

Defective Consent in Sharia Economic Contracts: Legal Foundations, Doctrinal Analysis, and Practical Implications

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Abstract: Sharia economic contracts are fundamentally built on the principles of mutual consent (an-taradhin), justice, balance, transparency, and good faith. However, in practice, contract formation can face issues such as defective will, ambiguity, or invalidity of the object or substance of the contract, which have different characteristics and legal consequences. This study aims to analyze the legal basis, form, and consequences of defective will in Sharia economic contracts based on Islamic law and Indonesian positive law, and to examine its threat to contemporary economic contract practices, including digital transactions. This study uses normative legal research methods with regulatory, conceptual, and analytical approaches. The legal material discussed includes provisions of the Indonesian Criminal Code (KUHP) on the requirements for a valid contract and defective will, fatwas from the National Sharia Council (DSN-MUI) regarding Sharia economic contracts, jurisprudence, and Islamic legal and contract law literature. The results indicate that defects in wills, such as coercion (ikrah), mistake (ghalath), fraud (tadlis), and involvement in certain circumstances, are associated with disruptions to the parties' freedom and awareness in giving consent. Meanwhile, jahalah and gharar cannot be automatically equated with defects in wills because both relate to ambiguity or lack of authorship in objects or transactions, while substantive invalidity relates to elements of the contract that contradict legal provisions or Sharia principles. This distinction results in diverse legal consequences, including the contract being voidable, fasid, bāṭil, or mauquf, depending on the type and severity of the violation. In digital contract practice, issues of information transparency, standard clauses, unequal bargaining power, and electronic agreement mechanisms can increase the risk of disruption to the parties' agreements. Therefore, adherence to transparency, legal protection, good faith, the principle of prudence, and legal certainty are necessary to maintain fairness in contracts while supporting public trust and economic independence as part of strengthening economic integrity.

Keywords: Contract validity, Defects in wills, Digital contracts, Economic sovereignty, Indonesian positive law, Sharia Economic contracts

INTRODUCTION

A contract is a legal instrument that forms the basis for establishing legal relationships in various Islamic economic activities. Contracts not only serve to bind the parties to a transaction but also serve as a means to achieve justice, balance, transparency, and protect the rights and interests of the parties. In Islamic law, the validity of a contract is related to the fulfillment of the contract's pillars and conditions, as well as the consent of the parties (ridha). The principle of an-taradhin places freely given consent as a crucial foundation for muamalah transactions. This principle is reflected, among other things, in the (DSN MUI, 2017) concerning Murabahah Sale and Purchase Contracts, which bases the transaction on the principle of mutual consent of the parties.

Problems arise when the consent given by one party is not given freely, consciously, or based on adequate information. This condition is known in contract law as a defect in will (wilsgebreken). (Putry Delsa Hasanah¹, Rival Febriyana², Nur Cahya³, 2024) explain that a defect in will in the formation of an agreement relates to the disruption of the agreement as one of the subjective conditions of the agreement, specifically through error, coercion, and fraud. From an Islamic legal perspective, this issue can be linked to the concepts of ikrah (coercion), ghalath (mistake), and tadlis (fraud), while abuse of circumstances (misbruik van omstandigheden) has developed as a doctrine in modern contract law and is also discussed in the context of sharia business contracts (Hasanah & Wirdyaningsih, 2023). Thus, defects in a will essentially focus on the process of forming an agreement, not solely on the content or object of the contract.

This distinction is important because not every issue in a contract can be categorized as a defect in will. Jahalah, for example, relates to a lack of clarity regarding the object or specific elements in a

transaction, while *gharar* relates to excessive uncertainty in the contract. Both can affect the validity of a contract, but are not identical to defects of will because the problem lies in the clarity or certainty of the object and structure of the transaction. (Alia, 2017)) discusses various forms of defective contracts in Islamic contract law, while (Bantekas, 2024)) shows that Islamic contract law recognizes a distinction between valid contracts (*ṣaḥīḥ*), defective contracts (*fāsid*), and void contracts (*bāṭil*), each of which does not necessarily result in the same legal consequences. (Alhadidi et al., 2026)also point out that the doctrine of nullity in Islamic jurisprudence needs to be viewed based on the type and degree of defect, including the distinction between *bāṭil*, *fāsid*, and *mauquf* contracts. Therefore, equating all such issues as “defects of will” or uniformly defining “revokable” consequences may obscure doctrinal differences in Islamic law.

In Indonesian positive law, the issue of defective will has a more specific basis in the Civil Code (KUHPerdata). Article 1320 of the Civil Code stipulates four conditions for a valid agreement: agreement between the parties, capacity, a specific subject matter, and a non-prohibited cause. Furthermore, Article 1321 emphasizes that an agreement is void if it is given due to an error or obtained through coercion or fraud. This provision is then detailed in Article 1322 concerning error, Articles 1323–1325 concerning coercion, and Article 1328 concerning fraud. Thus, defective will in Indonesian civil law primarily relates to the terms of agreement as a subjective condition of the agreement, so its legal consequences need to be distinguished from violations of objective conditions regarding a specific object and non-prohibited cause.

The development of Indonesian contract law doctrine also shows that abuse of circumstances has its own relevance in determining the validity of an agreement. This is evident, among other things, in Supreme Court Jurisprudence Number 2356 K/Pdt/2008, which states that a sale and purchase agreement made under duress and under duress can be categorized as *misbruik van omstandigheden* and can be canceled because it no longer meets the elements of Article 1320 of the Civil Code. (Hasanah & Wirduyaningsih, 2023; Widia & Budiarta, 2022)also position abuse of circumstances as an issue related to the freedom of will and the balance of the parties' positions. Therefore, an analysis of defects of will in Islamic economic contracts needs to reconcile Islamic legal norms with the construction of Indonesian contract law without directly equating the legal categories derived from the two systems.

The urgency of this discussion has increased with the development of the Islamic economy and the digitalization of transactions. Islamic banking, Islamic fintech, digital financing, and various forms of electronic contracts have transformed the way parties express their consent. Consent, previously granted through in-person meetings and physical *ijab qabul* (contractual agreement), can now be granted through electronic signatures, click-wrap agreements, digital platforms, or other electronic consent mechanisms(Faizin et al., 2025)demonstrated that electronic signatures can represent consent from an Islamic legal perspective as long as there is clarity of will, the identity of the parties, and certainty regarding the object of the contract. This change raises new questions regarding the extent to which electronic consent truly reflects free will, particularly when contracts use standard clauses and provide limited information.

In digital economic practices, these issues become increasingly important because parties providing consent do not always have the same bargaining power and level of information access. In digital financing services, for example, users may encounter standard contracts that must be electronically approved before the service can be used. This situation makes information transparency, cost transparency, approval mechanisms, and understanding of contractual clauses crucial aspects in maintaining the quality of consent. Research by (Nabilah et al., 2025; Sulistiawati et al., 2023) demonstrates the importance of clear contract structures and information in contemporary Islamic financing practices and financial transactions. Thus, technological developments do not eliminate the principle of *an-taradhin*, but rather demand forms of protection that can ensure that electronic consent remains given consciously and based on adequate information.

Several previous studies have addressed legal defects from both Islamic and positive law perspectives. (Alia, 2017)discusses the forms of defective contracts in Islamic contract law, while (Sulthan Wahidy & Rizki Amar, 2024)compare the legal consequences of defective contracts from Islamic and positive law perspectives(Hasanah & Wirduyaningsih, 2023)specifically discuss *misbruik van omstandigheden* or undue influence in conventional contracts and Sharia business contracts.

Meanwhile, (Alhadidi et al., 2026; Bantekas, 2024) provide conceptual developments regarding the classification and consequences of imperfect contracts under Islamic law. Research by (Faizin et al., 2025) further expands the discussion on the issue of consent in digital contracts through the use of electronic signatures.

Nevertheless, previous research still shows room for more integrative analysis. First, discussions of defective wills often focus on specific forms, such as duress, mistake, or fraud, without systematically distinguishing them from *jahalah*, *gharar*, and the substantive invalidity of contracts. Second, there is a tendency to compare legal consequences based on the terms "void" and "voidable" without explaining the doctrinal distinctions between *fāsid*, *bāṭil*, *mauquf*, and the concept of voidability in Indonesian civil law. Third, discussions of defective wills have not always connected the primary legal basis, legal doctrine, and developments in digital contracts within a single analytical framework. Fourth, the impact of defective wills on the development of Islamic economics and strengthening economic welfare has not received adequate attention.

Based on these gaps, this study offers an integrative analysis of the defects of will in sharia economic contracts by connecting Islamic law, Indonesian positive law, the doctrine of contract law, and the development of digital contracts. The analysis is conducted by distinguishing three main issues, namely (1) defects in the process of forming will, (2) ambiguity or betrayal in the object or structure of the contract, and (3) substantive invalidity because the object or cause of the contract is contrary to sharia law or principles. This distinction is necessary so that the legal consequences of a contract are not determined uniformly, but rather based on the type and level of violation.

This perspective is also relevant to economic sovereignty. Ensuring that Islamic economic transactions are based on free consent, transparent information, and fair contractual relationships can strengthen public trust in the Islamic economic system. Protection for parties in weaker bargaining positions can also prevent exploitative contractual practices and support the formation of a more independent, equitable, and sustainable economic ecosystem. Therefore, the study of testamentary defects is not only concerned with the validity of individual contracts but also encompasses legal certainty, protection of economic actors, and strengthening trust in the Islamic economic system.

Therefore, this study aims to analyze the legal basis of defective will in Islamic economic contracts, identify the forms of defective will and distinguish them from ambiguity, permission, and substantive invalidity of contracts, analyze their legal consequences based on Islamic law and Indonesian positive law, and apply them to contemporary economic contract practices, especially digital contracts. This study is expected to provide theoretical contributions to the development of Islamic economic law while providing a practical basis for strengthening legal protection, justice, transparency, and legal certainty in Islamic economic transactions.

METHODS

This research is a normative legal study that analyzes the legal norms, doctrines, and principles related to defects of will in Islamic economic contracts. This research uses regulatory-statutory (statutory), contextual (conceptual), and analytical (analytical) approaches. The regulatory-statutory approach is used to examine the provisions of the Criminal Code, specifically Articles 1320–1328, relevant fatwas from the National Council of Indonesian Ulema Council (DSN-MUI), and Supreme Court jurisprudence regarding defects of will and protection of circumstances. The contextual approach is used to analyze the concepts of *an-taradhin* (contract), *ridha* (relief), *ikrah* (intention), *ghalath* (intention), *tadlis* (intentional agreement), *misbruik van omstandigheden* (intentional agreement), *jahalah* (intentional agreement), and *gharar* (intentional agreement). Meanwhile, the analytical approach is used to compare the forms of defects and their legal consequences in Islamic law and Indonesian positive law.

The legal material used consists of primary and secondary legal materials. The primary legal materials include Articles 1320–1328 of the Criminal Code, DSN-MUI Fatwa No. The legal framework is based on Decree No. 111/DSN-MUI/IX/2017 concerning Murabahah Sale and Purchase Agreements, Fatwa No. 115/DSN-MUI/IX/2017 concerning Mudharabah Agreements, and Supreme Court Jurisprudence No. 2356 K/Pdt/2008 concerning the aforementioned situation. Secondary legal materials include books and scholarly articles discussing contracts, testamentary defects, contract law, contract

cancellation, and digital contracts, including (Alhadidi et al., 2026; Alia, 2017; Bantekas, 2024; Budiwati, 2018; Faizin et al., 2025; Hasanah & Wirdyaningsih, 2023; Nabilah et al., 2025; Putry Delsa Hasanah¹, Rival Febriyana², Nur Cahya³, 2024; Sulthan Wahidy & Rizki Amar, 2024; Widia & Budiarta, 2022)

Legal materials were collected through literature and documentation studies, exploring primary legal sources and relevant scientific publications. These legal materials were then analyzed qualitatively and prescriptively through norm identification, defect classification, legal consequence evaluation, and validity analysis in contemporary economic contract practice, particularly digital contracts. The analysis was conducted by distinguishing intentional defects from ambiguity or contractual truncation and substantive invalidity to avoid generalizing legal consequences.

RESULTS AND DISCUSSION

A. Form and Legal Basis for Defects in Will in Sharia Economic

The contract is the basis for establishing legal relationships in Sharia economic transactions. (Budiwati, 2018) explains that the contract serves as the framework for Sharia business transactions because it allows various business activities to be conducted through the contract. The validity of the contract is related to the fulfillment of the pillars, conditions, principles, and fundamentals of the contract. Therefore, the parties' agreement is not only understood as a formal agreement but must also reflect the principle of willingness (an-taradhin) in muamalah relationships.

When consent does not occur freely, the problem of defects in will arises. (Alia, 2017)) explains that coercion, error, and fraud are forms that can interfere with the will of the parties in forming a contract. In Indonesian positive law, this problem has a more specific basis through Articles 1320 and 1321 of the Civil Code (Putry Delsa Hasanah¹, Rival Febriyana², Nur Cahya³, 2024)) explains that agreement is one of the subjective conditions of a contract and can be flawed due to oversight, coercion, or fraud.

Based on this comparison, the relevant forms of will defects in Islamic economic contracts include coercion (ikrah), mistake (ghalath), fraud (tadlis), and protection of circumstances (misbruik van omstandigheden). All four have a common ground in the disruption of freedom or quality of will, although each has a different legal character.

1. Coercion (Ikrah)

Coercion (Ikrah) occurs when a person consents due to pressure or threats, resulting in a decision not entirely based on free will. In Indonesian civil law, this concept is related to *dwang* and is regulated in Article 1321 and Articles 1323–1325 of the Civil Code. Arrodlia et al. (2024) define coercion as a form of defective will that can affect the validity of an agreement. This condition also contradicts the principle of an-taradhin because consent does not arise from genuine willingness.

2. Mistake (Ghalath)

Mistake (Ghalath) occurs when a party consents based on a mistaken understanding of an essential aspect of the contract. Article 1322 of the Civil Code defines missteps as circumstances that can affect consent if they relate to essential matters. Therefore, not every mistake can be considered an intentional defect; what needs to be considered is the nature of the mistake and its impact on the parties' decision to consent.

3. Fraud (Tadlis)

Fraud (tadlis) refers to the act of providing false information or concealing facts to induce another party to consent based on a false sense of reality. In the Civil Code, fraud is defined under Articles 1321 and 1328. Unlike a mistake, which can occur without the actions of another party, fraud involves an act that causes the other party to experience error. In Sharia contracts, this distinction is made with the principles of honesty and transparency.

4. Abuse of Circumstances (Misbruik van Omstandigheden)

Abuse of circumstances occurs when one party exploits the other party's particular circumstances to obtain consent. Hasanah & Wirdyaningsih (2023) demonstrate that misapprehension is relevant in

both conventional contracts and Sharia business contracts, particularly when there is an imbalance in the parties' circumstances. In Indonesian law, this doctrine has developed through doctrine and jurisprudence, including Supreme Court Jurisprudence No. 2356 K/Pdt/2008 concerning agreements made under duress.

Thus, Islamic law and Indonesian positive law have common ground in providing protection for freedom of will, but the terms and legal consequences are not completely identical.

Table 1. Comparison of Defective Consent in Islamic Law and Indonesian Positive Law

Form of Defective Consent	Islamic Law Concept	Indonesian Civil Law Concept	Main Focus
Coercion	Ikrah	Dwang	Freedom of consent
Mistake	Ghalath	Dwaling	Error concerning an essential matter
Fraud	Tadlis	Bedrog	Consent obtained through deception
Abuse of Circumstances	Ghabn and Taghrir	Misbruik van Omstandigheden	Imbalance of circumstances and bargaining position

B. Distinguishing Defects in Will, Jahalah, and Gharar

Defects must be distinguished from jahalah and gharar. Defects in will relate to the process of forming an agreement, while jahalah relates to the ambiguity of the elements or object of the contract, and gharar relates to excessive disclosure in the transaction.

This distinction is important because a contract containing jahalah or gharar does not automatically mean that a contract was formed due to an intended defect. This issue must be clarified based on the object, structure, and level of ambiguity or ranking within the contract.

Bantekas (2024) shows that Islamic contract law distinguishes between *ṣaḥīḥ*, *fāsid*, and *bāṭil* contracts based on the nature of the defect present in the contract. Alhadidi et al. (2026) also show that Islamic law recognizes the categories of *bāṭil*, *fāsid*, and *mauqūf*, each with its own distinct consequences. Thus, the classification of contracts cannot be conditioned solely into "valid" and "void."

C. Additional Legal Differences

Differences in the nature of defects also lead to inconsistent legal consequences. In Indonesian civil law, defects in agreement are a subjective condition in principle related to an agreement that can be voided. Arroddi et al. (2024) explain that defects in will under Article 1320 of the Civil Code can be grounds for voiding an agreement.

However, these concepts cannot be simply equated with classifications in Islamic law. Bantekas (2024) distinguishes between *fāsid* and *bāṭil*, while Alhadidi et al. (2026) point to the existence of the category of *mauqūf*. Therefore, the term "voidable" is not used as a universal consequence for all problematic contracts.

D. Implications for Digital Contracts

The development of digital transactions is changing the way parties provide consent, but it does not eliminate the principle of *an-taradhin*. Faizin et al. (2025) show that electronic signatures can represent consent in digital transactions if there is clarity regarding the intent, identities of the parties, and the object of the contract. This aligns with Ghani & Shukor's (2024) discussion on informed consent in Islamic banking, which demonstrates the importance of information quality in determining whether consent can truly be deemed given.

In digital contracts, the risk of misrepresentation can arise through standard clauses, a lack of information transparency, unequal bargaining power, or consent mechanisms that only provide an "agree" option. Nabilah et al. (2025) and Sulistiawati et al. (2023) indicate that the development of

Islamic digital transactions and financing requires clarity in contract structure and adherence to Sharia principles.

Therefore, digital contracts ideally contain the identities of the parties, the object of the contract, prices and fees, rights and obligations, important clauses, consent mechanisms, and electronic records. Thus, electronic agreements not only fulfill formal requirements but also reflect the will and transparency of Sharia contracts.

E. Implications for Justice and Economic Sovereignty

Protecting the will of the parties influences public trust in Sharia economic activities. Budiwati (2018) positions contracts as the framework for Sharia business transactions, which must meet the pillars, conditions, principles, and foundations to serve as the basis for transactions. Therefore, the quality of contracts not only determines individual legal relationships but also influences trust in the Sharia transaction system as a whole.

In the context of economic sovereignty, protecting the will of the parties can be realized as a legal contribution to creating a fair, transparent, and certain transaction system. Legal certainty can increase trust among economic actors, while protection for the weaker party can reduce the risk of exploitation in contractual relationships.

Therefore, this study shows that a flawed will cannot be understood solely as a reason for contract cancellation, but also as an issue related to the quality of legal relations in the Sharia economy. The distinction between defective wills, *jahalah*, *gharar*, and substantive invalidity is important so that legal consequences can be determined proportionally while providing more effective protection in conventional and digital transactions.

CONCLUSION

This research shows that defective will in Islamic economic contracts is a crucial issue in determining the quality of the parties' agreement. These include coercion (*iqrah*), error (*ghalath*), fraud (*tadlis*), and the context related to the disruption of the parties' freedom or awareness in giving consent. In Indonesian positive law, these issues relate to the provisions of Articles 1320–1328 of the Civil Code concerning the requirements for a valid agreement and defective will. Meanwhile, in Islamic law, the consequences of defective contracts are not uniform, as they depend on the type and degree of the defect.

This research also emphasizes that defective will needs to be distinguished from *jahalah*, *gharar*, and substantive invalidity. Defective will primarily relates to the process of forming an agreement, while *jahalah* and *gharar* relate to ambiguity or creation in the object or transaction. This distinction is important because contract categories such as *fasid*, *bāṭil*, and *mauquf* have different characteristics and legal consequences. Therefore, determining legal consequences must be done proportionally based on the nature of the defect, rather than disguising all problematic contracts as voidable.

In the context of digital transactions, changes to approval mechanisms through electronic signatures, click-wrap agreements, and other forms of electronic agreement create a greater need for information transparency, clarity of clauses, the identity of the parties, and a track record of agreements. Protecting the will of the parties is not only crucial for ensuring the validity of contractual relationships but also for building trust in Sharia economic transactions. Therefore, applying the principles of *an-taradhin* (good faith), good faith, transparency, and legal certainty in both conventional and digital contracts can support the creation of fairer economic relationships and contribute to strengthening public trust and economic privacy.

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