

Breach of Contract in the View of Islamic law: A Case Study on the Partnership Agreements of Mini BRI-link

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ABSTRACT

As a banking industry, BRI has several financial services and products whose role is to satisfy the community's needs. Services and products provided by BRI include EDC Merchant machines, ATMs, E-Bangking, sales of third party products, such as Telkom products, PLN, credit cards and EDC mini BRI



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ATMs or BRILink Mobile. It is undeniable that sometimes there are some problems in the field such as defaults. Default is a form of negligence committed by one party that results in losses to the other party. This will be reviewed from Islamic Law using qualitative research methods with the research location located in Manokwari Regency, namely at the Manokwari Branch of the BRI Bank office (BRILink Section). In Indonesia itself, DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000 states that fines for consumers who are competent but unwilling to pay their debts are contained in the category of ta'zir that is allowed. As long as the status of the property is in the Yad Trust, the debtor is not obliged to compensate it for foreign causes.

BRI, yang merupakan sektor perbankan, menawarkan sejumlah layanan dan produk keuangan yang membantu masyarakat dengan memenuhi kebutuhannya. Layanan dan produk yang disediakan oleh BRI yaitu, mesin EDC Merchant, ATM, E-Banking, penjualan produk pihak ketiga, seperti produk-produk Telkom, PLN, kartu kredit dan EDC mini-ATM BRI atau BRILink Mobile. Tidak bisa dipungkiri bahwa terkadang terjadi beberapa permasalahan dalam lapangan seperti wanprestasi. Wanprestasi merupakan bentuk kelalaian yang dilakukan salah satu pihak yang mengakibatkan kerugian bagi pihak lainnya. Hal ini akan ditinjau dari Hukum Islam dengan menggunakan metode penelitian kualitatif dengan lokasi penelitian terletak di Kabupaten Manokwari yaitu pada kantor Bank BRI Cabang Manokwari (Bagian BRILink). Berdasarkan Fatwa DSN-MUI No. 17/DSN-MUI/IX/2000 menyebutkan bahwa denda bagi nasabah yang mampu tetapi tidak mau membayar utangnya tergolong dalam kategori ta'zir yang diizinkan. Selama status harta itu berada di Yad Trust, debitur tidak berkewajiban untuk mengkompensasinya dengan sebab-sebab luar negeri.

1. Introduction

The banking industry is an important tool in the economic development of any country. The economy will move towards greater profitability if the financial system is strong. Based on Article 5 Paragraph 1 of Law Number 10 of 1998 concerning Banking, there are two types of banks in Indonesia: Commercial Banks and Rural Banks (BPR). (Simatupang, 2019)

One type of commercial bank is Bank Rakyat Indonesia (BRI). The various financial services and products offered by BRI banking are designed to meet the needs of the community. Merchant EDC machines, ATMs, E-Banking, sales of third party goods including Telkom, PLN, credit cards, and EDC micro ATMs are some of the services and goods offered by BRI or BRILink Mobile. One of these services, namely BRILink Mobile, is still not widely known and used by the public. (Siti et al., 2022)

The number of BRILink Agents throughout Indonesia in January 2023 was 552,709 Agents. (Seno Tri Sulistiyono, 2022) Specifically for the Papua and West Papua regions, there are 6,674 agents in Manokwari Regency, South Manokwari Regency and Teluk Wondama Regency, for the Arfak Mountains Regency alone there are 661 BRILink Agents.

The availability of BRI services is part of the government's efforts to deal with uneven access to banking services throughout Indonesia, particularly in remote or remote areas, for example in the Arfak Mountains District, Anggi District, Teluk Wondama District and Windesi District. Regulation Number 19/POJK.03/2014 (POJK) related to Officeless Financial Services regarding Smart Behavior has been released by the Financial Services Authority (OJK). Laku Pandai is a program for providing banking

services or other financial inclusion services through collaboration with other organizations (bank agents), and enhanced by the use of technology and information. Derived from Officeless Financial Services in the realm of inclusive finance. Devi Yulianti and Darmo H Suwiryo, "Analisis Bagi Hasil Brilink Dan Jenis Perjanjian Brilink Dalam Mekanisme Layanan Keuangan Tanpa Kantor (Studi Kasus Di Desa Sukasari Dan Desa Gandasari Kecamatan Kadupandak)," *Jurnal Akuntansi Kompetif* 5, no. 3 (2022): 260-69, <https://doi.org/10.35446/akuntansikompetif.v5i3.1006>.

Laku Pandai is a special event where the whole community can easily access financial services and has the necessary resources to make the best use of financial services. By launching the BRILink product, Bank Rakyat Indonesia as an industrial bank initiated and succeeded in managing this financial inclusion market. **indonesia Persero Tbk, Dengan Agen Brilink, And T R I Suci Riyanti, "Implementasi Kuhperdata Tentang Perikatan Pada Perjanjian Kerjasama Antara PT . BANK RAKYAT" 5, no. 1 (2022): 35-47.** BRILink Agent is a mandatory service provided by Bank Rakyat Indonesia for the implementation of the Financial Services Authority program in the inclusive currency range. Agents can conduct banking transactions for the general public in real-time online by utilizing the Electronic Data Capture (EDC) feature of mini ATM partners with the provision of sharing fees or sharing fees in the BRILink agent service provided by Bank Rakyat Indonesia. (Munir Is'adi, n.d.)

OJK regulations regarding Laku Pandai in Article 16 Paragraph 1, state that banks administering Laku Pandai work together with agents in providing Laku Pandai for people who do not yet have access to bank infrastructure. From the quotation above, it can be concluded that the organization that committed the violation was BRI and its agents. The two organizations are effected by an agreement known as an agency agreement.

A permanent or temporary power of attorney arrangement between two similar companies to exercise all major interests in a particular marketing sector is known as an agency agreement. The organizing bank must have a written cooperation agreement with the agent in accordance with Article 22 Paragraph 1 Letter B of the POJK. (Suryono & Anggriani, 2018) Agency agreements are included in the category of anonymous agreements (innominaat) according to Article 1319 BW because they have not been recognized in the BW but instead appear, increase and develop in society without being regulated in laws and regulations. Business Law (KUHD), Civil Law (KUHPdt), or other organic law.

The agency contract is made in writing and is called a contract. Due to the signatures of the parties, the agency contract is enforceable and valid. If an agency contract has not been signed, it shall become effective as soon as the facsimile, telegram, letter of approval or telephone communication is received. If an agency agreement fulfills the conditions outlined in Article 1320 of the Criminal Code, which include: it is an agreement between two parties, both parties have the legal capacity to act, there is a certain object or can be determined, and it is based on law (permitted), it is considered legal. (Kumalasari et al., 2018)

The interesting thing if there is a breach of contract (default) in an agency agreement, seeing that this type of agreement is not regulated in an organic regulation so it is necessary to know what the implications or legal consequences can be for an agreement where there is no regulation that regulates it explicitly. and clear and how Islamic law views the occurrence of a breach of contract (wanprestasi). In accordance with Islamic law, breach of contract (default) is considered a failure in upholding the human rights of others and is defined as a prohibited act. Violation of promises is the nature of a hypocrite while fulfilling promises is one of the characteristics of a Mukmin. (Muhammad Nadratus dan Deden Misbahudin, 2014)

In accordance with the Fifth Majma al-fiqh al-Islami in Kuwait, which issued a fatwa in December 1988, and the Maliki school both affirm that "Unless there are obstacles, a party's promise can be enforced based on religious law, and if it is associated with a reason, it can also be legally enforced formally. In addition to evidence which is the basic guideline for the obligation to keep promises, there are several additional justifications, including the desire to avoid harm and gharar and the freedom to set conditions, but there are arguments that limit, prohibit or forbid these conditions".(Muhammad Nadratus dan Deden Misbahudin, 2014)

Based on the research issues as described in the previous paragraph, the object of research is the existence of a breach of contract or breach of contract in the BRILink mini partner agency agreement associated with the view of Islamic Law.

2. Metode

The research methodology is a type of normative research using qualitative descriptive techniques. The research location is located in Manokwari Regency, namely at the BRI Bank Manokwari Branch office (BRILink Section). Research data obtained from primary and secondary sources. Primary data based on interviews, secondary data obtained from periodicals and books.(John Ward Creswell, 2016)

By describing the findings of the information obtained from the interviews, the primary data from the interviews are assessed qualitatively (reduction, presentation, and conclusions). After being described, the information is then processed, followed by analysis to study and understand the legal consequences of defaults committed by BRILink agents in agency agreements.(John Ward Creswell, 2016)

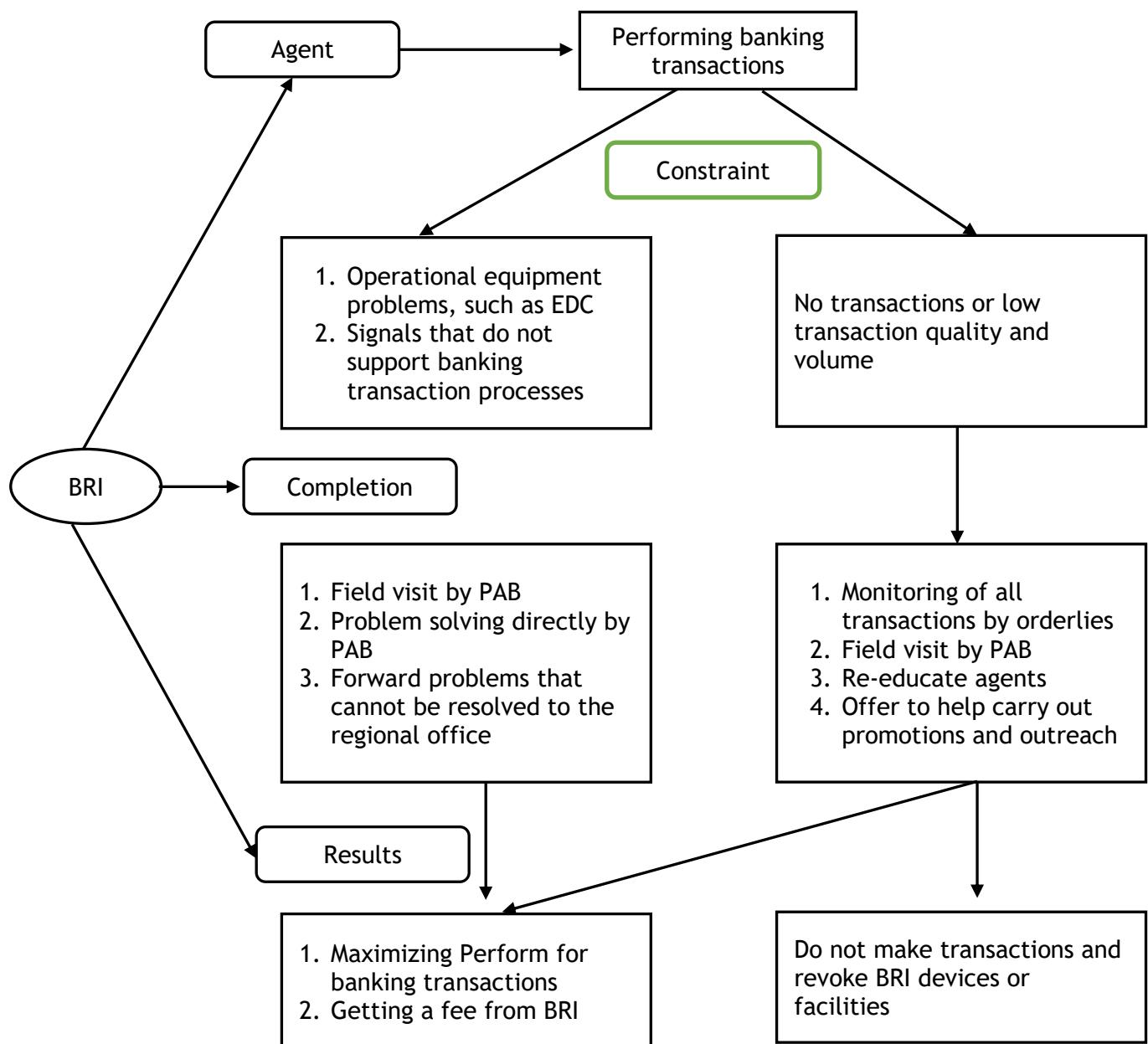
3. Results and Discussion

3.1. Legal Consequences on Breach of Contract (*Wanprestasi*) in the Partnership Agreements of Mini BRI-link

PT. Bank Rakyat Indonesia (Persero) Tbk introduces a new product called BRILink with the hope that people can recognize, understand and use financial services without having to stand in long lines at the BRI office. As BRILink agents, BRI banks and BRI customers work together to provide real-time online banking services to the general public through BRI EDC devices with the idea of revenue sharing. Telecommunications companies assist BRILink by providing a set of EDC (Electronic Data Capture) capabilities for financial services that can be offered by BRILink agents. Based on the results of interviews with BRI Manokwari bank employees on behalf of Sutanto as BRILink Agent (PAB) officers said that:

"Requirements that must be met to become a BRILink agent include having an active business, having a BRI savings account with a minimum balance of IDR 10,000,000, and having sufficient savings funds to meet customer transaction needs."

The schematic picture of BRILink Agent Operations as follow:



Source: BRILink Agent Officer, 2022

Cash deposits and withdrawals, interbank transfers, BRI loan instalment payments, SPP payments, purchases of phone credits, electricity tokens, purchases of e-tickets, and other banking-related transactions are just a few examples of transactions made through BRILink agents which are often used for banking services.

Furthermore, an interview was conducted with one of the BRILink user customers on behalf of Mrs. Ririn who is located in the Soribo Housing complex, Manokwari who said that she prefers to use BRILink because the location is closer and easier to reach, besides that there is no need to queue at the bank office.

The aim of the Laku Pandai Program is to provide easy access for people who are not familiar with or have never used financial services, as well as for people who cannot

participate in regular (regular) financial services due to several procedures and requirements that cannot be carried out. found by the public. As a result, banks use agents as extensions to offer financial services to the general public.

The community's expectations for these financial services to provide access to simple and affordable financial services were not fulfilled. This is intended so that clients do not experience losses due to agents who carry out illegal activities.

As was the case with one of the BRILink Agents, whose address is Jalan Trikora Wosi, Manokwari, which has its own system apart from the system provided by the Bank. As stated in Article 23 paragraph (1) of the OJK Regulation, that the banking provider of clever practices can only cooperate with individual agents who have not cooperated with other banks with similar business activities.

Regarding this incident, BRI had given the first warning letter as an initial warning in the cooperation agreement but the BRILink Agent ignored the warning. Furthermore, BRI again gave a second warning letter and a third warning letter, but still ignored the warning. In the end, BRI terminated the cooperation agreement with the BRILink agent and returned all the devices used, including removing BRI Bank attributes from banners, posters, and agent certificates.

3.2. Breach of Contract (Wanprestasi) in the View of Islamic Law

Akad is the legal term for "agreement" in Indonesia. The word "akad" which means "to bind, to connect (ar-rabt)". This term comes from the Arabic verb *al-'aqd*. In accordance with Article 262 Mursyid al-Hairan, consensus deliberation is proposed by one of the parties to a contract or agreement with the consent of the other party, and these results in legal consequences for the intended use of the contract. While according to S. Anwar the contract is an event where consent and *qabul* meet as a statement of the will of two or more parties to produce a legal form of something at issue.(Muayyad, 2015)

First, the two meanings above show that the contract is a bond or meeting of consent and *qabul* which has to do with law. Second, the contract is a joint legal act between two parties. The 3rd objective of the contract is to create legal results, or contract law (*al-'aqd law*). More specifically, the contract aims to transfer ownership with or without compensation (*at-tamlid*), do work (*al-a'mal*), form partnerships (*al-isytarak*), bestow (*at-tafwid*), and provide guarantees (*at-tausiq*).(Muayyad, 2015)

Islamic law provides a fundamental rule regarding contracts and agreements, namely that interested parties are allowed to enter into whatever type of contract they see fit. For this reason, all forms of consent and *qabul* can be called a contract, this is valid as long as it is carried out by the parties and all the necessary conditions are fulfilled. Important principles of Islamic law are contained in this clause, which states that contracts can take any form, including verbal or nonverbal cues indicating the intent of the contract.(Yuli Harlina., 2017)

For people who sign contracts or agreements, valuable directions and guidance are provided in the form of consent and *qabul*. To ensure that everyone's rights are protected, based on Islamic law, it is recommended that agreements be strengthened by written letters and witnesses,(Yuli Harlina., 2017) as Allah said in al-Baqarah/2: 282

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُم بِذِينِ إِلَيْ أَجْلٍ مَسْمَى فَاکْتُبُوهُ... إِنَّ

“O you who believe, if you don't do mu'amalah in cash for a specified time, you should write it down”.

Each agreement must be implemented properly, honestly, without violation and fraud or falsification. So that after reaching an agreement, the practice of muamalah in Islam develops into a clear path and stays away from bad things.

Hakim bin Hisam said that the Prophet SAW. Said: Two people who are buying and selling have the right to bargain (*khair*) as long as they haven't split up, so if they are honest and forthright, they will be blessed in their buying and selling, but if they are lying and not being forthright, their trading blessing will be abolished.(Santoso & Lestari, 2021)

This hadith means to prohibit, for example, the practice of buying and selling that is wrong because of dishonesty, breach of contract and other things that are prohibited because it is not profitable but detrimental. If someone acts in this way after the contract or agreement is made, it can be said that the person concerned has defaulted, namely the failure to carry out the necessary achievements or negligence in the form of achievement after entering into a certain agreement or contract.

Failure to fulfill the obligation to protect the rights of others is considered a prohibited act if it is previously known that they have entered into an agreement. They will be subject to fines in the form of compensation payments to creditors and/or detention, which is their right as collateral for the amount promised, for those who violate this law or default due to negligence in carrying out their achievements(Eko Arief Cahyono, n.d.).

Islamic law is very concerned about muamalah issues with fellow human beings, namely the obligation to uphold the commitments they make. As a result, people who are negligent or violate the agreement are branded as hypocrites, as the Prophet Muhammad said:(Hastuti & Rohmah, 2021)

Abu Hurairah RA mentioned that Rasulullah SAW said: There are three characteristics of a hypocrite, namely, when he speaks he lies, when he makes a promise he breaks it, and when he is trusted he betrays.

Observing the hadith above, that a person who defaults on purpose is labeled a hypocrite, meaning that he does not fulfill the mandate that has been entrusted to him. This is a fundamental provision that can be extracted from Islamic law regarding default, where the legal event is a form of violation if it is done with an element of intent. However, in case of negligence due to force majeure, different rules may apply.

In studying Islamic law, the duty to pay (*dhaman*) is divided into two parts as in Western and national law, including:

- Criminal Liability Rehabilitation (*Dhaman fi mas'uliyah jinayah*)
- Civil Damages (*Dhaman fi mas'uliyah madaniyah*)

In civil law, the responsibility is divided into two, including negligence (*mas'uliyah ta'qudiyah/dhaman al-'aqd*) and wrongdoing (*mas'uliyah taqsiriyah/dhaman al-'udwan/fi'l adh-dhar*). (S, 2020)

Regarding the meaning of *mas'uliyah ta'qudiyah/dhaman al-'aqd* is a responsibility according to the agreement contract. Wahbah Zuhaily uses this expression in explaining responsibility caused by differences of opinion on agreements that are defined in Indonesian legal language, such as procurement. The seller cannot deliver the goods that have been purchased, besides that, *mas'uliyah taqshiriyah/dhaman al-'udwan* means the word responsibility for losses/resistance. Besides, terminologically, liability for litigation as *ghasab* (seizing other people's rights) and destroying other people's things.(Zuhaily, 2012)

There are three pillars of social responsibility for civil areas in Islam, namely:

- a. There is an error.
- b. Someone is at a disadvantage.
- c. There is a causal correlation between errors and losses.

Sanhuri said this was about default which explained that Islamic Law has three pillars which are essentially the same as Western law¹. Meanwhile, Fauzi explained that the three pillars above were included in the elements of PMH(Faidhullah, 1986). These three factors, according to Wahbah Zuhaily, are the basis for both civil and criminal accountability.

According to Wahbah, there are really only two pillars of responsibility: mistakes and losses; causation is not one of these pillars. Causes are not pillar components themselves; on the contrary, it is a *mani'* (barrier) for the existence of legitimate causes. Pillars are defined as components of something; without that component, that component does not exist. Wahbah Zuhaily's definition of the Pillar of Responsibility does not include causes. Apart from these variations, the authors are of the opinion that these do not have much effect on the nature of default and PMH, regardless of whether it is pillars, conditions, or barriers.

Also, compensation (العصب) means actual compensation for the occurrence of an error(Zuhaily, 2012). Compensation (ta'widh), according to Article 20 Paragraph 37 KHES, is compensation for real losses suffered by the parties as a result of carelessness. Both are generally the same, but the definition of KHES (Compilation of Sharia Economic Law) is incomplete because it only limits it by default. Perhaps this happened because the KHES regulations only take into account standard issues and do not yet cover PMH issues according to Islamic law (Bring Promise, Article 36 KHES).

The concept of compensation is based on the following principles:

الضرر يدفع بقدر الإمكان

It means: "Losses must be prevented/rejected according to ability(Zarqa, 2021)."

الضرر يزال

It means: "The harm must be eliminated(Zarqa, 2021)".

Both principles imply that events that cause losses must be avoided before they happen. The first principle of Islam, according to Az-Zarqa, emphasizes that one way to prevent damage according to one's ability is to make restitution. When the guardian of the deceased forgives, then according to the Qisas Law, which was eventually replaced by Diyat, the guardian has the right to receive compensation. Another illustration is a claim for compensation for something that was taken without proper permission or something that was exchanged for something else in the event that the item taken was lost, as happened in the BriLink incident.

Compensation is different from qisas law. So there is no qisos (damage answer) as compensation. This condition is in accordance with the general rule of لا ضرر ولا ضرار (Don't do anything that endangers yourself and others) because a crash report actually causes new damage. This problem is also according to the rule of على لائحة بالضرر (Losses cannot be erased as well as losses). In Article 921 of *Majallah* it is explained that

¹(Abdur Razaq as-Sanhuri, 2020)

the person who was wronged (the item that was damaged) may not retaliate by being wronged. Also in Article 260 of the Urdun Civil Code, Article 216 of the Iraqi Civil Code states that there is no qisas in destroying property.

To receive compensation for breach of contract, conditions must be met. The debtor's assets immediately become collateral for the settlement of the debt. This compensation cannot be passed on to the debtor's heirs and must be taken from the debtor's own assets, as Allah said:

ولَا تُنْهِرْ وَازْرَةً وَزَرْ أُخْرَى

Translated:

“And a sinner will not bear the sins of others. (QS al-An’am: 164)(*Al-Qur'an Dan Terjemahan*, n.d.)

The form of compensation depends on the type of loss. In Islamic jurisprudence, scholars break down forms of loss into 3 types, including the following:

- a. Loss of property (dharar al-mâli).
- b. Loss of body (dharar jasady).
- c. Small loss (dharar al-ma’nawy/adabi)

In addition to what has been mentioned, several other scholars have described the types of losses into two categories, namely *dharar al-mâdi* (material losses) and *dharar al-ma’nawy* (immaterial losses). *Dharar al-mâdi* is further divided into 2 parts, namely *property losses* (dharar al-mâli) and *bodily losses* (dharar al-jasady)(Faruq Abdullah Karim, 2021).

In this case Raji’ah’s opinion is a permissible opinion, because according to him the prohibition on the use of money by *Ta’zir*, according to the classical scholars, was more due to fear of unjust judges. Controls the abuse problem and will use the money for himself under the guise of punishment. In essence, this type of punishment is a type of punishment based on the discretion of the judge. Hanafiyah scholars, in their language, mention this as *Hukumah al-adl* (judge’s discretion/just punishment), namely the sentence imposed by a judge as a form of legal discretion in examining cases. So this is actually in the rules of Article 39 which reads:

لَا يُنْكِرُ تَغْيِيرُ الْأَحْكَامِ بِتَغْيِيرِ الْأَزْمَانِ

It means:

“It is undeniable that law can develop along with the times. (There are rules that are more complete, that is, laws change due to changes in time, place, and circumstances)(Zarqa, 2021).

In light of the foregoing, *ta’zir* relating to money should and fully become the authority of the court at the place and time of the dispute.

Sourced from DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000 explains that fines for customers who are able but do not want to pay their debts are included in the category of permissible *ta’zir*. As long as the status of the assets is in *Yad Trust*, the debtor is not obligated to compensate with foreign causes. As for *Yad Dhamânah*, even if the property is damaged due to a disaster/external cause, the debtor is still obliged to pay compensation, except in the event that the damage to the property is caused by the original owner. *Yad Amanah* status can be transferred to *Yad Dhamânah*. If the carrier of the goods (even without intending to control it) accepts the goods without permission or prevents the goods from being returned to the owner, when to return them, when the goods are said and when they are returned.

Basically if we look at the types of commitments that exist, *Yad Amanah* is a commitment that is included in the category of commitment to business (badzl al-inâyah), while *Yad Dhamânah* is a commitment to achieve results (tahqîq al-ghâyah). If the three pillars and the provisions that apply to them have been fulfilled, the party that breaks the promise (default) may be subject to sanctions in Article 38 as follows:

- a. Contract termination.
- b. Risk Changes
- c. Pay damages
- d. Compensation fine or
- e. Pay court fees.

4. Conclusion

BRILink agents who commit defaults in the mini BRILink agreement for partnership agency will be given the first to third warning letters if the agent ignores the previous warning, then BRI will terminate the cooperation agreement with BRILink Agents by returning all devices used, including remove the attributes of Bank BRI.

For those who violate or default because they do not make achievements, they will be subject to be sanctions in the form of paying compensation to creditors or detention, which is their right as collateral for the amount promised. In Islamic Law, default is defined as negligence in fulfilling obligations and is classified as prohibited.

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