

Model of Sharia Financing Contract in the Form of Notary Deed According to the Perspective of Islamic Law

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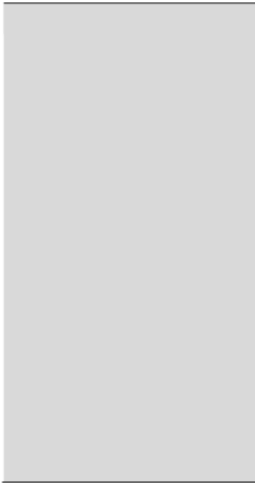
Sharia Financing Contract; Notarial Deed; Islamic law.

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Abstract

The practice of developing sharia financing has actually experienced massive developments, especially in ensuring the existence of legal certainty in transactions. One of the developmental practices of sharia financing is the existence of a contract formulated in the form of a notarial deed. This research focuses on the legal vacuum related to the arrangement of making a shari'ah financing contract in the form of a notarial deed. This research is a normative legal research with a concept and statutory approach. The results of the study show that a sharia financing contract made in the form of a notarial deed according to Islamic law must still refer to the provisions of syar'i law. In the process of shari'ah financing contracts, it is necessary to refer to several syar'i aspects, such as paying attention to the provisions contained in the Qur'an and sunnah, the Sharia Banking Law, to the JN Law. The model for making sharia financing contracts in the form of a notary deed based on the principles of agreement in Islamic law places the position of a notary to guarantee neutrality, professionalism and integrity including fulfilling and complying with the code of ethics. Notaries need to understand the provisions of syar'i or Islamic law in formulating a syari'ah financing contract requiring certification and special training in making sharia banking contracts for notaries.

Keywords: Sharia Financing Contract; Notarial Deed; Islamic law



I. Introduction

One of the developments in shari'ah banking is oriented towards optimizing shari'ah financing. Based on the nature of financing, shari'ah financing is divided into two, namely productive and consumptive financing.¹ Productive financing is financing aimed at meeting productive needs in a broad sense, namely for business improvement, both productive business, trade and investment.² Consumer financing has an orientation to meet consumption needs and is not long-term. Financing in shari'ah banking is identical to the existence of contracts / contracts with its customers or with bodies or institutions that cooperate with it. The contract aims to ensure legal certainty and provide legal protection for parties who conduct shari'ah financing transactions so that justice can be achieved.³

At first glance, there is no technical difference between transactions in Islamic banks and in conventional banks. This is because in general or in principle the technical similarity of transactions between Islamic banks and conventional banks because they are both subject to general banking technical regulations.⁴ Even so, the distinguishing aspect between Islamic banks and conventional banks is the existence of contracts that are commonly practiced in shari'ah banks. This is because in Islamic banks, all transactions must be based on contracts that are allowed by Islamic sharia. This is so that transactions at Islamic banks must be in accordance with the rules stipulated in the muamalah fiqh.⁵

The agreement in the transaction of shari'ah financing must be made in written form in order to guarantee aspects of legal certainty in the transaction.⁶ The obligation to transact shari'ah financing must be made in this written form while affirming that shari'ah financing transactions are not allowed to be carried out only orally or in speech. This is juridically regulated in the provisions of Article 1 number (13) of Law No. 21 of 2008 concerning Sharia Banking (Sharia Banking Law) which substantively confirms that the penalty of a contract in written form as proof of the parties' transactions based on shari'ah principles. Shar'i, this is also in accordance with the provisions of the Qur'an in Sura Al-Baqarah verse 282 which mandates the importance of written contracts in transactions one of the orientations is to prevent disputes in the future.

The importance of the Shari'ah financing contract in writing above in practice is also commonly made in the form of a notarial deed or deed under hand. The shari'ah financing agreement made based on a notarial deed can be understood as an effort to strengthen

¹ Diah Arini and Teddy Anggoro, "Keabsahan Hukum Grosse Akta Pengakuan Hutang Pada Akad Pembiayaan Perbankan Syariah," *Jurnal Usm Law Review* 4, no. 2 (2021): 484, <https://doi.org/10.26623/julr.v4i2.4056>.

² Tyas Susilo Haryono, Fifiana Wisnaeni, and Irma Cahyaningtyas, "Peranan Notaris Dalam Membuat Akta Akad Pembiayaan Murabahah Di Bmt Syariah Wanita Islam," *Notarius* 13, no. 2 (2020): 682-93, <https://doi.org/10.14710/nts.v13i2.31093>.

³ Zaid Raya Argantara, "Pencatatan Akta Notaris Akad Syariah Oleh Notaris Non Muslim Perspektif Hukum Islam," *Masyrif: Jurnal Ekonomi, Bisnis Dan Manajemen* 2, no. 2 (2021): 157-66.

⁴ Kharis Fadlullah Hana and Islahud Dimam, "Diskursus Akad Pembiayaan Bank Syariah Dalam Perspektif Hukum Di Indonesia," *Tawazun: Journal of Sharia Economic Law* 5, no. 1 (2022): 59, <https://doi.org/10.21043/tawazun.v5i1.13731>.

⁵ Nurul Hikmah Gelar Ali Ahmad, *Hukum Islam*, 1st ed. (Surabaya: Unesa University Press, 2018).

⁶ Andri Soemitra and Adlina, "Perlindungan Konsumen Terhadap Kebocoran Data Pada Jasa Keuangan Di Indonesia," *Jurnal Insitusi Politeknik Ganesha Medan Juripol* 5, no. 1 (2022): 288-303.

aspects of legal certainty because a notarial deed is an authentic deed. An authentic deed is actually a deed that describes a specific legal act seen by a notary directly.⁷ Therefore, the shari'ah financing contract formulated in the form of a notarial deed is an effort from the parties so that shari'ah financing transactions are carried out by guaranteeing aspects of legal certainty.⁸

Shari'ah financing agreements formulated in the form of notarial deeds are common in the practice of shari'ah financing. This is because by referring to the provisions of Law No. 30 of 2004 concerning Notary Positions (Law JN) and its amendments, namely Law Number 2 of 2014 concerning Amendments to Law JN (Law on Amendment of JN) which confirms that notaries are officials authorized to make authentic deeds so that notary legal products have strong evidentiary power, namely in the form of authentic deeds. Even so, in practice there is no integrated special arrangement regarding guidelines for making shari'ah financing contracts in the form of notarial deeds. Arrangements for making shari'ah financing contracts in the form of notarial deeds are still scattered in various regulations such as in the DSN-MUI Fatwa which includes: Fatwas on Murabahah, Salam, Istisna, Buy, Ijarah, Ijarah Muntahia Bittamlik, and Mudharabah.⁹ The lack of specific and integrated regulations regarding guidelines for making shari'ah financing contracts in the form of notarial deeds creates a legal vacuum related to the regulation of making shari'ah financing contracts in the form of notarial deeds. This research is oriented to answer two legal issues, namely: shari'ah financing contracts made in the form of notarial deeds according to Islamic law and sharia financing contract models in the form of notarial deeds based on the principles of agreement in Islamic law.

Research on shari'ah financing contracts in the form of notarial deeds has generally been carried out by several previous researchers, such as: (i) research conducted by Parmitasari (2020) which discusses the authenticity of shari'ah financing contracts accompanied by Basmalah sentences.¹⁰ The excellence of this study explains the general practices and phenomena regarding shari'ah financing contracts accompanied by the sentence Basmalah. The weakness of this study has not discussed the provisions of laws and regulations governing shari'ah financing contracts accompanied by the sentence Basmalah. The next research was conducted by Argantara (2021) which discussed the recording of notary contracts with shari'ah contracts carried out by notaries who are non-Muslim.¹¹ The advantage of this study is to examine specifically the phenomenon of notaries who are non-Muslims who record notary contracts with shari'ah contracts. The weakness of this study has not empirically discussed the practice of recording notary contracts with shari'ah contracts in various other places. Further research was conducted

⁷ Satrio Abdillah, "Batasan Kewenangan Dan Tanggung Jawab Notaris-PPAT Dalam Edukasi Prosedur Pembuatan Akta Otentik Ditinjau Dari Pasal 51 KUHP," *Journal of Education Research* 4, no. 1 (2023): 67-72.

⁸ Ni Made Dwikayanti and I Made Dedy Priyanto, "Kedudukan Keputusan Majelis Kehormatan Notaris Dalam Proses Penegakan Hukum Terhadap Notaris Theresia K. Dimu," *Acta Comitas* 6, no. 02 (2021): 410, <https://doi.org/10.24843/ac.2021.v06.i02.p15>.

⁹ Dudi Badruzaman, "Isu Kontemporer Peran Notaris Dalam Akad Murabahah Di Lembaga Keuangan Syariah," *Jurnal Muslim Heritage* 4, no. 1 (2019): 141-58.

¹⁰ Indah Parmitasari, "Autentikasi Akad Pembiayaan Pada Perbankan Syariah Dalam Penggunaan Lafadz Basmallah," *Undang: Jurnal Hukum* 3, no. 1 (2020): 85-105, <https://doi.org/10.22437/ujh.3.1.85-105>.

¹¹ Argantara, "Pencatatan Akta Notaris Akad Syariah Oleh Notaris Non Muslim Perspektif Hukum Islam."

by Santosa, et al. (2023) which discussed the duties and authorities of notaries in shari'ah banking.¹² The advantage of this study is a comprehensive discussion of the absence of rules regarding the duties and authorities of notaries in shari'ah banking. The weakness of this study is that it has not discussed legal problems that occur in the field as an implication of the absence of regulations regarding the duties and authority of notaries in shari'ah banking.

Of the three previous studies, this study with a focus on legal vacancies related to the regulation of making shari'ah financing contracts in the form of notarial deeds has never been analyzed comprehensively by the previous three studies so that it is an original research.

Research Methods

This research with a focus on the legal vacuum related to the regulation of making shari'ah financing contracts in the form of notarial deeds is a normative legal research whose orientation is to offer prescriptions for the legal issues faced.¹³ The primary legal materials in this study are the 1945 NRI Constitution, the Sharia Banking Law, the JN Law and its Amendments and related MUI DSN Fatwas. Secondary legal materials include: journal articles, books, and studies and research that discuss the authority of notaries in shari'ah financing contracts. Non-legal material is a dictionary of languages. The approach used is a conceptual and legislative approach.

II. Results and Discussion

1. The Shari'ah Financing Agreement Made in the Form of a Notarial Deed According to Islamic Law

A notary is a general official who has the authority to make an authentic deed. An authentic deed formed by a notary public substantially contains the agreed and legally valid legal acts of the parties.¹⁴ In this case, the notary's authority in making an authentic deed must be based on the JN Law and its amendments. The provisions in the JN Law along with its amendments and the notary code of ethics must be obeyed and used as "signposts" for notaries in carrying out their duties and obligations.¹⁵ The notary's authority in forming authentic deeds is actually an essential authority for notaries. This is because the notary's authority in making deeds is the main and principal authority of the notary from other authorities. In determining the authentic deed, the notary must precisely comply with applicable provisions including the form and format of the deed prepared must be in accordance with the provisions of the established laws and regulations.¹⁶ This is also to

¹² Irwan Santosa Rina Taurina, Endang Purwaningsih, "Kompetensi Notaris Dalam Menjalankan Peran, Tugas Dan Kewenangan Pada Perbankan Syariah (Studi Pada Bank Permata Syariah)," *Res Justitia* 3, no. 1 (2023): 148-66.

¹³ J. Ibrahim J. Efendi, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Kencana, 2016).

¹⁴ Luh Putu Sudini, "The Roles of Notary in Living Environment Conservation," *Notariil* 5, no. 2 (2020): 90-91.

¹⁵ Khairunnisa Noor Asufie and Ali Impron, "Perlindungan Hukum Terhadap Notaris Dalam Pelaksanaan Jabatan Notaris Berdasarkan Teori Keseimbangan Berbasis Keadilan," *Journal of Law, Society, and Islamic Civilization* 9, no. 2 (2021): 37, <https://doi.org/10.20961/jolsic.v9i2.54803>.

¹⁶ Yulfira Briliyanti Ramdan, "Implementasi Penyuluhan Hukum Oleh Notaris Melalui Media Sosial Dalam Meningkatkan Kesadaran Hukum Masyarakat," *Gorontalo Law Review* 2, no. 2 (2023): 190-99.

guarantee and reinforce authentic deeds made by notaries so as to produce legal certainty that protects legal acts from the parties.

The notary's authority in forming authentic deeds has relevance to the notary's orientation as an *officium nobile*. *Officium nobile* is the main characteristic of the notary profession as a noble profession that emphasizes aspects of trust, quality, professionalism, integrity, and accountability for the community.¹⁷ This characteristic of notaries as *officium nobile* has relevance to authentic deeds made by notaries which are the strongest evidence because they are authentic deeds. As the strongest evidence, an authentic deed must be formed based on procedures and provisions strictly and responsibly. This is because the authentic deed formulated by the notary is considered a document that explains the legal deeds of the parties officially so that the notary is fully responsible for his authority in formulating the authentic deed.¹⁸ An authentic deed as the strongest evidence in a legal act is strengthened by the formulation of Article Article 1870 of the Civil Code which states that an authentic deed has absolute evidentiary power and is like a law for the parties. As an absolute settlement, it means that an authentic deed has the highest legal force in the evidentiary process.¹⁹ An authentic deed like a law for the parties does not mean equating the position of an authentic deed with the law, but shows the validity of an authentic deed that must be obeyed and carried out by the parties as a law that must be implemented and binding on all levels of society.

An authentic deed in relation to perfect evidence also occupies an important position because if there is a dispute from the parties, the substance of this authentic deed is considered true and must be obeyed.²⁰ In fact, judges in court must submit and obey the substance of authentic deeds in terms of adjudicating a dispute. Although an authentic deed is an absolute means of evidence, as long as the truth can be proven, the authentic deed can lose its evidentiary power as absolute evidence.²¹ Therefore, if it cannot be proven otherwise the authentic deed remains absolute evidence that must be considered true by the parties. Regarding the official format of authentic deeds made by notaries, the JN Law through Article 38 has regulated the official and special format related to authentic deeds to be made. The provisions of Article 38 of the JN Law must be fulfilled, fulfilled, and implemented by notaries in making deeds, both general and shari'ah-based notary deeds. This is because there is no regulation regarding shari'ah-based notary deeds specifically so that through legal construction, shari'ah-based notary deeds are equated in formulation

¹⁷ Muhammad Akbar and Fadhil Yazid, "Implementasi Ketentuan Akta Autentik Notaris Pada Pembuatan Akad Di Perbankan Syariah," *Law Jurnal* 1, no. 1 (2020): 25–31, <https://doi.org/10.46576/lj.v1i1.785>.

¹⁸ Muhammad Soleh, Zulfatah Yasin, and Helmi Yusuf, "Penerapan Kepatuhan Syariah Dan Peraturan Jabatan Notaris Pada Lembaga Keuangan Syariah Di Indonesia," *Qonuni: Jurnal Hukum Dan Pengkajian Islam* 2, no. 1 (2022): 15–24.

¹⁹ Utary Maharany Barus Nelli Ayunda Putri, H. M. Hasballah Thaib, "Penolakan Notaris Muslim Terhadap Pembuatan Akta Ribawi (Perspektif UUJN Dan Hukum Islam)," *Jurnal Hukum Kaidah* 21, no. 1 (2021): 22, <https://jurnal.uisu.ac.id/index.php/jhk/article/view/4295>.

²⁰ Gde Yogi Yustyan, Siti Hamidah, and Hariyanto Susilo, "Aspek Pertanggungjawaban Pidana Notaris Pada Pembuatan Akta Pihak (Studi Putusan Mahkamah Agung Nomor 1099/Pid/2010)," *Jurnal IUS Kajian Hukum Dan Keadilan* 6, no. 2 (2018): 274, <https://doi.org/10.29303/ius.v6i2.560>.

²¹ Komang Yogi Triana Putra, Bambang Winarno, and Bambang Sudjito, "Perlindungan Hukum Notaris Terkait Hilang Dan Rusaknya Minuta Akta Akibat Keadaan Memaksa," *De Lega Lata: Jurnal Ilmu Hukum* 6, no. 2 (2021): 281–95, <https://doi.org/10.30596/delegalata.v6i2.5074>.

with notary deeds in general.²²

Even so, in practice the shari'ah-based notary deed is specially formulated with the addition of Basmalah writing. Referring to the existing positive law, neither the JN Law nor other provisions on shari'ah banking include regulations regarding lafadz Basmalah related to sharia-based notary deeds. In fact, in practice, shari'ah-based notary deeds are usually formulated with the presence of lafadz Basmalah. Although Lafadz Basmalah is not regulated in various existing positive legal provisions, according to the author at least influenced by various reasons, namely: first, although not regulated in Article 38 of the JN Law, the inclusion of lafadz Basmalah related to a shari'ah-based notary deed is more based on the shari'i argument that for every Muslim every good transaction must include lafadz Basmalah as a form of practicing religious teachings as well as showing that this transaction is a good act and is recognized by Allah SWT.²³ Second, Lafadz Basmalah related to sharia-based notary deeds is an attempt to distinguish between notary deeds in general and notarial-based deeds. The distinction is necessary to briefly and concisely collect or document the existing authentic deed. Third, lafadz Basmalah related to shari'ah-based notary deeds is actually present in practice because it is considered a good and appropriate substance in shari'ah transactions.

Lafadz Basmalah in a shari'ah-based notary deed is accepted and carried out by the community, especially to notaries in the practice of making shari'ah-based notary deeds as a habit that is considered good and appropriate according to the size that exists in the community. Although the practice of lafadz Basmalah related to sharia-based notary deeds has been common and commonly practiced, by referring to the provisions of Article 38 of the JN Law, it can be concluded that shari'ah-based notary deeds with Lafadz Basmalah are not in accordance with the formulation regarding the formulation of notary deeds. Because the shari'ah-based notarial deed with lafadz Basmalah is not in accordance with the provisions and general guidelines regarding the formulation of notarial deeds which are limitedly regulated in Article 38 of the JN Law, it can be said that a shari'ah-based notarial deed with lafadz Basmalah cannot be categorized as an authentic deed. This is based on at least three arguments, namely: first, the formulation of authentic deeds has a regulatory and limitative character which means that it must refer to and be based on existing provisions.²⁴ This is to guarantee the evidentiary strength of an authentic deed that is absolute. Therefore, the incompatibility of the formulation of authentic deeds with existing rules has degraded the evidentiary power of authentic deeds formulated not in accordance with existing provisions.

Second, the reasons for the customs and practices that have been carried out and recognized by the community regarding the sharia-based notarial deed with Lafadz Basmalah in this case cannot be used as an argument. This is because authentic deeds in

²² Ro Setyowati, "Peran & Tantangan Notaris Perbankan Syariah Dalam Pengembangan Perekonomian Di Indonesia," *Hukum Ekonomi Islam* 3, no. 1 (2021): 31–55.

²³ Aisyah Defy R. Simatupang Abdul Rachman, Atiqi Chollisni, Muklis, Dewi Reni, "Dasar Hukum Kontrak (Akad) Dan Implementasinya Pada Perbankan Syariah Di Indonesia," *Ilmiah Ekonomi Islam* 8, no. 1 (2022): 49.

²⁴ Radhyca Nanda Pratama and Liza Priandhini, "Kewenangan Notaris Dalam Pembuatan Tanda Bukti Ahli Waris Pada Peralihan Hak Milik Atas Kapal," *USM Law Review* 6, no. 1 (2023): 260–78.

legal science, especially civil law occupy an important position so that the format, officials who formulate them, and mechanisms are determined with certainty in laws and regulations.²⁵ Third, the formulation of a shari'ah-based notary deed with lafadz Basmalah has actually degraded the evidentiary power of an authentic deed that is absolute so that a sharia-based notary deed with lafadz Basmalah with reference to the provisions of Article 1869 of the Civil Code is a deed under hand whose evidentiary power is not as strong as an authentic deed.

The phenomenon of a shari'ah financing contract made in the form of a notary deed with its own format as in existing practice in the community with the addition of lafadz Basmalah in fact in addition to not being in accordance with the provisions of Article 38 of the JN Law also has implications for the strength of proving authentic deeds that have additional Lafadz Basmalah so that they are considered to be in the same position as the agreement under hand. Even so, the authentic deed that has the addition of the Basmalah lafadz can actually be a legal effort with the active role of the notary to change the shari'ah-based notary deed with the Basmalah lafadz by novating the agreement. So with these efforts, it is hoped that the sharia-based notary deed with the existing Lafadz Basmalah will still have evidentiary power as an authentic deed and not as an agreement under hand.²⁶ Related to the phenomenon of shari'ah financing contracts made in the form of notarial deeds, it is also necessary to know that in addition to referring to the Civil Code and the JN Law and its amendments, every shari'ah financing must also refer to the Sharia Banking Law. One of the important things that need to be considered in shari'ah financing transactions in addition to the existing positive laws also needs to pay attention to fatwas from authorized institutions.

Fatwas of authorized institutions with reference to Article 1 number 12 of the Sharia Banking Law occupy an important position because they must be obeyed and fulfilled by every Shari'ah-based transaction. In this context, the authorized institution related to fatwas is the Indonesian Ulema Council (MUI) so that in addition to being obliged to refer to the Sharia Banking Law, every Shari'ah-based transaction must also refer to MUI fatwas.²⁷ In further provisions, the binding force of MUI fatwas must be followed up by Bank Indonesia by formulating Bank Indonesia Regulations which substantively contain fatwas from the MUI. The practice of shari'ah financing contracts made in the form of notarial deeds as stipulated in 16 paragraph (1) letter I of the JN Law must be attended by at least two witnesses and read in front of the parties by a notary. Even so, in practice, shari'ah financing contracts specifically need to also refer to the provisions of Surat Al-Baqarah verse 282 which substantively explains the parties allowed to be witnesses in the transaction process. Surah Al-Baqarah verse 282 confirms that the minimum number of witnesses is two people who in this case must be male or one man and two women are allowed. The existence of the witness aims to be a reminder if the parties forget the

²⁵ Bahtiyar Efendi Widhi Handoko, "Legal Basis Of Duties And Functions Of Notary In Performing Tasks," *Russian Journal of Agricultural and Socio-Economic Sciences* 11, no. 3 (2023): 323–30.

²⁶ Dudi Badruzaman, "Isu Kontemporer Peran Notaris Dalam Akad Murabahah Di Lembaga Keuangan Syariah."

²⁷ Panji Adam, *Fatwa-Fatwa Ekonomi Syariah* (Jakarta: Amzah, 2022).

transaction they made.²⁸

In this context, Surah Al-Baqarah verse 282 emphasizes that female witnesses are allowed in matters of property of course in the presence of at least one man and two women. This emphasizes that in the practice of shari'ah financing contracts made in the form of notarial deeds, at least two witnesses are each male and can also be one man with two women. If other than that, then the testimony can be said to be incompatible with the shari'i. The practice of shari'ah financing contracts made in the form of notarial deeds thus does not merely comply with the provisions of the JN Law. However, it must also be based on shari'i provisions such as referring to the number of witnesses as in Surat Al-Baqarah verse 282 as well as other provisions that are not allowed in shari'ah banking such as the existence of credit agreements that are not known in shari'ah banking so that they cannot be made in the form of notarial deeds.²⁹ This is because referring to the provisions of Article 1 number 25 of the Sharia Banking Law is not regulated regarding credit agreements but what is allowed is financing.

Referring to the description of the analysis above, shari'ah financing contracts made in the form of notarial deeds according to Islamic law should be allowed in Islamic law as long as they still refer to the provisions of shari'a law. In the aspect of formulating a notarial deed which is a shari'ah financing contract, it must refer to the provisions of the JN Law. In the process of shari'ah financing contracts, it is necessary to refer to several aspects of shari'a such as paying attention to the provisions contained in the Qur'an and sunnah, the Sharia Banking Law, to the JN Law. Therefore, in the future there is a need for special arrangements regarding the form and format of shari'ah-based notary deeds to facilitate growing practices in the community.

2. Sharia Financing Contract Model in the form of a Notarial Deed Based on the Principles of Agreement In Islamic Law.

The covenant actually occupies an important position in Islamic law, especially in the aspect of muamalah. In Islamic law, covenants are identified in two aspects, namely the worldly aspect and the afterlife aspect.³⁰ Islamic law views an agreement as not merely an agreement between two parties that bind themselves. Islamic law views agreements as shari'i permissibility for two or more parties who bind themselves to each other.³¹ The Sharia aspect occupies the most important point in the agreement based on Islamic law. This means that even if both parties have agreed, agreed, even bind, but if the object of the agreement is contrary to Islamic law then the agreement is invalid. The principles of covenant in Islamic law are not substantively different from the principles of covenant in

²⁸ Hana and Dimam, "Diskursus Akad Pembiayaan Bank Syariah Dalam Perspektif Hukum Di Indonesia."

²⁹ Iza Hanifuddin and Moh. Ihsan Fauzi, "A Concept of Islamic Notary as Registrar on Sharia Contract: Al-Muwaththiq Perspective," *Justicia Islamica* 18, no. 2 (2021): 281-97, <https://doi.org/10.21154/justicia.v18i2.2887>.

³⁰ Akbar and Yazid, "Implementasi Ketentuan Akta Autentik Notaris Pada Pembuatan Akad Di Perbankan Syariah."

³¹ Muhammad Ali Akbar and Moh. Idil Ghufroon, "Sinkronisasi Ekonomi Pancasila Dan Ekonomi Islam," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi Dan Perbankan Syariah* 4, no. 1 (2019): 38, <https://doi.org/10.30651/jms.v4i1.2868>.

common law. This is because both covenants in Islamic law and covenants in common law both refer to morality as the main essence of law. It can be seen that Islamic law also substantively recognizes the principle of good faith, the principle of consensualism, the principle of proportionality, to the principle of pacta sunt servanda of course by referring to the Qur'an and sunnah as the main sources of Islamic teachings.³²

However, the main difference between agreements in Islamic law and agreements in common law is in the provisions of Islamic legal agreements whose object must be based on the provisions of shari'i. This confirms that the principles of covenant in Islamic law are not substantially different from the principles of covenant in common law because the only difference is the shari'i aspect of Islamic treaty law.³³ The agreement that in Islamic law is manifested into a contract is important to lay down the urgency of the validity of the contract in Islamic law. Islamic law places contract as the central factor of a transaction. This means, an incorrect or incorrect contract can make a transaction invalid.³⁴ Another aspect that needs to be done in making a contract in transactions based on Islamic law is that there are several aspects that are forbidden to be transacted in Islamic law. One aspect that is forbidden to be transacted in Islamic law is related to usury. Riba in Islamic law is seen as an act that extorts and oppresses one party while benefiting the other.³⁵ Islam strictly forbids usury and at the same time reinforces the permissibility of fair and proper buying and selling relations. The context of the Shari'ah financing contract must also refer to the prohibition in Islamic law. This means that every aspect of the Shari'ah financing contract that contains elements of riba must be avoided.

In this context, a safer Shari'ah financing contract to avoid riba is therefore executed through a Shari'ah Bank. Referring to the Sharia Banking Law, that Sharia Bank has an orientation to carry out transactions in accordance with Shar'i which means that every transaction in Sharia Bank is required to meet aspects and principles in Islamic treaty law. This includes the shari'ah financing contract formulated through a notarial deed must also be based on the principles of shari'ah. The implementation of the shari'ah financing agreement formulated through a notarial deed is generally seen that the notary is a party affiliated with the bank. Substantively, notaries only have legal relations but independently notaries remain free and independent in issuing an authentic deed. Notaries in this case are domiciled as legal service providers so that notaries are domiciled neutrally between customers and banks. The neutrality of the notary's position is evidenced by the careful and meticulous attitude possessed by the notary. Notaris dalam merumuskan suatu akad pembiayaan syari'ah harus juga memahami hukum Islam sehingga mengerti mana yang boleh dan mana yang dianggap bertentangan dengan syar'i.

³² Ahmad Khaedar Habibi Muhajir, "Analisis Hukum Islam Terhadap Praktik Akad Sewa Menyewa Di Desa Suren Gede Kecamatan Kejajar Kabupten Wonosobo," *Jatishwara* 36, no. 3 (2021): 305–10.

³³ Arihta Esther Endang Suprpti, "Itikad Baik Dalam Perjanjian Suatu Perspektif Hukum Dan Keadilan," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 8, no. 1 (2021): 151.

³⁴ Miftakhul Huda, "Konsep Dan Kedudukan Hak Kekayaan Intelektual Dalam Hukum Islam," *Salimiya: Jurnal Studi Ilmu Keagamaan Islam* 1, no. 1 (2020): 35–48, <http://ejournal.iaifa.ac.id/index.php/salimiya/article/view/87>.

³⁵ Nelli Ayunda Putri, H. M. Hasballah Thaib, "Penolakan Notaris Muslim Terhadap Pembuatan Akta Ribawi (Perspektif UUJN Dan Hukum Islam)."

Therefore, in addition to referring to the JN Law and its amendments, in carrying out the practice of formulating a notary shari'ah financing contract, it must also comply with the Sharia Banking Law, Bank Indonesia Regulations, Fatwa DSN-MUI, and KHES. Understanding and reviewing the various provisions above further strengthens notaries in carrying out their duties to formulate shari'ah financing contracts. The model of making sharia financing contracts in the form of notarial deeds based on the principles of agreement in Islamic law places the notary's position to ensure neutrality, professionalism, and integrity including fulfilling and complying with the code of ethics. Notaries are also required to pay attention to the form/format of the deed made, the substance of the deed, and the parties in the formulation of the deed are correct or not. In the aspect of formulating a shari'ah financing contract, notaries are also required to test and conduct legal analysis whether the transaction is in accordance with the provisions of shari'i or Islamic law. Therefore, the importance of notary understanding related to the provisions of shari'i or Islamic law in formulating shari'ah financing contracts requires special certification and training in making Islamic banking contracts for notaries.

IV. Conclusion

Shari'ah financing agreements made in the form of notarial deeds according to Islamic law should be allowed in Islamic law as long as they still refer to the provisions of shari'a law. In the aspect of formulating a notarial deed which is a shari'ah financing contract, it must refer to the provisions of the JN Law. In the process of shari'ah financing contracts, it is necessary to refer to several aspects of shari'a such as paying attention to the provisions contained in the Qur'an and sunnah, the Sharia Banking Law, to the JN Law. Therefore, in the future there is a need for special arrangements regarding the form and format of shari'ah-based notary deeds to facilitate developing practices in the community.

The model of making sharia financing contracts in the form of notarial deeds based on the principles of agreement in Islamic law places the notary's position to ensure neutrality, professionalism, and integrity including fulfilling and complying with the code of ethics. Notaries are also required to pay attention to the form/format of the deed made, the substance of the deed, and the parties in the formulation of the deed are correct or not. In the aspect of formulating a shari'ah financing contract, notaries are also required to test and conduct legal analysis whether the transaction is in accordance with the provisions of shari'i or Islamic law. Therefore, the importance of notary understanding related to the provisions of shari'i or Islamic law in formulating shari'ah financing contracts requires special certification and training in making Islamic banking contracts for notaries.

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