

IMPLEMENTING OF FINES IN DEFAULT OF ONLINE SALES ENTRUSTMENT CONTRACT BASED ON TA'WIDH IN THE SAMSAH CONTRACT

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Abstract

Consigning and Unbranded_Store are online shops that are engaged in selling electronic goods from entrusted sellers. The operational principle of the two online shops is to mediate sellers and buyers in sales transactions of electronic and informatics products with standard agreements and conditions set by the online shop, one of the dictums of which contains provisions for fines for defaults on the seller's part. This fine is the focus of the study with the problem of how to determine the amount of the fine to the seller who violates the dictum of the Consigning and Unbranded_Store sales agreement, the effectiveness of applying fines to reduce the level of default on the part of the seller and review of the samsarah contract on the determination of fines for seller defaults. To meet scientific standards, the authors designed a research procedure with stages, namely a normative sociological research approach, a descriptive analytical research type with data collection techniques through interviews and documentation. The results of his research are that the determination of fines in Consigning is based on the percentage of the price of goods set by the seller, and the Unbranded_Store fine value is fixed which is stated in the general provisions of the transaction that the seller must comply with. The fines imposed by these two consignments, although the procedures are different, have been able to reduce the potential for sellers to commit defaults which could harm Consigning and Unbranded_Store management in terms of performance and branding as online stores that have credible business qualifications and can significantly reduce the level of seller defaults. Determination and imposition of fines for seller's default on both consignments as a business based on a samsarah contract is in accordance with the concept of ta'widh and the scholars allow the application of the ta'widh which is implemented based on the agreement of the parties in the consignnet agreement (samsarah) as long as the dictum does not conflict with the provisions syara'.

Keywords: Determination, Fines, Default, Samsarah

Abstrak

Consigngaming dan Unbranded_Store merupakan toko online yang bergerak di bidang penjualan barang elektronik dari penjual titipan. Prinsip operasional kedua online shop tersebut adalah memediasi penjual dan pembeli dalam transaksi penjualan produk elektronik dan informatika dengan perjanjian dan ketentuan baku yang telah ditetapkan oleh online shop, yang salah satu diktumnya memuat ketentuan denda atas wanprestasi dari pihak penjual. Denda inilah yang menjadi fokus penelitian dengan permasalahan bagaimana penentuan besaran denda kepada penjual yang melanggar diktum perjanjian jual beli Konsinyasi dan Unbranded_Store, efektifitas penerapan denda untuk mengurangi tingkat wanprestasi dari pihak penjual dan tinjauan akad samsarah terhadap penentuan denda atas wanprestasi penjual. Untuk memenuhi standar ilmiah, penulis merancang prosedur penelitian dengan tahapan, yaitu pendekatan penelitian sosiologis normatif, tipe penelitian deskriptif analitis dengan teknik pengumpulan data melalui wawancara dan dokumentasi. Hasil penelitiannya adalah penetapan denda pada Consingaming didasarkan pada persentase harga barang yang ditetapkan oleh penjual, dan pada Unbranded_Store nilai denda bersifat tetap yang tertuang dalam ketentuan umum transaksi yang harus dipatuhi oleh penjual. Denda yang diberlakukan oleh kedua konsinyasi ini, meskipun prosedurnya berbeda, telah mampu mengurangi potensi penjual melakukan wanprestasi yang dapat merugikan manajemen Consingamig dan Unbranded_Store dari segi kinerja dan branding sebagai toko online yang memiliki kualifikasi bisnis yang kredibel serta dapat mengurangi tingkat wanprestasi penjual secara signifikan. Penetapan dan penerapan denda atas wanprestasi penjual pada kedua konsinyasi sebagai bisnis yang didasarkan pada akad samsarah telah sesuai dengan konsep ta'widh dan para ulama membolehkan penerapan ta'widh yang dilaksanakan berdasarkan kesepakatan para pihak dalam akad konsinyasi (samsarah) selama diktum tersebut tidak bertentangan dengan ketentuan syara'.

Kata Kunci: Penetapan, Denda, Wanprestasi, Samsarah

INTRODUCTION

Fines are essentially penalties in the form of either material goods or rights that have a value that must be paid by the person who violates the agreement. Fines are usually in the form of money that must be paid by the

wrongdoer. As explained above, in business transactions fines in the form of money, in addition to practically calculating the value of losses due to default, it also makes it easier for the injured party to recover losses arising from the default of its business partners.¹

In the National Sharia Council fatwa, the concept of ta'widh and its application must be based on the potential risks that may occur to one of the parties, especially to the LKS caused by default or negligence by delaying payment by the other party who violates the agreement. Furthermore, the application of ta'widh must be measured at the value of the loss itself so that the application of ta'widh can only be done on losses that are actually experienced in real terms by the parties to the transaction must be replaced by the party that caused the loss.²

The study of ta'widh will be examined by the author on the implementation of the entrustment agreement which uses a fine clause. Based on the data that the author examines, the clause in the sale order uses a mixed agreement that combines several models of contracts or transactions. In the practice of this sale and delivery transaction, the agent as the owner of the sale and delivery platform makes an agreement clause with the depositor or owner of the goods. One of the clauses of the sale and delivery agreement made regarding sanctions for violations committed by the seller or depositor who defaults or does not send the goods in this transaction. The provisions regarding violations and sanctions stipulated in the sales entrustment contract are to avoid defaults from the parties that cause losses to the parties.

The results of observations and interviews with the online shop Unbranded_Store explained that the agreement clause regarding fines was agreed upon at the beginning and was a condition for conducting entrustment transactions. The trustee or seller of goods must agree to the initial agreement before carrying out the entrustment transaction. In the Unbranded_Store online shop, the determination of fines is applied to people who cancel items that have been sold. In addition, this online shop also imposes fines on sellers who sell their goods not in accordance with the

¹ Wahyu Akbar and others, 'Optimization of Sharia Banking Regulations in Developing the Halal Cosmetic Industry in Indonesia' (2024) 22 Jurnal Ilmiah Al-Syir'ah 1 <<https://journal.iain-manado.ac.id/index.php/JIS/article/view/2611>> accessed 30 July 2024.

² Pemerintahan Aceh, QANUN ACEH NOMOR 8 TAHUN 2014 TENTANG POKOK-POKOK SYARIAT ISLAM 2014 [8 Tahun 2014].

conditions described when the ad was posted.

Based on the above background, the author is interested in examining the problem of fines for default in entrustment transactions. The purpose of this study is to determine the determination of the amount of fines for violations committed by the seller in the sale order transaction through the Consigngaming and Unbranded_Store platforms, to determine the effectiveness of the application of fines in reducing the level of default committed by the seller in the sale order agreement through the Consigngaming and Unbranded_Store platforms, and to find out the review of the samsarah contract on the determination of fines for seller defaults in sale order transactions through the Consigngaming and Unbranded_Store platforms.³

Research written by Maisa Fadhliha, a student of the Faculty of Sharia and Law, majoring in Sharia Economic Law, Ar-Raniry State Islamic University, in 2021. Which is entitled "Review of Islamic Law on the Validity of Buying and Selling Practices with the Online Titling Service System on Social Media". In this study, Maisa Fadhliha explained the results of her research, namely the process of buying and selling trust services through social media is carried out in several provisions, namely: 1) the service provider announces his departure to a place through his social media. 2) The entrustment service provider asks the seller for permission to take photos / videos of the product he wants to market. 3) The service provider posts the products in the trade center where he/she is going. 4) If the consumer wants to leave a product, the consumer must fill in the order format. 5) Consumers must transfer money for the price of the product as well as an additional deposit service fee of Rp. 15,000. 6) After the transaction has taken place, the service provider purchases the product ordered by the consumer, and 7) The pick-up of the product is agreed upon by the service provider and the customer.

The bay'al-fuḍūlī review of the sale and purchase of entrustment services through social media is a sale and purchase that brings benefits. The sale and purchase carried out by the entrustment service provider has fulfilled the pillars and conditions of sale and purchase. The sale and

³ Ahmad Luqman Hakim and Irfa Munandar, 'THE LEGALITY OF MURABAHAH CONTRACTS SYSTEM IN ISLAMIC FINANCING INSTITUTIONS: An Analysis of Muḥammad Bin Ṣāliḥ Al-Uṣaimīn's Thought' (2023) 7 JURISTA: Jurnal Hukum dan Keadilan 24 <<https://jurista-journal.org/index.php/jurista/article/view/66>> accessed 31 December 2023.

purchase of entrustment services through social media is not a practice of buying and selling other people's property or bay" al-fuḍūlī. The agreement between the service provider and the seller is done verbally. This can be a legality in buying and selling, so that the practice of online entrustment services becomes valid. This thesis has certain similarities and differences from the author's thesis. The similarity is that both discuss the agent system in online entrustment transactions.

The difference is in the research variables studied, in the thesis discusses the online entrustment service system in general and focuses on the bay'al-fuḍūlī contract and does not mention about defaults and fines contained in the entrustment transaction. The difference is also in the object of research or a different research place with the author.⁴

Della Rizki Amanda's research entitled "Sharia Economic Law Review of Online Buy and Sell Service Agreements Through Instagram", explains the results of her research, that online buy and sell services at the Joyfull online store in Purwokerto use a bay'al-murabahah contract because in practice Joyfull lists the rates / prices of entrusted services transparently so that consumers who will shop can find out at the beginning before the start of the transaction in the buying and selling practice. In the context of the pillars of buying and selling in Islam, the practice of entrusted services has largely fulfilled the pillars of Murabahah buying and selling and can be classified as a bay' al- murabahah contract based on orders. In this thesis, there are similarities with what the author is researching, namely on the aspect of selling and agent entrustment transactions in practice.⁵

The difference is that it can be seen in terms of the use of contracts in the transaction, besides that, this thesis is also about buying and selling transactions in general, while what the author will examine is discussing fines for defaults contained in online entrustment transactions.

⁴ Pemerintahan Aceh QANUN ACEH NOMOR 8 TAHUN 2014 TENTANG POKOK-POKOK SYARIAT ISLAM (n 2).

⁵ Nabilah Anika -, Nabila Indah Chairunnisa - and Aditya Wahyu Saputro, 'Potensi Praktik Monopoli dalam Merger Bank Syariah Indonesia: Tinjauan Hukum Ekonomi Islam dan Hukum Larangan Monopoli' (2021) 2 Jurnal Hukum Lex Generalis 174 <<https://ojs.rewangrencang.com/index.php/JHLG/article/view/22>> accessed 18 September 2022.

RESEARCH METHOD

In this research the author uses descriptive research by describing the object or subject of research as it is in accordance with reality and normative facts objectively. The data sources in this research are primary data and secondary data. Primary data is obtained through field research, namely directly on the object to be studied. Secondary data is data obtained from reading literature sourced from library research, in the form of reading materials that have been processed and can be used to support primary data⁶

Data collection techniques in this study using interviews and documentation techniques. After all the required data is collected, then the classified data is analyzed using descriptive methods, so that it is easy to understand and obtain objective validity from the research results. Furthermore, the final stage of data processing is drawing conclusions. The main purpose of data analysis is to summarize data in a form that is easy to understand and easy to interpret, so that the relationship between research problems can be studied and tested.

RESULT AND DISCUSSION

Determination of Fines for Breach of Contract in Titles for Sale Transactions at Consigngaming and Unbranded_Store

The amount of the determination of fines set at the Consigngaming online shop is the same as the fee applied in the selling order transaction. The following is the amount of fines set by Consigngaming to the seller or depositor of goods that make default, namely:

Table 1.1 The amount of fines set by Consigngaming

No.	Harga Jual Barang	<i>Fee / Denda</i>
1	0 – 100.000	Rp 10.000
2	101.000 – 350.000	Rp 25.000
3	351.000 – 800.000	Rp 50.000
4	801.000 – 2.000.000	Rp 100.000
5	2.001.000 – 4.000.000	Rp 150.000
6	4.001.000 – 6.000.000	Rp 250.000
7	6.001.000 – ++	<i>Mark Up</i>

⁶ Muhammad Siddiq-Armia, *Penentuan Metode Dan Pendekatan Penelitian Hukum* (Chairul Fahmi ed, Lembaga Kajian Konstitusi Indonesia (LKKI) 2022).

(Data source: Documentation data from Consigngaming management)

Based on the table above, it can be concluded that the amount of fines set by Consigngaming depends on the price of the goods entrusted by the seller or depositor of goods. It can be exemplified that if the depositor entrusts goods with a price of IDR 500,000 and if he defaults, the seller or depositor of the goods must pay a fine of IDR 50,000 to the Consigngaming management.

For the amount of fines with the price of goods that are more than Rp. 6,000,000 and above, it is determined according to the price of the agreement between the seller and the Consigngaming management who previously agreed on the selling price and fee to the Consigngaming management. In accordance with the table above, the amount of the fine set is the same as the fee previously agreed upon by Consigngaming and the seller or depositor of the goods.⁷

Unbranded_Store explained that the determination of fines set at the Unbranded_Store online shop varies based on the category of offense committed by the seller or depositor of goods. The following is the amount of the fine set by Unbranded_Store, namely:

Table 1.2 The amount of fines set by Unbranded_Store

No.	Jenis Pelanggaran	Besaran Denda
1	Barang <i>fake</i>	Rp 1.500.000
2	Tidak sesuai deskripsi	Rp 500.000
3	Tidak mengirimkan barang	Rp 500.000

(Source: *Unbranded_Store management*)

From the table above, it can be concluded that the amount of the fine value set for the seller's default by Unbranded_Store is in accordance with the type of offense committed. In this case, the standard value of the fine set is based on the form and type of default committed, which is generally

⁷ Chairul Fahmi and Wira Afrina, 'ANALYSIS OF LEGAL ASPECTS ON DEBT TRANSFER FROM CONVENTIONAL BANK TO SHARIA BANK POST THE APPLICATION OF QANUN ACEH NO. 11 OF 2018' (2023) 4 Al-Mudharabah: Jurnal Ekonomi dan Keuangan Syariah 28 <<https://www.journal.ar-raniry.ac.id/index.php/mudharabah/article/view/3047>> accessed 14 October 2023.

made into three categories, namely fake goods, not according to the description, and not sending goods by the seller or the goods deposited.⁸

Sanctions against defaults made by sellers have a big impact on the performance of online stores based on selling orders while the performance itself is built through hard work to produce a positive image on business performance. Consigngaming and Unbranded_Store set social sanctions for defaulters in addition to providing a deterrent effect to expose the profile of the party that made the default to narrow the space for movement so that the same thing does not happen to other business actors.

Sellers who commit acts of default pay the fine by transferring to the management of Consigngaming and Unbranded_Store. On the Consigngaming platform, it is explained that there are also sellers who pay their fines in installments.

Effectiveness of the Application of Fines to Reduce Defaults

In the management of Consigngaming and Unbranded_Store, the application of fines to the depositor who commits default aims to;

a. Reducing irresponsible entrustees

The imposition of fines on the management of Consigngaming and Unbranded_Store to depositors who make defaults is to make depositors who are not responsible for the goods entrusted by the depositor. The application of the fine is to make irresponsible entrustees decrease.

b. Providing a lesson for the depositor

The application of this fine is very effective to eliminate the emergence of defaults from the seller which will have a negative impact on the performance and performance of the two consignment platforms whose businesses rely heavily on the trust of consumers and also other sellers who will use the services of these two online consignments. Although the value of the fines set varies, it has a positive relationship with the seller's compliance with the agreed points of the agreement so that it gives good value to the fulfillment of the interests of the three parties, namely the platform owner, seller and consumer.

Unbranded_Store explained that the application of fines to seller defaults can reduce the occurrence of defaults and even be at an effective

⁸ Hasbi Ash-Shiddiqie, *Pengantar Fikih Muamalah* (Sinar Bintang 2021).

level. This can be seen from the case that the application of fines can reduce the bad intentions of sellers who are not responsible for the goods they entrust or seek profit for the negligence of the management of Consigngaming and Unbranded_Store and their consumers. With the deterrent effect of the application of this fine that protects the interests of consumers, it will automatically increase consumer confidence in consignment business operations that prioritize the interests of consumers from the irresponsible actions of sellers who try to take the opportunity and negligence of stakeholders at consignment.⁹

Review of the Samsarah Agreement According to the Ta'widh's Concept

The following are the pillars of the samsarah contract and its fulfillment by the two consignments that are the object of the author's research, namely:

a. *Al-Muta'qidani* (broker and property owner)

In Consigngaming and Unbranded_Store, the realtor is the management of the two online shops, which are informal institutions formed through online media based on Instagram and Line with accounts without formal legality. Meanwhile, the other parties, namely the owner of the property as a seller and buyer mediated by the simsar party, in this case consignment, are parties who have Instagram and Line accounts who are also able to interact virtually through their accounts. In this case, the consignment requires the identity of the parties as a form of identification and verification of the legal aspects of the parties, both those who do personal accounts and institutional accounts, to avoid potential irregularities and fraud that will have legal consequences so that the consignment can avoid liability that should not be borne by it in its position as a consignee who only facilitates transactions, not those who carry out commercial transactions.¹⁰

⁹ Qaulan Maisura and Edi Yuhermansyah, 'PEMBIAYAAN QARDHUL HASAN PADA PRODUK SUPER MIKRO BANK ACEH SYARIAH CABANG BANDA ACEH: STUDI FIQH MUAMALAH' (2024) 5 *Al-Mudharabah: Jurnal Ekonomi dan Keuangan Syariah* 266
<<https://scholar.google.com/scholar?cluster=15285261870416566894&hl=en&oi=scholar>> accessed 27 August 2024.

¹⁰ Chairul Fahmi, *HUKUM DAGANG INDONESIA* (Bandar Publishing 2023)
<<https://bandarpublishing.com/hukum-dagang-indonesia/>>.

b. *Mahall al-ta'auq* (type of transaction carried out and compensation)

The type of transaction carried out must be known and not goods that contain immoral and haram, and also the value of compensation (wages) must be known in advance by the parties so that there is no misunderstanding that can lead to gharar in the transaction being carried out. The purpose of the sales entrustment transaction carried out by the two consignment management is not only limited to mediating between the seller and the buyer, but also involved in the transaction, namely with the buyer who makes a transfer to the management of the two consignments which will later be disbursed when the goods sent are safely received by the buyer.

c. *Al-shighat*

One of the clauses made in this shighat is about the agreement of fines and the amount that must be paid for the seller's irresponsible actions. The determination of this fine is part of the standard clause in the form of an exclusion clause that must be borne entirely by the seller as a result of his default.¹¹

The determination of fines and the amount in the muamalah agreement is permitted by the scholars as explained by Wahbah al-Zuhaili, in his writing about Nazariyah al-Dhaman, namely: "Ta'widh (compensation) is to cover losses incurred due to violations or mistakes" (p. 87). "The general provisions applicable to compensation are: (a) covering the loss in the form of objects (dharar, harm), such as repairing a wall... (b) repairing the damaged object back to its original state as long as it is possible, such as restoring a broken object back to its original state. If this is difficult to do, then it is obligatory to replace it with the same object (similar) or with money" (p. 93). Meanwhile, the loss of profit and the occurrence of uncertain future losses or immaterial losses, then according to the provisions of fiqh law it cannot be replaced (asked for compensation). That is because the object of compensation is property that exists and is concrete and valuable (permitted by Shari'ah to utilize it)."

¹¹ Sri Wahyuni and others, 'THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS' (2023) 7 JURISTA: Jurnal Hukum dan Keadilan 1 <<https://jurista-journal.org/index.php/jurista/article/view/42>> accessed 6 August 2024.

In Consigngaming and Unbranded_Store, the determination of fines is carried out because of the loss of management to the acts of default committed by the seller, namely making the online shop deserted due to bad consumer testimonials. This loss is real because the aggrieved party is not only the management of the two online shops but also the consumers who have been waiting for the goods to be ordered to be canceled unilaterally by the seller. So it can be said that the determination of fines in the sales order agreement contract is permissible as long as no party is harmed in it. The concrete loss occurs when the management loses profit and the seller must pay a fine because he has committed an act of default.

From the explanation above, it can be understood that the practice of entrusting sales at online shops Consigngaming and Unbranded_Store is in accordance with the samsarah contract. This is clear as the author describes the practice in accordance with the pillars of the samsarah contract. In the sale transfer transaction, there are also no practices that deviate from Islamic teachings, namely the absence of usury, gharar, and maisir practices because the parties to the sale transfer transaction, both sellers and Consigngaming management, are open or transparent about the transactions carried out. In terms of determining the fines carried out by the two online shops, there are also no deviations from Islamic teachings because the determination of fines contained in the Consigngaming and Unbranded_Store online shops was agreed upon by the seller before entrusting the goods. So that the fines resulting from the default committed by the seller are known by the seller because they have agreed on the agreement at the beginning.¹²

The innovation of samsarah, which was previously engaged in face-to-face or offline buying and selling transactions, has now also developed into online buying and selling transactions. Classic samsarah does not have an image because it is done offline and only by individual parties. Whereas samsarah now has an image due to the branding of the online shop itself. This makes the party who does it impose a fine on the party who violates the agreement. It can be concluded that the stipulation of fines is not to gain profit in gharar but to reduce the occurrence of defaults that have an impact

¹² Chairul Fahmi, 'The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia' (2023) 11 Jurnal Ilmiah Peuradeun 667
<<http://www.journal.scadindependent.org/index.php/jipeuradeun/article/view/923>>
accessed 6 July 2023.

on buyer confidence in the second consignment transaction on different business objects.¹³ Thus it can be stated that the fines and stipulations imposed from both consignments are an agreement between the two parties to safeguard each other's interests and not the purpose of the transaction and are instruments for both parties as clauses in business transactions.

CONCLUSION

The determination of fines made by both consignment management is based on a standard agreement that has been agreed by the parties. The amount of fines set by Consigngaming and Unbranded_Store is determined unilaterally with different calculation mechanisms. At Consigngaming, the amount of the fine is determined based on the value of the selling price of the product that is entrusted by using a percentage of the price of the goods entrusted by the sellers. At Unbranded_Store, the determination of fines is carried out by its management which is fictional and has been included in the general conditions of transactions with the Unbranded_Store platform, so that the seller can know exactly the value of the fine that must be paid if the default is made and the selling value of the goods does not affect the fine paid if the seller commits an act of default.

The application of fines on both consignment platforms is based on standardized agreements to reduce potential risks that can damage the brand image built by the two platforms whose business performance is based on images and testimonials from clients. The fines imposed by the two consignments on sellers who violate the agreement have been made able to reduce the level of default and fines that differ in value between the two consignments have a positive effect on the level of seller compliance with the dictums stipulated by the two consignments which differ in the standard clauses of the fine provisions.

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