

Notary's Prudence Duty Effectiveness in Indonesian Financing Deeds: BPRS Rifat Case

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ABSTRACT

A notary, as a public official, has the authority to draw up authentic deeds intended to ensure legal certainty and provide legal protection for the parties. In exercising this authority, a notary is required to apply the principle of prudence as regulated in Article 16 paragraph (1) letter (a) of Law Number 2 of 2014 concerning the Office of Notary, including in the preparation of financing deeds that involve high legal and economic risks. This research aims to examine the effectiveness of the implementation of the principle of prudence and to identify both juridical and non-juridical constraints faced by notaries in preparing financing deeds at BPRS Rifatul Ummah, Bogor Regency. This study employs a sociological juridical legal research method using statutory and empirical approaches. The data were collected through literature review and interviews with relevant parties and were analyzed qualitatively. The findings indicate that the application of the principle of prudence by notaries in the preparation of financing deeds has not been fully effective. This is reflected in the continued practice of drafting deeds without the complete presence of the parties, as well as a tendency to prioritize administrative efficiency. Such practices may lead to formal defects in the deed and weaken its evidentiary value. This research concludes that the principle of prudence is a fundamental element in ensuring the validity of financing deeds and legal certainty. Therefore, consistent implementation of legal norms, along with increased awareness and professionalism of notaries in carrying out their official duties, is necessary.

Keywords: Notary, Prudential Principle, Financing Deed, Notarial Office, Legal Certainty.

1. INTRODUCTION

As social beings, humans inevitably engage in relationships and interactions with others in various aspects of life. These interactions give rise to legal relationships that bind the parties through specific rights and obligations. One of the most prevalent forms of legal relationships within society is the agreement, which serves as a legal instrument to ensure legal certainty, order, and legal protection for the parties involved. In civil law practice, agreements are commonly set forth in the form of authentic deeds drawn up by or before a notary as a public official. Authentic deeds have full evidentiary force and provide legal certainty, as they are executed by an authorized official in accordance with the applicable laws and regulations. Accordingly, notaries play a significant role in ensuring the validity and legal certainty of civil legal relationships, including those in the banking and financing sectors.

The banking sector is one of the key sectors that plays an important role in supporting national economic growth and stability. Through the activities of collecting and distributing funds,



banks function as intermediary institutions between parties with excess funds and parties requiring funds. In this context, financing agreements serve as the legal foundation of the relationship between banks and customers, which gives rise to rights and obligations for each party.

In line with the development of the Islamic financial system in Indonesia, Sharia Rural Banks (Bank Pembangunan Rakyat Syariah / BPRS) have emerged as financial institutions that carry out financing activities based on Sharia principles. Sharia financing is conducted through specific contractual arrangements (akad), including murabahah, musyarakah, mudharabah, and ijarah, which require clarity, transparency, and compliance with Sharia principles. In practice, these financing agreements are formalized in the form of notarial deeds to ensure legal certainty and legal protection for both the bank and the customers.

In exercising their authority, notaries are obliged to apply the principle of prudence as stipulated in Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Office of Notary. This provision stipulates that a notary must act in good faith, honestly, carefully, independently, and impartially, as well as safeguard the interests of the parties involved in every legal act. The principle of prudence serves as a fundamental basis to ensure that deeds drawn up by a notary fulfill both the formal and material requirements of an authentic deed under Indonesian positive law. Nevertheless, in practice, particularly in the preparation of financing deeds within Islamic banking institutions, the implementation of the principle of prudence by notaries has not been fully optimized. One of the problems identified is the drafting of financing deeds without the physical presence of the party who should legally appear before the notary, such as a bank director acting on behalf of the financial institution. This practice may result in formal defects in the deed, which can consequently reduce its evidentiary strength and potentially give rise to legal disputes in the future.

These issues have also been found in the practice of drafting financing deeds at BPRS Rifatul Ummah, Bogor Regency. In several cases, the drafting and signing of financing deeds have not fully complied with the provisions of the Notary Office Law, particularly regarding the obligation to read and sign the deed before a notary. This condition raises concerns about the effectiveness of the implementation of Article 16 paragraph (1) letter (a) of the Notary Office Law in notarial practice, especially in the context of Islamic financing, which involves high legal and economic risks. In addition, the application of the prudential principle is influenced not only by the applicable legal norms but also by factors related to the legal structure and legal culture among notaries and banking institutions. Time efficiency demands, administrative considerations, and a



pragmatic work culture often become non-juridical constraints in the consistent implementation of the prudential principle.

Based on the foregoing discussion, this study is significant in examining the effectiveness of the implementation of Article 16 paragraph (1) letter a of the Law on the Office of Notary (UUJN), which regulates the obligation of notaries to apply the principle of prudence in the preparation of financing deeds, particularly at BPRS Rifatul Ummah in Bogor Regency. This study aims to provide empirical evidence regarding the conformity between legal norms and their implementation in practice, as well as to identify juridical and non-juridical constraints encountered by notaries in applying the principle of prudence.

2. RESEARCH METHODS

This study employs empirical juridical research (socio-legal research) with a qualitative approach. Empirical juridical research is applied because the study not only examines legal norms governing the obligation of notaries to implement the principle of prudence as regulated in Article 16 paragraph (1) letter (a) of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Notarial Office, but also analyzes its implementation in the practice of drafting financing deeds in Islamic banking institutions. The research approach used is a juridical-sociological approach, conducted by analyzing statutory provisions that regulate the obligation of notaries to apply the principle of prudence and comparing them with their implementation in the practice of drafting financing deeds. The research location was selected based on the consideration that BPRS Rifatul Ummah is an Islamic financial institution actively engaged in financing activities that require the involvement of notaries in drafting financing deeds, making it relevant to the object of this study. The research was conducted in 2025, alongside the process of field data collection and literature review. The data sources consist of primary and secondary data. Primary data were obtained directly from the field through interviews with relevant informants related to the practice of drafting financing deeds at BPRS Rifatul Ummah, Bogor Regency. Secondary data comprise primary legal materials in the form of statutory regulations related to the notarial profession, banking law, and contract law; secondary legal materials including legal textbooks, scientific journals, expert opinions, and relevant scholarly works; and tertiary legal materials such as legal dictionaries and other supporting sources. Data collection techniques were carried out through interviews and document studies.

The data were analyzed using qualitative descriptive analysis by systematically describing and explaining the findings based on empirical facts and applicable legal norms. The analysis was



conducted by comparing the legal norms governing the obligation of notaries to apply the principle of prudence with the actual implementation in the practice of drafting financing deeds, in order to draw conclusions regarding the effectiveness of Article 16 paragraph (1) letter (a) of the Notarial Office Law, as well as the juridical and non-juridical constraints influencing its implementation.

3. RESULTS AND DISCUSSION

Effectiveness of the Implementation of Article 16 Paragraph (1) Letter (a) of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 concerning the Notary Profession in Relation to the Obligation to Apply the Principle of Prudence in the Preparation of Financing Deeds.

The position of a Notary is an office of trust that must be exercised in accordance with the credibility of those who perform notarial duties as trusted public officials. The notarial office loses its essential meaning if the notary entrusted with such authority proves to be untrustworthy in carrying out professional responsibilities. Normatively, the notarial office is established by law to assist and serve the public in providing authentic written evidence concerning legal acts, events, or circumstances. Legal effectiveness refers to the ability of law to create or realize conditions as intended by legal norms. This concept does not solely focus on the final outcome, but also emphasizes the conformity between the objectives formulated by the law and the legal impacts that arise in practice.

In the context of this research, the relevant provision is Article 16 paragraph (1) letter a of the Law on the Office of Notary (UUJN), which emphasizes the obligation of a notary to act in a trustworthy, honest, careful, independent, and impartial manner, as well as to protect the interests of the parties in every deed executed, particularly financing deeds conducted at BPRS Rifatul Ummah, Bogor Regency. According to the theory of legal effectiveness proposed by Lawrence M. Friedman, the effectiveness of the implementation of a legal provision is influenced by three main components, namely:

- 1) Legal Substance, which refers to legal norms regulating behavior and legal relationships;
- 2) Legal Structure, which refers to institutions or parties responsible for implementing and enforcing the law; and
- 3) Legal Culture, which refers to the attitudes, legal awareness, and behavior of society toward the law.

The implementation of Article 16 paragraph (1) letter a of the UUJN is analyzed using these three components in order to provide a comprehensive understanding of the extent to which



the principle of prudence is applied in the execution of financing deeds at BPRS Rifatul Ummah. The effectiveness of law enforcement in society contributes to the realization of the fundamental functions of law, namely:

- 1) Legal Certainty, which provides protection against arbitrary actions and ensures that individuals obtain their legitimate expectations, thereby creating social order;
- 2) Legal Utility, meaning that the application and enforcement of law must generate benefits for society; and
- 3) Justice, which requires that law enforcement be carried out fairly. Justice is subjective and individual in nature, such that what is considered fair for one person may not necessarily be fair for another.

The authority of a Notary is regulated in Article 15 of the Law on the Office of Notary (UUJN), which provides that a Notary is authorized to draw up authentic deeds concerning legal acts, agreements, and determinations as required by statutory regulations or as desired by the parties concerned to be stated in an authentic deed. This authority also includes ensuring the certainty of the date of execution of the deed, keeping the deed, and issuing grosses, copies, and excerpts thereof, insofar as the making of such deeds is not assigned or excluded to other officials or persons as determined by law. Based on this provision, a Notary is positioned as a public official whose main duty and authority is to draw up authentic deeds. An authentic deed is a deed whose form is determined by law and which is made by or before an authorized public official at the place where the deed is executed.

Legal substance constitutes the normative foundation that contains legal rules and provisions serving as guidelines for conduct. In this regard, the primary legal substance referred to is the Law on the Position of Notary (UUJN), particularly Article 16 paragraph (1) letter (a), which provides that:

“In carrying out his or her duties, a notary is obliged to act in a trustworthy, honest, careful, independent, and impartial manner, and to protect the interests of the parties involved in a legal act.”.

This provision emphasizes that notaries are required to apply the principle of prudence in every process of deed execution, including financing deeds. The application of this principle aims to ensure that the deed accurately reflects the intentions of the parties and provides optimal legal certainty. In the practice of drafting financing deeds at BPRS Rifatul Ummah, the implementation of the prudential principle is manifested through several procedural stages undertaken by the notary, as follows:



1) Verification of the presence of the parties

The presence of both the bank, represented by its board of directors, and the customer constitutes a fundamental requirement to maintain the formal validity of the deed. Empirical findings indicate that the Director of BPRS is not always physically present during the signing of the deed and instead authorizes an employee to act on their behalf. This practice is inconsistent with the formal requirements stipulated in the Law on Notary Office (UUJN), particularly Article 44, which requires that the deed be signed before the notary. The absence of the bank's representative may weaken the authentic evidentiary value of the deed and increase the potential for legal disputes in the future.

2) Verification of the identity of the parties (Know Your Customer / KYC)

Notaries are obliged to conduct a careful examination of the parties' identities, including identity cards (KTP), taxpayer identification numbers (NPWP), and other supporting documents. In practice, most notaries at BPRS Rifatul Ummah have implemented this verification procedure appropriately. However, there are still instances in which the submitted documents are incomplete, thereby creating potential legal risks.

3) Understanding the substance of the agreement

The role of the notary is not limited to recording the agreement but also includes ensuring that the substance of the deed corresponds to the intentions and objectives of the parties. In sharia-based financing contracts such as murabahah, mudharabah, and ijarah, a proper understanding of the contractual substance is essential to avoid violations of sharia principles.

4) Ensuring compliance with legal norms

Notaries must ensure that the contents of the deed do not conflict with prevailing laws and regulations or with sharia provisions. Accordingly, the financing contract must not contain elements of riba, gharar (uncertainty), or maysir (excessive speculation).

5) Compliance with procedural requirements under the UUJN

Procedural requirements, including the reading of the deed before witnesses and the direct signing of the deed by the parties, must be strictly observed. Nevertheless, notaries at BPRS Rifatul Ummah acknowledge that time constraints often result in these procedures being carried out in a less than optimal manner.

Based on the results of the study, it is found that the legal substance is sufficiently clear and adequate in regulating the obligations of notaries. Nevertheless, the effectiveness of its implementation still faces several obstacles, namely:

- 1) the lack of supervision over the compliance of notaries and banking institutions;



- 2) the absence of specific technical regulations concerning the drafting of sharia financing deeds; and
- 3) the existence of representation practices without the physical presence of bank representatives, which are often considered a common practice.

Therefore, from the perspective of legal substance, although the provisions have been clearly regulated, their implementation has not yet been optimal due to the lack of consistency in their application in practice.

The attitudes, awareness, and actions of notaries in applying the principle of prudence in the process of drafting financing deeds are based on statutory provisions, particularly the Law on the Office of Notary (Undang-Undang Jabatan Notaris/UUJN), the Notary Code of Ethics, as well as moral and professional responsibilities aimed at preventing legal disputes in the future. As public officials authorized to produce authentic deeds, notaries are required to uphold the law and comply with professional ethical standards.

The application of the principle of prudence is manifested through concrete actions at each stage of the preparation of financing deeds, including:

- a. Verifying the authenticity of identities, legal capacity, and the legitimacy of the appearing parties.
- b. Examining, reviewing, and validating the authenticity and legal validity of all supporting documents, including collateral documents, identification documents, and required permits.
- c. Ensuring that the substance of the agreement stipulated in the deed does not conflict with statutory regulations, morality, or public order.
- d. Conducting verification of the legal status of collateral objects, such as land or building certificates, to ensure the absence of disputes or other legal issues.
- e. Analyzing the transaction to be incorporated into the deed in order to identify potential suspicious transactions related to money laundering (TPPU) and, if necessary, submitting reports in accordance with applicable laws and regulations.
- f. Providing explanations regarding the legal consequences of the executed deed so that the parties clearly understand their respective rights and obligations.

Through the consistent application of the principle of prudence, notaries fulfill their professional responsibilities and function as legal gatekeepers in preventing fraud and other criminal acts. Failure to properly apply this principle may result in the deed lacking legal validity and may lead to the imposition of legal liability on the notary.



The non-implementation of the customer due diligence principle in accordance with the prudential principle may result in banks being exposed to various legal and operational risks. In practice, a number of notaries do not apply this principle, causing its enforcement to be ineffective, particularly in relation to their authority as reporting parties under the customer identification principle. This ineffectiveness is due to the fact that such authority is merely restrictive in nature and is not supported by technical guidelines or the imposition of sanctions, as regulated under the Law on Notarial Office (UUJN) and the Notary Code of Ethics.

Moreover, the legal culture of the Board of Directors of Sharia Rural Banks (BPRS) entails full responsibility for ensuring the implementation of prudential principles, including the preparation of financing deeds by partner notaries. The attitudes, legal awareness, and conduct of the Board must reflect strict compliance with Islamic banking regulations and the Financial Services Authority (OJK), while ensuring that the appointed notaries carry out their duties professionally. The Board is required to demonstrate strong leadership in fostering a culture of compliance and effective risk management across all organizational levels.

According to Abdillah Jetha Putra, SPi, the behavior and the fulfillment of the Board of Directors' obligations in this context are manifested through the policies and operational procedures of BPRS, which include:

- a. Ensuring that BPRS has a mechanism for selecting partner notaries who are competent, possess integrity, and have an adequate understanding of Islamic banking law as well as prudential principles.
- b. The Board of Directors bears the responsibility to ensure the existence of a mechanism to re-examine and validate the authenticity of collateral documents and customer data to be included in deeds prepared by the notary.
- c. Implementing detailed written rules concerning interactions between BPRS and notaries, including the obligation of notaries to verify the agreements of the parties and to ensure compliance with prevailing laws.
- d. Conducting internal supervision and reporting to ensure the proper functioning of the compliance unit, including routine monitoring of the deed preparation process by partner notaries and reporting any findings or irregularities to the Board of Directors and/or the Financial Services Authority (OJK).
- e. Ensuring that relevant employees, including those in the financing department, understand the importance of the notary's prudential principles and the procedures to be followed.



- f. Following up on findings from internal and external audits or OJK supervision regarding the financing deed process and the performance of partner notaries.

Overall, the legal attitude and conduct of the BPRS Board of Directors must be proactive in managing risks and maintaining compliance, rather than merely reactive after legal issues arise. This approach aligns with the principles of Good Corporate Governance as regulated by the Financial Services Authority (OJK) for BPR and BPRS.

Furthermore, the attitudes, awareness, and legal behavior of employees at Bank Perekonomian Rakyat Syariah (BPRS) and notaries regarding the obligation to apply the principle of prudence in drafting financing deeds are regulated by the Islamic Banking Law, the Notary Law, and the Notary Code of Ethics. These regulations emphasize professional responsibility to prevent legal issues. Employees' conduct should include the careful implementation of the "know your customer" principle, performing a 5C analysis (Character, Capacity, Capital, Collateral, Condition of Economic) before approving financing, and ensuring that all legal aspects provide secure legal protection for the bank.

The attitudes, awareness, and behaviors of both parties must be harmonized to ensure legal certainty and mitigate potential risks. Employees of BPRS rely on notaries for the formal legal aspects of authentic deeds, whereas notaries require accurate and truthful information from BPRS and its clients. Adherence to the principle of prudence jointly safeguards the interests of BPRS, its clients, and the public trust in the Islamic banking system.

Juridical and Non-Juridical Challenges

An illustrative case at BPRS Rifatul Ummah in Bogor Regency, based on Decision Number 7243/Pdt.G/2023/PA.Cbn regarding financing practices at BPRS Rifatul Ummah, shows that one of the plaintiff's claims was that the financing agreement was neither signed before a notary nor its contents read aloud to the plaintiff. Consequently, the plaintiff stated that they did not fully comprehend the substance of the agreement they had signed. This legal fact indicates a serious problem concerning compliance with the formal requirements for the execution of a notarial deed and the application of the prudence principle, particularly in the formation of financing agreements.

From the perspective of the Notary Position Law (UUJN), the obligation to read and sign a deed in the presence of a notary constitutes a single, inseparable process. Article 16 paragraph (1) letter m of the UUJN requires a notary to read the deed before the appearing parties in the presence of witnesses, and subsequently have it signed immediately. This provision is reinforced by Article 44 of the UUJN, which stipulates that after the deed has been read, it must be promptly signed by



the appearing parties, witnesses, and the notary. Therefore, the reading and signing of a deed in the presence of a notary is not merely an administrative formality, but a legal instrument to ensure that the parties consciously and voluntarily understand and agree to the contents of the agreement. The failure to read the financing agreement and the signing of the deed outside the presence of a notary, as demonstrated in the case, indicates that the principle of prudence was not fully implemented. The notary's duty of prudence, as regulated in Article 16 paragraph (1) letter a of the UUJN, requires the notary to act diligently and carefully, including ensuring that the appearing parties fully understand the contents of the deed to be signed. When the contents of the agreement are not read aloud, the notary loses the preventive function in safeguarding the legal interests of the parties, particularly the debtor, who is in a factually weaker position compared to the banking institution.

From the perspective of contract law, this condition also affects the fulfillment of the element of consent as regulated under Article 1320 of the Indonesian Civil Code. A valid agreement must be based on the parties' free will and their understanding of the contract's contents. If one party signs the contract without knowing or comprehending its substance due to the absence of reading and explanation, the validity of such agreement is subject to question. In this context, the notary's role is crucial as the party responsible for ensuring that the formation of the agreement is conducted transparently and fairly.

Furthermore, from the perspective of deed validity, the failure to meet the formal requirements, namely the reading and signing in the presence of a notary, may cause the deed to lose its authentic character. Article 16 paragraph (8) of the Notary Law (UUJN) stipulates that if the provisions regarding reading and signing are not observed, the deed shall only have evidentiary power as a private deed. This juridical consequence is highly significant, as a deed that is intended to serve as conclusive evidence loses its evidentiary strength, thereby opening the possibility for legal disputes, as demonstrated in the case under review.

In the context of the effectiveness of Article 16 paragraph (1) letter (a) of the UUJN, this case indicates that the legal norm regarding the notary's obligation to act diligently and prudently has not been fully realized in practice. Although this norm is clearly stipulated, its implementation still encounters obstacles, including customary banking practices, efficiency pressures, and a lack of awareness of the legal consequences of neglecting notarial procedures. This situation reflects a gap between the legal norm (das sollen) and actual practice (das sein).

The primary risk faced by banks in lending activities is credit risk, which refers to the likelihood that borrowers fail to fulfill their obligations to repay principal and/or interest. Such



defaults can cause financial losses, disrupt the bank's cash flow, and potentially result in asset seizure. Moreover, widespread defaults may undermine the bank's reputation and threaten financial stability, particularly when a significant number of borrowers fail to make payments and are subsequently listed in the OJK SLIK (BI Checking) database with adverse credit records.

Credit granted to debtors does not always proceed as expected. In practice, delays in repayment by debtors often occur, which can result in loans becoming problematic. An increase in problematic loans will affect the Non-Performing Loan (NPL) ratio, potentially leading to losses for banks. NPL is a primary indicator used to assess credit health in the banking sector and consists of troubled loans. Generally, loans are categorized into two groups: Performing Loans, which include current loans and loans under special attention, and Non-Performing Loans, which include substandard loans, doubtful loans, and bad debts. To address problematic loans, three approaches can be implemented in accordance with OJK Regulation No. 33/POJK.03/2018, namely: Rescheduling, Reconditioning, and Restructuring. According to the author, in practice, several juridical challenges arise, as follows:

- a. Article 16 paragraph (1) letter (a) of the UUJN (Indonesian Notary Law) does not clearly define the terms "diligent" or "careful," causing ambiguity in determining when a notary's actions constitute negligence or a violation of the prudence principle. This ambiguity allows multiple interpretations by notaries, the Supervisory Council, or courts.
- b. Notaries frequently encounter situations where clients provide false information or fraudulent documents.
- c. When legal issues arise regarding a deed, the notary must demonstrate that they acted according to the principle of prudence, which is often difficult because the standard is not clearly defined in the UUJN. Negligent notaries may face civil, administrative, ethical, or even criminal liability.
- d. The Notary Code of Ethics (KEN) generally provides more detailed guidance. However, as internal professional regulations, they sometimes raise debates when applied in formal law enforcement compared to UUJN as positive law.

In summary, the absence of explicit and measurable juridical standards in Article 16 paragraph (1) letter (a) of the UUJN is a significant gap that complicates a notary's consistent application of the prudence principle and avoidance of legal risks. In addition, there are several non-juridical challenges, including:



- a. Notaries often face pressure from one party (client) who requests the rapid completion of a deed, sometimes neglecting careful procedures or including clauses that favor only one party, thereby compromising prudence.
- b. Clients may provide false or non-authentic documents that are difficult for notaries to detect, even if the notary has applied the principle of prudence in document examination.
- c. Competition among notaries or the desire for higher fees may drive notaries to neglect prudence to serve clients quickly, especially in high-value transactions.
- d. Personal relationships or long-term business ties between a notary and clients (e.g., banks or companies) may undermine the independence and neutrality required by the UUJN.
- e. In some cases, local customs or societal norms may conflict with UUJN requirements, putting notaries in a dilemma regarding their application.

This study focuses on BPRS Rifatul Ummah in Bogor Regency. The research identifies a significant issue concerning the absence of the board of directors of the Sharia Rural Bank (BPRS) during the financing contract process carried out by a notary. This absence may reduce the evidentiary strength of the deed from an authentic deed to a private deed. Such a condition is contrary to the Notary Position Law (UUJN) and the principles of Good Corporate Governance (GCG), which are supervised by the Financial Services Authority (OJK).

In accordance with Article 16 paragraph 1 letter (a) and Article 44 of the Indonesian Notary Law (UUJN), the absence of the board of directors during the financing agreement constitutes a violation of UUJN. This is because a notary is obligated to act with integrity, honesty, independence, impartiality, and to safeguard the interests of their clients. The law stipulates that a deed must be signed simultaneously and at the same time by the parties appearing, the witnesses, and the notary, applying the principles of diligence and prudence. A notary is required to exercise careful and thorough consideration in every legal action performed. In practice, however, at BPRS Rifatul Ummah in Bogor Regency, the absence of the board of directors during the financing agreement indicates that the notary conducting the deed did not comply with UUJN provisions and may be subject to sanctions if the actions undertaken are inconsistent with applicable regulations. The board of directors is obliged to adhere to the company's Articles of Association and prevailing laws and regulations, including the implementation of Good Corporate Governance (GCG). Any violations committed by the BPRS board may be reported to the Financial Services Authority (OJK), which is authorized to impose administrative sanctions on BPRS and/or negligent directors. Moreover, BPRS shareholders may convene a General Meeting of Shareholders (GMS) to hold the directors accountable for their negligence.



4. CONCLUSION

A Based on the research findings, the implementation of Article 16 paragraph (1) letter (a) of the UUJN, which mandates notaries to act faithfully, honestly, fairly, independently, impartially, and to safeguard the interests of the parties in the preparation of financing deeds at BPRS Rifatul Ummah, Bogor Regency, has not been fully effective. Substantively, the UUJN provides a clear normative foundation for the notary's duty of prudence; however, field practices indicate inconsistencies, such as the absence of parties during signing, incomplete documentation, and time pressures that compromise meticulousness, potentially weakening the authentic validity of the deeds. From a legal structure perspective, the roles of notaries, the board of directors, and employees are clearly defined and interconnected, with notaries ensuring the validity of sharia-compliant deeds while the board and employees manage sharia compliance and associated risks. Nevertheless, coordination and supervision among these actors remain suboptimal. Furthermore, the legal culture demonstrates professional awareness among notaries, directors, and employees; however, lax adherence to formal procedures, weak sanctions, and insufficient oversight continue to reduce overall compliance with the principle of prudence.

The implementation of notaries' prudential principles in accordance with Article 16 paragraph (1) letter a and Article 44 of the Notary Law (UUJN) has not been fully optimized. Juridically, the main obstacle is the incompleteness of the formal requirements of authentic deeds, such as the simultaneous reading and signing in the presence of the notary by all parties, including the Board of Directors of BPRS. This reduces the evidentiary power of the deed to that of a private deed, potentially leading to legal disputes, while the unclear definitions of "due diligence" and "prudence" create uncertainty regarding the notary's liability. Non-juridical obstacles include banking efficiency pressures, habitual disregard for formal procedures, the absence of the BPRS Board of Directors without valid authorization, and long-term relationships that reduce the notary's independence. These conditions violate Good Corporate Governance under the supervision of the Financial Services Authority (OJK) and pose risks of administrative, civil, and criminal liability for both notaries and directors, while also causing potential losses to the bank and its clients.

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