GHRAR, FRAUD AND DISPUTE IN ISLAMIC BUSINESS TRANSACTION AN ISLAMIC LAW PERSPECTIVES

Ahmad Farikhin¹, and Heni Mulyasari²

¹(Perbanas Institute Jakarta)
²(Universitas Muhammadiyah Bandung)

*) Corresponding e-mail: mulyasarihena@umbandung.ac.id

Abstract

Islam adheres to the principle of justice in carrying out muamalah activities, especially in the economic field. Fairness is the main principle and foundation of business relationships between sellers and buyers. Fair means that business activities must be fair and mutually beneficial and do not cause harm to one party, so that the injured party feels aggrieved by the other party. One practice that may harm one party in a business is the practice of gharar. Gharar is an attempt to gain profit illegally
way according to Islamic law because it causes the transfer of rights in a false way which has been strictly forbidden by Allah Subhanawu wa Ta’ala. Although Muslim scholars and scholars differ in expressing the definition of gharar, it explicitly has a mutual meaning. In Islamic legal texts fraud (tadlis or khilaba), lesion or misrepresentation (ghabn), gross misrepresentation (ghabn fahish), deception (shushsh), imbalance (gharar), and trickery (taghrir) are used interchangeably as to mean fraud. Such practices can lead to disputes. This research uses a descriptive qualitative method by studying the literature, both classical, contemporary, and scientific journals. The results of the study found that gharar was forbidden because of the presumption between the two transacting parties. Disputes are a danger that will lead to bloodshed between Adam’s children and grandchildren. The danger must be removed (al-dhararuu yuzalu). Thus the unavoidable minor gharar caused by unavoidable gharar is unavoidable and unavoidable transactions that have been agreed upon between the seller and the buyer.

**Keywords:** Dispute, Fraud, Gharar, Islamic Business, Customer Satisfaction

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**INTRODUCTION**

Islam not only regulates the issue of ritual worship, which is a way of vertically worshiping Allah Subhanawu wa Ta’ala, but also comprehensively regulates all areas of human life, including horizontal relationships between fellow human beings and the natural environment. Horizontal relationships are social, cultural, economic, and political interactions to fulfill their duties as caliphs or representatives of God to regulate the rhythm of life. Everyone is responsible for the situation and conditions of the community and the environment in which he lives.
Creating a peaceful social environment, a prosperous level of community economic life, and a conducive political situation are part of worship that cannot be separated from the duties of mankind on earth. To achieve the ideal situation and conditions, it is necessary to have fair and transparent behavior in carrying out economic activities.

Gharar can be a stumbling block in achieving the mission of welfare in economic justice because gharar is a practice that results in the loss of one of the parties involved in economic activities. This is contrary to the basic principles of economics in Islamic law which make justice the main pillar. Islamic law does not prohibit business transactions that involve the risk of uncertainty. However, if the risk arises from the engineering of one party intending to gain profit at the expense of the other party, then the engineering practice is called gharar which is prohibited (Shohih, 2021).

Ibn Taimiyah believes that Allah Subhanawu wa Ta'ala and the Messenger of Allah (sallallahu 'alayhi wa sallam) do not prohibit any type of risk, nor do they prohibit business transactions that have the potential to gain profit or suffer losses or do not generate profits and do not suffer losses, but prohibits eating other people's property incorrectly even if it does not contain risks, it is not the risk that is prohibited (Muhammad Hifdil Islam, 2016).

**Background**

Islam as a religion that spreads mercy to all human beings does not tolerate economic activity by practicing fraud, gambling, coercion of will, or takeover of property among others in a false way. The practice of gharar is uncertainty in business transactions that results in the non-fulfillment of sharia provisions in the transaction.

The result of a transaction containing gharar is the occurrence of tyranny against one of the transacting parties. Some categories of gharar elements include lack of scales or measurements, unclear quality of goods, unclear prices, and delivery times of goods.

The uncertainty that arises due to the non-fulfillment of sharia provisions in a business transaction is gharar which is prohibited by Islamic sharia, while the uncertainty that arises after the fulfillment of all sharia provisions is considered a sunnatullah that cannot be eliminated, but can be mitigated and managed so as not to cause harm to either party.
LITERATURE REVIEW

Gharar is a term in Arabic which comes from the word *gharrayaghurru-gharran wa gharran* as the word of Allah *Subhanawu wa Ta’ala “wa laa yaghurrannakum billahi al-gharuur”* according to al-Zujaj can also be read as *ghururan* as the word of Allah *Subhanawu wa Ta’ala “wa maa al-hayatu al-dunya illa mata’u al-ghurur”* which means *khada’a* (deceit), al-gharar means *al-khathar* (prohibition), as the Prophet *sallallaahu ‘alaihi wa sallam* forbade *bai’al-gharar* such as selling fish in a pond or selling birds in the sky (Ibnu Mandhur, n.d.).

From the etymological meaning above, it can be understood that gharar is uncertain where this uncertainty can deceive and deceive one party. Concerning buying and selling, gharar can be interpreted as buying and selling activities that contain elements of ambiguity, betting, or gambling both in terms of price, quality, quantity, and time of delivery of the object of sale and purchase, resulting in uncertainty for one of the parties.

Meanwhile, in terms of fiqh, the scholars differ in defining of gharar. Al-Jurjani from the Hanafi school defines gharar as *maa yakunu majhul al-aqibah laa yadri ayukunu al laa* (something that is not known as a result/result will happen or not) (Al-Jurjany, 1955). Al-Qarafy from the Malikiyah school stated that gharar comes from something that is not known whether it can be obtained or not, such as birds in the sky and fish in the water (Al-Qarafy, 2001). According to al-Ramly from the Shafi‘i school, gharar is something that contains two possibilities with the same level of weight and lightness, or something whose consequences are hidden (Al-Ramly, 2003). In line with al-Ramly, al-Mawardy defines gharar as something contradictory and contradictory to the same degree as heavy or light, another opinion says something which consequently is hidden (Al-Mawardy, 2006).

Meanwhile, al-Qadhi from the Hambali school argues that gharar is something that contains the same two possibilities, neither of which is clearer, such as selling wild horses that cannot necessarily be caught even though the horse exists and is visible (Daradaka, 1973). Meanwhile, Ibn Hazm sees gharar in terms of the ignorance of one of the parties to the contract about the content and characteristics of the object.

Ibn Taimiyah is of the view that the prohibition of the practice of gharar is based on the prohibition of controlling the rights of others-
through vanity (Muhammad Hifdil Islam, 2016), as in the words of Allah Subhanawu wa Ta’ala, which means:

"And do not let some of you eat the wealth of the other part of you in a false way and (do not) take that wealth to the judge, so that you can eat a part of the property of others by sin, even though you know"

And the word of Allah Subhanahu wa Ta’ala in another verse which means:

"To you who believe, do not eat each other’s wealth in a false way, except by way of commerce that applies with mutual consent among you."

Ibn Taimiyah makes this verse as an argument for the law of business transactions between sellers and buyers based on mutual consent and honesty so that the purpose of business transactions can be achieved, namely the transfer of rights in a good and right way and mutual benefit between the two parties. If one of them commits fraud by practicing gharar, for example, the blessings of trading will be lost and will cause disputes between the two parties (Yusuf & Iswandi, 2021). Likewise, in one hadith, the Prophet sallallaahu ‘alaihi wa sallam has prohibited the practice of buying and selling initialized by al-hashah and buying and selling initialized by gharar.

Al-Sa’di argues that the practice of gharar in commerce can be equated with the practice of gambling which is clearly forbidden based on the texts of the Quran (al-Sa’di, 2006). Meanwhile, Ibn al-Qayyim said that gharar is doubtful between gaining or losing. In another sense, Ibn Qayyim said that gharar is something that is hidden and whose object is unknown (Aljauziya h, 1990).

Adiwarman Karim as quoted by Rahman defines gharar as a situation where incomplete information occurs due to uncertainty from both parties to the transaction. Parties conducting business transactions do not get certainty about something being transacted, or change something that was originally certain to be uncertain (Rahman, 2018). Taking a closer look at the definitions above, all of them are more directed to adjacent meanings even though there are differences in the use of language and terms.

The term gharar also refer to fraud, its causes misrepresentation and leads to a contractual imbalance between the contracting parties-
Islamic scholars associate fraud with its consequence when judging it as a defect. The consequence should indicate lesion on one of the parties concerned otherwise fraud simply has no effect. Fraud pentagon theory (Puspitha & Yasa, 2018) includes pressure, opportunity, rationalization, competence, and arrogance.

Dispute is a contradiction between two parties or more caused by an interest or an ownership right that can lead to legal consequence for both (Ali Achmad Chomzah, 2003). Dispute is a contradiction behavior between two people or more that can cause a legal consequence and thus, sanction can be given for one of them or both of them (Anwar, Yaswirman, & Ulfanora, 2019).

The dispute happens when one of the parties act or not act something but other parties ignore to do so (Aminatun & Mukhibad, 2021). This occurrence of dispute generally is because of deception or promise breaking by parties, or one of the parties does not do what has been agreed to be done. The parties or one of the parties has done what to do but it is not quite precise with what has been promised. The parties or one of the parties does what has been promise but it is late, and the parties or one of the parties does something that according to the contract it is forbidden to do. Therefore, the actions lead to one of the parties feel betrayed.

Business is defined as an activity carried out by humans to earn income or income or sustenance in order to meet the needs and desires of life by managing economic resources effectively and efficiently. Skinner defines business as mutual exchange of goods, services, or money (Norvadevi, 2015). According to Anoraga and Soegiastuti, business has the meaning of the buying and selling of goods and services (Anoraga, Pandji and Soegiastuti, 1996). As for Straub and Attner, business is nothing but an organization that carries out production and sales activities of goods and services desired by consumers to earn profit (Karebet and Yusanto, 2002).

Whereas in Islam business can be understood as a series of business activities in various forms which are not limited by the amount (quantity) of ownership of their assets (goods/services) including profits, but are limited in how to acquire and utilize their assets (there are halal and haram rules) (Karebet and Yusanto, 2002). In the literacy of Islamic legal norms, the word business is synonymous with tijarah (Veithzal Rivai Zaenal, 2017).
The description above illustrates that imbalance (gharar), fraud (tadlis or khilaba), lesion or misrepresentation (ghabn), gross misrepresentation (ghabn fahish), deception (shushsh), and trickery (taghrir) are used interchangeably as to mean fraud (Ibrahim et al., 2013). Such practices causes to disputes between various parties involved in business transaction. This discrepancy is the reason why gharar is forbidden.

In this study, the author asks the question what is the meaning of gharar, fraud and dispute in Islamic business transactio in the perspective of Islamic law from the scholars? Are all forms of gharar prohibited in Islamic law and how are economic activities free from gharar?

METHODOLOGY

This paper was compiled using a descriptive qualitative method (Moleong, 2021) through library research, namely research on reading materials sourced from various kinds of literature, both in the form of classical commentary books, contemporary books, and scientific journals related to Islamic legal norms regarding gharar, fraud and dispute and then analyzed and compiled systematically to provide a complete picture of the problem under study and then draw conclusions.

RESULTS AND DISCUSSION

The literature review above, a common thread can be drawn that gharar is an uncertainty due to the ignorance or intentionality of one party to take advantage of the ignorance of the other party in the transaction. In Islamic law, the legal basis for everything must be clear in its form and criteria, so that clear and definite legal provisions are obtained regarding whether or not it is permissible and can be used as legal jurisprudence.

One fiqh rule says that al-hukmu 'ala syai'ei hukmun 'ala tashawwurihi’ (As-Suyuthi, 1983). (law on something is a branch of perception of that thing). The deeper one's knowledge and insight about gharar from various sides will affect him in explaining and taking a legal attitude towards gharar and being able to present various alternative substitutes as a solution for buying and selling transactions according to Islamic law.

The practice of gharar has the potential to cause harm to the parties involved in a business transaction, both buyers and sellers.
that harms at first is not visible on the surface so both parties may suffer losses, or one party will be harmed by the other party. The practice of gharar includes two forms, first, doubting the existence of intermediate objects can be achieved or not. Second, the unknown form, both in nature, measure and scales. The two forms of gharar practice above lead to a conclusion that the practice of gharar is dangerous.

According to Daradakah, Malikiyah scholars classify gharar into 3 (three), first, gharar fahish (major), second, garar yasir (minor) and third, gharar mutawassith (middle between major and minor) (Daradaka, 1973). Gharar fahish is very significant and there is no tool to measure it. Gharar contains doubt, probability and uncertainty dominantly and the risk that occurs due to fraud or crime by one party against another party (Shohih, 2021).

Al-Quran has strictly prohibited all business transactions that contain elements of fraud in all forms, whether in the form of fraud, crime, obtaining improper profits or the risk of uncertainty in the transaction. Gharar can be caused by buyers or sellers who do not meet the criteria and are unable to carry out the obligations of each party. As stated by Ibn Rushd that gharar stems from ignorance and lack of information about the nature and characteristics of an object, doubts about its availability and existence, doubts about its quantity and quality, or definite information about the price, currency used, terms of payment and time of delivery of the object. buying and selling (Hidayatullah, 2018). Fiqh scholars agree that this type of gharar is unlawful.

Gharar yasir is an insignificant gharar and can be ignored because it does not cause disputes. This type of gharar can be tolerated and accepted and does not affect the essence of the contract. Like someone who buys a motorized vehicle on a cash basis and it is agreed that the delivery of the goods will be made a week later. Although the buyer does not see the vehicle he bought directly, he is confident and believes in the specifications and samples available at the dealer and believes the dealer will deliver the goods on time.

Regarding the Prophet’s hadith regarding the prohibition of selling objects that are not owned by the seller, some scholars such as Ahmad bin Hambal and two of his followers, Ibn Taimiyah and Ibn Qayyim interpret this as the seller’s inability to explain it to the buyer, they argue that this is tolerable and permissible.
Meanwhile, *gharar mutawassit* is the venue for differences of opinion among scholars whether it is equated with major gharar so that the law becomes haram or is included with minor gharar so that the law is allowed and does not affect the transaction law.

Imam Nawawi explained the logical reason for Imam Muslim in the book *Sahih Muslim* to say about gharar at the beginning of the discussion about buying and selling is that there are so many cases of gharar in buying and selling and the importance of avoiding gharar in buying and selling transactions to achieve mutual pleasure between the two (Al-Nawawi, 1994).

Furthermore, Imam Nawawi mentions several kinds of buying and selling that fall into the category of *ba’i gharar*, namely: 1) *Ba’i ma’dum*. If the seller cannot submit the object of sale and purchase when the contract is executed, such as selling a fetus that is still in the mother’s womb, let alone selling a fetus from an unborn fetus or often called habal al-habalah. 2) *Ba’i majhul*, if the seller sells an item that is not under his control or sells something that is not owned by the seller. This is to avoid the possibility of damaged or lost goods so that the buyer does not get the certainty of receiving the goods from the seller.

The uncertainty of the delivery of the object of sale and purchase can be categorized into several types: 1) Uncertainty of the object of the transaction, namely if there are two different transaction objects in one contract. For example, if in a transaction two goods with different criteria and quality are offered to the buyer without specifying one of the goods to be sold as the object of the contract. 2) There is no guarantee of conformity of the goods with the specifications stated in the contract, such as buying and selling a motorbike in a damaged condition while the seller does not explain the damage to the buyer. 3).

Uncertainty about the method of payment or the type of goods traded. Al-Zuhaili argues that this uncertainty is one form of gharar that is strongly prohibited (al-Zuhaily, 1996). 4) Price uncertainty. If a seller says: "I sell this mango to you at the current price." Meanwhile, the mangoes that are sold are not yet harvested. The price uncertainty in this transaction is a reflection of the prohibition on the trade in fruits that have not yet been harvested. 5) Uncertainty in the form of transaction with the existence of two different forms of contract in one object without specifying the form of transaction used. Like someone buying a car for Rp. 100 million paid in cash or Rp. 120 million in installments without-
confirming one of the prices agreed upon at the time of the contract. 6) There is coercion from one of the parties, both sellers and buyers, such as *bai’ al-hashā*, namely commerce by throwing objects at several merchandise, objects that are hit by throwing must be purchased, *bai’ al-munabazah*, namely commerce by throwing each other objects to each other as a sign of approval of commerce without knowing the quality and quantity of the goods purchased, *bai’ al-mulamasah*, namely trading by touching the goods to be traded without clearly knowing the goods being traded.

Trading transactions generally contain the risk of profit and loss. It is natural for business people to expect profits, but there is no guarantee that every business will make a profit. Al-Ghazaly said that the motivation for a person to do business is to gain profit both in this world and in the hereafter. The risk of making a profit and suffering a loss is an uncertain condition in every business. The long debate about the law of *gharar* is inseparable from the definition of *gharar* expressed by Islamic scholars and scholars who differ from one scholar to another.

The concept of gambling and its prohibition provides a clear view that interpreting *gharar* as risk, speculation, and uncertainty do not provide the correct perspective to express its meaning. Seeing *gharar* as a risk that is difficult to define in absolute terms would be confusing. Confusion will not arise if the word *gharar* is used in its original meaning in the Quran which means misinterpretation or deception which is unacceptable under any legal system (Nehad & Khanfar, 2016).

Islam does not prohibit business activities that have the potential to risk uncertainty, but if the risk of uncertainty is used as a way to gain personal gain at the expense of and at the expense of other parties, the mechanism for obtaining profits as above is called *gharar*. Ibn Taimiyah argues that Allah Subhanawu wa Ta’ala and the Messenger of Allah (sallallahu ‘alayhi wa sallam) do not prohibit any type of risk, and do not prohibit all types of transactions that have the potential to be profitable or detrimental. But what is prohibited is eating other people's property improperly in a false way even if there is no risk though, not the risk. *Gharar* is forbidden because of the potential to eat other people's property in a way that is not justified by Islamic law, not merely because there is an element of uncertainty risk or it is also called a game of chance.
Uncertainty is not speculation, nor is game of chance gambling, but if a commercial business only relies on a game of chance, then the activity is categorized as an activity of drawing fate with arrows which have been prohibited by Allah Subhanahu wa Ta'ala in QS. 4: 90. Game of chance only benefits one party while the other party has to bear the burden of the loss therefore this activity is prohibited and categorized as gambling. Risk is defined as Mukhatara which in Arabic means danger while some studies related to Islamic finance generally define risk as uncertainty. This uncertainty refers to gharar.

Meanwhile, Mukhatara is an essential element that makes a contract valid and binding according to sharia principles. Uncertainty in Islam is related to speculative activities such as gambling or Mysir which is strictly prohibited or Haram in Islam (Wae Ibrohim Wae Mustafa & Sukri, 2016).

**CONCLUSION AND RECOMMENDATION**

Islam adheres to the principle of justice in carrying out muamalah activities, especially in the economic field. Fairness is the main principle and foundation of business relationships between sellers and buyers. Fair means that business activities must be fair and mutually beneficial and do not cause harm to one party, so that the injured party feels mistreated by the other party. One practice that has the potential to harm one party in the business sector is the practice of gharar. The practice of gharar is an attempt to gain profit illegitimately according to Islamic law because it causes the transfer of rights in a false way which has been expressly forbidden by Allah Subhanawu wa Ta'ala.

Although Muslim scholars and scholars differ in expressing the definition of gharar, it explicitly has a close meaning as defined by Iqbal and Mirakhhor (Iqbal, Zamir and Mirakhhor, 2011) that gharar is an activity of exposing oneself to excessive risk and danger in a business transaction as a result of too little information or asymmetric information about price, quality and quantity of counter-value, delivery date, the ability of the buyer or seller to fulfill their commitments, or ambiguity in terms of the agreement—thus, exposes either party to unnecessary risk.

The scholars agree that the illat of gharar is forbidden because it causes a dispute between the two parties to the transaction. Disputes are a danger that will lead to bloodshed between Adam's descendants.
danger must be removed (*al-dhararuu yuzalu*). Thus, minor gharar that does not have the potential to cause disputes, let alone unavoidable gharar are not prohibited and do not cancel business transactions that have been agreed upon between the seller and the buyer (Al-Qahthany, n.d.).

The practice of gharar can also be eliminated with careful calculations by a professional in the field. The estimation of a credible professional can be trusted by all parties involved in the transaction so as to eliminate the potential for disputes that make the practice of gharar forbidden. If the illat that caused the prohibition of the practice of gharar has disappeared, the law for the prohibition of gharar will also disappear according to the rules of *al-ashlu an tazula al-ahkam bi zawali ilaliha* (Al-Nadawy, 1994).

REFERENCES


(b) Journals


