



Comparison of Principles in Rental Agreements According to the Civil Code and KHES

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Info Articles	Abstract
Article History Received: 2025-04-11 Revised: 2025-04-22 Published: 2025-05-30 Keywords: <i>Principles; Renting; Justice</i>	This study discusses the comparison of legal principles in rental agreements according to the Civil Code (KUHPerdara) and the Compilation of Sharia Economic Law (KHES). The background of this study is the importance of understanding the differences and similarities between the two legal systems applicable in Indonesia, especially in the context of a pluralistic society. The research method used is normative research with a comparative approach, through analysis of legal documents, literature, and related case studies. The research stages include identifying the main principles in the Civil Code and KHES, comparing the principles of freedom of contract, consensualism, good faith, and justice and welfare. The results of the study indicate that the principle of freedom of contract in the Civil Code is more flexible than the KHES which is limited by sharia values. The principles of consensualism and good faith are applied differently, with the KHES adding unique moral and religious dimensions. The conclusion of this study confirms that the KHES places more emphasis on justice and welfare in every agreement, while the Civil Code focuses on legal certainty. These findings are relevant to understanding the application of law in pluralistic societies and enhancing harmony between the two legal systems.

I. INTRODUCTION

Lease agreements are a common type of agreement in everyday life, both in business and social contexts. In Indonesia, these agreements are governed by two main legal systems: civil law, derived from the Civil Code (KUHPerdara), and sharia economic law, as outlined in the Compilation of Sharia Economic Law (KHES). (Pantow, 2020). The Civil Code, which is rooted in the Western civil law tradition, regulates rental agreements comprehensively with an emphasis on the principles of freedom of contract, legal certainty, and dispute resolution through state legal mechanisms. (Sukardi & Herlambang, 2020) In this system, the parties to a lease agreement have the freedom to determine the terms of their agreement as long as they do not violate applicable law. In contrast, KHES, which is based on Islamic sharia principles, regulates lease agreements known as *ijarah*. In this context, there is an emphasis on principles such as justice, public interest, and the avoidance of elements

considered forbidden in Islam, such as usury and *gharar* (uncertainty). (Kahar et al., 2023).

The fundamental differences between these two legal systems indicate the need for a more in-depth analysis of how these different legal principles are applied in lease agreements. This study aims to compare the principles contained in the Civil Code and the KHES in regulating lease agreements, with a focus on the principles of freedom of contract, the principle of consensualism, the principle of good faith, and the principles of justice and welfare. (Salainti, 2013). In the context of Indonesia, which has a pluralistic society, it is important to understand how these two legal systems operate simultaneously, both in everyday economic practices and in the resolution of legal disputes.

The scope of this research will include an analysis of the differences and similarities between the two legal systems in terms of the principles underlying lease agreements. This research will also assess how the influence of

sharia values contained in the KHES may influence the regulation of lease agreements in Indonesian society, which consists of various religious and cultural backgrounds. The research method used is a comparative method with a normative approach, which relies on literature analysis and the study of related legal documents, such as the Civil Code, KHES, and relevant case studies. The problem studied is how these two legal systems limit or allow freedom of contract in lease agreements and how the application of the principles of justice and welfare can create a balance for the parties involved. With this approach, this research is expected to provide deeper insight into the relevance of these two legal systems in pluralistic Indonesian legal practice and how these two systems can complement each other in implementing lease agreements that are fair and in accordance with applicable moral values.

II. RESEARCH METHODS

This study uses a comparative method with a normative approach to compare the principles in lease agreements between the Civil Code (KUHPperdata) and the Compilation of Sharia Economic Law (KHES). This normative approach aims to analyze the differences and similarities in the legal principles applied in both legal systems, especially related to the principles of freedom of contract, the principle of consensualism, the principle of good faith, and the principle of justice. The research stages begin with identifying problems related to the principles applied in lease agreements, followed by the collection of primary data in the form of legal documents such as the Civil Code, KHES, and relevant court decisions, and secondary data including legal literature and scientific articles.(Jonaedi Efendi et al., 2018).

After data collection, the next stage is a comparative analysis aimed at describing the application of legal principles in both systems. This research was conducted using a literature study method, accessing various legal sources through legal libraries and scientific databases. This study did not require direct field data collection, as it focused on reviewing relevant documents and literature. With a structured research process, this study is expected to provide a deeper understanding of the application of principles in lease agreements in both legal systems, as well as their relevance in the pluralistic context of Indonesian law.

III. RESULTS AND DISCUSSION

This study compares the principles applied in lease agreements according to the Civil Code (KUHPperdata) and the Compilation of Sharia Economic Law (KHES). In general, both legal systems recognize the principle of freedom of contract, which allows parties to determine the terms of the agreement according to their wishes, with the limitation that the agreement must not conflict with law and order. However, in the KHES, this freedom is regulated more strictly, with moral considerations and sharia law, which limits the terms of the agreement that are inconsistent with Islamic principles.

The principle of consensualism that applies in both legal systems states that an agreement is considered valid from the moment there is an agreement between the parties.(Abdullah, 2015)However, in practice, KHES places greater emphasis on the clarity of the contract and the avoidance of elements of gharar (uncertainty) or maysir (gambling), which can render the agreement invalid. This is one of the main differences between the two legal systems, rooted in Western and Islamic legal traditions.(Zulfahmi & Maulana, 2022).

The principle of good faith, which is the basis of both legal systems, also shows similarities.(Harisa, 2018)Both systems require parties to act honestly and not deceive each other in the agreement. However, KHES adds a religious dimension, namely that rental agreements must comply with sharia principles and contain no haram elements. This principle emphasizes integrity, viewed not only from a positive legal perspective but also from a moral and religious perspective.

Both legal systems place significant emphasis on the principles of justice and welfare, but with different focuses. The Civil Code emphasizes the balance of rights and obligations between parties in a contract, while the Islamic Law prioritizes the welfare of the people and compliance with Sharia law. This illustrates that the application of principles in lease agreements in Indonesia is heavily influenced by the underlying values embodied in both legal systems.

In the research findings section, a comparison of the principles of lease agreements according to the Civil Code (KUHPperdata) and the Compilation of Sharia Economic Law (KHES) has been discussed. This discussion aims to further explore the differences and similarities found in the two legal systems, with a focus on four main

principles: the principle of freedom of contract, the principle of consensualism, the principle of good faith, and the principle of justice and welfare. Each principle has a different application in these two legal systems, which illustrates the distinctive characteristics of Western civil law and Sharia law.

A. The Principle of Freedom of Contract

The Principle of Freedom of Contract One of the principles underlying rental agreements according to the Civil Code (KUHPerdota) and the Compilation of Sharia Economic Law (KHES) is freedom of contract. In the KUHPerdota, this principle allows the parties to determine the contents of their agreement based on their free will, with minimal restrictions, namely that it must not conflict with law and public order. This provides greater flexibility for the parties to adapt the rental agreement to their needs. On the other hand, in the KHES, freedom of contract is still respected, but with stricter restrictions in accordance with Islamic sharia principles. The principle of freedom of contract in the KHES must not violate existing rules in sharia law, such as the prohibition against *riba* (interest) and *gharar* (uncertainty). Thus, although both legal systems recognize the principle of freedom of contract, the KHES adds moral and religious dimensions that limit the scope of this freedom.(Mahendar & Budhayati, 2019).

B. The Principle of Consensualism

The principle of consensualism in a rental agreement states that a valid agreement occurs when there is an agreement between the parties. In the Civil Code, this principle is applied flexibly, where an agreement is considered valid if there is a consensus between the parties involved, provided it does not violate applicable law. This principle serves to ensure that the agreement has received the consent of both parties, without the need to fulfill overly strict additional conditions. Meanwhile, in the KHES, the principle of consensualism is also applied, but with a greater emphasis on clarity and precision in the agreement. One of the main objectives of the KHES is to avoid uncertainty (*gharar*) in the contract, which could be detrimental to one of the parties. Therefore, a rental agreement in the KHES must be clear regarding the rights and obligations of each party, while avoiding uncertainties. This difference shows that the KHES not only pays attention to agreement, but also ensures that the

agreement does not contain elements that could cause harm.(Hadi et al., 2017).

C. Principle of Good Faith

The principle of good faith requires parties to act honestly and not to harm each other in an agreement. In the Civil Code, this principle serves as the basis for each party's obligation to execute the contract responsibly and to refrain from fraud or evasion. This principle of good faith is important to ensure that no party is harmed or deceived in a rental agreement. In contrast, in the KHES, in addition to requiring parties to act in good faith, there is an emphasis on compliance with sharia principles. Good faith in the context of the KHES does not only mean honesty in entering into an agreement, but also includes pure intentions and not violating sharia law. In the KHES, good faith also includes avoiding all forms of transactions containing elements of usury, *gharar*, or fraud, as well as ensuring that each agreement brings clear benefits to all parties involved. This distinction highlights that in the KHES, good faith relates not only to legal honesty but also to religious and moral conformity.(Alaysia & Muttaqin, 2023).

D. Principles of Justice and Benefit

The principles of justice and welfare are important focuses in lease agreements, both in the Civil Code and the KHES. In the Civil Code, the principle of justice focuses on the balance of rights and obligations between the parties. Each party in a lease agreement is entitled to fair rights and equitable obligations. This principle aims to ensure that no party is disadvantaged in the contractual relationship. Meanwhile, in the KHES, the principle of justice also encompasses the social dimension and the welfare of the community. In addition to ensuring a balance of rights and obligations between parties, the KHES prioritizes that any agreement made must benefit not only the parties involved, but also the wider community, and must comply with sharia principles. This means that in the KHES, justice is seen not only in the legal context between the parties, but also in the broader context of social welfare. Therefore, the principle of welfare in the KHES directs that every lease agreement is not only fair but also has a positive impact on Muslims and society as a whole.(Rosyid, 2014).

Overall, despite the similarities in recognizing the basic principles in a lease agreement, their application in the Civil Code and the KHES shows

significant differences. The Civil Code, which is based on Western legal traditions, places greater emphasis on freedom of contract, the balance of rights and obligations, and the principle of good faith in the context of legal relations between parties. Meanwhile, the KHES, which is rooted in Islamic sharia principles, not only prioritizes these basic principles but also adds moral, religious, and social dimensions to its application, leading to the welfare of the community and compliance with sharia law.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the research results and discussion, it can be concluded that a comparison between the principles of lease agreements according to the Civil Code (KUHPerdata) and the Compilation of Sharia Economic Law (KHES) shows significant similarities and differences. Both legal systems recognize basic principles such as freedom of contract, consensualism, good faith, and justice and the welfare of the parties. However, in its application, the Civil Code provides broader freedom, while the KHES prioritizes adherence to Sharia principles and stricter social values. This difference reflects the different underlying philosophies between the Western and Islamic legal systems, and their impact on the implementation of lease agreements in Indonesia.

B. Suggestion

The recommendation is the importance of adapting existing legal principles to the development of Indonesia's pluralistic society. Further studies are needed on the application of Sharia principles within the context of national law, as well as the integration of moral and social values into rental agreements to better align with economic developments and societal needs.

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