

**Correlation of the Civil Code and Human Right Regarding Debt Dispute
Settlement Analysis of the Concept of Welfare and Justice in Islamic Law**

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ABSTRACT

Debt disputes are common issues in social life and encompass both civil law and human rights dimensions. The Indonesian Civil Code (KUHPdata) provides a normative legal framework for resolving such disputes, while Law No. 39 of 1999 on Human Rights emphasizes the protection of individual dignity and rights, including the right to fair treatment in legal proceedings. However, in practice, the resolution of debt disputes often overlooks substantive justice and humanitarian considerations, particularly for debtors who are in vulnerable financial situations. This study aims to analyze the correlation between the Civil Code and human rights in the context of debt dispute resolution, and to explore alternative solutions through Islamic legal approaches that emphasize the principles of public interest (maslahah) and justice ('adl). The research method used is normative legal research, employing both statutory and conceptual approaches. The findings reveal that Islamic law offers a more holistic paradigm for dispute resolution, taking into account the social and moral conditions of the parties involved, without neglecting their legal rights and obligations. A resolution model based on maslahah and 'adl not only provides legal justice, but also promotes humanity, empathy, and sustainable solutions.

Keywords: Civil Code, Human Rights, Debt disputes, Justice, welfare, Islamic law

A. INTRODUCTION

Debt disputes represent one of the most common forms of civil conflict in society. In resolving such disputes, Indonesia relies on the Civil Code (KUHPdata) as its positive legal foundation. However, the evolution of society and growing demands for the recognition of human rights require the legal system to go beyond the mere enforcement of formalities and also uphold substantive justice. In Islamic jurisprudence, debt transactions (*muamalah*) constitute binding agreements between two parties, governed by principles such as honesty (*ṣidq*), trustworthiness (*amānah*), fairness (*'adl*), the prohibition of *riba* (usury), and mutual assistance. Article 1313 of the Indonesian Civil Code defines a contract as a legal act made by one or more parties

with the intention of binding themselves to another party. Such acts are deliberately undertaken to produce legal consequences, particularly the emergence of rights and obligations for the involved parties. (Kholifah et al., 2025)

The practice of lending and borrowing money, commonly referred to as debt transactions, has long been an integral part of societal life, coinciding with the widespread use of money as the primary medium of exchange. In its implementation, debt agreements often encounter obstacles when the debtor fails to fulfill their obligations as stipulated in the contract, leading to a breach of contract (*wanprestasi*). (Suparyanto dan Rosad (2015, 2020)

Default (*wanprestasi*) refers to the failure to fulfill contractual obligations, which may result from negligence or a deliberate breach by the debtor. When a default occurs, it causes harm to the other party, and thus the negligent debtor is legally obligated to bear the consequences of claims brought by the creditor. Nevertheless, valid and lawful evidence is required to prove that the debtor has indeed committed a breach in accordance with applicable legal provisions. One of the consequences of default is the debtor's inability to repay the debt, which may ultimately lead to the seizure of the debtor's assets as a form of collateral for debt repayment commonly referred to as “conservatory attachment” (*sita jaminan*). (Paendong & Taunaumang, 2019)

Debt-related conflicts often involve an imbalance of power between creditors and debtors. When debtors face difficulty in meeting their payment obligations, the legal system may impose sanctions without adequately considering their socio-economic conditions, potentially leading to violations of human rights. Debt issues frequently serve as the root cause of various legal disputes within society. The Indonesian Civil Code (KUHPerdata) governs civil relations, including obligations arising from debt agreements. However, in practice, dispute resolution processes often neglect human rights considerations such as the right to property and the right to fair treatment. In contrast, Islamic law provides a *maslahah*-oriented and justice-based approach that emphasizes the protection of fundamental human rights, including the right to property.

In the context of Islamic law, justice is not limited to equal treatment but also

includes humanitarian and public welfare (maslahah) considerations. Therefore, examining the correlation between the Civil Code, human rights, and Islamic law is crucial in resolving debt disputes through a more comprehensive and humane concept of justice.

B. METHOD

This study employs a normative legal research method (Hendri & Khoiri, 2018), which is a library-based study that examines relevant written legal sources. This approach emphasizes the review of existing legal literature and theories (Rosidi et al., 2024). According to Peter Mahmud Marzuki, normative legal research aims to identify legal rules, principles, or doctrines in order to answer specific legal problems. This approach is prescriptive in nature, offering normative assessments of legal facts or conditions. According to Soerjono Soekanto and Sri Mamudji, normative legal research is a type of study that focuses on analyzing literature or legal materials derived from secondary data sources. (Muhaimin, 2020).

This study adopts both statutory and conceptual approaches (Soekanto, 2019). An approach may be understood as a method of establishing connections with the subject matter or as a strategy for understanding and directing the focus of a research problem. The subject of this research is debt and credit (utang piutang), while the objects of the study are the Indonesian Civil Code (KUHPerdata) and human rights in the context of debt dispute resolution, analyzed through the concept of justice in Islamic law.

Legal materials are the sources used in legal research. These materials can be classified into primary, secondary, and tertiary legal sources. Primary legal materials in this study include the Indonesian Civil Code (KUHPerdata) and the Human Rights Law in relation to debt disputes. Secondary legal materials consist of supporting references such as Islamic jurisprudence (fiqh) books, academic journals relevant to the research, statutory regulations, and credible internet sources. Tertiary legal materials include encyclopedias, the Indonesian Dictionary (KBBI), and translated versions of the Qur'an.

Data collection was conducted through a literature review, which involved

identifying and examining legal materials from various sources. The analysis of legal materials was also carried out through doctrinal study, aimed at formulating legal arguments based on the applied theories in order to provide normative assessments of the correlation between the two legal systems in achieving justice according to Islamic law. Islam commands every individual to uphold justice in all actions and decisions. (Rangkuti & Maha, 2017)

This study analyzes legal materials using a qualitative method. The analytical process involves examining relevant legal sources to support and formulate conclusions based on the researcher's findings, supported by theories elaborated in the discussion. The nature of analysis in this normative legal research is prescriptive, aiming to provide legal arguments or rational foundations for the research findings (Muhaimin, 2020). Legal argumentation serves not only to explain and interpret legal norms but also functions as a crucial tool in the process of juridical analysis.

C. ANALYSIS

The Civil Code in Resolving Debt Disputes

Debt or loan agreements (which involve consumable items) are forms of contracts in which the first party lends a sum of money or goods to the second party, with the condition that the second party is obliged to return an equivalent item in both quantity and condition. A loan agreement is defined as a contract whereby one party delivers consumable goods to another party, on the condition that the recipient must return items of the same kind, quantity, and quality. Under the Indonesian Civil Code (KUHPerdata), loan agreements are categorized into two types:

1. **Commodatum (Loan for Use)** This is an agreement in which one party lends a non-consumable item to another for use, without any payment, and with the obligation to return the item in its original condition after use. The object of this agreement must not be consumed through use. Its legal basis is found in Article 1740 of the Civil Code, which defines commodatum as a contract granting someone the right to use another's property free of charge, with the obligation to return it in its original state.
2. **Mutuum (Loan for Consumption)** This type of loan involves consumable items, typically money, food, raw materials, or similar goods. In such cases, the

borrower is required to return goods of the same type and in equal quantity, rather than the exact same item.

In the Indonesian Civil Code (KUHPerdata), there is no requirement that a contract must be made in writing; thus, oral agreements are considered legally valid and binding. This means that agreements can be made between any parties, whether between individuals or between an individual and a legal entity. This principle is grounded in the doctrine of freedom of contract, whereby every agreement made must still comply with statutory regulations, moral norms, and public order. However, certain essential elements must be present in any agreement: the parties involved, mutual consent, the object of the agreement, the lawful purpose, and the form whether oral or written (Patricia Caroline Tiodor et al., 2023).

Oral agreements commonly occur in daily life, often without the parties realizing it. One of the most frequent examples is a debt agreement. Essentially, a debt agreement carries the same meaning as a loan-for-consumption contract as defined in the Civil Code an arrangement in which one party delivers consumable goods to another, with the condition that the recipient must return goods of the same kind, quantity, and condition.

In drafting a contract, certain conditions must be fulfilled for the agreement to be considered legally valid, as stipulated in Article 1320 of the Indonesian Civil Code (KUHPerdata). These conditions include: (1) mutual consent of the parties; (2) legal capacity to enter into a contract; (3) a clearly defined subject matter; and (4) a lawful cause. The elements of consent and legal capacity are classified as subjective requirements because they relate to the parties involved in the contract. In contrast, the requirements concerning a specific object and lawful cause are considered objective requirements, as they directly pertain to the substance or content of the contract namely, the object of the legal act performed by the parties (Mahfuzh et al., 2021).

The fundamental basis of an oral loan agreement is mutual trust, particularly from the creditor toward the debtor as the borrowing party. The creditor places confidence in the debtor's promise to repay the borrowed sum within the agreed timeframe. However, oral agreements often result in losses for the creditor, especially when the debtor defaults or breaches the agreement due to inability to repay as agreed (Patricia Caroline Tiodor et al., 2023).

According to the *Legal Dictionary*, *wanprestasi* (default) is defined as negligence, failure, or breach of promise namely, a condition in which a person fails to fulfill obligations stipulated in a contract (Harahap, 1986). Default occurs when the debtor, due to their own negligence or fault and not due to force majeure fails to perform the obligations outlined in the agreement. In other words, default reflects the debtor's incapacity or negligence in fulfilling the obligations agreed upon with the creditor (Mahfuzh et al., 2021). In civil law, the term *wanprestasi* originates from Dutch, meaning poor or improper performance. It refers to a condition in which an individual fails or neglects to carry out obligations agreed upon in a contract between the creditor and the debtor. In practice, it is not uncommon for a debtor to commit *wanprestasi* by failing to fulfill obligations as stipulated in the agreement (Alberta & Quintarti, 2024).

Wanprestasi is regulated under Article 1238 of the Indonesian Civil Code (KUHPdata), which states that a debtor is considered in default if they have been formally declared as such through a written notice or equivalent document, or if the contract itself stipulates that default occurs automatically upon the lapse of a specified deadline. To determine when a debtor is in a state of default, one must examine whether the agreement specifies a time frame for the fulfillment of obligations. If no time limit is stated, the creditor must first issue a notice demanding performance. However, if a specific deadline is clearly defined in the agreement, the debtor is automatically considered in default once that deadline has passed (Paendong & Taunaumang, 2019).

The debtor must be issued a written warning explicitly stating their obligation to fulfill the agreed performance within a specified period. If the debtor fails to comply within that timeframe, they are deemed to be in default (*wanprestasi*). This written warning may be delivered either formally or informally. A formal notice usually takes the form of a *somasi* (legal warning) issued by an authorized institution. In practice, a *somasi* is typically issued three times: Somasi I, Somasi II, and Somasi III. However, the first and second *somasi* may also serve as a gradual escalation of warnings. The first warning is usually persuasive or conciliatory in tone, with the hope that the debtor will voluntarily fulfill their obligations as outlined in the notice. Generally, creditors issue at least three warnings. If the obligations remain unfulfilled after the third *somasi*, the creditor is then responsible for submitting a follow-up notification to the party or

institution in charge of collection or enforcement procedures (Nur Azza Morlin Iwanti & Taun, 2022).

In Indonesia, oral agreements are recognized under civil law, as stipulated in Article 1313 of the Indonesian Civil Code (KUHPerdata). However, in the absence of a written contract, the main challenges lie in proving the existence of the agreement and regulating the rights and obligations of both parties (J. Hukum et al., 2024). Informal written warnings may be delivered through various means, such as registered mail, telegrams, or direct delivery by the creditor to the debtor with proof of receipt. This type of warning is known as *ingebreke stelling*.

The legal consequence of *wanprestasi* (default) in a contract is that the debtor is obliged to compensate the creditor for losses incurred, as regulated in Article 1234 of the Civil Code. In cases involving reciprocal agreements, the creditor also has the right to file a petition with the court to cancel or nullify the contract, in accordance with Article 1266 of the Civil Code. Furthermore, Article 1131 of the Indonesian Civil Code states that all assets owned by the debtor both movable and immovable, whether currently held or acquired in the future serve as collateral for the fulfillment of their obligations. Accordingly, under the law, all of a debtor's assets automatically function as general collateral for debt obligations, without the need for a separate security agreement.

If the debtor commits a default or breach of contract and the credit agreement is not accompanied by a specific security agreement for a particular item (i.e., it is non-accessory), the creditor can only rely on general collateral in the form of the debtor's entire estate, as stipulated in Article 1131 of the Indonesian Civil Code. The following are measures that creditors may pursue to enforce repayment:

- a. If amicable settlement efforts, including debt restructuring, prove unsuccessful and the debtor remains unwilling to rectify the default, the final recourse is litigation. In such cases, the creditor may file a civil lawsuit in the District Court to demand the fulfillment of the debtor's obligations. However, if the credit agreement includes an arbitration clause, the dispute must be resolved through the designated arbitration institution.
- b. To ensure that the legal action is not futile or unenforceable (*illusoir*), the creditor may file a petition with the District Court to impose a conservatory

attachment (*conservatoir beslag*) on the debtor's assets.

If a debtor defaults and the credit agreement is not based on an accessory relationship secured by a specific item of collateral, the debt settlement process shall adhere to the provisions of Article 1131 of the Indonesian Civil Code, which stipulates that the debtor's entire estate serves as general collateral. In such cases, if amicable settlement or compromise fails and the debtor remains unwilling to correct the breach, the legal remedy available is to file a lawsuit in court to demand the fulfillment of obligations. To ensure that the lawsuit is not rendered ineffective and has enforceable power, the creditor may submit a petition to the District Court for the imposition of a conservatory attachment (*conservatoir beslag*) on the debtor's assets (Candra et al., 2023).

One of the primary grounds for filing a lawsuit in court is the debtor's default. According to Article 1234 of the Indonesian Civil Code, every obligation (or engagement) is intended to result in: (1) the delivery of something, (2) the performance of an act, or (3) an omission (the restraint from doing something). Default can manifest in several forms: a complete failure to perform the obligation, delay in performance, or performance that deviates from the terms agreed upon in the contract (Jamilah, 2017).

Human Right The Resolution Of Debt Diputes

In Indonesia, Law No. 39 of 1999 on Human Rights regulates various categories of human rights, including those related to debt practices (Amran, 2017). Debt-related activities often give rise to conflicts, which are typically resolved through deliberation between the creditor and the debtor. However, when amicable resolution cannot be reached, settlement through judicial institutions becomes the final resort to obtain justice before the law (Kartika Puspita Dewi & Siti Malikhatun, 2018). Human rights play a crucial role in being upheld, as they guarantee the principle of equality for all human beings without exception (Hakim, 2021).

The Human Rights Law particularly Article 17 emphasizes that every individual has the equal right to access justice without discrimination. This includes the freedom to file petitions, complaints, or lawsuits in criminal, civil, or administrative cases. Furthermore, each case must be resolved through an independent and impartial judicial process, governed by legal procedures that ensure an objective examination by honest

and fair judges, thereby achieving just and truthful rulings.

Article 19 paragraph (1) of the Law on Human Rights stipulates that no offense or crime may be punished with the confiscation of all property belonging to the guilty party, and paragraph (2) states that no one shall be imprisoned or detained under a court ruling solely for their inability to fulfill an obligation arising from a debt agreement (Law of the Republic of Indonesia on Human Rights, 2025). The article concerning the right to property guarantees that every individual has the right to own property, either individually or jointly with others. It further asserts that no one shall be arbitrarily deprived of their property.

Human rights provide an essential framework to ensure that the resolution of debt disputes does not solely emphasize formal legal aspects (such as contracts and defaults), but also considers fundamental human rights. In a just legal system, the rights of the creditor must be balanced with the protection of the debtor's dignity and right to a decent life. Every right is inherently linked to a corresponding obligation. Therefore, one seeking to enforce their rights must first have fulfilled their obligations (J. Hukum et al., 2023). Understanding the laws governing debt obligations is essential to grasp the respective rights and duties of each party, thereby minimizing potential disputes that could escalate into legal conflicts.

Human rights are a universal principle that upholds recognition of individual freedom, dignity, and protection, without distinction based on race, religion, gender, or social status. Human rights form the foundational basis for achieving equitable justice and societal well-being for all humanity (Ramadhani et al., 2023).

In practice, judicial rulings must consider whether the enforcement of debt law infringes upon the debtor's human rights. Financial institutions and debt collectors are required to adhere to human rights principles in their collection procedures, avoiding threats, intimidation, or harassment. Likewise, debt settlements within communities that occur outside the court system must consider the social condition of debtors and refrain from forcibly seizing their assets, as doing so could constitute a human rights violation (Hafizi, 2014). The state is obligated to provide fair mediation mechanisms and access to justice for debtors who are unable to repay their debts.

Debt Dispute Resolution: The Concepts of Public Interest (Maslahah) and Justice in Islamic Law Perspective

Maslahah in Islamic law refers to the principle of establishing legal rulings based on considerations of benefit (*maṣlaḥah*) and avoidance of harm (*mafsadah*). It originates from the fundamental objectives of Islamic law (*maqāṣid al-sharī‘ah*), which seek to preserve five essential elements: protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-‘aql*), progeny (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*). The *maqāṣid al-sharī‘ah* aim to ensure the realization of human welfare both in this world and the hereafter. Sharia exists as an instrument to promote good and prevent harm to mankind. These five necessities, known as *al-ḍarūriyyāt al-khams*, are the core of maslahah (Abidin, 2023).

According to Al-Ghazali (Irwansyah et al., 2018), maslahah is defined as “preserving the objectives of Sharia by avoiding harm and realizing benefits for humanity.” Maslahah is classified into three categories:

1. Maslahah Dharuriyyah (Primary) – Essential benefits necessary for human survival. Neglecting them leads to major harm or destruction. In debt contexts: ensuring wealth protection (*ḥifẓ al-māl*) through fair debt arrangements. Documentation of debt (QS Al-Baqarah: 282) safeguards ownership rights and prevents conflicts. Riba prohibition protects society from structural poverty. Mismanaged debts may cause mass bankruptcy and social breakdown—thus threatening *maslahah dharuriyyah*.
2. Maslahah Hajiyyah (Secondary) – Benefits that ease hardship, though not essential for survival. In debt contexts: offering time extensions for struggling debtors (QS Al-Baqarah: 280), allowing restructuring, rescheduling, or partial debt forgiveness. Avoiding abusive collection practices or confiscating a debtor’s sole residence. Example: psychological relief for insolvent debtors when given leniency, reflecting Sharia’s wisdom and compassion.
3. Maslahah Tahsiniyyah (Tertiary) – Complementary benefits that promote dignity, morality, and civility. In debt contexts: observing etiquette in transactions avoiding reminders of one’s debt, offering greetings, and kindness during collection. Encouraging voluntary debt forgiveness (QS Al-Baqarah: 280). Protecting the debtor’s dignity by avoiding public shaming. Example: A wealthy person forgiving a poor debtor purely for God’s sake though not legally required, it promotes virtuous ethics and social harmony.

In debt transactions, *maslahah* demands that creditors do not burden debtors in inhumane ways. Debtors genuinely unable to pay must be given respite or even forgiven (QS Al-Baqarah: 280). Transactions must be based on mutual consent and fairness (QS An-Nisa’: 29). Thus, justice (‘*adl*’) is central to Islamic legal frameworks.

Justice (‘*Adl*’) as a Core Principle in Islamic Law Justice in Islam is a foundational principle encompassing all dimensions of life. Linguistically, ‘*adl*’ means placing something in its rightful position. Ethically, it refers to a moral and spiritual concept that seeks to foster goodness and correct human affairs (Hamka, 2018).

Justice has long been acknowledged as the basis of legal formulation and implementation, even before modern human rights instruments. It represents a moral standard for regulating society (Nasution, 2014). Justice ensures balance and legal certainty and is not merely a legal construct but includes moral and ethical dimensions. It guarantees equal treatment and protection for all (J. N. Keadilan, 2024).

Various scholars define justice from different perspectives, but it essentially refers to moral correctness in social and legal interactions (Sumadi, 2015). In Islam, justice is not merely a formal-legal necessity but a spiritual, moral, and social value intended to ensure harmony and balance. The Quran mandates justice explicitly (QS An-Nahl: 90), which comprises three key dimensions:

- a. Legal Justice (*al-‘Adl al-Qānūnī*): Justice in judicial processes. Islam commands the impartial application of law regardless of social status or relations. In debt relations, legal justice demands that contracts be honored and rights and obligations upheld through enforceable legal frameworks.
- b. Moral Justice (*al-‘Adl al-Akhlāqī*): Justice rooted in conscience and noble character. Beyond legality, *ihsān* (excellence) encourages leniency, forgiveness, and moral compassion. For example, easing the burden of debt on struggling debtors (QS Al-Baqarah: 280).
- c. Social Justice (*al-‘Adl al-Ijtīmā’ī*): Justice in societal structures. The Quran emphasizes giving to relatives and prohibits injustice (*al-baghy*), which includes social inequality and economic oppression. In debt contexts: seizing a debtor’s only home or imprisoning one due to inability to pay are forms of *baghy*. Justice must integrate empathy, ethics, and social responsibility.

An ideal Muslim is not only legally just but also morally good (*ihsān*) and socially responsible. Islam advocates layered justice—legal firmness, heartfelt sincerity, and structural equity. In debt settlement, justice requires humane treatment of debtors, avoidance of exploitative interest, and resolution through peace and forgiveness (QS Al-Baqarah: 280, 282). Justice means treating everyone according to their rights and obligations (F. Hukum, 2023).

Ultimately, justice is the pathway to public benefit (*maslahah*), and *maslahah* is the goal of justice. Justice serves as the focal point in Islamic law. Thus, resolving debt disputes should be based on substantive justice and communal welfare—not merely legal formalities (Yonanto, 2019).

The Correlation Between the Indonesian Civil Code and Human Rights in the Framework of Maslahah and Justice

The Indonesian Civil Code (KUHPerdata) provides a structured and systematic legal mechanism for resolving debt disputes. However, its rigid application often fails to take into account the socio-economic conditions of debtors. In contrast, the Human Rights Law (UU HAM) emphasizes that justice must be accessible to all citizens without discrimination, and that the dignity and inherent worth of each individual must be respected. The Qur’an, in Surah Al-Baqarah (2:280), highlights this moral imperative: *“And if the debtor is in difficulty, grant him time until it is easy for him to repay. But if you remit it by way of charity, that is better for you, if you only knew.”* This verse exemplifies the Islamic emphasis on fair and humane treatment of debtors in hardship, even encouraging voluntary debt forgiveness (*iqṭā’ al-dayn*) for the sake of communal welfare (*maslahah*).

This contrast underscores that an ideal legal system should balance creditor rights with the protection of vulnerable debtors. Enforcement mechanisms such as asset seizure or coercive repayment orders, if implemented without humane considerations, may violate fundamental human rights principles. Hence, the Islamic concepts of justice (*‘adl*) and public interest (*maslahah*) can serve as vital normative complements to KUHPerdata and the Human Rights Law in the resolution of debt-related disputes.

Islamic law does not merely enforce normative justice, but upholds substantive *maslahah* in legal outcomes. Justice in Islamic jurisprudence is not limited to

punishment or legalistic interpretations but is rooted in empathy, social sensitivity, and ethical discretion. Through the integrated application of ‘adl and maslahah, Islamic law offers a more humane, ethical, and constructive framework for resolving debt disputes. This approach may serve as a bridge between rigid codified law (KUHPPerdata) and the universal moral imperatives of human rights law, ensuring justice and public welfare.

D. CONCLUSION

Debt dispute resolution should not rely solely on the provisions of the Indonesian Civil Code. Instead, it should be approached through a holistic legal framework that incorporates Human Rights Law and Islamic legal principles to achieve justice (al-‘adl) and public welfare (maslahah). An integrative approach leads to a dispute resolution process that is more equitable, dignified, and respectful of human values. By combining the strengths of three legal domains: Civil Code (KUHPPerdata): Secures creditors’ rights under the principle of *pacta sunt servanda* (agreements must be kept), Human Rights Law (HAM): Emphasizes humane treatment and the dignity of debtors, ensuring non-discriminatory access to justice, Islamic Law: Offers flexible, compassionate, and community-oriented solutions rooted in justice and moral ethics, it is possible to establish a more humane, balanced, and solution-oriented debt resolution system that upholds both legal certainty and human dignity.

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