

DETERMINATION OF FINES FOR THE DEFAULT IMPLEMENTATION OF ONLINE SALES ENTRUSTMENT CONTRACT

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Abstract

Consigning and Unbranded_Store are online shops that sell electronic goods from entrusted sellers. The operational principle of the two online shops is to mediate between 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 study aims to examine how the shops 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 penalties for seller defaults. The authors designed a research procedure with stages: 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 can significantly reduce the level of seller defaults. The determination and imposition of fines for the seller's default on both consignments as a business based on a samsarah contract is done by the concept of ta'widh. The scholars allow the application of the ta'widh, which is implemented based on the parties' agreement in the consignment agreement (samsarah) as long as the dictum does not conflict with the provisions of Sharia.

Keywords: Online shop, game, default, Islamic commercial law, Indonesia

Abstrak

Tujuan dari penelitian ini adalah untuk mengetahui bagaimana toko menentukan besaran denda bagi penjual yang melanggar diktum Perjanjian Jual Beli Konsinyasi dan Toko Tanpa Merek, efektifitas penerapan denda untuk mengurangi tingkat wanprestasi penjual, dan tinjauan akad samsarah terhadap penetapan denda wanprestasi penjual. 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 Consigngaming berdasarkan persentase dari harga barang yang ditetapkan oleh penjual, dan pada Unbranded_Store nilai denda bersifat tetap, yang tercantum dalam ketentuan umum transaksi yang harus dipatuhi oleh penjual. Denda yang diberlakukan oleh kedua program ini, meskipun berbeda dalam prosedurnya, telah mampu mengurangi potensi penjual melakukan wanprestasi yang dapat merugikan manajemen Consigngamig dan Unbranded_Store dari sisi kinerja dan branding sebagai toko online dengan kualifikasi bisnis yang kredibel serta dapat mengurangi tingkat wanprestasi penjual secara signifikan. Penetapan dan pengenaan 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: Toko online, game, wanprestasi, hukum dagang Islam, Indonesia

INTRODUCTION

Fines are essentially punishments in the form of property, whether in the form of material or rights that have value, that must be paid by the person who violates the agreement. Fines usually consist of money that must be paid by the person who made the mistake. As explained above, in business transactions, fines in the form of cash, besides being practical in calculating the value of losses due to default, also make it easier for the injured party to recover losses arising from the business partner's default.¹

In the National Sharia Council's fatwa, the concept of ta'widh and its

¹ Bryan Whitefield, *Risky Business: How Successful Organisations Embrace Uncertainty* (USA: Risk Management Partners, 2020).

implementation must be based on potential risks that may occur to one of the parties, especially to LKS, caused by default or negligence due to the other party's delay in payment, which violates the agreement. Furthermore, the application of ta'widh must be measured on the value of the loss itself, so that the application of ta'widh can only be carried out on losses that are experienced in real terms by the parties in the transaction and must be reimbursed by the party who caused the loss.²

In this study of ta'widh, the author will examine the implementation of sales and entrustment agreements that use fine clauses.³ Based on the author's data, the sale agreement's clauses use a mixed agreement that combines several contract or transaction models. In the practice of entrusting and selling transactions, the agent, as the owner of the entrusting and selling platform, makes agreement clauses with the entrusting party or owner of the goods.⁴ One of the clauses of the sales entrustment agreement is about sanctions for violations committed by the seller or entruster who defaults or does not send the goods in this transaction. The provisions regarding violations and sanctions stipulated in this sales contract are to avoid the occurrence of defaults by the parties, which cause losses to the parties.⁵

The results of observations and interviews with the online shop Unbranded_Store explained that the agreement clause regarding fines had been agreed at the beginning and was a condition for carrying out a sales entrustment transaction. The custodian or seller of goods must agree to the initial agreement before carrying out a sales entrustment transaction. In the Unbranded_Store online shop, fines are imposed on people who cancel goods sold. Apart from that, this online shop also imposes penalties on sellers who sell goods that do not comply with the conditions described

² Nurul Maghfirah et al., 'UNDERSTANDING INTELLECTUAL PROPERTY RIGHTS IN THE INDONESIAN TRADING BUSINESS', *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 3, no. 2 (2022): 89-103, <https://doi.org/10.22373/al-mudharabah.v4i2.3384>.

³ Salim H.S, *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak* (Jakarta: Sinar Grafika, 2021).

⁴ Yusnedi Achmad, *Aspek Hukum Dalam Ekonomi* (Yogyakarta: Deepublish, 2015).

⁵ Chairul Fahmi, Sri Wahyuni, and Laila Muhammad Rasyid, 'THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS', *JURISTA: JURNAL HUKUM DAN KEADILAN* 6, no. 2 (October 1, 2023): 1-22.

when the advertisement was posted.⁶

Based on the background above, the author is interested in researching the problem of fines for default in sales transactions. This research aims to determine the amount of penalties for violations committed by sellers in entrusted sales transactions via the Consigngaming and Unbranded_Store platforms, to determine the effectiveness of applying fines in reducing the level of default by sellers in entrusted sales agreements via the Consigngaming and Unbranded_Store platforms, and to find out the review of the samsarah contract regarding the determination of fines for seller defaults on entrusted sales transactions via the Consigngaming and Unbranded_Store platforms.

METODE PENELITIAN

In this research, the author uses a descriptive type of research by describing the object or subject of research as it is in reality and normative facts objectively. This research's primary and secondary data sources are primary and secondary data. Primary data is obtained through field research, directly from the studied object. Secondary data is from reading literature sourced from library research, in the form of reading materials that have been processed and can be used to support primary data.⁷

Data collection techniques in this research included interviews and documentation techniques. After all the required data is collected, the classified data is analysed using descriptive methods, making it easy to understand and obtaining objective validity from the research results. Next, the final stage of data processing is concluding. The main goal of data analysis is to summarise data in a form that is easy to understand and interpret, so that relationships between research problems can be studied and tested.

RESULTS AND DISCUSSION

A. Determination of Fines for Breach of Contract in Titles for Sale

⁶ R. Serfianto D. Purnomo, *Penyelesaian Sengketa Bisnis* (Jakarta: Gramedia Pustaka Utama, 2018).

⁷ Muhammad Siddiq Armia, *Penentuan Metode Pendekatan Penelitian Hukum* (Banda Aceh: Lembaga Kajian Konstitusi Indonesia (LKKI), 2022), <https://repository.ar-raniry.ac.id/id/eprint/22862/>.

Transactions at Consigning and Unbranded Store

The amount of the stipulated fine in the Consigning online shop is the same as the fee applied in the sale order transaction. The following is the number of fines set by Consigning to the seller or depositor of goods that make default, namely:

Table 1. Number of Fines Set by Consigning

No.	Selling Price of Goods	Fee
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 - ++	Mark Up

(Data source: Documentation data from Consigning management)

Based on the table above, it can be concluded that the fines set by Consigning depend on the price of the goods entrusted by the seller or depositor. It can be exemplified that if the depositor entrusts goods with a price of IDR 500,000 and if he makes a default, the seller or depositor of the goods must pay a fine of IDR 50,000 to the Consigning management.⁸

For the amount of fines with the price of goods that are more than Rp 6,000,000, it is determined according to the cost of the agreement between the depositor of the goods and the Consigning management, who previously agreed on the selling price and fee to the Consigning management. By the table above, the amount of the fine set is the same as the fee previously agreed upon by Consigning and the seller or depositor of the goods.⁹

Unbranded_Store explained that the determination of fines set at the Unbranded_Store online shop varies based on the category of offences

⁸ Forsa Restu Gibran, 'KEPASTIAN HUKUM PENYELESAIAN SENGKETA BISNIS MELALUI ABITRASE', *Lex LATA* 3, no. 2 (26 June 2021), <http://journal.fh.unsri.ac.id/index.php/LexS/article/view/1134>.

⁹ Muhammad Arifin, *Karakteristik Perjanjian Arbitrase Dalam Penyelesaian Sengketa Bisnis* (Medan: umsu press, 2022).

committed by the seller or depositor of goods. The following is the amount of the fine set by Unbranded_Store, namely:

Table 2: The amount of fine set by Unbranded_Store

No.	Offence Type	Amount of fine
1	Fake goods	Rp 1.500.000
2	Not as described	Rp 500.000
3	Not delivering the goods	Rp 500.000

(Data source: Documentation data from Unbranded_Store management)

From the table above, it can be concluded that the amount of the fine value set against the seller's default by Unbranded_Store is determined by the type of violation committed.¹⁰ In this case, the standard value of the fine set is based on the form and type of default committed, which in general is made into three categories, namely fake goods, not according to the description, and not sending goods by the seller or the goods deposited. Sanctions for defaults committed by sellers significantly impact the performance of online stores based on entrustment. In contrast, the performance itself is built through hard work to produce a positive image for the business.¹¹

Consigning and Unbranded_Store set social sanctions for the perpetrators of default in addition to providing a deterrent effect to expose the profile of the party who committed 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 it to the management of the Consigning and Unbranded Store. On the Consigning platform, it is explained that sellers also pay their fines in instalments.

B. Effectiveness of the Application of Fines to Reduce Defaults in the Consigning and Unbranded Store Titling Agreement

The management of Consigning and Unbranded_Store

¹⁰ Munir Fuady, *Hukum Bisnis Dalam Teori dan Praktek Buku Ketiga* (Jakarta: Citra Aditya Bakti, 2018).

¹¹ Fuady.

determines sanctions for depositors who fail to fulfil their obligations, namely holding the depositor accountable for the products they have entrusted. The purpose of imposing fines is to mitigate the behaviour of reckless depositors. The imposition of this fine is highly efficient in eradicating any indication of default on the seller's part, which can significantly undermine the performance and functioning of the two consignment selling platforms. These platforms heavily depend on the trust of consumers and other sellers utilising their services. The value of the fine set fluctuates, but it is directly correlated with the seller's adherence to the stated terms of the agreement. This ensures that the interests of all three parties involved - the platform owner, the seller, and the consumer - are effectively fulfilled, making it a beneficial arrangement.¹²

Unbranded_Store stated that imposing fees for seller defaults can effectively lower the frequency of defaults. This is evident from the fact that imposing fines might diminish the malicious intentions of sellers who are not accountable for the products they entrust or attempt to exploit the incompetence of Consigning and Unbranded_Store management and their customers. Implementing this fine will serve as a deterrent and protect the interests of consumers. This will automatically enhance consumer confidence in consignment business operations that prioritise consumer interests and prevent irresponsible sellers from exploiting opportunities and neglecting their consignment responsibilities.¹³

The aforementioned operational system enables the management of Consigning and Unbranded_Store to provide a direct assurance of transaction security for their customers. This is because the protection system utilised by these two consignment endeavours safeguards all consumer interests to prevent the seller from engaging in exploitation and other irresponsible activities.

C. Review of the Concept of Ta'widh in Determining Fines for Entrusted Sales Transactions via the Consigning and Unbranded Store Platforms

¹² Fahmi Basyaib, *Manajemen Resiko* (Jakarta: Grasindo Indonesia, 2022).

¹³ Lili Yan Ing, Gordon H. Hanson, and Sri Mulyani Indrawati, *The Indonesian Economy: Trade and Industrial Policies* (London & New York: Routledge, 2017).

The broker oversees Consigning and Unbranded_Store, two e-commerce platforms that operate as unofficial institutions established via online media platforms (e.g., Instagram and Line) with no formal legal foundation. Simsar mediates between the remaining parties, property proprietors acting as sellers and buyers; in this instance, the consignment, which possesses Instagram and Line accounts and can also engage in virtual interactions via its platform, is the intermediary.¹⁴ Whether they do so on personal or institutional accounts, the consignment party requires the parties' identities to identify and verify their legal status to prevent potential deviations and misappropriations that could result in legal repercussions. This enables the consignment party to evade liability that should not be imposed and borne by him in his capacity as a consignee, who performs no commercial transactions but merely facilitates them.¹⁵

The parties must agree regarding the nature of the transaction (i.e., whether it involves a corrupt item or haram) and the value of compensation (wages) in advance to prevent any misunderstandings that could lead to gharar. In addition to mediating between the seller and the buyer, the objective of the entrusted sale transaction executed by these two consignment managements is active participation in the transaction, specifically through the buyer's transfer to the management of the two consignments. Payment for the transfer is contingent upon the buyer's safe receipt of the goods. purchasing parties.¹⁶

A provision outlined in this shall pertains to the consensus concerning penalties and nominal sums that are obligated to be remitted in the event of negligent conduct by the vendor. The seller is fully liable for the determination of this fine, which is stipulated in the form of an exception clause within a standard contract provision. This liability arises from the seller's breach of contract.¹⁷

The authority to establish fines and their quantities in muamalah agreements rests with ulama, as Wahbah al-Zuhaili explains in his treatise

¹⁴ Fahmi, Wahyuni, and Rasyid, 'THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS'.

¹⁵ Angelo M. Venardos, *Islamic Banking & Finance in South-East Asia: Its Development & Future* (Singapore: World Scientific, 2006).

¹⁶ Dr Mardani, *Penyelesaian Sengketa Ekonomi dan Bisnis Syariah Litigasi dan Nonlitigasi* (Jakarta: Prenada Media, 2020).

¹⁷ Achmad, *Aspek Hukum Dalam Ekonomi*.

on Nazariyah al-Dhaman: "Compensation, or ta'widh, serves to offset losses incurred due to infractions or errors" (p. 87). "In the context of compensation, general provisions may include the following: (a) covering losses in the form of tangible assets (dharar, danger), such as the cost of wall repairs... (b) restoring damaged items to their original condition for an extended period of time, including the return of damaged items. Deconstructed into a unified entity. "If accomplishing this proves to be challenging, it becomes obligatory to substitute it with an identical item (of the same category) or currency" (p. 93). In contrast, fiqh law dictates that in the event of profit loss, uncertain future losses, or immaterial losses, such items are irreplaceable and cannot be compensated as per the rulings. This is because the subject of compensation is tangible, pre-existing property deemed valuable and permissible for use per Shari'a principles.¹⁸

Management losses in Consigning and Unbranded_Store resulted in fines imposed on account of management losses caused by the seller's breach of contract, specifically the deserting of the online store due to negative customer reviews. This loss is tangible, as not only the management of the two online stores but also the customers who have been anticipating the goods to be ordered are adversely affected by the seller's unilateral cancellation. Thus, it is possible to stipulate a fine in a sales agreement without causing harm to any party involved. When management forfeits profits and the seller is obligated to pay a penalty for an act of default, concrete losses transpire.¹⁹

Based on the aforementioned explanation, it is evident that the act of delegating sales to the Consigning and Unbranded_Store online shops aligns with the principles of the samsarah contract. This is clear as the author explains his practice in accordance with the pillars of the samsarah contract. In the entrusted sale transaction, there are no practises that violate Islamic teachings, such as usury, gharar, and maisir. This is because the parties involved in the transaction, whether the seller or Consigning

¹⁸ Djoko Imbawani Atmadjaja, *Hukum dagang Indonesia: sejarah, pengertian, dan prinsip-prinsip hukum dagang* (Jakarta: Setara Press, 2011).

¹⁹ Iwandi Iwandi, Rustam Efendi, and Chairul Fahmi, 'THE CONCEPT OF FRANCHISING IN THE INDONESIAN'S CIVIL LAW AND ISLAM', *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 4, no. 2 (29 September 2023): 14-39, <https://doi.org/10.22373/al-mudharabah.v5i2.3409>.

management, are transparent and open about their transactions. When deciding the fines imposed by the two online shops, it is essential to note that they align with Islamic teachings. The penalties imposed by Consigning and Unbranded_Store online stores are mutually agreed upon by the seller before the items are entrusted. The seller must be aware of the penalty associated with breaching the contract, as they have consented to the terms of the agreement from the outset.²⁰

Samsarah's innovation, centred initially on in-person or offline transactions, has recently extended to encompass internet transactions. The traditional samsara lacks visual representation as it is conducted offline and only performed by individuals. Currently, Samsarah has established a distinct identity as a result of the online retailer's branding efforts. As a result, the party that takes such action can levy a penalty on the party that breaches the agreement.²¹

Determining fines is not to generate profit via uncertainty (gharar), but rather to mitigate the occurrence of defaults that may undermine the buyer's confidence in future transactions with other business objects. Therefore, it can be concluded that the fines and conditions imposed by both parties are a mutual agreement aimed at protecting their interests. These fines and stipulations serve as clauses in the business transaction and are not the primary objective of the transaction.²²

Hence, the fines imposed by the two consignment management systems are established by mutually accepted standard agreements. The sanctions imposed by Consigning and Unbranded_Store are unilaterally set using distinct calculating procedures. In Consigning, the fine amount is calculated by applying a percentage of the selling price of the entrusted product, as chosen by the seller. At Unbranded_Store, the management determines the fines in a predetermined manner, as specified in the general terms of transactions with the Unbranded_Store platform.

²⁰ Andika Wijaya, *Pengantar hukum dagang: sejarah, pengertian, dan implementasi Undang-Undang Perdagangan di Indonesia* (Jakarta: Setara Press, 2017).

²¹ Alvianus Kristian Sumual, Mario Gerson Lontaan, and Yandi Supit, 'PELAKSANAAN PEMILU DI INDONESIA BERDASARKAN PERSPEKTIF UNDANG UNDANG DASAR 1945', *JOURNAL OF LAW AND NATION* 2, no. 2 (12 March 2023): 103-12.

²² Arifin, *Karakteristik Perjanjian Arbitrase Dalam Penyelesaian Sengketa Bisnis*.

This ensures that sellers know the exact amount of the fine they must pay in the event of a default, and that the value of the goods being sold does not impact the fine amount. Defaulting.

The imposition of sanctions on the two consignment platforms is predicated on a standardised agreement aimed at mitigating potential risks that may undermine the brand reputation cultivated by the platforms, whose operational success hinges on customer testimonials and brand image. The fines imposed by the two consignments on sellers who break the agreement have been designed to effectively decrease the non-compliance rate, and these fines vary in magnitude. These two consignments positively influence seller compliance with the rules established by the two consignments, which have distinct standard clauses in the fine provisions.

CONCLUSION

The determination of fines in the contract agreement is conducted by both parties involved in consignment management to mutually agree upon penalties to uphold the reputation of the online shop in cases of default, typically caused by the seller. Consignment parties that solely cater to the requirements of buyers and sellers will be impacted by the harmful conduct and intentions of one of the parties. This penalty will safeguard the interests of purchasers and ensure the proper handling of consignments by mitigating human mistakes. In essence, the *samsarah* contract and fines are not inherently connected. Still, the *ulama* permit the use of *ta'widh*, which is executed based on the mutual agreement of the involved parties, as long as it does not contradict *Sharia*. The agreement between the consignment parties and the seller aligns with the principles of *ta'widh* and *samsarah* contract, as evidenced by the harmonious and effective implementation of *samsarah*.

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