

THE JUSTIFICATION AND IMPLEMENTATION OF FINES ON CAPABLE CUSTOMERS IN ISLAMIC FINANCIAL INSTITUTIONS: A SHARIAH LAW PERSPECTIVE

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ABSTRACT

The imposition of fines on financially capable customers who delay installment payments in Islamic financial institutions presents a complex issue that necessitates justification in accordance with Shariah principles. This study examines the application of principles such as justice, legal compliance, and responsibility within the fine policies directed at these customers. It further assesses the degree to which the imposition of fines is accepted across various Islamic financial institutions and explores how existing regulations can be clarified to ensure adherence to Shariah principles. The fatwa issued by the Indonesia's National Sharia Council of the Indonesian Ulema Council (DSN-MUI) permits the imposition of fines solely on financially capable customers who intentionally delay their payments. However, a significant challenge persists: the lack of a standardized criterion for identifying capable customers who should justly incur fines, including the specific duration of delinquency required before a fine is applied. Islamic banks fundamentally operate on the profit-sharing principle and do not inherently recognize fines in the same manner as conventional banks. Nevertheless, to mitigate customer negligence and maintain a balance between justice and legal compliance, some Islamic banks incorporate fines into their financing contracts. This practice remains contentious, primarily due to concerns that such fines may resemble *riba qardh* or *riba nasi'ah*, both of which are explicitly prohibited in Islam. This article contributes to the development of standardized guidelines for Islamic banks, facilitating the objective identification of capable customers and the implementation of fines in a manner that aligns with Islamic values.

Keywords: Fines; Capable Customers; Islamic Banks; Legal Compliance; Indonesia.

INTRODUCTION

The development of sharia financial institutions¹ in Indonesia has shown significant growth in recent decades. This is not only reflected in the increase of the number of Islamic financial institutions, but also in the increasing variety of products and services offered to the public². One of the important aspects in the operation of Islamic financial institutions is the application of sharia principles in every transaction and policy taken, including in terms of handling delays in installment payments by customers.

Fines³ on delay⁴ Installment payment is a sensitive issue in the context of Islamic finance. On the one hand, Islamic financial institutions need to have mechanisms to discipline customers and protect the interests of shareholders and depositors⁵. On the other hand, the application of fines must remain in line with sharia principles that prioritize justice and avoid elements of usury. Therefore, an in-depth understanding of the nature of the fulfillment of sharia principles in the context of late installment payment penalties is required.⁶

Principles of sharia⁷ The principles that underlie the operations of Islamic financial institutions include several fundamental principles⁸, among them are justice ('is), balance

¹ Barney Warf, "Southeast Asia," in *E-Government in Asia* (Elsevier, 2017), 61–85, <https://doi.org/10.1016/B978-0-08-100873-7.00004-0>.

² Otoritas Jasa Keuangan, "Statistika Perbankan Syariah, Sharia Banking Statistic," 2023, <https://ojk.go.id/id/kanal/syariah/data-dan-statistik/statistik-perbankan-syariah/Pages/Statistik-Perbankan-Syariah---Desember-2023.aspx>.

³ Moh. Hamzah and Wasilatur Rohmaniyah, "Pembebasan Denda (al-Gharāmah) Pada Nasabah Wanprestasi Di Lembaga Keuangan Syariah: Analisis Maqāsid Asy-Syari'ah Perspektif Asy-Syātibī," *Jurnal Hukum Ekonomi Syariah* 6, no. 02 (December 21, 2022): 175–94, <https://doi.org/10.26618/j-hes.v6i02.7440>.

⁴ Bai Sutihat and Mulyana Ade, "Tinjauan Hukum Islam Terhadap Denda Keterlambatan (Late Charge) Pada Kartu Kredit Syariah (Studi Analisis Dengan Pendekatan Maqashid Al-Syariah)," *MUAMALATUNA; Jurnal Hukum Ekonomi Syariah* 9, no. 2 (2017): 34–64, https://d1wqtxts1xzle7.cloudfront.net/101202593/267965118-libre.pdf?1681781286=&response-content-disposition=inline%3B+filename%3DTinjauan_Hukum_Islam_Terhadap_Denda_Kete.pdf&Expires=1743930244&Signature=EgZbOH2vttldN0h0zp5KX8mS8Mh1XwSoSwi3S01XGVsGI3od-jC5wXnKXwFQZSUDJn0y96~hW9GRcUuiF864AmkLnrcMr0BocgCkBXDP8JkEJ~2K0RAe3S92Ovmm7TRrvv9MaD-w18MXbkif9P~AfFVAYcZLamLQpE4NU8d~vn6DXDzuP9QJSScBFQwdboFhQLKXEGSWLqzeo~7avEPIx-AxvhOQu624JxNXNsRKxYIXJD0Q4zx1NAXkMOWg3DZTIs~vSrvOQ614X83jMLzSofgp5iDrBlbor0v4PT5qvXEqEO6OHvWVT52Mgs4dDSMeod0w6X-Q3ChBpRspNWmADg__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA.

⁵ Firman Menne et al., "Sharia Accounting Model in the Perspective of Financial Innovation," *Journal of Open Innovation: Technology, Market, and Complexity* 10, no. 1 (March 2024): 1–10, <https://doi.org/10.1016/j.joitmc.2023.100176>.

⁶ Ryan Randy Suryono, Indra Budi, and Betty Purwandari, "Detection of Fintech P2P Lending Issues in Indonesia," *Heliyon* 7, no. 4 (April 2021): 1–10, <https://doi.org/10.1016/j.heliyon.2021.e06782>.

⁷ Rahmani Timorita Yulianti, "Asas-Asas Perjanjian (Akad) Dalam Hukum Kontrak Syari'ah," *La_Riba* 2, no. 1 (July 3, 2008): 91–107, <https://doi.org/10.20885/lariba.vol2.iss1.art7>.

⁸ Nikonova Tatiana, Kokh Igor, and Safina Liliya, "Principles and Instruments of Islamic Financial Institutions," *Procedia Economics and Finance* 24 (2015): 479–84, [https://doi.org/10.1016/S2212-5671\(15\)00613-9](https://doi.org/10.1016/S2212-5671(15)00613-9).

(tawazun), benefit (maslahah), and universalism (alamiyah). In the context of late fees, these principles must be translated into policies and practices that are not only effective in disciplining customers, but also take into account the human aspects and objective conditions of customers.

Recent research shows that the implementation of late fees in Islamic financial institutions still faces various challenges. A study conducted by Ascarya⁹ Performance measurement of Islamic Financial Institutions, including Islamic banks, still uses classical financial ratios and efficiency measures (technical and cost) which only pay attention to economic aspects and ignore other aspects of Islamic Financial Institutions, so that the Islamicity of Islamic banks has not become the main goal. Also conducted research by Sri Budi Cantika Yuli and Mochamad Rofik¹⁰ on the impact of Sharia-compliant financing on job creation in Indonesia. That there is still variation in the practice of applying penalties across different Islamic financial institutions in Indonesia, with some institutions still adopting an approach similar to the conventional system¹¹. This raises the question of the extent to which the essence of the fulfillment of sharia principles has actually been realized in practice in the field.

The issue of late fees¹² is also closely related to the concept of maqasid sharia or sharia objectives that are supervised by the Sharia Supervisory Board¹³ Islamic banks follow Islamic principles, morals, and ethical norms, all of which are ultimately aligned with Maqasid al-Sharia'ah¹⁴, This confirms that the fulfillment of sharia principles in

⁹ Siti Rahmawati Ascarya and Raditya Sukmana, "Measuring the Islamicity of Islamic Bank in Indonesia and Other Measuring the Islamicity of Islamic Bank in Indonesia and Other Countries Based On," *Center for Central Banking Research and Education, Bank Indonesia*, 2016, 1–30, https://www.researchgate.net/profile/Ascarya-Ascarya/publication/314093831_MEASURING_THE_ISLAMICITY_OF_ISLAMIC_BANK_IN_INDONESIA_AND_OTHER_COUNTRIES_BASED_ON_SHARI'AH_OBJECTIVES/links/58b50f8ca6fdcc6f03fe6c38/MEASURING-THE-ISLAMICITY-OF-ISLAMIC-BANK-IN-INDONESIA-AND-OTHER-COUNTRIES-BASED-ON-SHARIAH-OBJECTIVES.pdf.

¹⁰ Sri Budi Cantika Yuli and Mochamad Rofik, "Unleashing Open Innovation: A Decomposition Nexus of Sharia-Compliant Financing and Job Creation," *Journal of Open Innovation: Technology, Market, and Complexity* 9, no. 4 (December 2023): 1–8, <https://doi.org/10.1016/j.joitmc.2023.100162>.

¹¹ Hasanuddin Ingka, Fakhruddin Mansyur, and Mega Mustika, "Fatwa Dsn Mui Klausul Denda Dan Ganti Rugi Pada Skim Kpr Syariah," *Laa Maisyir: Jurnal Ekonomi Islam* 7, no. 2 (December 31, 2020): 261, <https://doi.org/10.24252/lamaisyir.v7i2.17560>.

¹² Irfan Harmoko, SE.I, MM., "Analisis Penerapan Denda Keterlambatan Pembayaran Angsuran Dalam Akad Pembiayaan Murabahah Di Bank Syariah (Berdasarkan Fatwa No. 17/Dsn-Mui/Ix/2000)," *Qawānīn Journal of Economic Syaria Law* 3, no. 1 (January 28, 2019): 32–49, <https://doi.org/10.30762/q.v3i1.1480>.

¹³ Rita Wijayanti and Doddy Setiawan, "The Role of the Board of Directors and the Sharia Supervisory Board on Sustainability Reports," *Journal of Open Innovation: Technology, Market, and Complexity* 9, no. 3 (September 2023): 1–11, <https://doi.org/10.1016/j.joitmc.2023.100083>.

¹⁴ H. Şaduman Okumuş, "Performance Assessment of Participation Banks Based on Maqasid Al-Shari'ah Framework: Evidence from Türkiye," *Borsa Istanbul Review* 24, no. 4 (July 2024): 806–17, <https://doi.org/10.1016/j.bir.2024.04.011>.

terms of late fees is not only a matter of formal compliance, but also the substance which should reflect the fundamental values of Islam, a practical and transparent institutional framework is essential to foster a well-regulated economic environment.¹⁵ Relevant policies should be adjusted accordingly¹⁶.

Financial Services Authority (OJK)¹⁷ has issued various regulations aimed at ensuring compliance of Islamic financial institutions with sharia principles. There is still a gap between regulations and implementation in the field, especially in terms of interpretation and application of the concept of late fees.¹⁸ This underscores the importance of further studies on the nature of sharia compliance in the practice of applying late fees related to financial regulations¹⁹.

The nature of the fulfillment of principles in Islamic financial institutions regarding late payment penalties is a complex and multidimensional issue. This study explores more deeply the fulfillment of the principles of how Islamic financial institutions in Indonesia so as to gain a more comprehensive understanding of the challenges and opportunities in realizing the authentic fulfillment of sharia principles in the operations of Islamic financial institutions, especially in terms of handling late installment payments.

Customers who are able to pay but delay payment (*al-matin al-mumathil*) may be subject to fines²⁰. according to Indonesian Ulema Council (MUI) fatwa²¹ On the one hand, Islamic financial institutions need to have a mechanism to discipline customers. On the other hand, the application of fines must remain in line with sharia principles²². which

¹⁵ Imron Mawardi et al., "The Influence of Institutional Quality, Economic Freedom, and Technological Development on Islamic Financial Development in OIC Countries," *Journal of Open Innovation: Technology, Market, and Complexity* 10, no. 2 (June 2024): 1–12, <https://doi.org/10.1016/j.joitmc.2024.100279>.

¹⁶ Abdul Qoyum et al., "Does the Islamic Label Indicate Good Environmental, Social, and Governance (ESG) Performance? Evidence from Sharia-Compliant Firms in Indonesia and Malaysia," *Borsa Istanbul Review* 22, no. 2 (March 2022): 306–20, <https://doi.org/10.1016/j.bir.2021.06.001>.

¹⁷ Otoritas Jasa Keuangan, *Buku Saku Otoritas Jasa Keuangan* (Jakarta: Otoritas Jasa Keuangan, 2016), <https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Pages/Buku-Saku-OJK-Edisi-II.aspx>.

¹⁸ Rindawati Maulina, Wawan Dhewanto, and Taufik Faturohman, "The Integration of Islamic Social and Commercial Finance (IISCF): Systematic Literature Review, Bibliometric Analysis, Conceptual Framework, and Future Research Opportunities," *Heliyon* 9, no. 11 (November 2023): 1–21, <https://doi.org/10.1016/j.heliyon.2023.e21612>.

¹⁹ Selfi Afriani Gultom et al., "Tantangan Regulasi Keuangan Bagi Perkembangan Perbankan Islam:," *Al-Kharaj : Jurnal Ekonomi, Keuangan & Bisnis Syariah* 4, no. 5 (February 16, 2022): 1309–26, <https://doi.org/10.47467/alkharaj.v4i5.928>.

²⁰ Iza Hanifuddin, *Denda Dan Ganti Rugi Perspektif Fiqh Ekonomi* (Bandung: CV Oman Publishing, 2019).

²¹ DSN-MUI, "Fatwa Dewan Syari'ah Nasional No: 17/Dsn-Mui/Ix/2000tentang Sanksi Atas Nasabah Mampu Yang Menunda-Nunda Pembayaran," Himpunan Fatwa DSN MUI § (2000), <https://tafsirq.com/fatwa/dsn-mui/sanksi-atas-nasabah-mampu-yang-menunda-nunda-pembayaran>.

²² Danang Wahyu Muhammad, "Penerapan Prinsip Syariah Dalam Permodalan Bank Syariah," *Jurnal Media Hukum* 21, no. 1 (2014): 45–56, <https://journal.umy.ac.id/index.php/jmh/article/view/1156>.

prioritizes justice and avoids the element of usury²³. Therefore, an in-depth understanding of the nature of the fulfillment of sharia principles in penalties for delayed payments by capable customers is very important.

The concept of ta'zir²⁴ (sanctions) and ta'widh²⁵ (This study aims to explore more deeply how Islamic financial institutions in Indonesia interpret and implement sharia principles in the context of the application of fines for customers who are able to delay payments, and analyze the extent to which the practice reflects the true nature and purpose of sharia.

RESEARCH METHOD

This research employs a doctrinal legal approach, analyzing legislation, fatwas from the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), and literature on muamalah fiqh. It utilizes a statutory approach to examine regulations governing Islamic financial institutions and a conceptual approach to explore relevant concepts in Islamic economic law, particularly regarding fines, such as ta'zir and ta'widh. The concept of Maslahah is applied to assess the benefits and drawbacks of imposing fines on capable customers who delay payments. Additionally, the Theory of Justice in Islam is used to evaluate fairness in the application of fines for both Islamic financial institutions and their customers. Finally, the concept of Akad in Fiqh Muamalah is analyzed to understand the Islamic legal foundations related to payment obligations and the implications of delays.

RESEARCH OUTCOME AND DISCUSSION

1. Criteria for Well-Off Customers

Every customer applying for financing in an Islamic bank has undergone a strict selection and feasibility analysis process. This process includes an assessment of income

²³ Dinar Marfianti Azzahra et al., "Riba, Perbankan Syariah, Dan Investasi Secara Islami Di Kalangan Remaja," *Ekonomi Islam* 12, no. 2 (November 30, 2021): 149–72, <https://doi.org/10.22236/jei.v12i2.5932>.

²⁴ Ahmad Syarbaini, "Konsep Ta'Zir Menurut Perspektif Hukum Pidana Islam," *Jurnal Tahqiqat : Jurnal Ilmiah Pemikiran Hukum Islam* 17, no. 2 (July 31, 2023): 37–48, <https://doi.org/10.61393/tahqiqat.v17i2.167>.

²⁵ Rena Damayanti, "Pelaksanaan Penentuan Ganti Rugi (Ta'Widh) Pada Produk Arrum Haji Pegadaian Syariah Unit Rancaekek," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 12, no. 2 (April 12, 2019): 163–82, <https://doi.org/10.15575/adliya.v12i2.4496>.

stability, credit history, repayment capacity ratio, and asset ownership that supports the customer's ability to meet their obligations. Additionally, Islamic banks consider the customer's compliance with Sharia principles in their economic activities. Through this selection process, only customers with genuine financial capacity receive financing, minimizing the risk of default from the outset²⁶.

A customer's financial condition may change after financing is disbursed. External factors such as economic crises, inflation, or market instability can lead to a decline in the customer's business income, affecting their ability to repay installments. Additionally, unforeseen events such as job loss, natural disasters, or pandemics can cause previously capable customers to become financially distressed. On the other hand, financial difficulties may also arise due to personal financial mismanagement, such as excessive debt or poor income allocation.

Beyond external factors and financial mismanagement, moral hazard is also a challenge in Islamic financing. Some customers may deliberately fail to meet their obligations despite having financial capability. For instance, they might divert funds into other investments they perceive as more profitable or hope to receive leniency from the bank. To address these risks, Islamic banks need to implement effective risk mitigation strategies. These include regular monitoring of customers' financial conditions, restructuring policies for those facing genuine financial difficulties, and enforcing sanctions aligned with Sharia principles for customers who intentionally default. By adopting these measures, Islamic banks can maintain a balance between justice and business sustainability. This approach ensures that financing remains ethical and fair while also safeguarding the institution's financial health.

The three main factors that cause customers to default on their installments in Islamic financing are:

Deliberate Non-Payment (Lack of Good Faith)

Some customers have the financial capacity to pay their installments but intentionally avoid their obligations. This may happen because they prefer to allocate funds to other investments they consider more profitable or because they hope to receive

²⁶ Damayanti.

leniency from the bank. This behavior falls under moral hazard and can be detrimental to Islamic banks and the financial system as a whole. Therefore, an appropriate sanction mechanism in line with Sharia principles is necessary to prevent such actions.

Natural Disasters

Unforeseen events such as earthquakes, floods, or pandemics can cause customers to lose their primary source of income. In such situations, customers who were previously able to pay their installments may become financially incapable due to the significant economic impact of these disasters. Islamic banks should consider restructuring policies or payment relief for affected customers as part of the principles of justice and social responsibility in Islamic finance.

Business Failure

Customers who use Islamic financing for business capital may experience business failure due to economic factors, intense competition, or poor management. When a business suffers losses or goes bankrupt, customers lose their main source of income to repay their installments. In such cases, Islamic banks can offer restructuring schemes or refinancing options to help customers recover from financial difficulties.

With this classification, customers who deliberately avoid payment fall into the category of "able but unwilling to pay," while those affected by natural disasters or business failures fall into the category of "unable to pay."

2. Fulfillment of the Principle of Good Faith

Good faith is a fundamental principle in every transaction, including Islamic financing. When a customer neglects their obligations, they may be classified as failing to uphold the principle of good faith, depending on the reason for their negligence.

Negligence That Does Not Fulfill the Principle of Good Faith

Deliberate Non-Payment

- a. The customer has the financial capability but deliberately delays or avoids installment payments.

- b. This contradicts the principles of al-amanah (trust) and al-adl (justice) in muamalah (Islamic transactions).
- c. It falls under moral hazard, allowing Islamic banks to impose sanctions in accordance with Sharia principles²⁷.

Delaying Payments Without a Valid Reason

- a. If a customer is capable of paying but intentionally delays without a legitimate reason, this constitutes an act of zulm (injustice).
- b. As stated in the hadith: *"The delay in payment by a capable person is an injustice."* (HR. Bukhari and Muslim)
- c. In such cases, Islamic banks have the right to take firm action based on the principle of ta'zir (educational sanctions).

Negligence That Still Aligns with the Principle of Good Faith

- a. Examples include being affected by natural disasters, job loss, or business failure that is not due to personal negligence.
- b. In these situations, the customer still has good faith but is genuinely unable to pay.
- c. Islam encourages tolerance and restructuring, as stated in the Quran: *"And if (the debtor) is in hardship, then let there be postponement until a time of ease. But if you remit it as charity, it is better for you, if you only knew."* (QS. Al-Baqarah: 280)

This principle is carried out in order to uphold the benefit and does not contain elements of entrapment or other bad actions. According to Maulana Hasanuddin and Jaih Mubarak in his book *The Development of Musyarakah Agreements*, it is explained that the principle of good faith in an agreement is that the agreement made by the parties should be based on propriety, namely an agreement that does not contain deceit or trickery, and an agreement that is only concerned with its own interests, but also pays attention to the interests of all parties bound by the agreement²⁸.

²⁷ Tri Inda Fhadila Rahma, "Perbankan Syariah I" (Universitas Islam Negeri Sumatra Utara, 2019), <http://repository.uinsu.ac.id/eprint/5265>.

²⁸ Maulana Hasanuddin and Jaih Mubarak, *Perkembangan Akad Musyarakah* (Jakarta: Kencana, 2012).

Good faith is also a form of *akhlaq al-karimah* that must be carried out by the parties to the contract. This is in accordance with the provisions of the Qur'an letter al-Baqarah verse 188 as follows:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ
النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

Translation:

Do not let some of you use the wealth of others among yourselves by means of unlawful means, and do not bring your affairs before a judge so that you may eat some of the wealth of others by way of sin, when you know it.

The verse implies that an agreement both at the time of its making and at the time of its implementation must be based on good faith²⁹ In other words, good faith is the inner attitude of the parties to the contract that must arise from the time the agreement is made and agreed upon³⁰.

Article 1338 of Civil Code paragraph (3) states that “Agreements must be executed in good faith”. The legislation does not provide a clear definition of what is meant by good faith. In the Big Indonesian Dictionary (KBBI)³¹, “intention” means trust, firm belief, intention, ability (which is good).

In the arrangement of Article 1338 paragraph (3) of the Civil Code³². The agreement must be implemented according to decency and justice. Article 1338 paragraph (3) of the Civil Code is generally always connected with Article 1339 of the Civil Code, that “The agreement is not only binding on what is expressly stipulated in it, but also everything that by its nature the agreement is required under justice, custom, or law”. The relative good faith pays attention to the real behavior and attitude of the subject.

The essence of the existence of this principle in a contract is that the parties to the contract can provide mutual benefits to each other and not only think about the good for themselves but also for others. In the Compilation of Sharia Economic Law, this principle is carried out in order to uphold the benefit and does not contain elements of entrapment

²⁹ Sutan Remi Sjahdeini, *Perbankan Syariah, Produk-Produk Dan Aspek-Aspek Hukumnya* (Jakarta: Kencana Prenada Media Group, 2014).

³⁰ Hasanuddin and Mubarak, *Perkembangan Akad Musyarakah*.

³¹ Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa Departemen Pendidikan dan Kebudayaan, *Kamus Bahasa Indonesia* (Jakarta: Pusat Bahasa, 2008).

³² R Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: PT Balai Pustaka (Persero), 2017).

or other bad actions. It has to fulfill two elements, namely sharia compliance (halal) and beneficial, and brings goodness (tayyib) to all aspects as a whole and does not cause harm and harm to one aspect.

3. Fulfillment of the Principle of Trust

Trust is intended that each party be in good faith in transacting with the other party and it is not justified for one party to exploit the ignorance of its partner. In today's life, many transaction objects are produced by one party through specialized skills and high professionalism so that when they are transacted, the other party who is the transaction partner does not know much about the ins and outs. Therefore, he is dependent on the party who has the expertise.

Every contract must be executed by the parties in accordance with the agreement stipulated by the parties concerned and at the same time avoid any breach of promise³³. With the principle of trust, it means that each party must be in good faith in dealing with the other party and it is not allowed for one party to exploit the ignorance of its partner³⁴. One of the most important teachings of the Qur'an in business matters is the issue of fulfillment of promises and contracts.

The Qur'an requires that all contracts and promised agreements be honored, and all obligations fulfilled. The Qur'an also warns strongly that everyone will be held accountable by Allah in relation to the promises and contracts he makes. This is explained in several suras in the Qur'an, including in Surah al-Isra' verse 34 as follows:

وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّىٰ يَبْلُغَ أَشُدَّهُ وَأَوْفُوا بِالْعَهْدِ إِنَّ
الْعَهْدَ كَانَ مَسْئُولًا

Translation:

And do not approach the property of orphans, except in a way that is better (beneficial) until he grows up, and fulfill promises, for they will certainly be held accountable.

³³ Mahkamah Agung RI, "Kompilasi Hukum Ekonomi Syariah (KHES) Peraturan Mahkamah Agung RI No. 2 Tahun 2008," Mahkamah Agung § (2008), <https://jdih.mahkamahagung.go.id/legal-product/perma-nomor-2-tahun-2008/detail>.

³⁴ Syamsul Anwar, *Hukum Perjanjian Syariah Studi Tentang Teori Akad Dalam Fikih Muamalat* (Jakarta: Rajawali Pers, 2007).

The Qur'an also instructs believers not to break a promise they have made even if they realize that there is good reason to believe that the other party will break the deal. In such a situation they are instructed to inform the other party to the agreement of their decision to have a formal solution to the agreement, thereby putting them on an equal footing. This is explained in the Qur'an Surah al-Anfal verse 58:

وَأِمَّا تَخَافَنَّ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَى سَوَاءٍ إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ

Translation:

And if you fear treachery on the part of any group, then restore the covenant to them in an honest manner. Verily, Allah does not like those who betray.

This is a proof that the Qur'an wants justice to be upheld in carrying out all agreed agreements. The principle of trust in the Compilation of Sharia Economic Law is that the parties are obliged to carry out the contracts they have made in accordance with the agreements stipulated by those concerned and at the same time avoid breaking promises. In the discussion of civil law, this principle is known as the principle of Pacta Sunt Servanda, which means that the parties' agreement must be obeyed.

The Qur'an requires that all contracts and promises of agreement be honored, and all obligations fulfilled. The Qur'an also warns strongly that every person will be held accountable by Allah in relation to the promises and contracts he makes.

The power of a legally made agreement (vide Article 1320 BW) has the same validity as a law made by a legislator and must therefore be obeyed by the parties, even if it is deemed necessary to be enforced with the help of law enforcement means (judges, bailiffs). This provision basically recognizes the freedom and independence of the parties in making agreements to freely determine: (i) the content, (ii) the validity and terms of the agreement, (iii) with a certain form or not, and (iv) free to choose which law will be used for the agreement.

As a consequence of this pacta sunt servanda principle is that Judges and third parties are "prohibited from interfering with the content" of the agreement that has been made by the parties to the agreement in question. Another consequence is that no third party may reduce the right of others to determine the contents of the agreement they make.

3. Fulfillment of the Principle of Justice

Justice is the goal that all laws seek to realize. In Islamic law, justice is a direct command of the Qur'an which states, "Be just, for justice is closer to piety". Justice is the cornerstone of every agreement made by the parties. Often in modern times, contracts are closed by another party without having the opportunity to negotiate the clauses of the contract, because the contract clauses have been standardized by the other party. In surah Al-Maidah Verse 8, it is explained that:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوِّمِينَ لِلّٰهِ شُهَدَاءَ بِالْقِسْطِ ۚ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ
أَلَّا تَعْدِلُوا ءَاعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۚ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

Translation:

O you who believe! Be ye upholders of justice for the sake of Allah, (when) bearing witness justly. And do not let your hatred of a people encourage you to be unjust. Be just. For that is closer to piety. And fear Allah; indeed, Allah is Exhaustive of what you do.

The principle of justice is an important pillar in Islamic economic and financial transactions. The enforcement of justice has been emphasized by the Qur'an as the main mission of the Prophets sent by God (QS.57: 25). The Qur'an's commitment to upholding justice can be seen from the mention of the word justice in it which reaches more than a thousand times, which means; the third most mentioned word in the Qur'an after the word Allah and 'Ilm. It is explained in the Qur'an Surah Al-Hadid verse 25 which reads:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ
وَأَنزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ وَلِيَعْلَمَ اللَّهُ مَن يَنصُرُهُ وَرُسُلَهُ
بِالْغَيْبِ إِنَّ اللَّهَ قَوِيٌّ عَزِيزٌ

Translation:

Indeed, We sent Our messengers with clear proofs, and We sent down with them the Book and the Balance so that man may be just. And We have created iron, which has strength and power and many benefits for mankind, and that Allah may know who helps Him and His messengers, though He does not see him. Verily, Allah is the Mighty, the Powerful.

The verse explains that Allah sent Our Messengers with clear proofs. We sent down with them a book of laws and laws. We sent down the scales so that people may deal with each other justly. We also sent down iron, which has great power and many benefits for

mankind, so that Allah may know with knowledge visible to the creatures who helps His religion and His messengers, even though he does not see them. Indeed, Allah is the strongest who cannot be defeated, and the mightiest who cannot be subdued.

This principle of justice also means that any form of transaction that invites elements of injustice is not justified. For example, the execution of collateral for debt by destroying all objects of collateral where the value of the collateral is greater than the remaining debt. It is an act of injustice if in the contract the creditor makes a provision that if the debt is not paid within a certain period of time, the collateral is destroyed, and everything belongs to the creditor. If the price of the auctioned collateral is greater than the customer's debt, the remainder should be returned to the customer, not become the property of the creditor. Islamic financing companies and multifinance companies should apply this principle of justice, because in conventional financing this practice is still widely applicable.

The results show that the interpretation of the principle of justice in the application of fines for capable customers who delay payments still varies among Islamic financial institutions in Indonesia. Some institutions interpret justice as the application of fines equivalent to the loss suffered, while others understand it as a form of deterrence against deliberate delay behavior.

According to the theory of justice in Islam proposed by Al-Ghazali, justice must include aspects of proportionality and balance³⁵. The application of fines, this means that the amount of the fine should be proportional to the amount of arrears and the length of the delay, as well as considering the financial capacity of the customer. Some Islamic financial institutions have developed a more complex scoring system to determine the amount of the fine. This system considers factors such as the customer's payment history, the reasons for the delay, and the customer's good faith in settling his obligations. This approach is in line with the concept of 'adl (justice) in maqasid sharia, which emphasizes the balance of rights and obligations³⁶.

³⁵ M Zaki, "Formulasi Standar Masalah Dalam Hukum Islam (Studi Atas Pemikiran al-Ghazali Dalam Kitab Al-Mustasfa)," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 13, no. 01 (December 1, 2018): 27–46, <https://doi.org/10.30631/alrisalah.v13i01.419>.

³⁶ Jaser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008).

4. Fulfillment of the Principle of Legal Compliance

The Principle of Legal Compliance refers to the obligation of every individual to adhere to the laws agreed upon in a contract (*akad*). If a customer fails to fulfill their obligations, they have violated the principle of legal compliance in Islam, particularly in Sharia-compliant financing contracts.

Capable Customer Who Intentionally Fails to Pay (Moral Hazard)

- a. Such a customer no longer fulfills the principle of legal compliance in Islam because they deliberately violate the agreed-upon contract (*akad*).
- b. Their actions fall into the category of injustice (*zulm*), as stated by the Prophet Muhammad *"Delaying payment by a wealthy person is a form of injustice."* (HR. Bukhari & Muslim).
- c. In this case, an Islamic bank has the right to impose administrative sanctions or take legal action in accordance with Sharia principles, as stipulated by the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI).

The law is one of the instruments to regulate the behavior of society in regulating social interactions. Sociologically, the law contains various elements including plans for action or behavior, certain conditions and situations. Law is a set of rules of a coercive nature, which regulates human behavior in a social environment, made by authorized official bodies, violation of which rules will result in action being taken, namely with certain punishments³⁷.

Obedience is an attitude of obedience to applicable rules. Not caused by strict sanctions or the presence of state officials, such as the police. Obedience is an attitude that arises from the drive of your responsibility as a good citizen. Legal compliance is an awareness of the benefits of the law that gives birth to a form of "loyalty" of society to the legal values that apply in living together which is manifested in the form of behavior that actually obeys the legal values themselves that can be seen and felt by fellow members of society. Legal awareness is actually an awareness or values that exist within humans about existing laws or about laws that are expected to exist. Actually, what is

³⁷ Theadora Rahmawati and Umi Supraptiningsih, *Pengantar Ilmu Hukum Dan Pengantar Hukum Indonesia* (Pamekasan: Duta Media, 2020), <http://repository.iainmadura.ac.id/id/eprint/378>.

emphasized are values about the function of law and not a legal assessment of concrete events in the society concerned³⁸.

Analysis of the existing regulatory framework shows that although there are general guidelines from Financial Services Authority (OJK) and National Sharia Council of the Indonesian Ulema Council (DSN-MUI), there is still quite a lot of room for interpretation for Islamic financial institutions in implementing the concepts of ta'zir and ta'widh. This results in variations in practices in the field that can lead to legal uncertainty. Referring to the theory of legal certainty put forward by Gustav Radbruch, clarity and consistency in the application of the law are important elements in a just legal system³⁹. In this context, there is a need to clarify the limitations and criteria for the application of ta'zir and ta'widh in more specific regulations. The need for more detailed guidelines on the application of ta'zir and ta'widh can increase the uniformity of practice in the Islamic financial industry and strengthen consumer protection.

5. Interpretation of Ta'zir and Ta'widh

Ta'zir is a form of punishment in Islamic law that is not covered by hudud or qisas laws. The word "ta'zir" comes from 'azzaro, which means to reject evil, strengthen, and provide assistance. Ta'zir is not regulated by the Qur'an or hadith. Ta'zir punishment is often applied to violations that do not have specific punishments stipulated in Islamic law. while Ta'zir in Islamic finance is that Ta'zir is a sanction in the form of a fine in Islamic finance which is imposed to discipline customers. Ta'zir is applied to violations that are not specifically regulated in the Qur'an or hadith.

This study indicates that there are variations in the interpretation and implementation of the concepts of ta'zir (sanctions) and ta'widh (compensation) among Islamic financial institutions in Indonesia. Some institutions tend to apply ta'zir as a form of punishment for deliberate delay behavior, while others prefer the ta'widh approach to cover the actual losses experienced.

Referring to the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) fatwa No. 17/DSN-MUI/IX/2000 concerning Sanctions for Capable Customers

³⁸ Soerjono Soekanto, "Kesadaran Hukum Dan Kepatuhan Hukum," *Jurnal Hukum Dan Pembangunan* 7, no. 6 (1977): 462–70, <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1460&context=jhp>.

³⁹ G. Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," *Oxford Journal of Legal Studies* 26, no. 1 (January 1, 2006): 1–11, <https://doi.org/10.1093/ojls/gqi041>.

Who Delay Payments, ta'zir is permitted on the condition that the funds obtained are allocated as social funds⁴⁰.

However, implementation in the field shows that some Islamic financial institutions have difficulty in separating the ta'zir and ta'widh components in their fine structure.

The main challenge in implementing this concept is determining the amount of actual loss (ta'widh) that can be charged to customers. Some institutions have developed more sophisticated calculation methodologies, but there is still a need for clearer standardization at the industry level.

DISCUSSION

1. Implementation of Penalties in Islamic Banks According to DSN-MUI Fatwa

Islamic banks operate based on the principles of justice and balance, ensuring that every transaction complies with Sharia principles and remains free from *riba* (usury). However, in practice, some financially capable customers (*mampu membayar*) deliberately delay their installment payments (*moral hazard*). To address this issue, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has issued fatwas permitting the imposition of penalties on customers who are able but intentionally fail to pay.

The relevant DSN-MUI fatwas regulating this matter include:

- a. Fatwa DSN-MUI No. 17/DSN-MUI/IX/2000 on Sanctions for Capable Customers Who Delay Payments. This fatwa allows penalties, not as profit for the bank but as an incentive for customers to fulfill their obligations on time.
- b. Fatwa DSN-MUI No. 43/DSN-MUI/VIII/2004 on Compensation in *Murabahah* Contracts, which affirms that Islamic banks may impose sanctions on negligent customers who have the ability to pay.

2. Challenges in Implementation: Lack of Standardized Criteria for Capable Customers

Although the fatwa has legitimized the imposition of penalties, a major challenge in its implementation is the absence of clear standardized guidelines for categorizing capable customers. Currently, Islamic banks have not issued a detailed definition of

⁴⁰ DSN-MUI, Fatwa Dewan Syari'ah Nasional No: 17/Dsn-Mui/Ix/2000tentang Sanksi Atas Nasabah Mampu Yang Menunda-Nunda Pembayaran.

customers who are deemed financially able to pay installments but deliberately delay payments.

In general banking practices, financial eligibility assessments are conducted using the 5C method (*Character, Capacity, Capital, Collateral, Condition*), which is also applied in Islamic banks. However, the lack of a standardized framework for determining a capable customer in the context of penalty enforcement leads to several issues:

- a. Unclear implementation, where different banks may adopt varying policies.
- b. Increased public skepticism, particularly among those who remain doubtful about the concept of penalties in Islamic banking.
- c. Potential misuse, where customers who are genuinely incapable of paying may still be penalized due to the absence of clear criteria.

One of the debates within society is whether the imposition of penalties in Islamic banks is akin to *riba qardh* or *riba nasi'ah*.

- a. *Riba Qardh* refers to an additional charge imposed on a loan as a condition in the contract.
- b. *Riba Nasi'ah* refers to an extra charge that arises due to delayed payment.

In conventional banks, late payment penalties clearly fall under *riba nasi'ah* because the bank profits from these penalties. However, in Islamic banks, the penalties imposed are not considered bank revenue but are allocated to a charity fund.

Despite this distinction, many people remain skeptical about this concept, mainly due to a lack of education and transparency regarding the implementation of penalties in Islamic banking

3. Fundamental Principle: All Financed Customers Are Considered Capable

In the Islamic banking system, every customer applying for financing undergoes a rigorous feasibility analysis before the contract is agreed upon. This assessment is based on the 5C method (*Character, Capacity, Capital, Collateral, Condition*) to ensure that:

- a. The customer has good character in fulfilling financial obligations.
- b. The customer has sufficient financial capacity to pay installments as agreed.
- c. The customer possesses adequate capital to sustain their business.
- d. The customer provides collateral as a risk mitigation measure for the bank.
- e. The customer is in a stable economic condition and has good business prospects.

Based on this principle, all approved financing customers are considered capable of repaying their installments. In other words, there is no valid reason for a customer to default on payments unless unforeseen circumstances occur, such as natural disasters or unintentional business failures.

In the context of imposing fines in Islamic banks, one aspect that has not been clearly detailed is the grace period before a customer is subjected to a penalty. Currently, the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) permits fines for financially capable customers who deliberately delay payments. However, it does not specifically determine how long the delay must occur before the fine can be applied.

Several aspects that have not been explicitly regulated include:

Time Limit for Delay Before the Fine is Imposed

- a. There is no standard regulation on whether the fine applies after 1 day, 7 days, or more from the due date.
- b. Each Islamic bank may have different internal policies, leading to inconsistencies in rule enforcement.

Gradual or Immediate Fine Implementation

- a. It is unclear whether the fine is imposed immediately after a customer exceeds a certain period or if it follows a staged process, such as:
 - 1) First warning after a few days of delay.
 - 2) A mild fine if the delay is within a specific timeframe.
 - 3) A higher fine if the delay continues for a longer period.

Evaluation Mechanism for Determining Customer Eligibility for Fines

- a. There is no standardized criterion to define when a customer is capable but deliberately delaying payments and when they are genuinely facing financial difficulties.
- b. Clear parameters are needed, such as payment history, financial reports, or direct evaluation of the customer's financial condition.

This ambiguity may lead to varied interpretations among Islamic banks, creating uncertainty for customers and risking a contradiction with the principles of justice and transparency in Islamic law. Therefore, more detailed regulations or standardized guidelines on the grace period before fines are imposed are necessary to ensure alignment

with Islamic financial principles while maintaining compliance with Islamic legal frameworks.

CONCLUSION

The fulfillment of principles in Islamic financial institutions regarding the imposition of fines on capable customers who delay installment payments requires a comprehensive approach based on the principles of justice, legal compliance, and responsibility in Islam. The fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has provided a legal basis for imposing fines on financially capable customers who intentionally delay payments. However, the main challenge remains the absence of clear standards for determining the criteria of capable customers and the fine mechanism that truly aligns with Sharia principles. Islamic banks fundamentally operate on a profit-sharing system and emphasize the value of fairness in financial transactions. However, in practice, fines are considered necessary instruments to maintain payment discipline and prevent moral hazard. On the other hand, this policy has also sparked controversy due to concerns that fines may resemble *riba qardh* or *riba nasi'ah*, which are explicitly prohibited in Islam. Developing more specific regulations is necessary to ensure that the imposition of fines in Islamic banks remains aligned with Sharia values. Standardizing the criteria for capable customers and establishing a fair fine mechanism must be clarified to ensure compliance with the principles of justice and transparency in Islamic finance. This is essential to maintaining a balance between the sustainability of Islamic financial institutions and their commitment to Islamic legal compliance.

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