

## Palm Juice Transactions for Making Alcoholic Beverages from the Perspective of KHES and the Civil Code in Tanjung Beringin District

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**Abstrak.** : Trade and commerce are essential to the economic activities of society, encompassing the exchange of goods or services with the purpose of deriving economic advantages. Within the framework of Indonesian law, these transactions are governed not only by civil regulations but also by Sharia principles, especially concerning adherence to religious and ethical standards. This study aims to examine the legal standing of transactions involving palm sap (nira water) utilized in the production of alcoholic beverages, viewed through the lenses of KHES and KUHP in Tanjung Beringin Subdistrict, Serdang Bedagai Regency. This study adopts an empirical juridical research method, employing a qualitative approach with comparative analysis. The research utilizes both primary and secondary sources of data, gathered through techniques such as observations, interviews, and document analysis. The study concludes that, under KHES, transactions involving palm sap intended for manufacturing alcoholic beverages are classified as invalid (fasid). This is due to the prohibition of alcoholic beverages in Sharia law, which renders any transaction related to palm sap for this purpose defective, regardless of whether it meets the formal requirements and conditions of a legitimate sale. As such, these transactions are subject to annulment. Conversely, from the perspective of the Indonesian Civil Code (KUHP), such transactions are deemed legally valid, as there is no specific prohibition against the trade of palm sap for producing alcoholic beverages within its provisions. Consequently, the transfer of ownership and rights from the seller to the buyer is recognized as lawful under civil law.

**Keywords:** Alcoholic Beverages; Sharia Economic; Civil Code

## Introduction

Buying and selling transactions are an essential part of the economic life of society that involves the exchange of goods or services with the aim of obtaining economic benefits. In the context of Indonesian law, these transactions are not only regulated by civil law, but also by sharia law, especially in matters relating to religious compliance and ethics. One interesting case to analyze is the sale and purchase transaction of palm sap (palm), especially when the palm sap is used to make alcoholic beverages, such as liquor. In Indonesia, these different views are reflected in two main legal systems, namely the Compilation of Sharia Economic Law (KHES) and the Civil Code (KUHPerduta).<sup>1</sup>

This research is in line with previous research conducted by Rif'an, a student of IAIN Walisongo, Department of Muamalah with the title Analysis of Islamic Law on the Sale and Purchase of Tofu Dregs for Pig Feed, in Tandang Hamlet, Jomblang Village, Candisari District, Semarang City. The results of this study conclude that the sale and purchase is valid because it meets the elements of the pillars and conditions of sale and purchase stipulated in Islamic law, but on the other hand the sale and purchase is also prohibited or fasid. This is because the use of the object in the sale and purchase, namely tofu dregs, is used for things that are prohibited by Islam, namely as pig feed. In Islam, the prohibition of this sale and purchase is to prevent things that are prohibited or *SaddudDzari'ah*.<sup>2</sup>

KHES as a product of the sharia legal system, regulates buying and selling transactions based on Islamic principles which include compliance with Allah's law and sharia provisions. One of the basic principles of sharia law is the prohibition of goods that are considered haram and have great harm, such as alcoholic beverages.<sup>3</sup> Therefore, transactions involving materials for making alcoholic beverages such as palm sap, must be analyzed from a sharia perspective to determine their validity

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<sup>1</sup> Bahtiar Efendi, "Asas Akad Ekonomi Islam Perspektif Khes", Jurnal Alwatzikhoebillah, Vol.8 No. 2 (Juli, 2022), 79.

<sup>2</sup> Rif'an, "Analisis Hukum Islam Terhadap Jual Beli Ampas Tahu untuk Pakan Ternak Babi, di Dusun Tandang Kelurahan Jomblang, Kecamatan Candisari, Kota Semarang" (Skripsi Program Hukum Ekonomi Syariah, IAIN Walisongo, 2008).

<sup>3</sup> Mahkamah Agung RI, Kompilasi Hukum Ekonomi Syariah, edisi ke-2. (Peraturan Mahkamah Agung RI, 2013), hlm 152

and compliance with Islamic law.<sup>4</sup> On the other hand, the Civil Code regulates sales transactions with a more secular positive law approach. The Civil Code does not explicitly prohibit palm sap transactions for making alcoholic beverages, but there are additional regulations regarding the production and distribution of alcoholic beverages that must be complied with. Therefore, it is important to understand how the Civil Code assesses the validity of palm sap transactions and any additional regulations that may apply.<sup>5</sup>

Generally, people in Tanjung Beringin District, Serdang Bedagai Regency work as farmers. They often make transactions to buy and sell their agricultural or garden products to meet their daily needs. However, there are some groups of people who have additional income, namely by selling palm sap (palm). Palm sap is a liquid that is tapped from the male flowers of the palm tree which can produce a liquid with a sugar content of around 10-15%.<sup>6</sup> Basically, in fresh conditions, nira has a sweet taste, is colorless and also fragrant. However, the reality in the field is that many people use nira liquid as a staple ingredient for making alcoholic beverages such as liquor.<sup>7</sup>

The type of research conducted in this study is empirical legal research which is comparative in nature with a qualitative approach. The data sources used are primary and secondary data sources. Data collection was carried out by means of observation, interviews, and documentation conducted from March to April 2024. In-depth interviews with informants or sources were conducted directly with the owners of sugar palm trees as producers of palm sap in the Tanjung Beringin District, Serdang Bedagai Regency. Secondary data sources were obtained from processed data sources of other people or parties in the form of books on the theories used or manuscripts of related research results that have been published in open-access journals.

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<sup>4</sup> Ibid, 153.

<sup>5</sup> Subekti, Tjitrosudibio, *Kitab Undang Undang Hukum Perdata*, (Jakarta: PT Balai Pustaka, 2014), hlm. 374

<sup>6</sup> Harmawan, "Penentuan Kadar Alkohol Pada Air Nira Aren Di Kecamatan Namorambe Kabupaten Deli Serdang Berdasarkan Lama Waktu Penyimpanan Pada Suhu Ruang Dengan Metode Gravimetri", *Jurnal Kimia Sains dan Terapan*, Vol.1 No. 2 (Oktober, 2019), 14.

<sup>7</sup> Ibid.

It cannot be denied that many people who transact palm sap do not know the status of palm sap transactions to be used as raw materials in making alcoholic beverages (hard drinks), especially people who live in Tanjung Beringin District, Serdang Bedagai Regency. Based on the explanation above, the author finds problems in the transaction of sap water, whose initial status is sacred, which is then used as liquor (liquor) which is clearly haram from the perspective of positive law and sharia. This transaction indirectly means the seller helps preserve liquor among the community.

### **Demographics of Tanjung Beringin District, Serdang Bedagai**

Tanjung Beringin District, geographically located at 2°26° – 2°33° North Latitude and 99°9° – 99°15° East Longitude. The area of Tanjung Beringin District is 74,170 km<sup>2</sup>, most of which is lowland with an altitude of 0-8 meters above sea level.<sup>8</sup> Tanjung Beringin District consists of 7 villages, namely Bagan Kuala Village, Mangga Dua Village, Nagur Village, Pekan Tanjung Beringin Village, Pematang Cermai Village, Pematang Terang Village, Suka Jadi Village. Based on its geographical location, Tanjung Beringin District has the following territorial boundaries: 1) To the north it borders the Strait of Malacca; 2) To the south it borders Sei Rampah District; 3) To the east it borders Bandar Khalifa District and the Strait of Malacca; 4) The west side is bordered by Mengkudu Bay. In the North is a lowland area with gentle coast, mangrove forests and swamps bordering neighboring Malaysia. The South is a lowland area. The East is an area of swamps, mangrove forests and gentle coast. The West is a lowland area. The topography of the land in Serdang Bedagai Regency is flat, hilly and undulating.<sup>9</sup>

The distance from the sub-district to the district capital and provincial capital is 66 km, the distance from the sub-district to the nearest district is 7 km. Tanjung Beringin Sub-district was formed based on Law Number 36 of 2003 concerning the Establishment of Samosir Regency and Serdang Bedagai Regency in North Sumatra Province on December 18, 2003, so starting in January 2004 Tanjung Beringin Sub-

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

district became one of the sub-districts in Serdang Bedagai Regency. Tanjung Beringin District has a total of 8,660 households and a population based on the mid-2022 population projection of 37,617 people, with a male population of 19,204 people (51.05 percent) and a female population of 18,413 people (48.94 percent). Pekan Tanjung Beringin Village is the village with the largest population, namely 11,371 people or 30.22 percent of the total population of Tanjung Beringin District. Meanwhile, the village with the smallest population is Bagan Kuala village with 1,500 people or 3.98 percent of the total population of Tanjung Beringin District with an area of 74,170 km<sup>2</sup>, so the average population density of Tanjung Beringin District reaches 507 people/km<sup>2</sup>.<sup>10</sup>

### **Palm Juice Production Process for Making Alcoholic Beverages in Tanjung Beringin District, Serdang Bedaga Regency**

Most of the residents of Tanjung Beringin District live from plantations and agriculture, especially from the results of the sugar palm trees that grow on their land, either from their own or from other people's land. Usually the sugar palm trees grow by themselves on the plantation land of the Tanjung Beringin District community. Although there are some people who plant sugar palm trees themselves using hybrid sugar palm seeds or genjah sugar palm seeds. Of the 7 villages in Tanjung Beringin District, it was found that there were 3 villages that had additional income from the sale and purchase of palm sap, including Tebing Village, Pematang Cermai Village, and Pekan Tanjung Beringin Village. Palm sap obtained from tapping the sugar palm tree is usually not directly sold to the public. Palm sap must be processed first, namely by boiling it, the longer the boiling time, the more addictive substances contained in the palm sap are lost so that it is not possible to be used as a raw material in making alcoholic beverages (liquor).<sup>11</sup>

Based on the results of the interview with Mr. Irfan, it was stated that the amount of sap produced was influenced by the number of bunches tapped. Each tap produced 8-10 liters of sap. The results in one

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<sup>10</sup> (Profil Kecamatan Tanjung Beringin – Mediacyber, 2022)

<sup>11</sup> Hasil wawancara Faqih, selaku peneliti di Kecamatan Tanjung Beringin, Rabu 25 Maret 2024

day reached  $\pm 25$  liters of sap, similarly based on the results of the interview with Mr. Samin, who said that in the process of collecting sap there were two stages, namely 10 liters in the morning and 10 liters in the afternoon, the total amount of results taken in one day reached  $\pm 20$  liters of sap. This was confirmed based on observations made by researchers that every day the sap produced  $\pm 30$  liters.<sup>12</sup>

The activity of buying and selling palm sap has been going on for a long time, namely since the 1990s until now. The activity of buying and selling palm sap is carried out at the homes of the sellers (distributors). Most of the buyers come directly to the place, the parties who buy and sell palm sap consist of people in Tanjung Beringin District and people outside Tanjung Beringin District. The people who take and produce palm sap act as the first party or seller. The second party is the people who act as buyers who are in Tanjung Beringin District or outside the district.

Some of the Tanjung Beringin community usually sell palm sap to fellow Muslims and non-Muslims. They can meet their daily needs from the additional proceeds from the sale of palm sap. There are several palm sap sellers who were successfully met to share information about palm sap transactions as an ingredient for making alcoholic beverages (liquor) in Tanjung Beringin District and various reasons were obtained from them for doing this transaction. The first reason is because rather than not being used or utilized at all, the seller decided to sell the palm sap to anyone who asked for it. Irfan, a seller said, "Sir, usually anyone who comes will buy it as long as you have the money, there was once a non-Muslim who wanted to buy palm sap to make their alcoholic drinks," meaning that the palm sap seller has a sugar palm tree that grows wild on his land.<sup>13</sup>

The second reason put forward by the sellers is because of the desire to gain greater profits. Rizal, a seller said, "If I sell palm sap to people who want to make liquor, it is usually more expensive, compared to selling it to make brown sugar, the price is lower, because they prefer liquor made from palm sap compared to other sap, they say it is fatter and

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<sup>12</sup> Hasil wawancara dengan Bapak Samin, selaku penjual air nira di Kecamatan Tanjung Beringin, Rabu 25 Maret 2024

<sup>13</sup> Hasil wawancara dengan Bapak Irfan, selaku penjual air nira di Kecamatan Tanjung Beringin, Rabu 25 Maret 2024

tastes better, "meaning, he prefers to sell palm sap to people who make liquor because the price can be more expensive compared to selling it to make brown sugar or others.<sup>14</sup> The same thing was also conveyed by another palm sap seller by saying that he wanted to seek greater profits even though the palm sap would be used to make illegal liquor. As he said, "Everyone's name is definitely looking for big profits, so if there are people who want to make liquor and buy palm sap from me, then I just give it to them, the problem of them making liquor is up to them."<sup>15</sup>

The third reason is because the palm sap transaction has become a tradition that has been passed down in their family. According to one of the palm sap sellers, this business has been run by the previous generation, he said "This business has been going on for a long time, before my father was born, my father's parents had been selling palm sap to be used as medicine or other things." This means that before he was born, his parents had been doing palm sap transactions and when he was a teenager, he started to follow and continue his parents' business.<sup>16</sup> Another seller also said that the palm sap transaction had been carried out by his extended family, both with his siblings and from his uncles. When something has become a family business, then each member or generally family members will try to maintain the business continuously, either as a side business or as a main business. Moreover, they are supported by the many sugar palm trees that grow well on their respective lands.

Practical and efficient is the fourth reason put forward by palm sap sellers. Palm sap transactions for making liquor are more practical in their work and save more time and energy. Generally, this reason is given by several palm sap sellers because people who want to make liquor usually prefer raw palm sap to processed ones. One seller said, "Usually, you sell the palm sap that you just took to people who want to make liquor because there are more enthusiasts than processed palm sap," meaning, the seller said that selling palm sap to people who want to make liquor is

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<sup>14</sup> Hasil wawancara dengan Bapak Rizal, selaku penjual air nira di Kecamatan Tanjung Beringin, Rabu 25 Maret 2024

<sup>15</sup> Hasil wawancara dengan Bapak Ranto, selaku penjual air nira di Kecamatan Tanjung Beringin, Rabu 25 Maret 2024

<sup>16</sup> Hasil wawancara dengan Bapak Ismail, selaku penjual air nira di Kecamatan Tanjung Beringin, Rabu 25 Maret 2024

a fairly easy type of business, no need to take the trouble like making brown sugar, small capital and the seller is sure he can run it, as long as there is a strong desire to do it.<sup>17</sup>

From the reasons above, in fact not all sellers of palm sap do such transactions. Because of the four reasons, there are still many sellers who do not want to sell their palm sap if it is for making alcoholic beverages such as liquor. Because according to him, if he sells palm sap to be used as an ingredient for making alcoholic beverages, then it is the same as preserving the beverage and there are also palm sap sellers who do not know the intentions and goals of the person who buys the palm sap. They just transact palm sap without any definite elements from the buyer. Based on the descriptions of the palm sap sellers above, it is known that generally palm sap sellers have different reasons for running their businesses. Regardless of the differences in reasons, it was factually found that in the Tanjung Beringin District community, palm sap transactions between Muslims and non-Muslims are commonplace. Thus, for them there is no longer a clear boundary between buying and selling palm sap as an ingredient for making alcoholic beverages (liquor) or making brown sugar which is halal to be traded.

### **Palm Juice Transactions for Making Alcoholic Beverages According to the Compilation of Sharia Economic Law (KHES) and the Civil Code**

The activity of buying and selling is no longer foreign to the general public. In Islamic economics, buying and selling is defined as a transfer of goods or an exchange of an object voluntarily without any coercion in accordance with the agreement or contract that has been made between the two parties. The legal basis for this buying and selling itself is also very clear, directly sourced from the Qur'an. The word of Allah SWT in Surah Al-Baqarah verse 275:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا  
الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ  
إِلَى اللَّهِ ۗ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ ۗ هُمْ فِيهَا خَالِدُونَ

<sup>17</sup> Hasil wawancara dengan Bapak Andi, selaku penjual air nira di Kecamatan Tanjung Beringin, Rabu 25 Maret 2024



Meaning: Those who consume (transact with) usury cannot stand, except like one who stands staggering because of being possessed by Satan. That is because they say that buying and selling is the same as usury. Whereas, Allah has permitted buying and selling and forbidden usury. Whoever has reached him a reminder from his Lord (regarding usury), then he stops so that what he had acquired before becomes his and his affairs (are up to) Allah. Whoever repeats (the transaction of usury), those are the people of the Fire. They will abide therein forever. (Q.S Al-baqarah:275)<sup>18</sup>

Palm sap transactions generally occur frequently in society, not only in villages but also in some places in the city. In addition to being made into liquor (alcoholic beverages), palm sap is also often drunk by many people without having to be fermented first. However, seeing the large number of people interested in liquor in society, many palm sap sellers sell their palm sap to liquor stalls. In fact, not a few of them subscribe to each other to carry out palm sap transactions. In a contract or sale, a lawful cause is one of the elements that is absolutely necessary. Sheikh Yusuf al-Qardawi provides a special chapter in his book regarding lawful and unlawful. In his writing, Yusuf Qardhawi explains that unlawful things refer to matters whose dangers are greater than their benefits, therefore contracts that are carried out with lawful causes aim to bring about benefits and prevent the emergence of harm or danger.<sup>19</sup>

In the Compilation of Sharia Economic Law article 22 (the first part concerning the pillars and terms of the contract) it is explained that a transaction contract is said to be valid if the conditions and terms and conditions have been fulfilled, of which the terms and conditions of the contract consist of: 1) The existence of parties who carry out transactions or bind themselves to each other (agreement); 2) The existence of objects or goods to be traded; 3) The existence of a primary objective of the contract; 4) There is an agreement between the two parties (ijab and qabul).<sup>20</sup> As long as these three elements are met in a

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<sup>18</sup> Q.S Al-Baqarah/2:275

<sup>19</sup> Bahtiar Efendi, "Asas Akad Ekonomi Islam Perspektif Khes", Jurnal Alwatzikhoebillah, Vol.8 No. 2 (Juli, 2022), 78.

<sup>20</sup> Mahkamah Agung RI, Kompilasi Hukum Ekonomi Syariah, edisi ke-2. (Peraturan Mahkamah Agung RI, 2013), hlm 16.

transaction, then the transaction can be said to be valid. In the fiqh of muamalah it is also said that the validity of a transaction is determined by several factors including the presence of a seller and a buyer, the presence of goods to be sold or purchased, the existence of benefits to be obtained from the goods/not causing mafsadat, the ability to deliver the agreed goods, knowing both the seller and the buyer about the goods and openness regarding the material, shape, quality and characteristics of the goods.<sup>21</sup>

In the Civil Code article 1338, an agreement or contract that has been agreed upon by both parties can be made a law for those who bind themselves to each other. This explains that all agreements made legally apply to those who make them and cannot be changed except by agreement between them. Therefore, all sales transactions in the Civil Code may be carried out and are considered valid as long as there are no elements that violate the law.<sup>22</sup>

Article 1457 of the Civil Code explains that a sale and purchase is an agreement with one party binding themselves to hand over an object and the other party to pay the promised or agreed price and according to Article 1458 of the Civil Code it is stated that a sale and purchase is deemed to have occurred between the two parties if an agreement has been reached between them regarding an object and the price of the object, even though the object has not been handed over or the price of the object has not been paid. This means that with the existence of an agreement or agreement between the two parties, it can be concluded that they are bound to each other to carry out what they have previously agreed upon.<sup>23</sup>

### **Legal Consequences of Palm Oil Transactions for Making Alcoholic Beverages According to the Compilation of Sharia Economic Law (KHES) and the Civil Code**

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<sup>21</sup> Ibid,25.

<sup>22</sup> Subekti, Tjitrosudibio, Kitab Undang Undang Hukum Perdata, (Jakarta: PT Balai Pustaka, 2014), hlm. 14.

<sup>23</sup> Putra, “Studi Komparatif Perjanjian/Akad Jual Beli Menurut Kitab Undang-Undang Hukum Perdata Dan Kompilasi Hukum Ekonomi Syariah”, Jurnal Hukum, Vol.5 No. 1 (2016), 12.

Based on article 26 KHES (Part two on the category of contract law), a contract is said to be invalid if it is contrary to: 1) Islamic law; 2) Legislation; 3) Public order; 4) morality. Then in article 27 (KHES Part two on the category of contract law) it explains that contract law is divided into three categories, namely: 1) Valid contract; 2) Void/cancellable contract; 3) Contracts that are void/null and void by law. As stated in Article 28 (Chapter 3, second part of the contract law category), namely: 1) AA valid card is a contract that fulfills the terms and conditions; 2) A fake contract is a contract that fulfills its pillars and conditions, but there are aspects or other things that damage the contract due to considerations of the benefit; 3) A void contract is a contract that lacks harmony and/or conditions. Based on the explanation above, it can be concluded that a valid contract is an agreement that fully meets the requirements and pillars of sharia, so that it is valid and legally binding, while a fake contract is an agreement that is not fully valid according to sharia, but can still be corrected or cancelled by the parties involved and a void contract is an agreement that is considered invalid from the start because it violates the basic principles of sharia and does not have any applicable legal effect.<sup>24</sup>

In this case, if we look at the object of the transaction that occurs in society, they sell an item that was originally halal or the palm sap itself, then it is changed into something that is haram by the buyer, such as alcoholic beverages (hard liquor). Similar to the fiqh problem that occurred in the past, namely selling grapes to be made into alcoholic beverages (khamr) by the buyer. In the process of grapes being turned into alcoholic beverages (khamr) it certainly requires a period of time and process in its manufacture, as well as with palm sap that is traded to be made into alcoholic beverages (liquor), of course there is deliberate interference so that there is a change in the substance of palm sap into alcoholic beverages (liquor). It can be concluded that a sale and purchase transaction like this is a defective transaction (fasid) as per the second point in article 28 in the Compilation of Sharia Economic Law (KHES), where the transaction is still valid in dzahiriyah because it has fulfilled all

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<sup>24</sup> Mahkamah Agung RI, *Kompilasi Hukum Ekonomi Syariah*, edisi ke-2. (Peraturan Mahkamah Agung RI, 2013), hlm 17.

the pillars of sale and purchase, but the purpose of a transaction like this is very far from the principles of sharia which prioritize the welfare of the people and this transaction can lead to greater sins or mafsadat, meaning that this transaction can be cancelled by both parties, both the seller and the buyer or one of them.

In Article 1320 of the Civil Code, in order for an agreement to be considered valid, the parties who are bound by it must fulfill the necessary conditions in accordance with the provisions consisting of: 1) The presence of a seller and a buyer in the sales and purchase agreement; 2) People who carry out the engagement must be legally competent (adult, not crazy, physically and spiritually healthy); 3) The existence of a particular object or subject matter that will be traded; 4) The existence of a halal cause (causa) that is not prohibited by religion, norms or laws applicable in Indonesia.<sup>25</sup>

If an agreement does not meet subjective requirements (agreement or capacity) the result is that the agreement can be canceled. Whereas if an agreement does not meet objective requirements (a certain thing and/or a lawful cause) the result is that the agreement is null and void by law. Here are the differences between the two:

#### 1. Cancelable Agreement

The agreement can be canceled or voidable means that one party can request cancellation. The agreement itself remains binding on both parties, as long as there is no objection between the two. So in short, the agreement is not immediately canceled but can be canceled by both parties. The agreement can be canceled as a legal consequence of the failure to fulfill subjective requirements (agreement and/or capacity) as a valid requirement for the agreement.

#### 2. Agreement Void By Law

A void agreement means that the agreement is void from the beginning and is considered to have never been born as an agreement or never existed as a contract. Void by law is also known as null and void. A void agreement is a legal consequence of the failure to fulfill objective

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<sup>25</sup> Putra, "Studi Komparatif Perjanjian/Akad Jual Beli Menurut Kitab Undang-Undang Hukum Perdata Dan Kompilasi Hukum Ekonomi Syariah", Jurnal Hukum, Vol.5 No. 1 (2016), 12

requirements (a certain thing and/or a lawful cause) as a valid requirement for an agreement.

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The word causation above is translated from the word *Oorzaak* (Dutch) or *Causa* (Latin) referring to the content and purpose of the agreement itself. For example, in a sale and purchase agreement, the content and purpose or cause is that one party wants the right to own an item and the other party wants money, so if someone buys a knife in a shop with the intention of killing someone, then the sale and purchase has a lawful cause. If the intention to kill is stated in the agreement, for example the knife seller states that he is only willing to sell his knife if the buyer purchases the knife to kill someone with it, there is no lawful cause here.<sup>26</sup>

From the description above, it can be concluded that according to the Civil Code, the transaction of palm sap for making alcoholic beverages (liquor) is permitted because the seller only wants money and the buyer wants goods, namely palm sap, even if it is to be made into alcoholic beverages, meaning that there is a transfer of power and ownership rights from the seller to the buyer. Unless the seller makes conditions in his contract, for example, he must make alcoholic beverages (liquor) before the seller is willing to sell his palm sap, then this sale and purchase is not permitted.

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<sup>26</sup> Anelka, "Problematika *Causa Halal* Sebagai Syarat Sah Perjanjian ", (Oktober, 2020)

## **Comparison of the Law on Palm Oil Transactions for Making Alcoholic Beverages According to the Compilation of Sharia Economic Law (KHES) and the Civil Code**

In the Compilation of Sharia Economic Law, article 21 (Chapter 2 on the principles of contracts, part 10), namely good faith, meaning that the contract is carried out in order to uphold the public interest, does not contain elements of traps and other bad deeds. And (part 11) namely a lawful cause, meaning that the contract must not conflict with Islamic law, both in terms of the lawfulness of its object and the benefits or objectives of the sale and purchase, is not prohibited by law and is not haram.<sup>27</sup> This principle contains the understanding that all forms of agreements made must bring benefits and advantages both to the parties who are bound by the agreement and to the surrounding community.

According to at-Thufy's opinion regarding *maslahat* and *mafsadat*, *maslahat* is a goal of establishing a law, while the text or *ijma'* becomes a means to realize the goal, so prioritizing the goal over the means is more important. Among the examples of the priority of *maslahat* over the text that were used as evidence by at-Thufy are the actions of the Companions of the Prophet Muhammad SAW after the Ahzab incident. While what is meant by *mafsadat* is something that has a greater impact than the *maslahat* itself.<sup>28</sup> If we look at the transaction objects that occur in society, there are elements of benefit and harm. The benefit is that they get additional income from the sale and purchase of palm sap and the harm is that some people change palm sap into alcoholic beverages (liquor) to be consumed or traded. This causes people who consume it to become drunk and create a commotion that causes people around them to be disturbed and unable to rest as happened in one of the villages in Tanjung Beringin sub-district..

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<sup>27</sup> Mahkamah Agung RI, *Kompilasi Hukum Ekonomi Syariah*, edisi ke-2. (Peraturan Mahkamah Agung RI, 2013), hlm 15

<sup>28</sup> Mayyadah, "Konsep *Maslahat At-Thufy* Dan Penerapan Dalam Kasus Kewarisan Di Indonesia", *Jurnal Al- Adl*, Vol. 11 No. 2 (Juli, 2018) 116.

As we know that the contents of the Compilation of Sharia Economic Law (KHES) follow the principles of sharia which strictly prohibit the production and consumption of alcoholic beverages. In the context of palm sap which is used as an ingredient in making alcoholic beverages (alcoholic drinks) it will be considered not in accordance with sharia principles because alcoholic beverages are prohibited in sharia. Therefore, all transactions related to the making of alcoholic beverages including those using palm sap will be considered defective and invalid from the perspective of the Compilation of Sharia Economic Law because they cannot fulfill the principles of benefit and welfare in their contracts according to article 21 parts (10) and (11).

Meanwhile, the Civil Code does not have a provision that explicitly prohibits palm sap transactions for making alcoholic beverages (liquor). However, regulations regarding the production and distribution of alcoholic beverages are regulated by special laws and regulations outside the Civil Code. Because halal in the Compilation of Sharia Economic Law has a different meaning from halal in the Civil Code, halal in the Civil Code according to Article 1337 of the Civil Code, namely a cause is prohibited, if it is prohibited by law or if it is contrary to good morality or public order. Therefore, although the Civil Code does not directly regulate palm sap transactions for making alcoholic beverages, the manufacture and distribution of alcoholic beverages must still comply with the provisions of applicable laws and special regulations. Thus, any activity related to alcoholic beverages must comply with the relevant legal provisions and not conflict with the norms regulated by law and not violate morality or public order.

## **Conclusion**

In the perspective of the Compilation of Sharia Economic Law (KHES), the transaction of palm sap used to make alcoholic beverages (liquor) is considered defective (*fasid*). Because alcoholic beverages (liquor) are goods that are forbidden by sharia, so all transactions of palm sap for making alcoholic beverages (liquor) will be considered invalid or defective (*fasid*) even though they have met the pillars and conditions of the sale and purchase. From the perspective of the Civil Code, transactions of palm sap for making alcoholic beverages (liquor) are

generally considered to be legitimate transactions, because there is no explicit prohibition regarding transactions of palm sap for making alcoholic beverages (liquor) in the Civil Code, meaning that there is a transfer of power and ownership rights from the seller to the buyer.

However, regulations regarding the production and distribution of alcoholic beverages are regulated by other laws in force in Indonesia. Therefore, although the transaction is civilly valid, the implementation of the manufacture and distribution of alcoholic beverages must comply with relevant regulations and laws, and must not conflict with moral norms and public order. From the explanation above, it can be concluded that the transaction of palm wine for the manufacture of alcoholic beverages is better to use the legal system concept of the Compilation of Sharia Economic Law (KHES).

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