

Maslahah Approach Towards Imposition of *Ta'widh* in Islamic Banking

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Abstract

The permissible imposition of *ta'widh* on the delay repayment against financing in Islamic banking is based on the ijtiḥad made by Shariah advisor of bank as a *maslahah*. The concept of *maslahah* and *mafsadah* are always used as a guide by Muslim Scholars to resolve contemporary Muslim problems. For this research, the instrument used to obtain the data is through library method and field research. The data was then analyzed using inductive and deductive method to see whether or not *maslahah* approach towards this issue is in line with its concept and objective. Generally, results showed that the late payment charges imposed by Islamic banking have conformed to the real *maslahah* concept by celebrating both parties, banks and customers, based on some aspects investigated such as the law imposition of *ta'widh* itself, the basis and the rate of *ta'widh* imposition, as well as *ta'widh* clauses in contracts. Thus, this research has found out that the Islamic banking institutions in Malaysia need to improve on the implementation of *ta'widh* as one of the ways to prevent customers from the lapse of repaying to the bank.

Keywords: Islamic Banking; *Ta'widh*; *Maslahah*; Shariah

Introduction

Islamic banking was developed based on

Shariah principle, whereby the main role is to ensure that there is no element that can make a transaction banned in Islam such as usury, *gharar* and gambling in the banking system, which is different from the conventional banking. Ever since the conventional system has been established, followed by the Islamic system about thirty-six years ago, the product of Islamic banking was introduced based on conventional product, but with minor modifications just to ensure that it is in line with Shariah. As a result, late payment charge becomes an issue faced by Islamic banking as it is seen to be the same as the implementation of fines imposed by conventional banking. In the context of Islamic banking, late payment charges are based on the concepts known as *ta'widh* (compensation) and *gharamah* (penalty). While there is still a dispute over the necessity of indemnification among contemporary fuqaha or banking practitioners and the permissible imposition of *ta'widh* are based on the ijtiḥad made by Shariah advisor of bank as a *maslahah*. The concepts of *maslahah* and *mafsadah* are always used as a guide by Muslim Scholars to resolve contemporary Muslims problems.

Therefore, payment of monthly installments of financing is a form of risk and uncertainty faced by each banking and finance industry involving financial transactions (Mohd Razif & Mohamad, 2011). Therefore, the bank has to impose fines or charges to customers as one of the solutions to this risk and to safeguard the

interest of the financier (bank) that has provided financing to the customers. Any form of risk faced by the bank is one form of *mafsadah*. In Islam, the achievement of the *maslahah* and denial of *mafsadah* is the ultimate goal of setting up Islamic law (*hukm*) especially to resolve contemporary Muslims problems (Sarif & Ahmad, 2017). *Maslahah* and *mafsadah* are approaches used by the scholars and *mujtahid* to solve problems in which evidence is not found in the al-Quran and hadith by using a particular methodology.

Hence, late payment charges is an issue that needs to be resolved theoretically and practically in Islamic banking as the imposition of additional charges resembles the practice of conventional banking. Thus, the approach of the *ijtihad* towards this issue is to achieve *maslahah* and justice to the creditors (bank) and the debtors (customer), and to show that the charges imposed by Islamic banking are different from conventional ones, even though there is a dispute among contemporary scholars. Generally, late repayment to the bank is a form of *mafsadah* instead of *maslahah* which can harm the bank's stability. This is because, banks act as institutions that contribute to lending and financing activities, hence influencing the quality and volatility of financing activities (Abdullah, 2018; Cuccinelli, 2015). Some says that *ta'widh* is a measure to maintain good loan quality by bank, as well as to give a good financing to the potential customers (Abdullah, 2018). In addition, banks also act as a driving force in the country's economic development. Therefore, they should continue to be protected from practices that may that result in the failure of the bank's actual functioning such as deliberate delays and delinquency from errant customers (Abdullah, 2018; Dusuki, 2008). In other word, imposing late payment charges or *ta'widh* on late customers will serve the purpose of *maslahah* to both, the banks and the deficit sectors (customers). Therefore, the present article attempts to analyse the *maslahah* approach towards this late payment charge imposed in Islamic banking.

In this regard, this study will focus on the concept of *maslahah* and *mafsadah* as the main discussion in the application of *ta'widh* in Islamic banking. In addition, this study discusses the methodology used in collecting and analyzing the data, and is concluded with the results and discussion of the study.

The concept of Maslahah and Mafsadah

Maslahah is one of the methods used by scholars in prescribing the *hukm* (*istinbat*) that are not specifically described in al-Quran or hadith. With the changing nature of human civilization and needs, Islam accommodates the incorporation of permanent features to adapt to these changes. *Maslahah*, is aimed to address the human needs, it allows creativity, dynamism and flexibility in terms of social policies (al-Mubarak & Osmani, 2010).

Literally, the word *maslahah* comes from the Arabic word *saluha* which means to bring good, benefit, interest and welfare. Another word that is also associated with the word *maslahah* is *al-istislah* which means to seek good (Salma, 2016). Generally, through some of these definitions, it is understandable that anything that contains benefits in it either to gain good or to reject harm, it is called *maslahah* (Salma, 2016; Qorib & Harahap, 2016) or very synonymous with the purpose of benefit or *manfaah*. In addition, anything that can ensure the five basic principles of *maqasid Shariah* which are protection of religion, life, intellect, lineage and property were awake and preserved, then it is *maslahah* (Mohd Azizi, n.d). On the contrary, failing to preserve them is called *mafsadah*. Islamic scholars regard *maslahah* as the true goal of justice. According to Imam al-Ghazali as cited by Sarif & Ahmad (2017), *maslahah* is just a method or the way to bring out the *hukm* rather than an evidence or sources of *hukm*. Therefore it still needs to depend on the primary sources which are Al-Quran and Sunnah because the element of *maslahah* itself is the main focus and the purpose of *hukm* in Islam (Ishak, 2019). One of the examples as

in Surah 5 that says “Allah does not intend to make difficulty for you”(Qur’an, 5: 6).

Unlike *mafsadah*, the concept of *mafsadah* is rarely discussed by the scholars. However, when the ulama discuss the concept of *masalah* to decide the *hukm (istinbat)*, they also discuss the concept of *mafsadah*. The word of *mafsadah* is antonym to *masalah*. It comes from the Arabic word *fasada* which indicates something broken, harmful (Ibn Manzur, 1993; Shaharuddin, 2010) or destructive. Hence, can be concluded as an act that results in damage, as well as eliminating the benefits that could affect the interests of the five principles in *Maqasid Syariah*. *Mafsadah* occurs when we neglect *masalah* and the acceptance of elements of damage, which then leads to the expulsion of *Maqasid Syariah* (Sarif & Ahmad, 2016). Therefore, the role of *masalah* is simply to eliminate the harmful and play an important role in contemporary issue that are drastically changing over time with changes in society, politics, technology and economics (Ishak, 2019).

The concept of Ta’widh

Technically there are two types of charges in Islamic banking that imposed on customers who are late to repay the financing according to the jointly defined period which are *ta’widh* and *gharamah*. *Ta’widh* is originated from the word of *’iwad* which is means change (Ibn Manzur, 1993; al-Fayyumi, 1988; al-Busaq, 1999) or replacing something that has been taken (al-Sharbasi, 1981). Thus, the term of *ta’widh* can be defined as a form of property damages imposed on a person for causing harm to others without the sanction of lawful sustenance (al-Busaq, 1999). Practically, in Islamic bank, *ta’widh* can be interpreted as a fine agreed by the parties of the contract as compensation that can be claimed by the creditor (the financier) when the debtor (customer) fails or delays to perform its obligation to repay the debt (Yaakub et al., 2013). According to the Resolution of Shariah Advisory Council (SAC) of Bank Negara Malaysia (2010), *ta’widh* refers

to the actual losses experienced which will be assessed and determined by a third party that is the Bank Negara Malaysia which acts as the regulator. However it is totally different with *gharamah* which refers to the penalty charges imposed for the delay in financing or debt settlement, without the need to prove the actual loss suffered (SACBNM, 2010). Technically, *gharamah* can be defined as a penalty or charge imposed to customers who delay in financing or debt settlement, over and above the amount of *ta’widh* (BNM, 2013). This paper, however, focuses more on the concept of *ta’widh* and its application in Islamic banking because in current practice, majority of Islamic banks impose *ta’widh* opined by the Shariah Committee appointed by the bank itself.

Views of Ta’widh

Basically, the late payment of the debt in Islamic banking will be subjected to late payment charges known as *ta’widh* (compensation) and *gharamah* (penalty) guided by the Bank Negara Malaysia. The guideline given to Islamic banks is whether to impose *ta’widh* or *gharamah* charges only or both based on fixed rates. While *ta’widh* can be recognised as bank’s income, *gharamah* needs to be channelled to charitable organizations (BNM, 2013). However, common practice by Islamic banking is only *ta’widh* imposition as a late payment charge (Muneeza et al., 2019). Generally, Islam prohibits usury and legitimates buying and selling transaction. So, any additional form of repayment of the loan is considered as usury. The ulama have different opinions in determining the status of mandatory imposition of this *ta’widh* especially in the context of Islamic *muamalat* now. This is because the imposition of *ta’widh* is in the form of property. There are three views expressed by contemporary scholars in the imposition of *ta’widh*. Among them are:

The imposition of ta’widh is required and considered as income to the bank

Al-Zarqa (1985), Al-Darir (1985), Al-Zuhayli

(1998), Uthmani (2003), Al-Ba'li (1996), Al-Zaftawi (1997) and majority of Shariah Committee in Islamic banks opined that it is allowed to impose a charge to the late customer and considered as income to the bank. According to Sanusi as cited by Muneeza et al. (2019), there are four justifications towards the permissibility of *ta'widh*. Firstly, the debtor is considered as an unjust person if they are late for payment of the loan or finance without any excuses and it will cause harm to creditor. Secondly late payment without any excuses can be reflected as destroying the benefit of property. Thirdly *ta'widh* is only way to compensate and eliminate the harm for delayed payment. Finally the imposition of *ta'widh* is only focusing on debtor with financial ability to compensate the loss. Hence, this opinion is based on the *masalih mursalah* to prevent the debtor from taking advantage of the payment of its debt which causes the creditor to lose its benefits and cause losses.

The imposition of ta'widh is required with a condition

Abu Ghuddah (2008) and the Shariah Council of Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI, 2015) viewed that the imposition of *ta'widh* in the form of property or money. However it should be used for the public interest or channeled to charity. The purpose is to avoid being trapped by the forbidden usury in Islam. In this case, it solves the problem of saying that the imposition of *ta'widh* is the same as fines in conventional banking.

Do not impose ta'widh at all

According the views from Daghi (2006), Al-Khafif (1997), Al-Buti (1981) and Sha'ban (1977), they strictly opined that this charge is similar to usury or *riba*. The scholars hold to the Qur'anic proposition as in Surah 2 that says "Allah has permitted trade and has forbidden usury" (Qur'an, 2: 275). It is therefore forbidden for creditors to take *ta'widh* due to delays or

refusal to pay their debts as it would mean to take more than their right.

According to the Shariah Resolution in Islamic Finance by Bank Negara Malaysia, the late payment charge imposed by Islamic banking or Islamic financial institutions encompassing both concept of *gharamah* or *ta'widh* is permissible with following conditions:

Ta'widh may be charged on late payment of financial obligations resulted from exchange contracts (such as sale and lease) and qard.

Ta'widh may only be imposed after the settlement date of the financing is due as agreed between both contracting parties.

Islamic financial institution may recognise ta'widh as income on the basis that it is charged as compensation for actual loss suffered by the institution.

Gharamah shall not be recognised as income. Instead, it has to be channeled to certain charitable bodies.

Applying the Maslahah Theory Towards Late Payment Charges

Maslahah applicable in all matters in Islam, whether in the matter of worship or *muamalah*. However, the space given for man to manage is wider in matters related to *muamalah*. It is as in the question of *ijtihad*. Space for Muslim scholars to interpret Islam in *muamalah* is wider as supposed to matters that are fixed (*qat'ie*) as in worship area which of course does not require any creativity in religious exaggerate (Mohd Azizi, n.d). Because of the limited texts and arguments related to economic policies it opens up space for a very large and attractive way in order to expand the reach of *ijtihad* in the principle *maslahah* (Mohd Azizi, n.d). The following are the elements of *maslahah* approach towards late payment charges that are often backed by contemporary *fuqaha* as well as banking practitioners in permissible

its application:

An alternative to usury

Looking at allegations that the implementation of this *ta'widh* is equivalent to usury, this claim could be rejected because in fact, the imposition of this *ta'widh* is an alternative to matters involving usury. This is because usury will only occur in matters of exchange or money between money or ribawi items with ribawi items. This is different from the imposition of *ta'widh* because it involves only interchange of money with goods of different types and properties. Therefore, it is clear that the imposition of *ta'widh* is an alternative to the ban on usury, but it is one of the efforts to curb greater harm. Thus, usury occurs on the basis of agreement between both parties (debtors and creditors) in case of delay there will be an increase. On the other hand, *ta'widh* is a damages imposed as a result of the loss of benefits incurred by the creditors. This coincides with the principle of legal maxims which is "*harm must be eliminated*".

Harm must be eliminated

The approach to applying *ta'widh* is appropriate with diverse conditions and diversity as a form of early reminder to keep the balance between debtors and creditors. Generally, the *maslahah* gives a meaning to the search for benefits and rejection of harm. In addition, it should be as recommended in Islam that "*harm must be eliminated*" in order to achieve general *maslahah* because the general *maslahah* should be prioritized over the particular *maslahah*. In this context, the harm to the bank is the failure to receive proper repayment of the financing within the agreed terms. As a result, the only way to avoid this harm is that only one per cent (1%) is imposed to the customers who deliberately avoid their obligation which is based on actual loss without any additional. Hence, the basis of imposing *ta'widh* is to cover the harmful effects of the actual harm without any form of addition or reduction and does not distinguish between the person who caused the harm or otherwise.

It is based on the hadith relating to this matter (al-Zarqa', 1989), from Abi Sa'id al-Khudri that Rasulullah (pbuh) said "Neither harming nor reciprocating harm" (*Hassan, h. 896*).

Justice

In terms of natural justice, the oppressor must be punished and forced to pay damages to the victim. As discussed earlier, the imposition of *ta'widh* is for the benefit of both the creditors and the debtors. Thus, it indirectly celebrates shared justice not just to the creditor alone. For the creditors (banks), justice is provided when the damage incurred can be eliminated by imposing a charge on the actual loss even if not the whole. While for the debtors (customers), the imposition of this law is an awareness to speed up the payment of the debt and do not take for granted for the harm. In addition, the rates charged are not as burdensome and not compounding as those used in conventional banking. This coincides with the hadith from Prophet Muhammad SAW, from Abu Hurairah that Rasulullah (pbuh) had said: "Delay by a rich person (in payment of debt) is tyranny" (*Sahih al-Bukhari, h. 2400*).

Methodology

This paper is a qualitative study. Basically, library research and field study were conducted to obtain data that can be collected as a basic study material. To obtain accurate data, an interview was conducted, which involved two persons who hold the position of a Shariah Advisor and a Shariah Research Executive respectively at one of the Islamic banking institutions in Malaysia. After that, the data obtained was used inductively and deductively to analyze the *maslahah* approach in the imposition of *ta'widh*. It is hoped that this research would be a valuable contribution to the matter and its beneficiaries.

Results and Discussion

Not only does the final goal of Islamic economic

and financial activity lead to a fair economic system, but Shariah also outlines various guidelines to ensure that the objective of Islamic financial and economic aspects can be realized. Hence, it can be seen here that Shariah does not only outlines the goals but also lists the guidelines to achieve them. It should be ensured that all these guides are followed and implemented.

The late payment charge imposed by Islamic banking has become a discussion which is a controversy among the contemporary fuqaha on its imperative in Islam. Its application in Malaysia is seen as an acceptable and mandatory form in Islam based on the ijtiḥad of the Shariah advisory from the council of Islamic banking itself. However, it may differ in terms of the revenue stream from which the charges are made as a bank income or channeled for charitable purposes. Therefore, there are some aspects that are seen to coincide with the *maslahah* concept and objectives in the implementation of late payment charges or *ta'widh* in Islamic banking. Among these aspects are:

Law of Imposition Ta'widh

The implementation of *ta'widh* in Islamic banking is based on the general sense of Quranic verses and hadiths as well as the prescribed determination and decision from the Shariah Advisory Council of Bank Negara Malaysia (Shariah Advisor and Shariah Research Executive). Although there are some views on the necessity of *ta'widh* in current practice in Islamic banking, it is only different from the point of money flow as a result of the imposition of the charge; whether it can be used as a bank's income or to be channeled to welfare institution to prevent being involved in the element of *riba*. This is because the necessity of late payment payment is based on *maslahah mursalah* to eliminate harm to a bank which is a form of *mafsadah*. Indirectly it impairs bank's activities whether in terms of lending or financing, the country's economic development and so on. In the event that a customer accidentally misses the

payment without leaving any notice, it brings *mafsadah* and loss to the bank's reputation. In addition, there should be no issue Islamic banking to impose *ta'widh* because it is an offense committed by the customer itself which causes the default in payment and the act of charging is different from the charges imposed by conventional banking (Yaakub et al., 2014). This requirement is also based on the fiqh method that is "harmless and not harmful" and "the harm must be eliminated". Therefore, through the study it is found that the imposition of *ta'widh* in Islamic banking is now justified and does not violate with Shariah because it has the basis and the legal backing. This is in line with those who permissible the imposition of *ta'widh* to achieve the objective of Shariah.

Basis of Imposition Ta'widh

In *ta'widh* instrument, Islamic banking that imposes this charge is based on actual cost or loss incurred by the bank. Thus, the imposition of *ta'widh* charges imposed by the bank is merely to cover losses or damages incurred. According to Malaysian Institute of Accountants (MIA), "expected credit losses model" have been used as a way of measuring the losses incurred and the entity (bank) is required to recognise loss allowance for a financial instrument at an amount equal to the 12-month expected credit losses or lifetime expected credit losses. Therefore, in determining the loss, it requires careful consideration and assessment to assess the lender's ability to recover defaulted amounts and the debtor's commitment and capability and so on. In other words, the expected loss that incurred on the *ta'widh* are based on the actual cost of the loss either directly like the cost of documenting debt or indirectly like the employees's salary, office rental and so on. Hence, losses incurred by banks are one form of harm that needs to be eliminated. This also coincides with what has been outlined in the fiqh method which is "harmless and not harmful". According to Daghi, the harm suffered by the bank may affect the following:

The delay period of this payment prevents the bank from venturing into new businesses and hindering the efforts of Islamic banks to create profits and retain its competitiveness with conventional banks.

As a result of overdue debts, it forces the bank to tighten the terms of the loan application only to those who are firmly in charge to avoid adding new arrears. This situation causes the Islamic banking fund to circulate among the wealthy. This is in contradiction with the Maqasid Syariah that advocates for the benefit of all bears all levels of society irrespective of status.

To cope with existing debt repayments, banks are forced to increase profit margins on new financing offerings and thus make Islamic financing products more expensive than conventional loans. This situation can tarnish the image of Islamic banks and cause customers to switch to conventional loans.

In addition, this basis also dismisses the claim that the Islamic law imposed by the Islamic bank was similar to that used in conventional banks. Therefore, in the practice of Islamic banks, the charge will only be imposed on the customer due to the negligence or delay in paying the monthly installment of the financing to the bank resulting in the loss incurred by the bank. The imposition of a *ta'widh* by the bank is not contrary to the Shariah principle which always safeguards both of the parties, and the compensation incurred is merely to cover up the loss. As a result, the basis of imposition of *ta'widh* is in line with what is outlined in Islam. Indirectly, it also shows that Islam cares for each other.

Determination Rate of Ta'widh

The rate charged for late customers repaying a financing is one per cent, which is determined by Bank Negara Malaysia. This is because the bank cannot determine the actual cost of the loss incurred. However, sometimes the losses incurred by the bank exceed the rate

that Bank Negara Malaysia has set. Based on this fixed *ta'widh* rate of one per cent this rate is seen to cover direct and indirect costs. This is because direct costs alone are insufficient to cover losses that also involve indirect costs such as transportation, communication and other obligations incurred by banks during the payment period. It does not involve any form of *riba* because it is assessed based on actual loss. Thus, the one per cent rate setting is based on *maqasid* (objective) and is not regarded as an instrument based on usury as it does not take profit concept (Shariah Advisor and Shariah Research Executive). Furthermore, if viewed from the rate charged, it meets the requirements in imposing *ta'widh*, in which it is not too high to burden the customers. In fact, the setting of a *ta'widh* charge of one per cent has yet to cover the loss suffered by the bank (Shariah Advisor and Shariah Research Executive). Therefore, the purpose of *Syarak* is not fully achieved, namely to eliminate harm and to care for *maslahah*. Hence, the cost of real losses incurred by Islamic banks should be adjusted to achieve the *maslahah* concept itself.

Ta'widh Clause in Contract

In the implementation of *ta'widh* in Islamic banking, the clause of imposition of *ta'widh* has been placed in the terms and conditions of the application for financing. The customer has been notified at the beginning of the finance application. Placing *ta'widh* clauses is prevent any inconvenience and adverse harm. This is because the delay and negligence of customers to repay financing is one of the forms of risk that the bank needs to bear. Additionally, placing this clause is not an additional fee required and it is different from a fine (*gharamah*). Generally, there is a difference between a fine and damages where damages are payments that are appropriate to the loss incurred, whereas fine is a fee that involves a period of time. This is clear with the emphasis given by Bank Negara Malaysia that *ta'widh* can be calculated as bank income while *gharamah* should be channelled to charity institutions. In terms of Shariah, this

clause is permissible, and it is not conflicted with the principles of Shariah. This coincides with what is stated in the fiqh method “the danger is contained as far as possible”.

However, in the context of different customer backgrounds, capabilities and so on, the customer will be categorized in terms of capable debtor or incapable debtor. If he is still not capable of paying it on time even though he has tried his best to repay the finance, he is then regarded as *mu'sir* which means genuinely unable to fulfill either financial or non-financial obligation (al-Mawsu'ah al-Fiqhiyyah, 1986). Generally, the scholars opined that this genuine incapable debtor cannot be punished either physically or financially (Abdullah, 2018). The appropriate time frame must be given to him which as in Surah 2 that says “And if someone is in hardship then postponement until ease” (Qur'an, 2: 280). Therefore, bank has to take the approach of either structuring or rescheduling the funding period to repay the debts within period that matches his capability (Shariah Advisor and Shariah Research Executive). This is accordance to the Shariah which aims to facilitate inconvenience (Ibn Hajar, 1997) as well as the legal maxims method of difficulty in bringing convenience (al-Zarqa', 1938). Therefore, in this case, it is seen that the *maslahah* which the bank wishes to reach the customer so that it does not harm to both parties. Hence, this agrees with the purpose of the Shariah based on the legal maxims which is “Neither harming nor reciprocating harm”. Thus, *maslahah* concept involves understanding the principles of preventing harm, stating that the bank and financial company are not endangered or causing distress to others while doing financial transactions and all activities related to banking. If there is a conflict between harm and benefit, the harm must be repelled first, even if doing so removes the benefit. Since harm can easily spread and cause severe damage, priority ought to be given to averting harm over attaining a benefit. Beside that, one of the Islamic methods to mitigate or deter loan repayment default is through punishment.

Therefore, it is concluded that the imposition of *ta'widh* in Islamic banking is now to safeguard the *maslahah* and eliminate continuous harm rather than as a profit to the bank. It is reinforced by al-Zarqa's statement and view “*that all such harm must be eliminated*”. If this damage is not imposed, it becomes unfair to other customers, and at the same time, causing continued harm to the bank.

Conclusion

The concepts of *maslahah* and *mafsadah* are always used as a guide by Muslim Scholars to resolve contemporary Muslims problems such as the imposition of *ta'widh* in Islamic banking which appear to be the same as the charges imposed by conventional banks. From the above discussion, it was found that the imposition of late payment charges that stipulated by BNM on Islamic banking was intended to keep both banks and customers accountable to some aspects: the law of *ta'widh*, its basis of imposition, the determination of rate and the clause in contract.

As for law of *ta'widh* imposition, the necessity of late payment is based on *maslahah mursalah* to eliminate harm to a bank which is a form of *mafsadah* and also avoiding losses to the bank. It is also to ensure that financing can be extended to deficit customers. Meanwhile, the basis of *ta'widh* is based on actual cost or loss that is incurred by the bank that requires careful consideration and assessment of the lender's ability and the debtor's commitment and capability. The actual cost is measured based on the “expected credit losses model” either direct cost, like the cost of documenting debt, or indirect cost, like the employees's salary, office rental and so on. Besides, the determination of rate is one per cent, which has been determined by Bank Negara Malaysia because the bank cannot determine the actual cost of the loss incurred and also to protect customers from being exploited. Last but not least is the clause of *ta'widh* in contract which is permissible and it does not conflict with the principles of Shariah. This coincides with

what is stated in the fiqh method “the danger is contained as far as possible”. However, in the context of different customer’s background, capabilities and so on, he will categorize in terms of capable debtor or incapable debtor as discussed earlier.

The principle of *ta’widh* which celebrates both parties (*maslahah*) proves that the Islamic financial system is capable to cope with current challenges especially in dealing with conventional systems that clearly oppress customers. Nevertheless, the Islamic banking institutions need to improve on the implementation of late payment as one of the ways to prevent customers from the lapse of repaying to the bank. Thus, it would be better if all these late payment charges were passed on to the charity body to get out of the doubt (*syubah*). Therefore, further research on this basic understanding of the late payment charges on conventional banking is needed through a comparative study.

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