

## Reconstruction of Breach of Performance & Unlawful Acts in Book III of Civil Law (Islamic Legal Analysis)

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**Abstract.** *This study examines the conceptual differences between default and unlawful acts in Book III of the Civil Code and reconstructs both concepts in the context of Indonesian civil law. In addition, this study analyzes the perspective of Islamic law on the reconstruction carried out. The method used is normative legal research with a statute approach and a conceptual approach. The results of the study indicate that default and unlawful acts have fundamental differences, where default arises due to a violation of an agreement, while unlawful acts are based on a violation of rights or legal norms. Book III of the Civil Code has provided a clear legal framework related to these two concepts, although in practice it still needs to be strengthened in implementation and adaptation to social developments. The reconstruction carried out in this study confirms that Indonesian civil law continues to develop in accordance with the dynamics of society. From an Islamic legal perspective, the principles of justice, individual responsibility, and good faith in transactions have strong relevance in understanding default and unlawful acts. This study contributes to the development of civil law theory and practice in Indonesia and enriches the study of Islamic law in the context of modern civil law.*

**Keywords:** Act; Civil; Islamic; Unlawful.

### 1. Introduction

One of the problems in contract law, and more broadly in obligation law, is related to the overlapping understanding between breach of contract and unlawful acts.(R. Putra et al., 2022). This problem does not only occur in academic discourse, but also in law enforcement practices, especially judicial practices. This problem does not only occur in the civil law system, but also in the common law system. Although there are differences in the regulatory systems for unlawful acts and breaches of contract in the common law and civil law systems, both legal systems often experience overlapping problems in understanding unlawful acts and breaches of contract.(Harahap, Fadillah, et al., 2023). This problem can occur because there is a similarity in concept between unlawful acts and breach of contract.

An unlawful act is different from a breach of contract. The plaintiff's rights in an unlawful act or the defendant's breached obligations in an unlawful act arise from the provisions of (general) law, while in a breach of contract, the rights or obligations come from the contract or agreement of the parties.(Apriani, 2021). The same thing was also stated by Catherine Elliot and Frances Quinn. Catherine Elliot and Frances Quinn stated that unlawful acts include acts of violating obligations determined by law, while default is a violation of an obligation that the parties have voluntarily agreed to.(Naldo, 2021). So it can be concluded that an unlawful act is a civil error while a breach of contractual obligations.

While the Indonesian legal system has historically been influenced by the civil law system(Harahap, 2019),uniting unlawful acts and contracts in one generic or category, namely obligations. The Indonesian Civil Code (KUHPerdata) originates from the Dutch Burgerlijk Wetboek (BW). The Dutch BW itself originates from the French Code Civil with several changes(Aryati et al., 2022). The regulation of obligations in the context of civil law in Indonesia is stated in Book III of the Civil Code which includes two main types, namely obligations arising from agreements and obligations arising from laws. Article 1233 of the Civil Code emphasizes that obligations can arise either due to an agreement of the parties or due to legal provisions. Furthermore, Article 1352 of the Civil Code divides obligations arising from laws into two categories, namely obligations that purely originate from laws and obligations arising from human actions. However, the unification of contracts and unlawful acts in one category of obligations raises theoretical and practical problems. Conceptually, default and unlawful acts have fundamental differences, but because they are within the same legal framework, there is often overlap in their understanding and application. This has an impact on court decisions which often cause controversy regarding cases of default and unlawful acts related to contracts. Then another thing is because both concepts provide the same punishment in the form of compensation. The broad concept of unlawful acts often removes its boundaries with breach of contract, as if breach of contract is also an unlawful act. In fact, there is a very clear difference between the two.(Ahyani et al., 2025).

In Islamic law, default and unlawful acts are discussed in the concept of *dhamân* or *mas'uliyah*. However, the term *dhamân* in the context of legal responsibility is different from its meaning as debt liability in *fiqh*.(PAA Putra, 2021). Malikiyah scholars define *dhamân* as kafalah (guarantee), which is a situation where someone bears the obligations of another party.(Yudha, 2018). Meanwhile, Khatib Syirbini from the Syafi'iyah school of thought explained that *dhamân* in language means *iltizam* (commitment), while in terms of terminology it is an obligation taken upon oneself to pay another person's debt or to bring the debtor. In the Hanabilah view, *dhamân* means bearing the obligation of another party in fulfilling rights, so that the debt becomes a joint responsibility. However, in the context of this research, *dhamân* refers more to the obligation to compensate for damage, whether to property, benefits, or the human self. Understanding the boundaries between default and unlawful acts is very important in sharia economics and religious court practices. Confusion in distinguishing the two has an impact on legal uncertainty in court. Therefore, in-depth research is needed to trace the differences, characteristics, and benchmarks of the court in deciding cases related to contracts.

This research is an original work developed independently by the author, with a different approach from previous research. Previous research has discussed important aspects of

default and unlawful acts in the legal system in Indonesia. Rosa Agustina examines the differences between default and unlawful acts by comparing the Civil Law System and the Common Law System.(Agustina, 2003), and examines the benchmarks used by the courts in determining the boundaries between the two. Meanwhile, Fiolenta Larassati examines the concept of default in the Compilation of Sharia Economic Law (KHES) and the Civil Code and its implementation in religious court decisions.(Larassati, nd). However, there are several research gaps that have not been touched in depth.

First, there has been no study that specifically integrates the concept of default and unlawful acts from an Islamic legal perspective with the benchmarks used in judicial practice in Indonesia. Second, previous studies have not highlighted how the judicial system, especially religious courts, distinguishes and applies the concept of default and unlawful acts concretely in sharia economic disputes. Third, there has been no study that explores the role and effectiveness of KHES in establishing legal certainty in cases of default in religious courts, especially in relation to national civil law. Therefore, this study aims to bridge this gap and provide a more comprehensive understanding of the limitations of default and unlawful acts from an Islamic legal perspective and judicial practice in Indonesia.

## **2. Research Methods**

This type of research is normative legal research, because this research examines legal rules, legal principles or principles as well as legal doctrines of default and unlawful acts, and examines the legal consequences that arise in connection with the overlapping understanding of default and unlawful acts.(Mahmud Marzuki, 2005). The approaches used in this study are the statute approach and the conceptual approach. The study was conducted through library research by examining library materials or secondary data. The secondary data used in this study consists of primary, secondary and tertiary legal materials. The data sources in this study are secondary data consisting of primary legal materials and secondary legal materials. The data collection technique used in this study is the library study technique. This study uses qualitative data analysis. The analysis method used is an interactive model of analysis which includes three stages, namely data reduction, data display, and conclusion drawing.(BOOKS, nd).

## **3. Results and Discussion**

### **3.1. Differences between Default and Unlawful Acts in Book III of the Civil Code**

Default and unlawful acts are two important concepts in civil law, particularly in relation to civil liability.(Harahap, Syahputra, et al., 2023). Although both are related to actions that harm others, there are fundamental differences between the two. Both in academic perspectives and judicial practice in Indonesia, there is an overlapping understanding between breach of contract and unlawful acts. This problem occurs, among other things, because there is a unification of regulations between contracts and unlawful acts in one generic, namely obligations. However, this does not mean that both cannot be determined by their boundaries or differences between the two. Breach of contract and unlawful acts are basically different(Hutagalung, 2022).

Judicial practice in the Common law system, especially Anglo-American, also has an overlap between breach of contract and tort. There is a tendency to show a bias in the boundaries of the concept of tort with performance.(Panggabean & SH, 2023). Although there is a bias in lawsuits based on breach of contract and unlawful acts, the courts are consistent with the principles of breach of contract and unlawful acts that have long been developed in case law and doctrine. The Indonesian legal system is strongly influenced by the Civil law tradition, so as with countries with a Civil law system such as France, Germany, and the Netherlands, the main source of contract law is legislation, especially the Code Civil.(Treasure & Lumbanraja, 2022). The main source of legal regulation of obligations in Indonesia is contained in Book III of the Civil Code concerning obligations (*van verbintenissen*).

Dutch law and Indonesian law view contracts as a legal act (*rechtshandeling or juridical act or actes juridiques*)(Asnawi, 2018). Legal acts in the context of obligations are legal acts in the field of property law (patrimonial law). The concept of contract or agreement adopted by Article 1313 of the Civil Code is as a legal act, not a legal relationship. Article 1313 of the Civil Code determines that *eene overeenkomst is eene handeling waarbij een of meer personen zich jegens een of meer andere verbinden* (a contract is an act in which one or more persons do to one or more other persons). To distinguish between breach of contract and unlawful acts, it is also necessary to describe the periods or phases in the contract. The periods or phases in the contract can be divided into three periods, namely:

The contract process consists of three main periods(Ismaryadi et al., 2023). The first pre-contract period is the stage before an agreement is reached, where the parties negotiate the transaction or cooperation plan. This initial agreement is stated in a *Memorandum of Understanding* (MoU) or *Letter of Intent* (LoI), which only contains the main points of the agreement as a basis for further negotiations. The contents of the final contract may differ from the MoU or LoI if there are changes to the agreement. The second period of contract implementation begins after the parties reach an agreement and lasts as long as the contract is still valid. In this stage, the parties involved are required to fulfill their obligations according to the agreement. The third post-contract period occurs after the contract ends, covering aspects of completion or cancellation of the contract. Contract cancellation generally occurs in two forms: void by law (*nietig van rechtswege*) and cancelable (*vernietigbaar*), which relates to the failure to fulfill the valid conditions of the contract. Meanwhile, contract termination occurs if the implementation of the agreement cannot be continued for certain reasons.

Default in contract law means the failure of the debtor to fulfill his performance obligations, either due to delay, negligence, or implementation that is not in accordance with the agreement. Meanwhile, unlawful acts include actions that are contrary to written or unwritten rules, such as violating the subjective rights of others, norms of propriety, and caution in society.(Sari, 2021). The assessment of unlawful acts is not only based on violations of formal law, but also on aspects of propriety. Because of its broad scope, unlawful acts can include breach of contract if the debtor's actions violate laws other than the contract itself. Breach of contract stems from an agreement, while unlawful acts stem from the Law. Breach of contract, which is often interpreted as a breach of promise, occurs when one party to an agreement does not fulfill the agreed performance obligations. In an agreement, the parties bind themselves to fulfill certain achievements. If one party fails to fulfill these obligations, then he is considered to have violated the

law that he himself has made, namely breach of contract. In court practice, cases are often found where the debtor is considered to have committed both a breach of contract and an unlawful act.

The fundamental difference between an unlawful act and a breach of contract lies in the birth of a legal relationship. A breach of contract occurs when the legal relationship is based on an agreement, while an unlawful act occurs without an agreement, usually violating the rights of others, one's own legal obligations, or morality. In other words, a breach of contract only exists if there is a prior agreement, while an unlawful act does not require a basis for an agreement, but is related to a violation of applicable legal rights or obligations.

### 3.2. Default and Unlawful Acts in Islam

The principle of civil law known as *pacta sunt servanda* states that every agreement becomes a binding law for the parties involved, so that agreements must be fulfilled (*agreements must be kept*). This principle is similar to the principle in Islamic law, namely the principle of *amanah* or keeping promises. In Islamic law, the implementation of a contract is an obligation regulated by various verses and hadiths. (Arys, 2017). One verse that emphasizes this is QS al-Maidah: 1, which reads,

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُبْلَى عَلَيْكُمْ غَيْرِ مُجْلَى الصَّيْدِ وَأَنْتُمْ حُرْمٌ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

*Believers, fulfill your pledges. Lawful for you are grazing livestock, except what is [explicitly] prohibited to you. However, do not hunt while in the state of ihram. Indeed, Allah decrees as He wills.*

Another verse, QS An-Nisa: 29, also reminds Muslims not to consume each other's property in a wrongful manner, except in a mutually agreed transaction:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمٌ

*O you who believe, do not consume your neighbor's wealth in a vanity (unrighteous) manner, unless it is in the form of commerce based on mutual consent between you. Don't kill yourself. Indeed, Allah is Most Merciful to you.*

In addition, QS al-Mu'minun: 8 states,

وَالَّذِينَ هُمْ لِأَمْتِهِمْ وَعَهْدِهِمْ رَاعُونَ

*"And those who keep the mandates (which they bear) and their promises."*

However, even though there is an obligation to fulfill the agreement, in reality there are often parties who violate the agreement. In Islamic civil law, this violation of the

agreement is called *mas'uliyah ta'aqudiyah* or *dhamân al-'aqd*, which in English is called breach of contract (Renjana, 2023). For a breach of contract to occur in Islamic law, the contract must meet the pillars and valid requirements. A breach of contract cannot be applied to children, insane people, or people with mental disorders, because the contract they make is not legally valid and is automatically void. In Islamic jurisprudence, for an act to be considered a breach of contract, there must be three pillars: error, loss, and causality between the two.

Contract errors, in Islamic law, are often referred to as *khatha' al-'aqdy* or *al-I'tidâ'*, which refers to acts that are contrary to the sharia, either intentionally or through negligence. (Renjana, 2023). Sanhuri explained that a contract error occurs if the debtor is unable to fulfill his obligations, either intentionally, negligently, or as a result of his actions. Compilation of Sharia Economic Law Article 36 identifies several types of errors, such as not fulfilling promises, carrying out promises inappropriately, being late, or doing something prohibited by the agreement (Yudha, 2018). In this case, the debtor is responsible for the error that causes the contract to fail, unless there is an agreement to transfer responsibility. The types of contracts are also divided into two, namely to realize results or to make certain efforts. In a result-oriented contract, an error occurs when the debtor cannot realize the promised results, for example the seller cannot deliver the goods that have been paid for. While in a contract to make efforts, an error occurs if the debtor does not make maximum efforts, such as a doctor who does not carry out medical procedures correctly.

In addition to error, the second pillar of default is the existence of loss (*dhara*). This loss, which can be in the form of damage to property, body, honor, or feelings, is the basis for compensation. If there is no loss even though there is an error, then the debtor is not considered to be in default. The third pillar is the existence of causality between error and loss. Wahbah Zuhaily explains that this causality is important, because the debtor is only responsible for losses caused by his error. Without causality, the debtor is not obliged to provide compensation (Renjana, 2023).

Unlawful acts in the context of Islamic law refer to actions that harm other parties and are one source of engagement. Wahbah Zuhaily identified five sources of engagement in Islam, namely contract, unilateral will, detrimental actions, beneficial actions, and *syarak*. These concepts are similar to the sources of engagement in national or Western law, which include agreements, unilateral wishes, unlawful acts, unpaid payments, and laws. In the context of unlawful acts, the terms often used in classical Islamic jurisprudence are *itlâf* (destruction) and *ghasab* (usurpation), which have meanings that are very close to detrimental acts or *al-fi'l adh-dhâr* (Arys, 2017).

Wahbah Zuhaily defines unlawful acts as responsibilities arising from violations of applicable regulations (*qanun*). These unlawful acts include actions that damage or take away the rights of others unlawfully. In Islamic economic law in Indonesia, although there are no specific regulations regarding unlawful acts in Islamic economics, several existing regulations discuss *ghasab* and *itlâf*, which are regulated in chapter 15, articles 391 to 412. Although *ghasab* and *itlâf* are not unlawful acts as a whole, both are part of a broader unlawful act in the context of Islamic law.

According to the Sharia Economic Law, *ghasab* refers to the act of preventing someone from using their wealth or denying the existence of someone's entrusted goods (*wadi'ah*

bih). *Ghasab* also means taking valuable property and having honor value without the owner's permission, such as taking goods openly from the owner. Some examples that are not included in *ghasab* are taking alcohol (because it is not a valuable item), taking the enemy's property in war (because it does not have honor value), or accepting gifts with the owner's permission. Meanwhile, *itlaf* or destruction refers to the act of eliminating the benefits of an item, such as damaging goods or killing animals, which include *ifsâd* (damaging part), *istihlâk* (using goods that are not theirs), and *ihlâk* (damaging for other purposes)(Larassati, nd).

Fauzi also added that *wadha`a al-yad* (receiving goods without a valid contract) is another type of unlawful act, namely taking control of someone else's property with the aim of owning it without the permission of the original owner, for example buying stolen goods. In this case, if the holder of the goods does not know that the goods are the result of *ghasab* or goods that should not be owned, then he is not considered to have committed an unlawful act. However, if the goods are damaged, the responsibility remains with the holder. The Qur'an emphasizes the prohibition of unlawful acts, as stated in QS. Al-Baqarah: 188, which prohibits consuming other people's property in a wrongful manner. Similar to breach of contract, unlawful acts according to Islamic jurisprudence can only occur if three elements are met: error, loss, and a causal relationship between the two.

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْخُلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

*Do not eat the wealth between you in a false way and (do not) bring (the affairs of) the wealth to the judges with the intention that you can consume some of other people's wealth in a sinful way, even though you know.(QS AL-Baqarah:188)*

### 3.3. Reconstruction of Default and Unlawful Acts in Book III of the Civil Code

Default refers to the failure or negligence of a party to fulfill its contractual obligations as stipulated in the contract. The legal basis for default is contained in Article 1243 of the Civil Code, which states that compensation must be paid by the defaulting debtor, namely the party who fails to carry out the contractual obligations.(Effyanto, 2023). While unlawful acts include actions that violate the law and harm other parties, with the legal basis contained in Article 1365 of the Civil Code. This article stipulates that acts that are contrary to the law and cause damage require the perpetrator to provide compensation to the injured party. Book III of the Civil Code discusses obligations which are legal relations between two or more parties, where one party has the right to demand something, while the other party is obliged to provide something. In this context, there are two important concepts, namely breach of contract and tort(Effyanto, 2023). Articles 1243-1252 of the Civil Code regulate compensation for breach of contract, while Article 1365 of the Civil Code regulates restitution for unlawful acts. Losses due to unlawful acts are called *schade* (losses), while losses due to breach of contract include costs, losses, and interest according to Article 1246 of the Civil Code.

Articles 1238 to 1243 of the Civil Code regulate the conditions and consequences of default, which occurs when the debtor fails to fulfill his obligations within the specified time or in the agreed manner. Default is deemed to have occurred if the obligation is

not fulfilled, which can be determined through an official declaration or the passage of time without performance. In the event of default, the creditor has the right to demand performance, seek damages, or terminate the contract. This concept emphasizes the importance of good faith and fair dealing in fulfilling contractual obligations.

Unlawful acts are regulated in Article 1365 of the Civil Code, which states that acts that violate the law and harm others require the perpetrator to compensate for the losses incurred. Violations of the law can be intentional or unintentional, but must cause physical, material, or moral harm to another party. To establish an unlawful act, it is necessary to prove the existence of an unlawful act, a causal relationship between the act and the loss, and the loss experienced by the injured party. The legal consequence of an unlawful act is the obligation to compensate for the loss, which is different from a breach of contract relating to certain contractual obligations.(Yudha, 2018).

Article 1365 of the Civil Code stipulates that a party who causes a loss due to his/her fault is obliged to compensate for the loss, but does not specify the amount of the loss to be paid. This article provides several forms of compensation claims, including: compensation for losses incurred, restitution in kind or return to the original condition, a statement that the action taken is illegal, inability to carry out an action, omission of an action deemed illegal, and the obligation to pay compensation due to default.(Renjana, 2023). The reconstruction of default and tort in Book III of the Civil Code requires a critical examination of the principles of contractual obligations and fault. This book explains the legal framework regarding obligations arising from contracts (default) and torts, with different characteristics and legal consequences. Default, as defined in the Civil Code, refers to the failure of a party to fulfill an obligation stated in a contract. The principles governing default and torts aim to provide justice for the injured party.

Unlawful acts, regulated in Article 1365 of the Civil Code, require the perpetrator to compensate for losses due to actions that violate the law and harm others. Its characteristics include violations of the law that can be intentional or not, resulting in physical, material, or moral losses. To establish an unlawful act, it is necessary to prove that the act is contrary to the law, there is a causal relationship between the act and the loss, and the loss is real for the injured party. The main consequence is the obligation to compensate for losses, in contrast to breach of contract relating to contractual obligations.(PAA Putra, 2021).

The reconstruction of breach of contract and unlawful acts in the Civil Code emphasizes the importance of clarity of legal obligations and fairness in contractual relations. The principle of good faith, as stated in Article 1338 of the Civil Code, plays a key role in contractual relations, ensuring that contracts are executed with honesty, fairness, and integrity. In breach of contract, this principle requires the party who fails to fulfill the obligation to act in good faith, reduce the damage, and try to resolve the dispute amicably. In unlawful acts, good faith affects the assessment of fault and the calculation of damages. The court will consider the intention and steps taken to prevent the loss, and measure responsibility and damages based on the principle of reasonableness. Overall, the principle of good faith underlies the implementation of contracts and legal actions, maintaining fair and mutually beneficial business relations.



### 3.4. Analysis of Islamic Law Regarding Reconstruction of Default and Unlawful Acts in Book III of the Civil Code

In Islamic law, default and unlawful acts are discussed in the concept of *dhamân* or *mas'uliyah*. However, *dhamân* in the context of legal responsibility is different from *dhamân* as a guarantee of debt in *fiqh*. According to Ibn Mandzur, *dhamân* has a meaning that is equivalent to kafalah (guarantee), as mentioned in the hadith of the Prophet which states that someone who dies in the way of Allah is guaranteed to enter heaven "Whoever dies in the way of Allah is guaranteed by Allah to enter heaven"(Larassati, nd).

Malikiyah scholars define *dhamân* as a guarantee, both in terms of language and terminology, which means a person's obligation to bear the burden of another person. Khatib Syirbini from the Syafi'i School interprets *dhamân* as *iltizam*, namely requiring something on oneself that was not originally obligatory, especially related to debt.(Hayati, 2020). Meanwhile, Hanabilah scholars argue that *dhamân* is a combination of the guarantor's liability with the guaranteed party in the obligation to fulfill rights or debts. Thus, the concept of *dhamân* in Islamic law is not only related to the guarantee contract, but also reflects the principle of legal responsibility in cases of default and unlawful acts. In this study, *dhamân* does not refer to debt guarantees, but has another meaning. One of its meanings is the filling of *dzimmah* with obligations or compensation for damage, which is more relevant in the context of legal responsibility for default and unlawful acts.

The principle of *pacta sunt servanda* in civil law states that every agreement is binding on the parties and must be fulfilled. In Islam, a similar principle is known as the principle of *amanah* or keeping promises, which requires the implementation of contracts. This principle is supported by verses of the Qur'an, such as QS Al-Maidah: 1 which orders the fulfillment of contracts, and QS An-Nisa: 29 which prohibits the acquisition of property by invalid means except through a valid and mutually agreed transaction. Thus, in both civil law and Islam, compliance with contracts is a fundamental obligation in maintaining justice and trust in transactions. In Islamic civil law, breach of contract is known as *mas'uliyah ta'aqudiyah* or *dhamân al-'aqd* (breach of contract). Breach of contract only occurs if the contract is legally valid, so that children, madmen, or idiots cannot be considered in breach of contract because their contracts are void by law. In Islamic jurisprudence, for an act to be considered a breach of contract, three pillars must be met: the existence of an error, a loss, and a causal relationship between the two. If the contract is invalid, then a breach of contract cannot occur. This concept is in line with the theory of *dhamân* in Islam which emphasizes accountability based on the error that caused the loss.(AZIS, 2012).

Default and unlawful acts in Indonesian civil law are regulated in Book III of the Civil Code and have fundamental differences even though both can give rise to compensation obligations. Default occurs due to negligence in fulfilling contractual obligations, while unlawful acts include actions that harm another party outside the agreement. In Islamic law, default refers to a violation of an agreement (*dhamân* or *mas'uliyah*), namely the failure to fulfill a promise that results in an obligation to compensate. Meanwhile, unlawful acts in Islam are known as *al-fi'l adh-dhâr*, which include actions that harm another party, both active and passive, without requiring a prior agreement. The concept of default and unlawful acts in Islam is rooted in the principle of *dhamân* or *mas'uliyah*,

which discusses accountability. Malikiyah scholars interpret *dhamân* as *kafalah* (guarantee), while in terms it refers to a person's responsibility for an obligation. Thus, the principles in Islamic law have similarities with the concepts in the Civil Code regarding civil liability and compensation.(AZIS, 2012).

Wahbah Zuhaily mentions five sources of engagement in Islam: contract (*al-'aqd*), unilateral will (*al-irâdah munfaridah*), detrimental actions (*al-fi'l adh-dhâr*), beneficial actions (*al-fi'l an-nâfi*), and *sharak*. A contract is a binding agreement between two parties, while a unilateral will is a legal decision from one party without the consent of the other party. Harmful acts include actions that violate another person's rights and give rise to obligations of compensation, while beneficial acts create obligations of recompense for the beneficiary. Syarak refers to the provisions of Islamic law in the Al-Qur'an and Hadith. The sources of this agreement have similarities with national/western law, namely agreements, unilateral wishes, unlawful acts, unpaid payments, and laws. Wahbah defines unlawful acts as responsibility resulting from violations of regulations (*qanun*), which in classical Islamic jurisprudence are known as *itlâf* (destruction) and *ghasab* (usurpation). However, in Indonesia there is no specific regulation regarding unlawful acts in Islamic economics. The Compilation of Sharia Economic Law (KHES) only regulates *ghasab* as a form of positive Islamic jurisprudence.(Zubair & Hamid, 2016).

Book III of the Civil Code regulates civil liability, including breach of contract and unlawful acts. A breach of contract occurs when one party fails to fulfill its obligations in an agreement, while an unlawful act is an act that harms another party. Islamic law also regulates agreements, breach of contract, and detrimental acts, but with a different approach. In Islam, breach of contract is associated with responsibility (*dhamân*) and unlawful acts include violations of the rights of others (*al-fi'l adh-dhâr*). Although there are similarities in concept, fundamental differences exist in the legal basis and its application.

Islamic law views default and unlawful acts in Book III of the Civil Code as sources of obligations that give rise to compensation obligations. Although there are differences in their application, both remain in line with sharia principles, such as justice, agreement, and responsibility. However, the reconstruction of default and unlawful acts faces several challenges. First, differences in legal sources: Islam relies on the Qur'an, Sunnah, *ijma'*, and *qiyas* which are fixed but can be interpreted, while the Civil Code is secular and can change according to the times. Second, differences in legal concepts: Islam considers moral and spiritual aspects in its application, while the Civil Code emphasizes legality and formality. In Islam, transactions not only prioritize legal compliance but also ethics and justice, such as the prohibition of usury and fraud(AZIS, 2012). Meanwhile, the Civil Code is more technical in regulating the rights and obligations of the parties involved. Third, the development of society raises new legal issues that have not been explicitly regulated in Islam. However, the flexibility of Islamic law through the concept of *maslahat* and *ijtihad* allows its application in various modern contexts without eliminating its basic principles.

Islamic law does not explicitly discuss reconstruction as in the Civil Code, but principles such as testimony, evidence, and *qiyas* can be used to assess a legal event. Reconstruction in Islamic law is based on fair and reliable witness testimony, physical evidence such as documents and objects, and the perpetrator's confession which is

considered valid evidence. In addition, qiyas is used to determine the law in cases that are not explicitly regulated in the Qur'an or Hadith by comparing them with similar cases that have clear legal provisions.

In cases of default, Islamic law emphasizes negotiation and mediation before legal action is taken. If there is no agreement, then arbitration or religious courts can be used. Meanwhile, in cases of unlawful acts, Islamic law prioritizes compensation that is equal to the losses suffered by the victim. Reconstruction in the Civil Code aims to find out the actual legal facts, while in Islamic law, the truth is also influenced by the intentions and reasons of the perpetrator. The application of Islamic law in default and unlawful acts in Indonesia faces the challenge of legal dualism, so that integration of Islamic values into the positive legal system is needed. Although the concept of default and unlawful acts in the Civil Code has similarities with Islamic law, differences in legal sources and concepts are a challenge. Therefore, ijtihad and integration of Islamic values in the positive legal system are needed so that they can be applied in accordance with the development of the times.

#### **4. Conclusion**

Based on research findings, breach of contract and unlawful acts are two legal concepts that are often related but have fundamental differences. A breach of contract occurs due to a violation of an agreed agreement, while an unlawful act involves a violation of applicable legal rights or norms. A breach of contract does not always require an element of fault, while an unlawful act must meet the element of fault (*culpa*) and a causal relationship with the losses incurred. The legal consequences of a breach of contract are limited to the scope of the agreement, such as the fulfillment of performance or compensation, while an unlawful act can result in criminal sanctions in some cases. Book III of the Civil Code is the basis of Indonesian civil law that regulates contracts, including breach of contract and unlawful acts. A breach of contract is rooted in an agreement, while an unlawful act is not always related to an agreement. The Civil Code provides clear rules regarding both, with articles such as Articles 1243, 1244, and 1246 for breach of contract and Article 1365 for unlawful acts. The reconstruction of these concepts shows that Indonesian civil law continues to develop and adapt to the needs of society. A good understanding of these two concepts is essential for judges, lawyers, and the public in resolving civil disputes. In Islamic law, breach of contract is understood as a breach of promise in an agreement, with an emphasis on morality and restoration of relationships, in contrast to the Civil Code which places more emphasis on compensation. Unlawful acts in Islam include actions that harm others without requiring an agreement, in line with Article 1365 of the Civil Code. Islam emphasizes the moral and social responsibility of the perpetrator to individuals and society, and demands compensation as a form of restoration of justice.

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