

Analisis terhadap penyelesaian sengketa perbankan syariah pasca putusan mahkamah konstitusi nomor 93/PUU-X/2012 tentang pembatalan penjelasan pasal 55 ayat (2) Undang-Undang nomor 21 tahun 2008 tentang perbankan syariah (studi kasus sengketa bank Muamalat cabang Bogor dan Dadang Achmad) = An analysis on the settlement of Islamic banking dispute after promulgation of constitutional court decision no 93/PUU-X-2012 on the annulment of the explanation of law no. 21/2008 article no. 55 paragraph (2) for islamic banking (a case study on bank Muamalat Bogor and Dadang Achmad)

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Abstrak

Penelitian ini adalah penelitian yuridis normatif yang mengkaji secara mendalam mengenai norma-norma hukum pada penyelesaian sengketa perbankan syariah, sekaligus menggali akibat hukum dari keluarnya Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 terhadap Pasal 55 ayat (2) Undang-Undang Perbankan Syariah. Sebelum adanya putusan tersebut, penyelesaian sengketa perbankan syariah dapat dilakukan di Pengadilan Agama, musyawarah, mediasi perbankan, arbitrase syariah atau abitrarse lainnya, dan bahkan melalui pengadilan dalam lingkungan Peradilan Umum. Hal ini dianggap menimbulkan ketidakpastian hukum dan melanggar UUD 1945 karena ada pilihan forum (choice of forum) pada dua lembaga peradilan yang memiliki kewenangan berbeda. Dadang Achmad yang mengalami sengketa dengan Bank Muamalat Cabang Bogor mengajukan uji materil kepada Mahkamah Konstitusi terkait hal ini karena sengketa atas pembiayaan musyarakah di antara mereka dibawa ke Pengadilan Negeri Bogor. Bank Muamalat sendiri menggunakan UU Hak Tanggungan dan akad musyarakah mereka sebagai dasar hukum melakukan eksekusi jaminan tersebut.

Dalam hal ini MK membatalkan Penjelasan Pasal 55 ayat (2) UU Perbankan Syariah sehingga penyelesaian sengketa perbankan syariah secara litigasi saat ini dapat dilakukan di Pengadilan Agama, dan secara non-litigasi para pihak dibebaskan untuk memilih lembaga penyelesaian sengketa tetapi harus tetap berdasarkan Prinsip Syariah. Akan tetapi untuk sengketa Dadang Achmad dan Bank Muamalat sendiri putusan MK tersebut tidak mempunyai implikasi karena eksekusi jaminan yang dilakukan oleh bank adalah berdasarkan UU Hak Tanggungan yang masih memberikan kewenangan eksekusi jaminan hanya kepada Peradilan Umum.

.....This research is juridical normative research that looked deeply about legal normson dispute settlement of the Islamic Banking, and due to law from promulgation of the the Constitutional Court Decision Number 93/PUU-X/2012 on article 55 paragraph (2) of syariah banking law. Before the presence of the Decision, dispute settlement of the Islamic Banking was conducted in Religion Court, by deliberation, banking mediation, Basyarnas or the other, and even through the civil court. It was considered to incur the legal uncertainty and violations of the Constitution because there is a choice of forum for two courts that have different authority. Dadang Achmad, who was involved in dispute with Muamalat Bank's Bogor office branch, proposed judicial review to The Constitutional Court regarding this case because the dispute over

musharaka financing among them were brought into a Civil Court of Bogor. Bank Muamalat was guided by the Indonesian Law of Hak Tanggungan and musharaka accad as legal basis for executing the guarantee. In this case, The Constitutional Court annulled the Explanation of article 55 paragraph (2) of the Islamic Banking Law so that the Islamic Banking dispute resolution by litigation at this time could be done at the Religion Court, and in a non-litigation condition, the parties were free to choose the dispute settlement resolutions but still have to be based on Shariah Principles. But for Achmad Dadang and Bank Muamalat dispute, this Constitutional Court Decision has no implications because the execution of the guarantee conducted by the bank was based on the Indonesian Law of Hak Tanggungan which the rights of the execution are still authorized by Civil Court.