

## The Practice of Gambling (Maisir) in Various Forms of Modern Economic Activity

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### Abstract

The word Maisir in Arabic literally means to obtain something very easily without hard work or to gain profit without working. It is anything that involves gambling, betting or risky games. Another term used in the Quran is the word 'azlam' which means the practice of gambling. Economic activity plays a vital role in creating a prosperous, just and prosperous society. Islam teaches in the economic system of its ummah, based on the values of justice that must be upheld, and become the main principle for conducting economic activities. Every economic activity must contain elements of benefit and not mistreatment of himself and others, so that economic activity can create community welfare equally. Conducting economic activities is not allowed to be done if it contains elements of gharar, maysir and usury or taking the rights of others by false means. In the Qur'an letter al-Baqarah: 219 and surat al-Ma'idah: 90 and 91, it is known that gambling is an abominable act that is forbidden by Islam. The scholars also said that gambling (maisir) is a game where the winner gets a certain amount of money or goods without reasonable effort and can make people fall into the valley of poverty because it contains three elements, namely games/competitions, there is a bet, luck. Today's modern conventional (non-sharia) businesses generally contain three elements that are prohibited in Islamic economic ideology, namely gharar, maisir and riba. This happens not separated from the reality of conventional business development trends and not widespread awareness and coverage of economic services based on Islamic economics. Bank Muamalat Indonesia (BMI) is the first purely Islamic bank in Indonesia which in principle all of its main products both in the service of Financing Strategy products (deposits funds) and financing products (financing) based on the Islamic system (profit sharing). BMI seeks to implement aspects of Islamic economic ideology that consistently avoids gharar, maisir and usury.

**Keywords** | gambling practices (maisir), activities, modern economy.

### INTRODUCTION

Humans as creatures created by Allah Swt. are social creatures, meaning that humans cannot stand alone without interacting with other people, which is then called living in society. One of the relationships of interaction between fellow human beings can be found in economic activities or muamalah (Masduha Abdurrahman, 1992). Economic activity or muamalah is an activity of property transactions carried out by humans based on general provisions in *sharia* such as the prohibition of gharar, maysir and usury (Ascarya, 2013).

Today's modern conventional (non-sharia) businesses generally contain three elements that are prohibited in Islamic economic ideology, namely *gharar*, *maisir* and *usury*. This happens inseparable from the reality of conventional business development trends and not widespread awareness and coverage of economic services based on Islamic economics. Bank Muamalat Indonesia (BMI) is the first purely Islamic bank in Indonesia which in principle all of its main products both in the service of Financing Strategy products (*deposits funds*) and *financing* products (*financing*) based on the



Islamic system (profit sharing). BMI seeks to implement aspects of Islamic economic ideology that consistently avoids *gharar*, *maysir* and *usury*.

So for each individual Muslim is required to make a positive image of himself, others, and the environment. So that each individual is responsible for the conditions and situations that surround him. The existence of a good and peaceful social environment, the economic conditions of a prosperous society, and a safe political situation are part of the worship that can be done by Muslims as a form of servitude to Allah SWT.

One of these acts of worship is to create community welfare by carrying out economic activities. The urgency of the economy cannot be ignored or underestimated. Economic activity plays a vital role in creating a prosperous, just and prosperous society. Islam teaches in the economic system of its ummah, based on the values of justice that must be upheld, and become the main principle for conducting economic activities. Every economic activity must contain elements of benefit and not mistreatment of himself and others, so that economic activity can create community welfare equally. Conducting economic activities is not allowed to be done if it contains elements of *gharar*, *maysir* and *usury* or taking the rights of others by false means.

Thus, this research is to examine; 1) the practice of gambling (maisir) in the form of modern economic activities; 2) preventing the practice of gambling (maisir) into a halal and useful product.

## METHOD

The research method in this study is a qualitative method. The purpose of this qualitative research is to explain the phenomenon with the deepest depth by collecting data as deeply as possible, which shows its focus on the data under study. And also to find answers to a phenomenon or question through scientific procedures systematically using a qualitative approach.

## RESULTS AND DISCUSSION

### Definition of Maisir

The word *Maisir* in Arabic literally means obtaining something very easily without hard work or getting profit without working. It is something that contains elements of gambling, betting, or risky games (Ascarya, 2013). Another term used in the Quran is the word '*azlam*' which means the practice of gambling. Gambling (*maisir*) is one of the forms of gambling of the Arabs during the ignorant period using *azlam*, or a game that uses *qidah* in everything. It is also said that *maysir* is everything that contains elements of *qimâr*, even to the game of a child with *jauz* (Ismail Nawawi, 2012). Gambling is an activity to take advantage of the form of games such as cards, cockfighting, playing ball, and other games, which do not trigger the perpetrators to be creative.

Hasbi ash-Shiddieqy defines gambling as any form of game where there is a form of losing and winning. The losing party gives an agreed amount of money or goods as a bet to the winning party. Sheikh Muhammad Rasyid Ridha stated that *maysir* is a game in seeking profit without having to think and work hard.

According to at-Tabarsi, the sixth-century Imamiah Shia commentator, *maysir* is a game in which the winner gets a certain amount of money or goods without reasonable effort and can make people fall into the valley of poverty. Even children's games, if there is an element of betting, fall into this category (Hasan Muarif Ambary, 1996).

According to Yusuf Qardhawi in the book "*Al-Halal Wal-Haram Fil- Islam*", gambling is any game that contains betting. The definition of *maysir*/gambling according to the author of Al-Munjid, *maysir*/gambling is any game in which it is stipulated that the winner will get/take something from the loser either in the form of money or something else (Ibrahim Hosen, 1987).

Based on the definitions expressed by the scholars above, it can be concluded that gambling is all kinds of games in which there are bets and there is the practice of luck, which makes people who play hope that they will get benefits easily without working hard.

A Muslim should not use gambling as a means of entertainment and leisure, just as he should not use it as a means of earning a living in any situation.

These three elements can be the factors that distinguish gambling behaviour from other risky behaviours:

- a. Gambling is a social activity involving a sum of money (something of value) where the winner receives money and other rewards that are considered valuable.
- b. The risks taken depend on future events, with unknown outcomes, and are largely determined by chance or luck.
- c. The risk taken is not something that should be done, defeat or loss can be avoided by not taking part in gambling games.

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Behind this prohibition, there are some great wisdom and noble goals:

- a. Islam requires every Muslim to follow *sunnatullah* (natural law) in earning a living. He should "reap the fruits of his labour after the preceding steps have been taken; enter the house through its door; and await the result after the cause has been realised". As for gambling, including lottery, it causes people to rely on good luck, coincidence, and idle dreams, instead of relying on hard work, sincerity, and appreciation for the effort that Allah has outlined and ordered to be done (Yusuf Qardhawi, 2007).
- b. Islam considers human property to be an honourable thing, so it should not be taken arbitrarily, except by way of exchange that has been prescribed, or in the form of a voluntary gift, whether in the form of a grant or charity. As for taking other people's wealth by means of gambling, this is eating other people's wealth unlawfully.
- c. It is not surprising then, that gambling arouses enmity and hatred between the two sides of the players, even though outwardly they appear to be willing. This is because there must be losers and winners, gainers and losers, deceivers and deceived. If the loser



- appears to be silent, his silence holds disappointment and resentment; disappointment because he failed to achieve his dreams, and resentment because he suffered a loss. If he then makes enemies, it is because of something he built himself, because of something he created himself.
- d. Losing can encourage the sufferer to repeat the game, because perhaps the second game can compensate for the loss in the first game. Meanwhile, the pleasure of victory also encourages the person to repeat the game, because they want to get more and more. Ambition never allows itself to stop, even though defeat will soon befall it, then replace the joy of victory with the sadness of defeat. And so on, so that the two parties will always be bound by the gambling table, almost they are no longer able to separate. This is the secret of the disaster of addiction to the two parties who gamble (Yusuf Qardhawi, 2007).
- e. Based on this fact, this kind of hobby is dangerous for society, as well as for the individual players. It is a hobby that can swallow time and seriousness, making addicts as unemployed; only want to take but do not want to give; only want to consume but do not want to produce (Yusuf Qardhawi, 2007).

### Legal Basis for the Prohibition of Gambling

Allah swt. and the Prophet saw. has prohibited all types of gambling. This is stated in the Qur'an Surah al-Ma'idah verses 90-91.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رَجَسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَتَاجِبُوا لَهُمْ لَعَلَّكُمْ تُفْلِحُونَ إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ

Meaning: "O you who believe! Verily, intoxicants, gambling, (sacrificing to) idols, and casting lots with arrows, are abominable and among the deeds of the devil. So avoid them so that you may be fortunate. By drinking alcohol and gambling, Satan only intends to cause enmity and hatred among you, and prevent you from remembering Allah and performing the prayer, so will you not stop?" (QS. al- Ma'idah [5]: 90-91) (Ahmad Hatta, 2009).

In gambling (*maysir*), the Jahili Arabs had the custom of keeping three arrows inside the Kaaba wrapped in paper or cloth with the words "do it!", "don't do it!", and the third "empty". Usually, before going on a long journey, they went to the caretaker of the Kaaba and asked for one of the arrows, if the arrow with the inscription "do it!" was taken, they would go on a long journey and consider their journey to be a chance (Nawawi., tth).

Against what the Jahiliah Arabs did, Allah gave a warning in the Qur'an Surah al-Ma'idah verse 90.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رَجَسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَتَاجِبُوا لَهُمْ لَعَلَّكُمْ تُفْلِحُونَ

Meaning: "O you who believe! Verily, intoxicants, gambling, (sacrificing to) idols, and casting lots with arrows, are abominable and among the deeds of the devil. So avoid them so that you may be fortunate. (QS. al-Ma'idah [5]: 90) (Hatta., tth)

From the content of the verse above, namely al-Baqarah: 219 and surat al- Ma'idah: 90 and 91, it is known that gambling is an abominable act forbidden by Islam.



يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْغَفْوُ كَذَلِكَ  
يُبَيِّنُ اللَّهُ لَكُمُ الْآيَاتِ لَعَلَّكُمْ تَفَكَّرُونَ

Meaning: "They ask you about alcohol and gambling. Say, "In both there is great sin and some benefit to man. But the sin is greater than the benefit." And they ask you about what they should spend. Say, "the excess (of what is necessary)." Thus Allah explains His verses to you that you may think. (QS. al- Baqarah [2]: 219) (Hatta., tth)

From the content of the verse above, namely al-Baqarah: 219 and surat al- Ma'idah: 90 and 91, it is known that gambling is an abominable act that is forbidden by Islam.

The Hadith reads as follows:

قَالَ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: " مَنْ حَلَفَ فَقَالَ فِي حَلْفِهِ: وَاللَّاتِ وَالْعُزَّى، فَلْيُقْل: لَا إِلَهَ إِلَّا اللَّهُ، وَمَنْ قَالَ لِصَاحِبِهِ: تَعَالَ أَقَامِرُكَ، فَلْيَتَصَدَّقْ "

Meaning:

Abu Hurairah Radhiyallahu anhu reported that he said: Rasûlullâh Sallallahu 'alaihi wa sallam said: Whoever swears by saying 'By Latta and 'Uzza, let him say, 'Lâ ilâha illa Allâh'. And whoever says to his friend, 'Let me take you gambling', let him give sadaqah (charity)." [Al-Bukhâri, no. 4860; Muslim, no. 1647].

In addition to these hadiths, there are still hadiths about gambling that mention that gambling is an unlawful act that is compared to dipping his hand in pig's blood. In the hadith from the Companion Abdullah ibn Amr ibn Ash (may Allah be pleased with him) said,

بهما غير قمار، كالغامس يده في دم خنزير

Meaning: "Playing with these two eyes of dice in order to gamble is like one who eats pork. And one who plays with both eyes of the dice but without betting, is like one who dips his hands in pig's blood. (HR. Bukhari)

### Types and Varieties of Gambling

Gambling can be grouped into 4 (four) types of gambling, namely:

- Lottery, which is in the form of lottery, lotto, porkas, togel and so on where they only have certain numbers. This gambling is mass gambling where millions of people can participate wherever they are.
- The bets for this gambling are usually related to the analysis of why the gambler's knowledge; for example, horse racing, dog, cockfighting, boksen or football.
- Gambling between other fellow gamblers, such as domino games, poker, dice, and others.
- Gambling between humans and machines, such as playing jackpot, mikey mouse, ding dong, pachinko or other computer games.

The types of gambling according to the explanation of PP No. 9 of 1981 concerning the Implementation of Law 7 of 1974, namely: article 1 paragraph (1) the forms and types of gambling referred to in this article include:

- Gambling in casinos, among others: Roulette, Blackjack, Baccarat, Keno, Tombola, Creps, Super pingpong, Lotto fair, Satan, Pay kyu, Slot machine, Ji Si Kie, Poker, Throw paser / chicken feather and Kiu-kiu.



- b. Gambling in crowded places, including: Throwing bracelets, Throwing money (coins), Kim, Pancingan, Throwing balls, Cockfighting, Cowfighting, Buffalo fighting, Sheep fighting, Horse racing, Cow racing, Dog racing, Erek-erek, Mayong/macak, Hailai.
- c. Gambling associated with other reasons include: Cockfighting, Cowfighting, Buffalo fighting, Horse racing, Bull racing, Sheep/goat fighting.

If you pay attention to gambling that develops in society, you can distinguish it based on tools or means, namely those that use animals, cards, dexterity machines, videos, the internet, and various types of sports games. Apart from being listed in the government regulations mentioned above, there are still many gambling that has developed in society (Haryanto, 2003).

### Factors Causing Gambling

Gambling behaviour has many adverse side effects for the gambler and his family and is probably very much realised by gamblers. Surprisingly, it is still difficult for them to abandon gambling behaviour once they have tried it. These factors are:

- a. Social and economic factors

For people with low social and economic status, gambling is often seen as a means to improve their standard of living. It is not surprising that during the SDSB lottery in Indonesia during the New Order era, there were more enthusiasts from the low-income community. With very little capital, they hope to get the maximum profit or become rich in an instant without great effort. In addition, the social conditions of the community that accept gambling behaviour also play a major role in the growth of this behaviour in the community.

- b. Situational factors

Situations that can be categorised as triggers for gambling behaviour include pressure from friends or groups or the environment to participate in gambling and marketing methods used by gambling managers. Group pressure makes the prospective gambler feel bad if he does not comply with what his group wants. While the marketing methods carried out by gambling managers by always exposing gamblers who have won give the impression to prospective gamblers that even winning in gambling is common, easy and can happen to anyone (even though in reality the chances of winning are very small). The role of mass media such as television and films that highlight the expertise of gamblers who 'seem' to be able to turn every opportunity into a victory or glorify the figure of the gambler, has also encouraged individuals to try gambling games (Dani Apriyantyo, 1999).

- c. Learning factors

It makes sense that learning has a large effect on gambling behaviour, especially when it comes to the desire to continue gambling. What has been learnt and resulted in something enjoyable will continue to be stored in a person's mind and at any time want to be repeated again. This is what in learning theory is referred to as *Reinforcement Theory* which says that certain behaviours will tend to be reinforced/repeated when followed by a reward/something pleasant.

d. Perception factor about the probability of winning

The perception referred to here is the perception of the offender in making an evaluation of the chances of winning that he will get if he gambles. Gamblers who find it difficult to leave gambling usually tend to have a false perception of the possibility of winning. They generally feel very confident about the victory they will get, even though in reality the chances are very small because the belief that exists is only an illusion obtained from evaluating opportunities based on something or events that are uncertain and very subjective. In their minds, they always have the thought: "if you don't win now, you will win the next time, and so on".

e. Perception of skill factor

Gamblers who feel they are very skilled in one or more types of gambling games will tend to assume that success / victory in gambling games is due to their skills. They think that their skills will allow them to control various situations to achieve victory (*illusion of control*). They often cannot distinguish which victories are obtained due to skill and which are just mere coincidence. For them, defeat in gambling is never counted as a defeat but is considered an "almost win", so they continue to hunt for the victory that they think will definitely be obtained (Dani Apriyanto, 1999).

### Forms of Gambling in the Discussion of Fuqaha and its Laws

Humans create games, competitions and fights for various purposes, some of which aim to entertain, train physical health, test the sharpness of the brain, and so on. Games, matches and fights may contain gambling if not careful. There are several forms of games discussed by the scholars, including:

- a. *Maysir al-qimar* gambling with agreed stakes is *maysir* which is haraam. Most of the *maysir* is in the form of *qimar* involves betting money or property. *Maysir* in this form is agreed by all scholars about the law is haram, as *maysir al-qimar* according to Imam Malik. The main characteristics of *al-qimar* are: 1) A game of win or lose; 2) Games that involve betting on property (*mukhatarah*); 3) Moving property through betting (*mukhatarah*)
- b. *Maysir al-lahw* which is agreed to be forbidden There are some of the *maysir* that do not necessarily involve a bet of money, *maysir* in this form referred to by Imam Malik as *maysir al-lahw* there is an agreed haraam law, because the nashah of the sunnah is clear about the prohibition of involving a bet of money or not such as *Nard*, *Tawilah* and *Tab*. The main characteristics in this form are that the player is solely dependent on fate and not based on thinking or the like.
- c. *Maysir al-lahw* which is not agreed upon as haram  
The scholars disagree on whether games that do not involve betting money but require the player to think and judge are haram or not. In general, the scholars are divided into several views, namely: 1) The Hanafi view is that games are haraam in principle, except for four types: horse racing, camel racing and games between husband and wife. 2) Maliki; similar to the Hanafi view, Imam Malik reportedly hated the game of chess and prohibited it (haram). 3) Shafi'i; all games that depend on calculating, thinking and



devising strategies are not prohibited but makruh, provided that there is no betting, bad conversation or neglect of prayer. 4) Hambali; all games that do not have a bet on property as long as they do not cause harm or distract from the things that are fard in the original must (Madya, 2011).

### **The Practice of Gambling (Maisir) in The Form of Modern Economic Activities Online Gambling**

Gambling is a game based on fate or intelligence and fate for betting money or goods in exchange for money and includes all games under the room. While Gambling according to Article 303 paragraph 3 of the Criminal Code in Indonesia is any game that bases the hope of winning generally depends on luck alone and also hope. Also included in gambling is a bet on the decision of a race or other game, which is not held by those who participate in the race or play, as well as all other games.

Gambling is a game where players bet to choose one option among several options where only one option is correct and the winner. The player who loses the bet will give his bet to the winner. The rules and the amount of the bet are determined before the game starts. Gambling or gambling games or gambling according to the Big Indonesian Dictionary is "Games using money as stakes". Gambling is "Risking a sum of money or property in a guessing game based on chance, with the aim of getting a sum of money or property that is greater than the original amount of money or property. online gambling is a game that is carried out using money as a bet with the terms of the game and the amount of the bet determined by the online gambling player and using electronic media with internet access as an intermediary.

Online gambling is a kind of addiction, where initially just trying - trying and getting a win will spur the desire or desire to repeat it with bigger and bigger bets with the thought that the more money that is bet, the victory will get more results. Online gambling itself can be done anywhere and anytime as long as the online gambling player has a lot of free time, the amount of money used as a bet contained in the offender's savings account, and a computer or smartphone and an internet connection that is used as a tool to conduct online gambling.

Definition of gambling according to experts:

According to Kartini Kartono gambling is "Deliberate betting, namely by risking a value or something that is considered valuable by realising certain risks and expectations of events, games, competitions and events that are not or have uncertain results.

According to Adli (2015) Online gambling is gambling that uses internet media to make bets, where in the game the gambler must make an agreement about the terms of the game and what is at stake. If his team wins the match, then he has the right to get everything that was bet.

Isjoni (2002) online gambling is gambling that uses the internet network in the game process, in people's lives, especially students, online gambling is no stranger to the lives of students because the process of online gambling games is very close to student life, it is very easy to find, even some students have made online gambling as entertainment or games that



promise victory.

Wahib and Labib (2005) online gambling is a social activity involving a sum of money (or something valuable) where the winner gets money from the loser. The risk taken depends on future events with unknown results and is only determined by things that are coincidental, the luck of the risk taken is not something that must be done, losing losses can be avoided by not taking part in gambling.

According to Dali Mutiara, the interpretation of the Criminal Code states as follows: "Gambling games must be interpreted in a broad sense and also include all bets on the defeat of a horse race or other competitions, or all bets, in competitions held between two people who do not participate in the competitions themselves, for example totalisators and others.

### **Factors Causing Online Gambling**

The rise of online gambling criminal offences is influenced by several factors, among which the authors can convey the following:

a. **Social & Economic Factors**

Many assume and think that online gambling is shorter, simpler, and can bring huge profits. Which is considered to be able to support and fulfil the desire, namely to become a rich person in a short time.

b. **Situational Factors**

There are conditions in society that have a consumptive spirit and get money instantly in an easy way supported by marketing that always makes news or exposes successful gambling news, so that many are interested.

c. **Learning Factors**

Initially he just wanted to try, but because of curiosity and belief that victory could happen to anyone, including himself and believed that he would one day win or succeed, thus making him do online gambling repeatedly. As the action learns to generate opportunities.

d. **Factors of Perception of Probability of Winning**

The perception referred to here is the perception of the offender in making an evaluation of the chances of winning that he will get if he gambles. Gamblers who find it difficult to leave gambling usually tend to have a false perception of the possibility of winning. They generally feel very confident about the victory they will get, even though in reality the chances are very small because the existing confidence is only an illusion obtained from evaluating opportunities based on a situation or event that is uncertain and very subjective. In their minds are always embedded thoughts: "if you don't win now, you will win the next time, and so on".

e. **The factor of self-belief in one's ability in the ITE field**

Gamblers who feel that they are very skilled in one or more types of gambling games will tend to think that success / victory in gambling games is due to their skills. They often cannot distinguish which wins are obtained due to skill and which are just coincidence. For them, a loss in gambling is never counted as a loss but is considered an



"almost win", so they continue to hunt for the victory that they think will definitely be obtained.

### **Impact of Online Gambling**

There are several negative impacts arising from gambling including; Gambling can lead to the destruction of households, Gambling can cause damage to one's faith, Gambling can encourage us to act shirk, Gambling will only spend a lot of time wasted, Gambling causes laziness to work and pray, Gambling can encourage the perpetrator to commit crimes.

In terms of legal certainty, the Gambling Law is considered less strict due to the uncertainty regarding the applicable law stipulated in the Criminal Code, ITE Law and its amendments. Regarding the standard of legal sanctions, there are differences in the level of sanctions that can be imposed on violators based on the two legal bases. The sanctions stipulated in the Criminal Code are alternative, which gives freedom to the perpetrators to choose between imprisonment or fines. Furthermore, the sanctions stipulated in the ITE Law and its amendments are cumulative, i.e. the perpetrators can only be threatened with imprisonment, fines only, or both imprisonment and fines. There is also legal ambiguity regarding the content of provisions related to games of chance in the Criminal Code, particularly the phrase "shall not" (Article 303 paragraph 1). This wording leads to the interpretation that gambling is allowed by law. This is contrary to the provisions of Law No. 7/1974 on Gambling Control and the Criminal Code which states that all forms of gambling are criminal offences.

In the case of online gambling, the right tools may include digital forensic experts to search for evidence of online gambling and advanced technological tools. The existence of these facilities actually helps the government fulfil its mission in reducing online gambling cases. Unfortunately, the available supporting facilities are still lacking. The proof is that there are still loopholes that players can easily enter when playing cards online.

Public legal awareness of wrongdoing and refraining from doing so will facilitate the achievement of the desired legal objectives. So far, sanctions against online gambling seem to only be able to influence public compliance with the rules. Without awareness, it will be difficult for the public to comply with the prohibition of gambling. To increase legal awareness among the public, law enforcers can provide education or awareness to the public about several deviant phenomena, both linear and conventional. So in this case it should need strict legal action as social control not to punish gamblers and their applications. The law is also a social engineering prevention promotion tool so that they do not do gambling.

### **Online Buying and Selling**

With the growing trend of online buying and selling today, more and more people want to get involved in the online buying and selling business. However, where there is an opportunity there must be irresponsible parties who want to take advantage of the ignorance of the online buying and selling actors. Therefore, online buying and selling actors are required to know more about the process, risks and security of an online transaction. On the other hand, currently the types of online transactions are also increasingly diverse, ranging from conventional types where buyers and sellers must meet face to face in carrying out the

transaction process to those that use an automated transaction process without having to meet face to face" (Mulyatno, 2006).

In Indonesia, the protection of the rights of consumers and businesses is regulated in Law No. 8/1999 on Consumer Protection. However, the 1999 GCPL only regulates consumer rights and obligations which are still limited to conventional trade. Meanwhile, the rights and obligations of consumers in online transactions have not been expressly regulated in the law.

Indonesian internet expert Budi Raharjo believes that Indonesia has the potential and prospects for the development of online buying and selling. However, the obstacles faced in this development include limited infrastructure, the absence of special laws governing online transactions, the lack of guarantees for transaction security, and the lack of human resources that can be pursued simultaneously with the development of online buying and selling institutions. Regarding the legal aspects applicable in online transactions, especially in an effort to protect consumers, Law Number 11 Year 2008 on Electronic Information and Transactions at least regulates provisions that accommodate electronic commerce which is one of the ornaments in business. So, automatically the agreements on the internet are subject to the ITE Law and the applicable agreement law" (<https://lotusbougenville.wordpress.com>).

### **Maslahah and Mafsadah**

#### *Maslahah*

1. Not bound by place and time, especially for those of you who are busy so you don't have time to shop by going to the store.
2. A large selection of online stores that provide the variety of products you want.
3. Save time and energy, you don't need to go around the mall or shop, you just need to spend a minute by opening the internet and of course you will avoid road congestion.
4. You can compare products and prices with other online stores, so there are more choices.
5. The shopping process is easy, just order the items, and payment can usually be done through internet/mobile banking or ATM and just wait for the goods to be delivered.

#### *Mafsadah*

1. Fraudulent goods are often not delivered after payment is made.
2. The physicality and quality of the goods are not as expected, because we can only see through the photos on the website.
3. Transport costs are charged, so there are additional costs.
4. Not being able to see and try on the items ordered.
5. It takes time for the goods to arrive at your place due to the shipping process.

The Prophet implies that buying and selling is halal as long as it is consensual. Because buying and selling or doing business like through online has a positive impact because it is considered practical, fast, and easy. And it is haram if:

1. the goods or services that are the object of the transaction are: prohibited goods such as drugs, pornographic videos, online sex, and sites that can lead visitors to adultery,
2. violate agreements or contain elements of fraud, as Allah's word contained in Surah Al Baqarah verse 275 which means: Those who eat (take) usury cannot stand but as one who



is possessed by a demon because of insanity. That is because they say that buying and selling is the same as usury, whereas God has made buying and selling lawful and usury unlawful. If a prohibition comes to him from his Lord, and he ceases (from taking usury), then to him what he had taken (before the prohibition came), and his affair (is) up to God: the inhabitants of hell; they abide therein. (QS. Al Baqarah 275)

### **The Law of SMS with Rewards**

Based on the source of Islamic law that takes from the postulates of the Qur'an, Qoul Ulama, and Fatwa Majelis Ulama Indonesia, SMS with prizes is punished haram, Majelis Ulama Indonesia (MUI), is: A place to start from the lower, middle, and upper society that has potential about religious, social, economic and others, and Majelis Ulama Indonesia is an institution that is active and competent in answering the problems of social life which is mainly related to Islamic law, therefore, the fatwa issued by Majelis Ulama Indonesia is expected to be accepted by the entire lower, middle, and upper society and become a reference for the government in making policies to the social community "(Jogiyanto, Hartono, 2000).

Fatwa of the Indonesian Ulema Council (MUI) related to the law of SMS with prizes that forbids the practice of SMS with prizes for lottery quizzes, with has a legal basis that considers the positive and negative for Muslims because SMS with prizes for lottery quizzes can harm financially and damage people's mentality so that it can cause laziness to work to find halal sustenance. The fatwa of the Indonesian Ulema Council (MUI) related to the law of SMS with prizes that forbids the practice of SMS with lottery quiz prizes, because there is an element of gambling, the fatwa is one of the fatwas resulting from the decision of the ulama' consensus at the Darrussalam Gontor Islamic Boarding School on 25-27 May 2006 which was attended by competent ulama' figures. Based on the arguments of Shara' that allude to SMS with lottery quiz prizes, which are equated to the definition of maisir (gambling) found in the words of Allah SWT.

Meaning: They ask you about alcohol and gambling. Say: "In both there is great sin and some benefit to man, but the sin of both is greater than the benefit." And they ask you what they spend. Say: "That which is more than is necessary." Thus Allah explains His verses to you so that you may think, (QS Al-Baqarah: 219)

And the words of Allah SWT in Surah Al- Maidah:

O you who believe, Verily (drinking) wine, gambling, (sacrificing to) idols, casting lots with arrows, are among the deeds of the devil. So avoid those deeds so that you may have good fortune. Verily, the devil intends to stir up enmity and hatred among you by reason of drinking and gambling, and to prevent you from remembering Allah and praying; so stop doing that. (QS Al- Maidah: 90-91).

SMS with lottery quiz prizes can be classified as haraam gambling, because it can cause enmity, hatred, and. Participating in SMS with lottery quiz prizes is the same as squandering wealth extravagantly, and Allah SWT hates it very much because the spenders are the brothers of the devil who always do negative things.

In the rules of fiqh, it is explained that anticipation in rejecting the negative takes



precedence over attracting good, BPHN 34 In SMS with lottery quiz prizes contains a lot of damage, which can cause hostility, damage, hatred, so it can be concluded according to the rules of fiqh that SMS with lottery quiz prizes is haram because there are elements of hostility, damage, hatred.

The definition of maisir (gambling) based on the opinion of contemporary fiqh experts is: games in which there is an element of betting, carried out by two (2) or more people directly face to face in a place. This is in accordance with the opinion explained by Ibrahim Hosen as quoted by Masfuk Zuhdi, there are two (2) things that need to be taken common thread, namely: betting and face-to-face in a place and bear the consequences of winning and losing, so the nature is pitting fate, profit, so the cause (illat) haramnya maisir (gambling) based on the opinion of Ibrahim Hosen is: face to face in a place where face to face is contained wisdom, so maisir (gambling) is haraam.

### Stock exchange

A share is a piece of paper in which the participant shares in the loss as much as the ratio of the share investment if the company suffers a loss, and he has the right to the final results of the company, if the company is dissolved or liquidated. In terms of whether or not it is permissible to trade stocks, it is divided into three (3), including:

- a. Companies (Shares) that operate in something halal and good, whose capital is free from usury and tazkiyat of impure wealth and does not give one of its shareholders material privileges over other shareholders. Investing in shares in companies, for example, is permissible according to sharee'ah, and is even recommended, because of the benefits that can be obtained and the damage that can be avoided with shares, and buying and selling (trading) in such companies, mediating activities, publishing shares and registering them, and taking part in obtaining a share of the proceeds is permissible. The basis that identifies the permissibility of all of these is that they are all grounds that identify the permissibility of sending the owner's right to own some of the company and giving him the right to take part in managing the company, either by being a member of the General Meeting of Shareholders, or the Board of Commissioners, The shares also provide returns or profits according to the ratio of the shares that he invests in the shares. Islamic Shari'a permits this.
- b. Companies (Shares) that operate on something that is punished as haram, or shareholders from haram assets from any source, or companies provide material privileges for some shareholders for example: privileges in the format of returning capital first when the company is liquidated dissolved or privileges over certain rights in dividends (profits). Mixed halal and haram companies (Shares), for example: when the activities and capital of the company are halal, but the company uses usury loans to provide capital in various activities, or the company's operations are according to haram contracts. Companies like this are very much we find in today's life, even not much we find in activities that are truly halal because more priority is given to conventional systems and laws in Muslim societies, so that there is no company or an activity that is clean from usury, contracts or bribes that are invalid. new management and administration applied in activities that are





not prohibited.

- c. Companies (Shares) whose halal and haram operations are mixed, companies (Shares) that are active in something that is not permitted, for example: companies that produce methamphetamine, narcotics and others, whether producers, distributors or suppliers from abroad (importers), companies that produce methamphetamine, narcotics and others, pawnshop companies based on usury such as ribawi banks, prohibited gambling companies, managers of lokalisasi, casinos or companies that provide the enemy with funds and strategic commodities used to fight Muslims, whether in the form of weapons, nukes, bombs and other weapons. Several other kinds of businesses that are in the Islamic sharia texts on their impermissibility (haram). And if the company's capital is sourced from dirty assets such as usury, stolen property, fraud and others, the same also applies if the shares provide material privileges for the holder over the holders of preferred shares (other shares). Based on the various divisions above, it is forbidden based on Islamic law, so it is forbidden to invest in these companies, as well as become a stockbroker, record and circulate in the market. The Prophet Muhammad SAW has cursed the person who plays a role in liquor ten times. This can identify the prohibition of economic activities related to something that is forbidden in any situation.

Based on the Qur'an, Al-Hadis, Consensus of the scholars and the regulations of the Law as well as several collections of fatwas DSN MUI In the modern economic concept of Islamic stock exchange, this stock exchange must be implemented in a financial institution that we know as the Islamic capital market or stock exchange, The legal basis of the Islamic stock exchange, including: Al-Qur'an, Al-Hadis, Ijma Ulama, Law No. 8 of 1995 related to the Capital Market, Law No. 1 of 1995 related to Limited Liability Companies, Decree of the Chairman of Bapepam No. KEP-130/BL/2006 related to the Islamic Stock Exchange: KEP-130/BL/2006 related to the Issuance of Sharia Securities (Regulation IX.A.13), Decree of the Chairman of Bapepam No. KEP-131/BL/2006 related to Akad- akad Used in the Issuance of Sharia Securities in the Capital Market (Regulation IX.A.14), Fatwa No: 20/DSN-MUI/IX/2000, dated 24 Muharram 1422 H / 18 April 2001 AD concerning Investment Implementation Guidelines for Islamic Mutual Funds, DSN Fatwa No. 40/DSN-MUI/X/2003 concerning Islamic Capital Markets The existence of fatwas of contemporary scholars about buying and selling shares.

Based on the fatwas of contemporary scholars related to buying and selling shares can strengthen the basis for the permissibility of buying and selling shares, from several collection of Fatwas DSN Saudi Arabia initiated by Sheikh Abdul Azis Ibn Abdillah Ibn Bazz, related to the law of buying and selling shares, explained:

"If the shares being traded are not equal to the full amount of money but are only a representation of an asset such as a factory, land, car, etc., and this is something that is known to the seller and buyer, then it is permissible to trade them for cash, paid in cash or in several payments, according to the general principle of the permissibility of buying and selling."

Based on the fatwas of contemporary jurists, it is forbidden to trade shares in the capital market of companies that are active in the field of haram business, such as

companies whose activities produce methamphetamine, narcotics and others, businesses and anything related to conventional financial services such as banks and insurance, the entertainment industry, such as localisation, casinos, casinos, gambling, pornographic media and others.

### **Foreign exchange (Forex)**

The word foreign exchange comes from the word "forex" which can generally be interpreted: "foreign exchange" as a currency that can be used and accepted by all countries in international trade. A currency is said to be foreign exchange depending on who is looking at it. For residents in countries that are not the country of origin of the currency will call it foreign exchange and vice versa residents in the country of origin of the currency will not call it so. For example for Indonesians the USDollar currency is: foreign exchange, while for Americans the USDollar currency is not foreign exchange" (Heli Charisma Berlian, 2006). Meanwhile, the term forex can be equated with the term Al-Sharf which linguistically means: "exchange, addition, avoidance, or buying and selling transactions" (Sutan Remy Sjahdiyni, 1999). Thus, Al-Sharf is: an agreement to buy and sell one currency for another.

### **Preventing gambling practices (maisir)**

How to Avoid Gambling Behaviour; 1) Endeavour to learn more about the harmful effects of gambling on oneself, family and society. That way a person can see why he/she should avoid gambling. 2) Carry out the commands of Allah SWT and stay away from its prohibitions. 3) Be pious where you are. 4) Read the Qur'an by understanding its content and meaning. 5) Filling spare time with useful activities. 6) Never visit a gambling place once and feel like trying it. How to Tackle Gambling.

Ways to tackle gambling are as follows: 1) Carry out a comprehensive economic recovery. Enact laws or regulations that guarantee a minimum salary for labourers, workers and employees that is commensurate with the cost of meeting daily needs. Expanding employment opportunities and others. 2) A balance between the budget at the centre and in the peripheral regions. Because, due to discrimination and inequality in the provision of budgets, there is then a sense of dissatisfaction. 3) Providing or giving places - places of entertainment and healthy recreation. 4) Specifically to reduce the amount of gambling, by lowering the value of the highest prizes of various official lotteries, and then increasing the number of other entertainment prizes more. 5) Localisation of gambling specifically for tourists - foreign tourists, high economic groups and citizens of foreign descent, by imposing sanctions on the opening of gambling places.

### **CLOSING**

#### **Conclusion**

Based on the description above, it can be concluded that: 1) Gambling (maisir) is all kinds of games in which there are bets and there is the practice of luck, which makes people who play hope that they will get benefits easily without working hard. 2) A Muslim should not use gambling as a means of entertainment and leisure, just as he should not use it as a



means of earning a living in any situation. 3) The practice of online gambling is a form of economic activity that is contrary because it is a game that has a negative impact on the perpetrator and society. 4) Prevention of gambling practices (maisir) is by applying the rule of law to create a deterrent effect for the perpetrator.

### Suggestion

1. Gambling (maisir) must be eradicated because it is contrary to Islamic teachings.
2. The existence of binding legal rules for product providers to prevent losses to consumers
3. The government and authorities are always ready to eradicate gambling in Indonesia

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