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Authority Of Non-Muslim Notary In Making Sharia Deeds

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Abstract

This research discusses the urgency and regulation of sharia certification for notaries in making sharia deeds, as well as the implications of the use of foreign languages in such deeds. Shariah certification is identified as an important step to ensure notaries' competence in understanding the elements of shariah, although it is not yet a legal obligation. This certification is particularly relevant for non-Muslim notaries who may face obstacles in explaining the contents of sharia deeds that use Arabic and quotations from the Qur'an, in accordance with the requirements of Article 43 of the Law on Notarial Position (UUJN-P) which requires the deed to be made in Indonesian. This research highlights that the validity of sharia deeds is not determined by the religion or beliefs of the notary, but rather by the fulfillment of the formal and material requirements in accordance with Article 38 of the UUJN-P. Nonetheless, deeds that do not comply with Article 38 of UUJN-P are only considered as underhand deeds, with lower evidentiary power. Therefore, sharia certification is considered important to ensure that sharia deeds are made in accordance with established standards, although it does not determine the validity of the deed. This research also recognizes that the term 'non-Muslim notary' is not official and only appears in an academic context, given the absence of religious requirements in notary appointments under Article 3 of UUJN-P.

Keywords: *Notary, Sharia Deed, Sharia Certification*

1. Intorduction

In civil law, notaries play a central role as a substitute for the role of the state in various civil law matters. The position of a notary as a public official is one of the state organs mandated with some of the state's duties and authorities, namely in the form of duties, obligations, and authorities in the context of providing services to the general public in the field of civil law[1]. The important role of notaries is reflected in the symbol of the Indonesian state attached to their position. Notaries must comply with Law No. 2 of 2014 on the Amendment of Law No. 30 of 2004 on Notary Position (UUJN-P) as well as the Notary Code of Ethics.

Article 1 Point 1 of UUJN-P states that 'Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws'. Based on these provisions, authentic deeds are the authority of notaries, and authentic deeds are one of the written evidence. The position of authentic deeds as written evidence is very important, considering that the State of Indonesia is a state of law that guarantees the creation of legal certainty, legal order, and at the same time legal protection in order to know the clarity of every right and obligation of legal subjects which of course must be legally accountable.[2]

Article 15 of UUJN-P details the authority of notaries, which includes making authentic deeds for deeds, agreements, and stipulations in accordance with the law, guaranteeing the date of making, as well as storing and issuing copies of deeds. In addition, notaries are also authorized to certify signatures, record letters under the hand, make copies of letters, certify photocopies, provide legal counseling, and make land-related deeds and minutes of auctions. Notaries also

[1] Freddy Harris dan Leny Helena, 2017, *Notaris Indonesia*, Cetakan Pertama, PT. Lintas Cetak Djaja, Jakarta, hal. 45

[2] Achmad Irwan Hamzani, 2014, "Menggagas Indonesia Sebagai Negara Hukum yang Membahagiakan Rakyatnya", *Jurnal Yustisia*, Volume 3 Nomor 3, Fakultas Hukum, Universitas Sebelas Maret, Surakarta, hal. 136-138

have other authorities regulated by laws and regulations. Notaries are authorized to make authentic deeds as long as the authority is not transferred or excluded by law. An authentic deed is required as written evidence with absolute evidentiary power for civil legal events and actions. A legal event is an occurrence that triggers legal consequences, governed by legal rules that connect the event with the consequences.... Such an event is referred to as a legal event, while the result that arises from the event is referred to as a legal effect.[3]

According to Van Apeldoorn, a legal event is an occurrence that has a legal basis and results in or extinguishes rights. Also known as a legal event or *rechtsfeit,* this event triggers the application of legal rules, making them applicable in society. In detail, it can be explained that if in society an event occurs that is in accordance with what is described in legal regulations, then the rules will be applied to the event.[4] A legal act is an action of a legal subject (human or legal entity) whose consequences are regulated by law and are the will of the perpetrator. Chainur Arrasjid defines legal action as an action whose consequences are regulated by law and willed by the perpetrator. According to Sudarsono, the definition of legal action is any action whose consequences have been regulated by law because the consequences are the will of the perpetrator of the action.[5]

Legal acts in this study are agreements, including sharia contracts in authentic deeds. In Islamic banking, many transactions require notaries to record and create binding legal documents, providing legal certainty for banks and customers. The same applies to banks that operate a sharia system, where various sharia contracts must also be documented in the form of authentic deeds known as sharia deeds.[6] The authentic principle of sharia law in Islamic banking requires the application of sharia economic principles in every transaction, known as sharia compliance. Therefore, the notarization of deeds must also refer to these sharia economic principles and values.[7] The notary that is intended to be able to make sharia deeds is still a debate regarding the requirement to be Muslim or not, this is due to the position of Notary. Along with the development of the era which certainly affects legal acts in the field of sharia, in this case regarding sharia deeds whose practices we often encounter in Islamic banking. Islamic banking is currently one of the choices of the community in carrying out various legal actions based on sharia principles, not only in one particular place but throughout Indonesia.

Although notaries are authorized to make sharia deeds, non-Muslim notaries often experience difficulties in exercising their authority properly due to limited understanding of Islamic law, especially in terms of legal counseling on sharia deeds. Article 43 paragraph (1) of UUJN-P requires deeds to be made in the Indonesian language, but sharia deeds often contain Arabic which may not be understood by non-Muslim notaries. Although Article 43 paragraph (3) allows the use of foreign languages, this article contradicts Article 15 paragraph (2) letter e of UUJN-P which requires notaries to provide legal counseling related to sharia deeds. If the notary cannot translate, an official translator must be applied in accordance with Article 43 paragraph (5) and Article 44 paragraph (3) of UUJN-P. Otherwise, Article 44 paragraph (5) of UUJN-P states that:

> “Violation of the provisions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4) results in a deed only having evidentiary power as a deed under hand

[3] R. Soeroso, 2006, *Pengantar Ilmu Hukum*, Sinar Grafika, Jakarta, hal. 291

[4] *Ibid*, hal. 292

[5] Yunasril Ali, 2009, ”*Dasar-Dasar Ilmu Hukum”*, Sinar Grafika, Jakarta, hal. 55

[6] M. Dhafan Firmansyah, 2021, Analisis Yuridis Notaris Non-Muslim dalam Membuat Akta Syariah, *Jurnal Signifikan Humaniora*, Volume 2 Nomor 3, Fakultas Hukum, Universitas Islam Malang, Jawa Timur, hal. 40

[7] Deni K. Yusup, 2015, Peran Notaris dalam Praktik Perjanjian Bisnis di Perbankan Syariah (Tinjauan dari Perspektif Hukum Ekonomi Syariah), *Jurnal Al-‘Adalah*, Volume 12 Nomor 2, Fakultas Syariah, Universitas Islam Negeri Raden Intan, Lampung, hal. 626

and may be a reason for the party who suffers a loss to claim reimbursement of costs, compensation, and interest from the Notary."

The need for clear rules regarding the authority of notaries, including certification for making sharia deeds, is very important. This certification should be an obligation, as stipulated in Article 3 number 5 of the Notary Code of Ethics, to improve the understanding of sharia deeds for notaries, both Muslim and non-Muslim. With certification, notaries can be more effective in legal counseling without the need for official translators. The researcher is interested in analyzing "The Authority of Non-Muslim Notaries in Making Sharia Deeds."

2. Method

The type of research used is normative legal research, which aims to analyze scientific procedures to reveal the truth based on legal scientific logic from a normative perspective. The problem approach in this research includes a*statute* approach and*conceptual* approach. Legal materials in this research use secondary data sources which include primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 2 of 2014, Law Number 21 of 2008, the Civil Code, Regulations of the Supreme Court of the Republic of Indonesia, Fatwa of the National Sharia Council, and the Notary Code of Ethics. Secondary legal materials consist of research results, seminars, and relevant scientific works[8]. Tertiary legal materials include legal dictionaries, the Big Indonesian Dictionary, and general encyclopedias[9]. The technique of collecting legal materials was carried out through literature studies, namely collecting provisions, research results, journals, scientific papers, seminar results, and documents related to the research topic. Analysis of legal materials is carried out by collecting, describing, and analyzing data systematically. Primary and secondary data will be studied in depth to obtain a comprehensive problem solving, and the results of the analysis will be presented in a descriptive analysis.

3. Result and Discussion

The Role of Notary in Making Sharia Deeds on Sharia Agreements

Notaries are authorized to make authentic deeds including sharia deeds regardless of whether the notary embraces and/or has a belief in a particular religion through the attributive authority possessed by a notary. Notaries certainly have a role to make sharia deeds, especially in terms of sharia contracts. Akad in the context of sharia refers to a binding agreement or contract between two or more parties, which is based on the principles of Islamic sharia. The deed stipulates the rights and obligations of each party in a transaction. Akad is a form of agreement that is valid under Islamic law and covers various types of transactions such as buying and selling, leasing, partnerships, and financing. Examples of sharia contracts include:[10]

1. Murabahah, which is a sale and purchase contract in which the seller states the cost of goods and a profit margin;
2. Mudharabah, which is an investment cooperation contract in which one party provides capital and the other party provides expertise to manage the business; and
3. Ijarah, which is a lease contract in which the asset owner leases the asset to the lessee for a certain period of time.

When viewed from the nature and form, the contract is an agreement or binding contract between two or more parties based on Islamic law. The contract can be in oral or written form

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[8] Ronny Hanitijo Soemitro, 1990, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, hal. 53

[9] Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Kencana, Jakarta, hal. 169

[10] Nur Wahid, 2019, *"Multi Akad dalam Lembaga Keuangan Syariah"*, Deepublish, Yogyakarta.

and is recognized as valid by sharia.[11] The purpose of a contract is to regulate legal relationships and transactions between the parties involved based on sharia principles. The contract can be made directly by the parties involved in the transaction without the need for a third party, but must be in accordance with sharia principles.[12] Shariah-compliant contracts not only avoid elements prohibited in Islam, but also promote fairness, transparency and business ethics in banking. With various types of contracts that can be customized according to customer needs, Islamic banking offers a comprehensive and Shariah-compliant alternative to conventional financial services[13]

Sharia agreements need to be written down, which is called a sharia deed. According to the Big Indonesian Dictionary (KBBI), a deed is an official document that contains statements or agreements related to legal events, made according to regulations and authorized by official officials. Deeds serve as valid legal evidence in various transactions and agreements[14] Therefore, a deed must be made by an authorized official, such as a notary, and requires certain formalities to have legal force[15] Sharia deeds are needed in every sharia contract, to provide legal certainty for all agreements that become business activities in Islamic financial institutions, namely Islamic banking.[16] Considering that the making of sharia deeds is the authority of notaries, in the context of Islamic banking it certainly involves the role of notaries.

These deeds legally have 3 (three) evidentiary powers, namely outward evidentiary power, formal evidentiary power, and material evidentiary power. Such is the result of the pouring of agreements in Islamic banking into authentic deeds. Therefore, the role of notaries in making financing contract deeds in Islamic banks is very important. Every financing requires a contract with complete clauses to ensure legal certainty, so as to minimize risks for Islamic banks. Formally, there are 2 (two) types of contracts made by Islamic banks, namely Islamic financing contracts under the hand or underhand deeds, and Islamic financing contracts made by and in the presence of a notary (notarial) or authentic deeds.[17]

The role of a notary in making a sharia deed in a sharia contract based on the description above is as a public official who pours the results of the agreement of the parties (in financing is the Islamic bank and the customer) in the sharia contract, into a written form or what is commonly referred to as a sharia deed. This places the sharia deed as a medium in the sharia contract. Sharia deeds are certainly different from deeds in general or conventional deeds, the format of conventional deeds is basically regulated in Article 38 of the UUJN-P. Therefore, the

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[11] Umar Ma'ruf, dan Dony Wijaya, 2015, Tinjauan Hukum Kedudukan dan Fungsi Notaris Sebagai Pejabat Umum dalam Membuat Akta Otentik (Studi Kasus di Kecamatan Bergas Kabupaten Semarang), *Jurnal Pembaharuan Hukum*, Volume 2 Nomor 3, Fakultas Hukum, Universitas Islam Sultan Agung, Semarang, Jawa Tengah.

[12] Abdul Rachman, Atiqi Chollisni, Muklis, Dewi Reni, dan Aisyah Defy R. Simatupang, 2022, Dasar Hukum Kontrak (Akad) dan Implementasinya Pada Perbankan Syariah di Indonesia, *Jurnal Ilmiah Ekonomi Islam*, Volume 8 Nomor 1, Departemen Perbankan Syariah, Sekolah Tinggi Ekonomi Syariah, Jakarta.

[13] Abdul Ghofur Anshori, 2018, "*Perbankan Syariah di Indonesia"*, Gadjah Mada University Press, Yogyakarta.

[14] Umar Ma'ruf, dan Dony Wijaya, 2015, Tinjauan Hukum Kedudukan dan Fungsi Notaris Sebagai Pejabat Umum dalam Membuat Akta Otentik (Studi Kasus di Kecamatan Bergas Kabupaten Semarang), *Jurnal Pembaharuan Hukum*, Volume 2 Nomor 3, Fakultas Hukum, Universitas Islam Sultan Agung, Semarang, Jawa Tengah.

[15] Abdul Rachman, Atiqi Chollisni, Muklis, Dewi Reni, dan Aisyah Defy R. Simatupang, *Loc. Cit*

[16] Yulies Tiena Masriani, 2016, Urgensi Akta Notariil dalam Transaksi Ekonomi Syariah, *Journal of Islamic Studies and Humanities*, Volume 1 Tahun 1, Universitas 17 Agustus 1945, Semarang.

[17] Dedy Pramono, 2015, Kekuatan Pembuktian Akta yang Dibuat Oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata di Indonesia, *Lex Jurnalica*, Volume 12 Nomor 3, Fakultas Hukum, Universitas Esa Unggul, Jakarta.

Financial Services Authority issued a 'Standard Book of Sharia Banking Products' which in its appendix contains examples of sharia deed formats, namely[18]

1. "Beginning of the deed:
   a. Lafadz Bismillah
   b. Title of the deed
   c. Deed number
   d. Meaning of Surah Al-Baqarah verse (275), and Surah An-Nisaa verse (29)
   e. Place, Day, Date of making the Deed
2. Body of the Deed
   a. Composition of Parties
   b. Information regarding the position of the acting party
   c. Premisse of the Deed
   d. The content of the deed, which consists of the following articles:
      (1) Definition
      (2) Financing Principles
      (3) Goods or Objects
      (4) Financing Facility
      (5) Term
      (6) Appointment of Customer as the Bank's Attorney (Wakalah)
      (7) Terms and Procedures for Financing Realization
      (8) Sale and Purchase Agreement
      (9) Terms of Down Payment and Margin
      (10) Fees and Penalties
      (11) Payment Mechanism
      (12) Accelerated Repayment
      (13) Customer Obligations
      (14) Collateral
      (15) Prohibitions for Customers
      (16) Event of Default
      (17) Consequences of Breach of Promise
      (18) Termination of Agreement
      (19) Dispute Resolution
      (20) Supervision & Inspection
      (21) Correspondence
      (22) Miscellaneous
3. End of Deed, containing the Closing Article."

Based on the above regulations and descriptions, it can be seen that the fundamental difference between conventional deeds and sharia deeds is the content of the phrase 'bismillah', and the meaning of Surah Al-Baqarah verse (275), and Surah An-Nisaa verse (29) in the beginning of the deed, which actually does not exist and/or is not even regulated in Article 38 of the UUJN-P. This means that there is an affixation or content of the word 'bismillah' and verses of the Qur'an in the sharia deed. As it is known that both of these are foreign languages, namely Arabic. In fact, Article 43 paragraph (1) of UUJN-P states that 'Deeds must be made in Indonesian'. Although Article 43 paragraph (3) of the UUJN-P states that 'If the parties wish, the Deed can be made in a foreign language', which means that it allows sharia deeds to contain a foreign language, namely Arabic, based on the agreement of the parties. When the deed is made in a foreign language, the Notary is obliged to translate it into Indonesian as stipulated in Article 43 paragraph (4) of UUJN-P.

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[18] Divisi Pengembangan Produk dan Edukasi, Departemen Perbankan Syariah, Otoritas Jasa Keuangan, *Loc. Cit*

If the Notary is unable to translate or explain it, the deed shall be translated or explained by an official translator as stipulated in Article 43 paragraph (5) of UUJN-P. The official translator is also required to affix a signature to the deed made in a foreign language as stipulated in Article 44 paragraph (3) of UUJN-P. Otherwise, Article 44 paragraph (5) of UUJN-P states that:

> "Violation of the provisions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4) results in a deed only having evidentiary power as a deed under hand and can be a reason for the party who suffers a loss to claim reimbursement of costs, compensation, and interest from the Notary."

The fact that has occurred to date, all notaries are authorized to make notarial deeds regardless of whether the notary understands the meaning of the deed, this is possible because not all notaries embrace Islam. This statement is based on the provisions of Article 1 Point 1 of UUJN-P which states that 'Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law', and Article 15 paragraph (1) of UUJN-P which states that:

> "Notaries are authorized to make authentic deeds concerning all acts, agreements, and provisions required by laws and regulations and/or desired by those concerned to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide a grosse, copy and quotation of the deed, all insofar as the making of these deeds is not also assigned or excluded to other officials or other persons stipulated by law."

This means that notaries are authorized to make all authentic deeds including sharia deeds as long as they are not excluded or not assigned to other officials stipulated by law. On the other hand, notaries are obliged to provide legal counseling related to the sharia deeds they make based on Article 15 Paragraph (2) letter e of UUJN-P which states that 'Notaries are also authorized to provide legal counseling in connection with the making of deeds', which is also a form of notary's role in making sharia deeds. Based on the entire description above, it can be seen that the actual role of a notary in making sharia deeds in sharia contracts is limited to preparing the agreement of the parties in the contract into a written form known and/or referred to as a sharia deed, and providing legal counseling in connection with the sharia deed.

Analysis of Non-Muslim Notaries in Exercising Their Authority to Provide Legal Counseling in Connection with Sharia Deeds They Make

Sharia deeds and deeds in general or conventional deeds related to their format have a fundamental difference, namely in sharia deeds there is an affixation of foreign languages in them which should be according to Article 43 paragraph (1) of the UUJN-P which states that 'Deeds must be made in Indonesian'. Although Article 43 paragraph (3) of UUJN-P states that basically it allows sharia deeds to contain foreign languages, namely Arabic on the basis of the agreement of the parties. When the deed is made in a foreign language, the Notary is obliged to translate it into Indonesian as stipulated in Article 43 paragraph (4) of UUJN-P.

If the Notary is unable to translate or explain it, the deed shall be translated or explained by an official translator as stipulated in Article 43 paragraph (5) of UUJN-P. The official translator is also required to affix a signature to the deed made in a foreign language as stipulated in Article 44 paragraph (3) of UUJN-P. If not, the legal consequences are stipulated in Article 44 paragraph (5) of UUJN-P. Looking at the practices that occur to this day, there are still many notaries who sometimes still do not understand the meaning of affixing foreign languages to the sharia deed. In fact, on the other hand, notaries have the authority to be able to provide legal counseling related to the sharia deed.

Article 1 Point 1 of the Regulation of the Minister of Law and Human Rights Number 44 of 2021 concerning Calculation and Proposal of Needs for Functional Position of Legal Counselor states that:

> "Legal counseling is an activity of disseminating legal information and understanding of legal norms and applicable laws and regulations as well as developing the quality of legal counseling in order to realize and develop public legal awareness so as to create a legal culture in the form of orderly and obedient or obedient to legal norms and applicable laws and regulations for the sake of upholding the rule of law."

Legal counseling is one method to increase public legal awareness by providing guidance in accordance with applicable norms. The goal is for the community to understand and comply with the rules of law that have been established.[19] Legal counseling aims to make people understand their role as citizens and be able to demonstrate law-abiding behavior. Legal awareness in society is the application of rational actions in accordance with applicable laws and regulations.[20]

The function of legal counseling is as a preventive measure to prevent things that harm the community, so as to reduce legal violations. Through legal counseling, it is expected to increase public awareness and participation in the development and construction of law[21] Approaches to legal counseling include:[22]

1) Persuasive, where legal counselors must be able to convince the public to be interested in the material presented;
2) Educative, where the legal counselor acts as an educator who guides the community towards the purpose of legal counseling;
3) Communicative, where legal counselors must be able to communicate well to create a reciprocal relationship; and
4) Accommodative, where legal counselors must be able to accommodate and provide solutions to existing problems.

Conveyance in legal counseling can be done through 2 (two) ways, namely directly and indirectly. Direct legal counseling is of course carried out face-to-face between extension workers and the community, while indirect legal counseling is usually carried out through print or electronic media.[23] Notaries do not receive honorarium for legal counseling. Legal counseling by a Notary is limited to those for whom an authentic deed will be made. The notary provides an understanding of the circumstances, the legal position of the parties, the suitability and balance of the position of the parties in the agreement, and the contents of the deed to be made. Notaries may only provide legal counseling related to the deed they will make and may not provide comments or assessments regarding deeds made by other Notaries. In addition, a Notary is not authorized to provide legal advice to a person or accompany a client as legal counsel in court.[24]

Notaries often provide legal counseling related to sharia deeds directly to their clients. This requires notaries, both Muslim and non-Muslim, to understand the elements in sharia deeds.

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[19] Jawardi, 2016, Strategi Pengembangan Budaya Hukum, *Jurnal Penelitian Hukum DE JURE*, Volume 16 Nomor 1, Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM, Jakarta, hal. 78

[20] Ana Silviana, 2012, Kajian Tentang Kesadaran Hukum Masyarakat dalam Melaksanakan Pendaftaran Tanah, *Jurnal Pandecta*, Volume 7 Nomor 1, Fakultas Hukum, Universitas Diponegoro, Semarang, hal. 118

[21] Komang Octaviani Dewi, 2019, Penyuluhan Hukum Tentang Pembuatan Akta Oleh Notaris, *UBELAJ: Universitas of Bengkulu Law Journal*, Volume 4 Nomor 1, Fakultas Hukum, Universitas Udayana, Denpasar, Bali, hal. 67

[22] Ananda Pradhitya Tenggara, 2024, Implementasi Kewenangan Penyuluhan Hukum oleh Notaris, *Notary Law Journal*, Volume 3 Nomor 1, Fakulas Hukum, Universitas Lambung Mangkurat, Banjarmasin, Kalimantan Selatan, hal. 34

[23] *Ibid*,

[24] *Ibid*,

Sharia certification, which helps notaries understand sharia deeds, is not yet mandatory and the regulation is unclear. This indicates a legal vacuum regarding the criteria that must be met by notaries in making sharia deeds. After attending sharia certification, it is expected that notaries can understand the elements in sharia deeds and provide legal counseling properly. The attributive authority of notaries allows all notaries, regardless of religious beliefs or certification status, to make sharia deeds.

The attributive authority of notaries to make deeds, including sharia deeds, must be carried out in accordance with the laws and regulations (Article 1 Point 1 of UUJN-P, Article 15 of UUJN-P, and Article 1868 of the Civil Code). Legal counseling related to sharia deeds can be conducted by notaries regardless of religion or belief, provided that the notary understands sharia deeds and complies with UUJN-P, Sharia Banking Law, and other sharia principles.[25] Therefore, usually in the practice of the position of notary, it is required to participate in the sharia certification program to understand the ins and outs of sharia deeds.

Referring to all sources of attributive authority related to notaries in making sharia deeds and conducting legal counseling in connection with the deeds they make, regardless of the religious elements of a notary, namely Article 1 Point 1 of UUJN-P, Article 15 of UUJN-P, Article 1868 of the Civil Code, even to Law Number 21 of 2008 concerning Islamic Banking. Sharia agreements need to be recorded in the form of a sharia deed, as stipulated in Surah Al-Baqarah 2:282 which instructs the recording of debts and credits to avoid disputes. Tafsir Jalalain, An-Nur, Al-Azhar, and Al-Misbah emphasize the importance of recording and witnesses in transactions for legal certainty. Surah At-Talaq 65:2 adds that testimony must be fair and done with the intention for Allah.

According to Islamic law, a notary must understand the principles of sharia and fear Allah. Although UUJN-P does not prohibit non-Muslim notaries from making sharia deeds, ideally, Muslim notaries are better suited for the task due to the association with Islamic sharia. In the absence of a Muslim notary, a non-Muslim notary can make sharia deeds in urgent situations. Although the practice of the office of notary does not look at any particular religion, compliance with the UUJN-P and the notary code of ethics remains important.Ulil amri as referred to in Q.s An-Nisa 4:59, mentioned above refers to the ruler or government. This means that in the practice of the office of notary, submitting and complying with the UUJN-P and the Notary Code of Ethics is also not wrong because it is a product of ulil amri, namely the government.

The statement of ulil amri which refers to the government or ruler, departs from the views of scholars such as according to Imam an-Nawawi rahimahullah who stated that:[26]

> “The scholars stated that 'ulil amri' refers to those whom Muslims must obey, namely the rulers and the government. This opinion is supported by the majority of the salaf and khalaf scholars, both from the commentators and jurists. There are also those who argue that 'ulil amri' are the scholars, or a combination of the scholars and the government. However, the view that 'ulil amri' refers only to the Companions is erroneous.”

Ibn al-Qayyim (may Allah have mercy on him) emphasized that 'ulil amri' includes both the scholars and the umara (government), because both interpretations are valid based on the narrations from the Companions. Abu Hurayrah (may Allah be pleased with him) said that ulil amri are the leaders/governors, and this interpretation was also accepted by Maimun ibn Mihran and others. Jabir ibn 'Abdullah said that they are the scholars and leaders of goodness. Mujahid, 'Atha', al-Hasan, and Abul 'Aliyah stated that it refers to the scholars. Imam ash-Shafi'i supported

[25] Mutiara Azura Mulyawan, dan Gemala Dewi, 2021, Keabsahan Akta Perbankan Syariah yang Dibuat Notaris Non-Muslim Perspektif Hukum Islam, *Jurnal Asy-Syari'ah*, Fakultas Hukum dan Syariah, Universitas Islam Negeri Sunan Gunung Djati Bandung, Jawa Barat, hal. 199

[26] Ari Wahyudi, 2014, *Ulil Amri*, dalam https://muslim.or.id/10585-ulil-amri.html, terakhir diakses pada 27 Juli 2024 Pukul 18.20 WITA.

the first opinion, which is that 'ulil amri' are the leaders/government.[27] Based on this description, non-Muslim notaries can still provide legal counseling related to sharia deeds, provided that they take sharia certification to understand the deed. This certification is important to understand foreign language elements such as Qur'anic quotations that may be present in sharia deeds. Although notaries are subject to UUJN-P and the Notary Code of Ethics, sharia certification helps notaries better understand sharia provisions.

Urgency and Regulation of Sharia Certification for Notaries in Relation to the Making of Sharia Deeds

Notaries play a role in making sharia deeds and contracts in Islamic banking because as public officials, they have this authority. Although the Fatwa DSN-MUI has not set specific limitations on notaries for sharia deeds, as long as the deed is included in the authority of the notary, then the making of sharia deeds becomes part of his authority in accordance with the Law on Notaries. This is because the position of notary does not require a certain religion to be able to make sharia deeds.[28]

Based on the applicable law, there are no restrictions on the authority given regarding the religion of a notary in certifying deeds related to financing transactions in Islamic banks. However, although there is no absolute requirement regarding the religion of the notary partner, Islamic banks will prioritize accepting a notary partner who is Muslim. Many notaries who currently handle business contracts in Islamic banks have attended sharia certification training, because some Islamic banks require their partner notaries to first attend such training. Legal actions carried out by Islamic banks and customers in the context of financing, especially in making deeds, require an in-depth understanding of sharia economics.[29] The aspects of sharia contracts must be well understood as the basis for making sharia deeds. Ideally, the notary formalizing an Islamic banking contract should be a Muslim with a deep understanding of sharia principles. It is important for notaries and Islamic banking managers to ensure that services to the public are truly in accordance with sharia principles and concepts, not just the outward appearance[30]

Notaries are authorized to explain the deeds they make, including sharia deeds. In practice, not all Islamic banks have specific requirements regarding the religion or educational background of the notary. Some Islamic banks require partnering notaries to have sharia financing training certification, but do not require that the notary must be a Muslim.[31] Notaries in general in carrying out the authority to be able to provide legal counseling in connection with the sharia deed they make is carried out directly to the client who is facing, so that most notaries want to take sharia certification first with the intention of understanding everything related to sharia deeds.

Sharia certification for notaries is a form of professional certification, which aims to recognize the expertise, skills, or competence of a notary by certifying all sharia elements in the process of making sharia deeds. This certificate is given after the notary has successfully passed a series of competency tests or assessments conducted by an authorized institution or organization, so that it is stated that the notary concerned has understood all elements of sharia related to the practice of the notary position.

The importance of sharia certification is actually to direct notaries so that in making sharia deeds they still follow the UUJN-P as a guideline that must be adhered to, because until now there

[27] Ari Wahyudi, *Loc. Cit*

[28] Pandam Nurwulan, 2018, Akad Perbankan Syariah dan Penerapannya dalam Akta Notaris Menurut Undang-Undang Jabatan Notaris, *Jurnal Hukum IUS QUIA IUSTUM*, Volume 25 Nomor 3, Fakultas Hukum, Universitas Islam Indonesia, Yogyakarta.

[29] *Ibid*,

[30] *Ibid*,

[31] *Ibid*,

are no rules in the form of legislation that regulate the special format of sharia deeds. This can be seen in the advertising flyer by one of the Islamic banking and finance education and training institutions, *'Iqtishad Consulting',* which opened the formation of the sharia certification program 'Training & Certification of Islamic Bank Notaries Level 1: Legal Aspects and Preparation of Islamic Bank Agreement Contracts and Sharia Collateral Binding', which is stated as a requirement for partners with Islamic banks with the following material:[32]

There is no legislation that regulates the format of sharia deeds, only to the extent that the Financial Services Authority through the Product Development and Education Division, Islamic Banking Department, Financial Services Authority in the book 'Murabahah Islamic Banking Product Standards' which in its appendix provides an example of a sharia deed by including the phrase '*Bismillahirahmannirrahim*', and quotations from the verses of the Qur'an. Shariah certification is also important in terms of being a requirement in partnering with Islamic banks. This is because it prepares notaries who truly understand everything related to sharia aspects for Islamic banking institutions.

Given that until now, Islamic banking innovation is growing rapidly. However, until now there is still a legal vacuum related to the obligation of sharia certification, from this analysis it can be taken that there is no regulation of sharia certification, as a result the purpose and purpose of sharia certification becomes undirected. Until now, institutions such as Islamic banking are active in filtering notaries to be partners, by stipulating one of the requirements is to have conducted and passed sharia certification. Although, the result of this raises the argument that notaries who follow sharia certification are authorized to make sharia deeds. In fact, Article 1 Point 1 of UUJN-P, Article 15 of UUJN-P, and Article 1868 of the Civil Code have attributively authorized notaries as public officials to make all authentic deeds including sharia deeds, as long as the task is not assigned to other public officials.

Therefore, the importance of sharia certification makes Islamic banking able to limit the space of notary authority in terms of making sharia deeds because until now institutions such as Islamic banking only accept partner notaries who have obtained sharia certification. Although on the other hand, sharia certification is still not regulated and is not a notary obligation. Sharia certification is more of a formality, which means that a notary even without certification can also make Islamic banking deeds.[33]

The Position and Authentication of Sharia Deeds made by Notaries

The validity of sharia deeds is related to the principle of *presumptio iustae causa*. As science develops, the principle of *presumptio iustae causa* can also be related to the practice of the notary office. This is because notaries are always related to the validity of the deeds they make based on their authority. The principle of *presumptio iustae causa* in the practice of notary office is known as the principle of valid presumption in notarial deeds. Habib Adjie argues that in making a notarial deed there are 2 (two) things that make a notarial deed valid.[34] First, notaries are authorized to make deeds in accordance with the wishes of the parties. Second, outwardly, formally, and materially in accordance with the legal rules regarding the making of notarial deeds. The notarial deed as a product of a public official, the assessment of the notarial deed must be carried out with the presumption of validity (*Vermoeden van Rechtmatigheid*) or *Presumptio*

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[32] Iqtishad Consulting, 2023, *Training & Sertifikasi Notaris Bank Syariah Level 1: Aspek Legal dan Penyusunan Kontrak Perjanjian Bank Syariah Serta Pengikatan Jaminan Secara Syariah*, dalam https://www.iqtishadconsulting.com/content/read/training-workshop/training-sertifikasi-notaris-bank-syariah-level-1-aspek-legal-dan-penyusunan-kontrak-perjanjian-bank-syariah-serta-pengikatan-jaminan-secara-syariah terakhir diakses pada 27 Juli 2024 Pukul 23.43 WITA

[33] Rina Taurina, Endang Purwaningsih, dan Irwan Santosa, *Loc. Cit*

[34] Habib Adjie, 2008, *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU Nomor 30 Tahun 2004 tentang Jabatan Notaris)*, PT. Refika Aditama, Bandung.

Iustae Causa. This presumption of validity can be used to assess notarial deeds, namely notarial deeds that must be considered valid until a party declares the deed invalid.[35]

As long as the lawsuit process takes place and there is no permanent legal verdict, the notarial deed remains valid and binding on the relevant parties. The presumption of validity states that notarial deeds as strong written evidence must be accepted, unless the interested party can prove otherwise in court. This principle relates to the possibility of canceling a deed if there is a defect in the making of the deed, but does not apply to deeds that are null and void, which are considered to have never existed.[36]

Notaries must comply with UUJN-P and the Notary Code of Ethics in their practice. A sharia deed, as a notarial product, is valid and valid as an authentic deed if it complies with Article 38 of UUJN-P. The sharia deed must not be adapted to other provisions that contradict Article 38 of the UUJN-P, such as a format that includes the phrase “*Bismillahirahmannirrahim*” and quotations of Qur'anic verses from the book “Murabahah Sharia Banking Product Standards” by OJK.An authentic deed made by a notary must be in accordance with Article 38 of the UUJN-P, if the sharia deed made by a notary receiving sharia certification deviates from Article 38 of the UUJN-P, then the deed is no longer authentic because it is relegated to a deed under the hand. This applies to all notaries regardless of their beliefs and/or religion, and regardless of whether they have undertaken sharia certification or not, because in fact this is not an obligation. Furthermore, if the sharia deed is prepared in accordance with the format of the deed as stipulated in Article 38 of UUJN-P, then the sharia deed has the status of an authentic deed. Meanwhile, if the format of the sharia deed made by the notary deviates from Article 38 of the UUJN-P, the deed is relegated to an underhand deed.

If the notary makes a sharia deed in accordance with the format of the deed as stipulated in Article 38 of the UUJN-P, then there is no need to affix the phrase *'bismilah'* and quotation of the Qur'anic verse even though it is a sharia deed, so that it does not give rise to an obligation for the notary to translate and/or provide legal counseling related to the affixing of the two phrases. Again, not affixing the phrase *'bismilah'* and quotation of the Qur'anic verse to a sharia deed does not make it invalid, because the validity of a sharia deed is based on the fulfillment of material and formal requirements. In addition, it also does not make the deed degraded as an underhand deed. This is because a sharia deed that complies with the deed format as stipulated in Article 38 of the UUJN-P is an authentic deed. The basis is the determination of the form by law (Article 38 UUJN-P) and the making by and/or before a public official (notary) regardless of the belief and/or religion of a notary.

Based on the entire description above, it can be seen that the sharia deed made by a notary is valid, regardless of what belief and/or religion a notary believes in, and regardless of whether the notary has obtained sharia certification or not. The validity of sharia deeds made by notaries emphasizes the fulfillment of material and formal requirements. This is because notaries are generally attributively authorized to make authentic deeds including sharia deeds based on Article 1 Point 1 of the UUJN-P. Article 15 of UUJN-P, and Article 1868 of the Civil Code. In addition, the validity of the sharia deed has the status of an authentic deed as long as it is made in accordance with the deed format as stipulated in Article 38 of UUJN-P. If the making of the sharia deed is not in accordance with Article 38 of the UUJN-P, the deed is still valid but only as an underhand deed. The basic and most important difference between an authentic deed and a deed under the hand is regarding proof, where an authentic deed has perfect evidentiary power both outwardly, formally, and materially.

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[35] Bernadetha Aurelia Oktavira, Arti Asas Praduga Sah pada Akta Notaris, dalam https://www.hukumonline.com/klinik/a/arti-asas-praduga-sah-pada-akta-notaris-lt5cbed96685ff4/, terakhir diakses pada 27 Maret 2024 Pukul 21.20 WITA.*t*

[36] Habib Adjie, *Loc. Cit*

4. Conclusion

Based on the research, two main conclusions can be drawn. First, the term 'non-Muslim notary' is not official and is only used in an academic context. As per Article 3 of the UU Jabatan Notaris (UUJN-P), there is no religious requirement for notaries, so they are authorized to make sharia deeds regardless of their religion. Non-Muslim notaries often pursue sharia certification to understand the elements of sharia deeds, including the use of foreign languages. Secondly, sharia certification is important to ensure notaries' understanding of sharia deeds, but it does not guarantee that the deed will automatically become an authentic deed. The validity of a sharia deed depends on the fulfillment of the requirements as per Article 38 of UUJN-P, and a deed that does not meet the requirements remains valid but has less evidentiary power. Sharia certification helps ensure that sharia deeds meet the set standards.

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