Revisiting *Gharar* in Contemporary Muamalat Contracts: A Qualitative and Comparative Analysis

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DOI: https://doi.org/10.47772/IJRISS.2026.100701147

Received: 12 August 2026; Accepted: 17 August 2026; Published: 22 August 2026

ABSTRACT

The prohibition of *gharar* (excessive uncertainty) is a fundamental principle of Islamic commercial jurisprudence that seeks to ensure transparency, fairness, and justice in contractual relationships. As Islamic finance continues to evolve through increasingly sophisticated financial products and contractual arrangements, questions have emerged regarding the consistency of contemporary *muamalat* contracts with the classical principles governing *gharar*. This study revisits the concept of *gharar* by examining its theoretical foundations in classical Islamic jurisprudence and evaluating its application in selected contemporary *muamalat* contracts. This study adopts a qualitative research design employing qualitative content analysis and comparative analysis. Primary sources include the classical juristic works *Al-Mughni* by Ibn Qudamah and *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* by Ibn Rushd, while secondary sources comprise the *Shariah Standards* issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), guidelines published by the Islamic Financial Services Board (IFSB) and recent scholarly literature. The data were analysed through thematic coding and comparative evaluation to identify key principles of *gharar* and assess their application in selected Islamic financial contracts. The findings indicate that the classical distinction between *gharar yasir* (minor uncertainty) and *gharar fahish* (excessive uncertainty) remains fundamental in determining the Shariah compliance of contemporary financial contracts. Although current regulatory frameworks have strengthened contractual transparency and Shariah governance, challenges remain in addressing the uncertainties arising from complex financial structures and emerging financial technologies. The study concludes that the classical principles of *gharar* continue to provide a relevant and effective framework for evaluating contemporary *muamalat* contracts and supporting the sustainable development of Islamic finance.

Keywords: Gharar; Islamic finance; Shariah compliance, Islamic financial contracts.

INTRODUCTION

Gharar is an Arabic phrase that signifies uncertainty, ambiguity, or risk, and is a significant concept in Islamic law, particularly in the field of *Muamalat* (business transactions) (Wan Ismail et al., 2020). This prohibition in Islamic law aims to maintain principles of justice, equity and openness in financial transactions, guaranteeing that all parties involved in a contract have a clear and thorough understanding of its terms, conditions and subject matter (Faster Capital, 2025). Excessive uncertainty is viewed as harmful to contractual fairness and is consequently considered incompatible with the ethical foundations of Shariah.

The contemporary Islamic banking nature faces different challenges in the identification and management of *Gharar*. Numerous contemporary financial instruments, such as derivatives, structured products and specific takaful arrangements, feature complex contractual frameworks that may be hiding risk, ownership and obligation. Consequently, these items may integrate disallowed components of uncertainty, while the specific attraction. Addressing this issue requires a thorough qualitative content examination of contractual clauses, legal documents and financial structures to assess their adherence to Shariah principles. A comparative analysis of ancient jurisprudential interpretations and contemporary financial practices is crucial to assess the degree to which recent developments conform to the fundamental principles of Islamic law (Abozaid, 2024a).

The rapid advancement of financial markets has produced new types of contracts that were missing throughout crucial eras of Islamic law. Conventional insurance policies and speculative derivative instruments have faced considerable scrutiny due to their incorporation of *Gharar*-related aspects, such as uncertainty over the contractual object, deferred exchanges and speculative risk. These developments need a re-evaluation of traditional legal perspectives about *Maqasid al-Shariah* (objectives of Islamic law). The prohibition of *Gharar* exceeds a mere textual rule, reflecting broader ethical objectives namely, the safeguarding of wealth *(hifz al-mal)*, the prevention of harm *(dafʿ al-darar)* and the promotion of mutual benefit *(jalb al-maslaha),* which are required to guide modern legal reasoning (Abozaid, 2024a).

Furthermore, the worldwide development of Islamic banking has highlighted the necessity for a clear and consistent interpretation of *Gharar* across many jurisdictions. The difference in academic interpretations and national Shariah norms has resulted in variations in the categorisation and management of *Gharar* in Islamic financial instruments. Such inconsistencies may lead to legal ambiguity, regulatory fragmentation and obstacles in cross-border financial transactions. A comparative jurisprudential study, including assessments of Shariah board fatwas, national regulatory frameworks and cross-jurisdictional practices, is essential to resolve this issue. These endeavours foster the establishment of a cohesive framework that bolsters the legitimacy and resilience of Islamic financial contracts while promoting the sector's adaptability and sustainability in fluctuating global market circumstances.

LITERATURE REVIEW

Definition and Classification of *Gharar*

Gharar is a fundamental concept in Islamic commercial jurisprudence, referring to excessive uncertainty or ambiguity concerning the subject matter, contractual terms, or outcome of a transaction. The prohibition of *gharar* is rooted in the objectives of Shariah (Maqasid al-Shariah), which seek to preserve justice, prevent exploitation, and ensure transparency and mutual consent in commercial dealings. Classical jurists have offered various definitions of *gharar* to explain its legal implications. Ibn Qudamah (2022) defined *gharar* as that whose outcome is concealed or unknown, emphasising that uncertainty regarding the consequences of a contract may compromise its validity. Likewise, Al-Qarafi distinguished between *gharar yasir* (minor uncertainty), which is tolerated because it is unavoidable and does not substantially affect the contract, and *gharar fahish* (excessive uncertainty), which invalidates contracts due to its potential to cause injustice, disputes, and exploitation (Islahi, 2008; Kamali, 2008). This distinction reflects the pragmatic nature of Islamic commercial law, which recognises that some degree of uncertainty is inevitable in business transactions while prohibiting uncertainty that undermines fairness and contractual certainty.

The distinction between *gharar yasir* and *gharar fahish* remains highly relevant in contemporary Islamic finance, particularly in evaluating the permissibility of innovative financial products and digital transactions. Modern Islamic finance scholars emphasise that excessive uncertainty can be minimised by ensuring that the essential elements of a contract, including the subject matter, price, quantity, delivery terms, and contractual obligations, are clearly specified and mutually agreed upon by all contracting parties (Abozaid, 2024b; Mohd Noh et al., 2025a). Such contractual clarity strengthens legal certainty and preserves the objectives of Shariah in commercial transactions. These classical principles have also been institutionalised through the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), whose Shariah Standards prohibit contracts involving excessive uncertainty and provide detailed guidelines for the structuring of Islamic financial products. By incorporating classical juristic principles into modern regulatory frameworks, AAOIFI ensures that Islamic financial transactions remain both legally valid and ethically consistent with Shariah principles (AAOIFI, 2015).

ISSN No. 2454-6186 | DOI: 10.47772/IJRISS | Volume X Issue VII July 2026

The continuing application of *gharar* in both classical jurisprudence and contemporary financial regulation demonstrates its enduring significance as a foundational principle of Islamic commercial law.

Therefore, classical Islamic jurists provide the jurisprudential foundation for understanding the prohibition of *gharar* in commercial transactions. In al-Mughni, Ibnu Qudamah (2022) emphasises that contracts containing excessive uncertainty concerning the subject matter, ownership, price, or delivery are invalid because they create the possibility of deception, dispute, and unjust enrichment. However, he acknowledges that minor and unavoidable uncertainty (*gharar yasir*) may be tolerated where it does not materially affect contractual obligations. Similarly, Ibnu Rushd (2000), in *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, analyses the opinions of the major Sunni schools regarding contracts involving uncertainty and explains that the prohibition of *gharar* serves to protect fairness, preserve property rights, and prevent contractual disputes. His comparative analysis demonstrates that although jurists unanimously prohibit excessive uncertainty, they differ in determining the extent to which uncertainty affects the validity of particular contracts. Together, these classical works establish the legal and ethical principles that continue to underpin contemporary Shariah governance and Islamic financial regulation.

Gharar in Early Islamic Commercial Practice

In the early development of Islamic law, the prohibition of *gharar* played a central role in promoting fairness, transparency, and ethical conduct in commercial transactions. The Prophet Muhammad (PBUH) prohibited contracts involving excessive uncertainty, including the sale of fish that had not yet been caught and unborn animals, as these transactions involved uncertainty regarding the existence or delivery of the subject matter (Muslim, Hadith No. 1513; Kamali, 2008). Likewise, the well-known hadith, *"Do not sell what you do not possess,"* emphasises that a seller must have legal ownership and the ability to deliver the subject matter before concluding a sale (Abu Dawud, Hadith No. 3503; Al-Tirmidhi, Hadith No. 1232). These Prophetic injunctions were intended to minimise disputes, protect contracting parties, and ensure certainty in commercial dealings, particularly in an era when transactions relied largely on oral agreements and mutual trust. Consequently, the prohibition of *gharar* functioned not only as a legal rule but also as a mechanism for promoting market confidence and commercial justice (Islahi, 2008; Kamali, 2008).

Classical jurists subsequently expanded the concept of *gharar* by integrating it within the broader ethical and legal framework of Islamic commercial law. They regarded the prohibition of *gharar*, together with *riba* (usury) and *maysir* (gambling), as fundamental safeguards against exploitation and unjust enrichment. These prohibitions support the objectives of Shariah (*maqasid al-Shariah*), particularly the protection of wealth (*hifz al-mal*), the establishment of justice (*'adl*), and the prevention of harm (*daf' al-darar*) (Abozaid, 2024b; Kamali, 2008). By grounding commercial law in these ethical objectives, classical jurists developed a flexible legal framework capable of addressing emerging commercial practices while preserving the principles of fairness and transparency. These foundational principles continue to shape contemporary Islamic finance and the assessment of modern financial contracts under Shariah standards (AAOIFI, 2015).

Modern Developments in Islamic Finance

The modern evolution of Islamic finance has witnessed the development of increasingly sophisticated financial instruments, including sukuk (Islamic bonds), takaful (Islamic cooperative insurance) and various Shariah-compliant investment structures. These innovations seek to satisfy the demands of contemporary financial markets while adhering to Islamic legal and ethical principles. Nevertheless, the increasing complexity of these products has generated scholarly concern regarding the potential presence of hidden *gharar*, particularly where contracts involve multiple contractual relationships, agency arrangements (*wakalah*), or layered *mudarabah* and *musharakah* structures. Such complexity may obscure the characteristics of the underlying assets, contractual obligations, or mechanisms for profit and loss allocation, thereby reducing contractual transparency and increasing the possibility of excessive uncertainty (Islahi, 2008; Mohd Noh et al., 2025a).

To address these concerns, international standard-setting bodies such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) have developed comprehensive Shariah governance and financial reporting standards. These regulatory frameworks establish principles governing risk allocation, contractual certainty, disclosure requirements, and Shariah governance to ensure that financial innovation remains consistent with the principles of transparency, fairness, and the prohibition of excessive uncertainty (AAOIFI, 2015; IFSB, 2025). Through these standards, regulators seek to strike a balance between facilitating financial innovation and preserving the ethical objectives of Islamic commercial law.

Despite these regulatory developments, *gharar* continues to represent a significant challenge as Islamic financial institutions increasingly employ financial engineering techniques to develop competitive products. Scholars argue that although these innovations may satisfy commercial objectives, complex contractual structures may unintentionally reintroduce the very uncertainties that classical Islamic jurisprudence sought to eliminate. Consequently, there is growing emphasis on strengthening Shariah governance through independent Shariah supervisory boards, comprehensive Shariah audits, effective internal control systems, and product-level Shariah certification to ensure compliance throughout the product lifecycle(AAOIFI, 2015; Abozaid, 2024b).

Furthermore, the rapid growth of financial technology (*fintech*) has introduced new dimensions to the application of *gharar* in Islamic finance. Digital platforms, blockchain technology, smart contracts, and artificial intelligence offer considerable opportunities to improve transparency, efficiency, and financial inclusion. However, these technologies also create new Shariah governance challenges, particularly where automated contracts contain ambiguous contractual terms or algorithmic decision-making processes lack sufficient transparency and accountability. Contemporary scholars therefore emphasise the importance of adapting traditional fiqh principles to emerging digital financial ecosystems while maintaining the objectives of Shariah in preventing exploitation, protecting property rights, and ensuring contractual certainty (Abozaid, 2024b; Alam et al., 2019).

In this context, trade models such as e-commerce platforms, pre-order mechanisms, and drop-shipping introduce forms of remote ambiguity (*gharar*) regarding physical inspection and delivery conditions. However, when essential product specifications and return protocols are transparently disclosed, the remaining minor uncertainty is accommodated as *gharar yasir* without invalidating the contract. Conversely, complex financial derivatives and multi-layered corporate structures (combining *wakalah*, *musharakah*, or *mudarabah*) continue to pose serious Shariah concerns. By obscuring underlying asset ownership and creating hidden liabilities, these arrangements risk reintroducing *gharar fahish* under the guise of financial engineering.

METHODOLOGY

This study adopts a qualitative research design, employing two complementary analytical methods, namely qualitative content analysis and comparative analysis, to examine the theoretical foundations of *gharar* (uncertainty) in Islamic jurisprudence and evaluate its application in contemporary Islamic financial contracts. A qualitative approach is particularly appropriate for investigating normative legal concepts because it enables an in-depth examination of legal texts, juristic interpretations, and the evolution of Shariah principles in response to contemporary financial developments (Creswell & Poth, 2018). Unlike quantitative methods, qualitative research facilitates the exploration of meanings, legal reasoning, and interpretative processes embedded within classical and contemporary Islamic legal discourse.

The study primarily employs qualitative content analysis to systematically examine classical juristic literature, contemporary regulatory standards, and scholarly publications relating to *gharar*. Qualitative content analysis is a well-established method for interpreting textual data through the identification, coding, and categorisation of recurring themes and legal concepts (Schreier, 2012). Similarly, Elo S. and Kyngäs H. (2008) explain that content analysis enables researchers to organise complex textual information into meaningful conceptual categories while preserving the context of the original sources. In this study, the method facilitates the identification of major themes, including the definition and classification of *gharar*, the distinction between *gharar yasir* and *gharar fahish*, contractual conditions affecting validity, and the juristic rationale underlying the prohibition of excessive uncertainty.

The primary sources analysed comprise classical works of Islamic jurisprudence, particularly *Al-Mughni* by Ibn Qudamah (1997) and *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* by Ibn Rushd (2000). These authoritative texts provide the doctrinal foundation for understanding the prohibition of *gharar*, the legal conditions governing commercial transactions (*fiqh al-muamalat*), and the reasoning adopted by classical jurists concerning contractual certainty, ownership, and risk allocation. To complement these classical sources, contemporary regulatory documents, including the *Shariah Standards* issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI, 2013) and relevant standards published by the Islamic Financial Services Board (IFSB, 2025), are examined to determine how classical jurisprudential principles have been operationalised within modern Islamic financial regulation.

In addition to qualitative content analysis, this study employs comparative analysis to examine the extent to which contemporary Islamic financial contracts correspond with the principles established in classical Islamic jurisprudence. Comparative legal analysis is widely recognised as an appropriate method for identifying similarities, differences, and developments across legal systems, schools of thought, and regulatory frameworks (Michaels, 2006). In this research, the comparative approach is used to evaluate selected Islamic financial contracts, including *takaful*, *bay' al-dayn*, and forward contractual arrangements, by comparing their operational structures with the juristic principles articulated by classical scholars and contemporary Shariah standards. This process enables the identification of areas where modern financial practices remain consistent with, or diverge from, classical legal doctrines concerning *gharar*.

By integrating qualitative content analysis with comparative analysis, this methodological framework provides a comprehensive understanding of both the theoretical and practical dimensions of *gharar*. It enables the study to examine not only the textual foundations and legal philosophy underpinning the prohibition of uncertainty but also the practical implications of these principles for the design, governance, and Shariah compliance of contemporary Islamic financial products. Consequently, the combined methodology offers a systematic and rigorous basis for evaluating the continued relevance of classical Islamic legal principles within the evolving landscape of modern Islamic finance.

Qualitative Content Analysis

A qualitative content analysis was conducted on a collection of classical and contemporary Islamic legal literature to examine the definition, evolution and application of the concept of *gharar*. Primary sources consisted of classical juristic works, including Al-Mughni by Ibn Qudamah and Bidayat al-Mujtahid by Ibn Rushd, both of which provide comprehensive discussions of contractual requirements, uncertainty, and commercial transactions (*fiqh al-muamalat*). These texts were selected because of their significant contribution to the development of Islamic commercial jurisprudence and their continuing influence on contemporary legal interpretations.

In addition, contemporary regulatory and scholarly sources were analysed to capture modern interpretations of *gharar*. These included the Shariah Standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and relevant standards and guiding principles published by the Islamic Financial Services Board (IFSB). These documents serve as authoritative references for determining acceptable levels of contractual uncertainty in Islamic financial transactions and provide practical guidance for Shariah compliance within contemporary financial institutions.

The analysis employed thematic coding to identify recurring concepts, legal rationales, and interpretative patterns across the selected texts. Codes were grouped into broader themes, including classifications of *gharar*, conditions affecting contractual validity, permissible levels of uncertainty, and areas of juristic disagreement. Thematic analysis enabled a systematic and transparent interpretation of complex legal materials while facilitating comparisons between classical juristic opinions and contemporary regulatory approaches (Braun & Clarke, 2006; Elo & Kyngäs, 2008; Schreier, 2012).

Comparative Analysis

A comparative analysis was conducted to examine classical juristic perspectives on *gharar* alongside their application in selected contemporary Islamic financial products. This approach sought to evaluate the extent to which modern financial practices conform to or depart from the principles established in classical Islamic commercial jurisprudence. The analysis focused on three contractual arrangements: (i) takaful (Islamic cooperative insurance), (ii) *bay' al-dayn* (debt trading), and (iii) forward contracts which have received considerable attention in Shariah scholarship because of their potential implications for *gharar*.

Takaful is founded upon the principles of mutual cooperation (*ta'awun*), shared responsibility, and risk-sharing. The contract is generally regarded as Shariah-compliant because it is structured on the principle of *tabarru'* (voluntary donation), which mitigates the legal effect of uncertainty that would otherwise invalidate a commercial exchange contract (AAOIFI, 2015; Billah, 2019). In contrast, *bay' al-dayn* and conventional forward contracts present more complex juristic issues. *Bay' al-dayn* remains a subject of scholarly disagreement, particularly concerning the sale of debt to third parties, while conventional forward contracts may involve uncertainty relating to delivery, ownership, and contractual obligations if they are not structured in accordance with recognised Islamic contracts such *as salam* or *istisna'* (AAOIFI, 2015; Islahi, 2008; Kamali, 2008). Consequently, these contracts require careful Shariah assessment to determine whether the level of uncertainty constitutes *gharar yasir*, which is tolerated or *gharar fahish*, which renders a contract impermissible.

This comparative analysis provides a valuable framework for assessing the adaptability and integrity of Islamic finance by integrating classical juristic principles with contemporary financial practices. It highlights the importance of continuous ijtihad, effective Shariah governance, and regulatory oversight to ensure that financial innovation remains consistent with the ethical objectives and legal principles of Islamic commercial law.

FINDINGS & DISCUSSIONS

Evolution of The Definition of Gharar

The concept of *gharar* has changed a lot over time, showing just how complex and deeply debated it is within Islamic finance. When looking at its roots, the traditional definition shows that while the word literally translates to "fraud" or "deception" (*al-khida'*), scholars have long used it in finance to describe risk, uncertainty or general hazards (Miah & Suzuki, 2018). In early classical jurisprudence, this meant any contract where people were left in the dark about what they were actually buying, its specific traits or whether it even existed yet, a core idea that still shapes Islamic finance today (Miah & Suzuki, 2018). Moving into contemporary interpretations, today's scholars look at the concept through a much wider lens. They break it down into two main areas: contractual clarity (whether the terms and essence of the contract are fully transparent) and object uncertainty (ambiguity surrounding the item itself) (Miah & Suzuki, 2018). In a broader philosophical sense, *gharar* is no longer viewed in isolation; it is part of a holistic Islamic philosophy of risk that connects to *maysir* (gambling) and *mukhatarah* (excessive risk), which goes far beyond how conventional finance defines uncertainty (Waemustafa & Sukri, 2016). Because of this, it is directly tied to the kind of excessive risk and pure speculation that Islamic finance strictly forbids (A. & A., 2016; D'Alvia, 2020).

Naturally, this shift brings up some real jurisprudential and linguistic challenges. Because different schools of Islamic thought interpret the concept differently, there is still no single, universally agreed-upon definition of *gharar*. Thus, according to Mohd Noh et al. (2025) and Waemustafa & Sukri (2016), this lack of standardization keeps the debate alive and well driving modern researchers to call for much clearer guidelines, especially when dealing with highly complex financial instruments like derivatives. Even with these disagreements, modern applications and debates show how well the framework adapts to today's markets. For instance, scholars recognize a category called permissible *gharar* (*gharar yasir*), which allows for minor, everyday ambiguities as long as they do not cause actual harm or spark major disputes—something seen in products like *tawarruq* (Thaidi et al., 2014). At the end of the day, *gharar* is being looked at more and more through the lens of ethical finance, putting the focus squarely on fairness, transparency, and true risk-sharing (M. K. Hassan et al., 2021; Nienhaus, 2011a). The ultimate goal now is to seamlessly blend this principle with modern financial practices, keeping everything Shariah-compliant by creating innovative products that leave excessive uncertainty behind (Hisham & Jaffar, 2017; Razak, 2016).

Moreover, scholars increasingly apply the higher objectives of Islamic law (*Maqasid al-Shariah*) specifically the preservation of wealth (*hifz al-mal*), prevention of harm (*daf' al-darar*), and promotion of public interest (*jalb al-maslaha*) to evaluate whether contractual ambiguity is genuinely exploitative or serves a valid economic need. Contemporary legal frameworks rely on the classic distinction between *gharar fahish* (excessive

ISSN No. 2454-6186 | DOI: 10.47772/IJRISS | Volume X Issue VII July 2026

uncertainty that voids contracts) and *gharar yasir* (minor, unavoidable uncertainty that is tolerated). Where transparency is high and uncertainty does not lead to dispute or injustice, *gharar yasir* is permitted to maintain commercial efficiency. To mitigate information asymmetry and prevent market fraud, modern Islamic finance integrates standard-setting guidelines from bodies like AAOIFI and IFSB. Enhanced disclosure requirements, smart contract verification, independent Shariah audits and robust governance mechanisms are essential tools to eliminate hidden ambiguity and ensure contractual certainty.

Key Trends in the Evolution of Gharar

Aspect	**Traditional View**	**Modern View**
Definition	Fraud, uncertainty, ignorance	Broader risk, excessive speculation
Focus	Object of sale and contract terms	Ethical finance, risk-sharing, transparency
Permissibility	Strict prohibition	Tolerance for minor uncertainty *(gharar yasir)*
Application	Simple trade contracts	Complex financial instruments (eg. derivatives)

Categorization and Application of *Gharar*

The practical application of *gharar* in contemporary settings relies heavily on the structural boundary between *gharar fahish* (excessive uncertainty) and *gharar yasir* (minor, tolerable uncertainty). This distinction serves as a fundamental analytical tool for evaluating the legitimacy of modern Islamic financial institutions and commercial contracts (Ar Royyan Ramly, 2019; Hasanah et al., 2026). Rather than applying a rigid, blanket ban on all forms of risk, Shariah scholars and researchers use these distinct categories to carefully assess the validity, economic impact, and ethical boundaries of specific transactions. By destabilizing market access and forcing vulnerable communities into speculative pricing environments, such hoarding creates a structural economic injustice that openly violates the foundational goals of *maqasid al-shariah*, particularly the preservation of wealth (*hifz al-mal*) (Irfan Fadilah et al., 2025). To resolve these operational tensions, contemporary jurists advocate for applying *Maqasid al-Shariah* specifically *hifz al-mal*, *dafʿ al-darar*, and *jalb al-maslaha* to evaluate whether contractual ambiguity is genuinely exploitative or serves a valid economic function. In addition, contemporary analysis relies heavily on the classical juristic taxonomy that distinguishes between *gharar fahish* (excessive uncertainty that invalidates contracts) and *gharar yasir* (minor, unavoidable uncertainty that is legally tolerated). Where transparency is high and ambiguity does not lead to exploitation or contractual disputes, *gharar yasir* is permitted to maintain commercial efficiency. To eliminate information asymmetry and prevent market fraud, standard-setting bodies such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) have operationalized enhanced disclosure guidelines. Integrating modern governance mechanisms, product-level Shariah audits, and automated verification tools ensures that contractual terms remain transparent, thereby safeguarding market confidence and preserving Shariah integrity.

Financial and Insurance Products:

In complex financial services, such as Sharia insurance operating under *wakalah bil ujrah* (agency with a fee) contracts, researchers analyze potential uncertainty to ensure strict compliance with regulatory benchmarks like the *Dewan Syariah Nasional – Majelis Ulama Indonesia* (DSN-MUI) fatwas (Hasanah et al., 2026). The operational reality shows that implementing structured risk-mitigation strategies can effectively prevent minor, everyday ambiguities (*gharar yasir*) from compounding into a severe, non-compliant level of uncertainty (*gharar fahish*). In addition, certain forms of uncertainty, such as the exact timing or amount of future claims, are considered unavoidable and may therefore be classified as *gharar yasir*. These minor uncertainties do not invalidate the contract as long as they are properly disclosed and managed through appropriate contractual mechanisms and risk mitigation measures. However, if uncertainty becomes excessive or creates ambiguity regarding the rights and obligations of the parties, it may develop into *gharar fahish*, rendering the transaction inconsistent with Shariah principles. This demonstrates that the classification of *gharar* is not merely theoretical but serves as an essential tool in designing financial products that balance commercial practicality with Islamic legal requirements (Hasanah et al., 2026).

Essential Commodities and Market Operations:

The real-world dangers of *gharar fahish* become clear when market manipulation disrupts access to vital consumer goods, as observed in the hoarding of the subsidized cooking oil commodity Minyakita in Indonesia (Irfan Fadilah et al., 2025). This deliberate practice is classified as *gharar fahish* because creating artificial scarcity and manipulating prices inflicts direct harm on public welfare, driving price volatility and widespread consumer uncertainty. By destabilizing market access and forcing vulnerable communities into speculative pricing environments, such hoarding creates a structural economic injustice that openly violates the foundational goals of *maqasid al-shariah*, particularly the preservation of wealth (*hifz al-mal*).

The Paradox of Financial Innovation vs. Shari'ah Compliance

Islamic finance is fundamentally anchored in the objective of aligning financial practices with Shariah principles, necessitating the strict exclusion of *riba* (interest), *gharar* (excessive uncertainty) and *maysir* (gambling) (R. Hassan et al., 2018; Nienhaus, 2011b). However, a significant operational tension emerges when Islamic financial institutions attempt to integrate into global markets, often finding that to gain sufficient traction, they must mirror the structure of conventional financial products. This necessity drives a common industry trend of retrofitting conventional instruments to achieve a state of technical Shariah compliance; unfortunately, this process often inadvertently introduces hidden elements of *gharar* and inherently dilutes the risk-sharing ethos that serves as the bedrock of Islamic finance (Mirakhor, 2014; Nienhaus, 2011b).

While scholars rigorously emphasize that risk-sharing and profit-loss-sharing mechanisms constitute the ideal framework, practitioners frequently prioritize market familiarity, liquidity, and investor acceptance. This pragmatic focus leads to an increasing reliance on risk-transfer models that essentially mirror conventional financial engineering (Mirakhor, 2014; Nienhaus, 2011b). This methodology has drawn substantial criticism for prioritizing legalistic form over ethical substance, as it may satisfy the immediate, superficial requirements of Shari'ah compliance while failing to realize the broader, more transformative ethical and socio-economic objectives of *Maqasid al-Shari'ah* (Laldin, 2014; Nienhaus, 2011b). Consequently, this reliance on synthetic replication can create a paradox where institutions successfully avoid interest-based debt on paper, yet struggle to foster the genuine economic stability and distributive justice that Islamic finance is mandated to provide (Laldin, 2014).

Critical Evaluation: Legal Stratagems (Hiyal) and the Spirit of Muamalat

The strategic use of legal stratagems (*hiyal*) to bypass strict prohibitions like *gharar* has ignited a profound debate regarding whether these practices genuinely uphold the spirit of *Muamalat* (Islamic commercial transactions). Critics strongly argue that these clever maneuvers often result in a superficial "form over substance" compliance mechanism, where the underlying economic risks and ethical flaws of conventional finance are merely rebranded using Islamic terminology (Nienhaus, 2011b; Zaheer & van Wijnbergen, 2025). For instance, the aggressive replication of conventional interest-bearing bonds through *Sukuk* structures has frequently triggered high-profile legal disputes over true asset ownership and risk-sharing, shining a harsh light on the massive gap between noble theoretical ideals and real-world practical implementation (Zaheer & van Wijnbergen, 2025). This structural disconnect shows that while an instrument might be perfectly legalistic on paper, it can still fail to deliver the equitable, transparent economic partnership that Islamic commercial law originally intended.

Furthermore, an over-reliance on *hiyal* inherently threatens to erode the entire ethical foundation of Islamic finance, as it shifts the primary focus away from achieving genuine economic justice and structural fairness to merely meeting technical Shariah requirements (Nienhaus, 2011b; Zaheer & van Wijnbergen, 2025). When the industry prioritizes passing a technical compliance audit over protecting the vulnerable and ensuring fair wealth distribution, the core identity of the system begins to slip away. This strictly legalistic approach carries significant long-term risks, particularly the alienation of vital stakeholders, consumers and global investors.

These market participants turn to Islamic financial institutions with the explicit expectation that they will offer a transparent, genuinely ethical, and socially responsible alternative to conventional systems, an expectation that is ultimately left unfulfilled when syntactic tricks replace true ethical compliance (Laldin, 2014; Nienhaus, 2011b).

CONCLUSIONS

The prohibition of *gharar* remains one of the fundamental principles of Islamic commercial jurisprudence, reflecting the Shariah objectives of promoting transparency, fairness, and justice in commercial transactions. This study revisited the concept of *gharar* by examining its classical jurisprudential foundations and analysing its application within selected contemporary *muamalat* contracts. Through qualitative content analysis and comparative analysis, the study demonstrated that the classical distinction between *gharar yasir* (minor uncertainty) and *gharar fahish* (excessive uncertainty) continues to serve as the primary criterion for determining the validity of Islamic financial contracts.

The findings reveal that the principles established by classical jurists, particularly Ibn Qudamah and Ibn Rushd, remain highly relevant in contemporary Islamic finance. Their emphasis on contractual certainty, clear ownership, mutual consent, and the avoidance of exploitation continues to underpin modern Shariah governance and regulatory standards issued by institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB). The comparative analysis further indicates that while contemporary Islamic financial products, including *takaful*, *bay' al-dayn*, and selected forward contractual arrangements, are generally designed to minimise excessive uncertainty, differences in juristic interpretation and regulatory approaches continue to influence their assessment across jurisdictions.

The study also highlights that the rapid development of financial engineering, digital finance, and fintech has introduced new forms of contractual complexity that require continuous Shariah evaluation. Although regulatory frameworks have significantly strengthened transparency, disclosure, and governance mechanisms, maintaining compliance with the classical principles of *gharar* remains an ongoing challenge. This underscores the importance of continuous *ijtihad*, effective Shariah governance, and collaboration among jurists, regulators, and industry practitioners to ensure that financial innovation remains aligned with the ethical objectives of Islamic commercial law.

Overall, this study contributes to the existing body of knowledge by integrating classical Islamic jurisprudence with contemporary regulatory practices, demonstrating the continued relevance of *gharar* as a guiding principle in evaluating modern *muamalat* contracts. The findings provide useful insights for scholars, regulators, and Islamic financial institutions seeking to strengthen Shariah-compliant financial products while preserving the fundamental objectives of justice, transparency, and the prevention of exploitation.

Despite its contributions, this study is limited to a qualitative analysis of selected classical texts, regulatory standards, and a limited number of contemporary *muamalat* contracts. Future research may expand the scope by incorporating empirical evidence from Islamic financial institutions, comparative studies across different jurisdictions, or analyses of emerging areas such as blockchain, smart contracts, decentralised finance (DeFi), and artificial intelligence in Islamic finance. Such studies would further enrich the understanding of how the principles of *gharar* can be effectively applied within an increasingly digital and globalised financial environment.

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