

Takaful and the Agenda of Maqasid Al-Shari'ah

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Takaful is an insurance industry that is growing impressively in the last three decades and globally recognized. It has attracted attention not only from Muslims audiences, but also from non-Muslims. This trend is mainly triggered by new concepts in managing the insurance funds and relationship of insurance operators and participants. This perspective embarks from new value-propositions offered whereby the funds and operations are not only Shari'ah compliance but also aim to realize the maqāid al-Shari'ah (the objectives of Shari'ah).

The impressive growth of the takaful industry that has reached US\$ 12 billion in 2011 in terms of global gross contributions suggests the potentiality of takaful. In furthering its progress to the next stage, we contend the significance of proper commitment to the goals and objectives of Shari'ah. This will ensure the current impressive development of takaful industry is on the right track. This would at the same time ensure the credibility and integrity of the takaful industry.

The Concept of Takaful

Takaful derived from the word kafala, means joint guarantee. The concept is based on the notion of having mutual protection and shared responsibility among the participants by contributing a sum of money in a form of donation into a shared pool. The collected funds will be used to help those who are in need of assistance. At the same time the takaful could be used as risk protection and reduction in case of any occurrence of peril.

Takaful is the practical application of Islamic teaching of ta'awun, which means helping each other, or mutual assistance (Al-Qur'an, 5: 2). Takaful in practice invites the participants to jointly share the risk and responsibility. This is inspired from the hadith Narrated by Bukhari and Muslim that says "the relationships and feelings of people with faith, between each other, is just like the body; when one of its parts is afflicted with pain, then the rest of the body will be affected".

The processes will not only reduce the risks and burdens but at the same time would strengthen the brotherhood and care for each other. This is because, unlike in the conventional insurance whereby risk is transferred to the insurer or the insurance company by its customers, in takaful, risk is not transferred but shared mutually among the participants of takaful. As such, the participants in takaful mutually agree to help each other against any hazard or loss that may inflict on any of them.

The spirit of togetherness, cooperation, caring for each other, and sharing are amongst the positive values that are instilled in the takaful objectives that have attracted the audiences to participate in the industry.

Those objectives and values should always be in takaful operator minds in managing the takaful funds and should be incorporated in the takaful model and structure. The present interest in finding appropriate compliance structure of takaful model is necessary to be done with strong adherence to maqasid al-Shariah. Takaful should be structured in such a way to be effectively act as the schemes of protection, wealth protection and accumulation with the objectives to strengthen social responsibility, mutual help or cooperation with ethical commitment in the society, namely fair and transparency.

The Maqasid Agenda

Takaful as a concept is very a comprehensive concept that would include anything that would facilitate protection, assistance and cooperation in the realm of human life. Such concept is very much in line with the concept of maqāid al-Shari'ah which aims at securing benefits (malaah) and repelling the harms (mafsadah) in human life.

Scholars classified malaah in three hierarchy of needs, or levels of necessity, namely the essentials or necessities (daruriyyah), the complementary (hajiyyah), and the embellishments (tahsiniyyah). Al-Ghazali, prominent theoretician of Maqasid al-Shari'ah, investigates further the necessary

components in all those level of necessity that Shari'ah aims to fulfil, safeguard and maintain, namely the protection of religion (din), protection of life (nafs), protection of intellect ('aql), protection of wealth (mal), and protection of lineage (nasl).

The takaful products could therefore be developed in various types to cover the protection of those five essentials (al-daruriyat al-khamsah). These are regarded as the essential needs that human requires for his wellbeing in this world and the hereafter. As the level of malaah is improving from daruriyyah to tahsiniyyah, the takaful product could also be structured accordingly. More products could therefore be structured and offered that would support and satisfy the needs of human being (hajiiyyah) and the products that would refine the additional needs and beautify and improve human life (tahsiniyyah).

The Maqasid Approaches

In approaching and applying the maqāid agenda in practical application, Shari'ah has also elaborated some necessary ways and means (wasa'il) to establish and preserve the benefits (maslahah) and repelling the harms (mafsadah) in the actual human life.

In this context, we can identify three necessary means that would establish maqāid al-Shari'ah. Those are facilitating the protection and circulation of wealth, promoting fair and transparent financial dealings and realizing social justice.

Firstly, in the protection and circulation of wealth in the takaful sector, Shariah lays the framework for the development of contracts and running of its operations through the elimination of the prohibited elements such as riba, maysir and gharar. Likewise, the subject matter of the contract should not have the prohibited elements and the takaful funds should not be invested in prohibited (non-halal) areas. Avoiding such prohibited elements will help the industry to grow healthily as those elements are known to cause unjust and are harmful for society.

Secondly, in doing the business in managing the takaful funds and protecting the participants, Shari'ah requires fair and transparent financial dealings. Shari'ah for that reason disapproves all transactions that involve explicit or implicit harm and injustice to one of the contracting parties or to the public at large or which restricts freedom of trade, or stands in violation of the Qur'anic injunctions and the approved business conduct.

Shariah in this regard aims at creating an equal and fair transactional atmosphere and at protecting the parties against exploitation or imbalance between their reciprocal rights and obligations. Shari'ah

intends to create a positive atmosphere in transactions whereby exchanges and dealings are done on the basis of brotherhood, cooperation and mutual benefit to both parties.

The application of the Shari'ah in the takaful practice and operation should therefore not result in injury, harm or difficulties to either individuals or the public at large. Takaful then is meant to protect the contributing participants from any form of unjust, especially during the presence of difficult moments when misfortune occurs.

In addition, this objective also seeks to ensure the takaful industry is free from any form of misuse of the fund contributed by the participants in term of the management of the fund and the investment made as well as the avenues used to invest the investment fund.

Finally, in the spirit of social justice, Islam balances individuals' rights and their duties and responsibilities towards others. This framework of social responsibility and mutual cooperation and assistance is among the primary underlying objective of takaful industry. Takaful is actually one of the means to achieve this noble objective.

The presence of takaful is really needed in society since it is a real fact of life that human life is surrounded by risks and problems. In addition, it is also a fact that human being is naturally structured not in an equal manner. Humanity is made up of the rich and the poor, the bright and the dull, the strong and the sick, the haves and the have-nots. This implicates mutual dependency among society and therefore mutual cooperation and social responsibility is needed (Qur'an, 2:255; 4:37; 8:74; 16:74).

Takaful is essentially designed with the purpose of helping society in solving their problems by giving protection to their life and wealth and assist them in the times of needs and anticipating the future uncertainties.

Moving forward, takaful institutions should take maqāid into account in setting their corporate objectives and policies, in structuring the operational models/structures and also use them to verify compliance to true Islamic principles. This is because, as takaful is set up on the basis of noble objectives, the industry's progress will also be monitored by how well it realizes the maqāid in producing a good economy marked by the spirit of brotherhood (ukhuwwah) and mutual cooperation and assistance (ta'awun), social equality and social justice ('adālah), just and fair allocation of resources, elimination of poverty, protection of the environment and achievement of general wellbeing (maslahah).