

THE ANALYSIS ELEMENT OF *GHARAR* IN E-WALLET CONTRACTS

ANALISIS UNSUR *GHARAR* DI DALAM KONTRAK E-WALLET

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ABSTRACT

E-wallet introduces a new trend for the financial services business landscape. E-wallet is characterized as a digital device that allows a user to conduct electronic transactions, but not restricted to only for purchasing but any activities involve in transfer and receive money. While many scholars focused on e-wallet awareness among people and banking industry which involved developed countries, there is not much literature discussed on prohibited element of Islam which is *gharār* in e-wallet contract. Furthermore, adapting the e-wallet's *sharī* ah compliance is important as it will help to eliminate the doubt about using e-wallet particularly among Muslims users because every business in Muslims 'daily lives has to comply with the Qurān and Sunnah. This research thus aims to understand the element of *gharār* in e-wallet contracts. The questions posed are: 1) what is the origin concept of *gharār* in contemporary Islamic finance and transaction?; 2) how to identify e-wallet contracts involve with element of *gharar*?; 3) how to minimize the existence of *gharar* in e-wallet contracts?. The study will adopt qualitative methodology. In this research, the methodology used is a library research which is the researcher handling with mining data from document and content analysis. The expected findings for this study will enrich the literature regarding the element of *gharār* in online transactions. Besides that, the study will help to identify the element of *gharār* which is prohibited in Islam in e-wallet contracts as well as benefit the public research institution to fix the financial activities until it achieve Islamic consideration and fulfillment in order to gain the God blessings.

Keywords: *E-wallet contract, gharār, online transaction*

ABSTRAK

*E-wallet memperkenalkan trend baru untuk landskap perniagaan perkhidmatan kewangan. E-wallet dicirikan sebagai peranti digital yang membolehkan pengguna melakukan transaksi elektronik, tetapi tidak terhad hanya untuk pembelian tetapi sebarang aktiviti melibatkan pemindahan dan penerimaan wang. Walaupun banyak sarjana memfokuskan pada kesedaran e-wallet di kalangan masyarakat dan industri perbankan yang melibatkan negara maju, tidak banyak literatur yang dibahas mengenai unsur Islam yang dilarang iaitu unsur *gharār* dalam kontrak e-wallet. Selain itu, penggunaan e-wallet patuh syariah adalah penting kerana ia akan membantu menghilangkan keraguan tentang penggunaan e-wallet terutama di kalangan pengguna Muslim kerana setiap perniagaan dalam kehidupan seharian umat Islam harus mematuhi al-Quran dan Sunnah. Oleh itu, penyelidikan ini bertujuan untuk memahami unsur *gharār* dalam kontrak e-wallet. Soalan-soalan yang diajukan adalah: 1) apakah konsep asli *gharār* dalam kewangan dan transaksi Islam kontemporari ?; 2) bagaimana untuk mengenalpasti kontrak e-wallet yang mengandungi unsur *gharar*?; 3) bagaimana untuk meminimumkan unsur *gharar* di dalam kontrak e-wallet?. Kajian ini akan menggunakan metodologi kualitatif. Dalam penyelidikan ini, metodologi yang digunakan adalah penyelidikan perpustakaan di mana penyelidik mengumpul data daripada dokumen dan menganalisis kandungan berdasarkan dokumen. Dapatan untuk kajian ini diharapkan akan memperkaya literatur mengenai unsur *gharār* dalam transaksi dalam talian. Selain itu, kajian ini akan membantu mengenal pasti*

unsur gharār yang dilarang dalam kontrak e-wallet serta memberi manfaat kepada institusi penyelidikan awam untuk memperbaiki aktiviti kewangan supaya berlandaskan Islam bagi memastikan memperoleh rahmat Tuhan .

Kata kunci: *Kontrak e-wallet, gharār, transaksi dalam talian*

Background of the Study

All system of people activity in the current era are connected with technology advancement of information and communication. These development have led to transformation and modernization in approach of interaction and transactions among people in social, economic, cultural and not fewest in financial field. Presently, there is technology that shows financial transformation with a touch of current technology in the sector of services, named as financial technology (fintech). (Iskandar & Yusram, 2020; Plukker et al., 1993; Miah & Omar, 2012; Zavolokina et al., 2016).

During ancient time, people apparently never made or required money; their labour and their goods were bartered by people. Eventually, barter was replaced by gold coinage, significantly increasing the liquidity of transactions and serving as an effective medium to store value (Ward, 2020). It evolves from money made from anything (commodity, bronze, copper, alloy, gold , silver and paper) to money on something (currency, notes, cheque, contract, product, instrument and legal tendering organization) (Omar et al., 2012). The digital transformation of money, cards and documents contributes to a reduction in the use of plastic and paper and physical wallets (Koosha, 2018). The advancement of digital communication and transaction processing technologies has gradually transformed finance from analogue to digital(Plukker et al., 1993) known as financial technology.

Financial technology (fintech) has turn to a technology that grows very fast and has very diverse and developing services in financial sectors (Karsen et al., 2019; Bin & Rahaman, n.d.). Nowadays, the financial technology adopts mobile phone as a medium very close to the client. Mobile phones are not just used as a telephone and receiving message, yet they also have mass functions that are useful for people needs. This advantage is adopt in financial services sector, for example the sectors connected with payment services that adopt mobile phone that we know today with smartphones (Karsen et al., 2019; Phoong et al., 2019; Acker & Murthy, 2020; Narayan, 2013).

Mobile technology, such a smartphone we use today is useful not only for financial services sector but also for people who use it. The mobile payment service is named as mobile payment since 2000. Now, we can see through all the world, there are lot of mobile payment services with the target to provide people to get any desire for payment (Kang, 2018; Narayan, 2013). The usage of mobile payment today has ease the customers. Because customers by now realize the usage of a smartphone. (My et al., 2020). The mobile payment turn into a medium to make sure all the transactions significant for the customers.

In Malaysia, government is working to promote cashless society (Suwitri, 2020; Ariffin & Lim, 2020; Lim et al., 2019). Bank Negara Malaysia (BNM) in their financial sector blueprint 2011-2020 aspiration to decrease the number of cheques matters per year and take over with mobile payment known as cashless transaction. The rising usage of mobile device and e- commerce has drove to the publicity of m-commerce (Phoong et al., 2019). Now, we can see how people use the services of e-wallet that becoming so popular such as Touch n Go e-wallet, Boost, Grab-pay and others. The adaptation of online transaction are gradually take over traditional methods of payment (Teng et al., 2018). This rapid development will transform how the community transfers and receive funds that may advance to a cashless world.

As the use of e-wallet in Malaysia is growing, it has become necessary to analyze and pays close attention to ethical elements in its implementation. Islam prohibits the element of exploitation in the form of transactions that are not yet clear, namely *gharar*. Many literatures have discussed about e-wallet emerging phenomenon. However, there is still a dearth of literature dealing with the *gharar* element in e-wallet contract. Hence, this research is aiming to explore the element of *gharar* in e-wallet contracts.

Problem Statements

BERNAMA (2018) recorded a survey found that the number of e-wallet users in Malaysia increased to 52.9 percent of respondents in October 2018 compared to 24.3 percent in February 2018. Carousell e-commerce

market said the survey also recorded a threefold increase in the number of respondents from 202 in February to 731 in October 2018, which showed a sharp increase in interest in the use of e-wallets in the country. However, research do by (Zulkefli et al., 2020) claimed the implementation of e-wallet involves certain transactions and concepts that might cause with *Sharī'ah* issues.

In Islam, there are prohibited elements that compulsory to avoid in order the transaction is align with *Sharī'ah*. One of the prohibited element is *gharar*. In this study, the researcher interests to understand the concept of *gharar* in Islam and the principle of *gharar* in online transaction since e-wallet is using digital transaction called as online transaction. By understand the concept of *gharar* in online transaction, it help to verify the transaction comply with *Sharī'ah* although the transaction is in virtual situation.

Besides, based on the literatures, there are several issues with the contract of e-wallet. (Zulkefli et al., 2020) who comes up with a question of e-wallet service called Maybank Anytime Everywhere (MAE) and Boost. In this e-wallet, the consumer benefits from cashbacks, discounts and discount vouchers. The benefits of the customer, as mentioned above, give rise to the impression that the contract can involve *gharar*, because it would hardly be *qard* or *wadī'ah* to define the contract. Another issues come from (Azrul Azlan, 2019) questions arise regarding two advertisements that are widely used by e-wallets, either concerning *riba'* or not. The two promotions were lucky draw and reload bonus where it is not clear that the contract is *qard* (loan) or if it is not *qard*, what is the potential contract?

As we know, there are many service provider of e-wallet in Malaysia. This study will explore more e-wallet contract which involve with element of *gharar* in some service providers. By doing this objective, it help to identify the clarity of the contract in e-wallet that involve with *gharar* which may help user to avoid with the non- *sharī'ah* compliance services.

Purpose of Study

This study aims to explore the element of *gharar* involve in e-wallet contracts which is nowadays most of transaction evolve to be in virtual form. It is hoped that this study can be used as a guidelines to identify element of *gharar* to any kind of virtual transaction although it is not use e-wallet.

Research Objectives

Based on the purpose of the study, this research attempts to achieve three objectives. The three objectives are as follows:

1. To understand the origin concept of *gharar* in Islamic financial system.
2. To explore e-wallet contracts involve with element of *gharar*.
3. To suggest better alternatives to minimize the existence of *gharar* in e-wallet contracts.

Research Questions

The research questions for this study as following:

1. What is the concept of *gharar* in Islam financial system?
2. How to identify e-wallet contracts involve with element of *gharar*?
3. How to minimize the existence of *gharar* in e-wallet contracts?

Significance of Study

This research will help other researchers especially who come from contemporary Islamic financial field. The understanding of *gharar* is important (Cattelan, 2009 ; Muchtar, 2017) because nowadays the evolution of financial system has change the traditional system. In Malaysia, the financial system also facing the positive development however, the understanding of *gharar* in financial development is still lacking among the people. Therefore, this study is expected to be a reference for other researchers. This research will explain the basic knowledge of *gharar* and the implementation of *gharar* in contemporary Islamic financial and transaction will be reported in detail in this thesis. The step-by-step description can be used as a guide for researcher to do future research.

Besides, this research will help customer especially from Muslim to gain awareness about prohibition of *gharar* when make any online transaction. The explanation of *gharar* in online transaction in this study expects to give comprehensive understanding between element of *gharar* and any transaction that related with online transaction. Before this, customer more easily can detect any *gharar* element in subject matter as the transaction happen in front of their eyes. However, with the development of technology, online transaction has took over conservative ways. This situation may create uncertainty and risk regarding the subject matter which Muslim must aware they have to understand the principle of *gharar* in online transaction in order to free from prohibition of *gharar*. Therefore, this study hopes can increase the awareness of Muslim customers about the knowledge of *gharar* in online transaction.

Literature Review

This research refers primarily to sources and literature on *Sunni* jurisprudence which is comes from four major school, *Hanafi* school, *Maliki* school, *Shafi'i* school and *Hanbali* school. Other than that, the discussion of this research also come from Qur'an, Hadith and contemporary resources.

The Epistemology of *Gharar* in Islamic Perspectives

In the various *fiqh* literatures, the discussion of *gharar* can be found in several classical books known as kitābul turāth such as *al-Mabsūt*, *al-Furūq*, *al-Muhadhab fī Fiqh al-Imām al-Shafi'i* and *I'lam al-Muwaqqi'īn 'an Rab al-'alamīn*. The rationale for this compilation of literature is that these books are widely regarded and have a special place among *Sunni* jurists. Traditional and contemporary scholars strongly draw attention to these references.

The literature of the *Hanafi's* in this study refer to book *Al-Mabsūt* written by Abū Bakr Muhammad Ibn Ahmad Sarakhsī, a scholar of the *Hanafi* school of Islamic jurisprudence. In this book, the explanation of *fiqh* cases is written thoroughly by mentioning the opinion from Imām Abū Hanīfah, founder of *Hanafi* school. In some cases, the author also mentioned the opinion from Imām Mālik, founder of *Māliki* school, Imam Shafi'i founder of *Shafi'i* school and other significant *fiqh* scholars. This book is highly recommended by *fiqh* scholars because the author combines the arguments of *Hanafi* school and other sects in such a beautiful way that there is no objection in the middle. For the aim of this study, in this book, the author is focusing in the chapter of corrupts selling and buying which is the fundamental in understanding the prohibition of *gharar* in contemporary transaction.

As for *Māliki's* literatures, this study refers to book *Al-Furūq* by Imām Abī al-'Abbas Ahmad Ibn Idrīs al-Qarāfī al-Mālikī. This book dealing with the legal rules in the school of Mālikī. Besides, in this book also explain the opinion from others *Sunni* school which help to figure out the differences between the schools. This study uses this book as some literatures from contemporary Islamic scholars have cited the work from Imām Qarāfī such as Dr. Wahbah Zuhaili in his books *Fiqh Islāmī wa Adillatuhu*. In this study, the topic of methodology of right and wrong in selling and buying will be analyzed in justifying the guidelines how to deal with *gharar* in contemporary transaction.

Besides, for *Shafi'i* literatures, this study refer to book *al-Muhadhab fī Fiqh al-Imām al-Shafi'i* by al-Imām Abū Ishāq Ibrāhīm al-Syairāzī. In this book Imām al-Syairāzī clearly write the *fiqh* cases with the arguments based on *Shafi'i* school methodology and complete with the basis from *Qura'n* and *Sunnah*. This book one of the main reference in *Shafi'i* school where it is the reason researcher used this book as reference for this study. The chapter that will be focused on this book is the topic "What is forbidden from selling ambiguity and others". This chapter is the most significant to be focused in investigating the argumentation about *gharar* in *Shafi'i's* perspectives.

About the *Hanbali's* literatures, , this study uses the book *I'lam al-Muwaqqi'īn 'an Rab al-'alamīn* by Shams al-Dīn Abū 'Abd Allāh Muḥammad Ibn Abī Bakr Ibn Ayyūb al-Zur'ī al-Dimashqī al-Ḥanbalī commonly known as *Ibn Qayyim al-Jawziyya*. This book explain the opinions of *Maliki's* school in *fiqh* cases and also add the opinion from others which is differenet from *Maliki's* school opinion. This is one of the main book in *Maliki's* school where the chapter that will be focusing in this study in topic "Selling and buying of unseen subject matters". This help researcher to find out the difference of opinions from Islamic scholars regarding the contract involve with unseen subject matter which relate with many

controversy issues in this study. In this chapter, element of *gharar* is one of the element which is contribute to the rejection of contract of sale.

In this study, the literatures also come from *Qura'n* and *Hadīth*. The several books of *hadīth* use in this research includes *Sahīh Bukhārī* by Muhammad bin Isma'īl al-Bukhārī, *Sahīh Muslim* by *Imām Muslim* and *Fath al-Bārī bi Sharh Sahīh al-Bukhārī* by Ibn Hajar al-'Asqalānī. All of the hadith books mentioned are highly recommended book by Islamic scholars because novelty of the sources. These books are being analyzed comprehensively especially in the chapter related to the topic of *gharar* which is many of *hadīth* from Prophet Muhammad SAW mentioned about the prohibition of *gharar* and types of *gharar*.

Nehad & Khanfar (2016) in their paper, A Critical Review of the *Gharar* Principle in Islamic Financial Contracts: Different Perspective, focuses on critically analyzing and expanding the interpretation of *gharar* in accordance with the teachings of the *Qura'n*. It also aims to investigate the modern definition of *gharar* against misrepresentation and fraud, which varies fundamentally from the traditional interpretation. This paper presents a new and modernized definition based on a *Qura'nic* interpretation of *Gharar* and a new understanding of the meaning of the Arabic language. However, in order to better identify the types of *gharar* and their legal consequences in respect of contracts, this paper needs more research.

Besides, in the research by Sanusi (n.d) explains the relationship in terminology and legal framework between Islamic and Western contract laws in general and their specific laws relating to the principle of *gharar*, highlighting the devine roots of Islamic law, the justice and common sense of it is based on the realistic understanding and elaboration of the Muslim jurist. But this study only limits *gharar* into two categories: 1) *gharar* because of doubt and probability; 2) *gharar* because of fraud and deception that need the further understanding with the various classification of *gharar*.

Kamali (n.d) in his study Uncertainty and Risk-taking (*gharar*) in Islamic Law addresses the conditions and typology of *gharar* and issues over the sale of the unseen (*ba'cy al-ghaib*), sale of the non-existent (*bay' al-ma'adūm*), sale at the market price (*ba'cy bi sīr al-sūq*) and the relevance of *gharar* to takaful insurance and futures trading in commodities. This study also focuses on the discussion of *gharar* over the element of risk-taking, gambling, and unlawful appropriation of the property of others. However, the complexities that are generated through the introduction of new products and modes of transaction in banking, finance, stock markets and future markets have brought with them new and equally more complex levels of *gharar* that require careful assessment and analysis.

Al-Saati (2003) in his research The Permissible *Gharar* (Risk) in Classical Islamic Jurisprudence discusses on the definition of *gharar* and uncertainty which are found to be almost the same. It also show that the prohibition of *gharar* is a gambling like transaction. Besides, this study find out that permissible of *gharar* by jurist is based on the justification of *maslahah* which can be considered as particularization of a general ruling (*hukm*) on the basis of stronger evidence which is either obvious or imbibed. However, this paper get many argument from contemporary Islamic scholar because the fundamental of *gharar* is prohibit in Islam that need more clarification.

Al-Suwailem (2000) in his study Towards an Objective Measure of *Gharar* in Exchange develops a framework for analysing *gharar* based on economics aspects of game theory. The framework is consistent with *Sharī'ah* maxims as well as individual *gharar* transactions widely studied in classical *fiqh* resources. In addition, the framework brings insights into explaining different *fiqhi* positions on controversial *gharar* contracts. When extended to contemporary practices, the measure helps understanding the logic of instrument design, and where violation of Islamic rules exactly lies. The moral, ethical, and social aspects of this framework show the deep consistency between Islamic rules of exchange and general Islamic principles of human behaviour. However, this paper only cover the *gharar* on contract that involve with game while there are many more situation which involve with *gharar* in transaction.

Application of E-wallet in Online Transaction

Nashirah, Sofian & Kiyotaka (2020) in their analysis of E-Wallet Transactional Framework for Digital Economy: The Islamic Financial Engineering Perspective focuses on the implementation of a transactional framework for the e-wallet payment system in the digital economy. This study clarified the mechanism of the transaction, beginning with the registration of the customer and the service provider, the composition of the payment and the generation of income for the e-wallet provider business model. This research offers an accurate and reliable overview to raise public knowledge of the e-wallet transaction. This study is helpful

to understand the mechanism of E-wallet however it does not cover on fiqh issues that will be add on in this research.

Lee & Daniel (2018) in their study Transforming Mobile Phones into E-Wallets in Malaysia highlights the Bank's reforms have made substantial progress in Malaysia's efforts to switch to e-payments. Going forward, mobile payments have a huge potential to reduce the use of cash. The implementation of E-wallet as mobile payments are at an initial phase of development in Malaysia, but are gaining momentum as new non-bank players join. As a result, the mobile payment market is expected to continue its rapid development. This will give rise to new opportunities, including a greater capacity for collaborative opportunities, either at the industry-wide level or between incumbents and new entrants. However, changes in the business model and consumer preferences towards greater use of e-payments would also lead to new risks related to *fiqh* issues that need to have further analysis.

Junadi & Sfenrianto (2015) in their paper A Model of Factors Influencing Consumers' Intention to Use e-wallet System in Malaysia: A Systematic Review discuss about technical developments in e-commerce and the ubiquity of smartphones has helped to promote the need to research the intention to use e-wallets. As the e-wallets markets are expected to grow significantly in Malaysia, it is essential to examine customer behavioural motivation to use e-wallets for the good of the e-wallets service provider in Malaysia. The study shows that the adoption of e-wallets (mobile payment) in Malaysia considered security as the most prominent reason to look deeper into the intention to use e-wallets (mobile payment). However, it would be better if it can relate with the awareness of using *Shari'ah* compliance e-wallet among Muslim customers.

Research Methodology

Every study conducted requires a method in obtaining data or research findings. A good research requires good data, obtained from carefully planned research based on the appropriate design, which is the approach used in the process of obtaining research data. Thus, this study is a text analysis study that uses a qualitative approach. There are two methodologies used, namely data collection methodology and data analysis methodology. To collect data in this study, two methods namely mining data from document and interview were used. While to analyze the data obtained, content analysis and thematic analysis is used. Data from the results of the interviews conducted are only a support to this study. In short, the methodology of this study is detailed according to the type of study, data collection methods and data analysis methods.

Research Design

This study is a qualitative study based on the research problems that have been submitted. Cresswell defines qualitative research as an inquiry process toward an understanding based on data collection methods, commonly used when reviewing a social problem (Cresswell, 2013). Thus, qualitative approach are chosen because researchers discuss about the current issues or problems of modern transaction which is involve with *gharar* in online transaction and e-wallet contracts. Therefore, the study design conducted by this research is more focused on how to get answers to research questions that have arisen from issues involve with *gharar* in online transaction and e-wallet contracts. In addition, qualitative design was chosen because this study did not involve numerical and statistical data experimental research. Because this study emphasizes the study in a real and natural setting, qualitative research is seen as appropriate in forming observations and explanations of something real and natural. This study requires thorough and in-depth information to answer research questions that revolve around issues *gharar* in online transaction and e-wallet contracts.

Data Collection Method

This study uses data collection methods by mining data from document and semi-structured interviews.

- i. Mining Data from Documents
- ii. Semi- structured interviews

Data Analysis Method

This study uses data analysis methods by content analysis and thematic analysis.

- i. Content Analysis
- ii. Thematic Analysis

Summary

The expected findings of this research is there are e-wallet contracts that involve with element of *gharar*. Therefore, this study hopes can increase public awareness especially among Muslims to avoid them from dealing with e-wallet that have potential involvement with element of *gharar*.

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