



## Problematic Financing Fine in Indonesian Ulema Council Perspective

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### **Abstract**

Bad credit is caused by two factors, which are from the bank and from the customer. This study aimed to analyze the fine financing problems in the Islamic of Pawnshop Unit Bone according to Indonesian Ulama Council (MUI) perspective. This research is a normative legal research using a sociological juridical approach. The primary data used are regulations or legal products from the Indonesian Ulama Council, namely the DSN-MUI fatwa regarding fines and direct interviews with employees and customers. Besides, the secondary data used was number of books that contain opinion Indonesian Ulama Council and other literature which is relevant to research. The results showed that the application of fines in financing problems in the Islamic pawnshop Unit Bone of South Sulawesi had positive and negative impacts. The positive impact was giving a deterrent effect to customers who face the due while the negative impact is the waste of time for employees who have to work more than working hours. However, the impact of these fines did not reduce the performance of the South Sulawesi specially in the Islamic of Pawnshop Unit Bone in order to become a non-bank financial institution that is still in demand by the public and become a financial institution that can help the economy of Indonesian society, among them is the society in Bone, South Sulawesi. It is because people in Bone regency tend to open up business as their economic livelihoods.

**Keywords:** Trouble financing; Fine; Indonesian Ulema Council

### **Introduction**

Economics is inseparable from the thought of Islamic economics, which is as old as Islam itself. Throughout the past 14th century Islamic history has explained the findings of ongoing studies of economic issues in sharia terms. Most of these discourses are only buried in the Qur'anic interpretation literature, sarah hadith, legal basics, ushulfiqh, and fiqh law (Hamid, 2007). Islamic economics should be based on a legal basis. The law must be able to answer all human problems, both large problems and something that has not been considered a problem. Law is used to manage human life from various sectors, economics, social, politics, and culture based on the benefit based on the Koran, al-Hadith, Ijtihad, Qiyas, other legal sources, such as urf ', istihsan, istishah and maslahah al-mursalah (Hamid, 2007).

The pawnshop is a place to hand over an object or service from a debtor to a creditor as collateral for the money he borrowed. As a non-bank financial institution engaged in credit services with its main task of channeling loans with a pawn system, the role of Pegadaian which is oriented to assisting and serving the needs of small-scale community is very helpful for economic growth. One of them is financing using the Islamic pawn system.

In addition, the majority of pawnshop customers are the majority of Muslims, so the existence of this Sharia Pawnshop will certainly expand the reach of the pawnshop market and customers will feel safe because their transactions are in accordance with Islamic Sharia which means that the system applied is an interest-free loan and is halal ( Rais, 2005).

The elements of morality and good values in banking are needed, because banks as financial institutions that manage public money as customers have a great responsibility must be accompanied by honesty and dedication which are important elements in trust, this is in accordance with the principles of banking operations ( Famauri, 2018).

Pawn includes transactions in the category of debt and debt agreements based on the trustworthiness of people in debt to mortgaged goods as collateral for debt. The collateral remains the property of the person who pawned (the person who owes) but is under the control of the mortgage recipient or the person who owes (Rais, 2005).

Rahn is one of the micro credit instruments available to people with lower incomes to get money faster and easier. (Rivai, 2012). Delivery of goods / assets from one party to another party as collateral for part or all of the debt for the party delivering the goods / assets. The conditions for rahn are Rahin and murtahin. In this pawn agreement, the person who executes the pawning agreement must fulfill the requirements of simply exchanging objects. Sighat (Sudarsono, 2003). Must not be bound by certain conditions and also with a time in the future. Rahn has the side of releasing goods and giving debts as well as buying and selling contracts. Then it may not be bound under certain conditions or at any time in the future. Marhun bih (debt) Is a right that must be given / submitted to the owner. Allows utilization if something becomes debt cannot be utilized then it is not valid (Buchari & Priansa, 2009). Marhun (goods) that will be used as collateral must have valuable assets and can be used and the collateral is not related to the rights of others.

Akad Ijarah is a contract of transfer of use rights over goods and or services through payment of rental wages, without being followed by transfer of ownership of the goods themselves. Through this contract, it is possible for Pegadaian to collect ijarah fees for the storage and maintenance of movable property owned by the customer / rahin that has entered into the contract (Sofia, 2008).

According to Banking Law No. 10 of 1998, financing is the provision of money or claims that can be equaled, based on an agreement or agreement between the Bank and other parties that are financed to return the money or claims after a certain period of time in return or profit sharing (Kasmir, 2012). Financing is the majority of assets of Islamic financial institutions, so the quality of the financing must be maintained, as mandated in Article 2 of the Sharia Banking Law that Islamic banking and / or UUS in conducting their business activities are based on sharia principles, economic democracy and prudential principles (Kamal, 2016).

Problematic financing is a financing condition that experiences obstacles in the form of customer disruption in the installment payment process or other problems that cause financing to be substandard or non-performing. According to Robert H. Behrens, factors causing financing problems according to Prabowo (2016), namely Adversity, is a change from the business cycle outside the control of the Bank and customers, such as natural disasters, illness and death. Mismanagement is the inability of customers

to manage their business activities and maintain financial conditions in accordance with the ways of healthy business activities from day to day. Fraud is the debtor's dishonesty in providing information and reports about his business activities, financial position, debts, inventories and others. Unevenness of customers to pay the principal installments and profit sharing financing causes the collectibility of financing (Dickerson, 2009).

Problematic financing cannot be avoided by PT. Sharia Pegadaian as the party that provides financing to customers. Therefore, to anticipate this problem handling of problem financing is a matter that must be done. The handling of financing is carried out by analysis and settlement of problem financing.

To avoid the failure of financing or financing concerns, the Islamic financial institutions must provide guidance and regular monitoring to customers who experience problems in their financing, namely by means of active monitoring and passive monitoring. Active monitoring, namely visiting customers regularly, monitoring financial reports regularly and providing customer visit reports / call reports to the finance committee / supervisor. While Passive Monitoring is monitoring the payment of customer obligations to Islamic financial institutions at the end of every month.

From these problems, the Islamic institutions will make an effort to deal with the problematic financing by saving and settling the problematic financing so that the funds that have been channeled by Islamic Banks can be received again. (Muhammad, 2005). However, considering that the funds used by Pegadaian Syariah in providing financing come from public funds, the Pegadaian Syariah in providing financing must take ways that do not harm the Sharia Bank, one of which is the application of fines so that the financing process becomes safe and effective (Waemustafa & Abdullah, 2015).

In the application of these fines, contemporary scholars also see that there is a need to apply fines or compensation in a sharia financial institution so that the system runs well and between financial institutions and customers keep on copying, please help and not harm each other.

The purpose of this study was to determine the application of fines or compensation in problem financing in PT. Sharia Unit Pegadaian of South Sulawesi according to the perspective of the Indonesian Ulema Council (MUI) so that the public knows more about these fines or compensation.

## **Research Methods**

The type of research used is normative and juridical empirical law. Use normative case studies in the form of legal products and positive written law that are not written about the behavior of community members in community relations and also use the type of library research. This research reveals the law that lives in the community through acts committed by the community.

The type of approach used in this study the author uses a sociological juridical approach. Sociological juridical research (law in action) is the object of his study of community behavior. The studied community behavior is the behavior that arises from interacting with the existing norm system. The behavior of the community is a customer of PT. Sharia pawn shops that experience obstacles.

This research uses primary data and secondary data. Primary data is the main data obtained directly from several regulatory provisions or legal products from the Indonesian Ulema Council, namely the DSM-MUI fatwa regarding fines and the results of interviews and observations from resource persons

at PT. Pegadaian Syariah Unit Bone and several customers. Secondary data sources are supporting data obtained from official documents such as regulations related to this research, books, journals, internet, etc. that support the operational writing of research related results.

## ***Results and Discussion***

### *The Mechanism for Applying Fines in Problem Financing*

The quality of financing is essentially based on the risk to the customer's compliance in meeting their obligations. This is as referred to in PBI provision No. 9/9 / PBI / 2007 and PBI No. 10/24 / PBI / 2008 concerning the determination of payment quality, in which payment quality is assessed based on aspects of business prospects, customer performance and ability to pay. Determination of the quality is carried out by considering the materiality and significance of the component evaluation factors as well as the relevance of the assessment factors to the characteristics of the accuracy of the customer's installment payments. Problematic financing tends to be more risky for products with a high percentage of fund allocations such as murabaha financing (Ibrahim & Rahmati, 2017). In relation to Islamic financial institutions, fines are sanctions imposed on customers who are able to pay, but delay the payment of installments or flat on purpose. Fines here are imposed if there is a deliberate delay in payment by a customer who is not in good faith to pay the principal installments.

Financing that is problematic continually makes Islamic financial institutions incur large losses to avoid this which can cause harm to the company, so the business undertaken by the pawnshop to minimize this is as much as possible to contact customers who are due, to simply remind customers about payments installments if it is ignored by the customer, what is done by sharia procurement is to make an excess in payment or referred to as ta'zir which is categorized as a fine for late payment made by the customer intended as a threat or punishment so that similar events do not occur for payment next installment.

The application of this fine system also has a deterrent effect on the customer because the Sharia Pawnshop is always trying to contact customers who are past due, so there is shame on the customer if they do not pay their installments. Starting from this, the customer who was always late in paying the loan installments will be on time in the next installment payments. Because if the customer is due does not pay the fines and installments, the fines imposed on him will be more and more.

Speaking of the fines applied, there are stages that need to be considered by customers and from the PT. Pegadaian Syariah in dealing with customers who have defaulted on principal payments. First, analyzing customers who will be due for principal installment payments. In this case, the customer who has not matured will be reminded of the installments to be paid by looking at the installment schedule that has been issued by the pawnshop to the customer. From the installment schedule, customers can see how many monthly installments must be paid. The installments have included principal installments and profit margins of the Islamic sharia pawnshop in providing financing.

In the installment schedule, there is also a due date for the customer to pay the installments agreed upon in the financing agreement contract process. Secondly, if the customer has passed the due date of the installment payment, the pawnshop will provide a fine (tazir) for any late installment payments. exceed the due date of installments with the provisions of a large fine (tazir) of  $4\% \times (\text{principal installments} \text{ marhun} \text{ bih} \text{ per} \text{ month} + \text{ujrah} \text{ per} \text{ month})$ : 30 days. With these provisions, customers can find out how much fines (tazir) must be paid. The penalty applied by Pegadaian Syariah is 4% per month.

In applying the fines, the proceeds of the fines will then be distributed or will be allocated as social funds. This is evidenced by the implementation of the construction of a mosque in one district in South Sulawesi in 2018 as well as donations for flood victims held by Pegadaian Syariah as an allocation of funds resulting from fines. The allocation of funds resulting from these fines is inseparable from the central regulations, regulations from regional offices, or policy rules by branch leaders.

The granting of fines to customers is inseparable from its main purpose of providing a deterrent effect to customers who experience delays in paying principal installments and as a reminder instrument for financing installments that must be paid immediately. As stated, in reminding customers, as employees or as those who hold responsibility for the smooth payment of customers, must always remind customers as much as possible if there is an important schedule, then we take time to remind customers who are due that day, or the day before the customer falls tempo. If in the pawnshop, one week before the due date it is already reminded about installment payments.

### *Application of Fines in Problem Funding*

PT. Pegadaian Syariah in carrying out its operations adheres to the principles of sharia, because PT. Sharia pawn shops are sharia-based financing institutions, so the products offered are also based on sharia-based characteristics, including not charging interest because of usury, establishing money as a medium of exchange not as a commodity to be traded, and conducting business activities only to obtain compensation for services and profit sharing.

Pawn shops during the time of the Messenger of Allah as well as at the time of the Companions and their development have been widely practiced by Muslims, this is based on the fact that the pawn is a Shari'a because in the Qur'an the argument is mentioned. Although in the Qur'an mentioned under certain conditions, but that does not limit people to do a pawn. As has been exemplified by the Messenger of Allah that he entered into a pawn contract not in a state of safar (travel) as the conditions mentioned in the Qur'an. There is one source saying that in the days of ignorance, if ar rahin could not pay debts or loans at the specified time, then the collateral goods directly belonged to al murtahin. Then the practice of ignorance was canceled by Islam. Fines are penalties in the form of having to pay in money (for violating rules, laws and so on). The scholars after the Prophet had also explained related fines and compensation. In the explanation of fines and compensation not only contemporary that explains it, but scholars in the era after the Prophet also explained the fines and compensation as they should. There are some scholars who explain the fines or compensation in his day.

Every late installment payment that exceeds the due date of the installment, is subject to a fine with a maximum stipulation of 10% multiplied by the number of installments per month, Tazir is recorded as a debt of good fortune and will be distributed as alms. (Regulation of the Directors of PT. Pegadaian Syariah, 2014) The provisions of the fine have been regulated in the regulations issued by PT. Sharia Pawnshop.

The current era of globalization is compared to scholars as a benchmark for ordinary people, because it is considered to understand more about Islamic laws. The opinion of ulama is very important for the development progress of a country. Development that is outwardly or physically which is essentially directed towards the development of the country and even its people. Also included in the development and development related to Islamic financial institutions. Indonesian Ulema Council is a collection of contemporary scholars who explain also related to fines and compensation.

Islamic financial institutions have developed very rapidly so that many people who believe to take financing in Islamic financial institutions including PT. Pegadaian Syariah Unit Bone South Sulawesi. In

addition to the terms and methods of taking it easy and practical, the fine or compensation does not burden the customer.

In granting fines to customers by PT. The South Sulawesi Bone Unit Pegadaian Sharia is justified in DSN (National Sharia Council) Fatwa Number 17 of 2000. The application of these fines is justified by the Shari'ah because the application of the fines or compensation is nothing but to discipline customers who do not pay the principal installments.

### *Perspective of the Indonesian Ulema Council (MUI)*

Regarding the imposition of fines, there are differences in opinions of fiqh scholars. Some think that the penalty may not be used, and some argue may be used. Hambali School of Ulama, including Ibn Taimiyah and Ibn Qayyim al-Jauziah, the majority of Maliki School scholars, Hanafi School scholars, and some scholars from the Shafi'ite school of thought argue that a judge may impose a fine on a ta'zir crime, they reasoned on the generality of the verses of Allah SWT. which prohibits being arbitrary towards the property of others. Muslims are ordered to fulfill agreements, transactions, requirements and fulfill the mandate. If fulfilling the agreement is a matter ordered, then applying certain conditions (such as fines) is valid. This is based on the famous hadith narrated by Abu Hurairah, that Rasulullah SAW said, "The Muslims are obliged to carry out the agreed terms." Everything whose law is changed will become mandatory, if there are conditions. And the Muslims are obliged to meet the conditions that have been mutually agreed upon, except those which justify the haram or forbid the halal.

The Indonesian Ulema Council also explained the provisions on compensation or fines accordingly. The provisions are: First, losses that can be subject to fines are real losses that can be clearly calculated. Second, compensation (ta'widh) may only be imposed on transactions (contracts) that incur debts (dain), such as salam, istishna 'as well as murabahah and ijarah. Third, compensation (ta'widh) may only be imposed on those who deliberately or because of negligence do something that deviates from the terms of the contract and cause harm to other parties.

This late fee is also not included in usury because usury is the benefit received by the debtor for loan services provided to the debtor. This is as a rule of fiqh: "That every benefit taken by the creditor (the party lending money) for his loan services is included in the riba category." Meanwhile, the tardy fund does not become Sharia Pawnshop income, but it becomes a social fund intended for the public and the environment that is confused. entitled to get. Fines do not apply to poor people or people who are in trouble. Dropping the fine is permitted on all types of transactions, other than debt and credit transactions. For the debt and credit transaction, there are some scholars who allow it, as long as the fine is not required at the beginning of the contract and only applies to people who can afford it. Nominal fines must also be reasonable and not excessive.

Sanctions in the form of monetary fines are also in accordance with the opinion of the AAOIFI international sharia standards and the opinion of the MUI National Sharia Council. DSN MUI has issued Fatwa Number 17 / DSN-MUI / IX / 2000 concerning Sanctions for Able Customers to Postpone Payment. (DSN MUI, 2014).

Sanctions described in the fatwa are sanctions applied by Islamic financial institutions to customers who are able to pay but delay payments on purpose. However, customers who are unable / unable to pay due to force majeure may not be subject to sanctions.

As for capable customers who delay payments and / or do not have the will and good faith to pay their debts, they may be subject to sanctions. Sanctions are based on the principle of ta'zir, which aims as

a threat so that customers are more disciplined in carrying out their obligations. This late fee is intended as a sanction or punishment, so as not to repeat immoral acts again. In the Sharia Economic Law Compilation, sanctions can be imposed on people who break promises, and the provisions of a person called breaking promises are explained in Article 36, which states that a party may be deemed to break a promise, if because of a mistake that is not doing what was promised to do it, doing what he promised, but not as promised, did what he promised, but was late, and did something that according to the agreement cannot be done. While regarding the type of sanctions mentioned in Article 38, namely the party in the contract that breaks the promise can be subject to sanctions to pay compensation, cancellation contract, risk transfer, fines, and / or paying legal fees. While regarding the use of fines, some fuqaha from groups that allow their use, they require penalties to be a threat, namely by withdrawing money from the person who made a mistake and withholding it from it. When 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. (DSN MUI, 2000). As is the case in PT. Pegadaian Syariah fines (ta'zir) that are applied in some products at PT. Pegadaian Syariah as explained in the perspective of Islamic economic law that these fines are a threat to customers who deliberately delay payments even though he is capable.

This fatwa also stipulates that sanctions can be in the form of fines of an amount of money determined on the basis of an agreement and made when the contract is signed. Then, funds from fines are intended as social funds. From the explanation of the Indonesian Ulema Council related to fines or compensation it is clear that PT. Pegadaian Syariah Unit Bone of South Sulawesi applies fines for customers who experience problematic financing due to the application of fines that run at PT. Pegadaian Syariah Unit Bone of South Sulawesi has been running with the provisions of Islamic principles.

### *Impact of Financing Application*

Planning is a basic function of management because organizing, staffing, directing, and controlling must first be planned. This planning is aimed at a future that is full of uncertainties due to changes in situation conditions (Kerzner, 2017). The penalty system applied by the Pawnshop Syariah Unit Bone is considered to have an effect on customer interest in taking financing at PT. Pegadaian Syariah Unit Bone South Sulawesi because fines imposed on customers are not burdensome because the value of fines is relatively mild. That is one reason why financing at PT. Pegadaian Syariah. this is much in demand by customers.

The impacts arising from the application of the system of fines (tazir) in financing problems in PT. Pegadaian Syariah Unit Bone of South Sulawesi, there are two impacts, positive and negative impacts. The impact caused by the implementation of the fine system is influenced by the existence of legal effectiveness. Law effectiveness is a process that aims to make the law effective (Zywicki & Stringham, 2010). To find out the extent of the effectiveness of the law, we must first be able to measure the extent to which the law is obeyed by most of the targets for compliance, we will say that the rule of law concerned is effective (Pistor et al, 2000). However, even though it is said that the rules that are obeyed are effective, we can still question further the degree of effectiveness because someone obeys or not a rule of law depends on their interests (Ali, 2009).

The positive impact of the application of the fines system implemented by the unit Pegadaian Syariah is that customers who are due and have been subject to fines will pay their installments early or on time. So that employees are no longer preoccupied with collecting delinquent customers, meaning that the fine is a deterrent and motivating effect for customers who get fined from the financing.

The positive impact of the application of this fine (tazir) system lies in the customer's credit portfolio, the customer who is diligent in paying installments so that when the loan portfolio is read by the

system, the customer's credit portfolio is in good condition. Wherever customers apply for credit or financing, an institution will provide convenience in providing credit because an institution will definitely see the customer's credit portfolio before taking out financing or credit. The worse the customer portfolio, the more an institution cannot provide financing or credit.

One of the negative effects of the application of the fine (tazir) lies in the waste of time that occurs because it is caused by employees who are supposed to work full time, but because they need to contact customers who are due to remind customers of financing not to forget to pay installments.

There are also other negative things related to this fine, for example customers who are due to deliberately allow themselves to be subject to fines because they think that the fines applied by Sharia Pawnshop are relatively light and not too burdensome, be it late in the daily or monthly period, so not a few customers let themselves be fined. However, this is certainly related to the number of installments. The less the amount of installments paid per month, the amount of fines paid when they are due will be less (lower), this is usually the customers who deliberately allow themselves to be fined. But, if the amount of installments is getting higher per month, the fines to be paid when they are due will be high too. In this case many customers are diligent in paying monthly installments.

Related to the application of this fine system, of course all of them have impacts, both positive and negative impacts. But with these things will not reduce the performance of PT. Pegadaian Syariah unit of the Bone of South Sulawesi in providing the best service to its customers in financial institutions.

## **Conclusion**

The application of fines in financing problems at PT. Pegadaian Syariah Unit Bone of South Sulawesi has positive and negative impacts. The positive impact is giving a deterrent effect to customers who are due while the negative impact is the waste of time for employees who have to work more than working hours. However, the impact of these fines did not reduce the performance of the South Sulawesi Unit Pegadaian Sharia Limited Company in order to become a non-bank financial institution that is still in demand by the public and become a financial institution that can help the economy of the Indonesian community, one of them is the community in Bone South Sulawesi. Because the people in the Bone area tend to open business land in their economic livelihoods, PT. Pegadaian Syariah Unit Bone always tries and strives to be an institution that can help the Bone community. The Indonesian Ulema Council has provided a detailed explanation related to fines on problematic financing. The application of these fines is permitted in Islam only for customers who deliberately delay installment payments on purpose.

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