

THE ROLE OF SHARIA BANKING NOTARIES IN THE DEVELOPMENT OF SHARIA ECONOMIC LAW IN THE DIGITAL ERA

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Abstract

Notary has a strategic position in making Islamic banking contracts. This is because the Notary is responsible for the correctness of the contract construction to fulfill the terms of the agreement, as well as sharia principles. This study is intended to analyze the legal consequences that arise in the relationship between the Notary profession and the Islamic banking industry. It is important to find opportunities and challenges of Notaries in supporting the development of Islamic economics in Indonesia. This study uses a philosophical, juridical and empirical approach. The results of the analysis show that the need for a notary who has sharia competence in Islamic banking is an urgent matter. In addition, the opportunities and challenges for sharia-compliant notaries are as great. This is due to the fact that the potential of the Islamic banking market is still very large, but there are also many technological developments with various problems. For this reason, Islamic competent notaries need to be confident that the conventional transaction concept is the design of Allah SWT, the Creator of man, so that it needs to be studied, practiced, disseminated and oriented towards finding solutions if there are still obstacles in its implementation.

Keywords: opportunities, notaries, Islamic banking, Indonesia.

Abstrak

Notaris memiliki posisi yang strategis dalam membuat akad perbankan syariah. Hal ini karena Notaris bertanggung jawab atas kebenaran konstruksi akad untuk memenuhi syarat-syarat perjanjian, serta prinsip-prinsip syariah. Penelitian ini dimaksudkan untuk menganalisis akibat hukum yang timbul dalam hubungan antara profesi Notaris dengan industri perbankan syariah. Penting untuk mencari peluang dan tantangan Notaris dalam mendukung perkembangan ekonomi syariah di Indonesia. Penelitian ini menggunakan pendekatan filosofis, yuridis dan empiris. Hasil analisis menunjukkan bahwa kebutuhan akan notaris yang memiliki kompetensi syariah di perbankan syariah merupakan hal yang mendesak. Selain itu, peluang dan tantangan bagi notaris syariah juga tidak kalah besar. Hal ini dikarenakan potensi pasar perbankan syariah masih sangat besar, namun juga banyak perkembangan teknologi dengan berbagai permasalahannya. Untuk itu, notaris yang berkompeten Islam perlu yakin bahwa konsep transaksi konvensional adalah rancangan Allah SWT, Pencipta manusia, sehingga perlu dikaji, diamalkan, disosialisasikan dan diorientasikan untuk mencari solusi jika masih terdapat kendala dalam pelaksanaannya. Implementasinya.

Kata Kunci: Peluang, Notaris, Perbankan Syariah, Indonesia.

I. INTRODUCTION

The mention of the term Islamic financial institution is a peculiarity in Indonesia. From a historical perspective, such mention is intended to minimize resistance. Meanwhile, from an economic perspective it is considered more marketable. From a philosophical and juridical aspect, it shows that the two terms have a very strong relationship and even cannot be separated. Thus, in this study it can be said that practically speaking, the mention of Islamic financial institutions is only intended to refer to Islamic financial institutions in Indonesia.

In the past five decades, Islamic financial systems and institutions have developed rapidly and have become popular in various Muslim-majority countries and in most Western countries which are predominantly non-Muslim.¹ Regarding to Wilson², Professor in economics, and Director of Postgraduate Studies at the University of Durham's School of Government and International Affairs, this phenomenon is the aftermath of the collapse of the communist system and the lack of success of the socialist movement. The Islamic economic system becomes a middle way between the socialist and capitalist systems. At least, from a general principle of balance between the permissibility of individual ownership and collective social virtue.³ Besides, the phenomenon of increasing awareness of sharia as a whole in the Muslim world has prompted Muslim economists to propose a sharia compliance-based economic system as an alternative to the Western capitalist system.⁴

The rationale for the strength of the Islamic economic system is supported by Goto, Professor of Legal History from the Faculty of Law, University of Toyo Japan. He stated that a strong legal system in historical dynamics is one that is based on a strong philosophy. Meanwhile, the strength of the philosophy in this context is indicated by the compliance of the community in implementing and developing the legal system. Based on this understanding, Goto views that Islamic law is a legal system that has the strongest philosophy. This is because since it was introduced and predicted until the end of time, it was practiced and continued to be developed by its adherents. One form of this development can be found, both in conceptual and practical forms, in the existence of Islamic banking. Article 1 Number 7 Law no. 21 of 2008 concerning Sharia Banking states that a Sharia Bank is a Bank which carries out its business activities based on Sharia Principles and by type consists of Sharia Commercial Banks and Sharia Rural Banks; jo. Number 12 which contains the clause "Sharia principles are principles of Islamic law in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia". Financing in Islamic Banking based on production sharing contracts places the bank as the funder. Therefore, the bank is entitled to a profit sharing ratio of the profits earned by the business owner.⁵

¹ Syed Farhan. Shah, Wajid Raza. Muhammad, and Malik Rizwan. Khurshid, "Islamic Banking Controversies And Challenges," *Interdisciplinary Journal Of Contemporary Research In Business* 3, no. 10 (2012): 1018.

² Rodney. Wilson, "Islm and Business," *Thunderbird International Business Review* 48, no. 1 (2006): 109.

³ Zukri. Samat, "Peranan Institusi Kewangan Dalam Mempertingkatkan Pemilikan Kekayaan Ummah: Suatu Gagasan Dan Cabaran" (Kuala Lumpur, 2009).

⁴ Ro'fah Setyowati, "Perlindungan 'Khusus' Bagi Nasabah Perbankan Syariah Dalam Perspektif Perlindungan Konsumen," *Jurnal Masalah-Masalah Hukum* 39, no. 3 (2010): 205.

⁵ Bagas Heradhyaksa and Ruzian Markom, "Mudharabah Financing Supervision Of," *Diponegoro Law Review* 03, no. 01 (2018): 1–14.

Halim Alamsyah⁶ also stated that the Indonesian Islamic banking industry has enormous potential to become a global player in Islamic finance. This statement is based on several supporting factors, including: (i) a large Muslim population (as much as 87.2% of the total population in Indonesia) as potential customers of the Islamic financial industry; (ii) good economic prospects supported by solid economic fundamentals; (iii) upgrading Indonesia's sovereign credit rating to investment grade which will increase investors' interest in investing in the domestic financial sector, including the Islamic finance industry; and (iv) natural resources that can be used as underlying transactions for the Islamic financial industry.

One of the important organs in this connection is a notary. He is a public official who has the duty and obligation to provide legal services and consultations to people in need. If it is associated with the rapid development of Islamic banking, notaries have a strategic position, especially in making contracts or deeds.⁷ This is because the notary is fully responsible for the correctness of the contract construction.

1.1. Research Method and Benefit

This paper is intended to present the latest developments in the Islamic banking industry, related to its role in economic development in Indonesia, as well as the opportunities and challenges for the notary profession. This research is included in empirical research. This is because this research studies about the norms of behavior of sharia notaries in their implementation facing the digital era. The nature of this research is descriptive analytical. This is because this study describes the regulations governing notaries and their implementation in the digital era. The data collection method used was library research. This research studies literacy related to the role of the notary in Islamic banking.

1.2. Paper Structure

This paper is intended to present the latest developments in the Islamic banking industry, related to its role in economic development in Indonesia, as well as the opportunities and challenges for the notary profession. The study in this paper uses a philosophical, juridical and empirical approach. In order to make it easier to understand the flow of thought in this paper, the description is arranged in the following order. 1) Sharia Bank in The Perspective of Philosophy; 2) The Role of Sharia Banking in Indonesian Economic Development; 3) The Role of Sharia Banking Notaries in a Philosophical Perspective.

II. DISCUSSION

2.1. Sharia Bank in The Perspective of Philosophy

Based on Article 1 number 1 of Law Number 21 of 2008 concerning Sharia Banking, what is meant by sharia banking is "Everything concerning Sharia Banks and Sharia Business Units, including institutions, business activities, as well as methods and processes in carrying out their business activities. "

In the Indonesian context, the discussion and seed of Islamic banking has existed in the 1970s. At the Indonesia-Middle East Relations seminar initiated by the Institute

⁶ Halim Alamsyah, "Perkembangan Dan Prospek Perbankan Syariah Indonesia: Tantangan Dalam Menyongsong MEA 2015," n.d.

⁷ Deni K. Yusup, "Peran Notaris Dalam Praktek Perjanjian Bisnis Di Perbankan Syariah (Tinjauan Dari Perspektif Hukum Ekonomi Syariah)," *Jurnal Al- 'Adalah* XXI, no. 4 (n.d.): 701.

for Social Studies and the Bhineka Tunggal Ika Foundation, Islamic banks were discussed. Although initially it revolved around the debate on the law of bank interest, the law of zakat, and taxes.⁸

Islamic banks in Indonesia officially operated in 1992 with the establishment of Bank Muamalat Indonesia (BMI). A bank founded on the initiative of the Indonesian Ulema Council. A year earlier, four Sharia Rural Banks had operated. Three BPRS in Bandung and another PT BPRS Heraukat in Nagroe Aceh Darussalam.⁹

In 1998, Islamic banks and Islamic business units have been operating in Indonesia. Such as Bank IFI, Bank Syariah Mandiri, Bank Niaga, Bank BTN, Bank Mega, Bank BRI, Bank Bukopin, BPD Jabar and BPD Aceh etc. Ten years later, there were eleven Islamic commercial banks in Indonesia, previously there were only five banks.¹⁰

As of April 2019, the Financial Services Authority (OJK) reports, total Islamic financial assets in Indonesia reached IDR 1,291.48 trillion. Of this total, Islamic banking contributed a percentage of 37.1% or IDR 479.17 trillion. This asset figure was contributed by 14 BUS and 20 Sharia Business Units operating throughout Indonesia.¹¹

Islamic banking has conceptual advantages and has been proven empirically. This advantage is due to the conceptual source of Islamic economics which has strong philosophical roots and is part of Islam. This is evidenced by the high response of the global community who accepts and implements the Islamic financial system through banking institutions. This is an interesting phenomenon, which shows that the sharia-based economic system is in demand by both Muslim business people and non-Muslim consumers.

Basically, the philosophy of Islamic banking emphasizes the similarity of values or non-ribawi principles that have been mentioned in the teachings of the divine religions before Islam. In Judaism, the prohibition of usury is clearly written and contained in several verses so that there is no interpretation which leads to differences of opinion among Jewish religious leaders. The prohibition on the practice of taking flowers is contained in their holy book, namely the Old Testament (Old Testament) and the Talmudic law. Book of Exodus Article 22 Verse 25, Book of Deuteronomy Article 23 Verse 19, Book of Leviticus Article 25 Verse 36-37.

In the gospels, the book of Christianity, in chapter Luke 6: 34-35, is used by some Christians as the legal basis for prohibiting the practice of taking interest or usury. But basically, in terms of language, in the content, there is no clear diction that states the prohibition of usury. This has led to a long debate among Christians. The various views among Christian religious leaders can be grouped into three main periods, namely the views of the early Christian priests (I-XII centuries) who forbade flowers, the views of Christian scholars (XII-XVI centuries) that interest was allowed,

⁸ Rachmadi. Usman, *Aspek Hukum Perbankan Syariah Di Indonesia* (Jakarta: Sinar Grafika, 2014).

⁹ *Ibid.*

¹⁰ Sylke Febrina Laucereno, "Sejarah Berdirinya Bank Syariah Di Indonesia," *Detik Finance*, last modified 2018, accessed September 5, 2019, <https://finance.detik.com/moneter/d-3894544/sejarah-berdirinya-bank-syariah-di-indonesia>.

¹¹ "Statistik Perbankan Syariah Maret-2019," *Otoritas Jasa Keuangan*, last modified 2019, accessed September 5, 2019, <https://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/statistik-perbankan-syariah/Pages/Statistik-Perbankan-Syariah---Maret-2019.aspx>.

and Christian reformers (XVI century-1836) brought the view of legalizing interest.¹² The prohibition of usury in Islam has come down gradually, it is contained in the Qur'an and made clear with the hadiths. The last stage, which states strongly about the prohibition of usury is in the Al Baqarah verse 275-276.

The concept of a usury-based economy is logically opposed by philosophers who are not Muslim. The leading Greek and Roman philosophers Plato, Aristotle, Cato, and Cicero condemned the practice of flower-taking. Plato has two reasons for his criticism of the flower system, namely: first, flowers cause division and feelings of dissatisfaction in society. Second, interest is a tool for the rich to exploit the poor. Aristotle is concerned about the changing function of money which has become a commodity. Meanwhile, according to Aristotles, money functions only as a medium of exchange. Meanwhile, Cicero indicated through his advice to stay away from two jobs, namely collecting excise taxes and providing loans with interest. More explicitly, Cato provides two illustrations to illustrate the difference between commerce and lending, first, commerce is a job that has risks, while giving loans at interest is something that is not appropriate. Second, in their tradition there is a comparison between a thief and a flower eater. Thieves will be fined double while flower-eaters will be fined four times. Thus, it can be understood that the crime of interest through the usury system is more evil than the crime of theft. Several important reasons that underlie the prohibition of usury practices from the philosophers above, namely because it removes the balance of the social and economic life order; and the instrument of interest is used as a weapon for adherents of the capitalist system (the rich) to exploit the poor. This indirectly also proves that the Islamic economic system is universal. In addition, the concept of Islamic economics is a concrete form of Islam as a religion that is *rahmatan lil 'ālamīn* (a blessing for the universe). The facts that strengthen this statement include that more than 70% of trades financed by Islamic Banks in Malaysia are used by non-Muslim customers.¹³

Islamic economics derives from the Alquran, hadith, *ijmā'* (consensus), *qiyās*, and other sources of Islamic law. Basically, all of these sources include three major pillars, namely faith, sharia and morality. The three pillars are the crystallization of the objectives of Islamic law (*al-maqāṣid al-sharī'ah*) which are summarized into five forms of protection, namely protecting religion, soul, mind, descent, and property. The five goals basically boils down to the realization of goodness, benefit, and physical and mental well-being.¹⁴

The material regulated by sharia can be categorized into two major groups, namely worship and muamalah.¹⁵ Chapra stated that the measure of business success in Islam, is not only seen in terms of the accumulation of material, but also in terms of ability to realize Islamic goals. (*maqāṣid al-sharī'ah*).¹⁶ According to Abdul Wahab Khalaf, the existence of *maqasid asy-syari'ah* is important because it can be used as a tool in understanding the editorial of the Qur'an and sunnah, helping to resolve

¹² Muhammad Syafii Antonio, *Bank Syariah Dari Teori Ke Praktek* (Jakarta: Gema Insani Press, 2001).

¹³ Sutan Remi. Sjahdeni, "Perbankan Syariah Suatu Alternatif Kebutuhan Pemiayaan Masyarakat," *Jurnal Hukum Bisnis* 20 (2002): 10.

¹⁴ Maskur. Rosyid and Muhammad Nurul. Irfan, "Reading Fatwas of MUI a Perspective of Masalahah Concept," *Syariah: Jurnal Hukum dan Pemikiran* 19, no. 1 (2019): 91.

¹⁵ Abd al-Wahhāb. Khallāf, *Maṣādir Al-Tashrī' Fī Mā Lā Naṣṣa Fīh* (Kuwait: Dār al-Qalam Li al-Nashr wa al-Tawzī, 1994).

¹⁶ Muhammad Umar. Chapra, *Islam and the Economic Challenge* (Leicester: Islamic Fo.undation, 1992).

conflicting arguments and what is very important is to establish a law in a case where the legal provisions are not listed in the Koran and sunnah when using semantic studies (language).¹⁷

Philosophically, activities related to Islamic banking are business activities that refer to the spirit of worship. From a philosophical perspective, sharia compliance for Islamic banking is an integral and inseparable one. In other words, if Islamic banking is likened to a body, then sharia compliance is its spirit.

2.2. The Role of Sharia Banking in Indonesian Economic Development

The emergence of several Sharia Rural Banks and Bank Muamalat Indonesia led the government to issue Law Number 7 of 1992 concerning Banking. In this law, banking operates on a profit-sharing basis. In the second part about commercial bank business, to be precise article 6 letter m states, "Providing financing for customers based on the principle of profit sharing in accordance with the provisions stipulated in the Government Regulation." More detailed regulations regarding bank business based on the profit sharing principle can be found in Government Regulation Number 72 of 1992.

Operations with profit sharing principles are deemed insufficient and include sharia principles in Islamic banking operations. In 1998 Law no. 7 of 1992 was amended by Law No. 10 of 1998. This law explicitly states that banks in Indonesia can operate under the principle of a dual banking system.

The latest law regulating Islamic banking is Act Number 21 of 2008 concerning Islamic Banking. This law specifically regulates everything related to Islamic banking operations. Among the important points in this law is the obligation of Bank Indonesia to form a Sharia Banking Committee to prepare detailed rules for Islamic banking in the form of a Bank Indonesia Regulation. In addition, this law emphasizes the existence of a fatwa from the Indonesian Ulema Council as the basis for Islamic banking operations. With a note, first legalized in the form of a Bank Indonesia Regulation.

Mentioned in Article 19 of Law Number 21 of 2008 concerning Sharia Banking, Islamic banks provide financing based on the principle of profit sharing (*mudârabah*), equity participation (*mushâraakah*), buying and selling of goods for a profit (*murâbahah*), pure lease without choice (*ijârah*), or with the option of transferring ownership of the goods leased from the bank by another party (*ijârah wa iqtinâ*), the *salam* contract, the *istithnâ* 'contract, the lease that ends with ownership (*ijârah al-muntahiya bi al-tamlîk*), and other principles that do not conflict with sharia principles. Based on the scope of business activities, it can be stated that Islamic banking products are more varied than conventional bank products. This allows Islamic bank products to provide wider opportunities in order to meet the needs of depositors and debtors according to their real needs. Especially in terms of channeling funds to the public, the financing scheme can be tailored to the needs of customers.

In addition to the number of sharia banking service networks and offices, significant developments also exist in the aspects of law and or regulation. This is very important in providing legal certainty for the parties, and through the completeness of this juridical aspect, public trust can be increased.

Some of the latest legislation related to the development of Islamic banking are:

- 1) Law no. 23 of 1999 concerning Bank Indonesia, as amended by Act Number 3 of 2004, subsequently amended by Law No.6 of 2009.

¹⁷ Muhammad. Zaki and Tri Bayu. Cahya, "Aplikasi Maqasid Asy-Syari'ah Pada Sistem Keuangan Syariah," *Jurnal Bisnis dan Manajemen Islam* 3, no. 2 (2015): 322.

- 2) Law No.21 of 2008 concerning Islamic Banking.
- 3) Law No. 19 of 2008 concerning State Sharia Securities (sukuk).
- 4) Law no. 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax.
- 5) Law No.42 of 2009 concerning the Third Amendment of Law No.8 of 1983 concerning Value Added Tax on Goods and Services

The enactment of the Sharia Banking Law, in fact, has encouraged an increase in the number of Sharia Commercial Banks, as of August 2017 there are 13 BUS, 23 Laws and 165 Islamic People's Financing Banks. Meanwhile, the issuance of sukuk by the government as an implementation of the Sukuk Law adds to the outlet for placement of Islamic banking funds in the context of liquidity management. Meanwhile, the enactment of Law No.42 of 2009 is a "tax neutrality" for murabahah transactions conducted by Islamic banks which previously were subject to double tax. This tax treatment is very detrimental to Islamic banking because it makes financing with a murabahah contract more expensive, while murabahah financing has a dominant share with an average of 56.8% in the last five years.¹⁸ In addition, in terms of taxation, it also began to be regulated in 2008 with the issuance of Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax, which was clarified by the existence of Government Regulation of the Republic of Indonesia Number 25 of 2009 concerning Income Tax for Sharia-Based Business Activities, which encourages the tax neutrality of Islamic banks. Subsequently, in 2009, Law Number 23 of 1999 concerning Bank Indonesia was issued, as amended by Act Number 3 of 2004, followed by Law Number 6 of 2009, which regulates Islamic interbank money market instruments and policies monetary based on sharia principles.

Since the Financial Services Authority replaced the function of Bank Indonesia as the authority that oversees Islamic banking, from 2014 to early 2017, the Financial Services Authority has issued several provisions, namely as follows:

- 1) Regulations related to Sharia Banking Products • Financial Services Authority Regulation Number 24 / POJK.03 / 2015 concerning Products and Activities of Sharia Banks and Sharia Business Units.
- 2) Regulations related to Institutions and Professionals • Financial Services Authority Regulation Number 2 / POJK.03 / 2016 concerning Development of the Sharia Banking Office Network in the Context of National Economic Stimulus for Banks • Financial Services Authority Regulation Number 3 / POJK.03 / 2016 concerning Bank Financing the People Sharia • Financial Services Authority Regulation Number 64 / POJK.03 / 2016 concerning Changes in Business Activities of Conventional Banks to become Sharia Banks.
- 3) Regulations related to Governance • Financial Services Authority Regulation Number 44 / POJK.03 / 2015 concerning Work Competency Certification for Members of the Board of Directors and Members of the Board of Commissioners of Rural Banks and Sharia Rural Banks • Financial Services Authority Regulation Number 65 /POJK.03/2016 concerning Application of Risk Management for Sharia Commercial Banks and Sharia Business Units.
- 4) Regulations related to Banking Soundness Level • Financial Services Authority Regulation Number 8 / POJK.03 / 2014 concerning Rating of Soundness of Sharia Commercial Banks and Sharia Business Units • POJK Number 16 /

¹⁸ OJK, *Roadmap Keuangan Syariah* (Jakarta, 2019).

POJK.03 / 2014 concerning Asset Quality Assessment of Sharia Commercial Banks and Business Units Sharia

- 5) Others: Financial Services Authority Regulation Number 21 / POJK.03 / 2014 concerning Minimum Capital Requirement for Sharia Commercial Banks • Financial Services Authority Regulation Number 12 / POJK.03 / 2015 concerning Prudential Provisions in the Context of National Economic Stimulus for Islamic Commercial Banks and Sharia Business Units • Financial Services Authority Regulation Number 66 / POJK.03/2016 concerning Minimum Capital Requirement and Fulfillment of Minimum Core Capital for Sharia Rural Banks.

If all the data is related to the Notary profession, it will show the great need for a Notary to support Islamic banking. Thus, this phenomenon is a great opportunity as well as a challenge for Notaries, especially the diversity of Islamic banking products, which is something new that requires in-depth introduction.

The function of a bank is very crucial for the economy of a country if the role of banking is related to economic aspects. Muslimin Kara stated that banking is one of the agents of development in state life.¹⁹ This is because the main function of banks is as a financial intermediary institution, namely collecting funds from the public in the form of deposits and channeling them back to the public in the form of credit or financing. This is indicated by the size of the assets, which reflects public confidence in banking institutions. The role of banking can also be seen from the aspect of strengthening the financial sector with the growth of community prosperity which has a very close relationship as has been proven by several empirical studies. This statement was reinforced by Mualimin Hadad that providing broad access to the community in addition to increasing community prosperity would also encourage the strengthening of the financial system.

Meanwhile, related to the role of the Islamic banking industry for the benefit of the national economy, it has been widely proven in the history of Islamic banking in Indonesia and other countries. The development of the sharia banking industry, at least, made a positive contribution in supporting financial inclusion, especially for people who want financial services that meet sharia principles at various levels of business. Starting from corporate businesses to grassroots communities who have not been reached by formal financial services. Thus, with the existence of the Islamic banking industry, the economic potential of the ummah that was previously hidden, is gradually being explored to be utilized for community empowerment. Apart from the economic aspect, the role of the Islamic banking industry for the community is to increase spiritual welfare. In the context of this study it is to avoid the prohibitions of muamalah, including ribā, maysīr, gharar, ḡalim and ḡaram.

Basically, the banking industry has a very important role in supporting the achievement of quality national economic growth. The community's demands are also great, so that the banking industry can function properly in increasing and equalizing the level of welfare of the wider community. The philosophical need of the Muslim community to be able to carry out banking transactions in accordance with sharia, has a juridical impact in the form of legality of the operation of Islamic banking, although the juridical aspects required are carried out gradually and continuously. In Indonesia, the development of Islamic banking is quite rapid, both from the aspect of network growth and the provision of facilities for related laws and regulations. Meanwhile, from the asset aspect, although it has reached the target, the portion is still not optimal.

¹⁹ Muslimin. Kara, "Kontribusi Pembiayaan Perbankan Syariah Terhadap Pengembangan Usaha Mikro, Kecil, Dan Menengah," *Jurnal Ahkam* 13, no. 2 (2013): 315.

The existence of Islamic banking has significantly improved the spiritual welfare of the community, especially the Muslim community in Indonesia.

2.3. The Role of Sharia Banking Notaries in a Philosophical Perspective

A Notary is obliged to provide services by existing regulations unless there is a reason to refuse it.²⁰ Besides, as a public official, a Notary Public must uphold the precautionary principle, because the responsibility of a Notary for deeds he makes is for life. In doing authentic deeds, notaries must prioritize the principle of prudence, especially concerning acts regarding agreements. This is because deeds regarding arrangements generally have legal consequences if there is a violation of the contract by the parties.

Lot of deeds made by notaries have problems at a later date. One example of a notary's involvement with sharia banking disputes is in Decree No. 01/P/Basy.PJT/VII/2010 between Haji Mochamad Logika and PT. Bank Syariah Mega Indonesia, Semarang Branch, stated that the Deed No. 14 Concerning the Musyarakah Account Financing Agreement from PT. Bank Syariah Mega Indonesia, declared invalid and null and void. If there is a sharia banking dispute arising from a declared invalid and null and void contract, the notary cannot be separated from responsibility for the incident. This is because the position of notarial deeds is significant as evidence in dispute resolution.²¹ Therefore, a notary may not neglect the principle of prudence in determining legal actions in a deed. As well as making this precautionary principle the main principle in carrying out their duties as a public official.

The notary must genuinely be responsible for the deed's accuracy, including one in the credit agreement or financing to banks.²² This legal responsibility comes from the Notary Position Law, Criminal Law, and Civil Law.²³ The notary is required to be able to make a balance between the rights and obligations of the parties who agree. This is because later the agreement is a rule that the parties in question will obey.²⁴

In the banking world, especially Islamic banking, notaries have the authority to make administrative legal actions. Notaries can make various kinds of contracts or agreements regarding financing, lending, and borrowing, buying and selling, leasing, auction minutes, and contracts required by the parties. Notaries are also always needed to obey and obey any regulations that govern their position and other laws. This is intended so that the public can truly interpret the Notary profession as one of the noble and dignified jobs. Therefore, there are professional values that must be obeyed by them, namely as follows: a) Honesty, b) Authentic; c) Responsible; d) Moral independence; e) Moral courage.²⁵ It can also be useful to support Islamic banks to be able to apply the prudential principle. Sharia banks are required to analyze their customers to ensure the financing process can take place properly.²⁶

²⁰ Wawan Setiawan, "Sikap Profesionalisme Notaris Dalam Pembuatan Akta Otentik," *Media Notariat*, May 2004.

²¹ Yulies Tiena. Masriani, "The Position of Notariial Deed in the Syaria Economic Dispute," *Mimbar Hukum* 28, no. 1 (2016): 162.

²² Abdul Kadir Muhammad, *Etika Profesi Hukum* (Bandung: Citra Aditya Bakti, 2001).

²³ Pieter Latumeten, "Pertanggungjawaban Hukum Profesi Notaris" (Bandung, 2014).

²⁴ Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris* (Bandung: Refika Aditama, 2011).

²⁵ Munir Fuady, *Profesi Mulia* (Bandung: Citra Aditya Bakti, 2005).

²⁶ Afif Noor and Bagas Heradhyaksa, "Execution Mechanism of Mortgage Rights Using Executorial Title in Sharia Banking Is Whose Authority?," *Diponegoro Law Review* 5, no. 2 (2020): 245–259.

If it is related to Islamic banking, the notary's responsibility is to control the scope of notary law, criminal law, civil law, and moral ethics and practice Islamic law, especially those related to muamalah. Believing and implementing Islamic law principles is an expected role for a sharia banking notary from a philosophical perspective.

OJK has understood the need for philosophical-juridical consequences. Therefore, it is suitable for the 2015-2019 Sharia Banking Roadmap²⁷ and the 2017-2019 Sharia Financial Roadmap²⁸ has been stated in the work program, in the form of Capacity Building for Human Resources. The sub-program is aimed at developing a Certification Program and Continuing Professional Education. The program's action is to encourage a certification program and Continuing Professional Education for the profession that contains Islamic finance material. The current condition shows that many occupations are still related to the financial industry, such as accountants, appraisers, actuaries, notaries, legal consultants, and other disciplines, which do not understand Islamic finance. Therefore, the Financial Services Authority needs to encourage a certification program and Continuing Professional Education for professions that contain Islamic finance material.²⁹

Another challenge in the notary profession is related to the cyber or electronic era. This gave rise to a cyber notary. Section 15 sub-section 3 of the Notary Law's amendment stipulates that notaries also have other powers that are regulated in statutory regulations. In the elucidation of section 15 sub-section 3, the other powers referred to include the authority to certify transactions conducted electronically or cyber notary. The concept of a cyber notary can temporarily be interpreted as a notary who carries out his / her duties or authority based on information technology, which is related to the notary's duties and functions, especially in doing.³⁰ By observing developments in several countries, both those with Common Law and Civil Law styles, many countries have empowered their notaries' function and role in electronic transactions. Therefore, Indonesia must stimulate notary services in electronic transactions, even up to the implementation of notary services itself electronically.³¹

World Bank research results³² The 2014 Global Findex Database shows that only around 36.1% of the population aged over 15 years have used formal financial institutions, with only 28.7% of the people in rural areas over 15 having an account with a legal financial institution. This data confirms that the market potential for Islamic banking development is still huge, especially in Indonesia.

This shows that the opportunity for Islamic banking notaries is still huge. This is because the market potential is still immense, but technological developments never stop. Therefore, Muslim Notaries who have the awareness to participate in the Islamic banking industry's development need to continue to strive to strengthen five attitudes or characters, namely believing, understanding, practicing, disseminating, and being patient in finding solutions. Even though there is no valid data on the number of Notaries who already have sharia eligibility, it can be assumed that there are not many notaries who are sharia eligible. This is based on introducing the concept and operation of Islamic financial institutions and the making of the contract has not been

²⁷ OJK, *Roadmap Perbankan Syariah* (Jakarta, 2017).

²⁸ OJK, *Roadmap Keuangan Syariah*.

²⁹ *Ibid.*

³⁰ Emma Nurita, *Cyber Notary* (Bandung: Refika Aditama, 2012).

³¹ Edmon Makarim, *Notaris Dan Transaksi Elektronik*, 2nd ed. (Jakarta: Rajawali Press, 2013).

³² Demircuc-Kunt and Leora Klapper, *The Global Findex Database*, 2014.

significant enough to be held specifically for Notaries. This is the actual role expected of the Notaries in the development of Islamic banking.

Another thing of concern is related to sharia notaries in Islamic banking. Indonesian Ulema Council Fatwa No. 1 of 2004 states that bank interest includes Riba and Haram. Meanwhile, interest, of course, involves conventional banks. Meanwhile, to become a partner of a sharia bank, a notary must be a partner of a conventional bank. This means that a notary must make a deed relating to the Ribawi case.

This study proposes that the Indonesian Ulema Council be able to make a fatwa so that it becomes a legal reference stating that those who become partners with sharia banks must be notaries with sharia compliance. The characteristics are as follows. First, do not become a partner of a conventional bank. Second, understanding sharia laws, especially related to Islamic bank contracts. and to make it happen, a competency test in accordance with sharia compliance is required.

III. CONCLUSION

The financial services industry, particularly banking, has significantly improved people's spiritual welfare, especially the Muslim community in Indonesia. Therefore, as a profession that is inherent in contract making, the notary has both opportunities and significant challenges in the development of the Islamic banking industry.

The growing number of Islamic banking service office networks and the relatively small number of asset customers shows the potential for the Islamic banking market is still very large. Meanwhile, the challenges of notaries in Islamic banking are also getting more significant. Some of the demands required by a notary for Islamic banking include: 1) The notary must believe that the concept of the non-ribawi transaction is the design of Allah SWT, which has the highest benefit value compared to other ideas at any time, including in the global era; 2) Notaries must understand and be skilled in expressing their knowledge related to their functions and positions, with instruments developing in the worldwide period; 3) Notaries should also practice this concept in their daily transaction activities by global developments; 4) The notary is also obliged to convey or ensure the superiority of this non-ribawi bank concept to the parties facing him; 5) Notaries must be patient and participate in fighting by the era if the application of the idea is still not ideal. This conclusion is based on a philosophical approach by exploring the relationship between the notary concept, Islamic banking, and the global era. In simple language, the opportunities and challenges for Islamic banking notaries increase linearly. Therefore, Muslim Notaries are expected to understand and do their best to fulfill both the desired role and the essential role to contribute to the development of Islamic banking.

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