Gharar and Maysir in Islamic Finance Structured Investment Products: The case of Commodity Murabahah in Malaysia

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ABSTRACT

Islamic Finance is fundamentally rooted in the Quran and Hadith, which prohibit elements like gharar and maysir. Gharar means excessive uncertainty, while maysir refers to gambling or speculation. Maysir also can be associated to the game of pure chances which the winner will win everything and the loser will lose everything. This prohibition is to ensure fairness, transparency and justice in financial transactions. Nevertheless, the rise of Islamic finance products has increased concerns among consumers as to whether the products offered are truly free from prohibited elements and follow the real Islamic scripture. Therefore, the purpose of this study is to examine the concepts of *gharar* and *maysir* from both perspectives, which are from classical and contemporary scholarship and then to evaluate their potential presence and mitigation in one modern Malaysian Islamic financial product which specifically focused on Commodity Murabahah. By using qualitative and conceptual research approach, this study analyses the operational structure of Commodity Murabahah and Shariah governance mechanism in Malaysia. The findings show that while certain operational features may raise concerns regarding the uncertainties or speculations, the effective measures through Shariah governance, contractual clarity and regulatory oversight can help to ensure Shariah compliance is fully observed.

Keywords: Gharar, Maysir, Islamic Finance, Commodity Murabahah, Shariah Governance

INTRODUCTION

Elements like riba, *gharar* and *maysir* are the fundamental elements that are prohibited in Islamic Finance as stated in the Quran and Hadith. Based on Surah al-Baqarah (2:275), it stated that Allah permitted trade but forbidden usury (interest). These unique features are the one that distinguish Islamic finance from conventional finance. The Arabic word *gharar* literally means deceit, risk, fraud, uncertainty, or hazard that might lead to destruction or loss (Md Akther, 2025). Syafi'i scholars defined *gharar* as something which in its manner and its consequences is hidden. While in financial application, *gharar* refers to deceptive uncertainty which indicates the one who practices *gharar* deceives or frauds through the use of uncertainty (Ahmad et al 2010). Gharar in sales to a presence of uncertainty or ignorance between two parties in a transaction, in which the object being sold is not physically present or when the outcome of the sales are unknown. For example, where there is unclear transaction whether the item will exist or be delivered at the time of contract like the sale of fish in the water or bird in the air (Muhammad Iman Sastra Mihajat, 2016).

While *maysir* in Arabic literally means available wealth or game of chance, which comes from the word al-yasar (easily). Furthermore, Hameed (2009), defined *maysir* as gambling, also any form of business activity in which money is gained from mere chance, speculation or conjecture. In addition, Allah clearly stated in the Quran, the prohibition of gambling in Surah al-Baqarah (2:219) and al-Maidah (5:93). The example of *maysir* is like the Casino which is very common with gambling activities, where gain or loss is highly dependent on chance, rather than productive effort. Participants stake money on uncertain outcomes, resulting in one party's gain at the expense of another (World Health Organization: WHO, 2024).

One of the most widely used Islamic finance in Malaysia is the Commodity Murabahah or also known as

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organised *tawarruq* (Bank Negara Malaysia, 2022). The introduction of Commodity Murabahah was driven by the need to solve the complexity of the application of bay' 'inah in solving the compliance issue with Bank Negara Malaysia policy and other majority Shariah scholars. Scholars who permit the use of Commodity Murabahah as based in financial products argue that it is consistent with the Shariah principles and the objective of Shariah (Ghazali, 2014). Nevertheless, Shaharudin (2019) said that Commodity Murabahah does not significantly differ from the bay' 'inah contract. Both are creating debt instruments. Hence, some Muslim economists feel that the adoption of Commodity Murabahah does not support the achievement of Shariah objectives and give rise to concerns regarding the *gharar* and *maysir*.

Hence, this study aims to understand about *gharar* and *maysir* based on classical and contemporary scholarship as well as to evaluate their potential presence and mitigation in Commodity Murabahah within the Malaysian Islamic finance framework.

Problem Statement

While Malaysia has a well-established Shariah governance and regulatory framework, there are still concerns regarding the *maysir* and *gharar* in modern Islamic finance products. Commodity Murabahah which is widely used in Malaysia Islamic finance (Bank Negara Malaysia 2022), has a complex operational structure, multiple contractual relationships, and reliance on constructive ownership rather than physical delivery of commodities. These features might arise issues on *gharar* and *maysir* and raise concerns on the true substance of the transactions.

Although Commodity Murabahah is generally recognised as Shariah-compliant, scholarly debates continue over whether its practical implementation adequately mitigates the risks of *gharar* and *maysir*, particularly when transactions are executed rapidly and primarily for cash-based financing (Shaharudin, 2019). Hence, this situation highlights the barriers faced by the Islamic financial institutions in balancing operational efficiency and market competitiveness with strict adherence to Shariah principles. Thus, an evaluation of the potential presence and mitigation of *gharar* and *maysir* in Commodity Murabahah within the Malaysian context is necessary.

Research Questions

1. How are *gharar* and *maysir* defined according to classical and contemporary Islamic scholarship?
2. To what extent do elements of *gharar* and *maysir* potentially arise in the operational structure of Commodity Murabahah in Malaysia?
3. What mitigation measures are applied by Malaysian Islamic financial institutions to address *gharar* and *maysir* in Commodity Murabahah?

Objective (s) of the research

1. To examine the concepts of *gharar* and *maysir* from classical and contemporary Islamic scholars perspectives.
2. To evaluate the potential presence of *gharar* and *maysir* in Commodity Murabahah as practised in Malaysia.
3. To analyse the effectiveness of mitigation measures, including Shariah governance and contractual structures, in ensuring the commodity murabah following the shariah principles.

LITERATURE REVIEW

The literature review offers a critical literature review of the academic discourse on the integration of Shariah principles in contemporary financial engineering. It analyses the strife between the classical prohibitions and the business needs of the modern Malaysian banking and more so in the framework of Equity-Linked Islamic Structured Investments (ELISI)

Contemporary Re-interpretation of Gharar and Maysir

The essential forbiddenness of *gharar* (lack of certainty) and *maysir* (speculation/gambling) are the ethical foundations of Islamic business, which are intended to guarantee all types of justice (adl).

Scholarly Debates on Commodity Murabahah (Tawarruq)

Use of Commodity Murabah, especially in the structured investment where organized forms are applied is a debatable issue amongst Malaysian scholars.

- Operational Necessity Proponents believe that Tawarruq serves a legitimate economic purpose of liquidity and safety of principal. It is an alternative to standard debt that is Shariah-compliant by using a real sale contract with a physical asset. This enables the banks to sell Principal Protected products, which are needed by the risk averse investors in the Islamic capital market.

- The Form vs. Substance Debate: Critics, like Shaharudin (2019), doubt that there is a real risk of ownership in automated digital trades (*qabd*). According to them, in the event that the bank and the customer do not even plan to physically receive delivery, the two may run the risk of a transaction becoming a legal gimmick (*hiyal*) to reproduce interest bearing debt. As far as accounting is concerned, the question arising is whether it should be considered as a true trade or a financing mechanism.

Detailed Operational Mitigation via Bursa Suq Al-Sila' (BSAS)

One of the main pillars of modern mitigation is the contribution of Bursa Suq Al-Sila' (BSAS). As it has been noted in research by Ahmad, Yusof, and Mazlan (2020), the selling of what one is not the owner of is the greatest risk of Commodity Murabahah, which is an evident violation of Shariah, resulting in *gharar*.

BSAS overcomes this by having fully-integrated electronic trading system so as to provide a verifiable chain of trade:

1. Bank Purchase: The bank has to buy the commodity (which is usually Crude Palm Oil) with a supplier.

2. Possession: BSAS covers that a Commodity Certificate is issued with evidence of constructive possession (*qabd ma'nawi)*. This is a Shariah-mandated evidentiary requirement of this digital audit trail.

3. Murabahah Sale: The bank can only sell the customer the asset at cost plus profit after the possession has been made.

4. Trade-Based Model: Giving the investment a physical asset, the transaction ceases to be merely a pure financial model of debt-creation and becomes a trade-based model, meeting the conditions of a valid sale and eliminating the aspect of *maysir* of synthetic financial bets.

The "Equity Link" and the Wa'd (Promise) Mechanism

It takes sophisticated contractual engineering to relate to the fluctuating stock market without causing *maysir*. The Wa'd (Unilateral Promise) mechanism is used in Malaysian institutions to separate the principal-protected investment and market volatility.

Najeeb and Vejzagic (2013) underline the fact that the uncertainty of the stock market does not nullify the essence of investment by making sure that the Murabahah contract (guaranteeing the principal) is removed and that the promise of the bank to provide the variable return (with reference to a Shariah-compliant index) is made. This makes sure that the *gharar* that the performance on the market possesses is not part of the main sale contract.

METHODOLOGY OF THE RESEARCH

The research method to be used in this research is aimed at offering a critical and systematic review of Equity-Linked Islamic Structured Investments (ELISI) in the aspect of compliance with Shariah. Considering the nature of modern financial engineering, the current study will include a qualitative and conceptual research design, which is a critical and evaluative framework rather than a descriptive one.

Research Design: Qualitative and Doctrinal Research.

The research methodology employed in this study is the traditional approach of legal and Shariah research; this approach is known as the doctrinal research methodology. It consists of two-level analysis:

- Conceptual Level: This would involve the examination of the theoretical limits of *gharar* and*maysir* as both defined in classical Fiqh and modern scholarly jurisprudence.
- Operational Level: It is looking at how these theories are used/where they may break down in the current practices in the banking industry in Malaysia where form and substance may not comply.

Data Analysis Procedure: Thematic and Flow Analysis

The data obtained is analyzed with the help of a strict analytical system:

- Step 1: Thematic Analysis: The study points to the presence of the common themes in the academic literature about the subject of contractual uncertainty and speculative returns. Through the classification of these themes, the research identifies the possible location where gharar (as in Jahalah or lack of knowledge of index formula) and maysir (zero-sum market bets) may be present in the ELISI structure.
- Step 2: Operational Flow Mapping: According to the methodology proposed by Ahmad, Yusof, and Mazlan (2020), the research maps out the sequential flow of transaction of Murabahah to Purchase Orderer (MPO). This is accompanied with a critical look-through to determine whether the commodity transaction on BSAS is a real economic activity or just a legal tactic (hiyal).
- Step 3: Benchmarking and Critical Synthesis: The last step is benchmarking of the identified operational risks to the Shariah Advisory Council (SAC) rulings. This is used to assess the effectiveness of the decoupling of the speculative equity connection of the fixed Murabahah contract to the Wa'd (Unilateral Promise).

Reliability, Validity, and Ethical Considerations

In order to guarantee validity, the study will be triangulated (i.e. academic opinions (e.g., Shahararudin, 2019) and regulatory standards (BNM) and industry practice (BSAS). This provides the balance of views that considers both the letter and the spirit of the Shariah. According to Ali and Atan (2022), the primary sign of reliability in Islamic banking studies is the disclosure of Shariah non-compliance.

FINDINGS AND DISCUSSION

Classical Foundations and Contemporary Applications of Gharar and Maysir

Based on the research that has been conducted on the concepts of *gharar* and *maysir* from classical and contemporary Islamic perspectives, we found that *gharar,* based on the classical Islamic Perspective. defined linguistically, refers to risk, hazard or uncertainty (Ali,2015) . While legally, it means excessive uncertainty in a contract related to the existence of the subject matter (Yousuf, 2016), its deliverability, quantity, quality or price. From classical sources, *gharar* is prohibited based on the hadith "The Prophet Muhammad S.A.W forbade the sale of *gharar*". For examples such as selling unborn animals, selling fish still in the sea or birds in the sky. These examples show that the subject of the contract is unknown, uncertain in existence or not in the seller's control. The buyer does not get certainty about the existence and conditions of the assets they want to buy. Making the delivery doubtful. From these specific prohibitions, classical jurists derived a general principle where the contract made should be based on transparency, full of knowledge and certainty (Ali, 2015) which is an important element for any transaction to occur.

These elements are very important as a preventive mechanism against fraud, deception and exploitation arising from the information asymmetry between the buyer and seller. By adapting these elements in the contract, both parties receive equal and fair benefits without involving any *gharar*. If any of the parties involved do not have sufficient knowledge and information about the exchange transaction, it raises the issue of unfair allocation of risk (Ali, 2015) where only a few parties will bear the risk and the rest do not bear any risk contrary to the agreed contract. As such, Shariah does not prohibit risk per se, but rather unjustifiable and avoidable uncertainty that undermines contractual fairness. Among the objectives implied by prohibition of *gharar* are protection of wealth and preservation of justice which are the core objectives of Shariah *(maqasid al-Shariah)*. By elements, quantity, price and delivery terms being communicated clearly and in detail, it can prevent loss caused by ignorance (*jahalah*) and prevents one party from bearing excessive and hidden risks that arise from contracts made with other parties.

Furthermore, referring to the legal rationale for the prohibition of *gharar*, it is grounded in its possibility to undermine justice and fairness in contractual relationships. When there is excessive uncertainty in the contract, it leads to injustice *(zulm)*, as one party may not know about the disproportionate risk or suffer loss due to unclear contractual terms. Moreover, the existence of *gharar* is also caused by ambiguity (Ali, 2015) and lack of clarity disputes to *(niza')* because it increases the possibility of conflicting interpretations once the contract is carried out leading to disagreements that may escalate into legal conflicts. This is why Islamic law requires certainty and transparency in contracts (Ali, 2015). In addition, *gharar* facilitates exploitation arising from information asymmetry, where one party may get more information about the contracts than the other that acts in ignorance *(jahalah*) (Ali, 2015). This imbalance allows one party to gain an unfair advantage, contrary to Islamic ethical requirements of honesty *(sidq)* and mutual consent (*taradi*).

Gharar has two levels of uncertainty which is *Gharar Fahish* (excessive gharar) and *Gharar Yasir* (minor gharar) (Raqibah, 2024). Gharar Fahish refers to substantial and avoidable uncertainty that can affect parties involved in the contract being executed whether there is significant risk of loss and injustice. For example, selling non-existent goods or items whose delivery is doubtful (Yousuf, 2016). While Gharar Yasir means unavoidable or slight uncertainty that does not affect or have a big impact on the parties involved when the contract is executed. This type of *gharar* can still be tolerated (Yousuf, 2016) because it has practical necessity (hajah) and customary practice (urf). This is because eliminating such uncertainty would impose excessive hardship.

As for classical concepts of *maysir*, it refers to gambling or games of chance where a person gains or acquires wealth without producing productive effort or lawful countervalue therefore, the result is gain or loss depends primarily on chance rather than work from one's own sweat or exchange. While from a linguistic point of view, the term *maysir* is derived from the word yusr, meaning ease or obtaining something effortlessly. This reflects the core concern of Islamic law where property is obtained easily by one party while another suffers loss (Yousuf, 2016), without a just exchange. This act is forbidden in Islam because it is against what is taught in

Islam. Maysir is explicitly prohibited in the Qur'an, mentioned in Surah al-Maidah *"O you who believe! Intoxicants, gambling, idols and divining arrows are abominations from the work of Satan. So avoid them so that you may be successful." Maysir* classical concept from the Qur'an cannot be denied and this prohibition establishes *maysir* as a major sin, not merely a discouraged act.

After doing the research, we found that classical jurists also defined *maysir* as any transaction involving income from an uncertain event, results in zero-sum outcome, where one party gains while the other loses (Yousuf, 2016) , lacks legitimate countervalue ('*iwad*) and also any transaction involving stake and wager from both parties. For example, betting games with money or any valuable items, lotteries, wagering on races or contests without productive purposes and also games involving stakes where chance determines the outcome. This element of *maysir* is prohibited in Islam because it is against the fundamental Shariah principles of justice, productive economic activity and social harmony. This prohibition is not only for moral goodness, but for justice in terms of legal and also economic in the future.

The involvement of the *maysir* in a contract creates an unjust transfer of wealth (Akl al-Mal bil-Batil) where the *maysir* allows one party to gain profit and property without lawful countervalue or effort. While the other side admits a loss purely due to chance (Ali, 2015). This shows the occurrence of injustice which the Qur'an explicitly forbids "Do not consume one another's wealth unjustly.." (Surah al-Baqarah 2:188). This shows that Islam wants a person to get property or income by working on it through trade, labour or risk-sharing, instead of getting income at the expense of another. In addition, classically, the existence of *maysir* in a contract occurs because of dependence on chance rather than effort, scholars viewed *maysir* as promoting reliance on luck and speculation, rather than work ('amal), productivity or skill. In addition, *maysir* is inherently zero-sum activity (Raqibah, 2024) which means one party's gain is exactly equal to another's loss (Yousuf, 2016). This statement is very contradictory in Islam because it does not reflect the characteristics of justice where exchange should create and produce mutual benefit, not guaranteed harm to one side. Therefore, scholars interpret *maysir* as a very immoral and selfish element.

In contemporary Islamic jurisprudence and finance, *gharar* is still a central concept used in determining and assessing the Shariah compliance of modern commercial and financial transactions. While classical jurists continue to develop their views in *gharar* based on relatively simple market practices, contemporary scholars face various challenges and obstacles to adapt and apply these principles into complex financial instruments (Yousuf, 2016), globalized markets and sophisticated contractual structures. Consequently, modern islamic financial institutions care and emphasize economic substance, risk allocation, transparency and also *maqasid al-shariah* rather than purely literal application of classical rules.

Based on the studies that have been conducted, contemporary Islamic scholars define *gharar* as excessive uncertainty and as an important element that need to be avoided in contracts because its existence will lead to injustice, dispute and also unjust enrichment. This definition further expands the classical interpretation of *gharar* by focusing on information asymmetry, uncertainty of outcome, disproportionate risk transfer and also lack of real economic activity (Ali, 2015), not only focusing on contractual ambiguity (jahalah). Financial institutions such as AAOIFI, IFSB and the International Islamic Fiqh Academy (OIC) emphasize that *gharar* must be handled based on its impact on fairness and consent, not only on its presence. Moreover, the relationship between *gharar* and risk in a contract is that risk is not prohibited per se, which means Islam does not prohibit risk, but prohibits excessive risk and uncompensated or hidden risk. This is because there is no transparency in the transaction which raises the issue of injustice in the execution of the contract. Permissible risk is risk that is shared between two parties, rather than transferred from one party to another, risk that is tied to real assets or services and is also accompanied by ownership or liability. These characteristics cannot be taken lightly and are very important in evaluating modern financial products.

We found that contemporary jurists view conventional derivatives as non-Shariah compliant for a number of reasons, including the sale of non-existent assets or products, pure price speculation, disconnection from real-economic activity and excessive uncertainty in outcome, all of which are contrary to Islamic teachings and the classical concept of *gharar*. However, conditional permissible derivatives have been discussed for hedging instruments (Arifah,2021) , namely if they serve a genuine commercial need, avoid speculation and if they are structured using Shariah contracts for example (wa'd). In addition, contemporary Islamic finance also permits structured products only if the contracts are shariah compliant, no artificial risk is introduced and the structure does not replicate conventional speculative products. To further strengthen the argument regarding the existence of *gharar* in contracts, scholars increasingly apply the principle of sadd al-dhara'i (blocking the means) to prevent legal stratagems (*hiyal*).

Contemporary scholars recognize that absolute *gharar* uncertainty is impossible in modern commerce and minor uncertainty (*gharar yasir*) is tolerated when it is avoidable (Yousuf, 2016), customary and also does not affect the core subject matter. For example, market price fluctuations, slight delivery delays and variable profits rates linked to real performance. To eliminate any existence of *gharar* in contracts, modern islamic law places great emphasis om full disclosure (*ifsha*') of the contract to all parties involved, clear documentation means no party will act in ignorance when the contract is executed with clear acceptance from both buyer and seller and also consumer protection, there is no spread of hidden risk imposed on any party. Therefore, there are several regulatory frameworks that have been established for the implementation of contracts without *gharar* namely standard contracts, Shariah governance and risk disclosure statements. Ultimately, contemporary Islamic concepts strive to uphold the objectives of Shariah while allowing ethical participation in modern economic life.

For contemporary Islamic jurisprudence on *maysir*, it is understood as an economic activity or financial transaction that generates profit primarily from chance, speculation or zero-sum outcomes rather than productive effort, real economic activity or legitimate risk-sharing, While classical Islam forbids gambling in its traditional form, contemporary scholars have expanded this prohibition in modern financial instruments and practices that reflects the same issues and replicate the same harmful activities, albeit in legal and sophisticated structure. Modern Islamic scholars define *maysir* as any transaction in which wealth and profits are gained or lost based on uncertain outcomes, where the gain of one party depends on the loss of the other party (Yousuf, 2016) without the basis of productive activity or fair consideration. This definition reflects a functional approach while focusing on economic reality rather than form. Among the key elements involved in determining the existence of *maysir* in a contract are reliance on chance or speculative price movements, zero or near-zero sum outcomes, the absence of genuine ownership or value creation, and guaranteed losses for one party.

Contemporary scholars argue that financial complexity does not alter the Shariah rulings if there are still elements similar to gambling. Speculation in modern markets is possible when buyers do not intend to use or own the asset, trading is extremely short-term, profits are made based on the prediction of price movements versus the performance of the asset, and leverage artificially amplifies profits and losses.

Most contemporary scholars classify conventional derivatives as having the presence of *maysir* elements because of the pure betting on price movements, no intention of delivery or disconnection from the actual asset. However, limited permissibility can be discussed for Shariah-based hedging instruments used for pure risk management, not speculation (Arifah,2021). For example, forex and margin trading are highly involved in *maysir* because they involve high leverage, short-term speculation and no actual currency exchange resulting from a zero-sum bet on currency fluctuations. Other than that, gaming, e-sports and online platforms sector also have involvement of *maysir* in modern forms of online betting, loot boxes and paid competitions if monetary stakes are involved, outcomes depend largely on chance and also winners gain at other's expense.

As for regulatory and institutional views, institutions such as AAOIFI, OIC Fiqh Academy and Shariah Advisory Council (SAC) adopt a principle-based approach, examining the purpose of the transaction, risk structure and economic impact from the contract to ensure the continued relevance of this prohibition in complex financial systems.

Identification of Gharar and Maysir Concerns in Commodity Murabahah Implementation

Commodity murabahah also known as Tawarruq Munazzam is one of the most widely used financing structures in Islamic banking (Hassan et al., 2024), particularly in Malaysia for many reasons and benefits for example liquidity management, personal financing and corporate financing. Although it is one of the financial structures

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approved by Shariah Advisory Council (SAC), contemporary scholars continue to debate whether the Commodity Murabahah's practical implementation has elements of *gharar*, especially if there is a divergence between contractual form and economic substance. In theory, Commodity Murabahah transaction satisfies Shariah requirement since there is existence of real asset, ownership and possession (*qabd*), cost plus transparency and deferred payment is allowed for these structures. However, each step of the transaction presents potential *gharar*-related concerns.

After doing some research, there are potential arises of the *gharar* element from existence and ownership of the commodity because in practice, the commodities may be traded electronically, no physical inspection occurs and the same commodities may be recycled multiple times within a short period which is very contrary to Islamic principles. This raises the issue that there is an element of *gharar* relating to uncertainty over the real existence and uniqueness of the commodity. In addition, Islamic financial institutions in Malaysia allow constructive possession where the contract can be executed through documentation rather than physical delivery (Wali, 2024). While legally accepted, critics argue that possession may be carried out only because for legal fiction, customers may not fully understand the nature of their own ownership and risk, and liability may not be genuinely transferred from seller to the buyer because there is no physical delivery. These characteristics introduce uncertainty regarding who bears ownership risk, potentially creating *gharar*.

The presence of *gharar* can also be confirmed if there is a situation where there is absence of intention to use the commodity. In the usual Commodity Murabahah transactions, neither the bank nor the customers intends to use or consume the commodity that is sold and bought. This is because the transaction occurred for reasons other than using the commodity. In addition, the commodity serves only as a conduit for cash. It happens when the buyer only buys commodities to get the money quickly and immediately. This situation creates uncertainty about whether the transaction reflects a real sale or merely simulates one. While intention (*niyyah*) is not a formal contractual requirement, contemporary scholars argue that systematic absence intent weakens Shariah substance and increases *gharar*.

In addition, during contract execution, there are pre-arranged and circular transactions where in practice, the sequence of buying and selling commodities is often pre-determined, involving the same group of brokers and executed almost simultaneously. Although it looks interesting, it raises Shariah concerns about the genuineness of the sale and the reality of market risk. In many commodity murabahah arrangements, they are pre-agreed and guaranteed where it gives room for actual price fluctuation or market exposure. This increases uncertainty as to whether the customer ever fully bears the ownership risk associated with the commodities that the buyer bought. It is also a fundamental requirement to legitimize profit in Murabahah transactions.

Another significant source of potential *gharar* lies in information asymmetry between the buyer and the seller. In many cases, customers enter the commodity murabahah transaction just to get financing and may not fully understand how it works and what underlying commodity transaction. In modern finance, the customer may be unaware of the type of commodity involved during the contract, the existence of the commodity to be purchased, the possibility to receive its delivery and also the parties involved in the contract. This is because the documentation and its operation is complex (Yousuf 2016). This causes several questions to arise as to whether informed consent (*taradi*) has been received by customers. Classical jurists emphasized that ignorance (*jahalah*) concerning the essential element of a contract invalidates consent and present element *gharar*. Although modern documentation may technically disclose all information related to the contract, excessive reliance on legal formalities rather than practical understanding is still capable of creating uncertainty for the customer's knowledge.

In most Commodity Murabahah structures, the customer will appoint the bank as an agent to sell the commodity on their behalf (Wali, 2024). Although this process is approved by Shariah, it attracts attention and concern when the bank is approved to manage both sides of the transaction. The transaction is as a seller of the commodity to the buyer and as a representative who sells the commodity to another buyer in resale. The customer is not involved in the resale decision process and the agent;s actions are not independently verifiable. Therefore, this control process may blur the distinction between the principal and the agent, increasing uncertainty regarding whose interests are paramount. If the agency is unable to explain or explain the information poorly, it can lead to an element of gharar by obscuring the customer's rights and obligations.

Theoretically, Murabahah pricing should be based on the cost of commodity plus an agreed profit margin, but in practice, prices of commodity murabahah are always detached from actual commodity market movements and instead adjusted against conventional interest-based rates. Although benchmarking itself is widely tolerated, the complete irrelevance of commodity price dynamics raises uncertainty as to whether the commodity is economically meaningful. This leads to constructive ambiguity where the commodity only exists nominally and does not influence and affect the transaction outcome. Such circumstances reinforce concerns that the sale is merely symbolic, thereby introducing *gharar* related to the authenticity of pricing mechanisms (Raqibah, 2024).

In terms of the time allocation aspects for the contract to be executed, modern Commodity Murabahah are frequently executed within seconds through automated trading platforms. Furthermore, the automation enhances efficiency, which significantly reduces the time during which ownership risk can realistically materialise. If the interval between the purchase and resale is very short and little, the risk exposure will be effectively eliminated immediately leading to uncertainty as to whether the Shariah condition of risk-bearing (*daman*) is genuinely fulfilled.

In Commodity Murabahah, the bank is theoretically required to bear the asset after securing the commodity before selling it to the customer (Wali, 2024), but in practice, the risk is always contractually minimised and neutralised through indemnities and is also operationally insignificant. This is because the buyer does not receive the asset purchased physically and does not have to bear any delivery of the asset or commodity. It was only carried out and settled through an online trading platform. The existence of the commodity is also not physically visible to the buyer and seller. This raises uncertainty regarding actual liability because the risk that exists may only exist in legal documentation but not in economic reality.

As for the regulatory aspects, Commodity Murabahah in Malaysia is endorsed and oversighted by Shariah Advisory Council (SAC) of Bank Negara Malaysia, therefore it is under strict supervision that requires strict conditions towards Commodity Murabahah contract such as genuine ownership, proper documentation and transparency in managing Commodity Murabahah. The SAC recognises operational challenges but generally views potential *gharar* as manageable and non-excessive, provided governance mechanisms are strong. Despite the regulatory approval, stricter supervision is required in the practice of Commodity Murabahah. A renewed focus on economic substance, transparency and genuine risk-taking is essential to preserve the Shariah integrity of Commodity Murabahah in contemporary Islamic finance.

The research on the studies identified that the potential element of *maysir* in Commodity Murabahah is formally structured as a sale transaction and generally approved by Shariah authorities, but the practical implementation may inadvertently resemble *maysir*. This is because it indicates gambling and wagering. However, because of the economic characteristics, behavioral patterns and structural perspectives, *maysir* is not only subject to games of chance, but also subject to financial arrangements that generate wealth and income without genuine productive activity, meaningful risk-taking or real economic uncertainty. To analyse the potential presence of *maysir* in Commodity Murabahah, it requires an analysis that goes beyond contractual form to examine economic substance and transaction dynamics.

The profit margin is fixed and repayment is contractually guaranteed. However, although Murabahah as a sales contract allows for a fixed profit (Wali, 2024) , contemporary scholars argue that when certainty is maximised until the commercial outcome is fully determined, the transaction becomes financial engineering rather than trading. Unlike a pure commercial transaction, Murabahah ensures that the bank will gain profit regardless of economic conditions, the customer bears the repayment obligation regardless of personal or business income and the market value of the commodity will have no impact on the final outcome of the transaction. The uncertainty arises because the transaction functions as a mechanical exchange of cash flows, rather than a genuine sale involving economic participation. From a contemporary perspective, it resembles a gambling structure where the contract outcome is engineered rather than earned. Although Islamic law requires that profits must be justified by risk *(al-ghunm bil ghurn*) (Arifah,2021) , the risks inherent in Commodity Murabahah are often very short-term, operationally insignificant and contractually neutralised. The commodity is held for a short period of time before being sold again, making actual exposure to price fluctuations practically impossible. Scholars argue that when the risk only exists in theory and cannot realistically materialise, the transaction can become an illusion of risk, similar to speculative financial instrument where the risk on paper is stimulated but not genuine, Such artificial risk neutralisation aligns with contemporary scholars' views on *maysir*, where financial outcomes are disconnected from real uncertainty and effort.

Commodity Murabahah often involves the same commodity being traded repeatedly, the same broker acting as counterparty, and rapid back-to-back transactions. This is circular trading where it raises concerns that the transaction does not add real economic value to either party, as the commodity does not enter the flow of production, consumption, or trade in the market. Rather, it functions only as a temporary legal intermediary to legitimate cash financing. From the perspective of contemporary Islamic scholars, *maysir* is prohibited because it allows property to be transferred without productive contribution by either party. When Commodity Murabahah becomes excessively circular, it risks replicating this harm by enabling extraction of profit without value creation. Although not a classic zero-sum game, Commodity Murabahah may also exhibit quasi zero-sum characteristics, especially when the bank makes a profit and is spared from losses, the customer bears all repayment responsibility, the commodity has no economic relevance. In such cases, the wealth transferred reflects speculative finance where returns are detached from productive success. Contemporary scholars argue that this structural rigidity mirrors unjust wealth transfer characteristics of *maysir*, even in legal forms.

When performing the Commodity Murabahah contract, the customer has no intentions in taking the delivery and the bank nor the customer intends to use the commodities. The absence of commercial intent weakens the trade-based rationale of the transaction because it is done solely for cash financing. When the contract is used systematically without any intention of trade, they risk becoming formal devices for financing rather than substantive economic activities. Although intention is not a strict legal requirement, persistent absence of commercial intent may transform the transaction into a synthetic financial agreement where it will create an element of *maysir* concerns due to speculative cash exchange. In addition, Commodity Murabahah is also often automated and executed within seconds, this automation eliminates human commercial decision-making, eliminates negotiation and market assessment and reduces trade to algorithm execution. From a contemporary perspective, *maysir* involves a transaction where the result is mechanically generated rather than achieved through real economic engagement. Excessive automation makes the Commodity Murabahah act as a financial mechanism, instead of a market transaction.

Most contemporary Islamic scholars are of the opinion that Commodity Murabahah does not involve *maysir* in the strict legal sense because this contract lacks betting, chance-based outcomes and winner-loser dynamics. Even so, critics argue that functional similarities to speculative finance justify continued concern about the potential presence of *maysir*, especially when transactions prioritize certainty, speed and profit extraction over economic substance.

Shariah Governance and Contractual Structures as Tools for Shariah Risk Mitigation

From the discussion previously, the potential of *gharar* and *maysir* arising from the practicality and the implementation. In response, Malaysia has established several frameworks with robust and well-designed Shariah governance for the structure of contracts by IFIs, to ensure that these contracts are Shariah compliant. This section analyses the effectiveness of these mitigation measures from both classical legal concerns and contemporary Islamic perspectives. The Shariah governance framework as a mitigation measure is a sensible action that Malaysia has implemented globally because at the institutional level, each Islamic bank is required to establish a Shariah Committee, while at national level, the Shariah Advisory Council of Bank Negara Malaysia has been established. This is to ensure that every contract or agreement executed is Shariah compliant and does not baby any prohibited elements. The SAC functions as the highest authority on Shariah matters in Islamic finance. Each established committee plays an important role as it aims to approve the structure of products offered by banks before implementation, issue Shariah rulings and standards, ensure consistency across institutions and monitor compliance through Shariah reviews and audits conducted on each case.

This Shariah model is particularly effective for Islamic financial institutions that offer complex contractual services in preventing *gharar* and *maysir*. From the perspective of classical Islamic scholars, *gharar* arises from ambiguity (jahalah) regarding price, matter of delivery, uncertainty about ownership and possession and unclear contractual rights and obligations. Therefore, the Shariah governance mechanism in Malaysia prevents these *gharar* and *maysir* elements by means of standard documentation, explicit disclosure of selling prices and profit margins, clear commodity identification and verification of ownership and possession before sale. By implementing such provisions, it can significantly reduce information asymmetry and contractual uncertainty between the bank and the customer. As a result, excessive *gharar* will be eliminated, leaving only minor uncertainty that is tolerable by Shariah (Yousuf, 2016).

From a legal point of view, Shariah governance in Malaysia successfully overcame the classical *gharar* concerns. However, the governance framework only focuses on contractual clarity rather than economic relevance of the commodity, which becomes a point of contention in contemporary discourse. Unlike *gharar*, *maysir* is not only seen from a contractual point of view but also needs to be seen from a behavioural and structural point of view. Shariah governance framework is often assessed by ensuring that if the transaction involves wagering or betting, outcomes depend on chance and if one party gains at the expense of another (Yousuf, 2016). In Commodity Murabahah, the Shariah Committee generally concludes that *maysir* does not exist if profits are fixed and disclosed to both parties, no elements of chance determine the outcome and obligations arise from the sale contracts, not games of chance. Therefore, Shariah governance is effective in avoiding the existence if *maysir* but less effective for addressing subtle or functional *maysir* such as excessive certainty of outcomes, risk-free profit structures and wealth transfer without genuine economic participation.

As discussed previously, Bursa Suq Al-Sila' (BSAS) also plays an important role in Commodity Murabahah transactions used by Malaysian Islamic financial institutions (Hassan et al., 2024). It is an electronic shariah-compliant commodity trading platform recognized by Bursa Malaysia. Its primary purpose is to facilitate Commodity Murabahah transactions for Islamic financial institutions. BSAS was established to provide a transparent and regulated marketplace for commodity-based Islamic financing (Hassan et al., 2024), mitigate Shariah concerns related to *gharar* and *maysir,* standardised Commodity Murabahah practices in Malaysia and ensure compliance with Shariah Advisory Council (SAC) rulings of Bank Negara Malaysia.

BSAS reduces *gharar* by ensuring clear identification of commodities where both parties between buyer and seller will know what assets will be involved in the sale transactions to be carried out, known prices and quantities to avoid uncertainties regarding prices, real ownership transfer to show who has the rights to the commodities when handling even if carried out in a short time and also proper documentation and audit trails to make it easier to detect if there is potential presence of *gharar* and *maysir* in the contract.

Mitigation of *maysir* is also carried out by BSAS by ensuring anchoring financing transactions to real commodities, avoiding chance-based outcomes and ensuring profits arise from sale contracts rather than speculation. BSAS ensures that the resulting profits are not transactions that involve gambling-based and do not involve wagering or zero-sum games.

It is a highly effective mitigation tool for contractual *gharar* and *maysir*. But effectiveness for ethical and economic concerns is dependent on how one utilizes the platform. As such, BSAS should be viewed as a compliance-enabling infrastructure rather than a complete solution to the structural challenges of modern Islamic finance.

CONCLUSIONS

In conclusion, we can conclude that in Malaysia it is very important to have a robust regulatory framework to ensure that all financial institutions comply with Shariah in the Islamic finance industry. The article examined the concept of *gharar* and *maysir* from classical and contemporary Islamic perspectives, highlighting their fundamental role in preserving fairness, transparency and justice in Islamic commercial transactions. The prohibition of *gharar* necessitates the need to eliminate excessive uncertainty and information asymmetry, while the prohibition of *maysir* aims to prevent any element of speculative behaviour and any gain that result from unjust enrichment. These principles ensure that contractual relationships are founded on clarity, mutual consent and equitable risk-sharing.

The analysis demonstrates that although Commodity Murabahah is an approved financing mechanism, it is not completely free from the potential presence of *gharar* and *maysir* if not executed and implemented properly. Without adequate safeguards, the practices will create elements of form over substance. In addition, these articles find robust mitigation measures that play a crucial role in addressing these concerns. Mechanism such as clear contractual documentation, strict adherence to ownership and ownership requirement, effective Shariah governance framework, independent Shariah review and also the use of dedicated platforms such as the Bursa Suq Al-Sila’ are very helpful in reducing the elements of *gharar* and *maysir*. These measures ensure transparency, proper transfer of risk and also compliance with Shariah principles.

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