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Legal Analysis of The Role of Notaries in The Drafting of Financing Agreement Deeds Based on Sharia Principles At PT. Bank Syariah Indonesia Batam Branch Office

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ABSTRACT. In every transaction or agreement they observe, notaries are crucial in guaranteeing adherence to sharia rules. It is essential for notaries to comprehend sharia principles in muamalah (business transactions) in order to perform their duties responsibly and in compliance with applicable legal rules. Muamalah based on sharia principles addresses a number of topics, including justice, openness, unity, and adherence to Islamic legal norms. To determine if a transaction or agreement complies with the relevant sharia principles, notaries must comprehend and internalise these principles. This research aims to find out, analyse and explain in depth the role of notaries in making financing agreement deeds based on sharia principles, so that they can contribute to the development of Islamic banking law and notaries in Indonesia, and analyse and explain comprehensively the responsibilities of notaries both civilly, criminally, and administratively for the sharia financing agreement deeds they make, so that they can contribute to the legal protection of the par. This research uses a type of legal research that is Normative as well as Sociological (empirical). The findings revealed that the role of the Notary in the application of Sharia principles in contract deeds at Bank Syariah Indonesia KC Batam is not overly dominant, because the Notary's role is essentially limited to legalising the contract, while the bank determines the contract's content entirely. The notary bears accountability for the Sharia Financing Agreement deed and must read and comprehend its contents. With this reading, the notary can also amend any inaccuracies in the deed's contents. The Notary will refuse to legalise the deed if it violates the law, public order, or decency. The constraints of the absence of Notary competencies that are in accordance with and fulfill sharia provisions, make not all Notaries who are partners of Islamic banks lack understanding of sharia principles.

Keywords: Role of Notary, Deed of Financing Agreement, Sharia Financing, Sharia Banking

1. INTRODUCTION

In recent decades, there has been a significant acceleration in the development of the sharia economy in Indonesia. This phenomenon is reflected in the growth and diversification of various sharia-based financial institutions, which include not only sharia banking, but also sharia insurance, sharia capital markets, and various other economic entities that adhere to the principles of Islamic economics. This transformation has resulted in a more inclusive and diverse economic landscape, creating opportunities for individuals and businesses to participate in a financial system that considers ethical and moral values in economic activities. This not only reflects a response to the increasing market demand for sharia-compliant financial products and services, but also reflects the public's desire to invest responsibly and develop a sustainable economy. This development is also supported by various government initiatives, including regulations that support the growth of the sharia economy, fiscal incentives, and promotion of public awareness of Islamic economic principles. Thus, the sharia

economic ecosystem in Indonesia has become an integral part of the national economy, making a significant contribution to overall economic growth and expanding financial access to previously marginalized segments of society. In the context of increasing globalization and economic integration, Indonesia continues to position itself as one of the main players in the global sharia economy. By maintaining this momentum through innovation, education, and supporting infrastructure development, Indonesia has the potential to continue to lead in the development of the sharia economy in the future (Muhammad A. Shiddiqy, 2023).

¹⁰ The development of Islamic banking as the main driving force in advancing the Islamic economy has experienced extraordinary growth. According to data released by the Financial Services Authority (OJK) as of December 2022, it was recorded that ⁶ there were 14 Islamic Commercial Banks (BUS), 20 Islamic Business Units (UUS), and 167 Islamic People's Financing Banks (BPRS) in Indonesia. The total assets of these institutions reached an impressive figure, reaching IDR 789.08 trillion. The presence of 14 Islamic Commercial Banks (BUS) signifies a substantial contribution from the banking sector in driving the Islamic economy. Not only that, the presence of 20 Islamic Business Units (UUS) also provides a new color in the diversity of Islamic financial institutions, creating more choices for the public to access financial services ⁶ that are in accordance with Islamic principles. In addition, the existence of 167 Islamic People's Financing Banks (BPRS) shows a strong commitment to providing access to financing to segments of society in need. The rapid development of the Islamic banking industry cannot be separated from the strong support of existing regulations. One of the key regulations that plays an important role in facilitating this growth is ² Law No. 21 of 2008 concerning Islamic Banking. ¹ As a public official who has the authority to make authentic deeds, notaries play a very important role in ensuring compliance with sharia principles in every transaction or agreement they witness. Understanding sharia principles in muamalah (economic transactions) is crucial for notaries so that they can carry out their duties responsibly and in accordance with applicable laws. Sharia principles in muamalah cover various aspects, such as justice, transparency, togetherness, and compliance with the laws that have been established in Islam. In the context of Islamic banking, notaries have a special role in making financing agreement deeds (credit agreements) based on sharia principles. They must ensure that every financing transaction they witness does not violate sharia principles such as ⁶ the prohibition of usury (interest), speculation, and transactions that violate other Islamic ethics. Notaries must also ensure that every deed they make reflects an agreement between the parties involved that is made with full awareness and without coercion. In addition, notaries must also be able to provide advice and direction to the parties involved in the

transaction regarding the relevant sharia principles and the legal consequences of the agreements they make. This can help prevent misunderstandings or violations of sharia principles in economic transactions.

In addition, notaries also have the responsibility to maintain the confidentiality of information they receive from their clients, to be fair and neutral in every transaction they witness, and to uphold their professional code of ethics. The presence of a notary who understands sharia principles and acts in accordance with Islamic integrity and ethics is very important in ensuring that every transaction or agreement they witness is in accordance with moral and sharia principles. In practice, there are still several problems faced regarding the role of notaries in making sharia financing agreements. One of them is the lack of understanding of some notaries regarding the sharia principles underlying the financing agreement, which can result in inconsistencies with sharia principles. In addition, the direct presence of notaries in the implementation of the agreement is often inconsistent, while the imposition of high notary service fees can be burdensome for customers. Not only that, imperfect deeds also have the potential to cause disputes in the future. The need for more competitive and technology-based product innovation is also very important for Islamic banking (Aziz Purba, 2023). To achieve its full potential, strong synergy and cooperation is needed from all stakeholders, including government, regulators, financial institutions, academics and the general public (Nur A Agnusia, 2022). Based on the background of the problem, it is necessary to further study the role and responsibilities of a notary in making a deed of financing agreement based on sharia principles. This research is expected to contribute ideas for the development of sharia banking law and notaries in Indonesia.

Based on the background description above, the author raises several problems that will be discussed further. The problems are as follows:

1. What is the role of a notary in making a financing agreement deed based on sharia principles?
2. What is the responsibility of a notary for the sharia financing agreement deed that he/she makes?
3. What is the solution to the obstacles to the role of a notary in making a financing agreement deed based on sharia principles at PT. Bank Syariah Indonesia?

Based on the formulation of the problem stated above, it can be seen that the objectives of this research are:

1. To find, analyze and explain the role of a notary in making a financing agreement deed based on sharia principles.

2. To find, analyze and explain the responsibility of a notary for the sharia financing agreement deed he/she made.
3. To find, analyze and explain solutions to the obstacles to ¹the role of a notary in making a financing agreement deed based on sharia principles at PT Bank Syariah Indonesia

2. LITERATURE REVIEW

The theory of contract is one of the most important theories and underlies transactions in Islamic law, including sharia banking transactions. Contract in language means a bond or knot, either a visible bond (hissy) or an invisible bond (ma'nawy). Meanwhile, according to the term, contract is defined as the meeting of ijab (statement of making a bond) and kabul (statement of acceptance of the bond) as a statement of the will of two or more parties to produce a legal consequence on its object (Kharis F. Hana And Islahud Dimam, 2022). Ijab is an offer submitted by one party, and kabul is the response of agreement given by the contract partner in response to the offer of the first party. Contract does not occur if the statement of the will of each party is not related to each other because the contract is the relationship of the will of the two parties which is reflected in the ijab and Kabul (M.E.Sy. Mahmudatus Sa'diyah, Fiqih Muamalah Ii, 2011). If the pillars and conditions of the contract have been fulfilled, then the contract made by the parties will have binding legal consequences. The parties are required to carry out the performance in accordance with what has been agreed in the contract. If one party does not carry out his performance, then he can be considered to have committed a breach of contract and can be held legally accountable (Nurhayati Nurhayati, 2022). The theory of authority is one of the most important theories in state administrative law and is closely related to the power or rights held by a person or institution to carry out legal actions. Authority can be obtained through three sources, namely attribution, delegation, and mandate. Attribution is the authority obtained from laws and regulations, delegation is the delegation of authority from a higher official to a lower official, while mandate is the delegation of authority to subordinates with responsibility remaining with the mandate giver. In the context of notary, the authority of a notary is derived from Law Number 30 of 2004 concerning the Position of Notary (UUJN) as amended by Law Number 2 of 2014. Article 15 paragraph (1) of the UUJN states that a notary is authorized to make authentic deeds regarding all acts, agreements and determinations required by statutory regulations or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide a grosse, copy and extract of the deed, all of which as long as the making of the deed is not also

assigned or excluded to another official or other person as determined by law.

The notary's authority in making this authentic deed is the authority of attribution obtained directly from the UUJN. An authentic deed made by a notary has perfect evidentiary power, meaning that the deed must be seen as it is, it does not need to be assessed or interpreted other than what is written in the deed. This is in accordance with Article 1870 of the Civil Code which states that an authentic deed provides between the parties and their heirs or people who receive rights from them, perfect evidence of what is contained therein (Soerjono Soekamto dan Sri Mamudji, 2007). In addition to the authority to make authentic deeds, notaries also have other authorities as regulated in Article 15 paragraph (2) and (3) UUJN, including validating signatures and determining the certainty of the date of private letters, recording private letters, making copies of the original private letters, validating the conformity of photocopies with the original letter, providing legal counseling in connection with the making of deeds, making deeds related to land, and making auction minutes deeds. However, the authority of notaries is also limited by laws and regulations.

The theory of responsibility is one of the most important theories in law, especially in the context of the legal profession such as notaries. Responsibility relates to the obligation of a person or legal entity to bear all consequences arising from the actions they have committed. In carrying out their duties and authorities, notaries are bound by great responsibility for the deeds they have made. In general, notary responsibilities can be divided into three types, namely civil liability, criminal liability, and administrative liability (I.G. Rahmawati, I.N. et al, 2020). In the context of making a deed of sharia financing agreement, a notary has a great responsibility to ensure that the deed he makes is in accordance with sharia principles and does not violate statutory regulations (Wayan P. Jaya, 2018). Notaries must be prepared to be responsible for every deed they make, including deeds of sharia financing agreements, even though the notary protocol has been submitted or transferred to the party keeping the notary protocol.

3. RESEARCH METHOD

The type of Normative Law research is that the data taken is carried out or directed at written regulations or other legal materials. The researcher also uses the type of Sociological Law research (empirical), namely the data taken from this study is data obtained directly from the community as the main source by conducting field research. In this case, the author conducted interviews with the parties concerned, namely at Bank Syariah Indonesia, Batam City. The approach used by the author is a statute approach, which in this case will examine all

problem formulations using existing laws and regulations. The author also uses a conceptual approach, namely by studying the views and doctrines in the Notary and the author will find ideas that are relevant to the issues faced. Then the author also uses a historical approach, namely examining the background of the emergence of existing problem formulations.

4. RESULTS AND DISCUSSION

The Role of Notaries in Making Financing Agreement Deeds Based on Sharia Principles

The Role of Notaries in Making Financing Agreement Deeds at PT Bank Syariah Indonesia KC Batam, namely Notaries as partners of PT Bank Syariah Indonesia KC Batam, after an agreement is reached between the Notary and the bank to work together, the Notary has several tasks, including:

- a. In charge of making the financing agreement deed requested by the bank. As a material for making the document, the bank must provide very clear and detailed data and information and explain the type and material of the requested agreement document.
- b. A notary may not refuse a bank's request to make a financing agreement deed unless the request from the bank or the party appearing is contrary to the sharia law, public interest and morality.
- c. In charge of keeping the client's name and the contents of the financing agreement confidential. The purpose of keeping it confidential is so that it is not known by other parties because this is considered an internal matter for both parties
- d. In charge of entering it into the register book to be registered with the District Court. All deeds that have been made and legalized by a Notary must be entered into the register book and registered with the District Court so that the deed has permanent legal force, and if in the future there is a problem related to the deed, it can be resolved according to applicable legal regulations

The role of Notaries in fulfilling Sharia Principles in financing agreements at Bank Syariah Indonesia, Batam Branch Office can be assessed from the Notary's understanding of financing products at the Islamic bank itself. Notaries who understand can certainly identify the conformity between theory and practice in financing agreements. With that understanding, Notaries can also provide legal opinions to customers and banks regarding the implementation of the agreement. In order to fulfill Sharia Principles, both Islamic banks, customers and Notaries must implement financing agreements based on the Qur'an, Hadith, Ijtihad, and DSN-MUI Fatwas related to sharia agreements. Notaries in formulating Islamic banking deed

contracts must pay attention to the matters regulated in the Notary Law, as well as the importance of understanding in the field of Islamic banking. Special regulations regarding the form of Islamic deed or clauses of Islamic deed contracts (contracts) have not existed so far. In practice, contracts made between banks and customers still refer to positive law, as do financing contracts made by notaries. The form of Islamic deed contracts made by notaries in order to be called authentic deeds must meet the provisions of applicable laws and regulations, therefore notaries in formulating the form of Islamic deed contracts must pay attention to the provisions of the Notary Law. One of the Islamic banking contracts is the murabahah contract. Murabahah is an item with a price that has been agreed upon between the seller and the buyer, after the seller has previously stated the actual purchase price of the item and the amount of profit he will obtain.

Notary's Responsibility for the Sharia Financing Agreement Deed Makes

The notary's responsibility in making a financing agreement deed at PT Bank Syariah Indonesia KC Batam, namely for the agreement document he makes, the notary is responsible for:

- a. Truth, accuracy and completeness of the documents presented.
- b. Leakage of bank secrets, whether by the Notary or his/her employees or staff.
- c. Problems with the documents he/she has made, if in the future there are errors and/or deliberate actions by the Notary or employees or people who assist him/her in his/her work.
- d. The Notary is tasked and responsible for providing guidance, instructions, and guidance to the bank regarding financing documents.
- e. The Notary is tasked with making final financing documents based on the concept that has been approved by the bank.
- f. The Notary is tasked with confirming the data to the bank if there are things that are not or are unclear and submitting the document concept to the bank.

The notary is responsible for the deed of Islamic banking financing agreement made before him authentically. In addition, the notary is fully responsible for the truth and accuracy of the construction of the agreement so that the subjective and objective requirements of the agreement are met, so that the deed of agreement he makes is very basic to become a deed of agreement that has perfect evidentiary value. The notary in formulating the deed of agreement at the request of the parties is based on the procedures or procedures for making a notarial deed.

If the parties consider that there is something wrong with the deed and suffer losses, then the parties in question must sue the notary and must prove whether the notarial deed does not meet the external, formal or material aspects and prove the losses. Therefore, the notary needs to pay close attention to the form of the deed of agreement made before him so that it is in accordance with and does not violate the provisions stipulated in the UUJNP

The threat of problems in the future regarding the deed of party made by a notary is very large. Not only that, notaries who do not carry out their profession properly have a high possibility of getting problems in the future, not only regarding the deed but also regarding their daily attitudes and behavior related to their profession as a notary. Violations committed by notaries, both regarding the making of sharia financing agreements and the behavior of notaries, can be subject to sanctions in accordance with Article 85 of Law Number 30 of 2004 concerning the Position of Notaries. From the observation results, one of the sanctions that was issued at Bank Syariah Indonesia, Batam Branch Office, only reached a verbal warning for the behavior of the notary who committed the violation. The deed of the parties or the deed of financing is different from other deeds in terms of the responsibility given if there are problems in the future regarding the deed made. Because the initial idea for making the agreement came from the parties and the notary did not interfere in the substance of the agreement made, when a case occurs between the parties, the notary is not responsible for the problems that arise because the notary is only a party who pours out and states the wishes of the parties or the agreement made and desired by the parties in an authentic deed. The notary can only be a witness to the deed he made, unless the notary makes a mistake in including the substance or formality of the deed which can result in the deed only having power underhand.

Solutions to the Constraints of the Role of Notaries in Making Financing Agreement Deeds Based on Sharia Principles at PT Bank Syariah Indonesia

Implementation of Making Financing Agreement Deeds Based on Sharia Principles at PT Bank Syariah Indonesia also experienced several obstacles, such obstacles include, in practice, Notaries who will make sharia banking agreement deeds do not have any laws and regulations that require them to obtain special certification in the field of sharia banking law and are expected to have a deep understanding of sharia principles and sharia banking products. This certification is to prove that notaries are not blind to sharia agreements. Notaries are accustomed to conducting their own ijtihad (legal opinions), because this is the same as legal counseling. When a client comes to see a notary, they provide legal counseling and opinions on what the client wants to then be stated in the deed. If the Notary does not understand sharia

agreements, then the Notary is not able to provide his opinion in making the sharia agreement.

² Notaries who wish to make a deed of sharia financing agreement must have a training certificate regarding sharia banking product contracts, which is considered a sharia notary certification. Notaries can cooperate with certain training agencies or institutions. There must be regulations that stipulate that every notary who handles sharia banking or sharia financial institutions must take the training test. However, the problem is that there are no laws and regulations that require Notaries to have certification from an official institution. In addition, sharia banking has not yet firmly determined the certification of Notaries who can become partners of sharia banking. So far, training has been held by institutions that have not received official recommendations from the relevant government.

The training and certification are also still voluntary and have not become an obligation for Notaries who will handle Islamic banking financing agreements. If the majority of Notaries in making Islamic banking agreements have not applied Islamic principles, this can be a problem because Islamic banking agreements must comply with Islamic principles which are the basis for Islamic banking operations. Therefore, notaries who make Islamic banking agreements must understand these Islamic principles and be able to apply them in making Islamic banking agreements. Therefore, the application of sharia principles in the preparation of sharia banking deed contracts is not only the responsibility of the notary, but also the responsibility of all parties involved in the sharia banking transaction, including the bank, customers, and legal advisors involved in the transaction. There needs to be good cooperation and coordination between all parties involved in sharia banking transactions to ensure that sharia principles are truly fulfilled in sharia banking transactions, including ⁷ in the preparation of sharia banking deed contracts by a notary.

5. CONCLUSION AND SUGGESTION

Conclusion

Based on the discussion in the previous chapter, the following conclusions can be drawn:

- a. The role of Notaries in the application of sharia principles to the deed of agreement at Bank Syariah Indonesia KC Batam is not too dominant, because in practice Notaries only validate the agreement while the contents of the agreement are fully determined by the bank. Competence and understanding of the agreement and sharia principles are also not prerequisites that must be met by Notaries. This is a legal problem where the responsibility for the deed of agreement in Islamic banking is broader than conventional

banking. This means that Notaries in Islamic banking are not only required to understand various western and national civil laws but also understand the Islamic law used. Notary's lack of understanding can be a problem when the parties entrust and submit the legal consequences to the Notary regarding the deed he made, so that if in the future problems arise and the parties feel disadvantaged, the Notary becomes jointly responsible. Notaries in becoming partners of PT Bank Syariah Indonesia KC Batam have a role, namely as public officials who have the right to make financing agreement deeds who have duties and authorities that are their responsibility. The role of a Notary in agreements made by banking parties is to provide legal protection and certainty for the parties entering into financing agreements.

- b. Responsibility for the Sharia Financing Agreement deed that is made, the notary must read and understand the contents of the agreement. By reading this, the Notary can also make corrections to the contents of the deed if there are errors in the contents of the deed. If the contents of the deed are found to be contrary to the provisions of law, public order or morality, the Notary will refuse to legalize it. Even though the law does not regulate the reading of a deed by a Notary in terms of legalization, the reading must still be carried out as a form of professionalism and responsibility of the Notary in carrying out his profession. If it turns out that the notary did not carry out the procedures properly, in the sense of deliberately not reading and explaining the legalized deed under his hand, the notary can be held responsible if problems occur in the future. The notary is responsible for the deed of sharia banking financing contract which is made in his presence authentically. In addition, the notary is fully responsible for the truth and accuracy of the construction of the contract so that the subjective and objective requirements of the contract are met, so that the deed of contract he makes is very basic to become a deed of contract that has perfect evidentiary value. The notary in formulating the deed of contract at the request of the parties based on the procedures for making notarial deeds.
- c. 3. The obstacle of the lack of Notary competence that is appropriate and meets the provisions of sharia, makes not all Notaries who are partners of sharia banks do not understand sharia principles. Notaries who do not understand the principles of sharia and applicable sharia banking provisions can produce a deed of agreement for sharia banking that does not comply with sharia compliance requirements and is not legally valid. In addition, if the notary does not understand the sharia banking product that is the object of the agreement, this can result in the deed of agreement being legally

invalid. The solution that can be taken is to take care of the competence of the Notary that is in accordance with Sharia Compliance, which is a joint concern of the related agencies, namely Sharia Banks, OJK and DSN MUI. The purpose of paying attention to competence that is in accordance with Sharia. Compliance is to advance sharia transactions, especially sharia banking, so that it becomes effective and efficient, minimizing the risk of sharia compliance. The granting of sharia certificates for notaries through competency tests is intended so that Sharia Banking notaries have qualifications in accordance with the standards. Sharia Certification for notaries is expected to be a provision of good understanding in creating legal relationships in the form of sharia deeds that truly refer to sharia principles.

Suggestion

From this conclusion, the author can provide several suggestions, namely:

- a. Notaries must deepen their knowledge related to Islamic Banking and the development of Islamic Banking so that in making deeds in accordance with sharia provisions and do not violate UUJN regulations or the Notary Code of Ethics.
- b. Notaries in carrying out their duties must comply with existing regulations, so as not to harm or cause losses to the parties concerned, and Notaries should first explain the legal consequences arising from the deed made as an agreement, so that parties who are not familiar with the law will feel protected
- c. It is hoped that in the future, the government can issue regulations that specifically regulate the competence of notaries in making Islamic banking agreements as a fulfillment of sharia compliance. This can strengthen legal protection and certainty in the implementation of Islamic banking contracts and encourage notaries to continue to improve their competence in the field of Islamic banking.
- d. It is hoped that further research will use research methods or research objects that are different from this research so that the research results are more varied

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