

The Concept of Waqf and Its Application in an Islamic Insurance's Product: The Malaysian Experience



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Introduction

- Waqf which is a kind of charity in Islamic law has been part of Malaysian Muslims' life for centuries.
- Waqf has contributed significantly towards the development and maintenance of mosques, Islamic religious education institutions, cemeteries, orphanages etc.



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Introduction

- Takaful an insurance tool is a more recent product which was firstly introduced in Malaysia about two and a half decade ago (1984).
- It was introduced to fulfill Muslims' risk management need which operations are free from the prohibitive elements in an Islamic contracts like riba, gharar and maysir normally associated with insurance.



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Introduction

- Throughout this period, takaful operators in the country have introduced many types of takaful plans which cater a multitude of Muslims' risk management risk.
- The plans range from a typical motor policy to complex and specialized policies like annuities and waqf plans.

Introduction

- We examine a plan which enables Muslims to give waqf through a takaful plan, known as takaful waqf plan.
- It is a combination of takaful and waqf and enable a participant to save for a waqf and at the same time assured against any calamities which will deter him from fulfilling his intention.

Introduction

- The presentation will discuss :
- First it deals with the introduction of waqf and takaful.
- Second, it will describe in brief the administration of waqf and takaful in Malaysia.
- Third, it will examine the issues surrounding the plan and finally it will look at the possible reasons behind its demise.
- This will be followed by some suggestions.

Waqf

- Waqf literally means detention, withholding or restraint.
- In Islamic law, waqf refers to an act of dedicating the usufruct of any property owned for purposes recognized by Islamic laws as pious or religious.
- The act is achieved by taking the corpus of the property from personal ownership and transferring it to be permanently own by Allah.

Waqf



owner bequeathed his property as waqf. The act has made waqf a system where properties are transferred from personal ownership and given to certain beneficiaries.



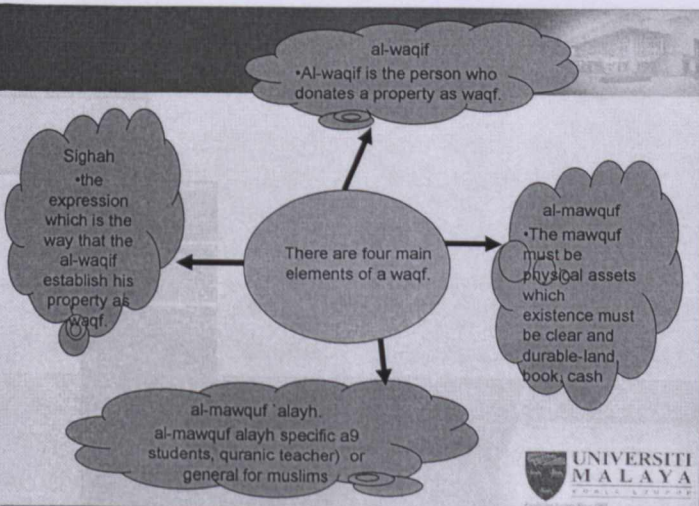
Beneficiaries reap its benefits permanently.



Waqf property will become a property owned by nobody but Allah

Waqf

- Another special feature of waqf is its irrevocability that is once the original owner bequeathed his property as waqf, he can no longer revoke the contract.
- Beneficiaries and trustee of waqf also has no right to dispose it.



Historical Experiences of Waqf

- Waqf was firstly initiated by the Prophet Muhammad (pbuh) himself in the light of the Qur'anic teachings which emphasizes dedication of property to attain Allah's pleasures.
- The encouragement of doing waqf can be understood from the hadith of the prophet SAW:
- *When the son of the Prophet Adam a.s. passed away, his good deeds will be cut off except for three things: the endless charity (sadaqa jaria), knowledge which benefit human, and the good son who always pray to both his father and mother*

Historical Experiences of Waqf

- The first waqf created by the Prophet was a land purchased for the construction of a mosque in Medina, known today as the Prophet's Mosque.
- This charitable act later on was followed by his Companions whether on the recommendations of the Prophet or out of their own free wills.

Historical Experiences of Waqf

- `Umar for example has established a waqf on a land in Khaybar upon the advise of the Prophet (pbuh).
- He made the land a voluntary alm (sadaqa) that cannot be sold or given away as gift.
- The fruits harvested from the land were distributed to the poor and kinships, used to liberate slaves, to provide for guests and the wayfarers, and its custodian.

Historical Experiences of Waqf

- Another *waqf* for drinking water which was established in Madinah also was suggested by the Prophet (pbuh).
- The Prophet (pbuh) noticing the high price of drinking water sold from a well in Medina, has called on Muslims to buy the well and render the water free for everybody.
- `Uthman bin `Affan bought the well and made it free for everybody.

Historical Experiences of Waqf

- After the Prophet's time, the practice of waqf continues to flourish in the Muslim world up until the present age.
- The history of waqf is very rich with impressive achievements in providing assistance for the poor and encouraging the development of education and knowledge.

Historical Experiences of Waqf

- Various kinds of *awqaf* were established including the cash *waqf*, *awqaf* for public utilities, education and research, and health care.
- Similarly, there were *awqaf* of grain to be used as seeds, and *awqaf* to provide loans to persons in need of financing and providing services and supplementary income to low income people.

Historical Experiences of Waqf

- The situation is also similar in Malaysia where waqf is synonymous with the development and maintenance of religious education institutions, mosques, cemeteries, orphanages etc.
- The Malaysian government for example has allocated RM241 million to develop the waqf property under the Ninth Malaysian Plan budget.

Historical Experiences of Waqf

- It was estimated that there was more than 174 secondary schools sponsored by waqf in Malaysia.
- In the Johore state alone, there was 2,477 identified waqf land used for religious places, schools, cemeteries, etc.

Takaful

- Takaful means joint guarantee.
- It is an agreement among a group of members of participants to jointly guarantee among themselves against loss or damage that may inflict upon any of them as defined in the contract.
- Should any member or participant suffer a catastrophe or disaster he would receive a certain sum of money or financial benefit from a fund to help him meet the loss or damage.

Takaful

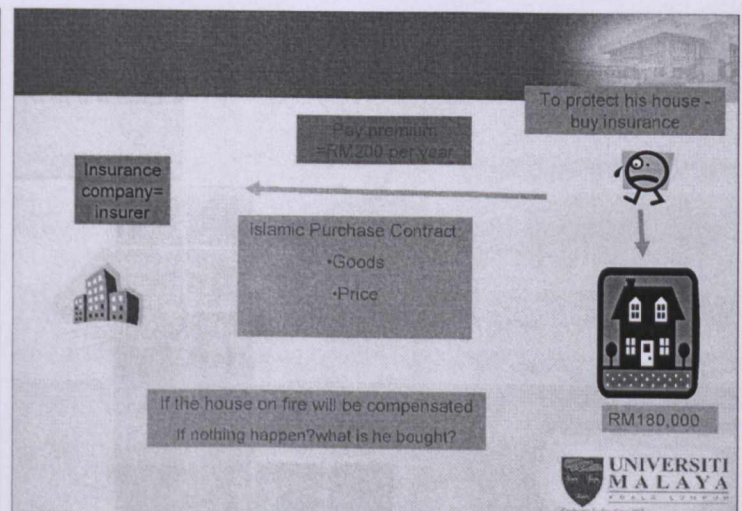
- In other words the basic objective of takaful is to pay for a defined loss from a defined fund where each member of the group pools effort and mutually help to support the needy among the group.
- So basically takaful is a risk management tool similar to insurance thus the reason why takaful is sometimes known as an Islamic insurance.

Takaful

- Takaful was introduced as a replacement of insurance as a risk management tool for Muslims.
- The insurance concept of helping an unfortunate individual by providing him with fiduciary assistance to cover his losses is applauded by the Islamic teachings.

Takaful

- However, in the operation of an insurance policy, several elements were found to be against the Islamic laws in particular
1. the uncertainties (gharar) regarding the contract, the total premiums paid, the compensation and the time of contract;
 2. the interest (riba) associated with the difference between premiums and compensation paid, or automatic premium loan in life insurance; and
 3. the gambling (maysir) elements whereby a small premium is paid for a significant compensation for an unknown risk.



Takaful

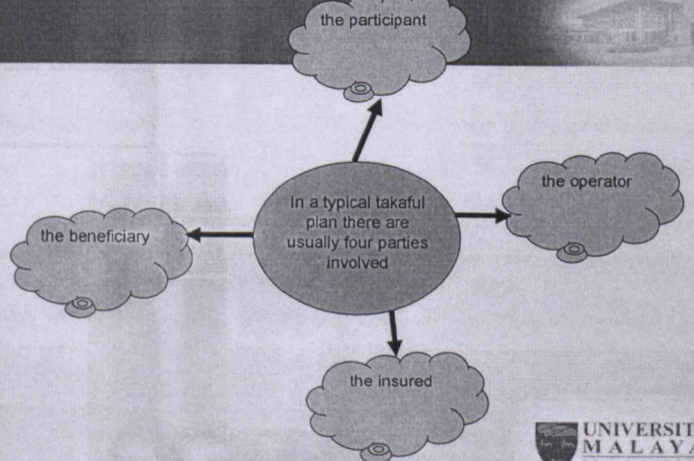
- These prohibitive elements have made it necessary for Muslims to have a risk management tool which have similar functions as insurance but operated according to the Islamic laws.

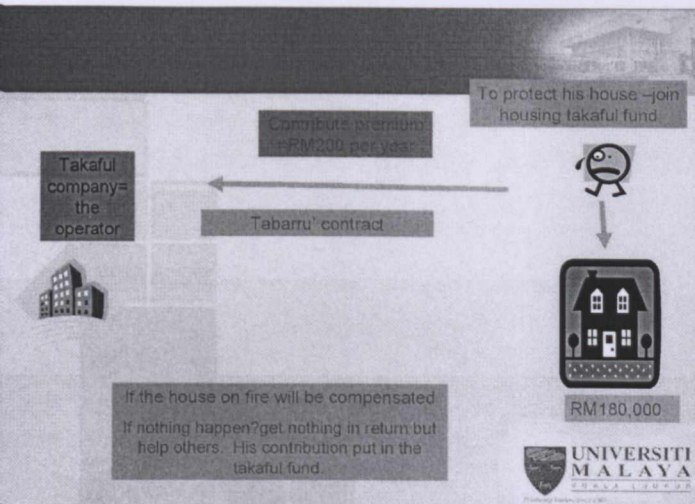
Takaful

- The contract of takaful is between the company or the operator with a group of individuals who are exposed to the same risk.
- These individuals have agreed to come together to contribute some money (premium contribution) to create a fund that will be used to pay anyone in the group who incur losses due to a well-defined mishap or hazard.

Takaful

- These individuals have also agreed that part of the contribution is donated to the fund that will be used for paying the loss.
- This donation is based on the principle of "*tabarru*" which means donation





Administration of Waqf and Takaful in Malaysia

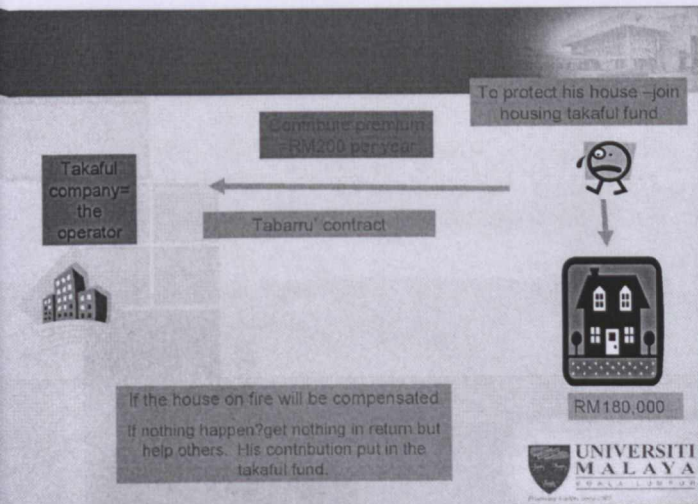
- In Malaysia, waqf is officially managed by state religious authorities.
- There are fourteen states in Malaysia
- This has been specified under the Malaysian Constitution whereby Islamic laws including waqf are to be regulated by state enactments.
- Thus waqf in each state is managed separately by each particular state.

Administration of Waqf and Takaful in Malaysia

- Under the state legislation, in each state a council commonly known as Majlis Agama Islam Negeri (State Religious Islamic Council) or MAIN is established and accorded extensive jurisdiction over the administration of its religious affairs.
- Accordingly, these laws only apply in the state concerned and are administered by a separate court system than the federal ones, which constitution, organization and procedures are under the jurisdiction of the states.

Administration of Waqf and Takaful in Malaysia

- Since the MAIN is the main authority regarding the religious affairs in the state, it has also become the sole trustee of waqf.
- This arrangement is also considered better in ensuring a more efficient management, avoiding breach of trust by individual trustee (mutawalli) and avoiding disagreement between mutawalli and beneficiaries normally associated with individual trustees.



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Administration of Waqf and Takaful in Malaysia

- In contrast, takaful is managed by privately owned companies licensed under the Takaful Act 1984 and are supervised by the central bank, Bank Negara Malaysia.
- Currently, there are nine takaful pperator in Malaysia, namely;

Administration of Waqf and Takaful in Malaysia

- 1. CIMB Aviva Takaful Berhad
- 2. Etika Takaful Berhad
- 3. Hong Leong Tokio Marine Takaful Berhad
- 4. HSBC Amanah Takaful (Malaysia) Sdn Bhd
- 5. MAA Takaful Berhad
- 6. Prudential BSN Takaful Berhad
- 7. Syarikat Takaful Malaysia Berhad
- 8. Takaful Ikhlas Sdn. Bhd.
- 9. AIA Takaful International Bhd

Administration of Waqf and Takaful in Malaysia

- The first takaful operator was Syarikat Takaful Malaysia Berhad incorporated on 29 November 1984 and was later on publicly traded on the Kuala Lumpur stock Exchange on 31 July 1996.
- Among the many prestigious awards received by the company is the Euromoney's Best Takaful Service Providers of 2004 and 2005.

Takaful Waqf Plan

- Takaful Waqf Plan was a plan offered by Syarikat Takaful Malaysia Berhad which was introduced in 2002 and eventually withdrew on February this year (2009).
- In a typical waqf, a waqif will endow a property owned as a waqf with specific beneficiaries in mind.

Takaful Waqf Plan

- One of the requirements for a legal waqf is that the property must be fully owned by the waqif at the onset of the waqf.
- In other words, in order for a Muslim to establish waqf, he must at first become an owner of the particular property that he wished to bequeath.

Takaful Waqf Plan

- A takaful waqf plan was introduced to provide a mechanism for Muslims which enables them to establish waqf even without owning any specific property or asset.
- Participants of the plan will be able to establish a future waqf through regular savings made in contributions to the takaful operator over a certain period of time.

Takaful Waqf Plan

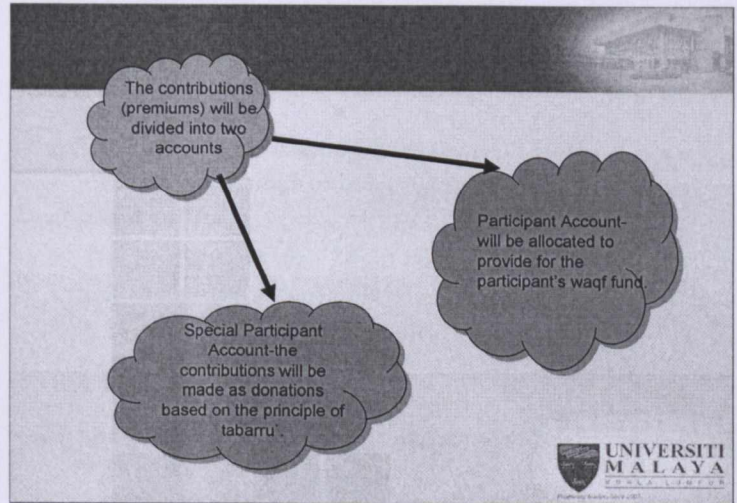
- As a takaful product, in cases where the participants are unable to provide for the desired waqf like his untimely death prior to policy's maturity, he will be assured that the balances of the desired waqf amount will be provided for him from the takaful waqf fund.

The Operation of the Takaful Waqf Plan

- The plan is offered to any individual aged between 18 to 70 years old.
- Participants are given the opportunity to choose a maturity period in multiple of fives ranging from 5 to 50 years so long that the plan must mature upon the participants attaining the age of 75 years old.
- The minimum sum of contribution must not be less than RM10 (80 ruble) per month enabling almost all walks of life participating in the plan.

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Participant Account-

- For this account, the participant has agreed to allow the takaful operator to utilize the fund in any appropriate investment based on the contract of mudharaba.
- Mudharaba is a profit sharing contract whereby a party will provide the capital for an investment and another party will manage it.

Participant Account-

- Even if the participant withdraws from the plan before its maturity, all the balances in this account shall be paid to the waqf beneficiaries.
- Any profit from the venture will be shared between the party and the takaful operator and benefits owned by the participant will also be credited proportionately to both his Participant and Special Participant Accounts.

Participant Account

- The percentage profits from the venture will become the sole sources of income for the takaful operator out of this plan.

Participant Account

- The two parties have agreed to share the investment profits based on a predetermined profit ratio.
- The profit ratio was 70:30 favoring the participant and the profit assigned to the Participant Account is 1 percent of the total profit received by the participant.

Special Participant Account

- For the second account, the contributions will be made as donations based on the principle of tabarru'.
- The purpose of the account is to provide the financial assurance to participants who met his death prior to the plan's maturity.

Special Participant Account

- The account will be used to pay the balances of the deceased participant to fulfill his desire to establish waqf and enabling him to pursue his waqf intention even though his contributions have yet to reach the targeted waqf fund.

The Operation of the Takaful Waqf Plan

- Syarikat Takaful Malaysia permits the participant to name the recipient of his waqf contribution limited to institution that has registered with Syarikat Takaful Malaysia in order to manage efficiently.
- Participants cannot name family or any individual as the recipient.

The Operation of the Takaful Waqf Plan

- Among the registered recipient are:
 1. Fund for building the mosque which has been approved by the State Religious Affairs
 2. Fund for orphanage centres
 3. Education funds
 4. Yayasan Pembangunan Ekonomi Islam Malaysia (YPEIM), an organization involved in assisting Muslims economic development in Malaysia.
 5. Tabung Kebajikan Jemaah Haji, a fund dedicated to help Muslims in pilgrimage.

The Operation of the Takaful Waqf Plan

- Nevertheless Syarikat Takaful Malaysia allows the participant to also name other institutions besides the registered list but which supervision is also surrendered to them.
- In addition to this, participants also can name more than one recipient for the waqf where they must state the percentage amount for each named recipients.

Issues Concerning the Takaful Waqf Plan

- The takaful waqf plan, like many products especially new ones was found to have some issues which can undermine its operational capacity and in some instances may also challenge its Islamicity.

Issues Concerning the Takaful Waqf Plan

- There are a few Shariah issues found which may undermine its Islamicity most of which associated with unclear description of the contract.
- First is the lack of mention about the loss which shall be solely borne by the participant if the investment's loss is not due to the operator's negligence.

Issues Concerning the Takaful Waqf Plan

- Even though in actual practice, the loss is most unlikely happened since the fund will be invested in non-aggressive instruments like bonds issued by the government, the participants should be clearly informed about this to avoid gharar or uncertainty in the contract

Issues Concerning the Takaful Waqf Plan

- Second is the unclear procedures taken by the operator in performing the waqf deeds except a general statement in the takaful certificate that the company will act in accordance with the Islamic principle

Issues Concerning the Takaful Waqf Plan

- There was also the issue of performing wishes of Muslims to give their assets after their death which is required to be one third or less than his assets only if the beneficiaries are not entitled to the rule of Islamic inheritance.
- There is no clear procedure stated in the plan's certificate regarding this especially in case where the desired waqf amount may be more than a third of his wealth.

Issues Concerning the Takaful Waqf Plan

- The plan was also besieged by some operational issues which can affect its capacity and success.
- Without an appropriate maximum limit for the desired waqf amount, the issue of whether the accumulated takaful fund from the Special Participants Account is sufficient to provide for a very high claim will arise.
- In the takaful waqf plan contract, there was in fact no clear indication regarding the measures that the operator will take under such situation

The Possible Reasons for Its Demise

- All the above issues can well contribute towards the operational instability of the plan.
- However the main contribution towards the plan's demise was probably the low demand of the product among the customers.

The Possible Reasons for Its Demise

- During the first three years of its introduction, the plan has attracted 5000 participants pledging a total amount of RM7.5 millions of waqf.
- Most of them are young participants aged between 30 and 40 years old who most possibly did not have sufficient fund to perform waqf of physical asset at that time.

The Possible Reasons for Its Demise

- However the pattern must have changed throughout the years because by early this year it was withdrawn from the market.
- The reason given was that the demand for the product has made it non-feasible for the operator to continue offering it further.

The Possible Reasons for Its Demise

- Undoubtedly the low demand for the product will make it impossible for the takaful operator to generate its income given its limited source of income from the plan.
- The risk of low demand also will be accentuated given the fund insecurity to cover for huge demand of defined loss.

The Possible Reasons for Its Demise

- The main question is why the demand for the plan was high for the first few years but decreases afterwards.
- We believe that the demand of the product was not as expected because customers expect more than God's pleasures from a takaful plan.

The Possible Reasons for Its Demise

- Put simply, the plan only provides an opportunity to Muslims to seek the pleasures of Allah which rewards will mostly be felt in the hereafter.
- All the benefits obtained from the plan will be bequeathed to the beneficiaries.

The Possible Reasons for Its Demise

- Since majority of Muslims associate a takaful plan not only for this but also worldly financial coverage, the demand for this kind of plan will lack after awhile.
- Only a small fraction of Muslims are prepared to participate for a totally hereafter oriented plan and once this group is exhausted the demand will trickle, thus the high demand at the onset of its introduction and a low demand afterwards.

The Possible Reasons for Its Demise

- It can be argued that the plan is unsuccessful because the demand for waqf may have been exhausted.
- However, a high demand of cash waqf whereby Muslims may contribute as small as RM10 to establish waqf showed that the demand for cash waqf was not at fault.
- One example was the collection of cash waqf made by the Selangor's MAIN in year 2006 and 2007.

Collection of Cash Waqf in Selangor State

Year	Amount (RM)
2006	1,246,189.00
2007	1,038,042.00

The Possible Reasons for Its Demise

- Perhaps, the cumbersome process of underwriting to establish a desire to establish waqf compared to the normal process of waqf especially cash waqf made it also more unattractive.
- The assurance of high amount of waqf in the event of the defined loss could not compensate for the ease of establishing waqf through giving away available assets to waqf.

Going Forward

- Given the benefits of waqf, undoubtedly it should always be encouraged to be practiced by Muslims society.
- For a takaful operator who wishes to engage waqf in its takaful plan, we believe that it can be integrated not through the above mechanism but through alternative methods where participants and their successors may also benefit from the plan.

Going Forward

- One example would be a clause allowing a participant of a family takaful to bequeath a portion of his compensation to waqf.

والله أعلم