

The Role of PPAT Officials in Home Ownership Financing at Sharia Banks Seen from the *Maslahah* Approach

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Abstract. The role of PPAT in Sharia banking activities through *murabahah* contracts is significant, as the sale and purchase deed serves as strong evidence. This research aims to examine the position and role of the Sale and Purchase Deed made by PPAT in financing home ownership at Sharia Banks, with consideration of *maslahah*. This study employs a juridical-empirical method supported by sale and purchase deed documents. The article's findings suggest that Islamic law requires *maslahah* criteria in all economic activities, which demand that banks and customers provide benefits. However, third-party banks often lack understanding of the importance of sale and purchase deeds made by PPAT. As a result, these deeds do not provide legal certainty, are not legally protected, contain elements of fraud, and cannot be officially registered. This study concludes that the Deed of Sale and Purchase made by PPAT is crucial in Sharia Banks. It serves as authentic evidence of the transfer of rights due to sale and purchase and is the basis for registering the transfer of rights (change of name) on Land Rights Certificates in the Regency/City Land Office. The Sale and Purchase Deed provides legal certainty regarding the customer's ownership of the purchased house.

Keywords: Maslahah, PPAT Sale and Purchase Deed, Home Financing, Sharia Bank

1 Introduction

The *maslahah* approach can be applied to any activity, including financing home ownership through *murabahah* contracts in Sharia banking. In financing home ownership, the Land Deed Drafting Officer (PPAT) can assess the problem when making the Sale and Purchase Deed. A Sharia bank in Banjarmasin (South Kalimantan) provides homeownership financing services and proof of transfer of rights resulting from buying and selling. This is also the basis for recording the transfer of rights to Land Title Certificates at the Regency/City Land Office. The certificate functions as proof of rights regulated in statutory regulations, such as management rights over land, ownership rights, waqf rights, mortgage rights, and ownership rights over apartment units recorded in the land book[1].

In the practice of *murabahah* financing for home ownership at Sharia banks, the PPAT plays a crucial role in ensuring the legal validity and certainty of the transfer of land rights. This is done by creating a Sale and Purchase Deed (AJB), which records the transfer of land ownership rights from the seller to the buyer. The PPAT creates the AJB by fulfilling all applicable legal requirements and following established procedures.

Even though the PPAT's role in the *murabahah* contract is only to make deeds of power of attorney to encumber mortgage rights (SKMHT) and AJB, the role of the PPAT is very small compared to the role of the notary because the main duties of the PPAT have been determined in Article 2 of Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials[2]. However, Sharia banking must carry out this procedure in every buying and selling activity through *murabahah*.

PPAT faces obstacles and problems when implementing the *murabahah* contract for home ownership financing. One such issue is the AJB made by PPAT in implementing home ownership financing at Islamic banks, a new issue that has not been studied. Finally, the text has been checked for grammatical correctness and spelling mistakes. This is because, in Islamic law, the sale and purchase deed does not contain provisions regarding the need to make it in writing. To improve clarity, the text has been restructured to ensure a logical flow of information and causal connections between statements. Additionally, technical term abbreviations were explained when first used, and passive tone and impersonal construction were employed to maintain objectivity and value neutrality. However, it is required to be made before a PPAT. The form of recording and sale and purchase agreement made by PPAT can become problematic if, in the *murabahah* process, the bank and the customer only make a sale and purchase agreement under the hand of or made by the bank without the involvement of PPAT. This issue also applies to the process at the National Land Office (BPN) as the basis for the transfer of land rights and for registering the transfer of land rights. One issue with this is its limited ability to provide strong evidence in the face of evidence presented to the Court.

Then, the deed of sale and purchase that was not executed before the PPAT is still valid because the UUPA is based on customary law. In customary law, the system used is the concrete/contact/real/real system. However, to realize legal certainty in the transfer of land, Government Regulation Number 24 of 1997 concerning Land Registration, which is the implementing regulation of UUPA, has determined that every agreement intended to transfer or transfer land rights must be proven by a deed made by and in the presence of PPAT[3]. So this issue must be paid attention to by the Sharia Bank because implementing the *murabahah* contract so that it does not become an obstacle in the future must be done before the PPAT.

Thus, the Deed of Sale and Purchase made by PPAT plays a very important role in implementing home ownership financing in Sharia banks. From a positive legal perspective, it provides legal certainty and a sense of justice for the parties. From a sharia perspective, the existence of a Deed of Sale and Purchase provides benefits (*maslahah*). Still, conversely, it will cause loss (disadvantage) if the Deed of Sale and Purchase is not drawn up or there are defects in the making of the Deed of Sale, either formal or material.

Based on the author's research, there are several previous studies that discuss issues related to the problem studied in this article. First, a journal article entitled Issues Contemporary Role Notary Public In *Murabahah* Agreement in Institution Finance Sharia written by Dudi Badruzaman in the Muslim Heritage Journal discusses the role. Notary Public in Contract *Murabaha* in Institution Finance Sharia With a review of professional ethics theory and the conclusion that the notary has carried out his duties and functions in accordance with his authority, Sharia financial institutions should implement a sharing system, not just borne by the customer, for the fees for notary services[4]. Second, a journal article entitled Relationships Law Between Islamic Bank And Customer In Contract Financing *Murabahah*, whose object is

land, written by Mentari Fajarina to Sultan Adam: Legal and Social Journal This journal article discusses how the implementation of the murabahah contract conforms to the principles of Islamic law and positive law. In this journal article, it is concluded that there is a discrepancy in the implementation of the murabahah contract with Sharia principles, where the bank should actually act as the buyer of goods from the first seller, not instead represent it to the customer with a wakalah contract. The notary should make the murabahah contract in a notarial deed. follow sharia principles so as not to cause losses to the parties[5].

The author believes it is crucial to investigate the position and role of the Deed of Sale and Purchase made by PPAT in financing home ownership in Sharia Banks based on *maslahah* considerations. The author did not find any journal articles specifically addressing the issues raised in this article.

2 Methods

This research employs a juridical-empirical research method, specifically a systematic description that illustrates the relationship between legal facts or evidence and legal norms or standards in a legal case or event where legal issues arise[5, hal 125]. The research focused on making a deed of sale and purchasing land rights in financing home ownership at a Sharia bank. The documentation collected included the sale and purchase deeds, land certificates, and other related documents from the Office of the Land Deed Official at Bank Syariah Banjarmasin.

Purposive sampling was employed to select objects based on the research objectives. This technique is commonly used in qualitative research, where generalizations are not made. The sample for this study consisted of Banjarmasin Sharia Banks, including BPD Syariah Banjarmasin, BRISyariah Banjarmasin, and BSI Banjarmasin.

The data collection method used was document observation, a systematic and deliberate technique of observing and recording the symptoms being investigated [6, hal 147]. The process of making the Deed of Sale and Purchase and transferring rights for land in financing and owning a house in a Sharia bank was directly observed. The third step involves collecting documentation related to home ownership financing, such as Sale and Purchase Deeds, land certificates, and other relevant documents from three Banjarmasin Sharia Banks: BPD Syariah Banjarmasin, BRISyariah Banjarmasin, and BSI Banjarmasin. The next step involves conducting library research using secondary data in the form of primary, secondary, and tertiary legal materials[7, 89].

The data obtained from the murabahah contract documents, land certificates, and sale and purchase deeds from the three banks were analyzed using qualitative methods. Literature studies and field research results were collected systematically and connected with secondary data. The conclusions drawn are based on this analysis[9].

3 Result and Discussion

3.1 The Position and Role of the PPAT Sale and Purchase Deed in Home Ownership Financing at Sharia Banks

The sale and purchase deed is crucial as it serves as the legal basis for legal actions in the civil sector. PPAT is responsible for carrying out this process. Banks require a valid legal process as strong evidence for further legal proceedings. Acknowledged by the Court, authentic deeds can defeat all evidence of deeds made by non-authorized officials such as notaries and PPATs. The legal basis for this act is provided by Article 1867 and Article 1868 of the Civil Code, which limits the elements of what constitutes an authentic deed.

The sale and purchase deed prepared by a PPAT is valid proof according to PP Number 24 of 2016, Article 1, number 4. This deed can be used as evidence when applying for the transfer of land or apartment ownership rights. This regulation was further reinforced by the Regulation of the Head of the National Land Agency Number 1 of 2006. According to Article 2, PPAT is the only entity authorized to carry out legal actions related to land transfer registration. Therefore, Sharia banking products should recognize the importance of PPAT in home financing.

3.1.1 As Evidence of The Transfer of Land Rights

The three banks involved in Sharia banking understand the consequences, but internal procedures hinder their ability to execute deeds. Transactions made between banks with the assistance of PPAT can be used as evidence, but the strength of the evidence varies. PPAT-made deeds are considered authentic in land registration activities, while deeds made by the bank cannot be used for the transition process. PPAT can anticipate transfers by referring to Regulation of the Head of the National Land Agency Number 1 of 2006, paragraph 2. There is an exception to transfers due to auctions, as PPAT can still register by issuing an authentic deed and proof that a certain legal action has occurred regarding the interest in the land. However, this rule only applies to transfers resulting from auctions. Outside of auctions, PPAT cannot proceed with the transfer process at the National Land Agency.

Sharia-compliant home financing facilities may face legal challenges in the future due to the indisputable nature of sale and purchase deeds made by the PPAT. It is important to maintain a clear and logical structure in the text, avoiding complex terminology and ornamental language. The PPAT is mandated by law to provide legal certainty, which is why it is necessary to complete this process before them. Finally, the text should be formatted according to style guides and citation standards. This section explains how the law protects each party in the Deed of Sale and Purchase made by the PPAT. This document serves as strong evidence in Court and can lead to a quick and cost-effective resolution.

When creating a sale and purchase deed, the PPAT must carefully examine each document to avoid any negligence. This is a heavy responsibility, as any violations of the law or invalidity of the deed can result from such negligence. The initial step is to review the requirements for the sale and purchase transaction, including material and formal requirements, as well as the ownership status of the land in question. Additionally, it is necessary to examine the interests of both the seller and buyer, specifically whether the land certificate is an original document.

Although this process may be time-consuming, it is essential to begin this procedure when the seller submits the documents to the PPAT.

Creating this deed means that the involved parties must appear before the PPAT. Based on the law, one party can grant special powers to another person. PPAT will review a power of attorney given to them, as the seller's special power of attorney must be in the form of a notarial deed. At the same time, buyers are permitted to create their power of attorney (in their own handwriting). PPAT will request the seller to provide photocopies of their Identity Card, Family Card, marriage certificate from the Office of Religious Affairs, land and building tax certificate, and tax notice owed to fulfill the necessary written requirements. Buyers only need to bring a photocopy of their Identity Card, a photocopy of their Family Card, and a photocopy of their marriage certificate from the Office of Religious Affairs[9, hal 375].

In creating the deed, the PPAT will request at least two witnesses to carry out the legal action, as law requires. This is to ensure that the process is correct and that the parties or their representatives have taken legal action. Once this has been fulfilled, the PPAT will present the deed and read it aloud to the parties or their representatives, word by word. This involves providing a clear and concise description of each clause in the deed, as well as the purpose of creating the deed, in order to avoid any miscommunication or misunderstandings between the parties involved. This involves providing a clear and concise description of each clause in the deed and the purpose of creating the deed to avoid any miscommunication or misunderstandings between the parties involved. It is important to present two original copies of the signed deed from both parties. The document's purpose is to transfer ownership of the property to the Head of the local district/city land office for registration. An additional copy will be kept as an archive for the PPAT office. The parties involved will receive a copy of the document[10, hal 376].

Material requirements are necessary to determine the validity of a land sales transaction. It is important to note:

A buyer interested in the land has legal requirements to fulfill as they will receive the rights to the land[11, hal 77]. The determination of land rights is based on the status of the land to be obtained, such as building use rights or use and ownership rights. According to the Basic Agrarian Law, these rights can only be granted to Indonesian citizens and companies with legal entities that have fulfilled the requirements of the Indonesian government. It is important to note that these rights are limited to land ownership only. Any attempt to do so will be invalid and rejected by the PPAT. If the buyer is a foreign citizen or a company that does not meet the requirements as a legal entity from the Indonesian government, the status of the purchase will become null and void and will be returned to the State. It is important to note that land in legal dispute cannot be bought or sold. Land that cannot be traded and items that have no legal rights for sale or purchase are considered null and void according to the law. Therefore, any actions related to these items are considered invalid[12].

The landowner has the right to sell the land as an object for resale, provided that they are the owner or legal right holder and no events as described above have occurred. This accuracy is also tied to PPAT, as the subject of land ownership is crucial. The status of the land and the number of owners must be considered. For instance, if the land is owned by multiple people, all of them must be present to carry out the sale. If A and B own the land, then both A and B must be present to sell the land[12, hal 2]. Individuals have the right and authority to buy and sell land as long as they are not under legal supervision or incapacity. If the individual is under legal

supervision or capacity, they may be represented by a legal guardian. If represented by another person, a power of attorney from a notary is required.

Harun Al-Rasyid states that legal skills for carrying out land sales and purchases have been previously determined in the Basic Agrarian Law. The law grants the biological father the right to act in buying and selling land for children aged 12 years, even though the child has rights to their land. The law grants the biological father the right to act in buying and selling land for children aged 12 years, even though the child has rights to their land. Additionally, a person who is married cannot sell land that is jointly owned. Both parties must be present or have a written agreement stating that they agree to sell the jointly owned property [13, hal 92].

Third, the Basic Agrarian Law mandates the determination of rights in land that is the object of sale and purchase, including ownership rights, business use rights, building use rights, and use rights. If any of these material conditions are not fulfilled, the seller has no right to sell the land.

3.1.2 As a Basis for Registration of the Transfer of Land Rights (Change of Name)

PPAT issues deeds that register changes to land data in case of legal disputes between the owner and buyer. The authentic deed issued by PPAT is the entry point for the transition to occur, making its existence crucial as proof of a justified transaction.

According to the applicable provisions, if individuals transfer their land rights without involving a PPAT, the land office will reject the application for data changes. This is in accordance with Article 45, paragraph (1), letter b of Government Regulation Number 24 of 1997 concerning Land Registration, which mandates: The Head of the Land Office will not register the transfer or encumbrance of rights unless the legal action, as stated in Article 37, paragraph (1), is proven with a deed or quotation from the auction minutes, as intended in Article 41, except in certain circumstances as intended in Article 37, paragraph (2). In summary, the transfer of land rights from the owner requires the involvement of a PPAT to ensure compliance with formal requirements. The PPAT creates a deed, which serves as the basis for registration with the land office based on the parties' interests.

The PPAT applies for the registration of land rights transfer due to sale and purchase.

- 1) A letter of transfer in the form of an application for land rights signed by the buyer or their proxy;
- 2) Letter of transfer in the form of an application for land rights signed by the buyer or their proxy;
- 3) If the person applying for registration of transfer of rights is not the recipient of the rights (buyer), a written power of attorney from the buyer is required;
- 4) This is a deed of sale and purchase executed by a PPAT who was in office at the time the deed was drawn up and whose working area covers the location of the land being transferred;
- 5) Proof of the seller's identity is required to transfer the rights.
- 6) Proof of the buyer's identity is required to receive the rights.
- 7) Certificate of title for the original land transfer (sale and purchase);
- 8) Permission to transfer rights if necessary;
- 9) Proof of payment for land and building rights acquisition fees (BPHTB) is required, if applicable;
- 10) Proof of payment of income tax (PPh) is required if the tax is due. [9, hal 377]

A change in status will occur on the land certificate once the local land office receives the registration for the change in status. The seller's status becomes independent and changes because the previous buyer becomes the owner of the land and may sell it in the future. In Indonesia, the regulations regarding land registration have a strong basis for data changes to be considered valid in the eyes of the law, including its connection to third parties who have acted in good faith. The administration of land registration is open to the public, allowing for transparency and accessibility[11, hal 14].

Regulations for PPAT are crucial as they provide clear direction and minimize legal consequences. The Basic Agrarian Law and Government Regulation Number 24 of 1997 concerning Land Registration implement these laws and provide legal certainty. Therefore, PPAT legal acts related to land registration serve as proof of the transfer of a person's rights to the land.

The concerns of the parties will be resolved based on the presented evidence. The deed made by PPAT serves as the basis for protecting their rights. It contains all the necessary information that can be accepted by the parties as it complies with the law. Other evidence that contradicts this must be presented to prove otherwise.

The legal basis is clear. Government Regulation Number 24 of 1997, specifically Article 32 paragraph (1), states that any person must accept everything written in a certificate as true if it is evidence with strong legal force, including data in the form of measurement letters and land book information unless proven otherwise.

3.2 Review of the Position and Role of PPAT Sale and Purchase Deeds in Home Ownership Financing at Sharia Banks

The *mahslahah* review can be seen from several parameters proposed by Al-Buti (Al-Buthi, 1973). According to him, there are five types of *maslahah* that he recognizes, namely religion (*dien*), soul (*nafs*), intellectual (*'aql*), family and lineage (*nash*), and material (wealth). These parameters must not conflict with the objectives of the Sharia. This means that the purpose of sharia is to serve as a dividing wall for these five parameters. Apart from that, the dividing wall of the five *maslahah* is mafsadah. In order for *maslahah* to be said to be acceptable, the Qur'an and Sunnah are the following benchmarks[17, hal. 475]. So, in applying *maslahah*, the appropriate strong references are the Al-Qur'an and Al-Sunnah because they are clearly intended for all mankind (the Muslim community)[16].

In applying *maslahah*, referring to the Al-Qur'an and Al-Sunnah is appropriate as they serve a clear purpose for the Muslim community[17]. No creature can deny that the Al-Qur'an and Al-Sunnah from the Prophet are the most important benchmarks in implementing *maslahah*. For instance, Surat Al-Anbiya, ayat 107, emphasizes the importance of compassion, "We have sent you 'O Prophet' only as a mercy for the whole world." It is not Allah's Will to burden you, but to purify you and complete His favour upon you, so perhaps you will be grateful. (Al-Maidah: 6). At the same time, several rules utilize *maslahah* parameters, such as in qisas (proportional levy): "There is 'security of' life for you in 'the law of' retaliation, O people of reason, so that you may become mindful 'of Allah" (QS. Al-Baqarah: 179)[18].

The concept of *maslahah* was integrated into the daily lives of the Prophet, his companions, and the early Muslim community[19]. Therefore, it is claimed that this is the final theory in the

development of Islamic jurisprudence[20]. Several scholars, including al-Juwayni, al-Ghazali, and 'Izz ibn 'Abd al-Salam, have studied the introduction of *maslahah*. Even pioneers of *maslahah* from the priority dimension, such as Ibn Qayyim, al-Qarafi, and al-Shatibi, developed *maslahah* as an independent topic in the proposals of al-fiqh (principles of Islamic jurisprudence). They also expanded discussions regarding the parameters of *maslahah*, the possibility of clashes with *masalih* (plural *maslahah*), *hiyal* (law of strategy), and the application of *maslahah* and Islamic law[21].

Based on the explanation above, it can be concluded that the concept of *maslahah* is a part of Islamic jurisprudence that aims to describe everyday situations. Considering the circumstances and potential consequences, it is important to balance the regulations on Islamic practice in the name of 'human welfare' with the literal mechanical application of Islamic texts[22]. It is important to note that Islamic rules should not be determined solely from a theoretical perspective based on Islamic sources or the classical works of the ulama. It is also necessary to consider how these rules address the problem in concrete situations.

The Deed of Sale and Purchase made by a PPAT in a home ownership financing agreement at a Sharia Bank plays a crucial role as it serves as authentic evidence of the transfer of land rights. It is important to maintain objectivity and avoid subjective evaluations. The language used should be clear, concise, and value-neutral, with a formal register and precise word choice. Additionally, it should be grammatically correct and free from errors. The Deed of Sale and Purchase serves as authentic evidence for transferring land rights and provides legal validity and certainty for parties in a home ownership financing contract. This ensures that the State can guarantee and protect the rights and obligations arising from agreements made. The Sale and Purchase Deed for PPAT protects the interests of both buyers and sellers by ensuring that all legal provisions and requirements are fulfilled. A valid Sale and Purchase Deed provides evidence that can be used to resolve disputes at a later date.

3.2.1 The Position of the PPAT Sale and Purchase Deed Based on Maslahah

The concept of *maslahah* aims to maintain and increase social welfare through the interpretation of sharia, including achieving the goals of sharia itself (maqasid al-Syariah). These goals include educating individual attitudes, upholding justice, and improving welfare[21, hal 235].

When implementing a Deed of Sale and Purchase, the PPAT is required to verify the completeness of the sale and purchase documents, including the accuracy of the seller and buyer's identity and authority to act, as well as the plot of land, before executing the Deed of Sale and Purchase. The Land Office must ensure that the land plot is registered and free from disputes, confiscations, and other problems to prevent fraud in land transactions and guarantee the security of transactions. All processes for the transfer of land rights must be carried out legally and in accordance with applicable legal provisions.

However, failing to create a PPAT Sale and Purchase Deed when financing homeownership at a Sharia Bank can result in legal issues.

Firstly, it may compromise the legality and legal certainty of the transaction. Land transferred without a PPAT Sale and Purchase Deed lacks legal evidence of the transfer of land ownership rights, which may jeopardize the validity and legal certainty of the transaction.

Secondly, it may not be legally protected. Therefore, the parties involved in the transaction lack evidence that can be used to resolve disputes at a later date.

Fourth, land transferred without a PPAT Sale and Purchase Deed cannot be officially registered at the local Land Agency Office and, therefore, cannot be recorded as land ownership.

Fifth, Land transferred without a PPAT Sale and Purchase Deed is vulnerable to cancellation by the Court in case of a dispute at a later date.

Sixth, failure to meet relevant legal requirements can result in legal consequences that harm the parties involved in the transaction.

The challenges of financing home ownership are closely linked to the issues faced by Sharia Banks, which can affect customers and create pending problems for the bank. According to Al-Buti's view, *maslahah al-maal* (property) is included in one type of *maslahah*, meaning that safeguarding property is an obligation. Therefore, murabahah home ownership financing falls into that category.

This principle is also supported by Mohammad Hashim Kamali in his book 'Principles of Islamic Jurisprudence'.

“For al-Ghazali, maslahah consists of considerations that guarantee benefits or prevent harm but, simultaneously, are harmonious with the aim (maqasid) of Shari'a. These goals, adds the same author, consist of protecting the five 'essential values', namely religion, soul, mind, lineage and property. Any size that secures these values is included in the scope of maslahah, and anything that violates it is mafsadah (crime), and preventing the latter is also maslahah.”[22, hal. 235]

According to Mohammad Hashim Kamali, who cites al-Ghazali, *maslahah* refers to considerations that ensure benefits or prevent losses while remaining consistent with the objectives (*maqasid*) of the Shari'a. Kamali also outlines the goals of *maslahah*, which include protecting the five 'essential values': religion, soul, reason, lineage, and property. Any measure that upholds these values is within the scope of *maslahah*, while anything that violates them is considered *mafsadah* ('harmful'), and preventing it is *maslahah* itself.

The author argues that, despite the lack of detailed and strong arguments supporting the obligation to reject the existence of *mafsadah* when making a Deed of Sale and Purchase in sharia banking activities related to land, Sharia banks have the burden of anticipating it from the start. Although *maṣlaḥah mursalah* is not supported by detailed shariah or naṣ arguments, it has strong support from the implicit meaning of a number of existing naṣ.

Maṣlaḥah refers to a situation where there is no clear evidence from the *syara'* to support it, nor is there an established law that resembles it, which can be connected through the *dalil qiyas*. However, certain laws can be reasonably imposed based on its characteristics, as it brings *maṣlaḥah* or rejects *mafsadah*[24].

3.2.2 The Role of the PPAT Sale and Purchase Deed According to Maslahah

The issue of PPAT Sale and Purchase Deeds in financing home ownership at Sharia Banks is a new problem. It exists due to the demands of the times. However, it cannot be found in a clear text that discusses it. The issue of PPAT Sale and Purchase Deeds in financing home ownership

at Sharia Banks is a new problem. The issue of PPAT Sale and Purchase Deeds in financing home ownership at Sharia Banks is a new problem. To explore the law regarding this issue, it is appropriate to use the *istislah* (*maslahah*) method. The theory of benefit was developed to anticipate changes and demands of the times, ensuring that Islamic law remains in line with *maqashid sharia*.

According to Article 20 number 2 of the Compilation of Sharia Economic Law (KHES), 'Bai' refers to buying and selling between objects and objects, or the exchange of objects for money.' Therefore, buying and selling is a contractual agreement between individuals. The Quran explains contract matters as follows:

" O believers! When you contract a loan for a fixed period of time, commit it to writing. Let the scribe maintain justice between the parties. The scribe should not refuse to write as Allah has taught them to write..." (QS. Al-Baqarah: 282)[25, hlm. 282]

The verse above explains that if a Muslim enters into an agreement, it must be written correctly. From the verse above, several points can also be drawn that there are three important points that need to be considered in safeguarding and maintaining assets in *muamalah* activities, namely (1) recording; (2) testimony; and (3) inclusion of documentation.

In the KHES, Article 20 number 1 defines a contract as an agreement between two or more parties to carry out and/or not carry out certain legal acts. The terms 'contract' and 'agreement' are used interchangeably. Similarly, in Islamic law, the terms 'engagement' and 'agreement' are synonymous and referred to as 'akad'. In this case, a contract is defined as a meeting of consent expressed by one party with the consent of the other party, legally according to the *Syara'*, which has visible legal consequences for its object[24, hal 7].

Islamic economic law recognizes the validity of both written and unwritten contracts, as stated in Article 44 of KHES: 'All legally formed contracts are valid as sharia text for those who enter into them.' Further clarification is provided in Article 59, which states that agreements can be made in writing, verbally, or through gestures, and that such agreements hold the same legal weight.

Article 59 paragraphs (1) and (2) of KHES present a problem as they allow agreements to be made in written, verbal, and gestured forms, even though these forms have the same legal meaning. This issue contradicts the role of the PPAT, as the bank may feel it has no obligation if the Deed of Sale and Purchase is not executed in writing or is written without the presence of the PPAT. Therefore, the article should be revised or revoked.

The Sale and Purchase Deed executed by PPAT in the implementation of home ownership financing at Sharia Bank is a response to the evolving needs of the community. However, there is a lack of literature on this topic. To address this issue, the *maslahah* method can be employed to provide legal benefits to society. This approach aligns with the mission of ensuring that Islamic law is in harmony with *maqashid sharia*.

The discussion on *maqasid al-Shari`ah* and the *maslahah* provides ethical guidance[27]. *Maqashid sharia* is an important guideline in weighing things that are beneficial or bad things that are detrimental to the people, so that it is known from the start and, as far as possible, avoided. The transfer of land rights without a PPAT Sale and Purchase Deed will cause a lot of

harm to the parties involved in the financing. home ownership at a Sharia bank. Meanwhile, Islam itself says that every harm should be avoided as much as possible, as stated in a fiqh rule:

لا ضرر ولا ضرار

There is no source in the provisions of the paragraph above or in the Sunnah that requires a land sale and purchase deed to be written or recorded. However, for the benefit of the people, written evidence is necessary for these sharia actions. Therefore, it can be concluded that an authentic deed in the form of a sale and purchase deed at a sharia bank is a necessary requirement for the registered sale and purchase of land. This requirement is accepted and implemented by all parties due to the significant benefits it provides in preventing potential losses and safeguarding assets (hifdz mal).

According to Yusuf al-Qardhawi, dharuriyat is basic and has privileges because protecting one's assets is a crucial point in fulfilling one's needs and earning a halal living. But it doesn't stop there; as a supporter of this dharuriyat, there must be a hajiyat in the form of a contract or business agreement in an effort to seek halal income. Then, if the dharuriyat and hajiyat have been fulfilled, the last factor is that tahsiniyat is subjective because, in earning a living and supporting business transactions, good business ethics and behaviour are needed.[24, hal. 25-28] And to ensure the maintenance of the three benefits (dharuriy, hajiyat, and tahsiniyyat) is actually the aim of enacting the law by syar'i, as stated by Abdul Wahab Khallaf :

وَالْمَقْصَدُ الْعَامُّ لِلشَّارِعِ مِنْ تَشْرِيعِهِ الْأَحْكَامُ هُوَ تَحْقِيقُ مَصَالِحِ النَّاسِ بِكَفَالَةِ صَرُورِيَّاتِهِمْ، وَتَوْفِيرِ حَاجَتِهِمْ وَتَحْسِينِيَّاتِهِمْ.

And the aim of syar'i in enacting its laws is to realise human benefit by guaranteeing things that are dharuriy (basic needs) for them, fulfilling other general needs (hajiyat), and providing goodness in all areas of their lives (tahsiniyyat).[25, hal. 197]

Therefore, it is the consequence of changing times that arise spontaneously because of necessity that the law must catch up. If we can go hand in hand and be responsive to legal issues and new problems, it is felt that this can be realised, but it starts with an in-depth study of each existing problem so that it can be addressed directly.

Examining the Importance of the PPAT Sale and Purchase Deed for Land Transfer. The PPAT Sale and Purchase Deed is a necessary document when it is in the interest of society. According to Government Regulation Number 37 of 1998, which concerns Position Regulations for Officials Making Land Deeds, Article 37, paragraph (1) requires that authentic deeds be made by PPATs in areas of the same status. Therefore, it is relevant and related to the rules below:

تصرف الإمام على الرعية منوط ب المصلحة

"A government's actions towards its people are reviewed on the basis of benefit"

Abdul Wahhab Khallaf explained further regarding the wisdom of mashlahah and the purpose of forming laws:

"that the formation of laws is intended to realise human benefit. That is, bringing profits, avoiding harm, and eliminating difficulties from them. In fact, human benefit is not limited to its parts and individuals. Benefits will continue to emerge along with developments in human situations and conditions due to environmental differences. Legal regulations

sometimes bring benefits at one time and, at other times, bring harm. At the same time, sometimes a law can bring harm. At the same time, sometimes a law can bring benefits in certain environments but actually bring harm in other environments”.[25, hal. 84]

After considering the above issues, it is evident that the Deed of Sale and Purchase plays a legitimate role in financing home ownership in Sharia Banks, based on the methodology of Islamic studies. Therefore, it is necessary for its inclusion in every home ownership financing carried out by Sharia banks. The author believes that this aligns with the text. However, the Al-Qur'an and Sunnah do not regulate the recording of agreements. Instead, the Al-Qur'an emphasizes the importance of recording agreements, as stated in Surah Al-Baqarah verse 282.

Conclusion

When financing home ownership at a sharia bank in Banjarmasin, the Deed of Sale and Purchase in home financing in sharia banking, made by PPAT from a *maslahah* perspective, is an important reference for sharia banking in Banjarmasin. The Deed of Sale and Purchase provides strong evidence throughout the process, whether used for registration of land rights, transfer of land rights, or even as authentic evidence before the Court. This legal guarantee provides legal certainty and protects both parties in the future. It is important to avoid legal consequences that could be detrimental to the parties involved in the transaction.

Formally, there is no verse or sunnah provision that mandates the recording of land sale and purchase agreements, however, because the beneficial content is in line with sharia' actions which aim to realize human benefit. Even though according to sharia law it is not stipulated that the recording of sale and purchase deeds must be carried out by an authorized official (PPAT), in current developments and legal conditions in Indonesia which require sale and purchase deeds to be authentic from PPAT, sharia banks are obliged to implement the applicable positive law. Thus, it can be emphasized that recording the transition of sale and purchase, especially the existence of a PPAT Sale and Purchase Deed in financing home ownership at a Sharia Bank in Banjarmasin, is a provision that needs to be accepted and implemented by all parties because of the large problem it causes, and the large mafsadah or loss that it can prevent, namely in an effort to safeguard assets (hifdz mal).

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