

# Islamic Perspective on Insurance: A Critical Analysis of Legality and Illegality

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## ABSTRACT

Insurance is one of the modern contracts by which one party, the insurer, pays a sum of money to the insured party as compensation for any damage that may occur to the insured item in the event of an accident or a similar occurrence. From the perspective of many Islamic jurists, this contract is not considered permissible under Islamic law due to the elements of uncertainty (gharar) and ambiguity (jahala) it contains, along with other evidence discussed in this study. However, from the viewpoint of a limited number of Islamic scholars, this contract is deemed permissible by analogy (qiyas) to the concept of "al-'aqilah" and related issues explored in the body of the study. In this context, Dr. Mustafa Al-Zarqa sees insurance not as a simple contract, but as a contractual system based on mutual compensation. Those who do not permit conventional insurance propose cooperative (takaful) insurance, which is based on the voluntary participation of members, as an alternative.

**Keywords:** Insurance, Contractual Insurance, Contract, Contractual System

## INTRODUCTION

Insurance is a financial mechanism that allows individuals or entities to transfer the risk of loss to an insurer in exchange for a premium. In conventional systems, insurance is legally recognized and regulated, plays a crucial role in managing personal and business risks, promoting economic stability, and encouraging savings and investment. The legal foundation of conventional insurance is based on contracts that define mutual obligations between the insurer and the insured, with the insurer pooling risks from multiple clients to provide financial security against unforeseen events. From an Islamic perspective, however, conventional insurance is generally considered impermissible (haram) due to the presence of *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (gambling). These elements violate core Shariah principles of fairness, transparency, and mutual responsibility. Specifically, the uncertainty in claim payouts, the speculative nature of premiums versus benefits, and interest-

based investments of insurance funds lead to the rejection of conventional insurance by most Islamic scholars and institutions. As a solution, *Takaful*, or Islamic insurance, was developed. Based on the principles of cooperation (*ta'awun*) and shared responsibility (*kafala*), *Takaful* allows participants to contribute to a common pool that is used to support members in times of need. Unlike conventional insurance, *Takaful* operates without interest, speculative risk, or unethical investments, making it a Shariah-compliant alternative widely accepted across the Islamic world. It reflects an ethical approach to risk-sharing in line with Islamic values and jurisprudence.

## Research Problem

Among the new issues in financial transactions is the matter of "insurance." It is one of the modern contracts that has permeated most aspects of a Muslim's life and has become an essential element in contemporary commercial dealings. Therefore, it is

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necessary to address this contract, understand its ruling under Islamic law, present the opinions of both those who prohibit and those who permit it, examine their evidence, weigh their arguments, and clarify the position of Islamic law on this issue. The main topic or central question of this research is whether insurance, as it has developed in the West, is permissible in Islam or not. If it is not permissible, what are the alternative jurisprudential solutions that can replace insurance? This is particularly important given the current circumstances, where ships, airplanes, and major companies are often required to be insured to travel to different countries or engage with the global economy.

### Research Questions:

1. Is insurance, in its Western form, permissible under Islamic jurisprudence?
2. If insurance is not permissible according to its Western conditions, what are the Islamic alternatives and lawful solutions?

### Importance of the Research:

The significance of this research lies in the fact that we live in the age of global communication, where interaction with the world is indispensable. In an era of international trade and travel, the use of modern means of transportation becomes necessary. Many countries do not allow our transport means, such as airplanes and ships, to enter their territories unless they are insured. Likewise, major commercial companies are reluctant to engage in business transactions with entities that are not commercially insured. Consequently, we find ourselves needing to insure most of our assets. Thus, it is crucial to understand the Islamic legal ruling on insurance: is it permissible according to Islamic law or not? If it is not permissible, what is the Islamic solution in this context? Therefore, this academic study holds great importance, as for Muslims, the legitimacy of an action is a critical matter — they refrain from engaging in activities that are not compliant with Islamic principles. It is essential to determine the stance of Islamic jurisprudence on insurance. If conventional insurance does not align with Islamic rulings, we must explore the appropriate Islamic alternatives. From this perspective, the discussion gains significant importance.

### OBJECTIVES OF THE STUDY:

This research aims to achieve the following objectives:

1. To become familiar with the rules and principles of insurance.
2. To comprehend the Islamic jurisprudential position on insurance and explore jurisprudential solutions in cases where insurance is mandatory.
3. To suggest alternatives to insurance from an Islamic perspective.

### RESEARCH METHODOLOGY:

In writing this study, we have adopted a descriptive-analytical approach by partially surveying Islamic legal texts and the opinions of jurists regarding insurance in Islam. This approach involves linking premises with their outcomes and moving from general principles to specific cases through the use of both direct and indirect reasoning.

### Research Outline:

After the introduction, the study is divided into two chapters and a conclusion as follows:

**Chapter One:** This chapter comprises three sections:

- Section One: Fundamentals and emergence of insurance.
- Section Two: Concept, objectives, and characteristics of insurance.
- Section Three: Types of insurance.

**Chapter Two:** This chapter comprises four sections:

- Section One: Evidence presented by those who prohibit insurance.
- Section Two: Evidence presented by those who permit insurance.
- Section Three: The preferred opinion (Tarjeeh) between the two views.
- Section Four: Presentation of the Islamic alternative to conventional insurance.

### CONCLUSION:

This section summarizes the findings and results of the study. I ask Allah, the Highest and the Almighty, to grant me success in presenting the various aspects related to this complex issue of "insurance" and to

facilitate for Muslims dealings that align with the new realities of the modern age while remaining by the noble principles of Islamic law.

## Chapter One: Definition of Insurance, Its Origin, Concept, Objectives, and Characteristics

### Section One: The Phenomenon and Origin of Insurance

1. **It has been defined as:** "A contract under which the insurer undertakes to pay the insured or the beneficiary, on whose behalf the insurance was contracted, a sum of money, a regular income, or any other financial compensation upon the occurrence of the event or the realization of the risk specified in the contract, in return for a premium or any other financial payment made by the insured to the insurer."
2. **Another definition states:** "A contract whereby one party, called the insurer, undertakes to bear financial responsibility on behalf of another party, called the insured, or to compensate him upon the occurrence of a specified event, in return for insurance premiums paid by the insured in advance."
3. **Professor Mustafa Al-Zarqa defined the insurance system as:** "A contractual system based on exchange, aimed at cooperation in repairing the damages caused by unexpected risks, carried out by organized entities practicing insurance contracts according to technical standards and statistical principles." In this way, Professor Al-Zarqa distinguished between insurance as a system and insurance contracts executed in practice, approving the system but stating that each contract must be judged individually.

The essential elements of insurance are: the two parties to the contract, the insured risk, the premium, the amount payable by the insurer upon the realization of the risk, and the offer and acceptance between the insurer and the insured.

4. **The UAE Civil Transactions Law defined insurance in Article 1026 as:** "Insurance is a contract in which the insured and the insurer

cooperate to face insured risks or incidents, whereby the insured pays the insurer a specific amount or periodic premiums, and upon the occurrence of the specified risk or incident, the insurer pays the insured or the beneficiary (on whose behalf the insurance was contracted) a sum of money, an income, a pension, or any other financial right."

### Common Terminologies Related to the Insurance Contract:

- **Insurer:** One of the parties to the insurance contract, typically a company or institution that undertakes to pay financial compensation to the insured upon the occurrence of the insured risk.
- **Insured:** The individual who contracts with the insurer and agrees, according to the insurance contract, to pay the agreed sum, either as a lump sum or in installments.
- **Insured Risk:** The future event whose occurrence the insured seeks protection against, such as a fire or death.
- **Premium:** The amount paid by the insured to the insurer.
- **Financial Compensation:** The amount paid by the insurer to the insured or beneficiary upon the occurrence of the insured risk.
- **Duration:** The period during which the insurance coverage is valid, such as one year from the date of the contract; the insurance contract expires when the period ends.

### Subsection Two: Origin of Insurance

Marine insurance was the first form of insurance to appear in the 14th century in Italy. Individuals undertook the risks faced by ships or their cargo in return for a specific amount. Later, land-based insurance emerged, with the earliest form being fire insurance, especially after the Great Fire of London in 1666. From there, insurance expanded to cover various aspects of life, such as theft, aviation accidents, and life insurance. Insurance was not known in the Islamic world until the era of the jurist Ibn Abidin (may Allah have mercy on him). He was

the first to issue a legal opinion on it, ruling on its prohibition. In his famous work "*Radd al-Muhtar ala al-Durr al-Mukhtar*", he wrote: "A significant matter regarding what merchants do by paying a fee called 'sukra' and securing compensation from a non-Muslim if goods perish during a sea voyage, whether by burning, drowning, looting, or other causes. By what we have stated, it appears that it is not permissible for a merchant to accept compensation for lost goods."

## Section Two: Concept, Objectives, and Characteristics of Insurance

### Subsection One: General Concept of Insurance

The fundamental idea of insurance is collective risk-sharing: a large number of individuals collaborate to eliminate or mitigate the impact of a potential loss. Thus, no single individual bears the heavy cost of the damage alone.

### Subsection Two: Concept of Insurance in Islam

Islam encourages cooperation and altruistic giving based on charity, not commercial exchange. As Allah says: "*And cooperate in righteousness and piety, but do not cooperate in sin and aggression.*" (Al-Ma'idah: 2) Because the idea of insurance involves group cooperation to remove or reduce risks, Islam introduced several organized mechanisms reflecting this spirit, including:

1. **Guaranteeing the Debtors (Kafalat al-Gharimin):** Those heavily burdened with debt—whether personal or for public interest—receive help from the wealth of the rich through zakat, based on communal solidarity.
2. **Sponsorship of the Poor and Needy:** Those who lack basic needs such as food and shelter are entitled to assistance. If they have no relatives to support them, the state becomes responsible for their living expenses.
3. **The System of 'Aqila (Blood Money Contribution):** In cases of accidental killing, the extended family of the killer shares the burden of paying the blood money. The Prophet Muhammad (peace be upon him) organized the Muslim community in Madinah around this principle of solidarity.

4. **Assistance for Wayfarers:** Travelers who are stranded away from their wealth are entitled to zakat funds to meet their needs.
5. **Financial Support among Relatives:** Wealthy relatives are obliged to support their needy relatives. According to the Hanafi school, financial support is due among parents, children, and certain close relatives, provided they share the same religion (except in cases of marriage or direct lineage).
6. **Social Solidarity (Takaful):** Mutual aid within local communities, as practiced by the Ash'arites, who shared their food supplies equally during times of scarcity, earned the approval and praise of the Prophet (peace be upon him).

### Subsection Three: Characteristics of the Insurance Contract

1. **A Consensual Contract:** The contract is concluded by mutual agreement between the parties and is usually evidenced by a written document signed by both.
2. **A Commutative Contract:** Both parties offer and receive something of value. The insured pays premiums in exchange for the insurer's promise to pay compensation upon the occurrence of the insured risk.
3. **A Binding Contract:** Once concluded, neither party may unilaterally withdraw or terminate the contract without the consent of the other. The insured must continue paying premiums, and the insurer must pay compensation if the insured event occurs.
4. **An Aleatory Contract:** The contract is based on uncertainty. The insured may not receive any compensation at all if the insured event does not occur. Neither party can determine at the outset the exact amount they will give or receive.
5. **A Contract Involving Gharar (Uncertainty):** Since the occurrence of the insured event is uncertain, the insurer might collect many premiums without having to pay anything if the risk does not materialize—or, conversely, might



have to pay a large sum shortly after the contract is signed.

"risk," which is an uncertain event that depends on the occurrence of a potential event.

## Chapter Two: Opinions of Scholars on Insurance

Contemporary scholars have taken different stances on insurance. Most of them prohibit it, a few permit it unconditionally, while others allow certain types of insurance, such as car insurance, and prohibit others. Some scholars have taken a neutral position and refrained from issuing a ruling on the matter. The disagreement among scholars regarding insurance stems from the following issues:

- A. Insurance is a new contract that lacks specific evidence from Islamic sources, and thus it relies on reasoning and *ijtihad* (independent juristic effort), which is a major reason for the differing opinions among scholars.
- B. Scholars differ in describing and categorizing the insurance contract. This difference in description and categorization naturally leads to different rulings. Those who describe insurance as a form of cooperation for good have allowed it, while those who describe it as a form of gambling, usury, and uncertainty have prohibited it.

### Section One: Evidence of Those Who Prohibit Insurance

1. **Uncertainty and Ignorance in Insurance:** The insurance contract is a contract of exchange, and uncertainty (*gharar*) corrupts such contracts because the outcome is unknown. Neither party to the contract knows exactly what they will give or receive at the time of the agreement. For example, a person may pay a premium and later receive compensation if a disaster occurs, or they may never experience an accident and pay all premiums without receiving anything. As for the insurer, they cannot determine the exact amount they will pay at the time of the contract, although they may be able to estimate it using statistical methods. The Prophet Muhammad (PBUH) prohibited the sale of uncertainty, as narrated by Abu Huraira (RA): "The Messenger of Allah (PBUH) forbade the sale of stones and the sale of uncertainty." The uncertainty in insurance is particularly severe because one of its elements is

2. **Insurance as a Form of Gambling and Betting:**

The insurance contract involves an element of gambling and betting because, like gambling, neither party can predict the exact amount they will either give or receive at the time of the contract, nor does it depend on an uncertain event occurring in the future. Islam prohibits gambling, as stated in the Quran: "O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful." However, some argue that insurance is not the same as gambling because it is based on scientific principles and is designed to mitigate risks. The prohibition of gambling in Islam is not economic but is primarily a moral and social one, as stated in the Quran.

3. **Interest (Riba) in Insurance:** Insurance involves both types of *riba*—*riba al-fadl* (excess interest) and *riba al-nasi'a* (deferred interest). The essence of a commercial insurance contract is the exchange of money for money, where the insured pays a premium in exchange for receiving a sum of money if the insured event occurs. The amount received by the insured may be the same as or more than the amount paid in premiums. Furthermore, insurance companies often invest their funds in interest-based transactions, which are forbidden in Islam. However, some argue that insurance is based on the idea of mutual cooperation to mitigate damage from unforeseen risks. Thus, *riba al-nasi'a* does not apply, as one of the parties (the insured) is benefiting and this benefit is not from one of the six categories of assets prohibited by *riba*. Additionally, there is no *riba al-fadl* because the exchange involves two different items.

4. **Obligation to Pay What Is Not Legally Required:** The insurer does not cause the risk that is insured against. They merely provide a guarantee in case the risk occurs. The insurer collects money from the insured in financial transactions without providing any service, which amounts to unlawfully consuming the money of

others. As Allah says in the Quran: "O you who have believed, do not consume one another's wealth unjustly or send it [in bribery] to the rulers so that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]." However, it is argued that the insurer has agreed to provide this guarantee voluntarily, and such an agreement is akin to the Islamic contract of kafilah (guarantee).

5. **Sale of Safety:** Safety should not be bought or sold, and it is not permissible to make it the subject of exchange or business for profit, no matter how limited the profit. It is argued, however, that safety is one of the greatest aspects of life, and there are contracts in Islam that support the idea of paying for security, such as contracts for hiring protection services.
6. **Defiance of Allah's Will:** Commercial insurance represents a challenge to Allah's will, particularly life insurance, as it implies that humans can control the occurrence of events, which contradicts the Islamic belief in divine predestination. However, it is argued that insurance does not guarantee that an accident or risk will not occur. Rather, it shifts the burden of unexpected risks from the individual to the community, allowing for a collective approach to bearing the financial burden.

## Section Two: Evidence of Those Who Permit Insurance

1. **Insurance as a New Contract:** Insurance is a new contract that is not addressed explicitly in Islamic law, and there is no specific evidence that prohibits it. According to the principle that the default position of contracts is permissibility unless there is evidence to the contrary, some scholars have drawn parallels to similar contracts such as "bai' al-wafa" (contract of redemption), which emerged in the 5th century AH.
2. **Analogy with the Contract of Affinity:** One analogy made is to the contract of "muwalat," where a person of unknown lineage declares that another person is their legal heir and responsible for their debts. This contract shares similarities with insurance contracts in that one party agrees

to cover the financial risk of the other. However, the analogy is criticized because the concept of "muwalat" does not align with commercial insurance, which involves a profit motive, while "muwalat" concerns family ties and mutual support.

3. **Analogy with the "Aqilah" System:** In this system, a tribe collectively bears the blood money for a member who commits manslaughter, which is similar to the idea of pooling resources to cover losses in insurance. However, it is argued that "aqilah" is based on family relationships and is not the same as the commercial nature of insurance.
4. **Analogy with the Guarantee of Safe Passage:** This analogy involves a person guaranteeing safety on a road and agreeing to cover any losses that may occur during the journey. Some argue that this is similar to the insurance contract in which the insurer guarantees compensation in the event of a loss. However, it is contended that the insurance contract does not involve the same kind of responsibility as the "safe passage" guarantee in Islamic law.
5. **Commitment and Binding Promise:** The argument here is based on the principle that if a person promises to cover someone else's losses, they become legally bound, even if the promise is not obligatory by default. However, this analogy is challenged because insurance is based on an exchange contract, while promises are typically considered non-binding until agreed upon.

## Section Three: Conclusion

After considering the evidence presented by both sides, it seems that the prohibitive arguments against insurance are stronger. Insurance may only be permissible in cases of necessity, such as mandatory government-required insurance or health insurance for the poor. The prohibitive stance is supported by Islamic legal texts, while the permissive stance relies heavily on analogies that may not be entirely applicable. Thus, insurance is invalid in Islamic law as it does not meet the requirements for a valid contract according to Islamic principles. The alternative, cooperative insurance (takaful), based on

mutual assistance and charity, aligns with Islamic values and is widely accepted by Islamic scholars as a valid model for insurance.

#### Section Four: Islamic Alternative

The study highlights the idea of insurance in Islam, which can be achieved through cooperative insurance (takaful). Takaful is based on mutual cooperation and charity, and is highly desirable in Islam. It involves members contributing voluntarily to a pool that is used to compensate those in need. Takaful companies operate according to Islamic principles, avoiding forbidden practices like usury and excessive uncertainty. Takaful can take forms such as pension systems or social insurance, where employees contribute part of their salary to a fund managed by the state or a recognized institution. The surplus in takaful funds can be invested in projects that align with Islamic principles, ensuring the welfare of participants. The conditions for Islamic insurance are that the system is cooperative, adheres to Islamic law, and focuses on the welfare of the participants, ensuring fairness and transparency in managing the funds.

#### CONCLUSION

The main findings I reached in the research are:

1. **Islam's Early Support for the Idea of Insurance:** This is evident in the systems of guaranteeing debts (kafala), supporting the poor and needy, supporting travelers, and the system of guaranteeing expenses among relatives and the needy.
2. **Types of Insurance:**
  - **By Form:** It is divided into cooperative insurance based on donations and commercial insurance aiming for profit.
  - **By Subject:** This includes damage insurance (such as property insurance and car accident insurance) and personal insurance (life insurance or post-death insurance).
  - **By Generality and Specificity:** This includes individual insurance, where the insured directly enters into the contract, and social insurance,

which aims to ensure a group of people against risks that could incapacitate them from work, such as illness.

3. **Difference of Opinion Among Scholars Regarding Insurance:** Most scholars prohibit insurance, while a minority permits it. Others allow certain types, such as insurance on property, and prohibit others, such as life insurance, while some scholars refrain from issuing a ruling on the matter.
4. **Consensus of Scholars on the Legitimacy of Cooperative Insurance:** They agree on the legitimacy of government insurance systems, such as social insurance and retirement pensions, but disagree on commercial insurance, which aims for profit.
5. **My Opinion on Prohibiting Insurance:** I support the view that insurance should be prohibited because it involves elements of uncertainty (gharar), ignorance (jahala), unfairness (ghubn), usury (riba), gambling (maysir), and mortgages. However, I make exceptions for cases of necessity and need that a Muslim might face, as some forms of insurance are legally obligatory, such as car insurance, which is enforced by the state to avoid unjust outcomes in the case of accidents.
6. **The First Scholar to Issue a Fatwa on the Prohibition of Insurance:** The Hanafi scholar Ibn Abidin (d. 1252 AH).
7. **Islamic Alternative:** This involves creating a cooperative insurance body made up of individuals who contribute subscriptions to cover damages for those affected. The goal of this insurance is to distribute risks and hardships without exploiting others for profit. Any surplus funds may be invested in Sharia-compliant projects, and profits can be distributed among the insured according to their contributions, with a reserve for future needs.

**Muslim Scholars' Commitment:** They have been keen to create Sharia-compliant alternatives for every modern financial transaction introduced outside of the Islamic world.

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