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Contemporary Issues and challenges Faced by the Takaful industry in Malaysia: special reference to shariah

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Abstract:

This paper examines the contemporary issue faced by the Islamic insurance (takaful) industry in Malaysia. The paper will then try to highlight the Shariah issues in the current practice of the takaful industry and takaful products. Therefore, the paper tries to critically analyses previous articles regarding the topic of takaful. Moreover, the paper would be a useful reference for any researcher who is researching the Shariah issues relating to takaful. Besides, the result of the paper would provide insight into how the Malaysian takaful industry and the takaful industry globally could improve their business operation model. However, the finding may be limited because the paper only concentrates on the Malaysian takaful industry.

Keywords: Takaful industry, Shariah issues, challenges, Malaysia.

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1.0 INTRODUCTION

Though the word “takaful” originates from the Arabic word *Kafalah*, which means "guaranteeing each other" or "joint guarantee," However, Takaful, as practised nowadays, is near to investment contract compared to insurance or pooled fund contract (Maki, 2014). Thus, they need to compete with the well-established insurance companies and have to be profit-oriented entities while operating within the framework of Shari'ah (Salman, 2014). On the other hand, Takaful can be a better alternative from the traditional insurance, which focuses only on benefits, regardless of the general interest and welfare of low-income people, who do not have the opportunity to bear all the burdens of life from disasters or family and money misfortune. Recently, the takaful industry has witnessed remarkable growth; this is due to the people who believe that takaful is an Islamic compatible product and that may become a better alternative from conventional insurance. Moreover, there arises the question, why the shariah became a mere name embellished with trademarks? Why do we always repeat the word "Sharia complaint" in order to reach customers' satisfaction and gain a reputation in a variety of fields? Where most of them do not serve the public interests nor even the assistance of people with special needs.

1.1 The History of Takaful in Malaysia

The emergence of Takaful companies was first established in Malaysia in 1984 with the establishment of the first Takaful company called Syarikat Takaful Malaysia Berhad (Malay for *Malaysia Takaful Company Limited* which was established by Bank Islam Malaysia Berhad. By implication, Syarikat Takaful is owned by Tabung Haj. The list of licenced Takaful companies in Malaysia are as follows: (1) AIA PUBLIC Takaful Bhd, (2) AmMetLife Takaful Berhad, (3) Etiqa Family Takaful Berhad, (4)Etiqa General Takaful Berhad, (5) FWD Takaful Berhad, (6) Great Eastern Takaful Berhad (7) Hong Leong MSIG Takaful Berhad (8) Prudential BSN Takaful Berhad, (9) Sun Life Malaysia Takaful Berhad, (10) Syarikat Takaful Malaysia Am Berhad, (11) Syarikat Takaful Malaysia Keluarga Berhad, (12) Takaful Ikhlas Family Berhad, (13) Takaful Ikhlas General Berhad, (14) Zurich General Takaful Malaysia Berhad, (15) Zurich Takaful Malaysia Berhad (Bank Negara Malaysia, 2019).

The development of the Takaful company in Malaysia has gone through three distinctive phases. The first phased of Takaful in Malaysia was between (1984-1992) with the enactment the Takaful Act 1984 regulatory law. This act focuses on the Takaful governance and conduct of its business activities with compliance with Shariah principles. The second phase of the Takaful industry in Malaysia between (1993-2000) triggers competitive practices with the establishment of ASEAN Takaful Group in 1995 and ASEAN Retakaful International (L) Ltd. in 1997 in Malaysia, Brunei, Indonesia and Singapore. The third phase of development in Malaysia Takaful industry was witnessed between the (2001-2010). This phase also witnessed the introduction of the Financial Sector Masterplan (FSMP) in 2001 to strengthen the administrative, legal and shariah framework of the takaful industry. Moreover, in 2002, the Malaysian Takaful Association (MTA), to improve the self-regulation of the operators, enhance uniformity and cooperation among the operators through information and knowledge sharing(Salman, 2019).

As shown in (Figure: 1) below, the development of the Takaful industry in Malaysia in the early 1980s was inspired by the prevailing needs of the Muslim public for a Shariah-compliant alternative to conventional insurance, as well as to complement the operation of the Islamic bank that was established in 1983 (Maki, 2014). Also, In South East Asia, Malaysia was the pioneer through the establishment of Syarikat Takaful Malaysia Sdn Bhd (STM), which started operation on the 2nd of August 1984(Azhar Alias, 2017).

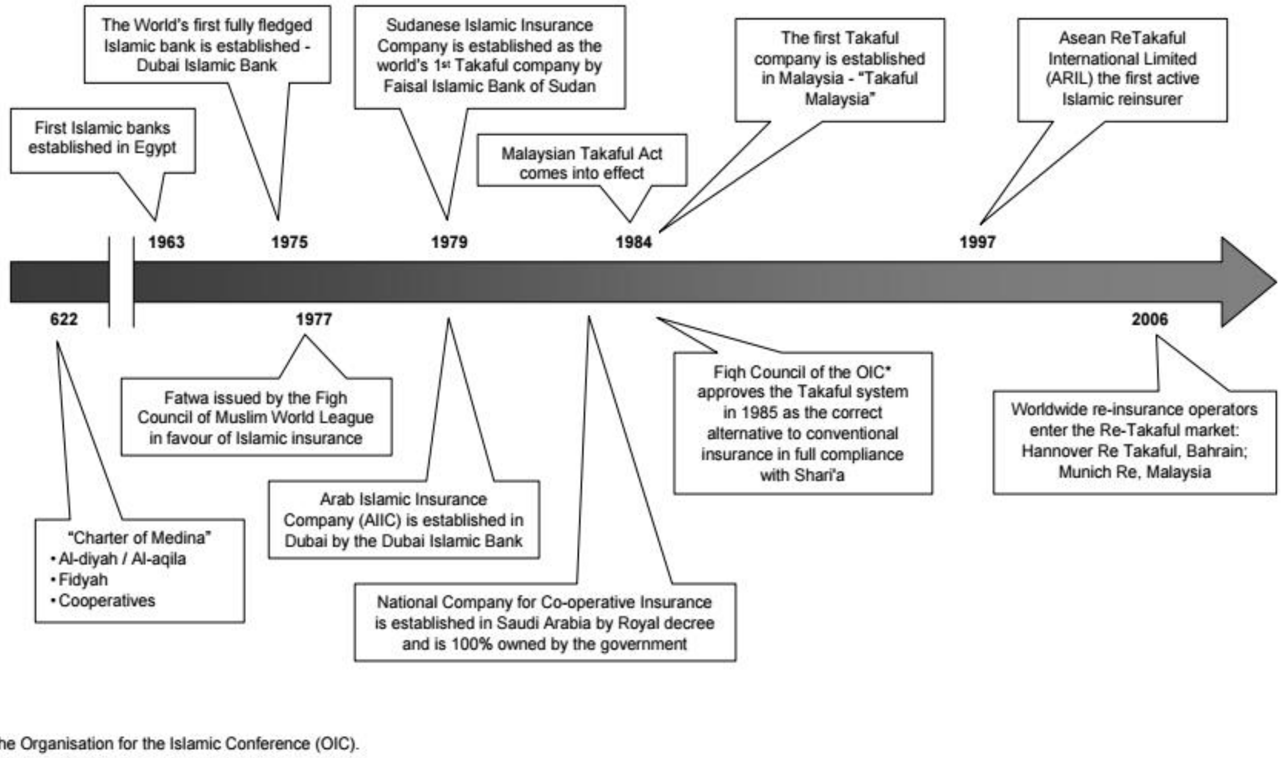

Figure 1: (Sharifuddin, 2016)

2.0 Literature review

2.1The Definition of Takaful

A basic Insurance contract is a risk-sharing arrangement between two parties. In an insurance contract (the policy), one party (the insured) will be agreed to be guaranteed against certain losses by another party (the insurer). Therefore, insurance is being used as an economic tool by firms and households alike in order to transfer real risks which involve in the uncertainty on future financial losses to others (Obaidullah, 2005). In simpler words, insurance is a mutual-help agreement where all parties are intended to help one another.

2.2 The Takaful Industry

In the modern context, the first country that founded modern Takaful is Sudan in 1979. The foundation of the modern Takaful was due to the juristic problem of trading in insurance with the issues of indemnities and guarantees which involved the elements of *Gharar* (Archer et al., 2009). The book was written by Archer et al. (2009) further suggest that the solution to this problem is to adopt a mutual structure for guaranteeing insured risk where the participants, on a non-profit basis, mutually insure one another. This structure follows the principle of '*takaful*' which means 'solidarity.' According to Archer et al. (2009), the other aspect of the solution in takaful is by integrating an element of tabarru'. The element of tabarru' is a conditional and irrevocable donation made by a donor in which he or she is entitled to benefit from mutual protection against insured losses.

In the context of Malaysia, the Takaful industry had experienced significant growth and transformation since its inception 25 years ago. The industry started with a single takaful operator known as Syarikat Takaful Malaysia in 1984 and has now increased to twelve after Bank Negara Malaysia (BNM) issued four new family insurance licenses. Local Takaful operators are working in the field of General Takaful and Family Takaful. All Takaful operators are regulated under the Takaful Act of 1984 under the supervision of BNM. Malaysia is the first country to implement the Takaful Regulations of 1984. In its support for the development of the Takaful industry, BNM issued a comprehensive concept paper on the Takaful Framework at the end of 2009. (Miniaoui & Chaibi, 2014) According to the 2017 Global Takaful Report, Malaysia has the world's largest family Takaful market with 33% market share (or 57% in Southeast Asia as shown in Figure 10) and Total Written Contributions (GWC) of US $ 0.8 billion Followed by Indonesia with a GWC of $ 0.6 billion and a growth rate of 11 per cent in 2015. In local currency, Malaysia continues to show positive growth of 4 percent in 2015. In terms of contributions Annual Contributions equivalent (ACE), Malaysia has a strong positive growth of 12% in 2015 in local currency. Further details of Malaysia are provided in the country analysis in Section 8. Comparative Annual Contributions Equivalent (ACE) figures are not available for Indonesia. (Milliman, 2017) Malaysia has the most extensive general Takaful market share in the region at 70% in 2015, with Total Written Contributions (GWC) of US$534 million. Malaysia exhibited a negative growth in its general Takaful market with (14) % in 2015 in terms of total contributions in US dollars. In local currency terms, Malaysia continues to exhibit positive growth in its general Takaful market with 6% in the same period. (Milliman, 2017) The success of the Takaful industry, especially the growth in domestic demand, is due to the growth of the various components of the Islamic financial system, especially the Islamic banking sector and the Islamic capital market. (Abdou, Ali, & Lister, 2014).

2.3 Types of Takaful Insurance

2.3.1 General Takaful

A general Takaful contract is usually a short-term policy where Takaful participants pay contributions and operators undertake risk management. Contributions made by participants in the General Takaful Fund, which is subsequently invested and the profits earned are credited to the Fund. The Tabarru element is more pronounced in general takaful as participants usually consider his contributions as a contribution to his fellow participants. All contributions go to a standard set of funds that will be used to compensate participants in case of loss. There are no savings and investment elements, but the Takaful Operator will distribute any excess subscription to the participants on an annual basis. Typically, general takaful is short-term but can be renewed periodically. Takaful insurance companies offer a full range of Takaful products in both the retail and corporate sectors. (ISRA, 2011)

The main types of general Takaful program that operators provide are:

i. Home Takaful System.
ii. Car Takaful System.
iii. Marine Takaful, Aviation and Transit Projects.
iv. Accident / Miscellaneous Takaful Program, which includes:

a) Personal accident scheme.
b) Compensation of workers for a Takaful system.
c) Engineering Takaful Program.(INCEIF, 2015)

2.3.1.1 Family Takaful

Family Takaful is a long-term policy that most participants aim to provide to meet their long-term needs, for example, their children's education and pensions, compensation for dependents in the event of death and disability and so on. This type of takaful has a long term horizon of 10 to 30 years. In family takaful, operators usually divide contributions into two parts: first, the participant account (savings account). Second, the account of the subscriber (tabarru account) to meet the losses of his fellow participants. In case of loss, the participant will be compensated according to a pre-agreed formula. Accordingly, the tabarru' condition is included in the nodes. Both accounts are invested in Shariah-compliant securities. Depending on the underlying contract type, the Takaful Operator may receive a fee or a share of the investment profits.

Usually, long-term in nature, compared to conventional life insurance. In case of premature death of a participant, his family will receive the amount in the participant's account in addition to the profits, and the amount in the subscriber's private account as if he continued to contribute until the maturity period. If the participant withdraws from the Takaful program, the participant will receive the amount only. Among the most common and typical family takaful products are savings schemes, education plans, retirement plans, pensions, stop plans, and added benefits to master plans such as serious illness protection, disability, incident death or contribution to waiver. (ISRA, 2011) (INCEIF, 2015)

Once more, Mudharabah, Wakalah, and Musharakah models can be executed under this approach. Past these two primary regions, Takaful items are additionally accessible for wellbeing and benefits needs. It ought to be noticed that Takaful protection is not only for Muslims yet besides for non-Muslims, as they observe it as a suitable type of protection.

2.4 Takaful Operates

BNM stated on a Policy Requirements on Guidelines on Takaful Operational Framework in the establishment of Operational Model:

i. Takaful operators shall establish an operational model that outlines the critical policies, procedures and management's responsibilities in carrying out the takaful operations.
ii. The operational model shall be based on contracts preferred by the takaful operator and approved by the Shariah Committee.
iii. In setting out the policies and procedures, takaful operators must ensure that the principles outlined in the contracts are appropriately operationalized.
iv. The operational model of the takaful operator shall define its relationship with and fiduciary duties towards the participants.
v. The takaful operator shall ensure that the operational model adopted is endorsed by its Shariah Committee and Board of Directors (Board).(BNM, 2013)

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2.5 Takaful contracts

Takaful contract is an insurance contract base on Islamic models of financing concepts where participants pay contributions to the takaful company. The takaful company to act as an operator to manage risk and invest the contribution fund. The premiums (contributions) paid by the participants are credited into the pooling fund, which is then invested and the profits generated are paid back to the participants. Takaful company may have three pooling fund namely takaful funds, investment funds, and corporate funds.(Kurniandi, 2012)

3.0 Issues and Challenges of Takaful in Malaysia

3.1 regulatory framework

One of the severe challenges that Takaful face mostly is a regulatory framework, to establish a suitable framework is usually takes a long process, and sometimes it comes about that the scholars will not agree on each other (Maki, 2014). These issues span questions as to the legality of certain practices from Shari'ah point of view, to conflict of laws and the adequacy of the framework for *takaful* operations (Dikko, 2014). In the following lines, we will try to highlight the most critical issues related to Takaful from a Shariah perspective.

3.2.1 shariah issue on hibah

Hibah is an Arabic word, which means "gift" (Hamid, n.d). It is a concept being used widely in the Islamic finance industry to indicate the voluntary payment (in cash or kind) at the discretion of financial institutions to their customer on some financial instruments to reward them for the "loan" they have made to them. More specifically, *hibah* is a contract that grants the owner of a property or an object from one party to another voluntarily, without expecting any reward (Eddine, 2013). In *Takaful*, especially Family *Takaful*, as it deals directly with the death of the participant, a question arises whether the *tabarruat* (insurable) amount or the claim can be distributed as *Hibah* to the beneficiaries or not? Must it be distributed solely based on *faraidh*? To answer these questions, let us first highlight the most important issues related to the *hibah*.

There are some outstanding issues in takaful benefits, including:
1: The Takaful benefits is it a gift (*hibah*) where the participant has the right of nominating to whom he/she wants, and whenever he/she wishes. In this case, it means it is merely subject to the shariah rules on the gift (*hibah*). 2: if we say the takaful benefits is a will (*wasiyyah*) where the participant has the right of nominating to whom he/she wants and whenever he/she wishes, in this case, means it is merely subject to the shariah rules on will (*wasiyyah*). In the first scenario, where we consider the Takaful benefit as a gift (*hibah*), there are some outstanding issues, including maintaining justice and equality among children, if we assume that the deceased left children. Where it is not permissible in the Shariah to allocate *hibat* (gifts) and valuable items to some children without others, unless shariah legal justification, Because of the sayings of the prophet peace be upon him:

فقال: يا رسول الله، إن أمّ هذا بنت رواحة، أعجبها أن أشهدك على الذي وهبت لابنها، فقال رسول ـ صل الله عليه وسلم ـ ((يا بشير ألك ولد سوى هذا؟)) قال: نعم، فقال: ((أكلهم وهبت له مثل هذا ؟)) قال: لا، قال: ((فلا تُشْهِدْنِي إذًا، فإني الله لا أشهد على جَوْر))

For the *hadith* of Al-Nu'man bin Bashir (may Allah be pleased with him) that his father doled him with some of his wealth, and the Prophet (peace and blessings of Allah be upon him) said to him "O Bashir Do you have children other than this? He replayed: yes, Prophet (peace and blessings of Allah be upon him) said: "did you endow the rest of your children same like this?" He replayed: No, Prophet (peace and blessings of Allah be upon him) said: "do not witness me then, I do not witness injustice"[2]. Based on the Hadith mentioned *a*bove, some may argue that the *takaful* benefit (in terms of *takaful* benefit is *hibah*) should distribute evenly among children. Otherwise, we will fall on the taboo. In the second scenario, where we consider the Takaful benefit as a gift (*wasiyyah*), "It is permissible to distribute the (*takaful*) death benefit according to the law of *Mirath* (Islamic law of succession), as it is also permissible to distribute the payment to a particular individuals or parties as specified by the participant on the basis that the benefit is the contribution of other participants to the beneficiary as specified by the participant and not his estate (Ismail, 2009). According the first situation, (It is permissible to distribute the (*takaful*) death benefit according to the law of *Mirath*) we have to keep in mind that the distribution of estate must not surpass one-third of the estate minus the expenses and debts as well as the distribution of estate after the death is considered as *wassiyah* and not as *hibah* (SYED AHMED SALMAN, SHEILA NU NU HTAY). Despite all the above mentioned in this regard, however, it is worth noting that the doctrines (*Al- Mathahib*) differ on allocating some gift (*hibat*) to specific child without other ather than others (children) to those who are forbidding and those who are allowing.

3.2.2 shariah issue on the nomination

The nomination is the process of appointing a person or persons to receive the takaful benefits as conferred on the takaful participant by the certificate in the event of the death of the participant (SYED AHMED SALMAN, SHEILA NU NU HTAY, n.d). The practise of nomination in family takaful aims to distribute the takaful benefits to the beneficiaries promptly without going through the lengthy administrative delays of estate administration as it is not subject to the Probate and Administration Act 1959 and the Wills Act 1959 (Nurdianawati Irwani Abdullah, Nazliatul Aniza Abdul Aziz). In this regard, what are the outstanding issues about expanding the circle of beneficiaries to include those who are not eligible for the inheritance? There is an argue which states a nomination clause in a typical conventional life insurance policy may enable a Muslim to violate the rules of takaful and *wasiyyah*, as the person nominated may be an heir and/or may end up getting more than one-third of the participant's estate (Nurdianawati Irwani Abdullah, Nazliatul Aniza Abdul Aziz). Hence, if the gift (Hibah) for the nominee is categorized under wasiyah, then the share of non-inheritance beneficiaries from this gift must not exceed one-third of the entire estate.

3.2.3 shariah issue on surplus

[2] *Bukhari* and *Muslim*

Based on research by Isra' in the Year 2008 it was mentioned that the AAOIFI standards deny the TO from having a share of the underwriting surplus as the surplus belongs exclusively to the participants (Supian, n.d). Surplus distribution is still an issue to the *Takaful* industry, which makes a prolonged issue, not yet resolved (Hamid, n.d). Moreover, : There are several challenges in this matter: First - the surplus insurance is the right of participants only, but there are *fatwas* of some of the legitimate bodies authorized the participation of owners of property rights with the policyholders in the takaful surplus, where they receive under the name of incentives is not permissible legally (العِيسى، 2018).

3.2.4 Shariah Issue Disclosure practices

Disclosure of necessary information that will instil confidence of the consumer in the product and services of Takaful company is a shariah compliance requirement to avoid ambiguity and deception. The Takaful company operation includes its products, services, investment, contract agreements, marketing, sharing surplus and fee structure should demonstrate a certain level of disclosure. It is also of significance for the Takaful company to disclosure in the shariah compliance investment portfolio (Abdullah, 2015). Despite the promises of the Takaful operators that their operations are following the shariah compliance requirements as dictated in the Malaysia act 1984, hence, transparency in the disclosure of its business activities, the fund Management and distribution of Hibah to participants should be transparent. Nevertheless, Shariah compliance requires takaful companies to ensure sufficient disclosures in the distribution of profit (surplus) among the participants (Ahmed & Qureshi, 2011).

3.2.5 shariah issue on Retakaful

In terms of Issues on non-proportional Retakaful, some views it as Shariah-non compliant mainly due to the absence of a proportional relationship between sums insured, contribution and claim (Zulkifli Hasan, n.d.). There is an argument that the same basis, controls, and methods should be applied to Islamic Retakaful, whereby the company acts as insurer and Retakaful company as insurer, but it is often found that takaful insurance companies resort to conventional reinsurance companies and are subject to their provisions, especially for taking a commission from the commercial reinsurance company, The takaful company paid interest on the reserves it holds (العِيسى، 2018).)

Takaful regulation for strict compliance to shariah compliance seems challenging in retakaful and this scenario might continue until there are sufficient Retakaful company in Islamic finance which can fill the gaps.

4.0 Conclusion and Recommendation

This paper presented the most critical issues related to Takaful from a legal perspective. Through the results discussed in the research gives these suggestions to the institutions concerned:

i. In order to obtain a good number of customers for the takaful industry, all outstanding issues need to be analyzed and interpreted, especially the Shariah issues.
ii. Takaful companies should be distinguished from their traditional counterparts, not focusing on maximizing benefits rather than highlighting the spirit of cooperation and contribution.
iii. If the customers discover that the shariah is just a mere name nothing else, and what is going inside (takaful company) and how to implement its work is different what it claims, it will be a disaster.

Finally, the Takaful system is still in the process of evolving, with some issues raised by various Shariah scholars. In order to obtain a wide acceptance for the Islamic insurance all outstanding issues need to be analyzed and interpreted, especially the Shariah issues. There is a sharp dispute between the opponents of Takaful and the proponents. Therefore, it will remain since both of them relying on the sayings of different doctrines (Mathhab) and scholars.

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