deed. Therefore, the resource person is of the opinion that the propositions and hadiths must be included in accordance with the

legal act. The inclusion of propositions and hadiths in the Sharia Agreement does not actually conflict with UUJN because it becomes a patron in doing the deed. All that remains is to look at the placement of the hadith and propositions of the Qur'an, which must be in accordance with what is stipulated in the UUJN (Abdurrifai, Interview, Notary and PPAT, Maros Regency, 27 February 2023).

Furthermore, according to Henny Hasbullah, Notary and PPAT in Maros Regency, when making a Sharia Deed, you must adhere to UUJN; the requirements for a Notarial Deed are generally the same as a Sharia Contract. Regarding the inclusion of propositions and hadiths in the Sharia Agreement, there is actually no problem as long as it does not conflict with the principles regulated in the UUJN, but you need to know that not all Sharia Contracts contain propositions and hadiths because it depends on the format of each notary or bank concerned (Henny Hasbullah, Interview, Notary and PPAT, Maros Regency, 27 February 2023).

Parties in making a Sharia Contract Deed

Islam has an economic system that is fundamentally different from other economic systems. The Islamic economic system has sharia roots, which form a worldview, strategy, and goals that are different from the secular system that dominates the world today. The concept of Sharia economics does not only have targets based on material benefits but also includes immaterial things, such as human happiness, a good life, aspects of brotherhood, socio-economic justice, and the spiritual needs of humanity.

The Sharia economy in Indonesia is developing rapidly, especially in the field of Sharia Banking. Starting from the promulgation of Law Number 7 of 1992 concerning Banking, Government Regulation Number 72 of 1992 concerning Banks Based on Profit Sharing Principles, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, then strengthened through Laws Law Number 23 of 1999 concerning Bank Indonesia, until the enactment of Law Number 21 of 2008 concerning Sharia Banking, which in its entirety shows that the sharia economic system, especially in the banking sector, has formal legal legitimacy and certainty.

A Notarial Deed is an Authentic Deed made by or before a notary according to the form and procedures stipulated in law based on UUJN. The deed is done at the request of the parties in the form of a Relaas Deed, which is a deed made by a notary at the request of the parties so that the notary records or writes down everything discussed by the parties relating to legal actions or other actions carried out by the parties so that the action is made or stated in a Notarial Deed.

According to Imam Syafi'i, in Q.S. Al-Baqarah Verse 282, Allah SWT commands that there should be testimony if we do not do muamalah in cash. Allah's explanation regarding debts shows that Allah prescribes testimony to be alert and careful. Imam Syarfi'i is more inclined towards recording and testifying because this is Allah's guidance as well as

guidance for sellers and buyers. People who do not record and testify mean they have abandoned the policies and rules that Imam Syafi'i tends to implement and do not ignore them.

In making a Sharia Contract Deed, the beginning and end of the deed are absolute matters that are the responsibility of the notary, but the contents of the deed are a written agreement desired by the parties that does not conflict with the applicable laws and regulations as regulated in Article 38 Paragraph (2) UUJN and line with Sharia Principles. In connection with the preparation of a Sharia Contract Deed in South Sulawesi Province, several practitioners explained that there are additional requirements that a Notary must have. For example, according to Sharir Madeali, Notary and PPAT in Makassar City, the requirements to become a Notary partner at a Sharia Bank are more or less the same as for other Conventional Bank partners, but there are additional requirements, namely having had an internship or education in Sharia Banking, or previously been a partner in other Sharia Banks (Sharir Madeali, Interview, Notary and PPAT, Makassar City, 06 June 2023).

Furthermore, Huswan Husain, a Notary and PPAT in Gowa City, believes that the requirement to become a notary partner of a Sharia Bank is that the notary concerned has passed a Sharia course or training and a Notary who has experience in making Sharia Deeds (Huswan et al., Gowa City, January 25, 2023). According to Hustam Husain, Notary and PPAT in Makassar City, believes that the requirements to become a Notary partner with a Sharia Bank are that you must have a Law Degree and a Sharia Bank Training Certificate. The actual position of the Sharia Training Certificate in law is not very decisive because Notaries are actually equipped with knowledge of making contracts in general. However, some banks require notaries to have a Sharia Bank training certificate, so like it or not, notaries have to take Sharia training (Hustam et al., Makassar City, 07 June 2023).

This is also in line with the opinion of Natsir Thaif, Notary and PPAT in Maros Regency, that the requirement to become a Notary partner with a Sharia Bank is that you must have attended Sharia Bank training and received a Training Certificate. These conditions are conditions set by the bank in appointing or selecting prospective partner notaries (Henny Hasbullah, Interview, Notary and PPAT, Maros Regency, 27 February 2023). According to Edna Primayanti, CSMFU Head at Bank BTN Makassar Branch Office, for a notary to become a Sharia Bank partner, the notary concerned must have a Basic Sharia Banking Education Certificate and fill in the complete data contained in the e-mitra application at Bank Tabungan Negara. (Edna Primayanti, Interview, CSMFU Head at Bank BTN Makassar Branch Office, 18 February 2023).

In line with the explanation above, according to Kumala Jodie Pranata L., Mortgage and Consumer Financing Unit Head at Bank BTN Makassar Sharia Branch Office, notaries are required to have a certificate indicating that the notary concerned understands Islamic law or has attended Basic Sharia Banking Education (PDPS), and the Notary has good experience as a partner at a previous Conventional Bank (Kumala

et al., Interview, Mortgage and Consumer Financing Unit Head at Bank BTN KC Syariah Makassar, 18 February 2023).

Legal Implications of Deeds Made by Notaries Who Do Not Apply Sharia Compliance Principles in Making Sharia Contracts

Sharia Compliance Principles is a condition where all aspects of Sharia Banking fully carry out activities based on Sharia Principles. In contrast to this condition, when the products and operational aspects of banking are not in accordance with Sharia principles, it is considered as disobedient or disobedient to Sharia.

Based on Bank Indonesia Regulation Number 13/2/PBI/2011 concerning the Implementation of the Compliance Function of Commercial Banks, compliance is the values, behavior, and actions that support the creation of compliance with Bank Indonesia provisions and applicable laws and regulations, including Sharia Principles for Sharia Commercial Banks and Sharia Business Unit. Guaranteeing Sharia Compliance for all Sharia Bank activities is very important for customers and the community.

In its operations, Sharia Banking must always adhere to the following principle corridors: a) Justice, namely sharing profits based on real sales according to the contribution and risks of each party; b) Partnership, which means that the positions of investor customers (fund depositors) and fund users, as well as the financial institutions themselves, are equal as business partners who synergize with each other to gain profits; c) Transparency, Sharia financial institutions will provide financial reports openly and continuously so that investor customers can know the condition of their funds; and d) Universal, which means that it does not differentiate between ethnicity, religion, race, and class in society in accordance with Islamic principles as "rahmatan lil alamin."

Sharia principles that are prohibited in Sharia banking operations are activities that contain the following elements: a) Maisir means easy/easy. According to maisir terms, it means making a profit without having to work hard. Maisir is often known for gambling because, in the practice of gambling, someone can gain profits easily. In gambling, a person can gain or lose. Gambling is prohibited in Islamic financial practices, as stated in the word of Allah as follows: "O you who believe, indeed wine, maisir, idols, drawing lots of fortunes with arrows, are heinous acts including acts of Satan, so stay away from these acts so that you will have good luck" (QS. Al-Maidah: 90). The prohibition of maisir by Allah SWT is due to the negative effects of maisir.

When gambling, a person is faced with the condition of abnormal profits or losses. There is a time when someone is lucky; he gets a profit that is greater than the effort he puts in. Meanwhile, when someone is unlucky, they can experience huge losses. Gambling is not in accordance with the principles of justice and balance and is therefore prohibited in the Islamic financial system; b) Gharar means betting. According to the term gharar, it means something that contains ambiguity, betting, or gambling. Any transaction where the goods are still unclear or are not under his control, aka outside the reach, includes gharar buying and selling. For example, buying birds in the air or fish in water, or buying livestock that is still in its mother's womb are considered gharar transactions. Gharar is prohibited because it has a negative effect on life. After all,

gharar is a practice of making false profits. The verse that prohibits gharar is Surah Al-Baqarah Verse (188), namely:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ
لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

"And do not let some of you consume the property of others among you in a false way and (do not) bring (the affairs of) that property to the judge, so that you may consume part of the property of others by (doing) sin, even though you know."

c) Riba: The literal meaning of the word Riba is increase, excess, growth, or increase. Then, according to technical terms, usury means the false taking of additional assets or capital. The scholars agree that usury is haram, as Allah SWT says in Surah Ali-Imran Verse (130), which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُّضَاعَفَةً وَاتَّقُوا اللَّهَ
لَعَلَّكُمْ تُفْلِحُونَ

"O you who believe! Do not consume usury in doubles and fear Allah so that you will be successful."

In principle, it is prohibited to consume usury assets in multiples. It is very important for us from the start of the discussion that there is no difference of opinion among Muslims regarding the prohibition of Riba and that all Muslim schools of thought believe that involvement in transactions containing riba is a major sin. This is because the main sources of sharia, namely the Al-Qur'an and Sunnah, truly condemn usury. However, there are differences regarding the meaning of usury or anything that constitutes usury that must be avoided for the compatibility of economic activities with Sharia teachings.

Several provisions that can be used as a qualitative measure to assess Sharia compliance in Sharia Financial Institutions include the following: a) The agreement or contract used for collecting and distributing funds is in accordance with Sharia principles and applicable Sharia rules; b) All economic transactions and activities are reported fairly in accordance with applicable sharia accounting standards; c) Work environment and Corporate Culture in accordance with sharia; d) The business financed does not conflict with sharia; e) There is a Sharia Supervisory Board (DPS) as sharia direction for all operational activities of the Sharia Bank; and f) The source of funds comes from legal and halal sources based on sharia provisions.

These provisions are general principles that serve as a reference for bank management in operating Sharia Banks. Sharia compliance in Sharia Bank operations is assessed based on provisions, namely whether bank operations have been carried out in accordance with the general provisions of Sharia compliance. In making a Sharia Contract Deed, of course, you must comply with Sharia Principles. A Sharia Contract Deed

is a deed made by a Notary as a public official who is authorized to make an Authentic Deed that contains Sharia Principles. The following are several Sharia Contract Deeds in Sharia Banking transactions: a) Wadiah is an agreement to deposit goods or money between the party who owns the goods or money and the party entrusted with the aim of maintaining the safety, security and integrity of the goods or money; b) Mudharabah is a business cooperation agreement between the first party (malik, shahibul mal, or Sharia Bank) which provides all the capital and the second party ('amil, mudharib, or customer) who acts as fund manager with the agreement stated in the contract, whereas losses are fully borne by the Sharia Bank unless the second party makes an intentional mistake, is negligent or violates the agreement; c) Musyarakah is a cooperation agreement between two or more parties for a particular business where each party provides its own portion of funds; d) Murabahah is an agreement to finance an item by confirming the purchase price to the buyer and the buyer pays the excess price as an agreed profit; e) Salam is an agreement to finance an item by ordering and paying the price in advance with certain agreed conditions; f) Istisna' contract for financing goods in the form of an order for the manufacture of certain goods agreed between the orderer or buyer (mustashni') and the seller or manufacturer (shani'); g) Ijarah is an agreement to provide funds in order to transfer the right to use or benefit from an item or service based on a rental transaction, without being followed by a transfer of ownership of the item itself; h) Ijarah Muntahiyah Bit Tamlik is an agreement to provide funds in order to transfer the right to use or benefit from an item or service based on a rental transaction with the option to transfer ownership of the item; and i) Qardh is a loan agreement for funds to a customer with the condition that the customer is obliged to return the funds received at the agreed time.

According to Notary Sharir Madeali, Notary and Land Deed Drafting Officer (PPAT) in Makassar City, the principle of Sharia Compliance is very important in making a Sharia Contract Deed, as there is no usury in it, only the distribution of profits from the customer's profits. The decision is also to cover businesses that are halal, not usury, and share the profits evenly (Syahrir Madeali, Interview, Notary and PPAT, Makassar City, 06 June 2023). In line with the previous opinion, according to Hustam Husain, Notary and PPAT in Makassar City, Sharia Compliance Principles are everything that Sharia Banks determine. In Sharia Banks, there is no interest but only the distribution of profits, which must be adhered to by customers. If the customer does not comply with these provisions, there will be problems in the future, such as payment failure and so on (Hustam et al., Makassar City, 07 June 2023).

According to Abdurrifai, the Notary and PPAT in Maros Regency, Sharia Compliance Principles must be adhered to in making Sharia Contract Deeds because it is the Sharia Compliance Principles that will then differentiate between Sharia Contract Deeds and Authentic Deeds in general, although so far, there are no clear technical rules in making

them. Sharia Contract Deed (Abdurrifai, Interview, Notary and PPAT, Maros Regency, 27 February 2023).

In line with the previous opinion, according to Henny Hasbullah, Notary and PPAT in Maros Regency, Sharia principles should be complied with by Sharia Banks because Sharia principles are the difference between Sharia Banks and Conventional Banks. Although so far, based on UUJN, the making of Sharia Contract Deeds has not been clearly regulated. Thus, all deeds made notarially are still considered valid. If the provisions regarding Sharia Contract Deeds have already been regulated and are not in line with their drafting, then there is the potential for degradation of the deed, but because there are no statutory regulations that clearly regulate it, the notary's basis for making Sharia Contract Deeds is of course based on UUJN (Henny Hasbullah, Interview, Notary and PPAT, Maros Regency, 27 February 2023).

CONCLUSION

Based on the results of research conducted by researchers, it can be concluded that: a) Notaries as public officials are given the authority to make authentic deeds, which must be guided by the composition of the deed format based on UUJN. The use of the word "Bismillah" should not be used to maintain the authenticity of the deed because there is no clear legal basis. The application of Sharia Compliance Principles can be seen through the inclusion of propositions, hadith, and Sharia principles in the content of the deed. A certificate or PDPS is not enough to prove that the Notary understands Islamic Law. The participation of non-Muslim customers in Sharia Contract transactions is not a problem because Islamic principles prioritize "rahmatan lil alamin," and increasing the availability of interest will help the economy turn into a positive direction in the development of the Sharia economy to make it more inclusive; and b) Making a Sharia Contract Deed must comply with Sharia Compliance Principles, if there is a Sharia Contract Deed that does not meet Sharia Compliance Principles then the legal implications that arise are that the deed cannot be used in Sharia Banking transactions, as regulated in Article 1 Paragraph (13) of the Law Syariah banking. Although so far, there are no regulations regarding the technicalities of making Sharia Contract Deeds, the basis for implementing the principles of Sharia compliance in Sharia Banks is the Sharia Banking Law and the DPS-MUI Fatwa.

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