

ABSTRACT

Firman Wahyudi; *Competence of Religious Courts in Bankruptcy Cases and Suspension of Obligation of Debt Payment (PKPU) at Sharia Financial Institution (Synchronization of Norma of Law No. 37 Year 2004 concerning Bankruptcy and PKPU and PERMA No. 2 Year 2008 About KHES).* Advisor: (I) Dr. H. Jalaluddin, M.Hum. (II). Dr. Budi Rahmat Hakim, S.Ag., M.H.I. Thesis, Prodi Law of Sharia Economics, Postgraduate UIN Antasari Banjarmasin, 2018.

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Normatively, post-legitimate constitution No. 3 of 2006, Religious Courts have the authority (legal constitutional) to examine and judge the sharia economic dispute and this strengthened by the decision of Constitutional Court Number 93/PUU/X/2012 which contain to new legal norms that all sharia banking dispute is an absolute competence of the Religious Courts. But in the empirical level, this authority is still not fully done, there are other sharia economic disputes that are still decided by the Commercial Court within the General Courts, namely bankruptcy disputes and PKPU (Delay of Payment Obligations) that occur in Islamic financial institutions, especially sharia banking.

This research is focused on three things: firstly to know the cause of dualism of authority between Commercial Court and Religious Court in Bankruptcy and PKPU case in syariah financial institution, second the law effect if bankruptcy case and PKPU at sharia financial institution is decided by Commercial Court and third to build legal reasoning of competence of Religious Court in Bankruptcy and PKPU case in syariah financial institution. The type of method used in this research is normative law research by reviewing a set of rules and legislation related to bankruptcy and PKPU as legal material. The analytical method used is with a prescriptive approach that describes the normative side of a regulation of legislation.

Based on the research result, it is found that the cause of dualism of authority between Commercial Court and Religious Court in bankruptcy case and PKPU in sharia financial institution due to the conflict of norm in Law No. 37 Year 2004 and Perma No 2 Year 2008, the existence of legal vacancy condition (legal loophole) concerning Sharia Bankruptcy and the existence of a letter of instruction KMA No. 32/SK/IV/2006 concerning the enactment of book II. The legal consequences if bankruptcy proceedings and PKPU in sharia financial institutions are dicided and judged by the Commercial Court is the imposition of the substance of sharia economic law in order to become conventional economic law, the synchronization between contract and dispute settlement and the principle that is used more business oriented than substantive justice. Then based on the theory of limits of authority and argumentation lex specialis found the conclusion that bankruptcy cases and PKPU in sharia financial institutions are be authority absolute of the Religious Courts.