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The Obligation of Sharia Certification For Notaries In The Preparation of Financing Contract Deeds In Islamic Banking

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ABSTRACT

This study discusses the urgency and regulation of sharia certification obligations for notaries who make financing agreements in Islamic banking in Indonesia. The main problem arises because there is no legal norm that regulates notary sharia certification, thus creating a legal vacuum (rechtsvacuum) which has an impact on legal uncertainty, low legitimacy of deeds, potential disputes, and the risk of violating sharia principles such as the prohibition of usury, gharar, and maysir. This study formulates two main problems: (1) the urgency of regulating the obligation of notaries to have sharia certificates in making sharia financing agreements, and (2) the design of sharia certification regulations for notaries in order to increase sharia compliance in financing agreements in Islamic banking. The research method used is normative juridical with a statutory, conceptual, and comparative legal approach, based on primary, secondary, and tertiary legal materials. The results of the study indicate that notary sharia certification is very important to ensure the conformity of deeds with sharia principles and positive law. The necessary regulations must include a comprehensive curriculum containing Islamic legal principles, fatwas from the National Sharia Council (DSN-MUI), national regulations, and structured education and competency testing. Furthermore, a regular monitoring and evaluation mechanism by the Sharia Supervisory Board (DPS) is necessary to maintain professional standards and Sharia compliance. Comparison with practices in other countries, particularly Turkey, demonstrates the need for Indonesia to adopt more stringent and systematic regulations. This study recommends the establishment of formal regulations regarding mandatory Sharia notary certification, an integrated certification and supervision body, the implementation of training and competency testing, and optimizing the role of the DPS in overseeing Sharia compliance.

Keywords: Notary, Sharia Certification, Financing Deed, Sharia Banking.

1. INTRODUCTION

Indonesia's economic development is inextricably linked to the role of the banking sector, which is a key driver in supporting economic activity. As financial institutions, banks function not only to collect funds from the public in the form of deposits but also to redistribute these funds in the form of financing and other financial services. Furthermore, banks play a role in payment transactions, making them intermediaries between those with surplus funds and those experiencing shortages. In practice, the Indonesian banking system recognizes two types of banks: conventional banks and Islamic banks. The fundamental difference between the two lies in the existence of interest. Islamic banks are prohibited from using interest, but instead employ a profit-sharing system in accordance with Islamic law. This is affirmed in Law Number 21 of 2008 concerning

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Islamic Banking, which requires all Islamic banking business activities to comply with Islamic principles..The establishment of the National Sharia Council (DSN) in 1999 marked a significant milestone in overseeing Islamic banking practices in Indonesia. The DSN, comprised of Islamic legal experts and economic practitioners, is tasked with ensuring that Islamic banking products and practices comply with Islamic sharia principles. As such, this institution serves as a bridge between sharia regulations and the implementation of a modern economy. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Gandapradja, 2004)

In the digital era and even amidst the Covid-19 pandemic, the Islamic financial industry continues to demonstrate impressive performance. Islamic banking assets have grown by an average of 11.81% over the past five years, surpassing conventional banks. Increases have also been seen in investments in Islamic insurance, Islamic stocks, and Islamic pawnshops. This fact demonstrates that Islamic banking has become a vital pillar of the national financial system. To meet the needs of the community, Islamic banking offers a variety of financing products. These products are grouped into three main categories: funding, financing, and services. Of these three categories, financing is one of the main pillars regulated by Islamic contracts, such as mudharabah, musyarakah, murabahah, salam, istishna, ijarah, and qardh. Contracts in Islamic banking hold a fundamental position. Article 1, number 13 of Law Number 21 of 2008, stipulates that a contract is a written agreement between an Islamic bank and another party, setting out the rights and obligations of the parties in accordance with Islamic principles. A contract is not merely a formal document, but rather a representation of the validity of a transaction with legal and moral implications. The validity of a contract encompasses the fulfillment of the pillars (parties to the contract, the object, and the acceptance and acceptance of the contract) and the requirements, which must comply with the principles of Islamic jurisprudence (fiqh muamalah). Therefore, every Islamic financing contract must be ensured to be halal, both materially (substance) and procedurally (process), to ensure legal legitimacy and blessing in practice. (Kansil, 1986; Marzuki, 2013) (Marzuki, 2013) (Gandapradja, 2004)

In the national legal system, Islamic financing contracts are also subject to Indonesian civil law. This means that Islamic contracts must not only comply with the principles of Islamic jurisprudence (fiqh muamalah) but also comply with the legal provisions of contract law in the Civil Code (KUHPer). For example, Article 1320 of the KUHPer regulates the requirements for a valid contract, namely agreement, legal capacity, a specific object, and a lawful cause. Therefore, Islamic contracts hold a unique position as hybrid contracts that must comply with both Islamic law and positive law. This integration requires a comprehensive understanding from the parties,

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particularly notaries, to avoid disharmony between national law and Islamic law.The role of a notary in drafting Islamic financing contracts is highly strategic. A notary serves as a public official authorized to draft authentic deeds, ensuring the formal legal validity of transactions. Furthermore, in the context of Islamic banking, notaries are required to understand the concept of Islamic contracts and their implications for banking practices. Deeds must not contain prohibited elements, such as usury (riba), gharar (gharar), and maysir (gambling). If these elements are present, the contract is potentially void under Islamic law, even if it meets civil law requirements. Therefore, a notary's expertise in understanding Islamic economic law is urgently needed. The National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has given serious attention to this issue. At its 2014 annual meeting, the DSN-MUI recommended that notaries be competent in drafting Islamic financing agreements. This competency encompasses not only a technical understanding of notarial law but also a mastery of ushul fiqh (Islamic jurisprudence), fiqh muamalah (Islamic muamalah), and the DSN-MUI fatwas, which form the basis of Islamic banking products. However, this recommendation remains a soft law, as it has not yet been codified into legally binding legislation. Consequently, implementation in the field depends heavily on the awareness of individual notaries and the internal policies of Islamic banks. (Kansil, 1986; Marzuki, 2013).

The lack of regulation often reduces the role of notaries to merely an administrative role. In practice, the draft contract is usually prepared by the Islamic bank, while the notary is only responsible for legalizing it in the form of an authentic deed. Notaries are not involved in ensuring the substance of the contract complies with Sharia principles. A notarial deed should guarantee legal certainty and Sharia compliance. This situation creates the risk of contracts that are formally valid under national law but invalid under Islamic law, potentially giving rise to disputes between banks and customers. One major legal issue is the absence of mandatory Sharia certification for notaries. Sharia certification should be the minimum standard for notaries to legitimately compete in handling Sharia contracts. Without certification, it is difficult to ensure that notaries fully understand Sharia principles, such as the prohibition of usury, gharar, and maysir, and can interpret and apply DSN-MUI fatwas to contracts. In other words, certification is not merely an administrative formality, but is an important instrument to protect the legal interests of the parties while maintaining the integrity of the Islamic banking system. (Ali, 2002; Budi Untung, 2015).

The legal vacuum (rechtsvacuum) regarding sharia certification has several serious implications. First, legal uncertainty arises regarding the validity of sharia contracts drawn up by uncertified notaries. Second, sharia financing products are at risk of being deemed non-halal if

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notaries lack a detailed understanding of sharia principles, ultimately harming customers. Third, the public lacks adequate legal protection because the contracts they create may conflict with sharia. Fourth, weak oversight between the Sharia Supervisory Board (DPS) and notaries results in a lack of comprehensive compliance assurance. All of this highlights the need for clear and binding regulations. The weakness of notary competency becomes even more apparent when linked to their educational and academic background. Most notaries in Indonesia have a background in general civil law, lacking adequate knowledge of sharia economic law. Sharia business law, however, fundamentally differs from conventional business law, both philosophically and technically. In practice, many sharia contracts violate sharia principles, not due to bad faith, but rather due to the notaries' limited understanding. If this condition is allowed to continue, the quality of legal products in the field of Islamic banking will be degraded. (Kansil, 1986; Marzuki, 2013).

These facts demonstrate the urgency of Sharia certification for notaries as a legal and professional necessity. Certification will provide clear competency standards, ensuring notaries understand the theory and practice of Sharia contracts, and are able to draft deeds in accordance with Islamic and positive law principles. Certification also serves as an accountability mechanism, ensuring the public, banks, and regulators that the financing deeds they create are truly halal and valid. Regulations governing certification will better ensure legal certainty, product halalness, and consumer protection. Therefore, this research is highly relevant in addressing the issue of the lack of norms regarding Sharia certification for notaries. An in-depth analysis of the urgency and regulatory model for Sharia certification will provide recommendations for policymakers to formulate comprehensive regulations. These regulations are expected to encompass aspects of education, curriculum, competency testing, and a supervisory mechanism involving the Sharia Supervisory Board. With formal regulations, the notary profession will be better prepared to oversee Sharia banking practices, while ensuring that the primary goals of Sharia banking, namely realizing justice, legal certainty, and falah, are achieved. (Lumban Tobing, 1996; Tan Thong Kie, 2000).

2. RESEARCH METHODS

The research method used is Normative Juridical Research. The approach used in this research is carried out using the legislative approach, the Conceptual Analysis approach and the Comparative Law Approach. The data for this research is sourced from primary, secondary, and tertiary legal materials obtained through library studies, including laws and regulations, books, internet sites, mass media, dictionaries, and other data. The legal material search technique in this

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research will be carried out by library studies or better known as Library Research on various legal materials that will be used in this research. After all legal materials are collected, they are then analyzed using Grammatical Interpretation, Systematic Interpretation and Constructive Interpretation. (Kansil, 1986; Marzuki, 2013)

3. RESULTS AND DISCUSSION

The Urgency of Regulating The Obligation For Notaries To Have A Sharia Certificate In Making Deeds In Financing Agreements In Sharia Banking

1. The Urgency of Notaries' Obligation to Have Sharia Certificates

   The development of Islamic banking in Indonesia has significant implications for the role of notaries as public officials authorized to draw up authentic deeds. The existence of a notarial deed is necessary for financing agreements to obtain legal force and ensure compliance with national legal provisions. In the context of Islamic banking, a notary's duties extend beyond administrative duties to serve as a legal advisor, expected to provide legal interpretations and perspectives tailored to the client's needs. Deeds drawn up before a notary must reflect legal certainty and adhere to Sharia principles, such as the prohibition of usury, gharar, and maysir. Therefore, notaries are required to possess intelligence, precision, and a thorough understanding of Islamic jurisprudence (fiqh muamalah) to ensure that the deeds they draw up do not give rise to potential disputes or legal flaws in the future. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Lubis, 1994) (Gandapradja, 2004) (Lumban Tobing, 1996).

   The strategic position of a notary public requires specialized competence in Sharia law. Notaries are not only authorized to validate documents but also obligated to ensure that all the pillars and requirements of Sharia contracts are met, ensuring that financing transactions are truly in accordance with Sharia values. Without a comprehensive understanding of Sharia contracts, a notary will be unable to provide accurate legal opinions during the deed-making process. Furthermore, current regulations do not yet mandate Sharia certification for notaries, creating a legal vacuum (rechtsvacuum) that leads to uncertainty, weakens the legitimacy of deeds, and potentially leads to disputes. Under these circumstances, the need for Sharia certification for notaries is urgent to maintain professional integrity and Sharia compliance in banking practices. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi

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Untung, 2015) (Marzuki, 2013) (Gandapradja, 2004) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006).

From an Islamic legal perspective, the obligation of sharia certification can be viewed as an implementation of maslahah mursalah, namely an effort to realize the public good that does not conflict with sharia texts. This certification is considered a daruri (urgent) measure to prevent mafsadat in the form of legal uncertainty, flawed contract practices, and loss of public trust in the sharia banking system. Within the framework of maslahah haqiqiyah, certification also functions as a preventive instrument that ensures that sharia financing deeds are free from harmful elements, while providing optimal benefits to the community through a fair, transparent, and sharia-compliant transaction system. Thus, the obligation of sharia certification for notaries is not merely an administrative formality, but an integral part of efforts to maintain the stability and sustainability of the sharia financial industry. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Gandapradja, 2004) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

In addition to theological grounds, the urgency of mandatory Sharia certification can also be analyzed from philosophical, legal, and sociological perspectives. Philosophically, certification reflects Islamic moral and ethical values that must be internalized into legal practice, thus creating harmony between positive regulations and religious principles. Legally, certification closes regulatory gaps that have led to inconsistencies between the contents of deeds and Sharia principles, while simultaneously strengthening legal certainty and legitimacy of deeds. Sociologically, this obligation arises in response to the needs of a dynamic society, where Sharia-certified notaries will be more trusted by the public and financial institutions. In other words, Sharia certification is a crucial instrument for maintaining social order and public trust in Sharia-based financial transactions. (Ali, 2002; Budi Untung, 2015) (Lubis, 1994) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

Taking these normative, philosophical, and sociological aspects into account, it can be affirmed that mandatory Sharia certification for notaries is a strategic step in national legal reform. This regulation will ensure that notaries possess substantive competence in understanding Sharia contracts such as murabahah, mudharabah, musyarakah, and ijarah, which have distinct characteristics from conventional contracts. Regulations regarding Sharia certification are expected to enhance professionalism, provide legal certainty, and strengthen protection for parties involved in Sharia financing transactions. Thus, the existence of Sharia-certified notaries will be a key foundation for the development of a

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just, transparent, and sustainable Sharia banking industry in accordance with the principles of Islamic law and positive law in Indonesia. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Lubis, 1994) (Gandapradja, 2004) (Amiruddin & Asikin, 2006) (Budi Untung, 2015)

2. Comparison of Sharia Banking with Other Countries

The development of Islamic banking in Indonesia began in 1983 with the issuance of the December 1983 Package (Pakdes 83), which permitted banks to provide loans at 0% interest. This policy was followed by the October 1988 Package (Pakto 88), which introduced banking deregulation and provided opportunities for many parties to establish new banks. The discourse on Islamic banking intensified following the 1990 MUI Workshop, which discussed bank interest and banking. Consequently, on November 1, 1991, Bank Muamalat Indonesia was established as the first Islamic bank. However, initial public response was low due to the lack of a strong legal framework. Law No. 7 of 1992 only regulated banks based on the profit-sharing principle, without explicitly mentioning Islamic principles, leaving Islamic banking's legal standing very limited. (Kansil, 1986; Marzuki, 2013)

This situation began to change with the enactment of Law No. 10 of 1998, which explicitly recognized the existence of Islamic banks and introduced a dual banking system. Under this system, conventional banks could open Sharia Business Units (UUS) through the Islamic window mechanism. Since then, the development of Islamic banking has accelerated, with many conventional banks opening UUS and the establishment of Sharia BPRs and BMTs. By 2005, at least three large Islamic commercial banks—Bank Muamalat Indonesia, Bank Syariah Mandiri, and Bank Syariah Mega Indonesia—had opened Sharia services, along with more than a dozen other conventional banks. This momentum confirmed that Islamic banking was beginning to be widely accepted by the public, although further regulatory strengthening was still needed. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015)

A stronger legal basis emerged in 2008 through Law No. 21 of 2008 concerning Sharia Banking. This law complemented the general Law No. 10 of 1998, providing specific legal certainty for Sharia banking. With 13 chapters and 70 articles, this law regulates the principles, governance, and legal certainty for Sharia institutions. This law addresses the public's need for Sharia-based financial services and ensures

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harmonization with general banking regulations. Subsequently, supporting regulations were issued through Financial Services Authority Regulations (POJK), such as POJK No. 41/POJK.03/2019 concerning the application of Sharia principles and POJK No. 50/POJK.03/2017 concerning Good Corporate Governance in Sharia Banks. These regulations complement technical regulations, including the role of notaries in drafting Sharia banking contracts. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Lubis, 1994)

Globally, Islamic banking practices have developed in various countries with varying legal characteristics. Pakistan pioneered the practice by abolishing the interest system in 1979, and by 1985, its entire banking system officially operated under Sharia law. Egypt also developed Islamic banking earlier through the Faisal Islamic Bank in 1978, followed by the Islamic International Bank for Investment and Development. Cyprus, through the Faisal Islamic Bank of Cyprus, has been developing Islamic financing since 1983. Kuwait, Bahrain, the United Arab Emirates, Iran, Turkey, and Malaysia have also played a significant role in advancing Islamic banking, with varying regulatory models and legal authorities. Each country exhibits a variety of legal systems, whether based on civil law, common law, or a combination of both. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Subekti, 1999) (Gandapradja, 2004)

One important aspect of Islamic banking practices across various countries is the authority of notaries. In civil law countries such as Egypt, Cyprus, Kuwait, Bahrain, Iran, Turkey, and Indonesia, notaries serve as public officials with formal authority to draft and validate authentic deeds with high evidentiary weight. Meanwhile, in countries with common law systems such as Malaysia, the United Kingdom, and the United States, notaries public serve more as document legalizers or signature authenticators without substantive responsibility for the document's contents. This difference demonstrates the variation in notary functions across legal systems, with civil law countries positioning notaries as the party guaranteeing the legality of transactions, while common law countries place greater emphasis on administrative legalization. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Subekti, 1999) (Lumban Tobing, 1996)

In Indonesia, the authority of notaries is regulated in Law No. 30 of 2004 concerning the Position of Notary Public, which was later amended by Law No. 2 of

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2014. Notaries are authorized to make authentic deeds regarding legal acts, agreements, and determinations in accordance with statutory regulations. Authentic deeds made by notaries have formal, material, and external evidentiary force that is legally binding. This makes notaries an important pillar in ensuring legal certainty, including in the context of Islamic banking transactions. However, the regulation does not explicitly stipulate the obligation of notaries to have Islamic certification, although in practice notaries are required to understand Islamic principles so that the deeds they make comply with the provisions of the DSN-MUI and Islamic banking regulations. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Lubis, 1994) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

Compared to Turkey, despite both adopting civil law, there are differences in the administrative regulations of notaries. In Indonesia, supervision of notaries is carried out by the Ministry of Law and professional organizations, while in Turkey it is more centralized under the Council of Ministers and notary associations. Furthermore, notaries in Turkey are more involved in tax matters related to deeds, while in Indonesia this is not their primary responsibility. However, in both Indonesia and Turkey, the role of notaries remains central in the creation of authentic deeds, document verification, and ensuring the legality of legal transactions. This demonstrates that despite administrative variations, the position of notaries in both countries remains aligned in ensuring legal integrity. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Subekti, 1999) (Lumban Tobing, 1996) (Lutfi Effendi, 2004)

A key issue that has emerged is the need for Sharia certification for notaries, particularly in countries with a large Islamic banking industry like Indonesia. Currently, there are no regulations requiring notaries to have Sharia certification, creating a legal vacuum. However, with the increasing number of Sharia-based transactions, the need for notaries who understand Sharia principles is becoming increasingly urgent. Sharia certification for notaries has the potential to ensure that every deed related to Islamic banking is not only legally valid but also complies with Sharia principles. If implemented, this could strengthen legal certainty, increase public trust, and avoid legal disputes that may arise from differing interpretations of Sharia principles in notarial practice. (Ali, 2002; Budi Untung, 2015) (Lubis, 1994) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

3. The Legal Impact of the Lack of Sharia Certification Norms for Notaries.

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The development of Islamic economic law in Indonesia has positioned Islamic banking as a crucial pillar of the national financial system. Islamic banking is understood not only as a financial institution, but also as an entity that functions to implement the principles of muamalah in accordance with Islamic law. In practice, every Islamic financing transaction, whether in the form of a murabahah, musyarakah, ijarah, or mudharabah contract, requires legal certainty to provide protection for the parties involved. In the positive legal system, this certainty is realized through an authentic deed prepared by a notary in accordance with the provisions of Law Number 2 of 2014 concerning the Office of Notaries. An authentic deed prepared by a notary has full evidentiary force and is binding on the parties, so that every Islamic financing agreement outlined in a notarial deed must ensure compliance not only with civil law but also with Islamic legal principles. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Subekti, 1999) (Marzuki, 2013) (Lubis, 1994) (Gandapradja, 2004) (Lumban Tobing, 1996)

However, legal issues arise when the notary who drafts the Sharia financing deed lacks substantive competence regarding the basic principles of Sharia. This lack of understanding of Sharia can lead to formal and material defects in the deed, which can impair the legal validity of the agreement and reduce the level of legal certainty for the parties. In Islamic law, every contract must be free from prohibited elements such as usury, gharar, and maisir. Therefore, a financing deed in the Sharia banking system must not only be valid under civil law but must also be halal and valid under Sharia law. If the notary, as a public official, does not understand these principles, the resulting deed cannot be guaranteed to be legally and sharia-compliant, thereby reducing the legitimacy and legal integrity that should be inherent in authentic documents. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Subekti, 1999) (Marzuki, 2013) (Lubis, 1994) (Gandapradja, 2004) (Lumban Tobing, 1996)

The absence of regulations requiring notaries to possess Sharia certification indicates a gap in the Indonesian legal system. The Notary Law, OJK regulations, and other supporting regulations do not explicitly stipulate Sharia certification as a requirement for notaries handling Sharia banking documents. This gap creates a disconnect between the formal authority of notaries and the need for document authentication in accordance with Sharia principles. Consequently, the resulting deeds have the potential to be inconsistent with the provisions of Islamic jurisprudence (fiqh muamalah), creating a legal loophole that undermines the primary objective of Sharia banking, which is to create transactions

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free from riba (riba), gharar (gharar), and maisir (gambling). Therefore, this gap in norms constitutes a substantive issue that needs to be addressed immediately through regulatory instruments. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

The legal impact of the lack of Sharia certification standards for notaries is quite serious. First, deeds drawn up by notaries have the potential to be inconsistent with Sharia principles, even if they are valid under civil law, thus invalidating the contract from an Islamic legal perspective. Second, the absence of Sharia competency standards creates legal uncertainty for the parties, as the substance of the deed may not reflect the intended Sharia agreement. Third, the legitimacy of the deed as evidence is also threatened, both in court and with Sharia financial institutions, because the contents of the deed are not in line with Islamic principles. Fourth, inconsistencies in the elements of the contract have the potential to give rise to contractual disputes between the parties. Fifth, notaries without Sharia certification may fail to recognize clauses containing haram elements such as riba, gharar, and maisir. Sixth, the absence of these standards reduces legal protection for the parties and creates regulatory loopholes that undermine the professionalism and accountability of notaries. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Subekti, 1999) (Marzuki, 2013) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006) (Budi Untung, 2015)

Thus, the lack of Sharia certification norms for notaries not only poses risks at the normative level but also threatens the credibility of the Islamic legal and banking systems in Indonesia. Without certification, notaries lack a standard for exercising their authority, resulting in the quality of their deeds potentially not supporting the consistent application of Sharia law. This situation could ultimately weaken the national Sharia financial system and hinder the realization of legal harmonization between positive law and Islamic law. Therefore, regulations are needed that explicitly stipulate the obligation of Sharia certification for notaries. These regulations are expected to enhance professionalism, strengthen legal certainty, provide optimal protection for parties, and ensure that notarial deeds in Sharia banking transactions truly reflect the principles of justice and Sharia compliance. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Lubis, 1994) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006) (Ali, 2002) (Budi Untung, 2015)

Sharia Certification Regulations For Notaries Related To Improving Sharia Compliance In Financing Agreements In Sharia Banking

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1. Standardization of Materials and Processes for Sharia Notary Certification.

In the context of Islamic financing, notaries play a crucial role as public officials who draft authentic deeds for agreements between Islamic financial institutions and customers. However, problems arise when notaries only fulfill the formal legal administrative aspects but lack Sharia competency. Sharia financing contracts must be valid not only under positive law but also in accordance with Sharia principles as stipulated in Law Number 21 of 2008 concerning Islamic Banking and the fatwa of the National Sharia Council (DSN-MUI). This situation demonstrates the urgent need for additional competency for notaries to ensure that the deeds they draft truly reflect dual legal compliance, namely national law and Sharia. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Gandapradja, 2004) (Lumban Tobing, 1996)

The absence of regulations requiring notaries to possess Sharia certification creates a legal vacuum (rechtsvacuum). As a result, the drafted deeds risk inconsistencies with the principles of Islamic jurisprudence (fiqh muamalah). For example, in murabahah contracts, confusion often arises between the sale and purchase agreement and the financing agreement, even though the two must be clearly separated according to Sharia. If the notary fails to understand this, the substance of the deed could potentially be deemed null and void under Sharia law, even though it is valid under positive law. This situation has implications for customer legal protection and the credibility of Islamic banks, which are highly dependent on the validity of financing deeds. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Gandapradja, 2004) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

The existence of authentic deeds that do not comply with Sharia also poses serious challenges to proving the truth in court. Although Article 1868 of the Civil Code grants complete evidentiary power to authentic deeds, judges in Sharia banking cases will assess not only the formal aspects but also the substance of the contract. If proven to be in conflict with Sharia principles, the deed's evidentiary power may be weakened. Therefore, Sharia certification for notaries is not merely an administrative complement, but a recognition of the competency necessary to prepare deeds in accordance with dual standards: positive law and Islamic law. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

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The obligation to obtain Sharia certification also aligns with the principle of professionalism mandated by Article 16 of the Notary Law (UUJN). Notaries are required to be honest, meticulous, independent, and fair in carrying out their duties. Sharia competency will strengthen notaries' integrity and enhance their moral accountability in Sharia-compliant transactions. Thus, the notary profession is not only legally credible but also trusted to safeguard the certainty and legitimacy of contracts. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Amiruddin & Asikin, 2006) (Budi Untung, 2015)

Although the UUJN grants notaries full authority to draft deeds, there are currently no specific regulations regarding Sharia notaries. However, Sharia banking requires legal instruments that comply with relevant regulations, such as the Sharia Banking Law, fatwas from the National Sharia Council (DSN-MUI), the Financial Services Authority Regulation (POJK), and Circular Letters from the Financial Services Authority (OJK) and Bank Indonesia (BI). Notaries are required to master all these regulations, including understanding the parties' intentions, so that the deed reflects both contractual intent and legal compliance. This requires a balanced mastery of both the technical aspects of positive law and the substance of Sharia law. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Lumban Tobing, 1996)

In practice, the format of Islamic financing deeds often follows conventional patterns that are not yet uniform across banks. The Financial Services Authority (OJK) has issued Islamic product standards for murabahah, musyarakah, and musyarakah mutanaqisah, but these standards serve only as guidelines, not as standard regulations. Notaries are still required to align deeds with the UUJN and the Civil Code. Therefore, sharia competence is required to ensure that product standards are not merely formalities but truly align with the Islamic legal principles underlying the contracts. (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Gandapradja, 2004) (Lumban Tobing, 1996)

The discourse on Sharia certification for notaries can be viewed as a legal compliance mechanism that ensures adherence to a dual legal system. This certification will equip notaries with a thorough understanding of Sharia principles, preventing deeds from containing elements of usury (riba), gharar (gharar), and maisir (gambling), while strengthening their legal, moral, and administrative responsibilities. Thus, notaries will not only exercise their attribution authority under the law but also integrate religious legal

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principles into their professional practice. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

Turkey's experience can serve as a strategic reference. The country has established comprehensive Islamic banking regulations, accompanied by strict oversight to ensure Sharia compliance. Notaries and other authorized officials there are required to understand Sharia contracts in their daily legal practice. Indonesia could adopt a similar model by establishing formal Sharia certification for notaries, along with a curriculum, training, competency testing, and ongoing supervision. This step is crucial to address legal gaps, strengthen customer protection, and enhance the credibility of Islamic banking both nationally and internationally. (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Amiruddin & Asikin, 2006) (Lutfi Effendi, 2004)

2. Periodic Supervision and Evaluation Mechanism for Sharia Certification for Notaries.

The author and researcher recommends a comprehensive and integrated oversight mechanism for Sharia certification for notaries in Indonesia. The initial step is the establishment of a collective and collaborative national supervisory body, involving the Ministry of Law and Human Rights, the National Sharia Council (MUI), the Financial Services Authority (OJK), and the Indonesian Notaries Association (Izin Notaris). This body will regulate, supervise, and ensure that the implementation of Sharia certification for notaries complies with professional standards and applicable Sharia principles. With clear regulations and a supervisory body, each certification process will have formal legitimacy and can be implemented consistently throughout Indonesia. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Amiruddin & Asikin, 2006)

Furthermore, structured certification and competency standards are needed to ensure the quality of notaries handling sharia deeds. The curriculum must encompass the principles of sharia law, including Islamic jurisprudence (fiqh muamalah), the Quran, and Hadith, as well as fatwas and guidelines from the National Sharia Council (DSN-MUI) regarding sharia contracts. Furthermore, the curriculum must include sharia banking regulations, such as Law Number 21 of 2008 and its derivative regulations, as well as technical aspects of notarial practices in the preparation of sharia deeds. To be more applicable, training must also include case studies and practical simulations of sharia financing deeds. Certification should be conducted by an independent, state-recognized

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institution with the support of the DSN-MUI, so that both theoretical and practical testing is comprehensive, objective, and credible. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Gandapradja, 2004) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

The monitoring mechanism for certification implementation needs to be systematically regulated to ensure it doesn't stop at the initial certification stage. Oversight can be conducted through regular monitoring of training and certification institutions to ensure accreditation meets standards. Furthermore, verification of the completeness of certificate documentation in the professional register maintained by the Ministry of Law and Human Rights and the Financial Services Authority (OJK) is necessary. Compliance audits of certified notaries should also be conducted through sampling of previously executed Sharia financing deeds. To support transparency, notaries are required to report all Sharia deed creation activities electronically through an integrated ERP-based system that allows for real-time monitoring. This ensures the continued quality of certification implementation. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Gandapradja, 2004) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

Supervision of notarial practices is also crucial. This can be done through on-site inspections or off-site audits to ensure that Sharia deeds are prepared in accordance with Islamic law and positive legal provisions. The supervisory team should consist of Islamic legal experts and senior notaries competent in conducting substantive evaluations. Furthermore, the public and Islamic banking institutions should be given access to an official complaints mechanism regarding notarial practices whose Sharia compliance is questionable. Every complaint received must be followed up seriously by the supervisory body to maintain professional accountability. Furthermore, competency evaluations and certificate renewals must be conducted periodically, for example every two years, with a theory exam, practical assessment, and review of the notary's professional track record. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Lumban Tobing, 1996) (Lutfi Effendi, 2004)

Finally, the oversight and evaluation mechanism for Sharia notary certification must be complemented by a system of sanctions, remediation, and ongoing curriculum development. Notaries who fail to meet standards will be subject to written warnings, suspension, or even revocation of their Sharia certificates. However, remediation options

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include retraining and Sharia legal assistance before reapplying for certification. Furthermore, the supervisory body is obligated to conduct regular reviews of training materials and evaluation standards based on developments in DSN-MUI fatwas, OJK regulations, and the dynamics of the Sharia banking industry. These recommended mechanisms are designed to address the need for structural reform in the regulation of Sharia notary certification, with the aim of strengthening legal certainty, maintaining professional integrity, and providing optimal legal protection for the public. This will increase public trust in the resulting Sharia deeds, supporting transparent, accountable, and responsive legal governance to national needs. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Ali, 2002; Budi Untung, 2015) (Lubis, 1994) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

3. Sharia Certification Institution for Notaries and Sharia Certification Supervisory Institution for Notaries (Ali, 2002; Budi Untung, 2015) (Amiruddin & Asikin, 2006)

Certification is a formal process aimed at providing official recognition in the form of a certificate to human resources (HR) who have been declared competent through a specific qualification test mechanism. This process is crucial in various industrial sectors, including Islamic financial institutions, as it directly relates to ensuring service quality and legal certainty for their activities. HR competency certification in Islamic financial institutions extends beyond Islamic banking institutions to all Sharia-based financial entities, such as Islamic cooperatives, Islamic financing institutions, and Islamic insurance companies. This implies that HR working in Islamic financial institutions must not only understand the technical aspects of banking but also possess integrity and a comprehensive understanding of the Sharia principles that underpin their operations. Not only Islamic bankers, but also supporting professions such as notaries, accountants, and appraisers rely heavily on certification to ensure every aspect of their work complies with Sharia. For notaries in particular, this certification is an urgent need because their role in drafting authentic deeds for Islamic financing contracts requires legal expertise as well as a deep understanding of Sharia principles. (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Lubis, 1994) (Gandapradja, 2004) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

The implementation of professional certification in Indonesia is carried out by the National Professional Certification Agency (BNSP), an independent institution with the authoritative authority to organize workforce competency certification. In practice, BNSP

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appoints Professional Certification Institutions (LSPs) whose role is to carry out the technical certification. One important instrument used as a reference in the certification process is the Indonesian National Work Competency Standards (SKKNI), established by BNSP. This SKKNI covers various aspects of work ability, from theoretical knowledge to technical skills that must be possessed by each related profession. In the context of sharia notaries, the SKKNI must specifically emphasize mastery of sharia law, muamalah fiqh, and sharia banking regulations so that notaries can draft deeds that meet both legal and sharia compliance aspects. Thus, the involvement of BNSP, OJK, DSN-MUI, and LSPs in the development of sharia certification standards is a strategic step towards realizing the integration of national law with Islamic legal principles in notarial practice. (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006)

Sharia certification for notaries is not merely an administrative procedure, but a reflection of a public official's professionalism and moral commitment to providing services tailored to client needs in the Islamic financial sector. This certification significantly strengthens the trust of Islamic financial institutions and the Financial Services Authority (OJK) in the quality of notarial services. This is because Sharia certification ensures that notaries possess the competence to understand Sharia contracts such as murabahah, ijarah, mudharabah, and musyarakah, and are able to avoid legal documents containing clauses that conflict with Sharia principles, such as usury, gharar, and maisir. Furthermore, Sharia certification affirms that the notary profession is subject to higher ethical and professional standards, as they are required to understand not only civil law but also transcendental Sharia law. Therefore, Sharia certification should be viewed as an absolute requirement in notarial practice related to Sharia financial transactions. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Subekti, 1999) (Marzuki, 2013) (Amiruddin & Asikin, 2006) (Budi Untung, 2015)

In Islamic financing practices, authentic deeds drawn up by a notary serve as the primary evidence of the parties' agreement. Therefore, the existence of a Sharia Supervisory Board (SSB) is crucial to ensure that banks and notaries carry out their functions in accordance with sharia principles. The SSB is an independent institution comprised of Islamic jurisprudence scholars and experts in Islamic financial institutions, with the primary task of providing oversight, direction, and evaluation of the operations

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of Islamic financial institutions. All activities of Islamic financial institutions, including the use of notary services, must comply with the fatwa of the National Sharia Council (DSN-MUI), which serves as the official guideline for Islamic economic law. Structurally, the SSB occupies a position equivalent to the Board of Commissioners in Islamic banking organizations, thus possessing substantial authority to ensure the implementation of sharia. Unfortunately, the Notary Law (UUJN) does not specifically regulate the SSB's involvement in notary supervision, resulting in notarial supervision still being carried out by the Supervisory Board, whose scope is general and not specifically sharia-compliant. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Gandapradja, 2004) (Lumban Tobing, 1996) (Lutfi Effendi, 2004)

Although formally the Sharia Supervisory Board (SSB) does not have direct authority to supervise notaries, in practice, it plays a role in ensuring that contracts made through notary services in Islamic financial institutions remain in accordance with sharia principles. Notaries are required to ensure not only civil law compliance but also sharia compliance. The SSB's supervisory function includes providing advice, monitoring the implementation of DSN fatwas, and reporting the results of these supervisions regularly to the DSN-MUI. According to the AAOIFI, the SSB plays a role in directing (providing direction and advice), reviewing (assessing the conformity of practices with fatwas), supervising (conducting active and passive supervision), and marketing (socializing sharia principles to the public). However, the effectiveness of SSB supervision still faces various obstacles, such as a limited number of members, difficulty reaching all Islamic banking branches, and the OJK's permission to hold multiple positions, which reduces the focus of supervision. This condition creates inefficiencies in ensuring sharia compliance in the field. (Lumban Tobing, 1996; Tan Thong Kie, 2000) (Kansil, 1986; Marzuki, 2013) (Ali, 2002; Budi Untung, 2015) (Subekti, 1999) (Marzuki, 2013) (Lutfi Effendi, 2004)

The limited number of DPS members and the weak effectiveness of supervision need to be addressed immediately through strategic measures. First, the number of DPS members must be increased to reflect the broad scope of Islamic banking supervision in Indonesia. Second, the quality of DPS members needs to be improved through intensive training and Sharia certification, which also applies to notaries, to ensure more professional supervision of financing contracts. Third, supervisory methods need to be strengthened, not only based on examining administrative documents, but also through

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direct interaction with customers and the use of digital technology for more comprehensive supervision. Fourth, the Financial Services Authority (OJK) needs to clarify regulations regarding concurrent positions held by DPS members and strengthen the DPS performance evaluation system. With these steps, sharia supervision in financial institutions, including supervision of notarial deeds, will be more effective and consistent. This will ultimately maintain sharia compliance, strengthen legal protection for the public, and increase public trust in the Islamic financial industry in Indonesia. (Ali, 2002; Budi Untung, 2015) (Marzuki, 2013) (Gandapradja, 2004) (Lumban Tobing, 1996) (Amiruddin & Asikin, 2006) (Lutfi Effendi, 2004)

4. CONCLUSION

The urgency of sharia certification for notaries is fundamental because notaries are not only tasked with creating authentic deeds to ensure legal certainty, but also play a role in ensuring the compliance of financing deeds with sharia principles. Notaries' limited understanding of sharia contracts such as murabahah, mudharabah, musyarakah, and ijarah creates the risk of deeds that are legally valid but do not meet the standards of halalness and sharia compliance. This can have implications for the emergence of usury, gharar, and maysir in practice, which have the potential to reduce the legitimacy of the deed, trigger disputes, and harm the wider community. Therefore, sharia certification is an urgent need to ensure that financing deeds are not only valid under civil law but also in accordance with Islamic law, while supporting the principles of maslahah, namely legal certainty, justice, and consumer protection in sharia financial transactions.

Sharia certification for notaries must be implemented systematically, comprehensively, and sustainably, supported by clear regulations. A standardized training curriculum encompassing Islamic legal principles, DSN-MUI fatwas, Islamic banking regulations, and technical aspects of notarial law is absolutely necessary, along with theoretical and practical evaluation methods. The existence of an independent Sharia certification body and oversight by the Sharia Supervisory Board (DPS) are key to ensuring the quality of deeds. Furthermore, oversight mechanisms, compliance audits, and sanctions for violations of professional standards must be strictly regulated. Thus, Sharia certification not only enhances notary professionalism but also strengthens the integrity of the Islamic banking industry, protects customers, and fosters public trust, as is the practice in other countries that have successfully integrated positive law with Sharia principles.

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