

EXECUTION MECHANISM OF MORTGAGE RIGHTS USING EXECUTORIAL TITLE IN SHARIA BANKING IS WHOSE AUTHORITY?

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Abstract

Mortgage Right is a guaranteed right to land that is attached to the debt process. The authority to execute the guarantee of Liability on Sharia banks is an important matter to be discussed in the study of business law or commercial law as an effort to return loans that have been given by creditors (sharia banks) to debtors (customers) on financing problems or breach of contract. The Guarantee of Mortgage will not have meaning if the guarantee cannot be executed. The significance of this study is to know the mechanism of request for execution of guarantee of mortgage rights at a sharia bank after the decision of the Constitutional Court No. 93/PUU-X/2012. The research methodology used in this article is the research library. This article analyzes the laws related to the mechanism of execution of mortgage rights in sharia banks. Finally, this research found that the execution of mortgage rightst in Islamic banks is the authority of the Religious Court. The mechanism for requesting the execution of a mortgage guarantee at a sharia bank is also the same as the mechanism for requesting mortgage rights at a district court.

Keywords: *Guarantee; Mortgage Right; Sharia Bank; Religious Court*

1. Introduction

1.1. Background of Study

The establishment of Mortgage Rights in the field of banking financing begins with the existence of section 8 of Law No. 7 of 1992 the latest amended by Law No. 10 of 1998 concerning Banking. The law states that in granting credit, banks must have confidence that the debtor has the ability and ability to repay his debt in accordance with what was promised. For this reason, in the financing process of sharia banks, banks must conduct a careful assessment of the character, ability, capital, collateral and business practices of the debtor to fulfill their debts. If at any time the debtor commits a violation then the bank can take or sell the collateral provided by the debtor to repay the debt. A mortgage is not a stand-alone agreement. Its existence is due to another agreement, which is called the main agreement. One of the main agreements for the mortgage agreement is a loan agreement that creates a debt accompanied by collateral.¹

The existence of Mortgage as a guarantee of credit or financing starts with the provisions of Article 51 of Law No. 5 of 1960 concerning Basic Agrarian Provisions in which it is stated that ownership rights, business use rights and building use rights can be encumbered with

¹ Offi Jayanti and Agung Darmawan, "Auction Of Land Collateral Which Bound By Mortgage Rights," *Kanun Jurnal Ilmu Hukum* 20, no. 3 (2018): 459.

mortgage rights. However, the legislation governing mortgage rights was made in 1996. This is known from the issuance of Law No. 4 of 1996. Before the issuance of Law No. 4 of 1996 the existence of mortgage is based on the transitional provisions contained in Article 57 of the Basic Agrarian Law, by applying the hypotec provisions as referred to in Book II of the Civil Code and also the provisions of the Credietverband in Staatsblad 1908-542 as amended by Staatsblad 1937-190, insofar as things that do not yet have provisions in or based on the Basic Agrarian Law (Explanation of Article 57 of Law Number 5 of 1960).

In the sharia financial industry, particularly sharia banking, based on Sharia Banking Statistics data published by the Financial Services Authority, during the second quarter of 2014 the amount of non-performing financing reached 3.49 percent. When compared with the first quarter the position increased because the first quarter averaged only 3.25 percent. Every year, the ratio of Non-Performing Finance increased from 3.90% in June 2014 to 4.76% in June 2015. If converted Nominally, Islamic banking financing with non-performing loans status increased by 28.71% from Rp.7.54 trillion to Rp. 9.71 trillion.

The main activity of the bank is the financing sector. This is because financing is a sector that generates profits. However, financing also risks harming the bank. One of the risks in these financing activities is problem financing.² Financing in Islamic Banking based on the profit-sharing contract places the bank as the funder. Therefore, the bank has the right to get the profit-sharing as much as the ratio to income or profit obtained by the business owner (*mudhorib*). Whereas if the bank only acts as a liaison between the entrepreneur and the customer, he is entitled to a fee.³

In June 2015, the Infobank Research Bureau noted, there were 7 Sharia Banking that Non-Performing Finance experienced a surge. Of this number, there are 5 Sharia Banking banks that although surging, Non-Performing Finance is still under control, namely PaninBank Syariah, BNI Syariah, Muamalat Bank, BCA Syariah, and Mega Syariah Bank. As of June 2015, there were 4 BUSs whose NPF was above the safe threshold set by the regulator at 5%. The four banks are BRI Syariah (5.31%), BJB Syariah (6.91%), Maybank Syariah Indonesia (15.15%), and Victoria Syariah Bank (5,03%)⁴. The high level of Non-Performing Finance that occurs in Islamic

² Nita Triana and Deddy Purwinto, "Justice In Many Rooms In Sharia Banking Dispute Resolution To Achieve Justice," *Diponegoro Law Review* 3, no. 1 (2018): 43–63.

³ Bagas Heradhyaksa and Ruzian Markom, "MUDHARABAH FINANCING SUPERVISION OF ISLAMIC BANKING IN INDONESIA," *Diponegoro Law Review* 3, no. 1 (2018): 1–14.

⁴ Apriyani Apriyani, "Ekonomi Melambat, NPF Bank Umum Syariah Melonjak," *Infobanknews.Com*, September 10, 2015, <https://infobanknews.com/analisis/ekonomi-melambat-npf-bank-umum-syariah-melonjak/>.

banks, indicates the possibility of a request for execution of guarantee of mortgage rights at a sharia bank at a judicial institution.

The Indonesian Constitution not only instructs the Indonesian state to guarantee its citizens the freedom to run their own religion but also provides a means of religious courts. It is written in Article 24 Subsection 2 Indonesian Constitution. The religious court is one of the judicial institutions to conduct enforcement law and justice for the people who are seeking a particular justice case among Muslims (Law No. 3 of 2006). Section 1 Subsection 1 of Law No. 50 of 2009 also explains that the Religious Courts are courts for Muslims⁵. In section 24 Indonesian Constitution it is stated that judicial power is exercised by the Supreme Court and the Judiciary under its auspices and the Constitutional Court. The Supreme Court is the highest institution that houses general justice, religious justice, state administrative justice and military justice. These judicial institutions have different authorities.

Based on section 25 subsection 2 of Law No. 48 of 2009 concerning Judicial Power, the general court has the authority to examine, hear, and decide on criminal and civil cases in accordance with statutory provisions. Based on the provisions of this article, the authority to examine and adjudicate civil cases is an absolute competence of the general court or district court, therefore all disputes relating to civil matters including debit and credit agreements that use the legal basis of the Civil Code and related regulations with it such as the Agrarian Law and the Mortgage Rights Act are the authority of the general court or district court.

The authority to adjudicate civil disputes can also include disputes in the field of sharia banking provided that they are agreed upon by the parties as referred to in section 55 subsection 2 of Law No. 21 of 2008 concerning Sharia Banking. Section 55 subsection 2 and its explanation redactional provide an opportunity for the general court to hear cases in the field of sharia banking which in section 55 subsection 1 of the Law. Shari'ah Banking stated that the settlement of sharia banking disputes was the authority of the judiciary within the religious court environment. This is the reason for submitting the judicial review of the provisions of article 55 paragraph 2 of the Sharia Banking Law to the Constitutional Court.

The dualism of authority to adjudicate between religious courts and general courts in the settlement of Islamic banking disputes has occurred since the issuance of Law No. 3 of 2006 concerning Religious Courts. The District Court felt entitled to all matters concerning the judicial process in the banking sector including sharia banking, while the Religious Courts also felt more

⁵ Bagas Heradhyaksa and Ruzian Markom, "The Opportunities Of The Application Of Islamic Criminal Law According To Indonesian Constitution," *Scientific Journal of PPI-UKM* 4, no. 1 (2017).

entitled to adjudicate the Islamic banking dispute as a logical legal consequence of the inclusion of the Islamic economic field as the absolute competence of the Religious Courts contained in section 49 of Law No. 3 of 2006. Dualism became clearer after the issuance of Law No. 21 of 2008 concerning Sharia Banking, which in the Elucidation of section 55 subsection 2 lists the choice of forum in the settlement of Islamic banking disputes, one of which is through the General Court. The dualism of authority of each court is a result of the ambivalent legal politics of the government (legislative and executive) and never wants to give full confidence to the Religious Courts, as an independent and free judicial institution under the Supreme Court. The reality of the independence of the Religious Courts granted by the Law No. 48 of 2009 concerning Judicial Power, is reduced by political power as a colonial legacy which continues to claim that the Religious Courts are not state courts which are parallel to other courts under the Supreme Court. The historical experience that makes the Religious Courts always alienated from the politics of power has manifested in the minds of the legislators and the government so that the reality of this law occurs.⁶

The Constitutional Court, in regulation No. 93/PUU-X/2012, ruled that the explanation of Article 55 paragraph 2 of the Law on Sharia Banking is contrary to the 1945 Constitution and therefore does not have binding legal force. Based on the ruling of the Constitutional Court, the Islamic banking dispute becomes the authority of the religious court. Meanwhile, based on the provisions of the Civil Code Article 1338 basically states that the agreement is the Act for those who make it. This means that the parties can choose which judicial institution will be used as a means to resolve disputes if it occurs between them.

The issuance of the Constitutional Court's decision No. 93/PUU-X/2012 which provides a ruling that the religious court is authorized to settle disputes in the field of shari'a economics including sharia banking has created problems in terms of guarantees of mortgage rights because the existence of guarantees in the form of mortgage rights is the domain of the Law Civil law which means the absolute competence of the general court is not the realm of the religious court. The development of the implementation of sharia economic dispute resolution after the decision of the Constitutional Court Number 93/PUU-X/2012 based on the opinion of a number of judges in the Religious Courts increasingly shows the community's understanding that Islamic economic disputes become the absolute competence of the Religious Courts so that they no longer submit their cases to the General Courts. On the other hand, this development has become energy that

⁶ Triana Sofiani, "Dualisme Penyelesaian Sengketa Perbankan Syariah (Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012)," *Jurnal Hukum Islam* 13, no. 2 (2015): 119–31.

spurs Religious Court judges to improve academic readiness and judicial skills in resolving Islamic economic disputes.⁷

In the context of sharia business, the process of financing using a contract based on sharia principles should use guarantees that are based on sharia principles as well. Enforcement of guarantees that are not based on sharia principles, such as mortgage rights based on the Law. No. 4 of 1996, is an action that is contrary to Islamic principles. According to Imam Shafi'i, the value of assets contained in the collateral object may not be used by the creditor because the collateral is only an object to recover the value of the debt borrowed by the debtor unless the use of assets by the creditor does not harm the debtor.⁸ Based on the background of the problem, the following problems can be formulated: How is the mechanism for executing mortgage right at Islamic banks after the decision of the Constitutional Court No. 93/PUU-X/2012?

1.2. Significance of the Research

Although it had experienced a slowdown, the Islamic banking industry in Indonesia also experienced an increase. The growth of national sharia banking controlled 4.81% market share as of June 2016. As of September 2016, it has grown to 5.13% of the total assets of commercial banks. This has exceeded the target of 5%. Together with Qatar, Saudi Arabia, Malaysia, the United Arab Emirates, and Turkey, Indonesia is considered a future Islamic financial power. However, the new Islamic banking industry occupies a small niche in the country's financial sector with a majority Muslim population and in the international financial sector. Despite a number of difficulties, the banking Islamization movement went well. Progress achieved during the last quarter-century shows encouraging results.⁹

The small niche phenomenon in the Islamic banking industry in Indonesia basically shows that the contribution and participation of Muslim communities are still low. This condition cannot be separated from the various obstacles that still accompany its development. From a legal perspective, it can be said that the low attention and involvement of the community towards a new 'entity' is partly due to the low trust. Meanwhile, in the same context, public trust can be influenced by the proper functioning of the law, in providing justice, legal certainty and

⁷ Dewi Nurul Musjtari, "Rekonstruksi Lembaga Penyelesaian Sengketa Akad Pembiayaan Dengan Jaminan Hak Tanggungan Pasca Putusan Mahkamah Konstitusi Nomor 93/Puu-X/2012," *Jurnal Media Hukum* 23, no. 1 (2016): 66.

⁸ Muhammad Maulana, "Jaminan Dalam Pembiayaan Pada Perbankan Syariah Di Indonesia (Analisis Jaminan Pembiayaan Musyarakah Dan Muḍārabah)," *Jurnal Ilmiah ISLAM FUTURA* 14, no. 1 (2014): 77.

⁹ Ro'fah Setyowati, Bagas Heradhyaksa, and Ismail Suardi Wekke, "Sharia Compliance in the Islamic Banking Perception in Indonesia," *International Journal of Innovation, Creativity and Change* 5, no. 2 (2019): 1609.

expediency. Thus, the legal problem that can be captured from the presence of Islamic banking institutions is a low public trust. Therefore, serious efforts need to be made to increase the trust of the community.

Execution of the security of mortgage is something that will always happen in business activities. Therefore, the certainty of which judicial institution has the authority to adjudicate the execution of the guarantee of mortgage is something that must be considered. Based on the Law. No. 48 of 2009 concerning Judicial Power, each judicial institution has different powers or competencies between one judicial institution and another judicial institution. In section 25 of the Law. No. 48 of 2009 states that the general court or district court has the authority to examine, hear, and decide on criminal and civil cases in accordance with statutory provisions. Whereas the religious court has the authority to examine, hear, decide, and settle cases between people who are Muslims in accordance with the provisions of the legislation.

Referring to the provisions of this article, civil cases constitute the absolute authority or competence of the general court or district court. Therefore, every agreement made on the basis of the parties in making an agreement is the Civil Code, including in the scope of civil cases, is a debit and credit agreement that includes an accessory guarantee agreement for mortgage rights. Then the general court has the authority to adjudicate disputes that occur between the parties involved in the agreement. Meanwhile, Law No. 7 of 1989 which was last amended by Law No. 50 of 2009 concerning the Religious Courts stated that the religious court is authorized to adjudicate cases in the field of sharia economics, including those in dispute in the field of sharia banking. This raises the uncertainty regarding the security status of mortgage rights in sharia banks because the mortgage is itself based on law. No. 4 of 1996 as part of the civil law but is used as collateral for the contract or financing agreement at the sharia bank using the sharia principle. Therefore, the authority to execute the guarantee of mortgage rights at the sharia bank must get a solution.

2. Discussion

2.1. Consequences of the Constitutional Court Decision No. 93 / PUU – X / 2012 Against Execution of Mortgage Rights Collateral at Sharia Bank

Based on the Indonesian Constitution, the Constitutional Court is an element of implementing judicial power in Indonesia which has certain powers as stated in the constitution. One of the authorities of the Constitutional Court is to conduct judicial review related to its

conformity with the Constitution, both material and formal testing. In judicial review of the law, the Constitutional Court conducts an examination of the law whether the material or content of the paragraph, article and or part of the law contradicts the 1945 Constitution. While the formal review of the law by the Constitutional Court is carried out by examining whether the formation of law has fulfilled the procedure of establishing a law based on the provisions of the 1945 Constitution.

Based on this authority, people who have direct interests who feel their constitutional rights are impaired by the existence of law can submit a material test to the Constitutional Court. For this reason Ir. H. Dadang Achmad Director CV. Benua Engineer Consultant having its address at Taman Cimang RT 002 RW 008 Kedung Jaya Village, Tanah Sareal District, Bogor City, West Java, has submitted a material test request for Law No. 21 of 2008 concerning Sharia Banking in particular Article Article 55 paragraph (2) which reads "In the event that the parties have agreed to settle disputes other than those referred to in paragraph (1), dispute resolution is carried out in accordance with the contents of the contract" and paragraph (3) which reads "Settlement of disputes as referred to in paragraph (2) may not be in conflict with sharia principles". According to H. Dadang Achmad, the existence of Article 55 paragraph 2 and paragraph 3 contradicts Article 28D paragraph (1) which states that everyone has the right to recognition, guarantee, protection, and legal certainty that is fair and equal treatment before the law.

The petition for judicial review of Article 55 paragraph (2) and paragraph (3) with the applicant H. Dadang Achmad originates from the dispute of the applicant with Bank Muamalat Bogor Branch in financing Musyarakah. In the petition, the petitioner states that as citizens of the petition, the petitioner feels his rights have been impaired by the existence of Article 55 paragraph (2) and paragraph (3) of the Law. No. 21 of 2008 does not provide legal certainty because Article 55 paragraph (1) states that "Settlement of Islamic banking disputes is carried out by the Religious Courts" but in Article 55 paragraph (2) of the Law. No. 21 of 2008 states "In the event that the parties have agreed to settle a dispute other than as referred to in paragraph (1), the dispute resolution shall be carried out in accordance with the contents of the contract". Article 55 Paragraph (2) is strengthened by Article 55 Paragraph (3) which reads "Settlement of disputes as referred to in paragraph (2) may not conflict with Islamic principles".

In the decision on the petition for judicial review of Article 55 of the Law. No. 21 of 2008, the Constitutional Court is of the opinion that a dispute arising in Islamic banking that occurs

between a customer and a sharia bank or Sharia Business Unit, is caused by one of the parties being dissatisfied or feeling disadvantaged. Principally the parties involved in sharia banking disputes are given the freedom to determine the dispute resolution mechanism that they want in accordance with the sharia principle, namely Islamic legal principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia. Therefore, before channeling financing between the Sharia Bank or the Sharia business unit and the customer is required to make a written agreement between them that contains the rights and obligations for each party in accordance with the Sharia Principles.

According to the Panel of Judges of the Constitutional Court, the dispute resolution process in sharia banking as regulated in Article 55 of the Sharia Banking Law has given duties and authorities to the religious court as regulated in Article 49 letter (i) of Law Number 3 of 2006 concerning Amendment to the Law. No. 7 of 1989 concerning the Religious Courts in which the religious court has the authority to settle disputes not only sharia banking, but also in other sharia economics. According to the Constitutional Court Panel of Judges, the choice of a legal forum in terms of dispute resolution is the second choice if the parties do not agree to settle the dispute through a religious court. The choice of legal forum in sharia banking disputes must be clearly stated in the agreement.

Based on these considerations, the Constitutional Court Panel of Judges decided to grant part of the petition for the petition because the Constitutional Court Panel of Judges did not grant the petitioner's request to state that Article 55 of the Law. No. 21 of 2008 contrary to Article 28 D of the 1945 Constitution. The Panel of Judges of the Constitutional Court in its decision stated that the explanation of Article 55 paragraph (2) of the law which reads; "What is intended by dispute resolution carried out in accordance with the contents of the contract is the following efforts; a). discussion; b). banking mediation; c) through the National Sharia Arbitration Board or other arbitration institution; and / or d) through a court in the General Courts environment "declared no longer valid because it is considered contrary to the 1945 Constitution and does not have binding legal force. In adjudicating petition for judicial review of Section 55 of the Sharia Banking Law, the Constitutional Court Panel of Judges does not have the same opinion, because Constitutional Justices Hamdan Zoelva and Ahmad Fadlil Sumadi convey different reasons (concurring opinions) despite having the same decision and Constitutional Justice Muhammad Alim has a different opinion (dissenting opinion).

The decision of the Constitutional Court Panel of Judges confirms that Article 55 paragraph (2) and paragraph (3) do not contradict with Section 28 D of the 1945 Constitution but instead explain Section 55 Subsection (2) and (3) that are considered contrary to Article 28 D of the 1945 Constitution due to the provisions of Explanation Article a quo has caused legal uncertainty and the loss of the constitutional rights of customers to obtain fair legal certainty in sharia banking dispute resolution because it opens up the possibility of dispute resolution through general justice even though it is clearly and expressly stated in Section 49 Subsection I of Law No. 3 of 2006 that sharia banking as part of sharia economic activity is the absolute authority of the religious court. Thus, through the decision of the Constitutional Court, it is increasingly affirming that the settlement of the Shari'ah banking dispute is the absolute authority of the religious court.

Since the ruling of the Constitutional Court No. 93/PUU-X/2012 is read in a hearing that is open to the public and has been published in the state news sheet then legally the provisions of the explanation of Article 55 paragraph (2) are automatically invalid and not binding. Thus the litigation of sharia banking disputes in litigation constitutes the absolute authority of the religious court, the parties involved in the sharia banking contract must not determine other courts as authorized judicial institutions although in the Civil Code it is stated that in the agreement of the parties free to determine the contents of the agreement (the principle of freedom of contract) and the agreement functions as a law for its makers (the principle of *pacta sunt servanda*). However, an agreement must not conflict with the law. In Section 49 Subsection I of the Law. No. 3 of 2006 concerning changes to the Law. No. 7 of 1989 concerning Religious Courts stated that sharia banking as part of sharia economic activities is the absolute authority of religious courts. Thus, all matters relating to disputes in the field of sharia banking are the absolute authority of the religious court. Courts outside the religious courts are not authorized to adjudicate sharia banking cases or disputes.

If the parties do not wish to settle their dispute through the Religious Courts and want to resolve disputes in other forums (non-litigation), then the parties must agree in advance in the agreement or the contract they make. Accordingly, the agreement is valid as a law for the parties as mentioned in Article 1338 (the principle of *pacta sunt servanda*).

In accordance with the decision of the Constitutional Court No. 93/PUU-X/2012 concerning the application for judicial review of Section 55 Subsection 2 and Subsection 3 of Law No. 21 of 2008 concerning Sharia Banking which states that the provisions of Article 55

paragraph (2) of the Sharia banking Law is contrary to Section 28 D of the 1945 Constitution, the explanation of Section 55 Subsection 2 of the Sharia Banking Law is declared invalid and has no binding legal force. Based on the decision of the Constitutional Court, the religious court is the only judicial institution that is authorized to settle and adjudicate all disputes that occur in sharia banking.

The Constitutional Court's affirmation of the authority of the religious court to receive, resolve and decide on all disputes in the field of sharia banking results in that all matters related to sharia banking are the authority of the religious court, including disputes related to financing or credit at shariabank.¹⁰ In general, every financing agreement at a sharia bank is always accompanied by an agreement or access agreement that accompanies the contract, both using personal guarantee contract or *rahn* contract (material security). However, many Islamic banks often use the concept of collateral that is regulated in the Civil Code or the main law that is subject to it, such as the Dependency Rights regulated in Law No. 4 of 1996 concerning Mortgage Rights and Objects Related to Land.

Along with the issuance of the Constitutional Court ruling No. 93/PUU-X/2012 concerning Testing Article 55 paragraph (2) paragraph (3) of the Law. No. 21 of 2008 whose decision states that the explanation of Article 55 paragraph (2) contradicts Article 28D of the 1945 Constitution and is declared non-binding, this ruling results in the religious court being the only judicial institution authorized to adjudicate Sharia banking disputes that are part of Sharia economic activities as regulated in the Act. No. 7 of 1989 the last amended by law. No. 50 of 2009 concerning Religious Courts. Thus, all matters relating to Islamic banking disputes are the absolute authority of the religious court. Dependents are an access agreement on financing at Islamic banks. Therefore, if the debtor in the Shari'ah financing is in default, the execution of the material guarantee on the financing is the authority of the religious court as absolute authority.

2.2. Execution Mechanism of Guarantee of Mortgage Rights in Sharia Banks Post Constitutional Court Decision No. 93/PUU-X/2012

The existence of a religious court is institutionalized based on Law No. 7 of 1989 the last amended by Law. No. 50 of 2009 concerning Religious Courts. Religious Courts are special courts that handle civil disputes for those who are Muslim or submit themselves to Islamic law. In the first Amendment to the Law. Religious Courts namely the Act. No. 3 of 2006 stated that

¹⁰ Dendi Abdurrosyid, "Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 Dalam Penyelesaian Sengketa Perbankan Syariah," *Jurnal Nestor Magister Hukum* 4, no. 4 (2015).

the religious court has the authority to handle cases in the field of marriage (marriage, divorce, divorce, and reconciliation), inheritance, wills, grants, waqf, zakat, infaq, alms, sharia economy and the authority of adoption of children. Based on Law No. 7 of 1989 which was last amended by Law No. 50 of 2009 concerning Religious Courts, religious courts have the duty to examine, decide upon, and settle cases at the first level between people who are Muslim in the fields of marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah and Islamic economics. In the elucidation of Article 49 of the Law on Religious Courts it is stated that sharia economy is an act or business activity carried out according to sharia principles, including covering sharia banks; sharia microfinance institutions. sharia insurance; sharia reinsurance; sharia mutual funds; sharia bonds and sharia medium-term securities; sharia securities; sharia financing; sharia pawnshop; pension funds for Islamic financial institutions; and sharia business. The type of case is the absolute authority or competence of the religious court. Based on the provisions of the article, it appears that the case in the field of sharia bank as part of sharia economic activity is the absolute authority of the religious court. The implication of the decision of the Constitutional Court is that the District Court must declare no authority over disputes relating to Islamic banking. The statement must still be stated even though it has been agreed in the contract. This is confirmed by the nature of the Constitutional Court's decision which is final and binding on all citizens (*erga omnes*).¹¹

In carrying out its main duties as a judiciary, the religious court must accept every case submitted to it including the case for the petition for execution. As stated in Section 54 of the Law No. 7 of 1989 the last amended by Law. No. 50 of 2009 concerning Religious Courts, the procedural law that applies to religious courts is the procedural law that applies to general justice unless otherwise stipulated in the applicable laws and regulations. Nita Triana's research results show that the implementation of security interests in Islamic economic disputes in the Purbalingga Religious Court has been carried out in accordance with the Law. On the substance of the implementation of the execution, On the substance of the implementation of the execution decision, the outcome required by the plaintiff is determined in the Religious court using guidelines not separate from the disciplinary process contained in the HIR or Rbg.¹²

¹¹ Khotibul Umam, "Implikasi Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 Bagi Penyelesaian Sengketa Bisnis Dan Keuangan Syariah," *Jurnal Konstitusi* 12, no. 4 (2015): 691.

¹² Nita Triana, "Execution of Security Rights in Islamic Banking at the Religious Court of Purbalingga," *International Conference Of Moslem Society* 2 (2018): 51–61.

There are two types of execution of the mortgage right, namely the execution of the decision which punishes the loser to pay a sum of money and at the same time also the real execution for emptying the Mortgage right object in the form of land and buildings. Execution that punishes the losing party for paying a sum of money is done by auctioning the Mortgage object. Auction for the Underwriting Right object is carried out on the basis of a request from the applicant or the Underwriting Right holder who requests the Religious Court to execute.

After receiving a request for execution, the Religious Court then conducts a series of activities related to the legality of the Mortgage as mentioned in the Law No. 4 of 1996 concerning Mortgage Rights. The stages made by the Religious Court in carrying out the guarantee of Mortgage Rights are first examining the Mortgage Certificate which is used as the basis for the request for execution of the Mortgage. Next up is *Aan Maning*. In Article 196 HIR / Article 207 Rbg it is stated that *aan maning* is a warning or reprimand issued by the court to the requested respondent to carry out his obligation to pay debts voluntarily within a maximum period of eight days. This reprimand letter should be made twice so that the respondent pays attention to his obligations. If the reprimand or *aan maning* letter is not heeded by the respondent or the debtor of the Chair of the Court orders the bailiff to summon the respondent to be *aan maning*. The *aan maning* is conducted in an incidental trial which is attended by the Chief of the Court, the court clerk and the requested respondent who then makes the minutes of the implementation of the *aan maning* functioning as evidence. *Aan maning* is a must as a legal basis for executing execution.

Executorial beslag or confiscate execution is a continuation of the dismissal of the warning or reprimand that has been delivered by the Religious Court to the requested respondent. Auction implementation through the Office of State Assets and Auction Services. The implementation of the Auction is based on the Minister of Finance Regulation No. 27 / PMK.06 / 2016 concerning the Bidding Implementation Guidelines. The auction is an embodiment of the auction execution order issued by the court. Subsequently, the Court submitted an application to the State Assets and Auction Services Office. In the execution of the execution, the court submits an application to the Office of State Assets and Auction Services to carry out the execution. After the implementation is completed and payment has been made by the buyer/auction winner, the next step is to carry out the real execution of the Mortgage object. Real execution is carried out if the landowner or debtor who gives the Mortgage is not willing to surrender the land that is

the object of the auction to the buyer. In this case, the creditor or holder of the Underwriting Right must submit an application for execution to the Religious Court.

The execution of the guarantee of Mortgage Rights must be carried out in accordance with the applicable Mortgage Law and Procedure Law. Disregarding the provisions stipulated in the Mortgage Rights Act and Procedural Law can be made in the form of a fight or a lawsuit in the form of a lawsuit based on acts against the law. Therefore, the implementation of the Guarantee of Mortgage Rights must be carried out correctly.

Based on the description above, from all stages in the execution of the Underwriting Guarantee through the executable title as regulated in the Act. Underwriting Rights and the provisions of Article 195 up to Article 200 HIR / Rbg, the execution process of the Underwriting Guarantee requires at least around three months in accordance with the stages that must be passed starting from the *aanmaning* process which takes time, the opportunity to make peace for the parties 10 days work, confiscation of mortgage rights 10 working days, auctioning 30 working days, *aanmaning* for emptying the mortgage rights object 8 working days, preparation of evacuation coordinated with related parties such as the police and the village until execution in 30 real working days so that the whole the activity takes 96 working days.

3. Conclusions

The legal consequences of the Constitutional Court's decision No. 93/PUU-X/2012 regarding the execution of collateral rights at sharia banks is the establishment of the Religious Court as a judicial institution authorized to decide cases in the sharia economy, especially sharia banking. Based on the decision, the religious court is a judicial institution that has the authority to accept applications for the execution of guarantees of mortgage rights which are made based on sharia principles. This is based on the provisions of Article 55 of the Law. No. 21 of 2008 which was corroborated by the decision of the Constitutional Court No. 93/PUU-X/2012 which states the explanation of Article 55 paragraph (2) does not apply and does not have binding legal force. Canceled Explanation of Article 55 (2) further confirms the Religious Court as a court that is absolutely authorized to hear cases in the field of sharia banking. Thus, in general, all disputes made using sharia agreements/agreements and matters related to them are under the authority of the religious court as stated in Article 49 of the Law. 7 of 1989 the last amended by law. No. 50 of 2009 concerning Religious Courts.

The mechanism for requesting the execution of a mortgage guarantee at a sharia bank after the Constitutional Court ruling no. 93/PUU-X/2012 is the same as the mechanism of application for Mortgage in the district court. This is based on the reason that the procedural law applicable to the religious court is the procedural law that applies to the general court as affirmed in Article 54 of the Law. No. 7 of 1989 the last amended by law. No. 50 of 2009 concerning Religious Courts. The stages of execution of the Underwriting Guarantee must be based on the law. No. 4 of 1996 concerning Mortgage Rights and is based on HIR / Rbg.

Based on the results of this research, it is necessary to conduct socialization for Shari'ah economic actors so that they understand that shariaeconomic disputes are under the authority of the religious court. In making an agreement, a clause must be stated that if a dispute occurs and is settled in litigation, it must be resolved in the Religious Court because every agreement that is subject to sharia principles is the authority of the religious court.

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