

Legal Reconstruction of the *Sharia* Banking Act Standard Regulation Based on the Values of Justice

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Abstract

This research aims to analyze and discover the weaknesses of the regulations for making *Sharia* banking deeds that do not yet have certainty value and how to reconstruct the standards for making *Sharia* banking deeds, the authenticity and legal force of notarial deeds used in *Sharia* banking practices based on the value of certainty in a normative legal research which examines legal norms in regulations that examine the research object. The data used in this research is secondary data, namely primary legal material in the form of laws and regulations governing criminal sanctions. Secondary legal materials in the form of scientific literature and previous research discussing criminal sanctions and tertiary legal materials in the form of legal dictionaries. Based on the results of data analysis, it is concluded that there are two weaknesses in the regulations for making *Sharia* Deeds in this case: a. The *Sharia* notarial deed agreement does not conform to the format according to Article 38 UUJN, especially the placement of the word "*Bismillah*hirrahmanirrohim" and the word "*Alhamdulillah*". b. The inconsistency of the *Sharia* notarial deed agreement in its substance is that there is a clause for immediate collection of all Murabahah debts and delivery/disposal of goods and this is clearly contrary to the Fatwa of the National *Sharia* Council number 04/DSN-MUI/IV/2000 concerning Murabahah therefore, it is necessary to reconstruct Article 38 paragraph (3) UUJN concerning deed bodies.

Keywords: Legal Reconstruction, *Sharia*, Banking Act, Justice Value.

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INTRODUCTION

The role of notaries in current developments is very much needed. Therefore, professionalism is required in carrying out their position. To achieve professionalism and protection for users of notary services, a notary must have professional skills in the legal field and must also be based on responsibility and high morals as well as in carrying out his office duties as well as values and ethics, so that he can carry out his office duties in line with legal provisions and the interests of society (Vasylenko, 2023).

The authority of the notary itself has been explained in Article 15 Paragraph (1) UUJN, which reads: "*A notary has the authority to make authentic deeds regarding all deeds, agreements, and stipulations that are required by statutory regulations and/or that are desired by interested parties to be stated in the deed authentic, guaranteeing the certainty of the date the deed was made, storing the deed, providing copies, copies, and quotations of the deed, all of this as long as the*

making of the deed is not also assigned or excluded to another official or other person as determined by law."

As referred to in the explanation of article 1 number 1 of the Law Concerning Notary Positions, of course, a notary has a full obligation to make the deeds he or she makes for the rest of his or her lifetime. Therefore, a notary in making an authentic deed cannot deviate from UUJN provisions. The UUJN regulates the form and structure of authentic deeds (Widodo, 2018).

The provisions of Article 38 UUJN as referred to above are guidelines for notaries in making authentic deeds, so that notaries make authentic deeds not arbitrarily but in accordance with the provisions of statutory regulations.

Current developments, especially in the field of *Sharia* banking, require a notary to be able to make a *Sharia* deed based on a contract that has been agreed upon between the *Sharia* bank or *Sharia* business unit

and the customer, the contents of the deed being the rights and obligations of both parties. Making a *Sharia* deed itself is certainly something new for some notaries, which also accommodates *Sharia* interests or religious values so that when making the deed itself it is possible to include unusual things in the deed (Widodo, 2019). As is currently still being debated among notaries and the public in general, namely regarding the placement of the phrase *bismillah*, verses or hadiths from the Koran, and ending with the phrase *alhamdulillah*. The inclusion of this sentence is indeed used to differentiate it from conventional banking deeds and the inclusion of this sentence is an implementation of *Sharia* principles in the form of a *Sharia* banking deed.

Sharia deeds which are currently commonly used to add the phrase *bismillah*, verses or hadiths from the Koran, and ending with the phrase *alhamdulillah* have not been regulated in the Law on Notary Positions or in the Compilation of Islamic *Sharia* Economic Law (Bustamin, 2022). In this case, of course, the making of a *Sharia* banking deed is a question mark whether it can invalidate the authenticity of the deed made by a notary because its form does not conform to the provisions of Article 38 UUJN, this problem is interesting to be studied further and organized into research with the following main problem:

1. What are the weaknesses of The *Sharia* Banking Act Standart Regulation in Indonesia currently?
2. How is the Legal Reconstruction of the *Sharia* Banking act Standart Regulation Based on the value of Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the *Sharia* Banking Act Standart Regulation in Indonesia Currently

Sharia banking in Indonesia began its formation in 1992, based on Law Number 7 of 1992 concerning Banking (UU No. 7/1992), which contains provisions that implicitly allow banks to be based on the principle of profit and loss sharing. The implementation of this law is regulated through Government Regulation Number 72 of 1992 concerning banks based on the Profit Sharing Principle. After running for a decade or ten years, it was then reaffirmed through Law Number 10 of 1998 (UU. No. 10/1998) which was an amendment to Law No. 7/1992. In Law No.10/1998 concerning Banking, a clear distinction is made between banks based on their management consisting of conventional banks and *Sharia* banks; both commercial banks and people's credit banks.

In relation to its weaknesses, Article 38 UUJN-P has clearly regulated the format that must be followed and applied by a Notary in making authentic deeds, both *Sharia* contracts and deeds that are not based on *Sharia*, but in practice there are still cases where a Notary makes a *Sharia* contract that is not in accordance with what which has been mandated by Article 38 UUJN-P, there are still *Sharia* contracts which before the title contain the words *Bismillahirrohmanirrohim* with the meaning written in Arabic, namely Murabahah contracts, this clearly violates UUJN-P rules, especially Article 38. However, There are still Notaries who do not include the words *Bismillahirrohmanrrihim*, and there are also those who include it in the premise, this is fine because it does not violate UUJN-P regulations (Lifia, 2023).

There are no regulations governing it in Islamic law or positive law, so the Notary should be able to choose not to include the *Bismillahirrohmanirrohim lafadh* in the *Sharia* contract or by taking a mutual agreement with the Notary to include the *Bismillahirrohmanirrohim lafadh* in the *Sharia*

contract. In the contents of the deed so that it complies with the provisions of Article 38 UUJN. In the absence of regulations governing this matter, Notaries can standardize the form of *Sharia* contracts and agree that *Sharia* contracts are still made in accordance with the regulations contained in the UUJN, especially in Article 38. The lack of uniformity or differences in making *Sharia* contracts, especially the placement of the word *Bismillahhirrohmanirrohim* in this deed, means There is no legal certainty for the parties who make a *Sharia* contract in which the Notary includes the words *Bismillahhirrohmanirrohim* so that the deed made is no longer an authentic deed. So this can be exploited by irresponsible individuals, where these individuals have known from the start the weaknesses of the *Sharia* contract which includes the word *Bismillahhirrohmanirrohim*, this is very detrimental to the Notary himself and the parties who made the *Sharia* contract. That by adding the words *Bismillahhirrohmanirrohim* and *Alhamdulillah*, the parties are equally committed and determined to fulfill the contents of the contract or notarial agreement. Moreover, regarding the matter of cooperation, if the customer defaults, the sin of debt cannot be forgiven by Allah.

Sharia contract regulations are contained in the *Sharia* Banking Law Article 1 number 13, which reads: "Akad is a written agreement between a *Sharia* Bank or UUS and another party which contains the rights and obligations for each party in accordance with *Sharia* principles"

Meanwhile, the *Sharia* Principles themselves are explained in Article 1 number 12 which reads: "*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*."

With the explanation of the *Sharia* Banking Law regarding *Sharia* contracts and principles, there is no explanation or provision that *Sharia* contracts made in the form of a Notarial deed must contain or be preceded by the words *Bismillahhirrohmanirrohim* before the beginning of the deed. And what is meant by *Sharia* principles in the article above are the principles of Islamic law in banking activities which are based on fatwas issued by institutions that have authority. In the National *Sharia* Council Fatwa regarding Murabahah, namely the National *Sharia* Council Fatwa Number 04/DSNMUI/ IV/2000 concerning Murabahah, and Number 111/DSN-MUI/IX/2017 concerning Murabahah Sale-Purchase Agreements, National *Sharia* Council Fatwa Number 09/ DSN-MUI/IV/2000 concerning Ijarah, Number 112/DSNMUI/IXI/2017 concerning the Ijarah Agreement, and National *Sharia* Council Fatwa Number 27/DSN-MUI/III/2002 concerning Al-Ijarah Al-Muntahiyah Bi ALTamluk. DSn No. 07/DSN-MUI/IV/ 2000 concerning Mudharabah (Qiradh) Financing. None

of the provisions of these fatwas regulate the provision of the word *Bismillahhirrohmanirrohim* placed before the beginning of the deed or the word *Allhamdulillah* placed at the end of the *Sharia* deed (Mubarak, 2023).

The inconsistency of the *Sharia* notarial deed contract in its format and the inconsistency of the *Sharia* notarial deed contract in its substance of course not only hinders the goal of national development in order to achieve a just and prosperous society, based on economic democracy, by developing an economic system that is based on a just market mechanism, but in this case Islamic justice values also cannot be created. Remembering that the Islamic conception of justice is that law is a just law. Fairness is a constitutive element of all legal understanding, only fair regulations are called law. In this case, Islamic justice believes more in the moral principles contained in the law than in human wisdom (Toebagus, 2022).

The ultimate goal of law in Islamic justice must be achieved through a legal and independent institution in a country. This shows the importance of realizing justice for every citizen (human) as a legal orientation. Therefore, in adjusting the development of *Sharia* banking, it must also be clearly regulated in the Notary Position Law so that Islamic justice can be created or national development goals can be achieved.

2. Legal Reconstruction of the *Sharia* Banking Act Standart Regulation Based on the Value of Justice

The legal consequences of defects in a notarial deed in terms of formality are explained in Article 41 of the Law on the Position of Notaries which reads: "*Violations of the provisions as intended in Article 38, Article 39, and Article 40 result in the deed only having the power of proof as a private deed.* "

The degradation of an authentic deed (notarial deed) to a private deed of course also results in a lack of trust from customers who wish to make a *Sharia* contract with a notary regarding legal validity and legal protection for the parties. Meanwhile, legal protection has a repressive nature aimed at resolving disputes if there are irregularities committed by one of the parties (Wardhani, 2023).

So as not to violate the provisions of Article 38 of the Law on the Position of Notaries by adding the word *Bismillahhirrahmanirrohim* at the beginning of the deed and risk relegating it to a private deed. So it can be recommended that the lafadz *Bismillahhirrahmanirrohim* be placed on the body or contents of the deed, in accordance with the notary's opinion in including the lafadz *Bismillahhirrahmanirrohim* in the premise. The body or content of the deed contains the wishes and desires of the interested parties. Thus, placing the lafadz *Bismillahhirrahmanirrohim* in the body of the deed or premise does not conflict with Article 38 of the Notary Position Law. So that the deed reflects the principle of

legality and maintains the principle of legal certainty in the general principles of good governance.

There is a final opinion regarding the notary not placing the word *Bismillahirrahmanirrohim* in the *Sharia* contract deed. The deed is still valid and an authentic deed because basically, the *Sharia* Banking Law concerns *Sharia* contracts and principles, there is no explanation or provision that *Sharia* contracts made in the form of notarial deeds must contain or be preceded by the word *Bismillahirrahmanirrohim* before the beginning of the deed.

In order to realize various ideas related to value reconstruction in the issue of standards for making *Sharia* banking deeds, the authenticity and legal force of notarial deeds used in *Sharia* banking practices, it is necessary to reconstruct Article 38 of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Laws. Number 30 of 2004 concerning the Position of Notary with the consideration that there is no explanation regarding the arrangements regarding the placement of lafadz *Bismillahirrahmanirrohim* and lafadz *Allhamdulillah* so that it must be changed to reflect the principle of legality and still maintain the principle of legal certainty in the general principles of good governance so this provision needs to be regulated in Article 38 paragraph (3) Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary so that it contains:

- a. Lafadz *Bismillahirrahmanirrohim* (allowed for *Sharia* Contracts);
- b. Full name, place and date of birth, nationality, occupation, title, position, place of residence of the presenters and/or the person they represent;
- c. Information regarding the acting position of the facing person;
- d. The contents of the deed constitute the wishes and desires of the interested parties; And
- e. Full name, place, and date of birth, as well as occupation, title, position, and residence of each identifying witness.
- f. Lafadz *Allhamdulillah* (allowed for *Sharia* Contracts);

CONCLUSION

1. There are 2 (two) weaknesses in the regulations for making *Sharia* Deeds, namely 1) the inconsistency of the *Sharia* notarial deed contract in the format according to Article 38 of the Notary Position Law, especially the placement of *Bismillahirrahmanirrohim* and *Allhamdulillah* words. 2), the inconsistency of the *Sharia* notarial deed contract in its substance which contains the Goods clause and this clearly contradicts the Fatwa of the National *Sharia* Council Number 04/DSN-MUI/IV/2000 concerning Murabahah.

2. It is necessary to reconstruct Article 38 paragraph (3) of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries so that it reads: a. Lafadz *Bismillahirrahmanirrohim* (allowed for *Sharia* Contracts); b. Full name, place and date of birth, nationality, occupation, title, position, place of residence of the presenters and/or the person they represent; c. Information regarding the acting position of the facing person; d. The contents of the deed constitute the wishes and desires of the interested parties; e. Full name, place, and date of birth, as well as occupation, title, position, and residence of each identifying witness, and f. Lafadz *Allhamdulillah* (allowed for *Sharia* Contracts);

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