

Validity of Sharia Deeds Made by Non-Muslim Notaries and Attended by Non-Muslim Witnesses

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Abstract. *This study discusses the validity of sharia deeds made by non-Muslim notaries and attended by non-Muslim witnesses from the perspective of Indonesian positive law and sharia legal principles. This issue is important considering the increasingly complex development of notarial practices, especially in the preparation of deeds based on sharia principles, while the laws and regulations governing the position of notaries do not explicitly require a particular religion for notaries or witnesses in the preparation of deeds. This study aims to analyze the validity of these sharia deeds reviewed from the provisions of applicable laws and regulations and from the perspective of Islamic law. The research method used is normative legal research with a statute approach, a conceptual approach, and a comparative approach. The legal materials used consist of primary legal materials in the form of laws and regulations related to the position of notary and sharia principles, as well as secondary legal materials in the form of literature, journals, and opinions of legal experts. A qualitative analysis was conducted to assess the conformity between positive legal provisions and Islamic legal principles regarding the formal and material requirements of a sharia deed. The results indicate that under Indonesian positive law, the validity of a deed is determined by the fulfillment of formal and material requirements as specified in laws and regulations concerning the office of notary, without any religious requirements for notaries or witnesses. However, from an Islamic legal perspective, there are differing opinions among Islamic scholars regarding the status of non-Muslim witnesses in certain sharia transactions. Therefore, the validity of a sharia deed drawn up by a non-Muslim notary and attended by non-Muslim witnesses remains legally valid as long as it meets the provisions of the laws and regulations. However, normatively, under Islamic law, this can be controversial depending on the type of contract and the interpretation of Islamic law.*

Keywords: Deed; Law; Notary; Validity.

1. Introduction

The validity of sharia-compliant deeds drawn up by non-Muslim notaries and witnessed by non-Muslim witnesses in Indonesia is a crucial issue in Indonesian notarial practice, particularly in the context of a pluralistic country like Indonesia. The Indonesian legal system, which adheres to the principle of the rule of law, provides legal certainty for all citizens regardless of religion. Law Number 2 of 2014 concerning the Position of Notary (UUJN) stipulates that there are no specific religious requirements for notaries, meaning that a non-Muslim notary retains the same authority to draw up authentic deeds, including those based on sharia principles. However, on the other hand, Islamic law, particularly in some schools of Islamic jurisprudence, requires that witnesses in sharia-compliant contracts be Muslim, which can lead to inconsistencies between positive legal norms and Islamic legal provisions.¹

Indonesian positive law stipulates that deeds drawn up by a notary that meet the formal and material requirements stipulated in the UUJN remain valid and have full evidentiary force in court. There are no provisions restricting the religious affiliation of a notary or witness in drafting a deed. This indicates that the validity of a deed is determined more by the procedure and fulfillment of administrative requirements than by the religious identity of the notary or witness. For example, in the case of Islamic banking, deeds drawn up by non-Muslim notaries remain legally binding as long as they meet applicable legal requirements, despite debate regarding their substantive compliance with Islamic principles.²

However, from an Islamic legal perspective, tensions arise regarding the issue of witnessing in sharia transactions. Some Islamic jurisprudence schools, such as the Shafi'i and Hanbali schools, emphasize that witnesses in sharia contracts must be just Muslims to ensure the validity and fairness of transactions based on Islamic law. This view leads to difficulties in applying sharia principles to deeds involving non-Muslim notaries and non-Muslim witnesses. However, other views, as expressed by contemporary scholars, permit non-Muslim witnesses as long as they are trustworthy and do not have interests that conflict with sharia principles.³

This gap between positive law and Islamic law creates legal uncertainty that can affect public trust in the Indonesian legal system, particularly in transactions based on Sharia principles. This legal uncertainty not only has the potential to hinder the implementation of Sharia transactions but can also raise public doubts about

¹ Zeinaful Jannah et al., " Giving Rights Guarantee in Positive Law and Islamic Law Perspectives : Analysis Comparison ," *Al- Muamalat : Journal Sharia Law & Economics* 10, no. 2 (July– December 2025): 70–89.

² Mulyawan, Mutiara Azura & Gemala Dewi, 2022. " Legitimacy Deed Islamic Banking Made by Non-Muslim Notaries : An Islamic Law Perspective ," *Asy-Syari'ah : Journal of Sharia and Islamic Economics*, Vol. 23 No. 2, pp . 191–206.

³ Habib Adjie, " Indonesian Notary Law: Thematic Interpretation against Law No. 30 of 2004 concerning Position Notary ," Refika Aditama, Bandung, 2018.

selecting a notary to handle their Sharia deeds. Therefore, it is important to conduct a more in-depth study of how positive law and Islamic law can interact and address this gap.⁴

Several previous studies have shown that although positive law does not restrict religion in the role of notary, there are some tensions in practice. As noted in the literature on Sharia contract law, deeds made by non-Muslim notaries are often questioned regarding the validity of the substance of the contract, which must comply with Sharia principles, such as the prohibition of usury, gharar, and maysir. This opinion reflects a dualism in understanding the validity of Sharia deeds made by non-Muslim notaries, on the one hand based on compliance with positive legal procedures, and on the other hand questioning the conformity of the substance with Islamic law.⁵

Furthermore, in the context of Islamic law, some scholars argue that Sharia law places greater emphasis on the essence and intention of every legal act, thus deeming the presence of Muslim witnesses essential to ensuring that a transaction or contract does not conflict with moral and religious principles. Conversely, a more inclusive view holds that Islamic law can be applied more flexibly, allowing the participation of non-Muslim parties in Sharia transactions without compromising the validity of the deed.⁶

This gap between inclusive positive law and more restrictive Islamic law creates legal uncertainty, raising doubts about the validity of Sharia-compliant deeds in contexts involving non-Muslim notaries and witnesses. Therefore, this study is crucial to identify potential solutions that harmonize the two legal systems. This research aims to address this legal and academic gap by conducting an in-depth and comprehensive analysis of the validity of Sharia-compliant deeds drawn up by non-Muslim notaries and attended by non-Muslim witnesses.⁷

This study aims to analyze and provide an explanation regarding the validity status of sharia deeds made by non-Muslim notaries and attended by non-Muslim witnesses based on the positive legal regulatory framework applicable in Indonesia, especially by referring to the provisions in the Notary Law (UUJN).

⁴Muhammad Ali, " Legitimacy Sharia Act in Positive and Islamic Law Perspectives ," Indonesian Law Journal , Vol. 12 No. 3, pp . 55–67, 2020.

⁵Ady Setyo Fardiyanto , " Formulation to Systematics Deed in Sharia Contracts with Legal Certainty ," LEX Renaissance, Vol. 6, No. 2 (April 2021): 324–336.

⁶Intan Maisyarah, "Legal Analysis of the Position of Witnesses in the Making of Notarial Deeds According to Islamic Law and the Notary Law (UUJN)," Journal of Islamic Law, Vol. 8, No. 1 (2022): 51-65.

⁷Zaid Raya Argantara & Zainurrohman, "Recording of Sharia Notarial Deeds by Non-Muslim Notaries from an Islamic Law Perspective," Masyrif: Journal of Islamic Economics, Business and Banking Management, Vol. 2, No. 2, pp. 157–166, 2021.

2. Research Methods

Type of research used is study law normative (*normative legal research*). The approach used is approach legislation (*Statute Approach*), approach conceptual (*Conceptual Approach*), and approach Comparative Approach Specifications study. This focus on harmony between law positive and Islamic law regarding validity sharia deeds made by non-Muslim notaries and witnessed by non-Muslim witnesses, as well the impact to implementation law in Indonesia. This research does not emphasize empirical aspects or societal behavior, but rather an analysis of applicable legal norms. For data collection, this study utilized secondary data consisting of primary, secondary, and tertiary legal materials. The data collection technique in this normative legal research was through library research. The data analysis method employed was qualitative analysis with an interpretive approach. This analysis aimed to construct logical and coherent legal arguments to address the research problem. Conclusions were drawn deductively based on the analysis conducted to formulate constructive suggestions.

3. Results and Discussion

3.1. The Validity of Sharia Deeds by Non-Muslim Notaries and Witnesses from the Perspective of Indonesian Positive Law

As a public official as stipulated in Law Number 30 of 2004 concerning the Position of Notary Public as amended by Law Number 2 of 2014 concerning Amendments to the Law on the Position of Notary Public, a notary public has the authority to make authentic deeds as long as they meet the formal and material provisions stipulated by statutory regulations. The theory of authority asserts that the validity or invalidity of a public official's actions is determined by whether or not there is a basis for authority granted by law, and whether the action is carried out within the scope of the specified authority (not exceeding or *ultra vires*).⁸ Notaries carry out state functions in the realm of private law, particularly in civil legal relations between citizens. This function is oriented towards creating legal certainty (*rechtszekerheid*), legal order (*rechtsorde*), and legal protection (*rechtsbescherming*) for the community. In the context of a state based on the rule of law, legal certainty is the main prerequisite for the creation of social justice and stability. Notaries play an important role in realizing this legal certainty through the creation of authentic deeds that reflect the wishes of the parties clearly, in writing, and can be legally accounted for. Therefore, the existence of notaries cannot be separated from the principles of a state based on the rule of law as

⁸Ayasha Salsabil Sosiawan, "The Role of Notaries in Fulfilling Sharia Principles in Murabahah Bil Wakalah Financing Contracts in Sharia Banks," Indonesian Notary 2, no. 3 (2020): Article 39.

mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that Indonesia is a state based on the rule of law.⁹

The Notary Law explicitly does not require a specific religion to be appointed as a notary. Article 3 of the UJIN only regulates administrative, academic, and professional requirements, such as Indonesian citizenship, minimum age, a master's degree in notary education, physical and mental health, and no prior conviction for a specific crime. The absence of a religious requirement for notary appointments demonstrates that the lawmakers consciously positioned the notary position as a neutral and inclusive public office. Therefore, non-Muslim and Muslim notaries have equal legal standing in exercising their authority.¹⁰ The placement of notaries in an equal position without religious discrimination reflects the principle of equality before the law, which is one of the main pillars of a democratic state based on the rule of law. This principle is constitutionally guaranteed in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that all citizens have equal status before the law and government. In addition, Article 28D paragraph (1) of the 1945 Constitution also guarantees the right of every person to recognition, guarantees, protection, and fair legal certainty. In the context of the notary position, this principle means that every citizen who meets the legal requirements has the right to be appointed and carry out the notary position without discrimination on the basis of religion.

The office of a notary in the Indonesian legal system is secular in the legal sense, not in the ideological sense. Secular in this context means that the office of a notary is exercised based on state law, not the law of a particular religion, although religious law can be used as a material source in the substance of an agreement if agreed by the parties.¹¹ The notary's position as a public official also places him or her in charge of the formal aspects of a legal act, not the substance of the values or beliefs underlying the agreement between the parties. The notary's responsibility lies in fulfilling the formal requirements for drafting a deed, such as the identity of the parties, legal capacity, free will, and the procedures for reading and signing the deed. A notary does not act as an interpreter of religious teachings or assess the conformity of the substance of an agreement with a particular theological doctrine, except to the extent that this has been explicitly regulated in statutory regulations.

⁹Nur Asriaty Solichah, "The Urgency of Sharia Certification for Notaries in Handling Financing Agreement Deeds in Sharia Banking," *Jurnal Ilmiah Nusantara (JINU)* 2, no. 5 (September 2025): 1197–1210.

¹⁰I Gusti Putu Arya Lanang Karyasa and Putu Edgar Tanaya, "Legal Regulations for Notaries Appointed as Regional Heads," *Acta Comitas: Journal of Notary Law* 10, no. 2 (August 2025): 419–435

¹¹Puteri Chintami Oktavianti, "The Position of Instrumental Witnesses in Keeping Authentic Deeds Confidential and Legal Protection for Instrumental Witnesses," *Syntax Literate: Indonesian Scientific Journal* 6, no. 5 (2021)

The concept of a sharia deed, from the perspective of Indonesian positive law, must be understood proportionally within the framework of the national legal system, which is pluralistic and open to the values prevailing in society. Normatively, the term "sharia deed" is not found explicitly in the Notary Law or the Civil Code. However, the absence of this terminology does not necessarily negate the existence or validity of the practice of making deeds based on sharia principles.¹² In notarial practice, a sharia deed is understood as an authentic deed containing a legal act or agreement between the parties, the substance of which is structured based on the principles of Islamic law, particularly the *fiqh muamalah*, such as the prohibition of usury, *gharar*, and *maysir*, as well as an emphasis on justice, balance, and the willingness of the parties.¹³

This understanding demonstrates that the term sharia deed is more doctrinal and sociological than juridical-formal. Sharia deeds do not constitute a separate category of deeds outside the national legal system, but rather are a variant of authentic deeds recognized in Indonesian civil law. The difference lies in the source of values and norms underlying the content or substance of the agreement, not in its form, procedure, or evidentiary force. Therefore, sharia deeds remain subject to the positive legal regime governing authentic deeds, specifically the provisions of Article 1868 of the Civil Code and Article 38 of the Notary Law.¹⁴

From a positive legal perspective, a deed can be qualified as an authentic deed if it is made by or before an authorized public official, in a form determined by law, and within his jurisdiction. This provision is imperative and applies universally to all notarial deeds, regardless of whether the substance of the deed is based on general civil law, customary law, or sharia principles. Therefore, as long as a sharia deed is made by an authorized notary, meets the formal procedures for making a deed, and clearly and legally contains the wishes of the parties, then the deed has the same legal force as other notarial deeds.¹⁵ The label "sharia" in the context of a notarial deed does not change the legal character of the deed as authentic evidence. The label only serves to indicate that the substance of the agreement is prepared with reference to the principles of Islamic sharia and, in certain practices, to the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). Thus, the use of the term sharia deed is more appropriately understood as a manifestation of the freedom of the parties in determining the contents of the

¹²Ridwan Anthony Taufan and Zainal Arifin Hoesein, "The Urgency of Recognizing Sharia Notaries in the National Legal System as an Effort to Reform Law on Sharia Banking Practices in Indonesia," *Judge: Jurnal Hukum* 6, no. 3 (2025).

¹³N. Kirana, B. Harahap, and M. Rustamaji, "Authentication of Sharia Deeds Using Quotations of Al-Qur'anic Verses at the Beginning of the Deed," in *Proceedings of the National Research Seminar of LPPM UMJ, Muhammadiyah University of Jakarta*, October 26, 2023.

¹⁴TH Lubis, "Contract Law in Indonesia," *Journal Social and Economics* 2, no. 3 (2022): 177–190.

¹⁵Jimly Asshiddiqie. (2015). *The Indonesian Constitution and Constitutionalism*. Jakarta: Sinar Grafika.

agreement, not as the formation of a new legal regime that stands outside the national legal system.¹⁶

The position of sharia principles in sharia deeds must also be understood within the framework of the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code. This principle gives parties the freedom to determine whether they will make an agreement, with whom the agreement will be made, and what the content and form of the agreement will be. In this context, the parties' choice to base the agreement on sharia principles is a legitimate expression of freedom of contract. The state, through positive law, provides space for parties to adopt certain values in their agreements, as long as they do not conflict with the law, public order and decency.¹⁷

Therefore, the sharia principles contained in a notarial deed obtain legal legitimacy not because of their religious nature, but because of the agreement of the parties, protected by civil law. As long as these principles do not violate positive legal norms, their validity is binding on the parties, like any other contractual provision. In this case, Islamic law serves as the material source of the agreement's contents, while national law remains the formal and legal framework governing the validity and legal consequences of the agreement. In the practice of drafting sharia deeds, the DSN-MUI fatwa serves as a normative and technical reference for parties and notaries, particularly in the context of sharia economic and financial transactions. However, from a positive legal perspective, the DSN-MUI fatwa is not a generally binding statutory regulation. Its validity in sharia deeds stems from the conscious and voluntary agreement of the parties who use the fatwa as a guideline in drafting the substance of the agreement. Therefore, the DSN-MUI fatwa serves as a *contractual reference*, not as a stand-alone state legal norm.¹⁸

This construction confirms that a sharia deed is essentially a civil deed that is fully subject to the national legal system. Sharia principles are adopted internally in the agreement as part of the will of the parties, not as a coercive external norm. Therefore, testing the validity of a sharia deed in positive law is not based solely on its compliance with fiqh doctrine, but rather on fulfilling the valid conditions of the agreement as stipulated in Article 1320 of the Civil Code, as well as the formal provisions for the creation of an authentic deed according to the UUJN.¹⁹ With this approach, there is no dichotomy between Sharia law and positive law in the context of notarial deeds. The two exist in a complementary relationship, with positive law providing the formal legal framework, while Sharia principles fill the

¹⁶Intan Puspita Sari, Notary Legal Culture in the Implementation of the Notary Law in the Special Region of Yogyakarta (Thesis, Master of Notary Program, Faculty of Law, Islamic University of Indonesia, 2018).

¹⁷Hj. Wati Rahmi Ria, Islamic Civil Law (An Introduction) (Bandar Lampung: CV. Anugrah Utama Raharja, 2018).

¹⁸Muhammad Ilyas and Sodikin, "The Sale and Purchase Agreement (PPJB) in Full and Its Ownership Status from an Islamic Law Perspective," Ranah Research Journal (R2J) 8, no. 2 (2026)

¹⁹Ibid

normative substance of the agreement based on the parties' choices. This relationship reflects the inclusive and accommodating character of Indonesian law toward religious values without sacrificing the principle of the rule of law.

Thus, the concept of a sharia deed from a positive legal perspective must be understood as an integral part of the national notarial system. A sharia deed is not a deed that stands outside or above positive law, but rather an authentic deed that is valid and binding as long as it meets the provisions of the law. This understanding provides an important foundation for further analyzing the issue of the validity of sharia deeds made by non-Muslim notaries and attended by non-Muslim witnesses, because the primary focus of assessing validity remains the aspects of authority, procedures, and compliance with positive law, not the religious identities of the parties involved in the deed-making process.²⁰

The validity of a sharia deed made by a non-Muslim notary in the Indonesian legal system must be reviewed objectively based on the normative provisions of the Notary Law, not based on the religious identity of the official who made the deed. The UUJN consistently positions notaries as public officials who exercise state authority in the field of civil law, so that the benchmark for the validity of a notarial deed lies in fulfilling the formal and material aspects as determined by statutory regulations. Article 38 of the UUJN expressly regulates the structure and form of a notarial deed, which includes the head of the deed, the body of the deed, and the closing of the deed, and requires the signatures of the notary, the parties, and witnesses. This provision is imperative and applies to all notarial deeds without exception based on the type of transaction or the values underlying the substance of the agreement.

Within this framework, a notary's religious identity is never used as a determining factor in the validity of a deed. The UUJN does not contain any norm requiring a notary to be of a particular religion to draft a deed with a specific substance. Instead, the UUJN emphasizes the professionalism, independence, and neutrality of notaries in carrying out their duties. This demonstrates that notaries are positioned as executors of state functions who must serve all citizens equally, without discrimination based on religion or belief.²¹ Furthermore, a notary's authority to draft a deed is not limited by the type of agreement or the value system adopted by the parties. As long as the legal act outlined in the deed is permitted by law, the parties have legal capacity, and the content of the agreement does not conflict with statutory regulations, public order, or morality, the notary is authorized to document it in an authentic deed. Thus, agreements based on Sharia principles remain within the scope of national civil law and do not fall outside the authority of non-Muslim notaries.²²

²⁰M. Shohibul Itmam, *Positivization of Islamic Law in Indonesia* (Ponorogo: STAIN Po Press).

²¹Habib Adjie, *Indonesian Notary Law (Thematic Interpretation) against the Occupation Law Notary* (Bandung: Refika Aditama, 2015), p. 45.

²²Subekti, *Principles of Civil Law*. Jakarta: Intermasa, 2014, p. 78.

In the context of sharia deeds, the sharia principles used by the parties must be understood as part of the substance of the agreement which was born from mutual agreement. This principle is not a state legal norm that personally binds the notary, but rather a contractual norm chosen by the parties within the framework of the principle of freedom of contract. Therefore, the notary in this case is only tasked with expressing the wishes of the parties in the form of an authentic deed, ensuring that the agreement meets the legal requirements of the agreement, and does not conflict with positive law.

This approach aligns with the doctrine that notaries are not obligated to assess or test the validity of the religious teachings underlying the substance of an agreement, but only to ensure that the substance does not violate positive law.²³ In sharia deeds, non-Muslim notaries do not act as interpreters of Islamic law, but rather as public officials who record and validate the agreements of the parties. As long as the substance of the agreement does not legally violate the provisions of statutory regulations, there is no legal basis for declaring the deed invalid simply because it was drawn up by a non-Muslim notary. Furthermore, when viewed from the perspective of the principles of legality and legal certainty, limiting a notary's authority based on religion would actually contradict the principles of the rule of law. Indonesian positive law does not recognize restrictions on certain public positions based on religion, unless expressly stipulated by law.²⁴

Thus, there is no normative conflict between the sharia principles adopted by the parties and the authority of a non-Muslim notary in making a sharia deed. Both exist in different but complementary domains. Sharia principles govern the substance of the parties' legal relationship, while the UUJN and national civil law govern the formal aspects, authority, and evidentiary power of the deed. As long as these two domains operate within their respective corridors, the validity of the sharia deed remains legally guaranteed.²⁵ Based on this description, it can be affirmed that a sharia deed made by a non-Muslim notary remains valid and has legal force as an authentic deed as long as it meets the formal and material requirements as stipulated in the UUJN and the Civil Code. The notary's religious identity does not affect the validity of the deed, as the notary acts in a neutral and professional public office. Therefore, from the perspective of Indonesian positive law, the validity of a sharia deed is not determined by who makes it from a religious perspective, but by compliance with applicable laws and procedures²⁶.

²³Syamsul Anwar, *Sharia Contract Law: A Study of Contract Theory in Muamalat Jurisprudence* (Jakarta: PT RajaGrafindo Persada, 2010).

²⁴Ady Setyo Fardiyanto, *Formulation of the Systematics of Deeds in Sharia Contracts with Legal Certainty* (Thesis, Master of Notary Program, Faculty of Law, Islamic University of Indonesia, 2021).

²⁵Burhanuddin Susanto. *Sharia Economic Law in Indonesia*. Yogyakarta: UII Press, 2019, p. 134.

²⁶Mariah Kamelia and Anis Mashdurohatun, "The Role of Notaries in Drafting Credit Agreement Deeds from the Perspective of Positive Law and Islamic Law," *Jurnal Akta* 4, no. 4 (December 2017):

The position of witnesses in a notarial deed is an important element in the notarial system that is directly related to the formal validity of an authentic deed. From the perspective of the Notary Law, witnesses are not merely administrative complements, but rather elements that are normatively required to guarantee that the deed-making process has been carried out in accordance with the specified legal procedures. Therefore, the discussion regarding witnesses in notarial deeds must be placed within the framework of positive law, specifically the UUJN, by emphasizing the function and requirements of witnesses as instruments of formal evidence, not as assessors of the substance of the agreement.²⁷ Article 40 of the UUJN expressly stipulates that every notarial deed must be attended by at least two witnesses, unless the law stipulates otherwise. This provision emphasizes that the presence of witnesses is an absolute requirement (*essentialia*) for the validity of a notarial deed as an authentic deed. Without the presence of qualified witnesses, a notarial deed has the potential to lose its authentic nature and only has the force of a private deed. Thus, witnesses play a strategic role in maintaining the quality and evidentiary power of notarial deeds.

The UUJN further regulates the requirements for witnesses in detail and with limitations. Witnesses must be at least 18 years of age or married, competent to perform legal acts, understand the language used in the deed, and not be related by marriage or blood to any degree to the notary. These requirements demonstrate that the lawmakers emphasize the witness's competence, independence, and ability to understand the deed-making process. This emphasis reflects a positive legal orientation that focuses on ensuring the objectivity and reliability of the formal process, rather than on the witness's personal identity, such as religion or beliefs.²⁸

A key concern in this context is that the UUJN does not require a specific religion for witnesses to notarial deeds. The absence of a religious requirement in Article 40 of the UUJN is not a normative vacuum, but rather reflects a conscious legal policy choice *made* by the legislators. This choice is based on the principle that witnesses in notarial deeds function within the formal legal realm, not within the realm of normative or moral assessment of the substance of the agreement.²⁹ Therefore, the witness's religion has no legal relevance to the function they perform.

²⁷ Maulia Bella Sari and Djoni Sumardi Gozali, "Neutrality Notary Public in Make Deed Agreement Credit (Neutrality of Notaries in Making Credit Agreement Act)," *Journal Collaborative Science* 8, no. 6 (June 2025): 3475–3492.

²⁸ Rizkina Anggraeni and Aad Rusyad Nurdin, "The Role of Notaries in Implementation Contract Financing Murabahah at PT Bank Syariah X Tbk," *Journal Law, Humanities and Politics (JIHHP)* 5, no. 4 (2025)

²⁹ I Ketut Tjukup et al., "Notarial Deed (Authentic Deed) as Evidence in Civil Law Events," *Acta Comitas* 2 (2016): 180–188.

From a positive legal perspective, a notarial deed witness has a very limited but fundamental function: to directly witness that the deed has been drawn up in accordance with legal procedures. The witness ensures that the deed is read by the notary in the presence of the parties, that the parties understand the contents of the deed, and that the signing is done consciously and voluntarily. This function is formal and procedural, so the witness is not burdened with the responsibility of assessing whether the contents of the agreement are fair, correct, or in accordance with a particular value system, including religious values.

Therefore, witnesses are not legally obligated to understand or assess the conformity of the deed's substance with sharia principles. In sharia deeds, sharia principles are part of the contractual agreement of the parties. The responsibility for ensuring the agreement's substance complies with sharia principles rests with the parties themselves, and in certain contexts, with a referenced sharia institution or authority, such as the National Sharia Council of the Indonesian Ulema Council. Witnesses to notarial deeds, whether Muslim or non-Muslim, do not act as guardians of sharia compliance, but rather as guardians of procedural compliance.³⁰

Upon closer examination, limiting witnesses based on religion would actually contradict the fundamental principles of Indonesian positive law, particularly the principles of equality before the law and non-discrimination. The 1945 Constitution of the Republic of Indonesia guarantees that every citizen has equal standing before the law and government. This principle is reflected in various laws and regulations, including the UUJN, which does not differentiate the rights and obligations of citizens based on religion in the context of public office or certain legal functions. Therefore, interpreting that witnesses in sharia deeds must be Muslim is an interpretation that has no constitutional or legal basis.

In the context of notarial practice, the presence of non-Muslim witnesses in sharia deeds is a logical consequence of the inclusive and pluralistic nature of the national legal system. Indonesia does not adhere to an exclusively religious legal system, but rather a national legal system that accommodates religious values within certain limits. These values are internalized through the agreement of the parties and the regulation of the substance of the agreement, not through restrictions on public officials or witnesses based on religion. Therefore, the presence of non-Muslim witnesses in a sharia deed does not reduce, let alone eliminate, the validity of the deed from a positive legal perspective. Furthermore, if the function of witnesses is properly understood, it is clear that witnesses are not involved in forming the will of the parties. Witnesses merely witness the legal event, not create or influence the content of the agreement. Therefore, witnesses cannot be held responsible for the legal consequences arising from the substance

³⁰Ibid

of the deed.³¹In the event of a dispute regarding the conformity of the substance of a sharia deed with sharia principles, the responsible parties are the parties who made the agreement, not the witnesses present during the deed-making process.

This view is also consistent with civil law doctrine, which strictly separates the formal and material aspects of a legal act. The formal aspect relates to the procedures and methods of making an agreement, while the material aspect relates to the content and purpose of the agreement. Witnesses fall entirely within the realm of the formal aspect. Therefore, the relevance of a witness's religion to the validity of a deed is legally baseless, as religion is not included in the formal qualifications stipulated by law. In the context of sharia deeds, misunderstandings often arise by linking the concept of witness in Islamic law with that in positive law. In the fiqh of muamalah (Islamic jurisprudence), witness does have a broader meaning and is often associated with moral and religious aspects. However, the concept of witness in Islamic law cannot be simply applied in the context of notarial deeds, which are subject to the UUJN. Indonesian positive law strictly distinguishes between witnesses in procedural law or fiqh and witnesses in notarial deeds as instruments of formal evidence. Therefore, mixing these two concepts has the potential to lead to misinterpretation and legal uncertainty.

Thus, the position of witnesses in notarial deeds according to the UUJN must be understood normatively and systematically as part of the formal mechanism for creating authentic deeds. The requirements for witnesses stipulated by law are limited and do not include religious aspects. As long as the witness meets the requirements of age, legal competence, language comprehension, and independence from the notary, the witness is legally authorized to attend and sign notarial deeds, including deeds based on sharia principles. The presence of non-Muslim witnesses in sharia deeds does not affect the validity of the deed from the perspective of the UUJN and positive Indonesian law. The witness's religious status has no legal relevance to the formal function they perform. Sharia deeds made in accordance with the formal provisions of the UUJN, including the presence of witnesses authorized by law, remain legally binding as authentic deeds and are binding on the parties. Therefore, from a positive legal perspective, there is no legal basis to declare that a sharia deed is invalid simply because it is attended by non-Muslim witnesses.³²

Recognizing the validity of Sharia-compliant deeds drawn up by non-Muslim notaries and attended by non-Muslim witnesses has significant practical implications for the national legal system, particularly in ensuring legal certainty, access to justice, and state neutrality in the administration of public office. These implications not only impact notarial practice but also touch upon fundamental

³¹Sarwo Edy, "Implementation of Sharia Principles in Ijarah Contracts in Islamic Banks," *Jurnal Tasyri': Jurnal Muamalah dan Ekonomi Syari'ah* 4, no. 2 (July 2022).

³²*Ibid*

aspects of the concept of the rule of law and the protection of citizens' rights to freely and equally engage in legal and economic activities.

From the perspective of legal certainty, this recognition confirms that the validity of a notarial deed is determined by compliance with positive legal provisions, not by the religious identity of the officials or witnesses involved in its preparation. Legal certainty is one of the main pillars of a state based on the rule of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Legal certainty requires clear, predictable, and consistently applied rules. In the context of sharia deeds, legal certainty can only be realized if the benchmark for the validity of the deed is based on generally applicable written norms, namely the UUN and the Civil Code, not on subjective interpretations or religious standards that are not regulated in statutory regulations.

If a sharia deed drawn up by a non-Muslim notary and witnessed by non-Muslim witnesses is still recognized as authentic, the parties are guaranteed that their rights and obligations are legally protected from the moment the deed is signed. The deed can be used as perfect evidence in court, has enforceable power in certain contexts, and provides stability in legal and economic relations. This certainty is crucial, especially in large-value transactions such as sharia financing, business cooperation agreements, or long-term contracts that require maximum legal protection.³³

Conversely, if the validity of a Sharia-compliant deed requires a Muslim notary and the presence of Muslim witnesses, serious legal uncertainty will arise. The parties will be faced with a situation where a deed that formally meets all the provisions of the UUN could potentially be declared invalid simply because of religious identity. This situation will create a double standard in assessing the validity of deeds, ultimately undermining the principle of legal certainty and opening up space for disputes and inconsistent interpretations.

Recognition of the validity of Sharia-compliant deeds without religious discrimination reflects the state's commitment to ensuring that every citizen has equal access to legal services. Notaries, as public officials, are part of the civil law public service system. Therefore, limiting notary authority based on religion will directly impact public access to notarial services, particularly in areas with a demographically limited number of Muslim notaries.³⁴

In practice, not all regions in Indonesia have a sufficient number of Muslim notaries. If Sharia deeds are only permitted to be drawn up by Muslim notaries, then people in certain regions will face structural barriers in accessing the legal

³³Astri Angreani Kiyai Demak, *The Probative Power of Notarial Deeds as Evidence in Civil Court Processes* (Thesis, Master of Notary Program, Faculty of Law, Sultan Agung Islamic University, Semarang, 2024).

³⁴Chandra Novita, "Responsibilities and Legal Protection for Notary Werda," *Lex Renaissance* 2, no. 2 (July 2017): 331–353.

services they need. This not only contradicts the principle of access to justice, but also has the potential to violate citizens' constitutional rights to receive equal treatment before the law and government as guaranteed in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. Recognition of the validity of Sharia deeds drawn up by non-Muslim notaries also prevents the segmentation of legal services based on religion. Such segmentation has the potential to create a fragmented legal system, where certain groups of people can only access legal services from certain officials based on their religious identity. This condition is inconsistent with the principles of a modern rule of law that positions public office as an instrument of universal and inclusive service.

Furthermore, this recognition has important implications for state neutrality. The state, through the UUJN, positions notaries as public officials exercising state authority in the field of private law. In carrying out this function, notaries must be neutral and impartial, both in terms of the interests of the parties and in terms of personal values such as religion or belief. This neutrality is a primary prerequisite for maintaining public trust in the notary institution and the legal system as a whole.

If the state implicitly or explicitly requires that Sharia deeds are valid only if drawn up by a Muslim notary and attended by Muslim witnesses, the state has confused public office with personal beliefs. This shifts the notary's position from a neutral public official to a representative of a particular religious identity. This shift not only contradicts the UUJN (National Law) but also potentially violates the principle of functional secularity of the Indonesian rule of law, where the state respects religious values without making them a requirement for holding public office. Recognizing the validity of Sharia deeds drawn up by non-Muslim notaries provides business actors with certainty that their transactions will not be legally challenged solely due to the identity of the official or witness. This certainty is crucial for encouraging investment, expanding financial inclusion, and maintaining market confidence in the national legal system.³⁵

If the validity of Sharia deeds is subject to religious restrictions, there is a risk of increased legal transaction costs. Parties may be forced to seek out specific notaries outside their jurisdiction, delay transactions, or even avoid using notarial deeds due to concerns about their validity. This situation will be detrimental to business actors, particularly small and medium enterprises, and has the potential to hinder the growth of the Sharia economy itself. From a law enforcement perspective, recognizing the validity of Sharia deeds without religious discrimination also simplifies the work of law enforcement officials and judges. The standards for assessing the validity of deeds are clear and uniform, based on compliance with the provisions of the UUJN and civil law. Judges are not required

³⁵Mulyawan, Mutiara Azura & Gemala Dewi, 2022. *Validity Deed Islamic Banking Established by Non-Muslim Notaries : An Islamic Legal Perspective* , *Asy-Syari'ah : Journal of Sharia and Islamic Economics* , Vol. 23 No. 2, pp . 191–206. DOI:10.15575/as.v23i2.14057

to engage in theological debates or religious assessments of the identity of notaries and witnesses, which fall outside the purview of positive law. Thus, the judicial process becomes more efficient, objective, and oriented towards legal certainty.³⁶

Conversely, if religious identity is used as a determining factor in the validity of a deed, judges will be faced with complex normative issues that could potentially create a conflict between religious law and state law. This situation not only complicates law enforcement but also has the potential to lead to inconsistent decisions and weaken public trust in the judiciary. Another equally important practical implication is the prevention of structural discrimination. Structural discrimination occurs when a legal system or policy indirectly creates unequal treatment for certain groups. Religious requirements for notaries or witnesses in Sharia deeds would create structural discrimination, both against non-Muslim notaries whose authority is limited, and against the community that relies on their services. This type of discrimination runs counter to the spirit of pluralism and diversity that underpins national and state life in Indonesia.

Thus, recognizing the validity of Sharia deeds drawn up by non-Muslim notaries and attended by non-Muslim witnesses is not merely a technical notarial issue, but a fundamental issue concerning the direction and character of the national legal system. This recognition strengthens legal certainty, guarantees access to justice, maintains state neutrality, and prevents discrimination and normative conflicts between religious and state law. Based on all of the above, it can be emphasized that, from a practical perspective, recognizing the validity of Sharia deeds without religious restrictions is the most rational, just, and constitutional choice. This approach aligns with the UUDN (National Law), the 1945 Constitution, and the principles of a state based on the rule of law, which uphold legal certainty, equality before the law, and inclusive public services. Conversely, limiting the validity of Sharia deeds based on the religion of the notary and witnesses will actually give rise to various legal, social, and economic problems that have the potential to harm society and weaken the national legal system as a whole.

3.2. Fulfillment of Sharia Deed Requirements by Notaries and Non-Muslim Witnesses in the Perspective of Islamic Law and Maqāṣid al-Syarī'ah Maqasid al-Shari'ah

Fulfillment of the requirements for the creation of sharia deeds by non-Muslim notaries and non-Muslim witnesses is a legal issue that cannot be separated from the tension between the normative-theological approach of Islamic law and the pluralistic reality of the national legal system. This tension arises because Islamic law is traditionally built on a foundation of theological and moral values originating

³⁶Rahman Suwondo & Nynda Fatmawati Octarina, 2024. *Notary : Making Sharia Contract on Certification Sharia Competence in Islamic Banking* , *Widya Yuridika : Journal of Law* , Vol. 8 No. 2. DOI:10.31328/wy.v8i2.6433

from revelation, while the Indonesian national legal system is structured based on the principles of a modern rule of law that is secular-religious, guaranteeing equality of citizens without discrimination on the basis of religion.³⁷ In this context, the position of notary is positioned as a public official who carries out public service functions in the field of civil law, with authority derived from law and not linked to a particular religious identity. Consequently, in positive law, there are no restrictions or distinctions based on religion in terms of the authority of notaries to create authentic deeds, including deeds containing contracts based on sharia principles that are rapidly developing in national economic and financial practices.³⁸

However, from an Islamic legal perspective, the legitimacy of a contract is not solely determined by formal aspects or administrative legality as recognized in positive law, but primarily by the fulfillment of the pillars and conditions of the contract and its compliance with sharia principles derived from the Qur'an, Sunnah, and the *ijtihad* of scholars. Islamic law views a contract as a moral and legal obligation that binds the parties before Allah SWT, so that the measure of the validity of a contract lies in the substance of the agreement, the clarity of the object, the fairness of the relationship between the parties, and the purpose of the contract that does not conflict with sharia provisions. Therefore, the existence of formal legal instruments such as notarial deeds is positioned as a tool to maintain order and certainty, not as an essential element that determines the validity of the contract itself.³⁹ In *muamalah* fiqh, the validity of a contract is principally dependent on the existence of legally competent parties (*al-'āqidān*), the object of the contract being lawful, valuable, and transferable (*ma'qūd 'alayh*), the existence of *ijab* and *qabul* indicating free and conscious agreement (*ṣīghah*), and the purpose of the contract not being in conflict with sharia. As long as these elements are fulfilled, the contract is considered valid and binding according to sharia, even if it is not set out in written form or an authentic deed. Recording the contract and making an authentic deed are therefore not pillars or conditions for the validity of the contract, but rather are supporting means (*tawthīq*) which aim to strengthen evidence, provide legal certainty, and prevent future disputes.⁴⁰

This understanding aligns with the command to record debts and receivables in Surah al-Baqarah, verse 282, which most Islamic jurists interpret as a strong recommendation (*irsyād*) to maintain order and justice in transactions, rather than as a constitutive provision for the validity of contracts. The verse emphasizes the importance of recording and the presence of witnesses as a mechanism for

³⁷Abu Ishaq al-Shatibi. *Al- Muwafaqat fi Usul al- Shari'ah* . Beirut: Dar al-Kutub al-Ilmiyyah, 2004, p. 21

³⁸Wahbah az-Zuhaili. *Fiqh Muamalah*. Damascus: Dar al-Fikr, 2011, p. 143.

³⁹Akhmad Farroh Hasan, *Fiqh Muamalah from Classical to Contemporary (Theory and Practice)* (Malang: UIN-Maliki Press, 2018).

⁴⁰Nur Asriaty Solichah, 2025. *The Urgency of Sharia Certification for Notaries in Handling Financing Agreement Deeds in Sharia Banking* , *Jurnal Ilmiah Nusantara* , Vol. 2 No. 5, pp. 1848–1865.

protecting rights, particularly in transactions that have the potential to give rise to disputes. However, the verse does not make recording an absolute requirement for the validity of a contract, but rather as a preventive instrument to prevent denial or injustice. Thus, Islamic law has recognized the principle of transaction documentation from the beginning, although it does not position it as an essential element in the structure of the contract.⁴¹

The fulfillment of the requirements for making a sharia deed by a non-Muslim notary with non-Muslim witnesses raises an interesting legal discourse when viewed from the perspective of Islamic law and the principles of *Maqasid al-Shari'ah*. In Islamic law, an agreement (akad) is understood as a legally binding agreement between the parties and gives rise to legal consequences for the object of the agreement. The validity of an agreement is not solely determined by the religious identity of the parties involved, but by the fulfillment of the pillars and conditions of the agreement as stipulated in the fiqh of muamalah. In this context, the role of a notary as a public official is positioned as the party authorized to record and authenticate the agreement, not as the actor of the agreement itself. Therefore, as long as the notary carries out administrative and formal functions in accordance with the provisions of laws and regulations and does not carry out the substance of the agreement that is contrary to sharia principles, the presence of a non-Muslim notary does not essentially negate the validity of the sharia agreement.⁴²

Judging from the theory of *Maqasid al-Shari'ah* as put forward by al-Syātibī, the main aim of Islamic law is to create benefits and prevent harm by maintaining five basic elements, namely *hifz al-dīn* (protection of religion), *hifz al-nafs* (protection of the soul), *hifz al-'aql* (protection of reason), *hifz al-nasl* (protection of the soul). descendants), and *hifz al-māl* (protection of property). Making sharia deeds through a notary, including non-Muslim notaries, essentially aims to provide legal certainty, protect the rights and obligations of the parties, and ensure the security of property transactions. In the Maqasid perspective, this aspect is directly related to *hifz al-māl* and *hifz al-'aql*, because authentic deeds prevent disputes, manipulation and legal ambiguity that can harm the parties. Thus, the use of non-Muslim notary services can be seen as a means (*wasīlah*) to achieve sharia goals, as long as the substance of the contract remains in accordance with the principles of halal, justice and consent.⁴³

In Sharia law, the validity of a contract requires the fulfillment of both material and formal pillars and conditions. Formally, a Sharia contract must meet at least

⁴¹Kholidah et al., *Sharia Economic Law* (Yogyakarta: Semesta Aksara)..

⁴²Jasser Auda. *Maqasid al-Shariah as Philosophy of Islamic Law*. London: The International Institute of Islamic Thought, 2008, p. 67.

⁴³Sulaeman, "The Significance of Maqashid al-Shari'ah in Islamic Economic Law," *Journal of Sharia and Dictum Law* 16, no. 1 (July 2018): 98–117.

13 conditions to be considered valid and binding.⁴⁴ All of these conditions focus on the substance of the contract and the wishes of the parties, not solely on the religion of the registrar or witnesses.⁴⁵

The presence of non-Muslim witnesses in Sharia-compliant deeds also needs to be understood proportionally. In classical Islamic jurisprudence, the requirement for Muslim witnesses primarily applies to religious contracts and certain matters such as marriage. However, in civil and administrative transactions, some contemporary views permit non-Muslim witnesses as long as they fulfill the requirements of justice, competence, and ability to provide truthful testimony. This approach aligns with *the Maqasid al-Shari'ah (the principles of justice and welfare)* which emphasize the substance of justice and public interest over the formalities of identity. Therefore, as long as non-Muslim witnesses fulfill their evidentiary function objectively and do not cause injustice, their presence does not conflict with the objectives of Sharia.⁴⁶

The making of a sharia deed by a non-Muslim notary with non-Muslim witnesses can in principle be declared valid according to Islamic law, as long as all the pillars and conditions of a sharia agreement are fulfilled and the substance of the agreement does not deviate from the principles of *Maqasid al-Shari'ah*.⁴⁷ The maqāsid approach provides normative legitimacy that Islamic law is adaptive to social developments and positive law, as long as its main objectives, namely welfare and justice, are maintained. Therefore, the issue of the validity of a sharia deed should not be placed on the religious identity of the official making it or the witnesses, but rather on the fulfillment of sharia principles in substance and function.⁴⁸

In muamalah, the validity of a contract is not determined by the religious identity of the administrative party assisting in the recording, but rather by the fulfillment of the pillars and conditions of the contract, such as the presence of legally competent parties, a lawful and clear object, an agreement free from coercion, and objectives that do not conflict with sharia principles. Therefore, notaries and witnesses serve as instruments of legal evidence and documentation, not as elements of ritual worship. This approach demonstrates that Islamic law allows for the use of modern administrative tools as long as the substance of the contract remains within the corridors of justice and the public interest. The most important normative basis for transaction documentation is found in the Qur'an, specifically

⁴⁴Muhammad Ardi, "Principles of Agreement (Akad), Sharia Contract Law in the Application of Salam and Istisna," *Jurnal Hukum Diktum* 14, no. 2 (December 2016): 265–279.

⁴⁵Muhammad Ardi, "Principles of Agreement (Akad), Sharia Contract Law in the Application of Salam and Istisna," *Jurnal Hukum Diktum* 14, no. 2 (December 2016): 265–279.

⁴⁶Tomi Satria, Khadijah, and Widya Sari, "Maqashid Syariah as a Paradigm of Contemporary Islamic Law," *Al-Ilmiya: Journal of Islamic Education* 1, no. 3 (November 2025): 942–947.

⁴⁷Izz al-Din ibn Abd al-Salam. *Qawa'id al-Ahkam fi Masalih al-Anam*. Cairo: Maktabah al-Kulliyat al-Azhariyyah, 2007, p. 118.

⁴⁸Wahbah az-Zuhaili. *Al-Fiqh al-Islami wa Just and fair*. Damascus: Dar al-Fikr, 2010, p. 302.

Surah Al-Baqarah verse 282, which is often referred to as the longest verse in the Qur'an and forms the basis for the principles of contract recording.

The Maqasid perspective expands this understanding by placing the objectives of sharia as the main orientation of law. *Maqasid* thought formulated by Abu Ishaq al-Shatibi explains that all sharia provisions aim to protect five fundamental aspects of human life, one of which is protecting property. In the context of making sharia deeds, legal documentation through a notary is a means of maintaining certainty of ownership and preventing conflicts. As long as the substance of the contract is free from usury, excessive gharar and fraud, the use of non-Muslim professional services as administrative recorders does not hinder the achievement of Maqasid's objectives.⁴⁹

Maqasid principles also encompass the benefit (*maslahah*) and the relief of hardship (*raf' al-haraj*). In modern pluralistic societies, administrative restrictions based on religion have the potential to hinder access to legal services. From a maqasid perspective, social convenience and order are goals that must be maintained. Therefore, the use of non-Muslim notaries and witnesses in administrative contexts is seen as a form of adaptation of Islamic law to modern institutional systems without sacrificing sharia values.⁵⁰

Maqasid approach developed by Jasser Auda emphasizes that the objectives of sharia include rights protection, good governance, and social justice. Notarial deeds, as a modern legal instrument, align with these objectives by ensuring transparency and accountability. Oversight of the substance of sharia can still be carried out through authoritative institutions such as the National Sharia Council of the Indonesian Ulema Council, creating a synergy between formal legal certainty and religious adherence.

Overall, Islamic law, through the *Maqasid approach* , positions contract documentation as a means of protecting rights and justice. Quranic verses emphasize the importance of recording and witnessing transactions as a form of social responsibility. Within this framework, the involvement of non-Muslim notaries and non-Muslim witnesses does not diminish the legitimacy of sharia as long as the pillars and conditions of the contract are met and the objectives of *the Maqasid*, particularly the protection of property and justice, are achieved. This approach reflects the inclusive, rational, and adaptive nature of muamalah (transactions) to the development of modern legal institutions.

The notary's role in sharia transactions is more accurately understood as the party that administers and formalizes the parties' agreements into an authentic deed recognized by state law, rather than as the party that determines the validity of

⁴⁹Jasser Auda. *Maqasid al-Shariah as Philosophy of Islamic Law*. London: IIIT, 2008, p . 67.

⁵⁰Abu Ishaq al-Shatibi. *Al- Muwafaqat fi Usul al- Shari'ah* . Beirut: Dar al-Kutub al-Ilmiyyah, 2004, p. 215.

the contract according to Islamic law.⁵¹ The notary acts as a legal facilitator who translates the parties' wishes into a written formulation that is clear, systematic, and has perfect evidentiary force before positive law. As long as the notary carries out his duties professionally, honestly, and does not change the substance of the contract agreed upon by the parties in accordance with sharia principles, then his role, even if the notary is non-Muslim, does not conflict with the provisions of muamalah fiqh. Thus, the focus of assessing the validity of a sharia contract remains on the substance of the agreement and compliance with sharia principles, not on the religious identity of the official who records and formalizes the contract.⁵²

If a notary is positioned as a recorder or writer of a contract (*kātip*), then his/her religious identity is not a determining factor in the validity of the contract from the perspective of muamalah fiqh. In classical Islamic legal construction, the function of *kātip* is not equated with the contracting parties or witnesses who provide substantive testimony, but rather as a party who helps document the parties' agreement in writing. Therefore, the majority of scholars allow non-Muslims to carry out administrative functions in muamalah matters, as long as the person concerned is trustworthy, professional, and does not manipulate or change the substance of the contract that is contrary to sharia principles. The emphasis of fiqh is not on the personal identity of the recorder, but rather on the honesty and accuracy of the recording, because the main purpose of documentation is to safeguard the rights and obligations of the parties fairly.⁵³

This view derives historical legitimacy from the practice of muamalah (transactions) in the early days of Islam, where economic and administrative interactions between Muslims and non-Muslims were commonplace. History records that the Prophet Muhammad (peace be upon him) conducted various transactions with non-Muslim communities, particularly with the Jews in Medina, including sales and pawn transactions. This fact demonstrates that non-Muslim involvement in muamalah matters is not absolutely prohibited, as long as the transactions are conducted fairly and do not contain prohibited elements.⁵⁴ In this context, trust and professionalism are the primary criteria, not religious differences. Therefore, the presence of non-Muslim notaries in the preparation of Sharia deeds is normatively acceptable, as long as their role is limited to formal

⁵¹Abdul Wahid, "Maqasid al-Syariah Approach in the Study of Islamic Law," *Juris: Sharia Scientific Journal* 4, no. 2 (September 2023).

⁵²Gemala Dewi. *Sharia Contract Law in Indonesia*. Jakarta: Kencana, 2017, p. 141.

⁵³Aslati, Agustar A., Silawati, Arisman & Arafah, Siti, 2024. *Utilizing Science and Maqāṣid al-Sharī'ah in Resolving Contemporary Issues of Islamic Family Law*, *Al-Manahij : Journal of Islamic Legal Studies*, Vol. 18 No. 1, p. 17–36. DOI:10.24090/mnh.v18i1.10571

⁵⁴Nur Shaliha, Rosmita, and Zulfiah Sam, "Non-Muslim Testimony in Review Judicial Jurisprudence (Non-Muslim Testimony in Review of Judicial Jurisprudence)," *Al-Qiblah: Journal of Islamic and Arabic Studies* 2, no. 5 (2023): 579–601.

and administrative aspects, and they do not interfere with or interpret the substance of the Sharia contract beyond the agreement of the parties.

However, the debate becomes more complex when the discussion turns to the position of non-Muslim witnesses in sharia-compliant deeds. In classical Islamic jurisprudence, witnesses play a crucial role as evidence in disputes, leading scholars to establish specific requirements for witness qualifications. These requirements are not uniform, but vary depending on the type of case being witnessed. For serious criminal cases such as *hudūd* and *qisās*, the majority of scholars require witnesses to be Muslim, mature, sane, and just, as these cases involve the imposition of severe sharia sanctions and involve both religious and public law dimensions. In this context, non-Muslim testimony is generally not accepted due to precautionary considerations (*iḥtiyāt*) in enforcing Islamic criminal law. Conversely, in cases of transactions related to civil rights and socio-economic relations, scholars demonstrate more open differences of opinion. The Hanafiyah school, for example, is known for its more flexible approach, allowing non-Muslim testimony in certain muamalah transactions, particularly when the transaction involves non-Muslim parties or takes place in a heterogeneous community. This approach is based on the understanding that the primary purpose of testimony in muamalah is to safeguard the rights of the parties and prevent injustice, not to uphold religious rituals or symbolize faith identity. In other words, the function of testimony in muamalah is pragmatic and oriented toward the public interest, allowing it to be adapted to the social context and needs of the community.⁵⁵

Furthermore, this Hanafi view also reflects the general principle of Islamic jurisprudence that muamalah law is fundamentally flexible and open to social change, as long as it does not conflict with established texts. In a modern, pluralistic society like Indonesia, the rigid application of witness requirements without considering the social context has the potential to create legal difficulties and uncertainty. Therefore, the presence of non-Muslim witnesses in sharia deeds can be understood as part of an administrative mechanism to strengthen formal evidence, not as the primary determinant of the validity of the contract according to sharia. With this approach, Islamic law is able to maintain its core values while adapting to social realities and national legal systems that uphold the principles of equality and justice.⁵⁶

In the context of modern notarial deeds, it needs to be emphasized that witnesses in deeds are generally formal-administrative in nature, namely witnesses to the process of making the deed, not substantive witnesses to the occurrence of the contract itself. Deed witnesses do not always know in depth the content and substance of the contract, but only ensure that the deed is made according to legal

⁵⁵Tomi Satria, Khadijah, and Widya Sari, " Maqashid Syariah as Contemporary Islamic Law Paradigm ," Al- Ilmiya : Journal of Islamic Education 1, no. 3 (November 2025): 942–947.

⁵⁶Ibid

procedures. Therefore, the presence of non-Muslim witnesses in a sharia deed does not necessarily affect the validity of the contract according to Islamic law, as long as the substance of the contract meets the pillars and requirements of sharia and is consciously agreed upon by the contracting parties. In this case, the focus of Islamic law remains on the substance of the agreement, not on administrative formalities.

The Maqasid al-Shari'ah approach provides a more comprehensive theoretical basis for understanding this issue. *Maqasid al-Shari'ah* places the goals of Islamic law such as the protection of religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) as the main orientation in establishing and implementing law. In the context of making sharia deeds, the most relevant objectives are property protection and legal certainty. A notarial deed functions as authentic evidence that protects the rights of the parties and prevents disputes from occurring in the future. Therefore, as long as the making of the deed supports the achievement of benefits and does not give rise to mafsadat, then this practice is in line with *Maqasid al-Shari'ah* . Furthermore, the principle of maṣlaḥah mursalah can be used to justify the involvement of non-Muslim notaries and non-Muslim witnesses in the preparation of sharia deeds. In a modern, pluralistic society, limiting the position of a notary based on religion has the potential to create difficulties (*ḥaraj*) and legal uncertainty, which contradicts the fiqh principle that “with difficulty comes ease” (*al-mashaqqah tajlib al-taysīr*).⁵⁷

As long as the national legal system provides oversight mechanisms and professional standards for notaries, trust and justice can be maintained without requiring a specific religious identity. Therefore, conceptually, it can be emphasized that fulfilling the requirements for creating a sharia deed is not determined by the religion of the notary or the witnesses, but rather by the fulfillment of the substantive principles of sharia in the contract outlined in the deed. An Islamic legal approach oriented towards *Maqasid* demands that law be understood functionally and contextually, not merely formally. Within this framework, non-Muslim notaries and non-Muslim witnesses can be viewed as part of the legal mechanism for realizing the welfare, justice, and legal certainty in sharia transactions, as long as their role does not violate the normative boundaries established by sharia.

3.3. Legal Implications of the Validity of Sharia Deeds by Non-Muslim Notaries and Witnesses from the Perspective of Positive Law and Islamic Law

The creation of a sharia deed in Indonesia is a form of legal documentation based on Islamic sharia principles, which is usually related to Islamic financial contracts

⁵⁷Putri Reztu Angreni J., The Position of Male and Female Witnesses in Making Sharia Deed by Notary in Makassar City Area According to Islamic Law Perspective (Thesis, Master of Notary Program , Faculty of Law, Hasanuddin University, 2021).

or transactions such as murabahah, musyarakah, mudharabah, waqf, grants, and wills. A sharia deed has special characteristics because in addition to functioning as written evidence in civil law, it is also considered a formal statement that reflects the transaction's conformity with Islamic principles.⁵⁸ In practice, the creation of a sharia deed is often faced with complex questions regarding who is authorized to make the deed, especially if the notary and witnesses involved are not Muslim. This discussion will examine the legal implications from the perspective of Indonesian positive law and Islamic law, including its relevance to the principle of *Maqasid al-Shari'ah*.

In the context of Indonesian law, a notary is a public official with a strategic role in the creation of authentic deeds. This is clearly regulated in Law Number 2 of 2014 concerning the Office of Notaries (UUJN), where Article 1 number 1 states that a notary is a public official authorized to create authentic deeds. Authentic deeds themselves have high evidentiary power, because they are legally considered true and valid until proven otherwise, as stipulated in Article 1868 of the Civil Code (KUHPerdota). From a positive legal perspective, the authority of a notary is not limited by religion or religious background. The validity of a deed, within the Indonesian legal framework, is determined by procedural formalism, not the religious identity of the notary who made the deed. Therefore, as long as the deed is prepared and recorded in accordance with the formal provisions of the UUJN, the deed is valid and has full legal force.

In addition to the authority of a notary, the presence of witnesses is also an important element in the preparation of certain sharia deeds. The UUJN requires witnesses for certain types of deeds, but does not limit the religion of witnesses who can be present. The legal function of witnesses is to ensure that the parties to the contract or agreement are aware, willing, and agree to all provisions of the contract. Furthermore, witnesses also serve as parties who can provide testimony in the event of a future dispute. Under Indonesian positive law, the religion of witnesses is not a factor affecting the validity of a deed. The requirements are that witnesses must meet general criteria, namely being legally competent, being an adult, and not having a conflict of interest with the parties to the contract, as stipulated in Article 32 of the UUJN and Article 1871 of the Civil Code. Therefore, non-Muslim witnesses can be legally valid as long as they meet these general requirements, and their presence does not cause formal defects in the deed.

Based on the provisions of the UUJN and the Civil Code, the positive legal implications for the creation of sharia deeds made by non-Muslim notaries and witnessed by non-Muslim witnesses can be clearly drawn. First, the deed remains formally valid because the UUJN does not stipulate religious restrictions for notaries or witnesses. Second, the deed has the same evidentiary force as authentic deeds in general and can be used as strong evidence in court, as

⁵⁸Muhammad Romli, "The Concept of Valid Conditions for Contracts in Islamic Law and Valid Conditions for Agreements in Article 1320 of the Civil Code," *Tahkim* 17, no. 2 (December 2021).

stipulated in Article 1878 of the Civil Code. Third, potential disputes may arise, but these are more material or substantial in nature, namely regarding the conformity of the contents of the deed with sharia principles. In such situations, the court may examine whether the substance of the contract has complied with sharia, but this does not automatically invalidate the deed simply because the notary or witness is not Muslim. Thus, Indonesian positive law provides strong formal certainty while allowing flexibility in the practice of creating sharia deeds in a pluralistic society.

In Islamic law, the validity of a contract or agreement is measured not only by formal adherence to procedures, but more importantly by the fulfillment of the pillars and conditions of a valid contract (*sighah*). This principle emphasizes that every muamalat transaction, including those documented in a sharia deed, must meet provisions that guarantee clarity, justice, and blessings from a sharia perspective. The validity of the contract is key, because only a valid contract according to sharia has legal consequences that are recognized and enforceable both in religious courts and in socio-religious contexts. In other words, Islamic law views a contract not merely as a formal document, but as a concrete realization of the will and agreement of the parties in accordance with sharia principles.⁵⁹

From a fiqh perspective, every contract must fulfill certain pillars and requirements. The pillars of a contract encompass three main elements: first, the contracting parties, or *al-'āqidain* , must meet the criteria for legal capacity. They must be of sound mind, mature, and free from coercion. This ensures that each party involved understands and is capable of making informed legal decisions, so that the contract is a valid manifestation of free will. Second, the object of the contract, known as *al-ma'qud 'alayh* , must be clear, lawful, and accountable. An ambiguous or unlawful object will undermine the validity of the contract itself. Third, the *ijab* and *qabul*, or offer and acceptance, must be made clearly, voluntarily, and legally binding. Without these pillars, the contract is considered invalid and has no effect under sharia law.⁶⁰

In addition to the pillars, the requirements for witnesses are also an important aspect of Islamic jurisprudence. In some schools of thought, such as the Shafi'i and Hanbali, witnesses for certain contracts must be just Muslims. This requirement is intended to ensure the validity of testimony, as witnesses are responsible for maintaining justice and validating agreements in Sharia courts in the event of disputes. Just witnesses have a reputation for honesty and trustworthiness, so their testimony can be used as a reference in upholding the rights of the parties.⁶¹

In contemporary practice, particularly in a pluralistic country like Indonesia, questions arise about the role of non-Muslim witnesses. Some scholars permit the presence of non-Muslim witnesses as long as they are trustworthy and have no

⁵⁹Wahbah az -Zuhaili. *Al-Fiqh al-Islami wa Just and fair* . Damascus: Dar al-Fikr, 2010, p. 302.

⁶⁰Akhmad Hulaify, "Principles of Contracts (Akad) in Sharia Law," *At-Tadbir: Scientific Journal of Management* 3, no. 1 (2019): 41–54.

⁶¹*Ibid*

conflict of interest, while conservative scholars recommend that witnesses remain Muslim to avoid potential legal doubts. Furthermore, documentation requirements are also highly considered in Islamic law. Written deeds are recommended, as mentioned in Surah Al-Baqarah, verse 282, to clearly record debts and transactions. In the context of muamalat (muamala), written documents serve as valid evidence according to sharia, minimize the risk of disputes, and protect the rights of the parties involved. Formal documentation such as written deeds is an important tool for bridging sharia compliance with positive legal practices, ensuring that the substance of the contract can be clearly audited and verified without compromising the integrity of the contract itself.

In addition to the pillars and terms of the contract, modern Islamic legal approaches often use the framework of *Maqasid al-Shari'ah*, namely the aim or intent of sharia law, to assess the implications of sharia deeds. *Maqasid al-Shari'ah* emphasizes five main goals: protecting religion (*hifz al-din*), soul (*hifz al-nafs*), reason (*hifz al-'aql*), descendants (*hifz al-nasl*), and property (*hifz al-mal*). In the context of sharia deeds, every element of the transaction must be analyzed based on this objective.⁶²

From an Islamic legal perspective, the validity of a contract remains recognized as long as all the pillars and conditions of the contract are met, and the substance of the transaction does not conflict with sharia principles. The presence of non-Muslim witnesses can indeed give rise to differences of opinion among Islamic scholars. Some scholars believe that validity remains as long as the witnesses are trustworthy and free from conflicts of interest, while conservative scholars may recommend that Muslim witnesses be selected to avoid doubt. Non-Muslim notaries, on the other hand, do not negate the validity of the contract because their role is limited to being formal recorders, not determining the pillars of the contract. Therefore, Islamic law places greater emphasis on the substance and integrity of the contract than on the identity of the parties recording or witnessing the transaction.

In practice, the application of this principle allows Muslims in a pluralistic country like Indonesia to continue to formally create Sharia-compliant deeds through a notary. This also demonstrates the flexibility of Islamic law in facing modern social and legal contexts, while still upholding the objectives of *Maqasid al-Shari'ah*. The creation of deeds by non-Muslim notaries and non-Muslim witnesses does not diminish the legitimacy of Sharia law as long as the basic principles of the contract are maintained, so that Sharia-compliant deeds can still be used as valid instruments both in court and in the socio-religious sphere. Furthermore, this indicates a synchronization between positive law and Islamic law, where formal law provides procedural certainty, while Islamic law ensures that the substance of the contract remains in accordance with the principles of justice, transparency,

⁶²Sarwo Edy, "Implementation of Sharia Principles in Ijarah Contracts in Islamic Banks," Jurnal Tasyri': Jurnal Muamalah dan Ekonomi Syari'ah 4, no. 2 (July 2022)

and blessing. This synchronization is crucial for maintaining legal stability and public trust, particularly in Sharia-compliant financial and social transactions.⁶³

The legal implications for the validity of sharia deeds made by non-Muslim notaries and attended by non-Muslim witnesses need to be analyzed comprehensively by taking into account the two legal systems that coexist in Indonesia, namely positive law and Islamic law. From the perspective of Indonesian positive law, notaries are positioned as public officials whose authority is derived directly from the law, specifically Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public. This law does not require a particular religion for notaries or witnesses to deeds, but rather emphasizes the fulfillment of formal and material requirements for the deed, such as the competence of the parties, the notary's authority, and the procedures for making the deed as regulated in statutory regulations. Thus, from a normative-positive perspective, the validity of a sharia deed remains recognized as long as it is made by a legitimate notary, meets the formal requirements, and reflects the wishes of the parties, without questioning the religious background of the notary or witnesses.

However, when the deed is labeled or qualified as a "sharia deed," more complex legal implications arise because the deed is not only subject to positive law, but also contains the values and principles of Islamic law. In this context, the theory of contracts according to sharia law becomes relevant, especially the principle of *contracts* that emphasize the existence of *ijab* and *qabul*, the willingness of the parties (*an-tarāḍin minkum*), a lawful object, and the purpose of the agreement that does not conflict with sharia. The validity of a contract under Islamic law is essentially determined not by the religious identity of a third party such as a notary or witness, but by the fulfillment of the pillars and conditions of the contract itself. Therefore, as long as the substance of the agreement reflects the principles of justice, honesty, and voluntariness, the contract can still be considered valid from a muamalah perspective.

Furthermore, if analyzed through the theory of *Maqasid al-Shari'ah*, namely the main objectives of Islamic law which include the protection of religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), descendants (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*), then the presence of non-Muslim notaries and non-Muslim witnesses in the preparation of sharia deeds does not necessarily negate the objectives of the sharia. In fact, in the context of property protection and legal certainty (*ḥifẓ al-māl*), the role of the notary as a public official provides a guarantee of the authenticity and strength of proof of the deed, which is in line with maqāṣid sharia in realizing benefits (*maṣlaḥah*) and preventing harm (*mafsadah*). In this way, the emphasis is no longer solely on the religious identity of the deed maker, but rather

⁶³Zeinaful Jannah et al., "Guaranteed Rights in the Perspective of Positive Law and Islamic Law: A Comparative Analysis," *Al-Muamalat: Journal of Islamic Law & Economics* 10, no. 2 (July–December 2025): 70–89.

on the extent to which the deed is able to achieve justice and legal certainty for the parties.

However, legal implications can still arise if, in practice, non-Muslim notaries do not understand the sharia principles underlying the substance of the agreement, resulting in potential errors in formulating contract clauses that conflict with Islamic law. In such circumstances, the issue of validity lies not in the status of the notary or witness, but in the substance of the contract itself. If the substance of the agreement contains elements of *usury*, *gharar*, or *maisir*, then under Islamic law the contract can be deemed invalid, even though under positive law it still meets the formal requirements as an authentic deed. This indicates the possibility of dualism in the assessment of validity, namely valid under positive law but problematic under sharia law.

Thus, the legal implications of the validity of a Sharia-compliant deed drawn up by a non-Muslim notary and attended by non-Muslim witnesses are relative and contextual. From the perspective of Indonesian positive law, the deed remains valid and binding as long as it meets the provisions of statutory regulations. Meanwhile, from the perspective of Islamic law, validity is more determined by the fulfillment of the pillars and conditions of the contract and its compliance with *Maqasid al-Shari'ah*. Therefore, harmonization between positive law and Islamic law is important, by positioning the notary not only as a formal implementer of state authority, but also as a party who understands and is able to translate Sharia principles into an authentic deed to ensure the achievement of justice, legal certainty, and the benefit of the parties.

In analyzing the validity of sharia deeds made by non-Muslim notaries and witnessed by non-Muslim witnesses, it is crucial to note the fundamental differences between Indonesian positive law and Islamic law or fiqh. Indonesian positive law emphasizes formal and procedural certainty, while Islamic law places greater emphasis on substantial compliance with the pillars and conditions of the contract, as well as the objectives of *Maqasid al-Shari'ah*. This can be explained in more detail through several key aspects, such as notaries, witnesses, the validity of the deed, the power of proof, the risk of disputes, and the principles of *Maqasid al-Shari'ah*. From the notary's perspective, Indonesian positive law does not require that a notary be Muslim to make deeds related to sharia transactions. The UUJN emphasizes procedural formalism, including the identity of the parties, the validity of witnesses, signatures, the date of preparation, and compliance with notarial procedures as stipulated in Articles 15–16 of the UUJN. Thus, the notary's religious identity does not affect the formal legal validity of the deed. Meanwhile, from an Islamic legal perspective, the rules regarding who is authorized to record a contract are not explicitly stated. The primary focus is whether the deed drawn up acts solely as a formal recorder and does not alter or add to the mandatory pillars and conditions of the contract. Therefore, a non-Muslim notary can, in

principle, legally record a deed, as long as the substance of the contract remains in accordance with sharia.

Regarding witnesses, Indonesian positive law provides greater flexibility. The UUJN does not restrict the religion of witnesses, as long as they meet the general requirements: legal competence, maturity, and no conflict of interest. This allows the presence of non-Muslim witnesses in Sharia contracts without compromising their formal validity. In contrast, in Islamic jurisprudence (fiqh), there are differences of opinion between the various schools of thought. For example, the Shafi'i and Hanbali jurists require witnesses for certain contracts to be just Muslims. This requirement is intended to ensure the integrity of the testimony, strengthen the contract before a Sharia court, and maintain fairness for the parties involved. However, some contemporary scholars permit non-Muslim witnesses as long as they are trustworthy and do not have interests that could harm the other party. This difference demonstrates that Islamic law places greater emphasis on the substance and credibility of witnesses, rather than merely formal procedures.

The validity of deeds is also a fundamental difference between positive law and Islamic law. According to positive law, a sharia deed drawn up by a non-Muslim notary and witnessed by non-Muslim witnesses remains valid as long as the formalities are met. The evidentiary force of the deed remains valid in court, as stipulated in Article 1878 of the Civil Code, so the deed has strong legal value. On the other hand, Islamic law assesses the validity of a deed in terms of the pillars of the contract and compliance with sharia. A deed is considered valid if all the pillars of the contract are fulfilled, the object of the contract is halal, the *ijab qabul* is carried out voluntarily, and the witnesses are trustworthy. In this context, a non-Muslim notary does not pose a problem because he only acts as a registrar, but the presence of non-Muslim witnesses can raise doubts for some scholars, although many modern scholars still consider it valid if the witnesses are fair and impartial.

The power of proof also has nuanced differences. In positive law, authentic deeds are considered to have high probative power, making them strong evidence in court. Islamic law also encourages written documents, as emphasized in Surah Al-Baqarah, verse 282, but these documents must be supported by valid testimony according to sharia. Thus, positive law emphasizes formal evidence, while Islamic law emphasizes substantial evidence based on the principles of justice and integrity. The risk of disputes in the two legal systems also differs. In positive law, the risk is lower as long as the deed is drawn up according to procedure. Disputes that arise typically relate to the material or content of the contract, for example, claims by a party who feels aggrieved or a typographical error. In Islamic law, the risk arises when witnesses or procedures are questioned, particularly in conservative contexts that require Muslim witnesses and deeds that strictly fulfill the pillars and requirements. This demonstrates that Islamic law places greater

emphasis on substantive compliance and the integrity of the contract, while positive law focuses on formal certainty.

The Maqasid al-Shari'ah principle serves as a balancing tool in assessing sharia deeds. Islamic law emphasizes the protection of five primary objectives: religion, life, intellect, posterity, and property. In the context of sharia deeds, as long as the deed protects the rights of the parties, prevents harm, and upholds sharia objectives, the presence of non-Muslim notaries and witnesses does not constitute a violation of *the Maqasid principle*. Conversely, positive law does not explicitly address *Maqasid*, but a focus on compliance with formal procedures can indirectly support the achievement of these objectives, for example through clear documentation and strong evidence to avoid disputes. In practice, disputes related to sharia deeds can arise in two main categories: material disputes and formal disputes. Material disputes occur when one party believes the contract is invalid under Islamic law, for example because it contains elements considered usury or does not comply with the pillars of the contract. The party can file a lawsuit for annulment in a religious court. This process usually focuses on the substance of the transaction and sharia compliance, rather than the formal identity of the notary or witnesses. In contrast, formal disputes are less likely, as the UUJN and the Civil Code already provide formal certainty for non-Muslim notaries and witnesses. Deeds executed using the correct formal procedures are still considered valid under Indonesian law and have strong evidentiary force in court. To minimize the risk of disputes, several practical recommendations can be implemented. First, ensure the substance of the contract is in accordance with Sharia by consulting with a Sharia legal advisor or the Sharia Council. This can help ensure that the recorded contract does not conflict with Sharia principles and is acceptable under Islamic law. Second, selecting Muslim witnesses can be considered to reduce doubts in the eyes of some scholars, although it is not legally required. Third, it is important to have complete documentation, including the parties' signatures, complete identities, the date of the agreement, and details of the substance of the contract. Clear documentation will strengthen the legal standing of the deed in the event of a dispute. Fourth, including a fatwa or Sharia opinion can strengthen the legitimacy of the deed and reduce the potential for religious disputes, making the deed not only formally valid but also more substantively acceptable under Islamic law.

The phenomenon of non-Muslim notaries and witnesses in Sharia deeds is quite common in Indonesia, a country with a plurality of religions. Factors driving this practice include the limited number of Muslim notaries in some regions, as well as the public's need to continue using the services of formal notaries authorized to register deeds. In this context, positive law provides formal certainty that allows Sharia deeds to remain valid even if drawn up by non-Muslim notaries and witnesses, as long as the formal procedures stipulated in the UUJN and the Civil Code are met. The risk of deed cancellation is more related to procedural flaws or document falsification, rather than the religious identity of the notary or witness.

From an Islamic legal perspective, deeds recorded by non-Muslim notaries remain valid as long as the principles of the contract are not violated. The presence of non-Muslim witnesses may raise differences of opinion among Islamic scholars, but most modern scholars consider them valid if the witnesses are fair and impartial. The principle of *Maqasid al-Shari'ah* serves as a balancing tool, affirming that as long as the objectives of sharia are achieved, the presence of non-Muslim notaries and witnesses does not undermine Islamic principles, including the protection of religious rights, property, life, intellect, and descendants.

In practice, the legal implications of sharia deeds drawn up by non-Muslim notaries and attended by non-Muslim witnesses extend beyond normative validity and have the potential to create real conflict in dispute resolution, particularly within the Religious Courts. This is due to the differing approaches between positive law, which emphasizes formal aspects, and Islamic law, which emphasizes the substance of the contract.

From a sharia economic dispute perspective, Religious Court judges not only assess the formal validity of a deed but also examine its substance's compliance with sharia principles. Therefore, it is possible that a deed that is legally valid because it meets the provisions of the Notary Law may still be challenged from a sharia perspective if the substance of the contract is deemed not to meet the pillars and requirements of the contract. The resolution of sharia economic disputes in Religious Courts is closely related to the application of sharia principles as the basis for legal assessment, so it does not rely solely on formal administrative aspects.⁶⁴

This situation indicates the potential for dual validity, where a deed is valid under state law but becomes problematic from an Islamic legal perspective. This risk is not directly related to the religious identity of the notary or witness, but rather to the possibility of the substance of the agreement being inconsistent with sharia principles. In sharia notarial practice, the deed must comply with the provisions of the Notary Law without neglecting sharia principles. Therefore, notaries are required to have an adequate understanding of the sharia agreements outlined in the deed.⁶⁵

From a critical analysis perspective, the positive legal approach, which emphasizes formality, can be considered inadequate to accommodate the needs of sharia deeds, which are substantially based on religious values. While the emphasis on fulfilling formal requirements as stipulated in the Notary Law provides legal certainty, it has the potential to neglect the dimension of sharia compliance if not

⁶⁴Muhammad Rafki and Neni Vesna Madjid, "Judges' Considerations in the Settlement of Sharia Economic Disputes at the Padang Class IA Religious Court," *Ekasakti Legal Science Journal* 1, no. 4 (October 2024): 355.

⁶⁵Pandam Nurwulan, "Sharia Banking Contracts and Their Implementation in Notarial Deeds According to the Notary Law," *Ius Quia Iustum Law Journal*, Vol. 25, No. 3, September 2018, pp. 623–644.

balanced with an adequate understanding of Islamic contract principles. For example, sharia banking deeds must adhere to the formal provisions of the UUJN, but the contents of the deed reflect the will of the parties, who must adhere to sharia principles to avoid losing legitimacy from an Islamic legal perspective.⁶⁶

Thus, an overly formalistic approach to positive law has the potential to produce deeds that are administratively valid but weak in terms of Sharia compliance. This can lead to a decline in public trust in Sharia deeds, especially for those seeking certainty not only from a legal perspective but also from a religious perspective.

Based on all of these analyses, it is shown that sharia deeds made by non-Muslim notaries and attended by non-Muslim witnesses remain legally valid and in principle do not conflict with Islamic law, as long as all the pillars and conditions of the contract are met. However, this flexibility must be balanced with strengthening the aspect of sharia compliance. This strengthening does not have to be done through religious restrictions on notaries or witnesses, but rather through increasing the notary's competence in understanding sharia principles, using DSN-MUI fatwas as a reference in drafting contracts, and carefulness in formulating agreement clauses.

With this approach, the validity of the deed is not only guaranteed formally in positive law, but also has substantive legitimacy from an Islamic legal perspective, thus minimizing the potential for conflict and disputes in the future.

This analysis confirms that the synchronization between positive law and Islamic law allows Sharia deeds to be formally recorded by non-Muslim notaries without raising serious doubts about their validity in the Sharia context, provided that the substance of the contract remains Sharia-compliant. Thus, Sharia deeds can serve a dual function: providing formal certainty in state courts and substantial validity according to Sharia principles, while simultaneously upholding the objectives of *Maqasid al-Shari'ah*. This demonstrates the integration of Islamic legal practices with a pluralistic and modern national legal system, allowing the Muslim community to continue to access professional notarial services without compromising Sharia principles. This phenomenon also emphasizes the need for a pragmatic approach to the creation of sharia deeds. On the one hand, positive law provides procedural protection and formal certainty, which are essential for resolving disputes in court. On the other hand, Islamic law ensures that the substance of the contract remains valid, fair, and in accordance with sharia objectives. By understanding the differences and synergies between these two legal systems, the practice of creating sharia deeds can be more flexible, yet remain legally secure and valid according to sharia. Furthermore, the integration of these two legal systems requires the parties to be prepared to comply with the formal procedures of positive law while maintaining the integrity of the substance

⁶⁶Ady Setyo Fardiyanto, "Formulation of the Systematics of Deeds in Sharia Contracts with Legal Certainty," *Lex Renaissance*, Vol. 6, No. 2, April 2021, pp. 324–336.

of the contract to ensure it adheres to sharia principles. The use of a non-Muslim notary is a practical option that is valid under positive law, while sharia consultation or assistance from the Sharia Council ensures that the deed does not pose problems from an Islamic legal perspective. Thus, a registered sharia deed can become a strong, secure, and reliable legal instrument that meets the needs of the Muslim community while maintaining compliance with national law.

4. Conclusion

The validity of a Sharia deed drawn up by a non-Muslim notary and witnessed by a non-Muslim witness remains valid from the perspective of Indonesian positive law, as long as it meets the formal and material requirements stipulated in the Notary Law and the Civil Code. The perspective of Islamic law, based on the theory of Maqasid al-Shari'ah, also supports the validity of a deed as long as the substance of the contract complies with Sharia principles, without questioning the religious identity of the administrative official. Thus, under both positive and Islamic law, the deed is valid as long as it meets the specified authority and requirements. It is necessary to clarify in legislation regarding the validity of a Sharia deed that does not depend on the religion of the notary or witness, but rather on the fulfillment of the formal and substantive requirements of the agreement. Notaries and law enforcement officials are advised to prioritize caution and harmonization between positive law and Islamic law in assessing Sharia deeds. In addition, parties and academics need to improve their understanding of the characteristics and legal implications of Sharia deeds in the national legal system.

5. References

Journals:

- Ady Setyo Fardiyanto. (2021). Formulasi terhadap Sistematisasi Akta dalam Akad Syariah yang Berkepastian Hukum. *LEX Renaissance*, 6(2), 324–336.
- Ali, M. (2020). Keabsahan Akta Syariah dalam Perspektif Hukum Positif dan Islam. *Jurnal Hukum Indonesia*, 12(3), 55–67.
- Anggraeni, R. & Nurdin, A. R. (2025). Peran Notaris dalam Pelaksanaan Akad Pembiayaan Murabahah pada PT Bank Syariah X Tbk. *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, 5(4).
- Argantara, Z. R., & Zainurrohman. (2021). Pencatatan Akta Notaris Akad Syariah oleh Notaris Non-Muslim Perspektif Hukum Islam. Masyrif: *Jurnal Ekonomi, Bisnis dan Manajemen Perbankan Syariah*, 2(2), 157–166.
- Fardiyanto, A. S. (2021). Formulasi terhadap Sistematisasi Akta dalam Akad Syariah yang Berkepastian Hukum. *LEX Renaissance*, 6(2), 324–336.
- Ilyas, M., & Sodikin, S. (2026). Akad Perjanjian Perikatan Jual Beli (PPJB) Lunas dan Status Kepemilikannya dalam Perspektif Hukum Islam. *Ranah Research Journal (R2J)*, 8(2).
- Jannah, Z., et al. (2025). Hak-Hak yang Memberi Jaminan dalam Perspektif Hukum Positif dan Hukum Islam: Analisis Perbandingan. *Al-Muamalat: Jurnal Ilmu Hukum & Ekonomi Syariah*, 10(2), 70–89.

- Kamelia, M., & Mashdurohatun, A. (2025). Peran Notaris dalam Pembuatan Akta Perjanjian Kredit dalam Perspektif Hukum Positif dan Hukum Islam. *Jurnal Akta*, 4(4), 67–82.
- Lubis, T. H. (2022). Hukum Perjanjian di Indonesia. *Jurnal Sosek*, 2(3), 177–190.
- Maisyarah, I. (2022). Analisis Yuridis tentang Kedudukan Saksi dalam Pembuatan Akta Notariil Menurut Hukum Islam dan Undang-Undang Jabatan Notaris (UUJN). *Jurnal Hukum Islam*, 8(1), 51–65.
- Novita, C. (2017). Tanggung Jawab dan Perlindungan Hukum terhadap Werda Notaris. *Lex Renaissance*, 2(2), 331–353.
- Rahman, S. & Octarina, N. F. (2024). Notaris: Pembuatan Akad Syariah Pada Sertifikasi Kompetensi Syariah di Perbankan Syariah. *Widya Yuridika: Jurnal Hukum*, 8(2). DOI: 10.31328/wy.v8i2.6433
- Salsabil Sosiawan, A. (2020). Peran Notaris dalam Pemenuhan Prinsip Syariah pada Akad Pembiayaan Murabahah Bil Wakalah di Bank Syariah. *Indonesian Notary*, 2(3), Article 39.
- Solichah, N. A. (2025). Urgensi Sertifikasi Syariah bagi Notaris dalam Menangani Akta Perjanjian Pembiayaan di Perbankan Syariah. *Jurnal Ilmiah Nusantara (JINU)*, 2(5), 1197–1210.
- Taufan, R. A., & Hoesein, Z. A. (2025). Urgensi Pengakuan Notaris Syariah dalam Sistem Hukum Nasional sebagai Upaya Pembaharuan Hukum terhadap Praktik Perbankan Syariah di Indonesia. *Judge: Jurnal Hukum*, 6(3), 55–67.
- Tzukup, I. K. et al. (2016). Akta Notaris (Akta Otentik) sebagai Alat Bukti dalam Peristiwa Hukum Perdata. *Acta Comitatus*, 2, 180–188.

Books:

- Adjie, H. (2018). *Hukum Notaris Indonesia: Tafsir Tematik terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris*. Refika Aditama.
- Asshiddiqie, J. (2015). *Konstitusi dan Konstitusionalisme Indonesia*. Sinar Grafika.
- Auda, J. (2008). *Maqasid al-Shariah as Philosophy of Islamic Law*. The International Institute of Islamic Thought.
- Dewi, G. (2017). *Hukum Perikatan Syariah di Indonesia*. Kencana.
- Hasan, A. F. (2018). *Fiqh Muamalah dari Klasik hingga Kontemporer* (Teori dan Praktek). UIN-Maliki Press.
- Kiyai Demak, A. A. (2024). *Kekuatan Pembuktian Akta Notaris sebagai Alat Bukti dalam Proses Peradilan Perdata*. Tesis, Program Magister Kenotariatan, Fakultas Hukum, Universitas Islam Sultan Agung, Semarang.
- Wahbah, A. (2011). *Fiqh Muamalah*. Damaskus: Dar al-Fikr.
- Yogyakarta, P. C. O. (2018). *Budaya Hukum Notaris dalam Implementasi Undang-Undang Jabatan Notaris di Daerah Istimewa Yogyakarta* (Tesis). Program Magister Kenotariatan, Fakultas Hukum, Universitas Islam Indonesia.