

A Legal Perspective on the Opportunities and Challenges of the Sharia Notary Profession in Indonesia

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Abstract

The demand for Sharia-based legal services in Indonesia is steadily increasing, highlighting the urgency of establishing the position of Sharia Notary as a bridge between Islamic law and positive law. This study employs a normative juridical approach with qualitative methods. Data were collected through literature review, regulatory analysis, and in-depth interviews with notaries, academics, and practitioners of Sharia law. The main findings indicate that despite significant opportunities for developing the Sharia Notary—particularly in supporting the national Sharia economic system—substantial challenges continue to hinder its implementation. These challenges include the absence of specific regulations, limited educational infrastructure and professional certification, and the lack of harmonious integration between Sharia law and the national legal system. This study presents a novelty in the form of a conceptual framework proposal for the legalization and institutionalization of the Sharia Notary position in Indonesia, through three strategic recommendations: establishing specific regulations, integrating Sharia legal curriculum into notarial education, and strengthening the supervisory role of Sharia oversight bodies. The Sharia Notary plays a strategic role in ensuring legal certainty in Sharia transactions and strengthening trust in a fair, inclusive legal system.

Keywords: Sharia Notary; Islamic law; positive law; regulation; Sharia economy.

Abstrak

Permintaan terhadap layanan hukum berbasis syariah di Indonesia semakin meningkat, mendorong urgensi pembentukan jabatan Notaris Syariah sebagai jembatan antara hukum Islam dan hukum positif. Penelitian ini menggunakan pendekatan yuridis normatif dengan metode kualitatif. Data dikumpulkan melalui studi literatur, analisis regulasi, serta wawancara mendalam dengan notaris, akademisi, dan praktisi hukum syariah. Temuan utama penelitian ini menunjukkan bahwa meskipun terdapat peluang besar dalam pengembangan jabatan Notaris Syariah—terutama sebagai pendukung sistem ekonomi syariah nasional—tantangan substansial masih menghambat implementasinya. Tantangan tersebut mencakup kekosongan regulasi khusus, keterbatasan pendidikan dan sertifikasi profesional, serta belum harmonisnya integrasi hukum syariah ke dalam sistem hukum nasional. Penelitian ini menawarkan novelty berupa usulan kerangka konseptual bagi legalisasi dan institusionalisasi jabatan Notaris Syariah di Indonesia melalui tiga rekomendasi strategis: pembentukan regulasi khusus, integrasi kurikulum hukum syariah dalam pendidikan kenotariatan, dan penguatan peran lembaga pengawas syariah. Notaris Syariah dinilai berpotensi menjadi aktor strategis dalam menjamin kepastian hukum transaksi syariah dan memperkuat kepercayaan publik terhadap sistem hukum yang inklusif dan berkeadilan.

Kata kunci: Notaris Syariah; hukum Islam; hukum positif; regulasi; ekonomi syariah

Introduction

The notary profession plays a vital role within Indonesia's legal system, particularly as an official authorized to draft authentic deeds (Chamidah et al., 2019) and other legal documents (Hendra, 2012). With the continuous growth of the Sharia economy in Indonesia, there has been an increasing demand for notaries with specialized expertise in Islamic law (Yusup, 2017). In this context, the concept of a Sharia Notary has become increasingly relevant and merits thorough examination. The Sharia Notary is expected to address the legal needs of individuals and institutions engaged in business transactions and contractual arrangements governed by Sharia principles (Arliman, 2016).

However, the establishment of this professional role presents both opportunities and challenges. From a legal standpoint, there remains a regulatory vacuum, as current laws do not explicitly define the roles and authorities of a Sharia Notary (Azrin, 2023). At the same time, the growing demand for Sharia-compliant deeds is driven by the rapid development of Islamic finance and business sectors in Indonesia (Arliman, 2016). This opportunity underscores the urgency for a well-defined legal framework that clearly outlines the scope, authority, and limitations of Sharia Notaries in accordance with prevailing statutory regulations (Sunardi, 2021).

Another significant challenge lies in education and professional qualifications (Trinkūnienė & Viškelienė, 2023). A Sharia Notary must not only master general civil law but also possess in-depth knowledge of Islamic jurisprudence (Harahap et al., 2020). As such, there is a strong need to develop tailored educational programs and certification schemes capable of producing competent professionals equipped to handle the unique demands of Sharia-based legal services.

The role of notaries in business contracts—including Sharia-based business transactions—is crucial (Dolynska, 2023) given that their primary function is to draft authentic deeds that serve as legal evidence of contractual or juridical events (Tinggi et al., 2016). As public officials, notaries are expected to uphold high standards of personal integrity, act independently, maintain impartiality (*al-'adl*), and carry out their duties responsibly. Furthermore, notaries must possess adequate legal knowledge in accordance with their field of specialization (Victoria, 2022). This is essential, as notaries are not only legal consultants but also serve an educative function, helping clients to better understand their rights and obligations within a legal framework (Adil, 2011).

Given the strategic and complex role of notaries—particularly in light of the expanding Sharia economy (Krasniqi & Kacamakovic, 2023), —the time is ripe to establish the Sharia

Notary as a distinct legal profession (Storti, 2024). This need is grounded in several key reasons. First, most current notaries lack sufficient understanding of both theoretical and practical aspects of Sharia business law, largely due to their general legal education background as holders of Bachelor of Law degrees. Second, significant differences exist between Sharia and conventional business law, both philosophically and in the technical structure of contracts. Third, many Sharia financial institutions—especially Islamic banks—still use contracts that contradict Sharia principles, as notaries involved tend to merely legalize documents without the ability to evaluate or advise on their religious validity. Fourth, with the expanding jurisdiction of the Religious Courts over disputes in Islamic financial institutions, it becomes imperative to have notaries who are capable of drafting legally sound Sharia contracts. This would promote balanced competence across legal professions and ultimately contribute to improving the quality of legal enforcement in Indonesia (Adil, 2011).

This study is essential to address the legal and institutional gaps surrounding the formal establishment of the Sharia Notary profession in Indonesia. By analyzing the opportunities and challenges within the existing legal framework, the research provides a foundation for regulatory reform that aligns Sharia principles with national legal standards. Such efforts are crucial to ensure legal certainty, enhance professional competency, and support the growth of a just and inclusive Sharia-based legal system.

Methods

This study employs a normative juridical approach combined with qualitative research methods to analyze the legal dimensions and practical implications of establishing a Sharia Notary position in Indonesia. Primary data were collected through in-depth interviews with legal practitioners, notaries, and academics to obtain firsthand insights into the opportunities and challenges related to the institutionalization of Sharia Notaries. Secondary data were obtained from literature reviews, including statutory regulations concerning notarial duties and Sharia economic law, as well as relevant academic journals, government reports, and judicial decisions.

The research design emphasizes document analysis to critically assess the adequacy and gaps within the current legal framework, particularly the Notary Law (*Undang-Undang Jabatan Notaris* or UUJN), in accommodating Sharia-based notarial functions. All data were analyzed using qualitative descriptive techniques, with findings interpreted in light of legal theories and principles. This analytical framework aims to identify normative inconsistencies,

evaluate the potential for legal reform, and formulate policy recommendations that support the effective integration of Sharia Notaries into Indonesia's plural legal system..

Analysis of Opportunities in the Sharia Notary Profession

This study reveals that the development of the Sharia Notary position in Indonesia presents a range of both opportunities and challenges, viewed from legal dimensions as well as practical implementation in the field. The core findings of this research can be categorized into two primary aspects: the opportunities that can be legally and socially leveraged, and the obstacles that must be addressed for effective institutionalization. This section focuses on the former, elaborating the potential for growth and relevance of Sharia Notaries in Indonesia's evolving legal and economic landscape.

The rapid growth of the Sharia economic sector—especially in Islamic banking, insurance (takaful), and property—has led to a significant demand for legal services that are compliant with Islamic principles. This expansion is not merely quantitative but also reflects a qualitative shift in public preference toward economic transactions that align with their religious values. The study finds that individuals and institutions engaged in Sharia-based business activities increasingly seek legal guarantees that are both formally valid and religiously acceptable. In this regard, the establishment of a dedicated Sharia Notary role holds great promise in addressing these needs (Sutan Remy Sjahdeini, 2018). The existence of professionals who understand the intricacies of both Sharia law and legal drafting can bridge the gap between normative Islamic principles and their formal implementation in the national legal system, ensuring that contracts and agreements meet both legal and religious standards.

Furthermore, government policies that actively promote the development of the Sharia economy—such as the issuance of the Masterplan Ekonomi Syariah Indonesia and supporting regulations for Islamic banking—create a conducive environment for the formation of a legal framework that accommodates the Sharia Notary profession (Aminah, 2022). These policies are not merely aspirational but are operationalized through legal instruments, financial market reforms, and institutional arrangements that reflect a national commitment to strengthening Islamic economic infrastructure. Within this context, Sharia Notaries could serve as strategic legal actors who reinforce compliance and legitimacy in Sharia-compliant economic activities, thereby contributing to the institutional integrity of Indonesia's dual legal and financial system.

Although the Notary Law (UUJN) has yet to explicitly recognize the existence of a Sharia Notary, this regulatory gap is viewed by many legal scholars and practitioners as an opportunity rather than a hindrance. The absence of a specific framework provides a legal space in which

innovative regulations can be introduced to formalize and define the roles, responsibilities, and authority of Sharia Notaries (Sismanto, 2023). The current legal ambiguity opens a window for revising the UUJN or enacting supplementary regulations that directly address the operational scope and qualifications of Sharia Notaries. Such reform would not only provide legal certainty for practitioners but also institutionalize a professional standard that ensures consistency, accountability, and public trust in Sharia-based legal documentation.

Analysis of Challenges in the Sharia Notary Profession

One of the main challenges in developing the Sharia Notary profession is the absence of specific regulations. Although the Notary Law (UUJN) serves as the legal foundation for the notarial profession, it does not yet provide any dedicated provisions regarding the role of Sharia Notaries in Indonesia. This legal vacuum creates difficulties in providing legitimacy and legal certainty for notaries involved in Sharia-based transactions. To date, notaries participating in Sharia contracts rely solely on the general provisions of the UUJN and fatwas issued by the National Sharia Council (DSN). This gap opens the possibility for interpretive conflicts between conventional civil law rules and Sharia principles (Laibi, 2020).

A major obstacle in the advancement of the Sharia Notary role is the need for specialized education and professional certification. Interviews with academics and notaries reveal that many notaries still lack sufficient knowledge of Sharia economic law. This highlights the urgent need for curriculum development within notarial education institutions, as well as specialized certification programs for notaries wishing to specialize in Sharia matters. Without proper education and training, the quality of Sharia legal services will be difficult to ensure (Usman, 2009).

A critical challenge lies in integrating the Sharia Notary into Indonesia's pluralistic legal system, where conventional civil law and Sharia operate in parallel. Harmonizing Islamic law with Indonesia's positive legal framework often faces obstacles, particularly in matters concerning inheritance, contracts, and property rights. There is a pressing need to align Sharia legal provisions with civil law regulations to ensure that documents issued by Sharia Notaries carry the same legal weight as those prepared by conventional notaries (Adil, 2011).

Another challenge arises in the area of supervision. Currently, Sharia transactions are overseen by the National Sharia Council (Dewan Syariah Nasional / DSN) and the Sharia Supervisory Board (Dewan Pengawas Syariah / DPS). However, there is no clear mechanism for extending this oversight to include the Sharia Notary profession. Without strengthened

supervisory institutions, there is a risk that Sharia notarial practices may deviate from Sharia principles, thereby undermining public trust.

The development of the Sharia Notary profession in Indonesia faces four major challenges: (1) the absence of specific regulations that provide legal legitimacy, (2) a lack of specialized education and certification in Sharia economic law, (3) difficulties in harmonizing Sharia law with positive law within Indonesia's plural legal system, and (4) weak supervisory mechanisms due to the lack of a dedicated oversight system for Sharia Notarial practices. These challenges hinder the optimal role of Sharia Notaries in supporting Sharia-based transactions in a legally valid and trustworthy manner.

Legal Review Analysis on the Position of Sharia Notary in Indonesia

Based on the findings, several key aspects can be further discussed regarding the opportunities and challenges of the Sharia Notary position in Indonesia. Regulatory Potential for the Sharia Notary Role is especially important in realizing the integration between Sharia law and national law. Currently, the Notary Law (UUJN) does not specifically regulate the existence of Sharia notaries, thus necessitating more specific regulations to provide legitimacy and a clear legal framework for their role (Yaqin, 2019). This regulatory potential includes the enactment of provisions that define special requirements for Sharia notaries, such as education in Islamic law and certification from relevant institutions. Additionally, clear regulations regarding the authority and limitations of Sharia notaries are needed to accommodate Sharia-based transactions, such as contracts in Islamic banking and finance. In doing so, operational standards aligned with Sharia principles—such as the prohibition of *riba* (usury), *gharar* (uncertainty), and *maysir* (gambling)—can be enforced, including the proper procedures for drafting and legalizing documents in accordance with Islamic law.

Strong regulations must also ensure the integration of Sharia notaries into the national legal system without creating a confusing legal dualism (Derevyanko, 2021). This can be achieved through amendments to the Notary Law (UUJN) to formally include Sharia notaries within the national notarial structure, alongside collaboration with fatwa-issuing bodies such as the Indonesian Ulema Council (*Majelis Ulama Indonesia* / MUI) to guarantee Sharia compliance. Furthermore, strict oversight and accountability mechanisms should be established through the formation of a dedicated supervisory body to audit the practices of Sharia notaries, ensuring consistent adherence to Islamic legal principles. The implementation of clear sanctions for violations, along with incentives for exemplary performance, will enhance the overall quality and integrity of Sharia notary services (Sasri, 2024).

The existence of Sharia notaries also holds significant potential in supporting the development of the Islamic financial sector in Indonesia (Nu'man, 2021), including in the certification of Sharia-compliant assets and the legalization of contracts related to Islamic financial products. In this regard, regulations that support the role of Sharia notaries in the sector are essential to ensure that such products align with Islamic legal standards. With clear and comprehensive regulations, Sharia notaries not only provide legal certainty for the public but also contribute to the growth of the Sharia economic industry in Indonesia. Special education and training programs for prospective Sharia notaries can also be established to ensure they possess a deep understanding of Islamic law and its application within the national legal framework. These efforts will support the sustainability of Sharia law within the notarial context in Indonesia and offer greater legal assurance for individuals who wish to conduct transactions in accordance with Sharia principles (Omiyani et al., 2023).

Integrating Sharia education into notarial training is a crucial step toward producing notaries capable of comprehensively serving the legal needs of society, particularly in transactions requiring adherence to Sharia principles (Hidayat, 2019). Currently, notarial education in Indonesia primarily focuses on positive law and has yet to place significant emphasis on Islamic legal aspects. Therefore, incorporating Sharia law into the notarial curriculum is essential to ensure that future notaries possess a deep understanding of fundamental Islamic legal concepts such as *akad* (contract), *riba* (usury), *gharar* (uncertainty), and *maysir* (gambling), all of which are highly relevant in the context of Islamic finance and business agreements. With integrated Sharia education, aspiring notaries will be equipped to assess and draft legal documents in accordance with Sharia principles without violating the rules of positive law (Filling & Posts, 2022; Llopis Benlloch, 2023).

This integration can be realized by incorporating specialized courses on Sharia law into notarial study programs, including the study of conceptual differences between Islamic law and positive law, as well as how these two legal systems can be harmonized. In addition, targeted training in the form of seminars, workshops, and field practices focusing on the application of Sharia law in notarial work is essential to strengthen the competence of future notaries. Sharia education should not only provide theoretical understanding but also practical skills in applying Sharia principles to various types of transactions, including those in the financial, property, and business contract sectors. With such training, Sharia-oriented notaries will be well-prepared to meet the growing demand for legal services aligned with Islamic values, while also supporting the development of the Sharia economy in Indonesia. Beyond improving professional notary standards, the integration of Sharia education will also enhance public trust in a fair legal system

rooted in religious values, ultimately contributing positively to the advancement of Sharia economic law in the country (Adil, 2011).

Strengthening the role of the Sharia Supervisory Board (DPS) is a strategic step to ensure compliance and integrity in the execution of Sharia-based transactions and business activities (Zulbaidah et al., 2023). As the institution responsible for overseeing the application of Sharia principles across various sectors—particularly within Islamic financial institutions—the DPS plays a vital role in ensuring that every product, service, and policy adopted aligns with Islamic law. This role can be reinforced by granting the DPS broader and more specific authority in areas such as auditing, supervision, and the provision of Sharia advice and recommendations to the institutions it oversees. This includes the DPS's capacity not only to approve Sharia products prior to their launch but also to continuously monitor their implementation, thereby maintaining Sharia compliance throughout operational processes (Haliti-Mustafa et al., 2024).

In addition, enhancing the competence of DPS members through more rigorous training and certification is also an essential part of strengthening their role (Lubis et al., 2022). The DPS must be composed of individuals who possess not only deep knowledge of Islamic law but also a strong understanding of modern business and economic dynamics, enabling them to assess and guide the development of innovative yet Sharia-compliant financial products. The role of the DPS can also be reinforced by improving coordination with national regulators, such as the Financial Services Authority (OJK), to ensure that the regulations and guidelines issued by the DPS are effectively implemented by Islamic financial institutions (Zulfitri et al., 2021). This creates synergy between Sharia supervisory authorities and state regulators, leading to stronger and more comprehensive oversight of Sharia compliance.

The strengthening of the DPS must also be supported by a more transparent and accountable oversight system, in which Islamic financial institutions are required to regularly report to the DPS and the public regarding their Sharia compliance (Kusumah, 2020). A clear sanction mechanism for violations of Sharia principles identified by the DPS must be enforced to maintain discipline among players in the Sharia industry. In this way, the DPS does not merely serve as a passive overseer but becomes a driving force in upholding ethical standards and integrity within the Islamic financial sector. Strengthening the role of the DPS will ultimately enhance public trust in Sharia-compliant financial products and services, thereby supporting the sustainable development of the Sharia economy in Indonesia.

The role of a Sharia Notary within a parallel legal system is to bridge the application of Islamic legal principles within a national legal framework that is predominantly based on positive law (Goodrich et al., 2006). In Indonesia, the legal system often requires a flexible

approach to accommodate the diverse needs of society, particularly for those who wish to engage in transactions or agreements aligned with Sharia law. In this context, the Sharia Notary serves as an intermediary, integrating Sharia provisions into the drafting process of legal documents while maintaining their validity under national law. This role is crucial in providing legal certainty for parties who seek to have their transactions guided by Sharia values, such as in sales contracts, financing agreements, and business dealings that avoid elements of usury (*riba*) and uncertainty (*gharar*) (Arief, 2011).

In a parallel legal system, a Sharia Notary ensures that the documents drafted not only meet the formal legal requirements of national law but also comply with the conditions stipulated in Islamic law (Saputra, 2023). This provides certainty and comfort for Muslims who wish to conduct their economic activities in accordance with their religious beliefs (Batubara & Batubara, 2022). A Sharia Notary holds the responsibility of interpreting and applying Sharia principles across various modern transactional contexts, which are often complex and require a deep understanding of both Islamic and positive legal systems (Natasari et al., 2020). In addition, a Sharia Notary also plays a role in providing legal education to the public regarding Sharia-based transactions and explaining the legal implications of each agreement made under those principles.

The presence of Sharia Notaries enhances the effectiveness of Indonesia's parallel legal system by harmonizing Sharia and positive law, providing legally valid solutions aligned with religious values, strengthening public trust, and supporting the growth of the Sharia-based economy (Ardiyan, 2019; Mulyanto, 2024). This role is particularly crucial in a pluralistic society that requires legal certainty without compromising religious identity. With expertise in both legal systems, Sharia Notaries are capable of drafting legal documents that not only fulfill formal state requirements but also comply with the provisions of Islamic commercial jurisprudence (*fiqh muamalah*). This contributes to the development of a legal ecosystem that is responsive, adaptive, and just for entrepreneurs and communities who choose the Sharia economic path as a way of life.

Conclusion

This study concludes that the establishment of a Sharia Notary position holds significant strategic potential in meeting the growing demand for legal services grounded in Islamic principles, particularly within Indonesia's expanding Sharia economic sector. The role of a Sharia Notary is essential in bridging the gap between Islamic law and the national legal system, offering legal certainty and aligning contractual practices with religious values. Despite this

promise, several challenges hinder its institutionalization, including the absence of specific regulations, limited educational and certification pathways, and a lack of structural integration between Sharia and positive law. Moreover, the insufficient supervisory mechanisms for Sharia-based notarial practices highlight the need for regulatory and institutional reforms. This research proposes three strategic measures to support the effective implementation of the Sharia Notary: the formulation of dedicated regulations, the integration of Sharia law into notarial education, and the strengthening of Sharia supervisory bodies. These steps are essential to ensure not only legal clarity but also public trust in a fair and inclusive legal system that respects religious values within the framework of national law.

This study is primarily conceptual and normative in nature, relying on literature analysis and expert interviews without empirical case studies. While it offers a strong theoretical foundation and practical recommendations, future research involving fieldwork, stakeholder mapping, or policy simulations would be valuable to further validate and operationalize the proposed framework.

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