

Gharar in the Perspective of H.R. Muslim No. 1513, Kitab al-Buyu', and Law No. 8 of 1999 on Consumer Protection

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ABSTRACT

This research aims to examine the challenges in buying and selling in the form of uncertainty in selling or what is known as gharar within the parameters of the hadith of the Riwayat Muslim and the consumer Protection Law specifications of the 8th article. This research uses a Juridical-normative approach, using a literature study on Sharia and an analysis of relevant regulations. The research also investigates the principles of gharar according to the scholars. The finding shows that there are elements of gharar that are permissible in religion, but only prohibited due to conditions that involve specific contexts, exceptions, and underlying wisdoms. The study concludes that although religion and regulations have clearly regulated the prohibition of both buying and selling that contains elements of gharar, there are still a considerable number of individuals that are still lack a clear understanding of the concept of gharar and the reasons for its prohibition.

INTRODUCTION

Buying and selling are one of the fundamentals of economic interaction in human life. Selling in principle is a given and taken practice that provides benefits to both parties. However, in complex social realities, this principle is often neglected and used as a forum for criminality by sellers to make more profit.

One of the criminal acts in the practice of selling is gharar which has emerged and drawn serious concern and risk in commercial transactions. Gharar is a form of criminalization in the transaction of selling and buying, where the seller sells the products with uncertainty in terms of price, quantity, and time of delivery. For instance, selling goods with unclear specifications such as offering a “mystery” product without certainty about its contents or trading good whose existence is still unknown to the seller (speculative future sales), can be categorized as forms of gharar.

From the perspective of Islamic law, such transactions are prohibited because they violate the principles of fairness (‘adl), mutual consent (Ridha), and the avoidance of harm. Meanwhile in the context of positive law, particularly within consumer protection frameworks, similar practices may be considered forms of fraud or misrepresentation, warranting legal sanctions. The intersections of Islamic legal principles and national consumer protection laws present a critical area of inquiry in societies where both legal systems operate in parallel or in a complementary fashion.

In practice, not all forms of uncertainty can be immediately categorized as prohibited gharar. Some sales processes unavoidably involve a degree of uncertainty. There is room for permissible gharar (gharar yasir), which refers to minor or unavoidable uncertainty in daily life, such as unpredictability of crop yields in shareholding agreements or Islamic insurance (takaful), which are now growing in use. Therefore, deeper research is needed to distinguish between prohibited gharar (gharar fahisy) and those that can still be tolerated.

Furthermore, research conducted by Jenda Ingan Mahuli states that although there are regulations protecting consumer rights, the role of law enforcement and consumer awareness remain challenges that must be addressed. (Mahuli, 2024). Hence, more detailed discussions are needed to help consumers understand sales practices that may be detrimental to them.

This study focuses on a deep understanding of gharar within complex social realities, and examines its implications as a foundation for achieving a mature comprehension by analyzing normative sources of Islamic Law, including specific hadiths from Sahih Muslim in the Kitab al-Buyu’ as well as viewing the perspective of UUPK (Undang-Undang Perlindungan Konsumen) as a legal instrument that guarantees consumer rights. This article aims to bridge the two legal systems, Sharia and National Laws, in order to provide a more holistic and comprehensive understanding of gharar, especially in addressing the challenges of contemporary buying and selling in an increasingly complex era.

LITERATURE REVIEW

The Concept of Gharar in Islamic Law

In Arabic, gharar is defined as *al-taḥrīr* and *al-khaṭr*, which refer to a condition where something appears attractive on the surface but actually hides risks or potential losses within it. In other words, it refers to something that seems profitable at first glance but, in reality, may lead to harm or disadvantage. (Nurinayah, 2023). As Rasulullah, peace be upon him, prohibited the practice of bay' al-gharar (sale involving uncertainty), such as selling fish still in the pond or birds still flying in the air. (Farikhin & Mulyasari, 2022 as quoted in Ibnu Mandhur, n.d.). In terminology, gharar refers to transactions involving goods whose existence or attributes are uncertain, often caused by incomplete information, lack of clarity about key aspects, or uncertainty from one party regarding their ability to fulfill the terms of the contract. (Mohamed & Mochammad Sahid, 2019)

Meanwhile, in the study of fiqh (Islamic jurisprudence), scholars have offered various definitions of gharar, but they generally agree that gharar refers to transactions that involve uncertainty and carry the potential for harm or loss to one of the parties involved. This uncertainty may take the form of selling something that is not yet owned, outcomes that are not guaranteed, or objects whose ownership is unclear.

According to Al-Jurani of madzhab Hanafi, gharar is defined as something whose outcome is uncertain, whether it will occur or not. Al-Qarafi of the madzhab Maliki explains that gharar arises from situations in which it is unknown whether it will occur or not. According to Al-Ramly of madzhab Syafi'i, gharar is something with two equally likely outcomes, whether severe or minor or something with unknown consequences that are not known. (Mohamed & Mochammad Sahid, 2019) Meanwhile, Ibn Taimiyyah stated that gharar is a condition in which the outcome or result of a transaction is not known with certainty.

Likewise, whose result or receipt cannot be assured, even though the item physically exists. One example is the sale of a wild horse that has not yet been captured, even though the horse itself does exist out there. (Itona, 2022)

Allah Sublhanahu wa Ta'Ala has established in the Qur'an, in Surah An-Nisa, verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

“O you who have believed! Do not consume one another's wealth unjustly, except through lawful trade based on mutual consent. And do not kill yourselves. Indeed, Allah is Most Merciful to you.”

Indeed, Islam is a noble religion. In every aspect of life including matters of social and economic interaction (*mu'amalah*). Islam promotes values that uphold justice and balance. Allah commands His followers to conduct buying and selling based on the principles of honesty, fairness, and transparency, so as to prevent fraud or oppression from occurring to any of the parties involved in the transaction.

Table 1. Literature Review

Title, Researcher, Year of Publication	Variable	Research Method	Result
<p>"Pemikiran Ekonomi Syeikh Daud al-Fatani Mengenai Konsep Gharar dalam Kitab Fiqh Jawi (Sullam al-Mubtadi)" (Mohd Faisal Mohamed & Muallimin Mochamad Sahid, 2019)</p>	<p>Gharar, akad muwa'adah</p>	<p><i>Content Analysis</i></p>	<p>Syeikh Daud al-Fatani emphasized that in Islamic economics, any transaction containing elements of gharar (uncertainty) must be nullified. A contract is only considered valid when all components, such as the goods and the price, are clear and certain, in order to ensure justice and prevent deception.</p>
<p>"Gharar, Fraud and Dispute in Islamic Business Transaction: An Islamic Law Perspectives" (Ahmad Farikhin & Heni Mulyasari, 2022)</p>	<p>Gharar, Fraud, dan Dispute.</p>	<p>Descriptive-qualitative</p>	<p>The research findings indicate that gharar in Islamic business transactions is prohibited because it can lead to deception and injustice, which damages the relationship between the parties involved. Although some minor forms of gharar that do not cause disputes may be tolerated, uncertainty that results in loss or ambiguity in transactions is considered a violation of Islamic law.</p>
<p>"Perlindungan Hukum terhadap Konsumen dalam Transaksi E-commerce Legal Protection for Consumers in E-commerce Transactions" (H Natalia, 2017 myl.ejournal.unri.ac.id)</p>	<p>Consumer Protection, E-Commerce, and Consumer Protection Law.</p>	<p>Normative</p>	<p>The results of the research show that although regulations such as the Consumer Protection Law (UUPK) and the Electronic Information and Transaction Law (UU ITE) are in place to protect consumer rights, there are still challenges in implementing consumer protection in the e-commerce sector.</p>

UU"Konsep Gharar dan Maysir dan Aplikasinya pada Lembaga Keuangan Islam" (Ramly, 2019)	Gharar, maysir, dan Islamic Financial Institution	Qualitative-descriptive	The results of the research indicate that although regulations such as the Consumer Protection Law (UU ITE) already exist, in reality, consumer protection is still not fully effective.
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Consumer Protection under Article 8 of Law No.8 of 1999

Article 8 of Law No. 8 of 1999 prohibits sellers, business actors, or producers from trading or producing goods that do not meet standards, are misleading, or contain false information. This aligns with Sharia principles, which prohibit gharar because both aim to protect consumers from elements of uncertainty in buying and selling transactions (Law No. 8 of 1999 on Consumer Protection, 1999).

METHODOLOGY

This study employs a descriptive-analytical legal research method. The descriptive-analytical legal methodology examines the implementation of positive legal provisions and written documents related to specific legal events. The focus of the study is directed toward an in-depth analysis of the legal implications in cases of gharar-based transactions, by applying a legal normative-judicial approach, particularly from the perspective of Consumer Protection Law and Shahih Bukhari hadiths in Kitab al-Buyu'. The type of data used is qualitative data obtained through a literature review of relevant

According to Tajul Arifin, when the legal sources used involve aspects related to hadith, both their riwayat (transmission) and dirayah (understanding) must be carefully considered and analyzed (Tajul Arifin, 2014). Furthermore, Tajul Arifin explains that any approach, as long as it applies an epistemology accepted by the majority of scholars, can be used to interpret Islamic legal texts, especially those aimed at achieving *maslahah* (public benefit) in life as desired by Shari'ah, because the validity of the method used will influence the conclusions (*natijah*) produced (Tajul Arifin, 2016).

RESEARCH RESULT AND DISCUSSION

Analisis of Hadith Narrated by Riwayat Muslim No.1513 in Kitab al-Buyu'

Imam Muslim, in his book Sahih Muslim, narrated a hadith of the Prophet, peace be upon him, regarding the prohibition of gharar in trade transactions. The hadith reads,

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ وَبِحَيْبِ بْنِ سَعِيدٍ وَأَبُو أُسَامَةَ عَنْ عَبْدِ اللَّهِ ح وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ وَاللَّفْظُ لَهُ حَدَّثَنَا بَحْيَى بْنُ سَعِيدٍ عَنْ عَبْدِ اللَّهِ حَدَّثَنِي أَبُو الزِّنَادِ عَنِ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْحَصَاةِ وَعَنْ بَيْعِ الْعَرَرِ

Abu Bakar bin Abu Syaibah narrated to us, 'Abdullah bin Idris, Yahya bin Sa'id, and Abu Usamah also narrated to us from 'Ubaidullah (and this is the

wording of Zuhair ibn Harb), who said: Yahya ibn Sa'id narrated to us from Ubaidullah, Abu al-Zihad narrated to me from al'A'raj, from Abu Hurairah, who said: "The Messenger of Allah, peace be upon him, forbade sales involving pebbles and sales that are uncertain (gharar)."

According to the Sharh Sahih Muslim by Imam An-Nawawi, the phrase "The Messenger of Allah (peace be upon him) forbade sales involving pebbles and stones" has been interpreted in three ways (Imam An-Nawawi, n.d.):

1. The seller says, "Among these garments, I will sell you the one that is struck by the pebble I throw," or "I am selling you this land from here to the point where this pebble lands."
2. The seller says, "I sell it to you with the condition that you have the right of *khiyar* (option to cancel the sale) until I throw this pebble."
3. The seller and buyer consider the sale finalized when the pebble is thrown, as in the seller saying, "When I hit this garment with the pebble, it is sold to you for such-and-such price."

This type of transaction was common during the Jahiliyyah period, an era before the emergence of clear and structured regulations in economic practices and transactions. At that time, the validity of a sale was determined by the throwing of a stone or pebble. This practice lacked clear provisions regarding the price, form, size, and quality of the goods being sold. As described in the hadith, garments and land sold based on where a thrown pebble landed did not provide the buyer with certainty about the product's quality, quantity, or definite price. As Allah states in Surah Al-Baqarah verse 2:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْخِلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

"And do not consume one another's wealth unjustly or send it (in bribery) to the rulers in order that (they might aid) you to consume a portion of the wealth of others while knowingly committing sin"

From this verse, we can understand that the absence of transparency in a sale transaction carries a high risk of loss for the buyer, who may not know exactly what they are receiving. In the Islamic legal perspective, this type of sale is classified as an invalid transaction because it contains elements of *maysir* (gambling). According to Muhammad Ayub, *maysir* refers to a game of chance where a person may obtain something valuable without paying compensation, or lose the chance to gain something valuable.

Qimar or *Maysir* is defined as gaining wealth at the expense of another or receiving money in a process that involves deceit (Atika Rizki, 2023). Rasulullah Shalallahu 'Alaihi wa Sallam prohibited all forms of earning money through profit without effort, speculation, prediction, or guessing, as they do not derive from real, tangible work (Rizki et al., 2023). In the Qur'an, Allah Subhanahu wa Ta'ala prohibits the act of *maysir* (gambling), as stated in Surah Al-Ma'idah, verse 90:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رَجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

“O you who have believed! Indeed, wine, gambling, sacrificial stones (to idols), and driving arrows are but defilement from the work of Satan. So avoid them that you may be successful.”

The verse makes it clear that all forms of gambling and decision-making based on luck or chance are disgraceful and forbidden acts originating from Satan, and therefore must be avoided to ensure one’s well-being and success. These actions bring both spiritual harm and socio-economic damage. In this regard, the prohibition of gharar shares similarities with the prohibition of *maysir*, since both involve uncertainty and the risk of loss that may disadvantage one party. Allah the Almighty also hints at the prohibition of gharar in Surah Al-Baqarah, verse 188, which reads:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْأَلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنتُمْ تَعْلَمُونَ

“Do not consume one another’s wealth unjustly, nor deliberately take it to the judges in order to wrongfully consume a portion of another’ property, while you know (it is wrong).”

The word “consume” in Surah Al-Baqarah verse 188 is interpreted as utilizing or taking benefit from something. Meanwhile, the term “falsehood” (*batil*) refers to any method or act that contradicts the legal principles established by Allah. In the context of buying and selling, gharar is classified as *batil* act because it involves uncertainty, which leads to a lack of complete mutual consent between the two parties involved in the transaction.

The scholars of tafsir explain that this verse encompasses various prohibitions related to the unlawful acquisition of wealth. Among them are taking money through usury (*riba*), obtaining property without rightful ownership, and committing fraud, such as that carried out by brokers against buyers or sellers.

Gharar represents a form of transaction that resembles gambling, where the potential for significant loss can lead to tension and even hostility between the parties involved. Therefore, one of the underlying principles behind the prohibition of gharar in Islamic law is to prevent imbalance and substantial harm to either party in a transaction (Shohih & Seltyowati, 2021).

According to Izza (2021), there are three types of gharar that are prohibited, depending on the nature of the occurrence. First is the sale of an item that does not yet exist or has not yet come into being (*ma’dum*), such as the practice of habal al-habala—a transaction involving the unborn offspring of a pregnant animal. Second is the sale of an item whose characteristics or nature are unknown (*majhul*), leading to uncertainty. Third is the sale of items that legally or factually cannot be transferred, such as selling a runaway slave or a stolen vehicle. To further illustrate the concept of gharar, below are seven examples of such prohibited transactions (Nurinayah, 2023), including:

- a. Gharar refers to a phenomenon that occurs in transactions containing elements of ambiguity or uncertainty in the agreement, which can potentially harm one of the parties. An example of this is found in the practices of mulamasah and munabadzah. A mulamasah is a type of sale

in which the seller includes a clause intended to disadvantage the buyer. During the Prophet's time, this practice was common – sellers would say things like, "Whichever cloth you touch becomes yours at a fixed price," meaning that simply touching the item signified a commitment to purchase. Similarly, in *munabzah*, the seller would say, "Pay a set price for any garment I throw to you," implying that if no item is thrown, the buyer receives nothing. These practices reflect transactions filled with uncertainty and a lack of clarity, which can result in unfair outcomes.

- b. *Gharar* may arise when there is uncertainty or ambiguity regarding the goods being traded in a sale contract. This uncertainty can involve aspects such as the item's size, quality, specifications, availability, or other essential elements required for a valid agreement. If the information about the item being sold is unclear or misleading, the transaction is considered to contain *gharar* and has the potential to harm one of the parties involved.
- c. Sale of something that does not yet exist (*bay' al-ma'dum*) at the time of the contract. This type of *gharar* occurs when a contract is made for an item that does not physically exist at the time of the agreement. An example is a transaction involving the anticipated harvest expected to be obtained several years later. Since the exact outcome of the future harvest is uncertain, such transactions are considered speculative and therefore prohibited in Islamic law.
- d. Sale of goods that cannot be delivered. This type of transaction involves selling an item that faces difficulties in being delivered to the buyer. This can occur due to legal issues or the physical condition of the item itself. Examples include selling stolen goods, fish that are still in the middle of the sea, or birds that are still flying in the air. Since there is no guarantee that these goods can actually be obtained and delivered, such transactions are considered invalid according to Islamic law.
- e. Sale of unknown goods (*bay' al-Majhul*). This occurs when the goods being traded possess unclear characteristics, including unspecified details and measurements. In this context, uncertainty exists regarding the object of the transaction, such as the sale of goods that do not exist or whose type and attributes are unknown, or when it is uncertain whether the goods can be delivered. However, it is important to note that not all goods that are currently unavailable are prohibited from being sold. If, based on customary practices, the goods are expected to exist and there is a mutual agreement that they will be available at a determined time, then the transaction is not considered *gharar*. The prevailing rule is: any item that does not currently exist and whose existence is uncertain cannot be lawfully sold.
- f. This type of *gharar* occurs when the price between the contracting parties introduces uncertainty and risk, which can lead to unfair outcomes and is therefore considered impermissible under Islamic law.
- g. *Gharar* in terms of delivery time. This type of *gharar* occurs when there is uncertainty regarding the timing of the delivery of the object of the transaction. For example, a transaction is made, but the item being traded

is not delivered immediately, such as when the delivery is scheduled to occur only after someone passes away. This uncertainty regarding the delivery time can lead to losses for both parties involved. However, if the delivery time is clearly agreed upon by both parties and there is no ambiguity, then the transaction is considered valid. This type of transaction is referred to in Islamic jurisprudence as *Salam* sale, which is a sale contract where payment is made in advance while the delivery of goods is scheduled for a specific time in the future. The Prophet Muhammad, peace be upon him, said regarding *Salam* transactions:

قَدِمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ ، وَهُمْ يُسَلِّفُونَ بِالتَّمْرِ السَّنَتَيْنِ وَالثَّلَاثَ ، فَقَالَ «مَنْ أَسْلَفَ فِي شَيْءٍ
« فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ ، إِلَى أَجَلٍ مَعْلُومٍ »

“When the Prophet Muhammad, peace be upon him, arrived in Madinah, its residents were practicing a *salam* (advance payment) system in the sale of fruits – where payment was made upfront, and the goods would be delivered after a period of two or three years. The Prophet said, “Whoever practices *salam* (advance payment sale) in the sale of fruits, let it be for a known specified measure, a known specified weight, and a specified time.” Allah Subhanahu wa Ta’ala also says in the Qur’an, Surah Al-Baqarah, verse 282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ

“Oh you have believed, when you contract a debt for a specified term, write it down.”

In *Syarah Shahih Muslim*, Imam Nawawi explains that there are several forms of *gharar* (uncertainty) in buying and selling that cannot be avoided in practice, yet they are still permitted due to urgent necessity. For example, selling a house where it is not possible to know the exact condition of its foundation, or selling a pregnant goat that contains milk. Although there is an element of uncertainty, the types of transactions are allowed because, in general, society has a need for them, and goods being sold still have an accountable value.

In addition, scholars have agreed that minor or slight *gharar* (*gharar yasir*) is still permissible. An example is the sale of grains packed in sacks, where not all of the contents can be directly seen. As long as the contents can be reasonably assumed to represent the general quality of the item, the transaction is considered valid. This consensus also applies to rental contracts such as for houses, vehicle, clothing, and others – for a period of one month, even though in reality the number of days in a month can range between 29 and 30 days.

Furthermore, scholars permit the use of public facilities such as public restrooms with a fixed fee, even though the amount of water used by each person may vary. The same ruling applies to drinking from public water stations where payment is made at a set rate, even though the exact amount of water consumed is unknown. This indicates that under certain conditions, Islamic law allows leniency for minor and unavoidable *gharar*.

Additionally, according to Imam an-Nawawi, there is a difference of opinion among scholars regarding the sale of a fetus still in its mother’s womb and birds

flying in the air. Some scholars argue that such sales are permissible because if the buyer already knows the nature of the item, then the transaction is valid. Others contend that these sales are not valid due to the uncertainty surrounding the item being sold. This difference of opinion among scholars centers on how to categorize which practices fall under *gharar* (uncertainty) and which do not (Imam An-Nawawi, n.d.).

Essentially, *gharar* is considered impermissible if it cannot be avoided and if the degree of uncertainty involved is significant. If a transaction involves such unavoidable and substantial uncertainty, it is not allowed. In actual application, *gharar* is divided into two main types: *Gharar Fahisy* (major or excessive uncertainty) and *Gharar Yasir* (minor or slight uncertainty).

1. *Gharar Fahisy* (Major *Gharar*)

Major *gharar* or *fahisy* refers to a high level of uncertainty within a transaction, which can lead to significant risk or loss for one of the parties involved. These types of contracts are highly speculative and often resemble gambling (*maysir*), relying on chance rather than certainty. Examples include selling crops that have not yet grown, selling fish still in the sea without any assurance of when they will be caught, or selling fruits that appear fresh on the outside but are spoiled on the inside.

2. *Gharar Yasir* (Minor *Gharar*)

Minor *gharar* or *yasir* refers to a slight or minimal uncertainty that is extremely difficult to avoid in daily life. It involves small elements of doubt within a transaction that still fall within acceptable limits. For example, purchasing fruits that appear fresh on the outside, but upon opening, a few may be found spoiled. Such uncertainty is generally tolerated as long as it does not affect the overall validity of the transaction or cause significant injustice to either party.

It can be concluded that *gharar*, which invalidates a contract, is the type that involves a high level of uncertainty (Royyan Ramly, 2019).

Gharar Transaction in The Modern Era

As time progresses, the challenges in the realm of buying and selling have become increasingly diverse and complex. The following are some forms of *gharar* in modern times that we need to be aware of in order to avoid them.

1. **Derivative Contract**

A derivative contract is a payment agreement or financial contract issued by a bank, involving a combination of assets (such as money) and an agreement related to the exchange rate between foreign currencies and the rupiah. The main purpose is to gain profit from the purchase of foreign currencies against the rupiah. According to Bank Indonesia Circular Letter No. 10/42/DPD of 2008, speculative or gambling-like transactions are strictly prohibited. Banks are only allowed to engage in transactions that aim to protect the value of the rupiah, and are aware of the associated risks so that the customer does not feel disadvantaged if the value of the rupiah declines. Derivative contracts are permissible in Islam as long as their purpose is to safeguard the currency value or reduce harmful market fluctuations. Islamic principles allow agreements that serve good

purposes, are free from usury (*riba*) and uncertainty (*gharar*), and meet the requirements of fairness. (Buchori, 2009)

2. Insurance

In Islam, insurance is considered a relatively new concept, as there are no explicit legal foundations addressing it in the Qur'an, hadith, or classical principles of Islamic jurisprudence (*Ushul Fiqh*). As a result, contemporary Muslim scholars and thinkers approach insurance from a modern economic perspective. There are four main views regarding insurance: first, those who prohibit it entirely; second, those who permit it; third, those who allow social insurance but forbid life insurance; and fourth, those who view it as *shubhat* (doubtful) and advise caution. Sharia-compliant insurance, or *takaful*, is an alternative system based on Islamic principles, aiming to provide mutual protection and assistance among individuals through investment and *tabarru'* (donation). *Takaful* serves as an alternative to conventional insurance, which often involves elements such as *gharar* (uncertainty), *riba* (interest), and *maysir* (gambling) (Aravik, 2016).

3. Online Buying and Selling (E-Commerce)

In today's modern era, buying and selling activities are no longer limited to conventional methods that require face-to-face meetings between sellers and buyers. Instead, they can now be constructed online with the assistance of digital applications that function as third-party intermediaries. Through the e-commerce system or online transactions, individuals can market and purchase products more easily and with access to a much broader market reach. However, in practice, there are many aspects that need careful attention, as online transactions are not conducted in person. This makes it difficult for buyers to accurately assess the real quality of the product, the clarity of the shipping process, and the safety of the item during delivery. Such a condition may superficially resemble *gharar*, which refers to uncertainty within a transaction. Nevertheless, technological advancements have spurred innovation in e-commerce platforms. For instance, product pages often include comment and review sections that allow prospective buyers to view feedback and evaluations from previous customers. Additionally, there are delivery scheduling features that ensure goods can be dispatched within three to five days, along with tracking tools that enable buyers to monitor the real-time location of their purchased items. Other features that enhance transparency include order cancellation and return options, which provide convenience for buyers if the item received does not match its description. These features foster openness in online buying and selling, making e-commerce transactions more acceptable and permissible in accordance with Islamic principles. However, it is important to note that not all e-commerce platforms offer such transparency, so users must remain cautious, especially when using applications whose reliability has not yet been assured (Ningrum et al., n.d.).

4. Claw machine

The Claw machine is a type of game in which a player inserts money or coins into the machine and is then given the opportunity to grab a doll or other item using a mechanical claw operated by the player. This game is widely played and has become normalized in society. From the perspective of positive law, the claw machine is not officially classified as a form of gambling, primarily because there are no specific regulations that explicitly govern it. Article 303 of KUHPidana defines gambling as a game that relies on chance and involves a wager. In contrast, the claw machine tends to depend more on the player's skill. This aligns with the legal principle that laws do not apply retroactively – an act can only be considered illegal if there is a clear regulation that prohibits it. Conversely, from the standpoint of Islamic law, claw machine games are considered a form of gambling because they involve speculation and uncertainty. Islam strictly prohibits gambling, as it is seen as detrimental to both individual and societal well-being. Fatwas issued by Islamic institutions such as the Indonesian Ulama Council (MUI) also classify games involving speculative elements, such as the claw machine, as *gharar*, and therefore, they are not permitted to be played (Fitri et al., 2024).

Perspective of The Consumer Protection Law (UUPK)

According to Article 1 of the 1999 Consumer Protection Law (UUPK), a consumer is defined as any individual who uses goods and/or services available in the community, whether for personal use, for their family, others, or other living beings, and do not for resale – such individuals are regarded as consumers. In legal dictionaries, a consumer is a person who utilizes products or services, whether for personal purposes or for others (As stated by M. Marwan & Jimmy, 2009, in the work of Mira Erlinawati & Widi Nugrahaningsih., 2017) Furthermore, as outlined in the Article to ensure legal certainty in providing legal protection for consumers.

The law also defines a business actor as any person or entity, whether incorporated or not, established and operating within the jurisdiction of the Republic of Indonesia. Either individually or jointly through an agreement, they conduct business activities across various sectors of the economy.

Article 8 of Law No.8 of 1999 regulates prohibited actions for business actors, which are as follows:

- (1) Business actors are prohibited from producing and/or trading goods and/or services that:
 - a. Do not meet or not in accordance with the standards required and stipulated by applicable laws and regulations;
 - b. Do not match the net weight, net content, or net volume, and quality as declared on the label or packaging of the product;
 - c. Are inconsistent with the actual measurements, volumes, weights, and quantities;
 - d. Do not correspond to the condition, warranty, features, or effectiveness as stated on the label, packaging, or product/service description;

- e. Do not conform to the quality, grade, composition, processing method, design, model, or specific use described on the product/service label or packaging;
 - f. Are not in line with promises stated in the label, packaging, description, advertisement, or promotional material of the product/service;
 - g. Do not display the expiration date or the best-before date on certain goods;
 - h. Are not produced in accordance with halal standards, as indicated by a "halal" label;
 - i. Fail to display labels or explanations on the product that include product name, size, net weight/content, composition, usage instructions, production date, side effects, business actor's name and address, and any other required information;
 - j. Do not include product information and/or usage instructions in the Indonesian language, in accordance with prevailing regulations.
- (2) Business actors are also prohibited from selling goods that are damaged, defective, used, or contaminated without providing complete and truthful information about the item.
 - (3) Business actors are also prohibited from distributing pharmaceutical and food products that are damaged, defective, used, or contaminated, with or without providing accurate and complete information.
 - (4) Business actors who violate the provisions in paragraphs (1) and (2) are forbidden from trading such goods and/or services and must withdraw them from circulation.

This law aligns with Islamic principles (*shari'a*), which require sellers to trade products with clear and transparent specifications. Normatively, Article 8 provides legal protection for consumers to prevent the consumer from suffering losses due to goods/services that:

- a. Are unfit for use or misleading (in terms of both quality and quantity),
- b. They are inconsistent with the information provided.
- c. Contain elements of fraud, either implicitly or explicitly.

This proves that the provisions in the consumer protection law are in line with Islamic teachings, which prohibit transactions involving uncertainty (*gharar*) and deceit. The consequences for business actors who violate this regulation are outlined in Article 19 as follows:

- (1) Business actors are responsible for compensating any damage, contamination, and/or losses caused by the goods or services they produce or trade.
- (2) Compensation as mentioned in paragraph (1) may take the form of a refund, replacement of goods and/or services of a similar type or equal value, or medical treatment and/or services of compensation in accordance with applicable laws and regulations.
- (3) The provision of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of fault on the part of the business actor.

- (4) The provisions in paragraphs (1) and (2) do not apply if the business actor can prove that the fault lies with the consumer.

This article provides a clear consequence for sellers who violate Article 8 of Law No.8 of 1999 concerning Consumer Protection. However, the existence of this article has not fully ensured effective protection in practice. Many consumers or buyers are unaware of the legal mechanisms available to protect their rights and are thus unable to enforce them.

Consumers who fall victim to scams in buying and selling transactions, especially via e-commerce, often choose to remain silent rather than pursue legal action due to the lengthy, exhausting, and burdensome process. In reality, the government's response to such disputes is also inadequate, particularly regarding online transactions. Since its enactment in 1999, the Consumer Protection Law (UUPK) has not undergone significant amendments to keep up with societal changes. This is largely due to the government's lack of attention to ensuring the public's rights to fair and transparent trade practices, especially in today's digital era. (Mira ELrlinawati & Widi Nugrahaningsih., 2017)

According to the Decree of the Minister of Industry and Trade (Kepmenperindag) No. 350/MPP/KP/12/2001 Article 1, there are three methods of consumer dispute resolution that can be carried out through the Consumer Dispute Settlement Agency (BPSK), namely conciliation is a dispute resolution process conducted outside together to reach a voluntary agreement, with assistance of BPSK, in which both parties are brought together to reach a voluntary agreement, with the decision entirely dependent on the consent of the involved parties. Mediation is also carried out with the involvement of BPSK; however, in this method, BPSK plays a more active role as an advisor to encourage the parties in reaching a mutual solution, even though the final result still depends on the agreement between both sides.

Unlike the two previous methods, arbitration is a form of dispute resolution where the parties grant full authority to BPSK to process and decide the dispute in a binding manner. In other words, the decision made through arbitration is final and must be implemented by both parties.

As explained by Mutia Raras (2018) and supported by information from the official website of the Directorate General of Consumer Protection and Trade Order, BPSK was established as a specialized institution tasked with handling and resolving conflicts between business actors and consumers, in order to ensure legal protection for consumers in the trade of goods and services.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Gharar refers to an element in a transaction that involves uncertainty and deceit, which can potentially harm one of the parties involved in a sale and purchase agreement. Gharar has been explicitly prohibited by the Prophet Muhammad as stated in Hadith narrated by Muslim No. 1513, and this prohibition aligns with Article 8 of Law No. 8 of 1999 concerning Consumer Protection (UUPK). Based on the research above, there are certain forms of gharar that are considered permissible due to their unavoidable nature and minimal degree of uncertainty. Although gharar is clearly forbidden by both religious

teachings and state regulations, the general public still lacks sufficient understanding of what gharar is and how to recognize and avoid its various forms in practice.

Recommendations

1. The government and legal institutions should pay more attention to educating and protecting the public from harmful sales practices, especially those involving elements of gharar.
2. A comprehensive revision of the Consumer Protection Law (UUPK) is necessary, particularly by adding provisions that regulate digital transactions, the responsibility of e-commerce platforms, and mechanisms for resolving disputes online.
3. Legal education for the public should be conducted in a massive and structured manner to improve public legal awareness and understanding.

ADVANCED RESEARCH

For future research, it is expected to further explore the concept of Gharar in various types of digital transactions, not limited to the buying and selling of goods, but also covering services, online investments, and application-based transactions. The research sample is also expected to be expanded by involving respondents from both business actors and consumers, as well as covering a broader geographical area. In this way, the research can reveal the public's perception and understanding of gharar elements in electronic transactions more comprehensively, and also assess the effectiveness of the Consumer Protection Law (UUPK) in the context of the rapidly evolving digital trade, thereby producing findings that are more comprehensively, and applicable for both policymakers and the general public.

REFERENCES

- Ahmad Farikhin, & Heni Mulyasari. (2022). Gharar, Fraud and Dispute in Islamic Business Transaction an Islamic Law Perspectives. *International, Economic and Finance Review (IEFR)*, 1(2).
- Aravik, H. (2016). Asuransi dalam Perspektif Islam. *Nurani*, 2. <https://doi.org/https://doi.org/10.19109/nurani.v16i2.932>
- Atika Rizki, A. A. H. B. (2023). Pandangan Al-Qur'an Terhadap Bentuk Transaksi Maysir, Gharar & Riba di Indonesia. *Economics and Digital Business Review*, 4 Issue 1. <https://doi.org/https://doi.org/10.37531/ecotal.v4i1.349>
- Buchori, I. (2009). Transaksi Derivatif dalam Perspektif Hukum Islam. *Al-Qanun*, 12(2). <https://doi.org/https://doi.org/10.15642/alqanun.2009.12.1.130-154>
- Farikhin, A., & Mulyasari, H. (2022). Gharar, Fraud and Dispute in Islamic Business Transaction an Islamic Law Perspectives. *International Economic and Finance Review*, 1(2). <https://doi.org/10.56897/iefr.v1i2.18>
- Fitri, K., Fauzi, M., & Mursal, M. (2024). Classification of Gambling in Positive Law and Islamic Law: A Study of the Entertainment Elements of Claw Doll Games. *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsyiyah*, 7(2), 292-305. <https://doi.org/10.58824/mediasas.v7i2.171>
- Imam An-Nawawi. (n.d.). *Syarah Shahih Muslim* (3rd ed., Vol. 7). Penerbit Darus Sunnah.

- Itona, T. (2022). Praktik Gharar Dan Maisir Era Modern. *Muamalat : Jurnal Kajian Hukum Ekonomi Syariah*, 14(2), 163-176. <https://doi.org/https://doi.org/10.20414/mu.v14i2.5504>
- Law No. 8 of 1999 on Consumer Protection (1999).
- Mahuli, J. I. (2024). Perlindungan Hukum terhadap Konsumen dalam Transaksi E-commerce Legal Protection for Consumers in E-commerce Transactions. *AFoSJ-LAS*, 4(2), 102-109. <https://doi.org/https://doi.org/10.58939/afosj-las.v4i2>
- Mira Erlinawati, & Widi Nugrahaningsih. (2017). Implementasi Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Terhadap Bisnis Online. *Junral Serambi Hukum*.
- Mohamed, M. F., & Mochammad Sahid, M. (2019). Syeikh Daud Al-Fatani's Economic Thought Regarding The Concept Of Gharar In The Book Of Fiqh Jawi (Sullam Al-Mubtadi): Focusing On Akad Mua'wadah. *Malaysian Journal of Syariah and Law*, 7(1). <https://doi.org/10.33102/mjssl.v7i1.178>
- Mohd Faisal Mohamed, & Mualimin Mochamad Sahid. (2019). Syeikh Daud Al-Fatani's Economic Thought Regarding The Concept Of Gharar In The Book Of Fiqh Jawi (Sullam Al-Mubtadi): Focusing On Akad Mua'wadah. *Malaysian Journal of Syrai'ah and Law*, 7(1).
- Ningrum, E. W., Darutama, A., Sholihah, R. A., Abdurrahman, U. K. H., & Pekalongan, W. (n.d.). *Pemahaman Konsep Gharar Dimasyarakat Dalam Jual Beli Online*.
- Nurinayah, N. (2023). Praktik Gharar Dalam Transaksi Ekonomi Islam: Telaah Terhadap Kaidah Fiqhiyah. *Tadayun: Jurnal Hukum Ekonomi Syariah*, 4(1). <https://doi.org/10.24239/tadayun.v4i1.99>
- Ramly, A. Royyan. (2019). Konsep Gharar dan Maysir dan Aplikasinya pada Lembaga Keuangan Islam. *Islam Universalia: International Journal of Islamic Studies and Social Sciences*, 1(1). <https://doi.org/10.56613/islam-universalia.v1i1.107>
- Rizki, A., Abubakar, A., & Basri, H. (2023). Pandangan Al-Qur'an Terhadap Bentuk Transaksi Maysir, Gharar & Riba di Indonesia. *Economics and Digital Business Review*, 4(1).
- Royyan Ramly, A. (2019). The Concept Of Gharar And Maysir And Its Application To Islamic Financial Institutions Konsep Gharar Dan Maysir Dan Aplikasinya Pada Lembaga Keuangan Syariah. *Islam Universalia - International Journal of Islamic Studies and Social Sciences*, 1. <https://doi.org/https://doi.org/10.56613/islam-universalia.v1i1.107>
- Shohih, H., & Setyowati, R. (2021). Perspektif Hukum Islam Mengenai Praktik Gharar Dalam Transaksi Perbankan Syariah. *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, 12(2). <https://doi.org/10.28932/di.v12i2.3323>
- Tajul Arifin. (2014). *Ulumul Hadits Tajul Arifin 2014*. Sunan Gunung Djati Press dan Civic Education Center (CEC). <https://digilib.uinsgd.ac.id/id/eprint/29079>
- Tajul Arifin. (2016). *Antropologi Hukum Islam*. Pusat Penelitian dan Penerbitan UIN Sunan Gunung Djati. www.uinsgd.ac.id: