

Obligation to Pay Compensation (Ta'widh) for Customers Who are Late in Paying in Murabahah Bil Wakalah Financing Agreements According to Sharia Principles

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ABSTRACT

Murabahah bil wakalah is one of the most dominant financing schemes in Indonesian Islamic financial institutions, yet late installment payments frequently occur and create administrative losses and liquidity risks. Conventional penalties are prohibited due to their riba elements, thus ta'widh is applied as compensation for real losses. This normative legal research employs statutory and conceptual approaches to examine the concept of ta'widh, its juridical basis in fiqh muamalah and DSN-MUI fatwas, and its implementation in murabahah bil wakalah contracts. The findings indicate that ta'widh may only be imposed for proven real losses caused by customer negligence, excluding opportunity loss. Its application must adhere to principles of justice, transparency, and proportionality to avoid deviation from sharia principles. This study provides guidance for Islamic financial institutions and customers regarding proper ta'widh implementation.

INTRODUCTION

The development of Islamic financial institutions in Indonesia shows very significant dynamics, especially in the provision of financing products that are in accordance with sharia principles. One of the most widely used products by Islamic banking is the murabahah contract, which is a buying and selling transaction in which the bank as the seller states the cost of goods along with the profit margin agreed with the customer as the buyer. In modern Islamic banking practice, murabahah is often combined with a wakalah contract, so that customers are authorized by the bank to purchase the goods needed on behalf of the bank. This scheme is known as murabahah bil wakalah, which is considered more efficient and easier to implement in the provision of consumptive and productive financing.

However, a big challenge arises when customers do not fulfill their obligations to pay installments according to the time that has been agreed in the contract. Late payments not only pose a risk of non-performing financing (NPF) but can also result in administrative losses for Islamic financial institutions. To anticipate this, Islamic financial institutions apply the concept of ta'widh, which is a claim for compensation for real losses arising from late payments by customers.

The practice of imposing ta'widh is often a debate because it touches on sensitive areas between maintaining sharia compliance and managing business risks. The basic principle in sharia affirms that Islam prohibits usury in any way, including the additional charges charged for late payment of debts. Therefore, Islamic banks must ensure that ta'widh does not turn into a penalty that is profitable, but really becomes a replacement for real losses experienced by financial institutions. The National Sharia Council of MUI has given a clear limit that ta'widh can only be imposed on real losses in the form of administrative fees or collection fees, not as a form of time compensation or profits for banks.

Murabahah financing is the most dominant type of contract in the portfolio of Islamic financial institutions in Indonesia. In its development, the form of murabahah bil wakalah is the main choice, because banks give power to customers to buy the goods they need, while banks continue to play the role of financing and setting profit margins. This mechanism practically facilitates the financing process and speeds up services to customers.

However, murabahah bil wakalah financing cannot be separated from potential problems, one of which is the delay in installment payments by customers. These delays not only cause administrative losses, but also have an impact on the liquidity of the institution and pose a risk of moral hazard when customers deliberately delay payments because they feel that there are no burdensome consequences. In the context of conventional financial institutions, late fines are often used as a disincentive mechanism. However, this cannot be applied directly to the sharia system, because sharia expressly prohibits the addition of debt principal as a form of usury.

In fiqh muamalah, the murabahah contract is understood as a purchase and sale contract with an agreed profit margin, so that after the transaction occurs legally, the customer's obligation is to pay a predetermined price. When

negligence occurs, scholars emphasize that the aggrieved party can claim compensation limited to real losses, not potential losses or lost profits (opportunity loss). This concept is then known as ta'widh. DSN-MUI through a number of its fatwas, such as Fatwa No. 43/DSN-MUI/2004 and Fatwa No. 17/DSN-MUI/2000, stipulate that ta'widh can only be enforced if it is proven that there is negligence, and only limited to real losses suffered by Islamic financial institutions.

However, the implementation of ta'widh in the practice of Islamic financial institutions still raises various interpretations, especially related to indicators of negligence, methods of calculating real losses, and limitations so that the imposition of ta'widh does not turn into gharamah that can violate the principle of anti-usury. In addition, the regulation regarding the use of ta'widh funds and their transparency mechanism to customers is also still a debate in practice.

These problems make the study of ta'widh in the financing of murabahah bil wakalah very important to ensure that the contract runs not only in accordance with regulations, but also remains in the sharia corridor that upholds justice (al-'adl) and balance (al-tawazun). An in-depth academic study is needed so that its implementation does not cause ambiguity, both for Islamic financial institutions and for customers who carry out contracts as a form of muamalah worship.

Thus, the discussion of the obligation to pay ta'widh in the murabahah bil wakalah contract becomes very relevant, especially to ensure whether its implementation is in accordance with sharia principles, DSN MUI rules, and the practices of the Islamic banking industry in Indonesia. It is necessary to provide an in-depth explanation related to the legal basis, the types of losses that can be claimed, the determination mechanism, the limits, and the consequences of sharia and law if there are deviations in its application.

LITERATURE REVIEW

The Concept of Fiqh Muamalah and the Basic Principles of Transactions

Fiqh muamalah is a set of Islamic legal rules that govern human relations in the fields of economics, transactions, and trade. According to Antonio (2001) and Karim (2018), muamalah fiqh stands on basic principles such as: 1). Justice (al-'adl), demanding that each contract be carried out proportionately without harming certain parties. This principle is the main basis in determining ta'widh which is only limited to returning real losses; 2). Not harming (la darara wala dirara), this rule states that in economic transactions, no party should be harmed or harmed. Late payment by customers including actions that may be detrimental to Islamic financial institutions; 3). Certainty and commitment of the contract (al-wafa bil uqud), the agreed contract must be implemented with full commitment. The customer's obligation to pay on time is a direct application of this principle.

The Concept of Murabahah bil Wakalah

Murabahah is a purchase and sale contract with an explanation of the agreed cost price and profit margin. However, in modern practice, Islamic banks

give power to customers to buy goods that are the object of the contract. This scheme is called *murabahah bil wakalah*.

According to Ubaidullah (2005) and Manan (2012), this practice is necessary to: speed up the transaction process, adjust market needs, maintain operational efficiency. In this contract, the bank still acts as the seller, while the customer is the buyer. The obligation to pay periodically makes the customer bound to carry out his obligations according to a predetermined period of time.

The Theory of Real Loss in Islamic Law

Real losses are actual losses experienced by certain parties due to an event or action of another party. In Islamic law, real losses are distinguished from potential losses. Contemporary scholars, such as in *Majma' al-Fiqh al-Islami*, state that compensation should only be given on measurable real losses, such as operational costs, billing costs, or administrative costs. This literature is the basis for the determination of *ta'widh* so that it does not turn into an addition to debts that are in the nature of usury.

A Study of Ta'widh

The concept of *ta'widh* is widely discussed in modern Islamic financial literature. Al-Ghazali in *ihya'Ulumuddin* explained that compensation can be given as long as there is no element of persecution or exploitation. Syafi'i Antonio (2001) and Bank Indonesia (2006) underline that *ta'widh* is a return for the real burden that has been incurred, not a form of penalty. DSN-MUI Fatwa No. 43/2004 further emphasizes the limitations of *ta'widh*, namely: only for real losses, not for profits, must be proven accountably.

Contemporary Regulations of Sharia Banking

Regulations such as POJK Number 16/POJK. 03/2014 concerning Sharia Products and Activities and the OJK Circular Letter provides technical guidance on the application of *ta'widh* in sharia financing. Islamic financial institutions are obliged to ensure: *ta'widh* is not recognized as income, is not used as a means of making profits, does not turn into a fine in the conventional system. Theoretically, *ta'widh* falls within the framework of strict Islamic law, with clear boundaries between compensation for losses and additions containing usury.

METHODOLOGY

The research on the obligation of *ta'widh* in the *murabahah bil wakalah* contract is doctrinal/normative research. The statute approach is used to analyze the legal provisions that govern *ta'widh* based on: the nash of the Qur'an and Al-Hadith, the principles of *fiqh muamalah*, fatwa of DSN-MUI, OJK regulations, and sharia economic theory. In addition, a conceptual approach is also used, to examine the concept of *ta'widh*, real losses, *murabahah* contracts, and *wakalah* contracts in the financing structure. The source of legal materials consists of primary legal materials in the form of the Qur'an, Al-Hadith, DSN-MUI Fatwa No. 17 of 2000, DSN-MUI fatwa No. 43 of 2004, POJK on Islamic banking, classical *fiqh* literature (Al-Mughni, *Bada'i as-Sana'i*, etc.). Secondary legal materials from

Islamic economics and Islamic banking books, articles in Islamic economics journals and previous research related to ta'widh and murabahah financing.

RESEARCH RESULT AND DISCUSSION

The Legal Basis and Sharia Principles that govern the obligation to pay ta'widh for customers who are late in paying in the murabahah bil wakala contract.

The concept of ta'widh in sharia financial transactions cannot be separated from the foundation of fiqh muamalah which emphasizes that every contract must be oriented towards the principles of justice, balance of rights and obligations, and the prohibition of taking benefits from debt (qardh) without a clear basis. In the context of murabahah bil wakalah, the customer is positioned as a buyer of goods financed by an Islamic bank, and he is obliged to pay off the mutually agreed selling price including profit margin. When there is a delay in payment, the question arises whether Islamic banks can charge compensation fees without violating sharia principles.

The Qur'an pays special attention to the fulfillment of contractual obligations. The Word of Allah in QS. Al-Ma'idah (5):1 affirms, "O you who believe, fulfill the covenants". This verse is the basis that every payment obligation in the murabahah contract must be fulfilled on time. Late payment made deliberately by a party can be considered a form of tyranny. This is emphasized in the hadith of the Prophet PBUH, which means "Delaying the payment of debts for those who can afford it is an injustice". (HR. Bukhari and Muslim).

From the perspective of fiqh, scholars agree that additional payments due to late debt repayment are not allowed, because it can become riba jahiliyah, riba that arises as a result of additional debt as compensation for time. However, contemporary scholars distinguish between late interest (haram) and compensation for real losses (ta'widh) which is permissible because it is not intended for profit, but simply to refund the actual costs incurred.

The National Sharia Council of the MUI issued several important fatwas that became the formal basis for the imposition of ta'widh, namely: 1). DSN-MUI Fatwa No. 17/2000, emphasizing that able customers who delay payment can be subject to ta'zir (sanctions), but these sanctions should not be recognized as bank income; 2). DSN-MUI Fatwa No. 43/2004 concerning Ta'widh, states that ta'widh should only be imposed on customers who actually cause real losses, and these losses must be provable; 3). POJK and SE OJK related to sharia financing also emphasize that all costs must reflect the real value and should not be a tool to achieve additional profits. These fatwas show that sharia law does not reject ta'widh, as long as it is within strict limits and does not contain elements of penalties intended for profit.

In maqashid al-shari'ah, especially in the maintenance of assets (hifz al-mal), the imposition of ta'widh is seen as a form of protection for the rights of Islamic financial institutions from losses due to customer negligence. Islamic banks as an institution that manages people's funds are obliged to maintain the sustainability of their operations. Therefore, ta'widh which is compensation for real losses is considered in line with maqashid, as well as protecting the system from potential customer harm. Thus, the legal basis of ta'widh in murabahah bil

wakalah has a strong foothold in fiqh, fatwa, and maqashidus shari'ah, as long as its application does not violate the principle of prohibition of usury and is not intended to take advantage of the customer's delay.

In the murabahah bil wakalah transaction, the legal relationship that arises is a mutual relationship that demands transparency, legal certainty, and justice. Therefore, the sharia principles used to establish the obligation of ta'widh cannot be separated from: a). The principle of iltizam (contractual commitment), sharia strongly emphasizes that each party is obliged to comply with the commitments that have been pledged in the contract. The fulfillment of this obligation is not only a contractual responsibility, but also a moral responsibility. Therefore, late payment for the able party can be considered not only a breach of contract, but also an act that is not in line with Islamic business ethics; b). The principle of la darara wa la dirara (not to harm or be harmed), this principle is an important basis for the imposition of ta'widh. Through this rule, sharia provides space for parties who suffer losses due to the negligence of other parties to be entitled to commensurate compensation. In the context of murabahah bil wakalah, administrative losses due to late payment can be a sharia justification for imposing ta'widh, as long as it does not contain elements of exploitation; c). The principle of taswiyah (equality of position), Islam views that the two parties to the contract are in an equal legal relationship. This means that customers should not take unilateral advantage of delays, such as deliberately delaying payments to get certain benefits. This equality creates sharia legitimacy that ta'widh is needed so that there is no imbalance of interests between banks and customers; d). The approach of the rules of ushul fiqh to compensation of losses, contemporary scholars explain that ta'widh is permissible with the approach of the rules of ushul fiqh, including: 1). Al-ghurm bil ghum, whoever benefits from the contract, he must bear the risk; 2). Darar yuzal, harm must be eliminated, including real losses due to delay; 3). Al-umur bi maqasidiha, something is judged based on its purpose, if the purpose of ta'widh is not to seek profit, then it does not include usury. This analysis emphasizes that the foundation of sharia ta'widh is not only a matter of legal texts, but also philosophical interpretations of the function of akad and justice in muamalah; d). Relevant to contemporary Islamic banking practices, changes in modern transaction patterns that are all administrative require a compensation mechanism to maintain the stability of financial institutions. Therefore, the imposition of ta'widh in the financing of murabahah bil wakalah is a form of adaptation of Islamic law to contemporary needs, while still adhering to the limits of sharia. The foundation of the imposition of ta'widh is not purely technical, but has a strong foundation in the principles of justice, commitment, sharia maqashid, and relevant ushul fiqh rules.

The mechanism of application, scope of losses, and sharia implications of the obligation to pay ta'widh for customers in the murabahah bil wakala contract

In the murabahah bil wakalah contract, the financing mechanism involves authorizing the customer to purchase goods in the name of the bank. After the goods are purchased, the customer is obliged to return the funds to the bank according to the agreement. When customers are late in paying, banks can impose ta'widh with certain mechanisms that must meet sharia principles.

Operationally, Islamic banks usually implement the following steps: 1). Identifying delays based on payment due dates; 2). Proving that there is a real loss arising from the delay; 3). Calculating the value of the real loss allowed according to the DSN-MUI fatwa, the real loss is usually in the form of; collection costs, additional administrative costs, and operational expenses related to efforts to handle problematic financing; 4). Documenting evidence of losses (invoices, expense notes, billing activity logs); 5). Billing ta'widh to customers, which must be included from the beginning in the contract. Banks are not allowed to set ta'widh in the form of a percentage of the remaining debt or make a formula that resembles a fine.

The DSN-MUI fatwa emphasizes that ta'widh can only be charged on real losses, not potential losses or hypothetical losses such as the loss of opportunities to gain profits from retained capital. Thus, the scope of ta'widh is very limited and measurable. Ta'widh should not include: additional in the form of "time value" of money, imposition of percentage penalties, additional profit margins, and the cost of forming loss reserves. Only real losses that can be proven in an accountable manner can be charged to the customer.

In Islamic banking practice, ta'widh funds should not be directly recognized as bank income. The funds are usually placed in a special account that is treated as a refund of expenses that have been disbursed. If there are remaining funds or penalties, they must be distributed as social funds. This principle keeps ta'widh from turning into an instrument of profit seeking like penalties in the conventional system.

If the Islamic bank imposes ta'widh beyond the limit of real losses, then the action may contain an element of usury. The impact is; 1). Sharia compliance risk increases because banks are considered to have violated the DSN-MUI fatwa, 2). Customers can object to hukuun, because the contract is a sharia defect, 3). The potential for sharia audits to find findings that can disrupt the institution's reputation, 4). The contract can be null and void in certain parts because of additional elements that are not justified. From the perspective of fiqh, riba is not only prohibited, but also a factor in the cancellation of the contract when additional benefits are imposed intentionally without a sharia basis.

The determination of ta'widh must go through strict procedures, including: 1). Validation of customer status (able or incapable), ta'widh can only be imposed on customers who can afford but delay payment (mumatil). Customers who are not economically able should not be burdened; 2). Classification of real losses, losses must be objectively calculated, for example: collection officer travel expenses, warning letter fees, telecommunication fees, summons fees; 3). Sharia accounting record-keeping, each replacement fee must be recorded and verified by the sharia compliance unit.

Islamic banks must show good governance in determining ta'widh. This process involves: internal sharia audit, supervision of the Sharia Supervisory Board (DPS), proof of administrative transactions, separation of ta'widh fund accounts from bank income. This transparency ensures that ta'widh is not a form of additional gain.

If the mechanism of ta'widh does not follow the sharia fatwa, then a number of risks arise: 1). Risk of riba (riba al-jahiliyah), if the bank sets a late fee A percentage of the amount of the debt, then it resembles an addition to a loan that is prohibited by sharia; 2). The risk of moral hazard from the bank, the bank can be tempted to make ta'widh as a source of income, which clearly violates the fatwa of DSN-MUI; 3). Positive legal risk, customers can sue financial institutions on the grounds of violation of sharia principles and contract defects; 4). Reputational risk, even small deviations in the imposition of ta'widh can reduce public trust in Islamic banks.

The Sharia Supervisory Board has a significant role in: reviewing the ta'widh policy, ensuring real losses, supervising the administrative process, providing recommendations in case of violations. With the supervision of the DPS, the ta'widh mechanism remains in the sharia corridor.

The main goal of sharia financing is to create honest, productive, and fair transactions. Thus, ta'widh is not only a legal mechanism, but also an ethical instrument to: encourage customers to be disciplined, prevent negligence, maintain the sustainability of Islamic financial institutions, and avoid losses that can damage public trust.

CONCLUSIONS AND RECOMMENDATIONS

Based on the description of the discussion, it can be concluded that several important things are as follows:

The obligation to pay ta'widh for customers who are late in paying in the murabahah bil wakalah contract has a strong legal basis in the Qur'an, Al-Hadith, Fiqh Muamalah, and Fatwa DSN-MUI. Ta'widh is allowed as long as it is not profit-oriented, but to cover the real losses experienced by Islamic financial institutions.

The implementation of ta'widh must follow a clear and strict mechanism, including the identification of real losses, proof of costs, proportionate collection, and the placement of funds that should not be the bank's income. Deviations in its application have the potential to violate sharia principles and can contain elements of usury. thus, ta'widh is a legitimate sharia instrument to maintain contractual justice and avoid moral hazard, as long as it is applied in accordance with the provisions that have been outlined by fiqh and national sharia authorities.

ADVANCED RESEARCH

For future research, advanced studies are recommended to move beyond normative analysis by integrating empirical and comparative approaches. Subsequent research may examine the practical implementation of ta'widh across different Islamic financial institutions through case studies or quantitative analysis to assess consistency, effectiveness, and compliance with DSN-MUI fatwas. In addition, comparative studies between ta'widh practices in Indonesia and other jurisdictions with developed Islamic finance frameworks could provide insights into best practices and regulatory harmonization. Further research may also explore the impact of ta'widh on customer behavior, credit risk management, and moral hazard mitigation, as well as develop standardized

measurement models for real loss calculation to strengthen transparency, accountability, and sharia compliance in murabahah bil wakalah financing.

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