



# Legal Certainty Regarding Sharia Banking Dispute Resolution In The Context Of Constitutional Court Decision Number 93/PUU/X/2012

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## Abstract

Disputes resolution in the field of Islamic banking are actually arranged in Article 55, paragraph (1), (2), and (3) of the Law on Islamic Banking. The Problem appear when choice of legal forum (*choice of forum*) for finish dispute banking agreed for choose one of the legal forums in settlement dispute when the parties No want to finish it through religious courts and their contracts No stated in a way clear the choice of legal forum selected. This is where the need for certainty of law in settling the dispute in question arises, and how the Constitutional Court's decision for certainty of law can be realized in Islamic banking disputes. The research method used is descriptive normative. Research results explain that the Decision of the Constitutional Court Number 93/PUU/X/2012 confirms certainty of law by deleting dualism of authority justice, making the Religious Court as an institution the sole authority to finish Islamic banking through track litigation. Thus, it can be concluded that this decision cancels the explanation of Article 55 paragraph (2) of the Sharia Banking Law, eliminates forum selection to the District Court; however, it still allows non-litigation settlement, such as Sharia arbitration. The settlement process of disputes in Islamic banking, as arranged in Article 55 paragraph (1), (2), and (3) of the Sharia Banking Law, has given duties and authorities to courts in the neighborhood religious courts.

**Keywords:** Islamic Banking; Islamic Disputes; Religious Courts; Choice of Forum.

## PENDAHULUAN

Islam is a comprehensive system of life that arranges all aspects of life, both spiritual, social, economic, and political. This is explained in QS Al Nahl verse (89); it is stated, "We have sent down to you the Book (Al-Quran) to explain all things as guidance, mercy, and news happy for Muslims." The meaning of the verse states that Allah has sent down to you the Qur'an gradually to explain to man principles and general things, as guidance leading to the road of truth and peace, as well as blessings and news happy for those who surrender their full heart to Allah (Anisa & Khoiruddin, 2024). The verse clearly states that Islam is a perfect religion and has a system to face life problems, both material and non - material. Likewise, in life transactions arranged in Islam, including in the economic field, it is known as Islamic economics (Gunawan, 2020).

The development of sharia principles in Indonesia's economic activities is highlighted by the growing diversity of economic institutions that adhere to these principles, with sharia banking as a key example. Sharia banking is a system based on Islamic law (the Qur'an and Hadith) that prohibits *riba* (interest), *gharar* (uncertainty), and *maysir* (gambling). Instead, it operates on a profit-sharing model that prioritizes justice, transparency, and halal investments for the benefit of the economy (Haikal & Efendi, 2024). Sharia banking has a strong legal foundation established by Law Number 21 of 2008 concerning Sharia Banking, which has seen some amendments through Law Number 6 of 2023 concerning Job Creation. This legislation regulates all aspects related to Sharia Banks and Sharia Business Units, including their institutions, business activities, as well as their methods and processes. Law Number 21 of 2008, enacted on July 16, 2008, outlines that Sharia banks must operate according to Islamic legal principles, avoiding usury (*riba*), *gharar*, and *maysir*, and must also share risks. This legislation further clarifies the role of Sharia banking within Indonesia's dynamic and evolving economy (Abdul et al., 2022).

The development of Islamic banking is currently experiencing rapid growth, with an increasing number of people utilizing its services. However, alongside this expansion, the likelihood of problems or conflicts arising is also on the rise. Conflicts occur when two or more parties have differing interests, which can escalate into disputes. Such disputes arise when the aggrieved party directly communicates their dissatisfaction to the party they believe caused the loss (Siti Megadianty Adam, Takdir Rahmandi, 1997). In

principle, the parties involved in a dispute are free to choose their preferred mechanism for resolving it, in accordance with Islamic principles (Inayah, 2020).

Dispute resolution in the field of Islamic banking is governed by Article 55, paragraphs (1), (2), and (3) of the Islamic Banking Law. This article outlines the responsibilities and authorities of the Religious Courts in addressing such disputes. Additionally, Article 49, letter (i) of Law Number 3 of 2006 concerning Religious Courts further regulates dispute resolution not only in Islamic banking but also in other areas of Islamic economics. As a result, there is a choice of legal forum for dispute resolution in Islamic economics. This means that the parties involved can select their preferred legal forum if they do not wish to resolve the dispute through the Religious Courts. Consequently, if the parties do not want to pursue resolution in the Religious Court, they have the option to choose from various legal forums for resolving banking disputes (Suganda, 2022).

The existence of choice of legal forums for dispute resolution, along with the freedom to choose, can lead to confusion both before and during the execution of a contract. For instance, if a customer wishes to sign a contract with a Sharia bank but the bank expects disputes to be resolved in the District Court while the customer prefers the Religious Court, this discrepancy can create issues in the contract process. Offering a choice of forum is particularly problematic when it is stated that individuals entering Sharia banks include both Muslims and non-Muslims. In legal terms, when a non-Muslim engages with Sharia courts or banks, they effectively choose that legal framework and thus agree to be governed by its rules and principles, which pertain to Sharia law (Adila et al., 2024). When Sharia banks implement Sharia regulations, non-Muslims who choose to enter these banks must be prepared to accept that any dispute resolution will be conducted according to Sharia principles. Consequently, it can be argued that non-Muslims who engage with Islamic banks have, in effect, selected this legal forum. This is because conventional banking options exist, and it is made clear that the rules and principles guiding contracts and dispute resolutions in Islamic banks adhere to Islamic law (Pusvisasari et al., 2023).

The problem arises when the choice of forum for resolving banking disputes agrees to select a particular legal forum for dispute resolution if the parties do not wish to resolve the dispute through a religious court, and the agreement does not clearly state the chosen choice of forum. This is where legal certainty in resolving the dispute in question is needed, leading the Constitutional Court to issue a ruling to ensure legal certainty in Islamic banking disputes.

## METODE

The research method employed is the normative descriptive approach, which aims to systematically and accurately describe a phenomenon or existing legal status (descriptive) and then analyze it based on applicable norms, rules, principles, or standards (normative) (Sukmawan & Damayanti, 2025). The focus of this research is on legal certainty in Islamic banking disputes, specifically in the context of Constitutional Court Decision Number 93/PUU/X/2012. This method is commonly used in legal research, also referred to as normative or doctrinal legal research, as well as in public policy studies. It relies on library studies, official documents, laws and regulations, literature, and court decisions. The data collected is presented in the form of explanatory text or analytical narratives rather than statistical figures. The analysis examines the gap between the realities in the field (*das Sein*) and the ideal standards set by applicable legal rules or norms (*das Sollen*). The descriptive nature of this research aims to provide a comprehensive, clear, and systematic overview of the object or phenomenon being studied, without manipulating the variables involved. Normative benchmarks or standard rules are used to evaluate the objects being described.

## HASIL DAN PEMBAHASAN

### Dispute Resolution in Islamic Banking and the Authority of Religious Courts

Sharia banking, like other conventional banks in Indonesia, serves as an intermediary institution that collects funds from the public and distributes them in the form of financing. As such, banking institutions play a crucial role in driving the real sector to boost economic growth and development in Indonesia. Since the implementation of Law No. 21 of 2008, which specifically regulates various aspects of Sharia banking in Indonesia, the Sharia banking industry has experienced rapid growth. This growth is evident in the increasing establishment and development of Sharia-based banking institutions (Tuzuhro & Rozaini, 2023).

The rapid growth of Islamic banking, along with its significant market potential, has been warmly embraced by the public. This growth is closely linked to support from the government, Islamic scholars, and regulations from Bank Indonesia, which continue to facilitate the development of Islamic banking through

various issued guidelines. The range of Islamic economic-based businesses is also expanding, extending beyond banking to include sectors such as insurance, capital markets, stocks, and pawnshops, among others. Given the increasingly broad and diverse nature of these Islamic economic models, legal protection is essential. Islamic economic actors and users must ensure that their activities align with Islamic law. A commitment to upholding the Islamic system fosters a strong relationship between banks and their customers. Likewise, in the event of a dispute, it is likely that the resolution can be achieved through Islamic law (Nurfadillah et al., 2025).

To address Islamic economic disputes that may arise within the community and among Islamic financial institutions—both banks and non-banks—the government has implemented various regulations for dispute resolution. These regulations aim to ensure the security and convenience of all parties involved in transactions. Civil disputes, particularly those related to business, can be resolved through either litigation or non-litigation processes. Litigation involves resolving disputes through the courts, which can be either religious courts (for Islamic economic disputes) or general courts. Non-litigation options include alternative dispute resolution (ADR) and arbitration (Nurlani, 2022).

The pathway for litigation is through the Religious Court. According to Law No. 3 of 2006, which amends Law No. 7 of 1989 concerning Religious Courts, the authority of the Religious Court includes the following first-level cases involving Muslims: marriage, inheritance, wills, grants, waqf, zakat, infak, shadaqah, and sharia economics. This authority encompasses all business disputes that utilize sharia principles. Notably, this jurisdiction also extends to non-Muslims, provided they engage or transact using sharia contracts, particularly in areas such as sharia banking (Yasmin et al., 2024).

### **Cancellation of the Explanation of Article 55 Paragraph (2) of the Banking Law by the Constitutional Court**

The Panel of Judges considered the request made by the Petitioner for a review of Article 55, paragraphs (2) and (3) of Law No. 21 of 2008 concerning Sharia Banking in relation to the 1945 Constitution. Article 55, paragraph (2), states: "If the parties have agreed to resolve a dispute through a method other than that indicated in paragraph (1), the dispute resolution will be conducted according to the terms of the Agreement." Paragraph (3) adds: "The dispute resolution referred to in paragraph (2) must not conflict with Sharia Principles." The applicants argued that the Sharia Banking Law does not clearly specify which court should be used in cases of Sharia banking disputes. They claimed that the freedom to choose a court, as stated in Article 55, paragraph (2), has led to various interpretations regarding the court selected or agreed upon by each party (Alamudi, 2023). This, they argued, has resulted in legal uncertainty. In contrast, Article 55, paragraph (1) explicitly stipulates that if a dispute arises, it must be resolved within the environment of religious courts.

According to Article 28D, paragraph (1) of the 1945 Constitution, the principles of legal certainty and justice are explicitly regulated. However, the party submitting the application argues that there is a contradiction between Article 55, paragraphs (1), (2), and (3) (Sanafiah, 2026a). One provision specifies that the court designated to resolve Islamic banking disputes is the Religious Court, while another allows for the selection of an alternative forum. This contradiction can lead to varying interpretations, ultimately resulting in legal uncertainty regarding the resolution of Islamic banking disputes. This issue arises from the General Explanation in the Islamic Banking Law, which discusses the options for resolving disputes related to Islamic banking. It states that disputes may be settled through the Religious Courts, as well as through deliberation, banking mediation, arbitration, or the general courts, provided that such methods are mutually agreed upon by the parties involved in the agreement (Basri et al., 2022).

The emergence of disputes in Islamic banking between customers and Islamic Business Units often arises when one party feels dissatisfied or disadvantaged. In principle, the parties in dispute have the freedom to choose their preferred dispute resolution mechanism, provided it aligns with Islamic principles. These Islamic principles refer to the guidelines of Islamic law in banking activities, based on fatwas issued by authorized institutions in the field of Islamic law. Before providing financing from Islamic Banks to customers, Islamic Business Units are required to establish a written agreement—known as akad—between the Islamic Bank or Islamic Business Unit and the other parties involved. This agreement outlines the rights and obligations of each party in accordance with Islamic principles. The dispute resolution process in Islamic banking is regulated by Article 55, paragraphs (1), (2), and (3) of the Islamic Banking Law (Sanafiah, 2026a). This legislation assigns duties and authority to the courts within the religious court system. Additionally, Article 49(i) of Law Number 3 of 2006 concerning Religious Courts stipulates that dispute resolution extends beyond Islamic banking to encompass other areas of Islamic economics as well.

The choice of legal forum for dispute resolution, as outlined in the contract, serves as a secondary option if the parties do not agree to resolve their dispute through religious courts. Therefore, it is crucial that the chosen legal forum for handling Islamic banking disputes is clearly stated in the contract. The parties must mutually agree on one legal forum for dispute resolution if they prefer not to utilize the religious courts. Issues can arise when the contract does not specify the chosen legal forum (Harimurti et al., 2025).

The issue of unclear legal forum choices often leads to legal conflicts and multiple decisions at the arbitration or court level regarding the same case. A contract (or agreement) is legally binding for those who create it, as stated in Article 1338 of the Civil Code (Ali et al., 2022). However, a contract must not conflict with existing laws, especially those that designate a specific judicial body with authority that binds the parties involved. Therefore, clarity in drafting the agreement is essential. Parties should explicitly designate a legal forum to be used in the event of a dispute. The law has normatively provided examples of legal forums that the parties can choose from in their agreement.

The Constitutional Court reached its decision based on the understanding that the selection of a legal forum, as outlined in the Explanation of Article 55, paragraph (2) of the Sharia Banking Law, has created opportunities for choosing different legal forums for dispute resolution. This situation has led to constitutional issues, which in turn can result in legal uncertainty, potentially causing losses for both customers and sharia business units. The presence of a choice of dispute resolution (choice of forum) for handling disputes in sharia banking, as stated in the Explanation of Article 55, paragraph (2) of the Sharia Banking Law, may ultimately result in overlapping jurisdictions. This is because two courts have been granted the authority to adjudicate sharia banking disputes. In contrast, Article 49 of the Religious Court Law No. 3 of 2006 explicitly states that religious courts hold the authority to resolve disputes related to sharia banking, including sharia economic disputes (Mohamad & Samsudin, 2021).

The Court emphasizes that the law must offer certainty for both customers and sharia business units when resolving sharia banking disputes. If an institution that is genuinely qualified to manage these disputes fails to provide this certainty, then legal certainty—ensured by Article 28D, paragraph (1) of the 1945 Constitution—will never be achieved. Consequently, the rights of customers and sharia business units to obtain legal assurance remain unguaranteed. The Constitutional Court finds that the provisions in the Explanation of Article 55, paragraph (2) of the Sharia Banking Law do not deliver this legal certainty. Despite not examining a specific case, there is enough evidence to suggest that these provisions create an unjust legal environment and undermine customers' constitutional rights to fair legal certainty in resolving sharia banking disputes, which contradicts constitutional principles.

Through Decision No. 93/PUU-X/2012, the Constitutional Court annulled the explanation of Article 55, paragraph (2) of the Sharia Banking Law, which stated that "dispute resolution shall be carried out in accordance with the contents of the Agreement" (Nisa, 2017). Prior to this decision, the explanation allowed for the resolution of sharia banking disputes through the General Court (District Court), arbitration, or deliberation. This was considered contrary to the fundamental principle that sharia economic disputes should fall under the exclusive jurisdiction of the Religious Courts, thereby eliminating judicial dualism. The previous explanation had the potential to create overlapping authority between the Religious Courts and the General Courts, resulting in legal uncertainty and negatively impacting the parties involved in disputes. The Constitutional Court's decision clarifies that the responsibility for resolving disputes in the banking business and sharia financial institutions lies entirely with the Religious Courts, following the initial agreement as long as it does not violate sharia principles. This decision reinforces the affirmation of authority in these matters (Kelibia et al., 2025).

### **Determination of Dispute Resolution in Islamic Banking Contracts**

A dispute refers to a conflict of interests, goals, or understandings between two or more parties. It becomes a legal issue when this conflict leads to a struggle for rights, the defense against violated rights, or demands for obligations or responsibilities. The resolution of disputes in Islamic banking is governed by Article 55, paragraphs (1), (2), and (3) of Law No. 21 of 2008 concerning Islamic Banking. According to this law, disputes can be resolved through the courts within the religious court system, provided the parties have agreed to settle the dispute outside of a judicial institution. In such cases, the resolution must adhere to the terms of their contract and must not contradict Islamic principles (Fathoni & Sasnifa, 2025).

Additionally, the Explanation of Article 22, paragraph (2), clarifies that dispute resolution under the contract involves efforts such as deliberation and mediation through the National Sharia Arbitration Board (Basyarnas), other arbitration institutions, or general courts. Article 55, paragraph (2), along with its explanation, indicates a reduction in the competence of Religious Courts regarding Islamic banking cases.

According to Law No. 3 of 2006 concerning Religious Courts, these courts have the authority to handle Islamic economic cases, which include Islamic banking. However, these provisions were amended by Article 55, paragraph (2) of the Islamic Banking Law (Fathoni & Sasnifa, 2025), which was designed to facilitate the resolution of Islamic economic cases, particularly in Islamic banking. With the inclusion of district/general courts and extra-judicial institutions like Basyarnas in the explanation of Article 55, paragraph (2) of the Banking Law, the resolution of Islamic banking disputes can now be handled by three institutions: Religious Courts, district/general courts, and Basyarnas. This situation has led to controversy regarding dispute resolution between Religious Courts and District Courts (Putri & Andriani, 2022).

The Constitutional Court, in Decision No. 93/PUU-X/2012, annulled the explanation of Article 55, paragraph (2) of Law No. 21 of 2008, which pertains to Sharia Banking and regulates the resolution of disputes between customers and banks (Sanafiah, 2026b). The court's reasoning was based on the duality in the resolution framework for Sharia banking disputes, which led to legal uncertainty in handling such disputes. The Constitutional Court determined that the forum selection outlined in the explanation of Article 55, paragraph (2) of the Sharia Banking Law resulted in legal ambiguities that could potentially harm customers and Sharia business units (UUS). The option for resolving disputes in Sharia banking ultimately resulted in overlapping jurisdiction when compared to Article 49, letter i of Law No. 3 of 2006 concerning Religious Courts. This article grants religious courts the authority to adjudicate Sharia banking disputes, including those related to Sharia economics. The annulment of Article 55, paragraph (2) of Law No. 21 of 2008 was grounded in several reasons: *first*, Inconsistency in Settlement Provisions. The term "inconsistency" reflects the discrepancies between Article 55, paragraphs (1) and (2) of the Sharia Banking Law (Sanafiah, 2026b), which resulted in conflicting absolute authority between two judicial bodies: religious courts and district courts. *Second*, Legal Uncertainty, the overlapping regulations between religious courts and district courts contributed to legal uncertainty in resolving Sharia banking disputes. This inconsistency left customers of Sharia banks without clear recourse for addressing their disputes. *Three*, Violation of Constitutional Rights. The ambiguous provisions of Article 55, paragraph (2) deprived customers of their constitutional rights. Customers lack legal certainty in resolving disputes with Islamic banks, violating their rights as outlined in Article 28D, paragraph (1) of the 1945 Constitution. This article guarantees that everyone has the right to recognition, protection, and fair legal certainty, as well as equal treatment under the law (Permatasari, 2017).

According to the theory of legal certainty, the primary purpose of law is to protect individuals, as it must be both implemented and enforced (Andrianto, 2020). People expect the law to be applied consistently in specific situations. The manner in which the law is applied can sometimes deviate from the principle of "fiat justitia et pereat mundus" (let justice be done though the world perish). The law is responsible for creating legal certainty, which is essential for maintaining public order. Ronald Dworkin emphasized the distinction between "law as it is written in the books" and "law as it is interpreted by judges through the judicial process" (Ujung et al., 2025). This concept is relevant to the provisions in Article 55, paragraph (2) of the law, which reflects a dualism in the litigation process for resolving issues related to sharia economics. On one hand, the Religious Court is granted exclusive jurisdiction (as stated in Article 55, paragraph (1) of the Sharia Banking Law), while on the other hand, the possibility for resolution in general courts is also provided (as outlined in Article 55, paragraph (2)). The legal analysis reveals that Article 55, paragraph (2) of Law No. 21 of 2008 concerning Sharia Banking conflicts with Law No. 3 of 2006 concerning Religious Courts.

Article 55, paragraph (2) of the Sharia Banking Law is considered to conflict with the provisions of Law No. 3 of 2006 concerning Religious Courts. Consequently, if an agreement (contract) made by the parties conflicts with the law, it is deemed null and void. The decision made by the Constitutional Court aligns with the principle of legal certainty. By issuing regulations, the community is assured of legal clarity, which defines the obligations of individuals in their legal relationships and what they can expect from the government. The Constitutional Court's ruling to annul the explanation of Article 55, paragraph (2) of the Sharia Banking Law addresses constitutional issues, ultimately ensuring legal certainty that minimizes losses for both customers and sharia business units (Mardiani et al., 2019).

In Islamic banking disputes, the parties involved have the freedom to choose their preferred dispute resolution mechanism based on Islamic principles or Islamic law, as outlined in a written agreement between the Islamic bank and the customer. This agreement specifies the rights and obligations of each party and is formalized in the form of a contract. These provisions are set forth in Article 55, paragraphs (1), (2), and (3) of Law Number 21 of 2008 regarding Islamic Banking, as well as in Article 49, letter (i) of Law Number 3 of 2006, which amends Law Number 7 of 1989 concerning Religious Courts. These laws grant authority to the courts within the Religious Courts to settle Islamic banking disputes. Therefore, if the contract does not

specify a legal forum, all Islamic banking disputes fall under the exclusive jurisdiction of the courts within the Religious Courts (Ridwan, 2022).

The choice of legal forum outlined in the contract serves as the second option for resolving disputes if the parties do not wish to settle through the Religious Court. It is crucial that the legal forum designated for resolving Islamic banking disputes is clearly stated in the contract. If the parties prefer not to utilize the Religious Court, they must mutually agree on an alternative legal forum for dispute resolution. This is important because, according to Article 1338 of the Civil Code, a contract functions as law for the parties involved (principle of *pacta sunt servanda*) (Kesuma & Mahfud, 2023). However, it must not conflict with existing laws, particularly those that grant specific judicial bodies absolute authority to which the parties are bound. Therefore, clarity in the drafting of the agreement is essential.

## CONCLUSION

The Constitutional Court Decision Number 93/PUU/X/2012 reinforces legal certainty by eliminating the dualism of judicial authority. This decision establishes the Religious Court as the sole institution authorized to resolve disputes related to Islamic banking through litigation. Specifically, it annulled the explanation of Article 55, paragraph (2) of the Islamic Banking Law, which previously allowed for disputes to be taken to the District Court. Nevertheless, non-litigation resolutions, such as Islamic arbitration, are still recognized. The Islamic Banking Law, particularly in Article 55, paragraphs (1), (2), and (3), outlines the responsibilities and authorities of courts within the Religious Court system for handling dispute resolution. This is supported by Article 49, letter (i) of Law Number 3 of 2006 concerning Religious Courts, which indicates that dispute resolution is not only limited to Islamic banking but also extends to other areas of Islamic economics. It is crucial for contracts to clearly specify the chosen legal forum for dispute resolution. Parties involved must agree on a legal forum if they decide against resolving disputes through the Religious Court. Problems may arise when contracts do not explicitly state the selected legal forum. In essence, in cases of Islamic banking disputes, the parties are free to determine the mechanism for resolving the conflict. This resolution process must align with Islamic principles or Islamic law as outlined in a written agreement between the Islamic bank and the customer, detailing the rights and obligations of both parties.

As a recommendation, the government and the House of Representatives (DPR) should formulate regulations that provide a sense of justice and legal certainty to improve civil relations in Indonesia, particularly in the area of dispute resolution. Likewise, those involved in the sharia economy are expected to understand the explanation of the article amended by the Constitutional Court, which mandates that such issues must be resolved by the Religious Courts, as they now have absolute authority to resolve sharia economic disputes.

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