

ROLE OF NOTARIS IN ACTUALIZATION SHARIA PRINCIPLES IN SHARIA FINANCING AGREEMENT

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ABSTRACT

The practice of sharia banking in Indonesia is regulated by Law no. 21. Bank Syariah is a Bank conducting its business activities based on Sharia Principles. The act as a perfect proof must be made by public officials. UU no. 2 year 2014 provides that a Notary is the official authority of authentic action of all actions, agreements and conditions required by general rules. Both of these legal grounds underlie the making of the act of agreement in syariah bank. This paper illustrates the idea, first, how the role of a notary in applying sharia principles in making the deed of agreement in Islamic banks? Second, what is the position and legal implications of the agreement that does not apply sharia principles ?. The type of descriptive qualitative research with empirical juridical approach, namely testing the practice of a rule in making the deed of agreement. Sources of data used document acts of agreement between the parties and sharia banks made by a notary, equipped with existing theories (literature study). The method of analysis used is content analysis. The results showed that the notary in carrying out his duties must be professional and still comply with the Notary Code of Conduct. The actions taken by the notary in the making of deeds insofar as they are in accordance with the rules and comply with the principles of sharia, hence have the perfect strength of proof (authentic Act). Conversely, if the act is not in accordance with the rules and principles of sharia, then only as a act under the hand. If the act made by the notary is degraded, then the notary can be claimed by the parties to redress the loss and interest suffered.

Keywords: Notary, Authentic Act, Sharia Banking, degraded, agreements

A. Introduction

Twenty-five years in Indonesia have applied banking law with sharia principles. This can be seen from the birth of Act Number 7 of 1992 concerning Banking that has been amended by Law Number 10 Year 1998, which is further regulated specifically in Law Number 21 Year 2008 concerning Sharia Banking. The principle of Sharia Banking is part of Islamic teachings relating to the economy. One of the principles in Islamic economics is the prohibition of usury, maisir, gharar, haram, and zalim in its various forms, and uses a profit-sharing system.

One of Sharia compliance efforts (shariah compliance), is the making of act of agreement in accordance with sharia principles. Based on Law Number 2 Year 2014 regarding Notary as an official authorized to perform authentic act. Once the urgency of the notary's position, it needs serious attention. Understanding notary to the principles of sharia, because it can affect the thoughts, attitudes and actions and the results of acts done. In fact, a Notary must act as a trustworthy, honest, conscientious, independent, impartial person, and protect the interests of the parties concerned in legal action.¹

Authentic acts have very strong evidentiary power. However, the act may reduce its evidentiary power, which is converted into a act under the hand². This happens if the act is invalid. So what if it happens ?, What and how and who should be responsible? Taking into account the background, the author is interested to describe the role of a notary in the implementation of sharia principles in the act of sharia banking contract. The focus of this research is first, how the role of notary apply sharia principle in agreement in syariah bank? Secondly, what is the legal position of the act of agreement that does not fulfill the principles of sharia?

B. Research methods

The type of descriptive qualitative research with the empirical juridical approach, namely testing the practice of a rule in making the deed of agreement. Sources of data used document acts of agreement between the parties and sharia banks made by a notary, equipped with existing theories (literature study). Source of Law Materia the main legal material, obtained from the source of binding in the form of legislation, including the Civil Code, Law No. 2 of 2014 on Notary Position. Law Number 21 The year 2008 regarding Sharia Banking. Law no. 42 of 1999, Law No. 4 of 1996 etc. Secondary law material used in this research is in the form of textbooks. The method of analysis used is content analysis. Engineering Processing and Material Analysis Laws with deductive descriptions that describe situations or events and draw conclusions.

C. Urgency Act written in Sharia Banking agreement

Agreement or contract (iltizam)

The term akad, in Indonesia, generally uses the term "engagement" as a synonym for verbs and "agreements" equivalent to the term overeenkomst. But some use the word "covenant" as a Dutch verb equivalent to *verbinten* and the word "deal as

¹ Article 16 UUJN-P

² Article 41 UUJN-P

too much translation³, but mostly uses the term "engagement" as an equivalent English verb and "agreement" of *verbintenis* language and in this case identified with the "agreement" even with the term "contract" as an *overeenkomst* term translation⁴. "Moch Isnaeni argues that the terms of the contract and the agreement are identical, without needing to be differentiated and can be used simultaneously.⁵

Whereas in contemporary Islamic law (*verbintenis*) uses the term "*iltizam*" and the term "*akad*" to refer to the agreement (*overeenkomst*) and even to mention contract (*contract*). The term *akad*, an old term that has been used since classical times so it is very standard. While the term *iltizam*, is a new term to refer to the engagement in general. Initially in pre-modern Islamic law, the term *iltizam* is used only to show an engagement arising from one-sided will, sometimes only used in the sense of involvement arising from the covenant⁶. But in modern times, the term *iltizam* is used to refer to the entire engagement.

The term *akad* is derived from *al-a'qd*, which means binding, connecting or connecting (*ar-rabt*)⁷. The term "Terminology of Islamic Law", according to Article 262 Nursyid al-Hairan, is a treaty filed by one party with the obscenity of another party who has a legal effect on the object of the contract⁸. "Compilation of Islamic Economic Law, Article 20 letter 1, explains that the Agreement is an agreement in agreement between two or more parties to perform and or not to take certain legal action⁹ Law No. 21 of 2008 Article 1 number 13, whether the act is an agreement between a Sharia Bank or UUS and any other party which contains the rights and obligations of each party in accordance with the Sharia Principles.¹⁰

The definition above can be withdrawn his understanding: first, the contract is a linkage or meeting of the *Ijab*¹¹ and *kabul*¹² resulting in the emergence of law. Second, the contract is a two-party legal action because the contract is a consensual meeting that represents the will of the other party. One-party legal action, such as gift promise, testament, endowment not a contract, because these actions can not be two parties and no no *Kabul*.

Third: the purpose of the contract is to produce a legal effect. More firmly, the purpose of the contract to meet the needs of life and business development of each party that holds the contract¹³. The consequences of the law in Islamic law are called "law of contract" (*hukm al-aqad*)¹⁴. Fourth, the contract is only a written agreement in the field of Sharia Banking as stipulated in the Sharia banking law.

Urgency of Sharia Banking Agreement in Written Form

Law No. 21 of 2008 article 1 point 13 explains that *Akad* is a written agreement. This Article only requires that the contract in the Islamic banking acts be written, and is not required in a particular form. The contents and substance of the written agreement shall contain the right and share of each party in accordance with the principles of sharia. The implementation of the contract is related to the business of Sharia Commercial Bank and the articles of 19 paragraph (1) and paragraph (2) of Law No. 21 of 2008. Some activities of Sharia and Islamic banks are set forth in the form of acts, among others: *mudharabah* contracts, *musyarakah* contracts, *murabahah* contract, greeting contract, *istishna* contract, *akad qardh*, *ijarah* agreement, *akad hawalah* and *akad kafalah*.

In the practice of Islamic banks¹⁵ or Sharia Business Unit (UUS)¹⁶ written agreement which is in the form of act under the hand or notarial act. One of the objectives of this written act is to distinguish the act of Islamic Banking and Conventional Banking¹⁷ in both formal and material form.

³ M. Yahya Harahap, *Segi-Segi Hukum Perjanjian* (Bandung: Alumni, 1982), p. 6, 11

⁴ Abdulkadir Muhammad, *Hukum Perikatan* (Bandung: Alumni, 1992), p. 5; J. Satrio, *Hukum Perikatan, Perikatan Yang Lahir Dari Perjanjian*. Buku I (Bandung: PT Citra Aditya Bakti, 1995), p.2.

⁵ Dr. Habib Adjie SH., M.Hum, Muhammad Hafidh, SH, MKn, *Akta Perbankan Syariah, Yang Selaras Pasal 38 UUUJN-P*, Semarang, Pustaka Azam, 2014, p. 19

⁶ As-Sanhuri, *Mashadir al-Haqqi al-Fiqh al-Islami*. Dirasah bi al-Fiqh al-Garbi (Ttp.. Dar al-Hana li ath-Thiba•ah an-Nasyr, 1958, p. 9-10

⁷ Ahmad Abu al-Fath, *Kitab al-Mu'amalatfi asy-Syari'ah ai-Islamiyyah al-Qawanin al-Mishriyyah* (Mesir: Matbasah al-Busfir, 1913), p. 139; View, Asy-Syaukani, Fath al-Qadir (Mesir: Mushtafa al-Babii al-Halabi, 1964), p. 11: 4.

⁸ Basya, Mursyid al-Hairan ila ma'rifah Ahwal al-rnsan (Kairo: Dar al-Furjani', 1403/1983, p. 9

⁹ Compilation Of Islamic Economic Laws (KHES) article 20

¹⁰ Law No. 21 of 2008 on Syariah Banking Chapter 1 article 1 General provision number 13

¹¹ *Ijab* is a statement to indicate a willingness in the intention between two or more persons, thus avoiding or leaving a bond that is not based on *syara* '. See Rachmat Syafe'i, *Fiqh Muamalah*, p. 45

¹² *Kabul* is the answer to the agreement given by the contract partner in response to the first party offer

¹³ Compilation Of Islamic Economic Laws (KHES) article 25

¹⁴ Syamsul Anwar, *Hukum Perjanjian Syariah*, p. 68-69

¹⁵ Bank Syariah is a Bank conducting its business activities based on Sharia Principles and by type consisting of Sharia Commercial Bank and Sharia Rural Bank.

¹⁶ Law No. 21 of 2008 article 1 number 10

¹⁷ Law No. 21 of 2008 article 1 number 4)

Principles related to the agreement (akad) in Islamic law

The principle comes from the Arabic word *asasun* which means the foundation, foundation and foundation. The terminology of the principle is the basis or something that is the focus of thought or opinion¹⁸. The principle is as follows¹⁹:

- A. The principle of *Ibahah*. The principle of *ibahah* is the general principle of Islamic law in the field of *muamalat* in general. This principle is formulated in the adage "in principle everything can be done until there is a forbidden prohibition".
- b. Principle of Freedom of Practice. Islamic law follows the freedom of faith, which is a legal principle which states that anyone can make any kind of contract without being bound by the names prescribed in sharia law and inserting any clause into the contract made in accordance with his interests does not result in the treasure of property fellow way of vanity. *Nash-nash al-Qur'an*²⁰ and *sunnah of the Prophet (SAW)*²¹ and the rules of Islamic law²²
- c. The principle of Consensualism. The principle of consensualism states for the creation of a treaty sufficient to achieve the word of reward between the parties without having to fulfill certain formalities. In Islamic law in general the agreement means consensual. based on the word of God: QS. 4: 29 And the Word of God, QS. 4: 41.²³
- d. The Principle of Promise is Binding. There are many commandments in the *Qur'an* and *Hadith* about the command to fulfill the promise. In the rule of jurisprudence, "the command in principle implies obligatory". This means the promise is binding and mandatory. Among the verses and *hadith* are, the word of Allah QS. 17: 341 "...and fulfill the promise, in fact the promise will be held accountable." And *Asar of Ibn Mas'ud*: "... The promise is a debt".²⁴
- e. The principle of balance. Although factual there is often a balance between the parties in transactions, but the Islamic covenant law still reinforces the need for balance, both a balance between what is given and what is received and balance in taking risks.
- f. Principles of Punishment (not incriminating), anti contracts are made by the parties to realize the benefits for them and should not cause harm (*mudharat*) or burdensome society (*masyaqqah*).²⁵
- g. The principle of *Amānah*, suppose each party feels confident to transact with other parties and is not allowed either party to exploit the ignorance of its partners.
- h. The principle of Justice, the goal that all laws want to achieve. In Islamic law, direct justice is a stubborn *Qur'anic* commandment (*Surah 5: 8*), "... O ye who believe with you to be the ones who always establish (the truth) for Allah, be in a just relationship ...".²⁶

D. Notary's roles and Notary Public Notary

Notaries and responsibilities

The term Notary comes from the word "notarius" (Latin), which is the name given to the Romans where his work is in the process of writing or recording made at the time. Notary in his position at Regular Of Het Notary Ambt At Nederlandsch No. 1860: 3 which came into effect July 1, 1860. At this time, the Notary has a law with the birth of Law Number 30 Year 2004 and has been amended. Law of the Republic of Indonesia Number 2 Year 2014 Concerning Amendment to Law Number 30 Year 2004 regarding the position of Notary which is abbreviated as UUJN-P.

Notary is a public official authorized to perform an authentic act and has other powers mentioned in this Law or under any other law²⁷. With due attention to the description of Article 1 of the Notary Act, it can be explained that a Notary is: a. general officials b. authorized to make authentic act d. determined by law The duty of a Notary is to adjust the legal relationship between the parties in written form and certain format, which is an authentic act. He is a powerful document-maker in the legal process.²⁸

Legal scholars argue that notarial acts may be accepted in court because of the absolute proof of content, of course, denial by the opposite proof by which, which may prove what the notary notifies in the act is true.²⁹

¹⁸ Departemen Pendidikan Nasional (2002). *Kamus Besar Bahasa Indonesia, edisi ke-3*. Jakarta: Balai Pustaka), p. 70

¹⁹ Syamsul Anwar. *Hukum Perjanjian Syariah*. p. 83-92

²⁰ QS. 5: 11

²¹ The Prophet's words, "Muslims are always faithful to their terms (promises)". see al-Hakim, al-Mustadrak (Riyad: Maktabah wa Matabi 'an-Nasyr al-Hadītsah, t.t.), 11:49, This Hadith is narrated by al-Hakim from the Companions of Abu Hurairah

²² In principle the contract is the agreement of the parties and the law is what they set upon themselves through the promise. See, Asjmun A. Rahman, *Qa'idah-qa'idah Fiqih* Jakarta: Bulan Bintang, 1975), p. 44

²³ Ibnu Taimiyyah, *Majmu' al-Fatawa* (Riyad: Matabi' ar-Riyadh, 1383 H xxrx: 155

²⁴ Lihat *at-Tabarani, al-Mu'jam al-Ausat* (Kairo: Dar al-Haramain, 1415 H), IV: 23

²⁵ Syamsul Anwar. *Hukum Perjanjian Syariah*. Chapter XI number 3

²⁶ Departemen Agama RI, *al-Qur'an dan Tejemahnya*, p.. 86

²⁷ Law Number 30 Year 2004 regarding Position of Notary Chapter I Article 1 paragraph 1

²⁸ Tan Thong Kie, *Studi Notariat, Serba-serbi Praktek Notaris*, Buku I (Jakarta :PT Ichtiar Baru Van Hoeve, 2000), p. 159

²⁹ Liliana Tedjosaputro, *Malpraktek Notaris dan Hukum Pidana*, CV. Agung, Semarang, 1991, p. 4

The responsibility of the notary applicable to the act made. Notary is not responsible for the negligence and misconduct of the act made before him, the Notary launcher shall only be responsible for the form of a formal act as required by law. Regarding the responsibility of notary public officials related to material truth is divided into four points, namely:³⁰

First, the responsibility of a notary in civil law against material truths against his actions, juridical constructions used in civil liability for second material truth, the responsibility of a notary criminal on material truths in his acts. Third, the responsibility of the notary to the material truth in the act he made³¹. Fourth, the responsibility of a notary in carrying out his duties to take care of the code of notary ethics.

Notarial Act as Written Proof Instrument

The law of civil proceedings states that legal or legal evidence, consisting of: 1. written evidence, 2. evidence with him, 3. allegations, 4. acknowledgments, and 5. asseveration.³² Writing in writing is done with the writings and with the writings under the hand³³. The writing of the act agreement shall be written in a form already duly established by law, drawn up in front of an authorized official (public clerk) and the place where it is made³⁴.

Being handwritten under the hand or also called a act under the hand is a Act created in a form not specified by law, regardless of the mood or not before the general public.³⁵ Act under the hand has the power of proof with the parties that acknowledge it or no denial from either party³⁶. If the parties succeeding the act under the hand, then the act has the perfect proof power.³⁷

Table: acts under the hands and authentic acts

explanation	Act under the hands	Notarial Act
format	Created in a form not defined by law, without the contents or not in the presence of the General Officer	Created in the form prescribed by law (art. 38 UUJN-P) is made in the presence of an authorized public official and the place where the act is reinforced
Strength / value of evidence	<ul style="list-style-type: none"> Has the power of proof as long as the parties have or no denial of either party If any of the parties does not recognize it, the burden of proof is submitted to the party denying the act, and the denial of such evidence shall be submitted to the judge 	Has a perfect proof. The perfection of Notary act as evidence. Then the act should be seen as it is, not to be feared or interpreted otherwise, other than what is written in the act

the act made by Notary in its form has been determined in article 38 UUJN-P. Notarial act as proof to have proof of perfect strength, if all the provisions or means of making the act. If there are unfulfilled procedures, and unfulfilled procedures can be proven, then such actions through litigation can be accommodated as actions that have evidentiary power as acts under the hands. If the location is like that, then that is evidence to the judge.³⁸

Table: Notarial Act of Notarial and null and void

Information	Notarial Act of Notarial	Notarial Act is null and void
Reason	Breaking subjective requirements, ie 1. Check those who bind themselves (de toetsemming van degenen die zich verbinden), 2. the ability to make an engagement (de bekweemhield om eene verbindtenis aan te gaen)	Breaking objective terms, namely: 1. a certain thing (een bepaald onderwerp); 2. a forbidden cause (een geoorloofde oorzaak)
Start	1. act remains binding as long as	Since the act was signed and the

³⁰ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia*, (UII Press, Yogyakarta, 2009), p 16

³¹ Article 65 UUJN-P

³² M. Ali Boediarto, *Kompilasi Kaidah Hukum Putusan Mahkamah Agung Hukum Acara Perdata Setengah Abad*, Hal. 157 Swa Justitia, Jakarta, 2005, p. 157

³³ Article 1867 BW

³⁴ Article 1868 BW

³⁵ Article 1874 BW

³⁶ M.Ali Boediarto, opcit., p. 145

³⁷ Article 1875 BW

³⁸ Habib., opcit., p. 39

Applicable / occurrence cancellation	there is no court decision that has permanent legal power. 2. the act becomes unbound since a court decision has been established and has permanent legal force	legal action on the act never happened, and there needs to be a court decision
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Authentication Act Verification Value

Notary Notary as a straight act has three strengths of proof, namely: a. Strength of Proof of Outward / Birth; b. Strength of Formal Proof; c. Material Proof Strength.

The external authentication power of Notarial doctrine is the ability of the act itself to prove its validity as a act of fall (acta publica probandi sese ipsa). Outstanding authentication value is notary act must be seen "as is", not seen "what's wrong." Outwardly need not be contrasted with other evidence. If there is a judge of a notarial act does not qualify as a act fall, then the obligatory to pay is the act is not a act personally.³⁹

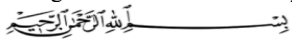
Formal verification means that the Notary act must provide certainty that the facts and facts mentioned in the act are done by the notary or explained by the parties facing the time stated in the act in accordance with the procedures specified in the act. This proves "what is seen, witnessed, heard" by the Notary and records the statement or statement of the parties / penghadap (on the dealing act).

The material proof is the certainty of the matter of a act, what is mentioned in the act is a valid proof against the parties making the act or those who get the rights and apply to the public, unless there is proven otherwise (tegenbewijs). The statements or statements of the parties or any person who comes to the notary who is subsequently contained in the act must be judged "rightly said". If it turns out the statement / statement of the parties / penyadap be "not right to say" then it is the responsibility of the parties. Notary public regardless of such a thing.

These three aspects are notary acts as authentic acts and whoever is bound by the act. On the contrary, if it can be proved in a court hearing that one of these aspects is not true, then the act concerned only has the proof power as a act under the hand or the act is degraded its evidentiary power as a act which has the evidentiary power as a act under the hand.⁴⁰

D. Results And Discussion

In practice, the making of act of agreement by syariah banking related to the role and position of notary there are some findings, that is:

1. The absence of guidance on making a act of financing contract in sharia banking by using notary act or act under the hand. The imposition of limitations on the amount of financing ceiling that is given to be done should be by a act of financing contract by notariil. However, in situational conditions, namely the financing ceiling proposed is not too large then the financing contract is done under the hand only. This way is created. The signing is done during the process of disbursement of the financing. On the following syariah financing acts are the following: "This financing contract is replaced where at the time already in duplicate each has enough seal and have the power of proof of both original".⁴¹
2. Noting the redaction of Notary act, at the beginning of notarial act of Islamic Banking there is a act using sentence  or with the Latin text "bismillahirrahmanirahim" and translating verse an-Nisa verse 29 and al-baqarah verse 275. Likewise at the end of the act is included the text "alhamdulillahirabbil alamin" "Similarly, at the end of the act is written sentence alhamdulillahirabbil alamin. Some Notaries use the term in the spirit of the principle of shari'ah which is based on the hadith of the Prophet WHEN everything good must begin with "bismillahirrahmainrahim" and ends al-hamdulillahirabbil alamin.⁴²
3. In the notarial act of Islamic banking, there is a clause of recognition and verification. The granting of this guarantee is adjusted for all contents of ujah owed by the client on a contractual basis, in a timely manner, in an orderly, timely manner and in a manner of providing for it. In this case the Customer for a Sharia Bank with a Warranty of Purchase Rights or Power of Attorney shall impose a Mortgage Contract (SKMHT) on the guarantee goods with all the consequences of the rules governing it⁴³

Discussion

1. Preparation of documents or standards by sharia banks that the signing is done during the process of disbursement of financing. So it contains several conditions, namely the first time the notary in the making of the agreement on the ceiling of Islamic financing has not been implemented. The act made can be categorized as act under the hand. The juridical still raises the potential in the process of proving a dispute between the sharia bank with the customer who generates the financing. Act under the hand has the power of proof with the parties that

³⁹ Habib., opcit., P. 49

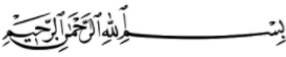
⁴⁰ Ibid., p. 39

⁴¹ Data that have been processed by the author from various sources related to the signature of the deed under the hands

⁴² <https://muslim.or.id/52-faedah-seputar-basmalah.html> (5 Desember 2017)

⁴³ Law No. 4 of 1996 article 1 point 1

acknowledge it or no denial from either party. But if the parties act under that hand, then the act has the perfect proof power of the act.⁴⁴

2. Notarial act of sharia banking using sentence  at the beginning of the act or with the Latin text "bismillahirrahmanirahim" and translating verse an-Nisa verse 29 and al-Baqarah verse 275 and at the end of the act is the text "alhamdulillahirabbil alamin". write the act wah it then there are some who need attention. First, in article 38 UUJN-P describes the structure of the notarial act, which starts from the head of the act to the cover of the act. The making of this act may be based on Article 43 of the UUJN-P compiled act must be made in the Indonesian language or any other language understood by Notary and the interested parties who are interested. Not from capital letters, for example B. Arabic. Chinese, Japanese or others⁴⁵. On the other hand, if there is a act which is not in accordance with Article 38 UUJN-P then the act is formally contained. If this happens, the act will be degraded so that his position becomes the only proof of power only as a act under the hands.⁴⁶ This is reinforced by article 1869 of the Criminal Code of paragraph 3 that a act that has the ability to prove as a act under the hands may occur if it does not meet the provisions of "defects in its form". If it is located that way, then it is proof to the judge.⁴⁷

Secondly, if the court of acquisition of the act has the evidentiary power as a act under the hands, then upon a verdict of the court is proven, the notary may be charged, compensation and interest⁴⁸. Above the act of the notary and based on the court decision proved to violate the provisions of the act formalities. Then the court dropped and obliged the notary to pay a fine, compensation and interest to the notary. If a notary is not able to pay, the notary will be settled bankrupt⁴⁹. And this bitterness can be used as a basis to impose additional sanctions in article 12 UUJN.⁵⁰

However, if the making of the syariah banking act is done consciously (and it is also possible to fulfill the Bank's wishes granted by the notary to the end of the act as the Bank wishes) by a notary, the notary may be said to have committed deliberately (this should not be done). So for the act of the notary, for those who feel harmed can file a lawsuit to the Notary concerned.

3. The term is one of the beginning of the beginning of the difference. Likewise, in the case of a guarantee that uses the Deposit Rights or Power of Attorney Charging the Insurance Right (SKMHT) as stipulated in Law No. 4 of 1996. In SKMHT there is the term creditor and debtor. Whereas in Law No. 21 of 2008 which rambles on Sharia Banking transactions, the term creditor⁵¹ and debtor⁵² are not used. In sharia banking transaction depends on the contract made between the customer and the sharia bank. In the syariah banking contract is used the term Customer⁵³ (for the parties who use banking services) and financing⁵⁴ (used for providers of funds). Therefore, it is important for the notary in making the acts of those terms to be in accordance with applicable regulations. If the use of this term in the act is misunderstood and not accepted by the parties, it may make the authentication power of the authentic degradation act to be a act under the hand.

But we can also understand that in the practice of sharia banks, the binding provisions on this collateral / collateral still use the same provisions as those practiced in conventional banks. This is because there is no special provisions or DSN fatwa that regulates it. If referring to the meaning of Law no. 21 of 2008 as a *lex specialis derogat legi generalis*, every other regulation not yet regulated in sharia banking law also applies to banking practices in Indonesia. Thus, the provision of the covenant collateral⁵⁵ to the binding of collateral⁵⁶ in an Islamic bank also uses the legal basis of legislation applicable in a conventional bank.

The main thing is that each party in making authentic act or act under the hand is to have the nature and principles of honest and fair trust. Properties This is according to the author the meaning corresponds to the contents of the letter of al-Baqarah verse 275.

Wallahu a'lam bi sh-showaf.

E. Conclusion

1. A notary in carrying out his / her position is required to be professional and keep firmly uphold Notary Code of Conduct. Notarized acts as per the regulations / principles of sharia banking have the perfect proof power (authentic act). On the contrary if it is not in accordance with the regulation and principle, then only as a act is under hand.

⁴⁴ Article 1875 BW

⁴⁵ Habib..., opcit., p. 62

⁴⁶ Article 41 of UUJN-P: Violation of Article 38, Article 39, and Article 40

⁴⁷ Habib..., opcit., p. 39

⁴⁸ Article 44 UUJN-P paragraph 5

⁴⁹ Law No. 37 of 2004 About. Bankruptcy And Delivery Of Debt Payment article 1 point 1

⁵⁰ Article 12 of Law No. 30 of 2004

⁵¹ Article 1 Sub-Article 2 of Law No. 4 Year 1996:

⁵² Article 1 number 3 of Law No. 4 of 1996

⁵³ Law No. 21 of 2008 article 1 number 16

⁵⁴ Law No 21 2008 article 1 number 25

⁵⁵ Herowati Poesoko, *Dinamika Parate Ekxecutie Objek Hak Tanggungan*, (Yogyakarta: Aswaja Pressindo, 2013), p. 26-27

⁵⁶ Law no. 42 of 1999 on Fiduciary Guarantees, and Mortgages

2. Authentic acts that experience degradation, then the notary can be sued in civilian to replace the losses and interest suffered by the parties.

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