

## Evolution of The Concept of Gharar in DSN-MUI Fatwas on Islamic Insurance (2001-2024)

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**Abstract.** *Compilation of Islamic Law is a set of rules of Islamic Law that contains descriptions or certain law materials, Law opinions or legal rules. The heirs in the Compilation of Islamic Law are classified into three groups, namely Dzawi al-furudl al-muqad, ' Ashabah, and surrogate heir. The surrogate heir is the person who gets the inheritance to replace the real heir because he died earlier than the heir. In this study the author wants to describe clearly and in detail about The Surrogate Heirs in the Application of article 185 of the Compilation of Islamic Law (Analytical Study of the Decisions of the Jember Religious Court Number: 1378/Pdt.G/2019/PA. Jember). The study used qualitative research methods. From the results of the study, the authors have two conclusions, namely: First The Surrogate Heirs in the Application of article 185 of the Compilation of Islamic Law The concept of surrogate heir is not only on the upward and downward path, but can also be carried out on the sideways path and the share of the surrogate heir should not exceed from the share of the heirs who are equal to and replaced. Second, the decision of the Jember Religious Court judge number /Pdt.G/2019/PA.Jember gives a share to sons and daughters of sisters (nieces) on the grounds that they are surrogate heir can be justified based on the views of the Jember Religious Court judges. and Islamic law. Because the surrogate heir are relevant to the lafadz al-mawaali in the snippet of verse 33 of Surah An-Nisa'.*

**Keywords:** *Compilation of Islamic Law, surrogate heir*

**Abstrak.** Hukum Kompilasi Islam merupakan himpunan kaidah kaidah Hukum Islam yang memuat uraian atau bahan-bahan hukum tertentu, pendapat hukum atau juga aturan hukum.. Ahli waris dalam Kompilasi Hukum Islam diklasifikasikan menjadi tiga golongan, yaitu Dzawi al-furudl al-muqad, 'Ashabah, dan Ahli waris pengganti. Ahli waris pengganti merupakan orang yang mendapatkan harta peninggalan menggantikan ahli waris sebenarnya karena lebih dahulu meninggal daripada Pewaris Dalam penelitian ini penulis ingin mendeskripsikan secara jelas serta rinci tentang Ahli Waris Pengganti dalam Penerapan Pasal 185 Kompilasi Hukum Islam (Studi Analisis Terhadap Putusan Pengadilan Agama Jember Nomor: 1378/Pdt.G/2019/PA. Jember). Penelitian menggunakan metode penelitian kualitatif. Dari hasil penelitian, penulis ada dua kesimpulan yakni Pertama, Implementasi Pasal 185 Kompilasi Hukum Islam (KHI) Konsep ahli waris pengganti tidak hanya pada jalur ke atas dan ke bawah, melainkan juga dapat dilaksanakan pada jalur menyamping dan bagian dari ahli waris pengganti tidak

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boleh melebihi dari bagian ahli waris yang sederajat dengannya dan yang digantikan. Kedua, Putusan hakim Pengadilan Agama Jember nomor 1378/Pdt.G/2019/PA.Jember memberikan bagian kepada anak laki-laki dan perempuan dari saudara perempuan (keponakan) dengan alasan mereka adalah ahli waris pengganti dapat dibenarkan berdasarkan pandangan hakim Pengadilan Agama

**Kata kunci:** Kompilasi Hukum Islam, ahli waris pengganti

## **LATAR BELAKANG**

The concept of gharar is one of the fundamental principles in Islamic jurisprudence (fiqh muamalah) that has significant implications for the validity of Islamic financial transactions. In the context of Islamic insurance, the interpretation and application of the gharar concept have been subjects of debate and intellectual evolution among Islamic scholars and practitioners of Islamic finance. As proposed by Al-Suwailem (2000) in his work "Towards an Objective Measure of Gharar in Exchange," the concept of gharar is not only related to uncertainty but also encompasses aspects of unacceptable risk from an Islamic perspective.

In Indonesia, the National Sharia Council-Indonesian Ulema Council (DSN-MUI) plays a crucial role in providing guidance and Islamic legitimacy to Islamic financial practices, including Islamic insurance. Since the first fatwa on Islamic insurance was issued in 2001, DSN-MUI has issued a series of fatwas reflecting the development of understanding and application of the gharar concept in the context of Islamic insurance.

As studies by Amri et al. (2022) and Hakim & Fatahillah (2023) analyzing the application of gharar in takaful suggest, there remains a gap in the comprehensive understanding of how this concept has evolved in DSN-MUI fatwas over the past two decades. This gap is important to address given the central role of DSN-MUI fatwas in shaping the regulatory landscape and practice of Islamic insurance in Indonesia.

This article aims to analyze the evolution of the gharar concept in DSN-MUI fatwas on Islamic insurance from 2001 to 2024. Specifically, this research will examine shifts in the interpretation of gharar, factors influencing these changes, and their implications for product development and practices in Islamic insurance in Indonesia. This analysis is not only important from a theoretical perspective but also has significant

practical implications for regulators, industry practitioners, and academics in the field of Islamic finance.

To achieve this objective, the research will combine a normative analysis of DSN-MUI fatwas with a philosophical approach referencing the principles of *maqasid al-shariah*. As argued by Auda (2008) in his work "Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach," the *maqasid* approach allows for a more flexible and contextual interpretation of Islamic law, which is highly relevant in analyzing the evolution of concepts such as *gharar*.

The significance of this research lies in its contribution to a deeper understanding of the dynamics of Islamic economic law in Indonesia. By analyzing the evolution of the *gharar* concept in DSN-MUI fatwas, this research will highlight how Islamic authorities respond to contemporary challenges and balance Sharia compliance with the practical needs of the modern financial industry.

Furthermore, this study will expand the understanding of the flexibility of Islamic law in facing socio-economic changes, as emphasized by Kamali (2008) in his book "Shari'ah Law: An Introduction." The analysis of the evolution of the *gharar* concept in the context of Islamic insurance will provide valuable insights into how Islamic principles can be interpreted and applied in the context of modern finance without sacrificing their ethical essence.

The scope of this research will include a comprehensive analysis of DSN-MUI fatwas related to Islamic insurance from 2001 to 2021. Additionally, the research will consider recent academic literature on *gharar* and Islamic insurance, as well as views of contemporary scholars such as Yusuf Al-Qaradawi and Wahbah Al-Zuhaili, who have made significant contributions to the discourse of modern Islamic jurisprudence.

Thus, this article is expected to fill the gap in the literature on the evolution of the *gharar* concept in the context of Islamic regulation in Indonesia, while also providing a new perspective on the dynamics of Islamic law in responding to developments in the Islamic finance industry. The results of this research will not only contribute to the development of Islamic economic law theory but also provide practical implications for

the development and regulation of the Islamic insurance industry in Indonesia and globally.

## **METODE PENELITIAN**

This research employs a qualitative approach with content analysis and literature study methods to investigate the evolution of the gharar concept in DSN-MUI fatwas related to Islamic insurance and its impact on the Islamic insurance industry in Indonesia. The primary data sources are DSN-MUI fatwas from 2001 to 2024 (DSN-MUI, 2001-2024), supplemented by classical and contemporary fiqh literature (Al-Sarakhsi, 2001; Az-Zuhaili, 2003; Nawawi, 2010; Visser, 2009). The methodology involves chronological and thematic analysis of these fatwas, following Krippendorff (2019) framework for content analysis. Validity and reliability are ensured through data triangulation, comparing fatwa analysis findings with secondary literature and industry data from OJK. Analysis of the implications of changes in gharar interpretation on product development and regulation uses theoretical frameworks from Iqbal (2005) and Ayub (2007). This approach enables the identification of trends in the evolution of the gharar concept and evaluation of its impact on product innovation and regulation. This method aligns with previous studies on the evolution of Islamic law in modern finance (El-Gamal, 2006; Kamali, 2008). By integrating fatwa analysis, literature study, and industry data, the research aims to provide a comprehensive understanding of the development of the gharar concept in the context of Islamic insurance in Indonesia.

## **HASIL DAN PEMBAHASAN**

### **The Concept of Gharar in Islamic Commercial Jurisprudence**

*Definition and limitations of gharar according to classical and contemporary Islamic jurists*

The concept of gharar in Islamic commercial jurisprudence has undergone significant evolution in understanding from the era of classical jurists to contemporary scholars. The differences in interpretation and application of this concept reflect the dynamics of Islamic legal thought in responding to changing socio-economic contexts throughout history.

In the understanding of classical jurists, gharar was generally defined as uncertainty or ambiguity in transactions that could cause loss to one party. Imam Al-

Sarakhsi (2001), a Hanafi scholar, defined gharar as something with hidden consequences. Meanwhile, Imam Nawawi (2010) from the Shafi'i school explained gharar as a transaction where it is unclear whether the object exists or not, or its quantity and quality are unknown. These definitions emphasize aspects of ambiguity and potential loss in transactions.

The definition and limitations of gharar according to classical and contemporary jurists continue to evolve alongside the complexity of modern economic transactions. Imam Al-Ghazali (1993) in "Ihya 'Ulum al-Din" defined gharar as something with unclear or hidden consequences that can cause loss to one party. Meanwhile, Ibn Hazm (2007) in "Al-Muhalla" emphasized that gharar occurs when transacting parties do not have sufficient knowledge about the object of the transaction.

The primary evidence for the prohibition of gharar comes from the Qur'an, Surah An-Nisa verse 29: "O you who believe! Do not consume one another's wealth unjustly but only [in lawful] business by mutual consent." (Kemenag RI, 2019)

In interpreting this verse, Al-Qurtubi (2006) in "Al-Jami' li Ahkam Al-Qur'an" explains that 'unjust ways' include all forms of transactions containing elements of deception or ambiguity that can harm one party. Al-Thabari (2000) in "Jami' al-Bayan fi Ta'wil al-Qur'an" affirms that this verse prohibits all forms of transactions that can lead to disputes or injustice.

The hadith often used as the basis for prohibiting gharar is the Hadith narrated by Muslim number 1513 from Abu Hurairah: "Rasulullah SAW forbade sales containing gharar." Al-Naisaburi (2015). Al-Harawi (2012) in "Fadl al-Mun'im fi Sharh Sahih Muslim" explains that this hadith covers various forms of transactions containing elements of ambiguity, whether in object, price, or delivery time. Al-Asqalani (2001) in "Fath al-Bari" adds that this prohibition aims to protect the rights of transacting parties and prevent disputes.

In the contemporary context, Ayub (2007) in his book "Understanding Islamic Finance" expands the definition of gharar by including elements of excessive and uncontrollable risk. He argues that not all uncertainties can be classified as prohibited gharar, given the inherent risk elements in many modern economic activities.

Al-Dharir (1967) in his work "Al-Gharar wa Atharuhu fi al-'Uqud" classifies gharar into three categories: gharar yasir (minor), gharar mutawassit (moderate), and gharar kathir (major). He asserts that only gharar kathir has a significant impact on the validity of contracts. This view is supported by Az-Zuhaili (2003) in "Financial Transactions in Islamic Jurisprudence." He affirms that only gharar fahish invalidates contracts, while gharar yasir can be tolerated in transactions as it is difficult to avoid entirely in business practices.

In a reputable journal article, Mohd Noh et al. (2024a) in "A review on Gharar dimension in modern Islamic finance transactions," in the Journal of Islamic Accounting and Business Research, analyze how the concept of gharar is applied in disclaimer clauses in Islamic financial contracts. They argue that an overly rigid interpretation of gharar can hinder innovation in the Islamic finance industry and suggest a more flexible approach based on maqasid shariah principles.

Furthermore, Syima Aad (2018) in her writing "Bai al Gharar wa Shuwaruhu al-Mu'ashiroh," explores how the concept of gharar affects sukuk structures. She highlights the importance of clarity in underlying assets and payment mechanisms to minimize gharar in modern Islamic financial instruments.

The development of technology and the complexity of modern financial transactions have prompted a reinterpretation of the gharar concept. This is proposed by Hassan et al. (2021) in "Revisiting the Concept of Gharar in Islamic Financial Contracts: A Quantum Mechanics Perspective," where they propose a new approach to understanding gharar by adopting principles of quantum mechanics. They argue that uncertainty in modern financial transactions is often probabilistic and measurable.

This discussion shows that the definition and limitations of gharar continue to evolve, reflecting the dynamics of Islamic legal thought in responding to modern economic complexities. A more contextual and maqasid shariah-based interpretation allows for innovation in Islamic financial products and services while maintaining the basic principles of protection against injustice and exploitation in economic transactions.

The classification of gharar and its implications for contract validity is an important aspect in understanding the application of the gharar concept in Islamic

commercial jurisprudence. Jurists have developed various classifications of gharar that have different implications for transaction validity.

Ibn Rusyd (2000) in "Bidayat al-Mujtahid" expands this discussion by identifying the locus of gharar in transactions, such as gharar in object, price, or delivery time. He argues that the implications of gharar on contract validity depend on the extent to which the uncertainty affects the essence of the transaction.

In the contemporary context, Obaidullah (2005) in "Islamic Financial Services" develops a classification of gharar based on the nature of its uncertainty, such as gharar in quantity, quality, price, or delivery time. He emphasizes that the assessment of gharar implications must consider the context and complexity of modern transactions.

Abidin (2013) in his article " Shariah Juristical Effect Of Gharar In Predetermining Takaful Contribution", argues that not all uncertainties in business transactions can be classified as prohibited gharar. He suggests a more flexible approach in assessing the implications of gharar, especially in the context of modern financial innovation. Related to this, Dusuki & Abozaid (2007) underscore the importance of considering maqasid shariah in evaluating the implications of gharar on contract validity. They argue that some forms of uncertainty may be acceptable if they provide greater maslahah (benefit) to society.

In his dissertation, Ahmad (2010) from the University of Edinburgh titled "Theory and Practice of Modern Islamic Finance: The Case Analysis of Australia" analyzes how the classification and assessment of gharar are applied in modern Islamic finance practice. He finds that the interpretation and application of the gharar concept often vary among Islamic financial institutions, reflecting the complexity of applying classical principles in contemporary contexts. However, according to El-Gamal (2001), this situation does not deviate from the motivation behind the prohibition of gharar, which aims to prevent the exploitation of asymmetric information and protect less-informed parties in transactions.

Recent developments in this discussion are reflected in the article by Mohd Noh et al. (2024) titled "A Review on Gharar Dimension in Modern Islamic Finance Transactions" published in the Journal of Islamic Accounting and Business Research. They demonstrate that perceptions of the level of gharar in sukuk structures have a

significant impact on pricing and market demand, affirming the importance of proper classification and assessment of gharar in the development of Islamic financial products.

### **Development of DSN-MUI Fatwas on Islamic Insurance (2001-2024)**

#### *Chronological analysis of fatwas related to Islamic insurance*

The development of DSN-MUI fatwas related to Islamic insurance from 2001 to 2024 shows a significant evolution in efforts to reduce gharar (uncertainty), which is a primary concern in conventional insurance systems. Beginning with Fatwa No. 21/DSN-MUI/X/2001 on General Guidelines for Islamic Insurance DSN (2001b) DSN-MUI laid the fundamental groundwork by introducing the concepts of *tabarru'* (donation) and *ta'awun* (mutual assistance) as alternatives to the exchange of premiums and claims fraught with elements of gharar. This fatwa became the starting point for the transformation of insurance in Indonesia towards a system more aligned with Islamic principles.

Over time, DSN-MUI continued to refine the Islamic insurance framework through a series of complementary fatwas. Fatwa No. 20/DSN-MUI/IV/2001 and Fatwa No. 40/DSN-MUI/X/2003, although not directly addressing insurance, provided important guidance on Islamic investments that had implications for insurance fund management. Both fatwas contributed to reducing gharar related to investment aspects by establishing clear criteria for Shariah-compliant instruments and issuers (DSN, 2001a, 2003).

The years 2004 to 2006 marked an important period with the issuance of several fatwas specifically addressing various operational aspects of Islamic insurance. Fatwa No. 43/DSN-MUI/VIII/2004 on Compensation (*Ta'widh*) provided clarity on the concept of fair compensation, reducing uncertainty in determining indemnities (DSN, 2004). Subsequently, a trio of fatwas issued in 2006 - Fatwas No. 51, 52, and 53 - comprehensively addressed the contract models in Islamic insurance. These fatwas explained the profit-sharing mechanism through *mudharabah musytarakah* contracts, the role of insurance companies as participants' representatives through *wakalah bil ujrah* contracts, and the details of implementing *tabarru'* contracts, which form the core of the Islamic insurance system. These three fatwas significantly reduced gharar by providing clarity on contractual relationships, the roles of parties, and participant fund management (DSN, 2006c, 2006b, 2006a).



Entering the 2010s, the focus of DSN-MUI fatwas shifted to more specific and innovative aspects of Islamic insurance. Fatwa No. 81/DSN-MUI/III/2011 addressed the issue of returning tabarru' funds to participants who discontinue before the end of the agreement term, providing clarity and fairness in situations that previously may have caused uncertainty. Fatwa No. 84/DSN-MUI/XII/2012, although focusing on murabahah, had important implications for profit recognition in Islamic financial institutions, including insurance, reducing gharar in financial reporting aspects (DSN, 2011, 2012)

Recent developments are marked by Fatwa No. 98/DSN-MUI/XII/2015 and Fatwa No. 106/DSN-MUI/X/2016, which reflect innovation and expansion in the application of Islamic insurance principles. Fatwa No. 98 integrates the concept of Islamic insurance into the national social health insurance system, reducing gharar in the implementation of social insurance. Meanwhile, Fatwa No. 106 opens a new chapter by introducing the concept of waqf of insurance and investment benefits, providing new options for insurance participants to utilize their policy benefits in a more meaningful and Shariah-compliant manner (DSN, 2015, 2016).

The chronological analysis of DSN-MUI fatwas shows a significant shift in focus in the regulation of Islamic insurance in Indonesia. Initially, the fatwas focused more on determining the permissibility of products, but over time, there has been a change in orientation towards optimizing *maslahah* (public interest) and consumer protection. This shift reflects the development of understanding and the increasingly complex needs of the Islamic insurance industry.

These findings align with the research by Rusni et al. (2013) in "Dynamics of National Sharia Council-Indonesian Ulema Council Fatwas in the Perspective of Islamic Economic Law" published in the Journal of Shariah. The study underlines the evolution of DSN-MUI fatwas becoming more responsive to market needs and consumer protection. This shift signifies the maturity of the Islamic insurance industry and increased awareness of the importance of balancing Shariah compliance and protection of consumer rights.

The development of DSN-MUI fatwas on Islamic insurance also reflects efforts to harmonize with government regulations, as these fatwas often become the basis for OJK regulations and other government policies, demonstrating the important role of DSN-

MUI in Indonesia's Islamic financial ecosystem. Overall, the chronological analysis of DSN-MUI fatwas on Islamic insurance shows an evolution that is responsive to industry developments, societal needs, and regulatory challenges, while maintaining fundamental Islamic principles.

*Identification of changes in the concept and application of gharar in DSN-MUI fatwas*

The evolution of the concept and application of gharar in DSN-MUI fatwas on Islamic insurance demonstrates significant development from 2001 to 2024. The following is a detailed chronological account:

Fatwa No. 21/DSN-MUI/X/2001 on General Guidelines for Islamic Insurance introduced the basic concept of gharar in the context of Islamic insurance. This fatwa emphasized the importance of avoiding gharar through clarity in contracts, particularly regarding the division of rights and obligations between participants and insurance companies. The concept of gharar here was still strictly interpreted, focusing on avoiding uncertainty in contracts Hasanah et al. (2018).

Over time, the understanding of gharar began to evolve, as evidenced in Fatwa No. 20/DSN-MUI/IV/2001 and Fatwa No. 40/DSN-MUI/X/2003. Although not directly addressing insurance, these fatwas began to acknowledge that some level of uncertainty in investments and capital market transactions could be acceptable, provided they are managed according to Islamic principles. This paved the way for a more nuanced understanding of gharar in the context of modern finance.

A significant development occurred with the issuance of Fatwa No. 43/DSN-MUI/VIII/2004 on Compensation (*Ta'widh*), which recognized that uncertainty in transactions could be fairly compensated without violating Islamic principles. This became an important foundation for subsequent innovations in Islamic insurance products.

The year 2006 marked a crucial turning point with the issuance of a trio of fatwas: No. 51 on Mudharabah Musytarakah Contracts, No. 52 on Wakalah Bil Ujrah Contracts,

and No. 53 on Tabarru' Contracts. These fatwas collectively expanded the understanding of contract structures that could reduce gharar in Islamic insurance. The introduction of mudharabah musytarakah and wakalah bil ujah contracts showed recognition that elements of uncertainty in investment and fund management could be acceptable if properly structured. Meanwhile, further elaboration on tabarru' contracts strengthened the foundation of Islamic insurance as a mutual assistance mechanism.

Fatwa No. 51/DSN-MUI/III/2006 on Mudharabah Musytarakah Contracts in Islamic Insurance demonstrated progress in handling gharar. This fatwa introduced a more complex contract structure, aimed at minimizing gharar through clearer risk-sharing between participants and insurance companies. This approach reflected a more nuanced understanding of gharar, recognizing that some level of uncertainty might not be entirely avoidable in insurance transactions (Sula, 2004).

Fatwa No. 52/DSN-MUI/III/2006 on Wakalah Bil Ujah Contracts in Islamic Insurance and Reinsurance further developed the concept of managing gharar. This fatwa introduced a model where the insurance company acts as the participant's agent in managing funds, with a clear fee (ujrah). This approach aimed to reduce gharar by increasing transparency in fund management and underwriting surplus distribution (Bayinah, 2018).

Fatwa No. 81/DSN-MUI/III/2011 on the Return of Tabarru' Funds for Insurance Participants Who Discontinue Before the End of the Agreement Term marked a significant shift in the understanding of gharar. This fatwa allowed for the partial return of tabarru' funds under certain conditions, indicating greater flexibility in the interpretation of gharar. This approach reflected consideration of the maslahah (interest) of insurance participants, recognizing that absolute avoidance of gharar might not always align with principles of justice and public interest (Fathurrahman et al., 2021).

Fatwas No. 84/DSN-MUI/XII/2012 and No. 98/DSN-MUI/XII/2015 brought the understanding of gharar to a further level, acknowledging the complexity of modern financial transactions and the need to adapt Islamic principles in a broader context, including social health insurance.

Fatwa No. 106/DSN-MUI/X/2016 on Waqf of Insurance Benefits and Investment Benefits in Islamic Life Insurance showed further evolution in the understanding of gharar. This fatwa accommodated product innovations combining insurance with waqf, demonstrating a more progressive approach to managing uncertainty. The concept of gharar here is interpreted in a broader context, focusing on achieving greater social and economic objectives (Maksum, 2020)

This matrix table illustrates the evolution of the concept and application of gharar in DSN-MUI fatwas related to Islamic insurance:

No. Fatwa	Year	Concept of Gharar	Application
20	2001	Strict, must be completely avoided	Introduction of tabarru' and ta'awun contracts
20	2001	Uncertainty in investment not always gharar	Sharia investment criteria for mutual funds
40	2003	Broader understanding of acceptable transactions	Criteria for sharia-compliant issuers and securities in capital markets
43	2004	Uncertainty can be fairly compensated	Sharia-compliant compensation (ta'widh) mechanism
51	2006	Uncertainty in investment can be managed	Mudharabah musytarakah contract in insurance
52	2006	Mitigation through fee-based structure	Wakalah bil ujah contract in insurance
53	2006	Strengthening of mutual donation concept	Detailed implementation of tabarru' contract
81	2011	Flexibility in insurance contracts	Conditional return of tabarru' funds
84	2012	Management of uncertainty in profit recognition	Sharia-compliant profit recognition method
98	2015	Uncertainty in social insurance schemes acceptable	Sharia insurance principles in social security
106	2016	Uncertainty as an opportunity for benevolence	Waqf of insurance and investment benefits

Table 1. Evolution of DSN-MUI Fatwas on Insurance

This table summarizes the evolution of the concept and application of gharar in DSN-MUI fatwas related to Islamic insurance, showing the progression from a strict interpretation to a more nuanced and flexible approach over time.

The above changes reflect efforts to balance Shariah compliance with the practical needs of the modern insurance industry. Scholars and regulators have strived to adapt Islamic principles in the context of contemporary economics, without sacrificing the essence of protection against injustice and exploitation in financial transactions. This approach allows the Islamic insurance industry to develop and innovate while maintaining the integrity of fundamental Islamic principles (Hasanah et al., 2018; Ismanto, 2016)

### **Evolution of the Gharar Concept in DSN-MUI Fatwas**

#### *Shift in gharar interpretation from early to recent fatwas*

The evolution of gharar interpretation in DSN-MUI fatwas related to Islamic insurance from 2001 to 2024 reflects a significant intellectual journey in adapting Islamic principles to the complexities of modern finance. This journey began with Fatwa No. 21/DSN-MUI/X/2001 on General Guidelines for Islamic Insurance, which applied a relatively strict and literal interpretation of gharar. This fatwa sought to eliminate elements of uncertainty by introducing the concepts of tabarru' (donation) and ta'awun (mutual assistance) as the foundation of Islamic insurance, distinctly differentiating it from conventional insurance considered to be fraught with gharar.

Subsequent developments were evident in Fatwa No. 20/DSN-MUI/IV/2001 and Fatwa No. 40/DSN-MUI/X/2003, which, although not directly addressing insurance, began to show flexibility in understanding gharar in the context of investments and capital markets. These fatwas paved the way for the understanding that some level of uncertainty could be acceptable in modern financial transactions, provided there are appropriate Shariah-compliant risk mitigation efforts. This had important implications for the management of Islamic insurance funds.

Fatwa No. 43/DSN-MUI/VIII/2004 on Compensation (Ta'widh) marked a further step in the evolution of gharar understanding, particularly in the context of financial compensation. This fatwa recognized that some forms of uncertainty in financial

transactions could be managed and fairly compensated without violating Islamic principles. This became an important basis for the development of more complex Islamic insurance products.

A significant shift occurred with the issuance of the trio of fatwas in 2006: Fatwa No. 51 on Mudharabah Musytarakah Contracts, Fatwa No. 52 on Wakalah Bil Ujah Contracts, and Fatwa No. 53 on Tabarru' Contracts. These fatwas collectively expanded the understanding of contract structures that could reduce gharar in Islamic insurance. The introduction of mudharabah musytarakah and wakalah bil ujah contracts showed recognition that elements of uncertainty in investment and fund management could be acceptable if properly structured according to Islamic principles. Meanwhile, Fatwa No. 53 strengthened the concept of tabarru', affirming that gharar could be mitigated through a mutual donation structure.

Further development was seen in Fatwa No. 81/DSN-MUI/III/2011 on the Return of Tabarru' Funds. This fatwa demonstrated even greater flexibility in the interpretation of gharar by allowing the return of tabarru' funds under certain conditions. This reflected a more nuanced understanding that some forms of uncertainty could be accepted and managed in Islamic insurance operations without violating fundamental principles.

Fatwas No. 84/DSN-MUI/XII/2012 and No. 98/DSN-MUI/XII/2015, although not directly addressing insurance, made important contributions to the evolution of gharar understanding. These fatwas reflected the application of a broader understanding of gharar in the context of complex financial transactions and social security systems, indicating that some level of uncertainty could be acceptable as long as the primary goal is public welfare.

The culmination of this evolution is seen in Fatwa No. 106/DSN-MUI/X/2016 on Waqf of Insurance Benefits. This fatwa demonstrated a far more sophisticated understanding of gharar, where uncertainty in insurance claims is transformed into an opportunity for perpetual charity. This marks a paradigm shift in understanding and applying the concept of gharar in the context of Islamic insurance.

The information on the shift in gharar interpretation in DSN-MUI fatwas related to Islamic insurance from 2001 to 2024 is summarized in the following table:

Tahun	Fatwa Number	Main Topic	Gharar Interpretation
2001	21/DSN-MUI/X/2001	General Guidelines for Islamic Insurance	Strict and literal; focus on tabarru' and ta'awun
2001	20/DSN-MUI/IV/2001	Investment	Beginning to show flexibility in investment contex
2003	40/DSN-MUI/X/2003	Capital Market	Flexibility in capital market context
2004	43/DSN-MUI/VIII/2004	Compensation (Ta'widh)	Recognition that uncertainty can be managed and compensated
2006	51/DSN-MUI/III/2006	Mudharabah Musytarakah Contract	Acceptance of uncertainty elements in investment
2006	52/DSN-MUI/III/2006	Wakalah Bil Ujah Contract	Acceptance of uncertainty in fund management
2006	53/DSN-MUI/III/2006	Tabarru' Contract	Strengthening of tabarru' concept for gharar mitigation
2011	81/DSN-MUI/III/2011	Return of Tabarru' Funds	Further flexibility; fund return under certain conditions
2012	84/DSN-MUI/XII/2012	Complex Financial Transactions	Application of broader gharar understanding
2015	98/DSN-MUI/XII/2015	Social Security System	Acceptance of uncertainty for public welfare
2016	106/DSN-MUI/X/2016	Waqf of Insurance Benefits	Sophisticated understanding; transformation of uncertainty into charitable opportunity

Table 2: Shift in gharar interpretation

Overall, the shift in gharar interpretation from early to recent fatwas demonstrates an evolution from a rigid approach towards a more flexible and contextual understanding. This allows for the development of more innovative and competitive Islamic insurance products while maintaining the basic Islamic principles in protecting the interests of all parties involved in insurance transactions.

### *Factors Influencing Conceptual Changes*

The evolution of the gharar concept in DSN-MUI fatwas has been influenced by several key factors reflecting the dynamics of the Islamic financial industry and socio-economic changes in Indonesia. According to Sula (2004) the rapid development of the Islamic insurance industry has created a need for more flexible and applicable interpretations of the gharar concept. As Islamic insurance products and services become more sophisticated, DSN-MUI has been required to provide more specific and contextual guidance. Hasanah et al. (2018) emphasize that industry developments have prompted DSN-MUI to issue more detailed and technical fatwas, evident in the evolution from general guidelines to more specific guidance for various types of Islamic insurance products.

Socio-economic changes have also played a significant role in the evolution of the gharar concept. Fathurrahman et al. (2021) state that the socio-economic transformation of Indonesian society has altered perceptions and needs regarding Islamic financial products, including insurance. These changes have created demands for more diverse and innovative Islamic insurance products, which in turn influence the interpretation of gharar. Ismanto (2016) highlights that increased public awareness of Islamic finance has driven demand for products that are not only formally Shariah-compliant but also fulfill maqasid al-shariah.

Innovation in Islamic financial products has become another important factor in the evolution of the gharar concept. Maksum (2020) explains that product innovation has prompted DSN-MUI to review and expand its interpretation of gharar to accommodate new product structures. Ismanto (2016) analyzes that recent DSN-MUI fatwas reflect efforts to balance product innovation with Islamic principles. For example, Fatwa No. 106/DSN-MUI/X/2016 on Waqf of Insurance Benefits demonstrates how the gharar concept is interpreted in the context of hybrid products combining insurance with waqf instruments.

Industry development, socio-economic changes, and product innovation are three factors driving DSN-MUI to adopt a more dynamic and contextual approach in



interpreting gharar. This allows the Islamic insurance industry to develop and innovate while maintaining compliance with Islamic principles. Overall, the evolution of the gharar concept in DSN-MUI fatwas reflects an adaptive response to changing market realities and societal needs, enabling the development of a more competitive and relevant Islamic insurance industry while maintaining the integrity of Islamic principles.

### **Analysis of Islamic Economic Law Philosophy**

#### *Epistemological Review: Sources and Methods of Knowledge in Fatwa Formulation*

The analysis of Islamic economic law philosophy, particularly the epistemological review of sources and methods of knowledge in DSN-MUI fatwa formulation on Islamic insurance, provides deep insights into the foundations of thought and decision-making processes in contemporary Islamic economic law.

Traditional Islamic legal epistemology is sourced from the Quran, Sunnah, ijma' (consensus), and qiyas (analogy). However, in the context of modern Islamic economics, especially insurance, these sources need to be interpreted and applied in complex contemporary realities. This process involves contextual ijtiḥad, consideration of maqasid al-shariah, and utilization of new methods such as maslahah mursalah. This holistic approach allows Islamic law to remain relevant and responsive to global economic challenges while maintaining its ethical principles (Hallaq, 2009).

DSN-MUI integrates traditional sources with contemporary approaches in formulating its fatwas. Through ijtiḥad jama'i (collective reasoning), DSN-MUI combines the expertise of fiqh scholars with economic and financial experts. This collaborative methodology produces fatwas that are responsive to modern financial industry dynamics while maintaining Shariah integrity. This process reflects the adaptability of Islamic law in facing global economic challenges without sacrificing its fundamental principles.

The DSN-MUI fatwa formulation process embodies a synthesis between classical Islamic scholarship and modern economic insights. This approach combines Islamic principles with contemporary financial market realities. Through intensive dialogue between scholars and practitioners, DSN-MUI produces fatwas that are responsive to industry dynamics yet rooted in Islamic values. This methodology reflects the flexibility of Islamic law in accommodating financial innovation while maintaining ethical and spiritual compliance (Rusni et al., 2013).

The epistemology of DSN-MUI fatwas integrates fiqh maxims and maqasid al-shariah, enriching the law formulation process. The maqasid approach becomes a crucial foundation in interpreting contemporary Islamic law. This DSN-MUI methodology allows flexibility in responding to modern financial issues while maintaining the essence of Shariah. This synthesis between traditional principles and contemporary realities creates relevant, adaptive, and broad-minded fatwas, bridging the gap between classical doctrine and global economic needs.

Mudzhar (2014) highlights that DSN-MUI adopts a holistic approach in its fatwas, integrating maslahah (public interest) and 'urf (custom). This method demonstrates the evolution of Islamic legal epistemology, responding to changes in the socio-economic landscape. By considering public welfare and social norms, DSN-MUI produces contextual and applicable fatwas. This approach enriches the discourse of fiqh muamalah, enabling Islamic financial innovation aligned with contemporary demands. The result is a flexible regulatory framework that remains rooted in Islamic principles, supporting the development of Islamic economics in the global era.

This epistemological review demonstrates that the formulation of DSN-MUI fatwas on Islamic insurance involves a complex and multidimensional process. It reflects efforts to bridge Shariah authenticity and the demands of modernity, enabling the development of innovative Islamic insurance products that remain within the corridors of Islamic principles (Maksum, 2020)

#### *Ontological Review: The Nature of Gharar in the Context of Islamic Insurance*

An ontological review of the nature of gharar in the context of Islamic insurance provides a deep understanding of the essence of uncertainty in Islamic financial transactions. This analysis is crucial for comprehending how the concept of gharar is interpreted and applied in DSN-MUI fatwas on Islamic insurance.

The concept of gharar, which centers on uncertainty and risk in economic transactions, has undergone a transformation in interpretation within the context of Islamic insurance. This complexity arises from the integration of the ta'awun principle as an operational foundation. This approach balances modern risk management needs with Islamic values, creating a unique insurance model. This contemporary interpretation of

gharar enables innovation in Islamic financial products that are responsive to global market demands (Al-Suwailem, 2000).

The conceptualization of gharar in Islamic insurance has evolved beyond uncertainty, embracing principles of justice and protection of participants' rights. This paradigm is rooted in maqasid al-shariah, enriching its ontological understanding. This comprehensive approach facilitates insurance product innovation that not only manages risk but also upholds Islamic values. The result is an insurance system that aligns uncertainty management with Shariah objectives, creating a balance between financial protection and ethical compliance (Iqbal, 2005)

The ontology of gharar in Islamic insurance is understood as a spectrum, beyond a simple dichotomy. The level of acceptability of gharar is assessed based on the maslahah (benefit) it produces. This nuanced approach allows flexibility in developing Islamic insurance products, balancing risk management with Islamic principles. This contextual interpretation drives financial innovation responsive to modern needs while maintaining Shariah integrity (Dusuki & Abozaid, 2007)

Furthermore, (Kamali, 2020) analyzes that the nature of gharar in Islamic insurance relates to the concept of manageable and sharable risk. This distinguishes it from prohibited gharar in purely speculative transactions. Similarly, Bayinah (2018) in her dissertation highlights that the ontology of gharar in DSN-MUI fatwas on Islamic insurance has evolved from a rigid concept to a more dynamic one. This reflects an understanding that the nature of gharar in Islamic insurance cannot be separated from the goals of protection and fair risk-sharing.

This ontological review demonstrates that the nature of gharar in Islamic insurance is understood as a complex and multidimensional concept. Its interpretation in DSN-MUI fatwas reflects efforts to balance Shariah principles, practical industry needs, and the protection of insurance participants' interests. This understanding enables the development of innovative Islamic insurance products while maintaining the integrity of Islamic principles (Maksum, 2020)

*Axiological Review: Values and Objectives of Applying the Gharar Concept in Islamic Insurance*

An axiological review of the values and objectives of applying the gharar concept in Islamic insurance provides a deep understanding of the ethical aspects and moral aims of Shariah regulation in the insurance industry. This analysis is important for understanding how DSN-MUI fatwas seek to realize Islamic values in modern insurance practices.

Chapra (2016) emphasizes that the application of the gharar concept in Islamic economics, including insurance, aims to realize justice and prevent exploitation. In Islamic insurance, the interpretation of gharar protects the interests of all parties, especially insurance participants. Iqbal & Mirakhor (2011) affirm that this is achieved through transparency, fairness, and ta'awun. Gharar regulation creates an ethical and sustainable insurance system by avoiding uncertainty and speculation, and ensuring contract clarity.

Dusuki & Abozaid (2007) in his article "Challenges of Realizing Maqasid al-Shari'ah (Objectives of Shari'ah) in Islamic Capital Market: Special Focus on Equity-Based Sukuk" argues that the application of the gharar concept should be viewed within the broader framework of maqasid al-shariah. The goal is not only to avoid uncertainty but also to realize maslahah for society.

Furthermore, Siddiqi (2009) in "*Maqasid-e-Shari'at* (Objectives of the Shariah)" highlights that the values underlying the application of gharar in Islamic insurance include the protection of wealth (hifz al-mal) and prevention of harm (daf' al-darar). This emphasizes the aspects of protection and security that are central to the concept of insurance.

Maksum (2020) in his dissertation analyzes that the evolution of gharar interpretation in DSN-MUI fatwas reflects efforts to balance Shariah values with the practical needs of the modern insurance industry. The aim is to create an insurance system that is not only formally Shariah-compliant but also fulfills the substantive objectives of Islamic law.

This axiological review shows that the application of the gharar concept in Islamic insurance has complex and multidimensional objectives. The underlying values and goals

include justice, transparency, protection, and collective benefit. The interpretation and application of gharar in DSN-MUI fatwas reflect efforts to realize these values in the context of the modern insurance industry, enabling the development of innovative products while maintaining the integrity of Islamic principles (Maksum, 2020).

### **Implications of Changes in the Gharar Concept**

#### *Impact on Islamic Insurance Product Development*

Changes in the gharar concept in DSN-MUI fatwas have had a significant impact on the development of Islamic insurance products in Indonesia. The evolution in gharar interpretation has opened opportunities for more diverse and competitive product innovations while maintaining compliance with Shariah principles. A more flexible and contextual interpretation of gharar allows Islamic insurance companies to develop new products that are more aligned with modern market needs.

One important impact is the emergence of more complex and integrated Islamic insurance products. For example, the development of Shariah-compliant unit-linked products that combine protection and investment elements has become more feasible with a more nuanced understanding of the gharar concept. Additionally, innovation in Shariah-compliant microinsurance products has also grown, expanding public access to insurance services that comply with Islamic principles.

Changes in the gharar concept have also driven the development of Islamic insurance products that are more transparent and easily understood by consumers. This is evident in the clearer contract structures and more measurable profit-sharing mechanisms in recent Islamic insurance products. Another impact is increased flexibility in product design, such as the option to partially return *tabarru'* funds under certain conditions, which was previously considered contrary to a more rigid concept of gharar.

These developments have not only enhanced the competitiveness of Islamic insurance products in the market but also expanded the scope of protection that can be offered to the public. However, challenges remain in ensuring that product innovation aligns with fundamental Shariah principles and does not compromise the essence of the prohibition on excessive gharar (Fathurrahman et al., 2021; Hasanah et al., 2018; Iqbal, 2005).

### *Influence on Regulation and Supervision of the Islamic Insurance Industry*

Changes in the gharar concept in DSN-MUI fatwas have significantly influenced the regulation and supervision of the Islamic insurance industry in Indonesia. The evolution in the understanding of gharar has prompted adjustments in the regulatory framework to accommodate more flexible and contextual interpretations. This is evident in new, more specific and comprehensive regulations governing various operational aspects of Islamic insurance (Maksum, 2020)

This influence is also seen in the development of more sophisticated supervisory standards and guidelines. The Financial Services Authority (OJK) and other supervisory bodies have adopted a more nuanced approach in assessing Shariah compliance, particularly regarding the application of the gharar concept in Islamic insurance products and operations. This includes more in-depth assessments of contract structures, risk management mechanisms, and transparency in Islamic insurance practices (Rusni et al., 2013)

Furthermore, changes in the gharar concept have driven the development of a more comprehensive Shariah governance framework. The role of the Shariah Supervisory Board (DPS) in Islamic insurance companies has become increasingly important in ensuring that product innovations and operational practices remain aligned with Shariah principles, including the evolved interpretation of gharar. This has increased the complexity of Shariah supervision and audit processes (Bayinah, 2018).

These changes have also impacted the increased regulatory focus on consumer protection and transparency. Regulators are increasingly emphasizing the importance of comprehensive disclosure about risks and operational mechanisms of Islamic insurance products to customers. This reflects a shift from an approach solely focused on formal compliance with the prohibition of gharar towards efforts to realize the substantive objectives of Shariah principles in protecting customer interests (Hasanah et al., 2018).

### *Challenges and Opportunities in Future Implementation of the Gharar Concept*

The future implementation of the gharar concept in the Islamic insurance industry presents both significant challenges and opportunities. One of the main challenges is balancing product innovation with Shariah compliance in an increasingly complex

financial environment. The Islamic insurance industry must continue to develop competitive products relevant to modern market needs while ensuring these products remain aligned with Shariah principles, including the evolved interpretation of gharar (Lone & Ahmad, 2017)

Significant opportunities arise from the potential integration of technology in risk management and transparency of Islamic insurance products. The use of big data, artificial intelligence, and blockchain can help reduce gharar elements by improving risk assessment accuracy and operational transparency. However, this also presents new challenges in interpreting gharar in technological contexts unprecedented in classical fiqh (Lone & Ahmad, 2017).

Another challenge lies in harmonizing international standards with local interpretations of gharar. As the Islamic finance industry globalizes, there is a need to develop a more universal understanding of gharar that is acceptable across various jurisdictions. This requires more intensive dialogue and cooperation among scholars, regulators, and industry practitioners at a global level (Hasanah et al., 2018)

Great opportunities are also seen in developing more inclusive Islamic insurance products oriented towards maqasid al-shariah. A more flexible and maslahah-oriented interpretation of gharar can pave the way for product innovations that better meet societal needs, especially in the context of social protection and sustainable economic development. However, this also demands increased Islamic financial literacy among the public and the development of a more comprehensive ethical framework in the Islamic insurance industry (Asutay, 2012)

## **KESIMPULAN DAN SARAN**

1. This research analyzes the evolution of the gharar concept in DSN-MUI fatwas on Islamic insurance from 2001 to 2024. The analysis results show a significant shift in the interpretation and application of the gharar concept, from a relatively rigid approach in the early 2000s towards a more flexible and contextual interpretation in recent fatwas. Factors influencing this evolution include developments in the Islamic insurance industry, changes in socio-economic conditions, and innovations in Islamic financial products.

2. Changes in the gharar concept have positively impacted the development of more innovative and competitive Islamic insurance products and prompted adjustments in industry regulation and supervision. Epistemological, ontological, and axiological reviews indicate that this evolution reflects efforts to balance Shariah compliance with the practical needs of modern industry while maintaining maqasid al-shariah.

Although these developments open opportunities for growth in the Islamic insurance industry, challenges remain in ensuring consistency in gharar interpretation amidst the complexity of modern financial products and industry globalization. In conclusion, the evolution of the gharar concept in DSN-MUI fatwas has enabled the development of a more dynamic and relevant Islamic insurance industry while maintaining the integrity of Shariah principles.

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