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## **Implementation of Taking a Woman as a Witness in the Making of Sharia Deed Agreement in Aceh Besar District**

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### **Abstract**

Al Baqarah verse 282 is a guidance from Allah for His believing servants, if they commit unrighteousness, let them write it, hence that they may keep the number and the limit, and that it may be more firm for the witnesses. Article 40 (1) of Law No. 2 of 2014 on Amendments to the Law Number 30 of 2004 on the Notary Office (hereinafter referred to as the UUJN), states that "Every act read by a notary is attended by at least 2 (two) witnesses unless the provisions of the law determine otherwise". The practice of using a witness in the preparation of a Sharia act still follows the

Rule of UUJn, where there are still acts that make 2 (Two) women or 1 (one) woman and 1 (one) male as witnesses. It should be according to the letter Al Baqarah paragraph 282, in an act must be at least 1 (one) male witness and 2 (two) female witness or 4 (four) women. The method of research used is empirical jurisprudence. The purpose of this study is to explain the picture of the implementation of the use of women witnesses in the making of the Shariah Acts in the district of Aceh Besar.

**Keywords:** Implementation, Witness Using, Woman Witness, Act, Sharia Deed

### **Introduction**

Al Baqarah's chapter 282 has described the study of the basics, benefits, and importance of recording and recording in every financial transaction (especially regarding debts). This is a guidance from Allah to His faithful servants, if they commit unrighteousness, let them write it, so that they may keep the limits and be stronger for the witnesses<sup>[1]</sup>.

One of the important points of the sentence is that the presence of witnesses in an agreement is an urgent matter. A covenant of two male witnesses may be replaced by one male and two females. The comparison between a male and a female in the testimony is one against two.

Article 40 (1) of Act No. 2 of 2014 on Amendments to Law No. 30 of 2004 on the Office of Notaries (hereinafter referred to as UUJN), states that "Every act read by a notary shall be attended by at least 2 (two) witnesses unless otherwise specified by law".

The above provision explains that the presence of witnesses as referred to in Article 40 (1) of the UUJN is very important. They (witnesses) participate in forming a signature in the minutes of the act and give a testimony about the truth done and fulfilled the formalities required by Article 38 of the UUJN, that is, every act consisting of the end or closing of an act containing the identity of the witness. It explains that witnesses are required in every act making<sup>[2]</sup>.

Witnesses in the sphere of kinship are known as instrumental witnesses<sup>[3]</sup>. The instrumental witness is the witness who participates in the preparation of the act. Generally speaking, the instrumental witness is the notary's own employee<sup>[4]</sup>. They signed, testified to the truth and fulfilled the formalities required by article 44, paragraph (1) of the new law.

There are notaries in Banda Aceh who only have female employees and they act directly as instrumental witnesses in the drafting of documents at the notary's office.

In this context, through Act No. 11 of 2006 on the Government of Aceh, it is stated that Aceh applies Islamic sharia. This is reinforced by the birth of Law Number No. 8 of 2014 on Islamic Shariah Fundamentals. As we know one of the important parts of the academy is the presence of witnesses as mentioned in the letter Al Baqarah verse 282.

The practice of the use of witnesses in the preparation of the Sharia law still follows the rule of UUJN, where there is still a law that makes 2 (two) women or 1 (one) women and 1 (a) men as witnesses. It should be according to Al Baqarah verse 282,

in law must be at least 1 (an) male witness and 2 (twice) women witnesses or 4 (four) female Witnesses. This can be seen in one of the sale records with number 712/2022, where the two witnesses used in this act are 2 (two) women. Based on the description above, the researchers want to research to find out the picture of the Implementation of the Use of Female Witnesses in the Making of Sharia Acts in the District of Aceh Besar.

### Research Method

This research method includes empirical jurisprudence, i.e., the study of applicable legal provisions and what is happening to reality in society<sup>[5]</sup>. Still guided by existing legal principles and foundations, empirical jurisprudence is the study of law concerning the enforcement or implementation of normative legal provisions in action on any particular legal event that occurs in society<sup>[6]</sup>. The research is located in the Aceh Besar District Territory.

### Results and Discussions

Treaty or bargain is derived from the Arabic, Al' Aqd which etymologically means alliance, covenant, and binding (*Al-Ittifaq*)<sup>[7]</sup>. Etymologically speaking, *ack* is defined by a statement of bonding (*ijab*) and a declaration of acceptance (*qabul*) that affects the object of the bonding according to the will of the sharia. According to Hasbi Ash Shiddieqy, *akad* is the bond between *ijab* and *kabul* that the shara'll establish a dispute between the two sides. Thus, the accusation is a matter between the parties that are engaged in a bond, and what needs to be observed in the execution of the bar is the fulfillment of rights and obligations, there is no violation of rights between parties who are executing the bar. The view of Islamic law against the observance of religious values cannot deviate from the provisions of the doctrine, although the parties concerned have voluntarily declared<sup>[8]</sup>.

The law of Islam gives freedom to make a covenant according to his will, but the consequences of the law are the doctrine of religion, to keep from persecution between men by the bars and the conditions that he makes<sup>[9]</sup>. It is the expression given by the scholar Muhibbut Thabari in the session of the direct interview that "the accusation is a thing that can be done by anyone by guiding on the provisions of the Sharia with the equal conditions of each person who performs it"<sup>[10]</sup>.

The word of the covenant in the law of Islam is the shigat Aqad itself, which consists of the sign of surrender, bid, and acceptance. (*qabul*). *Ijab* and *Kabul* are statements or agreements between both sides. Ulama Muhibbut Thabari in the interview session said that "the law of Shariah although regulated by the provisions of Islamic law, is a flexible thing in other words not rigid in its implementation but also interferes with the development of the times".

If in a transaction or warrant made by the principles of Shariah and laid down in a notarial act made by a notary, then the parties are deemed to have agreed to all the contents of the warrant in the notary act, because by forming their signature in an act, then parties are considered to have known all the content of the act and the consequences of which the parties must exercise their rights and obligations according to its contents<sup>[11]</sup>.

Based on this, the scientist Muhibbut Thabari in the session of the opening interview gave the view that "not all accidents can be settled by an agreement between two

people who are bound but there are some provisions that require a Sharia academy to attend and be witnessed by witnesses based on the provisions of the sharia".

As noted by the Notary Siti Rahmah stated that "further the process of making the act in technical terms and its procedures refer to the Law of the Department of Notaries, whether it is the act of the Shari'ah or any other act"<sup>[12]</sup>. A contract in Islamic law is no different from an agreement in an act in general. A contract in Islamic law is known as a contract between two parties based on the agreement of the parties to make an agreement or alliance that precedes the offer and acceptance, i.e. a contract concerning a certain object. Thus, a contract is the achievement of a contract stated by one party and made by the other party legally according to the Shariah<sup>[13]</sup>. It shall be fulfilled, and it shall not be rejected.

Ayuni Devi, a notary of the District of Aceh Besar stated that "every act that has been agreed on the way of doing obstacles creates a legal relationship between the parties because both have had rights and obligations over both. Such rights and obligations must be fulfilled without being denied and excluded under certain circumstances"<sup>[14]</sup>.

In the formulation of the Sharia law, the parties must understand the principles and provisions relating to the applicable restrictions. The law is not a barrier imposed by the parties so that no harm to one of the parties occurs, where there is no violation of rights and obligations. Human beings as social beings are closely connected in meeting needs, where there are rights and obligations based on agreement. In a strict process, Islam has established provisions in the treaty that do not allow for the elements of coercion and deceit.

The existence of witnesses in the Acts of Shariah, according to the view of the fuqaha's all kinds of provisions or regulations that come from other sources than the Law of Islam and do not conflict with the law of Islam.

Islamic law must not sacrifice its material law. If the contents of the act are contrary to Islamic law, then it should not be enforced. The law of the Islamic covenant against the Covenant, in general, the law of Islam, must observe the provision in the Quran Al-Baqarah verse 282: "...thoroughly shall be witnessed by two male witnesses, if there is no witness of two male, then the witness may be by one male and two female witnesses." Women witnesses shall be excluded, except in cases of emergency, if there are no two male witnesses, then one male Witness and two female Witnesses. Nor should it be equal in all matters." The testimony plays a crucial role in the scholarship. A witness is a witness who sees something that others do not know. It is also said that a witness is a man who speaks truthfully of what he sees and hears<sup>[15]</sup>.

And do not follow what you do not know. Surely the hearing, the sight, and the heart will be asked to answer. (Q.S. Al-Isra ayat 36). The notary is the only public official authorized to make an authentic act concerning all acts, agreements, and arrangements required by the interested party is required to be stated in an authoritative act, the notary as a public official guarantees the legal certainty of the parties agreeing, therefore, notary in making an authentic act must not deviate from the terms, form, content, and act as regulated in the UUJN.

In line with this, Notary Novi Sri Wahyuni stated "As long as the process of drafting the act is always guided and based on the rules of positive law, not referring to the law of

sharia. As long as it does not violate the provisions of the positive law then we as notaries guarantee the legal certainty of an act that we issue".<sup>[16]</sup> For an agreement to become legally binding, it must be recorded before a notary. However, what needs to be emphasized here is that the products of the Sharia bank are using the principles and foundations of Sharia economic law. In other words, any form of registration of a business agreement in the act of a notary must also refer to the norms of Sharia economic law<sup>[17]</sup>.

Notaries have an important role in the creation of the Shariah Acts. Notaries as authorized officials must comply with the rules and principles of the Shariah based on the Qur'an, Hadiths, Ijma', and Ijtihad. In making the Acts, Notaries must understand the law of Shariah and have the certification of Shariah as proof of the skill, competence, skill, and skill in making the acts of Shariah.

Notaries must also pay attention to the objective and subjective conditions in the preparation of acts of Shariah. In this case, the parties to the agreement must be at least 18 (eighteen) years of age or have been married. It is said to have committed legal acts and must be known to the notary, through identity, nor to be introduced by another representative or witness and not under the authority.

"The obligation of witnesses in the notary's act is regulated in Article 16 A para 1 letter m UUJN". The article states that "The act is read in the presence of at least 2 (two) people witness, or 4 (four) people special witness for the making of the testament under the hand, and signed at that time also by the opponent, witness, and notary".

The notary is obliged to present two witnesses and if the obligation is disregarded, then threatens the act to lose its authenticity, that is, the act underhand. About the witnesses in the Act of Shariah, a Notary in the exercise of his office should also know about the Law of Islam, so that the act made by the Notary is not only valid according to the law applicable but also valid under Islamic Law. This was commented on by Notaries in the Aceh Besar Territory, as by Notaris Siti Rahmah that "The use of witnesses follows the provisions of the parties concerned with the acts of Shariah, our notaries are only limited to making acts".

And the difference between a male and a female is that of a witness, and the difference is that between a man and a woman. As notary Siti Rahmah revealed, "If the witnesses of the notary office always use female witness, because all the employees of that notary's office are women and women are usually more honest. Whereas the outside witness does not have to be a woman, men can also be a witness."

Noatris Siti Rahmah continued "In connection with the acts of Shariah itself depends on the bank, usually the bank is different. Some use two witnesses and some use four. We as notaries only follow the wishes of the bank. If it is not determined, then we use our employees (instrumental witnesses)". It is true that the notary of Siti Rahmah, the Notary of Ayuni Devi also conveyed the same thing: "The use of witness in acts of Shariah depends on the wishes of the bank that will perform acts, Notaries only follow and implement it as long as it does not conflict with the provisions of the laws".

There is a provision of witness in the Sharia Act supported by the existence of Article 40 Paragraph (1) of the UUJN stipulates that: "Every act read by a notary is attended by at least 2 (two) witnesses unless the rules of the laws determine otherwise." hence when the law of Sharia

determines the comparison of witnesses, then it should be followed to satisfy the formal and material of the law made<sup>[16]</sup>.

Muhibbut Thabari as Ulama states "A female witness is an exception, except in cases of emergency, if there are not two male witnesses, then one male and two female. Nor should it be equal in all matters. In marriage witnesses, some scholars argue must be men. In principle, it is allowed to use female witnesses, for example, in a sales system. A female witness can be used but still has to refer to the norm. Women are not allowed to do certain things."

Muhibbut Thabari continued that there is a legal consequence in the use of female witnesses that "in matters of sexuality must be different from the nature of hudud or marriage. It is flexible, there is no male witness, and there will be no cancellation of it." The academician of the Faculty of Law of the University of Shia Kuala, Bapak Iman Jauhari, gave a different view regarding the use of female witnesses in acts of Shariah. He responded as follows: "The use of female witnesses is not a problem as long as according to the guidelines, even if there is a difference from the Qur'an based on the value of fairness is the *ihsan* (goodness). As long as it's for good, it is not a problem".<sup>[17]</sup> The view of Father Iman Jauhari gives the picture that as long as the value of the equipment is contained and able to be held accountable then the use of female witnesses can be used in the fulfillment of acts of Shariah. The reason for this can be seen in the theory of utility, which gives the view that the purpose of an act is to give good to the people.

Father Iman Jauhari gives an advanced view of the consequences of the law against acts made using female witnesses not under the directions in Islam. He stated that "Legal acts remain valid if we look from a legal perspective". His expression is based on a positive legal view (UUJN) in this case Article 40.

Based on the above, it is also possible to see the view of the next academician, Father Syahrizal Abbas. He gave a descriptive picture of the position of female witnesses in the making of acts of Shariah. Mr. Syahrizal Abbas stated that:

In literature, fiqh is often mentioned that a male is equal to the testimony of 2 (two) women, basically from Al-Baqarah verse 282, also associated with the Chapter of Annisa that is *yu shi kumullahu fi auladikum mislu hdhdhil untsayaian*. If there is a male witness who is not qualified as a witness, then it can be replaced by a female witness. This means the existence of witnesses is important, the question of the number is made 2:1. No one is wrong because they followed the Qur'an using two witnesses, which distinguishes it is our interpretation. In Islam, there is a distinction between criminal testimony, marriage, and marriage, each of which has different conditions and consequences of the law. This is different in the matter of nudity because the nature of the nudity is circumcision. Which if we see consequently abandoned can, if carried out get a reward.

Based on the above, it can be said that the position of witnesses in the preparation of Sharia acts has an important position, it is proved by the statements of scholars, academics, and notaries that every creation of a Sharia act requires a witness regardless of male or female. However, in connection with the implementation or implementation of

this can be said that the use of female witnesses in the creation of acts of Shariah is not based on the provisions of Shariah but on UUJN provisions.

### Conclusion

To conclude, the implementation of the use of female witnesses in the making of the Act of Shariah in the district of Aceh Major is not under the provisions of the Islamic Act, in Islamic law, the condition of being a witness in the case is absolute to be fulfilled according to the terms of Al-Baqarah para. 282. Nevertheless, the Acts of Shariah have the validity of the law.

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