

THE REALIZATION OF MAQASID AL SHARI'AH IN FAMILY TAKAFUL

Nor Haziah Hashim

Abstract

Islamic law or Shariah provides rules and regulations for Muslims in conducting their daily life, whether in the matters relating to aqidah, ibadah, akhlak and muamalat. The main objectives of shariah also known as maqasid shariah is to protect the five important things that are closely related to the existence of human beings, namely religion, life, lineage, intellect and property. Given the importance of wealth in human's life, Shariah further outlined five aspects of maqasid in the protection of wealth. Takaful, an Islamic insurance instrument engineered based on Shari'ah principles that are free from riba, maisir and gharar can be an effective tool to facilitate Muslims in realizing the five maqasid matters mentioned. In light of the above issue, the paper will address how takaful can be an effective tool to help realize all the maqasid al shariah, especially in relation to wealth protection. The paper will also present the basic concept and central ideas of both maqasid shariah and takafu

Keywords: Maqasid al shariah, family takaful, wealth management

1.0 INTRODUCTION

Islamic law or Shariah encompasses every aspect of human activities and it is suitable for application since its revelation till the Day of Judgment. It has provided the rules that governed and protect the human life and making life itself easy and enjoyable. One of the important needs in life is the need to acquire and spend one's wealth. Wealth is part of the signs of Allah's bounty to His servants. Islam puts emphasis on the importance of wealth management and protection to ensure that wealth are acquired and spent in accordance to Shariah. There are many Quranic ayah that provide proof that Islam acknowledges wealth or materials as part of important needs of human life. Allah says:

“Do not hand over to those of weak understanding your properties which Allah has made a mean to support you.”

(Surah Al Nisa': 5)

In modern terms, wealth is very much related to properties, either physical or financial. In order to transform activities of acquiring these wealth into positive activities, the Shariah comprehensively outlined several aspects of maqasid al shariah for mankind in pursuing their economic activities. Ibn Ashur, a prominent scholar in the maqasid al shariah study, has outlined five aspects of maqasid in protecting wealth or properties. Takaful, an Islamic insurance based on Shariah principles, can be used as an effective tool to facilitate Muslims in this matter.

Therefore, this paper would discuss the definition, concept and classifications of maqasid al shariah, followed by its classifications. The five aspects of maqasid in protection of wealth will also be covered. The paper will also describe the underlying concept of takaful and the

products and models as practiced in Malaysia. Finally, the paper will analyze how the application of family takaful can help realize the maqasid al shariah, especially with regards to wealth protection.

2.0 DEFINITION AND CONCEPT OF MAQASID AL SHARI'AH¹

The phrase Maqasid al Shariah comprises two separate Arabic words: maqasid and shariah. Maqasid triliteral root word is qasada with various meanings as to intend, to mean. Another derivative from qasada is qasd which means intention (niyyah), purpose, aim, end, goal and objective (ghayah). Meanwhile, the terms shariah is also an Arabic word derived from its triliteral sha-ra-'a. Shara'a fi thus means to begin, to start, to commence, to go into, to enter upon. But sharra'a has an elementary meaning of 'creating' like to enact. Thus, the word shariah is understood as law (qanun) or code. Hence, al-Shariah al Islamiyyah is translated as Islamic law or law of Islam. The use of shariah in the context of Islam always refers to 'Islamic shariah either in the sense of Islamic law.

Hence, when the two words are combined, maqasid al-shariah is variously translated as the objectives of Islam law, goals of Islam and so on. There are many other definitions provided by the Islamic scholars of Maqasid (objectives of Shariah) and among these definition is the definition provided by the Ibn Ashur. Ibn Ashur defined maqasid based on two aspects, namely:

- The general aspect which is the purpose and wisdom behind the enactment of all or most of the shari'ah ruling. This definition is more related to the general objective of shari'ah.
- The specific aspect, which is related to specific objectives that are designed to achieve specific benefits to people in their daily activities,

As mentioned by Hashim Kamali (2007) the Shariah is generally predicated on the benefits to the individual and the community, and its laws are designed so as to protect these benefits and to facilitate the improvement and perfection of the conditions of human life on earth. The Quran is expressive of this when it singles out the most important purpose of the Prophethood of Muhammad:

"We have not sent you but as a mercy to the worlds"

(al-Anbiya' , 21:107)

This can also be seen in the Quran's characterisation of itself as "a healing to the (spiritual) ailments of the hearts" and "a guidance and mercy" for the believers and mankind (Yunus, 10:57). Undoubtedly, the shariah of Islam as a complete way of life and a universal call to all mankind has objectives and aims. These objectives revolve mainly around the interest and

¹ Definition of maqasid al-shariah is quoting from Hazizan Md. Noon in his paper entitled 'A Preliminary Exploration into The Relevance of Maqasid Al-Shariah Principles in the Social Science: The Case of Sociology presented in Internationao Conference on Islamic jurisprudence and the Challenges of the 21st Century.

well-being of man in this world and in the hereafter. In fact, the core interest of shariah lies in its attempt to remove hardship and mischief on man and bring ease and benefits to his life. Put clearly, the shariah stands for whatever thing that falls within man's interest and happiness.

3.0 CLASSIFICATIONS OF MAQASID AL SHARI'AH

The different injunctions of shariah aimed at protecting the interest of mankind and preventing evil from them. The objective of shariah can be divided into three categories, namely the essentials (dharuriyyat), the complimentary (hajjiyyat) and the embellishments (tahsiniyyat). All the different injunctions of shariah aim at realization of one or the other kinds of the above objectives (Nyazee, Imran, 2000).

3.1 The Essentials (al-Daruriyyah)

The essentials refers to the matters on which the religion and worldly affairs of the people depend on them, their neglect will lead to total disruption and disorder and it could lead to evil ending. These must be protected and all measures that aim at safeguarding them must be taken, whether by the individual, or by government authorities. These values include the five fundamental matters in life.

3.1.1 Protection of al-din

Protection of al-din at personal level is achieved through the observance of the different kind of ibadah, where all the six pillars must be protected. Protection of al-din at the wide scope involves defending Islamic faith particularly if it is attacked by the enemy of Islam (Nyazee, Imran 2000).

3.1.2 Protection of life (al-nafs)

The protection of nafs (human soul) is very important and this is the reason why it is placed at the second level of necessity. There are many verses in al-Quran which emphasized that killing someone is forbidden.

3.1.3 Protection of dignity or lineage (al-'ird)

Protection of lineage includes the protection of individual rights to privacy and not exposing or accusing others of misbehaviours. Islam has also regulated the relationship between man and women in order to protect their dignity. The prohibition of adultery in Islam is manifestation of the protection of dignity and lineage. Punishment for those involves in false accusation and adultery is meant to protect dignity.

3.1.4 Protection of intellect (al-'aql)

An intellect is a great gift from Allah s.w.t to mankind and it is one of the capacities that differentiate man with animals. The manifestation of the protection of intellect is obvious when Islam provide the right to freedom of expression, encourages its followers to acquire knowledge, and forbids them from any activities detrimental to mind. In addition, punishment for those who involve in activities detrimental to mind also supports this principle.

3.1.5 Protection of property or wealth (al-mal)

Property is one of the necessities of humankind and it should be acquired in legitimate ways. To protect wealth, Allah has revealed severe punishment for those who obtain property illegally. Islam encourages doing business, such as buying and selling, avoiding of the laziness and tawakul (hoping without any trial) and any injustice to business, such as riba and gharar. Apart from that, Islam has provided guideline that must be observed in financial activities.

3.2 The Complementary (al-Hajiyyah)

The complimentary interest or *al-hajiyyah* on the whole supplement to the five essential interest and it refers to kind of interests whose neglect leads to hardship of the individual or the community. The neglect, however, does not lead to the disruption of normal life. The actions will make human life easier and to solve some difficulties. In ibadah for example, performing the solat jama and qasar for the musafir is one of the hajiyyat in Islam. In muamalat, the permissibility of trading and other kind of transactions such as lease (ijarah), mudharabah, salam etc.

3.3 The Embellishments (al-Tahsiniyyah)

The embellishments or *al-tahsiniyyah* refers to interests whose realization leads to improvement and the attainment of that desirable. The disappearance of it will not interrupt the normal life; however, it might lead to the lack of comfort in life. Example of such in muamalat includes the prohibition of selling items that has no value and selling of public properties etc.

4.0 CONCEPT OF MAQASID AL SHARIAH IN PROPERTY OR WEALTH MANAGEMENT

As we have seen in the above section, Shari'ah had established the five basic needs of human protected by the Shari'ah; the religion, life, lineage, intellect and wealth or properties. Thus, it can be concluded that the protection of the wealth or properties is part of the ultimate goals of Shariah. Given the importance of wealth in the people's life, Islam has laid down the principles and guidelines on how to deal with things that fall under the category of wealth, such as money and properties. These guidelines and principles are imperative, especially in the context of managing and administering wealth for the benefit of the masses.

Ibn Ashur in his book, 'Maqasid al Shariah', further explained the maqasid of shariah in wealth or properties and divided it into five aspects, namely:

1. Wide Circulation of Wealth
2. Preservation and Protection of the Wealth

3. Transparency in Wealth Management
4. Certainty of the Ownership of the Wealth
5. Justice in the Circulation of Wealth

4.1 Wide Circulation of Wealth

The circulation of wealth is one of the great objectives of Shariah. The circulation and marketability of the wealth has been precisely mentioned as one of the primary objective of maqasid shariah in business transaction by Ibn Ashur. Ibn Ashur defined the circulation of the wealth as ‘implies the fair circulation of wealth in the hands of as many people as possible’. This means that the properties should be circulated among the public and actively transferred from one hand to another in the form of expenditures and investments.

It is very important for maqasid al shariah perspective to keep the circulation of the wealth and avoid all types of monopoly of monetary in the hands of few people (Ahcene Lahsasna, 2009). Thus, it is not allowed in Shariah to purposely keep properties in all its form idle. Allah says:

“And for those hoarding gold and silver and do not spent them in the way of Allah, announce unto them a most grievous penalty.”

(Surah At Taubah :34)

For this purpose, Shariah allowed many forms of financial transactions, such as contract of sales, lease, partnership, forward contract (salam) and many more to facilitate proper circulation of property ownership among the public. In addition to that, Shariah has also allowed minor gharar in business transaction as an exception to the general rule, based on the need and necessity of the public (Ahcene Lahsasna, 2009).

4.2 Preservation and Protection of the Wealth

Preservation and protection of the wealth is one of the primary maqasid in Shariah. It can be considered as the whole aspects of the concept of maqasid shariah in wealth. This objective was clearly stated in the Holy Quran:

“O you who have attained faith, do not devour one another’s possessions wrongfully not even by way of trade based on mutual agreement, and do not destroy one another”

(4:29)

The Prophet (pbuh) has also stated that:

“No Muslim’s property should be allowed to be taken from him without his own accord”

The above text are very strong and clear statement indicating the importance and the value of protection of the wealth, whether for individual people or for the community and society. It also shows that it is a great sin of any aggressive action against the wealth of property of the community.

4.3 Transparency in Wealth Management

This aspect requires that all financial transactions must be conducted in a manner that all parties are clear about all the important facts of the transactions by avoiding all causes of disputes, clashes or damages to any party. It was for this reason that the Quran recommended the Muslims to write down all future obligation transaction to be kept as a record. The purpose of writing down the debt transactions is to make all information and facts of the transactions clear and transparent in terms of subject matter, obligations and rights of all parties as a source of reference in cases of disputes in the future. This in particular is very relevant to the modern financial transactions which are always in the form of formal contracts duly signed by the related parties (Akhtarzaite Abd Aziz, 2006).

In addition to the above, Shariah also required security in some business transaction such as loan and mortgage or guarantor upon a transaction. Specific example of transparency in Islamic financial transaction would be as follows:

Musharakah

The transparency in musharakah can be observed in the ratio which is fixed and predetermined and is made known to all parties involved in advance. The profit and loss will be shared in the exact proportion of the two parties according to total investment capital of the contracting parties.

Mudharabah

In mudharabah contract, it is a requirement for the validation of the contract that the two contracting parties to agree on the proportion of the actual profit to which each of them are entitled.

Account audit, sound finance management, declaration of ownership are among the tools that could be used in order to achieve the transparency in finance. These tools can play important

role in making the finance and wealth in the business activities transparent, so that dispute could be avoided and corruptions could be reduced.

4.4 Certainty of the Ownership of the Wealth

The purpose of this aspect is that the rights of a party or parties to the ownership of the wealth or properties must be certain and there should be no doubt to the rights, unless there is certain public interest which could prevent individual privilege ((Akhtarzaite Abd Aziz, 2006). Ibn Ashur outlined that the rights implies three elements:

- i. Individual's or Individuals' right to ownership
- ii. Freedom of disposal of property within the boundaries of Shariah requirements
- iii. Guarantee over the privilege of ownership and prevention of encroachment against the rights without the owner's consent.

The holy Quran guaranteed the right of ownership whereby Allah says:

“O you who believe do not take the properties among you by illegal means unless by way of trade and mutual consent.”

(Surah Al Nisa:29)

This provides an evidence that it is an objective of the Shariah to guarantee the freedom of ownership and there is no way that the right can be transferred to others unless by contract of exchange or charity by the consent of the owners.

4.5 Justice in the Circulation of Wealth

Islam sees justice as a very general and comprehensive concept. It is a primary requirement in all aspect of human life. In terms of justice in wealth or in financial transaction, justice means putting the properties in their proper places as it was meant by the Creator and commanded by Him. It starts with the right to acquire the property, to perform all the responsibilities related to the properties and to find the wisest manner to spend or invest the properties (Akhtarzaite Abd Aziz, 2006).

5.0 UNDERLYING CONCEPT OF TAKAFUL

Insurance in Islam, according to the Muslim jurists should be based on the principles of mutuality and cooperation. These principles embody the elements of shared responsibility, joint indemnity, common interest and solidarity. Thus, in consonance with the above elements, the jurists resolved that the Islamic system of insurance should be found on the three concepts, namely al-takaful, al-Mudharabah and tabarru’.

Al-Takaful

Takaful derived from an Arabic word which means joint guarantee. It is where a group of members or participants agree to jointly guarantee among themselves against a defined loss. Should any member or participant suffer a loss, he would receive a certain sum of money from a fund to help meet the loss. In other words, the basic objective of takaful is to pay for a defined loss from a defined fund with each member mutually helping the needy.

Al-Mudharabah

As an insurance system, the operation of takaful is confine within the ‘Tijari’ (commercial sector). Therefore, the transactional aspect of the commercial activity of takaful must be subject to the Islamic contractual laws in order to ensure its compliance with the Shariah. Thus, the contract of takaful is based on the Islamic commercial profit-sharing principle of al-Mudharabah².

There are two parties involved in a Mudharabah contract, takaful operator (al-Mudharib), acting as the fund manager and participants (Sahib-ul-mal), the fund provider. The operator will accept takaful installments or contributions (premium) from the participants and manages the fund in trust on behalf of the participants. The contract between the participants and the operator is governed under the contract of Mudharabah (profit-sharing). The contract specifies how the profit (surplus) from the operations of takaful, managed by the operator is to be shared. The sharing of such profit may be in a ratio of 5:5, 6:4 or 7:3 as mutually agreed by both contracting parties.

Tabarru’

In order to eliminate the element of uncertainty in the takaful contract, the concept of tabarru’ is incorporated in it. Tabarru’, means donation, gift or contribution. Participant in takaful schemes agrees to relinquish, as a donation, a certain proportion of the contribution into a takaful fund to assist other participants faced with difficulties. It embraces the elements of shared responsibility, joint indemnity and mutual protection.

5.1 Features Of Takaful

Under the Islamic teachings, an insurance practice must possess certain fundamental characteristics before an insurance contract can be considered valid. The fundamental characteristics could be classified into four main categories (Maasum Billah, 2007):

² BIMB Institute of Research and Training Sdn Bhd. 1996. Takaful (Islamic Insurance) Concept & Operational System From The Practitioner’s Perspective

5.1.1 Sincerity

Every transaction should be entered into with sincerity and pure intentions in order to achieve the desired result from Allah (s.w.t).

He (swt) says:

...And they have been commanded no more than this to worship Allah (swt), offering him sincere devotion.

(Al-Quran, Surah al- Bayyinah 98:5)

Parties transacting in a takaful contract must be sincere and not to make personal gain, but to be bound by the transaction based on the principles of mutual co-operation, solidarity and brotherhood towards rescuing one from unexpected losses and damages. This is because Allah (swt) never looks at material gains, but the sincerity in the hearts of His creatures.

In addition to that the transacting parties in a takaful contract must put all their trust and faith in Allah (swt) in order to get His protection from any consequential unpredicted loss. This is because the operator is not liable to guarantee the ultimate protection, but merely compensating the participant against loss or damage. It is Allah (swt) that has the absolute power to protect.

5.1.2 Absolute shari'ah principles

The Takaful Act 1984 provides that a takaful policy is enforceable if its aims and operations do not involve any element which is not approved by the Shariah. Hence, it is a pre-requisite for the validity of a takaful contract that none of its aspects should contravene any express or implied Shariah ruling.

5.1.3 Moral attributes

Takaful participants must conform to moral sanctions which include the principles of utmost good faith, honesty, disclosure and truthfulness. These principles could be justified by the following sanction of the Holy Quran. Allah (swt) commands:

...Do not misappropriate your property among yourselves in vanities...

(Al-Quran, Surah an-Nisa, 4:29)

The contracting parties should not be greedy to gain something, but should instead build their purposes and aims based on the principle of mutual co-operation and rescuing a person from unexpected loss or disaster.

6.0 PRODUCTS AND MODELS OF TAKAFUL IN MALAYSIA

Similar to its conventional counterparts, takaful operators offer both general takaful and family takaful products. General takaful is the alternative to general insurance, whilst family takaful is the alternative to life insurance (Engku Rabiah Adawiah & Hassan Scott, 2008).

6.1 General Takaful Products

General takaful are basically contracts of joint-guarantee on a short-term basis (normally one year), between groups of participants to provide mutual compensation in the event of a defined loss. The schemes are designed to meet the needs for protection of both the individuals and corporate bodies in relation to material loss or damage resulting from a catastrophe or disaster inflicted upon properties, assets or belongings of participants.

There are many types of general takaful products. Examples of general takaful products offered in Malaysia are Fire Takaful, Motor Vehicle Takaful and Miscellaneous Takaful, which includes Personal Accident Takaful, Workmen Compensation Takaful, Fidelity Guarantee Takaful and etc.

The paper provides only a brief explanation on general takaful and focuses more on family takaful as it is the latter plan that the paper is trying to describe as the mean to realize the maqasid al shariah.

6.2 Family Takaful Products

Family takaful scheme can be said to be similar to the coverage provided by life insurance policies, offered by the conventional insurance. It is a long term saving and investment program with a fixed maturity period. It provides mutual financial assistance among its participants through a financial program that pools efforts to help the needy in time of need due to untimely death and other mishaps resulting in personal injury or disablement. Basically family takaful products in Malaysia can be divided into two main plans, which are The Individual Plan and The Mortgage Takaful (Engku Rabiah Adawiah & Hassan Scott, 2008). Examples of individual family takaful plans are endowment plans for education, retirement and for specific purposes.

In family takaful, each contributions paid by the participant is normally credited into Family Takaful Fund which is then divided into two separate accounts, Participant's Account (PA) and Participants' Special Account (PSA). Most of the contribution will be credited into the PA, which is for the purpose of savings and investment. The balance is credited into the PSA, as donation (tabarru') or risk, for the company to pay takaful benefits to other participants who may suffer a loss.

In takaful contract, the participant knows how much he/she will get back from each account should he/she die or when the policy matures.

If the participant dies, his /her beneficiary will get:-

- a) the contribution (premium) paid
- b) any profit credited into his/her PA
- c) remaining monthly contribution he/she would have paid if he/she had lived, from the PSA

If the participant is still alive when the policy matures, he/she is entitled to:

- a) all contributions (premium paid)
- b) any profit credited into his/her PA
- c) proportionate surplus, if any, arising from the PSA

6.3 Family Takaful Models

The earliest model for family takaful in Malaysia is the mudharabah model. In practice, takaful schemes in Malaysia normally use pure mudharabah or wakalah model for PA, while the modified mudharabah or modified wakalah is used for PSA (Engku Rabiah Adawiah & Hassan Scott, 2008).

Under the pure mudharabah model, the participants contribute to the Family Takaful Plan for two main purposes, which are saving/investment and donation. The saving/investment portion will be credited into the PA, whereas the donation portion is credited into the PSA. The PA belongs to the participants and the PSA belongs to the family takaful risk fund. Both PA and PSA will be invested in Shariah compliant investments by the takaful operators. If there are any profits, it will be shared between the participants and the operator based on a pre-agreed profit sharing ratio. The PSA will be used to pay claims, retakaful and reserves and if there is any net underwriting surplus, it will be returned to the participants.

Diagram 6.1 illustrates the transaction structure for a family takaful operation based on a pure mudharabah model.

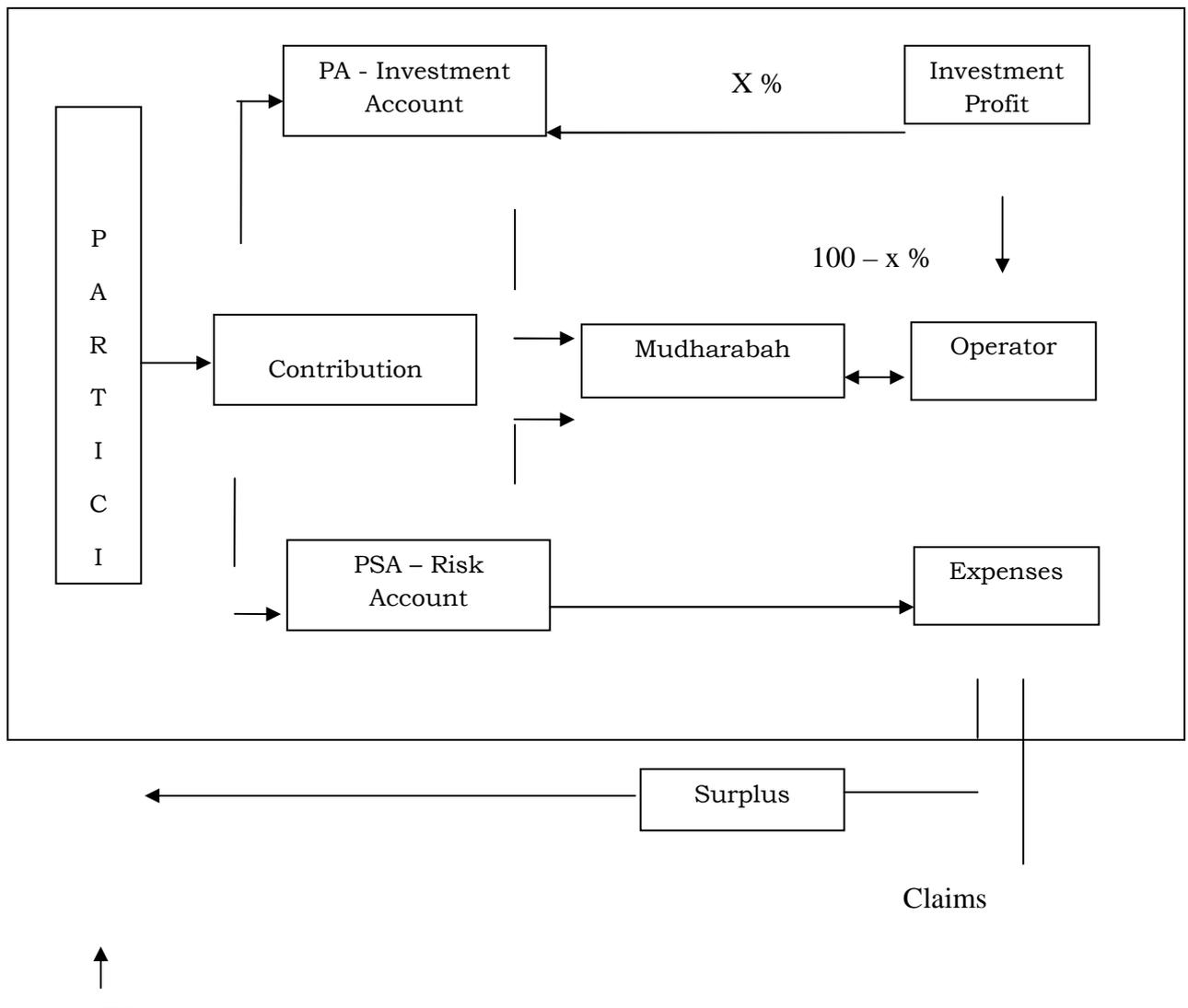


Diagram 6.1: Family Takaful Operation Based on Pure Mudharabah Model

Source: Engku Rabiah and Hassan Scott, 2008

In a family takaful operation that uses the wakalah model, the participants still contribute to the Family Takaful Fund for the two main purposes, namely saving/investment and donation. Similar to the mudharabah model, the saving/investment portion will be credited into PA and the donation portion will be credited into the PSA. However, the takaful operator will charge a fee on the basis of wakalah (as agent or wakil) for managing the Family Takaful Fund. Under this structure, all underwriting surplus and investment profits belong to the participants with charges inclusive of investment management fee being taken as income to the operator.

Diagram 6.2 illustrates the transaction structure for a family takaful operation based on a pure mudharabah model.

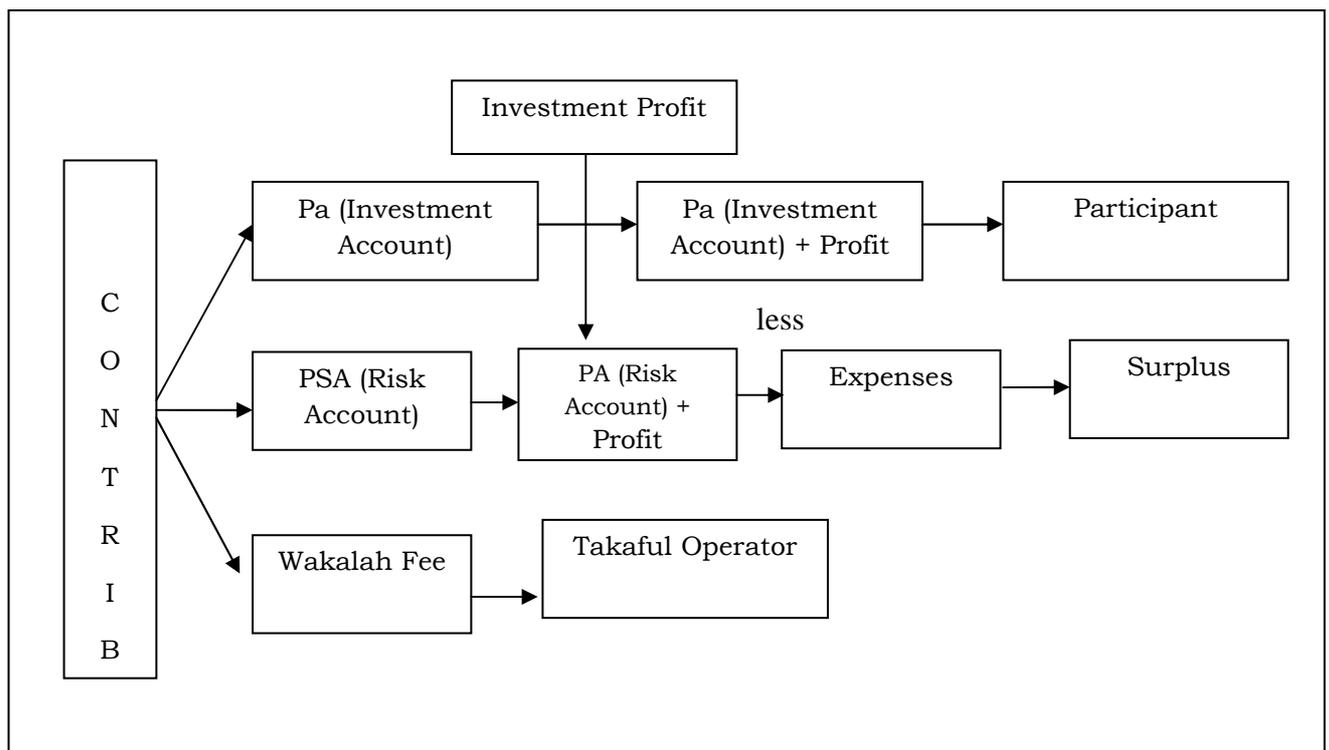


Diagram 6.2: Family Takaful Operation Based on Wakalah Model

Source: Engku Rabiah and Hassan Scott, 2008

7.0 TAKAFUL AS A MEANS TO REALIZE THE FIVE MAQASID

The above sections have discussed the principles of takaful, its products and benefits and the concept of maqasid al-shari'ah in property management. To relate takaful to the doctrine of maqasid al-shari'ah in property management, we must first clarify whether takaful benefits can be classified as one's property.

Muhammad Daud Bakar (2002) stated that mal or property can be classified into three types, namely:

- a) Tangible assets like landed property, present items and stock including Islamic bonds that are asset-based such as ijarah, musyarakah and mudarabah bonds.
- b) Intangible assets, such as copyright and royalty, trade name, trademarks, industrial design, etc.
- c) Financial rights, such as rights to receive (receivable) that include Islamic bonds, deferred dowry and maintenance, right to damages, the right to takaful compensation, etc.

From the above explanation. It can be concluded that in the modern application, takaful benefit is also treated as property (mal).

This section will explain how takaful, especially family takaful can be used to realize the five maqasid al shari'ah in property management. All the five maqasid could be realized by way of:

- the objectives of family takaful schemes provided,
- the issuance of a cover note (temporary document),
- the concept of 'Utmost Good Faith'
- the process of underwriting and
- the distribution of takaful benefits.

7.1 The Objectives of Family Takaful

Family takaful is an alternative scheme for conventional life insurance. It mainly has three objectives and through the application of these objectives that the first maqasid of shariah in wealth, which is the wide circulation of wealth can be realized. The scheme enables its participants to save regularly by paying specified contribution, to avail the takaful proceeds to

the legal heirs and dependents in the case of premature death and to invest the savings with the intention to gain profits in Shariah compliant investment avenues. Investment activities, as we know, will necessary render that wealth being circulated in the society. Lastly, even if the participant wants to surrender the policy, he is still entitled to receive the surrender benefits, which is the proportion of his paid contributions credited into the Participant Account (PA) plus any profits made from the paid contribution. All the above arrangements are the means to realize the purpose of wide circulation of wealth.

In addition to the above, one of the main objective of any takaful plan, be it family or general takaful is the protection of the benefit of properties in case of loss or damage. As we know, the protection of property is one of the five fundamentals in life. The importance of property in life may be either of essential necessity (darurah), without which people cannot survive, or of a general need (hajat) which is quite akin to the essential needs; or of complimentary needs which make life more comfortable and pleasant (Muhammad Daud Bakar, 2008).

7.2 Issuance of Cover Note @ Temporary Policy

A cover note is a temporary document issued by the takaful operator before the issuance of the certificate, especially in the case of general takaful. The cover note can be used as a proof to make a fair claim against the risk if it occurs before the permanent takaful certificate is issued. This arrangement and stipulation can be observed as the means to realize the purpose of transparency in wealth, certainty of the wealth's ownership and justice in the circulation of wealth.

7.3 The Concept Of 'Utmost Good Faith'

The concept of utmost good faith specifies that the participants of a takaful scheme must disclose the truth of the facts or the matters affecting the policy. It is also stated in the Takaful Act 1984, under section 28 that the participants are under the duty to disclose in the proposal form fully and faithfully all the facts which they know or ought to know, otherwise the policy may be void. It is therefore, the duty of the participants to disclose all the material facts affecting the contract to avoid the possibility of benefiting from the tabarru' funds fraudulently at the expense of other participants. This requirement can achieve the purpose of transparency in wealth management and justice in the circulation of wealth.

7.4 The Process Of Underwriting

Underwriting is the process by which takaful operators consider and decide whether to accept the participation of cover made by a proposer and also the terms to be imposed. The purpose is to maintain equity among the participants, whereby each participant should contribute according to the expected loss probabilities that he might transfer to the tabarru' fund. The takaful operator should estimate the potential loss exposure presented by the participant and charge a rate attributed to the tabarru' fund which commensurate with that exposure (Ahmad, Syed Wasseem, 1991). This arrangement is an effective means towards the purpose of achieving the transparency in wealth management and justice in the circulation of wealth.

7.5 The Distribution of Takaful Benefits, Profits and Contribution

In the case of death of the participant before the maturity, the takaful benefit or compensation shall be distributed on the basis of Islamic law of inheritance, as it is considered as part of the participant's estate. The nominees in the policy are considered as a mere trustee to administer

the distribution of the takaful benefit after the participant's death. The stipulation to administer the takaful benefit in accordance to the Islamic law of inheritance is in no doubt in parallel with the maqasid of certainty of the ownership of the wealth. This ensures the deserving parties rights to the inheritance as prescribed by the Holy Quran and Sunnah after one's death.

In addition to the above, the takaful operation is also free from the element of gharar, especially when it comes to the segregation of participants' contribution and the distribution of profits from the investments between the participants and the operator. For family takaful, as mentioned in the previous section, the contribution is divided into two separate accounts, Participant's Account (PA) for the purpose of savings and investment and Participants' Special Account (PSA as donation (tabarru') or risk. This ensures the principle of transparency is carried out. Furthermore, depending on the model adopted by the operator, remuneration for the operator who managed the takaful fund can also be specified. Under the mudharabah model, profit from the investment undertaken will be shared by the participants and the operator based on a pre-agreed ratio. No management fee will be charged on the service provided by the manager. On the other hand, if it is the wakalah model being used, then a management fee will be charged on the takaful fund for the service provided by the operator. The operator may (wakalah with performance fee model) or may not have a share in the underwriting surplus, if any.

The above transparent activities being practiced in the takaful operation not only ensure transparency in managing the wealth, but it also provides clear certainty of the ownership and justice in the circulation of wealth.

8.0 CONCLUSION

The general maqasid of shari'ah is to protect the five elements essentially needed for every human, namely: religion, life, lineage, intellect and property or wealth. The inclusion of wealth protection shows the importance of wealth in human life. Given the importance of wealth to human, Islam through the maqasid al shari'ah, outlined five aspects to protect wealth, which are wide circulation of wealth, preservation and protection of the wealth, transparency in wealth management, certainty of the ownership of the wealth and justice in the circulation of wealth. The paper has analyze how family takaful, an Islamic life insurance, engineered based on the shari'ah principles is able to realize the five maqasid. Through a well structured plan, takaful by way of objectives of the schemes, the issuance of a cover note, the concept of Utmost Good Faith, underwriting process and the distribution of takaful contribution, profits and benefits are able to materialize all the five aspects of maqasid in wealth protection.

REFERENCES

Book:

1. Engku Rabiah Adawiah Engku Ali and Hassan Scott (2008), Essential Guide to Takaful (Islamic Insurance), CERT Publications Sdn Bhd, 41-71
2. Ibn Ashur (2006), Treatise on Maqasid al-Shariah (Translates from the Arabic and Annotated by Mohamed El-Tahir El-Mesawi), The International Institute of Islamic Thought
3. Imran Ahsan Nyazee (2003), Islamic Jurisprudence, Islamabad, International Institute of Islamic Thought, Second Edition, p202
4. Mohammad Hashim Kamali (1991), Principles of Islamic Jurisprudence, KL: Ilmiah Publishers, p395
5. Mohd Ma'sum Billah (2007), Applied Takaful and Modern Insurance, Thomson, p5-29

Articles:

1. Akhtarzaitee Abdul Aziz. (2006), "The Concept of Al-Dhara'i and Its Role in the Realization of Maqasid Al-Shariah: An Exploration of its Application to Some Practical Aspects of Islamic Insurance".

Paper presented at the International Conference on Islamic Jurisprudence and the Challenges of the 21st Century.
2. Ahmad, Syed Waseem. (1991), 'Islamic Insurance in Malaysia, in the Muslim Private Sector in Southeast Asia'. Institute of Southeast Asian Studies.
3. Mohamad Akram Laldin. (2006), "The Shari'ah Objectives (Maqasid) of Financial Contracts and Islamic Banking".

Paper presented at the International Conference on Islamic Jurisprudence and the Challenges of the 21st Century.
4. Hazizan Md. Noor. (2006), "A Preliminary Exploration into The Relevance of Maqasid Al-Shariah Principles in the Social Science: The Case of Sociology".

Paper presented at the International Conference on Islamic Jurisprudence and the Challenges of the 21st Century.
5. Mohd Daud Bakar. 2002. 'Islamic Property Management: An Overview'. Paper presented at the Seminar on Islamic Financial Planning.

6. Ahcene Lahsasna. 2009. Lecture Notes on Maqasid al Shariah