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## **Fulfillment of Maqasid al-Shariah via Takaful**

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# Fulfillment of *Maqasid al-Shariah* via Takaful

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## Abstract

*Protection is as important as other basic needs as it ensures the continuity of the fulfillment of the needs. The fulfillment from Islamic point of view can be categorised into five major areas as prescribed under the Maqasid al-Shariah. Protection can be achieved via Insurance, but it is not acceptable by Islam because of the element of riba, gharar, and maysir in it. Therefore, Takaful or Islamic Insurance is taken as alternative to achieve the same objective but with a different contract and via Shariah-compliant investment mechanism. This paper tries to connect Takaful and its features as a tool to fulfill the Maqasid al-Shariah.*

**Keywords:** *Islamic Insurance, Takaful, Maqasid al-Shariah, Wealth Protection.*

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## **1.0 Introduction**

Insurance are means for wealth preservation. It helps to provide financial security in the event of illness, death and permanent disability, as well as the fund to repair damaged assets in an accident or replace assets that was loss due to robbery. Since death and accidents can happen at any point in time and nobody can predict when a mishap will happen, insurance gives peace of mind to policyholders that their loved ones will be duly compensated upon such occurrence.

### **1.1 Reasons for Insurance or Takaful**

There are several valid reasons for insurance which should be appealing to everyone. First and foremost, insurance serves as an income replacement in the event of death or disability, especially in the demise of the sole-breadwinner in the family. The insurance claim will at least support the surviving member of the family until they manage to get back on their feet. If the insurance coverage is huge, the claims received may even last a life time. Thus, it is of utmost important that the head of the family is amply insured according to his dependent's needs.

Health cost is another major reason for insurance. Although some countries (e.g. Malaysia) provide free medical care, often time it is not enough. As an example, health condition may deteriorate if treatment was not received promptly. It is well known that the delays of obtaining treatment in government hospital can be unbearable. In addition, most people would certainly prefer the comfort of private medical treatment if they can afford it. Thus, insurance covers medical cost including but not limited to surgery, medication, hospital charges and loss of income. In other words, insurance reduces the financial burden arising from health treatment and may even compensate policyholders for their inability to earn income during the period.

Insurance also helps to replace damaged assets via motor insurance or house owner insurance in case of accidents or fire. Since motor vehicle and real properties are normally bought on credit or procured through bank financing, it makes sense to insure it. In fact, some banks or home loans provider make it compulsory for the house buyer

to obtain insurance cover. Insurance claims allow policyholder to settle the outstanding financing amount of loss properties.

If the assets have been fully paid for, the proceeds can be utilised to purchase new vehicle or rebuild property. It ensures continuation of dwelling and place of business by avoiding the burden of having to pay double instalment on both the loss assets and its subsequent replacement.

A specific form of insurance on home mortgages is called the Mortgage Reducing Term Assurance (MRTA) or its takaful variant, the MRTT. The purpose of this insurance is solely for debt-repayment (i.e. pay off the mortgage balance). Upon disability, illness or death to the mortgagor, MRTA or MRTT ensures that the property is not auctioned off for non-payment of debt, so that his family will still have a place to stay.

In addition, insurance ensures that outstanding debt is fully settled which will please the debt guarantor. Muslims should be concerned with the state of indebtedness upon death as their good deeds will be suspended as quoted in the following *Hadith*:

*It has been reported on the authority of 'Amr b. al-'As that the Messenger of Allah (pbuh) said, "All the sins of a Shahid (martyr) are forgiven except debt".*

Sahih Muslim<sup>3</sup>

Apart from its protection element, insurance has been extended to include saving element. Notably, education insurance products feature investment plan to ensure enough savings for tertiary education. Even though there are several public universities in Malaysia, students have to compete for placement in esteemed colleges and prime courses. As an example, only top students are allowed to study medicine in the public universities.

Otherwise, parents will have to send their children to study in private universities or colleges which are getting pricier each year. This is not to mention the accommodation cost if the alma mater is located overseas. Education insurance helps parents to prepare

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<sup>3</sup> Muslim. Book 20, Hadith 4649.

for such situation. Apart from the forced saving and investment element of insurance, the insurer will provide for the education fund in case anything happen to the parents. Similarly, insurance may also be used for retirement planning by structured savings for the golden days.

Insurance premium or Takaful contributions are also tax deductible expenses in Malaysia which means such expenses may reduce the tax liability of a person. The tax rebates of insurance can be useful for tax planning purposes and should promote insurance and Takaful further.

## **1.2 The Difference between Insurance and Takaful**

In the conventional sense, insurance is the contract of selling indemnity for a premium. When people purchase this contract, risk is essentially transferred from the policyholder to the insurance company. In contrast, Takaful is mutual indemnity whereby participants mutually indemnify each other. It is different from insurance in the sense that the contribution made is considered as donation. As a result of this donation, risk is shared between participants.

Although both insurance and Takaful eventually provide protection to customers and participants, the nature of contract and type of investments differentiates between the two. Insurance is said to be not acceptable in Islam due to its contract of selling contingent risk for premium and the compliance of its investment portfolio to the *Shariah* is questionable due to lack of *Shariah* supervision.

In Islam, humans are free to accumulate and spend wealth according to *Shariah* and are made responsible for their actions as mentioned in the following *Hadith*:

*Abu Barzah (mAbpwh) reported: Messenger of Allah pbuh said, "Man's feet will not move on the Day of Resurrection before he is asked about his life, how did he consume it, his knowledge, what did he do with it, his wealth, how did he*

*earn it and how did he dispose of it, and about his body, how did he wear it out"*<sup>4</sup>

Islam is a *syumul* way of life whereby a person's life is integrated to another and would benefit in the current life and the hereafter (**Asyraf Wajdi Dusuki & Abdulazeem Abozaid, 2007**). In addressing this integrated relationship, wealth is to be structured to achieve the *Maqasid al-Shariah* (**Muhammad Umer Chapra, 2000**). Achieving *Maqasid al-Shariah* 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*).

Wealth planning and management is an effort to analyze and organize financial affairs to achieve the desired financial and lifestyle goals. Accumulation itself is not adequate if it is not protected. Due to Takaful insofar is the most important tool for wealth protection (**Jarvis & Mandell, 2003**), fulfillment of the *Maqasid al-Shariah* would be more comprehensive with Takaful.

This paper shall illustrate the concept of *Maqasid al-Shariah* and its importance to daily life and to understand the concept of protection in Islam. It will further discuss the fulfillment of *Maqasid al-Shariah* via Takaful.

## **2.0 Overview on *Maqasid al-Shariah***

### **2.1 Fundamentals of *Maqasid al-Shariah***

#### **2.1.1 Definition of *Maqasid al-Shariah***

*Maqasid* is the plural of *Maqsad* and comes from the verbal root of *Qasada*. Literally it means to intend, to take a middle course and to walk towards. From this root comes the noun *Qasd*, which means a goal, an aim, or an aspiration. The second part of the title is the word *Shariah*, which is a noun meaning a path to a water hole, and in its more common usage, the law of God as revealed to the Prophet. Together, the term *Maqasid*

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<sup>4</sup> At-Tirmidhi. Book 1, Hadith 407

*al-Shariah* means the goals and objectives for the legislation of the rules of Islam or simply The Objectives of the Islamic Law.

### 2.1.2 Concept of *Maqasid al-Shariah*

All *Shariah* laws have wisdom behind it as they are not legislated randomly or without purpose. In understanding this concept, we have to distinguish between '*illah* and *hikmah*. A ruling that has a clear reason behind it is called '*illah*. For instance, prohibition of alcohol in the **Quran (5:91)**<sup>5</sup> is made due to its intoxicating effect that would excite enmity and hatred between human as well as hindering them from remembering Allah and performing *solat*. On the other hand, there are ruling in which the reasons are hidden from us. Although the reasoning of some rulings is concealed from human knowledge, there is always a *hikmah* on all rulings and it is just that Allah in His wisdom chose not to disclose it. For instance, the Muslims are requires to perform prayers five times a day but the real reason behind the number five is not informed.

In-depth understanding of the objectives of *Shariah* is important for analogical deduction (**Mohammad Hashim Kamali, 1999**). Historically, different scholars have different views on the reason for Allah to reveal the *Shariah* (Divine Law). Ibn Taymiyyah is of the opinion that *Shariah* was introduced to achieve justice. Some other scholars said that it is to achieve happiness, while the rest particularly Imam al-Ghazali is of the opinion that it is for the achievement and realization of the benefits of mankind, which lies in safeguarding their faith (*din*), life (*nafs*), intellect (*aql*), posterity (*nasl*) and wealth (*mal*). Whatever that ensures the safeguard of these five purposes would effectively serve public interest (**Muhammad Umer Chapra, 2000**). In terms of the sequence of importance, Al-Shatibi approves al-Ghazali's list and sequence according to the most preferable in terms of their harmony with the essence of *Shariah*.

*Maqasid al-Shariah* can be classified into three categories according to their importance of life preservation namely; *daruriyyat*, *hajiyyat*, and *tahsiniyyat*. On top of the list is the *daruriyyat* which is defined as the essentials that people depends on them. It must be

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<sup>5</sup> Satan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from the remembrance of Allah, and from prayer: will ye not then abstain? – Quran 5:91

protected because it is fundamental need in life. Essential areas of *daruriyyat* are as listed above by Imam al-Ghazali. Next in line is the *hajiyyat*. This is the required needs for having a smooth life whereby without these needs, although the social order will not collapse, it will not function well. For instance, the need to perform forward contract (*salam*), leasing contract (*ijarah*) and so on as to ease the needs of day-to-day life. Finally, it is the *tahsiniyyat*, the complimentary factors that leads to the perfection of life. For instance, the practice of *sadaqah* leads to harmonious life and shows the beauty of the Muslims way of life.

Since it is serving public interest, the realization of *maslahah* is said to be the objective of the *Shariah* that does not only benefited individuals but also to the community at large (**Mashhad Al-Allaf, 2006**). Therefore, the *Shariah* law is not an end by itself because it serves to attain an objective which is of public interest (*maslahah*). As quoted by **Deina Abdelkader (2003)**, the terms *maslahah* and *maqasid* is used interchangeably by some scholars. **Imran Ahsan Khan Nyazee (2000)** extended further the concept by saying that achievement of the *maqasid* would lead to perfection of life in lifetime and the hereafter as whatever we do in accordance to *Shariah* is also a form of *ibadah* and would please Allah. Generally, all the approaches complement to each other, and we can conclude that *Shariah* lays guidelines in protecting and preserving public interests (*maslahah*) so that we can achieve our goals in our mortal life and the hereafter.

We shall revisit the concept of *maslahah* in the next section as it is closely related to *Maqasid al-Shariah*.

## **2.2 Relevance to Maslahah**

Issuing a fatwa based on *maslahah* in promoting public benefit is quite familiar in Malaysia. For instance, the issuance of fatwa on investment in Amanah Saham Bumiputera (ASB), inheritance due to simultaneous death, implementation of *wasiyyah wajibah*, usage of interest received from conventional bank for public benefit, receiving of insurance compensation and so on are based on *maslahah*. In Arabic, *maslahah* is synonymous to *manfaah*, which means benefit or utility. The plural of *maslahah* is

*masalih*, which means welfare, interest or benefit. **Imran Ahsan Khan Nyazee (2000)** termed *maslahah* as seeking the benefit and repealing the harm as inscribed by the *Shariah*.

Imam Malik is known as one of the strong proponent of using *maslahah* as one of the secondary sources of *Shariah*. *Al-masalih al-mursalah* is the term used by the Imam to take into account of public interest when issuing judgment. Three conditions should be fulfilled to allow any action based on *maslahah*. Firstly, *maslahah* is allowed for judgment on *muamalah* matters where rational reasoning is deemed necessary. *Muamalah* essentially means the rules of worldly engagement but may also be restricted to business dealings. *Maslahah* is not to be used on religious matters such as *ibadah* which should strictly follow the main sources of *Shariah*.

Secondly, the judgment should be in line with *Shariah* and not in conflict with any of its main sources. For instance, drinking wine with club members as an act of belongingness which may be deemed to constitute public interest is not permissible since it is clearly prohibited in the *Qur'an*. Thirdly, the judgment should be genuine and necessary (*darurah*). In other words, the judgment should be something the must-have rather than the nice-to-have and most importantly, it has to preserve the five objectives of *Shariah* (*Maqasid al-Shariah*).

Another notable adoption of the concept is by **Al-Ghazali (in Asyraf Wajdi Dusuki 2009)** who used the term *istislah* instead of *maslahah*. He restricted the application only to situation which is deemed necessary to serve the public interest. Majority of other jurist, however, rejects *maslahah* as a source of *Shariah*. According to **Ibn 'Ashur (in Asyraf Wajdi Dusuki 2009)** and **Al-Zuhaili (in Asyraf Wajdi Dusuki 2009)**, the jurists argued that the principle implies as if giving human a legislative authority which is based on humans' interpretation and judgment of what is good and bad. Therefore, it may sound like man-made law when the *Shariah* should always be from the Lawgiver.

## 3.0 Takaful or Islamic Insurance

### 3.1 Protection in *Qur'an* and *Hadith*

The need for protection against unforeseen adverse event should always be at the back of everybody mind. In case of any event that occurs by surprise like death, permanent disability, illness, accident, property damage, etc, there are several questions in life<sup>6</sup> that comes up. The first question is whether the surviving partner has sufficient assets to draw on. Then, can the dependants continue their current lifestyle and whether the family will lose their home. Next, it is in terms of tertiary education and retirement. The relevant question is whether tertiary question will be sacrifice or there will be no financial security upon retirement. The final questions are whether the essential medical treatment will eat up savings and if the business can continue.

The *Qur'an* and *Hadith* do not prohibit wealth protection. As human, we do not know what will happen, when, where and how things will be unfolded in the future, it is all the knowledge of Allah. Therefore, we are encouraged to protect ourselves, family, property, etc as evidenced in the following *Hadith*:

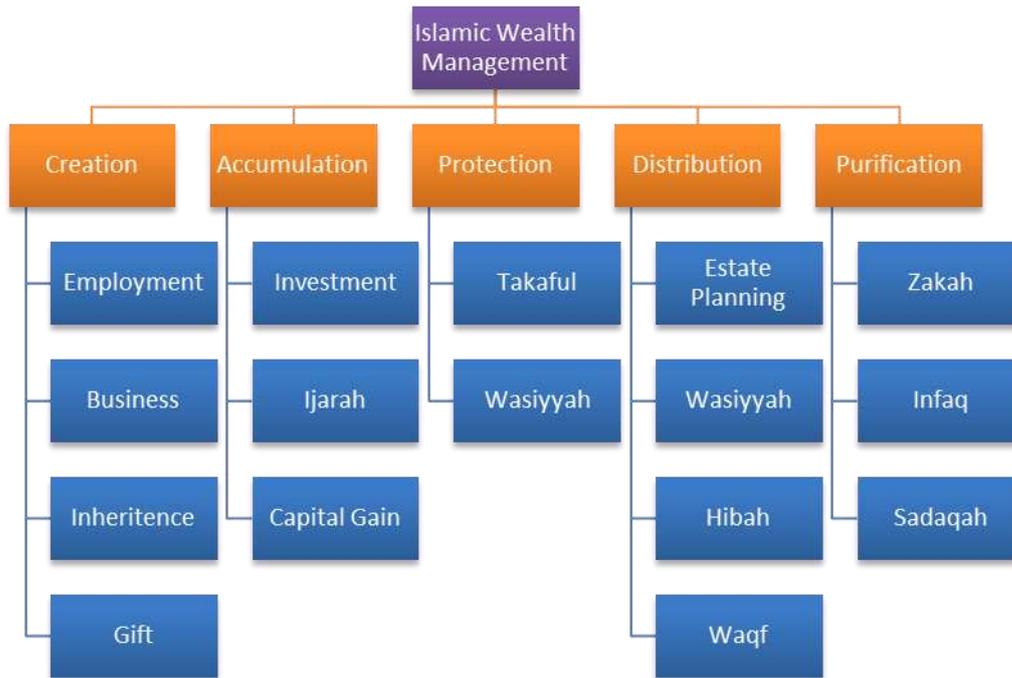
*Abu Hurairah (mAbpwh) narrated that the Messenger of Allah pbuh said: "If anyone relieves a Muslim believer from one of the hardships of this worldly life, Allah will relieve him of one of the hardships of the Day of Resurrection. If anyone makes it easy for the one who is indebted to him (while finding it difficult to repay), Allah will make it easy for him in this worldly life and in the Hereafter, and if anyone conceals the faults of a Muslim, Allah will conceal his faults in this world and in the Hereafter. Allah helps His slave as long as he helps his brother"*<sup>7</sup>

All these can be achieved via insurance, which is a part of wealth protection and a subset of wealth management (**Alwi Adam, 2010**) as depicted in the diagram below:

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<sup>6</sup> CWA (2012)

<sup>7</sup> Muslim. Book 16, Hadith 1508



Insurance is believed to be in existence during the days of the Babylonians more than 3000 years ago where the Code of Hammurabi circa 1750BC recorded that the merchants of the Mediterranean took loan to fund their shipment and pay the lender a little extra for the lender to waive their loan if their shipment were stolen **(Vaughan, 1997)**. In a way, the additional payment can be considered a form of insurance to cover for any untoward incident during the sea voyage. Insurance had since alleviates hardship from people via compensating for loss of lives, loss of assets, etc.

Notable huge claims from insurance are for the losses that arise from the aftermath of September 11, 2011 Japan Tsunami and Lloyd's insurance cover for Titanic which is for public interest. However, insurance does not only cover public losses but is quite convenient to compensate individual losses such as the staggering £910,000 claim from Rowan Atkinson's car crash. Despite its role in compensating for life and asset losses and replacement cost, insurance is deemed unacceptable from Islamic point of view.

### 3.2 Problems with Insurance

Since insurance enable Muslims to achieve wealth protection, the relevant question is whether there is any possibility that insurance is allowed by the *Shariah*. Wealth

protection is certainly beneficial for the Muslims where the income disparity is very huge. It can be seen that some Muslim countries are very rich but others are very poor. It is important to protect this wealth so that it will be able to be distributed from the well off to the less fortunate.

The problem with conventional insurance is in the concept of selling protection contracts by the insurance company in return for a premium. There is an element of *gharar* in terms of the premium to be paid (i.e. total premium paid is unknown) and the amount of compensation to be received (i.e. unknown compensation amount). In the case of motor insurance, most of the time there will be no claim made by the policyholder (i.e. participants did not receive the counter value of purchasing the policy). On the other hand, a policyholder who has just made one-time payment of premium may be entitled to huge claim which is akin to betting on the occurrence of an unfortunate event (i.e. gambling or *maysir*). In other word, the premium paid is unequal to claim received in calamity (*riba*).

Another problem inherent in insurance is the investment of the insurance fund in non-*Shariah* compliant investment. Since the insurance fund belongs to the shareholders and their main objective is maximisation of return, it is logical that the fund will be invested in high yield investment. Here, *Shariah* is not an objective and prerequisite condition and the investment opportunities vary from non-*Shariah* compliant equities, conventional bond, real estates rented to non-*Shariah* permissible business, conventional money market (*riba*), etc. A major difference between Takaful and conventional insurance is of course, the *Shariah* Committee to ensure adherence to supervision framework which includes observation and monitoring of investment vehicle.

As a result, the National Fatwa Committee of Malaysia has issued a fatwa in 1972 declaring the unacceptability of insurance especially life insurance due to the presence of *riba*, *maysir* and *gharar* in the conventional insurance contract. However, the compelling reasons of having insurance result in the development of its *Shariah* compliant alternative called Takaful.

### 3.3 What is Takaful?

The word Takaful is derived from the Arabic root word “kafala” which means responsibility, guarantee, amenability or suretyship (Asyraf Wajdi Dusuki, 2012). Literally, it means joint guarantee, shared responsibility, shared guarantee, collective assurance and mutual undertaking, which reflects a reciprocal relationship and agreement of mutual help among members in a particular group (Asyraf Wajdi Dusuki, 2012).

*Islamic insurance is a system through which the participants donate part of or all of their contributions which are used to pay claims for damages suffered by some of the participants. The company's role is restricted to managing the insurance operations and investing the insurance contributions<sup>8</sup>.*

There are three aspects of mutuality embodied in Takaful; namely mutual help, mutual responsibility and mutual protection from losses<sup>9</sup>. As such, Takaful can be intuitively explained as a system where participants donated or parted with a sum of contributions to a common fund for the mutual indemnity of fellow members.

*O ye who believe! Violate not the sanctity of the symbols of Allah, nor of the sacred month, nor of the animals brought for sacrifice, nor the garlands that mark out such animals, nor the people resorting to the sacred house, seeking of the bounty and good pleasure of their Lord. But when ye are clear of the sacred precincts and of pilgrim garb, ye may hunt and let not the hatred of some people in (once) shutting you out of the Sacred Mosque lead you to transgression (and hostility on your part). Help ye one another in righteousness and piety, but help ye not one another in sin and rancour: fear Allah: for Allah is strict in punishment.*

**Quran 5:2**

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<sup>8</sup> AAOIFI definition of takaful in Financial Accounting Standard No 12

<sup>9</sup> Ibid

The basic notion of Takaful is to share the risk among all the participants involved, and to help each other, especially those encountering misfortunes. This signifies the importance of sharing as promoted in Islam. In Islam, sharing is strongly recommended so as to strengthen the brotherhood and care for each other.

#### **4.0 Achieving *Maqasid al-Shariah* via Takaful**

Takaful provides *Shariah* alternative to Muslims for wealth protection. Therefore, Takaful is one of the pillars of the bigger Islamic financial system, in which the *Maqasid al-Shariah* 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 **(Syahida Abdullah & Hafas Furqani, 2012)**. Takaful aim at life protection and assist in having smooth circulation of wealth; instilling social responsibility spirit and facilitating mutual cooperation within society and flourishing ethical dealings.

#### **4.1 Self and Family Protection**

In terms of self and family protection, Takaful allows for the continuity of the family in the event of death or total permanent disability of the breadwinner. Such event deprived the breadwinner from his ability to generate income for the family. Takaful compensation benefits the loved ones whom are left in case of death or support the family in case of disabled breadwinner. In other words, it satisfies the notion of continuity of life of the *maqasid*. In the *Hadith* below, it is better to leave the family rich rather than poor:

*Sa'd Ibn Waqas said that Prophet pbuh used to visit him at Mecca, in the year of his farewell Pilgrimage. So he said (to the Prophet pbuh) shall he then bequeath two-thirds of his property in charity? The prophet pbuh said no. He asked him for half. The prophet pbuh again said no. Then he asked (him) to bequeath one-third and (the Prophet pbuh said even) one-third is too much, for if he leaves his*

*heirs free from want, it is better than that he leaves them in poverty, begging of (other) people<sup>10</sup>*

Takaful fulfils basic needs such as food and clothes and allow family to carry on with their lives upon the loss of sole-breadwinner. In addition, Takaful allows the treatment of critical illness where the cost of treatment which consists of surgery, hospitalisation, medication, post-surgery, dialysis, chemotherapy, etc can be huge. The treatment cost may also be controlled from ballooning by detecting and curing the illness at an early stage. The hospital income is able to compensate inability to generate income and pay hospitalisation bill. Although the person that is ill may not be the breadwinner, it may still result in loss of income for the family as they take care for the sick which can be compensated by Takaful.

#### **4.2 Asset Protection**

Human are made with desire with unlimited needs and wants. However, there are limited resources to fulfil these needs and wants. Limitation of resources here actually refers to the limitation of human ability (i.e. knowledge, capability) to discover these resources. As a result, the human wants can never be satisfied which will require economics and *Shariah* answers (i.e. issue of choice, sacrifices, living within means). Human desires and its required control are aptly summarised in the following verse:

*Fair in the eyes of men is the love of things they covet: Women and sons; Heaped-up hoards of gold and silver; horses branded (for blood and excellence); and (wealth of) cattle and well-tilled land. Such are the possessions of this world's life; but in nearness to Allah is the best of the goals (To return to).*

#### **Quran 3:14**

Nevertheless, human have to work hard to achieve all the worldly gains (as per the following verse in the Quran) which is not against the *Shariah*. In fact, work is regarded not only as a right but a duty and an obligation (**Abbas Mirakhor, 1987**). Since human

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<sup>10</sup> An-Nasa'i. Vol.4, Book 30, Hadith 3657

can still be tested in terms of losses of the worldly grace, *Shariah* allow it to be protected via Takaful.

*For each (such person) there are (angels) in succession, before and behind him: They guard him by command of Allah. Allah does not change a people's lot unless they change what is in their hearts. But when (once) Allah willeth a people's punishment, there can be no turning it back, nor will they find, besides Him, any to protect.*

### **Quran 13:11**

Assets like house and car are necessary to fulfil human basic needs in the current standard of living. The indemnity principle in Takaful allows for losses to be compensated so the financial condition of the policyholder will be returned to the situation before calamity. In addition, many people take financing to purchase house or car due to its high cost. Loss of assets is unfortunate for owner as he needs replacement to continue with his daily lives but outstanding debt still need to be repaid.

In addition, loss of assets may also mean loss of income to some people. As an example, commission-based marketers depend on car for their daily work which means they cannot perform their income yielding activity. In other words, the loss of assets means a loss to earn a living. In addition, a business may discontinue when shop caught fire. Thus, the shop owner requires compensation to rebuild the shop, find a new place to conduct business, and purchase the merchandise or inventories for the shop.

Another form of losses may occur from lawsuit against business for negligence. As an example, a doctor or clinic may be sued for mistakes during surgery which may wipe off the business (which is also an asset). Since damaged property or assets cannot be transferred, inherited, donated, etc, Takaful helps to rebuild and replace the loss assets or business. It should be noted that property transfer, inheritance and donation is a component of economic justice (i.e. distributive justice) which should be uphold in an Islamic society according to **Abbas Mirakhor (1987)**.

### 4.3 Mutual Protection

Allah is fair to human but the features are unequal in terms of capability, strength, ownership, inheritance, etc. There are some people who are born to be more intelligent and creative as compared to others. As a result, the product from the work of one person may be different from another. These differences ordain mutual cooperation and social responsibility among humans. Islam balances individuals' rights and their duties and responsibilities towards others. This social obligation (i.e. fard kifayah) puts a responsibility on those who are capable or better off to assist those who are not capable or worse off. Since it is an obligation or 'fard', social responsibility is therefore not an option.

*(Nor) those who are niggardly or enjoin niggardliness on others, or hide the bounties which Allah hath bestowed on them; for We have prepared, for those who resist Faith, a punishment that steeps them in contempt;-*

**Quran 4:37**

Similarly, mutual cooperation and assistance is among the primary underlying objective of Takaful industry. In fact, the Takaful contribution or the basic contract of Takaful is donation for common need among the participants. In Islam, donation is blessed while keeping wealth unnecessarily is cursed in the following *Hadith*:

*Abu Hurairah (mAbpwh) reported: The Prophet pbuh said, "Two angels descend every morning, and one says: 'O Allah, give him who spends something, in place of what he spends.' The other one says: 'O Allah, give destruction to him who withholds'"<sup>11</sup>*

**Syahida Abdullah & Hafas Furqani (2012)** explained mutual cooperation further by mentioning that inequality requires the rich to help the poor and the needy<sup>12</sup> (*Qur'an*,

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<sup>11</sup> Al-Bukhari & Muslim. Book 1, Hadith 295.

<sup>12</sup> The Believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is Exalted in power, Wise - Quran 9:71

9:71; 24:22) rather than taking the opportunity to exploit others<sup>13</sup> (*Qur'an*, 107:1–7). Such social commitment is praised in the *Qur'an* as a mark of the individual's spiritual ascent. God's love is in this spirit of sacrifice for others to create a just society<sup>14</sup> (*Qur'an*, 4:80–81; 16:55). In this perspective, sacrifice for society is in human self-interest<sup>15</sup> (*Qur'an*, 12:88; 34:38; 4:114) in that it purifies the soul and makes it beautiful so that love of God may be produced in it<sup>16</sup> (*Qur'an*, 9:103) and hence God will bless the person (*Qur'an*, 9:71) with wellbeing in the eternal life of the hereafter<sup>17</sup> (*Qur'an*, 30:38).

#### 4.4 Investment, Retirement and Education

As mentioned earlier, current Takaful products do not only provide coverage but may also be utilised as an investment or savings vehicle. In other words, it assists in wealth creation for the purpose of retirement and child education. It is vital that retiree has ample savings to live through their golden years comfortably. Unfortunately, current situation look bleak for these retirees. As reported by **Yeap (2012)**, Malaysian may have to postpone their retirement or extend their retirement age due to insufficient fund for retirement, resulting from low income and earnings during their working age, lack of savings and increasing life expectancy.

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Let not those among you who are endued with grace and amplitude of means resolve by oath against helping their kinsmen, those in want, and those who have left their homes in Allah's cause: let them forgive and overlook, do you not wish that Allah should forgive you? For Allah is Oft-Forgiving, Most Merciful – Quran 24:22

<sup>13</sup> Seest thou one who denies the Judgment (to come)? Then such is the (man) who repulses the orphan (with harshness), And encourages not the feeding of the indigent. So woe to the worshippers, Who are neglectful of their prayers, Those who (want but) to be seen (of men), But refuse (to supply) (even) neighbourly needs – Quran 107:1-7

<sup>14</sup> He who obeys the Messenger, obeys Allah: But if any turn away, We have not sent thee to watch over their (evil deeds). They have "Obedience" on their lips; but when they leave thee, a section of them Meditate all night on things very different from what thou tellest them. But Allah records their nightly (plots): So keep clear of them, and put thy trust in Allah, and enough is Allah as a disposer of affairs – Quran 4:80-81 (As if) to show their ingratitude for the favours we have bestowed on them! then enjoy (your brief day): but soon will ye know (your folly)! – Quran 16:55

<sup>15</sup> Then, when they came (back) into (Joseph's) presence they said: "O exalted one! distress has seized us and our family: we have (now) brought but scanty capital: so pay us full measure, (we pray thee), and treat it as charity to us: for Allah doth reward the charitable" - Quran 12:88

Those who strive against Our Signs, to frustrate them, will be given over into Punishment - Quran 34:38

In most of their secret talks there is no good: But if one exhorts to a deed of charity or justice or conciliation between men, (Secrecy is permissible): To him who does this, seeking the good pleasure of Allah, We shall soon give a reward of the highest (value) - Quran 4:114

<sup>16</sup> Of their goods, take alms, that so thou mightest purify and sanctify them; and pray on their behalf. Verily thy prayers are a source of security for them: And Allah is One Who heareth and knoweth – Quran 9:103

<sup>17</sup> So give what is due to kindred, the needy, and the wayfarer. That is best for those who seek the Countenance, of Allah, and it is they who will prosper – Quran 30:38

Moreover, studies showed that Malaysian Employee Provident Fund (EPF) savings is not enough, whereby it would be depleted between 3 to 5 years after retirement (**Ooi, 2009**). 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 savings) means the policyholder does not need to think much about the effect of untoward event to their retirement nest and the performance of the fund which is professionally managed.

In Malaysia, primary and secondary education is free but tertiary education is costly at an alarming rate. In the current job environment, tertiary education like a basic degree is pre-requisite and may even be insufficient. Thus, there is a need for access to higher education and the cost will put a financial strain on the family's budget. It is important to start planning for the children's education as soon as possible, because the earlier the fund begins, it allowed more time for the funds to grow. One of the products offered by Takaful is the child education policy in an investment-linked Takaful. It will provide the funds needed by for the children to pursue further education and assures that whatever happens in the future, the children will still have the means to pursue his or her goals in life.

The objectives of investment-linked products can only be achieved via investment. It should be reminded that Islam encourages business, trade and profit but prohibits *riba*. Thus, the Takaful Operator should only have investment portfolio that is free of *riba*. Next, the sharing of profit between the Takaful fund and the Takaful Operator may be done via *mudharabah* model or giving incentives as performance fee for good investment performance and prudence fund management. It is in line with the following verse in the *Qur'an*:

*Those who devour usury will not stand except as stand one whom the Evil one by his touch Hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their*

*case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire: They will abide therein (for ever).*

**Quran 2:275**

It is worth to mention here that the Central Bank of Malaysia (BNM) limits Takaful fund investments to investment certificates, quoted equity shares, shares in cooperatives, real estates, placement of deposits, and other loans or investments as prescribed that are in-line with *Shariah* to achieve the objective (**Syed Othman Alhabshi, Kamaruddin Sharif, Shaikh Hamzah Abdul Razak & Ezamshah Ismail, 2012**). Apart from achieving personal investment objectives that are in accordance to *Shariah* and sharing the bounty with the Takaful Operator, it also provides employment to the people and helps to spur the economy.

Being a public listed company, Takaful Operator itself is an investment avenue for shareholders to diversify risk. It provides an alternative *Shariah* compliant investment in the finance sector. Unfortunately, only 2 out of 41 counters from finance sector in the Main Market of Bursa Malaysia are *Shariah* compliant, i.e. BIMB Holdings Berhad and Syarikat Takaful Malaysia Berhad.

#### **4.5 Waqf and Charity**

Takaful is built upon tabarruat or donation contract for a good cause (i.e. mutual protection). To add further, some Takaful products incorporate waqf into its model to provide ongoing charity to the participants. According to **Fidrus Sukor (2012)**, the model was successfully used by reTakaful operators in South Africa and Pakistan, and by Swiss Re reTakaful.

The system works just like the *wakalah* model, only the donations (contributions) goes to the *waqf* fund. It requires initial donation by Takaful Operator to create the *waqf* fund. Later, further contributions by participants are *waqf* contributions. It was said that the main value proposition of the model at present is its ability to resolve the issue of ownership of the Takaful fund. The institution of *waqf* has been used to great advantage in meeting society's many socioeconomic needs. Scholars are currently

looking at how *waqf* can rejuvenate its role as a contributor to the development of a country or society like in the olden days.

In other words, Takaful surplus can be benefited in many other ways. The surplus may be donated as a *waqf* to allow flexibility in its use. If the huge amount of Takaful surplus is channelled to the *waqf*, it would greatly benefit the participants and the *ummah*. As an illustration, Malaysian general Takaful surplus amounting to RM525.7 million were generated between 2003 and 2011 which is a huge sum. Out of this surplus, RM339 million has been paid to the participants.

**Figure 1:** General Takaful Surplus Attributable to Participants. Figures in RM million

Year	Surplus Opening Reserves	Current Year Surplus	Surplus Paid & Payable	Surplus Closing Reserves
2003	30.8	46.13	34.33	42.6
2004	42.6	43.6	38.8	47.4
2005	47.4	68.3	38.7	77
2006	77	9.8	43.7	43.1
2007	43.1	-23.9	2.6	16.6
2008	16.6	71	33.3	54.3
2009	54.3	105.4	47.3	112.4
2010	112.4	95.7	18.9	189.2
2011	189.2	109.7	81.4	217.5
TOTAL		525.7	339	
AVERAGE		58.4	37.7	

**Source:** Bank Negara Malaysia (2011)

Since huge fund were created via Takaful surplus, it could be put to more efficient use for sustainable benefit of the participants or to the *ummah* by channelling the surplus to the *waqf* fund. The *waqf* fund may be used for charity purpose such as building of mosques, religious school, health benefits, or to support micro takaful program for the poor. It may also be used for the benefits of participants like reducing participants' premium or increasing investment, etc. Hence, further research on the best use of surplus for sustainable benefit of the participants and the *ummah* should be conducted.

#### 4.6 Fair and Transparent Contract

Takaful is only a tool towards achievement of *Maqasid al-Shariah* as previously discussed. It helps to protect self, progeny (family), assets, extend mutual help to *ummah*, etc. Before choosing which plan or contract that is most suitable for the achievement of the *maqasid*, one should ask himself who or what should be covered, when will it be covered, how much will it be covered, all of which are stipulated in the Takaful contract.

According to **Mohammad Hashim Kamali (2008)**, justice and fairness are the hallmark values in commercial contracts, and if it proves to be an unjust tool, such a contract has to be put aside. Justice, which is the goal and the intention of the Lawgiver, must be given priority over considerations of conformity to an untenable contract. Being transparent and fair in dealings would assist in achievement of the above objective. It is also a requirement by the Central Bank that institutions puts the customers interest in development, marketing and sale of products, and also the policies and procedures adopted should be directed towards fair treatment to customers, avoidance of over-selling of products and respect the freedom of choice by customers (**Bank Negara Malaysia, 2008**). Ideally, the transacting parties should understand and agree all the terms and conditions of the contract.

In order to achieve the above, there should be detailed contracts yet using simple words, easily readable without uncommon jargons and confusing terms. There should not be any small print so that the customer knows the substance of the contract. It should be reiterated that the nature of the Takaful is mutual help rather than procuring indemnity as to streamline their mind set (*niyyah*) while knowing that the outcome would serve the same purpose.

The contract should also highlight common expectations by customer that are not covered by the contract which will differentiate Takaful from conventional insurance. Takaful Operator should avoid unethical or pushy marketing techniques that create urgent need on the participants to sign up the contract (i.e. rush decision). Full written

contract should be given to customer for their perusal rather than just giving verbal explanation and accepting verbal confirmation from the customer especially with some important terms concealed.

Terms that nullified the claim or conditions for claim should be explicitly mention in the contract and verbally explained as to avoid frustration of the customers. Although family Takaful allows multiple claims from different Takaful Operator, claims may be rejected because of requirement to submit original supporting documentation (i.e. only one claim can be submitted). In this case, Takaful agents should inform the claim restriction of multiple claims to potential customers in marketing the Takaful products.

## **5.0 Conclusion**

It can be seen from the above that Takaful has certainly fulfil the *Maqasid al-Shariah*. Nevertheless, Takaful Operators should be wary that they do not jeopardize these branding of Islamic insurance by overzealous marketing and misspelling. At the end of the day, Takaful should be *Shariah* compliant in all aspects for it to live up to its image as the *Shariah* alternative of insurance.

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