

## Challenges of Sharia Banking Notaries in Indonesia's Economic Development in the Global Era

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**Abstract.** Notaries have a strategic position in making Islamic banking contracts. The reason is that the notary is responsible for the correctness of the contract construction to fulfill the terms of the agreement and the sharia principles. This study aims to find the philosophy of juridical consequences of the notary profession relationship with Islamic banking, which is associated with challenges in the global era. This research uses a philosophical, juridical, and empirical approach. The analysis results show that a notary who has sharia competence and understands and also carries out the philosophy of juridical consequences of the profession is very much needed. This is due to the growing challenges in developing Islamic banking globally, particularly about competition due to advances in information technology.

**Keywords:** Opportunities, Notaries, Islamic Banking, Indonesia, Global Era.

### 1. Introduction

Indonesia's Islamic banking industry has excellent potential to become a global player in Islamic finance. The first reason is that the large Muslim population is a potential customer of the Islamic financial industry. The latest census conducted by the government shows that 87.1% of the Indonesian people or around 270 million people adhere to Islam.(1) The increase in Indonesia's sovereign credit rating to investment grade will increase investor interest in investing in the domestic financial sector, including the Islamic finance industry. It has abundant natural resources that can be used as underlying transactions for the Islamic financial.(2) Globalization has many consequences. One of them is the expansion of equity and various risk financing activities. This will pave the way for further growth in the Islamic banking system(3).

Globalization has many consequences. One of them is the expansion of equity and various risk financing activities. This will pave the way for further growth in the Islamic banking system.(4) This view is logical, considering that the contract is made, the notary has full responsibility, regarding the correctness of the contract construction, so that the terms of the agreement are fulfilled, both from the substance of Islamic law, as well as the format and systematics, based on the relevant legislation. Berangkat

Based on some of these thoughts and references, it is essential to deepen the Islamic banking Notary profession's challenges, especially in the global era. This research is intended to explain the phenomena that occur in human activities. This aims to reinforce the hypothesis to help formulate new theories(5). This study aims to provide a new theory for notaries in Islamic banking is facing challenges in the cyber era. The research method used is the library research method. Library data is obtained through library research sourced from official documents.(6)

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Proceeding of the International Conference on Intellectuals' Global Responsibility 2020 (ICIGR):  
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## 2. Discussion

A Notary is obliged to provide services by existing regulations unless there is a reason to refuse it. (7) 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.

Not a few deeds made by notaries have problems at a later date. 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.(8) 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.(9) This legal responsibility comes from the Notary Position Law, Criminal Law, and Civil Law.(10) 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.(11)

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.(12)

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 Roadmap(13) and the 2017-2019 Sharia Financial Roadmap(14) 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.(14)

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

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deeds. (15) 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. (16)

World Bank research results(17) 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 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.

### 3. 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

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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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