

Application of *Ta'zīr* Sanctions and *Ta'wīd* Compensation in *Mushārah Mutanāqīshah* Contracts in Sharia Banking

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Abstract

Mushārah Mutanāqīshah (MMQ) is one of the innovative financing schemes implemented by Sharia banking institutions, allowing joint asset ownership between banks and customers with gradual transfer of ownership. A frequent issue in MMQ transactions is the customer's failure to fulfill payment obligations. In response, Sharia banks refer to Fatwa DSN-MUI No. 43/DSN-MUI/VIII/2004 on compensation (*ta'wīd*) and Fatwa No. 17/DSN-MUI/IX/2000 on disciplinary sanctions (*ta'zīr*). This study explores the legitimacy and application of these fatwas in the context of MMQ contracts, using a descriptive-qualitative approach through literature and documentation analysis. The findings indicate that imposition of sanctions must be aligned with the nature of the breached contract within MMQ—whether it is *mushārah*, *bai'*, or *ijārah*—to avoid unjust enforcement. The study concludes that while the fatwas provide legal grounds, a contextual contract-based analysis is crucial in applying punitive measures fairly.

Keywords:

Mushārah Mutanāqīshah, fatwa, *ta'zīr*, *ta'wīd*, Sharia banking.

INTRODUCTION

Sharia-compliant financial institutions have consistently developed innovative financing products to cater to the growing demand for ethical, interest-free, and justice-oriented financial solutions. Among these innovations is the *Mushārah Mutanāqīshah* (MMQ) contract, a hybrid financial model integrating elements of partnership (*mushārah*), sale (*bai'*), and lease (*ijārah*).

This structure allows Islamic banks and customers to co-own an asset, wherein the customer's ownership gradually increases by purchasing the bank's share through periodic installments. Meanwhile, rental payments (*ujrah*) are made by the customer for the portion of the asset still owned by the bank. This arrangement enables asset acquisition through a risk-sharing mechanism, reinforcing the *maqāṣid al-sharī'ah* principles of justice and cooperation in economic activities (Bank Indonesia, 2006; Wahbah al-Zuhaili, 2003).

However, the implementation of MMQ contracts in practice reveals several operational challenges, particularly regarding payment discipline. Customers may delay or fail to fulfill monthly installments and rental obligations, disrupting the contractual balance. In such circumstances, Islamic banks often refer to Fatwa DSN-MUI No. 43/DSN-MUI/VIII/2004, which permits the imposition of *ta'wīd* (compensation) to cover real losses, and Fatwa DSN-MUI No. 17/DSN-MUI/IX/2000, which allows the use of *ta'zīr* (sanctions) to penalize deliberate delays by customers who have the financial capacity to pay. These fatwas serve as a

legal foundation for banks to address non-performing financing while preserving Sharia compliance and institutional sustainability (DSN-MUI, 2004; DSN-MUI, 2000).

Despite their utility, the aforementioned fatwas are formulated in general terms and do not specifically address the intricacies of MMQ contracts. As MMQ consists of a multi-layered contractual structure (*'uqūd murakkabah*), determining the appropriate response to default requires an accurate identification of which component—*mushārahah*, *bai'*, or *ijārah*—has been breached. Applying penalties indiscriminately without understanding the legal implications of each contractual segment may result in injustice (*zulm*) and violate fundamental Sharia principles such as mutual consent (*tarāḍī*) and fair dealing (*'adl*) (Anwar, 2010; Al-Zuhaili, 2003).

Therefore, this study aims to critically evaluate the legitimacy and procedural implementation of *ta'zīr* and *ta'wīd* within the MMQ framework. Through a comprehensive legal and ethical analysis grounded in classical *fiqh* and contemporary Islamic finance standards, the research seeks to develop a principled framework that enables Sharia banks to enforce customer obligations fairly and proportionately. Such an approach not only ensures compliance with DSN-MUI guidelines but also promotes public confidence in Islamic financial institutions as equitable and socially responsible intermediaries (Al-Jazairi, 2004; Nasution, 2007).

LITERATURE REVIEW

The concept of *Mushārahah Mutanāqīshah* (MMQ) has gained significant traction in Islamic banking as a hybrid contract model that enables asset ownership through a gradual transfer of equity between the bank and the customer. MMQ integrates three distinct contract elements: partnership (*mushārahah*), sale (*bai'*), and lease (*ijārah*), making it a practical solution for home financing and other asset acquisitions in a Sharia-compliant manner. In this structure, the customer and the bank jointly purchase an asset, with the customer incrementally acquiring the bank's share while paying rent on the portion still owned by the bank. This model adheres to the principles of cooperation and equity sharing central to Islamic commercial jurisprudence (Bank Indonesia, 2006; Al-Zuhaili, 2003).

Islamic legal scholars classify MMQ as a form of *'uqūd murakkabah* (composite or hybrid contract), which must meet Sharia conditions for each underlying contract. For example, the *mushārahah* portion demands equal risk-sharing in terms of capital and profit, while *bai'* must fulfill conditions such as mutual consent and clarity of price and object. The *ijārah* contract must involve clearly defined benefits and lease terms. The composite nature of MMQ therefore requires stringent observance of Islamic legal principles at every contractual phase to maintain its Sharia validity (Al-Jazairi, 2004; Usmani, 2002).

In the case of contractual defaults, Islamic law recognizes two relevant concepts: *ta'zīr* and *ta'wīd*. *Ta'zīr* refers to discretionary punishments imposed by an authority to deter misconduct, while *ta'wīd* refers to compensation for proven financial harm. DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000 addresses *ta'zīr* in the context of late payments by capable customers, while Fatwa No. 43/DSN-MUI/VIII/2004 allows for *ta'wīd* to cover real, quantifiable losses. These provisions are considered necessary to uphold discipline and mitigate moral hazard within Islamic financial contracts (DSN-MUI, 2000; DSN-MUI, 2004).

However, the applicability of these fatwas to MMQ is not straightforward. Since MMQ includes multiple contractual layers, any delay or default must be examined with regard to the specific component breached—whether partnership, sale, or lease. The literature emphasizes that

indiscriminate enforcement of fines or penalties could contradict the foundational Sharia principles of fairness (*‘adl*) and prohibition of unjust enrichment (*zūlm*) (Anwar, 2010; Al-Zuhaili, 2003). Thus, scholars and practitioners urge careful contract design and clear stipulations regarding penalty clauses.

Furthermore, modern discussions in Islamic finance literature highlight the tension between regulatory enforcement and ethical responsibility. While financial institutions must protect their interests, the implementation of punitive measures must not exceed the actual harm caused, nor can they be imposed arbitrarily. Upholding the *maqāṣid al-sharī‘ah*—the higher objectives of Sharia such as justice and public welfare—remains a guiding framework for resolving these contractual complexities (Rahman, 2003; Usmani, 2002).

THEORETICAL FRAMEWORK

The theoretical foundation of this study is based on the Islamic legal theory (*uṣūl al-fiqh*) and contract law within the Sharia framework. In Islamic finance, contracts (*‘uqūd*) must adhere to specific legal pillars (*arkān*) and conditions (*shurūṭ*) to be considered valid. These include mutual consent, lawful subject matter, and transparency in terms and obligations. The hybrid nature of MMQ necessitates that each embedded contract—*mushārahah*, *bai‘*, and *ijārah*—must independently fulfill these requirements while harmonizing as a cohesive financing structure (Al-Jazairi, 2004; Usmani, 2002).

The principle of justice (*‘adl*) serves as a central theoretical axis in Islamic commercial law. Contracts should not only reflect mutual benefit but must also prevent exploitation or unjust enrichment (*ghabn*, *zūlm*). This is especially relevant in financial defaults, where penalties must be proportional and ethically justified. The implementation of *ta‘zīr* (disciplinary action) must aim to educate and deter, rather than punish excessively, while *ta‘wīd* (compensation) should correspond strictly to actual losses. These rules emerge from *maqāṣid al-sharī‘ah*, the higher objectives of Islamic law, which emphasize fairness, economic balance, and social welfare (Al-Zuhaili, 2003; Anwar, 2010).

The concept of liability (*damān*) also plays a significant role in this framework. In Islamic jurisprudence, liability arises from transgression (*t’addī*), negligence (*taqṣīr*), or breach of contract. Therefore, compensation (*ta‘wīd*) is not automatically enforceable unless clear harm has occurred due to a specific contractual violation. In MMQ, this raises theoretical challenges, as determining the liable party depends on the type of contract involved—*mushārahah*, *bai‘*, or *ijārah*. Without clarity in contract structure and breach terms, assigning liability may contravene Sharia norms (Usmani, 2002; Rahman, 2003).

Another relevant theoretical foundation is the doctrine of *‘urf* (custom), which is recognized in Islamic law as a valid basis for interpreting silent contract terms, provided it does not contradict Sharia principles. In Islamic banking, national fatwas (e.g., from DSN-MUI) are often based on *‘urf mu‘āmalah* (customary commercial practices), granting them semi-binding authority. Thus, fatwas on *ta‘wīd* and *ta‘zīr* are not just ethical recommendations but are grounded in juristic reasoning that reflects the socio-economic realities of Indonesia’s Islamic banking environment (DSN-MUI, 2000; Al-Jazairi, 2004).

Finally, modern Islamic financial theory incorporates *risk-sharing* and *profit-and-loss sharing* (PLS) as key paradigms. MMQ exemplifies this model by requiring both the bank and the customer to share risk equitably during the partnership phase. Penalties, therefore, must be evaluated in light of the overall risk model; imposing them without due consideration may

contradict the collaborative spirit of the partnership and lead to asymmetrical outcomes. This reinforces the need for a balanced, theoretically sound framework in sanctioning defaults (Anwar, 2010; Usmani, 2002).

RESEARCH METHODS

This study employs a qualitative-descriptive research design combined with a normative-juridical approach to examine the legal and ethical framework governing the application of *ta'zīr* (disciplinary sanctions) and *ta'wīd* (compensation) in *Mushārah Mutanāqīshah* (MMQ) contracts. The qualitative-descriptive method is chosen to systematically describe the legal and contractual structure of MMQ and to assess how existing DSN-MUI fatwas are interpreted and implemented in practice. Meanwhile, the normative-juridical approach allows the research to assess the fatwas and banking practices through the lens of Islamic legal theory (*uṣūl al-fiqh*) and positive regulations in Indonesia, focusing on harmonizing contractual obligations with Sharia ethics (Nasution, 2007; Rahman, 2003).

The primary data sources consist of official fatwas issued by the Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI), particularly Fatwa No. 43/DSN-MUI/VIII/2004 on *ta'wīd* and Fatwa No. 17/DSN-MUI/IX/2000 on *ta'zīr*. These are complemented by regulatory publications and standardized product guidelines issued by Bank Indonesia and Otoritas Jasa Keuangan (OJK), which detail the structural and operational framework of MMQ financing. Classical *fiqh* texts and authoritative interpretations of Islamic commercial law, such as those by Wahbah al-Zuhaili and Al-Jazairi, are consulted to evaluate the Sharia compliance of punitive practices in MMQ contracts (Al-Zuhaili, 2003; Al-Jazairi, 2004).

Document analysis is applied as the main technique for collecting and analyzing data. This includes reviewing legal manuscripts, fatwa compilations, national banking regulations, scholarly journals, and academic commentary relevant to Islamic finance law. The method is particularly appropriate for exploring the consistency between legal norms and actual practices, enabling a detailed understanding of how contractual provisions—especially those related to default, fines, and loss recovery—are interpreted in both legal and moral dimensions. This approach also facilitates critical assessment of whether current interpretations of *ta'zīr* and *ta'wīd* align with the foundational objectives of Sharia (*maqāsid al-sharī'ah*), particularly in preventing injustice (*zulm*) in financial dealings (Anwar, 2010; Muljadi & Widjaja, 2004).

RESULTS AND DISCUSSION

1. Structure of MMQ Contracts

Mushārah Mutanāqīshah (MMQ) is categorized as a hybrid contract (*'uqūd murakkabah*) in Islamic jurisprudence because it merges three different types of contracts: *mushārah* (partnership), *bai'* (sale), and *ijārah* (lease). According to DSN-MUI Fatwa No. 73/DSN-MUI/XI/2008, each component of this hybrid contract must independently comply with the legal requirements of Sharia (Bank Indonesia, 2006).

In the initial phase, *mushārah* establishes joint ownership between the Islamic bank and the customer, who share profits and bear losses proportionally to their capital contribution. As the contract progresses, the customer gradually purchases the bank's share through a *bai'* contract

while simultaneously paying rent for the bank's share of the asset under *ijārah* (Al-Zuhaili, 2003).

The complexity of MMQ lies in the contractual layering. If a breach occurs, it is imperative to determine under which component the violation happened. A breach in the *mushārah* component may result in the invalidation or dissolution of the partnership, especially if a party fails to meet their capital or operational obligations (Usmani, 2002; Al-Jazairi, 2004).

In the *ijārah* component, compensation (*ta'wīd*) is only justified if there is clear and measurable harm, such as unpaid rent for use of the asset. Meanwhile, punitive actions in the *bai'* component are only valid if the penalties were explicitly included and agreed upon in the contract. Failure to distinguish between these layers risks applying sanctions in a way that contradicts fundamental Sharia principles (Usmani, 2002; Al-Jazairi, 2004).

2. Application of *Ta'zīr* and *Ta'wīd*

The DSN-MUI has issued two relevant fatwas regarding penalties and compensation in Islamic finance: Fatwa No. 17/DSN-MUI/IX/2000 authorizes the application of *ta'zīr*—a discretionary penalty aimed at disciplining customers who are financially capable yet intentionally delay payment. Fatwa No. 43/DSN-MUI/VIII/2004 permits the application of *ta'wīd* as compensation for proven, real, and measurable financial losses resulting from a customer's contractual breach. Both mechanisms serve different Sharia-based purposes: *ta'zīr* is preventative and deterrent in nature, while *ta'wīd* is compensatory and aims to make the injured party whole again (DSN-MUI, 2000; DSN-MUI, 2004).

However, in the context of MMQ, these mechanisms must be aligned with the specific nature of the defaulted contract component. If the delay or default relates to the *ijārah* component—where rent is unpaid despite benefit received—then *ta'wīd* is legitimate. If the default is under *bai'*, where a customer has contractually agreed to purchase the bank's portion of the asset but delays payment, then penalties may be justified, provided they are clearly stipulated in the contract. Conversely, if the purchase agreement was not binding at the outset, imposing penalties may violate the prohibition against coercion in sales transactions (*lā ikrāh fī al-buyū'*) (Anwar, 2010; Usmani, 2002).

The principle of shared risk and profit under *mushārah* complicates the blanket application of penalties. Since both parties co-own the asset, default by one partner does not automatically justify punitive enforcement unless loss can be objectively attributed. Injustice (*ẓulm*) occurs when penalties are imposed beyond the scope of actual harm or without determining which contract component has been breached. Hence, Islamic banks must develop internal Sharia audit mechanisms to evaluate the legitimacy of every penalty on a case-by-case basis (Al-Zuhaili, 2003; Rahman, 2003).

3. Ethical Considerations and Challenges

The application of *ta'zīr* and *ta'wīd* within MMQ also raises profound ethical concerns. Sharia emphasizes that justice (*'adl*) and the absence of oppression (*ẓulm*) are cornerstones of all financial dealings. Penalties must be grounded in actual harm and cannot be arbitrary. In cases where customers genuinely experience financial hardship, enforcing penalties without considering their circumstances undermines Islamic ethics, which prioritize compassion (*rahmah*) and fairness (*insāf*) (Anwar, 2010; Al-Jazairi, 2004).

The hybrid structure of MMQ further complicates ethical enforcement, as default may occur under one or more contracts. Without rigorous due diligence and contract dissection, banks may wrongfully apply penalties to components not actually breached. This creates the risk of reputational damage and customer mistrust in Islamic financial institutions. It is therefore essential that Islamic banks consult Sharia advisors and ensure clarity in their contract drafting, especially concerning penalty clauses and their conditional enforcement (Rahman, 2003; DSN-MUI, 2004).

4. Economic and Societal Implications

Economically, the fair and transparent implementation of *ta'zīr* and *ta'wīd* in MMQ contracts improves contractual compliance and reduces non-performing financing ratios (NPF). It promotes better credit behavior among customers and strengthens institutional credibility. Islamic banks that apply such mechanisms justly are likely to be perceived as responsible and ethical actors in the financial ecosystem (Sari & Ismail, 2012; Yusof & Shafii, 2017).

Societally, such enforcement reinforces the ethical values of Islamic finance. It educates the public that Sharia-compliant banking does not mean lax accountability but rather offers balanced justice—where penalties exist, but only within justified and principled limits. This contributes to public trust, financial inclusion, and supports the broader goals of *maqāṣid al-sharī'ah*—particularly the preservation of wealth (*hifz al-māl*) and fairness in transactions (*'adālah*) (Kholid, 2015; Zainuddin & Abdul-Rahman, 2014).

CONCLUSION

The application of *ta'zīr* and *ta'wīd* in MMQ financing must be guided by precise identification of which contract—*mushārah*, *bai'*, or *ijārah*—has been breached. These components carry different Sharia implications, and their blending requires cautious legal interpretation. Blanket sanctions are inappropriate and risk violating Islamic legal and ethical norms. Instead, a case-by-case analysis rooted in contractual clarity, ethical enforcement, and Sharia principles is necessary to maintain justice, avoid oppression, and preserve the legitimacy of Islamic banking operations.

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