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Regulatory Blind Spots of Gharar in Platform-Based Economic Transactions: An Islamic Economic Law Perspective

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ABSTRACT :

The rapid expansion of platform-based economic transactions has transformed contemporary commercial practices while simultaneously generating new regulatory and ethical challenges. One of the most pressing concerns is the persistence of gharar arising from information asymmetry, opaque pricing mechanisms, and misleading product representations that are inadequately addressed by existing regulatory frameworks. This condition creates academic anxiety regarding the effectiveness of current consumer protection regimes in safeguarding transactional fairness and informed consent. This study aims to examine the regulatory blind spots surrounding gharar in digital marketplaces from the perspective of Islamic Economic Law. Employing a normative juridical method, the research analyzes classical Islamic legal doctrines on gharar and tadlis alongside contemporary legal instruments and regulatory practices governing digital commerce. The findings reveal that platform-based transactions institutionalize uncertainty through algorithmic mediation, standardized yet opaque contractual terms, and weak verification of product claims, thereby impairing genuine consumer consent (ridha). While positive law tends to address harm reactively, Islamic Economic Law offers a preventive and ethically grounded framework that obligates transparency, truthfulness, and moral accountability for all market actors, including platform operators. The study concludes that integrating Islamic ethical principles into digital marketplace governance can address regulatory gaps and promote justice, trust, and sustainability in the digital economy.

Key words: *Gharar; Digital Platforms; Islamic Economic Law; Regulatory Blind Spots; Platform Governance.*

INTRODUCTION

The rapid growth of platform-based economic transactions has fundamentally transformed modern commercial practices, enabling cross-border exchanges that are fast, efficient, and accessible. Digital marketplaces now function not merely as intermediaries but as complex ecosystems that mediate pricing, product representation, contractual terms, and consumer engagement. Despite these advantages, the expansion of digital commerce has generated significant academic anxiety regarding the adequacy of existing legal and ethical frameworks in addressing structural uncertainty and consumer vulnerability embedded in platform-mediated transactions. One of the most persistent concerns is the emergence of *gharar*—excessive uncertainty—resulting from information asymmetry, opaque contractual arrangements, and misleading product claims that undermine informed consent in digital markets.

Previous studies have extensively examined information asymmetry and consumer deception in digital commerce from economic and regulatory perspectives. Scholars such as Akerlof and Stiglitz highlight how uncertainty and asymmetric information distort market efficiency and disadvantage

consumers. Contemporary legal research further demonstrates that digital marketplaces intensify these problems through algorithmic pricing, standardized contracts, and weak verification of seller claims. International institutions, including the OECD and UNCTAD, have documented widespread deceptive advertising practices and identified regulatory enforcement challenges arising from cross-border transactions and platform governance limitations. While these studies provide valuable empirical and regulatory insights, they predominantly adopt a positivist or economic approach that treats deception as a compliance issue rather than a moral-legal problem.

Within Islamic legal scholarship, discussions on *gharar*, *tadlis* (deception), and contractual consent (*ridha*) are well established in classical jurisprudence. Islamic jurists have long emphasized that transactions contaminated by uncertainty or deception are morally illegitimate, as they violate principles of justice (*‘adl*), transparency (*bayān*), and trust (*amanah*). However, contemporary Islamic legal studies addressing digital marketplaces remain relatively limited and often focus on the permissibility of fintech instruments or Islamic finance products, rather than on platform-based consumer transactions. As a result, there is insufficient scholarly engagement with how *gharar* operates structurally within digital marketplace systems and how Islamic Economic Law responds to these emerging forms of uncertainty.

This condition reveals a clear research gap. While modern consumer protection literature identifies regulatory weaknesses in addressing deceptive practices in digital commerce, it rarely integrates Islamic normative principles as an analytical framework. Conversely, Islamic legal studies have not adequately theorized the regulatory blind spots of *gharar* in platform-based transactions shaped by algorithmic mediation and standardized digital contracts. This gap necessitates a comprehensive analysis that bridges Islamic Economic Law with contemporary digital market governance.

The rationale of this study lies in the need to develop a normative framework capable of addressing not only the legal consequences but also the ethical foundations of digital economic transactions. Islamic Economic Law offers a preventive and value-oriented approach that emphasizes moral accountability before harm occurs, making it particularly relevant for addressing systemic uncertainty in digital marketplaces.

Accordingly, this study aims to examine the regulatory blind spots of *gharar* in platform-based economic transactions from the perspective of Islamic Economic Law. The research focuses on analyzing how digital marketplace structures institutionalize uncertainty, how this condition affects contractual consent, and how Islamic legal principles can contribute to more ethical and effective governance of digital commerce. Through this approach, the study seeks to contribute to the development of an integrated legal-ethical discourse on digital market regulation.

Methods

This study employs a normative juridical research design with a doctrinal approach, selected due to the study's focus on examining legal norms, ethical principles, and regulatory frameworks governing platform-based economic transactions. The normative approach is appropriate because the research does not measure consumer behavior empirically but analyzes the coherence and adequacy of legal rules in addressing *gharar* within digital marketplaces from the perspective of Islamic Economic Law.

The primary data of this research consist of legal and normative texts. These include classical Islamic legal sources such as the Qur'an, Hadith, and authoritative fiqh literature discussing *gharar*, *tadlis*, contractual consent (*ridha*), and market ethics. Contemporary secondary data comprise scholarly journal articles, books on Islamic Economic Law, and official publications issued by international organizations such as the OECD and UNCTAD that address consumer protection and digital commerce regulation. In addition, relevant statutory materials and platform governance documents, including marketplace terms of service and advertising policies, are examined to contextualize regulatory practices in digital transactions.

Data were collected through systematic library research. Relevant sources were identified by searching academic databases such as Google Scholar and Scopus using keywords including "gharar," "digital marketplace," "platform-based transactions," and "Islamic Economic Law." Selection criteria emphasized peer-reviewed publications, authoritative legal texts, and policy reports relevant to digital commerce and consumer protection. All selected materials were organized using reference management software to ensure consistency and traceability of citations. Data analysis was conducted through qualitative normative analysis. First, classical Islamic legal doctrines on *gharar* and *tadlis* were identified and categorized to establish normative benchmarks for lawful transactions. Second, these principles were systematically compared with contemporary digital marketplace practices and regulatory frameworks to identify areas of convergence and divergence. Third, the analysis focused on identifying regulatory blind spots where platform-based mechanisms generate uncertainty that is insufficiently addressed by positive law. The findings were then synthesized to formulate normative conclusions regarding the relevance and contribution of Islamic Economic Law in addressing ethical and regulatory challenges in digital marketplaces.

Discussion

Institutionalization of Gharar in Platform-Based Economic Transactions

The results of this study demonstrate that *gharar* in platform-based economic transactions is not incidental but institutionalized within the structural design of digital marketplaces. Unlike conventional transactions, where uncertainty may arise from isolated contractual defects or individual misconduct, digital platforms systematically mediate transactions through algorithmic

interfaces, standardized contractual terms, and curated information environments. These mechanisms reshape how information is produced, displayed, and interpreted, thereby embedding uncertainty into the transactional process itself.

One significant source of *gharar* identified in this research is the abstraction of the transaction object. Consumers do not encounter the physical goods directly but engage with digital representations in the form of images, videos, ratings, and textual descriptions. These representations are often selectively constructed to highlight desirable attributes while concealing limitations or risks. From an Islamic legal perspective, such conditions undermine the requirement that the object of sale (*ma'qud 'alayh*) be clearly known and ascertainable. Classical jurists consistently maintained that ambiguity regarding the nature, quality, or usability of the object invalidates contractual consent due to the presence of excessive uncertainty.

Furthermore, platform-based pricing mechanisms contribute to *gharar* through opacity and volatility. Dynamic pricing, algorithm-driven discounts, flash sales, and personalized price displays obscure the true value of goods and prevent consumers from making informed comparisons. This finding resonates with Stiglitz's analysis of information asymmetry, yet Islamic Economic Law extends the critique beyond efficiency concerns by framing such opacity as a moral violation that compromises justice (*'adl*) in exchange relations. The institutionalization of *gharar* within platform systems thus represents a structural challenge that cannot be resolved solely through individual consumer vigilance.

Beyond the structural dimensions of *gharar* identified above, the study also finds that digital marketplaces normalize uncertainty through standardization and scale. Standard-form digital contracts, commonly accepted through click-wrap or browse-wrap mechanisms, limit consumers' ability to negotiate or even fully comprehend contractual terms. These contracts frequently contain vague clauses regarding liability, return policies, and dispute resolution, thereby transferring transactional risk disproportionately to consumers. From an Islamic legal standpoint, such contractual opacity contradicts the requirement of mutual clarity (*ta'ayyun*) and balance between contracting parties.

Moreover, the temporal disjunction inherent in digital transactions intensifies *gharar*. The delay between payment and product receipt, combined with uncertainty regarding delivery conditions, authenticity, and after-sales responsibility, introduces risks that are largely outside consumer control. Classical Islamic jurisprudence permits deferred transactions only when the object, price, and delivery terms are clearly specified. The findings indicate that platform-based transactions often fail to meet this standard, as delivery risks are externalized while sellers and platforms remain insulated from accountability.

This structural form of *gharar* differs qualitatively from traditional market uncertainty. It is embedded not only in individual transactions but also in the technological architecture of platforms that prioritize efficiency and scalability over transactional transparency. Consequently, addressing *gharar* in digital commerce requires structural intervention rather than isolated consumer protection measures.

Product Overclaim as Tadlis and the Erosion of Ridha

The study further finds that product overclaim functions as a dominant manifestation of *tadlis* (intentional deception) in digital marketplaces, directly eroding genuine consumer consent (*ridha*). Overclaim practices commonly involve exaggerated promises regarding product performance, health benefits, cosmetic outcomes, durability, or compliance with ethical and religious standards. These claims are frequently unsupported by empirical evidence and are amplified through persuasive marketing strategies such as edited visuals, testimonials of uncertain authenticity, and ambiguous qualifiers.

In Islamic contract law, *tadlis* is not evaluated merely by the presence of false statements but by its effect on the decision-making autonomy of the contracting party. Consent is considered valid only when formed with adequate and truthful knowledge. The findings indicate that consumers exposed to systematic overclaim enter transactions under distorted perceptions, believing that products possess attributes they do not in fact have. This condition invalidates meaningful consent and renders the transaction morally defective, even if formal contractual elements appear complete.

Compared with modern consumer protection regimes, which typically categorize overclaim as misleading advertising subject to administrative sanctions or civil liability, Islamic Economic Law adopts a more substantive approach. Doctrines such as *khiyar al-tadlis* and *khiyar al-'ayb* recognize the consumer's right to rescind contracts formed through deception, emphasizing restoration of justice rather than mere punishment. However, the study also reveals that in digital marketplaces these remedies are difficult to exercise due to delayed discovery of deception, lack of seller traceability, and procedural barriers imposed by platforms. This gap illustrates how digital environments intensify the harmful effects of *tadlis* while simultaneously weakening traditional remedial mechanisms.

In addition to undermining individual consent, product overclaim also produces cumulative ethical harm by reshaping consumer expectations and market norms. Repeated exposure to exaggerated claims gradually normalizes deception as an acceptable marketing strategy, blurring the boundary between persuasive advertising and fraudulent misrepresentation. This

normalization erodes the ethical sensitivity of both sellers and consumers, fostering a market culture that tolerates *tadlis* as a competitive necessity rather than a moral violation.

The study further reveals that overclaim disproportionately affects vulnerable consumer groups, including individuals with limited digital literacy, first-time online buyers, and consumers seeking health-related or religiously sensitive products. Islamic Economic Law places particular emphasis on protecting the vulnerable (*himayat al-du'afa*), recognizing that justice is compromised when transactions exploit informational or cognitive disadvantages. From this perspective, responsibility for preventing deception rests primarily on the party possessing superior knowledge and control—namely, sellers and platform operators—rather than on consumers.

This finding challenges narratives that frame consumer vigilance as the primary safeguard against deception. Islamic jurisprudence rejects the notion that consent obtained through informational manipulation constitutes valid agreement, regardless of the consumer's opportunity to verify claims. Accordingly, overclaim cannot be justified as a function of consumer choice but must be treated as a substantive ethical breach that corrodes the legitimacy of digital commerce.

Regulatory Blind Spots and the Ethical Responsibility of Platform Operators

A central finding of this research is the existence of significant regulatory blind spots in the governance of digital marketplaces, particularly regarding the responsibility of platform operators. While platforms often present themselves as neutral intermediaries, their operational control over information architecture, transaction flow, and dispute resolution mechanisms positions them as active participants in shaping market behavior. The study finds that platform policies against false advertising are largely reactive, relying on consumer complaints rather than proactive verification of product claims.

From the standpoint of Islamic Economic Law, such regulatory passivity is ethically insufficient. The principle of collective moral responsibility (*taklif jama'i*) holds that all actors who facilitate or benefit from harmful practices share accountability for preventing injustice. Platform operators that profit from transaction volume while neglecting meaningful oversight effectively enable *gharar* and *tadlis*, even if indirectly. This perspective challenges dominant legal narratives that shield platforms from liability under intermediary doctrines.

The research further draws parallels between contemporary platform governance and the classical institution of *hisbah*, which historically functioned to supervise markets, prevent fraud, and protect public interest before harm occurred. Unlike modern regulatory models that emphasize post-violation sanctions, *hisbah* embodies a preventive ethos rooted in moral obligation. Integrating this ethical framework into digital marketplace regulation would require platforms to adopt proactive verification mechanisms, transparent disclosure standards, and meaningful

sanctions for repeated deceptive behavior. Such an approach aligns digital governance with the objectives of *maqasid al-shariah*, particularly the protection of wealth (*hifz al-mal*), intellect (*hifz al-'aql*), and human dignity (*hifz al-'ird*). The research also highlights that regulatory blind spots are reinforced by fragmented governance across jurisdictions. Digital marketplaces frequently operate across national borders while remaining subject to uneven regulatory standards. This fragmentation allows platforms to exploit jurisdictional gaps, limiting the effectiveness of national consumer protection laws. From an Islamic legal perspective, such regulatory fragmentation does not diminish ethical responsibility, as moral accountability is not confined by territorial boundaries.

Furthermore, the monetization model of digital platforms intensifies ethical risk. Platforms derive revenue from transaction volume, advertising, and seller visibility services, creating incentives to tolerate or indirectly promote aggressive marketing practices. Islamic Economic Law explicitly rejects profit maximization detached from moral constraints, emphasizing that lawful gain (*kasb halal*) must be pursued within clearly defined ethical limits. The study finds that platform indifference to deceptive practices reflects a governance failure rather than mere regulatory insufficiency.

Reintroducing the preventive logic of *hisbah* into contemporary digital governance would require a paradigmatic shift from reactive moderation to ethical stewardship. This includes mandatory verification of material product claims, algorithmic transparency, and enforceable accountability mechanisms for repeat offenders. Such measures would reposition platforms not merely as intermediaries but as moral agents within the commercial ecosystem, consistent with the Islamic conception of market governance oriented toward public welfare (*maslahah 'ammah*).

Beyond the structural and regulatory dimensions discussed above, the findings of this study also carry significant implications for the normative validity of digital contracts under Islamic Economic Law. In Islamic jurisprudence, contractual validity is not determined solely by formal compliance with contractual elements but by the substantive fulfillment of ethical and informational requirements. The presence of excessive *gharar* directly affects the legal status of a contract, as uncertainty concerning the object, price, or consequences of the transaction undermines the legitimacy of consent (*ridha*). This doctrinal position distinguishes Islamic contract theory from many modern legal systems that prioritize formal agreement over substantive fairness.

In the context of digital marketplaces, the study reveals that platform-mediated contracts frequently blur the boundary between valid uncertainty (*gharar yasir*) and prohibited uncertainty (*gharar jabish*). While minor uncertainty may be tolerated due to practical necessity, the accumulation of multiple uncertainties—regarding product quality, delivery conditions, seller accountability, and dispute resolution—transforms the transaction into one characterized by excessive risk. Islamic jurists have consistently maintained that when uncertainty becomes

dominant and foreseeable, the transaction loses its moral and legal legitimacy. This finding suggests that many platform-based consumer transactions may be legally questionable from an Islamic perspective, even when they are technically enforceable under positive law.

Furthermore, the reliance on automated consent mechanisms, such as click-wrap agreements, raises questions regarding the authenticity of consumer acceptance. Consent obtained through procedural formalities without meaningful understanding contradicts the Islamic conception of voluntary agreement. The findings thus reinforce the argument that addressing *gharar* in digital commerce requires reassessing not only regulatory enforcement but also the normative foundations of digital contracting itself.

Islamic Economic Law and Contemporary Consumer Protection

A comparative analysis between Islamic Economic Law and contemporary consumer protection regimes further illuminates the unique contribution of Islamic jurisprudence to digital market governance. Both frameworks acknowledge the inherent vulnerability of consumers in asymmetric transactions and impose obligations on sellers to provide accurate and sufficient information. However, the underlying philosophical orientation of these systems differs substantially.

Modern consumer protection law primarily adopts a corrective approach, intervening after harm has occurred through sanctions, compensation mechanisms, or administrative penalties. While such measures are essential, the findings of this study indicate that they are often ineffective in digital marketplaces due to jurisdictional complexity and enforcement limitations. In contrast, Islamic Economic Law adopts a preventive and moral-centered approach, obligating market participants to avoid deception as a religious duty rather than a mere legal requirement.

This preventive orientation is grounded in the broader objectives of *maqasid al-shariah*, which prioritize the protection of wealth, intellect, and human dignity. By framing deceptive practices as violations of ethical responsibility, Islamic law seeks to eliminate harmful conduct at its source. The study demonstrates that this normative emphasis offers a complementary framework to modern regulatory models, particularly in addressing systemic uncertainty generated by platform architectures. Importantly, Islamic Economic Law also assigns responsibility beyond individual sellers. Platform operators, as facilitators of market interaction, are morally accountable for ensuring that the transactional environment does not institutionalize deception or excessive uncertainty. This perspective expands contemporary debates on platform liability by grounding accountability in ethical governance rather than contractual disclaimers alone.

The findings of this research have important implications for policy formulation and digital marketplace governance. Addressing regulatory blind spots related to *gharar* requires moving

beyond fragmented, complaint-based enforcement toward integrated ethical oversight mechanisms. From an Islamic Economic Law perspective, regulatory frameworks should prioritize transparency, verification, and proactive supervision of digital transactions. This includes mandatory disclosure of material product information, verification of claims that affect consumer health or religious compliance, and algorithmic transparency in pricing and product ranking systems. Platforms should also be required to implement meaningful accountability mechanisms for sellers who repeatedly engage in deceptive practices. Such measures align with the historical function of *hisbah*, which sought to prevent market injustice before harm occurred.

Additionally, the study underscores the importance of ethical education for digital entrepreneurs and platform operators. Embedding Islamic business ethics into training and certification programs can serve as a preventive strategy against overclaim and deception. By aligning digital commerce practices with moral accountability, policymakers and platform designers can foster a market environment that balances innovation with justice.

Conclusion

This study concludes that platform-based economic transactions systematically generate *gharar* through information asymmetry, opaque contractual arrangements, and deceptive product representations that are insufficiently addressed by existing regulatory frameworks. The findings demonstrate that product overclaim practices function as a form of *tadlis* that undermines genuine contractual consent (*ridha*) and violates the core principles of honesty, transparency, and justice upheld in Islamic Economic Law. While modern consumer protection regimes recognize similar harms, their predominantly reactive enforcement mechanisms face significant limitations in digital marketplaces characterized by cross-border operations and weak platform accountability. In contrast, Islamic Economic Law offers a preventive and ethically grounded framework that emphasizes moral responsibility prior to the occurrence of harm and assigns accountability not only to sellers but also to platform operators under the principle of collective responsibility (*taklif jama'i*). By integrating Islamic ethical principles with digital marketplace governance, this study reflects that aligning commercial practices with the objectives of *maqasid al-shariah*, particularly the protection of wealth, intellect, and human dignity, provides a holistic and sustainable approach to addressing regulatory blind spots and fostering trust in the digital economy.

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