

Harmonization of Civil Law and Sharia Principles in the Validity of *Murabahah* Contracts

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Abstract. *The rapid growth of Sharia-based financial institutions in Indonesia, particularly Sharia Savings and Financing Cooperatives (Koperasi Simpan Pinjam dan Pembiayaan Syariah, or KSPPS), has elevated the importance of murabahah financing as a primary product for community economic empowerment. However, the implementation of murabahah contracts at KSPPS faces significant legal challenges arising from the divergence between Indonesia's civil law framework and Islamic Sharia principles. This study aims to analyze the harmonization of civil law and Sharia principles in the validity and dispute resolution of murabahah contracts within KSPPS. Employing a normative legal research method, this study utilized three approaches: the statute approach, the conceptual approach, and the case approach. Legal materials were gathered from primary sources including statutory regulations (KUHPerdata, Law No. 21/2008 on Islamic Banking, Law No. 3/2006 on Religious Courts), DSN-MUI fatwas, and the Compilation of Sharia Economic Law (KHES), as well as secondary sources comprising legal journals and academic literature. The novelty of this research lies in its dual-perspective analysis that integrates civil law doctrines with Sharia normative standards to evaluate murabahah contract validity, particularly in the KSPPS institutional context. The study finds that murabahah contracts are valid under civil law provided they satisfy Article 1320 of the Civil Code, while Sharia validity requires compliance with DSN-MUI Fatwa No. 04/2000, especially the prerequisite of actual goods ownership by KSPPS prior to sale. Harmonization is achieved through dual legal drafting, inclusion of forum selection clauses referring to Religious Courts or BASYARNAS, and the recognition of DSN-MUI fatwas as material legal sources in dispute resolution. This research contributes to the formulation of better regulatory policies for integrating civil law and Sharia principles in Islamic cooperative finance.*

Keywords: *Civil Law; Dispute Resolution; Murabahah Contract; Sharia Principles.*

1. INTRODUCTION

financial institutions, particularly Sharia Savings and Financing Cooperatives (*Koperasi Simpan Pinjam dan Pembiayaan Syariah*, or KSPPS), in promoting financial inclusion and empowering local communities. Among the primary financial products offered by KSPPS is *murabahah* financing a cost-plus sale contract widely used in the purchase of goods under a deferred payment system. As a financial instrument rooted in Islamic jurisprudence, the *murabahah* contract upholds the fundamental principles of

transparency, fairness, and ethical conduct in trade and finance (Lestari & Saidatina, 2025)

Despite its growing relevance, the implementation of *murabahah* contracts in Indonesia faces significant challenges, particularly in aligning the provisions of civil law with the core tenets of Islamic Sharia law. Under Indonesia's Civil Code (Kitab Undang-Undang Hukum Perdata, or KUHPerdata), parties are granted freedom to enter into agreements as long as they do not contradict statutory regulations — a principle enshrined in Article 1338. This contractual freedom forms the legal foundation for all agreements, including *murabahah* transactions. However, Islamic law imposes distinct and stringent requirements not always covered by conventional civil law, specifically prohibiting *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (gambling) in all financial dealings (Rizkia & Na'im, 2025)

The harmonization of these two legal systems is essential not only to ensure the legality of *murabahah* contracts but also to provide legal certainty and protection for all parties involved. This harmonization is particularly critical when disputes arise, whether through litigation in court or non-litigation mechanisms such as deliberation (*musyawarah*) or Sharia arbitration. Without a coherent legal framework integrating both systems, there is a risk of legal uncertainty in areas related to payment obligations, contract breaches, and dispute resolution procedures (Maulan et al., 2023)

From the civil law perspective, in addition to Article 1338 of the Civil Code, Article 1320 outlines the four essential elements of a valid contract: consent, capacity, a specific object, and a lawful cause. These elements must also be present in *murabahah* agreements to ensure their enforceability under national law. Meanwhile, from the Islamic law perspective, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has issued Fatwa No. 04/DSN-MUI/IV/2000 on *Murabahah*, which details the procedures and ethical standards for conducting such transactions in accordance with Sharia, including the requirement that KSPPS must first own and control the goods before selling them to members.

Several legal instruments serve as reference points for this harmonization. Law No. 25 of 1992 on Cooperatives provides the legal framework for KSPPS operations, while Law No. 21 of 2008 on Sharia Banking offers guidance on Sharia compliance. Additionally, the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah, or KHES) provides both substantive and procedural guidance, including on dispute resolution mechanisms. Together, these instruments form the normative basis through which civil law and Sharia principles can be integrated within a unified legal framework (Yunita et al., 2025).

Previous studies have examined harmonization of Islamic and civil law in banking contexts, yet limited research specifically addresses KSPPS as the institutional locus, particularly from the dual perspective of contract validity and dispute resolution (Hamidah et al., 2017; Ilhami et al., 2021). This research gap the absence of a comprehensive normative analysis that simultaneously addresses *murabahah* contract validity under both legal systems within KSPPS constitutes the primary motivation for this study.

Therefore, this study aims to analyze: (1) how the *murabahah* contract at KSPPS can be valid under both civil law and Sharia principles; and (2) how disputes arising from *murabahah* contracts in KSPPS can be resolved in a harmonized manner that respects

both legal frameworks. Such harmonization will ultimately promote legal clarity, certainty, and protection for all parties involved in Sharia cooperative financing.

2. RESEARCH METHODS

This study employed a normative legal research methodology focusing on the analysis of legal norms, both positive law and Sharia principles, as applied to *murabahah* contracts within KSPPS. Three complementary approaches were utilized: first, the statute approach, which was applied to analyze written legal provisions governing contracts, Sharia cooperatives, *murabahah* financing, and dispute resolution jurisdictions, drawing on primary legal materials including KUHPPerdata, Law No. 21/2008 on Sharia Banking, Law No. 3/2006 on Religious Courts, DSN-MUI fatwas, and KHES; second, the conceptual approach, which was employed to understand fundamental concepts of civil law and Sharia principles, including the theory of legal harmonization, the principle of freedom of contract, and the principles of akad (contract) in Islamic law; and third, the case approach, which was applied to analyze court decisions and outcomes of Sharia arbitration related to *murabahah* contract disputes within KSPPS. Data were collected through library research and analyzed using prescriptive-analytical methods, evaluating whether existing legal norms adequately govern *murabahah* contract validity and dispute resolution from both civil and Sharia legal perspectives(Sunggono, 2021)

3. RESULTS AND DISCUSSION

3.1. Harmonization of Civil Law and Sharia Principles in the Implementation of *Murabahah* Contracts at KSPPS

Murabahah financing represents the most widely applied product in KSPPS. Its implementation operates within two legal frameworks simultaneously Indonesian civil law and Islamic Sharia law. This duality, while enriching the legal landscape, presents challenges regarding contract validity and dispute resolution. To address these challenges, legal harmonization ensures that *murabahah* contracts are not only legally valid under Indonesia's civil law but also consistent with Sharia principles. Law No. 21/2008 stipulates that all Sharia financial products must align with Islamic legal principles, and DSN-MUI fatwas serve as authoritative references for KSPPS operations (Niswatun Hidayah et al., 2025).

a) Implementation from the Civil Law Perspective

Under civil law, specifically Article 1320 of the Civil Code (KUHPPerdata), a *murabahah* contract is valid if it fulfills four essential conditions: (1) mutual consent of the parties; (2) legal capacity of the parties to enter into obligations; (3) a specific and determinable subject matter; and (4) a lawful cause that does not contradict statutory regulations, public morality, or public order. A *murabahah* contract that satisfies these four conditions is legally binding and enforceable under Indonesian civil law, irrespective of its Sharia dimension. Furthermore, the principle of *pacta sunt servanda* codified in Article 1338 ensures that agreements validly formed are binding as law between the parties. The principle of good faith under Article 1338(3) additionally requires that both parties act honestly and with integrity throughout the contract's execution (Setiyati & Waruwu, 2023).

b) Implementation from the Sharia Law Perspective

From a Sharia perspective, the validity of a *murabahah* contract is governed by DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000, which specifies the following essential elements (rukun) and conditions: the presence of contracting parties (buyer and seller) who are legally competent; a clearly defined and halal (permissible) object; a valid offer (ijab) and acceptance (qabul); and the complete absence of *riba*, *gharar*, and *maysir*. Most critically, the fatwa stipulates that KSPPS must first possess and control the goods before selling them to members under a *murabahah* contract. Violation of this requirement renders the contract invalid under Sharia, even if it may appear valid under civil law. This distinction represents the primary source of tension between the two legal systems (Ilhami et al., 2021).

c) Forms of Harmonization in Contract Implementation

Harmonization between civil law and Sharia principles in *murabahah* contract implementation takes several forms. First, dual legal drafting has emerged as a standard practice, where contracts are structured to simultaneously accommodate civil law requirements (written agreement satisfying Article 1320) and Sharia law requirements (compliance with DSN-MUI fatwas and KHES provisions). Notaries versed in both legal systems increasingly play a role in ensuring contracts are enforceable under both frameworks. Second, the inclusion of legal and forum choice clauses in *murabahah* agreements allows parties to preemptively specify the dispute resolution mechanism whether BASYARNAS, the Religious Court, or internal deliberation thereby reducing jurisdictional uncertainty (Hamidah et al., 2017). Third, several Sharia principles have been translated into civil law concepts to bridge normative gaps: *riba* is interpreted as an "unlawful cause" (causa tidak halal) under Article 1320(4), which can render a contract void; and *gharar* is classified as a defect in the object of agreement, allowing civil courts to adjudicate Sharia-based claims within a familiar doctrinal framework (Samsul et al., 2024).

3.2. Validity of *Murabahah* Contracts: A Comparative Analysis

The following table presents a comparative analysis of *murabahah* contract validity from both civil law and Sharia perspectives:

Table Comparative Validity of *Murabahah* Contracts

Aspect	Civil Law (KUHPerdata Art. 1320)	Sharia Principles (DSN-MUI Fatwa No. 04/2000)
Validity Requirements	Mutual consent, legal capacity, specific object, lawful cause	Competent parties, halal object, ijab-qabul, absence of <i>riba</i> / <i>gharar</i> / <i>maysir</i>
Goods Ownership	Not explicitly required; contract valid if terms met	Mandatory: KSPPS must own goods before sale
Profit Margin	Permissible as agreed by parties	Must be agreed from outset; cannot be changed unilaterally
Common Deviations	Contract remains valid if Article 1320 satisfied	Contract becomes fasid (defective/invalid) if Sharia elements absent
Legal Status if Both Met	Binding and enforceable	Sharia-compliant and permissible

Source: Researcher's Analysis, 2025

As shown in Table, the primary normative gap between the two frameworks lies in the requirement of actual goods ownership by KSPPS prior to the *murabahah* sale. In practice, many KSPPS institutions provide cash directly to members without first purchasing the goods, a deviation that renders the contract Sharia-invalid (fasid) while it may still satisfy civil law requirements. This inconsistency poses a significant threat to

the institutional credibility of KSPPS as a legitimate Sharia financial institution (Suhaimi et al., 2022).

3.3. Harmonization in Dispute Resolution of *Murabahah* Contracts

Disputes arising from *murabahah* contracts in KSPPS can be resolved through multiple legal channels. The following table presents the primary dispute resolution mechanisms and their regulatory bases:

Table Dispute Resolution Mechanisms for *Murabahah* Contracts in KSPPS

Dispute Channel	Resolution	Legal Basis	Description
Religious Court (Pengadilan Agama)		Law No. 3/2006, Art. 49	Has jurisdiction over Sharia economic disputes, including <i>murabahah</i> financing
National Sharia Arbitration Board (BASYARNAS)		DSN-MUI Fatwa & Contractual Clause	Applicable when parties include a Sharia arbitration clause in the contract
General Court (Pengadilan Umum)		KUHPerdata	Applicable if no special dispute resolution clause is included in the contract
Internal (Musyawarah)	Deliberation	Contractual Agreement	Non-litigation approach; first recourse before formal proceedings

Source: Researcher's Analysis, 2025

Harmonization in dispute resolution is achieved through four mechanisms. First, Article 49 of Law No. 3/2006 grants the Religious Court jurisdiction over Sharia economic disputes, including *murabahah* financing, providing an institutional avenue that accommodates Sharia norms within the formal judicial system. Second, where an arbitration clause is included in the *murabahah* contract, disputes are resolved through BASYARNAS, allowing for expedited resolution consistent with Islamic principles. Third, judges and arbitrators apply a juridico-normative approach in which Sharia principles are translated into civil law logic: *riba* is classified as an unlawful cause under Article 1320(4), and *gharar* is treated as a defect in the object of the contract, enabling civil and religious courts alike to adjudicate based on substantive Sharia content (Rahmawati Rama & Joko Suryono, 2024). Fourth, the DSN-MUI fatwa functions as a material legal source in court proceedings, as affirmed by the Explanation of Article 26 of Law No. 21/2008, thus bridging the gap between religious normative standards and national positive law (Jiwantomo, 2025).

3.4. Governing Principles of *Murabahah* Contracts Under Both Legal Systems

The implementation of *murabahah* contracts under harmonized civil-Sharia law is guided by a set of overlapping principles that reinforce their validity and enforceability. Under civil law, the key governing principles include: (1) freedom of contract (Article 1338), allowing parties to freely determine the terms of their agreement; (2) *pacta sunt servanda*, binding both parties to the agreed terms; (3) good faith (Article 1338(3)), requiring honest and ethical conduct throughout the contract; (4) equality of rights, ensuring non-discriminatory treatment of all parties; and (5) legal certainty, guaranteeing that duly formed contracts are binding and enforceable as law between the parties (Setiyati & Waruwu, 2023). Under Islamic law, the governing principles of akad include: (1) Al-Hurriyah (freedom of contract); (2) Al-Musawah (equality between parties); (3) Al-Adl (justice); (4) Al-Shidq (truth and honesty); (5) An-Taradhin (mutual consent, free from coercion); (6) Al-Manfa'ah (the contract must generate genuine benefit); and (7) Al-Khitabah (preference for written documentation). These principles bear significant overlap with civil law doctrine, suggesting that harmonization is not

merely a legal technique but is grounded in a shared commitment to justice, transparency, and the protection of contracting parties (Setiawan, 2021).

3.5. Practical Challenges and Recommendations

Notwithstanding the regulatory framework for harmonization, several recurring deviations in KSPPS practice undermine Sharia compliance: KSPPS frequently disburses cash to members without purchasing the goods first; actual delivery of goods is often absent, reducing *murabahah* to a disguised loan; and profit margins are sometimes set unilaterally without prior agreement. In such cases, the contract may be deemed Sharia-invalid (*fasid*) even while remaining civilly valid, a duality that erodes the legitimacy of KSPPS as a Sharia institution (Suhaimi et al., 2022). To address these challenges, several recommendations are proposed. Regulators, particularly OJK and the Ministry of Cooperatives, should strengthen Sharia compliance standards for KSPPS through more rigorous supervision and standardized *murabahah* contract templates that satisfy both civil and Sharia requirements. Sharia Supervisory Boards (DPS) within KSPPS should be empowered to conduct periodic reviews of contract implementation. Furthermore, legal education programs targeting KSPPS administrators should be intensified to ensure comprehension of both civil law obligations and Sharia principles, thereby reducing inadvertent deviations in practice (Andika et al., 2020).

4. CONCLUSION

This study has demonstrated that the harmonization of civil law and Sharia principles in the validity and dispute resolution of *murabahah* contracts at KSPPS is both legally feasible and institutionally necessary. A *murabahah* contract is valid under civil law when it satisfies the four conditions of Article 1320 of the Civil Code consent, capacity, object, and lawful cause while Sharia validity requires compliance with DSN-MUI Fatwa No. 04/2000, most critically the prerequisite that KSPPS must own and control the goods prior to sale. Harmonization is operationalized through dual legal drafting that integrates civil law structure with Sharia substance, the inclusion of forum selection clauses directing disputes to Religious Courts or BASYARNAS, and the recognition of DSN-MUI fatwas as authoritative material legal sources in adjudication. The study's key contribution lies in establishing a normative framework that simultaneously satisfies the requirements of both legal systems, thereby ensuring legal certainty, justice, and the protection of all parties involved in KSPPS *murabahah* transactions. Future research should examine the empirical application of this harmonized framework in specific KSPPS case studies to further validate its practical implementation and identify remaining gaps in regulatory supervision.

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