

Translating the Takaful “Islamic Insurance”: An Analytical Approach

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Abstract

In the last decades, Muslim societies have experienced multiple processes of modernization, as an example, in the area of finance. This marked among other things, the rise of Islamic finance particularly Islamic insurance (takaful). As a consequence, the number of Muslim literates in finance has increased tremendously as well as the number of texts, concerning Islamic legal rulings on Islamic financial transactions which involve Islamic insurance engaged in these finances. At the same time, the Islamic insurance has been channelled to compete or totally eradicate conventional insurance in the new Muslim financial markets or at least in the Islamic countries, and these has triggered disputes among the scholars as to the viability and originality of the Islamic insurance. The disputes over the originality and viability of Islamic insurance to replace conventional insurance might contribute to the emergence, in the Muslim countries, of a tradition of scholarly debates that would stress re-evaluation and innovation of the existing body of knowledge.

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Introduction

Well-known specialists in Islamic finance particularly Islamic insurance in Muslim countries, for example Ali al-Qurradaghi, Yousuf al-Shubayli, Sami al-Suwaylim, Abdul al-Rahman al-Sanad have contributed and shown that Islamic insurance is in line with the Islamic doctrine and as such, permissible in all forms and practices. The Islamic transmission delved into various parts of Islamic insurance physiologically. These transformation began from the theory, definition, distinguish features, modules operandi regulations etc. that would probably not really object to translation of the conventional insurance. These experts' ideas and contributions have been influencing the intending experts (future experts) and have been models of grooming the next generation of Islamic insurance experts. Investigations of some concerned experts in conventional finance and insurance economists such as Bianchi (2007) Annuar and Abu Bakar (2010) S&P's (2011) Olorogun (2013a, 2013b) Olorogun (2014) have proven that those early contributions are without faults. One of anxieties is that there were no reappraisals of the former publications on the parts of their proponents. It is not clear whether the lack of reappraisal is intentional or lack of awareness of those shortcomings. Thus, Cohen (2005) and Olorogun (2013a) have claimed it to show that the level at which human thinking accelerate which had created problems is not at par in the production of solutions to those problems. At the same time, some Muslim scholars such as Fahd al-Anzi (2009) has challenged the knowhow of the scholars in respect to conventional insurance and Musaffar al-Dawsari (2009) has shown that the practices of Islamic insurance is yet to be Islamic complaint.

Considering the requirements of becoming a well-seasoned Islamic insurance professional, it is crystal clear that those authors of earlier literatures might have not fulfilled these conditions. The conditions include being well versed in Islamic law or jurisprudence, professional in conventional insurance, versed in conventional management and finance. For example, al-Anzi (2009) argued that, there is no single university in the Muslim world where insurance being taught at graduate level i.e. certificate of Bachelor of Science (BSc.) being awarded. Conclusive, from Saudi Arabia to Malaysia in the hub of Islamic finance, there are none or few experts in conventional insurance.

Based on the above premises, this study aims to investigate the gaps between the conventional insurance and Islamic insurance. This is going to be done through analytical research method. The research would juxtapose four selected issues i.e. the definition, modules operandi, technical types, and differences between conventional and Islamic insurances. Dedicate analysis would be adopted to vindicate the inequities between the two systems. Therefore, this study is arranged as follows: the next section focuses on trends in Muslims' modern finance, evaluation of substances of conventional and Islamic insurances, and conclusion.

Trends in “Muslims” Modern Finance

While Islamic traditions of learning and scholarship before the mid-1970s was arguably presented and confined to Islamic monotheism, theology, and jurisprudence, immediately after the first Islamic economic conference held in Saudi Arabia in 1976 (Olorogun 2012), Islamic finance traditions of learning and scholarship have been transformed, in the last forty years. This transformation is much more intense in the area of Islamic banking and Islamic insurance. In the same way, the regional transformation is much more intense in Malaysia and the middle-eastern countries. The intensity of Malaysia was characterized by multiple processes of Asian financial crises, mass education, the emergence of Islamic civil society clamouring for mild-strict Islamic based financial transaction. In fact, this must have been motivated by the assumed financial crisis that was thought to have risen out of the capitalist financial hegemony. Today, Malaysia has been labelled as the hub of Islamic finance at academic and practice. The pace of development is not limited to Islamic banking as it were in other places rather, Islamic insurance particularly has witnessed much transformation such as Malaysian Government (2013) separation of operators into general, family and composite Islamic operations.

Islamic finance and specifically Islamic insurance boom has also become manifest in the development of a multitude of Muslims scholars known as “Shari’ah scholars” which express the changing in the legal rulings on transactions of the modern Islamic financial institutions and legitimize these changing perceptions of the faith in their transactions. Specifically, Islamic insurance was proclaimed *Shari’ah* compliant by these scholars i.e. *Shari’ah* advisory committee and dismissed conventional insurance as superfluous. Thus, Islamic insurance emerged and aimed to totally eradicate and replace the conventional insurance or at least compete with it. To make this profession transparent and convincing to the current and intending operators, Muslim scholars either secular or traditional have strived to translate it into an effort which included definition, stated its distinguish features, designed its modules operandi, and types of industry’s operational styles. Based on the existing literature, it is not certain whether those efforts asserted have fulfilled the dreams of Islamic insurance at both academic and professional levels. Therefore, the next section, i.e. translation section, juxtaposes the conventional and Islamic versions on the four areas of concentrations as stated in this section to adequately justify whether they are at par or not.

Evaluations of Substances of Conventional and Islamic Insurance

The development of Islamic finance specifically Islamic insurance has to be seen as a major break with the past when Muslims purchase protections, even if the conventional insurance acquired considerable recognition from the governments of the Muslim countries. The Islamic insurance system claimed that there are two parties in the business of Islamic insurance i.e. the operators and the owners of the funds who are officially known as the participants such as the conventional insurance clients. This fundamental assumption has reflected on the all veins of the industry, which are discussed in turn below.

Definition of Insurance

Conventional Insurance: Is a risk transfer mechanism through creation of common pool with equitable premium according to the magnitude of the risk brought to the pool (Schultz & Bardwell 1960; Dofman 1982; Rejda 1989; Mehr 1986; Olorogun 2013b). While there was consensus among insurers and their related professional on the definition of

insurance, the opposite is about the Islamic insurance. The Islamic insurance's definition is multiple according to different scholars views on what conventional insurance constitute. Some of them are stated below:

Islamic insurance is an agreement between the Islamic insurance operator who stands as a representative for the group of participants (Insurance account or insurance pools) between those that have interest in insurance (natural person or legal entity) by responsibility to compulsorily pay a certain amount as charity for the purpose of the pools to be paid when a peril occur in accordance to the insurance terms and fundamentals of Islam on commercial contracts (Al-Qurradaghi 2004, 2009).

Takaful or Islamic insurance as it is sometimes referred is built on availability of group of people who take responsibility to pay and participate in turn/round paid as in the form of tabarru' (charity) in the basket that has monetary independence managed by the insurance company for its purpose based on wakalah (agency) with wage/salary who use the funds to reinstate the participant (clients) from the funds on occurrence of specific peril in the creation of the insurance as agreed between the participants and the company, this basket is known as "Takaful basket" (Al-Qari 2009).

Islamic view of insurance, as agreed between those that approved it and those against it, is elimination of danger wholly and disintegrate its significance among the groups of Muslims. It is clear that the elimination of risks does not lead to revenue generation which is reward-able intended on charity (Al-Suwaylim 2009).

To analyse the above definitions it is obvious that the definitions have common aim but presented in different forms. In al-Qurradaghi's definition, it is clear that charity has to be compulsory and the operator is a representative of the policyholders. These two acts must be done in view of conventional insurance and fulfilment of Islamic injunctions on commercial contract. It is fair to ask that who will manage the affairs of the representative and what does compulsory charity mean to the participants and Islamic insurance? The second definition that is al-Qari is closer to the first definition only it clearly state that the insurance company is an agent of the funds' owners. The same questions as previously asked for the first definition. The third definition says that the takaful funds are created to eliminate risks among the participants. Does this correlate to the real life experiences? Nonetheless, these definitions aim to establish what the Islamic insurance stands to resolve but they were presented in multiple manner that need further standardization like that of conventional insurance.

This was the reason Olorogun (2013b) summarized those definitions by deriving common terms in those definitions and came up with a synthesized definition for all the scholars. Thus,

Islamic Insurance: Is based on the agreement between the Islamic insurance operator acting as an agent or entrepreneur on behalf of the policyholders (participants) and shareholders (natural person or legal entity) who agree to the payment of a specified amount (contribution) as donation (tabarru') to be paid when a specified peril occur (al-Qurradaghi 2004, 2009; al-Shubayli 2009; al-Suwaylim 2009; al-Sanad 2009; AAOIFI 2007, 2010; Olorogun 2013b).

Upon the vivid scrutiny of the two definitions stated above, Olorogun (2013b) evaluates these definitions, and pointed out that the Islamic insurance's definition is not comprehensive and undermined the full value of services the industry provided. Therefore, Olorogun vindicated the need to redefine the Islamic insurance on its real vision and mission and as such arrived at the definition below:

Islamic insurance' is understood as the agreement between the Takaful company and the participants or policyholders (natural person or legal entity) who agree to participate and share in a stated group of risk through the contribution of an equitable amount (donation). The contribution is according to the value of the risk in the participant's possession as an ordinary donation (tabarru') and to be paid when the specified peril occurs (Olorogun 2013b).

Comparing the above new definition to the conventional insurance, it is evident that they share common salient features such as both definitions stated that the entry fees that is, premium or contribution must be equitable to the risk brought to the pool (Olorogun 2013b). Another common trait between the two definitions is that the acclaimed agency contract was not available delegating the operators the power to dictate the rules and regulations of the pools' funds. In addition, the Islamic insurance contributions is only donation i.e. participants' contributions in charity form without any recourse of benefit in the future. As Olorogun (2013b) pointed out that making free donation would not confer on the operator (agent) power to institute a legal action against the participants (principals) in the event of deficit of the funds.

Types of Conventional and Islamic Insurance Business

Additional efforts employed to provide protection against future losses for numerically much larger and predominantly non-scholarly Muslim communities on the fundamentals of Islamic religion necessitate having a clear defined Islamic insurance business. Conventional insurance business or insurers are classified according to the type of services they render.

Conventional Insurance

Generally, conventional insurer that deal with tangible and intangible properties are called general insurer. Those that provide services on human life and loss of income through death and related hazards are called life insurers. For those that provide both general insurance and life assurance business/services are called composite insurance company (Dofman 1982; Rejda 1989; Schultz & Bardwell 1960; Mehr&Cammack 1980; Mehr 1986).

General Insurance Business

The general insurance business provides covers for loss or damage to properties insured. Normally, the buyers of insurance (henceforth insured) often classified into pools according to their risk exposure. The general insurance provides

cover against damage or destruction to properties by fire, theft, sickness insurance, travel insurance etc. The properties that are covered under general insurance are house, car, ship, aircraft, freight etc. One vital feature of general insurance services is that it a yearly renewable contract between the insured and insurance company/insurer. In other words, the cover against any expected peril is for a year. However, they can be renewed with the mutual consent of the parties involved (Dofman 1982; Rejda 1989; Schultz & Bardwell 1960; Mehr&Cammack 1980; Mehr 1986).

Life Assurance Business

Unlike the general insurance business, the life assurance business provides covers against loss of income due to the death of the breadwinner of a household. The buyers of life assurance program (henceforth assured) are often classified into pools according to the type of policy they requested. The programs available under life assurance covers are whole life assurance, endowment assurance, term assurance, pension schemes, annuities etc. One major feature of life assurance program is that they are long-term programs that can run for thirty, forty, fifty years. However, term assurance covers are the foundation of life assurance programs save they are yearly renewable contracts. Nonetheless, it has element of conversion thus, one of the types of term assurance is known as convertible term assurance and is five years renewable program, which allows the assured to convert their assurance policy to whole life or endowment assurance policy (Dofman 1982; Rejda 1989; Schultz & Bardwell 1960; Mehr&Cammack 1980, Mehr 1986).

Composite Insurance Company

This Company combines the services of the general insurer and life assurer and serves as an umbrella organization where the insuring public needs of protections are catered for at once (Dofman 1982; Rejda 1989; Schultz & Bardwell 1960; Mehr 1980, 1986).

In summary, these classes of operators share common salient feature such as they are professionals that is, they have professional bodies that regulate the skills of those operators. Running any form of these businesses requires a registration through an appropriate authority according to the country in question. This is to ensure the safety of the insuring public against insurers' recklessness. Above all, these common traits are the flexibility of insurance programs in general. In detail, the insurance covers that were mentioned earlier are not fixed iron or rock. Insurance covers are often tailored or designed in such a way that would fit into individuals' risks exposure. This orientation was based on the fact, that no two people would have the same risk exposure but can have similar risk exposures.

Islamic Insurance

Only in 2013, however, Islamic insurance operator/industry, which share similar aims and objectives with the conventional insurance and has gained recognition among Muslims and non-Muslims alike over the last forty years, was classified into general, family, and composite Islamic insurance operators (see Malaysia government 2013). Earlier, the operators run the industry as they wish. For example, all Islamic insurance companies in Malaysia before the lurch of the Malaysian Islamic insurance Act 759 of 2013 offers both family and general Islamic insurance business. Thus, before 2013 in Malaysia and elsewhere such as Saudi Arabia, Qatar, United Arab Emirate (UAE), Kenya, Nigeria etc. until this moment the industry has no specialization in terms of services provided. At least in Malaysia, however, the new Act 759 has set the pace for further standardization of the Islamic insurance industry. The act further states the authorized capital for the floating of any company they would carry on any of the business. Notwithstanding, it is important to be fair to the industry and state the current famous classification of the Islamic insurance operators:

General Islamic Insurance:The services provided by the general Islamic insurance industry are similar to that of general conventional insurance. The covers provided are yearly renewable covers. They cover losses and/or damages to the insured properties. The services provided include covers against fire, theft, sickness, travel insurance etc. In short, both general Islamic and conventional insurances shares similar substances. The renewal of any general Islamic insurance cover, after expiry date, is subject to mutual consent of the parties involved. To the best knowledge of the researcher, the Islamic insurance industry's capacity is yet to provide covers for marine and aviation losses. Arguably, the Islamic insurance is still at the infant stage i.e. under evolution compared to conventional insurance that had established over four centuries ago (Billah 2003; al-Qurradaghi 2009; al-Qari 2009; al-Suwaylim 2009; BNM 2007, 2010).

Family Islamic Insurance:The services provided by the family Islamic insurance industry are similar to that of life assurance industry. The covers provided lump sum or periodical income for the heirs of their clients who died from natural circumstances. The covers under this scheme are long-term contracts that can run for about twenty, forty, fifty years etc. The operators provide covers for Family insurance whole life, endowment etc. just like the conventional life assurance program (Billah 2003; al-Qurradaghi 2009; al-Qari 2009; al-Suwaylim 2009; BNM 2007, 2010).

In the context of Islamization or total eradication of the conventional insurance in the Muslim countries, the process of modernization and Islamically oriented finance have necessitated the need to make balance between modern finance literature and Islamic cannons. Thus, Islamic insurance is at the cross road of fulfilling and conquering the environmental challenges posed by modern capitalist finance and the compulsory satisfaction of their accountability to Allah. In an attempt to ground solutions to the problems facing the Islamic insurance operators, general or family, the Muslims scholars followed a legalistic approach and came up with modules operandi that would distinguish Islamic insurance operations from that of conventional operations. Thus, the scholars claimed that if insurance protection would be acceptable in Islamic discourse, there must be contractual relationship between the operators and their client i.e. insuring public. This modules operandi is based on Wakalah and Mudharabah as underlying contracts the covers should be based on.

Operational Substances of Islamic and Conventional Insurance

The same aims and objectives motivated the establishment of Islamic and conventional insurance industries. However, the models of operations or concepts of operations are two parallel lines that would never meet. In this section, the study looks at which industry has more standard and convincing operational substance and concept.

Conventional Insurance

The operational relationship between the insurer and the insuring public is in the form of seller and buyers. In other words, the seller is the insurer or insurance company who sells protections to the client in the anticipation of future losses. The business of providing protection has thus acquired the dimension in the sale of what is termed as soft products. Soft products are intangible products that cannot be seen with two naked eyes. Once this protection is paid for, which normally has limited period of at least a year, the provider takes all responsibilities of all liabilities that might arise during the term of the contract. Nevertheless, if everything goes well i.e. when there is no loss or damage to the property under protection the protection provider that is, the insurer swallows the premium. It is important to state at this junction that the operation of insurance and its underlying contractual concepts are generally standard across generation and regions (Rejda 1989; Schultz & Bardwell 1959; Mehr&Cammack 1980; Mehr1986).

Islamic Insurance

The attempts in translating and, subsequently, interpreting insurance business under the Islamic business ethics necessitate the adoption of *wakalah* (agency), *mudharabah* (investment), and combination of the two models as the underlying operational contract of Islamic insurance (Billah 2003; al-Qurradaghi 2009; al-Qari 2009; AAOIFI 2007, 2010). *Wakalah* model dictates that the relationship between the participants and the operator is an agency contract. The participants i.e. the contributors of the funds are the principal and the operators are the agent. The operators i.e. agent is entitled to agency fees and thus, cannot share in any profit of the funds (Al-Qurradaghi 2009; al-Qari 2009; AAOIFI 2007, 2010). The *mudharabah* model nonetheless; dictates that the relationship between the participants i.e. the funds' contributors and the operators is partnership in an investment where profits are shared in a predetermined percentage at onset of the relationship. However, in the event of loss the participants i.e. fund owners bear the loss alone. Where there is deficit in the owners' funds, the system provides benevolent loans "*qardhasan*" from the shareholders' funds (Al-Qurradaghi 2004, 2009; AAOIFI 2007, 2010). Whereas, the combinations of the two model is in form where a company adopted a model e.g. *wakalah* for some certain contracts and use other model i.e. *mudharabh* for other contracts.

However, these models of contracts also did not find undivided support. In particular, those stakeholders connected and familiar with conventional insurance such as S&P's (2011), Alpen Capital (2010) Am Best (2013) have criticized the roles of these models in bringing about lack of standardisation into the industry. Others from academic such as Annuar and Abu Bakar (2010) blamed these models for disparity in accounting policy across the industry and specific among operators in Malaysia. Similarly, Bashir and Haji Mail (2011) found out that the current system of Islamic insurance created lack of much needed products of Islamic insurance in Brunei. Likewise, Visser (2012) criticized the investment model of Islamic insurance as superfluous. Olorogun (2013a) evaluated the fundamental theory of *aqilah* (mutual consent) on which Islamic insurance was built and the findings showed that adopting *aqilah* concept as equivalent to conventional insurance concept was an erroneous concept. Am Best (2013) was also anxious about continuity of the benevolent loans (*qardhasan*) from the shareholders' funds without mechanism of paying it back.

In the same way, Olorogun (2013b) vividly scrutinized the *wakalah* (agency) model and found out that in actual sense, it is not an agency contract. This conclusion was based on the fact that in a normal agency contract (Shari'ah or secular) the principal has the right to dictate the terms of the contract. The current agency contract in Islamic insurance industry however, appropriate power to dictate and right to take legal action is given to the operators who are considered as the agents (Olorogun 2013b). What is not clear is whether the Islamic insurance has successfully eliminated *gharar* (ambiguity) and *riba* (usury) from its transactions. Another concern is about Islamic legal rulings on these models as each of these models has complex Islamic legal rulings and to what extent do the operators fulfill all the legal rulings of each of the models.

Other concerned individuals such as Siddique (2013) warned against "hikin" in Islamic finance using Malaysian as a case study. Bahty (2010) also lamented on the position of the Islamic insurance in the financial world. Among his concern is lack of standardization and *Shari'ah* disparity across regions. This makes regulation unification impossible and more difficult as *Shari'ah* disparity continues to grow. Similarly, the effect of unstandardized system was evaluated by Olorogun and Echchabi (2012) which showed that most of the respondents only subscribed to Islamic insurance because they are Muslims. Earlier, Loo (2010) investigated the level of acceptance of Islamic finance among Malaysians and he found out that the non-Muslims believed that Islamic finance is for the Muslims.

At this point, it appears that not a single part of Islamic insurance that does not come under constructive opposition. While all about conventional insurance is mostly standardized at least based on previous discussions; and the operational aspects of conventional insurance has been developed and well used, the opposite is for Islamic insurance. In fact, market players such as Tobias Frenz, CEO of Munich Re Takaful pointed out that the AAOIFI guidelines did not go into operational details (Middle East Insurance Review 2011). Thus, the main core issue in conventional insurance has never been taken into consideration in Islamic insurance specifically at academic level. Another important issue which was recklessly handled, or seems forgotten, is the logo or trademark of the Islamic insurance industry. The industry has been labelled with regional trademark such as in Saudi Arabia, the industry is known as "*ta'awuni*" elsewhere is known as "*takaful*". The implication of this in portraying the image of the industry to the advanced market such as in the U.S. is negative. Olorogun (2014) has pointed out that in marketing, trademark plays a pivotal role. Thus, for Islamic insurance to be able to compete or eliminate conventional insurance, it needs to present itself in a unified, attractive logo or trademark.

Conclusion

It is evident that the Islamic insurance industry proponents have asserted substantial strength to realize the dreams of the industry. However, it has yet a long way to go. Many of the so called achievements were marred by confusing theories and lack of critical review. It is understood that evolution is not an easy and quick process. Nevertheless, lack of reviewing of already made decisions might be among the challenges that the Islamic insurance faces the most. Conventional insurance has passed through rough ages but with constant reviews and adequate critical thinking process, the industry was up to its feet. Currently, there are no much different from the substances of the two industries. Nevertheless, it is obvious that all about Islamic insurance need further deliberations and solutions. It seems the elements of *gharar* (ambiguity) and *qimar* (gamble) which convention insurance was crucified upon is eminent in the Islamic insurance contract.

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