


**E-COMMERCE VIA MOBILE BANKING: CONTEMPORARY SHARIAH ISSUES AND  
WAYS TO ADDRESS THEM**

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ARTICLE INFO	ABSTRACT
<p><b>Article history:</b></p> <p><b>Received</b> 14 November 2022</p> <p><b>Accepted</b> 16 January 2023</p>	<p><b>Purpose:</b> This study aims to address some of the contemporary issues and challenges concerning mobile banking via Islamic banks, specifically in e-commerce and m-commerce.</p> <p><b>Theoretical Framework:</b> Mobile banking has made it possible for consumers to buy things online right from their pockets. With the availability of this sophisticated technology, online retailers have been swift in exploiting mobile banking for m-commerce to entice consumers into buying their products without serious considerations of ethical and halal aspects. Addressing these issues is important to address Muslim consumers' reluctance to fully utilise the functions of mobile banking.</p> <p><b>Methodology:</b> This study utilises a qualitative research method using virtual library and internet research. The information retrieved mainly came from academic journals, books, reports, magazines, newspapers, and websites.</p> <p><b>Findings:</b> This study finds that most of the transactions in e-commerce are permissible in Islamic commercial law.</p> <p><b>Research Implications:</b> This paper outlines issues such as gharar (uncertainty) and deception in e-commerce transactions and ways to address them. Among the ways to address these issues are content moderation, whether by a third party body or consumers themselves, and artificial intelligence. Another way is by applying the principle of khiyar in terms of khiyar al aib (option of defect) and khiyar al ru'yah (option of inspection).</p> <p><b>Originality/Value:</b> By addressing these issues, it is believed that consumers will be more aware of their rights in the eyes of Islamic law, which some argue accords more justice to consumers.</p>
<p><b>Keywords:</b></p> <p>Mobile Banking; Mobile Commerce; Islamic Banking; Gharar; Fraud.</p> <div data-bbox="172 954 480 1200" style="text-align: center;">  </div>	<p>Doi: <a href="https://doi.org/10.26668/businessreview/2023.v8i1.1258">https://doi.org/10.26668/businessreview/2023.v8i1.1258</a></p>

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## COMÉRCIO ELETRÔNICO VIA MOBILE BANKING: QUESTÕES SHARIAH CONTEMPORÂNEAS E FORMAS DE ENFRENTÁ-LAS

### RESUMO

**Objetivo:** Este estudo visa abordar algumas das questões e desafios contemporâneos relativos à banca móvel via bancos islâmicos, especificamente no comércio eletrônico e no m-commerce.

**Estrutura teórica:** Os serviços bancários móveis tornaram possível aos consumidores comprar coisas on-line diretamente de seus bolsos. Com a disponibilidade desta sofisticada tecnologia, os varejistas on-line têm sido rápidos na exploração do mobile banking para m-commerce para atrair os consumidores a comprar seus produtos sem considerações sérias de aspectos éticos e halal. Abordar estas questões é importante para enfrentar a relutância dos consumidores muçulmanos em utilizar plenamente as funções dos serviços bancários móveis.

**Metodologia:** Este estudo utiliza um método de pesquisa qualitativa utilizando biblioteca virtual e pesquisa na Internet. As informações obtidas vieram principalmente de periódicos acadêmicos, livros, relatórios, revistas, jornais e websites.

**Descobertas:** Este estudo conclui que a maioria das transações no comércio eletrônico são permitidas no direito comercial islâmico.

**Implicações da pesquisa:** Este documento descreve questões como gharar (incerteza) e engano nas transações de comércio eletrônico e formas de enfrentá-las. Entre as formas de abordar estas questões estão a moderação de conteúdo, seja por um organismo terceiro ou pelos próprios consumidores, e a inteligência artificial. Outra maneira é aplicando o princípio de khiyar em termos de khiyar al aib (opção de defeito) e khiyar al ru'yah (opção de inspeção).

**Originalidade/Valor:** Ao abordar estas questões, acredita-se que os consumidores estarão mais conscientes de seus direitos aos olhos da lei islâmica, que alguns argumentam que faz mais justiça aos consumidores.

**Palavras-chave:** Mobile Banking, Mobile Commerce, Banco Islâmico, Gharar, Fraude.

## COMERCIO ELECTRÓNICO A TRAVÉS DE LA BANCA MÓVIL: CUESTIONES CONTEMPORÁNEAS DE LA SHARIA Y FORMAS DE ABORDARLAS

### RESUMEN

**Propósito:** Este estudio pretende abordar algunas de las cuestiones y retos contemporáneos relativos a la banca móvil a través de bancos islámicos, concretamente en el comercio electrónico y el comercio móvil.

**Marco teórico:** La banca móvil ha hecho posible que los consumidores compren cosas en línea directamente desde sus bolsillos. Con la disponibilidad de esta sofisticada tecnología, los minoristas en línea se han apresurado a explotar la banca móvil para el comercio móvil con el fin de atraer a los consumidores para que compren sus productos sin tener muy en cuenta los aspectos éticos y halal. Abordar estas cuestiones es importante para hacer frente a la reticencia de los consumidores musulmanes a utilizar plenamente las funciones de la banca móvil.

**Metodología:** Este estudio utiliza un método de investigación cualitativo que recurre a la biblioteca virtual y a la búsqueda en Internet. La información recuperada procede principalmente de revistas académicas, libros, informes, revistas, periódicos y sitios web.

**Resultados:** Este estudio concluye que la mayoría de las transacciones del comercio electrónico están permitidas por la ley comercial islámica.

**Implicaciones de la investigación:** En este trabajo se esbozan cuestiones como el gharar (incertidumbre) y el engaño en las transacciones de comercio electrónico y las formas de abordarlas. Entre las formas de abordar estas cuestiones se encuentran la moderación de contenidos, ya sea por parte de un organismo tercero o de los propios consumidores, y la inteligencia artificial. Otra forma es aplicar el principio de khiyar en términos de khiyar al aib (opción de defecto) y khiyar al ru'yah (opción de inspección).

**Originalidad/valor:** Al abordar estas cuestiones, se cree que los consumidores serán más conscientes de sus derechos a los ojos de la ley islámica, lo que, según algunos, otorga más justicia a los consumidores.

**Palabras clave:** Banca Móvil, Comercio Móvil, Banca Islámica, Gharar, Fraude.

## INTRODUCTION

Malaysia is one of the leading countries in offering and promoting Islamic banking. Currently, Malaysia leads the Global Islamic Economy Indicator out of 81 countries worldwide

and scores 389.0 for Islamic banking, surpassing other major Islamic countries such as Saudi Arabia (234.2) and Indonesia (111.6) (Dinar Standard, 2020). However, when it comes to mobile banking, the adoption rate is still relatively low compared to Malaysia's nearest neighbours such as Indonesia and Thailand. The Movement Control Order (MCO) imposed by the Malaysian Government effective from 18 March 2020 to curb the spread of the Covid-19 pandemic had left people with no choice but to opt for e-commerce (Bhatti et al., 2020). Nonetheless, once some of the restrictions are lifted, people might go back to the brick-and-mortar business mode. Based on a survey conducted on internet users aged 16–64, 64% of Malaysians informed that they have bought something using their smartphones (Global Web Index, 2020). Although the figure is above the global average of 52%, it is still lower than those recorded by Thailand and Indonesia with 69% and 80%, respectively. Mobile banking is defined as a service or a product offered by a bank to consumers to conduct financial or non-financial transactions (Shaikh & Karjaluto, 2014). The services or products include checking account details and account statements as well as making bill payments, account transfers, credit card payments, instalment payments, and transacting in e-commerce (Shaikh & Karjaluto, 2014; Baabdullah et al., 2019).

Based on the demonstrated in the paragraph above, it is clear that Malaysia's position in terms of e-commerce transactions is still relatively low as compared to neighbouring nations. The present research seeks to answer the question via literature research on “what are the contemporary issues on of e-commerce via mobile banking?” and “what are the ways to address the issues pertaining e-commerce via mobile banking.

This paper is divided into several parts. Part one is the introduction. Part two is the literature review, which include the basics of Islamic law regarding financial transactions and contracts, the issues pertaining to e-commerce, its relation to Shariah commercial law, and how it affects consumer rights and some of the steps to overcome the issues in order to protect consumer rights. The third part is the material and methodology section. Part four is the result gathered and discussion from the literature research while the last part is the conclusion.

## LITERATURE REVIEW

The explanation of Islamic Shariah law in this paper is specific to its application in the banking sector and e-commerce in secular Malaysia<sup>D</sup>. Therefore, for the context of this study, this paper does not provide an in-depth explanation for all aspects of Shariah. Instead, this paper

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<sup>D</sup> Nevertheless, Islam in the religion of the Federation of Malaysia.

focuses on the relevant Shariah issues on e-commerce via mobile banking that is offered by Islamic banking institutions and some of the ways to address these issues.

In a broad sense, Shariah signifies all the writings by Muslim scholars throughout centuries pertaining to contemporary and anticipated issues (Yamani, 1979). According to Yamani (1979), these writings are based primarily on the principles derived from the Quran and Sunnah. Muslims believe that the Quran is the word of God and the Sunnah consists of the acts and statements made by Prophet Muhammad PBUH (Amir, Saeed, & Kang, 2020). For matters beyond the Quran and Sunnah, Muslim scholars refer to secondary sources such as *ijma*, *qiyas*, *istislah*, *istihsan*, *fatwa*, and *urf* (Firdaus, Juneidi, Astari, & Mustikasari, 2020). While *ijma* is a consensus among Muslim scholars, *qiyas* refers to the process of deductive analogy. Meanwhile, *istislah* is essentially a consideration beyond the Quran, Sunnah, and *ijma* for the benefit of the community as a whole, a smaller local community, or an individual as long as it does not contradict the primary sources of reference in Islam. *Istihsan* is similar to *istislah* but more specific, as it is based on a specific context as long as it does not contradict the primary sources. *Fatwa* is a non-binding legal opinion on a *Shariah* law given by a *mufti*, and finally, *urf* is the tradition and customs of a given society (Tyan & Walsh, 2012).

Islamic *Shariah* law is broad (Luth et al., 2017). *Fiqh*, which is the understanding of the *Shariah* law, has too many rulings for a person from a non-*Shariah* background to be acquainted with (Mohamad Akram et al., 2013). Therefore, scholars have synthesised the primary sources of Islamic law and integrated them with rational thinking, forming *qawaid fiqhiyyah* (Hamat & Ellias, 2010; Mohamad Akram et al., 2013). *Qawaid fiqhiyyah* encompasses comprehensive matters that apply to many particular cases and whose rulings can be understood (Hamat & Ellias, 2010; Mohamad Akram et al., 2013).

*Qawaid fiqhiyyah* consists of a number of maxims that are applied in the context of the modern world, be it in the context of the environment as elaborated by Khalid (2002) or in the context of the banking industry as expounded by Todorof (2018). These maxims are as follows:

1. The interest of the community takes precedence over the interest of the individual
2. Relieving hardship takes precedence over promoting benefit
3. A bigger loss cannot be prescribed to alleviate a smaller loss, and a bigger benefit takes precedence over a smaller one. Conversely, smaller harm can be prescribed to avoid bigger harm, and a smaller benefit can be dispensed with in preference for a bigger benefit.

Mobile banking is argued to be aligned with the interest of the community. In less developed countries, mobile banking is used to achieve financial inclusion, whereas in

developed countries, mobile banking is simply for managing money (Finextra, 2016) and convenience for e-commerce transactions because wealthy countries are already equipped with formal financial services for their citizens (Flood, West, & Wheadon, 2013).

The financial inclusion benefit of mobile banking coincides with the notion of “relieving hardship” in the Islamic legal maxim of “relieving hardship takes precedence over promoting benefit”. Indeed, poorer countries in Africa have benefitted significantly from mobile banking (Rouse & Verhoef, 2017).

Although e-commerce involving mobile banking is a relatively modern invention, the laws of *Shariah* that govern it accords it with similar inference as to the traditional way of commerce (Ribadu & Rahman, 2017). Among the essential *Shariah* principles for a business contract are 1) offer and acceptance; 2) contracting parties, involving a buyer and a seller; and 3) the subject matter, consisting of an object and its price (Muhammad et al., 2019). Various types of Islamic contracts are facilitated by mobile banking, ranging from Qard, which is a savings account, to repayments based on Murabaha, Musyarakah, and Ijarah. Specifically for m-commerce, several contracts are involved, with the main ones being Bai’ Salam, Wakalah, Bai’ Istisna, and Bai’ Muajjal.

Bai’ Salam or ordered sale is a sale contract where a product is fully paid in advance but its delivery will be in the future (Zainul, Osman, & Mazlan, 2004). Zainul et al. (2004) have also outlined several conditions for the subject matter of a Bai’ Salam contract, mainly 1) the product that is being offered for sale must be specified, 2) the product delivery must be in a delayed manner, which is after full payment has been made, and 3) the product must be available in the market. These conditions are fulfilled in a typical e-commerce transaction that can be executed using a laptop or a mobile phone through Malaysian e-commerce websites such as Lazada and Shopee, where most of the sale transactions are similar to the Bai’ Salam contract.

Bai’ Istisna is a manufacturing sale contract where a buyer places an order with a seller, and the seller is to make or manufacture a product with an agreement to pay as the product is made (Zainul et al., 2004). The conditions for this transaction are slightly different from those of Bai’ Salam. In Bai’ Istisna, the price need not be paid in advance, there is no specification on delivery, and the product is not available in the market. This transaction is relevant for the context of a consumer buying from an online seller via social media, i.e. Facebook or Instagram. For example, cakes and pastries can be designed and custom made according to what a buyer wants.

Bai' Muajjal or deferred sale is a contract where the payment for the product shall be deferred (Zainul et al., 2004). Zainul et al. (2004) outlined several conditions for this type of contract, namely 1) the product must exist; 2) the seller must be in possession of the product; 3) the sale must not be pending on a future date, which means that it must be instant and absolute; 4) the price is certain; and 5) no conditions are attached. In Malaysia, Bai' Muajjal can be applied for the sale of expensive products to be paid in instalments. For the instalment repayments, Zainul et al. (2004) suggest applying the Murabaha principle, but nowadays, some Islamic credit cards also apply the principle of Ujrah.

E-commerce is one of the features of mobile banking, which is provided by Islamic banking institutions. Amin (2008) argues that although e-commerce can provide a broader market for Muslim businesses, it can also be easily manipulated by irresponsible individuals to exploit unwary Muslim consumers. According to Fazlur Rahman Faridi, a renowned Islamic scholar, one of the most common immoral practices in business nowadays is false advertising (Zainul et al., 2004), which means that a product advertisement does not reflect the real product being sold. This issue arises because consumers are not able to closely inspect the product that they intend to buy (Abdul Rahman, 2020; Fauziah & Fathimah, 2020). Furthermore, consumers only rely on product pictures posted on e-commerce or m-commerce websites, which may not have clear images if viewed via smartphones. An issue that may arise from this situation is *gharar* (uncertainty) and even deceit.

Given the advancements of social media nowadays, false advertisements can also occur through product endorsements given by influencers who are engaged by sellers to advertise their products (Al-Khalaf & Choe, 2020). Some of the influencers exaggerate the functions and effectiveness of products to gain sales (Syahputra & Yoesoef, 2020). This practice is deceptive and may also raise the issue of *gharar*.

Muslim consumers are not only concerned about product quality. They also pay attention to whether their online shopping transactions that occur through mobile banking comply with the rulings of *Shariah* and whether the products are halal (Suhaimi, Mohamed Razi, Hussin, Muhammad, & Muhammad, 2013). The search functions of major e-commerce websites such as Shopee and Lazada do not guarantee accurate search results. For instance, many East Asian products generated from “halal Taiwan”, “halal Korea”, and “halal Japan” searches do not qualify as halal products (Muhamad, Adham, Said, & Nasir, 2020). This situation is worrying, given the craze for East Asian products among Malaysian youths nowadays.

Another form of *gharar* that may surface is in the gaming function in m-commerce apps, for example, Shopee. Consumers can use this function to play games using their smartphones. These games give prizes to winners in the form of virtual coins that can be redeemed for discounts. As pointed out by Lestanti (2019), these games may involve *gharar* for several reasons. First, for consumers that use limited data packages, playing the games will cost them money to purchase extra data. Second, the sites do not specify the specific percentage of discounts for each coin. Third, the coins will expire within a specific time duration if not used, which is disadvantageous to consumers.

Some forms of promotions could also involve *gharar*, such as the “One or not” promotion by Shopee, where consumers pay RM1 to qualify for one chance of winning a prize. Even though the paid amounts will be refunded to participants who do not win the prize, such promotion is considered as *gharar* as those contributing the RM1 are not guaranteed of winning. This is because the promotion involves an element of uncertainty, which is prohibited in Islam (Uddin, 2015).

One way to avoid *gharar* is by appointing a responsible party to moderate the postings on e-commerce sites, including m-commerce sites (Kingdom Digital, 2018). Mior Ibrahim, Md Noor, and Mehad (2009) suggested that an authoritative Islamic body should be appointed to monitor the online payment transactions for online shopping. Similarly, Ribadu and Wan Ab. Rahman (2019) suggested providing third party assurance for *Shariah* compliance. An example of such bodies is the Intermediate *Shariah* Transaction Party (ISTP), which acts as an intermediary between sellers and buyers to ensure the products and transactions are *Shariah*-compliant (Amboala et al., 2015).

In addition to a third-party authority, Gregorio (2019) suggests that the decision whether a product advertisement is appropriate is to be decided by consumers themselves by flagging, which could be applied in the context of *Shariah* compliance. Gregorio (2019) argues that this action provides consumers with a form of democracy, as they themselves are able to decide whether the product advertisement is appropriate or not. Furthermore, with the advancement of artificial intelligence (AI) technology, contents of e-commerce websites can also be moderated using AI. Social media platforms such as Facebook and Instagram have been using AI to moderate inappropriate contents (Elkin-koren, 2020; Gillespie, 2020). In the context of Muslim consumers, AI can be used to moderate ambiguous items, dubious postings, and non-*Shariah*-compliant items on e-commerce websites.

Another way to protect consumer rights is to apply the principle of *khiyar*, which shares some common similarities with the conventional principle of caveat emptor (Malek, Man,

Begum, & Hoque, 2014; Abdul Rahman, 2020, Lorien, Hakim, & Hakim, 2022). *Khiyar* means “choice” or “option”, and there are many kinds of *khiyar* according to the main four madhabs of *sunnah wal jama'ah*. Among the many types of *khiyar*, the four main ones are 1) *khiyar syarat*, 2) *khiyar ru'yah*, 3) *khiyar al aaib*, and 4) *khiyar majlis* (Mohd Noor et al., 2013). However, only *khiyar aaib* and *khiyar ru'yah* are relevant to the e-commerce context.

Linguistically, *khiyar al aaib* means an option in the case of defect. It is essentially a warranty policy that gives both parties, i.e. the buyer and the seller, the right to continue or cancel their transactions in the case of a defect (Mohd Noor et al., 2013) or the product does not correspond to the agreed-upon description (Bagheri & Hassan, 2012). For instance, if a purchaser buys a television through Shopee and the television delivered has a defect, the purchaser has the right to dispute the transaction.

*Khiyar al ru'yah* refers to the “option of inspection”. Since the object matter is not present, the buyer holds the right to reject the purchase if the product that is finally delivered does not fit or satisfy the description given by the seller (Almajid, 2010; Hamat & Abd Halim, 2014). For example, in the case of a Lazada customer based in Malaysia who has bought a television, if the television the customer ordered based on the criteria described does not fulfil the criteria when delivered, the buyer will have the right to dispute the transaction.

Although the concepts of *khiyar* and *caveat emptor* share several similarities, there are underlying differences between the two. The main difference is that although *caveat emptor* allows for the inspection of a product before purchase, there is no obligation for the seller to fully disclose the product's defects (Malek et al., 2014). However, the seller must not purposely conceal the defect and must disclose the defects upon request (Billah, 1998). On the other hand, according to Malek et al. (2014), for *khiyar*, in addition to allowing the buyer to inspect the product, the seller is also obligated to disclose the defect of the product regardless whether there is a request to do so by the buyer or not, plus the warranty is implied.

## METHODOLOGY

This study utilises a qualitative research method using virtual library and internet research. The information retrieved mainly came from academic journals, books, reports, magazines, newspapers, and websites. Ribadu, Wan Ab Rahman, Abd Ghani, Kamaruddin, and Othman (2020) argue that research on this topic is important because there are very few insights into the themes of e-commerce and the Shariah law governing these themes.



## RESULTS AND DISCUSSION

The results that are expected from the proposed ways to protect consumers can be discussed in the light of *Maqasid Shariah*. In a nutshell, *Maqasid Shariah* means the purpose, objectives or the ends behind the *Shariah* rulings (Auda, 2008). From the literature review, Amin (2008) have identified a breach of the practice of advertising from *Maqasid Shariah* in a form of false advertising. Muslims nowadays are exposed to false advertising that may cause *gharar*, due to the limitations of e-commerce (Fauziah & Fathimah 2020; Abdul Rahman, 2020).

The purpose of avoidance of *gharar* as discussed in the previous section is mainly to avoid injustice and dispute for all contracting parties, which include the buyer and the seller (Bouheraoua, Mohamad, Kasri, & Abdullah, 2015). Uddin (2015) stressed that the purpose of avoidance of *gharar* is to prevent the weak from being exploited. Consumers are almost always the weaker party in e-commerce transactions and they are at the mercy of big businesses and corporations (Triasih, Heryanti, & Pujiastuti, 2020). Additionally, on a macroeconomic perspective, the avoidance of *gharar* can also minimize potential financial disasters such as the 1997 Asian financial crisis and the US subprime loan crisis (Suzuki, 2013). Scholars' in Islamic economics have a consensus that, in addition to *maysir* (gambing) and *riba* (usury), *gharar* is one of the real causes of economic turmoil (Azcaria, 2015).

Third party moderation as suggested by Mior Ibrahim et al. (2009), Ribadu and Wan Ab. Rahman (2019) as well as Amboala et al. (2015) is one of the most discussed ways to reduce the possibility of *gharar*. This concept is almost similar to the *halal*, *kosher*, vegetarian, vegan and fair trade certification in physical consumer products that has garnered trust among Muslim, Jewish, Vegetarians, Vegans and activists around the world to consume physical products. Jabatan Kemajuan Agama Islam Malaysia (JAKIM), a globally recognised Islamic body that regulates matters regarding Islam in Malaysia is a prime example of a third party certification (Tawil, Ramlee, Jaafar & Saat, 2015).

Innovation of technology can facilitate the protection of consumers from *gharar*. The flagging function as discussed by Gregorio (2019) can potentially protect consumers against advertisement that contains *gharar*, which include dubious as well as haram products. Furthermore it can also help to enhance *Shariah* compliant businesses to be more visible since non-*Shariah* compliant businesses are flagged out. This flagging mechanism have been proved effective against the spread of fake news it can also potentially work to reduce advertisements that contain *gharar* and haram products (Bakir & Mcstay, 2017).

The discussion of *Khiyar* by Lorien et al. (2022), Abdul Rahman (2020) and Malek et al. (2014) have shed some light in terms of the application of the principle in real life. Lorien et al. (2022) for example found that the guarantee policy from conventional e-commerce transactions does not breach the Islamic *Khiyar* principle. Furthermore Hanafi (2020) even argue that the concept of warranty embodies the *Khiyar* principle. However authors such as Hanafi (2020) and Lorien et al. (2022) need to emphasise the difference between *Khiyar* and the conventional warranty, that is the obligation to reveal the defects of the products.

## CONCLUSION

This paper enriches the present body of literature by providing a Malaysian perspective for the understanding of *Shariah*-related issues pertaining to e-commerce through mobile banking. In addressing the first research question, literatures have mainly identified false advertising that raised the issue of *gharar*. In addressing the subsequent research question, this research have also some of the measures to address the issue of false advertising and eventually *gharar*. Among the measures to address the issue by means of third authority enforcement, flagging, and *Khiyar*, which is argued to be able to increase certainty and restore the objectives of the *Shariah*. From an Islamic perspective, if a consumer pays RM1, there must be a certainty that the consumer will get the item described for that RM1 paid. If the item is not as described, there should be an implied warranty. Besides, if a consumer has made an effort to earn points or coins from playing games, there must be a certainty that the consumer will receive a specific percentage of discount on their purchase. Islamic law also requires transparency, whereby sellers are obligated to disclose all defects in order for the sale to be valid. Furthermore, the implied warranty accords consumers the right to rescind their purchase or exchange. All these laws that are prescribed has its purpose or *maqasid*, which is to protect the rights of contracting parties. This is to ensure establishment of justice in all aspects in e-commerce via mobile banking for the benefit of e-commerce community and the society at large. One obvious limitation is the lack of statistical analyses. For example, researchers can design psychometric instrument to measure the extent to which false advertisements and *gharar* inhibits e-commerce transactions. Furthermore researchers can also measure the extent to which third party moderator, flagging or *khiyar* can restore or gain consumer confidence towards using mobile banking in e-commerce. A reason for this limitation is that statistical analysis would require designing, validating and testing a questionnaire that will be used as research instrument as well as a survey that will consume more time and money. Nevertheless statistical analysis can be considered for future work.

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