
Original Research Article

Ta'zir Concept in Sharia Banking (Analysis of Fatwa DSN MUI Number: 17/DSN-MUI/IX/2000)

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ABSTRACT

This research proves that the giving of ta'zir in the DSN MUI fatwa is based on mutual agreement which aims to obtain rights as users and depositors. The method used in this study is a literature review with a normative legal approach to the MUI DSN fatwa NUMBER: 17 / DSN-MUI / IX / 2000. this research found that ta'zir is a sanction in the form of money (a fine), the amount of which is not determined, but rather was made based on the agreement of both parties. In addition, the fine funds are not used as bank revenue but as social funds. Penalty is not to replace the value of real loss that must be experienced (fixed cost) by the bank, but so that customers are more disciplined in carrying out their obligations.

Keywords: Ta'zir, Concept, Sharia, Banking, DSN;MUI

Introduction

The attitude of procrastinating payments made by customers to banks that provide funding loans can be subject to action or sanctions in accordance with the conditions and reasons (Belkhir, Grira, Hassan, & Soumaré, 2019, p. 39; Chen, 2020; Gaganis, Galariotis, Pasiouras, & Staikouras, 2020, p. 98). In Islamic teachings (Berg, El-Komi, & Kim, 2016, p. 39; Çokgezen & Kuran, 2015, p. 862; Yasmin, Ghafran, & Haslam, 2020, p. 102) delaying payment for those who are capable is an act of wrongdoing, as the words of the Prophet SAW from Abi Hurairah RA. which states that postponing repaying debts for the rich is tyrannical and if one of you the debt is transferred to the rich, he should follow (Fadillah, 2020, p. 125; Farhan, 2018; Fransiskawati, 2018).

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With regard to the imposition of fines (Istiqomah, 2020), the Compilation of Sharia Economic Law states that: "A party may be deemed to have broken a promise, if due to its error: a. Not doing what was promised to do it. b. Carry out what he promised, but not as promised. c. Doing what he promised, but too late. d. Doing something according to the agreement cannot be done " (Pulungan, 2018; Rahmah, Abdurrahman, & Nurhasanah, 2016, p. 556). Regarding the type of sanction stated in Article 38, namely: "The party in the contract that breaks a promise can be subject to sanctions: a. Pay compensation b. Cancellation of contract c. Risk transition d. Fines, and / or e. Paying court fees " (Muhajirin, 2019, p. 237). As for the application of fines by Islamic banks to capable customers (Lestari & Nurhasanah, 2020; Putri, 2016), but delaying payment refers to the MUI National Sharia Board Fatwa Number: 17 / DSN-MUI / IX / 2000 which states that:

"Able customers who can delay payments and / or do not have willingness and good faith to repay debts may be subject to sanctions. The sanctions are based on the ta'zir principle, which aims to make customers more disciplined in carrying out their obligations. Sanctions can be in the form of a fine amount of money determined on the basis of an agreement and made when the contract is signed".

The legal foundation of this question is the Prophet Saw's hadith, which said:

عَنْ عَمْرِو بْنِ عَوْفٍ الْمُرَزِيِّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: (الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، إِلَّا صُلْحًا حَرَّمَ حَلَالًا وَ أَحَلَّ حَرَامًا، وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلَّا شَرْطًا حَرَّمَ حَلَالًا وَ أَحَلَّ حَرَامًا) رَوَاهُ التِّرْمِذِيُّ وَصَحَّحَهُ. وَأَنْكَرُوا عَلَيْهِ؛ لِأَنَّ رَاوِيَهُ كَثِيرٌ بَنَ عَبْدُ اللَّهِ بْنُ عَمْرٍو بْنِ عَوْفٍ ضَعِيفٌ. وَكَانَتْهُ إِعْتَبَرَهُ بِكَثْرَةِ طُرُقِهِ

Means: "From Amar Ibn Auf al-Muzany Radliyallaahu 'anhu that Rasulullah Saw. said: "Peace is lawful between the Muslims, except for Peace which forbids things that are haram or justifies things that are haram. Muslims are obliged to adhere to their terms, except those that prohibit things that are lawful or that which are haram." Sahih Hadith narrated by Tirmidhi. (Bulughul Maram, Hadith Number 895).

Likewise, in another hadith, which states:

حَدَّثَنَا سُرَيْجُ بْنُ النُّعْمَانِ حَدَّثَنَا هُشَيْمٌ أَخْبَرَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَطْلُ الْغَنِيِّ ظُلْمٌ وَإِذَا أُحِلَّتْ عَلَى مَلِيٍّ فَإِتْبَعُهُ وَلَا يَبْعَثِينَ فِي وَاحِدَةٍ

Means: Having told us [Suraij bin Nu'man] had told us [Husyim] had informed us [Yunus bin Ubaid] from [Nafi '] of [Ibn Umar], he said, Rasulullah sallallahu' alaihi wasallam said: "People rich who postpone payment of debt without a reason is an injustice, therefore if your debt is transferred to someone who is wealthy, follow him, and there are no two contracts of purchase in one item. "(Musnad Ahmad hadith number 5138)

That is why Indonesians need to know the connection between fines charged to Islamic banks. There appear to be two explanations for this: It is because of that the public needs a great deal of funding from the Shari'ah Financial Institution on the basis of the concept of sale and purchase or other contracts where payment to Shari'ah Financial Institution is made in installments. That the consumer can often defer payment obligations, either in the sale and purchase arrangement or in other contracts, on the basis of the agreement between the two parties, at a predetermined time.

The purpose of the sanctions *ta'zir*, namely:

1. Preventive. Aimed at others who have not yet done *Jarimah*.
2. Repressive (making a deterrent). Intended so that the perpetrators do not repeat the deeds of the finger in the future.
3. Curative (reconciliation). *Ta'zir* must be able to bring improved criminal behavior in the future.
4. Educational (education). Expected to be able to change his lifestyle towards a better.

Ta'zir referred to in the DSN Fatwa above is not to replace the value of *real losses* that must be experienced (*fixed cost*) by the bank or to compensate for the estimated losses (*potential loss*) due to opportunities that are lost (*al-furshah al-dha-i'ah*), but so that customers are more disciplined in carrying out their obligations (Nurmusyahidah, Hamid, & Famauri, 2019, p. 241). This means that the application of *ta'zir* penalties (fines) aims to have a deterrent effect on customers (Hafidzi, 2017). A contract is made on the basis of consideration of bringing benefits and avoiding the *mudarah* (harm) of people's lives. This principle warns that any form of contract is carried out on the basis of consideration of bringing benefits and avoiding harm in people's lives, with the result that all forms of contracts that damage people's lives are not justified. This is the value of this study that the negotiated fine is known as usury or bank interest or profit sharing given or not given to clients with their knowledge?. Compared with other researchers who have also investigated the DSN MUI decision, this is what makes this study important.

Methods

The topic of the problem to be examined in this paper is related to legal objects, namely the process of implementing *ta'zir* in Islamic banking. So this type of research uses normative legal research on the protection of the rights of users and depositors which is based on the DSN fatwa no 17 / DSN-MUI / IX / 2000. The approach used in this research is the statutory approach, which is used to review laws and regulations related to the theme being researched. (Christiani, 2016, p. 201).

The primary source of the legal material for this research is the focus on the results of the review of the DSN fatwa No. 17 of 2000 in finding sanctions in the form of fines imposed on users and replaced with money in their financing. The technique of collecting legal materials is carried out by using the literature method of research materials to collect data and conclude the findings in this study. The analytical method used in this research is prescriptive analysis (Lepenioti, Bousdekis, Apostolou, & Mentzas, 2020, p. 57), in which the researcher wishes to provide arguments or judgments about what should be according to the law on legal facts to find the results of the research objectives.

Results and Discussions

1. The Concept of *Ta'zir* in Islamic Economics

Ta'zir (punishment which has no rules in Shara') is an educational penalty for sin (immorality) (Adil & Abdullah, 2016). Basically *ta'zir* intended to prevent the occurrence of default, negligence customers who deliberately delaying payments. Fines (غرامة) in Islamic terminology are included in the *ta'zir* economic sanctions. In the area of sharia, *ta'zir* is charged to an individual or organization because of the business principle to educate, and so as not to forget it or put it off. (Abas & Hussin, 2017, p. 241; Adil & Abdullah, 2016).

For example, delaying the debt of the person who can still pay it is an act of wrongdoing, under the law of the economic. This injustice is because the owner of the property should be able to use and maintain his property, but he can't, because the property has not been obtained. Due to the unfair aspect, therefore, delaying here is a type to enforce *ta'zir*. The act of receiving benefits from other properties is likewise an act of persecution by the moneylender. He needs to accept *ta'zir* for that too. The Hambali School, the majority of Maliki School scholars, the Hanafi School, and some scholars from the Shafi'i school of thought argue that a judge may impose a fine for a crime *ta'zir* (Fadli, 2017, p. 219). The

reason they put forward is a narration from Bahz bin Hakim who talks about camel alms. In Hadith, the Prophet SAW said:

أَخْبَرَنَا عَمْرُو بْنُ عَلِيٍّ قَالَ حَدَّثَنَا يَحْيَى قَالَ حَدَّثَنَا يَهُزُّ بْنُ حَكِيمٍ قَالَ حَدَّثَنِي أَبِي عَنْ جَدِّي قَالَ سَمِعْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ فِي كُلِّ إِبِلٍ سَائِمَةٍ فِي كُلِّ أَرْبَعِينَ ابْنَةً لُبُونٍ لَا يُفَرَّقُ إِبِلٌ عَنْ جَسَابِهَا مَنْ أَعْطَاهَا مُؤْتَجِرًا فَلَهُ أَجْرُهَا وَمَنْ أَبِي فَإِنَّا آخِذُوهَا وَشَطْرَ إِبِلِهِ عَزْمَةٌ مِنْ عَزَمَاتِ رَبِّنَا لَا يَجِلُّ لِأَلِ مُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنْهَا شَيْءٌ

Meaning:

'Amru Ibn' Ali he said; Has told us Yahya he said; For telling us Bahz bin Hakim he said; My father had told me from my grandfather, he said; I heard the Prophet (PBUH) say: "For every forty camels released, (looking for food for themselves), the zakat of one is *Ibnatu Labun's* camel (camel whose age is in its third year). It cannot be separated by the camel to reduce the zakat calculation. Anyone gives it because expecting the reward, he will get the reward. Whoever refuses to issue it, we will take it along with half of his wealth, because of our Rabb's decision. It is not lawful for Muhammad's family to eat even the smallest (zakat) wealth. " (Narrated by Nasa'i).

Based on the source, there are two forms of *jarimah ta'zir*, namely *jarimah ta'zir* ruler (ulul amri) and *jarimah ta'zir syara'* (Hosseini & Khoshvaght, 2016). The two *jarimah ta'zir* have similarities and differences, the similarity is determined by the ruler because the types of punishment for both forms of *jarimah ta'zir* are mentioned by Islamic law. The difference is that *ta'zir* rulers are temporary and incidental, that is, if necessary they are considered to be *jarimah*, but if there is no need to be considered as *jarimah* and related to the general benefit, *Jarimah ta'zir syara'* is eternal and is forever considered *jarimah*. Since it is a proposal, *ta'zir* can be used and not implemented depending on the gain side. If it is considered by the Imam / competent authority that no application is available, then *ta'zir* must not be enforced. But if it happens the other way around, then for *ta'zir* it is also obligatory.

2. Transactions Between Ta'zir and Penalties Within the Bank

As is known, *ta'zir* in Islamic economics is sanctions in the form of money (fines), the amount of which is not stipulated, but made by agreement of the two parties (Hasanah, 2018; Hosseini & Khoshvaght, 2016, p. 304). In addition, the fine funds are not used as bank revenue but as social funds. Fines not to replace the loss of real value (*real loss*), which

must be experienced (*fixed cost*) by the bank, but that customers are more disciplined in carrying out its obligations (Apriliani, 2020; Putri, 2016).

The basic explanation that a customer is liable to a fine is that default or default is considered to have been violated by the customer. The default is that, prior to the due date, the customer is unable to make a complete settlement or installment payment. Imposing sanctions for customers who are negligent of their obligations refer to the MUI National Sharia Board Fatwa Number: 17 / DSN-MUI / IX / 2000 concerning Sanctions for Customers Who Are Able to Delay Payments stating that (Harmoko, 2019, p. 32; Hutami & Triyanto, 2016, p. 204):

- a. Sanctions imposed on Islamic financial institutions to customers who able to pay, but delaying payment on purpose.
- b. Customers who are unable to pay due to *force majeure* may not be subject to sanctions.
- c. Capable customers who delay payment and / or do not have the will and good faith to pay their debts may be subject to sanctions.
- d. Sanctions are based on the principle *ta'zir* , which aims to make customers more disciplined in carrying out their obligations.
- e. Sanctions can be in the form of a fine of an amount of money determined on the basis of an agreement and made when the contract is signed.
- f. Funds originating from fines are intended as social funds.

Judging from the MUI National Sharia Board Fatwa above, it can be said that all capable customers who delay payment and / or do not have the will and good faith to pay their debts are subject to sanctions (fines) (Harmoko, 2019, p. 40; Sunur, 2018; Yufitasari, 2019). This shows that the imposition of sanctions does not take into account the conditions of the perpetrators, as previously explained, the implementation of *ta'zir* must consider the culprit because the condition of the culprit is not always the same both the motive of the action and the psychological condition. In addition, "funds originating from fines are intended as social funds". As explained earlier, sanctions in the form of fines must be a threat, namely by withdrawing convicted money and withholding from it until the offender's condition becomes good. If it has become good, the treasure is returned to him, but if it does not become good, the treasure is given to the path of goodness. This means that the fines cannot be used by the bank for any purpose, because the fines are the right of the negligent customer. The bank is only entitled to withhold negligent customer property. If the negligent customer has become good, the detained property must be returned to him (Hosseini & Khoshvaght, 2016, p. 304).

A judge may stipulate a fine for a crime (*ta'zir*), if according to his consideration that fine is the right thing to apply to a criminal. According to them, in *ta'zir* a judge must always strive so that the sentence he applies really can stop (at least reduce) someone committing the same crime. Therefore, in determining a sentence, a judge must really know the convict's person, as well as the entire environment that surrounds him, so that he can precisely determine his sentence (Himmah, 2018). *Ta'zir* in Islamic economics are requirements that are made and mutually agreed upon by banks and customers in a transaction. These requirements are in the form of customer promises, where if the customer does not fulfill his promise, then the customer will give a number of his wealth to the poor through the bank. According to the Hanbali and Maliki schools that transactions and conditions are free, so there is nothing forbidden except those indicated by the prohibition of Islamic teachings with strict arguments or *qiyas* (Toha, 2018, pp. 40–48).

The origin of the transaction is the willingness of both parties. The consequence is to implement the commitments they agreed upon. Promises or contracts must be carried out without exception and the contract will not be binding unless done legally. According to Muhammad Rasyid Rida the verse shows that every word or deed considered as a contract is obligatory to be carried out as instructed by Allah SWT, as long as it does not contain cases that justify the haram and forbid the halal. A contract is made based on consideration of bringing benefits and avoiding the conditions of community life. This principle warns that any form of contract is carried out on the basis of consideration of bringing benefits and avoiding harm in people's lives, with the result that all forms of contracts that damage people's lives are not justified, for example trading drugs, drinking, gambling, pork, and blood (Stefhany, 2019).

Deliberation, notice, warning, fines and/or collateral execution can often be the issue of penalties for competent customers who delay financing. The conditions for deciding clients who are subject to fines are seen from the state of the home, owned properties, owned businesses, and neighborhood data. There may be several variables that cause customers to postpone payment, including consumer, economic and family factors that are not in good faith. If one of the parties fails to meet its responsibility or if there is a conflict between the two parties, a settlement will be made by the Syari'ah Arbitration Board after no decision has been reached by deliberation. By imposing penalties in the form of fines and enforcement of this promise, consumers who fail to fulfill their obligations are meant to be fined or punished in order not to replicate their acts again and to have a deterrent effect on individuals who fail to fulfill an agreement (contract).

Conclusion

In Islamic economics, *ta'zir* is sanctions in the form of money (fines), the amount of which is not stipulated, but is made based on an agreement between the two parties. In addition, the fine funds are not used as bank revenue but as social funds. Fines not to replace the loss value of real (*real loss*), which must be experienced (*fixed cost*) by the bank, but that customers are more disciplined in carrying out the obligations that refer to the National Sharia Board Fatwa MUI No. 17 / DSN-MUI / IX / 2000 on sanctions for customers who are able to procrastinate payments. *Ta'zir* in Islamic economics are requirements that are made and mutually agreed upon by banks and customers in a transaction. These requirements are in the form of customer promises, where if the customer does not fulfill his promise, then the customer will give a number of his wealth to the poor through the bank.

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