

## **ANALYSIS OF COMPENSATION PRACTICES IN HAJJ ARRUM PRODUCTS ACCORDING TO FIQH MUAMALAH : STUDY ON BANDA ACEH SHARIA PAWNSHOP**

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### **Abstract**

One of the superior products of Pegadaian Syariah is the Hajj arrum product which provides Hajj assistance funds by pawning gold weighing 3.5 grams or the equivalent of 1.5 gold mayams, and customers have received a loan of IDR 25,000,000 to register for the Hajj portion. Pegadaian Syariah is inseparable from the risk of loss, so compensation (ta'widh) is applied. The determination of ta'widh must be in accordance with the applicable rules in accordance with the Fatwa DSN-MUI and Islamic Law. This type of research uses qualitative research methods and uses a normative-empirical legal approach with data from laws and regulations, fatwas of scholars, and other secondary data. The results showed that the mechanism of compensation practices in the Arrum Haji product at Pegadaian Syariah Darussalam Banda Aceh, this has been determined by the nominal amount of a maximum percentage of 4% which has been made in accordance with the institution's regulatory policies and agreed upon by the customer. However, the amount of compensation is only made by one party and the customer only follows the rules without knowing what form of loss the Sharia Pawnshop will experience if the customer delays in paying the financing installments. So that the implementation of the practice of compensation (ta'widh) is not in accordance with the contents of the MUI DSN Fatwa No. 43 / DSN-MUI / VIII / 2004 concerning compensation (ta'widh) which explains how the practice of compensation (ta'widh) should not include nominal losses, but must be in accordance with the actual losses or real losses incurred by the customer.

**Keywords:** Sharia Pawnshop, Fiqh Muamalah, Fatwa DSN-MUI No.43/2004, Compensation (ta'widh)

### Abstrak

Salah satu produk unggulan Pegadaian Syariah adalah produk *arrum haji* yang menyediakan dana bantuan haji dengan menggadaikan emas seberat 3,5 gram atau setara 1,5 mayam emas, dan nasabah sudah mendapatkan pinjaman sebesar Rp 25.000.000 untuk mendaftar porsi haji. Pegadaian Syariah tidak terlepas dari risiko kerugian, sehingga diberlakukan ganti rugi (*ta'widh*). Penentuan *ta'widh* harus sesuai dengan aturan yang berlaku sesuai dengan Fatwa DSN-MUI dan Hukum Islam. Jenis penelitian ini menggunakan metode Penelitian kualitatif dan menggunakan pendekatan hukum normatif-empiris dengan data dari peraturan perundang-undangan, fatwa ulama, dan data sekunder lainnya. Hasil penelitian menunjukkan bahwa Mekanisme praktik ganti rugi pada produk *Arrum Haji* di Pegadaian Syariah Darussalam Banda Aceh, ini telah ditentukan jumlah nominal persentasenya maksimal sebesar 4% yang sudah dibuat sesuai dengan kebijakan peraturan lembaga dan disepakati oleh pihak nasabah. Namun jumlah ganti rugi tersebut hanya dibuat oleh sepihak dan nasabah hanya mengikuti aturannya saja tanpa mengetahui bentuk kerugian apa saja yang akan dialami Pegadaian Syariah apabila pihak nasabah menunda dalam pembayaran angsuran pembiayaannya. Sehingga pelaksanaan praktik ganti rugi (*ta'widh*) ini belum sesuai dengan isi Fatwa DSN MUI No. 43/DSN-MUI/VIII/2004 tentang ganti rugi (*ta'widh*) yang didalamnya menjelaskan bagaimana praktik ganti rugi (*ta'widh*) yang seharusnya tidak boleh mencantumkan nominal kerugian, akan tetapi harus sesuai dengan kerugian yang sebenarnya atau kerugian yang nyata (*rill*) yang dilakukan oleh nasabah.

**Kata Kunci** : Pegadaian Syariah, Fiqih Muamalah, Fatwa DSN-MUI No. 43/2004, Ganti Rugi (*ta'widh*)

### PENDAHULUAN

Pawnshops is a state-owned enterprise (*Badan Usaha Milik Negara* [BUMN]) engaged in the Indonesian financial sector and is engaged in three types of commercial companies, namely financing, gold, and various other services.<sup>1</sup> Meanwhile, sharia pawnshop institutions are companies that offer loan facilities with certain collateral requirements in accordance with sharia principles. The collateral is pawned and then the institution will evaluate or

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<sup>1</sup> M. Habiburrahim dkk., "Mengenal Pegadaian Syariah," Jakarta, Kuwais, 2012, hlm.217.



interpret it. The estimated value of the collateral has a great influence on the size of the loan amount.<sup>2</sup>

Islamic pawnshops can also help the community with loan products that are accompanied by collateral. In addition, in Islamic pawnshops there are several other sharia-based products outside of gold pawning, which if needed and can also help the needs of the community. There are three forms of product aspects, namely financing, gold, and services or services. One form of Islamic pawnshop products from the financing aspect, namely there is a Hajj arrum product. Where this product is the right solution in order to help Muslims to realize the implementation of the fifth pillar of Islam, namely, performing the hajj to the temple.<sup>3</sup>

Arrum Haji Financing is one of the financing products owned by Pegadaian Syariah which is intended for customers who want to perform the Hajj pilgrimage, where Pegadaian Syariah helps customers in performing the Hajj pilgrimage financially. The agreement used in the arrum Haji business is a rahn contract, which is keeping the borrower's property as collateral for the loan received, and an al qard contract, which is a lending and borrowing agreement to receive money from the customer with the condition that the customer is obliged to return the money received within the agreed time. However, in the implementation of the rahn contract at Pegadaian Syariah, there is a payment of compensation (*ta'widh*) in the event of late payment of the financing money paid in monthly installments. The compensation is paid to the Islamic pawnshop which has been determined in the contents of the agreement.<sup>4</sup>

The word *al ta'widh* comes from *'iwadh* which means compensation.<sup>5</sup> While *al ta'widh* linguistically means compensating (loss) or paying compensation. As for the term is to cover losses incurred due to violations or mistakes. The loss in question is a loss that befalls a person, either concerning himself or his property, resulting in a reduction in quality, quantity, or benefits. In the principle of Islam strongly recommends a compensation

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<sup>2</sup> Muhammad Firdaus, "Fatwa-Fatwa Ekonomi Syariah Kontemporer," Jakarta, Renaisan, 2005, hlm. 68.

<sup>3</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 30, 2023): 667-86, <https://doi.org/10.26811/peuradeun.v11i2.923>.

<sup>4</sup> Firdaus, "Fatwa-Fatwa Ekonomi Syariah Kontemporer."

<sup>5</sup> Basuni Imamuddin dan Nashiroh Ishaq, "Kamus Konstektual Arab-Indonesia," Depok, Gma Insani, 2012, hlm. 420.



because giving mudharat to someone is not justified to do, based on the principle of “*la dharar wa la dhirar*” (no harm and no harm) When it happens it should be resolved if not it will be prosecuted in the court of Allah SWT.<sup>6</sup>

DSN MUI Fatwa No. 43 Year 2004 on muamalah practices, particularly related to indemnity practices, is to provide guidance and explanation on the validity and compliance with sharia principles in financial transactions.<sup>7</sup> This fatwa emphasizes the importance of ensuring that the financial practices carried out by Islamic financial institutions are in accordance with Islamic teachings, and do not conflict with applicable legal provisions. In addition, this fatwa also provides a clear framework for Islamic financial institutions to regulate and manage the practice of compensation in financial contracts by taking into account the principles of fairness, transparency, and agreement between the parties involved.<sup>8</sup>

The general provisions explained in the fatwa are, *first*, compensation (*ta`widh*) may only be imposed on the party who intentionally or negligently does something that deviates from the terms of the contract and causes harm to the other party. *Second*, the losses that can be subject to *ta`widh* as referred to in paragraph 1 are real losses that can be clearly calculated. *Third*, the real loss as referred to in paragraph 2 is the real costs incurred in the context of collecting the rights that should be paid. *Fourth*, the amount of compensation (*ta`widh*) is in accordance with the value of real loss (real loss) that must be experienced (fixed cost) in the transaction and not the loss that is expected to occur (potential loss) due to lost opportunities (opportunity loss or *al-furshah al-dha-i'ah*). *Fifth*, compensation (*ta`widh*) may only be imposed on transactions (contracts) that give rise to debts and receivables (*dain*), such as *salam*, *istishna'* and *murabahah* and *ijarah*. *Sixthly*, in *Mudharabah* and *Musyarakah* contracts, compensation can only be imposed by the shahibul mal or one of the parties in *musyarakah* if the share of profit is clear but not paid.

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<sup>6</sup> Chairul Fahmi, “KONSEP IJMAK MENURUT FAZLUR RAHMAN: Studi Kritis Terhadap Teori Ijmak Imam Asy-Syafi'i,” *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 15, no. 2 (October 29, 2017): 245–56, <https://doi.org/10.22373/jms.v15i2.1778>.

<sup>7</sup> Fatwa DSN MUI No. 43/DSN-MUI/VIII/2004, “Tentang Ganti Rugi (Ta'widh),” *Jakarta Pusat*, Agustus 2004, hlm. 6.

<sup>8</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 (2024): 1–12, <https://journal.iain-manado.ac.id/index.php/JIS/article/view/2611>.



However, in its implementation, there are differences in interpretation or application that can lead to certain problems.<sup>9</sup> Problems that arise in the practice of compensation for Arrum Haji products can vary depending on the context, one of the problems is, unclear terms and conditions, this can cause confusion and disputes between product providers and consumers, including the amount of nominal compensation when the loss does not reach the predetermined, the amount of compensation is only made by one party and is not transparent in providing product information, consumers may not fully understand what is guaranteed by Arrum Haji products because customers only follow the rules that have been made.<sup>10</sup>

Pawnshop Syariah Darussalam Banda Aceh as a financial institution that provides Arrum Haji products, became the object of research to evaluate the extent of compliance with the principles of muamalah and DSN MUI fatwa No. 43 of 2004. Arrum Haji is one of the Islamic financial products that offers financing solutions for people who want to perform the Hajj pilgrimage. Therefore, this research will identify the background of the problem related to the practice of compensation for Arrum Haji products at Pegadaian Syariah Darussalam Banda Aceh.<sup>11</sup>

The focus of this research is on the practice of compensation for Arrum Haji products at Pegadaian Syariah Darussalam Banda Aceh. In this context, the role of fiqh muamalah and DSN MUI fatwa No. 43 of 2004 becomes a guide in assessing the validity and compliance of compensation practices in the product. Thus, this fatwa has an important role in maintaining compliance with sharia principles in the economic and financial activities of Muslims.

By highlighting this issue, it is hoped that it can provide a deeper understanding of the implementation of the practice of compensation in the Hajj arrum product, as well as make a positive contribution in improving compliance with sharia principles in sharia financial business practices in Indonesia, especially in Pegadaian Syariah Darussalam Banda Aceh.

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<sup>9</sup> Rahman, "Analisis Permasalahan Dalam Praktik Ganti Rugi Produk Arrum Haji," *Jurnal Ekonomi Syariah*, 2023, hlm. 45-60.

<sup>10</sup> Hidayat, "Studi Kasus: Permasalahan Praktik Ganti Rugi Produk Arrum Haji Di Industri Pegadaian Syariah," *Jurnal Manajemen Keuangan Syariah*, 2022, hlm. 30-45.

<sup>11</sup> Prasetyo, "Implikasi Permasalahan Praktik Ganti Rugi Produk Arrum Haji Terhadap Kepercayaan Konsumen," *Jurnal Manajemen Keuangan Dan Perbankan Syariah* Vol. 01, No. 2, (2021): hlm. 80-95.



## RESEARCH METHODS

This type of research includes field research, which is research conducted in the field or in the community. This research approach combines Normative Law and Empirical Law.<sup>12</sup> Primary data is data sourced from the field using interviews. The primary data needed are regulations and fatwas on the practice of compensation in the Hajj arrum product.<sup>13</sup> Meanwhile, secondary data is obtained from relevant sources and obtained directly from sources. This research was conducted using several methods of primary data collection and interview results. Literature study is conducted by reviewing written information about the law that comes from various sources and is published for the general public. Observation was also carried out by directly observing the practice of arrum Hajj product compensation at Pegadaian Syariah Darussalam Banda Aceh.<sup>14</sup> After the data is collected, the researcher performs data processing by grouping the data based on the purpose of each question. The data is then analyzed using descriptive methods to obtain valid and easy-to-understand results. The final stage of data processing is drawing conclusions based on the results of the analysis.<sup>15</sup>

## RESULTS AND DISCUSSION

### Fiqh Muamalah Concept and Legal Basis for Compensation

The word "*al-ta'widh*" comes from "*Iwadha*" which means "compensation" or "compensation". Linguistically, "*al-ta'widh*" means compensating for losses or paying compensation.<sup>16</sup> In terms, "*al-ta'widh*" means covering losses arising from violations. While the definition of "*ta'widh*" in general means covering losses incurred as a result of violations or mistakes using the provisions of losses that can be calculated clearly and

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<sup>12</sup> Muhammad Teguh, "Metodologi Penelitian Ekonomi :Teori Dan Aplikasi, (Jakarta : PT Raja Grafindo," *Jakarta*, PT Raja Grafindo, 2005, hlm. 121.

<sup>13</sup> Suryana, "Metodologi Penelitian Model Praktis Penelitian Kuantitatif Dan Kualitatif," *Bandung*, Universitas Pendidikan Indonesia, 2010, hlm. 20.

<sup>14</sup> Suharsimi Arikunto, " , Prosedur Penelitian Suatu Pendekatan Praktek," *Jakarta*, PT Rineka Cipta, 2002, hlm. 135.

<sup>15</sup> Muhaimin, "Metode Penelitian Hukum, Cetakan Pertama," *Mataram*, Mataram University Press, 2020, hlm. 115.

<sup>16</sup> Nining Herawati, " Analisis Ta"widh (Ganti Rugi) Bagi Nasabah Wanprestasi Pada Pembiayaan Murabahah Dalam Perspektif Ekonomi Islam Di Bank Syariah Mandiri Teluk Betung Bandar Lampung." , " *Skripsi*, Fakultas Ekonomi dan Bisnis Islam, Universitas Islam Negeri Raden Intan Lampung, 2018, hlm. 50.





accurately. The purpose of “*ta'widh*” is to obtain payment in accordance with the real losses experienced, not to compensate for losses that have not yet occurred or are expected to occur. The form of “*ta'widh*” that can be given can be in the form of objects or cash that is used to cover the losses experienced in an effective and appropriate manner.<sup>17</sup>

Compensation according to muamalah fiqh is an obligation imposed on a person or party who has caused loss or damage to the rights, property, or interests of another party, whether intentionally or unintentionally, where this obligation arises as a form of legal and moral responsibility to return or replace what has been harmed in accordance with the value or amount of loss experienced, in order to restore justice and avoid injustice in muamalah transactions, as well as to maintain balance and harmony in social and economic relations in society in accordance with the principles of Islamic sharia.<sup>18</sup>

In a legal context, punitive damages are often the remedy for breach of contract, negligence or other unlawful acts that result in harm to another party. The basic principle of punitive damages is to ensure that the injured party is compensated fairly and in accordance with their losses. Punitive damages can be set through a written agreement between the parties involved or decided by a court if no agreement is reached. In addition, the amount of compensation should be proportionate and balanced to the level of loss incurred, and should consider various factors such as the economic, emotional, and social impact of the loss. Allah says in QS. Al-Baqarah: 194

الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَتُ قِصَاصٌ فَمَنْ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا  
اعْتَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

Meaning: “Whoever attacks you, then attack him in proportion to his attack on you. Fear Allah and know that Allah is with those who fear.” (QS. Al-Baqarah [1]: 194)<sup>19</sup>

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<sup>17</sup> Bagya Agung Prabowo, “Aspek Hukum Pembiayaan Murabahah Pada Perbankan Syariah,” *Yogyakarta*, UII Press Yogyakarta (Anggota IKAPI), 2012, hlm. 69.

<sup>18</sup> Iza Hanifuddin, “Ganti Rugi Perspektif Fiqh Ekonomi,” *Jurnal Muslim Heritage*. Vol. 5 No 1, (Mei 2020): hlm. 10-15.

<sup>19</sup> Al-Qur’an Al-Baqarah, ayat 194, “Mushaf Al-Qur’an Terjemahan,” Jakarta, Departemen Agama RI, Yayasan Penyelenggara Penerjemah Al-Qur’an, 2002.



From the above verse can be connected with compensation (ta'widh) means that if someone attacks you (causing harm), then reply with the equivalent of the same loss.

### **Arrum Haji Product Concept**

Arrum Haji product is a financing service provided by Islamic financial institutions to assist customers in planning and preparing for Hajj travel expenses. This product is specifically designed to facilitate Muslims who want to perform the Hajj pilgrimage but do not have sufficient funds. Islamic financial institutions provide financing to customers using an appropriate contract (agreement), such as a murabahah contract or ijarah contract. Through this product, customers can obtain funds for Hajj expenses, including registration fees, travel costs, and living expenses while in the holy land. With the Arrum Haji Product, it is hoped that more and more Muslims will be able to realize their dream of performing the Hajj pilgrimage in an easier and more planned way.<sup>20</sup>

The Arrum Haji product is a product issued by a sharia pawnshop where the product provides Hajj assistance funds to members of the public who wish to perform the Hajj pilgrimage. Arrum Haji products are obtained only by pawning gold weighing 3.5grams or the equivalent of 1.5 mayam of gold and the customer has received a loan of Rp 25,000,000 in the form of a Hajj savings book when making a savings book at a Sharia Bank to register for the Hajj portion. Pegadaian Syariah Darussalam Banda Aceh, prospective customers must fulfill the conditions set by the company.

The causes of compensation in Arrum Haji products can be caused by several factors. First, the customer does not fulfill the obligation to pay installments or repay the loan in accordance with the agreed agreement.<sup>21</sup> This can be caused by the customer's poor economic condition which can make them not have enough funds to pay installments on time. Second, there is a

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<sup>20</sup> Chairul Fahmi and Wira Afrina, "ANALYSIS OF LEGAL ASPECTS ON DEBT TRANSFER FROM CONVENTIONAL BANK TO SHARIA BANK POST THE APPLICATION OF QANUN ACEH NO. 11 OF 2018," *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 4, no. 1 (July 23, 2023): 28-39, <https://www.journal.ar-raniry.ac.id/index.php/mudharabah/article/view/3047>.

<sup>21</sup> Suad Qurrotul Aini, "Praktik Denda Keterlambatan Pelunasan Produk Pembiayaan Arrum Haji Di Pegadaian Syariah Blauran Surabaya Dalam Tinjauan Hukum Islam," *Jurnal Hukum Bisnis Islam*, Vol. 10, No. 01, (2020): hlm. 170.





violation of the terms and conditions set out in the financing agreement, such as the use of funds for purposes other than Hajj expenses. Third, the risk of loss can also arise from a decrease in the value of the collateral, for example if the price of gold used as collateral has decreased drastically, so that it no longer covers the amount of the loan given.<sup>22</sup>

In Fatwa DSN MUI No.43 of 2004 the concept of compensation (*ta'widh*) issued by the National Sharia Council is expected to be one way to prevent losses experienced by Islamic Financial Institutions. It also aims to compete with conventional institutions that use interest based on the concept of lost opportunity or time value of money when customers are late in paying their obligations.<sup>23</sup>

However, further explanation is needed regarding the application of Fatwa DSN-MUI NO. 43/DSN-MUI/VIII/2004 also explains compensation (*ta'widh*) which is expected to be able to teach a lesson to unruly financing customers and help Sharia Financial Institutions to encourage customers to pay off their obligations on time. Where the application of compensation (*ta'widh*) in Fatwa DSNMUI No.43 / DSN-MUI / VIII / 2004 aims to protect the transacting parties, both customers and Islamic Financial Institutions, so that no one party should be deprived of their rights.<sup>24</sup>

Based on the fatwa, the provisions of compensation (*ta'widh*) are divided into two, namely:

a. General Provisions

- 1) Compensation (*ta'widh*) may only be imposed on the party who intentionally or negligently does something that deviates from the terms of the contract and causes harm to the other party.
- 2) Losses that can be subject to *ta'widh* as referred to in paragraph 1 are real losses that can be clearly calculated.

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<sup>22</sup> Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *AlterNative: An International Journal of Indigenous Peoples*, March 8, 2024, 11771801241235261, <https://doi.org/10.1177/11771801241235261>.

<sup>23</sup> Rachmadi Usman, "Produk Dan Akad Perbankan Syariah Di Indonesia," Bandung, PT. Citra Aditya Bakti, 2019, hlm. 258.

<sup>24</sup> Fatwa Dewan Syariah Nasional MUI NO. 43/DSN-MUI/VIII/2004, "Tentang Ganti Rugi (Ta'widh)," n.d.



- 3) The real loss as referred to in paragraph 2 is the real costs incurred in the context of collecting the rights that should be paid.
- 4) The amount of compensation (*ta'widh*) is in accordance with the value of real loss (real loss) that must be experienced (fixed cost) in the transaction and not the loss that is expected to occur (potential loss) due to lost opportunities (opportunity loss or *al-furshah al-dha-i'ah*).
- 5) Compensation (*ta'widh*) may only be imposed on transactions (contracts) that give rise to debt and credit (*dain*), such as *salam*, *istishna'* and *murabahah* and *ijarah*.
- 6) In *Mudharabah* and *Musyarakah* contracts, compensation can only be imposed by the *shahibul mal* or one of the parties in *musyarakah* if the share of profit is clear but not paid.

b. Special Conditions

- 1) Compensation received in transactions at LKS can be recognized as a right (income) for the party receiving it.
- 2) The amount of compensation must be fixed in accordance with the real loss and the procedure for payment depends on the agreement of the parties.
- 3) The amount of compensation must not be included in the contract.
- 4) The party who breaks the promise is responsible for court costs and other costs incurred as a result of the case settlement process.

In the business world, there are always parties who get profits and also those who experience losses. However, in Islam if we talk about sharia principles, it means sharing profits and losses between the actors either the entrepreneur (*mudharib*) or the capital owner (*shahibul mal*), so that no one is oppressed. Risks that may occur, such as non-compliance with the contract or customer error by delaying payments. This is very contrary to the principles of Islamic sharia which greatly safeguards the interests of all parties to the transaction, both Islamic financial institutions and customers, so that none of the parties should be harmed by their rights. One form of protection provided



by Islamic sharia is through the regulation of the compensation mechanism (*ta'widh*). Compensation to parties whose rights have been violated.<sup>25</sup>

## **Mechanism of Compensation Practices on Arrum Haji Products at Pegadaian Syariah Darussalam Banda Aceh**

### **1. Practice of Indemnity in Arrum Haji Products**

The mechanism of compensation practices in Arrum Haji products at Pegadaian Syariah Darussalam Banda Aceh involves several important aspects that must be obeyed. In practice, if the installment is not paid, the customer will receive the first summons. If the first summons is not heeded, within a week a second summons will be given, and so on until the third summons. After the third summons, Pegadaian Syariah will take further action, especially considering that this is related to the financing of the Arrum Haji product.<sup>26</sup>

Pegadaian Syariah will communicate with the customer to find a solution. The customer will be given two options: pay off the obligation or cancel the financing. If the customer chooses to cancel the Hajj portion financing, Pegadaian Syariah will take care of the cancellation process. The collateral submitted at the beginning, which is 3.5 grams or the equivalent of 1.5 mayam of gold, will be returned to the customer after the obligation is paid off. This is because after the contract, the customer is bound by the agreed rights and obligations.<sup>27</sup>

The following is a simulation of installments and fees at the time of the contract on the Arrum Haji product at the Darussalam Syariah pawnshop in Banda Aceh

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<sup>25</sup> Biantary Alike Zaini Abdul Malik and Eva Misfah Bayuni, "Tinjauan Fatwa DSN MUI Nomor 43/DSN-MUI/VIII/2004 Tentang Ganti Rugi (Ta'widh) Terhadap Penalty Pada Pencairan Deposito Mudharabah Sebelum Jatuh Tempo Di Bank Syariah Mandiri KCP Antapani Bandung," *Jurnal Biantary Alike, et Al.* Volume 4, No. 2 (2018): hlm. 428-430.

<sup>26</sup> Chairul Fahmi, "Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)," *TSAQAFAH* 8, no. 2 (November 30, 2012): 295-310, <https://doi.org/10.21111/tsaqafah.v8i2.27>.

<sup>27</sup> Wawancara dengan Rozi Hafiz, Bagian Pengelola Unit, pada tanggal 8 Juli 2024, di Pegadaian Syariah Darussalam Banda Aceh.



Table 1.1 Installment Simulation

Time Period	Principal Installment	Mu'nah	Installments
12 Month	Rp. 2.083.333	Rp. 252.900	Rp. 2.336.200
24 Month	Rp. 1.041.667	Rp. 252.900	Rp. 1.294.500
36 Month	Rp. 694.444	Rp. 252.900	Rp. 947.300
48 Month	Rp. 520. 833	Rp. 252.900	Rp. 773.700
60 Month	Rp. 416.667	Rp. 252.900	Rp. 669.500

Source: *Browsur Pegadaian Syariah*

Table 1.2 Fees at the Time of the Deal

Administration	Month	Kafalah fee	Bank Savings	Total
Rp. 270.000	12	Rp. 70.000	Rp. 100.000	Rp. 170.000
Rp. 270.000	24	Rp. 112.500	Rp. 100.000	Rp. 212.500
Rp. 270.000	36	Rp. 175.000	Rp. 100.000	Rp. 275.000
Rp. 270.000	48	Rp. 265.000	Rp. 100.000	Rp. 345.000
Rp. 270.000	60	Rp. 412.500	Rp. 100.000	Rp. 512.500

Source: *Browsur Pegadaian Syariah*

In the terms of the agreement (contract) article 1 which has been determined by the Islamic pawnshop regarding the Loan Amount, Purpose, and Term, namely:

- 1) The pawnshop provides a loan to rahin in the amount of Rp.25,000,000.00 (twenty-five million rupiah) and rahin agrees and accepts it. Of the loan amount, all of it will be used by rahin for the purpose of registering for the Hajj portion.
- 2) The loan is granted for a period of 60 (sixty) months starting from September 24, 2020 until September 24, 2025 (maturity date).
- 3) Before the loan period ends rahin can repay the loan by making a lump sum payment.
- 4) In the event that the collateral (*marhun*) is lost or destroyed or seriously damaged beyond the pawnshop's power to prevent it, the pawnshop will replace it with a similar item in the form of gold jewelry or Gold Precious Metal whose value is equivalent to the collateral (*marhun*) that was lost or destroyed or seriously damaged



as intended. The incident does not end the obligation and loan period (debt) of the *rajin* to the pawnshop.

## 2. Compensation (*Ta'widh*)

The maximum compensation (*ta'widh*) charged is 4% if the customer is late paying for one month. *Pegadaian Syariah*, the calculation of *ta'widh* is done per day, so that 4% is divided by 30. If the customer is one day late, the compensation charged is the amount that has been determined, and if it is two days late, the compensation will be multiplied by two, and so on.<sup>28</sup>

For example, if the customer is due on July 18 and does not pay until August 18, the compensation charged is 4%. If the customer does not pay on August 18 and is one day late until August 19, the compensation calculation will start all over again, up to a maximum of September 18 with the same 4% amount.<sup>29</sup>

Table 1.3 Amount of Compensation

<p>The maximum compensation rate is 4% per day from the 18th of each month.</p>
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*Source: Interview result*

- 1) For example, the one used by the customer is a 12-month contract, namely the installment of Rp 2. 336.200
- 2) Calculate the penalty per day Rp. 3,100
- 3) Compensation (*ta'widh*) applies per day, namely Rp. 3,100, if two days late, it means multiplying by two, if three days late, multiply by three and so on until the customer pays off the compensation.
- 4) The amount of compensation is a maximum of 4% in one month (30 days) which must be paid by the customer to the pawnshop.
- 5) If the payment is late within 1 month, the installment is Rp 2. 336,200 x 4% = Rp. 93,400

In accordance with the provisions of the agreement (contract) article 8 which has been determined by the Islamic pawnshop regarding compensation (*ta'widh*), namely:

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<sup>28</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 (2024): 89-104, <https://doi.org/10.21580/wa.v11i1.20007>.

<sup>29</sup> Wawancara dengan Rizka Adriani, Bagian Pengelola Unit, pada tanggal 19 Juli 2024, di *Pegadaian Syariah Darussalam Banda Aceh*.

- 1) If rahin does not carry out the obligation to pay installments until beyond the predetermined date, compensation (*ta'widh*) will be imposed, the amount of which is as referred to in paragraphs (2) to (3) of this article.
- 2) Every late installment payment is subject to a daily fine of 4% (four percent) divided by 30 (thirty) of the amount of the monthly installment.
- 3) Compensation (*ta'widh*) is paid together with installment payments and marhun maintenance costs.

#### **D. Review of the MUI DSN Fatwa on the Practice of Compensation for Arrum Haji Products at Pegadaian Syariah Darussalam Banda Aceh.**

Fatwa is one form of authority and responsibility made by the National Sharia Council (DSN). The following is a description of the fatwa related to DSN MUI Fatwa No. 43/DSN-MUI/2004 concerning compensation (*ta'widh*). This fatwa was issued by considering several important things, including: to answer the needs of Islamic financial institutions that operate based on sharia principles in order to avoid practices that approach usury, especially related to compensation (*ta'widh*) which is often applied by these institutions.

This fatwa also considers the risk of losses arising from default or delay in payment by the party that violates the agreement. Islamic sharia protection is given to all parties involved in the transaction, both customers and Islamic financial institutions, to ensure that no party feels disadvantaged. If there is a real loss, then the loss must be compensated in accordance with the actual amount of loss by the party that caused the loss. Therefore, this fatwa was made to provide guidelines in protecting all parties to the transaction.

As previously discussed regarding the settlement mechanism for the practice of compensation (*ta'widh*) on Arrum Haji products at Pegadaian Syariah Darussalam Banda Aceh, compensation (*ta'widh*) is imposed on customers who intentionally or negligently do not fulfill their installment payment obligations within a predetermined period. This delay causes a delay in payments that should have been made. The mechanism of the practice of compensation for Arrum Haji products at Pegadaian Syariah Darussalam Banda Aceh, this has been determined by the nominal amount of a maximum percentage of 4% which has been made in accordance with the institution's regulatory policy and agreed upon by the customer. However, the amount of compensation is only made by one party and the customer only follows the





rules without knowing what form of loss will be experienced by Pegadaian Syariah if the customer delays in paying the financing installments. So that the implementation of compensation (*ta'widh*) is not in accordance with the contents of the MUI DSN Fatwa No. 43 / DSN-MUI / VIII / 2004 concerning compensation (*ta'widh*) which explains how the provisions of compensation (*ta'widh*) should not include nominal losses, but must be in accordance with the actual losses or real losses incurred by the customer.

Based on the provisions in the DSN MUI Fatwa, it is sufficient to ensure that the implementation of the practice of compensation (*ta'widh*) at Pegadaian Syariah Darussalam Banda Aceh, is not fully in accordance with what is stated in the DSN MUI Fatwa No. 43/DSN-MUI/VIII/2004 concerning Compensation (*Ta'widh*). Looking at the contents of special provision number 3 which explains that "The amount of compensation may not be included in the contract", this is what causes that the Sharia Pawnshop implements the practice of compensation (*ta'widh*) not in accordance with the MUI DSN fatwa. This is because the compensation made by the customer has not yet occurred, while Pegadaian Syariah has included a maximum percentage of 4% in the contract.

In other words, the Islamic pawnshop has predicted or estimated the potential loss before the loss actually occurs. So that estimating these losses is not in accordance with the fatwa regarding general provisions number 4 which explains that "The amount of compensation (*ta'widh*) is in accordance with the value of the real loss (real loss) that must be experienced (fixed cost) in the transaction and not the loss that is expected to occur (potential loss) due to lost opportunities (opportunity loss or *al\_furshah al-dha-i'ah*)," and the Islamic pegadain does not mention what forms of loss will be experienced if the customer is late in paying installments.

## CONCLUSION

Based on the implementation of the practice of compensation (*ta'widh*) on Arrum Haji products in Sharia Pawnshops must be in accordance with Islamic law and the Fatwa of DSN MUI. However, in the implementation of the practice of compensation (*ta'widh*) at the Darussalam Syariah Pawnshop in Banda Aceh, it is not fully in accordance with what is stated in Fatwa DSN MUI No. 43/DSN-MUI/VIII/2004 concerning Compensation (*Ta'widh*). Because in practice, it has been determined that the nominal amount of the



percentage is a maximum of 4% which has been made in accordance with the institution's regulatory policy and agreed upon by the customer. However, the amount of compensation is only made by one party and the customer only follows the rules made without knowing what form of loss will be experienced by Pegadaian Syariah if the customer delays in paying financing installments. So it is convincing that the implementation of the practice of compensation (*ta'widh*) is not in accordance with the contents of the Fatwa DSN MUI and Islamic law which should not include nominal losses, but must be in accordance with actual losses or real losses that can be clearly calculated. In other words, the Islamic pawnshop has predicted or estimated the potential loss before the loss actually occurs.

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