Implementation of the Concept of I'tibar Al Ma'alat in Sharia Banks Toward Customer Late Fines for Delaying Payment Obligations

Aminuddin¹, Chindya Pratisti Puspa Devi²

¹Universitas Islam Negeri Sunan Kalijaga, Indonesia
²Sekolah Tinggi Agama Islam Al Barokah, Indonesia

*Corresponding author : chindya.staialbarokah@gmail.com

ABSTRACT

The concept of I'tibar Al Ma'alat is a legal consideration that is carried out based on the participation or understanding of a guideline study and sees its relationship with the consequences that occur, be it good or bad consequences. This study aims to determine the principle of I'tibar Al Ma'alat, the rules and regulations of Islamic banks related to fines on customers who are late in paying obligations to be in line with the concept of I'tibar Al Ma'alat and the impact of the implementation of the concept of I'tibar Al Ma'alat in terms of fines on customers and Islamic banks. This research uses a qualitative method with a normative juridical approach by extrapolating the legal texts set to consider the results with data collection through library research by reading and analysing in the form of fatwa books of DSN-MUI scholars, laws. The findings in this study indicate that the concept of I'tibar Al Ma'alat in the form of the bank continues to impose fines in the bank's internal system with the opportunity for customers to appeal the imposition of fines accompanied by evidence of force majeure faced with a certain period of time. The principle of I'tibar Al Ma'alat provides a solution that
is more valuable, just and beneficial in accordance with the objectives of Maqashid Sharia.

Keywords: Islamic Bank, I’tibar Al Ma’alat, Penalty

INTRODUCTION

Sharia-compliant banks represent a type of financial institution that offers financial support to individuals or businesses in order to fulfill their financial requirements (Alhusain, 2021; Khoiriyah & Putra, 2022). According to article 2 of Sharia Banking Law no. 21 of 2008, sharia banks conduct their business operations based on principles of Sharia, economic democracy, and the application of the precautionary principle (Cahyani, 2016; OJK, 2022). The implementation of this precautionary principle by sharia banks is closely connected to the fact that some of the funds held by these banks come from the general public, who entrust their funds to be managed by sharia banks. This aligns with article 36 of the Sharia Banking Law, which specifies that sharia banks and sharia business units (UUS) are obligated to adopt methods that do not harm the interests of the banks, UUS, and their customers when providing financing and conducting other business activities, it can be said that sharia banks intend to conduct banking activities in the principles of Islamic ideas (Baktiar & Aedy, 2017).

Multiple studies provide support for the hypothesis that Islamic banks exhibit an optimistic growth trajectory, as evidenced by their resilience to the global crisis, their significant contribution to national economic growth, and their superior financial performance in comparison to conventional banks (Rama, 2015; Utama, 2020). Nonetheless, there exists a body of literature positing that Islamic banks in Indonesia still lag behind conventional banks in terms of growth, innovation, and the ability to attract customers to utilize their services (Ansori, 2019; Gumilang & Putra, 2020). Therefore, in order to avoid being perceived as mere opportunists capitalizing on the Islamic label, it is necessary to provide criticism for the improvement of Sharia compliant banks in the future (Islamiyati & Anwar, 2018).
In implementing the Sharia Banking Law, every customer who intends to apply for financing at a sharia bank is subjected to a 5C test, namely character, capacity, capital, collateral and condition to ensure that the customer has good character in personal life and the business environment (Putra & Hasbiyah, 2018). Apart from that, customer capacity is a form of consideration of the capabilities possessed by prospective customers in carrying out their business in order to obtain the expected profits. Capital or the amount of funds is the own capital owned by the prospective customer. Conditions are situations and conditions that influence economic conditions which may at some point influence the smooth running of prospective customers' businesses. Meanwhile, collateral is goods handed over by customers as collateral for the financing they receive (Hamta, 2014; Niswah & Falikhatun, 2021; Rahma, 2018). Estimations of customer evaluations predicated on the 5C principles do not invariably align with actuality. Frequently, the circumstances of the customer differ from those that were appraised at the initiation of the financing application. Among the 5C principles that financial institutions commonly prioritize, character emerges as a noteworthy consideration due to the propensity of circumstances to evolve. The customer's character, as assessed during the initial evaluation, appears commendable and serves to convince the financial institution of their commitment to fulfilling payment obligations in the future (Halim & Putra, 2023; Irfani et al., 2020; Silviana & Putra, 2017). This circumstance is quite customary for prospective customers, thereby leading to the bank's granting of their financing request. Subsequent to the disbursement of funds to the customer, during the early stages, the customer typically demonstrates proficiency in fulfilling their payment obligations. However, after a few months elapse, the customer commences experiencing difficulties in smoothly meeting their obligations.

Every sharia bank basically has provisions and regulations for handling problematic financing, including how to impose late fines on customers who are late in paying their obligations. This provision is also integrated with the Fatwa of the National Sharia Council – Indonesian Ulema Council (DSN MUI) No: 17/DSN-MUI/IX/2000 concerning sanctions on wealthy customers who delay payments.
MUI was established with the goals of addressing the economic concerns of Muslims and promoting the application of Islamic teachings in the financial and economic sectors in compliance with Islamic law has issued Fatwa No: 17/DSN-MUI/IX/2000 (Maula, 2023). Among the legal provisions of the MUI DSN Fatwa are the sanctions mentioned in this fatwa which are sanctions imposed by sharia financial institutions on customers who are able to pay, but deliberately delay payments. Sanctions may not apply to clients who are unable to pay due to a force majeure event, but they may apply to capable clients who postpone payment or who lack the motivation and good faith to settle their debts. Sanctions are based on the ta'zir concept, which tries to discipline customers to fulfil their duties. Sanctions may take the form of a monetary fine, the exact amount of which is decided upon when the contract is signed and is based on an agreement. Penalty proceeds are classified as social funds (Antonio, 2001; Sahroni, 2020).

The concept of I'tibar al-Ma’alaat is applied as a way to produce benefits and avoid harm is a concept that is the result of the legal determination procedure stages mentioned (BP & Wijaya, 2018). This consideration is in accordance with the main objective of maqasid al-syariah when making a decision, which is for the benefit of humans in this world and in the afterlife. The I'tibar Al Ma’alat concept is one of the principles in sharia banking which refers to the principle of trust in financial transactions. In the context of fines for late payment of customer obligations, Islamic banks must implement this concept with full policy and integrity (Asbi & Sulong, 2018).

In this case, several sharia banks implement a general policy of sanctions for late payments. Every customer who is late in making a payment, the sharia banking system will automatically calculate the late fee either daily or monthly or for a certain period without looking at the real condition of the customer. Sharia banks find it difficult if every customer who makes a late payment is checked one by one. In fact, in the MUI DSN Fatwa, it is stated that customers who do not or have not been able to pay due to force majeure should not be subjected to sanctions. This is the public’s question as to whether Islamic banks have implemented the MUI DSN Fatwa correctly or not. The
The concept of I’tibar Al Ma’alat is an approach that can be an alternative solution to community problems, especially in the field of Muamalah.

An investigation by Lukman dkk., (2022) explains that the concept of I’tibar Al Ma’alat is applied as a way to produce benefits and avoid wrongful actions. The main principle of this concept determines the law of an action based on consideration of the consequences arising from the action. Harmoko, (2019) in his research stated that the application of Fatwa No.17/DSN-MUI/IX/2000 concerning sanctions on wealthy customers who delay financing is considered appropriate, and must even be emphasized in its application, because the impact of implementing this fatwa is quite good for sharia banks, namely as a warning to customers who have the potential to default.

However, the difference between this present research and the previous one is our study raises a concern toward the issue of late payment fines for Islamic bank customers while implementing the I’tibar Al Ma’alat concept. The aim of this research is to examine the principles of I’tibar Al Ma’alat, the rules and regulations of sharia banks regarding fines for customers who are late in paying their obligations so that they are in line with the I’tibar Al Ma’alat concept and the impact of implementing the I’tibar Al Ma’alat concept in terms of fines for customers and sharia banks.

RESEARCH METHOD

This research uses a qualitative method with a normative juridical approach by extrapolating established legal texts to consider the results and then analyzing these texts to obtain appropriate provisions in establishing laws (Astiti & Tarantang, 2020; Benuf & Azhar, 2020). The analytical description method is used to describe applicable laws and regulations linked to legal theory in the implementation of legal practice (Jazim Hamidi SH et al., 2012). The data source in this research uses primary data obtained through direct observation. The secondary data in this research is in the form of the MUI DSN Fatwa, Legislation, book research, journals, and several articles related to the problem object being studied. In collecting data related to the object of study, the author conducted library research. Library research is a type of research that
uses reading books as a basis for collecting data that is related to research results (Anggito & Setiawan, 2018; Sugiyono, 2018). The authors carried out library research by reading and analyzing DSN-MUI ulama fatwa books, Banking Laws, brochures, illustrated notes, PSAK, PBI, OJK, and other supporting data. The collected data will be processed, then discussed and analyzed by analyzing all existing data and adjusting it to the results of data collection to draw conclusions. The concrete steps that the author took in data analysis were by reading and researching the data obtained to obtain complete and valid data and recording the data systematically and consistently for drawing conclusions (Moleong, 2014).

RESULTS & DISCUSSION

**Sharia Bank Regulations and Conditions in Implementing Fines for Delayed Payments**

On the issue of sanctions for postponing debt payments, the National Sharia Council of the Indonesian Ulema Council, after considering and observing from various points of view, states that sanctions are imposed on people who are capable but delay in paying debts. In this case, the Sharia Council Fatwa No.17/DSN-MUI/IX/2000 concerning sanctions on capable customers who delay payment decides that: (1) The financial organisations that follow sharia law impose penalties on their customers who have the means to pay but purposefully postpone making the payment. These penalties are detailed in this fatwa. (2) Sanctions might not apply to customers who are incapable of paying because of a force majeure event. (3) Sanctions may be imposed on capable clients who fail to make payments on time, lack the motivation, or behave dishonestly when making payments. (4) The foundation of sanctions is the ta'zir concept, which seeks to instill discipline in clients in fulfilling their duties. (5) Sanctions may take the form of a monetary fine, the amount of which is decided upon at the time the contract is signed and is based on an agreement. (6) Money that comes from fines is called social money.

People who break their promises may face consequences under the compilation of sharia economic law. Article 36 explains the conditions under which a person may
be considered to have broken a promise: (1) Does not perform the act for which they were appointed. (2) Execute his commitment, but not exactly as he said. (3) He fulfilled his pledge, but it was too late. (3) Acting in a way that is prohibited by the agreement. Article 38 outlines the many forms of sanctions that may be imposed on parties who breach the agreement. These include fines, contract cancellation, risk transfer, payment of compensation, and/or payment of court expenses. Sharia financial institutions have the authority to charge late fees to clients who fail to pay, up to a predetermined, nominal sum that was agreed upon at the time the contract was established and signed. If a debtor is able to pay but chooses to postpone payment, they have owed the creditor money. As a result, penalties are applied to enforce discipline and make sure that clients fulfil their commitments.

The funds generated from fines given to customers may not be recognized as income or wealth at Sharia Financial Institutions. This is stipulated in the Sharia Council Fatwa No: 123/DSN MUI/XI/2018 concerning the use of funds that may not be recognized as income for sharia financial institutions, sharia business institutions and sharia economic institutions. The value or amount of fines imposed on customers is handed over to each sharia financial institution on the basis of an agreement between the customer and the sharia financial institution when the contract is signed. Fines received by sharia financial institutions are then included and recognized as social funds in the books of the sharia financial institution and cannot be recognized as profit. This result is in line with the research results of Harmoko (2019) which shows that the implementation of sharia banking is in accordance with the MUI DSN Fatwa regarding funds collected from late fines not being recognized as sharia bank income. However, it is included in the social funds category, its use is intended as social funds according to fatwa no. 17/DSN-MUI/IX/2000 concerning sanctions for wealthy customers who delay financing payments. PT Bank Muamalat Indonesia as the first sharia bank in Indonesia also applies a fine system based on PSAK No.102 and DSN MUI Fatwa No.17/DSN MUI/IX/2000. The treatment of fines in question consists of applying fines and distributing fine funds obtained from defaulting customers in murabahah financing. The fine funds were channeled through Baitul Maal Muamalat which is a
subsidiary of Bank Muamalat as an institution officially appointed to distribute corporate social responsibility funds including fines. Fine funds are not recognized as income and part of the bank's operational profits can be seen by giving customers the opportunity to apply for fines to be waived if the customer is unwilling to pay the fine. In other words, whether or not the fine is paid does not provide any contribution to the bank as income, the fine will be allocated for social purposes and public facilities such as assistance in building public toilets and roads in remote areas, etc.

The Concept Of I’tibar Al Ma’alat In Determining Fines For Customers Who Are Late In Payments

One of the risks faced by financial institutions in financing is bad credit. Customer installments that are not smooth cause banks to be overwhelmed in increasing income. Ideally, all financing runs smoothly according to the agreement at the beginning of the contract. However, unforeseen external conditions such as force majeure caused customers to fail in maintaining their business. DSN-MUI Fatwa 17/DSN MUI/IX/2000 emphasizes that clients who are able to pay but purposefully postpone payments are subject to the sanctions imposed by sharia financial institutions. If the customer does not or has not been able to pay due to force majeure, then sanctions may not be imposed. In this case, the researcher conducted an analysis map of the conditions of customers who delayed payment of their obligations to Islamic banks which can be seen in table 1.

**Tabel 1. Conditions and Reasons for Customers Delaying Installments**

<table>
<thead>
<tr>
<th>No</th>
<th>Customer Conditions</th>
<th>Main reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Force majeure</em></td>
<td>Customers experience disasters from their business that are beyond the customer's control and intentional, either due to natural factors or unintentional human error factors.</td>
</tr>
<tr>
<td>2</td>
<td><em>Force majeure</em></td>
<td>Conditions resulting from a sluggish economy that is unfavorable to customers, for example a monetary crisis or a virus pandemic.</td>
</tr>
<tr>
<td>3</td>
<td><em>Force majeure</em></td>
<td>Customers experience business failure because the customer takes deliberate actions that can worsen the customer's business. For example, carrying out business activities for...</td>
</tr>
</tbody>
</table>
The I’tibar Al Ma’alat principle can provide legal views and solutions to problems faced by Islamic banks. This method will consider the legal consequences of conditions faced by customers and sharia banks, including customers experiencing disasters from their business beyond their control and without the customer's intention, whether due to natural factors or human error. For customers with this condition, Islamic banks are obliged to waive late fines. If the system has made a debit automatically, it must be written off or returned. Sluggish economic conditions that do not benefit customers, for example the monetary crisis or the Covid-19 pandemic. For customers with this condition, Islamic banks can also waive late fines. If the system has automatically debited it, it can be written off or returned. However, there is something that is different from point 1, namely that when it is said that economic conditions are sluggish, banks can still impose fines when the results of the bank's investigation find that in general the impact of the economic downturn has no impact on businesses financed by the bank for customers. In the case of the Covid-19 pandemic, banks financed customers in the drug business, because the drug business was in high demand and sold well in the market so that even though economic conditions were sluggish, the condition of the bank’s financing objects to customers had no impact and was even profitable. This condition requires clarification and direct bank investigation. Customers experience business failure because the customer takes deliberate actions that can worsen the customer's business in carrying out business activities for gambling businesses, businesses with high risks without calculation, money laundering and so on. In this condition, banks are allowed to impose fines on customers. This is because the customer has carried out ta'addi, tafrih or mukhalafat al-syuruth actions. Ta'addi (ifrath) is doing something that is not permitted or should not be done, Taqshir (tafrith) is not doing something that should be done and Mukhalafat al-syuruth is violating the provisions (which do not conflict with sharia) agreed upon by the parties who agreed.
In the I'tibar Al Ma'alat concept, the bank continues to impose fines through the bank's internal system but is given the opportunity for customers to appeal against the imposition of these fines accompanied by evidence of the force majeure they are facing within a certain period of time. Information regarding these fine provisions needs to be conveyed to the customer in detail when the initial contract is made. So that customers understand what to do when they are fined by a sharia bank. The I'tibar Al Ma'alat concept can provide solutions to Islamic banks to ensure force majeure for each customer. In this case, the bank does not need to investigate one by one customers who delay payments because this will actually worsen the financial condition of Islamic banks which requires quite large costs in carrying out investigations considering that the conditions of customers are geographically different from one another. The solution offered through the I'tibar Al Ma'alat method according to sharia in certain cases will be more valuable, just and beneficial in accordance with the objectives of maqasid sharia.

In Al Mustafa (2020) research, the bank provides convenience to its customers in the installment payment process by providing time leeway without having to add any additional burden to the customer. However, in this case, the bank applied fines to all customers who were late in paying installments without reviewing the problems faced by the customers. If we study this case more deeply, it will certainly increase the burden on customers, because customers have to pay installments and then add fines. This is very contradictory to Islamic economics which strictly protects the interests of all parties to transactions, both banks and customers, so that no one party should feel unfair.

_The Impact of Implementing the I'tibar Al Ma'alat Concept on Customers Who Are Affected by Fines_

The principle of I'tibar Al Ma'alat is one of the general principles in carrying out ijtihad in Islamic law. A mufti or mujtahid must consider the impact that law enforcement will have and predict the good or bad possibilities of the fatwa he issues. DSN MUI Fatwa No: 17/DSN-MUI/IX/2000 concerning sanctions for wealthy
customers who delay payments basically provides guidelines for sanctions for the behavior of customers who delay paying their obligations to the bank. However, the fatwa does not yet consider the impact of this law on the Islamic banking side. Sharia banks need to be provided with solutions in implementing the MUI DSN Fatwa. Among the benefits obtained through the I’tibar Al Ma’alat concept are;

1. Affirms the main goal of sharia law in realizing benefits and avoiding evil.
2. Making the concept of justice in Sharia law by applying the concept of I’tibar Al Ma’alat can ensure that every action carried out coincides with the objectives of Sharia, such as preventing harm and damage to other people.
3. The application of the I’tibar Al Ma’alat concept can show aspects that are in accordance with sharia principles because this can encourage the achievement of sharia goals which require benefit and avoid evil.

By implementing the I’tibar Al Ma’alat method, the bank, in implementing the imposition of fines on customers who are late in paying their obligations, can immediately debit the customer's account according to the nominal fine agreed at the beginning of the contract based on the amount of time late without having to carry out a single investigation. One by one out of thousands of customers who experience the same condition. In this case, the bank can indirectly save on investigation costs from the impact of late customer payments. In research conducted by Khomayny & Abdullah (2020), Sharia banks have the right to charge late fees to clients who use murabahah financing. It must, however, be founded on the Al-Adl idea, according to which consumers who are able but postpone payment are the ones who face sanctions. Furthermore, the money collected in fines must be distributed to the public rather than to sharia banks for profit or as a source of income. The goal of ta'zir, the idea guiding the enforcement of fines, is to instill in customers a greater sense of discipline in fulfilling their commitments, rather than pursuing profit. In this way, one of the tenets of sharia banking is the realisation of justice between capital sources and users, as evidenced by the increasing value of sharia bank financing, so that in the future, the existence of the sharia bank business can continue to be maintained.
The benefits for customers of applying the I'tibar Al Ma'alat method in terms of imposing sanctions also have a very positive impact on customers who experience force majeure. Even though customers have been charged late payment fines by the bank system, customers can defend or appeal against the conditions they are experiencing. Customers who experience force majeure conditions that meet the bank's criteria can receive a late fee refund policy. The positive impact for banks and customers is a reflection of the implementation of I'tibar Al Ma'alat. This method brings benefits to both parties in cases of late fines being imposed.

CONCLUSION

Based on the principles and provisions of Islamic banks in implementing sanctions policies for late payments in accordance with DSN MUI Fatwa No. 17/DSN-MUI/IX/2000. Every customer who is late in making a payment, the system will automatically calculate the late fee, either daily or monthly or for a certain period. Sharia financial institutions have the authority to charge late fees to clients who fail to pay, up to a predetermined, nominal sum that was agreed upon at the time the contract was established and signed. The value or amount of fines imposed on customers is handed over to each sharia financial institution on the basis of an agreement between the customer and the sharia financial institution when the contract is signed. Fines received by sharia financial institutions are included and recognized as social funds in the books of the sharia financial institution and cannot be recognized as profit. The principle of I'tibar Al Ma'alat is one of the general principles in carrying out ijtihad in Islamic law. With the concept of I'tibār Al ma'alāt, the bank continues to impose fines through the bank's internal system but is given the opportunity for customers to appeal against the imposition of these fines accompanied by evidence of the force majeure they are facing within a certain period of time. Information regarding these fine provisions needs to be conveyed to customers in detail when the initial contract is made. Then the customers understand what to do when they are fined by a sharia bank. Customers who experience force majeure conditions that meet the bank's criteria can receive a late fee refund policy. The I'tibar Al Ma'alat concept has provided
solutions and space for Islamic banks in dealing with customer behavior that delays payments. The I’tibar Al Ma’alat principle provides solutions that are more valuable, fair and beneficial in accordance with the objectives of Maqashid Syariah. It can be concluded that this method brings benefits to both parties in cases of late fines being imposed.

REFERENCES


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