

CHAPTER IV

CLOSING

A. Conclusion

Filtered from the comprehensive explanation that has been delivered above, there are two points of conclusion that can be drawn:

1. First, Shariah Court has a legal competence to adjudicate Magda Safrina case regarding to divorce and division of community property in the matter of bank secrecy on community property, because in Shariah Court, the authority is regulated specifically on Article 49 Qanun No. 10 of 2002. Whereas, Shariah Court has an authority to examine, adjudicate, decide and settle the case covering in the field of; *ahwal al-syakhsiyah*, *muamalah*, and *jinayah*. Based on the explanation of Article 49, *ahwal al-syakhsiyah* which is based on Article 49 Law No. 7 of 1989, it is stated that the settlement of community property is part of the *ahwal al-syakhsiyah*. Because of that, Shariah Court has a legal competence to adjudicate this case. The second one, Constitutional Court has a legal competence to adjudicate Magda Safrina case regarding bank secrecy in the matter of community property, because only Constitutional Court has an authority to do judicial review. Whereas, it is needed to examine Article 40 section (1) Law No. 10 of 1998 on Banking Law towards 1945 Constitution, because there was found constitutional rights

violation. That is why, Constitutional Court has a legal competence to adjudicate Magda Safrina case.

2. After the decision of Constitutional Court regarding bank secrecy, there is no action that has been taken by Financial Services Authority (OJK) to implement the decision, because OJK and BI still obey the regulation of Law No. 10 of 1998, even in Article 40 section (1) it is proven that there was found Constitutional rights violation. As mentioned before, OJK prior to the banking activities and there is no good faith between those parties to follow up the Constitutional Court decision. On the other hand, Constitutional Court doesn't have executor agencies, so Constitutional Court can not force their decision. That is why, there is no implementation of bank secrecy after the decision of Constitutional Court No. 64/PUU-X/2012, eventhough the decision of Constitutional Court is final and binding.

B. Recommendation

1. First, to fulfill the sense of justice, actually the decision of Constitutional Court can be implemented. As mentioned before, the government who has this authrity should follow up the decision of Constitutional Court especially Financial Service Authority (OJK) and Bank Indonesia (BI). It's supposed to be that OJK and BI have good faith to coordinate each other to continue the decision of Constitutional Court, such as making new Bank Indonesia Regulation or other efforts to implement that decision.

2. Second, the writer assesses need for good faith from the government to follow and implement the decision of Constitutional Court. So, what are already decided by Constitutional Court can be implemented and the protection towards the constitutional rights of the citizen also can be implemented.
3. The government especially OJK and BI needs to renew the design regarding the arrangements of bank secrecy, so the bank secrecy principle can be implemented properly.

