

The Role of Notaries in Making Sharia Banking Contract Deeds in Post-Constitutional Court Decisions Number 93/PUU-X/2012

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Abstract

Notaries in the making of sharia contract acts are required to have an understanding of sharia contracts and laws. This study is to determine the application of the choice of forum in the settlement of Islamic banking disputes after the Constitutional Court decision Number 93 / PUU-X / 2012 concerning the Review of Law No. 21 of 2008 on Islamic Banking. As well as the role of the notary in making the Islamic banking deed and after the decision. The method used in this research is the normative legal method. There are three approaches used in this, as following: normative juridical research, namely the case, statutory and conceptual approach. The results of the research showed that after the issuance of Decision Number 93 / PUU-X / 2012, the settlement of Islamic banking disputes is an absolute authority within the Religious Courts (in litigation). This affirmation of the authority of the Religious Courts is supported by Perma Number 14 of 2016 concerning the Settlement of Sharia Economic Cases. The role of a notary in making sharia deeds must apply sharia principles in line with the Sharia Banking Law Number 21 of 2008 and it is important for a notary to have sharia certification so that its legality can be recognized. The role of the notary after the Constitutional Court Decision Number 93 / PUU-X / 2012 by stating that the settlement of sharia banking disputes is the absolute authority of the Religious Courts in making sharia deeds. In conclusion the Constitutional District Court is no longer authorized to resolve sharia economic disputes.

Keywords: Sharia Contract, Choice of Forum, Role of Notary, Sharia Banking, Constitutional Court Decision Number 93 / PUU-X / 2012, Dispute

Abstrak

Notaris dalam pembuatan akta akad syariah diharuskan memiliki pemahaman mengenai akad dan hukum syariah. Penelitian ini untuk mengetahui penerapan choice of forum dalam penyelesaian sengketa perbankan syariah pasca putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 Tentang Pengujian Undang-Undang No 21 Tahun 2008 Perbankan Syariah. Serta peran notaris dalam pembuatan akta akad perbankan syariah dan pasca putusan tersebut. Metode yang digunakan dalam penelitian ini adalah metode hukum secara normatif. Pendekatan yang digunakan dalam penelitian yuridis normatif ini ada tiga pendekatan, yaitu pendekatan kasus, perundang-undangan dan konseptual. Hasil penelitian menemukan bahwa pasca diterbitkannya Putusan Nomor 93/PUU-X/2012, penyelesaian sengketa perbankan syariah merupakan kewenangan absolut dalam lingkungan Peradilan Agama (secara litigasi). Penegasan kewenangan Peradilan Agama ini didukung oleh Perma Nomor 14 Tahun 2016 tentang Penyelesaian Perkara Ekonomi Syariah. Peran Notaris dalam pembuatan akta akad syariah wajib menerapkan prinsip-prinsip syariah sesuai dengan UU Perbankan Syariah Nomor 21 Tahun 2008 dan Notaris penting untuk memiliki sertifikasi syariah sehingga dapat diakui legalitasnya. Peran Notaris pasca Putusan MK Nomor 93/PUU-X/2012 dengan mencantumkan bahwa penyelesaian sengketa perbankan syariah merupakan kewenangan mutlak Pengadilan Agama dalam pembuatan akta syariah. Dengan demikian Pengadilan Negeri secara konstitusi sudah tidak berwenang menyelesaikan sengketa ekonomi syariah.

Kata kunci: Akad Syariah, Choice of Forum, Peran Notaris, Perbankan Syariah, Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012, Sengketa

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Introduction

An individual relation with a sharia banking institution in accordance with the provision of loans, financing, or cooperation is usually bound in a bond called

a contract either in oral or written form. In practice, the contract in Islamic banking is also inseparable from problems such as in banking institutions in general. These problems give rise to a dispute between the two parties who carried out the contract or agreement.

Choice of forum is a forum which has the authority to resolve contractual civil disputes between parties bound by an agreement (*pacta sunt servanda*). In relation to the choice of forum, based on Article 18 of Law Number 48 of 2009 concerning Judicial Power, the authority to adjudicate cases rests with the judiciary, as follows the General Court, Religious Court, Military Court, and State Administrative Court (litigation). However, in the elucidation of Article 60 paragraph (1) of the law, it does not exclude the possibility of settlement of cases outside the judiciary, namely through peace / Alternative Dispute Resolution (APS) and Arbitration as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (non-litigation).

The principle of *actor sequitur forum rei* Article 118 Paragraph (1) HIR confirms that the authority to hear a case is the District Court where the defendant resides. Choosing the court where the defendant resides as outlined in Article 118 paragraph (1) HIR, provided that the object of dispute is movable property or debt and credit. If the object is immovable then it should refer to the principle of the *forum rei seizure* of Article 118 paragraph (3) HIR, the lawsuit is filed to the Court where the immovable object (land / building) is located, because it is based on the agreement of the parties which is based on the principle of freedom of contract. , then the parties agree that in the event of a dispute between them, the lawsuit will be addressed to the Court where the plaintiff's residence or relative competence is based on the choice of domicile (the parties to the agreement can agree on the preferred domicile, namely to choose a certain Court that will be authorized to resolve disputes arising from the agreement. (Harahap, 2012: 193).

In an agreement, the principle of *pacta sunt servanda* is considered a fundamental principle because it is based on the emergence of an agreement. *Pacta sunt servanda* that any agreement made becomes a binding law for the parties to the agreement, as well as Article 1338 of the Civil Code. In Islamic law the principle of *pacta sunt servanda* is known as the principle of *al hurriyah* (freedom) is the basic principle in the law of agreement or contract. And it is also emphasized in the Qur'an Surat Al-Isra verse 34 "And fulfill the promise, indeed the promise will be held accountable".

The existence of Article 55 of the Sharia Banking Law puts customers constitutionally in disadvantage because it does not provide legal certainty as a constitutional right. This is because there are two courts that are authorized in

terms of a choice of forum in cases with the same substance and object. In consideration, the Constitutional Court is of the opinion that precisely the provisions of the Elucidation of Article 55 paragraph (2) a quo do not provide legal certainty.

The application of the choice of forum can be seen in the decision of the District Court in the general court environment, namely in Decision Number 607 / Pdt.G / 2014 / PN Bdg. In this verdict, his anger stated that the District Court has the authority to hear a lawsuit based on the Credit Agreement with Murabahah Agreement between Aban and PT. Bank Syariah Bukopin Bandung Branch with the consideration that the district court is authorized to examine and decide cases of Islamic banking problems in accordance with the provisions of Article 55 paragraph (2) of the Sharia Banking Law.

Another example can be seen in the Decision of the Karanganyar District Court Number 75 / Pdt.G / 2014 / PN Krg, which states that the District Court has no authority to hear a lawsuit based on Murabahah Financing Deed Number 07 / MRB / MP-500/30100/0511 dated 17 May 2011 between Albertus Heru Sediarto, SE. and G. K. Hestiningrum as the Plaintiffs against PT. Bank Mega Syariah.

Another decision was the West Java High Court Decision Number 28 / PDT / 2018 / PT.BDG which stated that the District Court was not authorized to hear lawsuits based on the Bandung District Court decision. This decision in case Number: 52 / Pdt.G / 2017 / PN.Bdg between Aniyati, SH.M.Kn as Plaintiff against PT.BANK OCBC NISP, Tbk Sharia Branch Office, DKK as Defendants.

The handling of disputes in sharia banking is regulated in Article 55 paragraph (1) of the Sharia Banking Law which states that the settlement of sharia banking disputes is carried out by the Religious Courts. The settlement of disputes in Islamic banking institutions as regulated in Article 55 of the Sharia Banking Law, raises dualism caused by alternative dispute resolution options, namely through litigation at general courts and religious courts (Khopiatuziadah, 2014).

The Religious Court is an institution that has the authority to examine the settlement of disputes in sharia economic cases in Indonesia (Syafudin, 2017). The civil procedural law used in the Religious Courts still refers to the procedural law in general courts that have been heavily criticized, due to their complicated and time-consuming procedures. This is because, in resolving business disputes, including in the field of sharia economics, it demands quick dispute resolution. The business world is always moving fast, while on the other hand, procedural law does not support a quick settlement, because there is no limit to when a case will be resolved in court (Bintoro, 2016).

The dualism of dispute resolution causes concerns about differences or dualism in regulations and the emergence of legal uncertainty by granting authority to two different judicial institutions. Based on this explanation, this research analyzes the application of the choice of forum in the settlement of Islamic banking disputes after the Constitutional Court decision Number 93 / PUU-X / 2012 and the role of the notary after the decision.

Notaries have a role in making deeds of Islamic banking product contracts and binding guarantees (especially in cases of Mortgage and Fiduciary Rights). Islamic banking requires a notary who is able to understand the concepts of sharia contracts and their application in Islamic banking practices. Changes in regulations after the Constitutional Court decision Number 93 / PUU-X / 2012 also affect the role of the notary. Notaries must apply sharia principles appropriately in making sharia banking deeds and not deviate from the rules stipulated in law. Based on this, this has attracted researchers to raise research with the title *The Role of Notaries in Making Sharia Banking Deeds after the Constitutional Court Decision Number 93 / Puu-X / 2012*.

Research Problems

1. How to conduct the election of the forum in the resolution of Sharia Banking disputes after the Constitutional Court Decision No. 93/PUU-X/2012?
2. How the role of notaries in making islamic banking deeds and post-Constitutional Court Decision No. 93/PUU-X/2012?

Research Method

The method utilized in this research is the normative legal method (normative juridical). The approach used in this normative juridical research has three approaches as follows the case approach, the statue approach and the conceptual approach (Marzuki, 2017).

Sources of data in this research are divided into two, primary and secondary. Primary data sources are the 1945 Constitution; *Burgerlijk Wetboek voor Indonesie*, hereinafter referred to as the Civil Code (KUHPerdata); Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, (State Gazette of the Republic of Indonesia of 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491), Law No. 21 of 2008 concerning Islamic Banking, LN No. 94 of 2008, TLN Number 4867; Law Number 7 of 1989 concerning Religious Courts, LN No. 49 of 1089, TLN Number 3400; Law No. 2 of 1986 concerning General Courts (General Court Law), LN No. 20 of 1986, TLN. Number 3327; Bandung District Court

Decision Number 607 / Pdt.G / 2014 / PN Bdg and MK Decision Number 93 / PUU-X / 2012. Secondary data sources consist of scientific books in the field of law, scientific journals and scientific articles.

Discussion

1. Implementation of Choice of Forum in Sharia Banking Dispute Resolution after Constitutional Court Decision Number 93 / PUU-X / 2012

After the issuance of Decision Number 93 / PUU-X / 2012 by the Constitutional Court, the choice of forum for sharia banking dispute resolution has found its legal certainty. By stating the decision related to the judicial review of Law No. 21 of 2008 concerning Sharia Banking against the 1945 Constitution Article 28D paragraph (1) by Nine Constitutional Justices, it is stated that the Elucidation of Article 55 paragraph (2) of Law No. 21 of 2008 which does not have binding legal force.

The Constitutional Court Decision Number 93 / PUU-X / 2012 expressly nullifies the legal force of Elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Islamic Banking. Implicitly, the Constitutional Court's decision directly and indirectly removes the dualism of sharia economic dispute resolution and substantively contextually invalidates some of the previous norms that signal the authority of sharia economic settlement to the District Court (Umam K, 2017). Explanation of Article 55 paragraph (2) of Law No. 21 of 2008 no longer has the force of binding law due to several things (Musjtari et al, 2019) namely:

a. There are inconsistencies in the settlement arrangement

The inconsistency is reflected in the provisions in Article 55 paragraph (1) and paragraph (2) in Law No. 21 of 2008 concerning Sharia Banking, so that there is an overlap in the absolute powers of 2 (two) judicial institutions, namely the religious court and the district court.

b. The existence of legal uncertainty

The overlapping arrangements between religious courts and district courts create legal uncertainty in resolving sharia banking disputes. The inconsistency of the provisions of Article 55 paragraphs (1) and (2) and the explanation of these articles results in the absence of legal certainty for customers of Islamic banks to resolve dispute.

c. Loss of the customer's constitutional rights

The elucidation of Article 55 results in customers not having legal certainty to settle their dispute with a sharia bank, this violates one's constitutional rights, as stipulated in Article 28D paragraph (1) of the 1945 Constitution

which explains that everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law.

Giving the choice of forum opportunity has certain risk if there is an expression that people who enter Islamic banks are not only Muslims, but there are non-Muslims. In legal theory, when a non-Muslim enters the judiciary or Islamic banking, he has made a choice of law. When he has chosen the law, then he is immediately ready and regulated by the rules of the fundamentals in the institution he enters, namely matters related to sharia and when Islamic banks apply sharia rules, then when non-Muslims enter into Islamic banks have prepared themselves and are also ready to accept the rules applied by Islamic banks, so that from matters of principles, rules, and until the settlement of disputes must be adjusted to sharia. Therefore, it is said that non-Muslims who have entered into Islamic banks have made the choice of law because there are conventional banks that can be chosen why they enter Islamic banks. While in Islamic banks it has been clearly explained that the rules and principles that have been implemented from the contract to dispute resolution are in accordance with sharia rules.

Sharia banking dispute resolution is an absolute (absolute) authority within the Religious Courts. Disputing parties must comply with the authority of the Religious Courts in resolving sharia economic disputes. Meanwhile, the disputing parties may only choose the domicile of the Religious Court which will resolve the dispute (Masse et al, 2018).

The absolute authority of the Religious Courts in handling sharia economic disputes is supported by a regulation that contains procedures for settling sharia economic cases. The Supreme Court has issued Supreme Court Regulation (PERMA) Number 14 of 2016 concerning Settlement of Sharia Economic Cases. This regulation was issued because the existing procedural law provisions, both in HIR and RBg, did not differentiate the procedure for examining the large and small value of material objects, so the settlement of the case took a long time.

PERMA Number 14 of 2016 concerning Settlement of Sharia Economic Cases was published on December 22, 2016. This PERMA regulates the procedural law of sharia economic disputes complementing PERMA No. 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES) in 2008 as the implementation of Article 49 concerning the Religious Courts. This PERMA in outline contains the affirmation of the authority of the Religious Courts, judicial techniques and administration of Islamic economic cases. The affirmation of the authority of the Religious Courts is clearly stated in Article 1 and Article 13.

Article 1 states that the competent court is a court within a religious court. Article 13 Paragraph (1) also states that the implementation of decisions on sharia

economic cases, mortgage and fiduciary rights based on sharia contracts is carried out by the Court within the Religious Courts. Paragraph (2) also states that the implementation of sharia arbitration decisions and their cancellation will be carried out by the court within the religious court.

So far, regarding mortgage and fiduciary rights based on sharia contracts, there is no clarity regarding which judicial environment has the authority to accept, examine and decide cases, and implement decisions. The fact is that many courts within the religious courts have tried this dispute by upholding the principle: as long as the contract is a sharia contract, it becomes the authority of the religious court, in accordance with Law 3/2006 and the Constitutional Court decision Number 93 / PUU-X / 2012.

Regarding the implementation of the sharia arbitration decision and its revocation, in fact the authority was once given to the religious judiciary through SEMA 8/2008. The authority was then transferred to the general court, after the MA issued SEMA 8/2010. Thus, the provisions in SEMA 8/2010 are no longer valid, after the PERMA 14/2016.

Regarding the PERMA 14/2016, Decision Number 607 / Pdt.G / 2014 / PN Bdg, which states that the District Court has the authority to hear lawsuits based on the Murabahah Credit Agreement between Aban and PT. Bank Syariah Bukopin Bandung branch can be said to have no problem. This is because the Decision Number 607 / Pdt.G / 2014 / PN Bdg was decided in 2014 while PERMA 14/2016 was only issued in 2016. Other cases involving sharia economic shocks that are still being handled by the District Court after 2016 have not justified, so with the PERMA 14/2016 the District Court should have rejected sharia cases.

The explanation above produces a conclusion that must be implemented by the Islamic economic industry. Based on the Decision of the Constitutional Court Number 93 / PUU-X / 2012 and PERMA Number 14 of 2016 concerning the Settlement of Islamic Economic Cases, it means that the settlement of sharia economic disputes must be carried out by the Court within the Religious Court.

2. The Role of Notaries in Making Sharia Banking Deeds and Post-Constitutional Court Decisions Number 93 / PUU-X / 2012

a. The Role of Notaries in the Making of the Shariah Banking Contract Act

Notary in Indonesia is a public official appointed by the Minister of Law and Human Rights of the Republic of Indonesia. Whereas public officials are also state organs equipped with general powers, have the authority to exercise part of the state power to produce written and authentic evidence in the field of

civil law (Setiawan, 2001). The responsibilities of an Indonesian Notary are clearly stipulated in the Law on Notary Position Number 30 of 2004 and amended by Law Number 2 of 2014 Article 16.

The authority of the notary as a public official authorized to make an authentic act has been expressly stated in Article 1 paragraph (1) Juncto Article 15 paragraph (1) of the UUJN. As for the authority of the notary as referred to in the law is as mandated by Article 15 paragraph (1) UUJN that the Notary is authorized to make an authentic act on all acts, agreements, and rulings required by law and / or required by interested parties stated in the authentic act, ensuring the date of enactment, keeping the deed, giving grosse, copies and quotations of the act, all of which throughout the making of the acts are not even assigned or exempted to other officials or other persons prescribed by law (Harris et al , 2007).

Making a finance agreement deed in Islamic banking requires the authorized notary to understand the law and the Islamic financing contract. Because it is stated that notaries must pay attention to laws and other government regulations in making deeds, so if a notary wants to make a sharia financing deed, he must master the ins and outs of a sharia financing contract (Anwar & Ulfanora, 2019).

Notaries must understand Law No. 21 of 2008 on Shariah Banking. The shariah principles enshrined in Sharia Banking Law must be understood by the Notary in his work. Shariah principles in Sharia Banking Law are the principles of Islamic law in banking activities based on fatwas issued by institutions that have authority in the determination of fatwas in the field of sharia. Notaries must be able to understand sharia banking products. These products such as murabahah agreement, musyarakah, mudharabah, ijarah, ijarah muntahiyah bit tamlik, Musyarakah Mutanaqishah, take over sharia financing, sharia refinancing, sharia guarantee issues, and anatomy of sharia acts (Arliman, 2016).

Notaries who do not understand the sharia financing contract will be confused when dealing with clients. This is because the realm of sharia is a much different domain from the realm of civil law. Until now, there have been no written regulations governing sharia notaries. Notaries who want to make a sharia financing deed must only have a training certificate regarding sharia banking product contracts, which is considered a sharia notary certification (Umam K, 2015).

In 2016, OJK issued a standardization of several sharia financing products. The product standards for several sharia financing are regulated by the OJK, namely musyarakah, musyarakah mutanaqisah, and murabahah. The product

standard does not mean that it is a standard clause that must be followed by a notary, but as a reference for the notary in making a financing agreement deed, in order to comply with the sharia provisions stipulated in the DSN-MUI Fatwa and other regulations related to sharia financing contracts. Because the notary in making the deed must be based on the wishes of the parties who want the deed. So that notaries who are partners of Islamic banks and want to write a financing contract must refer to the product standard, but do not ignore the provisions contained in UUJNP and the Civil Code.

In making a sharia banking deed, a notary must understand the sharia contract. This is because after the contract is made, the notary must explain the contents of the deed to the customer (Yahya I, 2017). The reading and explanation of the contents of the sharia deed made by the notary must include important matters. Important things such as the identity of the related parties, the amount of financing, the purpose and description of the object of guarantee. The reading and explanation of the contents of the sharia deed is carried out on the specified day. UUJN has regulated the reading, explanation and signing of the sharia deed. The syariah deed of the canteen can be used as authentic evidence if a dispute occurs in the future.

Before reading and explaining the sharia deed to the customer The notary must already understand the sharia contract. Based on this, a notary (Himawan, 2010) must:

- a. Obey the rules that apply to meet the elements of sharia in the contract. Some regulations include, Sharia Banking Law, DSN-MUI Fatwa, KHES, Bank Indonesia Regulations related to sharia financing, and others. In this case the notary must constantly renew his knowledge.
- b. Must understand the sharia contract. In order for notaries to pay attention to the pillars and conditions in the implementation of the contract, also about things that can damage and cancel the contract.

The things mentioned above require the notary to really understand about the sharia contract, so that the notary fulfills his professionalism in carrying out his position and meets the provisions of the code of ethics, where the notary must constantly update his knowledge and pay attention to the latest regulations. Notaries are also required to understand sharia contracts, so that there are no errors and omissions in making the sharia financing agreement deeds.

Notaries who make sharia deeds must be guided by adherence to sharia principles based on the Al Quran, Hadith, Ijma 'and Ijtihad. Therefore, it is important for notaries who are involved in making sharia deeds to have sharia

certification (Yanti, 2012). Notaries who have sharia certification have the understanding, ability and skill in making sharia deeds based on sharia law. The notary will not be confused when dealing with clients because he has an understanding of the contract and sharia law. Again, it is emphasized that the realm of sharia is different from the realm of civil law. Notaries must be more aware of this, especially for those who are involved in making sharia contracts. An understanding of the sharia contract owned by a Notary can make clients more confident in making financing. The client can also feel calm because later the sharia deed that is owned is not at risk because there is an error or mistake regarding an important part of the deed.

The requirement for a notary to have the competence to make various business agreements in Islamic banking institutions is a recommendation from the Annual Meeting of the National Sharia Council of the Indonesian Ulama Council (DSN-MUI) in December 2014 in Jakarta. Formally, the legal provisions in Article 17 Point 1 (i) Law Number 2 of 2014 concerning the Position of Notary Public do not regulate the existence of a sharia notary at all, but in substance, although it is not explicitly seen as opening up space to guarantee the existence of a sharia notary.

In order for a sharia notary to be legally recognized, he must follow a certification process with integrated training with the Indonesian Notary Association (INI), one of which is a certification program in collaboration with the Indonesian Banking Development Institute and the International Center for Development in Islamic Finance (ICDIF) or Iqtishad Consulting (IC). Even today INI and MUI are in an agreement to form the INI Sharia Compartment in order to certify notaries from the aspect of sharia.

Certification is the process of awarding certificates in the industry for human resources (HR) through a competency test in order to qualify according to the standards. So that competency certification of Islamic financial institutions is a necessity. This certification is not limited to Islamic banking, but also applies to Islamic financial institutions as a whole. In this case, it is hoped that the human resources for Islamic financial institutions will have the skills and attitudes in accordance with sharia principles. One of the human resources intended for this certification is the supporting profession which provides services in Islamic banking activities, including notaries, accountants, and appraisers. This certification is a necessity, both for the OJK as the institution that regulates this certification, for Islamic banking in terms of requiring direction from supporting professions that must understand these sharia principles.

Apart from the reasons for the need for OJK and sharia banking, this certification is also a necessity for the notary, because in addition to the notary having to understand sharia terms, principles and contracts, the notary must also be able to explain these sharia principles to clients. In the implementation of this professional certification, the National Professional Certification Agency (BNSP) is also involved. Because BNSP is an independent body that has the authority as an individual certification authority and is tasked with carrying out professional competency certification for workers. BNSP first appointed a Professional Certification Institute (LSP) to hold the certification. BNSP must also establish the Indonesian National Work Competency Standard (SKKNI) as a work ability standard that includes knowledge and abilities for the specified profession. The certification process is quite difficult and requires a long and complicated process. Meanwhile, Islamic banking is still relatively new in the community, so it can complicate the development of sharia.

Islamic banks currently require their partner notaries to have a certificate of Islamic finance training. This sharia financial training certificate is proof that the notary has a fundamental understanding of contracts and sharia law. The notary will later be able to fulfill the client's wishes to formulate the sharia deed so as to avoid the risk of errors or errors in important parts of the deed. The notary's understanding of the contract and sharia law can prevent client losses, for example, there are mistakes that result in the subject of the contract.

b. The Role of the Notary Post-Constitutional Court Decision Number 93 / PUU-X / 2012

A notary has the responsibility of the Islamic banking financing deed authentically. With regard to the deed of contract, the Notary has full responsibility regarding the correctness and accuracy of the contract construction so that the subjective and objective requirements of the contract / agreement are fulfilled, so that the deed made before the notary is true and authentically very basic to become a deed that has value strength of perfect evidence. Notary in formulating the deed at the request of the parties based on the procedure or mechanism / procedure for making a notary deed.

The parties who think there is something wrong with the deed and suffer losses as a direct result of the deed, the said party must sue the notary and must prove whether the notarial deed does not meet the physical, formal or material aspects and prove the loss. The notary must be fully responsible for the construction of the deed since the deed is formulated into the deed, so that if there is a dispute on the deed that is declared invalid and / or null and void

which refers to the mechanism for making the deed, the notary must be accountable for it, even when later by the judge decided to pay compensation suffered by the subjects as a direct result of the construction error deed made by the notary public. Notaries need to pay close attention to how the form of the deed made in front of them is appropriate and does not violate the stipulated provisions.

The financing act in sharia banks made notarized after the decision of the Constitutional Court Number 93 / PUU-X / 2012 must remain in the form prescribed by Law, in this case is Law No. 2 of 2014 on Amendments to Law Number 30 of 2004 on the Notary Department.

In making Islamic bank financing contracts, many still refer to the format of credit agreements at conventional banks, however, adjustments are also made in the articles so that they do not conflict with sharia principles. The adjustments made are guided by the applicable Islamic law, and also refer to the provisions of positive law in Indonesia. The following matters in making the contract include the Law on Sharia Banking, the Limited Liability Company Law, the Decree of the Board of Directors of Bank Indonesia, the Fatwa of the National Sharia Board (DSN), and so on (Faqih A, 2017).

In carrying out their duties notaries follow applicable legal provisions, in sharia banking business practice there are no specific regulations regarding sharia financing contracts including limiting provisions regarding financing clauses, therefore notaries are not required to add or change their own terms and habits. So far practiced. Until now, notaries comply with the provisions of the Law on the Position of Notary Public and general provisions regarding Islamic banking.

Even though it still refers to positive law, the clause in the contract , as long as it does not contradict syar'i and there is also a social value in it, can be accepted by Islamic law. Any form of contract / contract if there are no provisions that prohibit it then it is valid, because the essence of the agreement itself is according to its intent / purpose and meaning, not according to the literal form and wording or editorial (Faqih A, 2017).

If there is a dispute while making a sharia banking deed, the notary may state that the dispute resolution is the absolute authority of the Court within the Religious Courts (in litigation). When a notary provides a choice of forum in an agreement, the notary may not place the District Court as a choice of law to resolve disputes between parties. The notary must also inform the parties involved in the agreement.

The decision of the Constitutional Court as the highest judicial institution which has a final and binding decision has provided certainty in the Constitutional Court decision Number 93 / PUUX / 2012, stating that it cancels the Elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Islamic Banking. The consequence of the cancellation makes the substance in Article 55 paragraph (1) of Law Number 21 of 2008 concerning Sharia Banking, namely that the settlement of Islamic banking disputes is carried out by the Court within the Religious Courts. So that every sharia contract that is made always chooses a place of domicile (choice of forum) for dispute resolution in the Religious Court, because it is based on besides the will of the parties, it is also based on the Constitutional Court decision Number 93 / PUU-X / 2012. Regarding the clause on the choice of sharia contract dispute settlement, according to the parties wanting a domicile to settle the dispute either through National Sharia Body or at the Religious Court.

Conclusion

The conclusion in this study is that after the issuance of Decision Number 93 / PUU-X / 2012 by the Constitutional Court, the settlement of Islamic banking disputes is an absolute (absolute) authority within the Religious Courts (by litigation). This affirmation of the authority of the Religious Courts is supported by the Supreme Court Regulation Number 14 of 2016 concerning the Settlement of Sharia Economic Cases.

Notaries who make a sharia deed are required to apply sharia principles in accordance with the Sharia Banking Law Number 21 of 2008 and it is important to have sharia certification. Notaries who have sharia certification have the understanding, ability and skill in making sharia deeds based on sharia law. Sharia notary so that its legality can be recognized. After the Constitutional Court Decision Number 93 / PUU-X / 2012, the Notary may state that the settlement of sharia banking disputes is the absolute authority of the Religious Courts in making sharia deeds. Thus the Constitutional District Court is no longer authorized to resolve sharia economic disputes.

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