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Ta'widh Penalties in *Rahn Tasjily*: Contractual Formalism and the Risk of *Riba* in Indonesian Religious Courts

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Abstract. This study critically examines a systemic loophole in Indonesian Religious Courts where Western contractual formalism inadvertently legitimizes usury *(riba)* within Islamic economic disputes. Additionally, this study aims to propose a way out through Judicial Self-Assessment model for Indonesian Religious Courts. Employing doctrinal legal research, this study analyzes a recent *Rahn Tasjily* (fiduciary pawn) dispute to illustrate how judges, constrained by the procedural efficiency of the Small Claims Court *(Gugatan Sederhana)*, rigidly apply the *pacta sunt servanda* doctrine. Consequently, they bypass their *ex officio* mandate to ensure substantive Sharia compliance. The core findings demonstrate that the judicially validated 4% daily penalty clause materially constitutes disguised *Riba Nasi'ah* rather than compensation for actual operational loss *(Dharar al-Haqiqi)*. By calculating penalties proportionally to the principal debt and default duration, the court essentially sanctions the prohibited Time Value of Money. This approach facilitates risk-free capital accumulation for financial institutions and creates a systemic debt spiral for vulnerable micro-debtors. To resolve the tension between evidentiary challenges and the strict prohibition of usury, this research proposes a Judicial Self-Assessment model. By utilizing standardized court summon radius fees as an objective benchmark, judges can accurately quantify real loss. This mechanism empowers the application of the *ex aequo et bono* principle within strict Sharia corridors, effectively closing the judicial loophole that permits the legalization of *riba*.

Keywords: Islamic Law, Islamic Contract, Pacta Sunt Servanda, Riba Nasi'ah, Small Claims Court.

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INTRODUCTION

Indonesia has established a dualistic judicial system in which the Religious Court has absolute authority to resolve disputes in the field of Islamic economics (Article 49 letter i, Law No. 3 of 2006). This judicial duty is not limited to applying written positive law but requires ensuring that decisions align with the principles of Islamic Sharia. However, Religious Court judges face a profound challenge: navigating the volatile intersection between formal legal certainty

embodied in the Western legal principle of *pacta sunt servanda* (contracts are binding) and substantive Sharia justice *(al-`adl wa al-ihsan)* (Hakim et al., 2025).

Assessing the possibility of legalizing *riba* through contractual formalism is of paramount importance. When courts prioritize procedural efficiency and strict adherence to written agreements, they possess the dangerous potential to bypass substantive Sharia material reviews. If this loophole remains unfixed, Religious Courts may inadvertently function as rubber stamps that legitimize usurious practices disguised under Sharia-compliant labels, thereby undermining the integrity of the entire Islamic economic system (Lubis et al., 2025).

A glaring manifestation of this peril is evident in a recent *Rahn Tasjily* dispute adjudicated at the Andoolo Religious Court. The case involved a customer's default and the Sharia financial institution's subsequent claim for *Ta'widh* (late payment compensation) based on a percentage-based daily penalty clause. Instead of verifying the actual operational losses, the judge applied strict legal positivism, validating the 4% proportional penalty merely because it was explicitly agreed upon in the contract. This procedural pragmatism indicates a limited application of the *ex officio* function, overriding the judge's mandate under Article 790 of the Compilation of Sharia Economic Law to actively explore and discover the law to ensure substantive Sharia justice. Consequently, fines that are mathematically proportional to the debt and time, rather than actual losses, have a great potential to be legally sanctioned despite falling into the category of *riba nasi`ah*.

To contextualize this judicial phenomenon, it is imperative to examine how previous scholarship on *Ta'widh* and Islamic financial penalties has predominantly evolved within normative, theological, and macro-regulatory domains. For instance, (Binti Zulkipli, 2020) and (Rahmawati et al., 2025) comprehensively examined the Sharia legitimacy of late payment penalties, while (Syaifullah, 2021) deepened the theological basis through classical exegetes. This normative foundation is further reinforced by (Fadhil et al., 2024), who emphasized the critical imperative of DSN-MUI fatwas as the primary parameter in resolving default disputes. On the implementation front, studies have highlighted the practical and Sharia-compliance dilemmas of these penalties. (Nasir & Wasilah, 2018) revealed how fine mechanisms inherently raise critical Sharia compliance doubts, to the extent that certain Islamic banks opted to eliminate them entirely. Expanding on these practical distortions, (Hassan et al., 2026) and (Fanisa & Hakim, 2024) provided specific critiques on compensation mechanisms, highlighting how predetermined, percentage-based penalties functionally deviate from Sharia

principles and entrap vulnerable consumers. Furthermore, from a philosophical and judicial standpoint, (Wibowo et al., 2025) have heavily critiqued the inadequacy of purely legalistic-positivistic approaches in Indonesian Islamic economic dispute resolution. This critique is philosophically deepened by (Puspitasari et al., 2025), who explicitly calls for a progressive transformation towards substantive justice, moving beyond mere procedural formalism. Adding to this procedural complexity, (Tjoneng et al., 2020) highlighted how the expedited nature of the Small Claims Court *(Gugatan Sederhana)* mechanism structurally limits thorough dispute settlement efforts.

Despite these extensive reviews, existing literature leaves a significant void regarding the specific procedural-judicial realities of how contractual positivism is operationalized by lower courts to inadvertently legitimize *riba*. Previous studies have almost exclusively discussed *Ta'widh* normatively, heavily focusing on what the law should be rather than how it is actually adjudicated. This study fills this precise gap by shifting the discourse from normative validity to judicial operationalization. The primary novelty lies in its direct critique of the Contractual Formalism applied in lower court decisions where judges pragmatically validate usurious clauses coupled with the proposal of a Judicial Self-Assessment model utilizing standardized court radius costs as an objective instrument to quantify real loss.

Departing from the judicial legitimization of a contract clause that diametrically contradicts the fiqh muamalah principles of the National Sharia Council of the Indonesian Ulama Council (DSN-MUI), this study focuses on three main dimensions of analysis. First, the urgency to dissect the legal construction built by the judge in validating the percentage-based *Ta'widh* clause in the *Rahn Tasjily* dispute, and to examine the extent to which this validation violates the imperative mandate of Article 790 of the Compilation of Sharia Economic Law. Second, the analysis is directed at verifying whether the application of *Ta'widh* in the *a quo* decision has materially fulfilled the qualifications of *Dharar al-Haqiqi* (real loss) as outlined in DSN-MUI Fatwa Number 43/2004, or whether it has slipped into substantive *riba* practices. Third, in response to the weaknesses of conventional methods, this study formulates a progressive reformulation of legal discovery through the Judicial Self-Assessment model, which is offered as an instrument for Religious Court judges to decide on compensation cases in accordance with Sharia law and avoid the legalization of *riba*.

LITERATURE REVIEW

Ta'widh (Compensation) in the Perspective of Fiqh Muamalah

The concept of *Ta'widh* (Compensation) is an instrument in contemporary *fiqh muamalah* that functions as financial compensation for losses suffered by one party due to default or negligence of another party. Literally, *Ta'widh* comes from the word *al-'iwadh*, which means compensation or replacement value (Ngabas et al., 2025).

From a *fiqh* perspective, compensation is based on the principle of *La dharar wa la dhirar* (do not harm yourself or others). Contemporary scholars, such as Wahbah al-Zuhaili, emphasize that *Ta'widh* is to cover losses incurred because of violations or errors, and the general provisions of compensation aim to eliminate these losses *(al-dhaman/al-'iwadh)* (Ambarningsih et al., 2024).

It is very important to distinguish between losses that can be compensated for and those that cannot. The object of compensation in *fiqh* is limited to existing, concrete, and valuable property *(al-mal al-maujud al-muhaqqaq wa al-muttaqawwam syar'an).* The loss of uncertain future profits (potential loss) or opportunity loss *(al-furshah al-dha-i'ah)* and immaterial losses in general cannot be compensated (compensation requested) according to the provisions of *fiqh* law. This principle aims to prevent financial penalties from becoming a means of pursuing non-real profits that could lead to *riba* (Radja Haehta Sembada et al., 2025).

The National Sharia Council of the Indonesian Ulama Council issued Fatwa No. 43/DSN-MUI/VIII/2004 on Compensation *(Ta'widh)* as operational guidelines for Sharia Financial Institutions. This fatwa was explicitly created to prevent Sharia Financial Institutions from engaging in *riba* or practices that lead to *riba* (Fadhil et al., 2024).

Key Provisions of Fatwa of the National Sharia Council of the Indonesian Ulama Council number 43/2004 (Satria et al., 2020):

a. *Ta'widh* is only imposed on parties who default/neglect their obligations and cause losses to other parties.
b. The losses that can be subject to *Ta'widh* are real losses that can be clearly calculated.
c. The real losses referred to are the actual costs incurred in the process of collecting the rights that should have been paid.

d. The amount of compensation must be in accordance with the value of the real loss (fixed cost) and not the losses that are estimated to occur (potential loss).

e. The amount of compensation may not be specified in the contract.

Points c and e are the most important normative defenses for distinguishing between sharia-compliant *Ta'widh* and *riba*. *Ta'widh* must be based on an audit of actual costs, and the determination of a fixed penalty in advance that is proportional to the debt is strictly prohibited.

The Position of the Fatwa of the National Sharia Board of the Indonesian Ulama Council and the Mandate of Article 790 of the Compilation of Sharia Economic Law

In Indonesia`s Islamic economic legal system, Fatwa of the National Sharia Council of the Indonesian Ulama Council are considered a very important source of substantive law. Although fatwas are not always equivalent to laws, Supreme Court (MA) rulings have repeatedly emphasized that religious court judges are required to use fatwas as the main reference to ensure sharia compliance in Sharia Financial Institutions disputes (Muhammad Khoiru Sa'i & Zaidah Nur Rosidah, 2024). A stronger mandate comes from the Compilation of Sharia Economic Law, specifically Article 790. This article explicitly states: "This Compilation of Sharia Economic Law does not diminish the responsibility of judges to explore and discover the law to ensure fair and correct decisions" (Damayanti et al., 2024). This clause requires judges to set aside formal adherence to the text of the contract *(pacta sunt servanda)* if the text clearly contradicts Sharia principles. In the case of Sharia Financial Institutions, this means that if a contract clause (such as the 4% penalty clause) conflicts with the Fatwa of the National Sharia Council of the Indonesian Ulama Council, the judge not only has the right, but also the obligation, to invalidate or reinterpret the clause. Religious Court judges in Islamic economic disputes must act as guarantors of Sharia compliance, not merely as enforcers of contracts.

Duality of Legal Discovery: Normative Positivism vs. Progressive Paradigm

Legal positivism, in this context, means that judges focus only on formal legal certainty, i.e., considering contracts agreed upon by the parties to be valid and binding *(pacta sunt servanda).* Judges who adhere to this view tend to see themselves as mouthpieces for contracts, whose job is only to apply the terms of the contract without questioning its substance or Sharia morality. In the Religious Court Andoolo case, judges tended to prioritize the evidence of the contract and installment schedule as the absolute basis for collection (Rachmah et al., 2023).

In contrast, the Progressive Law paradigm proposed by Satjipto Rahardjo offers an antithesis to this rigidity. This theory postulates that law is for humans, not humans for law. From a progressive perspective, law is not viewed as a final scheme (law as a final scheme), but rather as an institution that continues to flow and change to achieve substantive justice (Ambarwati, 2022). Article 790 of the Compilation of Sharia Economic Law is essentially a legislative manifestation of this progressive spirit, which requires judges to engage in rule breaking when the text of a contract or law violates the sense of justice. For judges in the Religious Court, this means the courage to free themselves from the constraints of legal positivism when faced with contract clauses that are formally valid but materially contain injustice in the form of *riba*.

Riba Nasi`ah and Its Relation to Percentage Ta'widh

Riba is an additional charge imposed by a lender on a borrower without any equivalent compensation, which is absolutely prohibited in Islam. Specifically, *Riba Nasi`ah* is an addition to debt or a penalty arising from a delay in the payment of the principal debt. This mechanism occurs when the debtor fails to pay the debt on the due date, and the creditor imposes a financial penalty proportional to the amount of debt that is late in payment (Pardiansyah, 2022).

The *Ta'widh* clause stipulated in advance and calculated based on the percentage of debt/installments has a very close functional similarity to *Riba Nasi`ah*. If the penalty is not based on the real cost of collection, but rather aims to generate excess profit without compensation for the Sharia Financial Institutions, then the penalty automatically changes its function to an addition to the debt, which is prohibited (Alimin & Fahlefi, 2020). The principle of Fatwa of the National Sharia Council of the Indonesian Ulama Council Number 43/2004 was introduced as an effort to separate legitimate *Ta'widh* (real compensation) from *Riba Nasi`ah* (proportional penalties on debt).

The Concept of Equity Principle (Billijkheid) and Ex Aequo Et Bono

The Principle of Fairness (*Billijkheid* or Reasonableness Test) is a general principle in civil law that allows judges to consider fairness and appropriateness in deciding cases, especially when the application of formal law can result in injustice (Aripah, 2023). *Ex Aequo Et Bono* authority (adjudicating based on fairness and justice) gives judges the discretion to determine what is considered fair, especially in cases where it is difficult to prove actual damages or when a contract clause is legally flawed (Hasibuan & Ramadhita, 2022). In the context of Religious Court, this principle is an important tool for implementing the mandate of Article 790 of the Compilation of Sharia Economic Law. When the *Ta'widh* clause (4% daily) is declared invalid

because it is usurious, but the Sharia Financial Institutions still suffers collection losses, the judge is obliged to use this authority to determine appropriate compensation (real and non-usurious), so that the court does not refuse to adjudicate due to the ambiguity or defectiveness of the contract clause.

METHOD

This study employs doctrinal legal research to systematically examine legal rules and principles (Hutchinson, 2013). To comprehensively address the discrepancy between judicial positivism and substantive Sharia justice, this study uses a combination of legal approaches, namely statutory, case, and conceptual approaches. Utilizing this specific combination perfectly matches this study because dismantling the legalization of *riba* requires a simultaneous examination of the legislative texts (statutory), their practical application by judges in the *a quo* verdict (case), and the formulation of progressive legal remedies based on substantive justice (conceptual) (Marzuki, 2017).

Although relying on a single court decision (the Andoolo Religious Court ruling on *Rahn Tasjily*), this case study approach is highly justifiable. Recent methodological literature emphasizes that a single "revelatory" case demonstrating a systemic loophole here, the clash between procedural efficiency and Sharia compliance provides deep, contextual insights that broad general surveys cannot effectively capture (Stępień, 2020).

Data are drawn from primary legal materials (the *a quo* decision, KHES, PERMA on Small Claims Court, and DSN-MUI Fatwa No. 43/2004) alongside secondary *fiqh muamalah* literature. The data were analyzed using a qualitative-normative technique with prescriptive reasoning. This specific technique perfectly matches this study because contemporary doctrinal legal research demands more than descriptive analysis; it inherently requires a prescriptive formulation to resolve normative conflicts and propose tangible legal remedies (Majeed et al., 2023). Consequently, this study fulfills that prescriptive mandate by constructing the Judicial Self-Assessment model in three concise phases: extracting the legal facts from the verdict (case approach), evaluating its formalistic rationale against substantive Sharia regulations (statutory approach), and formulating an objective mechanism to quantify actual losses (conceptual approach).

RESULTS

The case examined in the Andoolo Sharia Court decision involved a dispute over default between PT Pegadaian Syariah (as *Murtahin*, the party receiving the collateral) and the Defendant (as *Rahin*, the party pawning) in the *Rahn Tasjily* contract. This contract was made in May 2018, with a loan facility *(Amanah)* used by *Rahin* to purchase a vehicle, with a total debt of IDR 506,209,408, to be paid in installments over 48 months with a monthly installment of IDR 10,547,000.00. The dispute arose when the Defendant (*Rahin*) defaulted on payments for 8 months (February to September 2020), resulting in the Plaintiff's claim for arrears and compensation. This claim for compensation *(Ta'widh)* is based on Article 5 of the agreement, which stipulates that if *Rahin* defaults, he will be subject to compensation of 4% divided by 30 of the installment amounts (daily penalty).

Procedurally, the classification of this case was a Small Claim *(Gugatan Sederhana)* governed by Supreme Court Regulation No. 4 of 2019, and the dispute was decided via *Verstek* (default judgment) due to the absence of the Defendant. In this dispute, the Defendant was also suspected of damaging the collateral (cutting the exhaust pipe and removing the wheels).

Regarding the financial claims, although in the petitum of the Plaintiff's lawsuit, only the total claim amount of IDR 86,402,774 was listed without explicit details between the principal and the penalty, the usurious component could be isolated through simple mathematical reconstruction. Based on the legal facts, the Defendant's monthly installments amounted to IDR 10,547,000 with a delinquency period of 8 (eight) months (February to September 2020). Thus, the principal amount of the delinquent obligation can be calculated as follows: Principal Arrears = IDR 10,547,000 x 8 months = IDR 84,376,000. Next, by subtracting the total claim from the principal amount owed, the following difference was found: *Ta'widh* value = IDR 86,402,774 (total claim) – IDR 84,376,000 (principal areas) = IDR 2,026,774. The difference of IDR 2,026,774 was granted by the judge as compensation. To support this collection effort, the actual evidence of collection activities submitted by the Plaintiff at the trial consisted of only 7 (seven) administrative actions, namely: 3 (three) Warning Letters (Evidence P-1 to P-3) and 4 (four) visits by officers to the location (Evidence P-4 to P-7).

DISCUSSION

A. The Conflict between Contractual Formalism and the Responsibility of Ghalli al-Hukm

This section analyzes in depth why the Andoolo Religious Court Decision Number 0001/Pdt.G.S/2020/PA.Adl, by validating the percentage-based *Ta'widh* clause, has demonstrated a pronounced tendency toward legal positivism which poses a significant challenge to the preservation of the integrity and distinctiveness of Sharia economic law. The judge in a quo decision showed excessive adherence to the formalities of the contract *(Akad Rahn Tasjily)*. By recognizing the evidence of the *Akad* and the Installment Schedule as binding legal facts, the judge placed the principle of *pacta sunt servanda* (contracts are law for the parties) above all other sharia consideratio (Aisyah et al., 2025). The validation of this 4% clause is the pinnacle of contractual formalism, wherein the decision prioritizes the formal terms of the contract, while the substantive financial illegality contained therein remained unaddressed.

The validity of an agreement in Indonesian civil law requires four conditions, one of which is a lawful cause (Article 1320 paragraph 4) (Hadiyan Achfas et al., 2024). In the jurisdiction of the Religious Court, a lawful cause must inherently be interpreted as a cause that is in accordance with sharia principles, which means free from elements of *riba* (Madjid et al., 2026). When the 4% compensation clause is based on a percentage proportional to the debt, the clause substantively violates the prohibition of *riba*. If a clause in a sharia contract is sharia-unlawful, then it constitutes a *fasid* condition or *causa illegal*. Consequently, the clause should be declared null and void *(void ab initio)*.

The failure of the panel of judges to revoke the 4% penalty clause is not merely an error in the application of the law, but a manifestation of the dominance of legal positivism within the judicial reasoning process significantly overlooked within the religious court system. In Decision Number 0001/Pdt.G.S/2020/PA. Adl, the judges relied absolutely on the principle of *Pacta Sunt Servanda* (Article 1338 of the Civil Code) and the doctrine of *al-muslimuna ala syurutihim* but significantly overlooked the prerequisite of lawful causality *(Causa Halal)* as stipulated in Article 1320 of the Civil Code (Amalia, 2018).

This absolute reliance on the *pacta sunt servanda* doctrine reflects the deep-seated influence of Western legal positivism and classical contract formalism within the Indonesian judicial mindset. In the Western legal tradition, classical formalism asserts that the explicit text of an

agreement is sacrosanct and must be enforced strictly according to its terms, often detaching the contract from external moral or substantive evaluations (Siregar et al., 2025). However, transplanting this Western positivist paradigm into Sharia economic disputes creates a fundamental epistemological clash. While Western legal formalism prioritizes formal legal certainty and procedural autonomy based purely on mutual consent, Islamic jurisprudence demands substantive justice *(al-'adl)*. In Islamic law, formal consent *(taradhi)* is insufficient if the substance of the contract violates absolute divine prohibitions *(causa prohibita)* (Kamali, 2008). Applying this to the a quo decision, a clause that stipulates a proportional penalty on the principal debt functionally aims to generate profits from the delay in time (Time Value of Money). Such a mechanism inherently transforms the clause into a *causa prohibita*, which is strictly prohibited by higher Sharia norms regarding the prohibition of *Riba Nasi`ah*.

To counter the application of these higher Sharia norms in formal courts, there is often a positivist argument that the Fatwa of the National Sharia Council of the Indonesian Ulama Council (which codifies these norms) is not a statutory regulation, so that its violation does not automatically invalidate the *halal* cause requirement in Article 1320 of the Civil Code. This view has become obsolete and has been refuted by the enactment of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law) and its latest implementing regulation, POJK Number 39 of 2024. Article 141 letter c of POJK No. 39 of 2024 requires sharia pawnshop business activities to not conflict with Islamic law based on fatwas from authorized institutions. The definition of this institution is hierarchically defined by Article 337 letter h of the P2SK Law and its Explanation, which explicitly states that the institution in question is the Indonesian Ulama Council (Hidayah et al., 2023).

Thus, a solid legal bridge has been formed. The Fatwa of the National Sharia Council of the Indonesian Ulama Council is now the standard for sharia compliance required by law (P2SK Law) and OJK regulations. Consequently, contract clauses that conflict with the Fatwa of the National Sharia Council of the Indonesian Ulama Council (such as percentage penalties that contain *riba*) automatically conflict with the law. Within the framework of Article 1320 of the Civil Code, a cause is prohibited if it is prohibited by law.

Therefore, the 4% *Ta'widh* clause must be declared null and void because it violates the Causa *Halal* as defined by applicable positive law standards. A critical analytical gap in the decision is evident in this layer of examination. The judge did not conduct a material test to determine whether the 4% clause met the non-*riba* requirements. Instead, the judge accepted the clause

as a lawful cause simply because it had been agreed upon by the parties and was included in a sharia-labeled contract. The ruling does not sufficiently distinguish between the formal certainty of the contract and the requirement of substantial sharia compliance. Accepting the usurious clause under the pretext of *pacta sunt servanda* makes the contract sharia as an instrument that misinterpreting both general civil law (Article 1320) and Islamic law (Alam et al., 2026).

This judicial approach, viewed through Satjipto Rahardjo's perspective, reflects a rigid formalism that overlooks the substantive dimension of justice, prioritizing textual compliance over the ethical spirit of the law (Sianturi et al., 2025). The decision illustrates a positivist-legalistic interpretation, where the judicial function is strictly limited to enforcing the explicit terms of the agreement *(pacta sunt servanda)*, potentially at the expense of substantive sharia compliance reviews. By refusing to interpret beyond the text (Tania et al., 2021), the judicial reasoning does not fully account for the reality of the customer's subordinate position and was forced to agree to the usurious clause. In fact, Progressive Law requires judges to have the moral courage to reject the status quo (the *pacta sunt servanda* doctrine) if the status quo is proven to validate practices that potentially contravene fundamental ethical standards in Islamic finance, specifically regarding the prohibition of *riba* (Tania et al., 2021).

However, attributing the judicial validation of the 4% clause solely to 'contractual formalism' oversimplifies the procedural reality of the Andoolo Religious Court. A critical examination of the decision reveals it was adjudicated under the mechanism of a Small Claim *(Gugatan Sederhana),* governed by Supreme Court Regulation No. 4 of 2019. This procedural framework mandates a simple, fast, and low-cost trial, structurally disincentivizing judges from conducting prolonged material examinations of contract clauses or ordering external audits to verify real loss (Tjoneng et al., 2020). Designed primarily for a speedy trial with limited evidentiary procedures (resolving cases within 25 to 30 days maximum), this mechanism pressures judges to prioritize procedural efficiency and formal legal certainty over deep Fiqh exploration (Long et al., 2025). Here lies a fundamental tension in Indonesian Sharia litigation: the procedural imperative for speed in *Gugatan Sederhana* inadvertently "forces" judges to be positivist. It necessitates a reliance on the face value of written evidence *(Pacta Sunt Servanda)*, bypassing the deep substantive vetting required to identify latent *Riba* elements within the contract. Consequently, the legalization of the usurious *Ta'widh* clause is a symptom of a systemic friction where the expedited procedure of civil law suffocates the *Maqashid Syariah* obligation

to ensure transaction purity. However, simplifying the adjudication process should never entail simplifying the Sharia compliance standard itself (Long et al., 2025).

The fact that this dispute was decided via *Verstek* (default judgment) significantly escalates the burden of the judicial *ex officio* responsibility. In the absence of the Defendant to challenge the evidence or arguments presented by the Plaintiff, the panel of judges effectively lost their adversarial partner in testing the validity of the financial claims. Under these circumstances, the principle of justice should have been activated at its highest level, requiring the judge to act as a guardian against potentially predatory clauses rather than merely accepting the Plaintiff's unilateral evidence (Malye & Rahdiansyah, 2020). Treating the Defendant's silence as tacit consent to a usurious 4% penalty constitutes a procedural failure, as the absence of a defense does not absolve the court from its primary duty to ensure that every validated claim remains within the corridors of Sharia compliance.

The biggest contradiction in this ruling, therefore, is the disregard for Article 790 of the Compilation of Sharia Economic Law. This article is the legal foundation that distinguishes Religious Court judges from conventional civil judges, mandating that they go beyond merely applying the text to explore and discover the law (Nazaruddin, 2023). Judges who carry out the function of *ghalli al-hukm* (exploring the law) must have the role of *Qadi Mujtahid*. This means that judges must be able to conduct sharia vetting of the clauses submitted to the court. If there are clauses that are potentially *fasid* (corrupt) or contrary to Fatwa Number 43/2004, the judge is obliged to cancel or reinterpret them. The Andoolo Religious Court ruling indicates a limited application of this *ex officio* function (Rahmatillah, 2025). The judge did not take the initiative to compare the 4% clause with the Second Provision Paragraphs 3 and 4 of the Fatwa, which prohibits the determination of *Ta'widh* at the outset as a potential loss (Fanisa & Hakim, 2024). This oversight resulted in a passive judicial stance.

In their considerations, the judges must have acknowledged that the Defendant (*Rahin*) had delayed payment *(mathl al-ghani),* which is referred to as an injustice in the hadith. In fact, the Defendant was suspected of damaging the collateral (cutting the exhaust pipe and removing the wheels). The existence of *mathl al-ghani* and damage to collateral clearly causes *dharar* (loss) (Ngabas et al., 2025). However, a fundamental logical inconsistency is observed in linking this loss to the percentage-based *Ta'widh* claim. Losses due to default have two components that must be separated logically:

- Real Collection Losses *(Ta'widh)*: Costs incurred by Sharia Financial Institutions to conduct collection actions.
- Physical Damage to Collateral *(Dhaman)*: Losses arising from the loss of collateral value (e.g., damage to the vehicle) (Ngabas et al., 2025).

The judge appears to have used evidence of the debtor's bad faith (damage to collateral and delay) as moral justification for applying the 4% penalty clause. This approach is dogmatically inconsistent. Losses due to damage to collateral *(dhaman)* are valid for compensation, but the calculation must be based on the actual value of the damage, not on a daily penalty formula proportional to the debt installment. The consolidation and justification of the *Ta'widh ribawi* claim by the debtor's bad faith indicates a conflict of losses that was not properly resolved by the judge, proving that this decision was driven by contractual formalism reinforced by subjective morality, rather than strict Sharia compliance.

The functional implications of this failure are severe, as the legalization of the 4% daily clause by the Andoolo District Court creates a negative jurisprudential precedent. If clauses that explicitly contradict the principles of *fiqh muamalah* are accepted as valid law, it will result in two major systemic detriments:

- The Mission of Sharia Financial Institutions is Compromised: If Sharia court judges adopt a rigid positivist approach, they effectively negate the substantive differentiation between Islamic Financial Institutions (IFIs) and Conventional Financial Institutions (CFIs). Clauses such as this allow IFIs to gain additional profits from delays, whereas profits should come from valid risks and rewards, not from penalties on debt.
- The Authority of the Fatwa is Questioned: If the court ignores Fatwa Number 43/2004, which is the authoritative interpretation of the Indonesian Ulama Council, then the position of the Fatwa as a source of material law in sharia economic disputes becomes structurally weakened.

In this ruling, the decision did not fully demonstrate the application of the sharia compliance test standard. By validating the *riba* clause, the decision appears to be inconsistent with the directives established by the National Sharia Council. To provide a clear framework, a comprehensive comparison between the clauses in the ruling and Fatwa Number 43/2004 must be presented, as in the following table:

Tabel 1 Identification of Material Defects and Sharia Non-Compliance in the Percentage-Based Penalty Scheme

Sharia Compliance Test Criteria	*Rahn Tasjily* Contract Clause (4% Daily)	Fatwa Provision No. 43/2004	Compliance Status
Calculation Object	Based on Percentage of Installment Amount (IDR 10,547,000.00).	Only real costs incurred for rights collection (Fixed Cost).	Non-Compliant: Fine is proportional to principal debt/installment, not operational costs.
Quantification	Explicitly stated as 4% divided by 30 of the installments (Article 5).	*Ta'widh* amount must not be stated in the contract.	Violates Fatwa: Predetermined amount violates Fatwa procedural provisions.
Loss Category	Potentially includes opportunity loss as it is proportional to potential lost income.	Exclusively Real Loss (real loss) experienced, not potential loss.	Non-Compliant: Percentage formula implicitly compensates for lost income (not just collection costs).

B. Sharia Material Test: Percentage Ta'widh as a Variant of Riba Nasi`ah

This section focuses on analyzing the substance of the 4% daily compensation clause, proving that its financial mechanism is identical to *Riba Nasi`ah* because it is not based on real loss *(Dharar al-Haqiqi)*. The *Rahn Tasjily* contract is a complementary contract that functions as collateral for the principal debt *(Qardh Amanah)*. In *fiqh muamalah*, the *Qardh* contract (money lending) must comply with the principle that additional requirements at the outset are prohibited, because any excess required on top of the principal debt is *riba* (Dwi Estuningtyas, 2024). The clause approved by the judge mathematically shows that the number of penalties imposed directly depends on the amount of the principal debt (which is divided into monthly installments). The larger the initial loan received by the Defendant *(Rahin),* the larger the monthly installments, and exponentially, the greater the daily penalties imposed in the event of a delay.

Ontologically, the distinction between *Ta'widh* and *Riba* lies in the nature of the financial claim. *Ta'widh* works on the principle of *Dhaman al-Mutlaf* (responsibility for damage), which aims exclusively to restore the creditor's financial position to before the loss occurred (Apriliady et al., 2020). Its nature is retrospective, and cost-recovery based. In contrast, the 4% penalty clause validated by the judge works with prospective and profit-based logic. By formulating the penalty as a percentage of the installment divided by 30 days, the clause creates a linear correlation between the passage of time and the increase in financial obligations. This is the precise definition of *Riba Nasi'ah (ziyadah)* required for delay. This formula does not track Real Loss *(Dharar al-Haqiqi)* such as billing administration costs, which are typically fixed

variables, but rather tracks Potential Loss or the opportunity cost of capital, which is explicitly prohibited in DSN-MUI Fatwa No. 43/2004. Judicial legalization of this formula is tantamount to state recognition of the commodification of time in debt transactions, a concept that is foreign to the Islamic economic worldview (Maghfiroh, 2019).

The dependence of penalties on the principal amount of debt is a definitive characteristic of conventional interest or *Riba Nasi`ah*. *Riba* arises due to the addition of debt due to late repayment, and this addition is proportional to the debt (Naasihah et al., 2025). If Sharia Financial Institutions claims real costs, these real costs should be in the form of fixed operational costs, such as communication costs, collection transportation costs (gasoline, tolls), or collection salaries per hour/per visit. These costs are not correlated with the amount of debt or the Defendant's monthly installments. The gasoline costs incurred to travel from the office to the customer's location (North Moramo, South Konawe Regency) are not determined by the amount of debt, but purely by distance and operations. Because the variable number of installments (which is influenced by the amount of debt) greatly determines the amount of penalties, this penalty mechanism becomes an excess profit without compensation for Sharia Financial Institutions, which theoretically and practically can be categorized as *riba* (Makraja & Suip, 2026).

Furthermore, mathematical analysis of the penalty formula proves the hidden application of the Time Value of Money (TVM) concept. The larger the principal debt, the greater the nominal penalty imposed. However, in real cost logic, operational costs of collection, such as transportation for officers or administrative costs for letters, should be fixed costs with a flat curve, regardless of whether the customer owes ten million or one hundred million rupiah. When the penalty curve moves proportionally with the amount of debt, the difference between the real (fixed) costs and the penalties imposed (variable) creates a liquidity surplus (Nirawati et al., 2022). Economically, this surplus serves to cover Opportunity Loss or potential profits lost due to funds being held by debtors. From a conventional economic perspective, this is reasonable as compensation for the loss of money's earning capacity (Fajar, 2021). However, from a Sharia perspective, treating money as a commodity that has added value based solely on time is a fundamental characteristic of *Riba*. Islam views money as a medium of exchange and not an asset that can be rented out (store of value with time-based rent) (Elsanti et al., 2025). Therefore, when judges approve fines calculated based on a percentage of debt to cover potential losses, they have essentially legitimized *Riba Nasi'ah*, which is the taking of

additional financial benefits solely because of a delay in debt repayment, without any underlying real sector transactions (Jamarudin et al., 2022).

Beyond the theoretical illegitimacy, a profound Legal Economic Analysis must be considered regarding the systemic impact if the "4% Fine" scheme continues to be legalized by religious courts. Since this dispute falls strictly under the domain of Sharia Economics, judicial decisions carry massive socioeconomic consequences. Legalizing a percentage-based penalty inevitably creates systemic injustice for small debtors within the Small Claims Law mechanism. Customers utilizing *Rahn Tasjily* facilities are predominantly micro-entrepreneurs or lower-middle-class individuals borrowing for productive capital or urgent consumptive needs. Imposing an exponentially compounding daily fine of 4% proportional to their installment severely cripples their financial recovery capacity. Instead of rehabilitating the debtor, this scheme manufactures a debt spiral (debt trap), forcibly transferring wealth from the economically vulnerable *Rahin* to the financially dominant *Murtahin*. Such wealth extraction blatantly contradicts the core *Maqashid Syariah* (objectives of Islamic law) regarding the protection of wealth *(hifzh al-mal)* and the equitable circulation of capital, fundamentally stripping the "Sharia" label of its ethical and economic justice substance (Hassan et al., 2026).

The illegitimacy of the 4% clause is further illuminated when deconstructed through the lens of *'Iwad* (counter-value) theory. In Islamic jurisprudence, a financial return is only justified by three factors: *Maal* (capital), *Amal* (labor), or *Dhaman* (liability/risk) (Abdullah, 2023). The 4% daily penalty imposed by the Plaintiff operates as a function of time and principal debt volume, adhering to the formula of Time Value of Money inherent in conventional interest. It acts as a passive generator of profit without an underlying *Amal* (real collection effort) or *Dhaman* (asset risk), as the operational costs of collection do not logically rise in linear proportion to the debt amount. By validating a penalty that generates revenue exceeding the administrative cost of collection, the court has effectively sanctioned Risk-Free Capital Growth, which is the precise ontological definition of *Riba Nasi'ah*. The claim is masquerading as *Ta'widh* (compensation for injury) but structurally functions as *Ziyadah* (unjustified increase) on the loan principle prohibited by the consensus of classical and contemporary scholars. Thus, the argument that the 4% penalty is *Ta'widh* is epistemologically invalid. Sharia *Ta'widh* is strictly limited to *Dharar al-Haqiqi* (actual loss), whereas the 4% percentage formula is inherently designed to pursue the time value of money (Prihatin & Asmuni, 2025). This confirms that the clause is no longer a compensation mechanism, but rather a profit-taking instrument that exploits customer default, a practice that is expressly prohibited in the Fatwa

of the National Sharia Council of the Indonesian Ulama Council and the basic principles of *fiqh muamalah*.

The theoretical validity above was confirmed when a forensic examination was conducted on the facts of the trial. As established in the factual case summary, the granted *Ta'widh* of IDR 2,026,774 mathematically correlates precisely with the disputed 4% penalty clause and does not originate from the sum of the actual cost receipts. To prove that this amount is a disguised profit and not a cost recovery, a reasonableness test must be conducted by comparing this amount to the volume of collection activities. Relying on the 7 (seven) administrative actions previously identified, if the compensation amount is divided equally among these total actions, the average cost per procedure is astronomical: IDR 2,026,774 / 7 actions = IDR 289,539. This figure contains an economic fallacy. The actual cost of printing and sending a Warning Letter (paper, ink, postage) would not reasonably exceed IDR 50,000. Similarly, the cost of a local field visit, if based on the general standards for official travel expenses or local transportation rates, is very unlikely to reach nearly three hundred thousand rupiah per trip. The extreme price disparity between the real administrative costs and the approved nominal claim empirically proves that the figure of IDR 2,026,774 is not a representation of cost recovery, but rather a disguised profit margin.

The Fatwa of the National Sharia Council of the Indonesian Ulama Council makes a subtle distinction between *Ta'widh* (real compensation that may become Sharia Financial Institutions income) and *Gharamah Maliyah* (pure financial penalties, which often take the form of *Ta'zir* disciplinary sanctions, the funds for which must go to charity funds). This 4% clause is clearly designed as Sharia Financial Institutions income, as it is included in the financial compensation claim that is expected to be claimed as a right (income) for the Plaintiff. For this clause to be valid as *Ta'widh* (Sharia Financial Institutions income), it must be based entirely and exclusively on actual collection losses. Because this 4% clause fails to prove itself as a real loss (as explained in the reasonableness test above) and is substantially a proportional addition to the debt, it does not meet the criteria for a valid *Ta'widh*. It falls into a dangerous ambiguity: It is too proportional and not real to be valid *Ta'widh*. It is not categorized as *Ta'zir* (disciplinary penalty) because it is intended as income for the Sharia Financial Institutions (Muhajirin, 2019). The result is inherent *riba*. *Ta'widh* that is not based on a real cost audit tends to inherently include an element of potential loss (profit lost due to late turnover of funds). Sharia Financial Institutions suffers losses not only from collection costs, but also from the opportunity cost of tied-up capital. Fatwa of the National Sharia Council of the Indonesian

Ulama Council Number 43/2004 explicitly prohibits compensation for opportunity loss. By approving a 4% penalty, the judge's decision legitimizes the compensation for opportunity loss that is prohibited, which is the essence of *riba* in debt (Binti Zulkipli, 2020).

The principle of non-proportionality of costs is even explicitly stipulated in the *Rahn Tasjily* contract itself. Fatwa of the National Sharia Council of the Indonesian Ulama Council Number 68/DSN-MUI/III/2008 concerning *Rahn Tasjily* stipulates that Sharia Financial Institutions (*Murtahin*) may impose maintenance and storage costs for *marhun* goods (in the form of proof of ownership or certificates), but the amount of these costs may not be linked to the amount of the loan provided. Costs must be based on actual expenses and other charges. By analogy *(Qiyas),* if normal operational costs (maintenance or storage costs) are prohibited from being linked to the loan amount in accordance with Fatwa of the National Sharia Council of the Indonesian Ulama Council Number 68/DSN- MUI/III 2008 concerning *Rahn Tasjily*. Then financial sanctions (late fees) should be subject to a much stricter principle of non-proportionality. Penalties, which have a higher potential for *riba* than normal costs, should not be calculated based on a percentage of installments or principal debt (Mahyuddin & Bilgies, 2018). The judge's decision to validate the 4% penalty directly related to the installment amount shows serious normative inconsistency.

To emphasize this error, it is important to compare Indonesian *Ta'widh* standards with those of Malaysia. Fatwa of the National Sharia Council of the Indonesian Ulama Council Number 43/2004 is very conservative, limiting *Ta'widh* to compensation for real losses and prohibiting compensation for potential losses. In contrast, Malaysia, through the Shariah Advisory Council (SAC) of Bank Negara Malaysia, has a more pragmatic approach, allowing *Ta'widh* to be recognized as bank income. However, even though Malaysia appears to be more lenient, it applies very strict safeguards: BNM guidelines explicitly prohibit such penalties from being compounded into the principal debt. It is this principle of non-compounding that is violated in the penalty scheme approved by the judge in a quo ruling, where the validation of a fixed percentage against the principal/installment inherently creates the effect of compound interest, which is prohibited even in more flexible jurisdictions such as Malaysia (Binti Zulkipli, 2020).

C. Progressive Legal Discovery Reformulation: The Judicial Self-Assessment Model

To resolve the judicial paradox highlighted in the previous section where the procedural efficiency of Small Claims *(Gugatan Sederhana)* inadvertently suffocates the substantive obligations of *Maqashid Syariah* a progressive reformulation of legal discovery is urgently

required. The Judicial Self-Assessment model proposed in this study offers a vital reconciliation of these frictions. By utilizing existing judicial data, such as the Radius Call Fee Decree which contains precise local transportation cost standards, judges can conduct a Reasonableness Test instantly and objectively without delaying the proceedings. This approach enables courts to fulfill the *ex officio* mandate of Article 790 of the KHES within the corridor of Small Claims procedural efficiency, ensuring that the pursuit of speedy trials does not become an unintended gateway for the entry of usury practices into the courtroom.

Religious court judges bear the imperative obligation to explore and discover the law *(rechtsvinding)* as mandated by Article 790 of the Compilation of Sharia Economic Law, so that the absence of clear rules or lack of evidence should not be a reason to reject a case (Fizran et al., 2023). In facing the dilemma of *Ta'widh* claims, which are often caught between the formalities of usurious contracts and the difficulty of proving real costs, it is necessary to reformulate the method of legal discovery through the Judicial Self- Assessment model. This approach requires the adoption of the Progressive Judge paradigm as an epistemological basis, shifting the framework of thinking from rigid formal positivism to substantive legal discovery that is fair. Through the lens of progressive law, the ambiguity of real cost evidence details should not be allowed to create a vacuum of justice but must be filled with the judge's initiative to actively seek justice to protect the parties from operational losses and *riba* exploitation (Hasanah et al., 2021).

The application of Judicial Self-Assessment is a legitimate form of judicial activism that utilizes the principle of fairness *(billijkheid)* and the authority of *Ex Aequo Et Bono* to resolve disputes fairly and wisely (Aripah, 2023). If the literal application of a contract clause, such as a 4% daily penalty, clearly results in *mafsadah* in the form of legalizing *riba*, then the judge is obliged to seek a legal solution that brings *maslahah* through the principles of *Istihsan* or *Maslahah Mursalah* (Chintya, 2023). *Maslahah* in this context is interpreted as an effort to protect Sharia Financial Institutions from real operational losses due to default, without allowing them to take usurious profits from such delays. Thus, the principle of propriety serves as a positive legal umbrella that allows judges to determine reasonable compensation when evidence of actual costs is difficult to present administratively by the Sharia Financial Institutions.

This independent assessment methodology is not actually unfamiliar territory *(terra incognita)* in the tradition of religious courts but rather has a strong *qiyas* (analogy) with the practice of

determining *iddah* or *mut'ah* alimony in *Ahwal Al-Syakhshiyyah* cases (Muhyiddin, 2023). In alimony cases, judges often do not demand rigid proof in the form of detailed daily shopping receipts from the former wife but instead use their *Ex Aequo Et Bono* authority to estimate a reasonable amount by considering economic conditions and living standards. Legal logic the same should be adopted in sharia economic disputes, where the absence of a billing receipt should not invalidate Sharia Financial Institutions right to operational compensation. Judges can use the standard of propriety, such as determining alimony, to bridge justice (Masrukhin & Damayanti, 2020), preventing Sharia Financial Institutions from suffering losses while protecting customers from disproportionate fines.

To ensure objectivity and avoid subjectivity in estimating the value of losses, judges can standardize by using court operating costs as an analogy benchmark. Specifically, judges can refer to the costs of court summonses based on the radius distance set by the local Religious Court as a representation of reasonable collection costs. The rationality of this analogy lies in the similarity of the nature of the summons costs, which include transportation and the time spent by officers (bailiffs) to visit the parties to the case, which essentially replicates the activities of Sharia Financial Institutions collection officers when conducting summons and field visits (evidence P-1 to P-7). By using this standard, the value of compensation becomes measurable, fixed, and free from the element of proportionality to the principal debt, which is prohibited by sharia. The implementation of this model must depart from the legal facts revealed in court *(in casu)*. The following are the concrete steps for applying Judicial Self-Assessment to the available evidence:

- Delegitimization of *Riba* Clauses: The judge must first nullify the 4% daily penalty clause because it violates Fatwa of the National Sharia Council of the Indonesian Ulama Council Number 43/2004, which prohibits the imposition of compensation proportional to the principal debt.
- Fact-Finding Verification: The judge examined written evidence to confirm the existence of *Dharar al-Haqiqi* (actual loss). Drawing upon the trial facts previously outlined, the Sharia Financial Institution's proven collection efforts were strictly limited to the 7 (seven) documented administrative actions (comprising warning letters and field visits).

The main issue in *Ta'widh* disputes is evidence. Banks often do not keep gas receipts or parking tickets from collection agents, making it difficult to prove the actual costs down to the last

digit. Consequently, likely driven by the procedural necessity for efficiency in Small Claims cases, the adjudication process tends to pragmatically validate the 4% claim without requiring an exhaustive verification of actual costs (Rahmawati et al., 2025). To overcome the impasse between flawed contract formalities and the difficulty of proving actual costs, this study proposes a Standardized Judicial Assessment model that utilizes existing procedural law instruments. Judges can use analogy *(Qiyas)* to the Decree on Court Fees *(Panjar Biaya Perkara)* applicable in local courts as a benchmark for reasonable collection costs. As a concrete illustration, based on the Decree of the Head of the Andoolo Religious Court Number 287/2025:

- The defendant resides in Mata Wawatu Village, North Moramo District.
- Based on the Appendix to the Decree on Advance Costs, North Moramo District is included in Radius IV.
- The Summons/Notification Fee for Radius IV is IDR 275,000.

Model Application: Instead of accepting the unclear claim of IDR 2,026,774, the judge can make a judicial estimation as follows:

- Verification of activities: There were 4 visits by officers (trial facts).
- Cost standardization: Use the court's Radius IV rate (Rp 275,000) as a benchmark for reasonable transportation and service costs.
- Calculation: 4 visits x IDR 275,000 = IDR 1,100,000.
- Add letter costs: 3 letters x IDR 20,000 (registered mail costs) = IDR 60,000.
- Total Fair Compensation: IDR 1,160,000.

To transition the Judicial Self-Assessment from an abstract concept to a practical judicial tool, judges can utilize the Standardized Radius Cost *(Biaya Radius*) already established in court decrees as a comparative proxy for Real Loss. For instance, in the jurisdiction of the Andoolo Religious Court, the standardized cost for a summons to the Defendant's location in North Moramo (Radius IV) is set at IDR 275,000. The trial facts indicate the Plaintiff conducted four field visits. Instead of relying on a generalized 4% percentage, a more precise determination of Reasonable Real Loss can be derived by objectively calculating four times the Radius IV cost (4 x IDR 275,000 = IDR 1,100,000) plus necessary administrative expenses (e.g., IDR 60,000). This method provides a verifiable, non-arbitrary benchmark. Any claim amount exceeding this

calculated baseline such as the Plaintiff's claim of IDR 2,026,774 generated via the percentage formula should be judicially presumed as disguised profit *(Riba)* and rejected *ex officio.* This approach allows judges to fulfill the mandate of Article 790 of the KHES without requiring complex external audits, thus maintaining the efficiency required by Small Claims procedures while safeguarding Sharia compliance. This model is a concrete manifestation of the application of the principle of *Ex Aequo Et Bono* (fairness and propriety) in a measurable way, not merely based on the subjective feelings of the judge.

Tabel 2 Judicial Ruling vs. Self-Assessment Model

Component	Plaintiff's Claim / Judge's Decision	Self-Assessment Model	Difference (Indication of Riba)
Calculation Basis	4% of Installment divided by 30 days	Radius IV Standard Cost (Decree of the Head of the Andoolo Religious Court Number 287/2025).	-
Formula	Proportional to Debt and Time	Fixed Cost per Activity (Visit)	-
Value per Visit	IDR 290.000 (Implicit average)	IDR 275.000 (Official Benchmark)	IDR 15.000 per Visit
Total Ta'widh	IDR 2.026.774	IDR 1,160,000	IDR 866,774
Legal Status	Haram (Riba Nasi'ah).	Halal (Real Compensation)	Illegal Profit

CONCLUSION

First, this study establishes that the Andoolo Religious Court's validation of the 4% penalty clause constitutes a rigid application of contractual formalism, prioritizing the Western paradigm of *pacta sunt servanda* over substantive Sharia justice. By neglecting a substantive sharia compliance review, the court reduced its function to a mere contract enforcer, thereby overriding the judicial *ex officio* obligation mandated by Article 790 of the Compilation of Sharia Economic Law (KHES) and inadvertently legitimizing a *causa prohibita*. This judicial passivity undermines the integrity of the religious judiciary, particularly within the procedural constraints of the Small Claims *(Gugatan Sederhana)* mechanism, where the procedural imperative for a speedy trial systemically forces judges into legal positivism and compromises the purification of transactions from usurious elements.

Second, the percentage-based *Ta'widh* clause validated in the *a quo* ruling is empirically and mathematically proven to be disguised *Riba Nasi'ah* rather than compensation for real loss *(Dharar al-Haqiqi)*. The formula inherently adopts the Time Value of Money to offset

opportunity loss a practice explicitly prohibited by DSN-MUI Fatwa No. 43/2004 by calculating penalties proportionally to the principal debt and the duration of default. Evidentiary analysis reveals an extreme disparity between the approved penalty and the actual operational costs of collection. Consequently, the imposed charges function not as genuine cost recovery, but as an instrument for risk-free capital accumulation that creates a systemic debt spiral (debt trap) for socio-economically vulnerable micro-debtors, violating the core *Maqashid Syariah* of wealth protection.

Third, to resolve the tension between the evidentiary challenges of proving actual costs and the strict prohibition of usury, this research proposes the Judicial Self-Assessment model as a progressive method of legal discovery. By utilizing the standardized Radius Call Fees already established in court decrees as an objective benchmark, judges can quantify real loss with fairness, precision, and efficiency, independent of subjective estimation or complex external audits. This approach enables the application of the *Ex Aequo Et Bono* and *billijkheid* principles within strict Sharia corridors. Ultimately, it empowers judges to actively prevent *mafsadah* and effectively close the judicial loophole that permits the infiltration of *riba* practices in expedited litigation.

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