

## THE SYSTEM OF IMPOSING FINES AND ITS EFFECTIVENESS IN REDUCING FRAUD IN PERUM PEGADAIAN PRODUCTS IN THE CONTEXT OF *TA'WIDH*

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### Abstract

The penalty system and its effectiveness in reducing *fraud* in Perum Pegadaian products are examined through the lens of *ta'widh*. *Ta'widh* is a form of compensation imposed on customers due to negligence or delay in fulfilling contractual obligations, intended to cover the actual losses suffered by Islamic financial institutions, not as a means of profit-seeking. This study focuses on the mechanism for imposing fines at Perum Pegadaian, their effectiveness in preventing fraud and customer default, and their conformity with the principle of *ta'widh* as defined in sharia provisions. This study uses a normative empirical method with a descriptive qualitative approach. Data were obtained through interviews with Pegadaian Syari'ah employees and analysis of relevant documents. The results show that the penalty system at Perum Pegadaian serves a preventive function, improving payment discipline and reducing the potential for fraud through deliberate late payments and contract misuse. However, in practice, penalties are still imposed on a standard basis and are included in the contract, so they may not fully reflect the actual losses as required by the principle of *ta'widh*. This study suggests that the penalty system at Perum Pegadaian is functionally effective in reducing *fraud* but needs improvement to better align with the principles of justice and Sharia compliance, particularly in determining the amount of *ta'widh* based on actual losses.

**Keywords:** *Ta'widh*, penalty, Sharia Pawnshop, *fraud*, default, effectiveness.

## Abstrak

Sistem denda dan efektivitasnya dalam mengurangi *penipuan* pada produk Perum Pegadaian dianalisis melalui perspektif *ta'widh*. *Ta'widh* adalah bentuk kompensasi yang dikenakan kepada pelanggan akibat kelalaian atau keterlambatan dalam memenuhi kewajiban kontrak, bertujuan untuk menutupi kerugian aktual yang dialami oleh lembaga keuangan Islam, bukan sebagai sarana mencari keuntungan. Penelitian ini berfokus pada mekanisme penetapan denda di Perum Pegadaian, efektivitasnya dalam mencegah kecurangan dan default pelanggan, serta kesesuaiannya dengan prinsip *ta'widh* sebagaimana diatur dalam ketentuan syariah. Penelitian ini menggunakan metode empiris normatif dengan pendekatan kualitatif deskriptif. Data diperoleh melalui wawancara dengan karyawan Pegadaian Syari'ah dan analisis dokumen terkait. Hasil menunjukkan bahwa sistem denda di Perum Pegadaian memiliki fungsi preventif, meningkatkan disiplin pembayaran, dan mengurangi potensi penipuan melalui pembayaran terlambat yang disengaja dan penyalahgunaan kontrak. Namun, dalam praktiknya, denda masih dikenakan secara standar dan termasuk dalam kontrak, sehingga mungkin tidak sepenuhnya mencerminkan kerugian aktual sebagaimana *required* oleh prinsip *ta'widh*. Studi ini menyarankan bahwa sistem denda di Perum Pegadaian secara fungsional efektif dalam mengurangi *penipuan* tetapi memerlukan perbaikan untuk lebih selaras dengan prinsip keadilan dan kepatuhan Syariah, terutama dalam menentukan jumlah *ta'widh* berdasarkan kerugian aktual.

**Kata kunci:** *Ta'widh*, denda, Pegadaian Syariah, *penipuan*, gagal bayar, efektivitas.

## INTRODUCTION

The development of sharia-compliant financial institutions has increased significantly, in line with growing public awareness of the importance of a sharia-compliant financial system. The Sharia financial system not only emphasises profit but also upholds the values of fairness, transparency, and moral responsibility in every transaction. One of the financial institutions that plays a role in the development of Islamic financing is Perum Pegadaian, which, through its Islamic business unit, offers various contract-based financing products to meet the community's needs.<sup>1</sup>

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<sup>1</sup> Uci Paramida, 'Implementasi Ta'widh (Denda Keterlambatan) Pembayaran Pada Pembiayaan MULIA Di Pegadaian Syariah Cabang Bengkulu' (IAIN Bengkulu, 2017).

In financing practices, Islamic financial institutions, including Perum Pegadaian, are not immune to the risk of problematic financing arising from customer defaults or fraud.<sup>2</sup> *Fraud* in the context of financing can take the form of deliberate late payments, denial of contractual obligations, and moral hazard behaviour that could cause losses to the institution. According to Ascarya, fraud and default are inherent risks in Islamic financing that must be managed through risk control mechanisms that are in accordance with Islamic principles and do not conflict with the value of justice.<sup>3</sup>

As an effort to mitigate financing risks and control customer behaviour, Perum Pegadaian imposes late-payment fines on its financing products. From a Sharia economic law perspective, these late payment penalties are known as *ta'widh*, compensation imposed on parties who fail to fulfil their obligations solely to cover the real losses incurred by Sharia financial institutions. The concept of *ta'widh* is clearly regulated in the Indonesian Ulema Council's National Sharia Board (DSN-MUI) Fatwa Number 43/DSN-MUI/VIII/2004, which emphasises that *ta'widh* cannot be used as a means of profit-taking and can only be imposed if there is a real loss due to customer negligence.<sup>4</sup>

Although the concept of *ta'widh* has a clear legal basis, in practice, the application of late fees on pawnshop products continues to spark debate. In some cases, penalties are imposed as standard and are specified at the outset of the contract without any calculation of the *actual* losses caused by late payment. This practice has the potential to deviate from the purpose of *ta'widh* as stipulated in the DSN-MUI fatwa. It may create the perception that penalties serve as commercial penalties rather than compensation for losses. According to Karim, the discrepancy between practice and Sharia principles can undermine the legitimacy of contracts and lead to injustice in Sharia-compliant financial transactions.<sup>5</sup> The application of *ta'widh* also has a preventive function in encouraging customer discipline and reducing the potential for *fraud*. Late payment penalties can be an effective control instrument to prevent deliberate late payments and irresponsible behaviour in contract

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<sup>2</sup> Chairul Fahmi, 'Analysis of Legal Aspects On Capital Investment Fraud In Indonesia', *Proceeding of International Conference on Sharia Economic Law (ICoShEL)* 1, no. 1 (September 2024): 1.

<sup>3</sup>Paramida, 'Implementasi Ta'widh (Denda Keterlambatan) Pembayaran Pada Pembiayaan MULIA Di Pegadaian Syariah Cabang Bengkulu'. pp. 1-5.

<sup>4</sup>Dewan Syariah Nasional Majelis Ulama Indonesia, Fatwa DSN-MUI Nomor 43/DSN-MUI/VIII/2004 Tentang Ganti Rugi (Ta'widh).

<sup>5</sup>Adiwarman A. Karim, *Ekonomi Mikro Islam* (Jakarta: Raja Grafindo Persada, 2016). pp. 305–306.

implementation. Therefore, the effectiveness of the penalty system needs to be assessed not only in terms of compliance with the principle of *ta'widh*, but also in terms of its ability to reduce *fraud* and maintain the sustainability of sharia financing at Perum Pegadaian.

## RESEARCH METHOD

In this article, the author uses a normative-empirical approach to examine the factual implementation of legal provisions and written documents in each legal event, specifically the imposition of fines for late instalment payments at pawnshops. The purpose of this assessment is to determine whether the application of the law in practice is in accordance with the written provisions.<sup>6</sup> This research is essentially a method to discover specifically what is happening in reality. Therefore, to obtain valid data, the researcher uses a qualitative research method, namely one conducted in a natural state or as is, without being transformed into symbols or numbers. This type of research is classified as *descriptive analysis*, in which the author will present the facts of reality based on what has been seen and heard about the use and management of fines at pawnshops by collecting and compiling the data obtained and using accurate and valid data source analysis based on observations and observations made in the field.<sup>7</sup> The author's data collection technique is interviews.<sup>8</sup> The author conducted interviews with the interviewees and informants, who provided answers to the questions asked. The data analysis process is a stage in managing the data obtained by researchers to produce answers to the problems formulated. The purpose of data analysis is to explain, in accordance with the research objectives, the research process to conclude.

## RESULTS AND DISCUSSION

### A. Implementation of the Penalty System on Perum Pegadaian KCP Keutapang Products

The implementation of a penalty system for Perum Pegadaian products is part of the institution's internal policy to maintain business continuity, control

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<sup>6</sup>Muhammad Teguh, *Metodologi Penelitian Ekonomi, Teori Dan Aplikasi* (Jakarta: Raja Grafindo Persada, 2005). p. 121.

<sup>7</sup> Muhammad Siddiq Armia, *PENENTUAN METODE & PENDEKATAN PENELITIAN HUKUM*, ed. Chairul Fahmi (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022).

<sup>8</sup>Lexy J. Moleong, *Metodelogi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2010). pp. 187.

financing risks, and ensure that customer obligations are fulfilled in accordance with the agreed contract. Penalties are imposed for late payment of customer obligations, including financing repayments, ujrah payments, and other administrative costs.

In practice, Perum Pegadaian imposes late payment penalties *preventively and repressively*. *Preventively*, the presence of penalty clauses in the agreement is intended to encourage customers to be disciplined and responsible in fulfilling their obligations.<sup>9</sup> *Repressively*, penalties serve as administrative sanctions when customers are proven to be negligent or deliberately delay payments without justifiable reasons. Thus, penalties are an important instrument in Pegadaian's financing risk management.<sup>10</sup>

The penalty system at Perum Pegadaian is generally stated explicitly in the contract agreement at the beginning of the transaction. The penalty amount is determined in advance in accordance with the company's internal policy and is applied uniformly to customers who are late in making payments. This pattern shows that imposing penalties prioritises legal certainty and operational efficiency over an individual approach to each delay case.<sup>11</sup>

However, the application of fixed and standard penalties raises issues from the perspective of Islamic economic law.<sup>12</sup> In the concept of sharia, any form of financial sanction should not be intended as a means of seeking profit, but must be based on the principles of fairness and proportionality to the losses actually suffered by the aggrieved party. Therefore, imposing penalties that do not take into account the factual circumstances of the customer's delay may deviate from the original purpose of penalties in Sharia transactions. Furthermore, the penalty system at Perum Pegadaian does not fully distinguish between customers who are genuinely unable to pay and those who are able but deliberately delay payment. In fact, in Islamic economic law, this difference in circumstances has significant legal implications. Customers

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<sup>9</sup> Muhammad Achyar, Chairul Fahmi, and Riadhus Sholihin, 'ISLAMIC LAW REVIEW OF MONOPOLY PRACTICES IN MODERN ECONOMICS', *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 5, no. 2 (2024): 288-308.

<sup>10</sup> Ascarya, *Akad Dan Produk Bank Syariah* (Jakarta: Raja Grafindo Persada, 2015). pp. 210-211.

<sup>11</sup> Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori Ke Praktik* (Jakarta: Gema Insani Press, 2001). p. 153.

<sup>12</sup> Chairul Fahmi and Syarifah Riyani, 'ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT', *Wahana Akademika: Jurnal Studi Islam Dan Sosial* 11, no. 1 (July 2024): 89-104, <https://doi.org/10.21580/WA.V11I1.20007>.

experiencing financial difficulties should be granted relief or *payment rescheduling*, rather than being subject to penalties.<sup>13</sup>

In terms of implementation, late payment penalties are usually calculated based on the number of days of delay or a certain percentage of the outstanding obligation. This mechanism makes it easier for Pegadaian to calculate and record administrative matters. However, this approach also reinforces the impression that penalties are treated as automatic penalties, rather than compensation for *real* losses that can be measured concretely. In Sharia financing practices, penalties are categorised as *ta'widh*, which is compensation for actual costs or losses incurred due to customer delays, such as collection costs, additional administrative costs, and other operational losses.<sup>14</sup> However, the analysis shows that the implementation of penalties at Perum Pegadaian is not yet fully based on the calculation of these actual losses.

Nevertheless, from an operational effectiveness perspective, the penalty system implemented by Perum Pegadaian has proven to be effective in reducing late payments and increasing customer awareness of their obligations. The existence of fines has a *deterrent effect* on customers who are potentially willing to default deliberately. In other words, empirically, this system contributes positively to maintaining the quality of financing and the institution's financial stability.<sup>15</sup>

The financial needs of the community are increasing in line with the development of the types and consumer goods marketed, so that the community's needs are becoming more varied, whether at the *dharuriyah*, *hajjiyah*, or *tahsiniyyah* levels.<sup>16</sup> To meet these various needs, financial capability and a sound budgeting system are required. In situations where financial capacity is limited but needs and lifestyle require the acquisition of a product, various alternatives are pursued to realise one's enthusiasm and preference for the product, including borrowing or pawning assets. However, in the pawn system, not all consumers or debtors can fulfil their repayment

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<sup>13</sup>Karim, *Ekonomi Mikro Islam*. , p. 305.

<sup>14</sup>Dewan Syariah Nasional Majelis Ulama Indonesia, Fatwa DSN-MUI Nomor 43/DSN-MUI/VIII/2004 Tentang Ganti Rugi (Ta'widh).

<sup>15</sup>Ascarya, *Akad Dan Produk Bank Syariah*. , p. 215).

<sup>16</sup> Chairul Fahmi, 'KONSEP IJMAK MENURUT FAZLUR RAHMAN DAN PEMBAHARUAN HUKUM ISLAM', *Jurnal Ilmiah Islam Futura* 11, no. 1 (2017), <https://doi.org/10.22373/jiif.v11i1.59>.

obligations, resulting in arrears and even fraud, which may lead the creditor to impose sanctions and fines.<sup>17</sup>

The problem often encountered in the repayment of pawned goods is the delay in repayment by the pawner to the pawnbroker or pawnshop, so that this delay has caused difficulties for the recipient or pawnshop, because the funds that have been disbursed to the pawner have resulted in the pawnbroker or pawnshop being unable to use their funds or money for individual, social or business purposes.<sup>18</sup> However, as non-bank financial institutions, pawnshops operate with a profit orientation that is essential to their operations. In disbursing financing to consumers, Perum Pegadaian's management often faces risks that must be addressed to protect its interests, especially the risk of consumer default, in the form of delays and arrears in payments due in instalments to Pegadaian within the specified time frame.<sup>19</sup>

The penalty system for Perum Pegadaian products is part of the financing risk control mechanism implemented to maintain business continuity and ensure customer compliance with contractual obligations. In the context of Sharia financing, penalties are not intended to generate profit, but rather to enforce payment discipline and prevent deliberate customer default. Perum Pegadaian applies a penalty system to several financing products, both conventional and sharia, with the main objective of reducing the risk of late payments and potential operational losses. In Sharia products, the application of penalties must refer to the principles of Sharia economic law, particularly the provisions regarding *ta'widh* as a form of compensation for *real* losses suffered by the institution due to customer negligence.<sup>20</sup>

The penalty system at Perum Pegadaian is based on internal company policies designed to provide legal certainty and ease of operational implementation. Late payment penalties are *explicitly* stated in the financing agreement at the outset of the transaction. This clause governs the amount of

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<sup>17</sup>Meity Taqdir Qadratullah, *Kamus Besar Bahasa Indonesia Untuk Pelajar* (Jakarta: Badan Pengembangan dan Pembinaan Bahasa, Kementerian Pendidikan dan Kebudayaan, 2011). p. 92.

<sup>18</sup> Chairul Fahmi, 'The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia', *Jurnal Ilmiah Peuradeun* 11, no. 2 (May 2023): 667–86, <https://doi.org/10.26811/PEURADEUN.V11I2.923>.

<sup>19</sup>Aris Anwaril Muttaqin, *Sistem Transaksi Syari'ah: Konsep Ganti Rugi Dalam Hukum Bisnis* (Tulungagung: Perpustakaan UIN SATU Tulungagung, 2021). p. 15.

<sup>20</sup>Ascarya, *Akad Dan Produk Bank Syariah*. pp. 212–215.

the penalty, the time of imposition, and the legal consequences if the customer fails to meet their payment obligations under the agreed schedule.<sup>21</sup>

The mechanism for determining penalties on Perum Pegadaian products is standard and uniform. This means the penalty amount is determined in advance, without considering the customer's individual circumstances or the actual level of loss caused by the late payment. This approach was chosen for administrative efficiency and to ensure consistent policy implementation across all Pegadaian units. However, from a Sharia perspective, this approach has sparked debate regarding its compatibility with the principles of fairness and proportionality. In practice, penalties are imposed after the payment deadline specified in the contract has passed. Penalties are usually calculated based on the number of days of delay or a certain percentage of the outstanding obligation. This system facilitates financial supervision and recording, but has the potential to treat penalties as automatic penalties rather than compensation for actual losses.<sup>22</sup>

Furthermore, the penalty system at Perum Pegadaian KCP Keutapang does not fully distinguish between customers who are unable to pay due to economic conditions and those who deliberately delay payment despite having the financial means to pay. In Islamic economic law, this distinction is very important because customers who are unable to pay should be given relief or *restructuring*, not fines.<sup>23</sup> In Sharia Pawnshop products, fines should be classified as *ta'widh*, which compensates for costs and operational losses incurred due to customer delays, such as collection costs, additional administrative costs, and other operational expenses. However, based on normative analysis, the current penalty system does not fully reflect actual losses, potentially deviating from the concept of *ta'widh* as defined in the DSN-MUI Fatwa.

However, in terms of effectiveness, the penalty system implemented by Perum Pegadaian has proven to have a deterrent effect on customers and increase payment compliance rates. Penalties encourage customers to be more disciplined in fulfilling their obligations, thereby effectively reducing the potential for *fraud* through deliberate late payments. Thus, the penalty system for Perum Pegadaian KCP Keutapang products can be considered

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<sup>21</sup><https://www.pegadaian.co.id/Berita/Detail/236/Penjelasan-Tentang-Pegadaian-Usaha-Gadai-Dan-Pergadaian> Diakses Pada Tanggal 11 September 2025'.

<sup>22</sup>Hasil Wawancara Dengan Staf Pegadaian Syariah KCP Keutapang, Pada Tanggal 5 September 2025, Di Keutapang Kecamatan Darul Imarah Aceh Besar. (n.d.).

<sup>23</sup>Antonio, *Bank Syariah: Dari Teori Ke Praktik*. pp. 153-154.

operationally effective, but still requires refinement from a Sharia economic law perspective. This refinement is necessary so that the penalty system not only functions as a risk control tool but also aligns with the principles of fairness, transparency, and Sharia compliance, as outlined in the concept of *ta'widh*.<sup>24</sup>

Based on the results of interviews conducted by the author with Pegadaian Syariah KCP staff, *ta'widh* is determined unilaterally by the pawnshop for debtor customers, and the calculation of the *ta'widh* value is carried out daily within a certain period agreed upon by the debtor customer and the management of Pegadaian Syariah. In this product, the object of the pawn is to estimate how much will be pawned. Cases involving fines and deviations from operational rules are common in field practice. One particularly prominent case occurred in 2013 at the Keutapang Branch of Pegadaian Syariah in Aceh Besar. The suspect's *modus operandi* was to fabricate fictitious credit disbursements and provide loans to customers without adequate collateral. In pawn practices that comply with regulations, each customer is required to submit tangible items as collateral, such as gold, vehicles, or other assets that the pawnshop can temporarily hold. However, in this case, the submitted collateral was only a Motor Vehicle Ownership Certificate (BPKB), without the vehicle's physical presence. This is contrary to the pawnshop's operational standards, as valid collateral must be a physical vehicle whose ownership documents match to confirm its validity and existence.<sup>25</sup>

This deviation opens up opportunities for abuse of authority, as the loan was disbursed without a solid collateral basis. As a result, the company suffered a significant loss of more than IDR 1.8 billion, as stated in the official audit report issued by the Aceh Financial and Development Supervisory Agency (BPKP). This loss not only impacts the reputation of an institution that should uphold the principle of prudence, especially in the context of the penalty system, but also affects the company's financial aspects. The operations carried out to resolve the *fraud* case at Pegadaian involved several systematic stages, both internal and external. Internally, the company first

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<sup>24</sup>Karim, *Ekonomi Mikro Islam*. p. 305.

<sup>25</sup> Chairul Fahmi, Audia Humairah, and Ayrin Sazwa, 'MODEL OF LEGAL DISPUTE RESOLUTION FOR BUSINESS CONTRACT DEFAULT', *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 2023): 242-63, <https://doi.org/10.22373/JURISTA.V7I2.228>.

conducted an investigative audit by a supervisory team, or Internal Supervisory Unit (SPI), to confirm the existence of irregularities.<sup>26</sup>

## **B. Factors Contributing to *Fraud* in Pegadaian Products**

*Fraud* in Pegadaian KCP Keutapang financing products is an operational risk that can disrupt the institution's performance and harm both Pegadaian and its customers. *Fraud* in this context does not always take the form of a criminal act. Still, it more often appears as administrative irregularities, intentional default, and moral hazard behaviour contrary to the contract's principles. Based on the results of normative analysis and theoretical studies, several main factors cause *fraud* in KCP Keutapang pawnshop products, namely:

### **1. Customer Moral Hazard Factor**

One factor that often leads to fraud is customer moral hazard, the behaviour of customers who deliberately delay payments even though they have the financial means to pay. In practice, some customers take advantage of lenient payment terms or weak non-financial sanctions to delay repayment. This behaviour is often driven by the assumption that late payments will only result in administrative fines without more serious legal consequences.<sup>27</sup> This moral hazard indicates a lack of customer awareness of the value of trust in Sharia contracts, where contracts should be viewed as moral and religious commitments, not merely administrative contracts.<sup>28</sup>

### **2. Customers' Limited Understanding of Contracts**

This factor refers to customers' low understanding of the substance of the contract, particularly regarding the rights and obligations arising from the financing agreement. Some customers view the contract only as a formality to obtain funds, without realising the legal and Sharia consequences in the event of default. This limitation in Sharia financial literacy causes customers to pay

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<sup>26</sup>Hasil Wawancara Dengan Staf Pegadaian Syari'ah KCP Keutapang, Pada Tanggal 5 September 2025, Di Keutapang Kecamatan Darul Imarah Aceh Besar.

<sup>27</sup> Adiwarman A. Karim, *Islamic Microeconomics* (Jakarta: Raja Grafindo Persada, 2016), pp. 305–306.

<sup>28</sup> Fahmi, Humairah, and Sazwa, 'MODEL OF LEGAL DISPUTE RESOLUTION FOR BUSINESS CONTRACT DEFAULT'.

less attention to payment schedules and penalty provisions, thereby increasing the potential for repeated delays and the risk of administrative *fraud*.<sup>29</sup>

### 3. Customer Economic Conditions

The customer's economic condition is also a significant factor in *fraud*, particularly in the form of late payments. However, income losses, job losses, or declines in business activity can cause some customers to experience liquidity difficulties. Although these conditions do not always indicate intent, in practice, it is often difficult to distinguish between customer inability and non-compliance. When economic conditions are not addressed with adequate *restructuring* or relief mechanisms, late payments can develop into repeated defaults and be categorised as operational fraud.<sup>30</sup>

### 4. Weak Internal Supervision and Control Factors

*Weaknesses also contributed to fraud in the Keutapang KCP Pawnshop product within the internal control system.* Sub-standard monitoring of customer compliance, limited post-disbursement monitoring, and a lack of periodic evaluation of customer risk profiles can create opportunities for *fraud*. In addition, limited human resources and high workloads can undermine the effectiveness of internal controls, leading to late payments that are not proactively addressed.<sup>31</sup>

### 5. Standardised Penalty System Factors

A standardised and automated penalty system also contributes to *fraud*. Penalties that are not adjusted to the customer's *actual* circumstances and the actual level of loss can lead to customer complacency. Some customers view fines as an additional cost that can be tolerated rather than a form of responsibility for breaching the contract. From a sharia perspective, a penalty system that is not based on *ta'widh* may lose its educational and preventive functions, thereby becoming less effective in preventing intentional *fraud*.<sup>32</sup>

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<sup>29</sup> Ascarya, *Contracts and Products of Islamic Banks* (Jakarta: RajaGrafindo Persada, 2015), p. 210.

<sup>30</sup> Muhammad Syafi'i Antonio, *Islamic Banking: From Theory to Practice* (Jakarta: Gema Insani Press, 2001), p. 153.

<sup>31</sup>Otoritas Jasa Keuangan, *Manajemen Risiko Lembaga Keuangan Syariah*.

<sup>32</sup>Dewan Syariah Nasional Majelis Ulama Indonesia, *Fatwa DSN-MUI Nomor 43/DSN-MUI/VIII/2004 Tentang Ganti Rugi (Ta'widh)*.

The imposition of fines in the case of *fraud* at Pegadaian Syariah Keutapang in 2013 was carried out as a form of *ta'widh*, or *compensation*, for losses incurred due to fictitious credit and unsecured loans, which resulted in the company losing more than Rp1.8 billion. In Sharia Pawnshop practice, fines for late payments are not intended as profit but as a form of *ta'widh* or compensation for losses incurred when customers delay settlement of their obligations. The penalty amount is usually calculated as a percentage of the customer's outstanding obligations (principal loan plus profit margin), multiplied by the length of the delay. However, at the Keutapang Sharia Pawnshop in Aceh Besar, the late payment penalty is set at 4% per month. The mechanism for determining penalties in Sharia Pawnshops is basically designed to deter customers who deliberately delay their obligations. Thus, the mechanism for determining penalties not only serves as a financial instrument to cover operational losses but also has educational and normative value in maintaining customer discipline and ensuring the sustainability of financial practices in accordance with Sharia principles.<sup>33</sup>

### C. Effectiveness of the Penalty System in Reducing *Fraud*

The effectiveness of the penalty system in reducing *fraud* in Perum Pegadaian products is an important aspect in assessing the success of financing risk control policies. Penalties are applied as an administrative measure to suppress default behaviour and prevent *fraud*, particularly in the form of deliberate late payments. In the context of Islamic financial institutions, the effectiveness of fines is not only measured by their success in reducing late payments, but also by their adherence to the principles of justice and Sharia.<sup>34</sup>

Functionally, the penalty system at Perum Pegadaian demonstrates significant effectiveness in improving customer payment discipline. Penalties have a deterrent effect, encouraging customers to fulfil their obligations on time. Customers tend to consider the financial consequences of late payments, thereby becoming more compliant with the agreed payment schedule in the contract.<sup>35</sup> Thus, fines serve as a preventive instrument in preventing administrative fraud.

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<sup>33</sup> Results of an interview with staff of the Keutapang Sharia Pawnshop, on 5 September 2025, in Keutapang, Darul Imarah District, Aceh Besar.

<sup>34</sup> Chairul Fahmi, 'Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)', *TSAQAFAH* 8, no. 2 (2012), <https://doi.org/10.21111/tsaqafah.v8i2.27>.

<sup>35</sup> Ascarya, *Akad Dan Produk Bank Syariah*. pp. 210-211.

In practice, the application of penalties can reduce the number of deliberate late payments. Penalties send a clear signal that contract violations will result in legal and financial consequences. This is in line with the principle of financial institution risk management, which uses administrative sanctions to control the behaviour of parties involved in financing transactions.<sup>36</sup>

The effectiveness of fines in reducing *fraud* is not absolute. Fines are more effective at addressing minor *fraud* (*soft fraud*), such as short-term late payments or administrative negligence.<sup>37</sup> However, the fine system has limitations when it comes to structural or systemic *fraud*, such as data manipulation or contract abuse. Therefore, fines cannot be used as the sole instrument for controlling *fraud*. The effectiveness of fines is also influenced by customers' perceptions of the amount and purpose of the fines. If fines are considered too light or routine, customers tend to view them as an additional cost that can be tolerated. In such conditions, the function of fraud control is reduced and may even trigger moral hazard behaviour.<sup>38</sup> This shows that the effectiveness of fines depends heavily on the system used to determine them.

The effectiveness of the penalty system must be linked to the concept of *ta'widh*. *Ta'widh* emphasises that penalties should be imposed only to compensate for *actual* losses incurred by the institution due to customer negligence. If penalties are imposed without calculating actual losses, their effectiveness from a Sharia perspective becomes questionable, even if they appear successful from an operational standpoint.<sup>39</sup> In addition, the effectiveness of the penalty system is also influenced by consistency in implementation and internal supervision. Penalties that are applied consistently and accompanied by effective monitoring will be more effective at reducing fraud than those applied evenly. This consistency creates legal certainty and enhances the institution's credibility.

It can be concluded that the penalty system at Perum Pegadaian is relatively effective in reducing administrative *fraud* and improving customer payment compliance. However, this effectiveness still needs to be improved through a

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<sup>36</sup>Karim, *Ekonomi Mikro Islam*. pp. 307.

<sup>37</sup> Wahyu Akbar et al., 'Optimization of Sharia Banking Regulations in Developing the Halal Cosmetic Industry in Indonesia', *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (June 2024): 1–12, <https://doi.org/10.30984/JIS.V22I1.2611>.

<sup>38</sup>Antonio, *Bank Syariah: Dari Teori Ke Praktik*. , pp. 155–159.

<sup>39</sup> Interview with staff of the Keutapang Sharia Pawnshop Branch Office, on 5 September 2025, in Keutapang, Darul Imarah District, Aceh Besar.

penalty system that is more proportional, transparent, and in line with the principle of *ta'widh*. Thus, penalties not only serve as a risk-control tool but also as an instrument that reflects fairness and Sharia compliance.

Based on interviews with Pegadaian employees, the penalty system (*ta'widh*) is used as a risk-control instrument to address late payments and customer *fraud*. Pegadaian emphasised that *ta'widh* is imposed only on customers who are proven to be negligent or deliberately delay payment, and not on customers who experience an objective inability or force majeure. This shows that Pegadaian's penalty system is designed to distinguish between pure business risk and dishonest behaviour. In practice, *ta'widh* at Pegadaian serves as a tool for payment discipline. Pegadaian employees stated that after the penalty provisions were clearly socialised in the agreement, customer delinquency decreased significantly.<sup>40</sup>

Pegadaian also uses *ta'widh* imposition data as an early *fraud* detection tool. Customers who are repeatedly fined will be placed on a risk monitoring list (*watch list*) and may be subject to further action, such as special collection or financing restrictions. Thus, *ta'widh* serves not only as a sanction but also as an instrument for monitoring customer behaviour. Pegadaian emphasises that *ta'widh* funds are not included as company revenue but are allocated to cover *actual* costs incurred due to late payments, such as collection and administration costs, or channelled into social funds. This practice is in accordance with DSN-MUI regulations, which prohibit Islamic financial institutions from profiting from late payment penalties.

*Ta'widh* is an important part of assessing the level of *Sharia compliance* with financing risk control policies. In *Sharia economic law*, any financial penalty imposed on customers must have a clear basis and a legitimate purpose: to compensate for real losses incurred due to the debtor's negligence, not as a means of obtaining additional profits.<sup>41</sup>

Conceptually, *ta'widh* is defined as compensation for *real losses* suffered by the aggrieved party as a result of another party's default. *Ta'widh* can only be imposed if there is an element of intent or negligence on the part of the party who can pay but delays the fulfilment of their obligations. This provision is explicitly regulated by the Sharia Board of the Indonesian Ulema Council in

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<sup>40</sup> Interview with staff of the Keutapang Sharia Pawnshop Branch Office, on 5 September 2025, in Keutapang, Darul Imarah District, Aceh Besar.

<sup>41</sup>Wahbah Al-Zuhaili, *Nazariyah al-Dhaman*, (Damsyiq: Dar al-Fikr, 1998), Hal. 87 Melalui Dewan Syariah Nasional, "Fatwa DSN MUI No. 43/DSN-MUI/VIII/2004" Dalam Himpunan Fatwa Dewan Syariah Nasional (Jakarta: Erlangga, 2013). Hlm. 248. (n.d.).

Fatwa DSN-MUI Number 43/DSN-MUI/VIII/2004 concerning *Ta'widh*, which serves as the main reference for Islamic finance practices in Indonesia. The penalty system at Perum Pegadaian is applied as standard and is stated in the contract at the beginning of the transaction. The company's internal policy predetermines the penalty amount and applies uniformly to all customers who are late in making payments. From an operational perspective, the system provides administrative convenience and legal certainty. However, when analysed in terms of *ta'widh*, several aspects require criticism.<sup>42</sup>

First, the imposition of fixed and standard penalties may not reflect the *actual* losses incurred by Perum Pegadaian. In the concept of *ta'widh*, the amount of compensation must be proportional to the actual costs or losses, such as collection costs, additional administrative costs, or other operational losses that can be measured objectively. Setting fines without calculating actual losses risks turning them into penalties rather than compensation.<sup>43</sup>

Second, the penalty system stipulated in the contract at the outset of the transaction raises normative issues in Sharia law. *Ta'widh* is essentially a consequence of a subsequent breach of contract, so the amount and application should be determined after the breach, not predetermined at the outset. The practice of setting penalties from the outset risks blurring the line between *ta'widh* and penalty clauses, which are prohibited in Sharia contracts.

Third, the penalty system at Perum Pegadaian does not fully distinguish between customers who are genuinely unable to pay and those who are able but deliberately delay payment. This distinction is a fundamental principle. Customers experiencing economic difficulties should be given relief or *rescheduling* of payments, in accordance with the principles of *ta'awun* and *tasamuh* in muamalah, rather than being subject to penalties.<sup>44</sup>

Fourth, the application of penalties should aim to maintain justice, benefit, and prevent injustice. If penalties are applied without regard for the principles of justice and the real conditions of customers, the objectives of Sharia will not be achieved. In fact, there is a risk that these penalties will resemble covert usury if they are not managed carefully and transparently. The penalty system implemented by Perum Pegadaian has benefits (*maslahah*)

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<sup>42</sup>Arianto Saputra, 'Analisis Pengelolaan Dana Ta'zir Dan Ta'widh Bagi Nasabah Wanprestasi Pada PT. Brisyarlah' (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2014). p. 31.

<sup>43</sup>Syaikhul Islam Ibnu Taimiyah, *Kumpulan Fatwa Ibnu Taimiyah (Amar Ma'ruf Nahi Munkar & Kekuasaan Siyasah Syar'iyah Jihadi Fi Sabilillah)*, Hlm. 63-65. (n.d.).

<sup>44</sup>Antonio, *Bank Syariah: Dari Teori Ke Praktik*. p. 154.

in preventing *fraud*. Penalties can reduce deliberate default behaviour and improve customer payment discipline. Therefore, the main challenge is not to abolish the penalty system, but to improve it so that it is more in line with the principle of *ta'widh*.<sup>45</sup>

According to the author's data, *ta'widh* indicates that the Perum Pegadaian penalty system is operationally effective but not yet fully in line with Sharia norms. Improvements are needed in the mechanism for determining and applying penalties, particularly in calculating actual losses, differentiating between customer conditions, and ensuring transparency in the use of penalty funds, to be in line with Sharia provisions and the objectives of justice in muamalah.

## CONCLUSION

Based on the results of research and discussion regarding the penalty determination system and its effectiveness in reducing *fraud* in Perum Pegadaian products in a *ta'widh* review, several conclusions can be drawn as follows:

First, the penalty system for Perum Pegadaian products serves as an instrument to control financing risks and enforce customer payment discipline. Penalties are explicitly stated in the contract and are applied as standard to customers who are late in making payments. Operationally, this system provides legal certainty and administrative convenience for Perum Pegadaian.

Second, effectiveness: the application of penalties has proven to increase customer payment compliance and reduce administrative fraud, particularly in the form of deliberate late payments. Penalties have a *deterrent effect*, encouraging customers to fulfil their obligations on time. However, this effectiveness is limited to minor *fraud* and is not yet fully capable of preventing structural or systemic *fraud*.

Third, the factors causing *fraud* in Pegadaian products, including at Pegadaian KCP Keutapang, are multidimensional and include customer moral hazard, limited understanding of contracts, economic conditions, weak internal supervision, and a uniform penalty system. Therefore, *fraud* cannot be handled solely through penalties; it requires a more comprehensive approach.

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<sup>45</sup>Ascarya, *Akad Dan Produk Bank Syariah.*, p. 216.

Fourth, the penalty system at Perum Pegadaian is not fully in line with the concept of *ta'widh* as stipulated in Fatwa DSN-MUI Number 43/DSN-MUI/VIII/2004. The imposition of standard penalties specified at the outset of the contract may not reflect the *actual* losses and does not clearly distinguish between customers who are able and unable to pay.

Fifth, the application of fines at Perum Pegadaian has dual legal implications: both sharia and civil law. Fines provide legal certainty and operational effectiveness in controlling financing risks. However, if not managed in accordance with the principle of *ta'widh*, the imposition of fines may lead to inconsistencies with the principles of justice and sharia compliance.

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