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## Article Title

### Legal Consequences of a Morally Defective (*Fasiq*) Instrumental Witness on the Execution of Sharia Financing Collateral: A Comparative Approach

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## ABSTRACT

*The disparity in the position of the instrumental witness in the creation of Sharia financing deeds originates from the collision between the formal rationality of positive law and the ontological values of Islamic law. Notarial practice tends to be oriented towards fulfilling administrative requirements without burdening the witness with material liability, whereas Islamic law absolutely demands the 'adalah (highest moral integrity) qualification. This research aims to examine the dogmatic comparison of the instrumental witness position in both legal regimes and analyze its implications on the validity of the contract and the executory force of the Mortgage Right collateral. This research is a normative juridical study that utilizes the statutory, conceptual, and comparative approaches. The research results indicate that the use of a witness with defective moral integrity (fasid) degrades the evidentiary power of the deed into a private deed under positive law and renders the contract status fasid (attributively defective making it voidable) under Islamic law. The dogmatic consequences of this double defect in the principal agreement are fatal for the accessory instrument. The Mortgage Right guarantee certificate automatically loses its theological legitimacy foundation, thus becoming paralyzed in executing parate executie (direct execution clause) at the Religious Court. In conclusion, disregard for witness integrity undermines the entire legal protection framework for the creditor. Therefore, integrating the fiqh muamalah (Islamic commercial jurisprudence) into notarial technical guidelines is necessary to prevent administrative malpractice and safeguard the validity of Sharia economic transactions.*

**Keywords:** *Fasid Contract; Instrumental Witness; Mortgage Right; Notary; Sharia Banking.*

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## INTRODUCTION

The state grants Notaries, as public officials, the authority to ensure legal certainty by creating authentic deeds. This authority is explicitly mandated through Article 15 section (1) of Law Number 2 of 2014. One of the formal requirements in issuing these instruments is the presence of an instrumental witness (attesting witness). The involvement of this third party is an absolute prerequisite regulated in Article 40 section (1) and section (2) of the Law to validate the reading and signing process of the document. The presence of an instrumental witness is highly essential, as their testimony is legally recognized as valid evidence in court in civil disputes (Istiqomah et al., 2024).

The fulfillment of the instrumental witness qualification within the positive law framework is purely administrative. Notarial regulations only demand a minimum age limit of eighteen years and legal capacity without addressing the material liability aspect regarding the substance of the agreement. This condition creates a dogmatic loophole, as Notary employees who act as witnesses are exempt from the burden of verifying the truth of the parties' agreement (Nugraha & Bagiastra, 2022). The absence of this material burden contradicts the demands of professional ethics, which require the application of the precautionary principle and trustworthy behavior in every creation of legal products by a Notary. Violations of these ethical and precautionary principles may lead to the imposition of layered administrative and professional code-of-ethics sanctions (Prakoso & Sukirno, 2023).

This administrative qualification problem becomes increasingly complex when Notaries formulate Sharia banking financing deeds. The creation of Sharia financing contracts demands absolute compliance with ontological values sourced directly from the holy text of the Quran (Munir et al., 2025). This theological demand requires the application of the moral integrity and justice (*'adl*) parameter for every individual acting as a witness in Islamic civil relations (*muamalah*), rather than merely relying on fulfilling the age of majority requirement (Rasyid, 2020). The collision of legal systems becomes apparent because the positive regime prioritizes the equality principle in determining testimonial capacity, while Sharia dogma rigidly regulates the proportions of qualifications to guarantee the validity of financial transaction recording (Effendi et al., 2025).

The disparity between the formal certainty of positive law and the substantive justice of Islamic law directly impacts the vulnerability of financing collateral instruments. Notaries have jurisdictional limits in formulating the principal contract, while the binding of executorial material guarantees is subject to the authority of the Land Deed Official (Ardhita & Yunanto, 2023). If the principal contract formulated by the Notary has procedural defects or violates Sharia principles due to the incompatibility of the witness's moral qualification, the validity of its accessory guarantee deed is also threatened (Suwandi et al., 2021). This absolute connection between the principal contract and the collateral places the position of Sharia banking deeds under the threat of annulment lawsuits.

The dominance of a purely administrative orientation in notarial practice is shown to frequently trap Notaries in Sharia banking disputes. Setyowati (2016) affirms that Notaries' lack of a comprehensive understanding of the specific character of Sharia financing contracts renders the deed's legitimacy vulnerable when examined by the panel of judges. The consequences of annulling the contract are fatal losses for the financial institution as the creditor. A Sharia contract proven to have lost the ethical foundation of Islamic law will automatically lose its legal rationality, thus the direct execution clause (*parate executie*) on the Mortgage Right certificate can be voided (Rosadi, 2025).

Previous research has partially dissected this problem through separate studies. Studies on the minimal material liability of witnesses and their formal position have been thoroughly analyzed by Nugraha and Bagiastra (2022) and Istiqomah et al. (2024). On the other hand, discourses on the jurisdictional limits of Notaries and professional ethics were the main focus of the research by Ardhita and Yunanto (2023) and Prakoso and Sukirno (2023). Meanwhile, Setyowati (2016) and Effendi et al. (2025) focus more on Sharia banking disputes and the validity of the equality principle in the deed. Based on this literature mapping, there is no integrated dogmatic study analyzing the intersection between the moral integrity defect of an instrumental witness and the

weakening of the executive power of the Mortgage Right. This academic gap demands comparative intervention to prevent administrative malpractice that potentially destroys the evidentiary power of authentic deeds.

This research focuses on two interconnected main analytical objectives. The initial objective aims to examine and juxtapose the position of the instrumental witness in deed creation through the formal certainty parameter of positive law and the substantive justice parameter of Islamic law. This comparative construction then leads to the final objective, namely, analyzing the dogmatic implications of the witness qualification disparity on the material validity and execution power of the Mortgage Right collateral. The results of this research are expected to make theoretical contributions to the scientific development of Islamic contract law, while simultaneously providing practical benefits for Notaries and judicial institutions by offering guidelines for mitigating dispute risks related to the validity of Sharia financing contracts.

## **METHOD**

This research is a normative juridical study that examines norms, principles, and the synchronization between legal systems (Qamar & Rezah, 2020). The selection of this research type is based on the necessity to dissect the regulatory disparity between the formality of positive law and the substance of Islamic law regarding testimonial instruments. Dogmatic tracing is conducted through the cumulative application of three approaches. The first approach is the statute approach, used to dissect the vertical and horizontal coherence among notarial regulations, guarantee law instruments, civil procedural law, and the compilation of Sharia banking laws. The second approach is the conceptual approach, applied to analyze the doctrines of contract validity in Islamic jurisprudence (*fiqh*) literature. The third approach uses a comparative approach to diametrically juxtapose witness qualifications based on state and religious standards.

The object of study in this research is supported by two main classifications of legal material sources. Primary legal materials consist of absolutely binding laws and regulations, including the Civil Code, HIR/RBg, Law Number 4 of 1996, Law Number 30 of 2004<sup>1</sup>, Law Number 21 of 2008<sup>2</sup>, and Supreme Court Regulation Number 2 of 2008. Furthermore, primary legal materials also include absolute arguments in the form of the holy texts of the Quran and the Sunnah (Hadith), which regulate fundamental principles regarding testimony and the recording of *muamalah*. Meanwhile, secondary legal materials serve as supporting instruments, comprising previous scientific journal literature, contract law textbooks, and classical scholarly documents (*turats*) that

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<sup>1</sup>Law Number 30 of 2004, as amended by Law Number 2 of 2014.

<sup>2</sup>Law Number 21 of 2008, as amended several times, lastly by Article 15 of Law Number 4 of 2023.

contain Islamic constitutional doctrines and the principles of Islamic jurisprudence (*ushul fiqh*).

The legal materials collection technique is carried out through library research. This process does not merely involve document inventory but proceeds with precise identification and categorization (Sampara & Husen, 2016). The collected legal materials are then classified into an analytical matrix based on two testing regimes, namely the positive law regime and the Islamic law regime. This matrix categorization serves as a mapping tool to assess the validity of a Sharia financing contract while tracing the chain of its legal consequences in court during the execution of collateral.

All categorized legal materials are subsequently processed using normative qualitative analysis techniques (Irwansyah, 2020). This processing relies on deductive syllogism reasoning. The researcher draws the major premise from the principles of contract validity and testimonial requirements, then tests it against the minor premise in the form of the specific qualifications of an instrumental witness, to ultimately formulate a conclusion regarding the position of the guarantee instrument. This analytical tool is reinforced by two main interpretation methods, namely systematic interpretation to read notarial norms within the comprehensive framework of civil procedural law, and teleological interpretation to discover the essential meaning of testimony prescription in Islamic law.

The operational application of this method is designed to gradually dissect the problem's anatomy in the results and discussion section. The initial stage of analysis is implemented to conduct a critical comparison between the formal certainty of positive law and the moral integrity and justice (*'adl*) parameter in Sharia. The subsequent stage utilizes conceptual instruments to draw a dogmatic demarcation on the status of a contract with defective testimonial requirements, to strictly differentiate between the status of being irregular under Sharia (*fasid*) and null and void by law. The culmination of this normative analysis stage is to test the logical implications of the contract's defect for the legitimacy of *parate executie* on the Mortgage Right certificate if disputed in the Religious Court.

## **RESULTS AND DISCUSSION**

### **A. Comparison of the Instrumental Witness Position: Positive Law Formality against Sharia Integrity**

The position of the instrumental witness is a fundamental pillar in the validity construction of an authentic deed. Indonesian positive law, as provided in Law Number 30 of 2004, sets strict procedural guidelines for this instrument. Based on the normative rule in Article 16 section (1) letter m of Law Number 2 of

2014, a Notary is obligated to read the deed manuscript directly before the parties, witnessed by at least two witnesses. The qualification of this third party is further regulated in Article 40 of the Law, which limits its validity requirements only to the fulfillment of the minimum age limit of eighteen years, civil legal capacity to perform legal acts, comprehension of the deed's language, and the absence of kinship prohibitions. The physical presence of witnesses during the formalization of the deed must be strictly observed, as their capacity is recognized as an objective evidentiary instrument in judicial institutions (Istiqomah et al., 2024). The execution of this formal instrument simultaneously requires the Notary to apply the precautionary principle to ensure that the issued legal product does not exceed their jurisdictional limits (Ardhita & Yunanto, 2023).

The evidentiary orientation in the civil regime highly prioritizes quantitative certainty over substantial quality. This principle is reflected through the provision of Article 1905 of the Civil Code, which establishes the postulate *unus testis nullus testis* (one witness is no witness). This principal norm holds that a single witness before a panel of judges has no binding legal effect; thus, the minimum of two witnesses becomes an absolute, non-negotiable standard. This administrative standardization, although providing procedural certainty, frequently reduces the essence of testimony into a mere complementary formality. The disregard for this material-truth dimension can lead to potential violations of the professional code of ethics, as Notaries frequently exceed the boundaries of propriety by manipulating administrative procedures to expedite deed processing time (Prakoso & Sukirno, 2023).

The most striking weakness of positive law administrative standardization is the absence of a material liability burden on the instrumental witness. In notarial practice in Indonesia, it is common for a Notary to use their own staff or employees as instrumental witnesses. Contemporary literature indicates that Notary employees are not liable for losses arising from the defective substance of the contract (Nugraha & Bagiastra, 2022). Positive law standards explicitly only burden the instrumental witness with the formal responsibility to verify the presence of the parties and the signing process, yet turn a blind eye to their obligation to understand, let alone validate, the rationality of the deed's contents (Tauratiya & Danni, 2024).

This dogmatic immunity against the deed's material contents is exacerbated by regulatory loopholes regarding the obligation to protect confidentiality. Employees acting as instrumental witnesses are not bound by a moral obligation equivalent to the Notary's oath of office in maintaining the confidentiality of the parties' documents. The moral liability weakness of this internal witness places the authentic deed architecture in a vulnerable position, especially when the deed

becomes the subject of a court annulment dispute (Oktavianti, 2021). The absence of this morality and integrity assessment instrument becomes highly problematic if the procedure is used to facilitate the creation of financing deeds in the Sharia banking sector, which possesses a theological foundation far more complex than a mere regular civil contract.

The Sharia banking system demands a contract construction that is not only valid in the eyes of the state but also valid in the eyes of religious dogma. The creation of Sharia financing contracts is absolutely bound to ontological values sourced directly from the holy text of the Quran (Munir et al., 2025). This holy text establishes parameters that contrast sharply with Western civil law, where Sharia rigidly distinguishes gender qualifications and witness numbers to guarantee layered protection for the validity of high-risk financial transaction recording (Effendi et al., 2025). The provision regarding testimony in Islamic civil relations is regulated specifically and precisely through QS Al-Baqarah verse 282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ ... وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَيْنِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ ... ﴿٢٨٢﴾

*"O you who have believed, when you contract a debt for a specified term, write it down. ... And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her. ... ."*

Beyond the issues of quantity and gender representation, Islamic law places the greatest emphasis on the witness's spiritual qualifications. Al-Mawardi (2020) formulated a classical constitutional doctrine that places public officials and their recording apparatuses into the status of *katib bil 'adl* (just recorder). This doctrine stipulates that every instrument legitimizing public property rights must be subject to two inseparable cumulative requirements, namely *kifayah* (technical proficiency or competence) and *'adalah* (highest moral integrity). This requirement demands a witness to possess a clean track record of obedience, avoid deceitful behavior, and maintain self-honor. In contrast to positive law, which automatically validates every adult, Islamic law will annul a person's authority and testimony status if they are proven *fasiq* (immoral transgressor or moral traitor).

The diametrical collision between these two legal regimes leads to an extremely wide conceptual gap. Positive law through Law Number 30 of 2004 operates purely on the layer of formal rationality, where the state is blind to the

morality of witnesses as long as they possess a demographic identity and medical sanity. Conversely, the *'adl* (justice) parameter in Sharia positions testimony as a spiritual devotion whose implications are measured through the parameter of moral worthiness before God (Rasyid, 2020). If a Notary forces the use of an instrumental witness who possesses a moral defect, is indicated to have committed an evil conspiracy, or allows an element of deception to infiltrate the Sharia banking contract, then the deed automatically fulfills the state's legal validity requirements but suffers a fatal defect under Sharia.

This disparity between administrative compliance and violations of Sharia integrity creates a crucial legal anomaly. A Sharia financing contract with a defective witness's moral qualification cannot maintain its legitimacy merely by taking refuge behind the perfection of the Notary's stamp and signature. The collapse of the *'adalah* foundation within the evidentiary instrument will inevitably pull the position of the deed out of the absolute validity status. This condition forces law enforcers to no longer dwell on the formal legality aspect, but rather to enter the realm of theoretical demarcation to determine whether the attributive defect damages the contract so that it becomes voidable, or precisely destroys the contract, making it null and void by law from the beginning of its formation.

### **B. Dogmatic Problematics of Contract Validity: Demarcation of Irregularity (*Fasid*) and Nullity due to Witness Defect**

The validity of an agreement is determined solely by the fulfillment of its material and formal requirements. In the civil law regime, Article 1320 of the Civil Code stipulates four main pillars, namely consent, capacity, a certain subject matter, and a lawful cause. When this principal rule is applied in the realm of Sharia banking, these parameters intersect directly with Article 22 of Supreme Court Regulation Number 2 of 2008. This provision necessitates the existence of contract pillars comprising parties, object, primary objective, and consent. The intersection of these two norms affirms that every Sharia financing contract must not only comply with state legal standards but is also subject to the sanctity of Sharia formation procedures.

Violations of the deed formation procedure, particularly regarding the qualification of the witness who authenticates the contract pillars, cannot be viewed as mere routine administrative defects. Wijaya et al. (2023) demonstrate that the issuance of an authentic deed with procedural defects often gives rise to tort lawsuits seeking joint and several liability for damages. Furthermore, the intensity of deed annulment disputes arising from the manipulation of the presence or absence of the instrumental witness qualification continues to dominate civil courtrooms (Chaniago et al., 2025). This empirical reality proves that the witness

is not merely a decorative ornament, but an essential instrument that determines the validity of a high-value agreement.

In Islamic contract law, the parameters for assessing the validity of testimony are primarily articulated in classical juristic works (*fiqh*). Qudamah (2013) formulates that testimony in *muamalah* requires the highest moral integrity (*'adalah*) and the absence of suspicion or conflict of interest (*intifa' al-tuhmah*). This doctrine absolutely rejects testimony from a person indicated to be *fasiq* (frequently committing moral transgressions) or an individual with a conflict of interest seeking personal benefit. If a Notary employee acting as a witness is proven to have concealed a defect of will or allowed an element of deception to infiltrate the Sharia financing contract, then their testimonial capacity collapses instantaneously theologically. The firmness of the doctrine rejecting a *fasiq* witness possesses extremely strong dogmatic roots and is non-negotiable. This absolute foundation rests on the Hadith of Abu Dawud (n.d.), where 'Amr bin Shu'aib on his father's authority, said that his grandfather said:

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَدَّ شَهَادَةَ الْخَائِنِ وَالْخَائِنَةِ وَذِي الْغَمْرِ عَلَى أَخِيهِ وَرَدَّ  
شَهَادَةَ الْقَانِعِ لِأَهْلِ الْبَيْتِ وَأَجَازَهَا لِغَيْرِهِمْ .

*"The Messenger of Allah rejected the testimony of a deceitful man and woman, of one who harbours rancor against his brother, and he rejected the testimony of one who is dependent on a family, and he allowed his testimony for other."*

The Hadith explicitly prohibits the acceptance of testimony from a deceitful man or woman, as well as individuals harboring rancor. This Sharia ethical norm serves as an absolute safeguard against the abuse of legal institutions, ensuring that morally defective testimony will never generate legal certainty (Fauzan et al., 2020). This dogma directly exposes the crucial weakness of positive law which tends to accept any testimony as long as the quantitative requirements of age and sound mind have been fulfilled.

The subsequent dogmatic question that arises concerns the status of a Sharia financing contract that has been signed using the instrument of such a *fasiq* witness. To dissect this problematic contract, Al-Sarakhsi (1993) formulated a sharp distinction between a contract that is null and void by law from the beginning and an attributively defective contract, making it voidable (*fasid*). According to this doctrine, a contract is considered null and void if the defect occurs in the core pillars, such as an object that is intrinsically prohibited (*haram*). Conversely, if the core pillars have been fulfilled but a defect occurs in the accompanying external

requirements, such as the injustice of the evidentiary instrument, then the contract status is not automatically null and void by law, but falls into the *fasid* category.

This construction separating the status of defect provides highly crucial analytical certainty in assessing the degree of administrative malpractice in Notarial deed products. Forgery of consent, manipulation of fingerprints to substitute for signatures, or the use of witnesses who do not fulfill the justice principle are manifestations of attributive defects that destroy the purity of the contract (Adam et al., 2024). Considering that the witness instrument is situated outside the substance of the Sharia financing contract, the absence of moral integrity within it does not automatically eliminate the existence of the principal agreement between the financial institution and the customer. The principal contract continues to exist in civil law, but it contains a Sharia defect that grants the parties an absolute right to annul or reconstruct it by a judge's ruling.

This classical theory regarding contract defect has been perfectly adopted into the positive economic law instruments in Indonesia. Article 28 section (2) of Supreme Court Regulation Number 2 of 2008 canonizes the doctrine with the formulation that a *fasid* contract is an agreement where the pillars and requirements are fulfilled, but other aspects or matters are damaging the contract due to public interest (*maslahah*) considerations. The harmonization between the *fiqh* doctrine and the Supreme Court Regulation on the banking compilation absolutely refutes the narrow view that a Sharia deed with a defective witness can be simply salvaged by adding subsequent witnesses. Dogmatically, a contract that is void due to an evidentiary defect in morality requires annulment (*fasakh*) by the judicial authority, not merely a correction of formal procedures violated from the beginning.

From a purely notarial procedural perspective, the consequence of this evidentiary instrument integrity defect is also subject to extremely severe administrative sanctions. Article 41 of Law Number 2 of 2014 *juncto* Article 1869 of the Civil Code explicitly imposes a sanction that a deed with a defective formalization procedure cannot be treated as an authentic deed, but its position is degraded to a mere private deed. The cassation-level court consistently imposes severe sanctions for this administrative malpractice by disregarding the evidentiary value of a deed that fails to meet formal recording standards (Budiman et al., 2026). This status degradation undermines the perfect-evidentiary-principle that should be inherent in state legal products.

The collapse of these two validity pillars creates a highly fatal juridical anomaly for the survival of Sharia creditors' legal protection. On the one hand, the deed loses its theological validity and becomes a *fasid* contract. On the other hand,

under positive law, the document is stripped of its authenticity and reduced to a private deed (one created without the intervention of an authorized official). This double defect in the Sharia financing contract triggers a chain of events that directly implicates the principal contract's status as an accessory. The crucial problem that subsequently emerges is the fate of the collateral certificate's existence and executive force, given that the agreement it is anchored to has lost both its legal and moral legitimacy.

### **C. Dogmatic Implications of Sharia Contract Nullity on the Executorial Force of Mortgage Right Collateral**

The fate of the Mortgage Right certificate's existence, questioned at the end of the previous analysis, finds its dogmatic answer through the dissection of the *accessoir* (accessory or supplementary agreement) principle. In the guarantee law regime, the Mortgage Right possesses no ontological independence, and its existence absolutely depends on the principal agreement. Article 10 of Law Number 4 of 1996 explicitly requires that the provision of collateral must be an accessory to the principal agreement creating the debt and receivable relationship. If the Sharia financing contract serving as the principal foundation is degraded to a private deed and falls into the *fasid* category due to a witness defect, the legal protection of the guarantee deed automatically collapses.

The collapse of this foundation places the legal protection architecture for the creditor in a highly risky position. [Suwandi et al. \(2021\)](#) affirm that the validity of a material guarantee deed is highly vulnerable to annulment lawsuits if the formalization process of the underlying principal contract is conducted without precise procedures. When a Sharia financing contract contains formal or material defects in its testimonial instrument, the binding of the Mortgage Right essentially guarantees a morally defective obligation. This condition creates a highly serious juridical paradox, where the material instrument is forced by circumstances to stand upon an agreement that has lost its truth legitimacy.

This paradox culminates in the position of the *irah-irah* (executorial heading), consistently printed on the cover of the collateral certificate. Based on the provision of Article 14 section (2) of Law Number 4 of 1996, every guarantee certificate must contain the phrase "For the Sake of Justice Based on Almighty God". This theological phrase is not merely a complementary administrative design, but the dogmatic foundation granting a parate executive force equivalent to a legally binding court decision. Executing a collateral auction in the name of divine justice, while the principal contract is authenticated by a witness instrument that violates the integrity command of the holy book, is a dogmatic contradiction that degrades the dignity of Islamic civil law.

From a pure evidentiary procedure perspective, the degradation of a notarial deed into a private deed brings the consequence of execution paralysis. Procedural law regulated through the provisions of Article 169 of the HIR and Article 224 of the RBg establishes strict boundaries that executive force attaches exclusively to authentic deeds and court decisions. When the authenticity of the Sharia financing contract is stripped by the court due to the Notary's manipulation of witness qualifications, the convenience of direct auction execution guaranteed by Article 20 of Law Number 4 of 1996 is rendered completely paralyzed. The absence of this perfect authentic evidence forces Sharia banking to pursue a regular civil lawsuit which is time-consuming, costly, and full of uncertainty.

This collateral execution paralysis faces its ultimate test when the default or tort dispute enters the litigation realm. Based on Article 55 section (1) of Law Number 21 of 2008, the Religious Court possesses absolute jurisdiction to adjudicate and resolve disputes arising from Islamic economic contracts. [Setyowati \(2016\)](#) articulates a critical finding that judges at the Religious Court possess a different jurisprudential character compared to general civil judges, who do not merely act as the mouthpiece of formal law but also hold full authority to assess the material compliance of a deed with Sharia principles.

In examining the validity of the deed, the panel of judges is absolutely bound to the mandate of Article 2 of Law Number 21 of 2008, which obligates all transactional activities to comply with Sharia principles, economic democracy, and the precautionary principle. When a customer argues and can prove that the Notary has utilized an instrumental witness failing to meet the '*adalah* standard or indicated to be *fasiq*, the panel of judges will utilize classical judicial *fiqh* literature as the primary analytical foundation. Dogmatically, the Religious Court will not issue a *fiat* (execution stipulation permit) to auction the Mortgage Right object whose obligation root arises from a process that violates the dogma and evidentiary ethics of Islamic law.

This chain of events stemming from the witness defect confirms that the violation of formal ethics in the Sharia notarial realm is not an administrative matter to be underestimated. [Rosadi \(2025\)](#) locks this premise by concluding that a Sharia financing contract losing the ethical foundation of Islamic law will automatically lose its dogmatic rationality, thus the executive force heading on the Mortgage Right certificate can be absolutely voided by the judge. At this culminating point, Notarial malpractice in underestimating the moral qualification of the instrumental witness is proven not merely to damage the legality of a single sheet of document, but to destroy the entire legal protection architecture for the creditor, painstakingly built through state instruments.

## CONCLUSIONS AND SUGGESTIONS

The disparity in the position of the instrumental witness in the creation of Sharia financing contracts originates from the sharp collision between the formal rationality of positive law and the ontological values of Islamic law. Pure notarial law is oriented towards fulfilling quantitative administrative requirements without burdening the testimonial instrument with material liability obligations. Conversely, Islamic law positions testimony as a layered spiritual instrument demanding the absolute fulfillment of the *'adalah* qualification. The disregard for this Sharia ethical dimension demonstrates that state legal procedural compliance has not fully accommodated the philosophy of Islamic civil protection, thereby placing the deed in a highly vulnerable position when tested in judicial institutions.

The dogmatic consequences of disregarding witness integrity create a double legal anomaly that undermines the architecture of the Sharia financing contract. Under positive law, the attributive defect in this testimonial process degrades the evidentiary power of the authentic deed into a mere private deed. Simultaneously, Islamic law holds that such administrative malpractice impairs the purity of the obligation, rendering the contract *fasid*. This double defect in the principal agreement has fatal implications for the accessory instrument. The Mortgage Right guarantee certificate automatically loses its theological legitimacy foundation and is paralyzed in executing *parate executie* before the panel of judges at the Religious Court.

The implication of this executive paralysis demands a comprehensive policy reconstruction. Academically, the notarial scientific discourse needs to integrate the doctrine of *fiqh muamalah* as a philosophical foundation so that Notaries are no longer constrained by rigid legal positivism. At the macro policy level, legislators alongside the Notary Honorary Council are urged to formulate specific regulations or technical guidelines regarding the creation of Sharia financing contracts. These legal guidelines must contain a testimonial instrument screening parameter adopting the *'adalah* principle, thereby creating a clear and binding qualification demarcation between witnesses for conventional civil obligations and witnesses for Sharia economic transactions.

As a concrete follow-up to mitigate dispute risks, Notaries are required to deepen their understanding of Islamic legal principles and to cease using internal employees with defective material integrity as instrumental witnesses. Sharia banking institutions must also tighten their standard operating procedures by mandating verification of evidentiary instruments for moral validity before contract signing. On the other hand, the Religious Court is encouraged to continuously maintain its critical jurisprudential character. The court must not reduce its authority to a mere formal

authenticating institution, but must consistently exercise its absolute power to refuse to issue a *fiat* against collateral objects arising from a deed formalization process that betrays Sharia dogma.

## REFERENCES

- Adam, P. M., Purba, H., Suprayitno, S., & Wau, H. S. M. (2024). The Legal Consequence of Fingerprint Forgery Substitute for Signature in Authentic Deed. *SIGN Jurnal Hukum*, 6(2), 188-205. <https://doi.org/10.37276/sjh.v6i2.376>
- Al-Mawardi, I. (2020). *Al-Ahkam As-Sulthaniyyah: Hukum-Hukum Penyelenggaraan Negara dalam Syariat Islam* (Trans. by F. Bahri). Darul Falah. <https://books.google.co.id/books?id=C9UJEAAAQBAJ>
- Al-Sarakhsi, M. I. A. (1993). *Al-Mabsut*. Dar al-Ma'arifah. <https://books.google.co.id/books?id=KzRLwAEACAAJ>
- Ardhita, B. C. K., & Yunanto, Y. (2023). Juridical Analysis of the Implementation of Notary Public's Authority in Making Deeds Related to the Land Sector. *SIGN Jurnal Hukum*, 5(2), 312-323. <https://doi.org/10.37276/sjh.v5i2.298>
- Budiman, F. C., Sudarwanto, A. S., & Ismunarno, I. (2026). Judicial Silence on Administrative Malpractice: The Disregard of Notarial Repertorium in the Legal Considerations of Indonesian Supreme Court Decisions. *SIGN Jurnal Hukum*, 7(2), 1227-1242. <https://doi.org/10.37276/sjh.v7i2.573>
- Chaniago, F. F. I., Setiadi, Y., & Ridwan, R. (2025). Perlindungan Hukum Notaris Terkait Gugatan Penghadap Atas Penggunaan Saksi Instrumenter dalam Pembuatan Akta Autentik. *Journal of Innovation Research and Knowledge*, 4(11), 8253-8262. Retrieved from <https://bajangjournal.com/index.php/jirk/article/view/10044>
- Colonial Regulations, *Staatsblad* Number 23 of 1847 on the *Burgerlijk Wetboek voor Indonesie*/the Civil Code. <https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-perdata/detail>
- Colonial Regulations, *Staatsblad* Number 496 of 1926 on the *Herzien Inlandsch Reglement*. <https://jdih.mahkamahagung.go.id/legal-product/herzien-inlandsch-reglement-hir/detail>
- Colonial Regulations, *Staatsblad* Number 227 of 1927 on *Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madura*. <https://putusan3.mahkamahagung.go.id/peraturan/detail/11e9da0a8acb021e8439313835303432.html>
- Dawud, A. (n.d.). *Kitab Al-Aqdiyah: The One who's Testimony Is to Be Rejected* (3600). Sunnah. <https://sunnah.com/abudawud:3600>

- Effendi, B., Qasthary, A., Angkasa, M. A., & Lestari, C. R. (2025). Harmonizing Law and Faith: The Validity of Female Instrumentaire Witnesses in Notarial Deeds and the Principle of Gender Justice. *Gender Equality: International Journal of Child and Gender Studies*, 11(2), 231-241. <https://doi.org/10.22373/equality.v11i2.31950>
- Fauzan, F., Khalidin, B., & Maghfirah, I. (2020). Perspektif Hukum Islam terhadap Perlindungan Khusus bagi Pelapor dan Saksi Tindak Pidana Pencucian Uang. *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial*, 22(2), 177-193. <https://doi.org/10.22373/jms.v22i2.8017>
- Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022 on Job Creation (State Gazette of the Republic of Indonesia of 2022 Number 238, Supplement to the State Gazette of the Republic of Indonesia Number 6841). <https://peraturan.go.id/id/perppu-no-2-tahun-2022>
- Irwansyah. (2020). *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Mirra Buana Media.
- Istiqomah, I. N., Sulistyarini, R., & Uyun, D. A. (2024). Kedudukan Saksi Instrumen di Pengadilan. *Unes Journal of Swara Justisia*, 8(1), 203-214. <https://doi.org/10.31933/8fxk3695>
- Lajnah Pentashihan Mushaf Al-Qur'an. (2022). *Qur'an Kemenag*. Ministry of Religious Affairs of the Republic of Indonesia. <https://quran.kemenag.go.id>
- Law of the Republic of Indonesia Number 4 of 1996 on Mortgage Right over Land and Objects Related to Land (State Gazette of the Republic of Indonesia of 1996 Number 42, Supplement to the State Gazette of the Republic of Indonesia Number 3632). <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/475>
- Law of the Republic of Indonesia Number 30 of 2004 on the Office of Notary Public (State Gazette of the Republic of Indonesia of 2014 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432). <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/31>
- Law of the Republic of Indonesia Number 21 of 2008 on Sharia Banking (State Gazette of the Republic of Indonesia of 2008 Number 94, Supplement to the State Gazette of the Republic of Indonesia Number 4867). <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/148>
- Law of the Republic of Indonesia Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Office of Notary Public (State Gazette of the Republic of Indonesia of 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491). <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/927>
- Law of the Republic of Indonesia Number 4 of 2023 on Financial Sector Development and Strengthening (State Gazette of the Republic of Indonesia of 2023 Number 4, Supplement to the State Gazette of the Republic of Indonesia Number 6845). <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/1821>
-

- Law of the Republic of Indonesia Number 6 of 2023 on Enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation Into Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856). <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/1825>
- Munir, S., Hidayati, R., & Sunardi, S. (2025). Prinsip Etik dalam Al-Quran tentang Profesi Notaris di Indonesia. *Revelatia: Jurnal Ilmu al-Qur'an dan Tafsir*, 6(2), 150-161. <https://doi.org/10.19105/revelatia.v6i2.19014>
- Nugraha, P. P., & Bagiastra, I. N. (2022). Perlindungan Hukum Pegawai Notaris sebagai Saksi Akta Otentik dalam Proses Peradilan Terkait Kerahasiaan Akta Otentik. *Kertha Semaya: Journal Ilmu Hukum*, 10(7), 1540-1549. <https://doi.org/10.24843/ks.2022.v10.i07.p06>
- Oktavianti, P. C. (2021). Kedudukan Saksi Instrumenter dalam Merahasiakan Akta Otentik dan Perlindungan Hukum Bagi Saksi Instrumenter. *Syntax Literate: Jurnal Ilmiah Indonesia*, 6(5), 2408-2417. <https://doi.org/10.36418/syntax-literate.v6i5.2720>
- Prakoso, M. T. M., & Sukirno, S. (2023). Notary Ethics and Profession: The Consequences of Sanctions for Violating the Code of Ethics. *SIGN Jurnal Hukum*, 5(1), 114-125. <https://doi.org/10.37276/sjh.v5i1.266>
- Qamar, N., & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. CV. Social Politic Genius (SIGN). <https://books.google.co.id/books?id=TAQHEAAAQBAJ>
- Qudamah, I. (2013). *Al Mughni: Pembahasan Tentang Sumpah, Nadzar, Peradilan, Pembagian Hak Milik Bersama dan Kesaksian* (Jilid 15). Pustaka Azzam. <https://www.pustakaazzam.com/al-mughni-jilid-15.html>
- Rasyid, A. (2020). Kesaksian dalam Perspektif Hukum Islam. *Jurnal el-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan dan Pranata Sosial*, 6(1), 29-41. <https://doi.org/10.24952/el-qanuniy.v6i1.2442>
- Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 on the Compilation of Sharia Economic Law. <https://jdih.mahkamahagung.go.id/legal-product/perma-nomor-2-tahun-2008/detail>
- Rosadi, I. (2025). Telaah Filsafat Hukum Islam Terhadap Akad dalam Kebijakan Ekonomi Syariah. *Equality: Journal of Islamic Law*, 3(2), 193-208. <https://doi.org/10.15575/ejil.v3i2.1978>
- Sampara, S., & Husen, L. O. (2016). *Metode Penelitian Hukum*. Kretakupa Print.
- Setyowati, R. (2016). Notaris dalam Sengketa Perbankan Syariah. *Masalah-Masalah Hukum*, 45(2), 131-139. <https://doi.org/10.14710/mmh.45.2.2016.131-139>

- Suwandi, L., Dewi, I., & Koeswarni, E. (2021). Keabsahan Akta Pengakuan dan Kuasa yang Dibuat oleh Notaris dengan Menjamin Hak Atas Tanah yang Dianggap Jual Beli Analisis Putusan Negeri Nomor 23/Pdt.G/2016/PN MRS. *Indonesian Notary*, 3(3), 585-605. Retrieved from <https://scholarhub.ui.ac.id/notary/vol3/iss3/25>
- Tauratiya, T., & Danni, R. (2024). Juridical Review of Instrumentair Witness Responsibility towards the Content of Notarial Deeds. *Refleksi Hukum: Jurnal Ilmu Hukum*, 8(1), 1-16. <https://doi.org/10.24246/jrh.2023.v8.i1.p1-16>
- Wijaya, V. C., Afriana, A., & Baraba, B. (2023). Perlindungan Hukum Secara Keperdataan Bagi Klien Notaris yang Mengalami Kerugian Akibat Diterbitkannya Akta Autentik yang Cacat Hukum oleh Notaris. *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan*, 7(1), 15-30. <https://doi.org/10.23920/acta.v7i1.1332>