



SHARIA COMPLIANCE ANALYSIS OF INDONESIA'S NATIONAL HEALTH INSURANCE (BPJS KESEHATAN): A HYBRID MODEL BETWEEN TAKAFUL PRINCIPLES AND STATE SOCIAL INSURANCE

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Abstract

This study analyzes the Sharia compliance of BPJS Kesehatan as Indonesia's national social health insurance system by examining its contractual structure, contribution mechanism, fund management, penalty system, and participation status. The research is motivated by the need to evaluate whether state-based social insurance aligns with Islamic insurance (*takaful*) principles within *fiqh muamalat*. A qualitative case study approach was applied using interviews, field observations, focus group discussions, and document analysis. Data were analyzed using inductive and deductive methods based on Islamic jurisprudence and social insurance theory, supported by comparative perspectives from Indonesian Islamic institutions. Findings show that BPJS Kesehatan is structurally aligned with the Islamic principle of *tabarru'* through collective risk-sharing and mutual assistance (*ta'āwun*). However, it does not fully comply with Islamic insurance contracts such as *wakālah bi al-ujrah* due to its statutory nature and lack of formal Sharia governance. In addition, investment of funds in non-Sharia-compliant instruments and the contested nature of late payment penalties indicate partial Sharia non-compliance at the operational level. Despite these issues, participation is considered permissible (*mubāh*) based on public necessity and welfare considerations. The study concludes that BPJS Kesehatan is a hybrid social insurance system with partial Sharia alignment, requiring governance reform in investment management and contractual standardization to achieve full compliance.

Keywords: BPJS Kesehatan, Islamic insurance, Takaful, Tabarru', Social Insurance, Fiqh Muamalat, Sharia Compliance, Public Policy



INTRODUCTION

Islam is a comprehensive and holistic religion that regulates all dimensions of human life, including theological beliefs (*aqidah*), ritual worship (*ibadah*), and socio-economic transactions (*muamalat*). Within the framework of Islamic jurisprudence (*fiqh*), the discussion of *muamalat* covers a broad spectrum of human economic and social interactions such as trade (*buyu*), leasing (*ijarah*), partnership (*shirkah*), charity (*hibah*), endowment (*waqf*), and financial guarantees. Among these modern developments in Islamic commercial jurisprudence is the concept of insurance, which has become an increasingly significant instrument in contemporary economic systems.

Insurance in its conventional form is widely adopted in modern economies as a mechanism for risk mitigation and financial protection. However, within Islamic legal discourse, conventional insurance has long been debated due to the presence of elements such as *riba* (interest), *maysir* (gambling), and *gharar* (excessive uncertainty). As a response, Islamic insurance (*takaful*) has been developed based on the principles of mutual cooperation (*ta'āwun*) and voluntary donation (*tabarru*), offering a Sharia-compliant alternative that aligns financial protection with Islamic ethical and legal values.

The evolution of Islamic insurance has led to the establishment of structured operational models such as *wakālah bi al-ujrah* (agency with fee), *mudārabah* (profit-sharing), and hybrid contractual arrangements that aim to eliminate prohibited elements while maintaining financial sustainability. These models have been widely implemented in Islamic financial institutions across Muslim-majority countries, including Indonesia.

In Indonesia, however, the development of insurance is not limited to private Islamic financial institutions. The government has established a national social security system known as the *Badan Penyelenggara Jaminan Sosial (BPJS)*, which includes BPJS Kesehatan as the national health insurance provider. BPJS Kesehatan operates as a public social insurance system designed to ensure universal healthcare access for the entire population through a mandatory participation scheme and a collective risk-sharing mechanism.

According to the dissertation, BPJS Kesehatan is structured based on a mutual assistance system (*gotong royong*) that resembles the Islamic concept of *tabarru*, where participants contribute funds to support other members who experience health risks. This similarity has led some scholars to argue that BPJS Kesehatan contains elements of Islamic insurance principles.



However, despite this apparent resemblance, the operational structure of BPJS Kesehatan raises important Sharia concerns. The system is managed under state law rather than Islamic financial governance, and part of its fund management involves investment activities that may not fully comply with Sharia principles. These conditions create a hybrid system that cannot be easily categorized as either fully Islamic insurance (*takaful*) or conventional commercial insurance.

The implementation of BPJS Kesehatan as a mandatory national health insurance system introduces complex jurisprudential questions within Islamic law. The core issue lies in determining whether a state-based compulsory social insurance system can be considered Sharia-compliant when evaluated through the framework of Islamic insurance principles.

The dissertation highlights that although BPJS Kesehatan is based on a social solidarity mechanism, several operational aspects raise Sharia concerns, particularly in relation to fund investment, contribution management, and contractual structure. One of the main issues is whether the participant contribution can be classified as *tabarru'* (donation) or whether it constitutes a commercial insurance premium with elements of exchange (*mu'āwadah*).

Another critical issue is the investment of collected funds. In Islamic insurance, funds must be invested in Sharia-compliant instruments. However, BPJS Kesehatan, as a government institution, does not fully operate under Islamic financial screening mechanisms. This raises concerns regarding the potential involvement of non-Sharia-compliant financial instruments.

Furthermore, the imposition of penalties on late payment contributions has also been widely debated. Some scholars argue that such penalties may resemble *riba* if they generate additional financial benefit from delayed payment obligations. This creates further ambiguity regarding the Sharia status of the system.

The dissertation also notes that Islamic scholarly institutions in Indonesia provide differing interpretations. The Majelis Ulama Indonesia (MUI) expresses reservations regarding full Sharia compliance, while Nahdlatul Ulama (NU) considers BPJS Kesehatan generally acceptable due to its public welfare objective. Despite differing perspectives, both institutions agree that participation in BPJS Kesehatan is permissible (*mubah*).



LITERATURE REVIEW

Islamic Insurance (Takaful) as a Sharia-Compliant Risk Management System

Islamic insurance (*takaful*) represents a contemporary development within Islamic commercial jurisprudence (*fiqh al-mu'amalat*) that seeks to provide a Sharia-compliant alternative to conventional insurance systems. The foundational distinction between *takaful* and conventional insurance lies in the underlying contractual philosophy. Conventional insurance is primarily structured around exchange contracts (*mu'awadāt*) in which risk is transferred from the insured to the insurer for a premium. In contrast, *takaful* is based on mutual assistance (*ta'awun*) and voluntary contribution (*tabarru'*), where participants collectively guarantee each other against defined risks (Billah, 2019; Ayub, 2018).

From a jurisprudential perspective, scholars argue that conventional insurance contains elements of *gharar* (uncertainty), *maysir* (gambling), and *riba* (interest), which render it problematic under Islamic law (El-Gamal, 2006; Dusuki & Abdullah, 2012). As a result, Islamic jurists have developed alternative contractual frameworks such as *wakālah bi al-ujrah* (agency fee model), *muḍārabah* (profit-sharing model), and hybrid structures combining both principles (AAOIFI, 2020).

The *tabarru'* principle plays a central role in Islamic insurance theory. Under this principle, participants willingly contribute funds into a common pool without expectation of direct financial return, except in cases of claim eligibility. This transforms the contractual nature from a commercial exchange into a charitable risk-sharing mechanism. As emphasized by contemporary Islamic finance scholars, the legitimacy of *takaful* depends not only on the absence of prohibited elements but also on the presence of genuine mutual solidarity and ethical fund governance (Billah, 2019).

The dissertation under analysis highlights that BPJS Kesehatan conceptually resembles this *tabarru'*-based model, as participant contributions are pooled and redistributed for healthcare coverage among members. This conceptual overlap forms the primary theoretical bridge between Islamic insurance and state-based social insurance systems.

Social Insurance Theory and Welfare State Mechanisms

Social insurance systems are typically associated with welfare state models in which governments assume responsibility for providing essential services such as healthcare, unemployment protection, and pensions. Unlike private insurance,



social insurance is characterized by mandatory participation, income redistribution, and state oversight (Barr, 2012).

In classical welfare economics, social insurance is justified based on the principles of risk pooling, adverse selection mitigation, and social justice. By mandating participation, governments ensure that high-risk individuals are not excluded from coverage, thereby achieving universal protection (Esping-Andersen, 1990). This model is particularly relevant in developing countries where private insurance markets are insufficient to cover the entire population.

Indonesia's BPJS Kesehatan is a direct implementation of this social insurance paradigm. The system is based on the principle of *gotong royong* (mutual cooperation), which aligns structurally with risk-sharing mechanisms found in Islamic finance. However, unlike *takaful*, BPJS is not explicitly governed by Sharia supervisory frameworks, which creates a hybrid institutional identity between secular welfare policy and Islamic ethical expectations.

The dissertation emphasizes that BPJS Kesehatan is legally established as a public social security institution under Indonesian law and operates under compulsory participation rules, making it fundamentally different from voluntary insurance schemes.

Theoretical Convergence Between Takaful and Social Insurance

Recent scholarship in Islamic economics has increasingly explored the convergence between *takaful* systems and state-led social insurance models. Some scholars argue that social insurance institutions may implicitly reflect Islamic principles if they are based on mutual assistance, solidarity, and redistribution (Hassan & Lewis, 2007).

This convergence theory suggests that the distinction between Islamic insurance and social insurance is not always absolute. Instead, the differentiation depends on contractual structuring, fund governance, and investment compliance. If a social insurance system avoids interest-based investments and ensures ethical fund management, it may partially align with *maqāṣid al-sharī'ah* (objectives of Islamic law), particularly the preservation of life (*hifz al-nafs*) and wealth (*hifz al-māl*) (Chapra, 2008).

In the case of BPJS Kesehatan, the dissertation identifies strong alignment with *tabarru'*-like mechanisms but also notes deviations in investment practices, where funds may be managed through non-Sharia-compliant financial instruments. This creates a theoretical tension between structural similarity and operational divergence.

Contractual Structures in Islamic Insurance and Public Insurance Systems

Sharia Compliance Analysis ...



Contractual legitimacy (*'aqd legitimacy*) is a central issue in Islamic financial law. Classical fiqh identifies several valid contracts for risk-sharing arrangements, including *tabarru'*, *wakālah*, and *muḍārabah*. In modern Islamic insurance, *wakālah bi al-ujrah* has become the dominant model due to its operational clarity and regulatory compatibility (AAOIFI, 2020).

In *wakālah* structures, the operator acts as an agent managing contributions on behalf of participants in exchange for a predefined fee. This model separates risk pooling (participant fund) from operational management (insurance operator), thereby enhancing transparency and reducing ambiguity.

Public insurance systems such as BPJS Kesehatan, however, do not explicitly adopt these Islamic contractual labels. Instead, they rely on statutory law and administrative regulation. The dissertation explains that BPJS Kesehatan operates under state authority and is governed by national legal instruments rather than Sharia contracts, which complicates its classification within Islamic jurisprudence.

Therefore, from a legal theory perspective, BPJS Kesehatan may be described as a “statutory social contract system” rather than a classical Islamic *'aqd* system. Nevertheless, functional similarities with *tabarru'* remain significant in comparative analysis.

Sharia Issues in Insurance Fund Management and Investment

One of the most critical debates in Islamic finance literature concerns the investment of insurance funds. Islamic insurance requires that all collected contributions be invested in Sharia-compliant instruments, avoiding interest-bearing securities and unethical industries (Dusuki & Abdullah, 2012).

Investment governance is essential because even if the contractual structure is Sharia-compliant, non-compliant investment activities can invalidate the overall system from a jurisprudential perspective. AAOIFI (2020) emphasizes strict screening criteria for insurance fund investments, including exclusion of conventional bonds, interest-based deposits, and speculative financial derivatives.

The dissertation identifies that BPJS Kesehatan engages in investment activities as part of its fund management strategy. However, these investments are not fully structured under Islamic financial screening standards. As a result, while the system maintains social insurance functionality, its Sharia compliance remains partial rather than absolute.



This issue is central to the Sharia evaluation because it demonstrates that compliance cannot be assessed solely based on intent or structure, but must also include operational financial behavior.

Late Payment Penalties in Islamic Jurisprudence

Another important literature stream relates to penalties for delayed payments. In Islamic commercial law, imposing additional charges on overdue payments is generally prohibited if it results in unjust enrichment, as it may resemble *riba* (Usmani, 2002).

However, contemporary Islamic finance allows conditional penalties (*ta'zīr financial penalties*) under strict conditions, particularly when they are used as deterrents and not as profit-generating mechanisms. Some Islamic scholars permit such penalties provided that collected amounts are directed toward charitable purposes or public funds rather than institutional revenue.

In the context of BPJS Kesehatan, late-payment penalties are used to ensure compliance with mandatory participation rules. The dissertation notes that this issue has generated significant scholarly debate in Indonesia, especially regarding whether such penalties constitute *riba* or administrative enforcement tools.

This debate highlights the intersection between Islamic jurisprudence and modern regulatory governance, where financial penalties serve both disciplinary and systemic sustainability functions.

Institutional Fatwa and Scholarly Divergence in Indonesia

Indonesia presents a unique intellectual landscape in Islamic finance due to the presence of multiple authoritative institutions, including the Majelis Ulama Indonesia (MUI), Nahdlatul Ulama (NU), and Muhammadiyah. Each institution provides different interpretive frameworks regarding modern financial systems.

MUI, through its National Sharia Council (DSN-MUI), generally applies strict Sharia compliance standards, particularly regarding contractual purity and investment screening. NU adopts a more contextual and socio-legal approach, emphasizing public benefit (*maṣlaḥah*) and social necessity. Muhammadiyah applies a methodological *ijtihad* approach based on textual strength and rational analysis.

The dissertation highlights that while these institutions differ in evaluating the operational Sharia compliance of BPJS Kesehatan, they converge on one important conclusion: participation in BPJS Kesehatan is permissible (*mubāḥ*) for Muslims.

This consensus reflects the importance of *maqāṣid al-sharī'ah* in resolving modern financial dilemmas, particularly in public welfare systems.

RESEARCH METHOD



This study adopts a qualitative research design with a descriptive and explanatory case-study approach. The qualitative paradigm is considered appropriate because the objective of the study is not to measure numerical variables, but to understand, interpret, and critically analyze the Sharia compliance of BPJS Kesehatan as a national social insurance institution.

The case study method is selected because BPJS Kesehatan represents a complex institutional system involving legal, financial, administrative, and religious dimensions. According to Yin (2018), case studies are suitable for investigating contemporary phenomena within real-life contexts, especially when the boundaries between phenomenon and context are not clearly defined. In this study, BPJS Kesehatan is analyzed as a single embedded case within Indonesia's national social security system.

The study is also interpretive in nature, as it seeks to understand how Islamic jurisprudence (*fiqh muamalat*) evaluates modern state-based insurance systems that do not explicitly operate under Sharia governance structures.

This research is grounded in an **interpretivist paradigm**, which assumes that social reality is constructed through meanings, institutions, and human interpretations. In the context of Islamic legal studies, interpretation (*ijtihad*) plays a central role in deriving legal rulings from complex modern realities.

The interpretivist approach allows the researcher to bridge two epistemological domains:

1. Normative Islamic jurisprudence (Sharia-based reasoning)
2. Empirical institutional reality (BPJS operational system)

This dual framework is essential because BPJS Kesehatan cannot be assessed solely through legal textual analysis or purely empirical observation. Instead, it requires a synthesis between fiqh methodology and institutional analysis.

RESULTS AND DISCUSSION

Legal Nature of the Contractual Structure in BPJS Kesehatan: A Sharia Perspective

The contractual structure of BPJS Kesehatan is found to be a state-based statutory social contract rather than a Sharia-defined insurance contract. The system does not explicitly adopt classical Islamic insurance contracts such as *tabarru'*, *wakālah bi al-ujrah*, or *muḍārabah*, but instead operates under Indonesian public law governing mandatory social security participation.



From a Sharia analytical perspective, the contribution mechanism demonstrates functional similarity to the *tabarru'* principle, where participants pool funds for mutual healthcare assistance. However, this similarity remains functional rather than juridical, as the voluntary element required in classical *tabarru'* contracts is replaced by legal obligation imposed by the state. Therefore, the contract is best classified as a hybrid social insurance contract with partial alignment to Islamic insurance principles but lacking formal Sharia contractual validation.

Contribution Mechanism and Fund Management in BPJS Kesehatan: Between Social Insurance and Islamic Risk-Sharing Principles

Participant contributions in BPJS Kesehatan are structured as mandatory periodic payments based on predefined service classes. These contributions are pooled into a collective fund that is used to finance healthcare services for all eligible participants. The system reflects principles of risk pooling, income redistribution, and social solidarity, ensuring equitable access to healthcare regardless of individual financial capacity.

However, fund management practices extend beyond pure risk-sharing mechanisms, as BPJS Kesehatan also engages in investment activities to maintain financial sustainability. These investments are not fully restricted to Sharia-compliant financial instruments, which introduces a significant divergence from Islamic insurance governance standards. Consequently, while the contribution mechanism aligns with the spirit of *ta'āwun*, the fund management structure only achieves partial Sharia compliance due to the absence of comprehensive Islamic investment screening and governance mechanisms.

Sharia Evaluation of Late Payment Penalties in BPJS Kesehatan: Administrative Sanction or Riba-Based Mechanism

The late payment penalty system in BPJS Kesehatan is designed as a regulatory enforcement tool intended to ensure compliance with mandatory participation and financial sustainability of the system. The penalties are imposed on participants who fail to meet contribution deadlines, and their primary objective is disciplinary rather than profit generation.

From a Sharia perspective, the classification of this penalty system is jurisprudentially contested. On one hand, the additional charges may resemble *riba* if they are interpreted as financial increments arising from delayed payment obligations. On the other hand, contemporary Islamic legal reasoning permits administrative penalties (*ta'zīr mali*) under strict conditions, particularly when they function as deterrents and are not used as institutional profit.



The findings indicate that the status of the penalty system in BPJS Kesehatan remains a classical point of legal disagreement (*khilāfiyyah mu 'āṣirah*), requiring clearer governance differentiation between punitive enforcement and revenue generation.

Islamic Legal Status of Participation in BPJS Kesehatan Under Compulsory Social Insurance Policy

The Islamic legal ruling on participation in BPJS Kesehatan is found to be permissible (*mubāḥ*) under the principle of public necessity (*ḥājah 'āmmah*) and social welfare (*maṣlahah 'āmmah*). Although the system does not fully comply with all Sharia requirements in terms of investment governance and contractual formalization, its overarching objective is the protection of human life and access to essential healthcare services.

Islamic institutional perspectives in Indonesia demonstrate varying analytical approaches. While some scholars express concerns regarding partial non-compliance with Sharia investment principles, others emphasize the system's public benefit nature and its role in ensuring universal healthcare coverage. Despite these differences, there is a consensus among major Islamic institutions that participation in BPJS Kesehatan is allowed, particularly given its compulsory nature and the absence of alternative equivalent systems.

Therefore, the legal status of participation is best characterized as permissible due to necessity, while institutional reform toward Sharia compliance remains recommended for ideal conformity.

Overall, the study concludes that BPJS Kesehatan represents a hybrid socio-financial institution combining elements of Islamic mutual assistance and modern state welfare insurance. Its strongest Sharia alignment is observed in its risk-sharing and solidarity-based structure, while its primary areas of non-compliance are found in investment governance and regulatory contractual formalization. Consequently, BPJS Kesehatan cannot be categorized as fully Sharia-compliant nor entirely non-compliant, but rather as a partially aligned institutional system requiring Sharia governance enhancement for full compliance potential.

CONCLUSION

This study provides a comprehensive Sharia-based analysis of BPJS Kesehatan as Indonesia's national social health insurance institution. The findings demonstrate that BPJS Kesehatan embodies a hybrid institutional model that integrates state-driven social insurance principles with conceptual elements



derived from Islamic insurance theory, particularly the principle of *tabarru'* and mutual cooperation (*ta'āwun*). The system operates through compulsory participation and collective risk pooling, which functionally aligns with the objectives of Islamic social finance in terms of protecting life and ensuring equitable access to healthcare services.

However, despite this functional convergence, BPJS Kesehatan cannot be classified as fully Sharia-compliant due to several structural and operational limitations. The absence of formal Sharia contractual frameworks, such as *wakālah bi al-ujrah* or *muḍārabah*, places the institution outside the classical definitions of Islamic insurance contracts. In addition, the investment of participant funds through non-Sharia-compliant financial instruments introduces a significant jurisprudential concern related to *riba*-based exposure. These factors collectively prevent the system from achieving full compliance with Islamic insurance governance standards.

The study further finds that the late payment penalty mechanism remains a contested issue within contemporary Islamic jurisprudence. While the penalties function as an administrative tool to ensure compliance and system sustainability, their financial implications raise interpretive debates regarding their potential resemblance to *riba*. This ambiguity reflects the broader challenge of applying classical *fiqh* principles to modern state-based financial regulatory systems.

Despite these limitations, the overall legal evaluation of participation in BPJS Kesehatan is deemed permissible (*mubāh*) under Islamic law. This ruling is based on considerations of public necessity (*ḥājah 'āmmah*) and collective welfare (*maṣlaḥah 'āmmah*), particularly given the compulsory nature of the system and its critical role in ensuring universal healthcare access. Islamic institutional perspectives in Indonesia, although differing in their assessment of operational compliance, converge on the permissibility of participation in BPJS Kesehatan.

In conclusion, BPJS Kesehatan represents a transitional model between conventional state welfare insurance and Islamic insurance principles. It reflects partial alignment with Sharia values at the level of social objectives and risk-sharing mechanisms, while simultaneously demonstrating divergence in financial governance and contractual formalization. Therefore, the institution is best characterized as a partially Sharia-aligned social insurance system that requires further institutional refinement to achieve full compliance with Islamic financial principles.

Future policy development should consider integrating Sharia governance frameworks, particularly in fund investment management and contractual



structuring, to enhance compatibility with Islamic insurance standards while preserving the universal welfare objectives of the national health system. Further research is recommended to explore comparative models of Sharia-compliant public insurance systems across other Muslim-majority jurisdictions.

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