

Implikasi putusan mahkamah konstitusi nomor 93 PUU/X/2012 terhadap penyelesaian sengketa perbankan syariah pada PT Bank X dan Y = Implications of constitutional court decision no 93 puu x 2012 settlement against islamic banking at PT Bank X and Y

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Abstrak

[Tesis ini membahas Implikasi Putusan Mahkamah Konstitusi Nomor 93/PUU X/2012 Terhadap Penyelesaian Sengketa Perbankan Syariah Pada PT Bank X dan Y. Putusan MK Nomor 93/PUU-X/2012 membatalkan penjelasan Pasal 55 ayat (2) UU Nomor 21 Tahun 2008 tentang Perbankan Syariah yang mengatur tentang Pilihan sengketa antara nasabah dan pihak bank. Pengujian Pasal 55 ayat (2) dan ayat (3) UU Perbankan Syariah ini diajukan oleh seorang nasabah Bank Muamalat bernama Dudun Achmad. Pemohon sendiri mengalami kredit macet di Bank Muamalat Cabang Bogor melalui akad pembiayaan sebagaimana tertuang dalam Akta Notaris No. 34 tertanggal 9 Juli 2009. Tesis ini membahas mengenai pilihan forum (choice of forum) dalam hal terjadi sengketa dibidang perbankan syariah sebelum adanya Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 serta implikasi Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 terhadap penyelesaian sengketa perbankan syariah pada PT Bank X dan Y. Metode penulisan yang digunakan adalah yuridis normatif dan data yang digunakan adalah data primer, sekunder dan tersier. Putusan MK Nomor 93/PUU-X/2012 yang menghapus penjelasan Pasal 55 ayat (2). Adapun pilihan forum dalam hal terjadi sengketa dibidang perbankan syariah sebelum adanya Putusan Mahkamah Konstitusi dilakukan melalui arbitrase oleh BAMUI yang kemudian berganti nama menjadi basyarnas dan pada tahun 2006 ada dispute settlement option (pilihan penyelesaian sengketa yang baru (Pasal 49 huruf (i) UU Peradilan Agama hingga lahir Lahir UU Nomor 21 Tahun 2008 tentang Perbankan Syariah. Implikasi Putusan MK Nomor 93/PUU-X/2012 yang menghapus penjelasan Pasal 55 ayat 2 UU Nomor 21 Tahun 2008 mendorong para pihak untuk menyelesaikan sengketa pada Pengadilan Agama. Berdasarkan hasil wawancara yang dilakukan pada Bank X dapat diketahui bahwasanya Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 tidak berpengaruh pada Bank tersebut yang sejak awal memilih Pengadilan Agama. Sedangkan untuk PT. Bank Y sendiri, dikarenakan putusan MK Nomor 93/PUUX/ 2012 tidak menghapus isi pasal 55 ayat 2 Undang-undang Nomor 21 Tahun 2008, maka Bank Y mempunyai hak untuk menggunakan choice of law dalam hal penyelesaian sengketa. Dalam hal ini Bank Y memilih penyelesaian sengketa melalui Pengadilan Negeri. Biasanya bank mempunyai formulir standar dalam hal terjadi penyelesaian sengketa kecuali para pihak menentukan sebaliknya. Namun dalam pelaksanaannya biasanya para pihak mengikuti ketentuan yang telah diatur dalam formulir standar tersebut; This thesis discusses the implications of the Constitutional Court Decision No. 93 / PUU X / 2012 Settlement Against Islamic Banking at PT Bank X and Y. Court Decision No. 93 / PUU-X / 2012 canceled the elucidation of Article 55 paragraph (2) of Law Number 21 Year 2008 on Islamic Banking governing the choice of dispute between the customer and the bank. Testing of Article 55 paragraph (2) and (3) Islamic Banking Act was filed by a customer of Bank Muamalat named Dudun Achmad. Applicant's own experience of bad loans in Bank Muamalat branch Bogor through financing agreement as stated in Deed No.

34 dated 9 July 2009. This thesis discusses the choice of forum (choice of forum) in the event of a dispute in the field of Islamic banking before adannya Constitutional Court Decision No. 93 / PUU-X / 2012 as well as the implications of the Constitutional Court Decision No. 93 / PUU-X / 2012 against Islamic banking dispute resolution in PT Bank X and Y. The method used is normative juridical and data used are primary data, secondary and tertiary. Constitutional Court Decision No. 93 / PUU-X / 2012 which remove the elucidation of Article 55 paragraph (2). As for the choice of forum in the event of a dispute in the field of Islamic banking before adannya Decision of the Constitutional Mahkamah made through arbitration by BAMUI which later renamed Basyarnas and in 2006 there was a dispute settlement option (a new option for dispute resolution (Article 49 letter (i) of the Religious Judicature born Born to Act No. 21 of 2008 concerning Islamic Banking. Implications of Constitutional Court Decision No. 93 / PUU-X / 2012 which remove the elucidation of Article 55 paragraph 2 of Law No. 21 of 2008 to encourage the parties to resolve the dispute at the Religious Court. Based on the results of interviews conducted Bank X can be seen that the Constitutional Court Decision No. 93 / PUU-X / 2012 has no effect on the Bank since the beginning choose the Religious Courts. As for PT. Bank Y itself, due to the decision of the Constitutional Court Number 93 / PUU-X / 2012 does not remove the content of Article 55 paragraph 2 of Law No. 21 of 2008, the Bank Y has the right to use the choice of law in terms of dispute resolution. In this case the Bank Y selecting dispute resolution through the District Court. Usually banks have a standard form in the event of a dispute unless the parties specify otherwise. But the parties in the implementation usually follow the provisions set out in the standard form., This thesis discusses the implications of the Constitutional Court Decision No. 93 /

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