

TAKAFUL: BASE OF ISLAMIC INSURANCE ON THE SHARI'AH FRAMEWORK

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Abstract

Takaful is growing fast day by days. Other than it can develop the industry of Takaful itself, the main reason by introducing the takaful insurance is to offer or provide an alternative to all Muslims' needs in protection product. Thus, similar to the conventional insurance, it is to provide the element of protection and indemnity to both individual and corporate bodies against loss or hazards to their selves or wealth but in line with the Maqasid Shari'ah Principles. Hence, the objective of the study has been evaluated the family takaful product which based on the Maqasid Shari'ah framework due to the five preservations or protections (Protection of Religion, Protection of Life, Protection of Intellect, Protection of Progeny and Protection of wealth). Most of the products offered in takaful institutions are in line with the Maqasid Shari'ah perspective as sustainable of financial planning which bring to the social well-being and impartiality for the public interest (maslahah) by taking into consideration of five preservation, namely the preservation of religion (al-ddin), the preservation of life (al-nafs), the preservation of intellect (al-'aql), the preservation of progeny (al-nasl) and the preservation of wealth (al-mal). Therefore, it is an important not only in developing takaful as a part of industry growing but then beyond than that to fulfill the needs of Muslim as well for all the others as well as enhancing halal sustainability through takaful products development.

Keywords: Takaful, Halal Sustainability, Maqasid Shari'ah

I. INTRODUCTION

According to Central Bank of Malaysia (2000-2006) the establishment of takaful industry is a necessities (daruriyyah), as the result of a fatwa (decree) issued by the Malaysian National Fatwa Committee which ruled that conventional life insurance is void contract due to the presence of the elements of gambling (maisir), uncertainty (gharar) and usury (riba).

Takaful is one of the halal product which become the strategy paradigm that embraces broad concerns of universal in halal-oriented economics. It is a system of Islamic insurance based on the principle of mutual cooperation (ta'awun) and donation (tabarru'), where the risk is shared collectively and voluntarily by the group of participants. It is an arrangement by a group of people with common interests to guarantee or protect each other from certain defined misfortunes such as premature death, disability and property damages

According to Arifin, Yazid, & Hussin, (2014) the takaful industry has experienced a significant expansion as it is one of the vital mechanisms in enhancing halal sustainability of the Islamic Finance system. Due to this, the takaful industry is endlessly creating the basis that is strong enough to take its place together with the conventional insurance industry as a legal alternative in key markets. Even though the takaful industry is still considered by low market penetration in the world as compared to the conventional insurance market, the takaful industry seems to be doing well and strives to expand the competitive performance so that takaful can magnificently have a positive outlook parallel to the conventional insurance performance in the world today. By having such rapid growth of both takaful business specifically for family takaful business, it is automatically lead to the business opportunities for takaful industry itself. By zooming into family takaful market, the family takaful penetration rate was merely 10 percent of the population in 2010 (OSK Research Report, 2012). This was supported by Hashim (2012) where the market penetration rate for family takaful business in Malaysia is relatively low and remains largely untapped, therefore presenting a huge business opportunity.

Therefore, this study has been evaluated the family takaful product which based on the Maqasid Shari'ah framework due to the five preservations or protections

(Protection of Religion, Protection of Life, Protection of Intellect, Protection of Progeny and Protection of wealth).

Takaful : Base of Islamic Insurance on The Shari'ah Framework

The main theory in this study is using the theory from Al-Ghazali. The theory said that, Islamic Law was made to protect five preservations of religion, life, intellect, progeny, and wealth, which are the main rights of human in this life. Imam al-Ghazali (d. 505 AH/1111 AC) defined maqasid by stressing that the Shari'ah concerns with protection of five objectives: "The main objective of the Shari'ah is to promote the public interest and the well-being of the people, which lies in protection of their religion (din), their life (nafs), their intellect ('aql), their progeny (nasl) and their wealth (mal). According to Al-Ghazali (1998), whatever ensures and covers the safeguarding of these five origins, and it is a public interest, and whatever leaves these five's, it is a harm and against public interest". Therefore, the Maqasid al-Shari'ah are the law's meanings and objectives as manifested in most or all of its rulings, or they may be said to be the objectives of the shari'ah and the hidden wisdom which the lawgiver has placed within each of its rulings, Zuhaili (1996).

Protection of Religion

Protect faith and religion, Allah (S.W) forbade believing in someone else except him, either by belief or by action. He (S.W) forbade everything leads to that such as exaggeration of obeying the prophets and the righteous, to believe they are agents between Allah (S.W) and his creation, and to believe that good or bad is in anyone else's hand except Allah (S.W). Protection of religion is an obligatory when establishing a takaful company to be in line with sharia'h compliant. Therefore, to ensure all the takaful companies are shari'ah-compliant, then the government has formed the Takaful Act in 1984, strengthening with Islamic Financial Services Act (IFSA) in 2013. To ensure the protection of religion, all takaful companies are under Shari'ah Advisory Council of Bank Negara Malaysia (SAC), which was established in May 1997 as the highest Shari'ah authority in Islamic finance in Malaysia. Every takaful company should have a Shari'ah Advisory Board (SAB). SAB is responsible

for validating all takaful products development with to ensure their compatibility with the shari'ah principles.

According to Azmi & Mohd. Kasim (2015), they said that takaful as part of the Islamic finance can be termed ethical insurance which it is operating under the Islamic ethical framework and hence creates the atmosphere of a caring and sharing society while promoting solidarity. Takaful has been introduced as an alternative to insurance to ensure that people can participate in takaful which is free from interest, uncertainty, and gambling. These elements are prohibited from the Islamic perspective due to unfair nature of their practices.

Abdullah (2012) examined takaful's growth towards an effective risk management and ethical promoting tool which tailored to the Maqasid of Shari'ah. The research captured that protection of human dignity was being prioritized to honor and treasure individuals without discrimination. It was also highlighted that Islamic virtuous goals and values that are highly thought of in takaful are believed to pave the future direction to achieve the universal objectives of shari'ah.

This also supported by Fisher (2013) that said the implementation of takaful is deemed to have a strong relationship in achieving the Maqasid Shari'ah. In preserving ad-din, takaful is able to realize it as its transaction begins with a contribution in the form of tabarru' (donation). This is regarded as sincere contribution of a person to a pool of contribution. The relationship between the participants and the risk pool (as managed by the Takaful Operator) is termed as 'tabarru'. All the contributions collected from the policyholders or participants are not meant for the transfer of risk as in conventional insurance but it is meant to help those who are struck with misfortune, which is considered as 'ibadah'.

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Protection of Human Life

According to Al-Kurdi (2014), the objective of takaful implementation is also to realize the spirit of cooperation among the takaful participants. The participation is also meant to provide protection to members in the group who face any form of calamity or disaster. Such spirit and practice are in line with the objectives of Shari'ah, specifically protection of life or an-nafs which encourages Muslims to do good deeds to self and others, and taking all preventive measures such as health precautions. For example, a participant could have various health products to maintain good health which is essential to every human need.

According to Iqbal and Mirakhor (2007) and Abdul Razak and Ismail (2011), Islamic banking and finance is unique; it is distinct from conventional banking as it includes striving for a just, fair and balanced society. Dusuki and Abdullah (2007) argue that the rationale behind the emergence of an Islamic banking system goes beyond conforming to Shari'ah injunctions in offering Islamic financial products. The system aims at fulfilling socioeconomic objectives including establishing fair economic development and activities. The objective of Shari'ah is to support the

wellbeing of the people, which includes the protection of faith, life, intellect, progeny and wealth (Abdul Rahman, 2003). While maximizing business profit is permissible, social welfare must be considered for conducting fair and just business deals (Abdul Rahman, 2010).

Protection of Intellect

According to Asyraf Wajdi Dusuki & Abdulazeem Abozaid, (2007) Islam is a symul way of life whereby a person's life is integrated to another and would benefit in the current life and the hereafter. Achieving Maqasid al- Shari'ah will create a society whereby every member will cooperate with each other and compete constructively in achieving success in life which is to obtain the ultimate happiness (falah). In the concept of takaful itself, people finally can achieve the peace of intellect when they think they have something if something happened. Takaful practices are free from prohibited elements such as riba, maysir and gharar, and its operations are lawful. Thus, participating in takaful is believed to create a peaceful heart and intellect to both participants and Takaful operators as they are not involved in unlawful or non-shari'ah compliant activities.

According to Sabbir (2002), the main purpose of insurance is to act as a risk transfer mechanism to protect against losses and provide peace of intellect. Moreover, the income generated from takaful activities, which is free from prohibited elements would lead to earnings and gains that are blessed by the Almighty Allah. Indeed, a Muslim practicing true Islamic teaching with the avoidance of prohibited elements, and illegal or unlawful activities such as the conventional insurance will onset the feeling of peace at heart and intellect which would preserve the human's intellect or al-'aql.

Protection of Progeny

According to Fisher (2013) in terms of preserving the forth fundamental element of human being which is ancestor (an-nasl), it can be clearly viewed through the takaful product, namely family takaful. This is relevant because in such policy, the policyholders' family relations will benefit from the compensation that is paid after his/her demise. Thus, the family members will be left with some financial assistance

according to the conditions agreed. The compensation paid by the takaful operators is indeed vital to assist families especially those who have lost their main source of income provider.

According to Yaari (1965), he describes demand for life insurance is attributed to a person's desire (or a "joy of giving") to bequeath funds to dependents and provide income for retirement, demand for life insurance has been posited as a function of wealth, expected income over a person's lifetime, interest rates, the cost of life insurance policies (e.g. administrative costs) and the assumed subjective discount on current over future consumption.

Protection of Wealth

The protection of wealth (al-mal) is one of the essential needs of human's life as Islam encourages Muslims to earn lawful earnings and prohibits income from illegal sources such as gambling, bribery, stealing, and anything that involves riba or usury. As such, protection of property or wealth is associated with economic activities that include Islamic finance. (Al- Khelaifi: 2004; Laldin: 2010; Dusuki and Bohrawa: 2011; Ahmed: 2011).

Protection of wealth according to Ibn-Ashur (2006) means protecting the wealth from being broke and from shifting to the hands of others without legal means and compensation. Furthermore, al-Shatibi asserts that it is the prohibition against injustice, depriving orphans of their property, wastefulness, envy, giving short measure and weight, and corruption in the land (al-Raysuni, 1997).

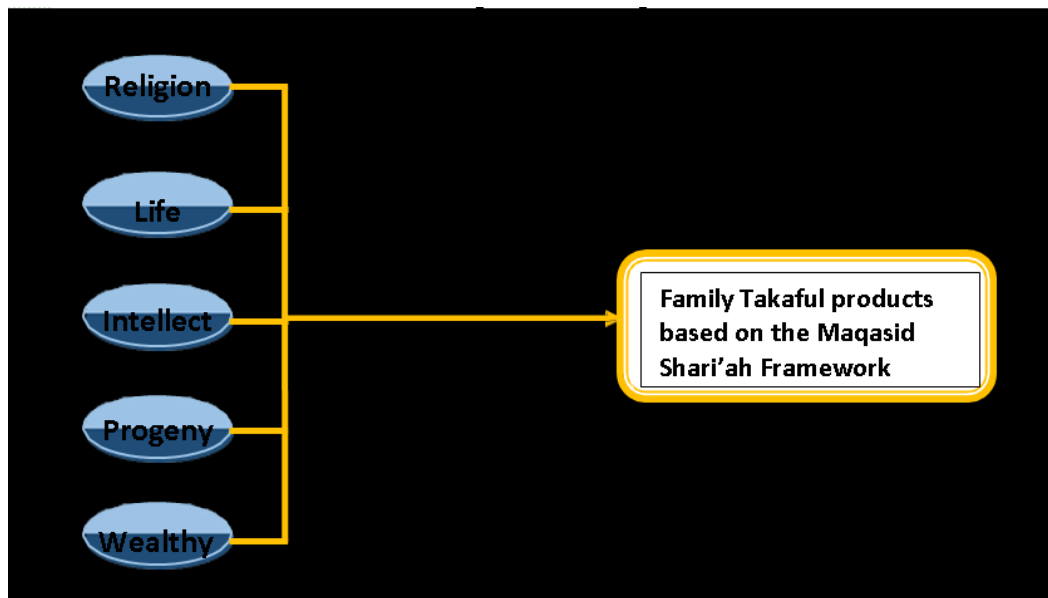
Supported by Ooi (2009) that said Malaysian Employee Provident Fund (EPF) savings is not enough, whereby it would be depleted between 3 to 5 years after retirement. Hence, there is an urgent need for extra source of funding for retirement such as takaful which would assist in wealth planning and prepare the financial fortress for the retirees. The two-pronged nature of takaful (i.e. protection and need to think much about the effect of untoward event to their retirement nest and the performance of the fund which is professionally managed).

Syahida Abdullah & Hafas Furqani (2012), also said that takaful provides Shari'ah alternative to Muslims for wealth protection. Therefore, takaful is one of the pillars of the bigger Islamic financial system, in which the Maqasid al-Shari'ah should

be applied towards achieving its goals, objectives, values and direction via realizing the *maslahah* (benefits) and preventing or repelling the *mafsadah* (harms) in all dimension of human life.

II. CONCLUSIONS AND SUGGESTIONS

In conclusion, most of the products offered in *takaful* institutions should be in line with the *Maqasid Shari'ah* perspective as sustainable of financial planning which bring to the social well-being and impartiality for the public interest (*maslahah*). Therefore, the choice of *takaful* products is falls under the category of public interest (*maslahah*) by taking into consideration of five preservation, namely the preservation of religion (*al-ddin*), the preservation of life (*al-nafs*), the preservation of intellect (*al-aql*), the preservation of progeny (*al-nasl*) and the preservation of wealth (*al-mal*). Therefore, This conclusion can be demonstrated through the following table bellow:



III. REFERENCES

- Abdul Rahman, A.R. *An Introduction to Islamic Accounting Theory and Practice*. Kuala Lumpur: CERT Publication, 2010. . "Ethics in Accounting Education: Contribution of Islamic Principle of Ma la ah." *IIUM Journal of Economics and Management* 11, no.1 (2003): 31- 49.
- Arifin, J., Yazid, A. S., & Hussin, M. R. (2014). Demand of Family *Takaful* in Malaysia: Critical Determinant Factors Examined, pp 982– 992.
- Al-Ghazali, M. (1998). *al-Mustasfa min ,ilm al-usul*. Beirut: Dar al- Kutub al-Islamiyyah. Vol. 1, pp. 174.
- Azmi, S. (2015), "An Islamic Approach to Business Ethics", available at: <http://www.renaissance.com.pk/mayviewpoint2y5.htm>, (accessed 10 September 2012).
- Abdullah, S. (2012). Risk Management via *Takaful* from a Perspective of *Maqasid* of *Shari''ah*. International Congress on Interdisciplinary Business and Social Science, 535-541.
- Abdul Razak, D., and Y. Ismail. "Diminishing Partnership: Bankers Strategic Response to *Shari''ah* Compliant Home Financing." *International Journal of Economics, Management and Accounting, Supplementary Issue* 19 (2011): 177-96.
- Al-Kurdi, Amin Haji Muhammad Amin. (2014). *Al-Ta''min Al-Takafili Fi Dhawi Maqasid Asy- Syariah*. 24. Paper presented at The 22nd International Scientific Conference on Legal Aspects of Insurance and Its Contemporary Issues, retrived from www.alukah.net.
- Al-Raysuni, A. (1997). *Nazariyyat al-Maqasid 'inda al-Imam al- Shatibi*. Al-Mansurah, Egypt: Dar al-Kalimah.
- Asyraf Wajdi Dusuki & Abdulazeem Abozaid (2007). A Critical Appraisal on the Challenges of Realizing *Maqasid al-Shari''ah* in Islamic Banking and Finance. *IIUM Journal of Economics and Management*, 15(2), pp. 143-165.
- Dusuki, A.W., and N.I. Abdullah. "Why Do Malaysian Customers Patronize Islamic Banks." *International Journal of Bank Marketing* 25, no. 3 (2007): 142-6
- Dusuki, A. W., and Bouheraoua, S. (2011). The framework of *Maqasid al-Shari''ah* (the objectives of *Shari''ah*) and its implications for Islamic Finance. *ISRA Research Paper No.22*. Kuala Lumpur: ISRA.
- Fisher, O. C. (2013). *A Takaful Primer Basics of Islamic Insurance*. Thomson Reuters. Online http://www.Takafulprimer.com/Resources/Takaful_report_primer_2013.pdf. Retrieved on 28 October 2013.
- Iqbal, Z., and A. Mirakhor. *Introduction to Islamic Finance: Theory and Practice*. Singapore: John Wiley and Sons (Asia), 2007.

- Ibnu Ashur, M.A. (2006). Treatise on *Maqasid al-Shari'ah*, translated by Dr.Muhammad El- Tahir El- Mesawi. London: IIIT.
- Ladin, M. A. (2011), Introduction to Shari'ah & Islamic Jurisprudence, CERT PublicationSdn.Bhd, Kuala Lumpur.
- Mohammed, N., Dan, K., & Damansara, K. (2016). Factors Influencing the Choice of *Takaful* over Conventional Insurance : TheFactors Influencing the Choice of *Takaful* Over Conventional Insurance: The Case of Malaysia, <https://doi.org/10.12816/0025101>
- Mohamed Fisol, W. N., Md. Radzi, N. Z., Haji-Othman, Y. (2017). The Engineering of Islamic Legal Opinion (*Ijtihad*) On the *Maqasid Al- Shari'ah* Development in the Assessment of Islamic Financial Products. *International Journal of Academic Research in Business and Social Sciences*. 7(4), 945-956.
- Mohamed Fisol, W. N., Al-Basri, S. H., Ismail Mat. (2017). The Scientific Of the Fundamentals of *Maqasid* in Islamic Financial Products Development. *International Journal of Academic Research in Business and Social Sciences*. 7(10), 683-692
- Mohamed Fisol, W. N., Ariffin, M. S., Ismail Mat. (2017). The Issues in Islamic Financial Products: Based on the Scientific *Maqasid Al-Shari'ah* Perspective. *International Journal of Academic Research in Business and Social Sciences*. 7(6) 979-990.
- Nyazee, I. A. K. (1994). *Theories of Islamic Law: The Methodology of Ijtihad*. Islamabad: IIIT. Ooi, K.H. (2009). Is your EPF money enough for retirement? The Star. 15th July. Viewed at <http://biz.thestar.com.my/news/story.asp?file=/2009/7/15/business/4318886>
- Obaidullah, M., 2005, Islamic Financial Services, [http:// www.islamic-finance.net].
- Raysuni, A. (2009). *Muhadharat fi Maqasid al-Shari'ah*. Beirut: Dar al- Salam.
- Raysuni, A. (2006). *Imam Al-Shatibi's Theory of the Higher Objectives and Intentions of Islamic Law*. London and Washington: The International Institute of Islamic Thought.
- Rom, N. A. M., & Rahman, Z. A. (2012). Financial protection for the poor in Malaysia: Role of zakah and micro-*Takaful*. *Journal of King Abdulaziz University, Islamic Economics*, 25(1), 119–140. <https://doi.org/10.4197/Islec.25-1.5>
- Sabbir, P. (2002). *Takaful* and poverty alleviation.