Theory of Gharar and its interpretation of Risk and Uncertainty from the perspectives of Authentic Hadith and the Holy Quran: A Qualitative Analysis

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Theory of *Gharar* and its interpretation of Risk and Uncertainty from the perspectives of Authentic Hadith and the Holy Quran: A Qualitative Analysis

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Abstract

The inconclusive definition of *Gharar* as risk and uncertainty can be commonly found in the contemporary literatures. The difference in the meaning of *Gharar* is generally thought to be due to the difference in the jurisprudence point of views. The current practice is that there is no standard in defining the terms. Hence, this study introduces steps in defining terminology namely; dictionary definition, Arabic linguistic definition and jurisprudence definition. However, the philosophy of risk as stated in the Holy Quran and Hadith differs from the concept of risk in conventional finance. The finding reveals that risk in Islamic banking refers to a wider interpretation covering the concepts *gharar*. *mysir, mukhatarah, al ghunm bil ghurm* and *al kharajbil daman* than the element of uncertainty as in the conventional finance.

Keyword: *Gharar, Mukhatarah, Mysir, al ghunm bil ghurm and al kharaj bil daman.*

Introduction

Table 1.0 (a), (b) and (c) show that the finding of content analysis from *Quran*, *Hadith* and various literatures as reviewed in Chapter two show that there are fives concepts related to risks; (i) *Mukhatarah* (ii) *Gharar* (iii) *Mysir* (iv) *al ghunm bil ghurm* (v) *al kharaj bil daman*. Risk defined as *Mukhatarah* which in Arabic language literally means danger while some studies related to Islamic finance generally define risk as uncertainty. This uncertainty refers to *Gharar*. Meanwhile, *Mukhatarah* is an essential element that makes a contract legal and binding according *Shari'ah* principle. Uncertainty in Islam is related to speculative activities like gambling or *Mysir* which is highly prohibited or *Haram* in Islam. The concept of risk is also associated with the fundamental concept of *al-ghunm bil ghurmi* where profit is only legitimate when a party engages in real economic activities or venture whereas *al Kharaj bil-al-Daman* requires that any gain should be accompanied with liability for losses in order to acquire permissible or *Halal* earning (Ibn Taymiah 728H-1328G). Fundamentally, Islamic banks seek to obtain returns with the ultimate aim to maximize the welfare of the *Ummah* based on activities that are free from *al batil* elements by taking risks which are only permissible in *Shari'ah*.

This study therefore found that risk in Islamic perspective have wider dimensions involving not only uncertainty, but *Mukhatarah*, *Gharar*, *Mysir*, *al ghunm bil ghurm* and *al kharaj bil daman*. It is to be noted that in Islamic finance transactions should be vary of risk-taking activities so that these activities at any point of time are within the ambit of *Shari'ah* principles. In conventional finance, risk is defined as uncertainty of financial losses. It is the expression of the likelihood and impact of an event with the potential to influence the achievement of an organization's objectives. This study further found that risk is considered as the reductions in firm value due to changes in the business environment. Conventionally banks seek to minimize risk and maximize return.

Past Studies on Definition of Risk in Islamic Framework

Waemustafa (2013) found that inconclusive definition of permissible *riba* and *gharar* is further creates endless debate among Islamic banking scholars, there are diverse opinions in defining the term of risk in Islamic Banking, El-Gamal (2001) attempted to propose the criterion of risk, which is permissible on the basis of economic efficiency. While, Al-Saati (2003) studies he attempted to narrow the gap in the definition of risks as uncertainty within an acceptable level. The result of the study also indicates that the prohibition of *Gharar* was to avoid possible dispute which is intolerable in Islam. The study of Islamic analogy (*Qiyas*) base on general consensus of Islamic scholar Al-Omar and Mohammad (1996) and Obadullah (2000) determine restricted risk in Islamic banking based on the excessive level of risk involve in the Islamic banking instruments. According to Al-Suwailem (2000) and Kotby (1996), the (*Gharar*) risk in Islamic banking is measured on the basis of zero-sum game with uncertain payoff. Spremann (2004) opines that the reason behind the prohibition is because of want of knowledge on the specification of goods and services entered into Islamic commercial contract. Dusuki *et al*. (2009) and Swartz (2013) describes Risk as something that beyond and within our control while *Gharar* is without our reach and control.

Definition	Author	Basis of the definitions	Consequences
Gharar is risk	Al-Dhareer (1997) Iqbal and Llewellyn (2002) Al-Darir (2004) Obaidullah (2005) Al-Suwailem (2006) Razali (2007) Hailey (2009) Yankson (2011) Hussain and Pasha (2011) Lambak (2013)	The term *Gharar* Literally means risk. *Gharar* in the language of jurist mean the outcome of something is unknown. The element of uncertainty or hazard caused by ambiguity due to lack of inflammations, risk, subjecting oneself to peril and risk	*Gharar* invalidate contract
Mukhatarah is risk	Swartz (2013) Kozarevic*et al*. (2013)	The event that can be associate with given probability. The Arabic word *Mukhatarah* mean risk	The permissible risk is the one that exist and inevitable in everyday transaction, thus not all risk that rendering contract to void.

Table 1.0 (a)
Finding on Concept of Risk from Islamic Perspective

Definition	Author	Basis of the definitions	Consequences
Gharar is Uncertainty and risk	Nabil (1986) Kamali (1999) Khan and Ahmad (2001) Al-Saati (2003) Visser (2009) Razmi and Abbaspour (2012) Al-Muharrami and Mohd*et al*. (2013) Farooq *et al*. (2012) Akanbi (2012) Visser (2012) Razali (2012) Hoque *et al*. (2013) Hardy (2013) Schmid (2013) Ajagbe and Brimah (2013)	Fraud, uncertainty and hazard, speculation, deceit, buyer and seller do not know the subject matter of sales	Prohibited as vendors inability to deliver the subject matter due to non-existence and uncertainty.
Literal meaning of *Gharar*	Hussain and Pasha (2011)	Danger, deception and illusion	
Gharar is uncertainty	Al-Dhareer (1997) Elgari (2003) Obaidullah (2005) El-Gamal (2006) Ahmad and Hasan (2007) Mounira and Anas (2008) Jensen (2008) Cizakca (2010) Alam (2011) Yankson (2011) Razali (2012) Swartz (2013) Mohammad *et al*. (2013) Al-Taani, K. (2013)	Uncertainty or event that probability assessment is not possible, Uncertainty. Doubt over the existence of the subject matter of the contract Al-Dareer (1997) in the jurisprudence term *Gharar* mean unknown, doubtful and uncertainty	Invalidate contract
Gharar is Mukhatarah	Heck (2006)	Speculation and uncertainty	Invalidate contract

Table 2.0 (b)

Finding on Concept of Risk from Islamic Perspective

Types of *Gharar*			
Definition	Author	Basis of the definitions	Consequences
Gharar yasir and *fahish*	Kamali (1999) Khan and Ahmad (2001) Ahmad (2003) Ibrahim (2011) Fisher (2013) Muhammad *et al*. (2013)	The element of *Gharar* is unavoidable especially the *Gharar yasir, excessive and minor Gharar*	*Gharar yasir* is permissible whilst *Gharar fahish* is restricted that invalidate contract, the excessive *Gharar* rending contract to void.
Prohibited *Gharar*	Iqbal and Llewellyn (2002) Elgari (2003) Al-Saati (2003)	Excessive/ gross uncertainty or speculation, deceit, *khatar* or risk, only	Invalidate the contract.

	Al-Darir (2004) Range (2004) Hasan and Lewis (2007) Lee and Ullah (2007) Chapra (2008) Dusuki and Abzaid (2008) Ali (2008) El-Khatib and Patel (2009) Ibrahim (2011) Sole and Jobst (2012) Ansari and Farooq (2012) Åström (2012)	those that affect the validity of contract is considered as excessive *Gharar*. Al-Suwailem (2006) The prohibition of *Gharar* is due to its predominantly zero sum game which resemblance to *maisir* or gambling	

Table 1.0 (c)
Types of *Gharar*

The review of literature found that definition of *Gharar* could be classified into three categories (i) Dictionary Definition (ii) Arabic Linguistic Definition (iii) Jurisprudence Definition, The dictionary definition of *Gharar* ()الغرر mean risk, hazard, danger, jeopardy, peril, deception and fraud whereas *Mukhatarah* ([1])مخاطرة means probability of losses in investment or undertaking risk, however the Arabic linguistic definition of ([2])الغرر*Gharar* mean Risk whilst Jurisprudence definition of *Gharar* mean uncertainty, unknown outcome, probability of more than one outcome. The study also found that the term *Gharar* is commonly defined as risk and uncertainty by numbers of scholars; however few scholars who actually classified the definition of *Gharar* according to dictionary term subsequently define *Gharar* according to jurisprudence definition due to the fact that *Gharar* literally mean risk according to dictionary definition and Arabic linguistic definition. However, the table 1.0 shows that jurisprudence define *Gharar* differently as it is defined as uncertainty which is divided into two categories excessive and minor *Gharar* the later is permissible as argued by many scholars based on its nature that exist in all contract whereas the excessive *Gharar* is restricted based on numbers of reasons such as resembling to gambling, uncertainty in the characteristics of goods, time of delivery and quantity which rendering the contract unenforceable under Islamic law. *Mukhatarah* is defined as risk by scholars which is considered as the risk which exist in the minor uncertainty or *Gharar yasir*, hence the *Mukhatarah* is considered as part of the contract that cannot be eliminated completely which can also be considered as calculated risk unlike gambling which is mainly zero sum game. Therefore, the study also provide an important finding about the future use of *Gharar* where it should be in precautionary manner as confusion might arises when using the term *Gharar* and uncertainty interchangeably as the meaning of *Gharar* changes considering the context that the words is used.

Methodology

The content analysis is attempted to review available literature in defining risk according to Islamic perspective. The extensive review of literature were carried out

[1] *Mu'jam al-lughah al-'Arabīyah al-mu'āṣirah*

[2] *Al Misbah al Munir fi Ghorib al Syarah al Kabir*, 6/496.

in the area of Risk in Islamic philosophy from published work of pioneers and contemporary scholars in Islamic economics to gain an insight into the sources of how Islamic scholars interpret the definition of risk. In this study extensive library search for the printed material related to risk in relation to Islamic economic activities or *Muamalat* in particular the word *Gharar* was carried out. This is to highlight the differences in the meaning and interpretation of "*Gharar*" and other terms, which are commonly referred as risk.

According to Elo and Kyngas (2008) there is no specific rules in analyzing qualitative data in the content analysis, however the process of analysis data can be categories into three phases: preparation, organizing and reporting. Similarly, this study adopts the process of content analysis by Elo and Kyngas (2008).

Discussions

The bank faced financial risk in using deposits. However, sharing the return with saving/investment depositors mitigates the financial risk of Islamic banks. Hence, the bank is further exposed to other risks that includes fiduciary risks as a result of mismanagement of fund by banks, whereas displace commercial risk which is the transfer of the risk associated with deposit to equity holders. This arises when under commercial pressure the bank to forgo part of profit to retain depositors from withdrawal due to lower return compare to benchmark rate.

قول النبى لايغلق الرهن من صاحبه الذي رهنه،له غنمه وعليه غرمه[3]

The *Hadith* of prophet Muhammad (PBUH) is applied in the Islamic banking operation whereby potential buyers' temporary possession of sale object must ensure that the objects conformity to the specification. Any usufruct of commodity at that particular period of time, thus the potential loss or damage cause by the buyer on the sale of object should be also liable to compensate or share the risk of loss of the seller. Take the scenario of *Mudarabah* financing where by both party share certain amount of risk from any Islamic permissible business venture, the party that invest capital in the form of money is exposed to the risk of loss of his capital invested, in which applied the same to the party that invest his labor and effort to accomplished the ventured business.

الغنم لغة: هو الفوز بالشيء والربح والفضل، ولا يخرج المعنى الاصطلاحي عن المعنى اللغوي، والغرم: الدين
؛ وأداء شيء لازم. ومن القواعد الفقهية (الغنم بالغرم) ومعناها: أنَّ من ينال نفع شيء يتحمَّل ضرره،[4]

Literally *Al-Ghunm* means to profit or benefit from something, the word *Al-Ghurm* in another word means to liability for losses, thus the word *Al-Ghunm bil-Ghurm* according to Islamic jurisprudence refer to permissible profit only bear with liability for losses. The depositors or investors should share liability in order to profit. Eliminate the element of *Al-Ghurm* and to shared *Al-Ghunm* or profit alone is strictly prohibited in Islam. It is not permissible to guarantee profit and avoid liability for losses.

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[3] *Sunan Ibn Majah al-ahkam* (No. 2441)

[4] *Mosooa Fiqhiyyah,Wazarat Awqaf Islami Amoor Kuwait* Vol. 31 pp. 301

فقال عليه السلام: «الخراج بالضمان». قال أبو عبيد: الخراج في هذا الحديث غلَّة العبد يشتريه الرجل فيستغلَّه زمانا، ثم يعثر منه على عيب دلَّسه البائع، فيردُّه ويأخذ جميع الثمن، ويفوز بغلَّته كلِّها؛ لأنهَّ كان في ضمانه، ولو هلك هلك من ماله [5]

According to *Hadith* above, the sold slave was found to be not conforming to the specification that result of intentional concealment of defect in sale object by the seller. The object of sale was then returned and reclaimed the full amount paid. Nevertheless, the buyer is also liable to compensate for any losses in the sale object during his possession. This is the basis of where information asymmetry arises. Like conventional banks, asymmetric information also exists in Islamic banks. This is one of the main challenges for Islamic banks to prevent the parties from concealing information since withholding information is prohibited or *Haram* in Islam.

Free from *Al-Batil* (ألباطل) Elements

According to Buang (2000), literally the word *BATIL* means wastefulness which is without any material benefit result of no legal effect on it. The ultimate objective of Islam as religion is to ease mankind to live together in harmony, especially when acquiring wealth among mankind should be through just trades and transactions, and encourage to eliminating fraud and deception that would lead to potential dispute. The wealth acquired through deception is strictly condemned and serious punishment is awaiting in thereafter life; the acquired wealth was resemblance of eating and swallowing fire in hell. Thus, Islamic wealth acquisition must be on the basis of tangible transaction that is based on fair trade that both parties equally share profit and loss that generate from business venture. Allah (SWT) has stated in *Surah Al-Nisa*.

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا تَأۡكُلُوٓاْ أَمۡوَٰلَكُم بَيۡنَكُم
بِٱلۡبَٰطِلِ إِلَّآ أَن تَكُونَ تِجَٰرَةً عَن تَرَاضٖ مِّنكُمۡۚ وَلَا تَقۡتُلُوٓاْ
أَنفُسَكُمۡۚ إِنَّ ٱللَّهَ كَانَ بِكُمۡ رَحِيمٗا ٢٩

{4:29-30}

"O, ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual good-will: Nor kill (or destroy) yourselves: for verily God hath been to you Most Merciful"

From this verses revealed that Islamic required all process of wealth acquisition in Islam should be based on mutual consent and free from any coercion among each other to prevent possible dispute, enmity and hatred. Thus, any contract that involved the *Al-Batil* is void and must be avoided by Muslim as instructed in the *Holy Quran*. These verses clarify that any faithful Muslim must free himself from acquiring wealth through unlawful means. Therefore, all transaction in Islamic banking should be free from *Al-Batil* element that result the contract to be void and unenforceable.

[5] *As-Suyuti,Al-Ashbah wal Nadha'ir* pp. 136

The *Shari'ah* principle has limited the validity of the contract that contains some of the following elements; *Riba* (Interest), *Maysir* (Gambling), *Ghabn* (Fraud and deception), *Ikrah* (Coercion), *Bay al-mudtarr* (Exploitation of the needy), *Ihtikar* (Hoarding), *Najsh* (Raising prices by manipulating false bids), *Gharar* (Hazard or uncertainty) and *Jahl mufdi ila al-niza* (Lack of Information of a commodity).

The ultimate objective of *Shari'ah* is to seek for *Allah* mercy at the same time promoting peace and harmony between human being when dealing with wealth acquisition process, the prohibition of the above mainly to avoid any potential dispute that may arises as a result of unjust trade. The real economic activities are praised whilst any earning through non-economic venture is highly condemned. Hence, to continuously uphold to *Shari'ah* principle while doing banking activities pose a challenge to Islamic banks. However, daunting it is, staying true to Islamic principles that set Islamic banking aparts from conventional banks.

Limits of Freedom in Validating Contract in Islam Philosophy

Having put production and exchange of wealth on a firm basis, Islam proceeds to define a framework within which these activities should take place so that justice and fairness is ensured for all parties concerned. This comprises the do as well as do-not; the focused is more on the prohibition and the following are prohibited:

1. *Riba* - Interest on loans and exchange of unequal quantities of similar fungibles. Gold or silver or a particular paper currency must be exchanged in equal quantities. When gold or silver or different paper currencies are exchanged with one another, the quantities can be unequal but the exchange must be simultaneous.

Prohibition of interest on loans is clearly implied by the text of the *Quran*: *Surah Al-Baqarah Chapter 2 Verses 278-280)*

يَا أَيُّهَا الَّذِينَ آمَنُواْ اتَّقُواْ اللّهَ وَذَرُواْ مَا بَقِيَ مِنَ الرِّبَا إِن كُنتُم مُّؤْمِنِينَ {2:278}

Oh you who believe! Fear Allah, and give up what remains of your demand for usury, if you are indeed believers. If you do it not, take notice of war from Allah and His Messenger:

فَإِن لَّمْ تَفْعَلُواْ فَأْذَنُواْ بِحَرْبٍ مِّنَ اللّهِ وَرَسُولِهِ وَإِن تُبْتُمْ فَلَكُمْ رُؤُوسُ أَمْوَالِكُمْ لاَ تَظْلِمُونَ وَلاَ تُظْلَمُونَ
{2:792}

But if you turn back, you shall have your capital sums; Deal not unjustly, and you shall not be dealt with unjustly.

وَإِن كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ وَأَن تَصَدَّقُواْ خَيْرٌ لَّكُمْ إِن كُنتُمْ تَعْلَمُونَ
{2:280}

If the debtor is in a difficulty, grant him time till it is easy for him to repay. But if your remit it by way of charity, that is best for you if you only knew.

As we shall note later on, this and the prohibition of gambling are focused on justice in distribution. Islamic law does not distinguish between high rates of interest characterized as usury and lower rates characterized as interest.

Any excess over and above the sum lent is disallowed. There have been some modern scholars who have taken a different view but classical jurists as well as overwhelming majority of modern scholars take the stand reported above. It is this view that is reflected in significantly to Islamic banking and finance progress.

2. *Maysir*-Gambling, bet and wager.

The essence of gambling is taking an unnecessary risk deliberately created or invited for possible gains, but not necessarily in any economic activity. Unlike the risks that are taken by other economic agents, entrepreneurs, investors, insurers, which it has a sound economic basis and contributes to growth and prosperity of society.

3. *Ghabn*- Fraud and deception.
4. *Ikrah*-Coercion, for example, imposing a contract, or a condition therein, on an unwilling party.
5. *Bay al-mudtarr*-Exploitation of the needy, for example, by charging an exorbitantly high price.

6. *Ihtikar*-Withholding supplies of essential goods and services with a view to raising prices.

7. *Najsh* -Raising prices by manipulating false bids.

8. *Gharar* - Hazard or uncertainty surrounding a commodity, its price, time of payment, time of delivery, quantity, etc. makes the deal invalid. But some little *Gharar* can be ignored as it may be humanly impossible to eliminate it.

9. *Jahl mufdi ila al-niza* - Lack of information about a commodity, its quantity, price, etc. as may lead to dispute.

This list is by no means all inclusive, rather it serves the purpose of highlighting what the *Shari'ah* (Islamic Law) cares about in order to guide men and women towards an efficient and just economy as well as preventing oneself from succumbing to risk and the eventuate losses.

Islamic Philosophy of Risk

Islamic risk management is dated back since prophet Yusuf era whereby some verses in the Holy *Quran* actually instructed Muslim to manage risk by avoiding them, and some of verses was asked to diversifies them, whilst there are verses in the Holy *Quran* that suggested diversification portfolio to manage risk; precautionary measure was also suggest in the Holy *Quran* to be taken proactive steps to eliminate risk. Though some scholars in Islamic banking usually define risk as "*Gharar*" that does cover only part of the meaning. The available literature defined risk is limited only to the perspective of "*Gharar*", though risk in Islamic contract is much wider than just concept of "*Gharar*". This narrow scope results in some ambiguities and inconsistencies in interpreting the definition of risk.

Literal Meaning or "*Lughah*" of Risk or "*Mukhatarah*" in Islam

According to Qal'aji (1985), the literal meaning (*Lughah*) of risk as defined by the Islamic principle (*fiqh*) is that risk is any action that leads to damages, the risk here are classified into two categories, firstly any actions that involved bet or wager in which the consequences entirely depend on luck that is uncontrollable by human. Secondly, the actions that involved element of uncertainty that led to damages. The risk however further defined according to Al-Zuhayly (1989) risk is defined as venture into hazardous. Islamic principle defines risk stressing on the process and outcome of risk in order to determine the acceptable level of risk as presented in a nature of business, which is unavoidable. Hence, excessive risk taking without adequate assessment or calculation is highly restricted such as uncertainty *Gharar*, gambling *Maisir* and usury *Riba*. Thus, defining risk should be based on ethical and moral ground considering the welfare of humanity in order to ensure the permissibility as stated in the holy *Al-Quran*, *Hadith*, scholarly consensus *Ijmaa* and analogical reasoning *Qiyas*. Moreover, the ultimate objective of Islamic law *Maqasid Al-Syari'ah* which serves as foundation to determine the permissibility of any innovation that was not taken place during the prophet Muhammad's life time (PBUH).

General Concept of Risk in Islam

Wealth acquisition in Islam is permissible only if involved with economic venture that contain the element of risk *Al Ghunm bil Ghurm* (الغنم بالغرم) Earning Profit is legitimate only by engaging in economic venture, from the above concept in Islam restricted Muslim to gain profit without engaging in productive economic activity, *Kharaj bi-al-Daman* (الخراج بالضمان) also means that any gain should accompanies liability for loss in order to acquire *Halal* earning. According to (Ibn Taymiah 728H-1328G) Risk falls into two categories: Commercial risk, where one would buy a commodity in order to sell it for profit, and rely on ALLAH for that. This risk is necessary for merchants, and although one might occasionally lose, but this is the nature of commerce. The other type of risk is that of gambling, which refer eating wealth for nothing (اكل المال بالباطل). This is what ALLAH and his Messenger (Peace be upon him) have prohibited.

Specific Rule of Risk in Islamic Perspectives

Islam prohibited Muslim to involve in speculations that lead to excessive uncertainty *Gharar* in business relation *Muamalat*. The reason of prohibition is to avoid hatred, exploitation and disturb harmony in the society. Also, Game of chances or *Mysir* on other hand is restricted in Islam because literally means earning profit without working for it. Gambling or *Qimar* in Islam is highly prohibited because no productive activity generate from gambling, whereby profit gain is at the expenses of other party.

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِن نَّفْعِهِمَا وَيَسْأَلُونَكَ مَاذَا يُنفِقُونَ قُلِ
الْعَفْوَ كَذَلِكَ يُبيِّنُ اللهُ لَكُمُ الآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ
{2:219}

[Yusuf Ali 2:219] They ask thee concerning wine and gambling. Say: "In them is great sin, and some profit, for men; but the sin is greater than the profit." They ask thee how much they are to spend; Say: "What is beyond your needs." Thus doth Allah Make clear to you His Signs: In order that ye may consider.

يَا أَيُّهَا الَّذِينَ آمَنُواْ إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالأَنصَابُ وَالأَزْلاَمُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ
{5:90}

[Pickthal 5:90] O ye who believe! Strong drink and games of chance and idols and divining arrows are only an infamy of Satan's handiwork. Leave it aside in order that ye may succeed.

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَن يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاء فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَن ذِكْرِ اللّهِ وَعَنِ الصَّلاَةِ فَهَلْ أَنتُم مُّنتَهُونَ
{5:91}

[Yusuf Ali 5:91] Satan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from the remembrance of Allah, and from prayer: will ye not then abstain?

3.4.4 **Authentic *Hadith* and Justification on Prohibition of *Gharar***

أَنَّ أَبَا سَعِيدٍ، الْخُدْرِيَّ قَالَ نَهَانَا رَسُولُ اللَّهِ صلى الله عليه وسلم عَنْ بَيْعَتَيْنِ وَلِبْسَتَيْنِ نَهَى عَنِ الْمُلاَمَسَةِ وَالْمُنَابَذَةِ فِي الْبَيْعِ . وَالْمُلاَمَسَةُ لَمْسُ الرَّجُلِ ثَوْبَ الآخَرِ بِيَدِهِ بِاللَّيْلِ أَوْ بِالنَّهَارِ وَلاَ يَقْلِبُهُ إِلاَّ بِذَلِكَ وَالْمُنَابَذَةُ أَنْ يَنْبِذَ الرَّجُلُ إِلَى الرَّجُلِ بِثَوْبِهِ وَيَنْبِذَ الآخَرُ إِلَيْهِ ثَوْبَهُ وَيَكُونُ ذَلِكَ بَيْعَهُمَا مِنْ غَيْرِ نَظَرٍ وَلاَ تَرَاضٍ .

Sahih Muslim, Book 10, Number 3613:

Abu Sa'id al-Khudri (Allah be pleased with him) reported: Allah's Messenger (May peace be upon him) forbade us (from), two types of business transactions and two ways of dressing. He forbade *Mulamasa* and *Munabadha* in transactions. *Mulamasa* means the touching of another's garment with his hand, whether at night or by day, without proper inspections on object of sales. *Munabadha* means that a man throws his garment to another and the other throws his garment, and thus confirming their contract without the inspection of mutual agreement. This *Hadith* has been narrated on the authority of Ibn Shihab through the same chain of transmitters.

عَنْ أَبِي هُرَيْرَةَ، قَالَ نَهَى رَسُولُ اللَّهِ صلى الله عليه وسلم عَنْ بَيْعِ الْحَصَاةِ وَعَنْ بَيْعِ الْغَرَرِ .

Sahih Muslim, Book 10, Number 3614:

Abu Huraira (Allah be pleased with him) reported that Allah's Messenger (May peace be upon him) forbade a transaction determined by throwing stones, and the type which involves some uncertainty.

عَنِ ابْنِ عَبَّاسٍقَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
" مَنِ ابْتَاعَ طَعَامًا ، فَلا يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ "
Sahih Muslim, Book 10, Number 3640:

Ibn Abbas (Allah be pleased with them) reported Allah's Messenger (May peace be upon him) as saying: He who buys food grain should not sell it until he has taken possession of it.

جَابِرَ بْنَ عَبْدِ اللَّهِ، يَقُولُ نَهَى رَسُولُ اللَّهِ صلى الله عليه وسلم عَنْ بَيْعِ الصُّبْرَةِ مِنَ التَّمْرِ لاَ يُعْلَمُ مَكِيلَتُهَا بِالْكَيْلِ الْمُسَمَّى مِنَ التَّمْرِ .

Sahih Muslim, Book 10, Number 3654:

Jabir b. Abdullah (Allah be pleased with them) is reported to have said that Allah's Messenger (may peace be upon him) forbade the sale of a heap of dates the weight of which is unknown in accordance with the known weight of dates.

عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ، أَنَّهُ سَمِعَ ابْنَ، عُمَرَ يَقُولُ ذَكَرَ رَجُلٌ لِرَسُولِ اللَّهِ صلى الله عليه وسلم
أَنَّهُ يُخْدَعُ فِي الْبُيُوعِ فَقَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم
" مَنْ بَايَعْتَ فَقُلْ لاَ خِلاَبَةَ "
فَكَانَ إِذَا بَايَعَ يَقُولُ لاَ خِيَابَةَ.

Sahih Muslim, Book 10, Number 3663:

Abdullah b. Dinar narrated that he heard Ibn 'Umar (Allah be pleased with them) saying: A man mentioned to the Messenger of Allah (May peace be upon him) that he was deceived in a business transaction, whereupon Allah's Messenger (May peace be upon him) said: When you enter into a transaction, say: There should be no attempt to deceive.

.عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم نَهَى عَنْ بَيْعِ الثَّمَرِ حَتَّى يَبْدُوَ صَلاَحُهَا نَهَى الْبَائِعَ وَالْمُبْتَاعَ

Sahih Muslim, Book 10, Number 3665:

Ibn 'Umar (Allah be pleased with them) reported that Allah's Messenger (May peace be upon him) forbade the sale of fruits until they were clearly in good condition, he forbade it both to the seller and to the buyer.

Theoretical Literature of Risks in Islamic Perspectives

Islam defines risks as venture into hazard. In another words bet or wager is also defined as risk that purely rely on luck without considering human ability to manage the consequences. However, risk may be defined as any actions that result to uncertainty as in Muhammad Rawwas Qal'aji, (1985) and Elgari, M. A., (2003) the word *Khatar* is refer to honor and respect, *Khatar* also means harshness and supervision over ruin; in another words its interpret as an actions that lead to wager. In modern Arabic where it is now equivalent to English word “Risk”. According to Al-Zuhayly (1989), Islamic risk referred to danger or hazard in which the situation taken places oppose to what as expected by the party contracted. According to Al-Suwailem (2006) define risk as possibility of loss, which is clearly not desirable in Islamic perspective.

According to Elgari (2006), there is a fundamental difference between the concept of risk and that of "*Gharar*". "*Gharar*" is the contractual uncertainty in exchange transactions. While a contract impeded with *"Gharar"* is void from *Shari'ah* point of view, the same cannot be said about risk. Risk is a natural thing, which exists in every situation. It cannot be avoided. While for "*Gharar*" is a special risk created by the structure of the contractual arrangement between two parties. For example, lending money to a non-credit worthy individual (or selling him on *Murabaha* basis) is risky, but it is not "*Gharar*". On the other hand, selling an object for two prices one for cash and the other from differed price leaving the matter to be decided by the buyer after sales has been effected is void because it is "*Gharar*", but it may not be very risky.

There exist many schools of thoughts on Islamic risks. Some of these thoughts are different from another due to the interpretation of risk by different *Mudzhab*.

***Gharar* (Uncertainty)**

In Islam risk or probability is referred to "*Gharar*" in Arabic language that means risk, hazard and perils; however in business term it means to undertake anything blindly without sufficient knowledge or to risk oneself in a venture not knowing exactly what will be the outcome, or to rush headlong into perils by not considering to its consequences.

Trace back to the origin of "*Gharar*" and Islamic interpretation that according to *Hadith* as was recorded in (Sahih Muslim) stated that "*Gharar*" is involved in any undertaking that may lead to negative outcome and consequences, whereby if any party attempt to deceive another party through injustice and cause any doubt during negotiation of contract, thus such undertaking contain elements of "*Gharar*" or uncertainty that rendering the contract to void.

According to Ahmad (2000) "*Gharar*" signifying to reveal oneself and one's property to destruction without being aware of it, furthermore "*Gharar*" in Arabic language cover varieties of negative elements such as deceit, cheating, danger, perils and risk that might lead to destruction or loss. Kamali, (1998:1999) "*Gharar*" in transactions has often been used in the sense of risk, uncertainty and hazard which include both unknowingly regarding to subject matter and uncertain in term of its availability and existence.

According to Imam Ibn Tamiyah "*Gharar*" is involved in the business that one's deals with unknown about its existence, whereby Rahman (1979) "*Gharar*" may be divided into two groups, the first group referred to risk that involved uncertainty and probability is dominant, whereby the second group referred to the element of doubt due to deceit or fraud. According to Nabil (1992) the "*Gharar*" that is disallowed when involving with unclear identification of subject matter, possession and price, the risk that is forbidden and panelized in Islamic principles are any elements that occurred from within between parties involved while carrying out the transaction. Whereby, business risk is approved provided that there is sufficient knowledge of the subject matter before entering into a venture. In order to avoid unlawful risk is to presence the subject matter at the time of negotiation to avert any dispute that may arise at the end of the agreement. Nevertheless, in practical world, the situation may be different which often happen at the time of making contract the subject matter may not be available or undetermined in its quantity. Moreover, the price of goods may not be paid at the time of closed deal.

However according to Obaidullah (2002) Islam strictly forbidden all form of transactions that involved "*Gharar*" or excessive uncertainty that lead the contract to void. In various narration of the *Hadith* has forbid any transaction that involved an excessive uncertainty.

According to Al-Dhareer (1997) definition of "*Gharar"* literally means risk or hazard "*Taghreer*" being the verbal noun of "*Gharar"* is to unknowingly expose oneself or one property to jeopardy. The following remarks are noteworthy. Vogel and Hayes (1998) the *Sunnah* speaks about not only gambling but risk or "*Gharar*" that refer to a number of transaction characterized by risk or uncertainty at their inception.

Most of "*Gharar*" prohibition was on the ground that Prophet (PBUH) rejected "The sale of Gharar", the main Islamic injunction of prohibition is command in the Holy *Quran* that all sale is unlawful if both party does not achieved mutual consent (*Taradin*) in the sale transaction, whereby any element of deception or fraud (*Al-Batil*) in the object of sale may lead to potential dispute, hatred and enmity.

According to Al-Saati (2003) the acceptable *"Gharar"* occurred when the uncertainties are endogenous or exogenous that can be acceptable degree of "*Gharar*", which is based on Islamic legal maxim "Damage and benefit go together" As in the saying of Prophet (PBUH) "Revenue goes with liability".
From the review of literature on *Gharar*, the reasons of prohibition can be categories into four categories (i) pure speculation (ii) uncertain in the outcome (iii) unknown in term of future benefit (iv) ambiguous. Hence any of the above elements prevail during the contract of *Muamalat* would render the contract to void and unenforceable according to *Shari'ah* principle.

Conclusions
Risk is accepted in both conventional and Islamic banking operations. However, the philosophy of risk as stated in the Holy *Quran* and *Hadith* differs from the concept of risk in conventional finance.

The content analysis from *Quran*, *Hadith* and various literatures prescribes fives concepts of risks; (i) *Mukhatarah* (ii) *Gharar* (iii) *Mysir* (iv) *al ghunm bil ghurm* (v) *al kharaj bil daman*. Risk is defined as *Mukhatarah*, which literally means danger, while some studies related to Islamic finance generally define risk as uncertainty. This uncertainty refers to *Gharar*. Meanwhile, *Mukhatarah* is an essential element that makes a contract legal and binding according *Shari'ah* principle. Uncertainty in Islam is related to speculative activities like gambling or *Mysir*, which is highly prohibited, or *Haram* in Islam. The concept of risk is also associated with the fundamental concept of *al-gunm bil ghurmi,* where profit is only legitimate when a party engages in real economic activities or venture. Whereas *al Kharaj bil-al-Daman* requires that any gain should be accompanied with liability for losses in order to acquire permissible or *Halal* earning. Fundamentally, Islamic banks seek to obtain returns with the ultimate aim to maximize the welfare of the *Ummah* based on activities that are free from *al batil* elements by taking risks, which are only permissible in *shari'ah*.

The first objective of the study is successfully achieved by establishing the significant differences of risks between the Islamic perspective and conventional practices. This study deduces that the Islamic perspective provides a broader spectrum of risk association, i.e. *Mukhatarah*, *Gharar*, *Mysir*, *al ghunm bil ghurm* and *al kharaj bil daman*, and not limited to uncertainty only. This study further found that the definitions of risk according to Islamic perspectives are tailored to the financial transactions that are confined within the *Shari'ah* principles. Interestingly, this study found that the definitions of risk based on Islamic principles are based on the dictionary definitions, Arabic linguistic definitions and Jurisprudence definitions of *gharar* that are subjected to arguments, debates and compliances.

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