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## Notary responsibility for unlawful acts in the legalization of sharia banking financing agreements in Banda Aceh

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### Abstract

The purpose of this article is to explain the implementation of the legalization of Sharia banking financing agreements by notaries in Banda Aceh, analyze the evidentiary power of contract legalization that does not meet procedural provisions, and analyze the responsibility of notaries for unlawful acts because the signing of the legalization of Sharia banking financing agreements by the parties is not witnessed directly by the Notary concerned in Banda Aceh. This research uses normative legal research types and empirical legal research. Normative legal research is carried out with a statutory approach and a conceptual approach. In empirical legal research, the law is seen as the norm. Sources of legal materials in the study are secondary data consisting of primary legal materials, secondary legal materials, tertiary legal materials, and primary data obtained directly from interviewees. The analysis is carried out qualitatively. The results showed the following, first, the implementation of the legalization of the contract by the Notary, starting when the Notary received the documents and was obliged to check and witness that it was true that the parties were entitled to sign the contract. The contract is signed and affixed with a stamp by a Notary, then it is registered in the legalization book. Secondly, an agreement legalized by a Notary, but does not meet the procedural provisions, does not have perfect evidentiary power, because the evidentiary power of a letter that is not an authentic deed is left to the judge's consideration. The power of proof is limited to being evidence of clues supported by other evidence and the court will make a summons to the Notary as a witness. Third, the implementation of the Notary's responsibility for the contract that is legalized unlawfully because the signing of the parties is not witnessed directly by the Notary concerned is with the Notary. Responsibility for the position of Notary adheres to the principle of liability based on errors, and sanctions given in the form of reimbursement of costs, compensation, and interest.

**Keywords:** syariah law, notary responsibility, unlawful acts

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### Introduction

Every person or business entity that seeks to increase productive needs requires funding, one of which is in the form of credit. The provision of credit to debtors can also be provided in the form of Sharia financing. In line with the implementation of Islamic law in Aceh Province, Sharia financing is further regulated in Qanun Aceh Number 11 of 2018 about Islamic Financial Institutions. Financing with Sharia principles, as well as the provision of previous banking loans in Aceh, can be made in the form of authentic deeds made by notaries or in the form of agreements under the hands of legalized and *waarmarking* by Notaries. Regarding these provisions, the authority of the Notary in legalizing the agreement under the hand is regulated in Article 15 paragraph (2) letter an of Law Number 2 of 2014 about Amendments to Law Number 30 of 2004 about the Position of Notary, which states that: "the authority of the Notary certifies the signature and guarantees the certainty of the date of the letter under the hand by registering in a special book".

The obligation of the Notary to witness directly the signing of the agreement under the hand is regulated again in Article 15 paragraph (2) letter an of Law Number 2 of 2014 about Amendments to Law Number 30 of 2004 about the Position of Notary (hereinafter referred to as UUJN-P), which states that: "the authority of the Notary certifies the signature and guarantees the certainty of the date of the letter under the hand by registering in a special book" <sup>[1]</sup>. This special authority of the Notary is called legalization, which is a legal event, in which the parties to the agreement under the hand sign the agreement jointly in the presence of the Notary at the same place and time <sup>[2]</sup>.

The Notary authority in the legalization of sharia banking financing agreements occurs when the signing is carried out by the parties in the presence of a Notary. The Notary witnesses firsthand the signatures of the parties, and ensures that the parties to the agreement are bank officials and customers authorized in the agreement. The purpose of the legalization of the agreement under the hand is that there is the certainty of the correctness of the signature contained in the agreement, that it is correctly signed by the parties, thus the parties are no longer free to change the signature contained in the agreement <sup>[3]</sup>.

However, in Practice, the Notary did not directly witness the signing of the parties in the Islamic banking financing agreement. Legalized Islamic banking financing agreements should have been witnessed by notaries in signing agreements, but some notaries out of habit and already established cooperation with banks, provide excessive convenience in this legalization process.

The convenience is in the form of the absence of a Notary in witnessing the signing of the agreement, who witnesses the signing of only the clerk of the Notary's office. Then the clerk of the Notary office brings the signed file to the Notary office to be ratified and legalized by the Notary. Supposedly, the legal acts performed by the Notary are only as *waarmerking* the agreement under the hand, not the legalization of the agreement under the hand, because the signing of the parties is not witnessed directly by the Notary.<sup>[4]</sup>

Likewise, the Notary only witnessed the signature of one party, namely the customer, who then the Notary legalized the Islamic banking financing agreement. After legalization, the Islamic banking financing contract was brought back to the bank by a Notary employee to be signed by the bank.<sup>[5]</sup> Supposedly, the Notary witnessed firsthand the signing of the agreement between the parties (both parties).

In this regard, if in the future there is an acknowledgment from one of the parties who does not recognize his signature or the problem occurs for the birth of the agreement under the legalized hand, then the court will make a summons to the Notary as a witness relating to the agreement under the hand legalized by the Notary concerned.<sup>[6]</sup>

The Notary should carry out the duties of his office in accordance with Article 16 paragraph (1) letter an of UUJN-P, which specifies that "in carrying out his position, the Notary is obliged to act trustworthy, honestly, thoroughly, independently, impartially, and safeguard the interests of the parties concerned in legal acts". Furthermore, the rule is also contained in the provisions of Article 3 number 4 of the Notary Code of Ethics, specifying that "the Notary must behave honestly, independently, impartially, trustworthy, thorough, and full of sense of responsibility, based on laws and regulations and the content of the Notary's oath of office".

A Notary as a general officer who is given the authority to legalize agreements under the hand, can uphold his office to act honestly, independently, and impartially. In this regard, it is appropriate for the Notary to be able to provide legal certainty for the legal actions he takes, to protect the interests of the parties.

## Research Methods

This research uses normative legal research types and empirical legal research. Normative legal research is carried out with a statutory approach and a conceptual approach. In empirical legal research, the law is seen as the norm. Sources of legal materials in the study are secondary data consisting of primary legal materials, secondary legal materials, tertiary legal materials, and primary data obtained directly from interviewees. The analysis is carried out qualitatively.

## Discussion and Analysis of Results

### A. Implementation of Notary Responsibility for Sharia Banking Financing Agreements That Are Legalized Unlawfully Because The Signing of The Parties Is Not Witnessed Directly By The Notary Concerned In Banda Aceh

Responsibility in professional ethics is closely related to integrity and morals, if you do not have good integrity and morals, a Notary cannot be expected to have good professional responsibilities and ethics. Responsibility is a principle of professionalism which is a form of commitment that must be possessed by a Notary to the implementation of his position, as regulated in the UUJN.

Responsibility for the post of Notary adheres to the principle of responsibility based on errors. The principle of responsibility based on errors must be fulfilled, among others: the existence of actions, the presence of elements of errors, the presence of losses suffered, and the existence of a causality relationship between errors and losses. The responsibility of the Notary arises if there is an element of a mistake made in the performance of his duties and position, the mistake causes losses to the person who requests the services of the Notary.

The Notary's responsibility for the legalized Islamic banking financing agreement is as follows:

#### Responsibility for the Identity of the Parties

When the parties face him to carry out the legalization of the Sharia banking financing contract, the Notary is obliged to check the identity of the parties who will sign the Sharia banking financing contract, the identity is either in the form of an Identity Card (KTP), passport or Driver's License (SIM). The Notary also ensures that the parties are capable of carrying out legal acts, and it is true that the parties facing him are the parties authorized to sign the agreement.

#### Responsibility for the Contents of the Deed

The Notary is obliged to read the contents of the deed to the parties and ask whether it is true that the contents of the Islamic banking financing agreement are desired by the parties.<sup>[7]</sup> The Notary as a general officer in carrying out his duties and responsibilities must also pay attention to and understand the laws and regulations related to the agreement.

Considering that the Sharia banking financing agreement is a product of banking law or legal acts that use Sharia principles, the content of the agreement should not conflict with Islamic sharia principles and is obliged to

comply with the provisions stipulated in the Financial Services Authority Regulation Number 31 / POJK.05 / 2014 about the Implementation of Sharia Financing Business.

### **Responsibility for Signatures**

That I the signatures outlined in indeed the signatures of the parties to the agreement, the Notary is obliged to witness the signing of the Islamic banking financing agreement to be legalized.

### **Responsibility for Date Certainty**

The date stated in the legalized Islamic banking financing agreement is the date at the time the signing is carried out by the parties before a Notary which is then recorded by the Notary in a special legalization book.

Thus, based on Article 15 paragraph (2) letter a of UUJN-P, the responsibility of the Notary for the legalized Islamic banking financing agreement is the responsibility for the certainty of the signatures of the parties and is registered in a special book. The Notary guarantees that it is true that the parties (banks and customers) who signed the agreement under the hand, not someone else because the Notary witnessed firsthand the signing of the agreement under the hand.<sup>[8]</sup>

In practice, not all notaries carry out their duties and authorities by Article 15 paragraph (2) letter (a) of UUJN-P. Islamic banking financing agreements that will be legalized by notaries are not based on these provisions. Based on an interview with one of the bank employees, the Islamic banking financing agreement to be legalized by the Notary was not signed by the parties before the Notary. In practice, some notaries receive sharia banking financing agreement files that have been signed by customers and asked to be legalized. This is because the head of the bank branch is not always in place, for the Islamic banking financing agreement, and the signing by the bank is carried out after the Notary legalizes the agreement.<sup>[9]</sup>

Likewise, with Notary clients who come to face the Notary's office, the signing of the agreement under the hand to be legalized is not in the presence of the Notary, but only in front of the Notary employee.<sup>[10]</sup> Sometimes due to excessive *service* to the client and trust in the parties, the Notary legalizes the agreement under the signed hand.<sup>[11]</sup>

Of course, the practice that occurs in the field like this is not, it is good to be carried out by a general official, namely a Notary. Because the responsibility of the Notary towards the legalization of the agreement is to witness the signature of the parties and ascertain the date of legalization of the Islamic banking financing agreement. So that the Sharia banking financing agreement is against the law because the signing of the parties is not witnessed directly by a Notary.

The responsibility of the Notary for the Islamic banking financing agreement that was legalized unlawfully because the signing of the parties was not witnessed directly by the Notary concerned is a civil responsibility. Civil sanctions are sanctions imposed against errors that occur due to default or unlawful acts. This sanction in the form of reimbursement of costs, damages, and interest is a result that the Notary will receive from the lawsuit of the parties to the agreement.

In addition to civil sanctions imposed against notaries who have committed violations of the law, administrative sanctions may be imposed on such notaries. Regarding administrative sanctions for notaries who make mistakes, it can be seen in Article 85 of the UUJN, which stipulates that there are five types of administrative sanctions, namely: "oral reprimands, written reprimands, temporary dismissals, respectful dismissals, disrespectful dismissals". These sanctions apply in a tiered manner ranging from verbal reprimands to dismissals of disrespect. The imposition of these sanctions is carried out only if the Notary is proven to have violated the provisions of certain articles as stipulated in Article 85 of the UUJN.

Another sanction, namely the imposition of criminal sanctions against notaries, can be carried out as long as such restrictions are violated. That is, in addition to fulfilling the formulation of violations mentioned in the UUJN, the code of ethics for the position of Notary must also meet the formulation mentioned in the Criminal Code. The articles that are used to prosecute a Notary in the performance of the duties of the office are articles that regulate the criminal act of forgery of letters, namely Article 263, Article 264, and Article 266 of the Criminal Code.

Based on these articles, it turns out that the Notary as a general official, can also be subject to criminal charges, both based on articles on forgery of letters, as well as other articles related to the duties of his position as a Notary. In fact, it is also sentenced to imprisonment as long as the act meets the elements of the criminal act contained in the articles alleged The Supervisory Board is a body that has the authority and obligation to carry out guidance and supervision of notaries. However, in practice, the implementation of supervision from the Supervisory Board is less effective and needs quality improvement to be able to work professionally. The Regional Supervisory Council (MPD) is formed in the Regency/City to foster and supervise notaries who have work areas in the Regency/City.

The MPD authority is not only to supervise and examine notaries but also to impose sanctions on notaries who are proven to have committed violations in carrying out the duties and positions of notaries. However, this authority is passively exercised. This means waiting for reporting from the public for violations committed by a Notary. Some notaries carry out their duties and positions that are not by the UUJN.

### Conclusions

The implementation of Notary responsibility for Sharia banking financing agreements that are legalized unlawfully because the signing of the parties is not witnessed directly by the Notary concerned in Banda Aceh is with the Notary. Responsibility for the post of Notary adheres to the principle of liability based on errors, which causes losses to the person who requests the services of a Notary. A Notary who makes a mistake in his authority to certify a signature between the bank and the customer may be qualified for an unlawful act. Islamic banking uses the services of a Notary to guarantee that it is true that the bank and the customer who signed the Sharia banking financing agreement, not other people outside of the parties to the contract. The responsibility of the Notary for the legalized Islamic banking financing agreement is the responsibility for the correctness of the identity and content of the correct agreement made by the bank and the customer, responsibility for the correctness of the signature between the bank and the customer, and the correctness of the date made on the day at the time of signing the contract, which is registered in the Notary legalization book. The unsuccessful implementation according to the rule of law leads to the non-creation of legal certainty and protection for banks and customers. In resolving civil matters, a Notary may be subject to civil sanctions for unlawful acts committed by him. These sanctions are in the form of reimbursement, compensation, and interest.

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