

INTEGRATING SHARIA CERTIFICATION IN THE NOTARY PROFESSION: A COMPARATIVE LEGAL ANALYSIS, CHALLENGES, AND OPPORTUNITIES IN SOUTHEAST ASIAN COUNTRIES

¹ Ghansham Anand, ² Baiq Elma Purnamawadita, ³ Xavier Nugraha, ⁴ Nur Ezan Rahmat

¹²³ Faculty of Law, Universitas Airlangga

⁴ Faculty of Law, Universiti Teknologi MARA (UiTM), Malaysia

Email: ghansam@fh.unair.ac.id¹, baiq.elma.purnamawadita-2023@fh.unair.ac.id²,
nugrahaxavier72@gmail.com³, nurezan@uitm.edu.my⁴,

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Abstrak: Asia Tenggara merupakan rumah bagi penduduk yang mayoritas beragama Islam, seperti Indonesia, Malaysia, Brunei Darussalam, Thailand, dan Filipina. Oleh sebab itu, negara-negara di Asia Tenggara menerapkan hukum Islam, yang dilaksanakan dalam hukum nasionalnya baik secara keseluruhan maupun sebagian yang berasal dari Al-Qur'an *Hadist/Sunnah*. Notaris merupakan pejabat umum yang berwenang untuk membuat akta autentik dan kewenangan-kewenangan lainnya sesuai yang diatur dalam peraturan perundang-undangan. Di beberapa negara Asia Tenggara, notaris memiliki kewenangan untuk mengesahkan suatu perjanjian atau dokumen. Pembuatan akta dan perjanjian ini termasuk pula perjanjian-perjanjian yang berdasarkan hukum Islam atau hukum Syariah, yang hingga saat ini masih belum terstandardisasi baik secara regional maupun internasional. Sementara itu, notaris harus memahami kaidah dan asas hukum Islam dalam pembuatan akta Syariah. Dengan menggunakan metode pendekatan yuridis normatif, tulisan ini memfokuskan perlunya standarisasi terhadap pembuatan akta Syariah, membahas tantangan penerapan sertifikasi di berbagai sistem hukum, dan mengusulkan model untuk integrasi yang efektif. Hal ini berfungsi sebagai alat penting untuk mencapai unifikasi hukum dalam pembuatan akta Syariah dalam skala lintas batas melalui Sertifikasi Syariah yang dapat meningkatkan kepastian hukum berdasarkan hukum Islam. Oleh karena itu, rekomendasi yang dapat diberikan untuk mengatasi masalah ini yaitu melalui pelatihan kelembagaan dan kerangka kerja sama antar negara ASEAN.

Kata Kunci: *Asia Tenggara, Hukum Syariah, Notaris, Sertifikasi Syariah.*

Abstract: Southeast Asia is home to a largely Muslim demographic, such as Indonesia, Malaysia, Brunei Darussalam, Thailand, and the Philippines. Consequently, countries in Southeast Asia implement Islamic law into their national laws, either whole or partially based on the Qur'an and *Sunnah*. A notary is an authorized individual entitled to make authentic deeds and other documents as regulated in laws and regulations. In several Southeast Asian countries, notaries have the authority to attest an agreement or document. The making of these deeds and agreements also includes agreements based on Islamic law or Sharia law which these days still does not have any standard, either regionally nor internationally. Meanwhile, the notary should understand the rules and principles of Islamic law in making Sharia deeds. Using a normative juridical approach, it highlights the need for standardization in Sharia-compliant deeds, discusses the challenges of implementing certification across different legal systems, and proposes models for effective integration. This serves as a crucial tool for achieving legal unification in the creation of Sharia deeds on a cross-border scale through Shariah certification that can enhance legal certainty under Islamic law. Accordingly, the recommendation for this issue are an institutional training and a framework for cooperation among ASEAN countries.

Key words: Southeast Asian, Sharia Law, Notary, Sharia Certification.



INTRODUCTION

Southeast Asian is a vast region of Asia that is situated east of the Indian subcontinent and south of China.¹ Southeast Asia consists of eleven countries divided into “mainland” and island” zones.² The mainland there are Myanmar, Thailand, Laos, Cambodia, and Vietnam, which is an extension of the Asian continent, yet the others are island zones. Muslims are widespread in all mainland countries, but the most significant populations are in southern Thailand, Malaysia, and Indonesia. The population of Cham in central Vietnam and Cambodia is also Muslim.³ The Southeast Asian region is home to several Muslim-majority countries, including Indonesia, Malaysia, Brunei, and countries with significant Muslim minorities, such as the Philippines and Thailand. Indonesia, in particular, is the world’s most populous country after India, China, and the United States, and it holds the world’s largest Muslim population.⁴

Islam appears to have been transported by Muslims from several countries. Islam was initially transmitted through traders from Gujarat and Malabar in Western India, followed by Arabs from Hadhramaut until the fifteenth century laid foundations in Sumatra. Indonesia has been a leader in national and pro-Islamic movements for the revival of Islam, including during the colonial era that has been recognized by Van den Berg that Muslims were using Islamic Law for daily.⁵ After independence, the new government reverted to a unitary state, causing resentment. Sukarno and Suharto embraced religious diversity for social stability, but adopted pro-Islamic policies.⁶ With a long history, the Indonesian government recognized the Compilation of Islamic Law through Presidential Instruction (Inpres) No. 1 of 1991 on the Dissemination of Islamic Law Compilation. Moreover, Brunei and Malaysia are the Islamic countries that adopt Islamic or Sharia law. Therefore, legal actions in these countries often involve aspects of Islamic law (Sharia), such as property sales, money lending, and inheritance.⁷

Sharia means God's eternal and immutable will for humanity as articulated in the Quran and the Sunnah; it represents the ideal Islamic law. Fiqh (jurisprudence) is the application of Islamic norms in practical terms and legislate for cases, which not specifically addressed in the Qur'an and Sunna.⁸ Hence, by applying the Sharia law, a country must follow the rules governed by Qur'an and Sunna which could affect the economic, social, politic, and family life.⁹

¹William H. Frederick and Thomas R. Leinbach. 2024. *Southeast Asia*. Britannica. <https://www.britannica.com/place/Southeast-Asia> accessed on

²Maskufa, Sopa, Sri Hidayati, and Adi Damanhuri. 2021. *Implementation Of The New MABIMS Crescent Visibility Criteria: Efforts To Unite The Hijriyah Calendar In The Southeast Asian Region*. Ahkam: Jurnal Ilmu Syariah, Vol. 22 No. 1. p. 214.

³Barbara Watson Andaya. *Introduction to Southeast Asia: History, Geography, and Livelihood*. Asia Society, Education. <https://asiasociety.org/education/introduction-southeast-asia?page=0> accessed on

⁴Farkhunda Burke. 2004. *Muslim Minorities and Majorities of Southeast Asia: Focus on Realities*. Pakistan Institute of International Affairs Journal. p. 37-378.

⁵Fatkhul Muin. 2016. *Politik Hukum Islam di Indonesia dan Malaysia: Suatu Kajian Perbandingan*. AL-MANAHIJ: Jurnal Kajian Hukum Islam, Vol. 10 No.2. p. 271.

⁶Ibid. p. 38-39.

⁷Erie Hariyanto. 2019. *The Settlement of Sharia Banking Dispute based on Legal Culture as a Practice of Indonesian Islamic Moderation*. Al-Ihkam: Jurnal Hukum dan Pranata Sosial, Vol. 14 No. 2. p. 307.

⁸Azhari Akmal Tarigan. 2020. *Chemical Castration for Pedophiles: Study of Fiqh Problems in Indonesia*. Al-Ahkam, Vol. 30 No.2. p. 144.

⁹Raficq S. Abdulla and Mohamed M. Keshavjee. 2018. *Understanding Sharia: Islamic Law in Globalised World*. London: Islamic Publications Ltd. p. xiii.

However, the legal practitioners in these countries, such as judge, prosecutor, lawyer, and notary, are primarily trained in civil law, not Islamic law. This gap in knowledge can lead to legal complications, especially when Sharia principles are involved. Especially for the notary, where they have to make the agreements, transcripts, *waarmerking*, and others related to legal deed and act. The notary will make the documents appropriate with the law of the country. For example, under Indonesian Law, the deed is an authentic evidence which pertains to the interests of those seeking justice.¹⁰ Therefore, if the country conducted the Sharia Law, then the notary must comply with that law regarding document making.

Under the legal term, the term notary is derived from the Latin word *notarius* in singular form and *notarii* in the prural form.¹¹ In national law, notary regulated under the Law Number 30 of 2004 jo. The Law Number 2 of 2014 regarding Notary Occupation (hereinafter, “**Law on Notaries (UUJN)**”). The Law on Notaries (UUJN) defined a notary as a public officer that authorised to execute legitimate/authentic deeds and holds additional authorities as stipulated in this Law or other applicable laws. Since the notary carry out their duties base on the law, they have to be aware about the other areas of law.¹² For instance, a notary without proper understanding of Islamic law may fail to provide adequate legal advice or prevent parties from engaging in actions that contradict Islamic law. Moreover, in some countries, notaries are obliged to provide education and safeguard the interests of the parties, as is the case in Indonesia, pursuant to Article 16 paragraph 1 of the Law on Notaries (UUJN).

To address this issue, a solution has been proposed: “mandatory Sharia certification for notaries who draft deeds related to Islamic law”. This is due to the fact that the Sharia deed contains Islamic sharia principles. This certification would ensure that notaries fully understand and comply with Islamic legal principles. However, the implementation of this requirement raises several challenges. For instance, it will give a burden on the non-Muslim notaries in diverse countries. That will cause a possibility of reduction in the number of notaries willing to draft Islamic law-related deeds. Moreover, there is also the possibility of diverse interpretations of Islamic law across Southeast Asian countries since there are numerous interpretations by the *Imam* or leader of Islam (*mazhab*).¹³ Therefore, it gives questions about the legitimacy and consistency of certification bodies.

In regards the problems above, this study seeks to analyze the necessity and feasibility of Sharia certification for notaries, focusing on Southeast Asian Muslim countries. The research will identify potential legal frameworks for integrating Sharia certification into the notarial profession.

This article will examine the questions bellow:

1. How do the legal systems of Southeast Asian Muslim countries regulate the notarial profession in relation to Islamic law?
2. What is the best model for formulating Sharia certification for notaries, ensuring it aligns with each Southeast Asian Muslim country?

METHODS

¹⁰ Muhammad Zaki. 2024. *Legal Protection and Law Assistance to Notaries as a Public Official in Indonesia*. Samarah: Jurnal Hukum Keluarga dan Hukum Islam, Vol. 8 No. 2. p. 822.

¹¹ Ghansham Anand. 2018. *Karakteristik Jabatan Notaris di Indonesia*. Jakarta: Prenada Media.

¹² Nurhasanah and others. 2022. *The Position Of Regional Notary Honorary Council In Providing The Approval Toward The Notary Audit In The Investigation Process*. Syariah : Jurnal Hukum dan Pemikiran, Vol. 22, No.1. p. 51.

¹³ Meirison. 2022. Desmadi Sharuddin, Husnul Fatarib. *The Dynamics Of Islamic Jurisprudence In The Eyes Of Contemporary Muslims*. El-Mashlahah, Vol. 12, No. 1. p. 74.

This research uses a normative juridical approach to analyze the integration of Sharia certification in the notary profession in Southeast Asia.¹⁴ The authors used both primary and secondary legal materials. The sources of legal materials include, but are not limited to, laws and regulations, international treaties, arbitration judgements or national court judgements, and more legal literature. Using some approaches, the sources of legal materials are collected to find substances from diverse perspectives in addressing the legal concerns under examination.¹⁵ The primary legal materials in this research, such as relevant laws and regulations to the notary profession, such as Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 on the Office of Notary (Indonesia), Notaries Public Act 1959 (Malaysia), Sharia Penal Code Order 2013 (Brunei), The Lawyers Act of 1985 (Thailand), and Presidential Decree No. 1083 on the Code of Muslim Personal Laws (Philippines). In addition, another regulation, such as Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, Financial Services Authority Regulation Number 67/POJK.04/2017, etc that related to Sharia law were also part of the primary legal materials

A conceptual approach was applied to understand the basic principles of Sharia law relevant to the notary profession through books and legal literature regarding the prohibition of usury, justice, and the concept of *aqad*. The study is based on Islamic law literature, as a secondary legal material such as "Islamic Covenant Law in Indonesia: Concept, Regulation, and Implementation" by A.G. Anshori and "Understanding Sharia: Islamic Law in a Globalized World" by Abdulla and Keshaviee. This approach led to the formulation of the essential elements that should be addressed in making Sharia deeds, which served as the basis for the Sharia certification model recommendation. This article also use Legal dictionaries, such as Black's Law Dictionary dan Encyclopedia, such as Britannica to provide a definition of the Southeast Asian region and demographic context as a tertiary legal materials.

It combines with the statutory approach, focusing on laws and regulations as a framework for reviewing and analyzing the legal systems governing notarial practices for comparative purposes.¹⁶ Specifically, the statutory approach is applied to examine the the regulations related to the notarial profession in Southeast Asian countries. The regulations examined included the Law on Notaries (Indonesia), rules on capital market certification (Indonesia), and other regulations such as the Islamic Family Laws (Malaysia) and the Sharia Court Act (Brunei). This approach proposes to evaluate the adherence of each country's national laws with Sharia law principles in the context of deed-making.

As part of the comparative approach, this research compares the legal frameworks and practices of the notarial profession in Indonesia, Malaysia, Brunei, Thailand and the Philippines. The comparison is conducted to identify similarities, differences, and challenges in the implementation of Sharia certification. The study utilized secondary legal materials, such as scholarly journal articles, including "Authority of Non-Muslim Notary in Making Sharia Deeds" and "Competence of Notary in Performing Roles, Duties, and Authorities in Sharia Banking."

In addition, this research provided the analyzes of Case studies of notarial deeds related to Sharia law, such as *murabahah*, *musyarakah*, and *ijarah*. That explanation will give the overview of the notary practices in the field. Considering this approach, the research

¹⁴ M Anwar Nawawi, Sulastris, Relit Nur Edi. 2022. *Harmonization of Islam and human rights: judges' legal arguments in rejecting child marriage dispensation in Sukadana, Indonesia*. Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan, Vol. 22, No. 1. p. 121.

¹⁵ Peter Mahmud Marzuki. 2005. *Penelitian Hukum*. Jakarta: Prenada Media. p. 133.

¹⁶ Peter Mahmud Marzuki. p. 133.

offered strategic recommendations for improving the standard of the notary profession in Southeast Asia through the implementation of Shariah certification

RESULT AND DISCUSSION

Characteristics of Notarial Regulation in Southeast Asian Muslim Countries That Ensure Notaries Have a Thorough Understanding of Islamic Law

A notary (public) is defined by the Black's Law Dictionary as a person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters.¹⁷ In Indonesia under the Law on Notaries (UUJN), notary known as a public official with exclusive authority to create authentic deeds for all agreements and determinations stipulated by general regulations or requested by the interested parties to be documented in an authentic deed. The making of authentic deeds is required by laws and regulations to guarantee legal certainty, order, and protection for the community in need.¹⁸ Under the Article of 15 Law on Notaries (UUJN) states that (translation in english):

"Notaries have the authority to create authentic Deeds regarding all acts, agreements and stipulations that are required by statutory regulations and/or requested by interested parties, ensure the certainty of the Deed's date, safeguard the Deed, and provide originals, copies, and excerpts of the Deed, provided that the Deed has not been delegated or excluded to other officials or individuals as stipulated by law."

Besides, there are also similar duties as notary public in Malaysia, Philippines, Thailand, and Brunei. Therefore the author will give the big picture in brief explanations regarding regulation, and role of notaries not only in Indonesia, but also in Malaysia, Brunei, Thailand, and the Philippines.

Malaysia as a former colonial country that applied the common law system from England, historically there were several notaries who were assigned to make various deeds.¹⁹ Their main functions include administering oaths, taking affidavits, witnessing document executions, describing deeds, protest notes, and providing notarial copies.²⁰ The regulation for the Notary Public in Malaysia is govern under the Laws Of Malaysia Act 115 of 1959 regarding Notaries Public (hereinafter, "**Notaries Public Act 1959**"). The latest amendments was on 1 January of 2006. Based on the Notaries Public Act 1959 also governed the scope of public notary's role stipulated in section 4 regarding the Privileges of notaries public. Article 4 paragraph (1) of Notaries Public Act 1959 is stipulated that Notary public in Malaysia have equal powers and functions as notaries in England, with the exception of administering oaths or affirmation in connection with any affidavit or statutory declarations intended for use in Malaysian courts, or for the taking or attesting such documents. The inforcement of Sharia Law implied by the establishment of the Syariah Court system, which operates alongside Malaysia's civil legal framework.²¹ The functions of notary public in Malaysia is written under Article 4 paragraph (2) of Natories Public Act 1959:

"Without prejudice to the generality of the powers and functions conferred by subsection (1), a notary public may—

¹⁷ Black's Law Dictionary. 2009. Tenth Edition. United State of America: Thomson Reuters. p. 1225.

¹⁸ Ghansham Anand. 2018. Karakteristik Jabatan Notaris di Indonesia. Jakarta: media Group. p. 31.

¹⁹ Komar Andasmita. 1991. *Notaris I Peraturan Jabatan, Kode Etik Dan Asosiasi Notaris/Notariat*. Bandung: Ikatan Notaris Indonesia Jawa Barat. p. 14-15.

²⁰ Taufiq Deen, O. Argo Victoria, Sumain. 2018. *Public Notary Services In Malaysia*. Jurnal Akta, Vol. 5 Issue 4. p. 1017.

²¹ Muhammad Amrullah Drs. Nasrul and others. *Unraveling Legal Complexities: Muslim and non-Muslim Estate Administration Process in Malaysia and Brunei*. De Jure: Jurnal Hukum dan Syari'ah, Vol. 16 No. 2. p. 533.

- (a) administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed—
 - (i) for the purpose of confirming or proving the due execution of any document;
 - (ii) by any master or member of the crew of any vessel in respect of any matter concerning that vessel; or
 - (iii) for the purpose of being used in any court or place outside Malaysia, and may take or attest any such affidavit or statutory declaration; and
- (b) have and exercise such other powers and functions as may be prescribed.”

The other country that also conduct the Sharia law is Brunei Darussalam. The legal system is divided between secular law and Sharia system, with sharia courts operating separately under a single judiciary department. Sharia courts follow the Shafi'i school of Islamic jurisprudence, have jurisdiction over criminal and civil/family matters involving Muslims.²² Brunei as a Malay Islamic Monarchy state, officially adopted Islam as the religion of its rulers and ruled since the early 15th century, following the conversion of Awang Alak Betatar to Islam. This Islamic Monarchy State remains in existence today.²³ In Brunei, for the public documents divided by two services, which are Registrars Services and Notarial Services. According to the Subordinate Court Act Chapter 6 Section 11 paragraph (2), stipulate that the Registrars and Deputy Registrars shall be ex-officio Commissioner for Oaths, such as public documents, statutory declarations, affidavits, proof of debts, contracts, agreements, deeds, other declarations, and attesting power of attorney. Besides, the notarial services that according to the Supreme Court Act Chapter 5 Section 30 paragraph (2), the Chief Registrar, Deputy Chief Registrar, Senior Registrars and Registrars shall be ex-officio Commissioners for Oaths and notaries public. The High Court Registrar of the Supreme Court, who at the same serves as the Magistrate of the Subordinate Courts, is authorized to notarize documents intended for use in foreign jurisdictions. The notary services provided in the Subordinate Court encompass witnessing, attesting the execution of documents (except Foreign Workers Employment Contracts), and certifying documents for use in foreign jurisdictions.²⁴

Thailand is one of common law countries, as well as Malaysia and Brunei, thus, the notary is known as public notaries. In Thailand, Notaries widely recognized for their legal training and authority that licensed by the state, perform acts like witnessing signatures, administering oaths, and certifying documents, with their seal providing credit and authenticity in foreign jurisdictions.²⁵ In Thailand, notary must have a legal training which the course was from the Lawyer's council in order to get their notary's license or attestation.²⁶ In Thailand, notaries are referred to as "Thai Attorneys" and have an exclusive license issued by the Thai Council of Lawyers. Thailand has not yet legally enacted an

²² Executive Summary. 2021. *Brunei 2021 International Religious Freedom Report*. U.S. Department of State. <https://www.state.gov/reports/2021-report-on-international-religious-freedom/brunei/>.

²³ Profesor Dr. Abdul Mohaimin bin Noordin Ayus. 2018. *Shariah Penal Code Order, 2013 of Negara Brunei Darussalam: Its Implementation and Challenges*. International Conference of ASEAN Prespective and Policy (ICAP). Vol. 1. No. 1. p. 199.

²⁴ State Judiciary Department of Brunei Darussalam. *Registrars and Notarial Services*. <https://www.judiciary.gov.bn/SJD/Site/Pages/Subordinate%20Court/Registrars%20and%20Notarial%20Services/Registrars%20and%20Notarial%20Services.aspx>.

²⁵ Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. 2019. *How Notary's Service in Thailand?* Sultan Agung Notary Law Review, Vol. 1 Issue 1. p. 50-51. See also: Alfred E Piombino. 2011. *Notary Public Handbook: Principles, Practices & Cases, National Edition (First ed.)*. East Coast Publishing. [Yaya Kareng and others]

²⁶ Ibid. p. 51.

official Act for "Notary Public." This bar association is established and operates under "The Lawyers Act of 1985."²⁷ Therefore, the notary is also the lawyer that has extra courses that make them authorized to make the documents and creates a guarantee on the authenticity of the documents.

In the Philippines, the office of the notary royal (*escribano real*) and notary public (*escribano publico*) in the Philippines was begin since the colonial era of Spanish.²⁸ Under the Notarial Law of Spain, a notary was required to ascertain the identity of the parties to an instrument subject of notarization.²⁹ Therefore, the Philippines adopt the law and these days the function of a notary public is governed under the 2004 Rules on Notarial Practice by the Supreme Court of the Republic of the Philippines. Similar to Thailand, notaries in the Philippines are also licensed lawyers. The notary in the Philippines could also from non-lawyers, however, to the exception that in places where there are no lawyers or there are not enough lawyers as stated by the Supreme Court in 1974.³⁰ In addition the municipal judges also may act as notaries public, only in *a de officio* capacity. In *Opus v. Barnia*, the Supreme Court found "good and valid reasons not ot limit the authority of a municipal judge as an ex-officio notary public to the notarization of documents in connection with the performance of his official functions."³¹

In conclusion, the notary or notary public in Southeast Asian, especially in Indonesia, Malaysia, Thailand, Brunei, and the Philippines most likely have the same authority for creates and the notarization the documents and deeds. In connection with legal actions related to Islamic law, there is a possibility that notaries may draft deeds involving Islamic law. The legal framework governing Islamic law in these five countries is summarized in a table below:

No.	Countries	Legal Frameworks
1.	Indonesia	Compilation of Islamic Law under Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law or in Indonesian namelu Inpres 1/1991 ("Presidential Instruction 1/1991"). This law is only applicable to the Muslim in Indonesia.
2.	Malaysia	In Malaysia, the Islamic law or Shariah law, is applied solely to Muslims and is limited to specific areas of law. It is well known that Muslims in Malaysia belong to the Sunni madhab.³² Since the Malaysia have several official kingdom, thus, there are different enactments for Islamic Law management in each State. Each categories of law

²⁷ Ibid.

²⁸ Atty. Jose Y. Dalisay. 2014. *Notarial Practice & Malpractice in the Philippines: Rules, Jurisprudence, & Comments*. Mandaluyong City: Anvil Publishing, Inc. Section: Historical Background.

²⁹ Ibid. Section: Who May Qualify As Notaries.

³⁰ Anna Leah T. Castaneda. 1993. *A Manual For Filipino Notaries*. Ateneo Law Journal, Vol. 37 No. 2. p. 84.

³¹ Ibid. p. 84-85.

³² Selman Zahid Ozdemir, Miszaïri Bin Sitiris, Mohamad Sabri B Zakaria. 2022. *Codification of Islamic Family Law in Malaysia*. Journal of Islamic and Humanities Studies, Vol 2 No 2. p. 106.

		have their own regulation, such as Islamic Family Laws and Islamic Bank Act 1983. Malaysia has the Sharia Court by virtue of the provision of the Ninth Schedule, List II (State List) of the Federal Constitution, which limited to the Muslims only. ³³
3.	Brunei	The Shariah Penal Code Order 2013 governs the penal code. In addition, a number of regulations, including the Islamic Religious Council Act, the Shari'ah Court Act, Islamic Family Law Act and the Shari'ah Court Classification Order of 2001, are based on Sharia Law.
4.	Thailand	Under the 1901 Decree extended the Thai court system to Muslim-majority areas, allowing Islamic law to be applied in civil disputes involving both Muslim plaintiffs and defendants, with To Kali (kadi) as the expert to decide under Islamic law. ³⁴ Therefore, Islamic law is applied only to family and inheritance cases among Muslims. Moreover, Islam law judges (kadi) continue to adjudicate such cases. Part of the Judiciary (Islamic law Judges are dispatched to Provincial Courts, instead of organizing Syariah Court). ³⁵
5.	The Philippines	Presidential Decree No. 1083 concerning the Code of Muslim Personal Laws. This law is the recognition by the State for the Islamic law as the part of the law of the Philippines. There is other specific codification of Islamic Law, however, the Qur'an and Sunnah are the main source of the law. The Philippines has five Sharia District Courts.

The most documents that notary made mostly comes from the economic activity, such as trading and banking.³⁶ As exemplified by the Prophet Muhammad saw., trading/business is highly recommended in Islam teaching. Under the business activity, it is common to use an agreement or a contract for the parties. The agreement process is referred to as aqad that contain offering and acceptance.³⁷ The agreed-upon aqad serves as

³³ Najahudin Lateh, and others. 2010. *The Legal Framework Of The Islamic Financial System : A Study On The Cases In Malaysia*. Malaysian Accounting Review, Special Issue Vol. 9 No. 2. p. 87-88.

³⁴ Shinya Imaizumi. 2017. *The Application of Islamic Law in Thailand*. Institute of Developing Economies: Ide Discussion Paper No. 660. p. 8.

³⁵ Ibid. p. 6.

³⁶ Asyharul Muala. 2020. *Repositioning of Islamic Economics in the Era of Globalization from the Maqāṣid Syari'ah Perspective*. Journal of Islamic Law (JIL), Vol. 1, No. 1. p. 55.

³⁷ Yosi Aryanti. 2016. *Multi Akad (Al-Uqud Al-Murakkabah) di Perbankan Syariah Perspektif Fiqh Muamalah*. Juris: Jurnal Ilmiah Syariah, Vol. 15 No. 2. p. 178.

a binding law for the parties involved.³⁸ Aqad is divided into nominate aqad and innominate aqad. Under Sharia agreement, there are several terms of nominate aqad executed in notarial deeds, such as, but not limited to:³⁹

- a. Murabahah
Murabahah is an aqad of sale and purchase agreement with the declaration of margin of profit is agreed by the seller and the buyer;⁴⁰
- b. Bai' al-Istishna
Istishna is an aqad of sale and purchase agreement with certain conditions and criterias which agreed by the seller and the buyer;⁴¹
- c. Al-ijarah (rent agreement);
- d. Al-kafalah (warrant);
- e. Ar-rahn (pledge agreement);
- f. Al-qismah (grant).

For instance in Malaysia, notary also involved in the preparation of Islamic Loan documentation with product such as Bai Bil Taman Ajil and Musharakah Mutanaqisah for with various bank. Furthermore, there exist innominate aqad, which are contracts not explicitly defined by Islamic law but have evolved throughout the long history of the Muslim community, adapted to current requirements and advancements, such as the *istishna* contract, *bai' al-wafa*, *bai' istijrar*, and *al-tahkir*. This unidentified contract mainly relies on legal principles under Islamic Law such as *urf*, *istisban*, *qiyas*, and *maslahah mursalah*.⁴²

The Best Model for Formulating and Implementing Sharia Certification for Notaries That Can Be Effectively Applied in Southeast Asian Muslim Countries

The Islamic beliefs originated from Prophet Muhammad, who established a doctrine based on divine revelations contained in the Quran as the main source of Islamic law. There is another source of Islamic law namely the Sunna which encompassing both spiritual and secular traditions, serves as the primary framework for Muslim behavior. These two sources serve as the primary rules for both spiritual and temporal Muslim behavior in this world. The word Sharia means the highway for the good life. Over a period of Sharia, which derives from *Qiyas* and *Ijma*, has become the constitutional law of Muslim society over time. *Qiyas* means an analogical reasoning and *Ijma* means the consensus of the Islamic community on the point of law. Therefore, Sharia in this context is the constitutional law of Muslim society.⁴³

The relevance of the Sharia today is that the intersection of the Islamic law and the conventional international financial system. Under the Sharia law, there is a main element namely *riba* which usually is the issue of any business activity that using money. *Riba* is a common term refer to the any increase sought illegal means, such as usury, bribery, profiteering, and fraudulent trading.⁴⁴ Consequently, any agreements that comply with

³⁸ Doli Witro, and others.

³⁹ Dahrul Muftadin. 2018. *Dasar-Dasar Hukum Perjanjian Syariah dan Penerapannya Dalam Transaksi Syariah*. Jurnal Al-Adl Vol. 11 No. 1. p. 104. [Dahrul Muftadin]

⁴⁰ Anshori, A.G. 2018. *Hukum perjanjian Islam di Indonesia: konsep, regulasi, dan implementasi*. Yogyakarta: Ugm Press. p. 53-54; Youdhi Prayoga. 2014. *Murabahah Produk Unggulan Bank Syariah (Konsep, Prosedur, Penetapan Margin dan Penerapan Pasa Perbankan Syariah)*. Al-Risalah- Forum Kajian Hukum dan Sosial Kemasyarakatan, Vol. 14. No. 1. p. 118.

⁴¹ Ibid. 55.

⁴² Dahrul Muftadin. p. 104.

⁴³ Noor Mohammed. 2006. *Understanding Islamic Law: From Classical to Contemporary. Section: Principles of Islamic Contract Law*. United Kingdom: Altamira Press. p. 95.

⁴⁴ Ibid. p. 97.

Sharia law must be devoid of any aspect of *riba* or at least *subhat riba*.⁴⁵ *Subhat* means something that uncertainty or under the grey area of Islamic law. These agreements is made by the notaries in certain countries practices. However, if we look at the Indonesian notaries, they have a wider scope of roles, handling diverse legal deeds, whereas Malaysian notaries mostly specialize on wills and documents related to Islamic law.⁴⁶

There are several countries that require a specific certification in order to become notaries or specify an authority for notaries to do certain types of deeds. For instance, notaries in Thailand are required having legal training completed from the Lawyer's Council before they can get their notary licence or attestation.⁴⁷ Similar to the requirements of Thailand, the notaries in the Philippines must have certification from the Securities and Exchange Commission (SEC). Furthermore, Indonesia governed that the capital market notaries in Indonesia are required to obtained a professional education regarding the capital market study, as stipulated in Article 3(g) of the Financial Services Authority Regulation Number 67/POJK.04/2017, which states: "having expertise in the capital market, obtained through a professional education program with a minimum of 30 (thirty) professional credit units".

In the context of drafting Sharia agreements or deeds, there is a possibility that the notary may not be a muslim or may lack enough knowledge of Sharia law. This would result into a problem in the making of deeds itself if does not comply to the Sharia law. Aqad is not solely the commitment of the parties by morals, but also and act that may cause another legal consequences. Aqad must adhere to the legal principles of Sharia law, as noncompliance would render the agreement unlawful. Therefore, there is an urgency for the notary to understanding Sharia law to provide advice to parties who wish to draft Sharia-based deeds.

Islamic law requires specific guidelines, such as fairness, *riba* prohibition, and ethical conduct, may pose a challenge to the conventional legal frameworks. To address this issue, there are many alternative legal solutions may be suggested so that the notaries may retain the compliance with the Sharia law. For instance, there is a legal framework governing regarding the requirement of notaries to have a certification and authorization for making a Sharia-deeds or Sharia documents and agreements. This requirement will make sure the unifying comprehension of Sharia law for the notaries. In addition, this may prevent notaries from drafting deeds that violate Sharia law. Therefore, the notaries have authorization and obligation to refuse to draft Sharia-deeds that contravene Islamic law.

The implementation of Sharia certification in Southeast Asian faces challenges due to its complex social, legal, and religious landscapes.⁴⁸ The Southeast Asian countries, such as Indonesia, Malaysia, Brunei, Thailand and the Philippines have different legal system and diverse religious demographics. Even though the population of Indonesia, Malaysia, and Brunei are dominated by the muslim, however, there are also exist the non-muslim population. The Indonesian constitution legally recognizes six religions, as well as in Malaysia grants religious freedom to its community. In practice, becoming a notary is open to anyone of any religions. However, there is possibility that the Sharia deed may contain some foreign languages, Arabic for example, that many notaries who still lack an understanding the meaning of affixing foreign languages to the Sharia deed. Consequently, this may leads to gaps in understanding and application of Islamic law in the making of

⁴⁵ Raficq S. Abdulla and Mohamed M. Keshavjee. 2018. *Understanding Sharia: Islamic Law in a Globalised World*. London: I.B. Tauris & Co. Ltd. p.162.

⁴⁶ Satrio Abdillah, Norhasliza Ghapa, Maheran Makhtar. 2023. *A Comparative Study Between Indonesia and Malaysia on the Role of Notaries and Advocates*. Jurnal USM Law Review Vol 6 No 3. p. 952.

⁴⁷ Yaya Kareng and others. p. 51.

⁴⁸ Henky Fernando and others. 2024. *Bibliometrics of Family Law Research Trends in Southeast Asia: An Analysis Two Decades 2003-2023*. El-Usrah: Jurnal Hukum Keluarga, Vol. 7, No. 1. p. 83.

Sharia deed. In contrast, notaries have legal authority to provide legal counseling related to the Sharia deed.⁴⁹

Another challenges that may occur is the absence of a clear mechanism to identify notaries who have passed the Sharia certification. Until these days, there is no regulation governing the obligation of having specialization in Islamic Law for the notary to be able to create a Sharia deed. For instance, the related regulation that require the notary to have special certification is in Indonesia regarding the certification for capital market notary. The capital market notaries in Indonesia are required to obtained a professional education regarding the capital market study for minimum of 30 (thirty) professional credit unit according to the Article 3(g) of the Financial Services Authority Regulation Number 67/POJK.04/2017. The aim of this certification is proficiency and expertise in matters of capital markets⁵⁰ since notary as a profession in supporting capital markets.⁵¹

There is another element that could affect the implementation of Islamic law, which comes from the scholar, called *madhab*. Muslims constituted around sixty-one percent of the entire population in Malaysia, predominantly following the Shāfi'ī adhab, with a minority adhering to the Ḥanafī *madhab*.⁵² The majority muslims in Southeast Asian, such as Indonesia, Brunei, Thailand, and the Philippines use the Shāfi'ī adhab as well. In contrast, the Saudi Arabia, or muslim countries in Middle-East mostly using the Ḥanafī *madhab*. The differences create challenges in developing a generally authorized certification process among all Islamic scholars and institutions. For instance, the implementation of *riba*, which may different between the Ḥanafī and Shāfi'ī approaches. This may result in legal inconsistencies, complicating the establishment of a standardized certification process both internationally and domestically.

Therefore, to unify the formulation of Sharia certification for notaries, the certifying institution must be competent and capable. In Thailand and the Philippines, a lawyer who wants to be a notary must adhere to the certification by their authoritative country's institution. The concept aligns well with the Sharia certification; the institution issuing the Sharia certification should be compliant and capable of doing so. In Indonesia, there is a specific institution that related to Islamic law which is the certification for halal product held by the Institution of Halal Product Guarantee. Furthermore, the institution could be the ministry, like the “Kementerian Hal Ehwal Ugama” in Brunei which is a Ministry of Religion that regulates Islamic financial practices, such as *al-Ijarah* or the rent agreement.⁵³

In order to achieve the standardization of Sharia certification for natary, pre-certification training should be provided to ensure that every notaries can acquire the necessary knowledge before the exam. By participating the professional development and training, either in regular organizational meetings or individual, notaries may develop their knowledge through the upgrading, provision, and refreshing courses.⁵⁴ The training aims to provide notaries with a comprehensive knowledge of Sharia law, focusing topics such as Islamic banking, inheritance law, and marriage issue.⁵⁵ Therefore, Sharia certification

⁴⁹ Aan Guswandi Arifin. 2024. *Authority Of Non-Muslim Notary In Making Sharia Deeds*. Leges Privatae, Vol. 1 No. 2. p. 6.

⁵⁰ Elvira Fitriyani Pakpahan, Vivi Prisilla, Dicky, Yuni Adriana Malau. 2020. *Peran Dan Kewenangan Profesi Penunjang Pasar Modal (Notaris) Dalam Menghadapi Era Globalisasi*. Jurnal Cendekia Hukum: Vol. 5, No 2. p. 331.

⁵¹ Ibid. p. 329.

⁵² Ozdemir and others. p. 102.

⁵³ Fatin Rabia'tul AdawiyahMohammed Fareed. 2020. *The Role of Islam in the Management and Administration of Brunei Darussalam*. Islamic Research, Vol. 3 No. 2. p. 48.

⁵⁴ Andri Nurwandi and others. 2024. *Peran Pelatihan Dan Pengembangan Profesional Dalam Meningkatkan Kompetensi Notaris*. Journal of Law, Vol. 3, No. 1. p. 7.

⁵⁵ Edi Kurniawan and others. 2020. *Early Marriage, Human Rights, and The Living Fiqh: A Maqasid al-Shari'a Review*. Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan, Vol. 20, No. 1. p. 8.

allowing a notary to make a Sharia deed. Competence ensures positive law and sets up agreements in alignment with Sharia principles.⁵⁶

Through the certification of Sharia law, there is a possibility to unification of standard among the Southeast Asian countries. This will give a chance for the ASEAN Economic Community (AEC) to have multilateral agreement to grant a cross-border Sharia compliant transactions, including the Islamic Initial Public Offerings (IPOs), Sukuk (Islamic bonds), and other financial instruments. In order to achieve this goal, each institutions of each Southeast Asian countries collaborate and govern regarding the unification of implementation and regulation for Sharia certificate. Thus, the importance element is set the uniform standards for Sharia deeds and agreements across Southeast Asian. Furthermore, there is an international website made by the authority institution through that collaboration that may check the validity of the Sharia certificates for notaries.

CONCLUSIONS

The notaries in some Southeast Asian countries, such as Indonesia, Malaysia, Brunei, Thailand, and the Philippines, hold different authorities according to each national law and regulation. Since these countries have a Muslim population as the majority, the implementation of Islamic law is recognized and enforceable. Through this study, it is terminated that the notary may make the deeds and agreements under the Islamic law that are recognized and regulated by each national law, categorized as Sharia deed or Sharia agreement with classified *aqad*. This agreement is made mostly from the economic activity, such as trading and banking. The agreed-upon *aqad* serves as a binding law for the parties involved. For instance, the *murabahah*, *musyarakah*, *al-Istishna* and *al-ijarah*.

In conclusion, the Sharia certification for notaries in Southeast Asia is necessary to ensure compliance with Islamic legal principles and improve the cross-border legal practices. The findings highlight the need for standardized certification processes since there is a gap of knowledge and understanding that may occur to the notary in order to make a Sharia deed or agreement. This certification system shall adhere to each country's specific legal and religious context. Therefore, future efforts should focus on establishing competent and capable certifying institutions providing comprehensive legal training programs and certification, either regionally or internationally. Eventually, the Sharia certification gives an outcome of the unification among Southeast Asian countries, fostering regional cooperation to harmonize Sharia-compliant notarial practices.

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⁵⁶ Rina Taurina and others. 2023. *Kompetensi Notaris Dalam Menjalankan Peran, Tugas Dan Kewenangan Pada Perbankan Syariah: Studi Pada Bank Permata Syariah*. Jurnal Res Justitia: Jurnal Ilmu Hukum, Vol. 3 No. 1. p.158.

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