Al-Shajarah, Journal of the International Institute of Islamic Thought and Civilisation (ISTAC), International Islamic University Malaysia (IIUM)
ISSN: 1394-6870 (Print) ISSN: 2735-1866 (Online)
IIUM Kuala Lumpur Campus, No. 24, Persiaran Tuanku Syed Sirajuddin, Taman Duta, 50480 Kuala Lumpur

Vol. No.: 30 Issue No.: 2 (2025) Page No.: 387-420 DOI: 10.31436/shajarah.v30i02.1378

PROCRASTINATION, COMPENSATION, AND MORAL ECONOMY: A CIVILISATIONAL ANALYSIS OF *TAʿWĪḌ* IN ISLAMIC FINANCE

Issa Khan[1], Noor Naemah binti Abdul Rahman[2], Ahmad Sufian bin Che Abdullah[3]

ABSTRACT

This study critically examines classical and contemporary Muslim scholarly perspectives on compensation (taʿwīḍ) for procrastination in Islamic financing arrangements, with particular reference to its application in Islamic financial institutions. It aims to identify a Sharīʿah-compliant and ethically coherent approach that minimises juristic contention while preserving the moral foundations of Islamic finance. Adopting a qualitative research design, the study draws upon classical fiqh sources, contemporary academic literature, juristic resolutions, regulatory documents, and conference proceedings, analysed through a comparative and analytical framework.

[1] Senior Lecturer, Department of Islamic Management and Finance, Academy of Islamic Studies, Universiti Malaya. Corresponding author: shahaalam83@gmail.com / issa@um.edu.my
[2] Honorary Professor, Department of *Fiqh-Usul* and Applied Sciences, Academy of Islamic Studies, Universiti Malaya, naemah@um.edu.my
[3] Senior Lecturer, Department of Islamic Management and Finance, Academy of Islamic Studies, Universiti Malaya, sufyan@um.edu.my

The study finds that classical jurists of the Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī schools unanimously rejected the imposition of additional financial penalties on debtors for payment delays. In contrast, contemporary scholarship is divided into three main positions: those who permit compensation, those who prohibit it entirely, and those who allow compensation on the condition that the proceeds are channelled to charitable purposes rather than retained as income by financial institutions. Building upon this third position, the study proposes the establishment of a *tabarruʿ* (donation) fund as a practical and ethically grounded mechanism. Under this model, a capable debtor who delays payment would contribute a voluntary donation to the fund upon settlement, while Islamic banks may recover demonstrable actual losses from the same fund.

The proposed framework seeks to reconcile Sharīʿah compliance with moral accountability, preserve the principle of risk-sharing, and prevent the commercialisation of penalties in Islamic finance. By situating *taʿwīḍ* within a broader moral-economic and civilisational perspective, the study contributes to ongoing debates on ethical governance and reform in contemporary Islamic financial practice.

KEYWORDS: *Taʿwīḍ*, procrastination, Islamic finance, *tabarruʿ* fund, moral economy, Sharīʿah governance.

1. INTRODUCTION

Borrowing and lending constitute fundamental economic practices in all societies and may occur through direct transactions between creditors and borrowers, or through institutional intermediaries such as banks and other financial institutions. In Islamic law, financial transactions undertaken by Muslim debtors and creditors are governed by Sharīʿah principles that seek to ensure justice, transparency, and the

avoidance of *ribā* (interest).[4] For a debt contract to be valid, it must comply with these principles, particularly the prohibition of unjust enrichment and exploitative gain. Sharīʿah requires that a debtor repay his obligation within the agreed period unless he is genuinely insolvent; intentional delay in repayment by a capable debtor is regarded as an act of injustice (*ẓulm*) against the creditor.[5] Conversely, Sharīʿah recognises the right of the creditor to seek security for a debt in order to safeguard his financial interest. In this regard, the Qurʾān states: "And if you are on a journey and cannot find a scribe, then let there be a pledge taken."[6]

In contemporary financial systems, Islamic banks and other Sharīʿah-compliant institutions offer a wide range of products and services structured primarily around sale-based, lease-based, and partnership contracts.[7] In sale-based financing, customers typically request the bank to acquire specific assets, such as vehicles or residential properties, which are then sold to the customer on a deferred payment basis, often through instalments. While this structure is Sharīʿah-compliant in principle, Islamic banks increasingly face the practical challenge of customers who deliberately delay instalment

[4] Muhammad Ayub, *Understanding Islamic Finance* (West Sussex: John Wiley & Sons, 2007); Benaouda Bensaid, Fadila Grine, Mohd Roslan Mohd Nor, and Mohd Yakub Zulkifli Mohd Yusoff, "Enduring Financial Debt: An Islamic perspective," *Middle-East Journal of Scientific Research* 13, no. 2 (2013): 162-170; Auwal Adam Saad, and Syed Musa bin Syed Jaafar Alhabshi, "Debt Theories in Islamic Commercial Transactions and their Implications for the Islamic Capital Market," *International Journal of Management and Applied Research* 6, no. 4 (2019): 296-306.

[5] Muhammad Ayub, *Understanding Islamic Finance;* Mohamad Akram Laldin, Hafas Furqani, Riaz Ansary, Said Adekunle Mikail, and Tawfik Azrak, "Debt from Sharīʿah and Economic Perspectives: Concepts, Issues and Implications," ISRA Research Paper 81/2015 (Kuala Lumpur: International Sharīʿah Research Academy for Islamic Finance, 2015).

[6] Al-Qurʾān, 2:283.

[7] Muhammad Ayub, *Understanding Islamic Finance*; Bala Shanmugam and Zaha Rina Zahari, *A Primer on Islamic Finance* (Virginia: Research Foundation of CFA Institute, 2009); International Shariah Research Academy for Islamic Finance (ISRA), *Islamic Financial System: Principles and Operations*, 2nd ed. (Kuala Lumpur: ISRA, 2016).

payments despite having the financial capacity to fulfil their obligations. Empirical studies indicate that such intentional procrastination negatively affects bank performance, liquidity management, and shareholder confidence.[8]

At the same time, critics have observed that an excessive emphasis on profit maximisation within Islamic banking risks reproducing the logic of conventional finance and undermining the broader moral objectives of Islamic economics. From a civilisational perspective, Islamic finance is not merely a commercial enterprise but part of a wider ethical-economic system aimed at promoting social justice and alleviating hardship. In this context, Islamic social finance instruments such as *zakāh, ṣadaqah*, and *waqf* play a vital role in supporting non-bankable individuals and ensuring that financial practices remain aligned with the maqāṣid al-Sharīʿah, particularly the preservation of wealth and the protection of human dignity.

The central juristic question that arises in cases of deliberate delay by solvent debtors is whether the creditor or financial institution has the right to impose or demand an additional amount as compensation for the delay. In Malaysia, Islamic banks are generally permitted to impose *taʿwīḍ* (compensation) and *gharāmah* (penalty) on delinquent customers.[9] However, in practice, most Islamic banks apply *taʿwīḍ* rather than *gharāmah.* Similarly, Indonesia's Sharīʿah supervisory authorities allow the imposition of *taʿwīḍ* based on actual loss, although no uniform standard or detailed regulatory guideline has been issued to govern its application. In several Middle Eastern

[8] Atikullah Abdullah, "Late Payment Treatment in Islamic Banking Institutions in Malaysia: A Maqasid Analysis," *International Journal of Academic Research in Business and Social Sciences* 8, no. 11 (2018): 30-43; Aishath Muneeza, Nur Adibah Zainudin, Ruqayyah Ali, Siti Nadzirah Ibrahim, and Zakariya Mustapha, "Application of *Ta'widh* and *Gharamah* in Islamic Banking in Malaysia," *The Journal of Muamalat and Islamic Finance Research* 16, no. 1 (2019): 1-16; Muhammad Shahrul Ifwat Ishak, "Sharīʿah issues on taʿwidh in Malaysia," *International Journal of Islamic and Middle Eastern Finance and Management* 12, no. 4 (2019): 523-531; Zuhaira Nadiah Zulkipli, "Late Payment Penalty: *Ta'widh* and *Gharamah* Imposed to Debtor from the Shariah perspective," *Yuridika* 35, no. 1 (2020): 187-210.

[9] Muneeza *et al.*, "Application of *Ta'widh* and *Gharamah*," 50.

jurisdictions, only *taʿwīḍ* is applied,[10] while in some other contexts non-financial punitive measures, such as "name and shame" practices through customer blacklists, are employed.[11] As a result, the implementation of compensation mechanisms in Islamic banking varies significantly across jurisdictions, institutions, and regulatory environments, particularly in relation to the concepts of *taʿwīḍ, gharāmah*, and the applicable rates or thresholds. This diversity raises serious Sharīʿah concerns, as the imposition of additional amounts—whether labelled as compensation or penalty—may inadvertently lead to *ribā*-like outcomes if not carefully regulated.[12] Contemporary Muslim scholars remain divided on this issue. While some permit the imposition of additional amounts as compensation or deterrence, others categorically reject it on the grounds that it constitutes prohibited *ribā*.[13] A third group adopts an intermediate position, allowing compensation under strict conditions designed to prevent unjust enrichment.

Despite the widespread practice of late payment charges in Islamic banking, there remains no universally accepted Sharīʿah-compliant framework for addressing intentional procrastination by capable debtors in a manner that is both ethically sound and juristically

[10] Issa Khan, Abdul Muneem, Fadillah Mansor, Mohd Abd Wahab Fatoni Bin Mohd Balwi, and Md. Mahfujur Rahman, "Critical Review on Issues and Challenges of Malaysian Islamic Financial System," *Journal of Southwest Jiaotong University* 56, no. 2 (2021): 552-567.

[11] Muneeza *et al.*, "Application of ta'widh and gharamah," 50.

[12] Ezani Yaakub, Mohamed Azam Mohamed Adil, Asmak Husin, Mohd Dani Muhamad, Mohd Solahuddin Shahruddin, and Nur Hidayah Md Yazid, "Late Payment Charge in Islamic Banks," paper presented at the 5th International Conference on Financial Criminology (ICFC), Kuala Lumpur, Malaysia, May 28–29, 2012; Muneeza Ameer Ali et al., "Application of Taʿwīḍ and Gharāmah in Islamic Finance," Arab Law Quarterly 26, no. 2 (2012): 137–154.

[13] Mohammad Firdaus Mohammad Hatta, and Siti Akmar Abu Samah, "Compensation and Penalty Imposed on Debt Settlement of Islamic Products," *Global Journal Al-Thaqafah* 5, no. 1 (2015): 7-18; Atikullah Abdullah, "Late Payment Treatment in Islamic,"; Zuhaira Nadiah Zulkipli, "Late Payment Penalty."

robust. This paper seeks to address this gap by examining classical and contemporary scholarly positions on *taʿwīḍ* for procrastination and by exploring a principled solution that harmonises Sharīʿah compliance with moral accountability and civilisational objectives in Islamic finance.

2. METHODOLOGY

This study adopts a qualitative, library-based research approach to examine classical and contemporary Muslim scholarly perspectives on compensation (*taʿwīḍ*) for intentional procrastination in debt settlement within Islamic banking. The qualitative method is appropriate given the juristic and ethical nature of the subject, which requires textual analysis rather than empirical measurement.[14][15][16]

Data are drawn from classical fiqh sources representing the four Sunni schools of law (Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī), contemporary scholarly writings, academic journal articles, Sharīʿah standards and resolutions, conference proceedings, and authoritative online materials. The primary sources of Islamic law, namely the Qurʾān and the Sunnah, are also consulted to ground the analysis in foundational Sharīʿah principles.

The study employs a comparative-analytical method to examine and evaluate divergent scholarly positions.[17][18] Contemporary views are analysed across three main approaches: (i) permissibility of compensation, (ii) prohibition of compensation, and (iii) conditional

[14] Issa Khan *et al.*, "Critical Review on Issues."
[15] Issa Khan, Noor Naemah binti Abdul Rahman, Zulkifli bin Mohd Yakub Mohd Yusoff, Mohd Roslan Mohd Nor and Kamaruzaman bin Noordin, "A Narrative on Islamic Insurance in Bangladesh: Problems and Prospects", *International Journal of Ethics and Systems* 34, no 3 (2018): 1-15.
[16] Meguellati Achour, Fadila Grine, and Mohd Roslan Mohd Nor, "Work–Family Conflict and Coping Strategies: Qualitative Study of Muslim Female Academicians in Malaysia." *Mental Health, Religion & Culture* 17, no. 10 (2014): 1002-1014.
[17] Md Faruk Abdullah, *Application of Wa'd (Promise) in Islamic Banking Products: A Study in Malaysia and Bangladesh* (PhD diss., Academy of Islamic Studies, Universiti Malaya, 2016).
[18] Ibid.

permissibility with specific restrictions. These positions are assessed in light of their evidences, juristic reasoning, and consistency with the objectives of Sharīʿah, particularly the avoidance of *ribā*, the protection of wealth, and the promotion of justice. This approach enables the study to propose a harmonised Sharīʿah-compliant solution grounded in juristic coherence and ethical considerations.

This methodological approach situates the debate on *taʿwīḍ* within the broader civilisational trajectory of Islamic economic thought, treating Islamic finance not merely as a technical legal system but as an ethical–juristic expression of Islamic civilisation concerned with justice, moral responsibility, and social harmony.

3. LITERATURE REVIEW

3.1. Opinions of Classical Scholars on Compensation (*Taʿwīḍ*)

Within the classical Islamic legal tradition, the problem of debtor procrastination (*mumāṭalah*) was treated not merely as a contractual breach but as a moral and civilisational concern affecting social trust, justice, and economic order. Pre-modern Muslim jurists addressed delayed repayment within a broader ethical framework that sought to preserve social harmony, protect creditors from injustice, and prevent practices that might evolve into *ribā al-jāhiliyyah*. Consequently, classical scholars across the four Sunni schools refrained from legitimising financial penalties as compensation, opting instead for judicial and moral corrective measures.

Classical Ḥanafī jurists addressed deliberate procrastination primarily through judicial coercion rather than financial punishment. Al-Kāsānī[19] explains that *ḥabs* (custody) may be imposed as a disciplinary measure against a procrastinating debtor, based on the ḥadīth: "Delay in payment by one who is able renders his honour and

[19] ʿAlā al-Dīn Al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ* 2nd ed. (Beirut: Dār al-Kitāb al-ʿArabī, 1974).

punishment permissible"[20]. This punishment, however, was not monetary but corrective, intended to restore justice and deter wrongdoing.

The role of the *ḥākim* (judge) was to protect the creditor from injustice by compelling payment through lawful means.[21] This position is further codified in *Majallat al-Aḥkām al-ʿAdliyyah* (Article 998)[22], which authorises the court to restrict a debtor's disposal of property and, if necessary, sell his assets to satisfy outstanding debts, beginning with liquid assets and proceeding incrementally to immovable property.[23]

Ḥaidar[24] clarifies that such interdiction applies once judicial authority is invoked and that it may extend to both insolvent and deliberately procrastinating debtors. While Imām Abū Yūsuf[25] permitted temporary confiscation of property as a form of *taʿzīr*, Imām Abū Ḥanīfah rejected judicial sale of property without the debtor's consent, favouring coercion through custody instead. This debate reflects a deep concern for preventing unjust enrichment and avoiding financial penalties resembling interest.

In the Mālikī jurists[26] framed procrastination as a moral failing that undermines social credibility. Saḥnūn held that a capable debtor who delays repayment is disqualified from giving testimony, based on the Prophetic declaration that procrastination constitutes injustice. Al-

[20] Muḥammad Ibn Ismāʿīl Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Riyad: Dār al-Ḥaḍārah, 2015); Abū Dāwūd Sulaimān Al-Sijistānī, *Sunan abī dāwūd* (Dimashq, Syria: Dār al-Risālah al-ʿĀlamiyyah, 2009); Aḥmad Ibn Shuʿaib Al-Nasāʾī, *Sunan al-Nasāʾī* (Beirut: Dār al-Maʿrifah, 1999).

[21] ʿAlā al-Dīn Al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*.

[22] Alī Ḥaidar, *Durar al-Hukkām Sharḥ Majallah al-Aḥkām* (Riyad: Dār ʿĀlam al-Kutub, 2003).

[23] *The Mejelle (Majallah al-Aḥkām al-ʿAdliyyah)*, trans. C. R. Tyser, D. G. Demetriades, and Ismail Haqqi Effendi (Kuala Lumpur: The Other Press, 2007).

[24] Ḥaidar, *Durar al-Hukkām,*

[25] Shams al-Dīn Al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, 1989); Ḥaidar, *Durar al-Hukkām.*

[26] Shams al-Dīn Al-Dusūqī, *Ḥāshiyah al-Dusūqī ʿalā al-sharḥ al-kabīr* (Al-Qāhirah: ʿĪsā al-Bābī al-Ḥalabī wa Shurakāʾuh, n.d.).

Qarāfī[27] further classified such conduct as *ḥarām*, emphasising that moral accountability precedes legal enforcement. The Mālikī response thus targeted social standing and ethical responsibility, rather than imposing financial sanctions. [28]

According to the Shāfiʿī school, a solvent debtor becomes a *mumāṭil* once payment is demanded and unjustifiably delayed.[29] The *ḥākim* may then compel payment, including through custody or forced sale of assets, but only to the extent necessary to satisfy the debt.[30] Importantly, this judicial authority was exercised with restraint, reflecting a commitment to justice without financial exploitation.

The Ḥanbalī jurists similarly permitted custody of a capable procrastinating debtor. Ibn Qudāmah[31] maintained that the creditor may persistently demand payment and that judicial custody is a legitimate form of discipline. Al-Buhūtī[32] clarified that the judge may order immediate payment without necessarily imposing *ḥajr*. Again, no additional monetary compensation was sanctioned.

Across all four schools,[33] a clear civilisational pattern emerges: classical jurists categorically avoided financial penalties for delayed repayment. Their concern was not merely technical legality but the

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[27] Shihāb al-Dīn Aḥmad Al-Qarāfī, *Al-Dhakhīrah* (Beirut: Dār al-Gharb, 1994).

[28] Muḥammad Ibn Aḥmad ibn Rushd, *Al-Muqaddimāt al-Mumahhitād* (Beirut: Dār al-Gharb al-ʾIslāmī, 1988).

[29] Zakariyyā Ibn Muḥammad Al-Anṣārī, *Asnā al-Maṭālib fī Sharḥ Rawḍ al-Tālib* (Cairo: Dār al-Kitāb al-Islāmī, n.d.); Muḥammad Ibn al-Khaṭīb Al-Sharbīnī, *Mughnī al-Muḥtāj* (Beirut: Dār al-Maʿrifah, 1997).

[30] Muḥammad Ibn Abū al-ʿAbbās Al-Ramlī, *Nihāyah al-Muḥtāj ʾilā Sharḥ al-Minhāj* (Bairūt: Dār al-Kutub al-ʿIlmiyyah, 2003).

[31] Muwaffaq al-Dīn ʿAbdullāh Ibn Aḥmad Ibn Qudāmah, *Al-mughnī* 3rd ed. (Riyāḍ: Dār ʿĀlam al-Kutub, 1997).

[32] Manṣūr Ibn Yūnūs Al-Buhūtī, *Sharḥ Munthaā al-Irādāt* (Beirut: Muʾassasah al-Risālah Nāshirūn, 2000).

[33] Aḥmad Ibn Muḥammad Al-Ṣāwī, *Ḥāshiyah al-Sawī ʿalā al-Sharḥ al-Saghīr* (Egypt: Dār al-Maʿārif, n.d.); Shams al-Dīn Al-Dusūqī, *Ḥāshiyah al-Dusūqī ʻalā al-Sharḥ al-Kabīr*; Muḥammad ʾAmīn Ibn ʿĀbidīn, *Hāshiyah ibn ʿābidīn - radd al-muḥtār ʻalā al-durri al-mukhtār* (Riyad: Dār ʿĀlam al-Kutub, 2003); Muḥammad Ibn al-Khaṭīb Al-Sharbīnī, *Mughnī al-muḥtāj*; Muḥammad Ibn Abū Bakr Ibn Qayyim, *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn* (KSA: Dār Ibn al-Jawzī, 2002).

preservation of an ethical economic order grounded in justice (ʿ*adl*), trust (*amānah*), and social cohesion. Monetary penalties were viewed as a slippery slope toward *ribā*, particularly *ribā al-jāhiliyyah*, where debt increases due to delay.

Instead, Islamic civilisation relied on non-financial corrective mechanisms—custody (*ḥabs*), interdiction (*ḥajr*), social disqualification, and judicial coercion—aimed at moral reform rather than revenue generation. Even the limited allowance by Abū Yūsuf[34], for temporary confiscation was framed as *taʿzīr*, not compensation.

This classical framework reflects a civilisational ethic of debt in which economic transactions were inseparable from moral responsibility. The objective was to discipline behaviour, restore justice, and safeguard the moral integrity of financial relations. In contemporary Islamic banking, where contractual penalties are normalised, this classical legacy raises a fundamental question: can modern financial mechanisms replicate the moral corrective function of classical jurisprudence without reintroducing ribā in another form? Table 1 summarises the positions of the classical schools.

Table 1: Classical Juristic Approaches to Debtor Procrastination (*Mumāṭalah*)

Criteria	**Ḥanafī**	**Mālikī**	**Shāfiʿī**	**Ḥambalī**
Primary Judicial Measu-res	*Ḥabs* (custody) and *ḥajr* (interdicti-on)	Disqualifi-cation from testimony (*isqāṭ al-shahādah*)	(a) Custody (b) Forced sale of property (c) Judicial sale by *ḥākim*	(a) Custody (b) Verbal reprimand (c) Judicial compulsion to pay

[34] Zayn al-Dīn Ibn Nujaim, *Al-Baḥr al-Rā'iq* (Beirut: Dār al-Kutub ʿIlmiyyah, 1997); Ibn ʿĀbidīn, *Hāshiyah ibn ʿĀbidīn - Radd al-Muḥtār ʻalā al-Durri al-Mukhtār*; Niẓām, *Al-Fatāwā al-Hindiyyah* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000).

Financial Compensation / Monetary Penalty	No (exception: temporary *taʿzīr* according to Abū Yūsuf)	No	No	No
Representative Jurists	ʿAlā al-Dīn Al-Kāsānī, Majallah al-Aḥkām al-ʿAdliyah, Ḥaidar ʿAlī	ʿAbd al-Salām Ibn Saʿīd Saḥnūn, Aḥmad Ibn Idrīs al-Qarāfī,	Zakariyyā Ibn Muḥammad Al-Anṣārī, Muḥammad Ibn al-Khaṭīb Sharbīnī, Muḥammad Ibn Abū al-ʿAbbās Al-Ramlī,	Ibn Qudāmah, Manṣūr Ibn Yūnūs Al-Buhūtī

Source: Compiled by the author from classical fiqh sources.

The classical jurists uniformly refrained from prescribing financial penalties for debtor procrastination, not merely due to technical legal concerns, but out of a deeper civilisational commitment to preventing the monetisation of moral failure. Financial penalties were viewed as a pathway to *ribā al-jāhiliyyah*, where delay itself becomes a source of profit. Instead, Islamic law developed a corrective framework grounded in moral discipline, judicial authority, and social accountability through non-financial measures such as custody (*ḥabs*), interdiction (*ḥajr*), and disqualification from testimony.

This approach reflects a distinctive Islamic civilisational ethic of finance, in which economic order is sustained through moral responsibility rather than contractual coercion. Justice was pursued by reforming behaviour, not by commodifying default. In contemporary

Islamic banking contexts, these legacy challenges purely technical solutions to delinquency and calls for institutional mechanisms that restore ethical accountability without reintroducing ribā in disguised forms. Behavioural interventions, ethical education, and socially embedded compliance frameworks may thus be understood as modern continuations of this classical civilisational logic rather than departures from it.

3.2. Contemporary Scholarly Debates on Compensation (*Taʿwīḍ*) for Procrastination

The global expansion of Islamic banking and finance has generated new juridical and ethical challenges that require renewed scholarly engagement. Among the most contested issues is the question of whether a solvent debtor's deliberate procrastination (*mumāṭalah*) justifies the imposition of financial compensation (*taʿwīḍ*). Unlike the classical jurists, who overwhelmingly rejected monetary penalties, contemporary scholars and Sharīʿah bodies have articulated divergent positions in response to modern institutional realities. These views may be broadly classified into three approaches, two of which are examined below.

3.3. The Permissibility of Compensation for Procrastination

A number of contemporary scholars permit compensation for debtor procrastination, provided that it is strictly limited to actual loss and subject to stringent conditions. Among the most prominent proponents of this view is by Muṣṭafā al-Zarqā[35] who argues that compensating a creditor for proven material loss incurred due to a solvent debtor's intentional delay is Sharīʿah-compliant. According to al-Zarqā, neither the primary texts nor the objectives of Sharīʿah (*maqāṣid al-Sharīʿah*) prohibit such compensation; rather, general legal principles

[35] Muṣṭafā Aḥmad Al-Zarqā, "Hal Yuqbal Sharʿan al-Hukm alā al-Madin al-Mumāṭil bi al-Taʿwīḍ alā al-Dāʾin?" *Majallah Abḥāth al-Iqtiṣād al-Islāmī* 2, no. 2 (1985): 102-112.

concerning harm (*ḍarar*) and liability (*ḍamān*) support it. However, he emphasises several critical conditions: the debtor must be solvent, the delay must be deliberate and without Sharīʿah excuse, and compensation must not be stipulated in advance within the contract.

A similar position is advanced by ʿAbdullāh Sulaimān al-Manīʿ[36], who maintains that a procrastinating debtor is legally liable for the creditor's actual loss. He distinguishes this form of compensation from *ribā al-jāhiliyyah* on two principal grounds. First, *ribā al-jāhiliyyah* applies indiscriminately to both solvent and insolvent debtors, whereas compensation applies only to those who are financially capable. Second, *ribā* involves a mutually agreed extension of the debt term, while compensation arises unilaterally as a legal consequence of misconduct.

Likewise, al-Ṣiddīq Muḥammad al-Amīn al-Ḍarīr[37] restricts compensation to cases where the bank can demonstrably prove material loss. In the absence of such loss, he argues, no compensation may be claimed. He further cautions that any prior agreement specifying a fixed amount or percentage payable upon delay constitutes *ribā* and is therefore impermissible. While this position seeks to avoid contractual *ribā*, it has been criticised for insufficiently addressing the moral hazard posed by strategic and repeated procrastination in modern banking environments.

From a civilisational perspective, the permissive approach to compensation reflects an attempt to recalibrate classical Sharīʿah principles within the institutional realities of modern financial systems. This position prioritises the protection of economic order, contractual discipline, and the prevention of harm (*ḍarar*) in complex commercial environments where delayed payments may generate measurable systemic costs. By grounding compensation in actual loss

[36] ʿAbdullāh Sulaimān Al-Manīʿ, *Buḥūth fi al-Iqtiṣād al-Islāmī* (Beirūt: Al-Maktab al-Islamī, 1996).

[37] Al-Ṣadīq Muḥammad al-Amīn al-Ḍarīr, "Faskh al-dayn bi al-dayn," (Paper Presented at the 18th Council of Islamic Fiqh Council of Muslim World League, Mecca, 8-12/04/2006),

and restricting it to solvent debtors, proponents seek to preserve justice (*ʿadl*) without reviving *ribā al-jāhiliyyah*. Nevertheless, this approach signals a shift from the pre-modern Islamic civilisational emphasis on moral restraint and social trust toward a more regulatory conception of justice, shaped by institutional risk management and financial accountability. As such, it reflects a transitional civilisational logic—one that seeks ethical continuity while adapting Sharīʿah norms to contemporary banking infrastructures.

3.4. The Impermissibility of Compensation for Procrastination

A second and influential group of scholars rejects compensation for procrastination outright, regarding it as incompatible with Sharīʿah principles and dangerously proximate to *ribā*. Taqī al-ʿUthmānī[38] argues that imposing financial compensation on a debtor finds no basis in the Prophetic tradition. He refers to the well-known ḥadīth: "Delay in payment by one who is able is injustice; his honour and punishment become permissible,"[39] and notes that neither ḥadīth scholars nor exegetes have interpreted the term *ʿuqūbah* (punishment) to mean financial penalty (*ʿuqūbah māliyyah*). Moreover, he stresses that even if punishment were justified, it would fall within the exclusive jurisdiction of the judge (*ḥākim*), not the creditor or financial institution.

Muḥammad ʿUthmān Shubair[40] similarly maintains that imposing compensation—whether through contractual stipulation, unilateral promise, or customary banking practice—is impermissible, as it constitutes an increment over the principal debt and thus amounts

[38] Muḥammad Taqī Al-ʿUthmānī, *Buḥūth fī Qaḍāyā Fiqhiyyah Muʿāṣārah* (Damascus: Dār al-Qalam, 2013).
[39] Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī;* Al-Sijistānī, *Sunan abī Dāwūd;* Al-Nasāʾī, *Sunan al-Nasāʾī.*
[40] Muḥammad ʿUthmān Shubair, "Ṣiyānah al-Madyūniyyāt wa Muʿāljatuhā min al-Taʿaththur fi al-Fiqh al-Islāmī," *Majallh al-Sharīʿah wa al-Qānūn* 10 (1996): 15-90.

to *ribā*. Nazīh Ḥammād[41] reinforces this position by analogy: even if a procrastinating debtor were likened to a usurper, liability for usufruct would not apply to money, as it is non-rentable. Accordingly, the debtor remains liable only for the principal sum. As an alternative, he advocates non-financial corrective measures, including moral admonition, judicial *taʿzīr*, imprisonment, and court-supervised liquidation of assets.

These scholarly positions are further reinforced by institutional resolutions, The Islamic Fiqh Council[42] and the International Islamic Fiqh Academy[43] have both ruled that financial penalties or compensation for delayed payment are impermissible, regardless of whether such penalties are stipulated contractually. They categorise such practices as *ribā al-jāhiliyyah*. Similarly, the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) states:

> It is not permissible to stipulate any financial compensation, whether in cash or kind, as a penalty clause for a debtor's delay in settling his debt, whether or not the amount is predetermined. This applies to compensation for opportunity loss as well as loss arising from changes in currency value.[44]

This position is institutionally reinforced by the Accounting and Auditing Organisation for Islamic Financial Institutions

[41] Nazīh Ḥammād, "Al-Muʾayyidāt al-Sharʿiyyah li Haml al-Madīn al-Mumāṭil alā al-Wafāʾ wa Buṭlān al-Hukm bi al-Taʿwīḍ al-Mālī ʿan Darar al-Mumāṭalah," *Majallah Abḥāth al-Iqtiṣād al-Islāmī* 3, no. 2 (1985): 107-115.

[42] Islamic Fiqh Council (Al-Majmaʿ al-Fiqhī al-Islāmī) of Muslim World League (MWL). (1989). Meeting no. 11, resolution no. 8.

[43] International Islamic Fiqh Academy (IIFA) of Organization of Islamic Cooperation (OIC). (1990). Meeting no.6, resolution No. 51 (6/2).

[44] Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). *Shariah Standards*. Manama, Bahrain: AAOIFI, latest ed., Sharīʿah Standard No. 3 (Default in Payment by a Debtor), clauses 2/1/2–2/1/3.

(AAOIFI), which explicitly prohibits the stipulation or judicial imposition of financial compensation for delayed debt settlement, classifying such practices as impermissible regardless of whether the amount is predetermined or linked to opportunity cost.

The categorical rejection of financial compensation for procrastination embodies a distinctly classical Islamic civilisational ethic, wherein debt relations are governed primarily by moral accountability rather than monetised sanctions. This position reflects a deep concern with safeguarding the moral economy of Islam from structural mechanisms that normalise profit from delay and hardship. By confining punishment to judicial authority (*ḥākim*), moral admonition, or non-financial coercive measures such as *taʿzīr* and *ḥabs*, this view preserves the Sharīʿah's historical resistance to transforming ethical violations into revenue-generating instruments. Civilisationally, it affirms a vision of Islamic economic life rooted in ethical self-restraint, social solidarity, and the prevention of exploitative asymmetry—principles that characterised pre-modern Islamic commercial civilisation but face increasing strain within modern interest-analogous financial environments.

3.5. Compensation for Procrastination Permissible under Certain Conditions

A third group of contemporary scholars adopts a mediating position by allowing compensation for procrastination (*taʿwīḍ*) only under strict conditions. These scholars reject automatic or contractualised financial penalties, but permit compensation where the creditor incurs a verifiable actual loss, subject to Sharīʿah-based safeguards. Central to this approach is the principle that such compensation must not constitute income for the creditor or Islamic bank, but should instead be channelled to charitable purposes.

In this regard, Zaharuddin Abd Rahman[45] and Abdul Sattar Abū Ghuddah[46] argue that any compensation collected from a procrastinating debtor should be directed to charity rather than retained by the bank. Aishath Muneeza[47] similarly proposes transferring such amounts to charitable accounts as a means of avoiding *ribā* while preserving contractual discipline.[48]

Zakī al-Dīn Shaʿbān[49] endorses this position and emphasises that Sharīʿah prioritises non-financial deterrents such as *taʿzīr* (discretionary punishment), *ḥabs* (custody), or judicial seizure of assets. Likewise, Muḥammad Zakī ʿAbd al-Barr[50] permits punitive clauses in debt-based contracts provided that the resulting sums are allocated to charitable causes rather than creditors, and he further supports judicial sanctions, including temporary detention, as a deterrent against habitual procrastination.

Likewise, ʿAlī al-Sālūs[51] permits punitive clauses in debt-based contracts provided that the resulting sums are allocated to charitable causes rather than creditors, and he further supports judicial sanctions, including temporary detention, as a deterrent against habitual procrastination.

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[45] Zaharuddin Abd Rahman, "Ruling on Debt Trading in Sharīʿah," *New Straits Times (NST)*, 20 April 2022 http://zaharuddin.net/senarai-lengkap-artikel/38/58--ruling-on-debt-trading-in-shariah.html.

[46] Abdul Sattar Abū Ghuddah, "Debt Issues: Zakah upon Debts and Trading in Debts: An Introduction to Juristic and Practical Issues," paper presented at the 7th Conference of the Shariah Boards of AAOIFI, Manama, Kingdom of Bahrain, May 27–28, 2008.

[47] Muneeza *et. al*, "Application of *Ta'widh* and *Gharamah* in Islamic Banking."

[48] Sherin Kunhibava, "Claiming ta'wid in Islamic Banking," *Malayan Law Journal Articles* 4, no. 1 (2016): 1-7; Atikullah Abdullah, "Late Payment Treatment in Islamic Banking."

[49] Zakī al-Dīn Shaʿbān, "Comment on the paper by Muṣṭafā al-Zarqā'," *Majallah Jāmiʿah al-Malik ʿAbd al-ʿAzīz: al-Iqtiṣād al-Islāmī* 1, no. 2 (1989): 215-219.

[50] Muḥammad Zakī ʿAbd al-Barr, "*Raʾyun ʾākhar fī: Maṭl al-Madīn*, hal Yulzam bi al-Taʿwīḍ?," *Majallah Jāmiʿah al-Malik ʿAbd al-ʿAzīz: al-Iqtiṣād al-Islāmī* 2, no. 1 (1990): 165-171.

[51] Muḥammad Al-Zarqā, and Muḥammad al-ʿAli Al-Qarī, "Al-Taʿwīḍ ʿan Darar al-Mumāṭalah fi al-Dayn Baina al-Fiqh wa al-Iqtiṣād," *Majallah Jāmiʿah al-Malik ʿAbd al-ʿAzīz: al-Iqtiṣād al-Islāmī* 3, no. 1 (1991): 23-57.

Nejatullah Siddiqi[52], however, cautions against any structural linkage between delay and financial gain. To preserve Sharīʿah integrity, he proposes a dual-fund mechanism: one fund to which penalties from procrastinating debtors are contributed, and a separate fund from which creditors may be compensated for demonstrable losses. This institutional separation prevents the monetisation of delay while maintaining market discipline.

From a civilisational perspective, this conditional approach reflects an attempt to reconcile contractual order with ethical restraint. Rather than prioritising financial efficiency alone, it embeds moral accountability, social responsibility, and charitable redistribution into financial governance. Such models resonate with the broader Islamic civilisational ethos in which economic regulation is inseparable from ethical cultivation and communal welfare, thereby preserving trust (*thiqa*), justice (ʿ*adl*), and social cohesion within Islamic financial systems. Table 2 summarises contemporary scholarly positions on compensation for procrastination and situates them within their broader civilisational orientations.

[52] Ibid.

Table 2: Opinions of Contemporary Scholars on Compensation for Procrastination

Criteria	Group 1	Group 2	Group 3
General Ruling	Permissible	Impermissible	Permissible with conditions
Core Juristic Reasoning	(a) No explicit *nuṣūṣ shar'iyyah* prohibiting compensation (b) Applicable only to solvent debtors (*al-mumṭil al-qādir*) (c) No prior contractual stipulation	(a) Compensation constitutes *ribā* (b) No Prophetic evidence for *'uqūbah māliyyah* (financial punishment)	(a) Compensation limited to proven actual loss (b) Funds must not accrue to creditor as income (c) Amount channelled to charity (*ṣadaqah / tabarru'*)
Position on Financial Penalty	Allowed	Prohibited	Allowed only as indirect or charitable mechanism
Civilisational Orientation	**Institutional–Regulatory Logic** Emphasises contractual discipline, market stability, and harm prevention	**Moral–Protective Logic** Prioritises safeguarding Islamic moral economy from monetising delay and preventing	**Mediating–Ethical Logic** Seeks reconciliation between classical moral restraints and contemporary institutional needs through

	(*dafʿ al-ḍarar*) within modern financial systems	revival of *ribā al-jāhiliyyah*	ethical redirection
Key Scholars / Bodies	Muṣṭafā al-Zarqā, ʿAbdullāh Sulaimān al-Manīʿ, Al-Ṣiddīq Muḥammad al-Amīn al-Ḍarīr	Taqī al-ʿUthmānī, Muḥammad ʿUthmān Shubair, Nazīh Ḥammād, Islamic Fiqh Council, International Islamic Fiqh Academy, AAOIFI	Zaharuddin Abd Rahman, Abdul Sattar Abū Ghuddah, Zakī al-Dīn Shaʿbān, Muḥammad Zakī ʿAbd al-Barr, ʿAlī al-Sālūs

3.6. The Arguments of Contemporary Jurists in Favour of the Permissibility of Compensation for Procrastination

Contemporary jurists who permit compensation (*taʿwīḍ*) for intentional procrastination by solvent debtors ground their arguments in Qurʾānic injunctions, Prophetic traditions, and established legal maxims, while framing the issue within the broader objectives of justice, harm prevention, and market order. Their reasoning reflects an attempt to reconcile classical moral norms with the institutional realities of modern Islamic finance.

Among the Qurʾānic evidences cited is the command: "O you who believe, fulfil (your) obligations"[53] which underscores the binding moral and legal nature of contractual commitments. A debt constitutes a binding obligation (*iltizām*) upon the debtor according to the agreed terms, and deliberate delay in repayment amounts to a violation of this

[53] Al-Qurʾān, 5 :01.

obligation. Similarly, the Qurʾānic injunction to restore trusts to their rightful owners— "Indeed, Allah commands you to render trusts (amānāt) to whom they are due"[54]—establishes timely repayment as a moral duty. In this light, debt repayment is not merely a financial act but an ethical responsibility rooted in *amānah* (trust).

The prohibition against unjust appropriation of property further reinforces this position: "O you who believe, do not consume one another's wealth unjustly, unless it is through trade by mutual consent"[55]. When a solvent debtor intentionally delays repayment, the creditor is deprived of the lawful use of his property, while the debtor continues to benefit from it without consent. Such conduct constitutes *ẓulm* (injustice), thereby justifying remedial measures to restore equity between the parties.

This Qurʾānic ethos is reinforced by the well-known Prophetic tradition: "Delay in payment by one who is able is injustice; his honour and punishment become permissible."[56] Jurists permitting compensation interpret this ḥadīth as legitimising disciplinary measures against capable procrastinators. In contemporary financial systems—particularly within institutionalised Islamic banking—persistent delays disrupt cash flows, impair fiduciary duties to depositors and investors, and undermine contractual trust.[57] From this perspective, compensation functions as a deterrent against moral hazard and strategic default rather than as a mechanism for unjust enrichment.

Another Prophetic maxim invoked is: "There should be neither harm nor reciprocating harm" (*lā ḍarar wa lā ḍirār*).[58] Delayed

[54] Al-Qurʾān, 4 :58.
[55] Al-Qurʾān, 4 :29.
[56] Al-Bukhārī, *Ṣaḥīḥ al-bukhārī*; Al-Sijistānī, *Sunan abī Dāwūd*; Al-Nasāʾī, *Sunan al-Nasāʾī*.
[57] Atikullah Abdullah, "Late Payment Treatment in Islamic Banking"; Muneeza *et al.* "Application of *Ta'widh* and *Gharamah* in Islamic Banking"; Zuhaira Nadiah Zulkipli, "Late Payment Penalty: *Ta'widh* and *Gharamah*."
[58] Ibn Mājah, *Sunan*, Kitāb al-Aḥkām, ḥadīth no. 2340; al-Suyūṭī, *al-Ashbāh wa al-Naẓāʾir*; Ibn Ḥajar al-ʿAsqalānī, *Bulūgh al-Marām*.

payment often imposes tangible costs on financial institutions, including administrative expenses, legal fees, and opportunity costs related to liquidity management. Proponents argue that compensation limited to actual and demonstrable loss aligns with this principle by preventing harm without transforming delay into a source of profit. This reasoning is further supported by the legal maxim: "Harm must be removed" (*al-ḍarar yuzāl*),"[59] which justifies corrective intervention to eliminate avoidable injustice within economic transactions.[60]

Muṣṭafā al-Zarqā[61] develops this argument further by analogising deliberate procrastination to *ghaṣb* (usurpation), insofar as both obstruct the rightful owner from benefiting from his property. Since the effective cause (*ʿillah*) in both cases is the unjust deprivation of usufruct, al-Zarqā contends that liability for loss is justified. Drawing on opinions attributed to Imām al-Shāfiʿī and Imām Aḥmad[62], he argues that usufruct is legally protected and compensable when wrongfully withheld. Accordingly, the debtor bears responsibility for losses arising from his misconduct.[63]

At the institutional level, this reasoning has been reflected in regulatory resolutions. Bank Negara Malaysia (BNM), for example, permits Islamic banking institutions to impose late payment charges comprising *gharāmah* (penalty) and *taʿwīḍ* (compensation) as a deterrent against default, provided that compensation corresponds to actual loss. BNM further allows such compensation to be treated as

[59] Muḥammad Ibn Yazīd Al-Qazwīīnī, *Sunan ibn mājah* (Riyāḍ: Maktabah al-Maʿārif, 1997).

[60] Bank Negara Malaysia (BNM), "Resolutions of Shariah Advisory Council Bank Negara Malaysia," (Kuala Lumpur: Bank Negara Malaysia, 2010, June). https://www.bnm.gov.my/-/resolutions-of-shariah-advisory-council-bank-negara-malaysia.

[61] Muṣṭafā Aḥmad Al-Zarqā, "Hal Yuqbal Sharʿan al-Hukm alā al-Madin al-Mumāṭil bi al-Taʿwīḍ alā al-Dāʾin?," *Majallah Abḥāth al-Iqtiṣād al-Islāmī* 2, no. 2 (1985): 102-112.

[62] Ibrāhīm Ibn ʿAlī Al-Fayrūzabādī al-Shīrazī, *Al-Muhadhdhab fī Fiqh al-Imām al-Shāfiʿī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1995); Wahbah Al-Zuhailī, *Al-Fiqh al-Hanbalī al-Muyassar* (Damascus: Dār al-Qalam, 1997).

[63] BNM, "Resolutions of Shariah Advisory Council Bank Negara Malaysia."

income insofar as it reflects verifiable costs incurred due to delay. Similarly, the Sharīʿah Advisory Council of the Securities Commission Malaysia affirms the permissibility of *taʿwīḍ* for late repayment in exchange-based contracts (*ʿuqūd muʿāwaḍāt*), including relevant *ṣukūk* structures.[64]

From a civilisational perspective, these arguments reflect an institutional–ethical orientation that seeks to preserve market order, contractual integrity, and economic justice without reverting to interest-based mechanisms. Compensation, in this framework, is not conceived as a monetisation of time or debt, but as a corrective tool aimed at safeguarding trust (*amānah*), preventing harm (*ḍarar*), and ensuring the functional sustainability of Islamic financial institutions within a complex modern economy.

3.7. The Arguments of Contemporary Jurists Who Oppose Compensation on Procrastination

Scholars who oppose the imposition of compensation for debtor procrastination argue that Sharīʿah permits the creditor to recover only the principal amount (*raʾs al-māl*), unless any additional payment is offered voluntarily by the debtor without stipulation.[65] Any compulsory increase imposed due to delay, they maintain, constitutes *ribā al-jāhiliyyah*, which the Qurʾān unequivocally prohibits: "Allah has permitted trade and has forbidden *ribā*".[66] From this perspective, compensation represents an unlawful increment over the debt, benefiting the creditor merely by virtue of deferment.

[64] Securities Commission Malaysia, "Resolutions of the Shariah Advisory Council of the Securities Commission Malaysia," (Kuala Lumpur: Securities Commission Malaysia, 2018): 4-5.
[65] Al-Bukhārī, *Ṣaḥīḥ al-bukhārī.*
[66] Al-Qurʾān, 2:275.

This position is further reinforced by the ḥadīth that states: "Every debt that leads to profits is usury,"[67] which classical jurists understood as prohibiting any conditional advantage accruing to the lender.[68] Accordingly, compelling the debtor to pay compensation for delay is viewed as introducing a prohibited financial gain and thus undermining the moral architecture of Islamic contractual ethics.

Opponents of compensation also invoke the Prophetic maxim *"lā ḍarar wa lā ḍirār"* ("there should be neither harm nor reciprocating harm"),[69] arguing that while harm must indeed be removed, Sharīʿah does not mandate its removal through impermissible means. Eliminating harm by enforcing financial compensation, they contend, merely replaces one injustice with another. Had compensation been a valid mechanism, it would have been explicitly applied through judicial authority (*ḥākim*) in classical legal practice[70]. Yet, none of the four Sunnī schools prescribed monetary penalties for procrastination. The well-known ḥadīth—"If one who can afford it delays repayment, his honour and punishment (ʿ*uqūbah*) become permissible"[71] —is consistently interpreted by classical jurists as authorising non-financial disciplinary measures, such as *ḥabs* (custody) or *ḥajr* (interdiction), rather than ʿ*uqūbah māliyyah* (financial punishment).[72] Even within discussions of *taʿzīr*, the majority of scholars[73] rejected confiscatory penalties, with the

[67] Abū Bakr Aḥmad Ibn al-Ḥusain Al-Baihaqī, *Al-Sunan al-Saghīr* (Karachi: Jāmiʿah al-Dirāsāt al-Islāmiyyah, 1989); Abū Bakr Aḥmad Ibn al-Ḥusain Al-Baihaqī, *Al-Sunan al-Kubrā* 3rd ed. (Beirūt: Dār al-Kutub al-ʿIlmiyyah, 2003).

[68] Azman Mohd Noor and Muḥammad Nasir Haron, "A Framework for Determination of Actual Costs in Islamic Financing Products," *Journal of Islamic Finance* 5, no. 2 (2016): 037-052.

[69] Al-Qazwiīnī, *Sunan ibn Mājah.*

[70] Al-ʿUthmānī, *Buḥūth fī Qaḍāyā Fiqhiyyah Muʿāṣārah*.

[71] Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*; Al-Sijistānī, *Sunan Abī Dāwūd* ; Al-Nasāʾī, *Sunan al-Nasāʾī* .

[72] Al-ʿUthmānī, *Buḥūth fī Qaḍāyā Fiqhiyyah Muʿāṣārah.*

[73] Aḥmad Ibn Muḥammad Al-Ṣāwī, *Ḥāshiyah al-Sawī ʿalā al-Sharḥ al-Saghīr* (Egypt: Dār al-Maʿārif, n.d.); Shams al-Dīn Al-Dusūqī, *Ḥāshiyah al-Dusūqī ʿalā al-Sharḥ al-Kabīr* (Al-Qāhirah: ʿĪsā al-Bābī al-Ḥalabī wa Shurakāʾuh, n.d.); Ibn ʿĀbidīn, *Ḥāshiyat Ibn ʿĀbidīn – Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*; Muḥammad Ibn al-

notable exception of Imām Abū Yūsuf,[74] who allowed temporary judicial seizure under strict supervision.

From a civilisational perspective, this juristic stance reflects a moral economy prioritising ethical correction over pecuniary coercion. Economic justice, in this view, is preserved not by monetising misconduct but by reinforcing personal responsibility, judicial oversight, and communal moral order. Contemporary scholars such as Taqī al-ʿUthmānī [75] emphasise that although procrastination has existed across historical periods, no precedent from the Prophetic era or early Islamic civilisation supports compensatory penalties. The absence of such practice underscores a deliberate ethical restraint designed to prevent contractual relations from degenerating into exploitative mechanisms.

3.8. The Arguments of Contemporary Jurists in Favour of Compensation under Certain Conditions

A third group of contemporary scholars adopts a mediating position, recognising the injustice suffered by creditors due to deliberate procrastination while simultaneously safeguarding Sharīʿah's prohibition of *ribā*. These scholars accept that harm to the creditor must be addressed, but they categorically reject treating compensation as income for the creditor or financial institution.

Instead, they propose that any compensation imposed be channelled to charitable purposes (*ṣadaqah* or *tabarruʿ*), thereby severing the causal link between delay and creditor profit. Scholars such as Zaharuddin Abd Rahman, ʿAbdul Sattār Abū Ghuddah, and ʿAlī al-Sālūs argue that this approach preserves the deterrent function of compensation without reproducing the logic of *ribā al-jāhiliyyah*, wherein debtors were pressured to increase their obligations in

Khaṭīb Al-Sharbīnī, *Mughnī al-muḥtāj*; Ibn Qayyim, *Iʿlām al-Muwaqqiʿīn ʿan Rbb al-ʿālamīn.*

[74] Ibn Nujaim, *Al-Baḥr al-rā'iq*; Ibn ʿĀbidīn, *Hāshiyah ibn* ʿĀbidīn - *Radd al-Muḥtār ʻalā al-Durri al-Mukhtār*; Niẓām, *Al-Fatāwā al-Hindiyyah*.

[75] Al-ʿUthmānī, *Buḥūth fī Qaḍāyā Fiqhiyyah Muʿāṣarah.*

exchange for extended time.[76] [77] This model draws upon the historical memory of pre-Islamic financial exploitation, encapsulated in the phrase: "Increase the amount, and I will extend the term"[78]. By diverting compensation to charity, the punitive element remains corrective rather than extractive. The debtor is disciplined, creditors are discouraged from profiting from delay, and broader social welfare is simultaneously advanced.

Other scholars, such as Zakī al-Dīn Shaʿbān and Muḥammad Zakī ʿAbd al-Barr, further restrict compensation to cases of verifiable, direct loss, such as penalties incurred by the creditor due to secondary contractual obligations. They emphasise that speculative losses—such as unrealised profits—are not compensable. Alternative sanctions, including *taʿzīr*, *ḥabs*, or court-supervised liquidation of assets, remain preferable instruments of enforcement.[79]

From a civilisational standpoint, this conditional approach reflects an attempt to reconcile classical moral restraint with the institutional complexities of modern finance. It acknowledges that contemporary banking systems operate within dense networks of obligation and accountability while insisting that ethical boundaries not be crossed. By framing compensation as a social corrective rather than a commercial gain, this position aspires to preserve Islamic finance as a morally distinctive system—one oriented toward justice,

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[76] Zaharuddin Abd. Rahman, "Ruling on Debt Trading in Sharīʿah," New Straits Times (NST), 20 April 2022, http://zaharuddin.net/senarai-lengkap-artikel/38/58--ruling-on-debt-trading-in-shariah.html; ʿAbdul Sattar Abū Ghuddah, "Debt Issues: *Zakāh* upon Debts and Trading in Debts: An Introduction to Juristic and Practical Issues"; Muneeza *et al.*, "Application of *Taʿwīḍ* and *Gharāmah* in Islamic Banking."

[77] Muneeza *et al*., "Application of *Ta'widh* and *Gharamah* in Islamic Banking."

[78] ʿĀlā al-Dīn ʿAlī Ibn Muḥammad Al-Khāzin, *Tafsīr al-Khāzin - Lubāb al-Taʾwīl fī Maʿānī al-Tanzīl* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2004); Maḥmūd Ibn ʿAbdullāh Al-Alūsī, *Tafsīr al-Alūsī - Rūḥ al-Maʿānī* (Beirut: Dār ʾIḥyāʾ al-Turāth al-ʿArabī, n.d.); Mālik Ibn ʾAnas, *Muwaṭṭaʿal-Imām Malik* (Beirut: Muʾassasah al-Risālah Nāshirūn, 2013).

[79] Zakī al-Dīn Shaʿbān, *Al-Muʿāmalāt al-Māliyya al-Muʿāṣira fī al-Fiqh al-Islāmī* (Beirut: Dār al-Nahḍah al-ʿArabiyyah, 2000); Muḥammad Zakī ʿAbd al-Barr, "Al-Taʿwīḍ ʿan al-Mumāṭalah fī al-Dayn," *Majallat Majmaʿ al-Fiqh al-Islāmī*, no. 5 (1988).

trust, and communal responsibility rather than contractual opportunism.

3.9. From Juristic Divergence to Civilisational Coherence

The preceding analysis has demonstrated that contemporary juristic discourse on compensation (*taʿwīḍ*) for intentional procrastination (*mumāṭalah*) in debt repayment may be broadly classified into three approaches: permissibility, impermissibility, and conditional permissibility. Although all three positions draw upon Qurʾānic injunctions, Prophetic traditions, and legal maxims, they diverge significantly in how these sources are interpreted and operationalised within modern financial contexts.

Scholars who permit compensation emphasise Qurʾānic commands to fulfil obligations and render trusts, such as: "O you who believe, fulfil your obligations"[80] and "Verily! Allah commands that you should render back the trusts to those to whom they are due."[81] These verses clearly establish the moral and legal duty of the debtor to honour contractual commitments. Likewise, Prophetic reports describing procrastination by a solvent debtor as *ẓulm* (injustice) are cited to justify corrective measures. However, a close reading of the classical juristic tradition reveals that such texts were historically interpreted to justify disciplinary and judicial sanctions rather than financial penalties. With the notable exception of Imām Abū Yūsuf—who permitted the temporary seizure of assets without permanent appropriation—classical jurists did not equate punishment (*ʿuqūbah*) with monetary extraction.[82]

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[80] Al-Qurʾān, 05 :01.

[81] Al-Qurʾān, 4 :58.

[82] Muḥammad Taqī ʿUthmānī, *An Introduction to Islamic Finance* (Karachi: Maktabah Maʿārif al-Qur'ān, 2002); Issa Khan and Noor Naemah Binti Abdul Rahman, "Mawqif al-Shaykh Muḥammad Taqī al-ʿUthmānī fī Mas'alat al-Taʿwīḍ ʿan Darar al-Maṭal fī Bayʿ al-Taqsīṭ," *Journal of Fiqh* 7 (2010): 245–258.

Proponents of compensation further invoke the legal maxim "harm must be removed" (*al-ḍarar yuzāl*),[83] arguing that creditors suffer material harm through delayed payment. Yet classical *fiqh* demonstrates that harm may be mitigated through multiple non-financial mechanisms, including *ḥabs* (custody), *ḥajr* (interdiction), forced sale of assets, or judicial enforcement.[84] These measures reflect a civilisational ethic in which moral discipline precedes monetisation, and justice is enforced through institutional authority rather than contractual penalisation or market coercion.

By contrast, scholars who categorically reject compensation maintain that any increment over the principal debt constitutes *ribā al-jāhiliyyah*, particularly where delay becomes a basis for financial gain. They ground this position in the Qurʾānic prohibition of *ribā*[85] and in in the well-established juristic maxim, derived from Prophetic practice and Companion consensus, that creditors are entitled only to the principal of a loan, and any stipulated benefit constitutes *ribā* unless given voluntarily without prior condition.[86] This view is further reinforced by the absence of any historical precedent for monetary penalties in classical Islamic adjudication, despite the acknowledged prevalence of deliberate procrastination in early commercial life, where jurists consistently prescribed custodial, judicial, or moral sanctions rather than financial extraction.[87]

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[83] Al-Suyūṭī, *Al-Ashbāh wa al-Naẓā'ir fī Qawāʿid wa Furūʿ Fiqh al-Shafiʿiyyah.*

[84] Nazīh Ḥammād, "Al-Muʿawwiḍāt al-Sharʿiyyah li-Ḥaml al-Madīn al-Mumāṭil ʿalā al-Wafāʾ wa Buṭlān al-Ḥukm bi al-Taʿwīḍ al-Mālī ʿan Darar al-Mumāṭalah"; Muḥammad Zakī ʿAbd al-Barr, "Raʾyun Ākhar fī: Maṭl al-Madīn, Hal Yulzam bi al-Taʿwīḍ?"; Al-ʿUthmānī, *Buḥūth fī Qaḍāyā Fiqhiyyah Muʿāṣarah*.

[85] Al-Qurʾān, 2:275.

[86] Ibn Qudāmah, *al-Mughnī*, vol. 6 (Cairo: Dār al-Ḥadīth, 2004), 436; Ibn al-Mundhir, *al-Ijmāʿ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 58; al-Bayhaqī, *Sunan al-Kubrā*, vol. 5 (Beirut: Dār al-Maʿrifah, 1994), 350.

[87] Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, vol. 2 (Beirut: Dār al-Ḥadīth, 2004), 275–277; al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, vol. 7 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986), 102–104; Muḥammad Taqī al-ʿUthmānī, *Fiqh al-Buyūʿ*, vol. 2 (Damascus: Dār al-Qalam, 2001), 1026.

The third, mediating position—adopted by several contemporary scholars[88] and Sharīʿah institutions—allows conditional compensation, provided that it does not accrue as income to the creditor or financial institution. Instead, any additional payment is channelled to charitable purposes. While this approach seeks to avoid *ribā*, it remains vulnerable to criticism insofar as it may resemble pre-Islamic practices if applied mechanically, coercively, or without clear Sharīʿah governance.[89]

In light of these tensions, and guided by the classical civilisational ethos of Islamic law, this study advances a Sharīʿah-supervised *tabarruʿ* fund as a principled and reconciliatory solution. Rather than imposing contractual compensation, solvent procrastinating debtors may be required—under transparent Sharīʿah oversight—to make a voluntary contribution to a *tabarruʿ* fund upon settlement of the debt. Financial institutions may then recover only verifiable actual losses from this fund, subject to documentation and Sharīʿah supervision, while any surplus is directed towards the poor, the needy, and welfare initiatives. Figure 1 illustrates this proposed framework and its operational logic.

[88] Zaharuddin Abd Rahman, *Islamic Financial System: Principles and Operations* (Kuala Lumpur: IBFIM, 2011), 355–358; ʿAbd al-Sattār Abū Ghuddah, "Al-Taʿwīḍ ʿan al-Mumāṭalah fī al-Muʿāmalāt al-Māliyyah," in *Buḥūth fī al-Fiqh al-Mālī al-Muʿāṣir* (Jeddah: Dār al-Bashīr, 2006), 213–230; Zakī al-Dīn Shaʿbān, *Al-Muʿāmalāt al-Māliyyah al-Muʿāṣirah fī al-Fiqh al-Islāmī* (Beirut: Dār al-Nafāʾis, 2000), 425–428; ʿAlī al-Sālūs, *Al-Muʿāmalāt al-Māliyyah al-Muʿāṣirah* (Doha: Dār al-Thaqāfah, 2008), 612–618.

[89] Muḥammad Taqī al-ʿUthmānī, *An Introduction to Islamic Finance* (Karachi: Maktaba Maʿārif al-Qurʾān, 2002), 136–139; Nejatullah Siddiqi, "Islamic Banking and Finance in Theory and Practice," *Islamic Economic Studies* 13, no. 2 (2006): 1–48.

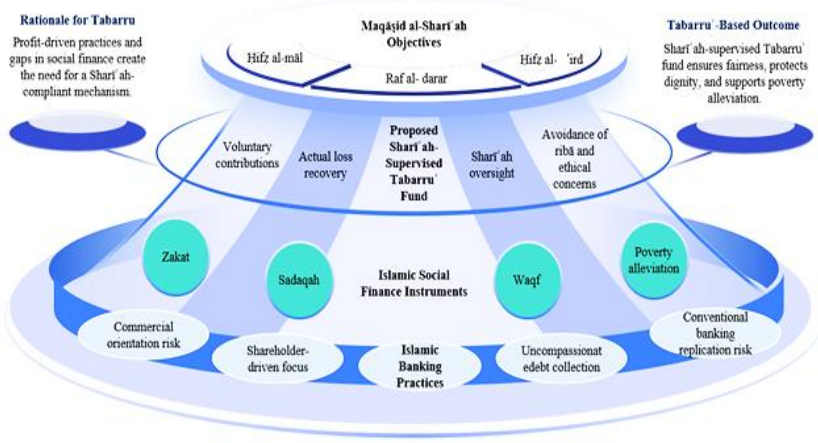

Figure 1: Conceptual framework illustrating how a Sharīʿah-supervised *tabarruʿ* fund aligns ethical risk management, Islamic social finance instruments, and the *Maqāṣid al-Sharīʿah*, particularly *ḥifẓ al-māl* (preservation of wealth) and *rafʿ al-ḥaraj* (removal of hardship).

This model is supported by al-ʿUthmānī,[90] who argues that any recovery by Islamic financial institutions should be strictly limited to verifiable actual loss and must not generate income from debtor delay. Accordingly, the management of the *tabarruʿ* fund should remain institutionally and financially separate from the bank's own funds. Banks may submit documented claims to the fund for actual losses arising from late payment, including administrative costs such as reminder notices, communication expenses, and legal processing fees. Similar positions are endorsed by AAOIFI,[91], Muhamad[92], Zakī al-Dīn

[90] Al-ʿUthmānī, *Buḥūth fī Qaḍāyā Fiqhiyyah Muʿāṣārah*
[91] AAOIFI, *Sharīʿah Standards for Islamic Financial Institutions.*
[92] Muhamad Rahimi Osman, *Islamic banking system in Malaysia: A study of the legal and Sharīʿah Framework with Special Reference to Debt Financing Products* (PhD thesis, International Islamic University Malaysia, Malaysia, 2007.

Shaʿbān[93], Muḥammad Zakī ʿAbd al-Barr [94], the International Islamic Fiqh Academy [95] and Majmūʿah Dallah al-Barakah[96], all of whom restrict recovery to demonstrable loss, with any surplus directed to charitable and welfare purposes.

Tabarruʿ, as a voluntary donation, is unanimously recognised in Islamic jurisprudence and is grounded in the Qurʾānic injunction: *"Cooperate in righteousness and piety."*[97] Within this framework, contributions linked to deliberate procrastination function not as punitive extraction but as moral correction, encouraging contractual discipline while simultaneously supporting poverty alleviation and social welfare. In this way, the *tabarruʿ* fund operationalises a civilisational ethic that balances financial order with compassion, legality with morality, and institutional stability with social responsibility.

This model aligns with the civilisational logic of Islamic economic ethics in several respects. First, it preserves the prohibition of *ribā* by preventing creditors from profiting from delay. Second, it restores the primacy of moral accountability and social responsibility over contractual penalisation. Third, by integrating the *tabarruʿ* fund within the wider ecosystem of Islamic social finance—such as *zakāh*, *ṣadaqah*, and *waqf*—it ensures that mechanisms designed to protect financial stability simultaneously contribute to poverty alleviation and social trust.

From a *Maqāṣid al-Sharīʿah* perspective, this approach safeguards wealth (*ḥifẓ al-māl*), prevents harm (*rafʿ al-ḥaraj*), and upholds justice without reproducing the profit-driven logics characteristic of conventional finance. More broadly, it reflects a

[93] Zakī al-Dīn Shaʿbān, "Comment on the Paper by Muṣṭafā al-Zarqā'".
[94] Muḥammad Zakī ʿAbd al-Barr, "Raʾyun Ākhar fī: Maṭl al-Madīn, Hal Yulzam bi al-Taʿwīḍ?"
[95] International Islamic Fiqh Academy (IIFA) of Organization of Islamic Cooperation (OIC), *Resolution No. 109*, Meeting No. 12 (2000).
[96] *Majmūʿah Dallah al-Barakah. Fatāwā Nadawāt al-Barakah*, eds. ʿAbd al-Sattār Abū Ghuddah and ʿIzz al-Dīn (Jiddah: Majmūʿah Dallah al-Barakah, 1997).
[97] Al-Qurān, 5:2.

civilisational commitment to balancing discipline with compassion, legality with morality, and financial order with social solidarity. In this sense, the proposed *tabarruʿ* framework does not merely resolve a technical juristic disagreement; rather, it contributes to re-embedding Islamic banking within its ethical and civilisational foundations, where law serves moral purpose and economic practice advances collective well-being.

4. CONCLUSION

The foregoing analysis demonstrates that classical Islamic jurisprudence addressed debtor procrastination through a civilisational ethic that privileged moral discipline, judicial authority, and social order over financial extraction. While capable debtors were subject to coercive and reputational measures—such as *ḥabs* (custody), *ḥajr* (interdiction), and public admonition—classical jurists consistently resisted the legitimisation of monetary penalties. This restraint reflects a foundational concern within the Islamic legal tradition: to prevent the monetisation of injustice and to block the re-emergence of *ribā al-jāhiliyyah* through punitive financial instruments.

Contemporary juristic divergence on *taʿwīḍ* must therefore be understood not merely as a technical disagreement, but as a symptom of a deeper civilisational tension. On one hand lies the ethical architecture of Islamic law, grounded in moral accountability and social justice; on the other lies the operational pressure of modern financial systems that prioritise efficiency, predictability, and risk management. The tripartite division among contemporary scholars—permissibility, impermissibility, and conditional permissibility—reflects competing attempts to negotiate this tension rather than a settled doctrinal consensus.

Within present-day financial environments, persistent default, strategic procrastination, and insolvency create systemic risks that extend beyond individual contracts. They erode trust, distort risk-sharing, and threaten the moral credibility of Islamic financial institutions. From a civilisational perspective, these challenges cannot be resolved through contractual penalisation alone, as Islamic

economics conceives finance not as an autonomous market mechanism, but as an instrument for sustaining social order and ethical conduct.

In response, this study advances a Sharīʿah-supervised tabarruʿ fund as a civilisationally coherent mechanism that reconciles juristic plurality with ethical integrity. Rather than institutionalising compensation as a creditor's entitlement, solvent procrastinating debtors may—under transparent Sharīʿah governance—make a voluntary contribution to a segregated *tabarruʿ* fund upon settlement of their obligations. Financial institutions may recover only demonstrable actual losses from this fund, while any surplus is redirected towards charitable and welfare purposes.

This framework does not represent a procedural compromise, but a principled reorientation. It preserves the prohibition of *ribā* by severing any link between delay and profit, restores moral accountability without commodifying punishment, and embeds Islamic banking within the wider ecosystem of Islamic social finance. In doing so, it aligns with the guidance of AAOIFI, Nejatullah Siddiqi, and the International Islamic Fiqh Academy, all of whom caution against transforming *taʿwīḍ* into a routine punitive instrument.

From a *Maqāṣid al-Sharīʿah* perspective, the proposed model safeguards wealth (*ḥifẓ al-māl*), mitigates harm (*rafʿ al-ḥaraj*), and upholds justice while avoiding the profit-driven logic characteristic of conventional finance. More broadly, it reflects a civilisational commitment to balancing discipline with compassion and legality with moral purpose. Islamic banks, as civilisational institutions, must therefore distinguish clearly between deliberate procrastination and genuine incapacity, in accordance with the Qurʾānic injunction to grant respite to the insolvent. Future empirical research should examine how such Sharīʿah-supervised mechanisms can be operationalised without coercion, ensuring that Islamic finance remains ethically credible, socially rooted, and civilisationally distinctive.

Vol. No.: 30 Issue No.: 2 (2025) Page No.: 387-420 DOI: 10.31436/shajarah.v30i02.1378