

RIBA AND GHARAR ON DIGITAL PAYMENT APPLICATIONS: Comparison Between Malaysia And Indonesia

Mohd. Shahid bin Mohd. Noh, Dwi Fidhayanti
University of Malaya, Malaysia; UIN Maulana Malik Ibrahim Malang,
Indonesia
Email: shahid82@um.edu.my

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Abstract

Malaysia and Indonesia have muslim-majority population, encourage the financial sector to provide services that is in line with sharia, including digital payment instruments. This study aims to compare riba and gharar on digital payment applications in Malaysia and Indonesia. This research is normative juridical research with conceptual and comparative approaches. The main part of the focus, first, Securities Commission Malaysia has divided digital currencies into two categories, namely digital currencies based on technology without underlying assets and the ones based on riba goods. For the former currencies, it is categorized as urudh and is not considered a currency from sharia point of view, nor it is a riba commodity. Second, Based on Islamic law, the use of digital payment applications between Malaysia and Indonesia is permissible. Riba issues can occur if the floating funds stored at the service provider are used improperly. Floating funds should not get any additional to avoid riba. Lucky draws and lottery given after doing top-up are riba because of the uncertainty. Digital payments are developing both in Malaysia and Indonesia so this research can provide an overview of the differences between riba and gharar in digital payment instruments in both countries and it's law.

Malaysia dan Indonesia, negara dengan populasi mayoritas muslim, mendorong sektor keuangan untuk menyediakan layanan yang tidak bertentangan dengan syariah, termasuk

alat pembayaran digital. Penelitian ini bertujuan untuk melakukan perbandingan riba dan gharar pada aplikasi pembayaran digital di Malaysia dan Indonesia. Penelitian ini merupakan penelitian yuridis normatif dengan pendekatan konseptual dan perbandingan. Bagian utama dari focus pertama, Keamanan Malaysia telah membagi mata uang digital menjadi dua kategori, yaitu mata uang digital berdasarkan teknologi tanpa aset dasar dan mata uang digital berdasarkan barang riba. Untuk mata uang tanpa aset dasar, mata uang dalam bentuk ini dikategorikan sebagai urudh dan tidak dianggap sebagai mata uang dari sudut pandang syariah, juga bukan komoditas riba. Kedua, berdasarkan hukum Islam penggunaan aplikasi pembayaran digital antara Malaysia dan Indonesia adalah sama, yaitu boleh. Isu riba dapat terjadi jika dana float yang disimpan di penyedia layanan digunakan tidak sebagaimana mestinya. Dana float tidak boleh mendapatkan tambahan apapun agar terhindar dari riba. Lucky draw dan undian yang diberikan setelah melakukan top-up merupakan gharar karena ketidakpastiannya. Pembayaran digital sedang berkembang baik di Malaysia maupun Indonesia sehingga penelitian ini dapat memberikan gambaran perbedaan riba dan gharar dalam alat pembayaran digital di kedua negara, letak riba dan ghararnya serta hukumnya.

Keywords: *digital payment, Islamic law, gharar, riba*

Introduction

Malaysia is the country with the highest number of mobile e-wallet or digital wallet users in the Southeast Asia. It is higher than the Philippines, Thailand and Singapore. According to the Mastercard Impact Studies, Malaysian consumers are increasing digitally in line with the increasing use of e-commerce, digital payments and preference for online activities. The Covid-19 has resulted in more than 80% growth for e-wallet usage in Malaysia, as limited movement pushes cashless payments among Malaysians in the past 18 months. Based on the Google's e-Conomy Southeast Asia 2020 report, e-wallets transactions rose to an average of 25% post-Covid-19, indicating that consumers will continue to use digital payments, given their convenience. In fact, Malaysians recorded an average of 170 digital payments in 2020 and a report by Boku Inc. highlighted that e-wallets are the most preferred payment method among consumers in Southeast Asia. Malaysian Finance Minister Tengku Datuk Seri Zafrul Tengku Abdul Aziz had noted in his opening keynote address at the Malaysian Banking and Finance Summit 2021 that e-wallet volume has increased 89% to 468 million transactions in just one year up to June 2021. TNG Digital Sdn Bhd CEO Ignatius Ong told The Malaysian Reserve (TMR) that as of the first half of 2021 (1H21), online use cases grew by 86% compared to the post eTunai and ePenjana period. E-wallet usage has become essential for purchasing goods, settling bills, food delivery, road tax renewal, insurance purchase, mobile reloads and more. Additionally, he said

Touch 'n Go eWallet increase 75% in 2020. Touch 'n Go eWallet is a Malaysian digital wallet and online payment platform, established in Kuala Lumpur, Malaysia, in July 2017 as a joint venture between Touch 'n Go and Ant Financial.

Muamalat (sell and purchase activities) is something recommended and encouraged in Islam. In addition, this activity is also part of the *sunnah* of the Prophet Muhammad (PBUH). However, there are some elements prevented when the activity is conducted since it can cancel the sale and purchase transaction. One of the elements is the trading that *riba* and *gharar*. However, determining the right parameter for these two cases is not easy, as al-Syatibi (1997) stated that *riba* is the most complicated and difficult matter for *mujtahidin* to explain.

In Arabic, the word *riba* means to increase, to grow, or to expand.¹ However, this literal understanding is imprecise, because not everything that increases in Islamic economics is *riba*. This is because profit in commerce is also considered as increasing and growing in the economy. *Riba* is more suitable to compare with the purpose of additional or extra forms in a commerce that is not accompanied by a commensurate return.

According to *Mazhab* (Islamic school of thought) Syafii, *riba* is a contract that is sealed as the exchange of certain goods. However, the exchange is unknown according to *syara'* or the delivery of one or some goods are passed. Meanwhile, *Mazhab* Hanafi also defines *riba* as an excess of property, even though it is only in the form of law, without exchange (replacement) in a contract. This definition includes *riba al-nasi'ah* and also includes all types of invalid commerce (*al-buyu' al-fasidah*) since the suspension of one exchanged item will result in an excess (addition), from a legal point of view, without any tangible exchange.

Mazhab Maliki states that each type of *riba* follows what it defines. Meanwhile, *Mazhab* Hanbali defines *riba* as the excess and the submission delay for certain cases which are forbidden based on sharia. Ibn Hajar al-Haithami also has almost similar definition and gives further explanation that *riba* activity usually adds the scale, which is not in line with *syara'*, and delays something when there is an exchange of *riba* goods.² Abu Bakr Ibn al-Arabi briefly says *riba* is an excess to a return for which no reward is paid.³ Al-Mawdudi utters that *riba* is an excess payment determined at the initial stage more than the debt amount within a certain period.⁴ Another expert, Haque states that *riba* is an addition or extra

1 Sudin Haron, *Sistem Kewangan Dan Perbankan Islam* (Kuala Lumpur: Kuala Lumpur Business School Sdn. Bhd, 2016), 351.

2 Ahmad bin Muhammad I.H Al-Haithami, *Tuhfat Al-Muhtaj Fi Syarh Al-Minbaj*, 4th ed. (Kaheerah: Al-Maktabah al-Tijariyah al-Kubra, 1983), 272.

3 Afzal ur Rahman, *Economics Doctrine of Islam*, 3rd ed. (Lahore: Islamic Publications Ltd, 2016), 69.

4 Abu al A'la al Mawdudi, *Economic System of Islam* (Lahore: Islamic Publication Ltd, n.d.), 162-163.

as an exchange for trading commodities (given to the owner of the commodity providing the loan) without equal returns to other parties.⁵

The prohibition of *riba* and *gharar* also applies to sharia digital payments. Digital payment is also known as electronic payment, abbreviated as e-payment. It is a payment model that is easy and convenience to the users in completing payment transactions. Users only need to make online transactions without having to meet or come all the way to sellers. Electronic payment is representative of all non-cash payments, which are also defined as transactions between buyers and sellers using a saving account via the internet or electronic network.⁶ The payments are currently used for long-distance transactions such as online shopping, along with the growing use of the internet and the increasing number of e-commerce. Electronic payment is a smart solution to replace the old transaction tools. Some facilities are included in electronic payments e.g., ATM, e-money, internet banking, credit cards, debit, mobile payments, and mobile banking.⁷

Digital payment literacy is growing during the covid-19 pandemic. At that time, people's outdoor activities were limited following the government policy known as Large-Scale Social Restrictions (or PSBB—*Pembatasan Sosial Berskala Besar*). PSBB is a policy issued in response to a Health Emergency. Law Number 6 of 2018 concerning Health Quarantine is the legal basis for this anticipatory policy. Definition of PSBB is restrictions on certain citizen's activities in an area suspected of being infected with Corona Virus Disease 2019 (COVID19) in such a way as to prevent the possible spread of the said virus.⁸ The limitations make people carry out all their activities from home. People use the internet to fulfill their daily needs, including shopping, thus, payment choice via internet is then increasingly diverse in its facilities and services.

Fintech Xendit has predicted that, digital wallets (e-wallet) became the most popular digital payment platform in 2021. The covid-19 pandemic has changed activities in various sectors. This disrupts not only the health system but also economic activity. The policy of limiting physical distance has changed

5 Shahrulh Rafi Khan, *Profit and Loss Sharing: An Islamic Experiment in Finance and Banking* (New York: Oxford University Press, 1987).

6 Wendy Ming Yen Teoh et al., "Factors Affecting Consumers' Perception of Electronic Payment: An Empirical Analysis," *Internet Research* 23, no. 4 (August 9, 2013): 465–85, <https://doi.org/10.1108/IntR-09-2012-0199>, 140.

7 Riyan Rizkyandy, "Apa Yang Harus Dipertimbangkan Sebagai Penerimaan Pembayaran Mobile: Investigasi Faktor-Faktor Yang Mempengaruhi Niat Untuk Menggunakan Sistem Layanan T-Cash," *E-Journal Uajy*, no. July (2016): 1–23, <https://e-journal.uajy.ac.id/15609/4/MTF025823.pdf>, 72.

8 Apriata Ristiyawati, "Efektifitas Kebijakan Pembatasan Sosial Berskala Besar Dalam Masa Pandemi Corona Virus 2019 Oleh Pemerintah Sesuai Amanat UUD NRI Tahun 1945," *Administrative Law and Governance Journal* 3, no. 2 (2020): 240–49, <https://doi.org/10.14710/alj.v3i2.240-249>.

the conventional way of public transactions to become electronic because it is considered safer, easier and more efficient. There are 43% of digital financial transactions through e-wallet out of 150 million digital transactions through Xendit. Most Xendit merchants have provided e-wallet services to accept payments in November 2021. Meanwhile, 41% of digital payment instruments used in the transactions are virtual accounts, and the remaining 7% are QR code or Quick Response Indonesian Standard (QRIS) payments. Bank Indonesia noted that the nominal QRIS transactions increased fourfold in February 2022 or reached Rp 4.5 trillion. This is supported by 15.7 million merchants who already added a QR code as a payment method.⁹

Indonesia, with a Muslim majority population, encourages the financial sector to provide sharia-based services, including digital payment tools, be it e-wallet, virtual accounts, and QRIS. Currently, there are 4 (four) players in sharia-based digital payments in Indonesia. This Islamic digital payment focuses on increasing Islamic financial literacy and inclusion by providing access for, (a) people who have received access to finance but do not use Islamic financial services; and (b) people who have not received access to the services.

Malaysia and Indonesia use different legal systems, but these two countries from the Southeast Asian region have almost the same characteristics of society and culture. Malaysia and Indonesia are the countries with the largest Muslim population. The similarity in the character of society, religion, and culture is a powerful asset to improve diplomatic relations of both countries, especially in the economic field, including studies on the regulation of sharia digital payments. Therefore, this legal comparison needs to be done in order to obtain the advantages and disadvantages between digital payments in Malaysia and Indonesia.

Study on the importance of e-wallet in Malaysia has been carried out by previous researchers. Md Nor et al. found several legal issues related to e-wallet, inter alia, an unclear position on the liability of board directors of e-wallet operators, breach of mandate, and exclusion of liability of e-wallet operators. Since e-wallet can significantly increase financial inclusion, the researchers thought that it is important to address the legal issues on e-wallet to enhance good governance and best practices of e-wallet in Malaysia. The findings from the paper could be used as a basis for policymakers including scholars in the formulation of guidelines on legal and sharia compliance of e-wallets.¹⁰ Aunurrochim & Saharudin's study shows

9 "Transaksi QRIS Pada Dompot Digital Semakin Melesat," accessed May 14, 2022, <https://keuangan.kontan.co.id/news/transaksi-qr-is-pada-dompot-digital-semakin-melesat>.

10 Mohd Zakhiri Md Nor et al., "Legal Issues In E-Wallet Practices," *UUM Journal of Legal Studies* 12, no. 2 (2021): 229–52, <https://doi.org/10.32890/UUMJLS2021.12.2.10>.

that some contracts are involved in e-wallet namely, *wadi'ah* and *qardh* contracts. The results indicate that e-wallet operational mechanism is based on Sharia values, hence allowed and permissible.¹¹ Another research by Ihsanudin shows that in the Fatwa of DSN-MUI No. 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money reveals that the value of e-money will not be lost even if the card is lost. It also states that sharia-based e-money must be reintegrated so the users do not lose their rights and reduces the risks of misuse. The study reveals that e-money security system is ineffective, especially in recording users' data. Ihsanudin's study also proves that the fatwa is improperly implemented by the services developer that there is no difference between sharia and conventional e-money, thus, it is on the opposite of DSN-MUI's fatwa.¹² The current study has similar theme, but is devoted to a discussion of *riba* and *gharar* in electronic payment applications found in Malaysia and Indonesia.

Research Methods

This study employs normative juridical research. It is also known as doctrinal research, namely a study on laws that are conceptualized and developed on the basis of the adopted and developed doctrines.¹³ There are 2 (two) approaches implemented in this study, (a) conceptual approach used to conduct an assessment on Islamic law from *riba* and *gharar* as well as several expert opinions, and (b) comparative approach is used to study digital payments based on sharia principles implemented in Malaysia and Indonesia. Primary legal materials for this research are Bank Indonesia Regulations and Indonesian Financial Services Authority Regulations regarding digital payments. Meanwhile, the secondary legal materials are from journal articles and research results on the law of *riba*, *gharar* and digital payments. Last, the researcher also uses the tertiary legal materials for completing this study such as dictionary to translate the foreign-language materials. Looking at the various literatures used here and the way to analyze them, this research is included in a qualitative descriptive method.

11 Muhammad Aunurrochim and Muhammad Adib bin Saharudin, "E-Wallet: A Study On Contracts Involved Within Its Operational Mechanism," *Journal of Fatwa Management and Research*, Vol. 26, no. 1 (2021): 1–16, <https://doi.org/10.33102/jfatwa>

12 Dede Ihsanudin, "Uang Elektronik Perspektif Hukum Islam Dan Hukum Positif (Analisa Perbandingan Peraturan Bank Indonesia Nomor 20/6/PBI/2018 Tentang Uang Elektronik (Electronic Money) Dan Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 116/DSN-MUI/IX/2017 Tenta" (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2021).

13 Soetandyo Wignjosoebroto, *Paradigma Metode Dan Dinamika Masalahnya* (Jakarta: ELSAM dan HUMA, 2002).

Discussion

The Prohibition of Riba in Islam

The process of *riba* prohibition is applied in four stages. The first stage is based on Allah's words in verse 39 of Surah al-Rum. Allah says, the additional return we got from humans because of debt interest is not from Allah. On the contrary, when humans give charity for others, Allah will surely give manifold fortunes in return. The second stage is what is written in verse 161 of Surah al-Nisa'. Allah denounces the practice of *riba* and declares that He will prepare a painful torment for people who practice it. The next stage is grounded on verse 130 of Surah Al Imran. Allah calls on believers to stay away from *riba* in order to gain success in life. For the last stage, Allah says in verse 275 to 278 of Al-Baqarah that He admonishes those who eat *riba* and emphasizes that trading and *riba* are two different things. He also commands Muslim to cross *riba* out of all debts and only take the initial capital. He also advises to help others in-need if they cannot pay their debts.

In Islamic terms, *riba* that is prohibited based on the Quranic verses is called *riba al-dhuyun*, meanwhile, the one banned by the Prophet through his hadith and wise words is called *riba al-buyu'*. However, in general, *riba* is divided into two main categories. The first category, *riba al-nasiyah* usually applies in debt or loan contracts. This type is also applied in two circumstances known as *riba al-qardh* (loans) and *riba al-jahiliyah*. The former one is implemented if there is an additional benefit required for the repayment of the principal loan amount. Meanwhile, the latter usually refers to the rate or additional benefit that exceeds the amount of principal loan charging to the person who is failed to repay the loan in the agreed time. *Riba al-jahiliyah* is named after the transaction practiced by *jahiliyah* community in the past.

The second category is *riba al-buyu'*. It is applied in sale and purchase contract of *riba* goods and it applies in two circumstances, (a) it involves excess levels in buying and selling known as *riba al-fadhl*. This *riba* is applied in the sale and purchase of *riba* goods of the same type but different in weight or quantity. Among the examples is the exchange between 5 kg of high grade Ajwah dates and 6 kg of low-grade dates. In this case, *riba* applies because there is an excess of scales on the low-grade dates. *Ribawi* goods include currency and food. Currency is in the forms of gold and silver, while food includes wheat, barley, dates and salt; (b) the sale and purchase of similar goods of different types but it is received in delay (not in the same time as the sale and purchase contract happens). For example, Mr. Ahmad paid RM 2,670 to buy the Egyptian

Pound currency which was worth EGP 10,000. However, due to difficulties in the delivery of the currency, he received the currency after a week of the transaction. In this case, the issue of *riba* arises because of the suspension of the currency transfer.

There is a difference of opinion about the *'illah* of *riba*. *'Illah* is a cause or a characteristic that forms the basis for the provision of a law.¹⁴ Without *'illah*, some laws cannot be determined or formed. There are three opinions regarding *'illah*. *Mazhab* (Islamic school of thought) Syafii divides *'illah riba* into two categories, namely price and food value. The price refers to gold and silver, meanwhile food includes wheat, barley, dates, and salt. *Mazhab* Hanafi agrees to the statement that the *'illah* in *riba* is scales and measures. This statement is general because it assumes the six *riba* items are equal. *Mazhab* Hanbali has similarity with the final statement of Hanafi by placing the scales and measures as *'illah* to *riba* if the two items are of the same type. Last, *Mazhab* Maliki agrees with Shafii in placing the *'illah* of *riba* for silver and gold as the *'illah* of price, but has similar opinion with Hanafi and Hanbali on the *'illah* of goods being weighed e.g., wheat, barley, dates, and salt.

The Concept of Gharar in Islamic Perspective

The word *gharar* means to expose oneself or one's property to unconscious destruction. In general, *gharar* means danger, disaster, or risk. The Arabic word carries several meanings, (a) *al-khotar* means risk or danger that is harmful; (b) *jahalalah* means ignorance; (c) *ghubn* means deception that is detrimental; and (d) *tadlis* means counterfeiting. Al-Barkati (2003) justifies *gharar* as a trait containing the possibility that may damage the contract subject or a case that is clearly unknown. It may apply if the consequences are not known or expected.

Fuqaha (the experts in *fiqh*) have different opinions in defining the term *gharar*. Some of the definitions are, (a) al-Shirazi from *Mazhab* Syafii states that *gharar* is something unknown or hidden (the effect/consequence); (b) Imam al-Sarakhsi also explains that *gharar* is the thing that has hidden consequences; and (c) Imam al-Qarafi from *Mazhab* Maliki says that *gharar* is the thing that is hazardous to obtain.¹⁵ It means that *gharar* contains uncertainty which can harm the involving parties so it must be avoided. Furthermore, al-Qarafi explains that scholars often use *gharar* and *jahalalah* on the same topic and subject, where in

14 Solih bin Muhammad Al-Asmuri, *Majmu'ah Al-Fawa'id Al-Bahiyah* (Jeddah: Dar al-Suma'ie, 2000), 112.

15 Zamir Iqbal and Abbas Mirakhor, *An Introduction to Islamic Finance Theory and Practice* (Singapore: John Wiley & Sons (Asia) Pte. Ltd, 2007).

fact, both have clear differences. *Gharar* refers to the case or subject of sale which may exist and may be submitted or vice versa. Meanwhile, *jabalah* refers to the criteria of the selling subject which is unknown or hidden. It can be understood that *gharar* involves the existence of *'ain* (goods) in a sale and purchase, whereas in *jabalah*, the *'ain* is often absent. This opinion of al-Qarafi does not deny the divisions made by other scholars regarding *gharar* which exists in the nature of a selling subject. The case brought by al-Qarafi may be explained through the following example.

In the past, selling a servant was a common thing. In the transaction, the seller and buyer both know the nature or characteristics of the servant as the selling object. However, if the servant is escaped, then the object cannot be submitted in the transaction moment. It is alright to sell beautiful gemstones since the object can be seen. However, we do not really know whether it is genuine or fake because its nature cannot be ascertained in an instant or with naked eyes. The prohibition of *gharar* is clearly stated in the hadith of the Prophet Muhammad narrated by Abu Hurairah: “*The Messenger of Allah forbade the buying and selling of hashah and gharar.*”¹⁶

Al-Nawawi (1972) explains that this hadith is the main argument for all matters related to *muamalah* and includes many branches of problems. He emphasizes that business transactions that contain a few *gharar* or if it is needed based on *hajah* or is difficult to avoid, are accepted. This opinion is in line with other scholars who say that there is the so called *gharar yasir*—it is a transaction that contains a lighter level of *gharar*. The example of this type of *gharar* is the practice of *ma'dum* a sale and purchase activity where the object does not exist at the transaction moment. Originally, all *muamalat* affairs containing *gharar* are prohibited in Islam. However, the law regarding *gharar* will be adjusted based on its level that exists in the transaction, whether it is low, medium, or high. *Fuqaha* categorize *gharar* into three levels.¹⁷ such as *gharar fahish*, *gharar mutawasit* dan *gharar yasir*.

First, *gharar yasir* is the low or basic level of *gharar*. This is allowed if *gharar* is difficult to avoid. The transaction should also not contain any element that complicate others. In this level, no one gets individual benefits and no other parties are at lost in a contract.¹⁸ This type of *gharar* is forgiven and is granted with concessions because it does not break the contract. The example is buying a house without knowing the real foundation of the house, whether it is solid or

16 Abul Husain Muslim bin al-Hajjaj Al-Naisaburi, *Kitab Al-Buyu*, Buthlaan B, n.d.

17 Darakiah, *Naẓariyyah Al-Gharar Fi Al-Syari'ah Al-Islamiyyah*, 1973, 97.

18 Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuh*, 435.

not. Traditionally, the foundation of a house must be solid.

Second, *gharar fahish* is the high level of *gharar* existing in a contract or sale and purchase activity. According to al-Nawawi, *gharar fahish* can be seen or known clearly just by looking at the appearance, so it can be avoided. The *fuqaha* agree that this abundant element of *gharar* is not forgiven and may result in the cancellation of the *mu'awadah* contract such as buying and selling.¹⁹ Among the examples given by the *fuqaha* is buying and selling fish that are still in the river or birds that are still flying in the air.

Third, *gharar mutawassit* is in between *gharar yasir* and *gharar fahish*. The element of *gharar* is in the middle– not too much and not too little. In this case, the *fuqaha* differ in expressing their opinion in determining the appropriate level for the category of *gharar mutawassit*, whether it is more on *gharar fahish* or *gharar yasir*. The opinions regarding the status of *gharar mutawassit* are divided into two groups, (a) it belongs to *gharar fahish*. So, it is not allowed in a muamalah practice if the *gharar* elements are various; and (b) it belongs to *gharar yasir*. So, it is forgiven and allowed in a *muamalah* or a contract. Ahmad Yasin Daradikah (1973, 99-100) concludes a more flexible view regarding the division of this type of *gharar* where it will vary according to time and place. It is possible that the sale and purchase activity once was seen as *gharar fahish*. Along the time and changes in the market, it may be seen as *gharar yasir*.

All in all, in order to categorize things as the forgiven *gharar*, the majority of *fuqaha* has given three conditions as a guideline. First, the *gharar* must be included in the *yasir* category. Second, the business management is a service that is very much needed by the community. The last one is that the *gharar* elements are difficult to avoid except with *masyaqqah* which is known by *syara'*.²⁰

Issue on Riba and Gharar in Malaysian e-Platforms

Riba and *gharar* are seen as the interrelated issue, they affect one another. The issue has long existed in all aspects of life of the world community. Along the time, the issue has evolved from only around classical *gharar* such as *bay' habl al-habalab* and *bay' al-mulamasah* to the contemporary matters of this era. Now, the issue of *riba* and *gharar* is also seen in online electronic applications. Therefore, the author will describe some examples of elements of *riba* and *gharar* that apply to online applications i.e., forex, purchasing gold, cryptocurrencies, and e-commerce.

19 Azman Mohd Noh and Mohamad Sabri, "Takaful: Analisis Terhadap Konsep Dan Akad," *Jurnal Muamalat Jabatan Kemajuan Islam Malaysia* 3 (2010), 7.

20 Muhammad Beltaji Hasan, *Al-Milkiyyah Al-Fardiyyah Fi Al-Nizam Al-Iqtisadi Al-Islami* (Kaherah: Maktabah al-Syabab, 1988).

The first example is quite common done by people, that is online trading of foreign exchange (forex). Forex management is based on the ups and downs of the wanted currencies values. Mustafiyah argues that forex is similar to *maisir* or gambling²¹ because the exact value is unknown and changing or fluctuating. However, forex trading is allowed if it is conducted under the requirements written in several *fatwa*.²² They are, (a) *muzakarah* (discussion or the exchange of thoughts) of the 98th of the Authority for the National Assembly Fatwa of Islamic Religion in Malaysia held on February 13-15, 2012 decided that forex trading on a Lani basis (Individual Spot forex) through electronic platforms nowadays is unlawful. The reason is that it is against the will of *syara'* and is also considered illegal in the state regulations and laws. Accordingly, Muslims are prohibited from engaging in such currency trading; (b) Fatwa of the Indonesian Ulema Council (MUI) No. 28/DSN-MUI/III/2002 concerning the Sale and Purchase of Currency (Al-Sharf) shares that forex must not be done only for gaining much profit due to the difference in the currencies exchange value. It is allowed if the trading is done when needed. Since online forex is based on speculation, it does not comply with this requirement; (c) The State Mufti of Perak decided that forex is a must if not for speculation purposes; (d) The State Mufti of Perlis decided that forex must be subject to the condition that the exchange or trade management is carried out with the transfer of property by both parties in cash and immediately. This *fatwa* prohibits online currency trading through platforms done by individuals or institutions in local or overseas level; and (e) The World Islamic Majma' Fiqh regarding Trade with Margin in 2006 decides that forex trading with margin and profit gaining is *haram* (forbidden) as it contains elements of *riba*. To conclude, all fatwas forbid forex trading because the transactions and process are impossible to be free from the elements of *riba*, *gharar*, *maisir* and other harmful factors.

The second example is purchasing gold online. Gold is one of the six items of *riba* mentioned in the hadith of the Prophet Muhammad. If a business transaction involves *riba* goods and *gharar*, then the special requirements for *muamalah* are needed. If these requirements are unfulfilled, the *muamalah* may be cancelled or the sale and purchase contract is broken. Among the requirements

21 “(69) Shariah Analysis Of Earning Income Via Foreign Exchange (‘Forex’) Trading - A Guide For The Singapore Muslim Community | Fazrihan Duriat, Mustafiyah Kadir Sahib, Shabana Hasan, Haron Masagoes Hassan, Shahrizan Mansor, And Zul Hakim - Academia.Edu,” Accessed May 23, 2022, https://www.academia.edu/38695046/Shariah_Analysis_Of_Earning_Income_Via_Foreign_Exchange_Forex_Trading_A_Guide_For_The_Singapore_Muslim_Community.

22 “Hukum Forex Trading Online,” accessed May 23, 2022, <https://muftiperlis.gov.my/index.php/himpunan-fatwa-negeri/119-hukum-forex-trading-online>.

for gold sale and purchase are *taqabudh* (submission) and Lani. *Taqabudh* must be carried out on the spot (in a specific place), before either party separates from each other after making the contract. It involves both elements of sale and purchase, namely the payment and the goods traded. Some methods used for payments are cash, bank checks, personal checks, debit cards, credit cards, and online transfer.

The delivery of the selling goods can be done in real or through other conventions that can replace the actual delivery. Usually, online gold sellers will use the *taqabudh bukmi* method to solve problems related to this issue, namely by using receipts and account records as a proof of transaction documents. This is in line with the agreement decided in the 11th *Majlis Majma' al-Fiqh al-Islami* held by *Rabitah al-Alam al-Islami* in Mecca, Saudi Arabia on February 19-26, 1989; that *taqabudh bukmi* method is valid and accepted in Islamic laws.

Meetings for this contract may done face-to-face or through other ways that is similar to face-to-face in terms of meaning. Using the sophisticated technology created nowadays, the meeting via WhatsApp, e-mail, SMS, telephone calls, and others is also considered valid. Another requirement is Lani, that is, the delivery without any suspension, whether in the delivery of money or the selling gold. If there is a suspension, *riba* issue will be present in the transaction. It is because the market price for the gold may increase or decrease anytime that affects the loss and profit of other parties.

However, there is an opinion that allows it because of the T+2 (or 3) rule used in the foreign currency exchange system. Another opinion does not consider the application of expiry date even though it is less than 3 days because it is not an *uruf*. The situation is different from the foreign currency exchange business transaction.

Furthermore, the issue of *gharar* also applies to online sale and purchase of gold. One of the causes is the seller does not provide specifications in details for the selling gold e.g., the weight (grams) and gold types such as 999, 916, or 750. There are also circumstances where the seller cannot certify or guarantee that the selling gold is his/her possession. However, if the transaction is done directly through a video call for example, the buyer can clearly see the physical of the gold along with the details. In addition, to ensure that *taqabudh* applies directly, the seller and the buyer must be both online, so that the transaction runs smoothly without any suspension element that can cancel and damage the contract.

The third example is cryptocurrency. It is a type of digital currency categorized under digital assets. It represents the digital value written on the Ledger of Distributed Digital secured cryptographically. Cryptocurrency also functions as an exchange medium and may be exchanged for all types of money, either through crediting or debiting an account.²³ Cryptocurrencies use the Blockchain system to operate. The blockchain system is a public ledger that records all cryptocurrency trading transactions and then generates blocks of data.²⁴

According to Muhd Rosydi, one of the characteristics of crypto currency is that it has no underlying value or intrinsic value, unlike gold which has its own value.²⁵ In addition, it only exists on the internet and its publication is not carried out by any country. This is because cryptocurrencies are a kind of decentralized currency, that is, a currency that is not issued or controlled by any country or government, instead, it only functions through a peer-to-peer network using Blockchain technology.²⁶

The 233rd and 234th Mesyuarat Majlis Sharia Advisory Suruhanjaya Sekuriti Malaysia believes that digital currencies are recognized as *maal* (wealth) from sharia perspective. According to the majority of *fuqaha*, *maal* refers to something valueable and may be traded and be subject to fines or penalties for those who cause its damage. In this case, *Sekuriti Malaysia* (The Securities Commission Malaysia) has divided digital currency into two categories i.e., digital currency based on technology without underlying assets and digital currency based on *riba* goods. For the first category, it is known as *urudh* and it is not considered as currency from sharia perspective nor is it a commodity of *riba*. Ibn Qudamah defines *urudh* as a *maal* (wealth) other than currency, such as plants, animals, soil, and the like. Meanwhile, according to al-Bujairimi, *urudh* is anything that can be exchanged for currency. Therefore, trading involving digital currencies without underlying assets is not subject to the *bay' al-sarf* (currency exchange) principles.

Meanwhile, for the second category, digital currency based on *riba* goods, it is divided into two types of goods, (a) gold and silver; they are considered as currency from sharia perspective, so trading these goods is subject to *bay' al-sarf* principles; and (b) currency; it is included in *riba* goods (*amwal ribawiyah*).

23 "Guidelines On Digital Assets," n.d.

24 Nor et al., "Legal Issues In E-Wallet Practices."

25 "(PDF) Bitcoin Dan Analisis Pandangan Fiqh Islam," accessed May 23, 2022, https://www.researchgate.net/publication/323109033_Bitcoin_dan_analisis_pandangan_fiqh_Islam.

26 Marcella Atzori, "Blockchain Technology And Decentralized Governance: Is The State Still Necessary?," *Journal of Governance and Regulation* 6, no. 1 (2017), https://doi.org/10.22495/jgr_v6_i1_p5.

Trading the currency is bound to the special conditions of the sale and purchase of *riba* goods. Therefore, because both are closely related to the special conditions of *bay' al-sarf* and also *riba* goods, mistakes in dealing with digital currencies based on the underlying assets of *riba* goods may cause issue of *riba* in *muamalat*.

One of *riba* issues in *bay' al-sarf* is the delay in *taqabudh* (handover and reception) between digital currency and *fiat* money, which leads to *riba nasi'ah*.²⁷ In addition, digital currencies such as Bitcoin are also suspected to have *gharar* issues in exchanges of Bitcoin and fiat money. This is because Bitcoin has no physical form and its value is constantly changing in an extreme way.²⁸

The fourth example of transaction involving *riba* and *gharar* is e-commerce. Ribadu, M.B., & Rahman, W.N. (2017) qualitatively examines the stages of sharia compliance of e-commerce platforms used in commercial affairs in general. According to them, the platform which is made to conventional concepts may fulfill the needs of sharia and also *maqasid al-Syariah*. However, this does not mean that there is no need to create a high-quality system based on matrix by eliminating *gharar* and *haram* elements and filtering out the advertisements according to Islamic ethics.

Related to gold smelting, Razimi et al. (2017) explains that investors always emphasize that their gold investment is essential yet has no guarantee on fake and *gharar* cases. According to them, *gharar* in gold trading and investment may apply if the lenders are not allowed to take their physical gold out of deposits that may cause issue whether the traded gold actually exists in bank deposits or not. Zainul et al. (2004) describes how e-commerce can be regulated in accordance with sharia principles and free from elements of *gharar*, *riba*, and *maysir*. When doing transaction, the seller should precisely explain a product so that buyer has clear information on what he/she wants to buy. The information that must be given also includes price, payment and delivery methods. In addition, the system operation must accord to sharia principles in order to be clear from *gharar*, *riba*, and *maysir* elements.

Riba and Gharar on Digital Payment Applications in Indonesia

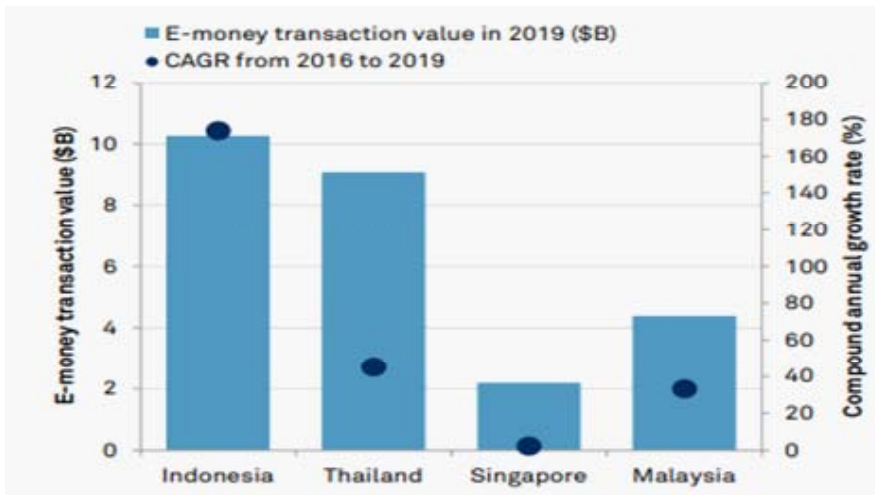
In 2019, the total amount of e-money transactions in Indonesia is 5,23 billion, making it the largest market in the region. Indonesian e-money market is

27 "(69) The Halal and Haram Aspects of Cryptocurrencies in Islam | Sudais Asif - Academia.Edu," accessed May 23, 2022, https://www.academia.edu/37137631/The_Halal_and_Haram_Aspects_of_Cryptocurrencies_in_Islam, 91-101.

28 Hussein Elasrag, "Munich Personal RePEc Archive Blockchains for Islamic Finance: Obstacles Challenges," 2019, 136.

growing faster than other Southeast Asian countries, but the scope for replacing cash is far greater in the archipelago than in Singapore, Malaysia, and Thailand. The slow pace of credit card insurance in the country could mean that Indonesia cashless payment will tend to stored-value wallets.²⁹

Figure 1: Indonesia Is The Fastest-Growing Electronic Money Market Among Large Southeast Asian Economies



Source: Central banks, S&P Global Market Intelligence, 2021

Historically, banking in Indonesia has dominated payments offered via prepaid cards to a large proportion of the unbanked population. Based on market capitalization, BCA (Bank Central Asia) was the largest in 2018, followed by several state-owned banks such as Bank Mandiri and BRI which accounted for the majority of electronic money transactions. The increasing use of mobile phones has changed financial transactions, from which banks dominated prepaid cards to be mobile payments. Based on Bank Indonesia data, around 54% of the value of funds was in e-money accounts held at non-banks in 2019.

It accounts for 72% of the total value of e-money developing in Indonesia based on S&P Global Market Intelligence estimates data. Leading companies, namely GoPay (by Gojek) and OVO made up the majority of e-wallet payments in 2019. OVO exists as an independent payment app as well as in-app payment features in ride-hailing application Grab and e-commerce Tokopedia.³⁰Sea Ltd.'s growing

29 Sampath Sharma Nariyanuri, "Southeast Asia E-Money Market Report," 2021, 1–21.

30 Sharma Nariyanuri.

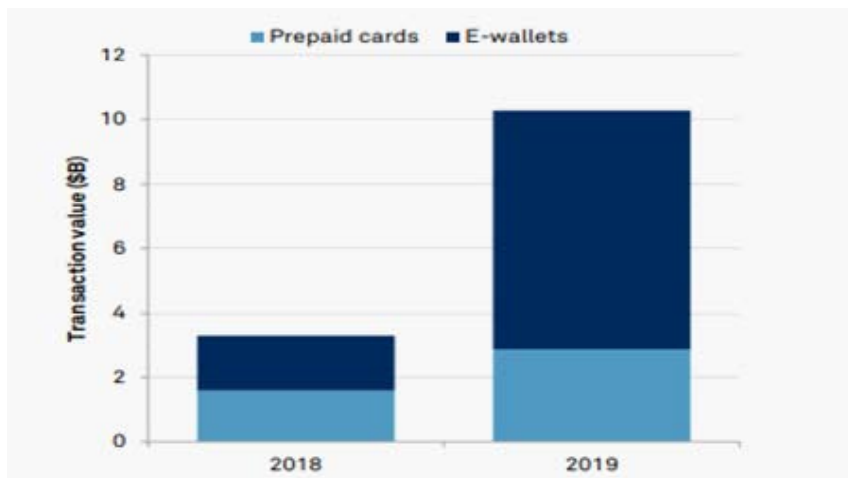
popularity in Indonesia, thanks to their aggressive marketing and discounts, has made mobile wallet market a three-pronged race in 2020. In the second quarter of 2020, purchases using the ShopeePay wallet on Sea's e-commerce platform alone dominate more than 10% of e-money transactions in the country. Sea's mobile wallet likely holds a much larger market share in the country as the wallet users can make payments in offline stores as well. ShopeePay enjoyed a 26% adoption rate among MarkPlus survey respondents, The Jakarta Post reported in September.

Other popular wallets include Dana, which is majority-owned by Emtek Group and Ant Group as an investor, and LinkAja. Dana exists as an independent payment app and supports payments on e-commerce platforms such as Bukalapak and Lazada, which are also backed by Ant Group and Alibaba. LinkAja represents state-owned banks' best bet on mobile payments. It grows more after state-owned banks including Bank Mandiri, Bank Rakyat Indonesia, and Bank Negara Indonesia merged their wallets with Telkomsel's TCash, the largest telecommunication provider in the country.

While competing with technology firms, large banks are also seeing opportunities to collaborate with fintechs and e-commerce companies in a growing payment ecosystem. Bank Central Asia and large state-owned banks have launched platforms to offer application programming interfaces for tech firms. One of the innovations is to allow fintechs and e-commerce apps to top-up prepaid cards issued by banks.

With its large population and economy, Indonesia is critical for companies to build ride-hailing, e-commerce, and financial services businesses in the Southeast Asia. It is the key market for three of the region's largest tech firms: Sea, Grab, and Gojek. Ant Group and affiliate Alibaba are the other key actors in the country, thanks to their ownership and equity stakes in e-commerce platforms i.e., Lazada, Tokopedia, Bukalapak, and Dana. E-money market growth in Indonesia will be largely driven by the aforementioned tech firms.

Figure 2: E-Wallets Growing Faster Than Prepaid Cards in Indonesia



Source: Central banks, S&P Global Market Intelligence 2021

Bank Indonesia has policies on the use of digital technology in respond to pandemic conditions, including encouraging non-cash transactions using contactless media, acceptance and innovation of the QRIS business model for MSMEs. The policies also aim at strengthening the digital economy and finance ecosystem through the use of digital payment instruments, bank collaboration, fintech and e-commerce to support the national economic recovery program. QRIS as a digital payment instrument is part of Bank Indonesia's policy in the payment system as an effort to keep economic activities running during the Covid-19 pandemic. Likewise, the Financial Services Authority (OJK) also issues a policy focusing on accelerating digital transformation in the Financial Services Sector which is part of the third pillar of the Indonesia Financial Services Sector Master Plan 2021-2025. One of which is that OJK encourages collaboration in the financial services system to make innovations that can improve efficiency and expand the range of services for the community.

Indonesia is a country with the largest Muslim population in the world based on a report from The Royal Islamic Strategic Studies Center (RISSC) or MABDA entitled The Muslim 500 2022 edition. There are 231.06 million Muslim in the country. This amount is equivalent to 86.7% of the total population. The proportion of the Muslim population in Indonesia also reaches 11.92% of the total population in the world. The large number of Muslim population in Indonesia must also be balanced with digital payments that are in accordance with sharia

principles. Sharia-based digital payments have the opportunity to develop well. Bank Indonesia and the OJK, which hold the authority, give maximum support to develop sharia-based digital payments.

At the beginning of the development of digital payments, the DSN-MUI (National Sharia Board-Indonesian Ulama Council) as the institution authorized to regulate Islamic law, also issues fatwas on economic and financial activities.³¹ The criteria for sharia-based digital payments have been explained in the Fatwa of DSN-MUI No: 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money. The Fatwa states several requirements, (a) avoiding prohibited transactions; (b) the cost of facility services is a real cost according to the principle of compensation/*ijarah*; (c) the funds are saved in Islamic banks; (d) the contract between the issuer and the e-money holder is *wadi'ah* or *qardh* because the nominal money can be used or withdrawn at any time; and (e) the contracts between publishers and digital financial service agents are *ijarah*, *ju'alah*, and *wakalah bi al-ujrah*.

In the development, the ease of transacting using digital payments triggers the issue of *riba* and *gharar* in using the application. In using digital payments, service users must have electronic money which is the amount of money topped-up by service users into digital payment applications. Based on the DSN-MUI fatwa No: 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money, electronic money is a means of payment that meets the following elements, (a) issued on the basis of the nominal amount of money that was deposited in advance to the issuer; (b) the nominal amount of money is stored electronically in an integrated media; (c) the nominal amount of electronic money managed by the issuer is not a deposit as referred to in the law of banking; and (d) it is used as a payment to merchants who are not the issuers of the electronic money. Meanwhile, the regulation of Bank Indonesia No. 20/6/PBI/2018 concerning Electronic Money, explains that e-money is a payment instrument that meets the following elements, (a) issuing on the basis of the value of money that was deposited in advance to the issuer; (b) the value of money is stored electronically in a media server or chip; and (c) the value of electronic money managed by the issuer is not a deposit as referred to in the law of banking.

The issue of *riba* and *gharar* is a public concern when using electronic money for digital payments. *First*, the issue of *riba*. Some people think that the money that settles in a digital payment account is then used as a discount given to service users or account owners; thus, considered *riba*. Funds that settle in a

31 Ulin Nuha, "Optimalisasi Peran Dewan Pengawas Syariah Pada Lembaga Keuangan Mikro Syariah (Studi Kasus Di Asosiasi Koperasi Warga NU Jepara)," *MALIA: Journal of Islamic Banking and Finance* 2, no. 2 (2018): 211, <https://doi.org/10.21043/malia.v2i2.4940>.

digital payment account are called Floating Funds. Based on Bank Indonesia Regulation No. 20/6/PBI/2018 concerning Electronic Money, Floating Funds are the entire Value of Electronic Money available at in Issuer based on the proceeds of Electronic Money issuance and/or Top-Up as an Issuer's obligation to a User and Goods and/or Service Provider. In Article 48 of the said regulation, Bank Indonesia states that the Issuer is obliged to record Floating Fund under some rules, (a) at least 30% of the Floating Fund is placed in cash or current account (*giro*) for the issuers in the form of a Bank included in commercial banks category based on business activities (BUKU) 4; and (b) 70% of funds at most are into securities or an account in Bank Indonesia. Floating funds placed in securities have the potential to get dividends. Additional dividends given back to service users can be categorized as *riba* that has unclear status.

If the service provider uses sharia principles, the contract is *wadi'ah* or *qardh*, both are included in *tabarru'*. *Tabarru'* is a contract that is intended to help others and purely expects reward from Allah SWT. There is absolutely no element of seeking return, or other profitable motive. Contracts included in this category are *ibra*, *wakalah*, *kafalah*, *hawalah*, *rahn*, and *qirad*. Some sources say that *waqf* and *hibah* are also *tabarru'* contracts because of the similar aim to help others. In other words, *tabarru'* is a transaction that is non-profit oriented.³² In the *tabarru'* contract, the party who does good is not entitled to any compensation from others. However, they may ask to cover the costs spent for performing the *tabarru'* contract, without taking any profit. For example, when you top up your e-wallet in a digital payment application, the service provider can determine the administration fee.

To be *riba*-free, service providers should place the Floating Funds in Islamic Banks as recommended in the DSN-MUI fatwa No: 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money. The fatwa says that the nominal amount of e-money available to the issuer must be placed in the sharia bank. This provision also applies to Floating Funds placed in Sharia Securities such as State Sharia Securities/Government Sukuk.

Meanwhile, *gharar* in digital payment transactions can occur when the service provider gives a lucky draw prize when the service user has made a top up. Lucky draw prizes are often given by the marketplace to service users and are in great demand. Lucky draws are usually given in the form of a coupon which is then drawn or also in the form of a game being played and the prize is determined by the stop of the needle. Not only will there be *gharar*, but it can also be accompanied by

³² Nurul Ichsan, "5_Akad Bank Syariah_Nurul Ichsan," *Jurnal Ilmu Syari'ah Dan Hukum* 50, no. 2 (2016), 404.

maysir because it contains elements of gambling. Shaykh As-Sa'di stated, *al-gharar* is *al-mukhatharah* (gambling) and *al-jahalalah* (uncertainty). This is included in the category of gambling. From this explanation, it can be understood that what is meant by *gharar* is all sale and purchase activities containing ambiguity, betting, or gambling.

As mentioned in the previous discussion, the Prophet Muhammad (PBUH) has prohibited *gharar* in a hadith narrated by Abu Hurairah. The reason is that because in *gharar*, there is an element of consuming other people's property in a wrong way. That has been clearly warned by Allah in Q.S. al-Baqarah (188) and Q.S. al-Maidah (90). Therefore, if the service provider wants to give a prize, it should not be done through a draw or lucky draw. It must be given as a prize of amount of fresh money to service users who made a top-up. This is allowed because it is not included in *riba*. *Riba* is an addition given in the credit agreement. However, if the top-up is a cash purchase, the gift is given as an advertisement to attract consumers.

Conclusion

The elements of *riba* and *gharar* in business transactions and *muamalah* may result in failure and cancellation. The same may also apply in transactions that rely on current the advanced technology such as forex, online gold trading, cryptocurrency transactions, and e-commerce. In this case, sharia principles must be taken into account. The same elements apply to other online applications such as e-wallet which grows and gains, popularity wise, among industry players and users. In Indonesia, *riba* and *gharar* can be found in the improper use of Floating Funds. If the Floating Funds are not placed in sharia-based investment instrument, it may contain *riba*. Meanwhile, *gharar* will break the contract, if the service provider gives a gift after top-up via lottery or lucky draw. All in all, the current study found no significant difference between *riba* and *gharar* in digital payment transactions between Indonesia and Malaysia. Both countries determine that there is the potential for *riba* and *gharar* in transactions if the funds are not managed according to the provisions of *syara'*.

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