

COMPARISON OF SHARIA BUSINESS LAW OPINIONS ON FINE SANCTIONS FOR LATE PAYMENT OF INSTALLMENTS IN SHARIA FINANCIAL INSTITUTIONS

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Abstract: *Islamic Financial Institutions are financial institutions whose operations are based on Sharia principles or Islamic legal rules in the financial transactions that are carried out. Closely to conventional financial institutions, fines for late payment of installments by customers are also applied by Islamic financial institutions whose legality refers to the DSN-MUI fatwa on sanctions against capable customers who delay payments. The issue of fines eventually creates problems and debates on its legality and relevance to sharia principles. This research aimed to compare sharia business law opinions on issues of fines for late installment payments at Islamic financial institutions. The research method employed was normative legal research with a comparative approach. The research results revealed the difference of opinions on the existence and legal status of these fines in Islamic financial institutions. Leastwise, there are two legal opinions: (1) it is permissible on condition that fines are only given to capable customers who delay payments (under specific criteria, not absolute permissibility) and that fines must be designated as social funds. Meanwhile, (2) disapproving opinion to assume that this fine is similar to usury; hence, it is forbidden.*

Keywords: Legal Opinion; Late Charge; Installment; Sharia Financial Institution

Abstrak: Lembaga Keuangan Syariah adalah lembaga keuangan yang operasionalnya berdasarkan pada prinsip syariah atau aturan hukum Islam dalam transaksi keuangan yang dilakukan. Sebagaimana lembaga keuangan konvensional, denda atas keterlambatan pembayaran angsuran oleh nasabah juga diterapkan oleh lembaga keuangan syariah yang legalitasnya mengacu pada fatwa DSN-MUI tentang sanksi atas nasabah mampu yang menunda-nunda pembayaran. Persoalan denda inipun pada akhirnya menuai problematika dan perdebatan terkait legalitasnya dan relevansinya dengan prinsip syariah. Tujuan penelitian ini adalah mendeskripsikan perbandingan opini hukum bisnis syariah terkait persoalan denda atas keterlambatan pembayaran angsuran di lembaga keuangan syariah. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan komparatif. Hasil kajian menunjukkan adanya perbedaan pendapat

dalam memandang eksistensi dan status hukum denda ini di lembaga keuangan syariah. Setidaknya terdapat dua opini hukum, yakni membolehkan dengan syarat sanksi denda hanya diberikan kepada nasabah mampu yang menunda pembayaran (ada kriteria khusus, bukan kebolehan mutlak) dan peruntukkan denda harus sebagai dana sosial. Sedangkan opini yang melarang berpandangan bahwa denda ini memiliki kedudukan yang sama dengan riba sehingga diharamkan.

Kata Kunci : Opini Hukum; Denda Keterlambatan; Angsuran; Lembaga Keuangan Syariah

A. Introduction

After a financial institution distributes funds in *financing products*, it cannot be separated from the existence of business risks, i.e., bad loans or non-performing financing. Not all financing disbursed is smooth in payment; even though a customer feasibility analysis has been carried out, it still opens the possibility of late payments or exceeding the predetermined deadline. The emergence of financing arrears can be influenced by several factors such as Character, Capacity, Capital, Collateral and Condition of economy.¹ Hence, an action conducted by financial institutions is imposing fines for late payment of installments by these customers.² It has been commonly used in conventional financial institutions. Meanwhile, in Islamic financial institutions, it still invites debate or *pros* and *cons* in its application.³

¹ Hadion Wijoyo, "Analisis Pengendalian Internal Dalam Pemberian Kredit Pada PT Bank Perkreditan Rakyat (BPR) Indomitra Mandiri," *TIN: Terapan Informatika Nusantara* 1, no. 4 (2020): 157.

² Irfan Harmoko, "Analisis penerapan denda keterlambatan pembayaran angsuran dalam akad pembiayaan murabahah di bank syariah (berdasarkan fatwa no. 17/DSN-MUI/IX/2000)," *Qavānīn Journal of Economic Syariah Law* 3, no. 1 (2019): 33.

³ Muhammad Sulthon Aziz, "Tinjauan Syari'ah terhadap Klausul Denda pada Perjanjian (Akad)," *El-Faqih: Jurnal Pemikiran dan Hukum Islam* 4, no. 1 (2018): 88.

DSN-MUI is an institution that has the authority of sharia economic fatwas in Indonesia with the legal position of fatwas that have been legitimized by law.⁴ DSN-MUI, as a sharia economic fatwa institution, has issued a fatwa relating to late payment fines to address the problems of fines. The DSN-MUI has issued a fatwa on this fine through DSN Fatwa No: 17/DSN-MUI/IX/2000 on Sanctions against capable customers who delay payments. Based on the fatwa applied to fine sanctions, some opinions justify it, and some consider this fatwa to be contrary to Islamic teachings.

The existence of fines imposed on customers who deliberately delay paying their installments according to a predetermined or mutually agreed upon time between the customer and Islamic financial institutions; heretofore, there is still debate over its legality. Difference opinions in the punishment were triggered on whether the fine was considered usury or not. Disapproving opinions on fine implementation as sanctions to customers with late payment installments were due to fines that were assumed to be usury ignorance.⁵ Ongoing different opinions in considering the legal status of fines for late payment of installments, the DSN-MUI shows a legal opinion on a permissible position through its fatwa. This paper is expected to be a scientific reference in understanding differences of opinion that occur through the legal opinions of scholars who are competent in their fields

B. Research Method

This paper employed normative legal research methods. The approach used was a comparative approach by comparing sharia business law opinions on issues of fines submitted by contemporary

⁴ Ian Rakhmawan Suherli, Iu Rusliana, dan Pandu Pribadi, "Kelemahan Fatwa Dan Implementasinya Dalam Pengembangan Ekonomi Dan Keuangan Kontemporer," *TAFALQUH: Jurnal Hukum Ekonomi Syariah Dan Ahwal Syabsiyah* 7, no. 1 (11 Agustus 2022): 71–72.

⁵ Teuku Arie Azhari dan Burhanudin Harahap, "Analisis Penerapan Biaya Atas Keterlambatan Pembayaran Atau Denda Dalam Pembiayaan Al Murabahah Pada Perbankan Syariah," *Jurnal Repertorium* 5, no. 2 (2018): 189.

scholars. The primary legal material studied was the legal opinions of contemporary scholars contained in books and other scientific writings related to the legality of fines for late installment payments applied by Islamic financial institutions from the perspective of sharia business law..

C. Results and Discussion

1. The Concept of Fines on DSN-MUI Fatwa

The issue of fines for capable customers who deliberately delay payment of their installments, in this case, the DSN-MUI issued a particular fatwa on this issue.⁶ This fatwa was issued because Islamic Financial Institutions were still confused about how to treat their customers who deliberately delay installments even though they were capable. Therefore, this fatwa can be used as a basis for Islamic Financial Institutions to impose sanctions in the form of a fine of an amount of money to customers who are negligent in paying their installments.⁷

Based on the DSN Fatwa, fine sanctions for late payment of debts (financing installments) are listed in general provisions criteria of the DSN-MUI Fatwa No.17/DSN-MUI/IX/2000 on Sanctions against Capable Customers who Delay Payments:

- a. This fine may only be given to customers who postpone payment of installments where the customer can pay the installments, i.e., there are two crucial points: *first*, customers can actually pay; *second*, customers deliberately do not pay.
- b. Incapacitated customers are not allowed to utilize this fatwa as a basis for the permissibility of being subject to sanctions because, indeed, those who are capable are only allowed to be subject to sanctions.

⁶ Oni Sahroni, *Ushul Fikih Muamalah: Kaidah-kaidah Ijtihad dan Fatwa dalam Ekonomi Islam* (Depok: Rajawali Pers, 2017), 128.

⁷ Muchlish Khomayny dan Muhammad Wahyuddin Abdullah, "Perlakuan Denda Pembiayaan Berbasis Konsep Al-Adl Dalam Menjaga Eksistensi Bisnis Bank Syariah," *Jurnal Iqtisaduna* 6, no. 2 (2020): 100.

- c. This fine is given to customers to make a deterrent and not to repeat it in upcoming installments.
- d. The fine amount was agreed upon when the initial contract was signed.
- e. The fine proceeds are entirely into social funds, not cash funds.

Based on the fatwa above, DSN-MUI provides a special category for customers who are allowed to be imposed sanctions in the form of monetary fines, namely customers who are capable but deliberately delay payment of installments and customers who do not have the desire to pay their installments. Moreover, customers who are late paying installments due to economic problems are not allowed to be subject to sanctions by an amount of money.

This fine aimed to trigger customers to no longer repeat their actions by delaying installment payments even though the customer can do it on time. In other words, it has a deterrent effect on customers, not because the LKS intends to obtain more profit.⁸ Hence, this perspective can be considered that Islamic financial institutions are not seeking additional benefits from fined installment payments because the purpose of fines is solely to provide a deterrent effect for capable customers who deliberately delay payments.

2. Comparison of Legal Opinion of Contemporary Scholars on Fine Sanctions for Late Payment of Installment in Islamic Financial Institutions

- a. Erwandi Tarmizi

According to Erwandi Tarmizi, there may be no conditions in buying and selling credit that indicate a fine may be subjected when late paying installments' customers. It demonstrates that he has a legal opinion if the requirements related to fines and sanctions on

⁸ Maya Kristia Ningsih, Abdul Wahab Abd Muhaimin, dan Umi Khusnul Khotimah, "Implementasi Fatwa DSN-MUI No. 17 Pada Pembayaran Angsuran Pembiayaan Kepemilikan Rumah Menggunakan Akad Murabahah di Bank Syariah Indonesia Jakarta Pusat," *Al-Mizan: Jurnal Hukum dan Ekonomi Islam* 7, no. 2 (2023): 55.

customers are late paying installments and potentially break the validity of a credit purchase agreement.⁹

His opinion is in line with the decision of the *Majma' Al Fiqh Al Islami* Conference (Fiqh Division of OIC) No: 51 (2/6) in 1990, which states:

“If the customer is late in paying his due date, it is not permissible to be subject to a fine of money, whether it is obliged on the early contract or not, because it is similar to forbidden usury”.

Based on the explanation above, we can figure out conditions of delay in customers when imposing sanctions that ultimately increase the customer debts, either predetermined or not before. Additional value that must be paid includes the form of usury. Moreover, it is a matter of forbidden principle in Islamic economics.

Furthermore, the decision of this institution on penalty's implementation No. 109 (3/12) of 2000, which states:

“Sanctions may be imposed on all types of contracts, except for contracts that cause debt; indeed, it is usury”.

The verdict indicates that he has a legal opinion on an increase of the total value that must be paid even though he is categorized as a permanent sanction, including *usury*. It is a forbidden principle in Islamic economics. Thus, as anticipation, the creditor is encouraged to ask for collateral or a guarantor. The collateral can be sold with a late installment payment.¹⁰

Several principles need to be explained when discussing the issue of this fine payment comprehensively, i.e., a *late charge* is different from the *penalty*. The penalty's money is entirely deposited into the cash of Islamic financial institutions. Meanwhile, the late charge does not become cash by Islamic financial institutions and is not countless as profit. However, it is recognized as a social fund.¹¹

⁹ Erwandi Tarmizi, *Harta Haram Muamalat Kontemporer* (Bogor: Berkat Mulia Insani, 2017), 462.

¹⁰ Tarmizi, 464.

¹¹ Tarmizi, 474.

In addition, scholars also have different opinions on *late charge*; *first*, as conveyed by Erwandi Tarmizi:¹²

“The fine money is similar to additional nominal of debts that have been agreed at an early contract, and it is essentially usury. The allocation of these funds as a social fund also reveals that it is usury because of getting more benefits from the existence obtained”.

The statement above attempts to convey the requirements for imposing sanctions in the form of fines, according to Erwandi Tarmidhi's opinion, including an additional payment of money from debts agreed upon from the beginning, which then increases due to late payment of liabilities. In essence, it is the same as usury, even though the money from the fines does not become the income of Islamic financial institutions and is allocated for social purposes.

The use of *late charge* money as a social fund seems a usury's requirement, which is employed as a deterrent sanction to the debtor. In this case, it will strengthen the view and validates the usury requirements, which is similarly justifying the unlawful.

Based on the issue of penalties for intentional late payment of installments, several Islamic financial institutions apply several solutions, i.e., Islamic financial institutions create an agreement that the object of the debt is also a pawned item through official documents that is confiscated by Islamic financial institution until the debt is paid off. Then, create an agreement between the sharia financial institution and the customer; if the problem is late paying installments, the debtor will cover the debt's object. Sales are returned to customers.¹³

The solution proposed by Erwandi Tarmidzi is in line with the opinion of *Majma' Al Fiqh Al Islami*, the Fiqh Division of OIC, with Decree No. 51 (92/6) in 1990, which states:¹⁴

“Debtors are allowed to provide maturity conditions for all installments before the deadline when the buyer is late paying

¹² Tarmizi, 475.

¹³ Tarmizi, 464–65.

¹⁴ Tarmizi, 465.

installments, as long as the creditors agree with this condition when the transactions are carried out. Debtors are allowed to provide conditions that the goods of the debt objects are used as pawned goods as collateral so that the creditors are not late in paying the installments.

Several critical points from the *Majma' Al Fiqh Al Islami* in Fiqh Division of OIC demonstrate that financial institutions can provide a repayment period of installment payments and it can be used as a requirement in financing. In addition, Islamic financial institutions also allow debtors to require creditors to make the goods they sell as collateral or pawned goods so that creditors can keep the repayment period.

The solution offered by Erwamdi Tarmizi when customers are delayed or deliberately delaying payments is by selling collateral goods when creating an early contract. According to him, it is a solution for both parties and a necessary preventive measure to avoid delays in payments or other detrimental actions.

b. Sheikh Abdullah bin Mani'

Sheikh Abdullah bin Mani' believes that *late charges* at the beginning of the contract are not permissible, and withdrawing *late charges* is also a prohibited act in financing transactions in the sharia economy, even though later they are channeled to social funds because the nature of *late charges* is usury, which is then channeled for social purposes. *Usury* is indeed usury. For any purpose, utilizing usury funds cannot change their usury status adhered.¹⁵

The allocation of these funds as social funds seems impossible if Islamic financial institutions do not get any benefit because, indeed, Islamic financial institutions will benefit, for instance, a good reputation with the public when distributing these funds. Thus, it is included in the rule: "Loans that generate benefits (profits)", which are forbidden in Shari'a.¹⁶

This legal opinion from Sheikh Abdullah bin Mani' was similar to Tarmizi's legal opinion above, which also considered the

¹⁵ Tarmizi, 477.

¹⁶ Tarmizi, 477.

imposition of fines for payment of debts as an added value of payments classified as *usury*.

c. Ismail Nawawi

Ismail Nawawi believes that there is an agreement in the issuance of this transaction that the buyer is obliged to pay a fine if he is late in paying the agreed installments. Thus, it is identical to *an-nasi'ah usury*, which is prohibited in Islam. The original law of this transaction is unlawful and void because of the interest requirement for the buyer's delay in paying the installments.¹⁷

An-nasi'ah usury is commonly known as additional money from the agreed amount of debt due to delayed payments (credit).¹⁸ Hence, according to him, the application of fines is the same as *an-nasi'ah usury*.

d. Oni Sahroni

Oni Sahroni is one of the Central MUI National Sharia Councils. Concerning the implementation of this monetary penalty, he believes that Islamic financial institutions are allowed to withdraw fines for late installment payments; under circumstances where the customer deliberately delays it even though he can pay it based on the agreed time. Then, these funds are allocated for social funds instead of being used as income by Islamic financial institutions.¹⁹

His opinion is based on several arguments and rules, in which these fines are intended for customers who can afford but deliberately delay installment payments.²⁰ Based on the following hadith:²¹

¹⁷ Ismail Nawawi, *Fikih Muamalah Klasik dan Kontemporer* (Bogor: Ghalia Indonesia, 2012), 121.

¹⁸ Muhammad Arifin Badri, *Riba dan Tinjauan Kritis Perbankan Syariah* (Bogor: Darul Ilmi, 2012), 20.

¹⁹ Oni Sahroni, *Fikih Muamalah Kontemporer* (Jakarta: Republika, 2019), 158–59.

²⁰ Sahroni, 159.

²¹ Abû Abdullah Muhammad Bin Yazîd bin Mâjah al Qazwînî, *Sunan Ibnu Mâjah*, vol. 2 (Kairo: Dâr al-Ihya' al-Kutub al-'Arabiyah, n.d.), 811; Abû

عَنْ عَمْرِو بْنِ الشَّرِيدِ، عَنْ أَبِيهِ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لِيَّ
الْوَاجِدِ يُحِلُّ عِرْضَهُ وَعُقُوبَتَهُ»

From 'Amru bin Asy Syarid from his father, he said, the Prophet *Sallallahu 'alaibi wasallam* stated that: "Delaying the payment of debts by people who can pay it justifies honor (esteem) and punishment for him."

In addition, Rasulullah SAW said:²²

مَظَلُّ الْغَنِيِّ ظُلْمٌ

"Delaying (payment) by people who can afford it is an injustice."

Based on the hadith above, we can understand that if the debtor is capable but delays payment; thus, it is an unjust act towards the creditor and is also to avoid losses suffered by the creditor. Hence, it is seen as a middle way that can be enforced.²³

There is a keyword, namely *loss*. It is a consideration for debtors to impose sanctions on creditors who delay payments. However, what is the relationship between the potential losses experienced if the customer delays payment linked to fines in the form of money, and what is the status of the money paid as fines in debt; heretofore, it is a problem that continues to be debated. The author slightly

'Abdurrahman Ahmad bin Syu'aib bin 'Alî al Khurâsânî an Nasâ'î, *Sunan An-Nasâ'î*, vol. 7 (Aleppo: Maktab al-Mathbû'ât al-Islâmiyyah, 1986), 316; Abû Dâwud Sulaimân bin al Asy'ats bin Ishâq bin Basyîr bin Syidâd bin 'Amrû al-Azdî as Sijjâtânî, *Sunan Abû Dâwud*, vol. 3 (Beirut: Maktabah al-'Ashriyah, n.d.), 313; Abû 'Abdullah Ahmad bin Muhammad bin Hanbal bin Hilâl bin bin Asad asy Syaibânî, *Musnad Ahmad*, vol. 29 (Beirut: Muassasah ar-Risâlah, 2001), 465.

²² Abû 'Abdullah Muhammad bin Ismâ'il bin Ibrahim bin al Mughîrah bin Bardîzbah al Ju'fi al Bukhârî, *Shahîb al-Bukhârî*, vol. 3 (Beirut: Dâr Thauq an-Najah, 2001), 118; Abû al Hasan Muslim bin al Hallaj al Qusyairi an Naisabûri, *Shahîb Muslim*, vol. 3 (Beirut: Dâr Ihyâ' at-Turâts al-'Arabî, t.t.), 1197; as Sijjâtânî, *Sunan Abû Dâwud*, 3:247; an Nasâ'î, *Sunan an-Nasâ'î*, 7:317; Abû 'îsâ Muhammad bin 'îsâ bin Saurah bin Mûsa bin adh Dhahâk at Tirmidzî, *Sunan at-Tirmidzî*, vol. 2 (Beirut: Dar al-Gharb al-Islami, 1998), 591.

²³ Sahroni, *Fikih Muamalah Kontemporer*, 159.

found two legal opinions on this issue. The legal opinion that allows imposing fines argues for avoiding potential losses due to intentional delays. It should be avoided. For instance, by giving late fines, it is hoped that the debtor will pay more attention to his obligations. It is based on the Hadith of the Prophet:²⁴

عَنْ ابْنِ عَبَّاسٍ ، قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : « لَا ضَرَرَ وَلَا ضِرَارَ »

Ibn Abbas said, "The Rasulullah SAW stated that: "It is not permissible to harm oneself or others."

The command to avoid harmful actions in a contract is highly clear in *muamalah fiqh*. Many arguments exist, from the Nash al-Qur'an and Hadith to the rules. A loss to one of the parties must be avoided and *vice versa*, according to customers' views that imposed sanctions in the form of monetary fines; it is certainly an interesting issue to discuss.

The first legal opinion considers that the imposition of late payment fines is included in the act of forbidden usury. It is due to the additional value that must be paid. The second legal opinion says that the money from the proceeds of this fine does not include *usury* because the intended usury is the benefits obtained from the debtor for the loan services submitted to the debtor. It is as stated in the *fiqh* rules:

²⁴ Abû al Hasan 'Alî bin Ahmad bin Mahdî bin Mas'ûd bin an Nu'mân bin Dînar al Baghdâdî ad Dâruquthnî, *Sunan Ad-Dâruquthnî*, vol. 5 (Beirut: Muassasah ar-Risâlah, 2004), 407; Abû Bakar Ahmad bin al Husain bin 'Alî bin 'Abdullah bin Mûsa al Khusrauîrdî al Baihaqî, *As-Sunan al-Kubrâ*, vol. 6 (Beirut: Dâr al-Kutub al-'Ilmiyah, 2003), 268; Mâlik bin Anas bin Mâlik bin Âmir al Ashbâhî al Madanî, *Al-Muwaththa'*, vol. 2 (Beirut: Dâr Ihyâ' at-Turâts al- Ârab, 1985), 745; al Qazwîni, *Sunan Ibnu Mâjab*, 2: 784; Abû 'Abdullah al Hâkim Muhammad bin 'Abdullah bin Muhammad bin Hamdawaih bin Nu'aim bin al Hakam adh Dhabî ath Thahmânî an Naisâbûrî, *Al-Mustadrak 'alâ Ash-Shahîhain*, vol. 2 (Beirut: Dâr al-Kutub al-'Ilmiyah, 1990), 66; Abû 'Abdullah Ahmad bin Muhammad bin Hanbal bin Hilâl bin bin Asad asy Syaibânî, *Musnad Ahmad*, vol. 5 (Beirut: Muassasah ar-Risâlah, 2001), 55; Abû al Qâsim Sulaimân bin Ahmad bin Ayyûb bin Muthair al Lakhmî asy Syâmî ath Thabrânî, *Al-Mu'jam al-Ausath*, vol. 1 (Kairo: Dâr al-Haramain, n.d.), 307.

“Every debt (loan of money) that brings benefits is usury.”

Hence, this second legal opinion considers if a creditor is subject to fines, the value of money taken is seen as an additional benefit from the principal value of the debt; even though the benefit funds are not used by Islamic Financial Institutions but for social activities.

Islamic teachings protect each contracting party, including the imposition of debt sanctions for customers who delay payments. Thus, customers as consumers also get good protection. It is as stated by Siti Khadijah Ab. Manan and Norlela Kamaluddin:²⁵

“Islamic teachings also promote the spirit of *ukhuwah* (brotherhood) among humanity (*hablumminan-na*). Everyone is equal in the eyes of Allah and no one has more privileges than the other, except those who are *muttaqin* (God-fearing). Therefore, it is implied that every individual has an equal right and opportunity in the access, allocation, and distribution of resources endowed by the Almighty. Everyone is also responsible for caring and helping each other. As such, one's attitude towards other human beings is not to serve his self-interest”.

The first legal opinion that allows the imposition of fines for late payment of debts considers that the imposition of a fine of a sum of money is also in line with the opinion of the AAOIFI international sharia standards and the opinion of the MUI National Sharia Council. DSN-MUI has issued Fatwa No. 17 /DSN-MUI/IX/2000 on Sanctions against Capable Customers who Delay Payments.²⁶

The intended sanction in this fatwa is a sanction for capable customers but intentionally delays payment of installments. However, incapacitated customers should not be subject to this sanction.²⁷ This fatwa also explains that sanctions can be imposed with an amount of money, which is determined based on the

²⁵ Siti Khadijah Ab. Manan dan Norlela Kamaluddin, “The Underlying Contracts Of Islamic Banking (IB) Products And Some Related Issues In The Current Practice,” *Malaysian Accounting Review* 9, no. 2 (2010): 102.

²⁶ Sahroni, *Fikih Muamalah Kontemporer*, 161.

²⁷ Sahroni, 161.

agreement when the contract is agreed upon and the money will be intended for social funds.²⁸

e. Sheikh Wahbah Zuhaili

Wahbah Zuhaili also has a legal opinion on fine implementation for late payment of debts. He believes that in the loan contract, it is permissible to include the buyer's readiness to donate a certain amount of money or the customer if he delays payment; provided that the money is fully recognized as social funds and supervised directly by the sharia supervisory board.²⁹ This legal opinion leads to social sanctions, namely fines agreed upon as funds for social purposes. The fundamental argument of his opinion is a hadith that the Prophet SAW said:³⁰

الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، إِلَّا صَلْحًا حَرَمَ حَلَالًا، أَوْ أَحَلَ حَرَامًا،
وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلَّا شَرْطًا حَرَمَ حَلَالًا، أَوْ أَحَلَ حَرَامًا

"Peace is permissible among Muslims except for peace that forbids a lawful or allows unlawful matter. And Muslims may set conditions except for circumstances that forbid a lawful or allow unlawful matter."

Based on this hadith, the Prophet explains that the agreement made by a person must be fulfilled. Thus, the credit agreement made between the creditor and the debtor that the debtor will be subject to a late fee if he deliberately delays installment payments and aims to pay more attention to the debtor's obligations as a noble goal. It is not a penalty because the money from the fines does not become cash funds by Islamic Financial Institutions; however, it will be allocated as social funds.³¹

²⁸ Sahroni, 161.

²⁹ Tarmizi, *Harta Haram Muamalat Kontemporer*, 474–75.

³⁰ Abû 'isâ Muhammad bin 'isâ bin Saurah bin Mûsa bin adh Dhahâk at Tirmidzî, *Sunan at-Tirmidzî*, vol. 3 (Beirut: Dar al-Gharb al-Islami, 1998), 28.

³¹ Tarmizi, *Harta Haram Muamalat Kontemporer*, 475.

f. Sheikh Yusuf Qardhawi

Yusuf Qardhawi's opinion on the intentional delay of installment payments mentions that the person may be subject to financial sanctions, provided that he deliberately delays payment even though he is capable of paying it. In contrast, if he is unable to afford it, he may not be subject to monetary fines.³² His opinion is based on the Qur'an surah al-Baqarah/2:280:

وَأِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۗ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

“And if (the debtor) is in trouble, give a grace period until he gets relief. And if you give charity, it is better for you, if you know.”

Based on the verse above, Allah orders to give concessions to those who have debts but cannot pay, even if the creditor is in a state of relief, then Allah orders the debt to be given in charity.

Thus, various legal opinions of contemporary scholars above can be compiled in the table below:

Based on the table above, we can find out that the legal opinions of contemporary scholars on the issue of imposing fines for late payment of debts consisted of two views. The first is a disapproving view by arguing that it is part of the added value of debt, which is classified as an expected usury act. Although, these funds will be employed as social funds later. The second is an approving view by assuming that a fine for late payment of debt is allowed as long as it is used for social funds and does not become a profit for Islamic Financial Institutions.

NAME	LEGAL OPINION	
	Legal Status	Argumentation
Erwandi Tarmidzi	Forbidden	There is no penalty requirement for late payment even if the

³² Yusuf Qardhawi, *Fatwa-fatwa Kontemporer*, trans. oleh As'ad Yasin, vol. 3 (Jakarta: Gema Insai Pers, 2002), 534–35.

		debtor does it intentionally.
Abdullah Bin Mani'	Forbidden	Even though the funds from the proceeds of the fine are intended for social funds; it does not change the law of usury contained in the transaction.
Ismail Nawawi	Forbidden	The law is similar to <i>an-nasi'ah usury</i> , which is indeed prohibited in Islamic Sharia.
Oni Sahroni	Permissible	It is permissible under the circumstances of the debtor to carry it out intentionally even though he is capable of paying the installments and the money from the proceeds of the fine does not become income; in contrast, it leads to social funds.
Wahbah Zuhaili	Permissible	It is allowed under an early agreed contract.
Yusuf Qardhawi	Permissible	It is allowed under being deliberately delayed and is capable; on contrary, it is recommended to postpone it until you can afford it or even donate it.

Based on the table above, we can find out that the legal opinions of contemporary scholars on the issue of imposing fines

for late payment of debts consisted of two views. The first is a disapproving view by arguing that it is part of the added value of debt, which is classified as an expected usury act. Although, these funds will be employed as social funds later. The second is an approving view by assuming that a fine for late payment of debt is allowed as long as it is used for social funds and does not become a profit for Islamic Financial Institutions.

D. Conclusion

There are different opinions among contemporary scholars on this issue; some allow it, and some prohibit it to impose sanctions on a certain amount of money to capable customers who deliberately delay installment payments. The prohibited opinions are from Erwandi Tarmizi, Abdullah bin Mani' and Ismail Nawawi arguing that withdrawing a fine in the form of an amount of money is similar to forbidden usury in Islamic law. Meanwhile, approving opinions are from Oni Sahroni and Wahbah Zuhaili arguing that it is allowed to be implemented because it has a deterrent effect on customers to gain more attention on their obligations, as well as funds obtained should not be deposited into bank cash and employed for social funds.

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