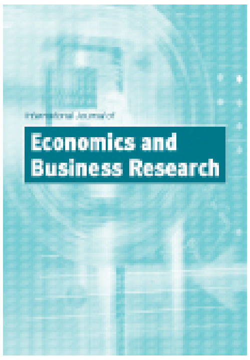

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Revival of the waqf-based takaful model in Malaysia: issues and the way forward

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Revival of the waqf-based takaful model in Malaysia: issues and the way forward

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Abstract: This study finds that the waqf-based takaful model ought to be implemented in Malaysia to eliminate some issues related to the current practice of *tabarruʿ* (donation), *wakālah* (agency), and *muḍārabah* (profit-and-loss sharing) within the takaful system. There are, however, legal issues, related to waqf-based takaful that should be solved through a proper and comprehensive waqf (endowment) act by the authority. Otherwise, a subsidiary of the State Islamic Religious Council may act as a takaful operator providing waqf-based takaful services. Above all, the takaful operator is required to establish a Sharīʿah-compliant mechanism for managing the fund while strictly avoiding the risk of losing the capital of the waqf fund and providing the takaful services as needed by the participants. Nevertheless, some constraints and challenges for the implementation of the waqf model in Malaysia may remain, and such constraints should be addressed by all parties involved in order to make this takaful model a reality in Malaysia.

Keywords: takaful; takaful model; waqf; cash waqf; *tabarru*'; Malaysia.

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1 Introduction

The mitigation and proper management of risks are essential parts of Islam and in accordance with *maqāṣid al-Sharīʿah* (objectives of Sharīʿah) (ISRA, 2016). Risk protection based on the takaful system has been well accepted in Malaysian society, particularly in the Muslim community. The takaful system is Sharīʿah-based protection that acts as a substitute for the conventional insurance system. The risk-sharing in takaful practice is based on the principles of mutual assistance (*taʿāwun*) and the sharing of responsibility (Ismail and Ismail, 2012; Abdullah, 2015). The risk management implemented by the takaful system is also free from *gharar* (ambiguity), *maisir* (gambling), and *ribā* (usury) (Iqbal, 2005; Shafique et al., 2015; ISRA, 2016).

The takaful system adopts Sharīʿah-compliant business concepts to provide takaful services (ISRA, 2016). Waqf is a Sharīʿah-compliant concept that could be used in a takaful system, but it is not used for that purpose in Malaysia. The waqf-based takaful model has the potential to address some of the existing takaful issues. The *tabarruʿ* (donation) principle used in the takaful contract has raised several issues. One of those issues is that it might be tantamount to *ribā*. If *tabarruʿ bi-al-ʿiwaḍ* (return-stipulated donation) is applied, the participants will donate a sum of money (*tabarruʿ*) to the takaful fund provided that they will be compensated (in the form of money) if a disaster happens. This means that money is exchanged for money, and in most cases, the compensation received is more than the money donated (*tabarru*ʿ) to the takaful fund. However, it is a Sharīʿah requirement in exchanges of money for money that the amounts be equal in order to avoid usury (Mohamad and Ab Rahman, 2010; Ali, 2016). This issue does not arise if the takaful contract that is used is based on the principle of *ṣadaqah* or waqf.

Another issue that arises in the current practice is *gharar*. *Gharar* can occur due to the way of *tabarru*ʿ contract that is applied in takaful activities under the *wakālah* model. This is because the participants maintain a type of possession over their donations and do not fully hand them over to other participants (Wahab, 2006). In this model, in case there is a surplus in the takaful fund that they contributed to as *tabarru*ʿ, participants can expect to receive a share of that surplus. Moreover, there is uncertainty in the stage and the access period of receiving the surplus. If a participant passes away, it is difficult to determine what amount the participant possessed in the takaful fund to be inherited by his/her heir (Wahab, 2006). If a waqf contract is used, there would be no such issues. This is because participants have endowed their property to help others and what is donated is no longer possessed by the *wāqif*, however, they can still be benefited from the waqf funds as beneficiaries.

The issue of *tabarru*ʿ in the *muḍārabah* model has been disputed since the very beginning of its use in takaful. This is because the contract basis of the *muḍārabah* model is *tabarru*ʿ instead of *muḍārabah*. Therefore, profit sharing cannot happen because takaful is not based on the the money donated contract. In addition to that, donations provided by the participants are not considered as the money donated capital (Wahab et al., 2007; Ali, 2016).

The basic issue of the *tabarru*ʿ contract itself is still being discussed among intellectuals. They differ as to whether it is *hibah bi al-*ʿ*iwad* (return-stipulated donation), *iltizām bi al-tabarru*ʿ (a contract entailing the commitment to donate), *ṣadaqah* (charity), *mu*ʿ*āwadah* (compensation) among others (Mohamad and Ab Rahman, 2010). Each of these contracts has its problems. For example, if the contract of *iltizām bi al-tabarru*ʿ becomes the basis of the takaful contract, the donated assets are still owned by the participants. They remain the property of the participants as long as they are not handed over by them to other participants as *tabarru*ʿ. However, there is uncertainty whether the share of the property that was handed over to other participants is considered as *tabarru*ʿ. The consequence is if the participant is bankrupt or dies or the heir is entitled to claim the property (Noor, 2009; Habib and Shaukat, 2016). This case is not included in the actual protection of the takaful scheme.

These problems require solutions. For this reason, the takaful waqf model was introduced. For example, in Pakistan, this takaful model has been successfully applied and widely accepted as a takaful model in society (Jaffer et al., 2010; Akhter, 2010; Hanif and Iqbal, 2014). This waqf-based takaful model product offers certain advantages to the customers. Customers or takaful participants will enjoy the compensation and protection of takaful as offered. Additionally, participants will gain the spiritual advantage of gaining reward from their wealth as they are helping others who are in distress. Participants will still receive a reward even after death as long as the endowed property exists and is utilised (Al-ʿUthaymīn, 2007; Wahab et al., 2007). Given Pakistan's successful experience in offering waqf-based takaful products, it would behove the Malaysian takaful industry to consider it as a basis for a new product that might provide wider benefits to the public (Mikail et al., 2017). To reintroduce the product, Malaysia would have to solve the issues related to waqf management and its law in the country. Previous literature has yet to provide solutions regarding the issues and challenges a takaful operator may face in practicing waqf-based takaful and its related law. Therefore, the objective of this study is to explain the concept of the waqf-based takaful model, and the challenges and issues related to its implementation in Malaysia and to provide some recommendations to overcome those issues and challenges.

2 Literature review

2.1 The concept of Takaful

Since Sharīʿah does not allow the modern conventional insurance system due to the existence of *ribā*, *gharar* and *maisir*, there is a dire need for a Sharīʿah-compliant insurance system for the Muslims around the world. Consequently, the Muslim scholars came up with the concept of takaful, which is based on the principle of *tabarruʿ* (donation), i.e., the contribution of participants into the takaful fund as a donation (Alhabshi and Razak, 2009; Nahar, 2015; ISRA, 2016; Hassan, 2020). The concept of takaful from the Sharīʿah perspective can be traced back to the ancient Arab tribal institution of *al-ʿāqilah*. This involved blood-money that was paid by a killer as compensation for his action; that money was collected from the killer's tribe, in particular from his paternal relatives (Ayub, 2007; Alhabshi and Razak, 2009; Salman et al., 2015). The Prophet (PBUH) acknowledged such practice. It is narrated that two women from Hudhail fought with each other, and one of them hit the other with a stone that killed her and what was in her womb. The relatives of the killer and the relatives of the victim submitted their case to the Prophet (PBUH), who judged that the blood-money for the foetus was a male or female slave, and the blood-money for the killed woman was to be paid by the *ʿāqilah* (the paternal relatives) of the killer (Al-Bukhārī, 2015). Such practice was beneficial for the victim's family in terms of financial assistance against such unexpected incidents. The modern takaful system also helps the participants and the family members of participants to receive financial assistance in their unexpected events in life.

Moreover, many *ḥadīths* show that the Prophet (PBUH) encouraged cooperation among the believers. He (PBUH) said: "Allah will always help His servant for as long as he helps his brother [in need]" (Al-Sijistānī, 2009), and he (PBUH) also said: "He who alleviates his brother from some of the sufferings of this world, Allah will alleviate him from suffering on the Day of Resurrection" (Al-Nisābūrī, 2015).

The Arabic word takaful is derived from the word *kafālah* which means a guarantee and responsibility and the word takaful means a joint guarantee and shared responsibility (ISRA, 2016). The IFSA (2013) defines takaful as:

> "An arrangement based on mutual assistance under which takaful participants agree to contribute to a common fund providing for mutual financial benefits payable to the takaful participants or their beneficiaries on the occurrence of pre-agreed events."

According to the AAOIFI (2015, p.678), takaful (Islamic insurance) is defined thus:

> "Islamic Insurance is a process of agreement among a group of persons to handle the injuries resulting from specific risks to which all of them are vulnerable. A process, thus initiated, involves payment of contributions as donations, and leads to the establishment of an insurance fund that enjoys the status of a legal entity and has independent financial liability."

By referring to these definitions and the operations of takaful, it can be highlighted that takaful has some distinctive features that distinguish it from conventional insurance. The main features of takaful operations are as follows:

1 The concept of takaful is not a contract of purchase between two parties at a certain cost or price; rather, it is an arrangement where the participants pay a donation to establish brotherhood and solidarity among the participants by helping each other in time of hardship (Alhabshi and Razak, 2009; ISRA, 2016).

2 The takaful operation must be in line with the Sharīʿah guidelines (Wahab et al., 2007; ISRA, 2016).

3 The takaful operator is not a risk-bearing party, this is because, in takaful, the participants mutually agree to secure and protect each other (Matsawali et al., 2012; Billah et al., 2019).

4 The takaful operator acts as a trustee/agent on behalf of the participants in takaful business operations (Alhabshi and Razak, 2009; Salleh et al., 2013; Amin and Hamid, 2014).

5 All contributions paid by the participants will be collected into the takaful fund to provide the takaful benefits in case a specified unfortunate event occurs (Wahab et al., 2007; ISRA, 2016).

6 Takaful funds (at the same time) may be invested in any investment approved by the Sharīʿah Committee (Salleh et al., 2013; Billah et al., 2019).

Table 1 List of takaful operators in Malaysia

No.	*Takaful operator*	*Ownership*
1	AIA PUBLIC Takaful Bhd	F
2	AmMetLife Takaful Berhad	L
3	Etiqa Family Takaful Berhad	L
4	Etiqa General Takaful Berhad	L
5	FWD Takaful Berhad	L
6	Great Eastern Takaful Berhad	F
7	Hong Leong MSIG Takaful Berhad	L
8	Prudential BSN Takaful Berhad	L
9	Sun Life Malaysia Takaful Berhad	L
10	Syarikat Takaful Malaysia Am Berhad (takaful Malaysia)	L
11	Syarikat Takaful Malaysia Keluarga Berhad (takaful Malaysia)	L
12	Takaful Ikhlas Family Berhad	L
13	Takaful Ikhlas General Berhad	L
14	Zurich General Takaful Malaysia Berhad	F
15	Zurich Takaful Malaysia Berhad	F

Source: BNM (n.d.)

2.2 Takaful in Malaysia

The takaful industry began to develop in Malaysia after the Malaysian National Fatwa Committee issued a resolution in 1980 that there are prohibited elements in the way the conventional insurance system provides insurance services. The Takaful Act was launched in 1984, and the first takaful company in Malaysia, Syarikat Takaful Malaysia Berhad, opened in 1985 (Redzuan et al., 2009; Ab Rahman et al., 2011; Sharifuddin et al., 2016; Othman, 2017). Malaysia has seen remarkable growth and development of the takaful industry since then, making it the leader among other Muslim countries (Othman, 2017; Billah et al., 2019). As of 2021, there are 15 takaful institutions operating in Malaysia for family and general takaful services (BNM, n.d.). Table 1 indicates the vitality of the takaful industry in Malaysia, with both local and foreign companies providing takaful services throughout the country. The growth of the takaful industry is a significant indicator of Malaysia's achievement of its target of being a global hub for Islamic finance.

Table 2 Sharīʿah concepts for takaful models in Malaysia

No.	*Takaful operator*	*Family takaful*	*General Takaful*
1	AIA PUBLIC Takaful Bhd	Tabarruʿ	
2	AmMetLife Takaful Berhad	Tabarruʿ/Wakālah/Qarḍ	
3	Etiqa Family Takaful Berhad and Etiqa General Takaful Berhad	Wakālah/Tabarruʿ/ Muḍārabah	Wakālah/Tabarruʿ/ Juʿālah
4	FWD Takaful Berhad	Tabarruʿ/Wakālah/Juʿālah/Qarḍ	
5	Great Eastern Takaful Berhad	Tabarruʿ	
6	Hong Leong MSIG Takaful Berhad	Tabarruʿ/Juʿālah/ Wakālah/Muḍārabah/ Qarḍ	Tabarruʿ/Juʿālah/ Wakālah/Wakālah bil Isismār
7	Prudential BSN Takaful Berhad	Wakālah/Taʿāwun	Wakālah/Tabarruʿ
8	Sun Life Malaysia Takaful Berhad	Tabarruʿ/Wakālah	
9	Takaful Malaysia – Syarikat Takaful Malaysia Am Berhad and Syarikat Takaful Malaysia Keluarga Berhad	Tabarruʿ/Wakālah/Qarḍ	
10	Takaful Ikhlas Family Berhad and Takaful Ikhlas General Berhad	Tabarruʿ/Wakālah	
11	Zurich General Takaful Malaysia Berhad and Zurich Takaful Malaysia Berhad	Tabarruʿ/Wakālah	

Source: Authors summarised

Takaful institutions in Malaysia apply a few takaful models that involve the combination of a number of Sharīʿah concepts, namely *tabarruʿ*, *wakālah*, *muḍārabah*, *juʿālah* and *qarḍ*. Based on a survey of the takaful operators through official websites, it is found that the *wakālah* model is applied by nine takaful operators for both types of takaful, i.e., family takaful and general takaful, whereas the *muḍārabah* model is adopted by a very few takaful companies. It should be noted that although the *muḍārabah* model is not highlighted in most of the takaful operators' product discloser sheets, the *muḍārabah* concept is mostly used in distributing the surplus of the takaful fund. Moreover, takaful companies in Malaysia offer various types of takaful services under family and general takaful such as motor vehicle, travel, health, home, education, business, and rider. Table 2 provides a glimpse of the takaful models that are used in Malaysian takaful operators.

Moreover, since the takaful industry is regulated by the Central Bank of Malaysia, also known as Bank Negara Malaysia (BNM), the operation of takaful must fulfil the Sharīʿah and legal compliance requirements. This applies to all types of takaful operators regardless of whether a company is local or foreign, or full-fledged or a window. This means that if a takaful operator is part of a conventional insurance or any other company, it must still follow the Sharīʿah guidelines once it is considered a takaful operator (Othman, 2017).

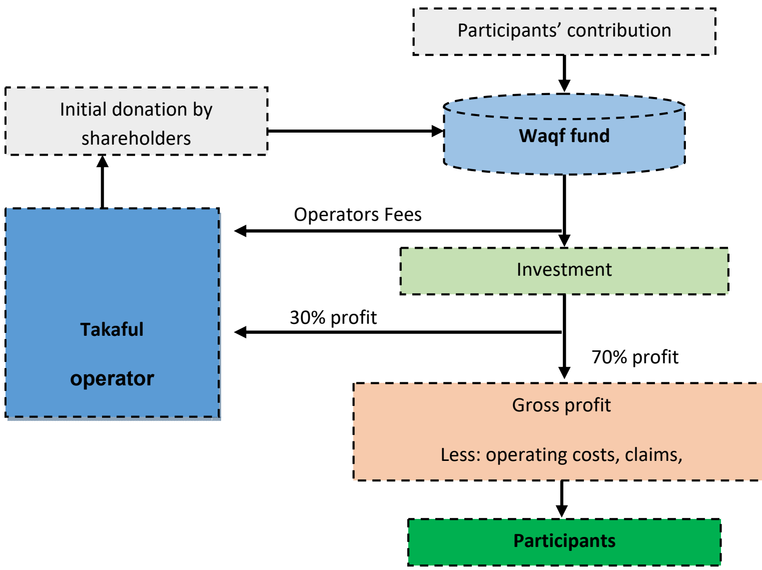
2.3 The concept of Waqf (endowment) and the Waqf-based Takaful model

Waqf is an Arabic word that means endowment. It is derived from the verb *waqafa*: to hold back or retain (Abbasi, 2021). Technically waqf refers to make an asset inalienable and assign its usufruct to charity (Ibn Qudāmah, 1997). Benefits of the endowed property are for general or specific welfare (as determined by the *wāqif*, i.e., the endower). The income, acquisition, or benefits of the waqf property should be spent on good causes. The property no longer remains the property of the endower; it shall not be taken back and shall not be owned by anyone. It is the absolute right of Allah SWT (Al-Zuḥailī, 1999). The concept of waqf is based on the *ḥadīth* in which ʿUmar (RA) asked the Prophet (PBUH) about a land that he owned in Khaybar. The Prophet (PBUH) said: "If you like, you may hold back the property and give its produce as charity on the condition that [the land] cannot be sold or given as a gift or inherited". Ibn ʿUmar said: "ʿUmar made a charitable donation of it, declaring that the property must not be sold or given as a gift or inherited. [He devoted its produce] to the poor, [his] relatives, to the emancipation of slaves, and for guests and wayfarers. And [he added that] there is no blame on the one who administers it to consume from it according to what is customary without appropriating it as [his own] property" (Al-Bukhārī, 2015).

The waqf model for takaful is a combination of the concept of takaful and waqf. This means that the participant becomes a member of a takaful plan provided that the participant pays a sum of money as waqf (which was classified as *tabarruʿ* in the previously discussed model). By that action the participants will gain both spiritual benefit (religious reward) and physical reward in the form of compensation when misfortune strikes since the money paid by participants in the takaful scheme is intended to assist other participants who are experiencing adversity (Ahmad et al., 2010). A waqf-based takaful model operation can be implemented when a takaful operator forms a waqf fund by donating a sum of money, and that money will remain in the waqf fund throughout the takaful activity. The takaful operator will invite the participants to donate money to the waqf fund (which is also a takaful fund). Later the waqf fund will be distributed in two accounts: participants' risk account (PRA) and participants' investment account (PIA). The waqf entity has the power to coordinate the funds therein and is also entitled to determine the amount of compensation that can be divided among participants (beneficiaries) in the event of a disaster (Ali et al., 2008).

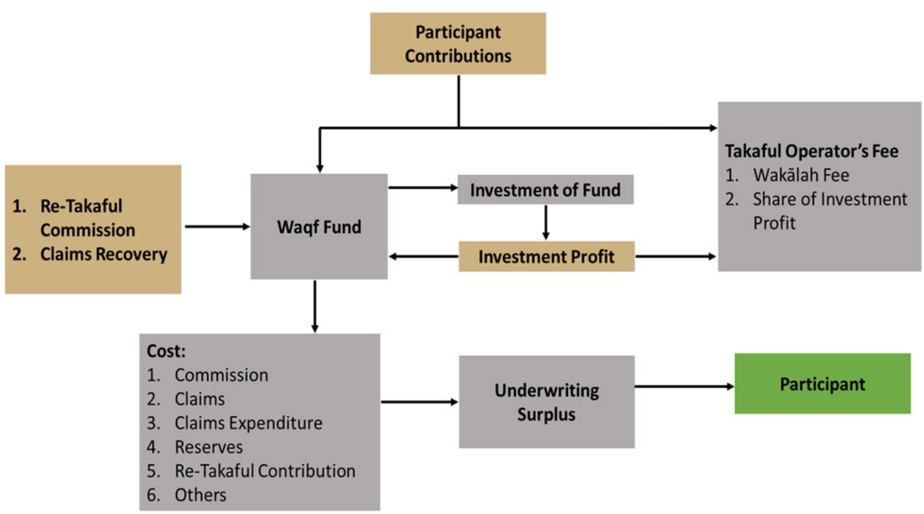
Takaful operators will invest in the PIA and the profit will be shared between the takaful operator and the waqf fund. PRA will be used for any claims, reserves, and re-takaful while any surplus that occurs in the waqf fund will be handed over to the participants. However, waqf takaful operations are still vulnerable to some confusion such as sharing of investment profits and surpluses submitted to participants. Figures 1 and 2 provide a glimpse of the practice of waqf and *wakālah* model in some takaful companies in Pakistan.

Figure 1 Waqf-based Takaful model in Pakistan (see online version for colours)



Source: Akhter (2010)

Figure 2 Waqf-based takaful model in Pakistan (see online version for colours)



Source: Zailani (2019)

After reviewing several operational forms of waqf takaful models, the study found that Pakistan's operation is favourable and in line with takaful practices today. The model practised in Pakistan is the *wakālah*-waqf takaful model. It is different from the waqf-based takaful model adopted by Takaful Malaysia from 2002 until 2009 (Rahaman and Yaacob, 2014; Zailani, 2019; Muhamat et al., 2019; Uluyol et al., 2021). The takaful model of waqf practised by Takaful Malaysia was based on the *muḍārabah*-waqf model. That model (*muḍārabah*-waqf) has some weaknesses, including the need for a guarantee against the investor's capital (*muḍārib*), which prevents the participants' intentions to make endowments, the reduction in waqf value due to investment loss, and the lack of contractual obligations when faced with high claims (Rahaman and Yaacob, 2014).

Therefore, the *wakālah*-waqf takaful model is the most appropriate to address the issue of *tabarruʿ* and *muḍārabah* issues of waqf in the takaful industry. Figure 1 demonstrates the flow of the takaful operation of this *wakālah*-waqf model linking participants and takaful operators through the waqf fund. Takaful operators are representatives who manage the waqf funds while participants contribute to the waqf fund. It instantly removes the element of uncertainty as the donation is in the form of waqf. The takaful contract between the participants and the takaful operator is the wakālah contract. Waqf funds are entities separated from both takaful operators and participants.

The takaful operator's business fees will be obtained by a deduction of 25% to 35% from the waqf participants' contributions while the rest of them will go into the waqf fund. Funds in the waqf fund will be invested (managed by the takaful operator). Any profit from the investment will be shared between the waqf fund and the takaful operator. In the event of loss, the shareholder will be liable to lend (*al-qarḍ al-ḥasan*) to the waqf fund. The income of the takaful operator company will be used for management expenses, and any loss or profit will be incurred jointly by the shareholders of the company. Funds in the waqf fund will be used for any claims, operating costs, and re-takaful. The surplus from the donation fund will be shared by the participants.

In terms of sources of income for this model, it would be the same as the normal *wakālah* model, which is gained from operator fees, service charges as *wakīl* and earning profits from investment activities as *muḍārib*. These sources would bear the company expenses related to the salaries of those involved in setting up operations and other kinds of company liabilities (Wahab et al., 2007).

3 Methodology

The study adopts an in-depth qualitative research approach to fulfil the objectives of this study. Qualitative research "involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or to interpret, phenomena in terms of the meanings people bring to them" [Denzin and Lincoln, (2005), p.3]. The qualitative method is ideal for this research since the objective of this study is to interpret the waqf-based takaful model in the Malaysian context. Moreover, qualitative research is also required to describe the issues and challenges that takaful operators would face in adopting the model. Qualitative data can be collected through various methods such as interviews, focus group discussions, library research, etc. (Booth et al., 2008; Bowen, 2009; Flick, 2018). This study adopts library research as its data collection method since the researchers find that a huge body of literature is available in library research that will enable the researchers to provide a fruitful discussion and solution to the subject matter. Moreover, since Malaysia is not currently practicing any waqf-based takaful model, other data collection methods might not be suitable to reach a data saturation. The literature on the concept of waqf and takaful and their practices has been collected from various resources such as books, journal articles, annual reports, conference papers and relevant websites. The data has been filtered for the particular topics and contents that fulfil the objectives of this study. To reach the objectives of this research, the study follows some data analysis processes such as the inductive approach. The inductive approach yields a general conclusion or result based on a number of observations of specific cases or concurrences. This approach is also known as the 'bottom-up' method (Lodico et al., 2010; Guest et al., 2012; Cropley, 2019). This study collects specific relevant studies on practices of waqf and its application in takaful companies in Pakistan; then, based on those specific studies' recommendations and findings, this study concludes with a result regarding the implementation of waqf as a takaful model in Malaysia. Moreover, the study also adopts a descriptive data analysis method since it requires addressing the issues and challenges that are faced by the takaful markets in applying the waqf concept.

4 Results and discussion

The literature proves that the concept of waqf is highly compatible with implementation in the takaful industry due to its flexibility when it comes to collecting funds and using them for the beneficiaries. However, there are some constraints on implementation. These constraints and challenges need to be addressed before the takaful model of waqf can be applied in the Malaysian takaful sector. The study addresses some of the challenges in implementing waqf in takaful as well as necessary improvements.

4.1 Cash waqf and its status in Sharīʿah

One challenge in implementing the waqf-based takaful model in Malaysia is the status of cash waqf, which is used in this waqf model. Scholars of the classical Islamic era differed on the permissibility of cash waqf. The concept of waqf implies the permanence of the property being endowed so that its benefits can continue. There is no scholarly dispute that immovable property is valid subject matter for waqf. Regarding movable waqf property, including cash waqf, the scholars have different opinions. There are three opinions regarding cash waqf in general.

The first group rejects cash waqf; this opinion is supported by scholars from the Ḥanafī (Ibn al-Humām, 2003) and Shāfiʿī Schools (Al-Māwardī, 1994), and it is also the final opinion of the Ḥanbalī School (Al-ʿImrānī, 2000; Ibn Qudāmah, 1997; Al-Mardāwī, 2004). They argue that the nature of money is changeability, and it is not useful unless it is consumed by spending it; thus, it contradicts the nature of waqf, which is to retain the endowed asset. According to the second group, cash waqf is disliked (*makrūh*). It is the view of the Mālikī scholar Ibn Rushd (Al-Hattāb, 2003; Ibn Rushd, 1988) since the money is changeable. The third group considers cash waqf to be permissible. This view is supported by the Mālikī School (Al-Ḥaṭṭāb, 2003; Al-Kharashī, 1997), by Zufar from the Ḥanafī School (Ibn ʿĀbidīn, n.d.), by al-Mardāwi (2004) and Ibn Taymiyyah from the Ḥanbalī School (Ibn Nujaim, 1997; Al-Baʿlī, 1978) and by Abū Thawr from the Shāfiʿī School (Al-Māwardī, 1994). The reasoning behind this view is that although the waqf substance in cash waqf is not permanent, it can be used or converted to other substances that are more permanent by buying land, a mosque, building a school, and others and that might bring more benefits to the beneficiaries.

However, the differences of opinion on cash waqf can be overcome by choosing a preferable opinion with some strong justifications. The plea must be done in accordance with the rules and methodologies performed by Sharīʿah scholars. It is also necessary to convince the public to accept the waqf-based takaful model in Malaysia. According to the researchers, the permissibility of cash waqf can be considered based on the evolution of the market and the demand for various types of financial services and aid to the people in the community. Cash waqf can support health care, education and other means of promoting human welfare (Ali et al., 2019; Uluyol et al., 2021). Moreover, cash waqf might help to establish more benefits for the beneficiaries compared to non-cash waqf, based on the concept of *maṣlaḥah* (benefit) (Mohammad, 2011; Ahmad, 2015; Jaʿfar, 2017) especially in the era of digitalisation of financial services. In addition, since there is no explicit prohibition from Sharīʿah texts, i.e., Qurʾān, and *ḥadīth*, and if such cash waqf does not cause any harm to waqf property/money, it can be considered permissible. This is based on the legal maxim: 'The principle of Sharīʿah in every matter is permissibility unless there is evidence of prohibition' (Al-Suyūṭī, 1997; Ismail and Rahman, 2013). However, considering the permanency/perpetuity of the waqf asset/money, the management of the waqf might convert the money into a permanent and immovable asset at a later time based on the situation. In this regard, Ibn ʿĀbidīn (2003) suggests that the dirham in waqf is something that is hard to determine in terms of its permanency. Thus, if money cannot be used by maintaining its physical substance, it should be converted to something more permanent.

In implementing the waqf-based takaful model in Malaysia, the takaful operator must strategise utilisation of the funds to meet the Sharīʿah requirement that the waqf asset must continue while at the same time fulfilling the participants' demands for compensation. Thus, the takaful operator must invest part of the waqf funds into investments of minimal risk. The profits from the investment will be used for the benefit of beneficiaries/participants. The practical question is how to maintain the waqf assets in the waqf fund in case there is increased demand from the beneficiaries. This scenario would make it difficult to stabilise the cash as a waqf asset, especially in takaful. It is, therefore, recommended that the cash be converted into a more permanent asset periodically for the sustainability of the waqf-based takaful model.

4.2 The legal position of waqf in Malaysia

A Malaysian takaful operator applied the cash waqf instrument using a *muḍārabah*-waqf model during the period 2002–2009 (Rahaman and Yaacob, 2014; Zailani, 2019; Uluyol et al., 2021). However, due to some issues, it could not continue. The issues of the application of waqf in takaful practices can be seen through its local jurisdictions. It should be noted that Malaysia's Federal Constitution placed Islamic religious affairs under the jurisdiction of the states, led by the Sultan (king). These jurisdictions include administration, marriage, zakat, and waqf. More clearly, the jurisdiction is detailed in Details 1, State List, Ninth Schedule, Federal Constitution as follows:

> "Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the

> religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom."

Moreover, Abdul Aziz et al. (2019), in a report on global waqf, state that Johor, Selangor, Negeri Sembilan, Terengganu, and Malacca decreed specific laws for waqf while the remaining states, including the federal territories, instituted waqf provisions under the general administrative laws. Thus, management of waqf is basically under the jurisdiction of the states. Consequently, takaful institutions have no power to own, establish or manage waqf funds that have been established through the takaful model of waqf. Hence, the State Islamic Religious Council, also known as Majlis Agama Islam Negeri (MAIN), is the sole trustee of all properties designated as waqf, whether it is a general or special waqf, and whether it involves movable or immovable property. Therefore, the money found in the takaful waqf fund shall be under the management of MAIN. To address this conflict, it is appropriate that MAIN appoints or makes an exclusion of a certain body, such as the takaful industry, to manage waqf funds in certain cases (Abdul Aziz et al., 2019; Che Mohd Salleh et al., 2020).

4.3 Management of the waqf fund in takaful

The challenge of implementing the waqf-based takaful model lies in liquidity and the operator's ability to manage waqf funds. For example, waqf funds that are formed in takaful practice are legal entities. This legal entity concept is accepted in Islamic law, wherein it is called *shakhṣiyyah iʿtibāriyyah* (Zulkifli, 2013; Abdullah et al., 2020). Consequently, takaful operators (or shareholders) and participants are not the owners of the takaful funds because they belong to the waqf itself. Takaful operators only serve as trustees or agents to handle and manage the waqf funds. If a waqf fund is a legal entity, it must be registered in any applicable law. It is a separate entity from the takaful institution that manages it. The question arises when a takaful institution experiences financial problems, whether it will affect the waqf fund and how the situation will be mitigated (Abdullah and Yaacob, 2012).

Likewise, there is the question of the ability of takaful operators to manage the waqf funds. This is because the waqf funds that the participants have endowed are no longer owned by them. Good management of waqf funds can guarantee benefits for the participants. Therefore, it is necessary that participants have a high level of trust in takaful operators before they endow the property as any claim to recover property in the event of abuse or the like would entail litigation, which could be a lengthy and expensive process.

4.4 Surplus distribution in the waqf-based takaful model

In the *wakālah* model and *muḍārabah* models of takaful, if there is any surplus, it can be divided between the participants and the takaful operator (Wahab et al., 2007; Ali, 2016). However, in the original waqf model, surplus cannot be divided because it remains part of the waqf. The waqf property does not belong to anyone; it remains under the possession of the waqf fund. Only profits from investments can be divided. This is likely to make the waqf-based takaful model unattractive to customers. In such a case, to attract participants, the takaful operator would have to utilise the profit to provide more benefits to the participants; for example, free additional medical check-ups, covering other family members for a specific benefit and so on. Therefore, implementing the takaful model of waqf in Malaysia requires a specific guideline to ensure its smooth functioning, reliability and liquidity (Wahab et al., 2007; Jaffer et al., 2010; Ali, 2016).

4.5 Proposed solutions and recommendations

Waqf has a very significant role to play in this modern era to provide social and economic supports to the community, and it can be extended to develop more community services such as hospitals, schools, elderly care, and so on (Zakaria et al., 2017; Abdullah, 2018; Hassan et al., 2020). Regarding the implementation of the waqf concept for takaful services in Malaysia, it should first be mentioned that due to the greater benefits of cash waqf a number of favourable fatwas have been issued by various religious authorities. The International Islamic Fiqh Academy (2004), the AAOIFI (2015), and the Malaysian National Fatwa Council (Ali and Markom, 2020; Aldeen et al., 2020) have issued fatwas that cash waqf is permissible, beneficial and compatible with the nature of waqf. Thus, there is no issue from the Sharīʿah perspective regarding the collection of cash waqf from the participants for takaful funds since it meets the requirements of waqf and provides required benefits to the participants/beneficiaries of the waqf.

Regarding the management of the fund by the takaful operators, the participants may appoint the takaful operator as the trustee/agent of the waqf fund to administer the fund in accord with the Sharīʿah rules of waqf. Regarding the issue of waqf being under the purview of state law, there are a few possible options to consider managing the waqf funds by takaful operators:

a A takaful operator could be formed as a subsidiary of MAIN's waqf fund specifically to manage the funds for waqf-based takaful services. In that case, there would be no need to change the law to allow a third party to handle the MAIN waqf asset since the subsidiary would be considered part of MAIN and thus eligible to manage the funds.

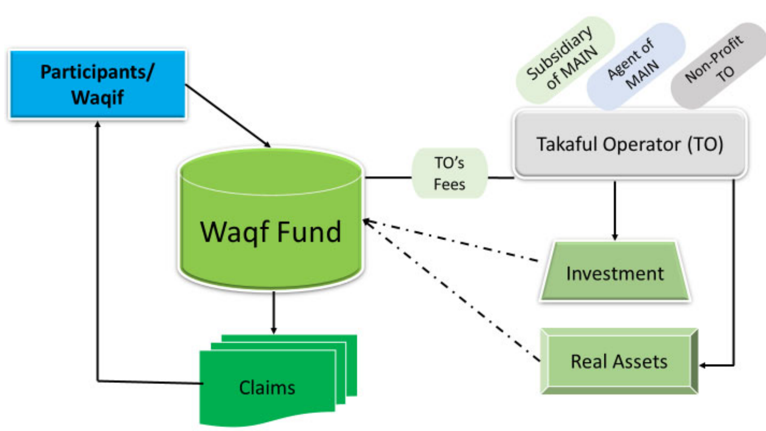
b A takaful operator, either in the form of a full-fledged company or as the subsidiary of any financial company, could act as an agent of MAIN to administer matters related to the cash waqf and provide takaful services. In this scenario, MAIN might pay the takaful operator the agency fees and let participants pay only the amount of cash waqf that they are bound for the takaful services.

c If MAIN or another legal authority (who has the authority to change the law) wishes to change or modify the waqf law in terms of its management, the takaful model under waqf might be the best option for the current takaful operators to provide takaful services based on waqf. In the waqf-based takaful model, the issue of demanding a return from *tabarruʿ* would be eliminated since waqf allows the donor (*wāqif*) to be among the beneficiaries of the waqf's benefits. Thus, receiving the compensation in takaful services would not be an issue. Regarding the waqf law in Malaysia, studies (Agil, 2019; Ali and Markom, 2020) urge the authorities to enact a proper and specific waqf law with comprehensive guidelines on regulatory and management policy that solve the current issues in cash waqf throughout the country.

The takaful operators must provide sufficient information to the participants about the takaful model based on waqf. This should include the benefits of waqf, rights, and responsibilities as *wāqif* and the adopted mechanism of waqf in providing the takaful services. The takaful operator as the entity responsible for managing the waqf fund should take precautionary measures in terms of investing the funds to derive profits from them. A portion of the waqf funds and its profit need to be converted to real assets so that the waqf asset has physical substance in reality in the case of default by the takaful operator or its closure due to any legal or natural disasters. Moreover, the surplus coming from the business of the waqf fund could be used for extra benefits of the participants where the takaful operator might increase the coverage of takaful services or provide premium services to the participants. In such a way, the waqf-based takaful model might impress and satisfy the participants for their contributions and participation while potential participants may become interested in contributing as well.

Based on the above discussion and recommendations, Figure 3 provides a glimpse of the waqf-based takaful model in Malaysia.

Figure 3 Proposed waqf-based takaful model for Malaysia (see online version for colours)



The proposed modus operandi for waqf-based takaful model is as follows:

- The participants would donate cash waqf to the fund operated by the takaful operator.

- The takaful operator could be established as a subsidiary company of MAIN, or an agent of MAIN, or it could be a non-profit organisation if the current waqf law can be modified.
- The waqf fund generally would be distributed towards an investment fund. It would utilise a small portion to purchase real assets, and the rest of the amount would be utilised for the claims from the *wāqifs*/participants.
- The takaful operator would receive the fees from the waqf fund based on the nature of the company.
- The surplus from the investment and real assets (if any), would be channelled to the waqf fund for the benefits of participants/*wāqifs*.

4.6 The procedure for introducing a new model/product in Malaysia

In Malaysia, a licensed company can introduce a waqf-based takaful model. However, the practice of a new model must go through some procedures required by the authorities such as BNM in the Malaysian context. According to the BNM guidelines (BNM, 2015), a licensed company must fulfil several essential requirements to introduce a new model. Some vital points are highlighted below:

- The licensed company must adhere with section 15 of the Islamic Financial Services Act (IFSA) whereby the new service or model should be under the permitted business or activities as stated in IFSA.
- The licensed company must acquire the necessary approvals from BNM and fulfil other regulatory requirements including conforming with policy documents issued by BNM and the Securities Commission of Malaysia (SCM).
- The licensed company must have proper risk management for the proposed new model. There should be an approving authority for the new model within the institution. The customers' perspective should be taken into consideration, and the company must ensure that it provides fair treatment to all customers.
- The licensed company must not introduce a product that is prohibited in other countries as it might raise public concern in Malaysia.
- A new takaful model which is not available in other countries can be introduced in Malaysia provided that it is approved by the Shariah Advisory Council (SAC). Moreover, the new model must always fulfil the Sharīʿah principles and guidelines set or approved by the SAC.
- The licensed company must establish a 'product management program' which provides product design, policies, procedures and pricing information, and it must designate the responsible authority to maintain and control the development of the product.
- The licensed company must maintain all the relevant documentation including internal analysis and product development and must be able to submit it to the BNM upon request.

5 Conclusions

Waqf plays a significant role in the realisation of socio-economic harmony, including the most important features of human life such as education, health, food, and accommodation. The generosity of the donors is considered so genuine that the waqf asset's ownership is transferred to the Almighty once the donors execute the waqf. The concept of waqf is vital and consistent with the practice of modern takaful services. However, the study finds that although the Malaysian takaful industry launched waqf-based takaful services a long time ago, due to some factors it could not survive. One of the factors is the disputed status of cash waqf among classical scholars, which led to reduce the confidence in the permissibility of this model among modern scholars. However, since the benefits of cash waqf have been proven to be greater than other kinds of waqf, it has gained the approval of many scholars and religious authorities, who have affirmed its permissibility in Sharīʿah. Moreover, the legal status of waqf in Malaysia requires more specific acts and regulations by the authority to be compatible with the modern development of financial markets and trends so that the waqf system can realise its socio-economic benefits on a greater level. Having a proper regulation of waqf might help to resolve all the legal issues that are faced by the waqf-based takaful services in Malaysia and to revitalise the use of waqf in various dimensions. In addition, the revival of the waqf-based takaful model would also provide an additional choice for takaful operators to offer while at the same time eliminating some issues that are faced in takaful models based on *tabarruʿ*, *wakālah*, and *muḍārabah*. Nevertheless, it should be noted that some challenges and constraints may remain in developing takaful on this model. These challenges and issues would need to be addressed to realise the benefits of implementing the waqf-based takaful model in Malaysia. Further efforts and research should be continually conducted by various parties to offer potential models and structures that suit the Malaysian context.

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