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TOWARDS SHARIA E-COMMERCE REGULATION: ANALYSIS OF GHARAR AND CONSUMER PROTECTION IN INDONESIA

Ahdiyatul Hidayah¹, Nurmu'izzatin Zaharatul Parhi²

STAI Rasyidiyah Khalidiyah Amuntai ¹

UIN Sunan Kalijaga Yogyakarta ²

ahdiyatul123@gmail.com ¹, titinazhar24@gmail.com ²

ABSTRACT

The development of digital technology has changed the pattern of conventional transactions to be online-based through e-commerce. Although it offers convenience and efficiency, e-commerce transactions also have potential legal problems, especially related to the unclear product information, payment methods, and delivery systems, which lead to gharar elements. In sharia economic law, gharar is seen as a prohibited uncertainty because it has the potential to harm one party and injure the principle of justice in the contract. This research aims to examine the concept of gharar in the context of digital transactions and examine consumer protection mechanisms according to the perspective of sharia economic law. The method used is normative legal research with a qualitative approach through literature studies on classical and contemporary fiqh books, national regulations, and relevant fatwas. The results of the study show that e-commerce is prone to contain elements of gharar, both explicitly and implicitly. Therefore, consumer protection is needed that is not only based on positive law, but also integrates sharia principles such as honesty (*sidq*), clarity of contract (*ablution al-'aqd*), and trust. This study recommends the need for special regulations on sharia e-commerce and increasing digital muamalah literacy for the Muslim community.

KEYWORDS

Gharar; E-Commerce; Consumer Protection; Sharia Economic Law; Digital Transactions.

INTRODUCTION

The development of information technology has had a significant impact on various aspects of human life, including in terms of trade and economic transactions. The emergence of e-commerce or electronic commerce is concrete evidence of digital transformation in the modern economic world. E-commerce facilitates the transaction of goods and services through internet media with a wide reach, fast access, and time and cost efficiency. In Indonesia, the trend of online shopping has increased significantly in recent years, especially since the COVID-19 pandemic, which has accelerated the digitization of transactions and consumer habits in online shopping. (Rosmayati, 023)

However, these technological advances are inseparable from various challenges,

especially in terms of legal certainty and protection of consumer rights. Various reports point to the existence of e-commerce practices that are detrimental to consumers, such as misleading product descriptions, fraud in the payment system, delivery of non-compliant goods, and the absence of a refund guarantee or product. In the context of Islamic law, this kind of practice can be categorized as a form of gharar, which is ambiguity, uncertainty, or speculation in a contract that is prohibited by sharia.

The Central Statistics Agency (BPS) routinely publishes annual reports on e-commerce statistics. The 2022 E-Commerce Statistics publication includes data from 2021 and is compiled based on a survey of 15,677 businesses across Indonesian provinces.

Some of the report's key findings:

1. Majority of Non-Formal Business Actors: Most e-commerce businesses are non-formal businesses that use instant messaging and social media as sales mediums.
2. Revenue Below IDR 300 Million: Total revenue as well as from e-commerce is mostly below IDR 300 million per year.
3. COD Dominant Payment Method: The most commonly used payment method is Cash On Delivery (COD) or payment in cash.

For more detailed data on the value of transactions from year to year, you can access the full BPS publication via the following link.

During the COVID-19 pandemic, there has been a significant increase in e-commerce activities in Indonesia. Many business actors have begun to turn to digital platforms to maintain their business operations. However, specific data regarding the percentage increase in transactions during the pandemic are not available in the referenced publications.

Online fraud is one of the challenges in the growth of e-commerce in Indonesia. According to data from the Ministry of Foreign Affairs of the Republic of Indonesia, between 2020 and November 2024, there were 5,111 cases of Indonesian citizens (WNI) related to online fraud. Of these, 1,299 of them were identified as victims of trafficking in persons (TPPO).

Unfortunately, the value of the financial losses suffered by consumers due to online fraud is not detailed in the source. To get more in-depth and up-to-date data on e-commerce in Indonesia, you can refer to the official publication from the Central Statistics Agency:

1. E-Commerce Statistics 2022: Presents data from the results of the 2021 e-commerce survey.
2. E-Commerce Statistics 2021: Presents data from the results of the 2020 e-commerce survey. (Statistik E-Commerce 2022)

The concept of gharar is one of the important pillars in sharia economic law which aims to maintain justice and balance in muamalah transactions. The prohibition against gharar has been affirmed in many fiqh literature, including

through the hadith of the Prophet Muhammad PBUH which prohibits buying and selling that contains elements of gharar (HR. Muslim). In the sharia economic system, gharar is considered an element that has the potential to cause exploitation of one of the parties in the transaction, due to the lack of clarity regarding the object of the contract, price, or conditions for the implementation of the transaction. (Fathonih, 2025)

Although gharar is a classic concept in muamalah jurisprudence, its existence is still relevant and even very important in the context of modern transactions such as e-commerce. Uncertainty in the specifications of goods sold online, the absence of opportunities to see or inspect goods directly, as well as the possibility of manipulation of information by sellers or platforms, all lead to the potential for gharar elements that can harm consumers. Therefore, re-understanding the concept of gharar in a digital context is very important to adapt the principles of sharia muamalah to contemporary socio-economic realities. (Setiawan, 2021)

Consumer protection is an important aspect of the legal system, both in national positive law and in Islamic law. In Indonesia, consumer protection has been regulated in Law Number 8 of 1999 concerning Consumer Protection. This law provides legal guarantees for consumers' rights to obtain true, clear, and honest information; the right to product safety; as well as the right to voice complaints and obtain dispute resolution. However, this positive regulation has not explicitly regulated the principles of consumer protection based on Islamic law, especially in the context of digital transactions or e-commerce. (Baiq, 2021)

From the perspective of sharia economic law, consumer protection is not only legal-formal, but also ethical and spiritual nuances. Principles such as honesty (sidq), trust, justice ('adl), and clarity of contract (wuduḥ al-'aqd) are the basis for ensuring fair transactions in accordance with maqasid al-shari'ah (shari'a goals). Thus, business actors in the Islamic economic system are seen as not only legally responsible to the

state or consumers, but also morally and spiritually to Allah SWT. (Winario, 2024)

When e-commerce transactions contain elements of *gharar*, it not only harms consumer rights, but can also cause the cancellation of the contract according to sharia, or at least reduce the perfection of the contract. Therefore, it is important to review the principles of Islamic law in digital transactions in order to formulate a sharia-based consumer protection model. In this context, sharia economic law must be able to answer the challenges of the times, while maintaining fundamental sharia values such as transparency, responsibility, and justice. (Kurniawati, 2019)

This research departs from concerns about the increasing number of cases of losses experienced by consumers in digital transactions, as well as the lack of an e-commerce consumer protection system that comprehensively adopts Islamic legal values. The study of the concept of *gharar* in the context of digital transactions is very important to identify forms of uncertainty that are often not realized by consumers and business actors. (Qori, 2020) More than that, this study is expected to contribute to the development of a contextual and applicable Islamic economic legal system in the digital era.

METHODS

This research uses a qualitative approach with the type of library research. This approach was chosen because the focus of the study lies in the study of the concept of *gharar* in the perspective of sharia economic law as well as an analysis of consumer protection practices in e-commerce transactions in Indonesia. The data used in this study comes from relevant secondary sources, in the form of classic and contemporary muamalah fiqh books, articles from national and international scientific journals, applicable laws and regulations, and official documents from authority institutions such as the Indonesian Ulema Council (MUI), the Financial Services Authority (OJK), and the Ministry of Trade. This

research is not only limited to a conceptual study of *gharar* theory from the perspective of Islamic law, but also explicitly examines the real practice of e-commerce in Indonesia. Therefore, the data sources used include academic literature, relevant regulations, as well as empirical data such as consumer infringement case reports and the results of consumer protection agency investigations. This approach aims to produce a contextual, applicative analysis of sharia law and make a real contribution to strengthening consumer protection in digital transactions in Indonesia. (Abdussamad, 2021)

Data collection was carried out by tracing and reviewing literature that discusses the central themes in this study, including: the concept of *gharar* in contracts, the principle of consumer protection in Islam, the development of e-commerce in Indonesia, as well as positive legal regulations that regulate digital transactions and consumer protection. All data are analyzed descriptively-analytically, namely by describing the concepts and phenomena found, then critically analyzed based on the perspective of Islamic economic law. (Ishaq, 2017) This study also adopts a comparative method to see the differences and meeting points between sharia principles and positive Indonesian law in the context of e-commerce consumer protection. The purpose of this approach is to provide a theoretical and practical basis in formulating solutions and policy recommendations that are applicable and in accordance with Islamic values. (Nugrahani, 2014)

RESULT AND DISCUSSION

The Concept of Gharar in Sharia Economic Law

Etymologically, *gharar* comes from the word "gharra" which means to deceive, deceive, or reveal something different from reality. In the terminology of fiqh muamalah, *gharar* is interpreted as ambiguity (*jahalah*), uncertainty (*ghayr ma'lum*), or high risk that cannot be clearly measured in a transaction. Scholars differ

in formulating the definition, but have a common point on the element of *jahalah* and the potential for unilateral losses in the contract. (Sholihin, 2020)

According to Imam al-Shafi'i, *gharar* is a transaction that is not known by either party for sure regarding the object, price, or time of delivery. Imam Malik stated that *gharar* is something whose outcome cannot be ascertained, such as selling fish in the sea or birds in the air. (Ruslan, 2022) Meanwhile, according to Imam an-Nawawi, *gharar* is a transaction whose final outcome is unknown. (Agustin, 2021) Meanwhile, in the fatwa DSN-MUI No. 31/DSN-MUI/VI/2002, *gharar* is categorized as a contract whose object is unclear, not owned, cannot be handed over, or whose existence is unknown. (Wulandari, 2019)

The evidence for the prohibition of *gharar* in sharia can be found in a sahih hadith narrated by Muslim:

عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْخَصَاةِ وَعَنْ بَيْعِ
الْعَرَرِ

From Abu Hurairah, he said: "The Messenger of Allah forbade the buying and selling of al-hashah (throwing pebbles) and buying and selling *gharar*." (HR. Muslim) (Tona, 2022)

The prohibition is a form of protection for justice in transactions and prevention against fraud (*tadlis*), exploitation, and disputes that may arise in the future. Islamic law strongly upholds the principles of clarity (*ablution*) and honesty (*sidq*) in muamalah as a manifestation of maqasid al-shari'ah, especially in safeguarding property (*hifz al-mal*). (Purnomo, 2024)

The scholars distinguish *gharar* based on its level of danger into two categories:

- a) *Gharar Fahisy* (large and prohibited): That is, *gharar* that is dominant in transactions so that it has the potential to damage the contract. An example is selling goods whose form, specifications, or existence are not known at all. Transactions with *gharar fahisy* cause the contract to become null or void. (Ramly, 2019)
- b) *Gharar Yasir* (light and forgiven): That is, *gharar* that is small and not dominant in the

contract. For example, a small ignorance about delivery time that can be overcome by deal. In the practice of muamalah, this type of *gharar* is tolerated because it is difficult to avoid completely. (Midhia, 2022)

By understanding this categorization, scholars and practitioners of sharia economic law can assess the level of validity of a transaction, including in the context of modern digital such as e-commerce.

In the context of digital transactions, *gharar* arises not only due to the lack of information from the physical object being sold, but also due to the complexity of the system, the limitations of direct verification, and the asymmetry of information between the seller and the buyer. Common forms of *gharar* in e-commerce practices include:

a. Unclear Product Specifications

In online transactions, consumers can only rely on text descriptions, images, or reviews provided by the seller. Often product specifications are written incompletely, or even manipulatively, creating a mismatch between the advertised goods and the goods received. This ambiguity includes *gharar* because the buyer does not have full knowledge of the object of the contract. (Yoesoef, 2020)

b. Uncertainty of Availability of Good

It often occurs in pre-order or dropshipping systems, where sellers do not necessarily have real stock of goods, but still open transactions. If the goods are not available after payment is made, then the contract risks being canceled and causing consumer losses. In sharia, selling something that you don't own is definitely included in the category of *bai' mā lā yamlik* which is prohibited. (Basyariah, 2022)

c. Non-Transparent Information

Non-disclosure in explaining the total price, additional costs (such as shipping or taxes), and the return system are also included in *gharar*. Consumers may agree to the transaction without fully understanding all their obligations or rights. (Suryaningsih, 2019)

d. Uncertain Payment or Delivery Scheme

Gharar can also arise from an unclear payment or delivery system. For example, payments made through a third party with no guarantee of refund, or uncertain delivery times. The system is prone to disputes and harms consumers if there is no transparency and clarity in the first place. (Ningrum, 2023)

In the principles of sharia economic law, the validity or validity of a contract is determined by the fulfillment of the principles and conditions that include the subject (al-'aqidan), object (al-ma'qud 'alayh), ijab-qabul, and the clarity of the rights and obligations of each party. The presence of gharar in one of these elements has the potential to cause the contract to become fasid (damaged), or even void (void), depending on the level of gharar and its effect on the validity of the transaction. (Rahman, 2022)

In the practice of e-commerce, gharar is often not noticed by the parties who transact because of blind trust in the system. In fact, from a sharia perspective, every transaction must be carried out with al-'ilm wa al-ridha (knowledge and willingness), not just following the flow of technology. (Fad, 2019) This phenomenon shows that the existence of sharia standards in e-commerce is a necessity. The protection of Muslim consumers is not enough just by applying positive laws, but also requires an Islamic economic legal framework that ensures the cleanliness of contracts from elements of gharar, usury, and fraud. (Fad, 2019)

Through the maqasid al-shari'ah approach, the prohibition of gharar actually aims to maintain the benefits of the economic life of the ummah. Gharar can undermine the principles of justice and transparency in muamalah. Therefore, the avoidance of gharar is not just a legal formality, but part of an effort to maintain the value of hifz al-mal (protection of property) and hifz al-nafs (self-protection) of consumers from losses and fraud. (Harun, 2022)

Characteristics of E-Commerce Transactions and the Potential of Gharar Elements

E-commerce transactions are one of the forms of information and communication technology development that has been very rapid in the last two decades. This development changed the way humans carry out buying and selling activities from a conventional system that involves physical meetings between sellers and buyers to an internet-based digital system. In this context, e-commerce or electronic commerce refers to any form of buying and selling activities carried out through electronic media, especially the internet. The main characteristic of e-commerce transactions is the loss of physical or face-to-face interaction between the parties in the sale and purchase contract, which is then replaced by digital communication, either in the form of text, images, sound, or video. This makes consumers highly dependent on the information available on digital platforms, which includes product descriptions, images, promotional videos, customer reviews, and service policies. This high dependence on digital information is the starting point for the emergence of the potential element of *gharar* in e-commerce transactions. (Jaharuddin, 2024)

In the study of sharia economic law, *gharar* refers to uncertainty, ambiguity, or speculation in a contract that can cause loss or injustice to one of the parties. The potential of *gharar* in e-commerce transactions can arise from various aspects that are systemically attached to the characteristics of the digitization of the transaction itself. (Muttaqin, 2024)

First, the absence of direct inspections of goods is one of the main sources of uncertainty. In conventional buying and selling, consumers can check the quality, size, color, and completeness of goods directly before deciding to buy. However, in e-commerce transactions, purchasing decisions are generally based solely on the images and descriptions of the products displayed by the seller. This inability of consumers to see and touch goods directly creates space for mismatches between expectations and reality, especially if product information is presented dishonestly or

engineered to look more attractive than it actually is. This clearly contains elements of *gharar*, because the object of the contract becomes unclear or not known for sure by the buyer (*jahalah*), thus causing uncertainty in the implementation of the contract. (Wardana, 2024)

Second, misleading product images and descriptions exacerbate the potential for *gharar*. In many cases, business actors use digital marketing techniques such as image editing or the use of certain angles to make the product look better. Descriptions often don't include important information such as materials, dimensions, weight, or detailed instructions for use. As a result, consumers don't have a complete picture of the products they buy. From a sharia perspective, a valid sale and purchase contract must meet the elements of clarity of the transaction object (*ma'qud 'alaihi*), both in terms of type, quality, quantity, and benefits. Ambiguity in one of these elements has the potential to make the contract contain *gharar* and even *fasid* (damaged or void) if the ambiguity is substantial and has the potential to harm one of the parties. In this context, business actors have a sharia responsibility to convey product information honestly and transparently so as not to harm the principles of *al-shidq* and *al-'adl* in Islamic muamalah. (Djamil, 2023)

Third, the lack of clarity in the return policy is one of the big challenges in e-commerce. Many consumers do not get clarity regarding the return procedure, return terms and conditions, and deadlines given. In fact, in most cases, there is no return option at all even if the item received is defective or not as described. In fact, in Islamic law, if there is damage or inconsistency in the object of sale and purchase, the buyer has the *right of khiyar* (option) to cancel the contract or request a replacement. Unfair or unavailable return policies create uncertainty and insecurity for consumers, which ultimately reinforces the presence of *gharar* elements in such transactions. Moreover, if business actors do not respond to consumer complaints professionally, then it can lead to actions that are close to fraud (*ghisy*) which is prohibited in sharia. (Fajar, 2024)

Fourth, the rating system or customer reviews that can be manipulated also adds to the murkiness of clarity in e-commerce transactions. Supposedly, a customer review system serves as a tool for potential buyers to assess the credibility of the seller and the quality of the product. However, in practice, this system can be abused, for example by buying fake reviews, hiding negative reviews, or creating fictitious accounts to give high ratings. Consumers who are buying at such stores for the first time will rely heavily on such indicators in making decisions. If the available reviews do not reflect reality, then the information consumed by the public becomes invalid, so consumers make decisions based on the wrong data. This clearly contains elements of *gharar*, because it undermines the principle of *transparency* and *honesty of information* in the sale and purchase contract. Islamic Sharia strongly emphasizes honesty in conveying the condition of goods, as emphasized in the hadith of the Prophet PBUH that "Whoever deceives, then he is not our group" (HR. Muslim). (Afandi, 2024)

Fifth, the lack of platform regulation for business actors adds to the complexity of consumer protection from *gharar* elements. Many marketplace platforms do not have strict policies in place to monitor and verify the authenticity of sellers. As a result, anyone can open an online store and sell products without strict supervision. This opens up space for individuals to commit fraud, such as selling counterfeit goods, not delivering goods after payment, or being difficult to contact when problems occur. In sharia economic law, the role of authorities or third parties who guarantee justice in transactions is very important, because Islam not only regulates relationships between individuals, but also demands a system that guarantees the realization of social and economic justice. When there are no strict regulations or an adequate dispute resolution system, consumers are vulnerable to losses that cannot be dealt with fairly. In this context, digital platforms should act as parties who have moral and legal responsibilities to create a healthy, transparent, and fair trading ecosystem. (Hayati, 2025)

The legal implications of the existence of *gharar* elements in e-commerce transactions are very significant from the perspective of sharia economic law. If the *element of gharar* that occurs is mild (*yasir*), then the contract can still be considered valid as long as it does not cause substantial ambiguity and is agreed upon by both parties. However, if the *gharar* has reached a heavy level (*fahisy*), then the contract can be considered invalid and *fasid*, because it does not meet the principles of clarity of the object of the contract, transparency of information, and justice for all parties involved. (Fadhli, 2016) Therefore, it is important for Muslim business actors and e-commerce service provider platforms to understand and internalize the basic principles in sharia economic law, such as honesty, openness, and responsibility, so that every transaction is not only legally positive, but also a blessing and legal according to sharia. By paying attention to these aspects, e-commerce transactions can develop into an economic instrument that is in line with Islamic values and provides benefits for all levels of society. (Elisa, 2024)

Consumer Protection in the Perspective of Sharia Economic Law

Consumer protection from the perspective of sharia economic law is an integral part of the muamalah system that upholds the values of justice (*al-'adl*), honesty (*al-shidq*), and trust in every form of economic transaction. Sharia economic law does not view transactions only as an exchange of goods or services, but also as legal acts that have ethical and spiritual dimensions. Therefore, in sharia business practice, business actors are obliged to provide true, clear, and non-misleading information to consumers. The product information conveyed must reflect the actual condition of the goods or services offered, without manipulation or obscuration of facts, as misleading acts are classified as a form of fraud (*ghisy*) which is strictly prohibited in Islam. (Maimunah, 2021)

In Indonesia, consumer protection has gained legal legitimacy through Law Number 8 of 1999 concerning Consumer Protection, which

provides basic rights to consumers such as the right to comfort, security, information, and compensation. However, in the context of digital transactions, especially cross-border e-commerce through foreign marketplaces, the effectiveness of the implementation of this law still faces major challenges. There are many cases where Indonesian consumers suffer losses due to weak supervision of foreign business actors, unclear jurisdiction, and lack of cross-border dispute resolution mechanisms. (Herlina, 2019)

In this case, the approach of sharia economic law presents an added value that is moral and spiritual: that the responsibility of business actors is not only to positive law, but also to Allah SWT as a form of ukhrawi accountability. Business actors are not only required to comply with regulations but are also required to maintain good morals in running a business, such as not taking profits unjustly, not cheating, and always maintaining sincere intentions in muamalah. Thus, consumer protection in the view of sharia is a comprehensive form of protection that includes legal, moral, social, and spiritual aspects, which if applied consistently will create a more just, sustainable, and blessed economic order. (Susanti, 2017)

Consumers have the right to clarity regarding product specifications, prices, how to use them, and the risks that may arise, so that they can make decisions based on full awareness and not as a result of misleading information. In addition, business actors are also obliged to provide products that are in accordance with the description that has been submitted. If there is a difference that is detrimental to the consumer, then according to the principle of *maslahah* and a *valid contract*, the consumer is entitled to compensation or return of goods. This principle is in line with Islamic teachings which affirm that a transaction is invalid if one of the parties is harmed or does not know clearly what is the object of the transaction (*jahalah*). This is where it is important to have a guarantee of return or fair compensation in the event of a discrepancy or

damage, as a form of moral and legal responsibility of business actors. (Putri, 2021)

The contract in the transaction must also be based on pleasure, an agreement that is free from coercive elements, and equality of information between the two parties. Fair transactions not only guarantee material profits, but also maintain social harmony and create public trust in business actors. (Santoso, 2024)

Therefore, the principle of justice is the main element in maintaining a balance between the rights and obligations of sellers and buyers. In addition, the value of honesty and transparency is highly emphasized in muamalah. The words of Allah SWT in QS. Al-Mutaffifin verses 1-3 expressly warns businesspeople who deceive in measurements and scales as a form of injustice in economic transactions. The Prophet Muhammad PBUH also set an example in trade practices that emphasized noble morals and information disclosure. (Rahman A. , 2025)

Consumer protection in the sharia economy rests on several main principles, namely related to the principle of clarity of contracts, the principle of itqan (professionalism and responsibility), the principle of morality (business ethics), and the principle of maslahah and maqasid al-syariah (protection of the five main principles of maqasid sharia: religion, soul, reason, descent, and property. Thus, consumer protection in Islam is not only interpreted juridically, but also spiritually and socially. (Djajaputra, 2024)

In the context of e-commerce, consumer protection faces complex challenges. Consumers are in a weak position because they cannot directly see, touch, or judge the product. Online interactions also lead to a lack of assurance of product authenticity, delivery time, and transparency in the refund and return process. This is where sharia principles are very relevant to be applied, in order to maintain justice in digital muama. In Indonesia's positive law, consumer protection has been regulated through Law No. 8 of 1999 concerning Consumer Protection, the ITE Law, and OJK and BI

Regulations related to digital transactions. (Khisom, 2019)

However, this regulation is still general and has not explicitly included sharia principles in online-based consumer protection practices, especially for Muslim consumers. Therefore, it is necessary to develop an e-commerce consumer protection system based on Islamic economic law, including by:

1. Require clarity of product information (original images, videos, full specifications),
2. Giving khiyar rights explicitly in online transactions,
3. Provision of a sharia escrow platform as an intermediary between payment and receipt of products,
4. Strengthening halal certification for Muslim marketplaces or online stores,
5. Sanctions for violations of business ethics, both sharia and positive law. (Handoyo, 2022)

And related to the element of gharar in digital transactions is an important indicator of the need for legal intervention to protect consumers. If the element of gharar is left unsupervised, there will be a violation of the principle of justice and betrayal of the trust in the transaction. For example, a seller who does not provide accurate information about the product means that he has hidden the potential of gharar in the contract. This is detrimental to consumers and can cause the cancellation of the contract according to sharia. Therefore, reducing gharar through muamalah digital policies and education is part of the consumer protection system in Islam. The integration of positive law and sharia law in e-commerce regulation will help develop a consumer protection system that is in accordance with the characteristics of Indonesia's Muslim community. (Yossyafaat, 2023)

Analysis of Gharar Practices and Consumer Protection in E-Commerce Transactions in Indonesia

The growth of e-commerce in Indonesia has shown very rapid development in the last

decade. Based on data from various digital research institutions, online shopping transactions have increased significantly, especially after the COVID-19 pandemic. Indonesian people are starting to get used to transacting through platforms such as Tokopedia, Shopee, Bukalapak, Lazada, and others. In addition, social media-based online stores are also emerging, such as through Instagram, TikTok, and WhatsApp Business. (Nugraha, 2023)

However, behind this progress, there are still many problems experienced by consumers, such as products that do not match the description or drawing, goods are not delivered or delivered late, difficulties in the return or refund process, (Sulaeman, 2025) product information that is not transparent and the existence of fictitious sellers. This problem is a strong indication that *the gharar* element is still widely used in e-commerce practices in Indonesia. This ambiguity and uncertainty is detrimental to consumers and has the potential to harm the principle of fairness in transactions. Therefore, it is important to analyze this *gharar* practice juridically and *syar'i*. (Ulum, 2020)

The practice of *gharar*, which refers to uncertainty or ambiguity in transactions, is increasingly evident in Indonesia's e-commerce ecosystem. Data from the National Consumer Protection Agency (BPKN) shows that throughout 2024, there will be 1,733 consumer complaints with potential losses of up to IDR 424 billion, but only around IDR 44.8 billion has been successfully recovered. The Trade Through Electronic Systems (PMSE) sector is one of the most complained about, with PT Tokopedia recorded as the most frequently reported business actor. This phenomenon reflects the presence of an element of *gharar* in e-commerce transactions, where consumers often face unclear product information, the risk of fraud, and uncertainty in the transaction process. BPKN noted that from January to July 2024, from 381 complaints received, total consumer losses reached IDR 202.6 billion, with potential losses

saved of IDR 42.8 billion. In addition, a report from the Ministry of Communication and Digital recorded more than 405,000 reports related to fraud and counterfeiting of online transactions from 2017 to 2024, with 13.1 percent of them occurring in the e-commerce sector in 2023. This condition shows that although e-commerce offers convenience in transactions, there are still significant challenges related to consumer protection. The practice of *gharar* that occurs can be detrimental to consumers and contrary to the principles of fairness in transactions. Therefore, joint efforts are needed between the government, business actors, and the public to increase consumer literacy, strengthen regulations, and ensure transparency in every e-commerce transaction.

(<https://bpkn.go.id/beritaterkini/detail/bpkn-ri-paparkan-catatan-akhir-tahun-2024-terima-1733-pengaduan-selama-tahun-2024>, 2024)

The development of digital technology has brought fundamental changes in the world of commerce, one of which is marked by the emergence of the e-commerce phenomenon or electronic commerce. E-commerce is becoming a new medium in buying and selling activities, where interaction between sellers and buyers occurs through digital platforms without face-to-face. (IslamulHaq, 2025) This system offers high convenience, efficiency, and accessibility for business actors and consumers. However, behind this convenience, e-commerce also holds significant potential risks, one of which is the practice of *gharar*, which is uncertainty or ambiguity in contracts, which is contrary to the basic principles in sharia economic law. In this context, it is important to analyze how the practice of *gharar* occurs in e-commerce transactions in Indonesia as well as how consumer protection can be enforced within the framework of positive law as well as Islamic economic law. (Ningrum, Understanding the concept of *gharar* in society in online buying and selling, 2023)

Conceptually, *gharar* in Islamic law refers to any form of uncertainty, speculation, or fraud

in a transaction that can harm one party. The Prophet PBUH expressly forbade transactions that contain *elements of gharar* as stated in the hadith narrated by Muslims. This provision is intended to maintain clarity, fairness, and openness in every muamalah agreement, so that no party is harmed due to lack of information or manipulation. In the practice of e-commerce in Indonesia, *the element of gharar* can appear in various forms. One of the most common forms is the consumer's inability to conduct a direct inspection of the goods before a transaction is made. Buyers can only see images or descriptions of products provided by sellers on digital platforms, which are often *misleading*. Product images can be visually engineered to make them appear more attractive than they are, while product descriptions can be too generic or even contain inaccurate information. In this context, the object of the contract (*ma'qud 'alaih*) becomes inherently unclear, so that the transaction is susceptible to containing *gharar*. (Salim, 2017)

In addition, the review and *rating* system provided by e-commerce platforms to build consumer trust is not completely free from manipulation. Many business actors buy fake reviews or incentivize consumers to provide positive reviews, thus creating the illusion of reliability that does not match reality. This adds a dimension of uncertainty for potential buyers who rely heavily on these testimonials as a reference in making decisions. Not only that, many business actors develop return *policies* that are not transparent or even avoid responsibility when there is a defect in goods or product non-conformity. When consumers file complaints, the resolution process is often complicated, time-consuming, and does not guarantee justice for the aggrieved party. In the sharia system, this kind of thing is contrary to the principle of *pleasure*, clarity of contracts, and the moral responsibility of business actors to maintain the mandate and integrity in trading. (Maharani, 2024)

This situation is exacerbated by weak oversight of digital business practices, especially those that take place on overseas e-commerce platforms that are difficult to reach by Indonesian legal jurisdictions. Domestic consumers are often

the most disadvantaged parties due to the lack of effective protection when transacting across borders. In the context of Indonesia's positive law, consumer protection has been regulated in:

- a) Law No. 8 of 1999 concerning Consumer Protection, which guarantees consumers' rights to correct information, product safety guarantees, and dispute resolution mechanisms.
- b) Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE), which contains provisions for digital-based transactions, including in terms of data protection and the validity of electronic transactions. (Mustaqim, 2023)

Normative laws and regulations on Consumer Protection have provided a legal basis to protect consumer rights, including the right to convenience, security, correct information, and the right to be heard and complained. However, in the reality of e-commerce practices, the effectiveness of this law still faces major challenges, such as the limitations of the supervision mechanism for digital business actors, the slow enforcement process, and the lack of digital literacy of the community as consumers. This is where the important role of sharia economic law lies as a complement and reinforcement of positive regulation, because in addition to offering legal solutions, it also brings a moral and spiritual approach that touches the inner consciousness of business actors. (Fahmi, 2023)

In sharia economic law, business actors are not only responsible to the state or consumers, but also to Allah SWT as a form of *ukhrawi* responsibility. This responsibility encourages business actors to always be honest, fair, and maintain trust in their every business activity. Principles such as *al-'adl* (justice), *al-shidq* (honesty), and *al-amanah* (integrity) become the main foundation in healthy and blessed transactions. Therefore, sharia e-commerce practices must be based on information disclosure, clarity of transaction

objects, the existence of non-coercive agreements, and fair treatment between sellers and buyers. E-commerce platforms should also ideally provide sharia-based consumer protection features, such as halal product certification, transparent assessments, and a fair return system. That way, this system not only avoids *gharar*, but also builds a responsible and sustainable digital economy ecosystem. (Muthiah, 2018)

To prevent and minimize *gharar*, there needs to be synergy between state policies, public education, and the commitment of business actors in building healthy and Islamic transactions. (Aziz, 2023) The government can strengthen regulations by requiring e-commerce players to provide accurate product information, open up efficient access to complaints, and apply strict sanctions against fraudulent business practices. In addition, it is also necessary to strengthen online-based consumer dispute resolution institutions that are fast and affordable. On the other hand, consumer literacy needs to be improved so that they are not easily caught up in fake ads or unclear transactions. The public must be equipped with knowledge of their rights as consumers, including the right to refuse non-transparent transactions and the right to obtain compensation for losses suffered. In the context of Islamic economics, this education also includes strengthening morals and spiritual awareness so that consumers are always careful, critical, and not tempted by the sweet promises of deceptive advertisements. (Haerisma, 2018)

So, according to the author, the results of this study show that the practice of *gharar* and consumer protection in e-commerce in Indonesia shows that there is still a fairly wide gap between legal ideals and the reality on the ground. Digital transactions that are supposed to provide convenience and efficiency can actually turn into a detrimental instrument if they are not accompanied by the principles of transparency, honesty, and moral responsibility. Therefore, the application of the principles of sharia economic law in e-commerce is very relevant to overcome

the weaknesses of the current system. This approach not only touches on the legal-formal aspect but also shapes the ethical and spiritual behavior of economic actors, which will ultimately create a fairer, trusted, and blessing-oriented digital trading system, not just worldly gains. Thus, the synergy between positive law, sharia law, and the collective consciousness of the community is the main key in building a safe, moral, and equitable e-commerce ecosystem.

CONCLUSION

The development of digital technology that has driven the growth of e-commerce in Indonesia has brought both convenience and challenges, particularly regarding the potential for *gharar*, which contradicts the principles of justice, transparency, and honesty in Islamic economic law. Practices such as unclear product specifications, incomplete information, and non-transparent payment systems are still commonly found in digital transactions. Consumer protection in Islam is not only legal in nature but also moral and spiritual, necessitating a synergistic role between the state, businesses, and consumers in creating a healthy and sharia-compliant digital ecosystem. Therefore, the integration of positive law and Islamic economic law is crucial to ensure that consumer protection for Muslims in digital transactions is implemented holistically.

REFERENCE

- Abdussamad, Z. (2021). *Qualitative Research Methods*. Makassar: Syakir Media Press.
- Afandi, N. (2024). Review of Qur'an Verses and Economic Hadith on Production Ethics in Islam. *Collaborative Journal of Science*, 4650-4655.
- Agustin, H. (2021). Islamic bank theory. *JPS (Journal of Sharia Banking)*, 67-83.
- Aziz, D. A. N., Khanif, A., Hartono, M. D., & Marbun, A. A. Y. (2023). Examining Qanun in Aceh

- from a human rights perspective: status, substance and impact on vulnerable groups and minorities. *Ijtihad J. Wacana Huk. Islam dan Kemanus*, 23, 37-56.
- Baiq, P. A. (2021). Legal Protection of Personal Data in E-Commerce Transactions: Perspectives of Islamic Law and Positive Law. *DICTUM*, 149-165.
- Basyariah, N. (2022). The Prohibition of Buying and Selling Gharar: A Study of Thematic Economic Hadith of Business in the Digital Era. *Mukaddimah: Journal of Islamic Studies*, 40-58.
- Djajaputra, S. H. (2024). Juridical Review of Default Settlement in Sale and Purchase Agreement. *UNES Law Review*, 10368-10380.
- Djamil, N. (2023). Akuntansi Terintegrasi Islam: Alternatif Model Dalam Penyusunan Laporan Keuangan: Islamic Integrated Accounting: Alternative Models in Preparing Financial Statements. *JAAMTER: Journal of Integrated Management Accounting Audit*, 1-19.
- Elisa, A. R. (2024). E-Commerce Business Development in the Perspective of Sharia Economics. *Al-A'mal: Journal of Sharia Business Management*, 1-21.
- Fad, M. F. (2019). E-commerce dispute resolution through online dispute resolution in the perspective of Islamic law. *Journal of Islamic Law*, 99-119.
- Fadhli, A. (2016). A Review of Islamic Law on the Application of Akad as-salam in e-commerce Transactions. *Mazahib*, 1-19.
- Fahmi, B. K. (2023). Indonesia's positive legal protection against the crime of misuse of personal data. *UNES Journal of Sound Justice*, 369-392.
- Fajar, M. R. (2024). Analysis of Buying and Selling Basic Necessities with a Credit System in the Perspective of Sharia Economics. *JHEB Narasi: Journal of Law, Economics and Business*, 6-12.
- Fathonih, M. A. (2025). Morals and Ethics of Buying and Selling Perspectives of the Qur'an and Al-Hadith. "Morals and Ethics of Buying and Selling from the Perspective of the Qur'an and Al-Hadith." *EKOMA: Journal of Economics, Management, Accounting*, 5595-5609.
- Haerisma, A. S. (2018). Development of Halal Tourism in Indonesia: A Review of Islamic Business Ethics. *Al-Mustashfa: Journal of Sharia Economic Law Research*, 153-168.
- Handoyo, B. (2022). Consumer Protection of Household Food Products Without an Expiration Date in the Perspective of Positive Law and Islamic Law. *Constitution: Journal of State and Political Law Research*, 1-16.
- Aaron, I. A. (2022). The Implementation of the Concept of Maslahah Mursalah in Islamic Economics According to Islamic Figures and Jumhur Ulama. *Journal of Economics*, 563-577.
- Haq, I., Sudirman, L., & Amiruddin, M. M. (2025). Eco-Theological Insights on The Sasi Tradition: Analyzing Environmental Ethics and Sanctions Through Fiqh al-Bi'ah and Islamic Criminal Law. *Al-Istinbath: Jurnal Hukum Islam*, 10(1), 58-80.
- Hayati, W. (2025). The Application of The Principle of Bona Fides in The Sale and Purchase Agreement Through the Electronic System (E-Commerce). *Iqtishaduna: Scientific Journal of Sharia Economic Law Students*, 421-428.
- Herlina, N. (2019). The Application of Administrative Sanctions in Consumer Protection Law. *Galuh Justisi Scientific Journal*, 190-203.
- Ishaq. (2017). *Legal Research Methods and Writing Thesis, Thesis, and Dissertation*. Bandung: Alfabeta.
- Jaharuddin, A. A. (2024). Business Ethics in E-Commerce: Implementation of Islamic Values in Online Business Practices. *J-CEKI: Journal of Scientific Scholars*, 3578-3592.
- Khisom, M. (2019). Online buying and selling contracts in the perspective of Islamic law

- and positive law. *Turatsuna: Journal of Islam and Education*, 56-67.
- Kurniawati, A. D. (2019). E-Commerce Transactions in an Islamic Perspective. *El Barka: Journal of Islamic Economics and Business*, 90-113.
- Maharani. (2024). Islamic Covenant Legal Business Ethics. *Ahkam: Journal of Islamic Law and Humanity*, 15-24.
- Maimunah, I. A. (2021). Sharia Economic Customer Protection through Pawn Transactions in the Perspective of Fiqh Muamalah. *Islamic Law*, 236-255.
- Midhia, F. G. (2022). Buying and selling with the concept of All You Can Eat in the perspective of fiqh muamalah. *Mu'amalah: Journal of Sharia Economic Law*, 39-52.
- Mustaqim, D. A. (2023). Halal certification as a form of Muslim consumer protection: An analysis of sharia maqashid and positive law. *AB-JOIEC: Al-Bahjah Journal of Islamic Economics*, 54-67.
- Muthiah, A. (2018). Consumer Protection of Defective Products in the Perspective of Buying and Selling Fiqh. *Sharia: Journal of Law and Thought*, 211-232.
- Muttaqin, M. Z. (2024). Implementation of e-Money in the Perspective of Sharia Economic Law: An Analysis of Sharia Principles and Compliance. *Innovative: Journal Of Social Science Research*, 6371-6380.
- Ningrum, E. W. (2023). Understanding the concept of gharar in the community in online buying and selling. *Sahmiyya: Journal of Economics and Business*, 472-480.
- Ningrum, E. W. (2023). Understanding the concept of gharar in society in online buying and selling. *Sahmiyya: Journal of Economics and Business*, 472-480.
- Nugraha, P. P. (2023). The Correlation of Joyoboyo's Prediction of Pasar Ilang Kumandange to Digital Marketing in the Marketing 4.0 Era in Indonesia. *Build Recapiment*, 75-87.
- Nugrahani, F. (2014). *Qualitative Research Methods in Language Education Research*. Surakarta.
- Purnomo, S. B. (2024). The Process of Buying and Selling Rubber Rubber Tenders in Rejodadi Village, Sembawa District, Banyuasin Regency in The Perspective of The Principles of Sharia Economic Law. *Journal of Multidiscipline and Equality*, 9-17.
- Putri, E. A. (2021). The authority of the MUI after the issuance of Government Regulation No. 31 of 2019 concerning the Implementation Regulation of Law No. 33 of 2014 concerning Halal Product Assurance. *Krtha Bhayangkara*, 19-26.
- This, D. E. (2020). Market Place-Based E-Commerce Transactions: Between Akad Salam and Gharar Perspective of Fiqh Madzhab Syafi'i. *MIYAH: Journal of Islamic Studies*, 414-429.
- Rahman, A. (2025). THE PRINCIPLES OF JUSTICE IN PRICING FROM AN ISLAMIC PERSPECTIVE. *Al-Hukmi: Journal of Islamic Economic and Family Law*, 124-134.
- Rahman, F. (2022). The practice of affiliate marketing on e-commerce platforms in a review of sharia economic law. *Istidlal: Journal of Islamic Economics and Law*, 24-37.
- Ramly, A. R. (2019). The Concept of Gharar and Maysir and Their Application to Islamic Financial Institutions. *Islam Universalia: International Journal of Islamic Studies and Social Sciences*, 62-82.
- Rosmayati, S. (2023). Legal challenges and the role of the government in the development of e-commerce. *Coalition: Cooperative Journal*, 9-24.
- Ruslan, N. F. (2022). Keberangkalan Gharar di dalam E Wallet: Satu Penelitian Awal: Probability of Gharar in E-Wallets: A

- Preliminary Study. *ALBASIRAH JOURNAL*, 25-36.
- Salim, M. (2017). Buy and sell online according to the view of Islamic law. *Al Daulah: Journal of Criminal Law and Constitutionality*, 371-386.
- Santoso, N. A. (2024). The analysis of profit sharing between investors and managers is reviewed from the perspective of Islamic economic law. *El-kahfi/ Journal of Islamic Economics*, 372-383.
- Setiawan, I. (2021). Basic Principles of Sharia Financial Management. *Journal of Sharia Accounting and Business (AKSY)*, 153-170.
- Sholihin, R. (2020). A Review of Fiqh Muamalah on the Practice of Skincare Endorsement in Banda Aceh. *Al-Mudharabah: Journal of Sharia Economics and Finance*, 69-80.
- Sulaeman, O., Alfiander, D., Kanus, O., Rahmi, S. N., & Utomo, B. (2025). Negotiating Gender Justice in Minangkabau Marital Disputes: Between Adat, Islamic, and State Law. *JURIS (Jurnal Ilmiah Syariah)*, 24(1), 39-49.
- Suryaningsih, D. I. (2019). Analysis of Gold Debt Receivables in Laban Village Menganti Gresik. *Journal of Islamic Economics and Business*, 36-49.
- Susanti, I. (2017). Juridical Review of Consumer Protection of Online Shopping Based on Law No. 8 of 1999 concerning Consumer Protection in conjunction with Law No. 11 of 2008 concerning Information and Electronic Transactions. *Sigma-Mu*, 19-32.
- Tona, T. I. (2022). The Practice of Gharar and Maisir in the Modern Era. *Mu'amalat: Journal of Sharia Economic Law Studies*, 163-176.
- Ulum, M. (2020). The principles of online buying and selling in Islam and its application to Islamic E-commerce in Indonesia. *Journal of Economic and Business Dynamics*, 454249.
- Wahid, K. (2018). The Significance of the Al-Ḥisbah Institution in the Islamic Economic System. *Mizani Scientific Journal: Legal, Economic and Religious Discourse*, 135-150.
- Wardana, H. K. (2024). Sharia law on riba and gharar is reviewed from the perspective of economic transactions in Islam. *Journal of Education and Teaching Review (JRPP)*, 14361-14364.
- Winario, N. F. (2024). Consumer Protection in Islamic Banking: A Legal Perspective of Islamic Economics. *Multidisciplinary Journal Of Religion and Social Sciences*, 29-39.
- Wulandari, F. (2019). Implementation of DSN MUI Fatwa No. 31/DSN-MUI/VI/2002 concerning Debt Transfer to Take Over Financing at BRI Syariah Madiun Branch Office. *Script iIAIN Ponorogo*.
- Yoesoef, A. S. (2020). Gharar's practice on product endorsements on social media Instagram." . *Al-Mustashfa: Journal of Sharia Economic Law Research*, 117-126.
- Yossyafaat, A. A. (2023). Legal Aspects of Consumer Protection on the Transfer of Personal Data by Corporations in Indonesian Positive Law. *Red Wing*, 619-629.