LATE PAYMENT CHARGE ON JUDGMENT DEBTS ARISING FROM FINANCIAL TRANSACTIONS IN ACCORDANCE WITH SHARIAH[i]

(Order 42 rule 12A, Rules of Court 2012)

By

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When the Rules of the High Court 1980 (RHC 1980) and the Subordinate Courts Rules 1980 (SCR 1980) were drafted, Islamic banking had not been introduced yet in Malaysia. So, the rules on "Interest on Judgment Debts" (Order 42 rule 12, RHC 1980 and Order 29 rule 12 SCR 1980)[ii] were drafted to cater for all judgment debts without any thought being given to judgment debts arising from financial transactions in accordance with Shariah.[iii] Hence, it was provided that a judgment debt carries interest from the date of judgment until the date the judgment is fully satisfied. Of course, "interest" is prohibited by the Shariah but that was not an issue then.

In late 1980s Islamic banking was introduced. It grew by leaps and bounds over the next thirty years. Like the conventional counterpart, customers began to default and civil suits were filed in courts. I understand that, unlike conventional banks, Islamic banks did not ask the court to make an order for interest after judgment as interest is prohibited under the Shariah.[iv]

However, that practice had led to two negative effects. First, Islamic banks were losing money because they were deprived of the "interest after judgment" which conventional banks were entitled to, which could cover the legal and related expenses in the execution of the judgment and also the loss incurred as a result of the delay in the settlement of the judgment debt. Secondly, there is another aspect which is worse. As the judgment debts of Islamic banking cases carries no after-judgment interest, it was in the interest of judgment debtors to delay the settlement of judgment debts of Islamic banking cases. It was more profitable for them to settle judgment debts of conventional banks first. In other words they would gain by delaying the settlement of judgment debts in Islamic banking cases and the longer they were able to delay, the more they would gain.

While Islamic banks suffered silently under the belief that "that is the requirement of Shariah", the defaulting customers, Muslims and non-Muslims, were enjoying "the benefits of Shariah"!

I did not hear anyone doing anything about it. Perhaps it is the usual case of "Those who know common law do not know Islamic law. Those who know Islamic law do not know common law. And, those who think they know both have never practised law." At the same time I used to hear "Muslim scholars" proudly stating that a large number (if not the majority, I can't remember which) of customers of an Islamic bank were non-Muslims, hinting of the "the greatness" of Islamic banking, the Shariah and Islam. I used to tell them privately that it could be because of the weakness of Islamic banking system or its implementation and that those customers were exploiting it. Then, on 28 September 2009, I had the opportunity to say it publicly.

The occasion was the Islamic Financial Services Industry Legal Forum 2009 and this is what I said:

"There is another area, caused by the interlink, that I think should be looked into. I am referring to the Rules of Court relating to the granting of interest by the court upon judgment. The Rules of Court allows the court to make an order of interest of up to 8% from the date of judgment until the date of full payment. This provision was made long before the existence of Islamic banking in Malaysia. It was meant for all judgments. No amendment has been made until today, for application to Islamic banking cases.

…….. The real problem is this: so long as the provision is there, when the court makes an order, it is in the form of interest, which is prohibited. If it is not asked for or is refused by the court, it may encourage the judgment debtor to delay payment of Islamic banking or a takaful judgment sum, because whether he pays it now or ten years later, he still pays the same amount.

…….. It means that judgment debtors will keep avoiding settling judgment debts to Islamic banks. They would settle judgment debts to conventional financial institutions first, or use the money for some other purpose first.

On 26.5.2005 and 24.8.2006, the Shariah Advisory Council of Bank Negara Malaysia had made a ruling that it is permissible for the Islamic Banking Institutions to get an order of compensation of up to 8% of the judgment sum. However, it may only take for itself an amount equivalent to the actual loss which is calculated based on the annual average for overnight weighted rate of the Islamic money market of the preceding year. The rest should be given to charity.

This should be made a rule of court. After all, the Central Bank of Malaysia Act 2009 has now formally recognised the dual financial system that Malaysia has been having over 40 years. It's about time that other laws and procedures follow suit."

I repeated the call on 30th July 2010 when speaking at the Malaysian Law Conference.

Indeed, three days earlier, the Deputy Governor of Bank Negara Malaysia announced the establishment of the Law Harmonisation Committee of Bank Negara Malaysia ("LHC") and I was made Chairman. That issue was the first issue that we tackled. The aim was to make a provision in the rules of court that has the same effect as Order 42, rule 12 RHC 1980 so that the judgment debtors of Islamic institutions would feel a similar pressure to settle the Islamic bank judgment debt as in conventional cases. However, that provision has to be Shariah-compliant. LHC's approach was that we would accept the ruling of the Shariah Advisory Council ("SAC") as the Shariah position on the issue, put up a draft and forward it to the Rules Committee for it to be included in the rules of court.

The Secretariat of the LHC, assisted by officers in the Islamic Banking and Takaful Department (JPIT), International Shariah Research Academy for Islamic Finance ("ISRA"), the Islamic Capital Market Division of the Securities Commission, Association of Islamic Banking Institutions Malaysia, the Attorney General's

Chambers and others got down to work. We decided that the proposed rule should cover financial transactions in accordance with Shariah under both the jurisdiction of Bank Negara Malaysia (Central Bank of Malaysia) ("BNM") and Securities Commission of Malaysia ("SC"). We checked the rulings of the SAC of BNM and the SAC of SC and found that there were discrepancies in the rulings of the two SACs. So, it was decided that a joint paper be presented to a joint meeting of the two SACs. That was done and the joint meeting was held on 25th July 2011 and it made a common ruling.[v]

For brevity, I shall reproduce, the final ruling as agreed by both the SACs. Reproduced here is my own translation in English (the official ruling in Malay is reproduced in the end-note)[vi]:

"Late Payment Charge for Judgment Debt

Rules of Court empower the court to award interest on all judgment debts. Considering that interest is prohibited by Shariah, SAC was referred to ascertain the mechanism of late payment charge which is consistent with Shariah which could be applied in Islamic banking cases.

Resolution

SAC, at the 13th Special Meeting on 25 July 2011 and the 115th Meeting on 25th August 2011 had decided that late payment charge on judgment debt could be implemented as follows:

- *Late payment charge on judgment debt may be awarded by the court from the date of judgment until the date the judgment is fully satisfied as provided by the rules of court. SAC decides that the rate shall be determined by applying the principles of ta'widh and gharamah.*
- *Ta'widh refers to compensation on actual loss. Taking into consideration the difficulty in determining the amount of actual loss and in view of the importance of uniformity in the industry, SAC decides that the rate of actual loss should be determined by a third party. In the context of Islamic banking SAC mandated Bank Negara Malaysia as the authority to determine the rate of actual loss. Further, SAC takes the stand that the rate that could be used to determine the actual loss is the daily overnight Islamic interbank rate available in the Islamic Interbank Money Market (bnm.iimm.gov.my) website on the date of the judgment and calculated monthly based on daily rest basis.*
- *Gharamah refers to the penalty imposed as a deterrent measure for the delay in payment by the debtor. In this context, gharamah refers to the difference between late payment charge and ta'widh, that is the difference if the ta'widh is less than the late payment charge. Late payment charge is determined by rules of court.*
- *Late payment charge on judgment debt shall not be compounded.*
- *The judgment creditor is only entitled to receive the amount of ta'widh. If the amount of ta'widh is equal to or more than the amount of late payment charge, the whole amount of the late payment charge may be taken by the Judgment Creditor. On the other hand, if the amount of the late payment charge exceeds the amount of the ta'widh, the excess will have to be channeled to charitable institutions.*

- *The total amount of late payment charge shall not exceed the outstanding principal amount.*
- *The calculation of late payment charge on judgment debt shall be based on the basic judgment sum. The outstanding principal amount of the judgment is the balance due subject to ibra', if applicable, and does not include pre-judgment late payment charge and related costs.*
- *Regarding the administration of gharamah, SAC takes the stand to give the mandate to the Shariah Committee/Advisor (of the respective IFI – my addition) to determine the suitable charitable institutions to receive the gharamah, including baitul mal. The channeling of the gharamah shall be undertaken by the judgment creditors. Judgment creditors must ensure that the channeling of the gharamah to charitable institutions does not result in any form of benefit to the said judgment creditor;*
- *Besides, institutions under the supervision of BNM are required to submit a report on the channeling of gharamah that had been made by the institutions from time to time."*

At its 115th meeting on 25 August 2011, the SAC had also decided that there was no restriction in Shariah for arbitrators to impose late payment charge as provided in arbitration procedures or as applicable to court, subject to the provisions of the relevant law.

After many drafts and meetings and going back to the SACs for rulings, a final draft was agreed. However, as the Judiciary was in the process of introducing a completely new Rules of Court, we had to wait for it to be approved and gazetted. And, on 26th June 2012 the Rules Committee approved it and the new Order 42 rule 12A appears in the new Rules of Court 2012 (P.U.(A) 205/2012.

The new Order 42 rule 12 reads as follows:

*"**Interest on judgment debts (O. 42, r. 12)***

12. Subject to rule 12A, except when it has been otherwise agreed between the parties, every judgment debt shall carry interest at such rate as the Chief Justice may from time to time determine or at such other rate not exceeding the rate aforesaid as the Court determines, such interest to be calculated from the date of judgment until the judgment is satisfied.

The new rule 12A reads as follows:

"Late payment charge on judgment debts arising from financial transactions in accordance with Shariah (O. 42, r. 12A)

12A.(1) Every judgment debt arising from financial transactions in accordance with Shariah shall carry a late payment charge calculated from the date of judgment until the judgment debt is fully satisfied at the rate provided under Order 42, rule 12 and subject to the following conditions:

(a) the Judgment creditor shall only be entitled to ta'widh as a result of late payment;

(b) the amount of late payment charge shall not exceed the outstanding principal amount; and

(c) if the amount of ta'widh is less than the amount of late payment charge, the balance shall be channelled to any charitable organizations as determined by the Shariah Advisory Council.

(2) For the purpose of this rule –

(a) "Shariah Advisory Council" means the Shariah Advisory Council established under the Central Bank of Malaysia Act 2009 [Act 701] and the Capital Markets and Services Act 2007 [Act 671]; and

(b) "ta'widh" means compensation for actual loss and shall be calculated at the rate determined by the Shariah Advisory Council."

Now, let me try to explain why the rule is drafted that way, what it is intended to achieve and, hopefully, how it would work.

Rule 12 is the original rule with a slight amendment added. The rule:

1. Declares that every judgment debt carries interest at such a rate as may be determined by the Chief Justice (in the RHC 1980, it was fixed at 8%, later 4%);
2. However that is subject to agreement by parties to the contrary. In other words, parties may agree beforehand (e.g. in the loan agreement) to a particular rate which is usually higher than the rate prescribed by the Chief Justice;
3. The interest runs from the date of judgment to the date of full satisfaction i.e. full settlement;
4. The Court may make an order not exceeding the rate determined by the Chief Justice or as agreed by the parties;
5. The words "Subject to rule 12A" are added to facilitate the introduction of rule 12A.

It is important to note that the words "Subject to rule 12A" are added to provide that in the specific case mentioned in rule 12A i.e. judgment debts arising from financial transactions in accordance with Shariah, it is rule 12A that applies. Rule 12 is only relevant to refer to the rate determined by the Chief Justice. In other words, the same rate determined by the Chief Justice is applicable to judgment debts arising from "conventional" judgment debts as well as judgment debts arising from financial transaction in accordance with Shariah. The reason behind it to avoid disparity mentioned above so that there is also pressure on judgment debtors to settle their judgment debts to Islamic financial Institutions (IFIs). However, there is one very important matter that must be remembered: the words *"…except when it has been otherwise agreed between the parties"* do NOT apply to cases arising from financial transactions in accordance with Shariah. Shariah does not permit parties to agree beforehand the rate of interest or late payment charge, whatever it is called, as that is *riba*. So, the only rate of late payment charge that the court may order in cases arising from financial transactions in accordance with Shariah is the rate determined by the Chief Justice. One may say that there is still room for disparity. It does not matter. That may be the difference between the conventional and Shariah positions.

There could even be *"hikmah"* in the Shariah position, which is arguably more customer-friendly besides the provision that the late payment charge should not exceed the capital amount and the fact that the amount in excess of *ta'widh* (i.e. *gharamah*) is to be channelled to charity.

We now come to rule 12A itself. Under rule 12A, a judgment debt arising from a financial transaction in accordance with Shariah carries a late payment charge from the date of the judgment until the date of full satisfaction, at a rate determined by the Chief Justice referred to in rule 12, not more and not less. The rule does not talk about *"not exceeding the rate aforesaid*" as in rule 12. As emphasised earlier, it also does not permit parties to agree between themselves beforehand as that would be *riba*.

Having said that, the rule goes on to provide the conditions applicable. These conditions are Shariah requirements which make a difference between Shariah and conventional positions. The conditions are:

1. Even though the judgment debt carries a late payment charge at the rate prescribed by the Chief Justice, (say, 4%) the judgment creditor is not necessarily entitled to the full amount as in the case of conventional judgment debt under rule 12. The judgment creditor is only entitled to the amount equal to the *ta'widh* which may, usually, be less than the rate prescribed by the Chief Justice.
2. In any event, the amount of late payment charge, should not be more than the outstanding principal amount.
3. If the amount of *ta'widh* is less than the amount of the late payment charge, the balance will be channelled to charitable institutions as may be determined by the SAC.

Rule 12A(2)(b) explains what *ta'widh* is. *Ta'widh* means compensation for actual loss and shall be calculated at the rate determined by the SAC. In other words, the Shariah principle is that a judgment creditor is entitled to "actual loss" as late payment charge. However, as "actual loss" is difficult to determine and as it is important that there should be uniformity in the industry, the SAC decided that the rate of actual loss should and could be determined by a third party, which, in the context of Islamic banking is Bank Negara Malaysia. The SAC also decided that the rate that could be used to determine the rate of actual loss is the "*daily overnight Islamic interbank rate"* on the date of the judgment calculated monthly on daily rest basis which is available in the *Islamic Interbank Money Market (bnm.iimm.gov.my),* website. So, instead of trying to calculate the actual loss in every case, the lawyer or bank officer need only to refer to the website to find out the rate on the day of the judgment to determine the amount of actual loss.

The Shariah justification for late payment charge at the rate as may be determined by the Chief Justice is arrived at by applying the Shariah principles of *ta'widh* and *gharamah*. *Ta'widh* is the "actual loss" suffered by the judgment creditor as a result of the delay in settlement of the judgment debt. It is assumed that the amount would normally be less than the rate determined by the Chief Justice, even at 4%. As a result, based on the principle of *ta'widh* alone, it would not be justifiable for the late payment charge to be at 4%. So, the principle of *gharamah* was also brought in. *Gharamah* is penalty for late payment resulting in financial loss to the judgment

creditor. The idea here is to pressure or induce the judgment debtor not to purposely delay the payment of Islamic banking judgment debt. That is a policy decision of the Authority or Government to prevent the "evil" caused by the absence of such a provision. So, the principle of *gharamah* is used to "top up" the rate of the late payment charge so that it is equal to the rate determined by the Chief Justice, applicable to conventional judgment debts. However, in Shariah the judgment creditor is only entitled to *ta'widh*. What happens to the balance, where the *ta'widh* is less than *gharamah*? Answer: to be channelled to charitable institutions determined by the SAC.

To summarise the effects of the new rule:

1. Every judgment debt arising from an Islamic financial transaction carries a late payment charge at a rate determined by the Chief Justice, say 4% per annum.
2. The "judgment debt" refers to the outstanding principal amount[vii]. The outstanding principal amount is the balance due subject to *ibra',* where applicable, and does not include late payment charge prior to the date of judgment and other costs. (This is explained in the Ruling of the SAC reproduced above)
3. The late payment charge is arrived at by multiplying the outstanding principal amount by the number of days of the delay from the date of judgment until the date of full satisfaction at 4% per annum. That will give the amount of the late payment charge, say RM10,000.00. This amount must not be more than the outstanding principal amount, otherwise it would be limited to that amount.
4. *Ta'widh* is arrived at by multiplying the outstanding principal amount by the *"daily overnight Islamic interbank rate"* on the date of judgment calculated monthly on daily rest basis for the period of the delay. That will give the amount of *ta'widh*, say RM6,000.00.
5. The difference between late payment charge and the *ta'widh* is the *gharamah*, which is to be channelled to charitable institutions. (RM10,000.00 – RM6,000.00 = RM4,000.00. In this example the RM4,000.00 is to be channelled to charitable institutions.

Further details are to be found in the rulings of the SAC. The SAC delegates the power to Shariah Committees/Shariah Advisors of the respective Islamic Financial Institution ("IFI") to determine suitable charitable institutions, including *Baitul Mal*, to receive the *gharamah*. It stresses that it is the responsibility of the judgment creditor to distribute the *gharamah* as provided by the rule and the ruling of the SAC. It is also the responsibility of the judgment creditor to ensure that the distribution of *gharamah* does not benefit the judgment creditor. Finally, every IFI under the supervisory jurisdiction of Bank Negara Malaysia is required, from time to time, to submit a report to Bank Negara Malaysia regarding its distribution of *gharamah.* In its 155th Meeting on 25th August 2011, SAC also decided that there is no Shariah objection for the rule to be adopted by Arbitrators.

How will it work? I believe it should be something like this:

1. In the statement of claim arising from a financial transaction in accordance with Shariah, the Plaintiff's solicitor would include a prayer for "late payment charge" instead of for "interest".
2. The court, as usual would only record "O.I.T." meaning "Order in terms" or Order as prayed.

3. Plaintiff's Solicitor would draw up the draft Order of Court, which includes the order for late payment charge.
4. The Registrar approves and issues the order.
5. Assuming that execution is carried out and the judgment debtor settles the full judgment debt, including the late payment charge, then the judgment creditor (IFI) will calculate the amount of *ta'widh* by referring to the website (http://iimm.bnm.gov.my/). If the *ta'widh* is less than the late payment charge, then the balance will have to be channelled to charity.
6. Even though power is given to the SAC to determine the charitable institutions for the purpose, the SAC has delegated the power to the Shariah Committee of each of the IFIs to determine them. The IFI, I believe, would place the amount in an account and pay out to the charitable institutions periodically. The rule is silent whether the amount should be paid periodically or as and when it is available. It is also silent whether prior consent of the Shariah Committee should be obtained regarding the amount to be paid and to which particular charitable institution. I would suggest that for the sake of transparency it would be better if the IFIs were to table their proposed payments to the charitable institutions for approval by their respective Shariah Committee before payment is made.

The rule is made on the basis that the judgment creditor is an IFI and that an IFI would honestly comply with the rule regarding the portion to be paid out to charitable institutions and not fraudulently embezzle it. A question may be asked: what if the IFI embezzles it? The answer is simple: It would be a case of criminal breach of trust and the law would take its own course. Besides, the IFI itself has its own system of checking whether such a thing happens. I personally believe that we have to give the IFIs a certain amount of trust. After all they are concerned that their business is Shariah-compliant (that is why they choose Islamic banking instead of conventional banking), then it follows that they would also ensure that just as they do not want to "devour" *riba*, they would not want to "devour" the portion to be paid to charitable institutions. It is no less *haram* than "devouring" *riba*. Another factor to be noted is that IFIs are under the supervision of Bank Negara Malaysia.

What if the judgment creditor is an individual? Our hope is that if he is pious enough to choose the Islamic financial transactions to avoid *riba*, he should also not want to devour the property of charitable institutions. It is also hoped that solicitors will explain the provision of the rule and the Shariah requirement to their clients. In any event, I think there are not many such cases.

We have introduced something new, which no one had ever done, perhaps in the history of the Shariah and common law. We cannot expect perfection. After all, nobody had come up with an alternative, not to say a better one. Give it a few years. During that period we will monitor how it works and make whatever improvement that is necessary. Anyone who has an idea of how to improve it should contact the Law Harmonisation Committee Secretariat of Bank Negara Malaysia or myself. Let us all play a part in this *amal jariah* and in the development of *Shariah,* particularly *mu'amalat* in this new millennium.

I hope that this innovation adds to the development of the rules of court as well as the Shariah, particularly *mu'amala*t. Whichever way one looks at it, it is the first rule

of its kind ever introduced in the long history of Shariah and common law. That is harmonisation of laws. East and West have met? Rudyard Kipling and Samuel Huntington may not be absolutely right after all.[viii]

NOTES

[i] Even when we were drafting the rule, I had said that when the rule comes into force, "someone" should write an article to explain it. However, when Miss Huma Sodhera, a Phd. Candidate from Bangor University, Wales, UK and Visiting Fellow, ILSP, Harvard Law School (2012-2013) visited me on the Aidil Fitri 1433 (19 August 2012) she convinced me that I should write it myself and I began writing it the same evening. That was four days before my cervical surgery. I continued working on it at Tanjung Roam, Ward 7 and finalised it later at Mawar Room, Ward 14, Kuala Lumpur Hospital. The production of this rule (indeed the writing of this article) had involved experts from various disciplines like common law lawyers, Shariah scholars, regulators, bankers and others. I am grateful to all of them.

[ii] For brevity, I will only be referring only RHC 1980.

[iii] I happened to be the Secretary to the Sub-Committee that drafted the Rules of the High Court 1980, The Subordinate Courts Rules 1980 and the Federal Court Rules 1980. I was then the Deputy Registrar of High Court Malaya. The Sub-Committee consisted of the late Tan Sri Chang Min Tat, then Supreme Court Judge, Mr. Lim Kean Chye, a lawyer from Penang and myself.

[iv] At a seminar organized by the Association of Islamic Banking Institutions Malaysia on 8 May, a bank officer complained that the courts were giving interest after judgment in cases arising from Islamic banking as well. I replied to him: "Tell your lawyer not to pray for it. If he does, it would be wrong for the court not to make an order for it as the rules applies to all judgment debts."

[v] That was the first of a joint meeting of the two SACs, hopefully a first step towards the establishment of a single SAC.

[vi] "***Caj Lewat Bayar bagi Hutang Penghakiman***

Kaedah-kaedah Mahkamah memberi kuasa kepada mahkamah untuk mengenakan faedah ke atas semua hutang penghakiman. Memandangkan bahawa pengenaan faedah adalah dilarang oleh Syarak, MPS dirujuk berhubung dengan kaedah caj lewat bayar yang selaras dengan hukum Syarak yang boleh dilaksanakan bagi kes perbankan Islam

Keputusan

MPS dalam mesyuarat khas ke-13 bertarikh 25 Julai 2011 dan mesyuarat ke-115 bertarikh 25 Ogos 2011 telah memutuskan bahawa caj pembayaran lewat dalam hutang penghakiman boleh dilaksanakan seperti berikut:

- *Caj pembayaran lewat bagi hutang penghakiman boleh dikenakan oleh mahkamah dari tarikh penghakiman dibuat sehingga hutang penghakiman tersebut diselesaikan pada kadar yang diperuntukkan oleh kaedah-kaedah mahkamah. MPS memutuskan bahawa kadar tersebut hendaklah ditentukan dengan menggunakan prinsip-prinsip ta`widh dan gharamah.*

- *Ta`widh merujuk kepada ganti rugi ke atas kerugian sebenar. Mengambil kira kesukaran dalam menentukan jumlah kerugian sebenar dan keperluan kepada penyelarasan dalam industri, MPS memutuskan bahawa kadar kerugian sebenar hendaklah ditetapkan oleh pihak ketiga. Dalam konteks perbankan Islam, MPS memberikan mandat bagi menentukan kadar kerugian sebenar tersebut kepada BNM selaku pihak berkuasa. MPS turut mengambil pendirian bahawa kadar yang boleh diguna pakai bagi menentukan kerugian sebenar ialah kadar semalaman antara bank*

secara Islam (daily overnight Islamic interbank rate) seperti yang dipaparkan dalam laman sesawang Islamic Interbank Money Market (bnm.iimm.gov.my), ditetapkan pada tarikh penghakiman dibuat dan dikira secara bulanan berasaskan kaedah baki harian (daily rest basis).

- *Gharamah merujuk kepada penalti yang dikenakan sebagai langkah pencegahan kepada kelewatan pembayaran oleh penghutang. Dalam konteks ini, gharamah merujuk kepada perbezaan antara caj pembayaran lewat dan ta`widh, iaitu lebihan sekiranya ta`widh kurang daripada jumlah caj pembayaran lewat. Caj pembayaran lewat adalah ditentukan oleh kaedah-kaedah mahkamah;*

- *Caj pembayaran lewat ke atas hutang penghakiman tidak boleh dikompaunkan;*

- *Pemiutang penghakiman hanya berhak menerima jumlah ta`widh sahaja. Sekiranya jumlah ta`widh menyamai atau melebihi jumlah caj pembayaran lewat, keseluruhan jumlah caj pembayaran lewat tersebut boleh diambil oleh pemiutang penghakiman. Sebaliknya, jika jumlah caj pembayaran lewat melebihi jumlah ta`widh, lebihan tersebut perlu disalurkan kepada badan kebajikan;*

- *Jumlah caj pembayaran lewat tidak boleh melebihi amaun baki pokok;*

- *Pengiraan caj pembayaran lewat bagi hutang penghakiman adalah dikenakan ke atas jumlah asas penghakiman. Jumlah asas penghakiman adalah baki tertunggak tertakluk kepada ibra' sekiranya terpakai dan tidak merangkumi caj pembayaran lewat sebelum penghakiman dan kos-kos lain;*

- *Berhubung isu pengurusan gharamah, MPS mengambil pendirian untuk memberikan mandat kepada Jawatankuasa Syariah/Penasihat Syariah bagi menentukan badan-badan kebajikan yang sesuai untuk menerima gharamah termasuk baitul mal. Penyaluran gharamah tersebut perlu dilaksanakan oleh pemiutang penghakiman. Pemiutang penghakiman hendaklah memastikan bahawa sebarang penyaluran gharamah kepada badan kebajikan tidak menghasilkan sebarang bentuk manfaat kepada pemiutang penghakiman tersebut; dan*

- *Selain itu, institusi-institusi di bawah kawal selia BNM perlu menghantar laporan tentang penyaluran gharamah yang telah dilaksanakan oleh institusi berkenaan dari semasa ke semasa.*

[vii] BNM's Guidelines uses the term "basic judgment sum". It refers to the same thing.

[viii] As I am finalising this article, the LHC has come up with another draft to cover *takaful* cases. This is because, the principle applicable to *takaful* is different from in Islamic banking cases.