

***Ta'zir* for Contractual Fraud: Evaluating Islamic Penal Sanctions as a Deterrent in Modern Contract Law**

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Abstract: Contractual fraud has become an increasingly significant challenge in modern business transactions, particularly when fraudulent conduct causes mass economic losses, targets vulnerable consumers, and is repeatedly committed through corporate structures. Existing contract law primarily addresses fraud through civil remedies such as damages and contract rescission. While these mechanisms compensate victims, they often fail to generate sufficient deterrent effects against systematic and recurring misconduct. This article examines the potential of *ta'zir* as a supplementary sanction for aggravated contractual fraud and evaluates its compatibility with Deterrence Theory. Employing a normative legal research method, this study analyzes legal doctrines, statutory regulations, Islamic criminal law principles, and relevant scholarly literature using conceptual and comparative approaches. The findings indicate that not all contractual breaches justify *ta'zir* sanctions; however, fraudulent conduct characterized by intentional deception (*dolus*), mass victimization, exploitation of vulnerable groups, and repetitive misconduct may warrant *ta'zir*-inspired interventions. The study further finds that enhanced financial penalties, business license revocation, director disqualification, and restorative obligations possess stronger deterrent potential than ordinary civil remedies because they increase the economic and professional costs of fraudulent behavior. This article contributes to the literature by developing a *ta'zir*-inspired deterrence model for aggravated contractual fraud that bridges Islamic criminal law, contract law, and modern business regulation.

Keywords: contractual fraud; *ta'zir*; deterrence theory

1. Introduction

Modern business transactions are founded upon the principle of *pacta sunt servanda* and mutual trust between contracting parties. However, such trust is frequently exploited through contractual fraud. In Indonesia, cases involving infrastructure project defaults, fraudulent investment schemes disguised as sale and purchase agreements, and the manipulation of clauses in consumer credit contracts have caused substantial economic losses, affecting not only individual victims but also undermining the national investment climate. According to data from the Indonesian Financial Services Authority (OJK) in 2024, public losses resulting from illegal investments, illegal online lending platforms, and illegal pawnshop operations reached IDR 139.67 trillion during the period 2017–2023¹. Most of these schemes originated from contracts containing misrepresentations or the concealment of material facts.

In modern contract law systems, whether based on common law or civil law traditions such as the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), contractual fraud is generally addressed through civil remedies, including contract annulment under Article 1320 of the Civil Code, compensation for breach of contract under Article 1243, and tort

¹ Grace El Dora, "OJK Sebut Angka Fantastis Dari Kerugian Akibat Investasi Ilegal," Investor.ID, 2024, <https://investor.id/nasional/372666/ojk-sebut-angka-fantastis-dari-kerugian-akibat-investasi-ilegal>.

liability under Article 1365. This approach is essentially compensatory and corrective in nature. However, it suffers from several significant limitations. First, proving the existence of *dolus* or bad faith is often difficult, time-consuming, and evidentially burdensome. Second, monetary compensation is frequently disproportionate to the benefits unlawfully obtained by the perpetrator. Third, civil remedies lack a meaningful deterrent effect, as fraudsters may simply establish new business entities and continue similar fraudulent practices after paying compensation. In other words, civil law effectively addresses losses that have already occurred but often fails to prevent future fraud.

This issue becomes increasingly critical when contractual fraud is committed on a large scale and targets the general public. Illegal online lending schemes utilizing unfair standard-form contracts, fictitious crowdfunding projects, and supply-chain fraud cannot be adequately resolved through the simple principle that “those who cause losses must compensate the victims.” The resulting harm is collective in nature and undermines the public interest (*maslahah*), particularly the protection of property and transactional certainty. At this point, modern criminal law also encounters significant limitations. Under Indonesian law, fraud is criminalized under Article 378 of the Criminal Code only when there is a clear pattern of deception. More sophisticated forms of contractual misconduct, such as constructive fraud or breaches of the duty of good faith, often fall outside the scope of criminal liability. Consequently, a zone of impunity emerges in which conduct that causes substantial public harm is neither sufficiently serious to trigger criminal sanctions nor adequately deterred through civil litigation alone.

Islamic criminal law, through the framework of *fiqh al-jinayah*, offers a different legal instrument in the form of *ta'zir*. Unlike *hudud* and *qisas*, which involve fixed punishments prescribed by Islamic law, *ta'zir* refers to discretionary sanctions whose determination is entrusted to the ruler (*ulil amr*) or judge for acts that harm public welfare, even when no specific punishment is prescribed in the primary legal sources. The principle of *hifz al-mal* (protection of property), as one of the fundamental objectives of *maqasid al-shariah*, places the protection of wealth and the prevention of collective economic harm at the center of legal policy. Within this framework, *ta'zir* may function as an instrument of deterrence. Its sanctions are not limited to imprisonment but may include enhanced financial penalties, revocation of business licenses, blacklisting of corporate managers, and compulsory community service. Such flexibility enables the law to respond more effectively to evolving forms of contractual fraud arising from increasingly complex business practices.

Nevertheless, the integration of *ta'zir* as a supplementary sanction to civil remedies in cases of contractual fraud remains a significant research gap. Existing studies generally maintain a strict separation between civil and criminal law or discuss *ta'zir* primarily in relation to offenses involving public morality and public order². Furthermore, the literature has not explicitly examined the effectiveness of *ta'zir* through the lens of Deterrence Theory in addressing contractual fraud.³ This gap provides the primary motivation for the present study. Contemporary contract law scholarship largely agrees that fraud in contractual

² Ronit Peled-Laskov, “When Personal Rational Decision-Making Fails: Examining the Psychological Limits of Criminal Punishment as a Successful Deterrent for White-Collar Offenders,” *The Journal of Forensic Psychiatry & Psychology* 35, no. 3 (May 3, 2024): 331–55, <https://doi.org/10.1080/14789949.2024.2335898>; Bahman Khodadadi, “Discretionary Punishment (Ta’zir) in Islamic Jurisprudence and the Islamic Penal Code,” ed. Bahman Khodadadi, *On Theocratic Criminal Law: The Rule of Religion and Punishment in Iran* (Oxford University Press, October 24, 2024), <https://doi.org/10.1093/9780191995088.003.0003>.

³ Peled-Laskov, “When Personal Rational Decision-Making Fails: Examining the Psychological Limits of Criminal Punishment as a Successful Deterrent for White-Collar Offenders.”

relationships is resolved through civil remedies, particularly damages and contract rescission. However, such an approach often fails to generate meaningful deterrence, as perpetrators may continue engaging in fraudulent practices even after compensating victims.⁴ In contrast, Islamic criminal law offers the institution of *ta'zir*, which provides a flexible framework of discretionary sanctions capable of extending beyond monetary compensation, particularly in cases involving conduct that threatens public welfare, such as large-scale fraud⁵. Despite its potential relevance, the role of *ta'zir* as a deterrence mechanism in contractual fraud remains largely unexplored in existing legal scholarship.

This article contributes to the literature by reconceptualizing *ta'zir* not as an alternative criminal punishment but as a supplementary mechanism that complements civil remedies in addressing aggravated contractual fraud. Unlike previous studies that treat civil and criminal responses as separate domains, this study develops an analytical framework that combines Deterrence Theory and *Maqasid al-Shariah* to determine when an ordinary breach of contract (*wanprestasi*) evolves into fraudulent conduct warranting *ta'zir* intervention. The study proposes a typology of contractual fraud that satisfies the criteria for *ta'zir* sanctions and develops a sanctioning model that may be adapted to contemporary business law systems. Through this approach, the article seeks to bridge the gap between Islamic criminal law and modern contract law while offering a normative framework for strengthening deterrence against large-scale contractual fraud.

2. Results and Discussion

2.1 Typology of Contractual Fraud Eligible for *Ta'zir*

The application of *ta'zir* sanctions to contractual disputes requires a clear distinction between ordinary breach of contract (*wanprestasi*) and fraudulent contractual conduct (*dolus*). Not every contractual violation constitutes a public wrong deserving penal intervention. Classical contract law generally treats contractual breaches as private disputes arising from non-performance, delay in performance, or imperfect performance of contractual obligations. Such breaches may result from negligence, financial difficulties, business miscalculations, or unforeseen circumstances. Consequently, the appropriate remedies are civil in nature, including damages, specific performance, or contract rescission.

In contrast, contractual fraud involves intentional deception at the formation or execution of the contract. The distinguishing feature of *dolus* lies in the existence of fraudulent intent from the outset of the transaction. The perpetrator knowingly misrepresents material facts, conceals relevant information, or creates false expectations in order to induce the other party to enter into an agreement that would not otherwise have been concluded. In such circumstances, the contract serves not as a legitimate commercial instrument but as a vehicle for unlawful enrichment.

From the perspective of Islamic criminal law, not every act of fraud automatically justifies *ta'zir* sanctions. The principle of proportionality requires that penal intervention be reserved for conduct that extends beyond private contractual disputes and threatens broader public interests. This approach is consistent with contemporary scholarship

⁴ Aditi Bagchi, "Contract as Procedural Justice," *Jurisprudence* 7, no. 1 (January 2, 2016): 47–84, <https://doi.org/10.1080/20403313.2015.1079430>.

⁵ Hisamudin Rahimzai and Naqibulla Mushfiq, "Ta'zir Punishment and Delegated Authority in Accordance with Islamic Jurisprudence and Afghanistan's Enacted Laws," *Integrated Journal for Research in Arts and Humanities* 3 (September 1, 2023): 1–14, <https://doi.org/10.55544/ijrah.3.5.1>.

emphasizing that *ta'zir* functions as a discretionary mechanism aimed at protecting public welfare (*maslahah*) and addressing harmful conduct not adequately covered by fixed punishments, while remaining subject to the principles of necessity and proportionality⁶. Likewise, studies on Islamic criminal justice have highlighted that discretionary sanctions should be imposed only where misconduct produces broader social or economic harm and where ordinary legal remedies are insufficient to safeguard public interests⁷. Therefore, this article proposes three cumulative criteria for identifying contractual fraud eligible for *ta'zir* sanctions.

The first criterion is the existence of massive economic loss affecting multiple victims. Fraudulent conduct that causes widespread financial harm differs fundamentally from isolated contractual disputes between two parties. Modern business practices have enabled fraudsters to exploit contractual mechanisms on a large scale through investment schemes, crowdfunding platforms, consumer financing arrangements, and digital transactions. When contractual fraud results in collective losses and undermines public confidence in commercial transactions, the harm transcends individual interests and threatens the protection of property (*hifz al-mal*) as one of the fundamental objectives of Islamic law.

The second criterion concerns the vulnerability of the targeted victims. *Ta'zir* becomes particularly relevant when fraudulent contractual schemes deliberately target individuals or groups with limited bargaining power, inadequate financial literacy, or restricted access to legal remedies. Examples include elderly consumers, low-income communities, small business owners, and first-time investors. In such situations, the imbalance of information and economic power increases the moral gravity of the offense and strengthens the justification for enhanced sanctions beyond ordinary civil liability.

The third criterion is the repetitive or systematic nature of the fraudulent conduct. A single act of misrepresentation may still be addressed through conventional contractual remedies. However, where the perpetrator repeatedly employs similar fraudulent schemes, establishes multiple corporate entities to avoid liability, or demonstrates a pattern of recurring misconduct, the risk to public welfare becomes substantially greater. Repetition indicates that civil remedies alone have failed to deter the offender and that stronger measures are necessary to prevent future harm.

Based on these criteria, this article argues that contractual fraud should be classified into two categories. The first category consists of ordinary contractual disputes, which remain subject to private law remedies. The second category consists of aggravated contractual fraud characterized by mass economic losses, exploitation of vulnerable victims, and repetitive fraudulent conduct. It is within this second category that *ta'zir* sanctions may legitimately operate as a supplementary legal mechanism designed to protect public welfare, preserve market integrity, and strengthen deterrence against economic misconduct.

Accordingly, the boundary between civil liability and *ta'zir* is not determined merely by the existence of contractual breach, but by the degree to which fraudulent conduct threatens the broader interests of society. When contractual fraud evolves from a private dispute into

⁶ Asmuni Arafat, Muhammad, "Implementation of Maqashid Al-Syariah in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia," *Al-Sulthaniyah* 14, no. 1 (2025): 45–68, <https://doi.org/https://doi.org/10.37567/al-sulthaniyah.v14i1.3577>.

⁷ Arminsyah, "Maqāṣ Id Al- Sharī' Ah in Contemporary Legal Systems: An Analysis of Digital Rights and Privacy Protection," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 2 (2025): 289–308, <https://doi.org/https://doi.org/10.32505/qadha.v12i2.11178>.

a systematic threat to economic justice and public trust, the imposition of *ta'zir* becomes normatively justified within the framework of *maqasid al-shariah*.

The proposed model does not seek to criminalize every contractual breach. *Ta'zir* is limited to aggravated contractual fraud characterized by intentional deception, mass victimization, and repetitive misconduct. This threshold serves as a safeguard against overcriminalization while preserving the distinction between private contractual disputes and public economic harm.

2.2 Reconstructing *Ta'zir* Sanctions for Aggravated Contractual Fraud

Having established the category of aggravated contractual fraud, the next question concerns the appropriate form of sanctions capable of addressing the unique characteristics of modern business misconduct. Conventional contract law primarily relies on compensatory remedies aimed at restoring the injured party to the position they would have occupied had the fraud not occurred. While such remedies serve an important corrective function, they often fail to eliminate the economic incentives that motivate fraudulent behavior. Consequently, perpetrators may regard compensation payments merely as a calculable business risk rather than a meaningful legal consequence.

Islamic criminal law offers an alternative approach through the institution of *ta'zir*. Unlike *hudud* and *qisas*, which are governed by predetermined sanctions, *ta'zir* grants discretionary authority to the ruler or judge to determine appropriate punishments based on the nature of the offense and the degree of harm caused to society. This flexibility enables *ta'zir* to respond effectively to emerging forms of economic misconduct that were not specifically contemplated in classical legal texts. In the context of contractual fraud, *ta'zir* functions not as a substitute for civil remedies but as a supplementary mechanism designed to protect public welfare and prevent future harm.

From a regulatory perspective, the discretionary nature of *ta'zir* is particularly relevant to contemporary business transactions, where fraudulent conduct often evolves more rapidly than statutory regulation. Modern contractual fraud frequently involves complex corporate structures, digital platforms, misleading investment schemes, and deceptive financing arrangements that may not fit neatly within traditional categories of criminal fraud. The flexibility of *ta'zir* allows legal authorities to calibrate sanctions according to the scale of harm, the number of victims affected, and the broader impact on market integrity. Such an approach is consistent with the preventive orientation of Islamic law, which seeks not only to remedy individual losses but also to preserve social and economic stability through the protection of property (*hifz al-mal*).

This rationale also aligns with contemporary deterrence scholarship. Economic actors often engage in fraudulent behavior after weighing potential gains against expected legal consequences. Where sanctions are limited to compensation, perpetrators may perceive fraud as a manageable commercial risk. By contrast, discretionary sanctions such as enhanced financial penalties, business license revocation, director disqualification, or public blacklisting increase the expected costs of misconduct and thereby strengthen deterrence. In this sense, *ta'zir* serves a dual function: restoring public confidence in commercial transactions and altering the incentive structure that encourages fraudulent behavior.

The relevance of discretionary sanctions in addressing economic misconduct has also been recognized in contemporary legal scholarship. Coffee argues that effective enforcement mechanisms must impose costs that exceed the economic benefits derived from unlawful

conduct, particularly in corporate and financial wrongdoing⁸. Similarly, Polinsky and Shavell demonstrate that optimal deterrence requires sanctions capable of outweighing the expected gains from violations, especially where detection rates are uncertain⁹. Within the Islamic legal tradition, Auda emphasizes that the objectives of *maqasid al-shariah*, including the protection of wealth and public welfare, justify adaptive legal responses to new forms of social and economic harm¹⁰. These perspectives collectively support the argument that *ta'zir* possesses significant normative and deterrent potential when applied to aggravated contractual fraud.

The first form of *ta'zir* proposed in this article is the imposition of enhanced financial penalties. Under conventional contract law, perpetrators are generally required to compensate victims only for the losses suffered. Such an approach may be inadequate when the economic gains obtained through fraud significantly exceed the compensation eventually paid. Therefore, aggravated contractual fraud should attract financial sanctions exceeding the amount of actual damages. The objective is not merely compensation but the removal of unlawful profits and the creation of a substantial economic disincentive for fraudulent conduct. From the perspective of *maqasid al-shariah*, such sanctions contribute to the protection of property (*hifz al-mal*) by ensuring that fraud does not become economically advantageous.

The second form of *ta'zir* involves the suspension or revocation of business licenses. Many large-scale contractual frauds are committed through corporate structures that enable perpetrators to repeatedly engage in deceptive practices while shielding themselves from personal accountability. In such circumstances, allowing the offending business entity to continue operating may expose the public to further harm. Revocation of business licenses therefore serves both preventive and protective functions by removing the institutional platform through which fraud is conducted. Unlike imprisonment, which primarily targets individuals, license revocation directly addresses the commercial mechanisms facilitating fraudulent activities.

The third form of *ta'zir* is the disqualification and blacklisting of directors, commissioners, and controlling shareholders responsible for fraudulent schemes. Contemporary business fraud frequently involves the misuse of corporate personality, whereby individuals dissolve one company and establish another after legal sanctions have been imposed. Civil liability alone often proves insufficient to prevent such practices. Accordingly, temporary or permanent prohibition from occupying managerial positions may constitute an effective deterrent against repeat offenders. This measure ensures that legal responsibility follows the individuals directing the fraudulent conduct rather than merely the corporate entities through which the conduct is carried out.

The fourth form of *ta'zir* consists of compulsory public service and restorative obligations. Although financial sanctions remain important, certain forms of contractual fraud also produce social harms that cannot be adequately measured in monetary terms. Public education programs, consumer protection initiatives, and mandatory participation in financial literacy campaigns may therefore be imposed as supplementary sanctions. Such

⁸ John C Coffee Jr, John C Coffee, and First Baron Thurlow, “‘No Soul to Damn : No Body to Kick’: An Unscandalized Inquiry into the Problem of Corporate Punishment,” *Michigan Law Review* 386, no. 1 (1981): 386–459.

⁹ A Mitchell Polinsky and Steven Shavell, “The Economic Theory of Public Enforcement of Law,” *Journal of Economic Literature* 38, no. 1 (2000): 45–76, <https://doi.org/10.1257/jel.38.1.45>.

¹⁰ Jasser Auda, *Maqasid Al Shariah as Philosophy of Islamic Law A Systems Approach* (London: The International Institute Of Islamic Thought, 2007).

measures reflect the restorative dimension of *ta'zir* by seeking not only to punish offenders but also to repair the social trust damaged by fraudulent practices.

The proposed reconstruction demonstrates that *ta'zir* sanctions are particularly compatible with contemporary business regulation because they combine punitive, preventive, and restorative objectives. Rather than focusing exclusively on compensation for past losses, *ta'zir* seeks to eliminate opportunities for future misconduct and preserve the integrity of commercial transactions. This multidimensional character distinguishes *ta'zir* from ordinary civil remedies and makes it especially relevant for addressing aggravated contractual fraud in modern business environments.

Accordingly, the integration of *ta'zir* into the regulation of contractual fraud should not be understood as the Islamization of contract law, but rather as the adoption of a flexible sanctioning framework aimed at strengthening deterrence and protecting public welfare. By incorporating enhanced financial penalties, business license revocation, director disqualification, and restorative obligations, *ta'zir* provides a comprehensive model capable of responding to the increasingly complex nature of contemporary economic fraud.

2.3 Evaluating the Deterrent Potential of *Ta'zir*-Based Sanctions for Contractual Fraud

The primary justification for integrating *ta'zir* into the regulation of aggravated contractual fraud lies in its deterrent capacity. While civil remedies remain essential for compensating victims, they often fail to discourage future misconduct, particularly when fraudulent activities are carried out systematically and generate substantial financial gains. This limitation becomes evident when contractual fraud is analyzed through the framework of Deterrence Theory.

Deterrence Theory assumes that individuals make decisions by comparing the potential benefits of unlawful conduct with the expected costs resulting from legal sanctions. According to this perspective, legal rules are effective only when sanctions create sufficient disincentives to outweigh the anticipated gains derived from misconduct. The probability of detection, the certainty of punishment, and the severity of sanctions therefore become critical factors influencing behavioral choices. In the context of business transactions, fraud frequently emerges as a calculated economic decision rather than an impulsive act. Perpetrators often assess the profitability of fraudulent schemes against the legal consequences they may eventually face.

This logic reveals a significant weakness within conventional contract law. Remedies such as damages, restitution, and contract rescission are designed primarily to restore the injured party rather than punish the wrongdoer. From an economic perspective, these remedies often fail to alter the incentive structure that motivates fraudulent behavior. As Becker's economic model of crime suggests, unlawful conduct becomes rational when the expected benefits outweigh the anticipated legal costs. In the context of contractual fraud, perpetrators frequently calculate that even if litigation occurs, the worst possible outcome is the repayment of losses or the return of unlawfully obtained gains. Consequently, contractual fraud may remain economically attractive when the expected profits exceed the potential compensation payable to victims. A fraudulent actor who acquires substantial

benefits through deceptive contractual arrangements may still perceive civil liability as an acceptable business risk. Even when courts order compensation, the sanction merely returns part of the unlawfully obtained gain without necessarily imposing additional costs capable of discouraging future violations.

Recent scholarship supports this concern. Coffee argues that purely compensatory legal mechanisms often fail to deter sophisticated economic misconduct because they do not sufficiently increase the expected costs of unlawful behavior¹¹. Similarly, Gordon demonstrate that corporate actors frequently internalize civil liability as a predictable operational expense, particularly in complex commercial transactions where enforcement is uncertain¹². Furthermore, Pargendler observes that modern business fraud increasingly exploits regulatory fragmentation, allowing perpetrators to shift risks to consumers and investors while retaining substantial economic gains even after adverse legal judgments¹³. These findings suggest that compensation-based remedies may restore individual losses but remain inadequate for preventing repeated or large-scale fraudulent conduct.

The deterrence deficit becomes even more pronounced in cases involving mass victimization. Where fraudulent schemes affect hundreds or thousands of consumers, the probability that every victim will pursue legal action remains relatively low. Rational offenders may therefore discount the likelihood of full liability and continue engaging in deceptive practices. Under such circumstances, civil remedies perform a corrective function but fail to generate the preventive effect required to protect market integrity and public confidence in commercial transactions. This structural limitation provides a strong justification for considering supplementary sanctions capable of increasing the economic, professional, and reputational consequences of contractual fraud.

The inadequacy of purely compensatory remedies becomes more apparent in cases involving mass victims and repeated fraudulent schemes. Contemporary economic fraud frequently operates through complex corporate structures, digital platforms, and rapidly changing business entities. Perpetrators may dissolve one company, establish another under a different name, and continue similar fraudulent practices despite previous civil judgments. Under such circumstances, the deterrent effect of ordinary contract law becomes significantly weakened because legal consequences fail to alter the economic incentives underlying fraudulent conduct.

Ta'zir-based sanctions offer a different regulatory approach. Rather than focusing exclusively on compensation, *ta'zir* seeks to prevent future harm by increasing the legal and

¹¹ Jr, Coffee, and Thurlow, “‘No Soul to Damn: No Body to Kick’: An Unscandalized Inquiry into the Problem of Corporate Punishment.”

¹² Jeffrey N Gordon, “Systematic Stewardship,” 566 (New York, 2021), [https://www.ecgi.global/sites/default/files/Systematic Stewardship %282021%29.pdf](https://www.ecgi.global/sites/default/files/Systematic%20Stewardship%202021%29.pdf).

¹³ Mariana Pargendler, “The New Corporate Law of Corporate Groups The New Corporate Law of Corporate Groups,” *Harvard Business Law Review* 14, no. October (2024): 339–402.

economic consequences associated with misconduct. Enhanced financial penalties, business license revocation, director disqualification, and public blacklisting collectively increase the expected costs of fraudulent behavior. As the severity and certainty of sanctions increase, the rational attractiveness of contractual fraud correspondingly decreases.

From a deterrence perspective, enhanced financial penalties are particularly significant. A fraudster who anticipates not only compensatory damages but also additional monetary sanctions exceeding the profits gained from deception faces a fundamentally different cost-benefit calculation. Fraud ceases to be a profitable strategy because the potential losses resulting from legal intervention outweigh any anticipated economic advantage. In this regard, *ta'zir* operates not merely as punishment but as a mechanism for eliminating the economic incentives that motivate fraudulent conduct.

Business license revocation further strengthens deterrence by targeting the institutional foundations of commercial fraud. Whereas civil liability generally affects a specific transaction, revocation directly restricts future participation in economic activities. For corporations dependent upon regulatory approval and public trust, the loss of operational authority may constitute a far greater sanction than monetary compensation alone. The prospect of losing access to the market therefore creates a substantial preventive effect.

Similarly, director disqualification addresses one of the most persistent challenges in contemporary business fraud, namely the ability of individuals to exploit corporate personality in order to avoid accountability. By prohibiting responsible individuals from occupying managerial positions, *ta'zir* sanctions extend legal responsibility beyond the corporate entity itself. This approach reduces opportunities for repeat offenses and increases the personal consequences associated with fraudulent conduct.

The deterrent potential of *ta'zir* also finds support within the objectives of *maqasid al-shariah*. The protection of property (*hifz al-mal*) requires not only compensation for losses already incurred but also preventive measures designed to safeguard economic stability and public confidence in commercial transactions. Contractual fraud undermines trust, increases transaction costs, and weakens market integrity. Consequently, sanctions aimed at preventing future misconduct are consistent with the broader objective of preserving social and economic welfare.

Developments in several Muslim-majority jurisdictions further illustrate the growing acceptance of discretionary sanctions in addressing economic misconduct. Regulatory frameworks in Malaysia and Brunei increasingly combine compensatory mechanisms with administrative and punitive measures against deceptive business practices. Although these systems do not explicitly classify such measures as *ta'zir* sanctions for contractual fraud, they reflect a similar underlying principle: conduct that threatens public economic interests may justify sanctions extending beyond private compensation. This trend suggests that modern legal systems increasingly recognize the limitations of purely civil remedies when confronting large-scale economic misconduct.

Based on the foregoing analysis, this article argues that *ta'zir* possesses a stronger deterrent potential than ordinary civil remedies in cases of aggravated contractual fraud. Civil liability remains necessary to restore victims' losses, but it is insufficient to prevent systematic and recurring fraudulent conduct. By increasing the economic, professional, and reputational costs of misconduct, *ta'zir* transforms contractual fraud from a low-risk commercial strategy into a high-cost unlawful act. The significance of *ta'zir* therefore lies not merely in its punitive function but in its capacity to reshape the incentives that drive fraudulent behavior and to strengthen the protection of property within contemporary business relations.

Despite its explanatory value, Deterrence Theory is not free from criticism. Studies on white-collar crime suggest that sanction severity alone does not always prevent corporate misconduct. Organizational culture, weak supervision, opportunities for regulatory arbitrage, and overconfidence among offenders may reduce the effectiveness of deterrence-based sanctions. Consequently, *ta'zir* should not be viewed as a standalone mechanism for combating contractual fraud. Its effectiveness depends upon integration with broader regulatory measures, including market supervision, corporate governance standards, transparency requirements, and consumer protection mechanisms. Therefore, the contribution of *ta'zir* lies in strengthening deterrence rather than providing a complete solution to business fraud.

2.4 Implications for Indonesian Business Law Reform

The preceding discussion demonstrates that aggravated contractual fraud possesses characteristics that distinguish it from ordinary contractual disputes. When fraudulent conduct causes widespread economic losses, targets vulnerable groups, and is committed systematically or repeatedly, conventional civil remedies become insufficient to protect public interests. In such circumstances, the deterrent rationale underlying *ta'zir* offers important insights for the development of contemporary business law.

Indonesia currently regulates contractual fraud through a fragmented legal framework. Civil law provides remedies in the form of damages, contract rescission, and compensation, while criminal law addresses fraud primarily through general provisions concerning deception and unlawful enrichment¹⁴. This separation often creates a regulatory gap. Certain forms of business misconduct generate substantial public harm but fail to satisfy the evidentiary requirements necessary for criminal prosecution. At the same time, civil remedies frequently lack sufficient deterrent force to prevent recurring violations. Consequently, perpetrators may continue exploiting contractual mechanisms while treating compensation as a manageable business expense.

The concept of *ta'zir* provides an alternative normative framework capable of bridging this gap. Rather than replacing existing civil and criminal mechanisms, *ta'zir*-inspired sanctions

¹⁴ Syaiful Badri, Pristika Handayani, and Tri Anugrah Rizki, "Ganti Rugi Terhadap Perbuatan Melawan Hukum Dan Wanprestasi Dalam Sistem Hukum Perdata," *Jurnal USM Law Review* 7, no. 2 (2024): 974–85, <https://doi.org/https://doi.org/10.26623/julr.v7i2.9440>.

may function as supplementary instruments designed to address aggravated contractual fraud. Such sanctions are justified not merely by the existence of individual losses but by the broader threat posed to economic stability, market integrity, and public confidence in commercial transactions¹⁵.

The first area requiring reform concerns consumer protection law. The increasing prevalence of deceptive financing schemes, misleading digital transactions, and fraudulent investment arrangements demonstrates the limitations of existing compensatory mechanisms. Indonesian consumer protection regulations could therefore incorporate enhanced sanctions for aggravated contractual fraud, particularly where misconduct affects a large number of consumers. Such measures would strengthen the preventive dimension of consumer protection while ensuring greater accountability for business actors engaging in systematic deception.

The second area relates to financial and business regulation. Regulatory agencies such as the Financial Services Authority (*Otoritas Jasa Keuangan*) already possess authority to impose administrative sanctions against business entities that violate legal obligations. However, the deterrent effect of these measures remains limited when sanctions are imposed solely upon corporate entities without adequately addressing the individuals responsible for the misconduct. Drawing inspiration from *ta'zir*, regulatory frameworks could be expanded to include director disqualification, management blacklisting, and restrictions on future participation in regulated industries. These measures would ensure that legal responsibility follows the decision-makers behind fraudulent conduct rather than merely the corporations through which such conduct is carried out.

The third area concerns the future development of Indonesian criminal policy. Although ordinary contractual disputes should remain within the sphere of private law, aggravated contractual fraud may warrant recognition as a distinct category of economic misconduct. Such recognition would be particularly relevant where fraudulent conduct produces large-scale social and economic consequences. Rather than criminalizing every contractual breach, legal reform should focus on fraudulent practices characterized by intentional deception, mass victimization, and repeated misconduct. In this context, *ta'zir* provides a useful conceptual foundation for designing proportional sanctions that balance deterrence, prevention, and fairness.

The adoption of *ta'zir*-inspired sanctions would also be consistent with broader principles of Indonesian law. Pancasila emphasizes social justice, public welfare, and the protection of vulnerable members of society. Similarly, the constitutional commitment to economic democracy requires legal mechanisms capable of preserving fairness and trust within commercial relations. By strengthening the legal consequences attached to aggravated contractual fraud, *ta'zir*-inspired sanctions contribute to these objectives while remaining compatible with the pluralistic character of the Indonesian legal system.

¹⁵ Ahmad Syarbaini, "Konsep Ta'zir Menurut Perspektif Hukum Pidana Islam," *Jurnal Tahqiq* 17, no. 2 (2023): 37–48, <https://doi.org/https://doi.org/10.61393/tahqiq.v17i2.167>.

Table 1. *Ta'zir*-Inspired Reform

Legal Framework	Current Sanction	<i>Ta'zir</i> -Inspired Reform
Consumer Protection Law	Compensation	Enhanced financial penalties
OJK Regulation	Administrative fines	Director disqualification
Financial Services Law	License suspension	Permanent industry blacklist
Criminal Policy	General fraud offense	Aggravated contractual fraud category

Ultimately, the significance of *ta'zir* lies not in its religious label but in its functional capacity to address regulatory shortcomings that conventional legal remedies have been unable to resolve effectively¹⁶. As business transactions become increasingly complex and technologically sophisticated, legal systems require more flexible and responsive sanctioning mechanisms. The integration of *ta'zir*-inspired sanctions into Indonesian business law therefore represents not a departure from modern legal principles, but an effort to enhance deterrence, protect public welfare, and strengthen confidence in commercial transactions. Through this approach, Indonesian law may better respond to the challenges posed by aggravated contractual fraud while preserving the fundamental distinction between ordinary contractual disputes and conduct that threatens the broader interests of society.

To ensure compatibility with modern rule-of-law principles, *ta'zir*-inspired sanctions must operate under clear statutory standards, judicial oversight, proportionality requirements, and due process guarantees. The discretionary nature of *ta'zir* should therefore be constrained by legal certainty and fundamental rights protections.

3. Conclusion

This article has demonstrated that not all contractual breaches justify the imposition of *ta'zir* sanctions. Ordinary breaches of contract (*wanprestasi*) remain within the domain of private law and should continue to be resolved through conventional civil remedies. However, contractual misconduct characterized by intentional deception (*dolus*), mass economic losses, exploitation of vulnerable victims, and repetitive fraudulent conduct constitutes a distinct category of aggravated contractual fraud that extends beyond the sphere of private disputes and threatens public welfare. In such circumstances, the

¹⁶ Wilda Lestari, "Ta'zir Crimes in Islamic Criminal Law: Definition Legal Basis Types and Punishments," *Al-Qanun: Jurnal Kajian Sosial Dan Hukum Islam* 05, no. 01 (2024): 22–32, <https://doi.org/http://dx.doi.org/10.58836/al-qanun.v5i1.21486>.

protection of property (*hifẓ al-māl*) and the preservation of market integrity provide a normative basis for the application of *ta'zīr*-inspired sanctions.

The study further argues that conventional contract law remedies, particularly damages and rescission, primarily serve compensatory functions and often fail to generate sufficient deterrent effects against systematic fraudulent conduct. By contrast, *ta'zīr* offers a flexible sanctioning framework capable of addressing the evolving nature of modern business fraud. Enhanced financial penalties, business license revocation, director disqualification, and restorative obligations represent forms of *ta'zīr* that may strengthen accountability while simultaneously protecting the broader interests of society.

Through the analytical framework of Deterrence Theory, this article finds that *ta'zīr* possesses stronger deterrent potential than ordinary civil remedies because it increases the economic, professional, and reputational costs associated with fraudulent behavior. The integration of *ta'zīr*-inspired sanctions therefore transforms aggravated contractual fraud from a relatively low-risk commercial strategy into a high-cost unlawful act. In this regard, *ta'zīr* functions not merely as a punitive mechanism but as an instrument for preventing future harm and safeguarding public trust in commercial transactions.

The findings also suggest that Indonesian business law may benefit from adopting *ta'zīr*-inspired regulatory measures, particularly within consumer protection, financial regulation, and the broader framework of economic crime policy. Such reforms would not require the formal incorporation of Islamic criminal law into the national legal system, but rather the adaptation of its underlying deterrence principles to address regulatory gaps in contemporary business practice.

Nevertheless, this study is subject to several limitations. First, the research employs a normative legal approach and therefore does not provide empirical evidence regarding the actual effectiveness of *ta'zīr*-based sanctions in reducing contractual fraud. Second, the analysis relies primarily on conceptual and doctrinal examination of Islamic criminal law, contract law, and Deterrence Theory, without conducting comparative field studies across jurisdictions. Third, the discussion of Malaysia and Brunei is limited to illustrative observations and does not constitute a comprehensive empirical assessment of the implementation of *ta'zīr*-related sanctions in those legal systems. Future research should therefore incorporate empirical methods, comparative legal analysis, and quantitative evaluation of fraud cases to assess the practical effectiveness of *ta'zīr*-inspired sanctions in contemporary business regulation.

Ultimately, this article contributes to the growing discourse on the intersection between Islamic legal principles and modern business law by proposing a *ta'zīr*-inspired deterrence model for aggravated contractual fraud. The model offers a normative framework capable of complementing existing civil remedies while enhancing the protection of property, strengthening market integrity, and promoting greater public confidence in commercial transactions. Theoretically, this study contributes to the emerging discourse on the interaction between Islamic criminal law and modern contract law by developing a *ta'zīr*-

inspired deterrence framework for aggravated contractual fraud. Practically, the proposed model may assist policymakers, financial regulators, and consumer protection agencies in designing more effective responses to large-scale business fraud.

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