



BPJS Insurance: Untangling the Knots of Gharar and Riba Contracts

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Abstract: BPJS insurance is often in the public spotlight regarding its halal-haram status from an Islamic law perspective, this occurs because of the uncertainty or clarity in the management of BPJS insurance. This study aims to examine the contracts in BPJS insurance, especially regarding the elements of usury and gharar, this study also attempts to provide a clearer sharia view of the issue. The approach used in this study is a qualitative approach, with a content analysis method of various relevant literature on BPJS insurance from an Islamic law perspective. Data were obtained through literature studies and analyzed to identify the elements of gharar and usury that exist. The results of this study indicate that BPJS does contain elements of gharar, this is proven by the discovery of new facts through this study that there is uncertainty in services in BPJS insurance and there is less transparent fund management. In addition, elements of usury are also found in BPJS insurance practices, this is proven by the existence of fines for BPJS insurance members who are late in paying their contributions. However, BPJS insurance is still recognized as important for the welfare of the people, so management reform is needed to comply with sharia principles. This study recommends the need for increased transparency, separation of funds, and elimination of riba and gharar elements to ensure compliance with sharia principles.

Keywords: Assurance; BPJS; Gharar; Islamic law; Riba

Introduction

BPJS (*Badan Penyelenggara Jaminan Sosial*) Insurance is a form of social insurance that serves as a future investment for health, old-age security, pension guarantees, and workplace accident coverage (Imaniyah & Agus, 2019). The National Sharia Council of the Indonesian Ulema Council (DSN-MUI) states that sharia insurance is a mutual protection and assistance effort through investment in the form of assets or tabarru' (donations) to mitigate risks using contracts that align with sharia principles (Ramadhan, 2022).

In Islam, financial transactions must not contain elements of gharar (excessive uncertainty), riba (usury), maisir (gambling), or batil (invalid practices), as such activities generate profit for only one party (Hannan & Muzakki, 2021). Insurance products may be permissible as long as they eliminate elements prohibited by Islamic teachings. Additionally, the contracts used in BPJS insurance should be replaced with traditional contracts

that conform to sharia principles (Hasanah, 2019; Satria et al., 2024). Traditional contracts refer to agreements that are commonly practiced in society and do not contradict Islamic law.

BPJS insurance is a recurring topic of debate among the public, particularly concerning its halal status and suspicions of practices that contradict Islamic principles in its management and operations. These concerns have led to significant public confusion and the need for clarification. In 2017, a controversy arose when a doctor refused to treat BPJS patients, claiming that BPJS was associated with riba. This incident sparked strong public reactions, with some supporting the doctor's stance and others opposing it. The BPJS administrators, however, refrained from addressing whether BPJS involved riba, stating that they handled the issue in accordance with legal procedures. KH Ahmad Muzammil, the head of the LBM PWNU Yogyakarta, also weighed in on the debate, asserting that BPJS is halal.

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Various references discussing BPJS insurance reveal sharp differences in opinion regarding its status. Mughni & Marwadi (2021) argue that BPJS insurance is permissible because it aligns with Islamic teachings. This view is supported by the Nahdlatul Ulama (NU), which allows BPJS insurance on the grounds that it is essential for society, has a legal basis, and is regulated by law.

Conversely, Ayu Atika Rahmah, in her journal article titled "*Sistem Pengelolaan yang Diterapkan Pada Program BPJS dalam Hukum Islam*," contends that BPJS does not fully comply with Islamic principles. This argument is backed by a statement from Ma'ruf Amin, the Chairman of the Indonesian Ulema Council (MUI), who asserts that BPJS contains elements of riba, gharar, and uncertainty, which render it inconsistent with sharia principles (Rahmah, 2022).

Previous studies have not provided a detailed explanation of which aspects of BPJS insurance are considered non-compliant with sharia. A thorough clarification is necessary to prevent further confusion among the public, many of whom only hear that BPJS is haram without understanding the reasons. Likewise, there has been no strong justification from previous scholars regarding why BPJS is deemed permissible. A more logical and in-depth analysis is needed to address lingering questions and help the public understand the status of BPJS insurance.

Method

The research method used in this study is qualitative, employing an Islamic legal approach and content analysis method. This analytical method involves examining various literature sources to explain BPJS insurance from the perspective of Islamic law.

Data collection for this article is conducted using the library research technique, which involves gathering data from previous studies through sources such as books, journals, and other scholarly works discussing BPJS insurance in Islamic law. The collected references are then analyzed qualitatively to identify elements of gharar (uncertainty) and riba (usury) in BPJS insurance.

The analysis also includes mapping scholars' views on the permissibility of BPJS insurance based on sharia criteria. Through a review of existing references, a research gap is identified: previous studies have not provided a detailed explanation of why BPJS insurance is considered to contain gharar and riba contracts. This gap serves as a basis for further investigation into the issue.

Result and Discussion

Social Insurance in the National and Islamic Concepts

From an epistemological perspective, insurance originates from the English word "insurance," meaning protection or guarantee, and in Dutch, it is called "verzekering," which means coverage (Nurdin, 2018). In Indonesian, insurance is translated as "*pertanggungan*" (coverage or indemnity) (Echols & Shadily, 1995). According to Wulansari (2017), insurance is an agreement between the guarantor and the insured party, in which the guarantor will provide a sum of money to the insured if they suffer a loss due to an uncertain event. Based on these definitions, insurance can be understood as a contract between the guarantor and the insured, where the guarantor assumes the financial risk of the insured in case of an incident.

Social security is a form of social protection that guarantees all citizens the ability to meet their basic living needs. It can also be described as an effort to protect society from risks, incidents, or events that may cause financial losses and impact income or economic stability. This protection is provided in the form of guarantees, including health insurance, family benefits, and child allowances. The Social Security Administering Agency (BPJS) is a legal entity established under the law to implement a social security program. The social security programs managed by BPJS, as stipulated in Law No. 40 of 2004, include health insurance, work accident insurance, pension insurance, old-age security, and death benefits for all citizens through mandatory worker contributions.

In Islamic teachings, the concept of insurance also exists, known as *takaful*, which means mutual protection. In *muamalah* (economic transactions), *takaful* refers to risk-sharing among individuals or groups. Islam also implements a form of social security, but it is provided through the zakat system. If a community member experiences an accident or hardship, financial aid is distributed from *baitul mal* (the treasury of the Islamic state) using zakat funds. In Islam, individuals do not need to register as beneficiaries of social security, nor are they required to pay regular premiums. Furthermore, there is no differentiation in social security assistance among individuals—support is provided based on the level of loss suffered rather than categorized by membership tiers.

The funds allocated for social security in Islam come from the zakat payments of wealthy individuals, fulfilling their obligation as part of the third pillar of Islam. These zakat funds are collected and managed in *baitul mal*, which serves as the treasury for receiving and distributing state wealth for public welfare. *Baitul mal* is a specialized institution responsible for managing

financial resources received by the state and allocating them for the benefit of society.

In *muamalah*, Islam provides a clear framework for mutual assistance among individuals. Wealthy individuals are expected to support those in need, and the concept of aid in Islam is based on sincerity, ensuring that assistance is provided without discrimination. Help is given according to the actual needs of each individual, without hierarchical distinctions.

The Islamic concept of social security is rooted in verses from the Qur'an that command Muslims to help their fellow believers, especially the poor and those who are unable to meet their basic needs (Salam et al., 2021; Zulhendra, 2022). One of the relevant verses is found in Surah Al-Ma'idah (5:2):

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْلُوا شَعَائِرَ اللَّهِ وَلَا الشَّهْرُ الْحَرَامُ وَلَا الْهُدْيُ
وَلَا الْقَلَادَةُ وَلَا أَمِينَ الْبَيْتِ الْحَرَامِ يَتَغَيَّرُونَ فَضْلًا مِّنْ رَّبِّهِمْ وَرِضْوَانًا
وَإِذَا حَلَّتُمْ فَاصْطَادُوا وَلَا يَجْرِمَكُمْ شَنَّانُ قَوْمٍ أَنْ صَدُّوكُمْ عَنِ
الْمُسْجِدِ الْحَرَامِ أَنْ تَعْتَدُوا وَتَعَاوَنُوا عَلَى الْبِرِّ وَالْتَّقْوَى وَلَا تَعَاوَنُوا عَلَى
الْإِثْمِ وَالْعُدُوانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ {2}

O you who have believed, do not violate the sanctity of the symbols of Allah, nor the sacred months, nor the sacrificial animals, nor the garlanded ones, nor those coming to the Sacred House seeking the bounty and pleasure of their Lord. But when you come out of ihram, then hunt if you will. And do not let the hatred of a people who once prevented you from Al-Masjid Al-Haram lead you to transgress. Cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty."

From the verse in Surah Al-Ma'idah above, it has been explained that we must help one another. Islam illustrates that in the implementation of governance, it is the responsibility of the government to provide social security assistance to its citizens, especially those who are less fortunate (Ramadhina & Dawati, 2023). Therefore, it can be said that the concept of social security in Islam follows the principle of mutual assistance or adheres to the principle of tabarru' contracts. The tabarru' contract in Islamic insurance is a contract that is distributed in the form of a donation aimed at goodwill and mutual assistance among participants (Vandiantara, 2017).

Gharar Contract

Definition of Gharar Contract

Essentially, gharar means deception or misleading, and it can also refer to something that brings harm and risk. In economic terms, gharar means uncertainty and

speculation. Gharar has several meanings from an epistemological perspective, namely:

Gharar refers to a contract whose object is unclear, either due to defects in the contract's object or due to uncertainty regarding the quality of the object (Mubarok, 2017). This opinion is supported by Sheikh al-Islam Ibn Taymiyyah, who stated that a gharar contract is one in which the object of the contract is uncertain.

According to Islamic jurists, gharar is a characteristic in financial transactions that causes some of its fundamental aspects to be uncertain (Aksamawanti, 2019). From the definitions above, it can be concluded that gharar is a contract conducted without clarity and can result in losses for the parties involved. Gharar is one of the elements that must not be present in a transaction or any financial dealings. The prohibition of gharar is mentioned in Surah An-Nisa (4:29).

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ
تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا
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" O you who have believed, do not consume one another's wealth unjustly, but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is Most Merciful to you."

From the explanation of Surah An-Nisa (4:29), it can be seen that we are not allowed to take the rights of others in a manner that is not in accordance with Islamic law and must not cause harm to others. The element of harm in transactions is what makes a transaction or financial dealing inconsistent with Islamic principles, as it contains gharar (Ihwanudin, 2015).

Gharar Contract in BPJS

The first aspect reflecting the presence of a gharar contract in BPJS is the lack of clarity regarding the amount of benefits participants receive after paying their monthly premiums. The amount received may result in either loss or gain. This uncertainty gives rise to the element of gharar, as there is no clear guarantee. The gharar in BPJS management is significant because the insurance covers the entire national population. Logically, the profit from BPJS insurance should be substantial, and losses should not occur. However, in reality, many BPJS cardholders do not receive proper services. For example, when BPJS members seek healthcare services using their BPJS cards, they often receive substandard treatment from hospitals or community health centers (Puskesmas).

The second aspect that makes BPJS considered to contain gharar is the lack of clear separation between the

funds collected from participants for contributions and the funds used as premium payments. This lack of clarity creates the potential for gharar since there is no transparency for insurance participants regarding how their BPJS funds are managed or utilized. This situation may also lead to doubts among BPJS members as they are unaware of the actual management system of BPJS.

The third aspect that introduces gharar in BPJS is the potential financial loss for BPJS members in the event of a funding deficit or mismanagement of BPJS. This falls under the gharar contract because one of the conditions that classify a contract as gharar is when it creates financial uncertainty and possible loss for the contracting parties.

Definition of Riba Contract

Riba, or *azziyadah* in Arabic, means an increase, growth, or expansion. In terms of terminology, Islamic jurisprudence (fiqh) defines riba as a specific additional amount acquired by one of the involved parties without a specific compensation. In English, riba is referred to as usury, which signifies an extra amount of money or capital obtained in a way that is not permitted by Islamic law, whether in small or large amounts. Based on these definitions, riba can be understood as an additional payment that contradicts Islamic principles when conducting financial transactions (muamalah).

Since the time of Prophet Muhammad (SAW), riba has been recognized as a prohibited contract, as supported by numerous Quranic verses that explicitly address its prohibition. These verses not only emphasize its restriction but also reinforce its categorization as a strictly forbidden practice. Islam considers riba a major sin and strongly prohibits it. This is clearly stated in Surah Ar-Rum (30:39).

وَمَا أَنْتُمْ مِنْ رِبًا لَيْزِبُوا فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُوا عِنْدَ اللَّهِ
وَمَا أَنْتُمْ مِنْ رَكُوٰةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَئِكَ هُمُ الْمُضْعِفُونَ

"The riba that you give so that it may increase through the wealth of others will not increase with Allah. But whatever you give in zakat, seeking the pleasure of Allah – those are the ones who will have their reward multiplied."

From Surah Ar-Rum (30:39), Allah gives a warning that He does not favor those who engage in riba. This verse also refutes the belief that interest-based loans are a form of mutual assistance among people to bring them closer to Allah.

Riba Contract in BPJS

The aspect that makes BPJS contain a riba contract is the regulation in Law No. 24 of 2011 on BPJS, Article 11, which states that BPJS has the authority to invest the funds collected from its members into contributions

deposited in state-owned banks (BUMN), whether for long-term or short-term investments (Zulhendra, 2022). Investments in conventional banks may lead BPJS insurance to contain elements of riba, as investing in conventional banks inherently involves riba-based contracts. This means that the profits earned by BPJS from these investments could also be considered riba.

The second aspect that raises concerns about riba in BPJS is the 2% penalty imposed on BPJS members who fail to pay their contributions for at least three months (Amanah et al., 2020). Ideally, if someone is late in paying their contribution, they should not be penalized, except in cases where the person is financially capable but deliberately refuses to pay on time. However, when applied to those who are unable to pay due to financial difficulties, this penalty causes hardship for BPJS members and leads to riba nasi'ah (interest due to delayed payment).

Scholarly Opinions on BPJS

There are differing scholarly views regarding the permissibility of BPJS, particularly between the Indonesian Ulema Council (MUI) and Nahdlatul Ulama (NU). MUI holds the opinion that BPJS is not yet fully aligned with Islamic principles because it contains elements of riba, gharar (uncertainty), and maisir (gambling). One of MUI's main concerns is the 2% penalty imposed on BPJS members for late payments. According to MUI scholars, this contradicts the ideal concept of social security and does not reflect Islamic financial management principles.

On the other hand, Nahdlatul Ulama (NU) argues that BPJS is permissible (halal) and conforms to Islamic teachings. According to NU scholars, the penalty imposed on members is acceptable because it is agreed upon at the beginning of the contract, making it a mutually accepted arrangement between both parties. Additionally, KH Muzzamil, chairman of LBM PWNU Yogyakarta, stated that the contributions paid by underprivileged individuals, especially in BPJS Health, are considered a religious obligation (fardhu 'ain) because they embody the Islamic values of mutual assistance and solidarity. NU also views BPJS contributions as a form of charity (sadaqah), which should be given sincerely as part of a collective effort to help those in need.

Given the differing views of these two major Islamic organizations in Indonesia, there is a significant debate regarding the Islamic status of BPJS. However, the author's perspective is that BPJS can still be utilized as long as its purpose remains focused on public welfare and mutual assistance. The need for insurance, particularly for health protection, is undeniable. Nevertheless, it is also evident that BPJS still contains elements of riba and gharar in its management.

Therefore, improvements should be made in BPJS governance to ensure that it fully aligns with Islamic financial principles.

Conclusion

Based on the discussion above, it can be concluded that the implementation of the BPJS insurance system in Indonesia still faces significant challenges from the perspective of Islamic law. BPJS insurance is recognized as an essential necessity for social protection in Indonesia. However, from an Islamic standpoint, debates arise regarding the presence of gharar (uncertainty) and riba in its management. Certain aspects of BPJS, such as the lack of transparency in fund management and the imposition of late payment penalties, are considered to contain elements of riba and gharar, which contradict Islamic principles. Nevertheless, there are differing opinions among scholars. Some, such as the Indonesian Ulema Council (MUI), argue that BPJS has not fully aligned with Islamic law, while others, such as Nahdlatul Ulama (NU), consider it permissible as it upholds the principles of mutual cooperation and social solidarity. From this perspective, BPJS can be regarded as halal if it is understood as a form of charity (sadaqah) and mutual assistance among its members. This study concludes that although BPJS requires adjustments to fully comply with Islamic legal principles, reforms in BPJS management are necessary to eliminate elements of gharar and riba. Recommended reforms include enhancing transparency in fund management to ensure participants understand how their contributions are utilized, as well as removing late payment penalties that involve elements of riba. With these changes, BPJS would better align with Islamic financial principles.

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Conflicts of Interest

The authors declare no conflict of interest.

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