



Sharia Economic Law Analysis of Late Payment Penalty Clauses in PT. SBL's Property Debt

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ABSTRACT

*This research focuses on the implementation of Debt Acknowledgement Letters (SPH) at PT. SBL as a critical administrative instrument for property transactions involving incomplete Down Payment settlements. The study investigates the 1% daily late payment penalty clause stipulated within PT. SBL's SPH. Although the developer does not enforce this penalty in practice and only collects the principal debt, the formal inclusion of the clause creates a significant discrepancy with Sharia principles, specifically the prohibition of *riba an-nasi'ah* (interest-based debt additions). Employing a qualitative-normative method with a content analysis of PT. SBL's SPH documents, the results indicate that while the clause is administratively valid under the civil law principle of *al-'aqdu syari'at al-muta'aqidin* (mutual consent), it is substantially non-compliant with Islamic Law due to its usurious nature. PT. SBL's waiver policy, while avoiding *riba*, inadvertently compromises the contract's legal certainty. As a strategic solution, this study advocates for the implementation of *ta'widh* (compensation), grounded in Fatwa DSN-MUI No. 43/DSN-MUI/VIII/2004. This Sharia-compliant instrument is permissible as it is strictly limited to covering real losses (real loss/damnum emergens) rather than generating profit from debt. This transition ensures a robust balance between legal certainty, contractual justice, and strict Sharia compliance within PT. SBL's operational framework.*

Keywords: Debt Acknowledgement Letter, Late Payment Sanctions, Sharia Economic Law, Legal Certainty of Contract, Fiqh Muamalah.

ABSTRAK

*Penelitian ini berfokus pada implementasi Surat Pengakuan Hutang (SPH) di PT. SBL sebagai instrumen administratif penting dalam transaksi properti yang melibatkan pelunasan uang muka (Down Payment) yang belum lengkap. Studi ini mengkaji klausul denda keterlambatan pembayaran sebesar 1% per hari yang tercantum dalam SPH PT. SBL. Meskipun dalam praktiknya pengembang tidak menerapkan denda tersebut dan hanya menagih pokok utang, pencantuman klausul tersebut secara formal menimbulkan ketidaksesuaian yang signifikan dengan prinsip-prinsip syariah, khususnya larangan *riba an-nasi'ah* (tambahan atas utang berbasis bunga).*

*Dengan menggunakan metode kualitatif-normatif melalui analisis isi terhadap dokumen SPH PT. SBL, hasil penelitian menunjukkan bahwa meskipun klausul tersebut sah secara administratif berdasarkan prinsip hukum perdata *al-'aqdu syari'at al-muta'aqidin* (kesepakatan para pihak), namun secara substansial tidak sesuai dengan hukum Islam karena bersifat ribawi. Kebijakan penghapusan denda yang diterapkan oleh PT. SBL, meskipun bertujuan menghindari praktik *riba*, secara tidak langsung justru melemahkan kepastian hukum dalam kontrak.*

Sebagai solusi strategis, penelitian ini merekomendasikan penerapan konsep ta'widh (ganti rugi) yang berlandaskan pada Fatwa DSN-MUI Nomor 43/DSN-MUI/VIII/2004. Instrumen yang sesuai syariah ini diperbolehkan karena secara tegas dibatasi hanya untuk mengganti kerugian nyata (real loss/damnum emergens), bukan untuk memperoleh keuntungan dari utang. Penerapan konsep ini diharapkan mampu mewujudkan keseimbangan yang kuat antara kepastian hukum, keadilan kontraktual, dan kepatuhan penuh terhadap prinsip syariah dalam kerangka operasional PT. SBL.

Keywords: *Debt Acknowledgement Letter, Late Payment Sanctions, Sharia Economic Law, Legal Certainty of Contract, Fiqh Muamalah.*

INTRODUCTION

The growth of the property sector in Indonesia is more than a mere economic phenomenon; it is a reflection of the fulfillment of fundamental human rights to adequate housing. Within the Islamic perspective, a home is categorized as *Al-Hajat Al-Ashliyyah* (primary needs), essential for protecting religion, soul, and family honor. However, the acceleration of this demand often encounters the financial realities of society. High property prices and fluctuating banking policies regarding Home Ownership Loan (Kredit Pemilikan Rumah or KPR) ceilings frequently result in a deficit in the required down payment. This phenomenon compels business actors in this case, property developers to create legal innovations in the form of supplementary agreements to ensure the continuity of transactions.

One of the most frequently utilized legal instruments is the Debt Acknowledgment Letter (Surat Pengakuan Hutang or SPH). Juridically, the SPH serves as a reinforcing document for the creditor's position, providing legal certainty over the debtor's remaining unfulfilled obligations. At PT. SBL, the SPH emerges as a bridge for consumers experiencing a reduction in bank loan ceilings, allowing them to proceed with the KPR contract. Nevertheless, as a form of mitigating company cash flow risks, PT. SBL includes a late payment penalty clause of 1% per day. Theoretically, this clause aims to enforce debtor discipline (the "shock therapy" function). However, in its implementation, PT. SBL never actually enforces these penalties and only collects the principal debt.

The inconsistency between the contractual provisions (law in books) and the practical field application (law in action) at PT. SBL creates legal ambiguity. On one hand, Islam highly upholds the integrity of contracts through the principle of *al-wafa' bil 'uqud* (fulfilling covenants), as commanded in the *Qur'an*, *Surah Al-Ma'idah* verse 1. A developer's unilateral waiver of sanctions could be perceived as undermining the binding force of a contract. On the other hand, the perspective of Islamic jurisprudence (*fiqh muamalah*) rigidly prohibits *ziyadah* (additions) to debt that arise solely due to the passage of time, which is clearly classified as *riba nasi'ah* (interest on credit).

Muhammad Syafi'i Antonio asserts that any addition in debt credit transactions, regardless of the percentage, remains prohibited if it is not based on actual losses (real loss). Similarly, *Wahbah al-Zuhaili* warns that the element of *gharar* (uncertainty) in compounding sanctions can violate the principle of justice ('*adl*). The situation at PT. SBL illustrates a tension between the developer's efforts to avoid *riba* and the risk of losing legal certainty in business. The use of an automatic penalty instrument (1% per day) clearly contradicts the National Sharia Board-Indonesian Council of Ulema (DSN-MUI) Fatwa No. 17/DSN-MUI/IX/2000, which prioritizes the concept of *ta'widh* (compensation for actual costs) over exploitative financial fines.

This research is crucial to dissect the legitimacy of such sanctions through the lens of Sharia Economic Law. Whether the waiver of fines by PT. SBL is a conscious step to maintain business blessings (*barakah*) or merely an administrative oversight that could lead to future disputes remains to be seen. This study will explore alternative solutions so that developers remain legally protected without violating Sharia boundaries. Based on these problems, this research focuses on two primary problem formulations: 1). What is the legal standing of the late payment penalty clause in a Debt Acknowledgment Letter (SPH) from the perspective of Sharia Economic Law? 2). What is the Sharia Economic Law review of PT. SBL's practice of factually not enforcing the penalty clauses within its property transactions?

METHODS

This research employs a qualitative-normative method focusing on library research. This method was selected to examine primary legal sources, including the *Qur'an*, *Hadith*, and Sharia economic law literature. According to Soerjono Soekanto, normative legal research perceives the law as a set of prevailing norms rather than merely a social phenomenon. The approach utilized is descriptive comparative analysis, which entails comparing classical Fiqh Muamalah (Islamic jurisprudence) perspectives with the practical application of late payment penalty clauses in the Debt Acknowledgment Letters (SPH) of PT. SBL.

As defined by Sugiyono, qualitative research is used to holistically understand the phenomena experienced by the research subjects through descriptive narratives within a natural context using various scientific methods. Through this approach, the study goes beyond examining the formal aspects of an agreement to interpret its substantial meaning within the framework of Islamic law.

The primary data for this research consist of the *Qur'an* and *Hadith*. The secondary data include Sharia economic law literature, scientific articles, and the physical Debt Acknowledgment Letter (SPH) documents.

The data analysis technique employed is content analysis. Sugiyono explains that content analysis is a technique used to examine documents whether in the form of text, symbols, or written communication to interpret their meaning systematically and objectively. By utilizing content analysis, this research aims to extract the legal significance from Sharia evidence (*dalil*), scholarly views, and SPH documents, subsequently comparing them using a descriptive-comparative method against real world practices. To uphold research ethics, the name of the company under study is pseudonymized as PT. SBL without compromising the validity of the data.

RESULTS AND DISCUSSION

A. General Overview of the Debt Acknowledgment Letter (SPH)

The Debt Acknowledgment Letter (SPH) serves as a legal instrument utilized by PT. SBL to regulate consumer obligations regarding the installment of the remaining down payment (DP) in property transactions. This document functions as a supplementary agreement that provides written certainty for both parties, particularly when a consumer is unable to settle the DP in full during the primary contract signing. The document contains essential information, including the specific date of the agreement and the identities of the parties involved the

consumer as the First Party and the developer as the Second Party complete with their names, identification numbers, occupations, and addresses. Consequently, the SPH plays a pivotal role in establishing a clear legal foundation regarding the consumer's liability toward the developer.

A notable provision within the SPH is the inclusion of a late payment penalty clause. For instance, Article 1 of the SPH document used by PT. SBL states: "In the event of a payment delay beyond the specified timeframe, the FIRST PARTY shall be subject to a late penalty of 1% (one percent) per day of the outstanding balance." Normatively, this clause is intended to foster payment discipline and protect the developer from the financial risks associated with delays.

However, in practice, PT. SBL does not enforce the sanctions as stipulated in the agreement. Consumers who default on their deadlines are only required to settle the principal debt without any additional late fees. This is evidenced by an analysis of two consumer SPH cases. In the first case, an SPH with a three-month installment period (December 2024–February 2025) required payments by the 10th of each month. In reality, while the first two installments were paid before the deadline, the amounts were less than agreed. Furthermore, the final installment was only paid on June 25, 2025 nearly four months past the due date and the amount remained below the contractual requirement. This indicates that the consumer failed to meet their obligations in terms of both nominal value and timing. In the second case, an SPH with a five month term (December 2024–April 2025) showed an even more significant breach, as the consumer failed to make any installment payments at all by June 2025. Thus, both cases confirm that the penalty clauses embedded in the SPH are not executed, despite clear breaches of contract by the consumers.

In addressing these violations, PT. SBL limits its actions to administrative measures, specifically the issuance of billing letters. These repeated notices only specify the remaining principal debt, making no mention of the 1% late penalty stipulated in the SPH contract. This demonstrates that PT. SBL consistently favors a persuasive approach over a repressive one. From a Sharia perspective, this stance can be interpreted as a form of prudence (*ihtiyat*) to avoid falling into the practice of riba (*usury*), as additional charges on debt potentially violate the principle of justice in muamalah (social transactions). Conversely, the non enforcement of penalty clauses creates practical challenges, such as weakened contractual certainty and the loss of a deterrent effect for non compliant consumers. Ultimately, this places PT. SBL in a dilemma: maintaining the purity of transactions to remain free from riba while simultaneously facing the challenges of poor consumer compliance with established agreements.

B. The Legal Standing of Late Payment Penalty Clauses from a Sharia Economic Law Perspective

The legal standing of late payment penalty clauses is a pivotal issue in contemporary Sharia economic law, particularly regarding Debt Acknowledgment Letters (SPH). Generally, an SPH includes formal data such as identity, loan amount, maturity date, and sanctions for delays. The primary problem arises when sanctions are set as a fixed percentage, such as 1% per day of the outstanding debt.

In *Fiqh Muamalah*, the validity of a contract (*akad*) is determined by its pillars (*rukun*) and conditions (*shurut*). Etymologically, *akad* refers to a binding agreement or consensus (*al-ittifaq*). According to Amir Syarifuddin, an *akad* is the bond between an offer (*ijab*) and an acceptance (*qabul*) that results in legal consequences. The SPH at PT. SBL fulfills these pillars: the parties are the consumer and the developer, the object is a monetary loan for the down payment, and the *sighat* (expression) is the signed document. From a formal administrative standpoint, the penalty clause is valid because it reflects mutual consent (*al-ridha*), aligning with Surah An-Nisa verse 29, which mandates that transactions be based on mutual goodwill.

However, Sharia law prioritizes substance over formal validity. The SPH is essentially a *Qardh* (loan) agreement. *Qardh* is a *tabarru'* (charitable/social) contract intended for mutual assistance, not commercial profit. As Muhammad Syafi'i Antonio notes, since *Qardh* is social, any additional charge whether interest or fines is classified as *riba* (usury). This is strictly prohibited in Surah Al-Baqarah verse 275, which distinguishes between lawful trade and unlawful *riba*. Furthermore, the Hadith emphasizes that "every loan that brings a benefit (to the lender) is *riba*." Therefore, a fixed percentage penalty that increases the debt burden is substantively *riba* and contradicts Sharia principles of justice.

In contemporary discourse, scholars distinguish between *Ta'widh* and *Gharamah*. According to Ascarya, *Ta'widh* is compensation for actual, measurable losses incurred by the creditor due to the debtor's delay (e.g., operational costs or project halts). Conversely, *Gharamah* is a penalty imposed solely for the delay without proof of real loss. Most scholars reject *Gharamah* as it provides financial gain to the lender without an underlying business activity or risk, effectively making it *riba*.

The 1% daily penalty in PT. SBL's SPH aligns more closely with *Gharamah* than *Ta'widh*. There is no evidence that the developer suffers a specific "1% per day" real loss. Without a detailed calculation of actual costs, this clause acts as an automatic penalty that could excessively burden the consumer, potentially exceeding the principal debt over time. Such a mechanism violates the Sharia principles of fairness and the prohibition of unilateral profit-taking from loans.

In conclusion, the late payment clause in PT. SBL's SPH occupies a difficult position. Administratively, it is valid as it stems from mutual agreement. However, substantively, it is non-compliant with Islamic law as it imposes a *riba*-like burden. Administrative consent does not legitimize what Sharia prohibits. Therefore, the 1% daily penalty cannot be justified under Sharia Economic Law and should be restructured into a *Ta'widh* based mechanism that reflects actual losses rather than a prohibited *Gharamah*.

C. Sharia Economic Law Review of the Non-Enforcement of Late Payment Sanctions at PT. SBL

Recognizing that a 1% penalty clause substantively contradicts Sharia principles, PT. SBL's decision to refrain from imposing such fines requires a profound legal analysis. Several critical points characterize this practice :

1. Efforts to Avoid Riba as a Manifestation of Prudence (*Ihtiyat*)

Factually, PT. SBL's policy of collecting only the principal debt excluding penalties demonstrates a commitment to the principle of prudence (*ihtiyat*). A well known fiqh maxim states that "Avoiding scholarly disputes is recommended" (*al-khuruj minal khilaf*

mustahabb). By waiving additional fines, PT. SBL distances its transactions from the elements of Riba Nasi'ah (interest on credit). Although the company possesses the administrative right to enforce the contract, they prioritize compliance with muamalah values that prohibit profiting from debt-related penalties.

2. Implementation of the Principle of Ease (*Taisir*) and *Inzar al-Mu'sir*

Islam advocates the principle of Taisir (facilitating ease) for parties facing financial distress. This aligns with the command of Allah in Surah Al-Baqarah verse 280:

"And if someone is in hardship, then let there be postponement until a time of ease..."

PT. SBL's practice of withholding financial pressure from consumers who are delayed in paying the remaining down payment (DP) can be categorized as *Inzar al-Mu'sir* (granting a grace period to those in difficulty). This reinforces the moral dimension in the property business, where the developer pursues social values and blessings (barakah) alongside profit.

3. The Issue of Legal Certainty in Contracts (*Pacta Sunt Servanda*)

While the waiver of fines is positive from a Sharia perspective, it creates a loophole from the standpoint of positive law and contract management. In contract law, the principle of *Pacta Sunt Servanda* (agreements must be kept) is paramount. If a clause is formally included but consistently disregarded, the binding force of the Debt Acknowledgment Letter (SPH) is undermined.

This inconsistency may lead consumers to underestimate their payment obligations, knowing there are no tangible consequences. Consequently, this poses a risk to the developer's cash flow. Therefore, while the waiver by PT. SBL serves as an ethical-Sharia solution, it represents a weakness in administrative contract risk management.

4. Formalization of *Ta'widh* or *Arbun*

To bridge the gap between legal certainty and Sharia compliance, it is recommended that PT. SBL ceases the use of percentage based penalty clauses (1% per day). Instead, they may implement:

- Ta'widh*. An agreement where the consumer is obligated to reimburse real administrative costs incurred due to the delay (e.g., courier fees for billing notices or additional stamp duty costs).
- Early Payment Incentives. Rather than penalizing delays, the developer could offer discounts for timely payments (positive incentives).

PT. SBL's practice of not enforcing late payment sanctions is substantively aligned with Sharia principles in its effort to avoid riba. However, it leaves a significant gap in the aspect of legal certainty. The optimal course of action is to revise the SPH content so that the written clauses accurately reflect permissible practices (such as *ta'widh*), ensuring harmony between contractual agreements and field implementation (Anwar K, 2025).

D. Analysis of the Non-Enforcement of Late Payment Penalty Clauses at PT. SBL

a. Socio-Legal Perspective

The research findings reveal a profound discrepancy between the normative framework (Article 1 of the SPH) and the empirical reality at PT. SBL. This phenomenon represents a classic case of the gap between Law in Books and Law in Action. Although a daily penalty of 1% is explicitly stipulated, its consistent non-enforcement against defaulting consumers as evidenced in Case I and Case II demonstrates that the developer prioritizes ethical-religious values over strict contractual litigation.

Although a late penalty clause of 1% per day was mutually agreed upon, the developer consistently refrains from enforcing it against defaulting consumers. This is confirmed through two specific case studies :

1. Case I: A consumer with a three-month installment tenor (December 2024–February 2025) made payments below the agreed nominal value and experienced significant delays, with the final payment only settled in June 2025.
2. Case II: A consumer with a five month tenor (December 2024–April 2025) failed to make any payments until the end of the research period.

PT. SBL's response to defaults has been limited to administrative actions, specifically the issuance of billing notices. Analysis of the collection documents dated May 16, 2025, and September 4, 2025, indicates that the developer demanded only the settlement of the principal debt, excluding the accumulated 1% penalty. This practice reflects a corporate policy to waive financial sanctions in favor of maintaining a persuasive and humanistic approach.

b. Sharia Compliance Review: Prudence and the Deconstruction of Riba Nasi'ah

Substantively, PT. SBL's refusal to enforce the 1% penalty can be analyzed through the lens of *ihtiyat* (legal prudence). From a Sharia perspective, a fixed percentage fine based solely on the passage of time is a contemporary manifestation of Riba Nasi'ah. Unlike a trade transaction where profit is generated from the exchange of goods, a debt-based penalty generates "profit from time," which is strictly prohibited in QS. Al-Baqarah: 275.

By waiving these sanctions, the developer effectively prevents the contract from transitioning from a *Tabarru'* (gratuitous/social) agreement into a prohibited commercial exploitation. This practice reflects the implementation of *Maqasid al-Shari'ah*, specifically *Hifz al-Mal* (protection of property), by ensuring that the wealth obtained by the developer is halal and free from usurious elements. This stance aligns with the principle of *la dharar wa la dhirar* (the prohibition of causing harm), as imposing such penalties could lead to injustice (*zulm*), particularly for consumers in financial distress.

c. The Ethical Dilemma. Taisir vs. Pacta Sunt Servanda

The non-enforcement of the clause implements the spirit of *Inzar al-Mu'sir* (granting a grace period) as mandated by QS. Al-Baqarah: 280. However, this creates a theoretical tension with the principle of *Pacta Sunt Servanda* (*al-'aqdu syari'atul muta'aqidin*), which demands that all agreed-upon terms be strictly followed.

The consistent waiver of penalties may inadvertently foster Moral Hazard. When consumers perceive a lack of tangible consequences (*ukubah*), the deterrent effect of the

contract diminishes. As seen in Case II, where no payment was made whatsoever, the absence of enforcement may lead to chronic non-compliance, ultimately threatening the developer's cash flow and financial sustainability. Therefore, while PT. SBL's approach is ethically commendable in Sharia, it is administratively fragile under standard contract management risks.

d. Towards a Reconciliatory Framework. *Ta'widh and Rahn*

To resolve the dilemma between avoiding riba and enforcing contractual discipline, PT. SBL must move beyond simple waiver toward procedural reconstruction. The conflict can be resolved by shifting the sanction mechanism from *Gharamah* (punitive fine) to *Ta'widh* (compensation for actual loss).

In Sharia Economic Law, *Ta'widh* is permissible because it aims to cover real costs such as administrative expenses, courier fees, or collection costs rather than generating profit from the delay. Furthermore, integrating *Rahn* (collateral) provides a non-interest-based security that ensures consumer commitment without violating the prohibition of riba.

PT. SBL's practice substantively fulfills Sharia principles regarding protection against riba and justice for the debtor. Nevertheless, procedurally, this practice weakens the integrity of the contract. A reconciliation between Sharia values and commercial legal certainty can be achieved by replacing invalid penalty clauses with *ta'widh* or *rahn* mechanisms, which are more equitable and legally consistent.

CONCLUSION

Based on the research findings and the analysis of the late payment penalty clauses in the Debt Acknowledgment Letters (SPH) at PT. SBL, the following conclusions are drawn; Legal Standing of the Penalty Clause. Juridically, the 1% daily penalty clause is formally valid as it is based on the principle of mutual consent (*al-ridha*). However, from the perspective of Sharia Economic Law, the clause is substantively non-compliant. It is categorized as *gharamah* (a fixed financial penalty) which leads to Riba Nasi'ah, as it imposes an additional financial burden on a loan agreement (*Qardh*) without being based on actual, measurable losses (real loss). Implementation at PT. SBL. In practice, PT. SBL consistently refrains from enforcing the penalty clause, even in cases of significant default. This non-enforcement reflects the principle of prudence (*ihtiyat*) to avoid usury and aligns with the Sharia mandate of *Inzar al-Mu'sir* (granting relief to debtors in hardship). While this approach preserves the Sharia integrity of the transaction, it simultaneously weakens the legal certainty of the contract (*pacta sunt servanda*) and risks creating moral hazard among consumers.

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