

The Urgency of the Guardian of Fairness Concept in Strengthening Notarial Ethics in Sharia Economic Transactions

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Abstract: The development of the Sharia economy in Indonesia has led to the increasing use of Sharia-based contracts in various business and financial activities. The characteristics of Sharia economic transactions, which emphasize justice (*al-'adl*), balance (*tawāzun*), public welfare (*maṣlahah*), and the protection of the parties involved, indicate that formal legal validity alone is insufficient to ensure the achievement of transaction objectives in accordance with Sharia principles. In this context, notaries occupy a strategic position as public officials authorized to draft authentic deeds and provide legal certainty for various contractual relationships. However, the growing complexity of Sharia economic transactions requires an ethical perspective that is oriented not only toward formal legality but also toward the realization of substantive justice. This article aims to analyze the urgency of the *Guardian of Fairness* concept as an ethical paradigm for understanding the role of notaries in Sharia economic transactions. This study employs a normative legal research method using statutory, conceptual, and philosophical approaches. The analysis focuses on regulations related to the notarial profession and Sharia economic transactions, as well as the concepts of *kātib al-'adl*, *al-muwaththiq*, and the principles of *maqāṣid al-sharī'ah*. The findings reveal that the concept of *Guardian of Fairness* has normative and historical roots within the Islamic legal tradition, which regards recorders and authenticators of contracts as guardians of justice in contractual relationships. This concept offers an ethical paradigm that positions notaries not merely as guardians of formal legality, but also as protectors of contractual balance, defenders of vulnerable parties, promoters of contractual transparency, and supporters of compliance with Sharia principles. Therefore, the *Guardian of Fairness* concept has significant relevance in strengthening notarial ethics while supporting the realization of Sharia economic transactions that are fair, transparent, and oriented toward public welfare.

Keywords: *Guardian of Fairness*, Notarial Ethics, Substantive Justice, *Kātib al-'Adl*, *Maqāṣid al-Sharī'ah*, Sharia Economic Transactions.

Introduction

The development of the Sharia economy in Indonesia over the last two decades has demonstrated remarkable growth. This development is reflected in the increasing number of Islamic financial institutions, the expansion of Sharia capital market instruments, and the growing diversity of business transactions utilizing Sharia-based contracts. These developments indicate that the Sharia economy has become an important component of the national economic system, one that is not solely oriented toward economic growth but also toward the realization of justice, balance, public welfare, and the protection of the rights of contracting parties (Moh Mardi, 2021).

Unlike the conventional economic system, which tends to regard freedom of contract as the primary foundation of legal relationships, the Sharia economic system emphasizes the importance of substantive justice in every contract. A transaction is not only required to satisfy the formal requirements of legality but must also be free from elements of *riba* (usury), *gharar* (uncertainty), *maysir* (gambling), *tadlis* (fraudulent misrepresentation), and other forms of injustice. Therefore, the success of a contract is not measured solely by its legal validity but also by its ability to ensure a balance of rights and obligations, protect weaker parties, and promote public welfare for all parties involved (Yunilhamri et al., 2024).

In this context, notaries occupy a highly strategic position. As public officials authorized to draft authentic deeds, notaries play a vital role in providing legal certainty for legal relationships arising from Sharia economic transactions. Through the authentic deeds they prepare, notaries not only document the agreements of the parties but also confer legal legitimacy upon the contracts that form the basis of such contractual relationships. Consequently, the existence of notaries is essential in supporting the establishment of an orderly, secure, and trustworthy transactional system (Audya Harahap et al., 2020).

The performance of this function cannot be separated from notarial ethics, which are founded upon the values of integrity, independence, impartiality, professionalism, and trustworthiness (*amanah*). These values constitute the primary foundation for maintaining public confidence in the notarial profession while ensuring that the authority granted by the state is exercised responsibly (Musdiyanti et al., 2022). Nevertheless, the increasing complexity of Sharia economic transactions demonstrates that formal legal certainty is not always synonymous with the realization of substantive justice. In practice, contractual relationships are still found that formally satisfy legal requirements but nevertheless involve unequal bargaining positions, insufficient transparency of information, or potential harm to one of the parties (Melisa Febriani, 2022).

This situation raises an important question regarding the extent to which notaries can contribute to the realization of justice in Sharia economic transactions. To date, the principles of independence and impartiality have often been understood as forms of neutrality primarily concerned with ensuring compliance with the formal requirements of a contract. However, within the framework of Sharia economics, justice constitutes the ultimate objective that must be realized in every contractual relationship. Accordingly, there is a need for an ethical perspective capable of bridging formal legal certainty with the demand for substantive justice (Audya Harahap et al., 2020).

This idea, in fact, has deep roots within the Islamic legal tradition. The Qur'an, through Q.S. Al-Baqarah [2]: 282, introduces the concept of *kātib al-'adl* (the just scribe) in the recording of transactions (Fahrudin, 2021). Throughout the historical development of Islamic law, this concept evolved into the institution of *al-muwaththiq*, whose function was to document and authenticate contracts in order to ensure legal certainty while simultaneously protecting the rights of the contracting parties. Both concepts demonstrate that the recording and authentication of contracts in Islam have never been merely administrative functions; rather, they embody a moral responsibility to uphold justice within legal relationships (Haniffuddin and Fauzi, 2021).

Building upon this tradition, this article proposes the concept of *Guardian of Fairness* as an ethical paradigm for understanding the role of notaries in Sharia economic transactions. This concept positions notaries not merely as guardians of formal legality but also as guardians of contractual fairness, committed to promoting balance, transparency, protection of rights, and compliance with Sharia principles. Employing a normative legal approach, this article aims to examine the urgency of the *Guardian of Fairness* concept, trace its conceptual roots within the Islamic legal tradition, and explain its contribution to strengthening notarial ethics in Sharia economic transactions in Indonesia.

Method

This study employs a descriptive-analytical method using a normative legal research approach to examine legal norms, professional ethical principles, and legal concepts related to the role of notaries in Sharia economic transactions. The research focuses on the analysis of legal and ethical frameworks governing notarial authority rather than on empirical observations or social behavior.

Three approaches were applied in this study: the statutory approach, conceptual approach, and philosophical approach. The statutory approach was used to analyze legal instruments related to notarial practice and Sharia economic transactions, including Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on Notarial Office, the 2025 Notarial Code of Ethics, Law Number 21 of 2008 on Sharia Banking, as well as relevant regulations and fatwas governing Sharia economic activities. The conceptual approach was employed to examine key concepts such as professional ethics, independence, impartiality, substantive justice, and the concept of *Guardian of Fairness* as a contemporary ethical paradigm in notarial practice. Meanwhile, the philosophical approach was used to explore the values of justice, trustworthiness (*amanah*), public benefit (*maṣlaḥah*), and the principles of *maqāṣid al-sharī'ah* as the moral foundation of Sharia economic transactions.

The legal materials consisted of primary, secondary, and tertiary sources. Primary materials included legislation, the Notarial Code of Ethics, relevant court decisions, and fatwas issued by the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI). Secondary materials comprised scholarly books, journal articles, research reports, and legal doctrines, while tertiary materials included legal dictionaries and encyclopedias.

Data were collected through library research and analyzed qualitatively using descriptive and prescriptive methods. The analysis aimed to formulate the conceptual significance of the *Guardian of Fairness* in strengthening notarial ethics and promoting substantive justice in Sharia economic transactions.

Results and Discussion

1. Characteristics of Sharia Economic Transactions and the Need for Substantive Justice

Sharia economics is an economic system founded upon the principles of Islamic law (*Sharī'ah*), aiming to achieve justice, public welfare (*maṣlaḥah*), balance, and prosperity for all parties engaged in economic activities. Unlike the conventional economic system, which generally emphasizes freedom of contract and economic gain as its primary objectives, Sharia economics places moral and ethical values as inseparable components of every economic transaction. Consequently, every legal relationship established within Sharia economic transactions is evaluated not only based on its formal legal validity but also on its conformity with Islamic legal principles and the values of justice that constitute the ultimate objectives of Islamic law (Yunilhamri et al., 2024).

One of the defining characteristics of Sharia economic transactions is the obligation to avoid any contractual arrangements containing elements of *ribā* (usury), *gharar* (excessive uncertainty), *maysir* (gambling or speculation), *tadlīs* (fraudulent concealment or misrepresentation), and other practices that may lead to injustice. The prohibition of these elements demonstrates that Islamic law is concerned not merely with the legality of a

transaction but also with its social, economic, and ethical consequences. Accordingly, a contract that formally satisfies the legal requirements of a valid agreement may still be regarded as inconsistent with Sharia principles if it contains provisions that disadvantage one of the contracting parties or create an imbalance in their contractual relationship (Tuasikal, 2020).

Justice (*al-'adl*) constitutes the fundamental pillar of the Sharia economic system. In Islamic jurisprudence, justice extends beyond formal equality before the law; it encompasses the realization of a fair balance between rights and obligations while ensuring protection for parties occupying weaker bargaining positions. This principle is explicitly affirmed by Allah in the Qur'an:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ

"Indeed, Allah commands justice (*al-'adl*), excellence (*al-ihsān*), and generosity toward relatives, and He forbids immorality, wrongdoing, and oppression." (*Qur'an, Surah An-Nahl* [16]: 90).

This verse illustrates that justice is a universal principle that must govern every aspect of human life, including economic and contractual relationships. Accordingly, every Sharia-based transaction should aim to generate mutual benefits for all contracting parties while preventing exploitation, abuse of economic power, and any form of inequitable treatment (Maulida et al., 2024).

Another distinguishing feature of Sharia economics is the inseparable relationship between legal norms and moral obligations. Within the Islamic legal framework, contractual agreements (*akad*) are not merely legal instruments creating reciprocal rights and obligations; they also constitute moral commitments for which individuals will ultimately be accountable before Allah. Consequently, values such as honesty (*sidq*), trustworthiness (*amānah*), transparency, and good faith (*ḥusn al-niyyah*) occupy a central position in every contractual relationship. This ethical foundation is reflected in the Qur'an:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ

"O you who believe! Do not consume one another's wealth unjustly, but only through lawful trade conducted by mutual consent." (*Qur'an, Surah An-Nisā* [4]: 29).

This verse emphasizes that the legitimacy of a transaction depends not only on the existence of mutual consent but also on the presence of genuine willingness, transparency, and fairness among the contracting parties (Zuhdi, 2017).

In contemporary practice, the need for substantive justice has become increasingly significant as Sharia economic transactions continue to grow in complexity. Modern financing arrangements, investment schemes, and commercial partnerships based on Sharia contracts frequently involve parties possessing different levels of legal knowledge, financial literacy, access to information, and bargaining power. If justice is interpreted solely as compliance with the formal legal requirements of a contract, opportunities for exploitation and contractual imbalance remain inevitable. Therefore, Sharia economic transactions require an approach that extends beyond formal legality toward substantive justice—one that ensures proportional protection, equitable treatment, and mutual benefit for all parties involved in accordance with the objectives of Islamic law (*maqāṣid al-sharī'ah*) (Atik Budi Paryanti & Lukman Hakim Sangapan, 2025).

2. Notarial Ethics in Ensuring Legal Certainty and Justice

The position of a notary as a public official is not merely intended to establish legal certainty but also to maintain public trust in every legal relationship embodied in an authentic deed. Accordingly, the exercise of notarial authority cannot be separated from the ethical dimension governing how such authority is exercised responsibly. Notarial ethics serves as the moral foundation that guides notaries to perform their duties with honesty, independence, trustworthiness (*amānah*), professionalism, and fairness (Putri & Aminah, 2025).

Normatively, these obligations are explicitly stipulated in Article 16 paragraph (1) letter (a) of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on Notarial Office, which requires a notary to "*act in a trustworthy, honest, diligent, independent, impartial manner and safeguard the interests of the parties involved in the legal act.*" This provision demonstrates that Indonesian positive law does not merely regard notaries as officials authorized to produce authentic deeds but also recognizes them as professionals entrusted with ethical responsibilities toward the parties who rely on their services (Imani & Basoeky, 2025).

The same principles are reaffirmed in the 2025 Notarial Code of Ethics. Article 4 letter (e) requires notaries to demonstrate trustworthiness (*amānah*) and responsibility, Article 4 letter (f) obliges them to uphold honesty and integrity, Article 4 letter (h) requires them to maintain independence, while Article 4 letter (i) mandates fairness and impartiality. Furthermore, Article 10 paragraph (1) emphasizes that justice must be realized through equal treatment of all parties and respect for their respective rights in every legal relationship executed before a notary. Collectively, these provisions confirm that justice constitutes one of the fundamental ethical values underpinning the notarial profession (Lubis et al., 2025).

The same ethical orientation is consistently reflected in various Fatwas issued by the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI), which emphasize transparency, honesty, and justice as essential principles governing every Sharia contract. In Sharia financing transactions, for example, the DSN-MUI requires certainty regarding the contractual object, full disclosure of relevant information, and strict prohibition of *ribā* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling or speculation), all of which may cause injustice to one of the contracting parties. These requirements demonstrate that justice is not merely an ethical aspiration but rather an integral component of the legal validity of Sharia transactions (Makkulau & Abdullah, 2017).

These normative foundations are fully consistent with Islamic teachings, which regard justice as the primary objective of both social and economic relationships. In addition to the command of justice contained in Qur'an, Surah An-Nahl (16): 90, Allah also states:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

"Indeed, Allah commands you to render trusts to whom they are due, and when you judge between people, judge with justice." (*Qur'an, Surah An-Nisā' [4]: 58*).

This verse establishes two inseparable ethical principles: trustworthiness (*amānah*) and justice (*al-'adl*). Both values constitute the moral foundation upon which the authority of public officials, including notaries, should be exercised. In this regard, the responsibility of a notary extends beyond ensuring procedural legality to encompass the ethical obligation of safeguarding fairness and protecting the legitimate interests of all parties involved.

Based on these legal and ethical frameworks, it can be understood that notarial ethics is intrinsically connected with the principle of justice. The legal certainty provided through an authentic deed should never be detached from its broader objective of establishing fair, balanced, and legally protected contractual relationships. Within this context, the concept of Guardian of Fairness becomes increasingly relevant as an ethical paradigm that strengthens the traditional role of notaries. Rather than functioning solely as guardians of formal legality, notaries should also be regarded as guardians of justice, ensuring that every authentic deed reflects contractual fairness, protects vulnerable parties, and upholds the ethical values that constitute the very spirit of Sharia economic transactions (Kristiawan, 2023).

3. Limitations of the Passive Neutrality Approach in Notarial Practice

The principles of independence and impartiality constitute the cornerstone of the notarial profession as public officials vested by the State with the authority to execute authentic deeds. These principles are intended to ensure that notaries perform their duties objectively, honestly, and without favoring any party involved in a legal transaction. In notarial practice, independence is generally understood as maintaining professional distance from the interests of the contracting parties, while impartiality is interpreted as the obligation to treat all appearers equally. Such an understanding is undoubtedly essential for preserving public confidence in the notarial profession. Nevertheless, within the context of Sharia economic transactions, an overly narrow interpretation of independence has given rise to what may be described as the passive neutrality approach (Satya Wibowo et al., 2022).

Passive neutrality confines the notary's role to verifying compliance with the formal legal requirements of an authentic deed, such as confirming the identity and legal capacity of the parties, examining supporting documentation, and ensuring adherence to procedural requirements for executing the deed. Once these formalities have been fulfilled, the notary is generally considered to have discharged his or her professional obligations. Under this paradigm, evaluating the substantive fairness of the legal relationship, the balance of rights and obligations between the parties, or the conformity of the contract (*akad*) with Sharia principles is regarded as falling outside the notary's professional responsibility. Consequently, the notary tends to function merely as a legal recorder or legal drafter, whose primary task is to formalize the parties' intentions into an authentic legal instrument (Cassandra, 2023).

Such an approach becomes increasingly problematic when applied to Sharia economic transactions. Unlike conventional contracts, which primarily emphasize the principle of freedom of contract, Sharia contracts require the realization of justice (*al-'adl*), contractual balance (*tawāzun*), transparency, and public benefit (*maṣlaḥah*). Consequently, the formal validity of a contract does not necessarily indicate that the objectives of Islamic law have been achieved if the contracting process is characterized by unequal access to information, disparities in bargaining power, or contractual clauses that disproportionately disadvantage one of the parties (Susanto et al., 2025).

The limitations of the passive neutrality approach are clearly illustrated in Supreme Court Decision No. 401 K/Ag/2020, concerning an investment financing dispute based on a *murābahah* contract. The case involved a notary who executed a Murābahah Financing Restructuring Deed, which subsequently became the subject of litigation due to allegations that portions of the deed and several pages had been altered without the consent of one of the contracting parties. Although the dispute was ultimately decided on the basis of the totality of evidence presented during the proceedings, the case demonstrates that the existence of an authentic deed does not

automatically guarantee justice within the contractual relationship. The central issues extended beyond the formal validity of the deed and concerned the integrity of the contracting process, transparency, and the protection of the parties' legitimate rights. Academic analyses of this decision further argue that a notary's responsibility in *murābahah* transactions should not be confined to fulfilling administrative formalities but should also include providing legal explanations, ensuring that the parties fully understand the substance of the contract, and considering compliance with Sharia principles throughout the drafting process (Cassandra, 2023).

A similar illustration can be found in Tangerang Religious Court Decision No. 2811/Pdt.G/2019/PA.Tng, which involved a dispute arising from a *murābahah* financing agreement. In this case, the notary who executed Murābahah Financing Deed No. 143 dated 29 November 2012 was named as a co-defendant. During the proceedings, the notary argued that he was not a party to the contract and had merely formalized the parties' intentions based on the financing approval documents provided by the Islamic bank. From a legal standpoint, this position accurately reflects the status of a notary as a public official rather than a contracting party. From the perspective of professional ethics, however, the argument simultaneously illustrates the continued dominance of the passive neutrality paradigm within notarial practice. The notary was deemed to have fulfilled his professional obligations once all procedural requirements had been satisfied, regardless of whether the contractual formation process had been balanced, transparent, and fully understood by all parties involved (Akbar & Yazid, 2020).

These two judicial decisions demonstrate that disputes in Sharia economic transactions rarely originate solely from formal defects in authentic deeds. More often, they arise from deficiencies in the quality of the contractual relationship established through the underlying *akad*. Although an authentic deed undoubtedly provides legal certainty regarding the existence of an agreement, it does not necessarily ensure that the agreement fulfills the requirements of substantive justice, which constitutes a defining characteristic of Sharia economics. This phenomenon reveals a persistent gap between formal legal certainty and the broader objectives of Islamic law, which emphasize the protection of contractual rights, equitable allocation of rights and obligations, and the prevention of injustice.

Accordingly, the prevailing understanding of independence and impartiality requires reconsideration. Independence should no longer be interpreted merely as passive non-interference but rather as a professional responsibility to ensure that the contractual formation process is conducted honestly, transparently, fully understood by all parties, and free from imbalances that contradict the principles of Sharia. It is precisely within this context that the concept of Guardian of Fairness acquires its significance. Rather than transforming the notary into a judge or an advocate for either party, this concept redefines the notary as a guardian of contractual fairness, entrusted with ensuring that formal legal certainty operates in harmony with substantive justice. Consequently, the Guardian of Fairness paradigm should be understood as an ethical evolution of the principles of independence and impartiality—not a departure from them—enabling the notarial profession to respond more effectively to the growing complexity of contemporary Sharia economic transactions.

4. The Concept of Guardian of Fairness as an Ethical Paradigm for Notaries

The increasing complexity of Sharia economic transactions necessitates a stronger ethical perspective in the performance of notarial duties. Traditionally, notaries have been positioned as public officials whose primary function is to provide legal certainty through the execution of authentic deeds. This function is of fundamental importance, as authentic deeds possess conclusive evidentiary value and serve as essential legal instruments for maintaining legal order within society. Nevertheless, the evolution of modern commercial transactions demonstrates that formal legal certainty does not necessarily guarantee substantive justice. A contract (*akad*) may fully satisfy all legal and procedural requirements while still reflecting an imbalance of rights and obligations, unequal bargaining power, or circumstances that may disadvantage one of the contracting parties. Within this context, the concept of Guardian of Fairness emerges as a relevant ethical paradigm that reinforces the role of notaries in promoting justice within contractual relationships (Kristiawan, 2023).

Conceptually, the Guardian of Fairness refers to a person who bears both a moral and professional responsibility to ensure that legal relationships established by contracting parties are conducted fairly, transparently, and equitably. This concept does not alter the legal status of the notary as an independent and impartial public official. Rather, it provides a broader interpretation of the principle of independence. Independence should no longer be understood merely as passive neutrality, but as a professional obligation to ensure that the process of establishing legal relationships is conducted fairly and without manifest injustice (Imani & Basoeky, 2025).

Within the Guardian of Fairness paradigm, a notary does not assume the role of legal adviser to either party, judicial decision-maker, or arbiter of contractual terms. Instead, the notary assumes an ethical responsibility to ensure that all parties understand their respective rights and obligations, receive adequate information concerning the legal consequences of the contract, and are not placed in circumstances that result in manifest unfairness. Accordingly, the role of the notary extends beyond merely verifying documents and identifying the parties; it also encompasses safeguarding the fairness of the contractual formation process itself (Musdiyanti et al., 2022).

This paradigm finds substantial normative support within the Indonesian legal system. Article 16 paragraph (1) letter (a) of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on Notarial Office requires notaries to act in a trustworthy, honest, diligent, independent, and impartial manner while safeguarding the interests of the parties involved in every legal act. The statutory phrase "*safeguarding the interests of the parties*" demonstrates that the function of a notary extends beyond the mere preparation of authentic deeds and includes an ethical obligation to ensure that legal processes are conducted properly and provide proportional protection for all parties concerned. Likewise, the 2025 Notarial Code of Ethics identifies trustworthiness (*amānah*), integrity, justice, independence, and professionalism as the fundamental ethical values governing notarial practice (Imani & Basoeky, 2025).

From the perspective of Sharia economics, the concept of Guardian of Fairness possesses even greater significance because justice constitutes the primary objective of every Sharia transaction. Islamic commercial law requires not only the formal validity of a contract but also the realization of contractual balance, public welfare (*maṣlahah*), and the protection of the legitimate rights of all contracting parties. Consequently, a transaction that is legally valid but contains elements of exploitation, excessive uncertainty, or significant contractual imbalance is inconsistent with the fundamental values of Sharia. Within this framework, the notary acting as a Guardian of Fairness serves as an ethical safeguard to ensure that contractual relationships remain within the boundaries of justice and Sharia compliance (Rosadi, 2025).

The philosophical foundation of this concept can be found in Islamic teachings, which regard justice as a fundamental principle of social and economic life. Allah declares:

"Indeed, Allah commands justice (*al-'adl*) and excellence (*al-ihsān*)."
(*Qur'an, Surah An-Nahl [16]: 90*).

This verse demonstrates that justice is not merely a legal objective but also a moral obligation that must be realized in every aspect of human interaction, including commercial transactions. The same principle is reaffirmed in another Qur'anic verse:

"O you who believe! Stand firmly for Allah as witnesses in justice."
(*Qur'an, Surah Al-Mā'idah [5]: 8*).

Within the context of notarial practice, these verses establish a moral foundation demonstrating that the notarial profession extends beyond technical legal functions and encompasses an ethical responsibility to promote justice in society.

Furthermore, the Guardian of Fairness paradigm is fully consistent with the objectives of maqāṣid al-sharī'ah, particularly the protection of property (*ḥifẓ al-māl*) and the realization of public welfare (*maṣlahah*). The objectives of Islamic law are not limited to ensuring the formal validity of transactions but also seek to guarantee that contractual relationships generate legitimate benefits while preventing harm to the contracting parties. Accordingly, recognizing the notary as a guardian of contractual fairness constitutes an important mechanism for advancing the objectives of Sharia in the field of *mu'āmalāt* (Huda & Saripudin, 2022).

Accordingly, the concept of Guardian of Fairness offers a more comprehensive ethical paradigm for understanding the contemporary role of notaries. Rather than replacing the principles of independence and impartiality that define the notarial profession, this paradigm reinforces their substantive meaning by orienting them toward justice, contractual balance, transparency, and the protection of legitimate interests. Through this perspective, notaries function not only as guardians of formal legality but also as guardians of justice who contribute to the establishment of legal relationships that are equitable, transparent, and fully consistent with the ethical values and objectives of Sharia economic law.

5. The Genealogy of the *Guardian of Fairness* Concept in the Islamic Legal Tradition

The concept of Guardian of Fairness as the protector of justice in contractual relationships is not an entirely novel idea within the Islamic legal tradition. Although the terminology has emerged within contemporary legal and professional ethics discourse, its underlying values have long been embedded in Islamic commercial jurisprudence (*fiqh al-mu'āmalāt*) through the concepts of *kātib al-'adl* (the just scribe) and *al-muwaththiq* (the authenticator or legal documenter). These two concepts demonstrate that, from the earliest period of Islamic civilization, the recording and authentication of contracts (*akad*) served not merely as administrative mechanisms for ensuring legal certainty but also as instruments for safeguarding justice and protecting the rights of the contracting parties (Hanifuddin & Fauzi, 2021).

The normative foundation for the documentation of contracts is found in the Qur'an, particularly in Surah Al-Baqarah (2): 282, the longest verse in the Qur'an, in which Allah commands:

وَلْيَكْتُبْ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ

"Let a scribe write it down between you in justice (*bil-'adl*)."
(*Qur'an, Surah Al-Baqarah [2]: 282*).

This verse clearly indicates that contractual documentation should not be entrusted to just anyone but must be undertaken by an individual who possesses the quality of justice (*'adl*). The expression *bil-'adl* conveys that the responsibility of the scribe extends far beyond the mechanical act of recording the parties' agreement. Rather, it embodies a moral obligation to preserve honesty, balance, and fairness throughout the process of contractual formation. Accordingly, the *kātib al-'adl* may be understood as a figure entrusted with ensuring that a written

contract faithfully reflects the genuine intentions of the parties, protects their respective rights, and prevents injustice or exploitation (Fahrudin, 2021).

As Islamic legal institutions evolved, the function of the *kātib al-'adl* gradually developed into the institution known as *al-muwaththiq*. Derived from the Arabic term *tawthīq*, meaning authentication, documentation, or legal confirmation, the *al-muwaththiq* was responsible for drafting, documenting, and authenticating contracts and other legal instruments to ensure legal certainty and evidentiary reliability. The role required not only technical competence in preparing legal documents but also a profound understanding of the principles of justice underpinning contractual relationships. Consequently, many Islamic legal scholars regard the institution of *al-muwaththiq* as the historical precursor to the modern notarial profession (Lubis et al., 2025).

From a conceptual perspective, there exists a clear continuity between the functions of the *kātib al-'adl*, *al-muwaththiq*, and the contemporary concept of Guardian of Fairness. All three place justice at the center of the contractual formation and documentation process. Their primary distinction lies in their historical and institutional contexts. The *kātib al-'adl* emphasized the fair recording of agreements; the *al-muwaththiq* focused on legal authentication and the protection of rights through documentation; whereas the Guardian of Fairness expands these traditional functions by positioning substantive justice as the ethical orientation of contemporary contractual practice (Muhajirin & Nur Ngaisah, 2019).

Accordingly, the concept of Guardian of Fairness may be understood as a contemporary manifestation of values that have long been embedded within the Islamic legal tradition. Rather than introducing an entirely new professional role, it revitalizes the ethical principles that have historically governed contractual documentation in Islam. The concept reflects the continuity between the Qur'anic principle of justice, the institution of the *kātib al-'adl*, the historical development of the *al-muwaththiq*, and the modern role of notaries in safeguarding contractual balance, protecting the rights of contracting parties, and ensuring fairness in economic transactions.

Furthermore, this historical continuity reinforces the normative legitimacy of the Guardian of Fairness paradigm. The concept is not merely derived from contemporary theories of professional ethics but is deeply rooted in the epistemological foundations of Islamic law. It embodies the enduring objectives of *maqāṣid al-sharī'ah*, particularly the preservation of property (*ḥifẓ al-māl*), the realization of justice (*al-'adl*), and the promotion of public welfare (*maṣlaḥah*). Within this framework, the notary is not viewed solely as an official responsible for authenticating legal documents but also as an ethical custodian entrusted with preserving contractual justice throughout the process of legal formation. Consequently, the Guardian of Fairness paradigm provides a strong historical, normative, and philosophical foundation for redefining the contemporary role of notaries in Sharia economic transactions while remaining faithful to the longstanding traditions of Islamic jurisprudence.

6. Guardian of Fairness from the Perspective of *Maqāṣid al-Sharī'ah*

The concept of Guardian of Fairness possesses a strong philosophical foundation when examined through the perspective of *maqāṣid al-sharī'ah*. In general, *maqāṣid al-sharī'ah* refers to the higher objectives of Islamic law aimed at realizing public welfare (*maṣlaḥah*) and preventing harm (*mafsadah*). Within the context of Islamic commercial law, *maqāṣid al-sharī'ah* functions not merely as a normative foundation but also as an evaluative framework for determining whether a transaction genuinely reflects justice, contractual balance, protection of rights, and benefits for all parties involved. Accordingly, the concept of Guardian of Fairness may be understood as the practical manifestation of *maqāṣid al-sharī'ah* values in notarial practice, particularly in Sharia economic transactions (Kasdi, 2019).

In Sharia economic transactions, the validity of a contract (*akad*) cannot be assessed solely by the fulfillment of formal legal requirements, such as the existence of contracting parties, the subject matter of the contract, offer and acceptance (*ijab* and *qabul*), and compliance with procedural formalities. More fundamentally, every contract must embody the values of justice, transparency, mutual consent, and fairness while remaining free from prohibited elements such as *riba* (usury), *gharar* (excessive uncertainty), *maysir* (gambling), *tadlīs* (fraudulent concealment), and exploitation. It is within this framework that the concept of Guardian of Fairness becomes particularly relevant. As a public official authorized to formalize the parties' intentions into an authentic deed, a notary should not merely safeguard formal legality but should also possess an ethical awareness to ensure that the legal relationship embodied in the deed is consistent with the objectives of Sharia (Rosadi, 2025).

One of the principal objectives of *maqāṣid al-sharī'ah* directly associated with this concept is the protection of property (*ḥifẓ al-māl*). In Islam, wealth is regarded not merely as an economic asset but as a trust (*amānah*) that must be acquired, managed, and transferred through lawful and ethical means. Consequently, protecting property extends beyond safeguarding individuals against theft or unlawful seizure; it also encompasses protecting contracting parties from unfair, manipulative, opaque, or exploitative transactions. In the context of Sharia economic transactions, the principle of *ḥifẓ al-māl* requires that every contract be drafted with clarity, fairness, and proportionality, avoiding contractual provisions that impose unreasonable burdens upon one party. Therefore, the notary, acting as a Guardian of Fairness, bears an ethical responsibility to ensure that the authentic deed does not become a formal instrument legitimizing transactions that are substantively detrimental to one of the

contracting parties (Mth, 2011).

This principle is consistent with the Qur'anic injunction in Qur'an 4:29 (An-Nisā'), which prohibits the unlawful appropriation of another person's property except through lawful trade conducted on the basis of mutual consent. The verse emphasizes that commercial transactions must be founded upon justice, free consent, honesty, and transparency. Within notarial practice, mutual consent should not be interpreted narrowly as the mere affixing of signatures but rather as consent arising from adequate understanding, sufficient information, and the absence of coercion or unequal bargaining power. Consequently, a contract signed without a genuine understanding of its legal and economic implications may satisfy formal legal requirements while remaining questionable from the perspective of substantive justice under Islamic law (Rosadi, 2025).

Beyond the protection of property, the concept of Guardian of Fairness is also intrinsically connected with the principle of justice (*al-'adl*), which constitutes one of the fundamental values of Islamic law and serves as the ethical foundation of all *mu'āmalāt* (commercial and civil transactions). Allah commands:

"Indeed, Allah commands justice, excellence, and giving to relatives..." (*Qur'an 16:90*).

This verse demonstrates that justice is not merely an aspirational value but a legal and moral obligation governing every social and economic relationship. Within Sharia economic transactions, justice requires a balanced allocation of rights and obligations, clarity regarding contractual objects, transparency of information, and protection against exploitative practices (Dewi, 2025).

The role of a notary as a Guardian of Fairness does not imply assuming the position of a judge or replacing the parties' autonomy in determining contractual terms. Rather, the notary's ethical responsibility lies in ensuring that the process of contract formation is conducted fairly. This responsibility includes verifying that the parties fully understand the contents of the deed, appreciate the legal consequences of the agreed clauses, and enter into the agreement free from coercion, informational asymmetry, or domination by one party. Accordingly, the concept of Guardian of Fairness reinforces—not contradicts—the principle of notarial impartiality. Impartiality should no longer be interpreted as passive neutrality but rather as objective professionalism that guarantees equal protection and fair treatment for all contracting parties (Imani & Basoeky, 2025).

From the perspective of *maqāṣid al-sharī'ah*, justice is inseparable from the principle of public welfare (*maṣlaḥah*). Every transaction should produce benefits while preventing harm to the contracting parties. This objective corresponds to the well-established legal maxim and Prophetic tradition:

"There should be neither harm nor reciprocating harm" (*lā ḍarar wa lā ḍirār*).

In Sharia contracts, this principle is particularly significant because certain agreements may appear legally valid while containing disproportionate penalty clauses, unequal contractual obligations, or ambiguous allocations of responsibility that ultimately generate injustice. If a notary confines his or her role solely to verifying formal legality, an authentic deed risks becoming an instrument that legitimizes transactions inconsistent with the principle of *maṣlaḥah* (Rizali, 2022).

Furthermore, the concept of Guardian of Fairness is closely associated with the Islamic principle of *amānah* (trustworthiness). Allah commands in Qur'an 4:58 (An-Nisā'):

"Indeed, Allah commands you to render trusts to whom they are due and, when you judge between people, to judge with justice."

This verse illustrates the inseparable relationship between trustworthiness and justice. The office of a notary constitutes a public trust because the authority exercised by notaries is delegated by the state and directly affects the civil rights and legal interests of society. In Sharia economic transactions, this trust assumes an even broader dimension because the contracts involved possess not only legal consequences but also moral and religious significance. Consequently, notaries should recognize that authentic deeds in Sharia transactions are not merely evidentiary documents but also legal instruments that ought to embody the values of *amānah*, justice, and public welfare (Qurratulaini, 2024).

In conclusion, from the perspective of *maqāṣid al-sharī'ah*, the concept of Guardian of Fairness represents an ethical paradigm that bridges formal legal certainty with substantive justice. Rather than transforming notaries into advocates or adjudicators, the concept positions them as guardians of a fair contractual process who ensure that authentic deeds satisfy not only procedural legality but also the fundamental objectives and ethical values of Islamic law. Consequently, Guardian of Fairness provides a normative and philosophical framework that strengthens the role of notaries in promoting Sharia economic transactions that are just, transparent, balanced, and oriented toward the realization of *maṣlaḥah* for all parties involved.

7. Implications of the Guardian of Fairness Concept for Strengthening Notarial Ethics

The concept of Guardian of Fairness offers a new perspective for understanding the ethical role of notaries amid the increasing complexity of contemporary economic transactions, particularly within Sharia economic practices. Traditionally, notarial ethics has been understood as a set of professional norms governing integrity, independence, impartiality, and professionalism in the exercise of notarial authority. These values remain fundamentally important, as they constitute the foundation for ensuring legal certainty and maintaining public confidence in the notarial profession. Nevertheless, the evolving nature of modern legal relationships

demonstrates that compliance with formal legal and procedural requirements alone is insufficient to guarantee justice within contractual relationships. Consequently, the concept of Guardian of Fairness introduces a broader ethical dimension by positioning justice as the primary objective of notarial practice (Putri & Aminah, 2025).

The first implication of the Guardian of Fairness concept is the reinforcement of the principles of notarial independence and impartiality. Traditionally, independence has been interpreted as freedom from external influence, while impartiality has been understood as refraining from favoring any party involved in a legal transaction. Within the Guardian of Fairness framework, however, these principles are not merely obligations to remain detached from the parties' interests but also serve as mechanisms for ensuring that legal relationships are established in a fair and balanced manner. Accordingly, independence should no longer be perceived as passive neutrality but rather as a professional capacity to maintain objectivity while simultaneously promoting fairness throughout the contractual formation process (Imani & Basoeky, 2025).

The second implication concerns the strengthening of the values of trustworthiness (*amānah*) and integrity as the core ethical foundations of the notarial profession. Article 16 paragraph (1) letter (a) of the Indonesian Law on Notarial Office requires notaries to act honestly, carefully, independently, impartially, and responsibly while safeguarding the interests of all parties involved in legal acts. This provision clearly indicates that the office of a notary is not merely administrative in nature but also carries significant moral responsibilities toward society. Within the Guardian of Fairness paradigm, *amānah* extends beyond simple compliance with statutory provisions; it embodies a commitment to ensuring that every legal relationship embodied in an authentic deed does not become an instrument facilitating injustice or the abuse of rights by any contracting party (Namira Audita & Budi Santoso, 2025).

The third implication relates to strengthening the protective function of authentic deeds for contracting parties. Authentic deeds are fundamentally intended to provide legal certainty and safeguard civil rights. In practice, however, parties involved in legal transactions often possess unequal levels of legal knowledge, experience, and bargaining power. Under such circumstances, the Guardian of Fairness concept encourages notaries to perform both educational and preventive functions by providing adequate legal explanations regarding the consequences of contractual provisions, thereby enabling parties to make informed and responsible decisions. This approach does not compromise the principle of impartiality; rather, it ensures that all parties possess an equal understanding of their respective rights and obligations before entering into a contractual relationship (Kusuma, 2023).

The fourth implication is the enhanced relevance of notarial ethics in supporting the continued development of the Sharia economy. The Islamic economic system is fundamentally built upon the principles of justice (*al-'adl*), balance (*tawāzun*), public welfare (*maṣlahah*), and trustworthiness (*amānah*). Consequently, the success of a Sharia economic transaction cannot be measured solely by its formal legal validity but also by its ability to produce equitable benefits for all parties involved. Within this context, the Guardian of Fairness concept strengthens the alignment between the ethical values of the notarial profession and the objectives of Sharia economic law. A notary therefore contributes not only to the realization of legal certainty but also to the promotion of substantive justice, which constitutes one of the principal objectives of Islamic commercial transactions (Nasution et al., 2026).

Beyond its implications for individual professional conduct, the Guardian of Fairness paradigm also contributes to the broader development of the legal system by reinforcing public trust in authentic deeds and promoting a more responsive model of legal services. As economic transactions become increasingly sophisticated and involve parties with varying degrees of legal literacy and bargaining capacity, the notarial profession is expected to assume a more proactive ethical role in safeguarding fairness without compromising its independence. Such an approach enhances the legitimacy of authentic deeds as instruments of both legal certainty and substantive justice.

In conclusion, the Guardian of Fairness concept has significant implications for strengthening notarial ethics. It broadens the orientation of professional ethics from mere compliance with formal legality toward a more comprehensive moral responsibility to uphold justice, contractual balance, and the protection of the parties' legitimate interests. In the context of Sharia economic transactions, this paradigm not only enhances the professionalism and ethical integrity of notaries but also contributes to the establishment of a legal system that is more just, transparent, accountable, and oriented toward the realization of *maṣlahah* (public welfare). Ultimately, the Guardian of Fairness offers an ethical framework capable of harmonizing legal certainty with substantive justice, thereby reinforcing the role of notaries in achieving the objectives of Sharia economic law in contemporary Indonesia.

Conclusion

The development of Sharia economic transactions in Indonesia necessitates strengthening the ethical role of notaries in the performance of their public office. The distinctive characteristics of Sharia economic transactions, which emphasize justice, balance, public benefit (*maṣlahah*), and the protection of the parties' rights, demonstrate

that formal legal certainty alone is insufficient to achieve transaction objectives consistent with Sharia principles. Within this context, notaries serve not only as public officials authorized to execute authentic deeds but also bear an ethical responsibility to promote fair and trustworthy legal relationships.

The findings of this study indicate that the principles of independence and impartiality, which have long constituted the foundation of the notarial profession, are frequently interpreted within the framework of passive neutrality that primarily emphasizes compliance with formal legal requirements. Although this approach plays an important role in preserving the objectivity of notaries, it has not been fully capable of addressing the need for substantive justice, which represents a fundamental characteristic of Sharia economic transactions. Consequently, a more comprehensive ethical perspective is required without diminishing the principles of independence and impartiality that inherently define the notarial profession.

Within this framework, the concept of Guardian of Fairness offers an ethical paradigm that positions the notary as a guardian of justice throughout the formation of contractual legal relationships. Rather than altering the notary's status as an independent public official, this concept broadens the understanding of independence by orienting it toward justice, contractual balance, transparency, and the protection of the parties' legitimate interests. Furthermore, this perspective is firmly grounded in the principles of *maqāṣid al-sharī'ah*, particularly the protection of property (*hifẓ al-māl*), justice (*al-'adl*), and public welfare (*maṣlaḥah*).

Accordingly, the concept of Guardian of Fairness possesses significant normative and practical importance in strengthening notarial ethics within Sharia economic transactions. It not only enhances the professionalism and integrity of notaries but also contributes to the realization of legal certainty that is harmonized with substantive justice and the fundamental values of Islamic law. Ultimately, positioning notaries as Guardians of Fairness is expected to reinforce legal protection, strengthen public confidence, and support the development of a more equitable, transparent, and *maṣlaḥah*-oriented Sharia economic system.

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