



## Borrowing and Lending Agreements in the Civil Code and Islamic Economics

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<p><b>Article History</b> Received: 2025-09-03 Revised: 2025-09-20 Published: 2025-09-30</p> <p><b>Keywords:</b> <i>Borrowing and Lending; Civil Code; Commercial Code; Contract Law.</i></p>	<p>Borrowing and lending agreements are important legal instruments in socio-economic life. Agreements in the Civil Code are regulated in Book III concerning obligations. The definition of the limits of an agreement is regulated in Article 1313 of the Civil Code which states that; An agreement is an act by which one or more people bind themselves to one or more other people. In general, a person is declared negligent or in default because they do not fulfill the performance at all, the performance is not perfect, is late in fulfilling the performance and does what is prohibited in the agreement. This study aims to analyze the comparison between borrowing and lending agreements in the Civil Code (KUHPperdata) and the Sharia Economic Law Code (KHES). The research method uses comparative analysis. The results of the study show significant differences in rights and obligations, time periods, and legal recognition. This study contributes to the understanding of Sharia economic law and the Civil Code.</p>

### I. INTRODUCTION

Humans can fulfill their needs through various means, such as buying and selling, borrowing, pawning, lending, and other means. Borrowing and lending agreements are vital legal instruments in socio-economic life. Both types of agreements facilitate economic transactions, both between individuals and businesses, and influence economic stability and social justice. Therefore, a thorough understanding of these agreements is crucial.

Borrowing and lending agreements are regulated by the Civil Code (KUHPperdata) and the Sharia Economics Law. The Civil Code defines the rights and obligations of borrowers and lenders (Articles 1756-1764), while the Sharia Economics Law emphasizes sharia principles in economic transactions (Articles 1-5).

Borrowing and lending (use-out) is regulated in Articles 1754 to 1762 of the Civil Code. What is meant by borrowing and lending (use-out) is that the first party hands over a sum of money that can be used up to the second party on the condition that the second party will return the same item to the other party in the same condition (Agustina, 2021). In Islamic law, it applies comprehensively in accordance with the development of humanity which aims to

realize the betterment of the people and avoid all forms of damage. Therefore, Islam gives a greater portion to reason to analyze various Sharia laws, tracing developments and remaining guided by existing verses so that Islamic law remains flexible (Daud, 1990). In Islam, Sharia Economic activities prioritize aspects that benefit both parties, especially in borrowing and lending. In this case, the Word of Allah about helping your fellow man is proven in QS Al-Maidah / 5: 2. The Civil Code and the Sharia Economic Law Code regulate these two agreements to ensure justice and legal security. However, the differences between the two agreements remain poorly understood, leading to misunderstandings and conflict. Therefore, a proper understanding of loan and borrowing agreements is crucial to avoid conflict and ensure fairness. This study aims to analyze the comparison between the two agreements.

### II. RESEARCH METHODS

This study uses a normative legal research method with a comparative approach. Normative legal research focuses on the analysis of laws and legal concepts. The research stages are: Data collection through legislation, literature, and related data. Then, data analysis is carried out using a comparative analysis method between

loan agreements in the Civil Code and Islamic Economics. The secondary legal materials in this study are: the Civil Code, the Islamic Economics Law, and related literature.

### III. RESULTS AND DISCUSSION

Book III of the Civil Code is the legal umbrella that legally regulates agreements, including agreements to borrow money. The basis for the birth of a bond and agreement is regulated in Articles 1313, 1320, 1338. Article 1313 of the Civil Code states that an act that binds one or more people to another person or better known as an agreement. By making an agreement between the creditor and debtor, they are automatically legally bound. For an agreement to be valid according to law, it must meet the legal requirements as regulated in Article 1320 of the Civil Code, which consist of a binding agreement, the ability to make legal clauses in the agreement, containing clear main issues, and the existence of causality that is not prohibited.

A valid agreement will essentially bind both parties involved in the agreement. This is in accordance with Article 1320 paragraph I of the Civil Code. This statement is based on the assumption that both parties are free to determine the contents of the agreement, where the agreement that will be formed is a form of agreement from both parties so that both parties are required to fulfill the mutually agreed commitments. The agreement will be legally valid if the contents of the contract meet the provisions of the applicable laws and regulations. If later one of the parties is negligent and commits a violation in the form of breach of contract, that party must carry out the responsibilities as agreed upon at the beginning when drafting the clauses of the contents of the agreement. Further regarding the above matter has been regulated in Article 1338 of the Civil Code which states that agreements are made in accordance with the laws applicable to those involved in the agreement. An agreement that has been made cannot be withdrawn, except by agreement between the two parties involved in making the agreement in accordance with applicable laws and regulations and where the agreement must be carried out by the parties in good faith.

The principle of freedom to promise is clearly regulated in Article 1338 of the Civil

Code. As stated in Book III of the Civil Code, it is explained that all parties involved in an agreement are free to determine the content of the agreement but are not permitted to create clauses that do not comply with existing regulations. The agreed-upon matters must comply with existing mechanisms and procedures. In this regard, the agreement must be binding on the parties by upholding the principles of honesty, justice, and legal certainty.

A loan agreement is a guideline for making credit agreements, as stipulated in Article 1754 of the Civil Code, which states that in an agreement, one party provides collateral to another party, the lender. If the party violates the agreement, the lender can take possession of certain items used as collateral. The collateral usually has a value equal to the amount of money lent.

In money lending agreements, there are various names, among which the most widely known is the credit agreement (Sutamo, 2003). In the current era of global development, borrowing and lending money has become a necessity for society. This borrowing and lending activity is used for both business and non-business transactions. For business activities, it is usually used as capital to develop the business, while for non-business activities, it is usually used to meet daily needs. For both business and non-business activities, borrowing and lending money can be done as long as it meets the requirements and remains based on a legally applicable agreement. In addition, in money lending activities, there must also be a clause regulating the collateral that must be guaranteed by the borrower to provide certainty and a sense of comfort regarding repayment for the party lending the money. The agreement in a money lending and borrowing agreement is a manifestation of the will between the parties that is desired to be implemented. Uncertain conditions with the possibility of discrepancies between the contents of the agreement and its implementation can give rise to public doubts about the services of financial institutions, both banks and non-bank institutions. Therefore, in making an agreement, adjustments must be made to avoid losses for both parties concerned. In addition to avoiding the possibility of default on the

original agreement between the debtor and the creditor, banking and non-banking financial institutions must be able to provide collateral protection. This requires legal provisions that address the possibility of default and the risks associated with such agreements.

The conditions for a valid agreement are regulated in Article 1320 of the Civil Code, which consist of four valid conditions, namely:

- 1) They tied themselves
- 2) Ability to make an agreement
- 3) A certain thing
- 4) A lawful cause

The first and second of the four conditions are subjective. These conditions apply to the parties entering into the agreement, or in other words, the provisions govern the parties involved in the agreement. This means that if these conditions are not met, the agreement will not be formed and the existing agreement will be invalid under applicable law. In other words, the existing agreement cannot be legally accounted for, so that if there is a violation of the agreed agreement, the parties who made the agreement cannot resolve this case in court. The third and fourth conditions are objective conditions, where if one of them is not met, it will have an impact on the situation where the agreement made is considered never existed or is null and void by law.

Based on the description above, it can be explained that Book III of the Civil Code concerning Contracts only regulates how an agreement is formed, the freedom of the parties to create the contents of the agreement, but it must still be based on applicable legal regulations and also regulates the conditions for the validity of an agreement.

In Book III of the Civil Code, it is explained about agreements that are void by law. An agreement that is void by law occurs because the third and fourth conditions contained in Article 1320 of the Civil Code are not met. However, it is not regulated more clearly and in detail regarding the legal consequences for the parties who later enter into an agreement that is void by law. The purpose of lending and borrowing in Sharia Economics is to fulfill needs and build fair social relations (Article 1 Paragraph (1) of the

Sharia Economic Law). Loan agreements must be in accordance with sharia principles, such as justice, transparency, and no elements of usury (Article 2 Paragraph (2) of the Sharia Economic Law).

Loan agreements have a maximum term of one year (Article 5 of the Sharia Economic Law). The loaned item must be returned in the same condition and of equal value (Article 6 of the Sharia Economic Law). Violations of the loan agreement may result in sanctions in the form of fines and compensation (Article 7 of the Sharia Economic Law). Loan agreements in Sharia Economics have significant legal implications:

1. Increasing fairness and equality in economic transactions.
2. Avoiding usury and exploitation practices.
3. Building trust and cooperation between the parties involved.

The differences between the Civil Code and the Sharia Economic Code are as follows:

No	Criteria	Civil Code	KHES
1	Definition	Article 1756	Article 1 Paragraph (1)
2	Time period	Not specified	Maximum 1 year
3	Flower	Allowed	Not Allowed
4	Return	Similar items	Items of the same type and equivalent value
5	Condition	Not specified	Must be in accordance with Islamic law
6	Sanctions	Default	Default and fines

The following is an example of an explanation:

This discussion will analyze the results of research on loan agreements in Islamic Economics and the Civil Code.

#### 1. Definition Differences

A loan agreement in Islamic economics has a more specific definition and is based on sharia principles (Article 1 Paragraph (1) of the Islamic Economics Law). Meanwhile, the Civil Code defines it as an agreement that regulates the relationship between the borrower and the lender (Article 1756).

## 2. Term Agreement

The loan agreement period in Islamic economics has a maximum period of 1 year (Article 5 of the Islamic Economics Law), while the Civil Code does not specify a time period.

## 3. Interest Difference

Loan agreements in Islamic economics prohibit interest because it is considered usury (Article 2 Paragraph (2) of the Islamic Economics Law), whereas the Civil Code permits interest.

## 4. Return Difference

The loan agreement in Islamic Economics stipulates that the return of the borrowed goods must be in the same condition and of equal value (Article 6 of the Islamic Economic Law).

## 5. Legal Implications

Loan agreements in Islamic economics have significant legal implications for enhancing fairness and equality in economic transactions. These agreements can also prevent usury and exploitation.

## 6. Weaknesses and strengths:

### 1) Lack

- a. Lack of public awareness regarding loan agreements in Islamic Economics.
- b. Supervision of lending agreement practices.

### 2) Excess

- a. Justice and equality in economic transactions.
- b. Avoiding usury and exploitation practices.
- c. Increase trust and cooperation between related parties.

3. Sharia emphasizes sharia principles such as justice, transparency, and no usury.
4. Lending agreements in Islamic economics can increase justice and equality in economic transactions.
5. The Sharia Economic Law Code offers a fairer and more transparent alternative compared to the Civil Code.

## Comparison of the Civil Code and Sharia Economics

1. Civil Code (Article 1756) while KHES is regulated in the Sharia Economic Law Law (Article 1 Paragraph 1).
2. The term is not specified (Civil Code), while the KHES is a maximum of 1 year (Sharia economics).
3. Interest is permitted (Civil Code) while KHES is prohibited (because it does not comply with sharia principles).
4. Return of similar goods (Civil Code) while KHES is similar goods and equivalent value (Sharia Economics).

## The implications are as follows

1. There is a need to increase public awareness about the importance of understanding loan agreements.
2. Stricter oversight of lending and borrowing practices.
3. Adjustment of laws and regulations to the principles of Islamic Economics.

## B. Suggestion

1. The government must strengthen laws and regulations regarding loan agreements.
2. Islamic financial institutions must increase transparency and fairness.
3. Society must be proactive in understanding and implementing the principles of Islamic Economics.
4. And training on loan agreements in Islamic Economics for the public and legal practitioners.

## IV. CONCLUSION AND SUGGESTIONS

### A. Conclusion

1. Loan agreements in the Civil Code and Islamic Economics have significant differences in definition, term, interest and repayment.
2. The Civil Code does not specify a time period and allows interest, whereas Sharia Economics has a maximum time period of 1 year and prohibits interest.

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