

CHAPTER I

INTRODUCTION

1.1. Background of Study

Islamic banking plays a significant role in the modern economy by offering financial solutions that align with Sharia principles. This system provides an alternative for individuals seeking to avoid *riba* (interest) and other non halal transactions that are considered inconsistent with Islamic teachings.¹ In the era of globalization and digital economic development, Islamic banking has established itself as a key pillar in promoting financial inclusion grounded in moral and ethical values. Its relevance extends beyond the Muslim community, offering a widely acceptable financial model for the broader society.² Furthermore, by channeling funds into productive areas including SMEs, the halal sector, and sustainable infrastructure Islamic banking actively contributes to broader economic development.³

The growth of the Islamic banking industry in Indonesia has shown significant progress over the past few decades. According to data from the Financial Services Authority (Otoritas Jasa Keuangan/OJK), the market share of Islamic banking continues to increase, although it still lags behind

¹ Dhofirul Yahya, "Tinjauan Terhadap Murabahah Dalam Sistem Perbankan Syariah," *Jurnal Reformasi Hukum: Cogito Ergo Sum* 7, no. 2 (2024): 1–9, <https://doi.org/10.51804/jrhces.v7i2.16603>.

² Talat Hussain, Noman Arshed, and Rukhsana Kalim, "An Appraisal of the Role of Islamic Banking Development and Economic Growth," *Journal of Applied Economics and Business Studies* 4, no. 4 (December 31, 2020): 215–36, <https://doi.org/10.34260/jaebbs.4410>.

³ Mahmud Yusuf et al., "The Role of Islamic Banks in Indonesia: A Systematic Literature Review," *Al Mashrafiyah: Jurnal Ekonomi, Keuangan, Dan Perbankan Syariah* 7, no. 1 (April 27, 2023): 16–35, <https://doi.org/10.24252/al-mashrafiyah.v7i1.36115>.

that of conventional banks.⁴ In 2020, the total assets of Islamic commercial banks (Bank Umum Syariah/BUS) amounted to IDR 397.073 trillion, while by 2023, this figure had increased to IDR 594.709 trillion representing a growth of 49.8%. Similarly, the assets of Islamic business units (Unit Usaha Syariah/UUS) grew by 39.3%, from IDR 196.875 trillion in 2020 to IDR 274.277 trillion in 2023.⁵ This development is supported by the increasing number of Islamic banks in Indonesia, which currently includes 11 Islamic commercial banks, 21 Islamic business units, and 173 Islamic rural banks (Bank Pembiayaan Rakyat Syariah/BPRS).

However, despite its significant potential, Islamic banking in Indonesia also faces considerable challenges. One of the primary challenges is moral hazard,⁶ this refers to irresponsible behavior by customers or related parties that has the potential to undermine the financial stability of the bank. Moral hazard often arises when there are gaps in oversight or the enforcement of sanctions, leading customers to feel free to breach contracts without facing severe consequences.

Moral hazard is defined as a situation in which an individual or entity feels empowered to take greater risks because they do not fully bear the negative consequences of those risks.⁷ Moral hazard is defined as a

⁴ Fauzatul Laily Nisa and Krisna Reswara, "Analisis Perkembangan Dan Tantangan Bank Syariah Dalam Persaingan Dengan Bank Konvensional Di Pasar Keuangan Modern," *Jurnal Ekonomi Dan Pembangunan Indonesia* 2, no. 3 (2024): 120–25, <https://doi.org/10.61132/jepi.v2i2.601>.

⁵ Otoritas Jasa Keuangan, "Desember 2023," *Statistika Perbankan Syariah, Sharia Banking Statistic*, no. December (2023): 19–119.

⁶ Adelia Oktarina, Idqan Fahmi, and Irfan Syauqi Beik, "Is There Moral Hazard in Islamic Rural Bank Financing?," *Iqtishadia* 12, no. 2 (2019): 119, <https://doi.org/10.21043/iqtishadia.v12i2.3875>.

⁷ Garrett L. Brady, Hemant Kakkar, and Niro Sivanathan, "Perilous and Unaccountable: The Positive Relationship Between Dominance and Moral Hazard

situation in which an individual or entity feels empowered to take greater risks because they do not fully bear the negative consequences of those risks.⁸ The causes of moral hazard among Islamic banking customers include information asymmetry between the bank and customers, as well as dishonest customer behavior.⁹ Weak supervision,¹⁰ as well as external factors such as business conditions, the amount of financing, and the duration of the financing contract, also contribute to moral hazard.¹¹

According to Holmstrom (1979)¹² and Mitnick (1996)¹³, Moral hazard is a consequence of the principal agent relationship, where one party (the customer) has an incentive to act opportunistically due to a lack of oversight or the absence of strict sanctions from the financing provider (the bank). In this context, an incentive and disincentive system is needed, which should not only be economic but also moral and ethical, in line with the

Behaviors," *Journal of Personality and Social Psychology*, 2024, 0–86, <https://doi.org/10.1037/pspi0000448>.

⁸ M. Soleh Mauludin, "Analisa Manajemen Resiko Untuk Mengurangi Moral Hazard Nasabah Pembiayaan Murabahah BRI Syariah Pare," *El Faqih : Jurnal Pemikiran Dan Hukum Islam* 6, no. 2 (2020): 75–79, <https://ejournal.iaifa.ac.id/index.php/faqih/article/view/184>.

⁹ Asmirawati Asmirawati and Sumarlin Sumarlin, "Perilaku Moral Hazard Nasabah Pada Pembiayaan Berbasis Bagi Hasil Pada Perbankan Syariah," *LAA MAISYIR : Jurnal Ekonomi Islam* 5, no. 1 (June 15, 2018): 121–44, <https://doi.org/10.24252/laamaisyir.v5i1a6>.

¹⁰ Sufyati HS and Oktaviani Yeni, "Risk Mitigation of Moral Hazard on Mudharabah Financing (Case Study : An Islamic Bank)," in *Proceedings of the 2nd International Conference on Indonesian Economy and Development (ICIED 2017)* (Paris, France: Atlantis Press, 2018), <https://doi.org/10.2991/iciied.17.2018.6>.

¹¹ Adelia Oktarina, Idqan Fahmi, and Irfan Syauqi Beik, "Is There Moral Hazard in Islamic Rural Bank Financing?," *IQTISHADIA* 12, no. 2 (October 23, 2019): 119, <https://doi.org/10.21043/iqtishadia.v12i2.3875>.

¹² Bengt Holmstrom, "Moral Hazard and Observability," *The Bell Journal of Economics* 10, no. 1 (1979): 74, <https://doi.org/10.2307/3003320>.

¹³ Barry M. Mitnick, "The Hazard Of Agency," *American Political Science Association* 11, no. 1 (1994): 1–14.

characteristics of Islamic banking. In conventional banking, this issue is often addressed through the application of interest penalties; however, this conflicts with Sharia principles, as the financial system must operate in accordance with Sharia principles that prioritize not only material interests but also moral and ethical values.¹⁴

Therefore, moral hazard also contributes to the high Non Performing Financing (NPF) in Islamic banking.¹⁵ NPF is the ratio of problematic financing to the total financing disbursed, and a high NPF indicates that customers frequently fail to meet their payment obligations.¹⁶ According to data from the Financial Services Authority (Otoritas Jasa Keuangan/OJK), the NPF of Islamic banks in Indonesia reached 2.2% in 2024. While this figure is below the 5% threshold set by regulators, it still reflects the presence of customers who have failed to fulfill their obligations, thereby posing financing risks. At Bank BTN Syariah and Bank Muamalat, the NPF also shows a concerning trend, with figures of 2.87% and 2.95%, respectively, for the same period.¹⁷ The high NPF may be caused by various factors, including the inadequate enforcement of sanctions against customers who breach contracts.

¹⁴ Hamad Raza et al., "Islamic Banking and Finance: A Systematic Literature Review And Bibliometric Analysis," *Journal of Accounting and Finance in Emerging Economies* 10, no. 2 (June 30, 2024), <https://doi.org/10.26710/jafee.v10i2.2933>.

¹⁵ Ahmad Rodoni and Bahrul Yaman, "Asymmetric Information and Non Performing Financing: Study in The Indonesian Islamic Banking Industry," *Al Iqtishad: Jurnal Ilmu Ekonomi Syariah* 10, no. 2 (2018): 403–16, <https://doi.org/10.15408/aiq.v10i2.7392>.

¹⁶ Ali Hardana et al., "Factors Influencing Non Performing Financing (NPF) In Sharia Banking," *Journal Markcount Finance* 1, no. 2 (2023): 87–97, <https://doi.org/10.55849/jmf.v1i2.87>.

¹⁷ PT. Bank Muamalat Indonesia Tbk, "LAPORAN KEUANGAN 2023 2024," n.d., 12940; PT. Bank Tabungan Negara, "Laporan Keuangan Triwulan IV 2024 Tbk Per 31 Desember 2024 Dan 2023," no. 840 (2024).

In Islamic law, the concepts of ta'widh play a crucial role in maintaining justice and preventing violations.¹⁸ Ta'widh is a form of compensation given to the party harmed by a contract breach or loss caused by another party.¹⁹ In Fatwa DSN MUI No. 43/DSN MUI/X/2004, it is stated that ta'widh or compensation is imposed on a party who intentionally or due to negligence engages in actions that deviate from the terms of the contract, causing harm to another party. Its application can only be implemented in transactions (akad) that involve debts (dain), such as in akad salam, istisna', murabahah, and ijarah.²⁰ Its implementation extends to akad such as ariyah, wakalah, wadi'ah, pledge, debt, and even jinayah.²¹ In the context of banking, ta'widh can be applied as compensation for the bank that suffers harm due to a customer breaching the contract.²²

In practice, several Islamic banks have implemented ta'widh to maintain customer commitment to the contract. For instance, in cases of delayed payments,²³ the bank can impose ta'widh on customers who delay installment payments. Additionally, ta'widh can be used as a sanction for

¹⁸ Muhammad Ridha Haykal Amal and Fauzan Muhammadi, "Reposition of Ta'zir and Ta'wid on Moral Hazard Behavior in Islamic Banking in Indonesia," *Jurnal Hukum Novelty* 13, no. 1 (July 22, 2022): 38, <https://doi.org/10.26555/novelty.v13i1.a21505>.

¹⁹ Rena Damayanti, "Pelaksanaan Penentuan Ganti Rugi (Ta'widh) Pada Produk Arrum Haji Pegadaian Syariah Unit Rancaekek," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 12, no. 2 (2019): 163–82, <https://doi.org/10.15575/adliya.v12i2.4496>.

²⁰ Hasanuddin Ingka, Fakhrudin Mansyur, and Mega Mustika, "Fatwa Dsn Mui Klausul Denda Dan Ganti Rugi Pada Skim Kpr Syariah," *Laa Maisyir : Jurnal Ekonomi Islam* 7, no. 2 (2020): 261, <https://doi.org/10.24252/lamaisyir.v7i2.17560>.

²¹ Muhajirin, "Implementasi Ganti Rugi (Ta'wid) Dalam Akad Muamalah Dan Korelasinya Dengan Tanggungjawab Dalam Hukum Perdata (Al Mas'u' Liyah Al Madaniyah Mesir Dan Syuria)," *Ekonomi Islam* 9, no. 32 (2018): 137–15.

²² Iza Hanifuddin, "Ganti Rugi Perspektif Fiqh Ekonomi," *Muslim Heritage* 5, no. 1 (2020): 1–26, <https://doi.org/10.21154/muslimheritage.v5i1.1959>.

²³ Siti Izzatul Bariyah, "Mitigasi Wanprestasi Nasabah Pembiayaan Murabahah Melalui Mekanisme Ta'zir Dan Ta'widh Pada BSI KCP Surabaya UINSA," *Muslim Heritage* 9, no. 1 (2024): 125–46, <https://doi.org/10.21154/muslimheritage.v9i1.7566>.

customers who intentionally commit repeated violations.²⁴ However, at Bank BTN Syariah Sragen and Bank Muamalat KC Ponorogo, several cases were found where customers refused to pay ta'widh on the grounds of not understanding its legal basis. This indicates that there is still a limited understanding of this concept among customers.

From the perspective of fiqh mu'amalah, the concepts of ta'widh have strong legitimacy. Ibn Qudamah in *Al Mughni* states that the party responsible for causing harm is obliged to compensate for that harm fairly.²⁵ Meanwhile, Wahbah az Zuhaili in *Al Fiqh al Islami wa Adillatuhu* emphasizes that financial sanctions are permissible in contemporary mu'amalah as long as they do not cause harm and do not contain elements of riba.²⁶ Therefore, it is essential to review the implementation of ta'widh from the perspective of fiqh, to ensure their alignment with Sharia principles.

The implementation of ta'widh also faces institutional challenges, such as the lack of understanding among the bank's internal stakeholders,²⁷ limited customer education,²⁸ and the suboptimal integration with the Islamic risk management system. According to Archer and Abdel Karim (2013), the success of shariah governance largely depends on the integration of regulatory frameworks, institutional capacity, and the implementers'

²⁴ Ali Idrus, "Implementasi Ta'widh Dan Ta'zir Serta Pendistribusiannya Dalam Akad Murobahah Pada Lembaga Keuangan Syariah," *Jurnal Manajemen* XI, no. 2 (2023): 185–98.

²⁵ Ibnu Qudamah, *Al Mughni Jilid 5*, vol. 85 (Jakarta: Pustaka Azzam, 1979).
²⁶ وهبه الزحيلي، "الفقه الإسلامي وأدلته الجزء السادس" (دمشق: دار الفكر، ١٩٨٤).

²⁷ Amal and Muhammadi, "Reposition of Ta'zir and Ta'wid on Moral Hazard Behavior in Islamic Banking in Indonesia."

²⁸ Sufyati HS and Oktaviani Yeni, "Risk Mitigation of Moral Hazard on Mudharabah Financing (Case Study: An Islamic Bank)," in *Proceedings of the 2nd International Conference on Indonesian Economy and Development (ICIED 2017)* (Paris, France: Atlantis Press, 2018), <https://doi.org/10.2991/iciied.17.2018.6>.

understanding of shariah principles. When any of these elements is weak, policy implementation tends to lose its effectiveness.²⁹

Several previous studies have examined the concept of *ta'widh* within the context of Islamic banking; however, they still demonstrate certain limitations. Brik Kumala (2018) focused more on the juridical aspects of *ta'widh* and criticized it as a potential form of *riba*, without discussing its application in addressing moral hazard. Adi Satria et al. (2020) explored *ta'widh* in Islamic credit card products, but did not examine its application in productive financing contracts such as *murabahah*. Meanwhile, Amal and Muhammadi (2022) emphasized the need for a repositioning of the *ta'widh* concept to address moral hazard, although their study remained theoretical and was not based on empirical field data. The study by Jajang Saepul Hamzah et al. (2023) discussed the application of *ta'widh* and *ta'zir* in BPRS, but did not specifically isolate *ta'widh* as an instrument for controlling moral hazard.

Based on these gaps, this study positions itself to specifically examine the effectiveness of *ta'widh* as an instrument for controlling customer moral hazard in Islamic financing contracts. Unlike previous studies, this research adopts a normative-empirical approach by analyzing the actual implementation of *ta'widh* at Bank BTN Syariah Sragen and Bank Muamalat KCP Ponorogo, and assessing its compliance with the principles of *fiqh mu'amalah*. Therefore, this research aims to fill the existing gap in the

²⁹ Rifaat Ahmed Abdel Karim Simon Archer, *Islamic Finance: The New Regulatory Challenge, Sustainability (Switzerland)* Wiley, vol. 11, 2013,

literature and contribute to the strengthening of behavioral risk management strategies within the Indonesian Islamic banking sector.

1.2. Identification and Research Scope

This study focuses on the implementation of ta'widh (compensation) (sanctions) at Bank Muamalat Ponorogo Branch, a full fledged Islamic commercial bank (BUS), and BTN Syariah Sragen Branch, an Islamic business unit (UUS) of a conventional bank. The central aim is to evaluate the application of these two concepts in mitigating customer moral hazard, which refers to the risk that customers may engage in riskier behavior or fail to fulfill their obligations due to a perceived protection from negative consequences. This challenge becomes more complex in Islamic banking, where every action must comply with shariah principles, which emphasize not only material aspects but also moral and ethical considerations.

This research is necessary because the effectiveness of implementing shariah principles such as ta'widh in addressing moral hazard has not been extensively examined in practice, particularly within the context of Indonesia's Islamic banking sector. Understanding the extent to which these mechanisms are effective in reducing moral hazard and ensuring compliance with Islamic law is critical for the stability and growth of the Islamic banking industry.

The study examines Bank Muamalat Ponorogo and BTN Syariah Sragen due to their distinctive financing characteristics. BTN Syariah Sragen focuses on Islamic housing finance, whereas Bank Muamalat Ponorogo primarily serves MSME (Micro, Small, and Medium Enterprises) financing.

This research analyzes the mechanisms of ta'widh implementation, including how these policies are embedded in the banks' standard operating procedures (SOPs). Furthermore, the study evaluates the effectiveness of these concepts in reducing customer moral hazard, using indicators such as the decline in non performing financing (NPF), increased customer compliance, and customer responses to compensation and sanction policies.

Challenges and obstacles in implementing ta'widh and ta'zir including operational limitations (e.g., human resource constraints, lack of public awareness), regulatory issues (e.g., gaps between DSN MUI fatwas and field implementation), and limited customer understanding are also examined. The study further analyzes the impact of these measures on customer satisfaction and loyalty.

The theoretical review discusses the alignment of ta'widh with the principles of fiqh mu'amalah, referencing classical Islamic jurisprudence texts and fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN MUI). Meanwhile, the practical review investigates how these concepts are implemented in the field, including the obstacles faced by Islamic banks. The study adopts a qualitative approach, utilizing interviews, observations, and document analysis. Data are collected from key informants, primarily operational staff involved in Islamic financing. Data analysis is conducted through three main stages: data reduction, data display, and conclusion drawing. Data validity is ensured through triangulation by comparing interview results from different informants, internal bank documents, and field observations.

The expected outputs of this research include policy recommendations to enhance the effectiveness of ta'widh implementation, practical guidelines for Islamic banks to address operational and regulatory challenges, and theoretical contributions to the development of literature on fiqh mu'amalah and Islamic risk management. Therefore, this study is expected to offer practical insights for Islamic banks in managing moral hazard risks, as well as enrich academic literature on the application of shariah principles in banking practices.

In addition, various previous studies have examined the concepts of ta'widh, ta'zir, and moral hazard from different perspectives, but there remains a notable gap in the literature. For instance, the research by Muhammad Ridha Haykal Amal and Fauzan Muhammadi (2022) emphasized the need to reposition ta'widh ta'zir to ensure they are free from riba elements; however, their study remained conceptual and lacked practical field data. Muthoifin et al. (2022) proposed ta'widh and ta'zir as preventive strategies to address moral hazard, but the analysis was not supported by empirical findings. Brik Kumala (2018) evaluated the application of ta'widh from a normative and positive legal perspective, without delving into classical fiqh or empirical banking practices. Meanwhile, Hamli Syaifullah (2021) offered a classical tafsir based interpretation of ta'widh, but did not contextualize it within the realities of the Islamic finance industry. Moreover, the study by Siti Izzatul Bariyah (2024) examined the practical application of ta'widh in Bank Syariah Indonesia (BSI), but was limited to murabahah contracts and did not specifically focus on its function in mitigating moral hazard.

These studies indicate a clear research gap there has been no comprehensive investigation that examines the implementation of ta'widh in addressing moral hazard using a combined approach: empirical case studies, normative legal review, and classical as well as contemporary fiqh mu'amalah analysis.

This research, therefore, seeks to fill that gap by conducting field studies at two Islamic banking institutions. BTN Syariah Sragen and Bank Muamalat Ponorogo Branch. It explores the actual practices related to the enforcement of ta'widh in the context of problematic financing and analyzes these practices through the lens of Islamic jurisprudence and relevant fatwas. Through this multi dimensional approach, the study aims to provide both theoretical and practical contributions to the development of risk management policies in Islamic banking, while also strengthening the shar'i legitimacy of ta'widh as a financial instrument in the modern era.

1.3. Problem Formulation

Based on the background presented above, this study seeks to examine, map, and analyze the following research questions:

1. How is ta'widh implemented in Islamic banking as efforts to address customer moral hazard?
2. What is the fiqh mu'amalah perspective on the implementation of ta'widh in Islamic Banking?

1.4. Purpose of Study

In line with the three problem formulations above, the objectives of this study are as follows:

1. To investigate how ta'widh is applied within Islamic banking to control customer moral hazard.
2. To analyze the implementation of ta'widh in Islamic banking from the perspective of fiqh mu'amalah.

1.5. Significance of Study

The value of usefulness or the axiological aspect of this research is divided into two categories: practical benefits and theoretical benefits. The practical benefit of this research is to fulfill the requirements for obtaining a master's degree in the field of sharia economic law. The theoretical benefits include the following:

1.5.1. Theoretical Benefits

- a) This study is expected to contribute to the development of academic discourse related to the application of ta'widh in Islamic Banking, enriching the literature on how Sharia principles can be integrated into the positive legal system in Indonesia.
- b) It has the potential to enhance the body of knowledge in the field of risk management in Islamic finance, particularly in addressing moral hazard through mechanisms that align with Sharia principles.
- c) The research aims to provide a deeper understanding of the concepts of ta'widh within the framework of fiqh mu'amalah, including how these concepts can be applied in a modern context without violating Sharia principles.

1.5.2. Partical Benerfits

- a) This study offers practical guidance for Islamic banks in mitigating customer moral hazard. The recommendations presented in this thesis may support the systematic and effective implementation of ta'widh mechanisms to safeguard the bank's interests while upholding Sharia principles.
- b) It may also serve as a reference for policymakers in reviewing or updating regulations related to the implementation of ta'widh in Islamic banking.
- c) The study provides insights into how the application of ta'widh influences customer compliance and satisfaction. By understanding the customers' perspectives, Islamic banks can formulate more equitable and transparent policies, thereby enhancing trust and customer loyalty.
- d) This research will offer a comprehensive perspective on how the implementation of ta'widh affects both compliance and satisfaction levels among customers. Such understanding enables Islamic banks to design policies that are more just and transparent, ultimately strengthening public confidence and customer loyalty.

1.6. Writings Systematic

To provide a clearer understanding of this research, the discussion is structured into five chapters, as outlined below:

Chapter I: Introduction. This chapter presents the background of the study, problem formulation, research objectives, significance of the study, and the structure of the thesis.

- Chapter II: Literature. This chapter reviews previous studies related to moral hazard, as well as the concepts of ta'widh in Islamic banking.
- Chapter III: Research Methodology. This chapter outlines the research procedures undertaken by the researcher, including the type of research selected, sources and types of data, data collection instruments, and techniques for data analysis.
- Chapter IV: Research Findings and Analysis. This chapter presents the descriptive analysis, data analysis, research findings, and discussion, along with the proposed model illustrating the relationships among the research variables.
- Chapter V: Conclusion and Implications. The final chapter provides a summary of the research conclusions and implications, along with recommendations related to the study's findings.