THE American Journal of Humanities and Social Sciences Research (THE AJHSSR) *2021*
E-ISSN: 2581-8868
Volume-04, Issue-02, pp-58-65
www.theajhssr.com
Research Paper Open Access

The Examination of the Constitutional Court Decision for Sharia Banking Dispute Settlement in Indonesia

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ABSTRACT

The research aims to find the examination of the Constitutional Court Decision Number 93/PUU-X/2012 related to the settlement of sharia banking disputes through the National Shariah Arbitration Board (BASYARNAS). The research is a normative and empirical legal research with a constitutional and statute approach. The finding shows that the Constitutional Court Decision Number 93/PUU-X/2012 did not nullify the authority of the BASYARNAS in resolving Sharia Banking disputes because, in general explanation of the Law Number 21 of 2008 on Shariah Banking, it is clearly stated that the authority of the BASYARNAS still exists. The Constitutional Court must implement the principle of competence and diligence in deciding the case. The court has nullified the authority of the BASYARNAS as stated in point c of the explanation Article 55 Paragraph (2) of Law Number 21 of 2008, not nullify the explanation of Article 55 Paragraph (2), point a, b, and c of Law Number 21 of 2008.

KEYWORDS: Examination; Constitutional Court Decision; BASYARNAS; Sharia Banking Dispute Settlement.

I. INTRODUCTION

Islamic banks function as intermediary financial that funding and financing mechanism balance based on Law Number 21 of 2008 about Sharia banking[1]. The existence of Islamic banking is essential to assist humanity's needs in the economy. Despite that, it must apply fair law to be effective and efficient, leading to a strong relationship between law and the economy. Post constitutional court decision is necessary for any challenges to sharia banking dispute settlement, especially about relevancies with the legal system as a manifestation of the economic system. Hence, the economic system will be reflected in the legal system [2]. This phenomenon becomes a severe concern for the manager of Islamic Bank, customer, notary, mediator, and Judge of Religious Court related to Dispute Settlement Body in Islamic Bank Practice is stipulated in Religious Court Decision Number 93/PUU-X/2012, Constitutional Court Decision Number 93/PUU-X/2012, August 29, 2013, related to examination on Article 55 Paragraph (2), and Paragraph (3) Law Number 21 of 2008 concerning Sharia Banking. Referring to the Constitutional Court Decision, the Constitutional Court restores the authority of Islamic Banking dispute settlement to Religious Court [3]. The dualism authority of Islamic Banking dispute settlement has created problems in Indonesian Law and needs to be addressed. A similar issue is also a concern of Mohidin Yahya Hj. Shamsudin in his Scientific Dissertation [4], and research [4]. Law Number 21 of 2008[6] concerning Sharia Banking (Sharia Banking Law) has created problems about this authority, whether it is real, as mentioned by the Sharia Banking Law of Indonesia. Article 55 Paragraph (1) Sharia Banking Law referred that Islamic Banking Dispute Settlement will be settled through Religious Court. Article 55 Paragraph (2) also states that when the parties agreed to dispute resolution, as mentioned in point , the dispute settlement is based on the agreement.

Explanation of Article 55 Paragraph (2) Sharia Banking Law states that effort dispute settlement based on an agreement, such as 1) discussion 2) Banking mediation 3) through National Shariah Arbitration Board and another arbitration board and general court. The phenomenon is not suitable for Article 49 Law Number 3 of 2006 concerning Religious Court in which it states that religious court has the authority to settle and resolve disputes in the first level between Moslem peoples in sharia economy. Furthermore, the provision of Article 49 states that one of the sharia economic activities is Islamic banking.

Explanation Article 55 Paragraph (2) has created a problem on dispute settlement mechanisms in the occurring dispute between Islamic banks and its customers. Arguably, it contradicts the right to choose so that it does not have legal certainty and contradict Article 28 Item D Paragraph (1) of the Constitution. The articles can create norm inconsistency, which gives a choice of litigation in Islamic banking dispute settlement between Religious Court and General Court. It's mean any dualism of Islamic banking dispute settlement authority. As a result, the norm inconsistency creates legal uncertainty for society and decreases Religious Court authority. Constitutional Court Decision, Number 93/PUU-X/2012[7] about Islamic Banking Dispute Settlement, nullifies Article 55 Paragraph (2) Letter a, b, c, and causes the Islamic banking dispute settlement through discussion, banking mediation, National Shariah Arbitration Board or another Arbitration Board to have no legal binding. The settlement of disputes through non-litigation such as discussion, banking mediation, National Sharia Arbitration Board (BASYARNAS), or other arbitration institutions also seems to have no authority in resolving the dispute of sharia economy after the decision of Court Number 93/PUU-X/2012[7]. With the decision of the Constitutional Court, it will affect the existence of the National Sharia Arbitration Board in solving the dispute of sharia banking. So, the writer would review the examination of the Constitutional Court Decision Number 93/PUU-X/2012[7] related to the settlement of Islamic banking disputes through BASYARNAS. This paper is expected to contribute to the process of sharia banking dispute settlement through BASYARNAS in Indonesia and developing sharia economic law.

II. LITERATURE REVIEW

The Constitutional Court Decision and Judicial Review: A decision is a statement made by the judge as state officials and pronounced in the trial to settle a dispute between parties. A decision should imply legal ideas such as fairness, legal certainty, and benefit. In Dispute Settlement, the judge should always give an objective decision while unveiling legal findings (*rechtvinding*). The thing that should be underlined about the constitutional court decision is the characteristic of the decision. Based on its authority, the Constitutional Court is the first degree, and its decision is final. It implies that there are no legal remedies against the decision, such as appeals and judicial review. The legal system in the certain country depends on the governance system and the state history. Judicial review is not only using in countries with a common law system but also to countries with a civil law system. According to Jimly Ashidiqie, judicial review is an effort to examine the legal products of legislative, executive, or judicative to implement the check and balance principles based on the separation of power. In contrast, the terms judicial review in the Common Law System is used differently since it does not have a special court to trial civil servants in the civil law system. As a result, the state administrative activities are tried in the general court. Hence, the judges of the common law system are authorized to solve disputes on both the law and state administration activities against the 1945 Constitution. Sumantri argued that the judicial review is the authority to assess whether the contents of the law are following the higher regulation and to check if certain powers have the right to issue specific rules.

The decision on the petition for judicial review of Article 55 Paragraph (2) and Paragraph (3) of Law Number 21 of 2008[6] concerning Sharia Banking against the 1945 Constitution was declared in an open trial on Thursday, August 29, 2013. The provided information is by the Petitioners through their legal representatives, Commission III of the House of Representatives, the Government, Experts of the Petitioners, and Experts of the Constitutional Court, as mentioned above. The Panel of Judges of the Constitutional Court concludes as follows:

a. "The Court has the authority to adjudicate a quo case,"
b. The Petitioner has the legal standing to file a quo petition;
c. The petition of the Petitioner's argument is reasoned by law for some parts".

Based on these conclusions, the Constitutional Court Justices in its verdict stated (Constitutional Court Decision Number. 93/PUU-X/2012[7]):

"To grant the petition for the parts:

1) "Explanation of Article 55 Paragraph (2) of Law Number 21 of 2008[6] concerning Sharia Banking (State Gazette of the Republic of Indonesia Number 94 of 2008, Supplement to State Gazette of the Republic of Indonesia Number 4867) is contradictory to the 1945 Constitution of the State of the Republic of Indonesia";
2) "Explanation of Article 55 Paragraph (2) of Law Number 21 of 2008[6] concerning Sharia Banking (State Gazette of the Republic of Indonesia of 2008 Number 94, Supplement to State Gazette of the Republic of Indonesia Number 4867) has no legal binding";
   a. "To order the proper posting of this decision in the Official Gazette of the Republic of Indonesia";
   b. "Refusing the Petitioner's petition for other than and beyond".

The Definition of Islamic Banking: Sharia Bank is known as *la riba* bank, Islamic Bank, or Non-interest Bank. Sharia banking started to emerge in 1990. The first pure Islamic bank in Indonesia is Bank Muamalat Indonesia.

The relationship between the bank and its customers is considered *muamalah* activities. Islamic law explained that *muamalah* is Allah's law to regulate the social activities of humans[8]. Therefore, An Islamic financial system should also cater to the social needs of society[9].The decision in Article 1 Paragraph (7) Sharia Banking Law state that sharia bank is "a bank that business activities are based on sharia principle and consist of Sharia General Bank and Sharia Finance Bank". The definition of sharia bank is explained in Sharia Banking Law, in which the bank must implement sharia principles. It means that the transactions in sharia bank must not go against sharia principles like *maysir* (gambling), *gharar* (uncertainty), *riba* (interest), *zalim*, and *haram.*
According to Karnaen Perwataatmadja and Muhammad Syafii Antonio, "an Islamic bank is a bank that implements sharia principles and based on Islamic decisions, especially related to *muamalah* in Islam"[10]. Hence, the bank should follow sharia decisions and *muamalah* based on Al Quran and Hadith.

Legal basis sourced from Al Quran for sharia bank consists of:

a. Surah Al Imron verse (130):
   "O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful"[11].
b. Surah An-Nisa verse (29):
   "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful".
c. Surah Al-Baqarah verse (275):
   "Those who consume interest cannot stand [on the Day of Resurrection] except as one stand who is being beaten by Satan into insanity". That is because they say, "Trade is [just] like interest. But Allah has permitted trade and has forbidden interest, so whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire, they will abide eternally therein"[11].

Besides some verses above, the positive law for the operation of Islamic Bank is Law Number 21 of 2008[6] concerning Sharia Banking based on profit-sharing principle. Also, it stipulates the regulation about the founding of non-interest bank. Another is "Article 28 and 29 of the Decision Board of Directors of Bank Indonesia Number 32/34/KEP/DIR dated Mei 12, 1999[12], concerning Islamic Bank Activities under the Profit-Sharing Principle". As amended by PBI Number 9/7/PBI/2007, Bank Indonesia Regulation concerning Amendments to Bank Indonesia Regulation Number 8/3 /PBI /2006 concerning Changes in Business Activities of Conventional Commercial Banks to Commercial Banks Conducting Business Activities Based on Sharia Principles and Opening Bank Offices Conducting Business Activities Based on Sharia Principles by Conventional Commercial Banks. Another specified regulation about the agreement in Islamic Bank activities is "Bank Indonesia Regulation Number 9/19/PBI/2007[13] concerning The Implementation of the Sharia Principle in Sharia Bank Funding, Financing, and Service". As amended by Bank Indonesia Regulation Number 10/16/ PBI/2008. Another regulation is the basic foundation of Islamic Bank is "Law Number 50 of 2009 concerning the second amendment of Law Number 7 of 1989 concerning the Religious Court where it has absolute authority to settle Sharia Dispute Settlement"[14].
Below are some hadiths related to business activities in Islamic banking:

a. The mandate of Prophet Muhammad SAW emphasized the attitude of Islamic teachings about the prohibition of usury is as follows:
   "Remember that you will face your Good, and he will surely count your deeds. Allah has forbidden you to take usury so that the debt due to usury should be abolished. Your capital (your principal) is your right. You will not suffer nor suffer injustice [15]".
b. The Hadith of Muslim History in the book of Al-Musaqah is as follows:
   Jabir said that the Prophet cursed the person who accepted usury, the person who gave it, and the person who recorded it and the two witnesses, then he said, "They are all the same" [16].
   Above hadiths unequivocally indicate that usury is *haram* and will bring punishment in the hereafter. Prohibition of usury, as mentioned in the hadiths, gave birth to the establishment of a banking institution based on sharia principles that do not contain elements of usury.
   In addition to provisions of Al-Qur'an and hadith above, based on positive law in operationalizing Islamic banks is Act Number 10 of 1998[17] on Banking. The existence of sharia bank based on sharia principles is stated in one of the banking business activities that can be operated by Commercial Bank and Rural Bank (BPR) as stipulated in Article 6 Paragraph (13) and Article 13 Paragraph (3) of Banking Law.

The provisions in the article of the Banking Act are the legal basis for the regulation and the existence of operational activities of banking operational based on sharia principles/systems. Such provisions shall be further stipulated by Bank Indonesia as sharia banking authority.

The Models of Dispute Settlement of Sharia Bank in Indonesia: The Law relationship between bank and customer is caused by financing. Problematic credit or financing is one of the five major problems for national banking. The problematic financing is, for example, unclear financing and non-performing loans.
In problematic financing, the bank preserves its liquidity by trying to settle the dispute. According to the agreement principle, *Pacta Sunt Servanda* principle is applied where agreement made by both parties legally acted as the law. Zahraa said "*Tahkim* or Arbitration is one of mechanism based on mutual agreement, which can be used as a tool of peace to resolve a dispute that arises now and in the future"[24]. Nita Triana said that "the Arbitration served as one of Alternative Dispute Settlement, acted as a solution for the settlement of the national civil dispute in Indonesia, or able to resolve civil disputes with the principle of prioritizing peace effort or *Islah"*[18].

In some studies, the Sharia Banking settlement procedures firstly consist of dispute settlement through deliberation and secondly through the *National Shariah Arbitration Board.* Dispute Settlement by *National Shariah Arbitration Board* is not yet regulated in the act. The parties can settle the dispute based on Decision of the Indonesian Ulema Council Number Kep/09/MUI/XII/2003 date December 24, 2003 renamed BAMUI as BASYARNAS. Dispute Settlement by BASYARNAS is based on Law Number 30 of 1999[19] about Alternative Dispute Resolution. "Models of Resolution by BASYARNAS is through mediation, negotiation, and reconciliation". "The Problems in the legal system are required after the coming into effect of Law Number 3 of 2006 related to the contents of Article 3 and Article 11 of Law Number 30 of 1999[19] concerning Arbitration".
According to the Law, "the arbitration is an alternative in settling a civil dispute outside the court based on an arbitration agreement written by the dispute parties". "Alternative dispute settlement is defined as a dispute resolution through a procedure agreed upon by the parties. It is an out-of-court settlement through consultation, negotiation, mediation, conciliation, or expert judgment".

Arbitration is "an out-of-court dispute resolution institution [20][21]", that is currently in great demand by businessmen both nationally and internationally since through an arbitration institution; the business dispute can be resolved in relatively quick time with simple procedures, as well as the resulting decision can be more easily predicted by the parties to the dispute. The existing institutional arbitration institutions are the Indonesian National Arbitration Board (BANI), the National Syariah Arbitration Board (BASYARNAS), and the Indonesian Capital Market Arbitration Board (BAPMI). The sharia business dispute, including the dispute over sharia banking, can be resolved through these institutions. This is reinforced by the provisions outlined in Article 55 of Law Number 21 of 2008[6] concerning Sharia Banking. "Article 3 Law Number 30 of 1999[19] states that Civil Court does not have the authority to settle disputes between parties who make arbitration agreements". "Article 11 Paragraph (1) and (2) Law Number 30 of 1999[19] mentioned that: Paragraph 1: A written arbitration agreement nullifies parties' right to propose dispute settlement or different opinions in agreement to civil court. Paragraph 2: Civil court must refuse nor intervene in a dispute settlement on BASYARNAS except decided in this law".The nonexistent sharia arbitration regulation leads to the use of a dispute settlement guide made by BASYARNAS with the use of analogy interpretation to Law Number 30 of 1999[19]. The definition of civil court in Law Number 30 of 1999[19] is interpreted as equal to religious court after the enactment Law Number 50 of 2009[14] about the religious court.

In the implementation of sharia's decision, if the parties do not comply with the due to counterfeiting, fraud on either side, then the offending party may file a cancellation of the arbitration decision. But, if one of the parties does not want to comply with arbitration decisions and harm other parties, the other party can file decision execution to a religious court."Law Number 50 of 2009[14] concerning The Second Amendment of Law Number 7 of 1989 concerning Religious Court had brought a big change in the existence of Religious Court". One of them is the increasing authority of the religious court in sharia economics. "Religious courts have the authority to settle and resolve the sharia economics dispute. Sharia economics is economic activities based on sharia principles such as Islamic Bank, Micro sharia Finance board, sharia insurance, sharia reinsurance, sharia mutual funding, shariah securities, sharia obligation, sharia finance, sharia mortgage, sharia pension finance, and sharia business"[22]. The same opinion was expressed by Manik[23].Choosing religious court in sharia economics dispute settlement is a rightful and wise option. The balance between material law based on Islamic principles with the religious court will be achieved. The religious court, as a representation of the Islamic court, is balanced with the Islamic legal apparatus. Authorization delegation to settle sharia economics to religious court would not go over the Islamic personality principle of a religious court.

III. METHODS

This research is legal research with a statute approach. The statute approach reviews the law and regulations related to the legal issue[25]. The author in this research reviewed law related to sharia banking dispute settlement. The study is "doctrinal or normative legal research using a statute approach [26]". "Secondary data sources consist of primary, secondary, and tertiary legal materials". Primary legal materials consist of "1) Law Number 30 of 1999[19] concerning Arbitration, 2) Law Number 21 of 2008[6] concerning Sharia banking, 3) Law Number Number 50 of 2009[14] concerning the second amendment on Law Number 7 of 1989[14] concerning Religious Court, 4) Supreme Court Regulation (PERMA) Number 02 of 2008[28] concerning Compilation of Islamic Economics Law, 5) Constitutional Court Decision Number 93/PUU-X/2012". Secondary legal materials are Islamic legal materials sources from Islamic Law books, Islamic Law Journals, and Islamic Law Doctrine; Legal materials such as legal books, national and international journals, and Islamic Law Doctrines. Tertiary legal materials are legal materials that give instructions or explanations for primary and secondary legal materials like Law dictionary, encyclopedia, etc. This research is a descriptive qualitative study. The descriptive part is by describing clearly the condition of the phenomena, whereas qualitative is by analyzing the data by respondents and interviewees and is further explained. Hence the qualitative-descriptive research is an analysis that describes the judicial review of Provisions of "Article 55 Paragraph (2) Law Number 21 of 2008[6] about Islamic banking dispute settlement"

IV. FINDING AND DISCUSSION

Judicial review of Article 55 Paragraph (2) and (3) Law Number 21 of 2008[6] concerning Sharia Banking to Article 28 Paragraph (1) Constitutional 1945 had registered in Registrar's Office of Constitutional Court on October 19, 2012, based on File Number 322/PAN.MK/2012 and written in Book of Constitutional Disputes Registration on September 24, 2012 Number 93/PUU-X/2012.The condition of standing can be fulfilled if the applicant or pleaded has a real interest and legal protection. The legal standing of the applicant as stated by Constitutional Court Judge was that the applicant is Indonesian citizen as a customer of Bank Muamalat Bogor branch which had done *aqad* based on Notary Public Gazette Number 34 dated July 9, 2009, with *al musyarakah aqad* (regarding time extension and collateral changer) of Number 14 dated March 8, made before Catur Virgo, notary public, in Jakarta. At the first hearing dated October 5, 2012, Dadang Ahmad gave power of attorney to Rudi Hermawan and Sophan Irawan as advocates to convey the crucial points as stated in the Application submitted to the Registrar's Office of the Constitutional Court. The legal certainty guaranteed by Article 28 D of the 1945 Constitution of the Republic of Indonesia, appealed to the Panel of Judges of the Constitutional Court to grant the petition as stipulated in the petition dated August 12, 2012, "which essentially stated that the content of Article 5 Paragraph (2) Law Number 21 of 2008 concerning Sharia Banking was contradictory to Article 28 D referred to". Therefore, "the content of Article 5 Paragraph (2) of Law Number 21 of 2008 concerning Sharia Banking did not have binding legal force [27]".

Secondly, in the second hearing on October 19, 2012, the applicant was not present, so the trial was declared over. In this context, the party was only the Petitioner, while the requested Party was the law. The Government and/or DPR were only parties to question. Therefore, if the Petitioner does not attend, it does not mean that the case is void as in the trial in the regular court. Third, the third hearing session dated November 28, 2012, was different from the first and second session since it was attended by 9 (nine) Judges of the Constitutional Court, "Moh. Mahfud MD as Chairman, with members Ahmad Fadlil Sumadi, Achmad Sodiki, Anwar Usman, M. Akil Mochtar, Muhammad Alim, Maria Farida Indrati, Harjono, and Hamdan Zoelva". There were also delegates from the Government and the House of Representatives to give statements.The first information was given by Adang Daradjatun as the representative of Commission III of the House of Representatives. Statement of the People's Legislative Assembly to the Petitioners' argument as described in *a quo* petition. With this information, the House of Representatives requested the Constitutional Court Judges to examine, decide, and adjudicate *a quo* case. The Government was represented by Robinson Simbolon and provided a brief explanation of the intended case to the Petitioners' argument stating that the provisions of Article 55 Paragraph (2) and Paragraph (3) of the Sharia Banking Law have created legal uncertainty due to the dualism of dispute settlement institutions in sharia banking.

At the fourth trial, the applicant presented witnesses and experts to give information to the Constitutional Court Judges. The session which was held on December 20, 2012, was attended by 7 (seven) Judges of the Constitutional Court, Dadang Achmad as the Petitioner, the Attorney of the Petitioner, the Petitioner's Companion, and the Expert from the Petitioners, namely Ija Suntana and Dedi Ismatullah, respectively, and the Government. In essence, the experts argued that the inclusion of the dispute resolution clause that chooses General Courts as its forum is inappropriate because, in addition to contradicting the concept of absolute

competence which cannot be shared in two different judicial environments, this is also contrary to the actual conditions in which the general court have no competence in sharia banking. Competence here is not only in the formal sense, but substantively the judges within the General Courts have not mastered sharia banking transactions that are not only covered by the principle of freedom of contract but must comply with the provisions of sharia. In the fifth session took place on January 29, 2013, in addition to the presence of the Petitioners, the Petitioners 'Legal Counsels, the Petitioners' Companions, the Government representatives and 9 (nine) Judges of the Constitutional Court, this session was also attended by experts invited by the Constitutional Court, Muhammad Syafi'i Antonio. This Sharia Banking Expert provided information by highlighting Article 55 of Law Number 21 of 2008 [6] related to Article 49 of Law Number 3 of 2006. Legal consideration was done by experts and witnesses from the applicant, government, House of Representatives, and Constitutional Court. The experts and witnesses' statements supported the Constitutional Court to grant the petition. Despite that, the government and House of Representatives did not support the decision because they believed that in explanation Article 55 Paragraph (2) and (3) Sharia Banking Law was suitable as long as not contradictory. The Constitutional Court assessed that provision explanation of Article 55 Paragraph Sharia Banking Law did not give legal certainty. However, Constitutional Court does not settle a concrete dispute, but it had enough proof that explanation Article 55 Paragraph (2) had given legal uncertainty in Islamic banking dispute settlement (Article 28 Paragraph (1) The 1945 Constitution and against the constitutional principles. "Explanation of Article 55 Paragraph (2) Law Number 21 of 2008[6]: dispute settlement is done according to the content of *aqad* as follows:

1. Discussion
2. Banking mediation
3. By the National Shariah Arbitration Board
4. By General Court".

The implication of the existence of these provisions potentially leads to legal uncertainty. "It also encourages one of the customers of a Sharia Bank to submit a petition for a judicial review of the Sharia Banking Law, in particular in Article 55 Paragraph (2) and (3), through Case Number 93/PUU-X/2012 regarding Judicial Review of Law Number 21 of 2008[6] concerning Sharia Banking against the Constitution of the Republic of Indonesia". The main point of the case referred to above is related to the provision of Article 55, which is deemed to be detrimental to one of the customers of a sharia bank, which is associated with the dispute resolution made through the courts through the General Courts. In contrast, according to clients, the Religious Courts are more competent after the enactment of Article 49 of Law Number 3 of 2006 concerning Amendment to Law Number 7 of 1989 concerning Religious Courts. The phenomenon occurs since two judicial authorities are in the choice of forum in the case with the same substance and object. Assessment, fact, and law that constitutional court stated that "the explanation Article 55 Paragraph (2) Law Number 21 of 2008 concerning Sharia Banking in line to The 1945 Constitution did not have legal binding". The constitutional court also inputted the decision in the state news of RI and refused the request for others and rest.

After the issuance of "the Constitutional Court Decision Number 93/PUU-X/2012 stated that explanation Article 55 Paragraph (2) Law Number 21 of 2008 concerning Sharia Banking against Constitutional 1945", so the Sharia Banking parties and its customer can ignore "the explanation Article 55 Paragraph (2) Law Number 21 of 2008[6] in non-litigation dispute settlement". "Constitutional Court Decision Number 93/PUU-X/2012 created a legal problem for the existence of National Shariah Arbitration Board because judge decision in the constitutional court related to the provision of Article 55 Paragraph (2) and had no legally binding power which the allowing dispute settlement through discussion, banking mediation, National Shariah Arbitration Board or another arbitration board and general court". In the point of decision, the judge stated that all "explanations Article 55 Paragraph (2") did not have legally binding power. In this case, the existence of the National Shariah Arbitration Board seemed to possess no authority in sharia economics dispute settlement, primarily Islamic economic dispute. But, a general explanation in Sharia Banking Law had explained that the arbitration board still has the authority to settle Islamic banking disputes.

The judge of the Constitutional Court should not have decided that all "explanations of Article 55 Paragraph (2)" have no legally binding power. The Judge of Constitutional Court in "Constitutional Court Decision Number 93/PUU-X/2012" should only decide Article 55 Paragraph (2) point c (by other arbitration board) and point d (by the general court) overall have no legally binding power. So, Article 55 Paragraph (2) point a, b, and c (by National Shariah Arbitration Board) still has the binding legal power and still valid. The Constitutional Court must implement the principle of competence and carefulness in deciding the case because the Decision must not nullify "the explanation of Article 55 Paragraph (2), point a,b, and c of Law Number 21 of 2008[6]". The Constitutional Court ruled that "the explanation of the Article 55 Paragraph (2) points a, b, and c" as a

whole had an impact on the settlement of sharia banking disputes, which resulted in the loss of BASYARNAS's authority and rendered it incapable of resolving the dispute over sharia banking. Dispute settlement by National Shariah Arbitration Board is not yet stipulated in a specific regulation as far as the parties agree with references to a decision of MUI Number Kep-09/MUI/XII/2003 dated December 24, 2003, to rename BAMUI as BASYARNAS and it is the organizational unit of MUI. Dispute settlements through the National Shariah Arbitration Board are based on Law Arbitration and Alternative Dispute Resolution (Law of Arbitration and ADR). The dispute settlement is through arbitration, mediation, negotiation, and reconciliation.

In this context, the decision of the Constitutional Court of Justice is binding on parties conducting transactions in sharia banking. This means that legally no longer possible for customers and the Sharia Bank or Sharia Business Units to make a dispute resolution clause by choosing the General Courts under the principle of freedom of contract. Hence, the choice of forum by appointing other judicial environment is not possible. The disputes in trade are only possible with non-litigation forums. Normally, if the clause in the dispute settlement still contains the choice of forum in the General Courts, then the clause is null and void. This is contrary to the rule that imperative legal provisions cannot be disregarded through agreements, even though they are agreed upon by both parties. The Constitutional Court ruling affirmed the attributes competency of the Religious Courts in the field of sharia banking. Agreement in choosing a forum can only be realized in the non-litigation domain.

Given the Constitutional Court's decision in the case of judicial review of the law against the 1945 Constitution, the decision is final and binding, and the concerned parties should obey the decision. This means that in the event of a clause referring to a General Courts territory, if a dispute arises, then the Panel of Judges of the District Court shall declare that they are not authorized, so the dictum of their decision is not to accept the claim of the plaintiff. If in practice later, the Court of Justice of the General Courts receives a dispute which designates it as a dispute resolution forum, then the party who feels aggrieved may make it an excuse to make a legal remedy, especially in the form of an appeal. This is most likely because by accepting disputes based on the appointment of the forum, *judex factie* (Court of State or High Court) has been wrong in applying the law. Sharia banking is a part of sharia economy, and therefore the two are covered by sharia law. The Constitutional Court Decision Number 93/PUU-X/2012 is essentially a part of law enforcement that affirms the competence of justice for the environment of Religious Courts in the field of sharia economy. Therefore, the dispute in business institutions and Islamic finance outside Islamic banking also applies this decision. Hence, the clause of the agreement between the customer and the business and financial institutions of sharia is unlawful when establishing a General Court forum for dispute resolution that may occur. The District Court judge should not accept the business and financial dispute of sharia, even though the parties have agreed. The authors propose to the Law Number 21 of 2008 to be revised, especially in Article 55 Paragraph (2) of Law Number 21 of 2008 on Sharia Banking to provide justice, legal certainty and benefit for the community, especially Sharia Bank, customers, and judicial institutions so as not to harm various parties.

The existence of this Constitutional Court Decision should be served as a momentum for Sharia Banks and Sharia Business Units to fix sharia standards in their products to be more obedient to sharia principles rather than using the opportunity to resolve disputes to the General Courts to gain victory by understanding that the judges in general courts are not competent in sharia contracts. Finally, with the ruling, the existence of the dualism of the judicial environment in settlement of Islamic banking disputes may be eliminated. A dispute settlement over sharia banking is the domain of the Religious Courts or an alternative dispute settlement institution as long as the parties agree to it.

V. CONCLUSION

Based on the research conducted that first, basically the Constitutional Court Decision Number 93/PUU-X/2012 did not nullify the authority of the National Shariah Arbitration Board in resolving Islamic Banking disputes because, in general explanation of the Law Number 21 of 2008 on Shariah Banking, it is clearly stated that the authority of the BASYARNAS still exists. Second, the Constitutional Court must implement the principle of competence and carefulness in deciding the case because the Decision must not nullify the explanation of Article 55 Paragraph (2), point a,b, and c of Law Number 21 of 2008. Nullifying the explanation of points a,b, dan c has made a new legal problem because, on the one hand, the Court has nullified the authority of the BASYARNAS as stated in point c of the explanation Article 55 Paragraph (2) of Law Number 21 of 2008. On the other hand, the authority of the BASYARNAS still exists, as stated in the general explanation of the Law Number 21 of 2008. The research proposes recommendations to the House of Representatives and Government to revise Law Number 21 of 2008, particularly regarding Article 55 Paragraph (2) to guarantee the legal certainty of Sharia Banking dispute settlement.

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