

IMPLIKASI YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 93/PUU-X/2012 TERHADAP KEWENANGAN BADAN ARBITRASE SYARIAH NASIONAL DAN ASAS KEBEBASAN BERKONTRAK DALAM PERJANJIAN

INTISARI

Oleh:

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Penelitian ini bertujuan untuk mendeskripsikan, menganalisis dan mengetahui implikasi yuridis putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 terhadap kewenangan BASYARNAS dalam penyelesaian sengketa perbankan syariah dan penerapan asas kebebasan berkontrak dalam perjanjian.

Penelitian ini menggunakan penelitian yuridis normatif yaitu meneliti bahan kepustakaan atau data sekunder, kemudian dianalisis secara kualitatif dan hasil analisis data dipaparkan dengan metode deskriptif, yaitu dengan cara memberikan gambaran yang sebenarnya mengenai implikasi yuridis putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 terhadap kewenangan BASYARNAS dalam penyelesaian sengketa perbankan syariah dan penerapan asas kebebasan berkontrak dalam perjanjian. Dalam penelitian ini juga terdapat narasumber yang hanya sebagai pelengkap dari data sekunder.

Berdasarkan hasil analisis, diperoleh kesimpulan bahwa implikasi yuridis putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 terhadap kewenangan BASYARNAS adalah terjadi kekaburan hukum atau ketidakpastian hukum dan implikasi penafsiran terhadap kewenangan BASYARNAS dalam penyelesaian sengketa perbankan syariah. Putusan BASYARNAS dinilai bertentangan dengan UUD NRI Tahun 1945 dan tidak mempunyai kekuatan hukum mengikat. Meskipun demikian, putusan BASYARNAS tetap mempunyai kekuatan hukum mengikat untuk menyelesaikan sengketa perbankan syariah sebagaimana diatur dalam Undang-Undang Nomor 30 Tahun 1999, PBI Nomor 9/19/PBI/2007, Pasal 59 ayat (1) dan penjelasan Undang-Undang Nomor 48 Tahun 2009, dan Pasal 55 ayat (2) dan (3) Undang-Undang Nomor 21 Tahun 2008. Sedangkan implikasi yuridisnya terhadap asas kebebasan berkontrak adalah asas kebebasan berkontrak masih dapat diberlakukan dalam membuat akad atau perjanjian terhadap klausul penyelesaian sengketa perbankan syariah sebagaimana termaktub dalam Pasal 55 ayat (2) dan (3) Undang-Undang Nomor 21 Tahun 2008 yang berlandaskan prinsip syariah.

Kata Kunci : Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012, Badan Arbitrase Syariah Nasional, Penyelesaian Sengketa, Perbankan Syariah, Asas Kebebasan Berkontrak.

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THE JURIDICAL IMPLICATION OF CONSTITUTIONAL COURT DECISION NO. 93/PUU-X/2012 TO THE AUTHORITIES POSSESSED BY NATIONAL SHARIA ARBITRATION BOARD AND THE FREEDOM OF CONTRACTS PRINCIPLE IN AGREEMENT

ABSTRACT

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The research on aimed to describe, analyze and knows the juridical implication of Constitutional Court Decision No. 93/PUU-X/2012 to the authorities possessed by National Sharia Arbitration Board in the settlement of sharia banks disputes and to the freedom of contracts principle in agreement.

This research belongs to a juridical-normative research that was by investigating literature materials or secondary data and then analyzed qualitatively. Furthermore, the result of data analysis was presented in descriptive manner, which gave a real description regarding the juridical implication of Constitutional Court Decision No. 93/PUU-X/2012 to the authorities possessed by National Sharia Arbitration Board in the settlement of sharia banks disputes and the application freedom of contracts principle in agreement. This research also direct interviews with informants who just as complement of secondary data.

Based on the result of analysis, it can be concluded that the juridical implication of Constitutional Court Decision No. 93/PUU-X/2012 to the authorities possessed by National Sharia Arbitration Board is happening vagueness law or uncertainty law and implication interpretation the authorities possessed by National Sharia Arbitration Board in the settlement of sharia banks disputes. Decision of National Sharia Arbitration Board considered to be in contradiction with Constitution of the Republic Indonesia 1945 and haven't legal power binding. Nevertheless, decision of National Sharia Arbitration Board still had legal power binding to resolve sharia banks disputes as regulated in Law No. 30/1999, Central Bank of Indonesia Regulation No. 9/19/PBI/2007, Article 59 Paragraph (1) and explanation Law No. 48/2009, and Article 55 Paragraph (2) and (3) of Law No. 21/2008. While the juridical implication freedom of contract is that the freedom of contract would still be applicable by the parties in order to make *akad* or agreement regarding sharia banking disputes settlements as ruled by Article 55 Paragraph (2) and (3) of Law No. 21/2008 based on sharia principle.

Key Words : Constitutional Court Decision No. 93/PUU-X/2012, National Sharia Arbitration Board, Dispute Settlement, Sharia Banks, Freedom of Contract.

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