

Shariah Compliance of Wakalah Concept in Takaful Operation: A Case Study of A Takaful Operation in Malaysia

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Abstract

Objective – The main objective of this paper is to focus on *wakalah* model and its impact in takaful operation and to evaluate the compliance of takaful company with shari’ah principles in applying the *wakalah* concept.

Methods – Qualitative method which is based on library research. Reference to many books, articles, proceeding papers, handouts, journals, and internet source regarding wakalah by Etiqa Takaful Berhad.

Result–The finding of this research shows that the takaful operation in Etiqa Takaful Berhad relies solely on the role of agents to market and promote their products. The agents shall act in accordance with the agreement signed by both parties as to the duties and work to be done by the agent. Binding agreement between the agent and the principal in Etiqa Takaful Berhad is the Family Takaful Agency Agreement and the General Takaful Agency Agreement.

Conclusion –It can be concluded that the agency system should be further strengthened as it has important role in takaful business. Indirectly, it can enhance the development of Islamic finance in Malaysia as well as make it known to the society that it is a good system and can completely replace conventional insurance in this industry.

Keywords: *Wakalah*, Agency System, Takaful, Conventional Insurance

Abstrak

Tujuan - Tujuan utama dari makalah ini adalah untuk fokus pada model wakalah dan dampaknya pada operasional takaful untuk mengevaluasi kepatuhan perusahaan takaful dengan prinsip syari'ah dalam menerapkan konsep wakalah.

Metode - Metode kualitatif yang didasarkan pada penelitian kepustakaan. Referensi kepada buku-buku, artikel, makalah persidangan, handout, jurnal, dan sumber internet tentang wakalah oleh Etiqa Takaful Berhad.

Hasil - Temuan penelitian ini menunjukkan bahwa operasi takaful di Etiqa Takaful Berhad hanya bergantung kepada peranan agen untuk memasarkan dan mempromosikan produk mereka. Para agen harus bertindak sesuai dengan perjanjian yang ditandatangani oleh kedua belah pihak mengenai tugas dan pekerjaan yang harus dilakukan oleh agen. Pengikat kesepakatan antara agen

dan prinsipal di Etiqa Takaful Berhad adalah Perjanjian Agen Takaful Keluarga dan Perjanjian Agen Takaful Umum.

Kesimpulan - Dapat disimpulkan bahwa sistem agen harus lebih diperkuat karena memiliki peranan penting dalam bisnis takaful. Secara tidak langsung, ia dapat meningkatkan perkembangan keuangan Islam di Malaysia serta menjadikannya dikenali masyarakat bahwa itu adalah sistem yang baik dan benar-benar dapat menggantikan asuransi konvensional dalam industri ini.

Kata Kunci : *Wakalah*, Agency System, Takaful, Conventional Insurance

1. Introduction

The existence of many Islamic Financial System operators lately gives new hopes to the Malaysian society particularly Muslims to enjoy a system based on divine revelation. The initiative made by the Central Bank of Malaysia (BNM) to grant licenses for the establishment of Islamic Banking and Takaful to a number of financial institutions should be applauded and appreciated for making it easier for the society to choose in getting fair, transparent and efficient financial services.

Takaful is a growing and fast developing industry. The main reason behind the introduction and development of takaful is to offer an Islamic and Shari'ah alternative to conventional insurance. Thus, similar to conventional insurance, takaful is designed to provide protection and indemnity to both individuals and corporate bodies against loss or hazards to their selves or properties.

This paper aims to provide the experience and latest progress of the mode of *wakalah* in the takaful (Islamic insurance) industries. Malaysia is chosen for the purpose of illustration of the application of this concept due to several reasons, mainly being that it is the pioneer of the use of this concept in the South East Asia, the availability of the data and information. Briefly, the first Islamic insurance in Malaysia was established in 1984. The 1985 Fiqh Academy ruling declared that conventional commercial insurance was forbidden while insurance based on the application of cooperative principles, Shari'ah compliance and charitable donations, was acceptable. To present an in-depth

discussion, this research will examine the use of *wakalah* by the one of the biggest takaful operators, which is Etiqa Takaful Berhad.

2. Methodology

This research is using qualitative method which is based on library research. Reference to many books, articles, proceeding papers, handouts and journals will be made in order to find reliable information on *wakalah* and its related issues and problems. Besides that, this research will also make use of reliable sources from the internet particularly relevant databases and websites including the Etiqa Takaful Berhad, International Shari'ah Research Academy for Islamic Finance (ISRA), Malaysia International Islamic Financial Centre (MIFC), Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and Bank Negara Malaysia.

2.1. *The Theory and Concept of Wakalah*

A contract in Islamic Law includes both bilateral as well as unilateral contracts. A contract can be defined as the connection of offer and acceptance that results in legal effects on the subject matter of the contract. The idea of having contract is to satisfy the consent of both parties to a contract. It seems that contract is the best available means to reflect the intention and the consent of the parties; not only in the Islamic legal system but also in other legal systems.

The nature and classification of a contract in Islamic law depends greatly on the purpose of concluding the contract. *Wakalah* is one of the contracts in Islamic law. It is also known as contract of agency. In which, it is an authorization of the agent to act on behalf of the principal, with or without fee. Before a further discussion is undertaken, it is necessary to have a brief and clear understanding of the underlying concept of *wakalah* in Islamic Law.

2.1.1. The Definition of *Wakalah*

Literally, the term *wakalah* is a noun of the word *wakala* which has several meanings, including agency, representation, proxy, mandate, authorization, delegation and empowerment (Hassan 1998). In technical terms, *wakalah* refers to authorizing another person to undertake any dealings on one's behalf. It is also known as an agent.

Scholars have different opinions regarding the meaning of *wakalah* technically (Hendi 2008).

1. The Maliki School holds that *wakalah* is:

“One replaces (occupies) a place of another in the right (duty), he is managing at that position.”

2. The Hanafi School views that *wakalah* is:

“One replaces the other people in the management.”

3. The Shafie School opines that *wakalah* is:

“Like a person hand over something or a job to another during his lifetime”.

4. The Hanbali School contend that *wakalah* is a demand of replacement which gives a balance management to another person in where there is a replacement of Allah's rights and human rights.

Based on the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) Shari'ah Standard, Standard No.23, Clause 2/1, *wakalah* is the act of one party delegating the other to act on its behalf in what can be a subject

matter of delegation (Islamic Financial System 2012). *Wakalah* is basically a non-binding contract, whereby the principal or the agent may withdraw at any time by a mutual agreement, unilateral termination, discharging the obligation, destruction of the subject matter and the death or loss of legal capacity of the contracting parties.

2.1.2. Sources of Legitimacy

The contract of agency is legally approved and practiced on several evidences from the Al- Quran, As-Sunnah and Ijma’.

Al-Quran

“Now, send one of you with your money to the town. Let him find out which is the best food (to be had) and bring some to you, that (you may) satisfy your hunger therewith: and let him behave with care and courtesy: not inform any one about you.” (Surah Al-Kahfi: 19)

“Commission two arbiters, one (representative) from his family and one

(representative) from hers” (Surah An-Nisa’:35)

“Alms are for the poor and the needy and those employed to administer the funds...”(Surah At-Taubah: 60)

In general, these verses specify various types of agencies which include appointing an agent to buy food, an agent to be the arbitrator and the agent to collect the charity or the *zakat*.

As-Sunnah

“Narrated by Jabir r.a, he said: I went out to Khaibar, and I came to the Prophet s.a.w he said, “If you meet my agent, take or ask from him fifteen wasq.” (Sunan Abu Daud).

“Narrated by Jabir r.a, that the Prohet s.a.w slaughtered his sacrifices of 63 animals and Ali karramallahu wajhah was asked to slaughter the sacrifices animals that have not been slaughtered yet.” (Sahih Muslim)

“Indeed the Prophet s.a.w delegate to Abu Rafi’ and the other from the Ansar, afterwards they marry the Prophet s.a.w with Maimunah r.a.” (Malik’s Muwatta)

Several hadith above, clearly shows the practice of *wakalah* by the Prophet’s *s.a.w* and his companions. This system was a common practice in the early period of Islam. In fact, Prophet Muhammad *s.a.w* was directly and indirectly involved in *wakalah* and encouraged its proliferation.

A consensus of Muslim scholars agrees on the permissibility of the *wakalah* contract, due to the people’s desperate need of assistance in accomplishing certain tasks that they are incapable of doing on their own (Islamic Financial System 2012). It has been stressed by Ibn Qudamah that they had accepted the concept of *wakalah* as a declaration because it is needed by all people in various forms of activities. The *wakalah* contract which is made into Islamic laws indicates that human behavior is weak, cannot live alone and require one another to manage the affairs of their life. Islam promotes the use of *wakalah* in various fields of activities as long as they do not contravene with the Shari’ah principles (Jemizan 2011).

2.1.3. Types of Wakalah

The *wakalah* contract can be divided into several categories based on the various nature of the contract. It can be seen through its scope of authority, sources of authorization and payment to the *wakil* or agent.

2.1.4. Scope of Authority

The scope of authority of the agent can either be general (unrestricted) or specific (restricted). General delegation is where the principal give a command or instruction without specifying any conditions. For instance, the principal asks the agent to buy a house without specifying the location, types or price of the house. While in specific delegation, the principal identifies certain requirements to the agent, such as price, feature and mode of payment. For example, the principal says ‘Buy me a car which costs about RM100, 000 via installment payment’.

The Hanafis and Malikis view that a general *wakalah* is permissible, while the Shafie and Hanbali scholars rule that it is invalid as a general agency may lead to excessive uncertainty (*gharar*). However, all jurists agree on the permissibility of the specific agency (Sa’id 2007).

2.1.5. Sources of Authorization

From the perspective of sources of authorization, *wakalah* falls under the category of agreed deputation (Deen 1995). In this type of deputation there must be an agreement between the principal and the agent in order for it to be valid. As such; it fits the requirement of *wakalah* since in *wakalah* there must be a mutual agreement reached between both concerned parties. The agreed deputation also includes testament (*wasiyyah*) and an unauthorized act (*fudalah*). It refers to an action undertaken by a person regarding other person’s affairs without getting prior consent or legal authorization or will from that other person.

Although these three types of contracts belong to the same category of agreed deputation, the manner in which they are executed may be differ. The differences occur at either the point in time when the agreement is reached or the point in time when the disposition is undertaken. In *wakalah*, the agreement and the disposition are undertaken during the principal's lifetime, whereas in *wassiyah*, the disposition is undertaken only after the death of the principal. In *fudalah*, the act happens during the life of the principal, but the agreement is reached only after the act was undertaken, whereby it becomes valid when the principal ratifies the act (Hairul 2010).

2.1.6. Payment to the Wakil

The *wakalah* contract can be valid with or without the *wakil* or agent being paid a wage. The basis for the permissibility of paid agency is due to the fact that the agency is useful work for which the agent has the right to ask for remuneration. When the agency is paid, its ruling falls under the ruling of *ijarah*. Thus, if the agency involves delivering an item to the principal, the agent is entitled to his wages upon delivering the object. During the Prophet's *s.a.w* period, he had paid his agents for the collection of charities. It was narrated by Abu Hurairah in Sahih Bukhari and Muslim (Sa'id 2007).

Furthermore, in a contract where the agent is entitled to a wage, the principal may stipulate a condition that the agent does not terminate the agency before an agreed date. If the agent terminates before the agreed date, the principal will not be required to pay any wages to the agent. Nevertheless, the unpaid agency is also allowed and it will be regarded as a form of charitable act (Sa'id 2007).

2.1.7. The Elements of Wakalah

For the elements of *wakalah* contract, the Hanafi scholars assume the same approach as in other contracts, whereby it consists of offer and acceptance (*sighah*) only. On the other hand, other scholars including the Syafie, the Maliki and the Hanbali are of the opinion that it comprises of four elements, namely: offer and acceptance, the principal, the agent and the object. In a contract of agency, the person who authorizes the power is called the principal (*muwakkil*) and the person who is appointed to exercise the power is called the agent (*wakil*) and the subject matter of which the authority is given to exercise the power is called the object (*muwakkil bih*) (Ghafar 2010) which in the takaful operation, it refers to various takaful products and plans.

2.1.8. *The Conditions of Wakalah*

Each of the elements needs to fulfill certain conditions as underlined below:

a) *Offer and Acceptance (sighah)*

Sighah means a pronouncement of delegation. It is pronounced by the principal and the agent as a symbol of pleasure to delegate a job and to accept it. The jurists agree that the acceptance of *wakalah* is not restricted to verbal indication only. It can be established through several other means such as action, writing and sign (gesture). The jurists also rule that the acceptance can either be done immediately or delayed (Idris 1986).

b) *The Principal (muwakkil)*

The principal must be a person who own the goods or under his authority to act on the property. The principal must also be a person who eligible to take the action and should possess a sound mind. Hence, a *wakalah* from an insane or a child is invalid.

The Hanafi scholars viewed that a *wakalah* from a child in financially

beneficial actions such as accepting gifts is permissible. Whereas, in intermediate cases where the action may lead to financial gains and losses such as trading and leasing, the permissibility of a *wakalah* from a child is depends on whether he is allowed to deal with those actions (Hendi 2008).

In addition, the principal should make a delegation based on his own free will without any coercion from others. It goes same to the agent where he should not be forced in conducting the task given to him

c) The Agent (wakil)

The conditions of the agents are quite similar with the principal. The agent must be a person who has a sound mind, otherwise the contract is invalid. According to the Hanafi School, a child who can differentiate between the good and bad things is permissible to be a *wakil*. This is interpreted from the fact that during the Prophet's *s.a.w* period, Amar bin Sayyidah Ummu Salamah married her mother with the Prophet *s.a.w* in which he was a child who is not *baligh* yet (Sabiq 1977).

d) The object (muwakkil bih)

The object of the agency contract should be eligible for legal authorization such as financial matters. The agency is not permitted in pure acts of worship such as prayer and fasting, oath-taking and testimony. Meanwhile, in acts of worship that have a financial element such as *zakat*, *haji* and slaughtering sacrificial animals, the agency is allowed by most scholars.

Moreover, it should not involve activities which are prohibited in Islam or acts of dishonesty such as theft and usurpation of property. According to the Shafie School, the object must be known in order to avoid uncertainty (*gharar*). Nevertheless, minor uncertainty that does not result in dispute among the contracting parties is

allowed. The Hanafi School is of the view that such object cannot be the utilization of public properties such as the collection of wood from public lands (Islamic Financial System 2012).

Generally, the concept of *wakalah* in takaful operation can be a specific and restricted *wakalah* as its contract may be varied depends on the takaful products. Indeed, the agent of the takaful company gets their own wages and remunerations. Thus, it also falls under the category of paid *wakalah*.

As to the conditions of *wakalah*, its application in takaful operation does comply accordingly to Shari'ah principles as described previously. The offer and acceptance of both contracting parties were normally done in verbal and writing. The principal and the agent are both capable to enter into the *wakalah* contract as the agent is a person who employed by the takaful companies whereas the principal is a person who has a sound mind, has a good job, and background. The object of its contract has been permitted under the shari'ah principle. Generally, it has been a donation among the participant which is really encouraged in Islam.

2.2. *Wakalah in Practice*

In contemporary society, an agent plays an important role in the propagation and promotion of an insurance practice especially Islamic insurance in Malaysia. An agent in an Islamic insurance practice may be appointed by the insurer which is takaful company. The appointment could either be on the part time or full time basis. The agents employed by the takaful company are bound by the contract of *wakalah*.

2.2.1. *Role of Agent*

Takaful agents are legitimate agents licensed under the Takaful Act 1984 as

authorized by the takaful company to perform the marketing of takaful products and work with the participants on behalf of the takaful company. Takaful agents can provide financial relief to help the participants bearing misfortune in the event of loss of property and building the discipline to save money among them. They also help the participants to ease the burden of liability by providing financial relief if the participants died (Buku Panduan Asas Takaful 2007).

Through the role of agent, the non-Muslims may also know about the Islamic finance products. Furthermore, Malaysia has multi-ethnic and multi-religious people. It can also be a method of missionary (*dakwah*) to indicate the outsiders that Islam is very beautiful as it includes all aspects of life.

According to Islamic perspective, belief and faith are important in creating the foundation of a Muslim character. Courtesy of the property, energy, attitude, good advice, sympathy, pleasant disposition and delicate language is an advantage of human beings as creatures of Allah, the most beautiful and perfect. Therefore, our duty as a Muslim and in discharging the role as a takaful agent generally must have a good morals and manners such as honest, trust, deliver, patience, dedication and wise (Buku Panduan Asas Takaful 2007).

2.2.2. Function of Agent

Generally, the agent functions as a person who market and distribute the company's products. The agent must perform according to the instructions of the takaful company as well as the principal needs and exercise due care and skill. He must also avoid conflict of interest. For example, the contribution collected from the participant should be adequate and submitted to the takaful operator within the prescribed time.

The agent's responsibility may include identifying the potential participants and disseminate information regarding the concept and policy practice in takaful business. They need to explain precisely for gaining a comprehensive understanding and avoid misconceptions (Ma'sum 2003).

Moreover, the agent is obliged to convince people about the advantages of takaful operation compared to the conventional insurance in order to gain competitiveness and good credibility. The agent may also assist the takaful company by collecting fund from the participant. Since they are representing their company, it is very important for them to produce a good image and build a strong relationship with the principal to maintain the credibility and integrity of takaful business (Kabir and Lewis 2007).

In marketing stage, the agent needs to gain clear and accurate information of the participant before noting them down in the application form. Before completing the form, the participant must be informed of Section 28, of the *Takaful* Act 1984, which emphasized on the importance of complete and honest answers. This is due to the legal implication that could render the contract invalid. If non satisfaction exists among the participants, it will be directed to the company, very rarely to the agent himself. It will also result to a bad reputation of takaful company (Hairul 2010).

The agent needs to inform and notify the takaful operator immediately of any incident or circumstances which may give rise to a claim against the takaful operator. In other words, the agent shall disclose all material facts or any risks to be undertaken by the takaful operator. If not, the takaful operator may terminate the contract depending on the situation.

2.2.3. Problem of Agency System

The agency system will grant a positive contribution to society by introducing and spreading the concepts of mutual assistance, cooperation, and good will among the general public. This system brings good and promotes public interests and values that are in accordance with the Shari`ah objectives.

Nevertheless, it is impossible for a system to have no defects or problems, especially a system that interacts directly with the society. Moreover, when the system depends on human interventions, which is subject to a variety of human emotions and judgment, as for example, the agency system. In the agency system, the agent may come from the people in the society which could be various kinds of people and totally have different types of behavior and attitude. Not all agents will consistently obey the rules that have been set up by the takaful company.

The former director of the agency department of Takaful Nasional Sendirian Berhad (TNSB) which is now known as Etiqa Takaful Berhad indicates three problems in agency system. It should be emphasized that the overall system does not cause these problems, but it is the result of agent's action which is human aspect. It consists of three different area of the agent's job such as the acquisition of takaful application, collection of contribution from the participants and the delivery of takaful certificates to the participants (Hairul 2005).

In the acquisition of takaful application, the agent uses different ways to achieve their target potential participants including presentation, advertisement and publication. Nowadays, the agents have their service advertised in the internet through their personal page, web or blog. The problem is about the content of the information itself. Sometimes, the agent will produce their own version of information regarding the services and plans offered which is contrary to the standard of company

coverage and offer. As a result, the participant will be confused.

With regard to the collection of the contribution from the participant, some agent does not hand over the contribution money as soon as possible to the company once the money had been collected. The takaful company had given a reasonable time limit to the agent for the handing over process, but it is still ignored by the agent. If it still continued, it will lead to the misappropriation of contributions. Thus, it infringes the contract between the principal and the agent.

Lastly, the issue of delivery certificates to the participants. Some of the agent failed to deliver the certificate after making the sale. It shows that the agent failed in their responsibilities. However, not only that, it has tarnished the image of the takaful company too. It will reduce the confidence of the participants toward the takaful company.

2.2.4. Advantages of Agency System

Even though there is negligence and misrepresentations done by the agent, the benefit of using agency system far outweighs any other loses cost incurred by the takaful company. Islam aims in all of the provisions of its teaching to achieve the interests of people and their happiness. Islam also brings benefits to them, and prevents an evil and harm from them. It is easier for them to lift all the embarrassment and discomfort.

Indeed, takaful agent provides the needs of a person who are unable to work directly on their own by prior introducing and spreading the benefit of takaful operations. For instance, people who have permanent disability due to an accident never lose their income even though he cannot work properly as before. It is because they have a takaful account to cover their incapability. It also provides relief to people in

distress and fulfills their needs arising out of any sudden calamity and disaster (Ridhwan 2012).

From a socioeconomic point of view, the government is being assisted by the agency system in which, it reduces the number of people who depend on charity and public relief. This system will introduce the society to self-reliance by using takaful operation. It also helps the society in developing an attitude of helping one another who are in distress or in needs.

The agent will enlighten the society to the importance of saving their money in a good, safe and systematic manner. It also provides an alternative to the Muslims to save their money in accordance with the Shari'ah principles. In addition, it also helps the growth of Islamic economic and finance in a developing country such as Malaysia.

Furthermore, in an economic point of view, the agency system helps the takaful company in improving their performance. The agent plays a vital role in explaining the beauty concept of brotherhood, solidarity and mutual assistance in takaful which differentiates it from the conventional insurance. Indirectly, it also helps in reducing unemployment rate in the country where the agent can works on part or full time basis (Hairul 2010).

3. Results and Discussions

3.1. The Use of Wakalah in Takaful Industry in Malaysia

The Malaysian takaful industry has experienced rapid growth and transformation since it was founded 29 years ago. It has grown from an industry comprising of a single player with limited basic products to become a viable

industry that has been integrated into the mainstream financial system. This was achieved through the concerted efforts of Bank Negara Malaysia and the takaful operators in developing a dynamic, resilient and efficient takaful industry (www.bnm.gov.my 2004). Central Bank of Malaysia had listed down several names of takaful operator in their website. It is interesting to see the performance of *takaful* company that applied the system of agency (*wakalah*). This research will examine the use of *wakalah* in Etiqa Takaful Berhad.

3.1.1. The use of wakalah in Etiqa Takaful Berhad

Takaful Nasional Sendirian Berhad (TNSB) is a subsidiary of Malaysia National Insurance (MNI) Berhad. It began its Takaful operations in 1993, with the birth of MNI Takaful Sdn Bhd. In general, it was set up to provide insurance based on the Shari'ah principles to the Malaysian public, as an alternative to conventional insurance. In particular, it will provide the industry with the desired level of competition, which was lacking prior to that and which the industry had longed for (Hamisah 2001).

In 2005, Malaysia National Insurance Berhad, and its subsidiary, Takaful Nasional Sdn Bhd, had been merged with Maybank Ageas, Maybank's insurance and takaful arm. This merger has boosted Maybank Ageas to the position of second largest insurer in Malaysia. At the end of 2007, the merger has reached its climax by rebranding the entire Insurance and Takaful group to the new brand name, Etiqa. It was only a name rebranding as its operation will still remain the same. Malaysia National Insurance Berhad is known as Etiqa Insurance Berhad, while Takaful Nasional Sdn Bhd is renamed as Etiqa Takaful Berhad (www.etiqa.com.my 2013).

Etiqa Takaful Berhad has two types of products, namely the Family Takaful and the General Takaful. The Family Takaful product covers a death claim, education, total

and permanent disability, critical illness and others. While the General Takaful covers the claim which involves with vehicle, property, engineering, marine and aviation risk. The research will only focus on the Family Takaful Agency Agreement in order to determine the compliance of its operation to the theory, concept and the practice of *wakalah* as being discussed previously.

The agency agreement specifically governs the relationship between the Company and its appointed agents. The sample of agency agreement shows that the contract is between the principal that is Etiqa Takaful Berhad on one part and the agent on the other part. The agreement is reached by both parties by putting down their respective signatures in the presence of witnesses on the last page of the agency agreement. This is a form of an agreed deputation and it is the standard procedure regulating the agreement on majority of contracts.

The nature of the Family Takaful Agency Agreement is a form of a special or restricted agency. The appointment of an agent is for a particular disposition, such as to transact family takaful business on behalf of the operator. The agent is under obligation to dispose within the scope of that particular disposition only. He or she is not allowed to exceed this limit such as by procuring and transmitting applications for general takaful as it has its own agency agreement. It clearly states in the special conditions of Section 3 of the First Schedule and Clause 3.1 of the Family Takaful Agency Agreement.

In Clause 9 of the agreement, the operator shall be entitled to terminate the agreement if the agent fails to comply with the provisions of any prevailing statutory provisions governing the family takaful business. The agent shall also indemnify the operator against all losses, costs and damages arising out of their breach of the

agreement. Furthermore, the agent working on behalf of Etiqa Takaful Berhad is bounded by certain confinements and restrictions under the terms and conditions of the contract, as imposed by the Company. An example of this restriction in which the agent is obliged to follow is to be found under Clause 7 and Clause 8. Both clauses explain the positive and negative covenants by the agent.

Henceforth, the research will further examine the payment of the agent, whether the agent must be remunerated for the service rendered in the Family Takaful business or not. Referring to Clause 6, it provides the rules of agent's remuneration. The agent shall be entitled to a commission at the rates already in force of to be notified to the agent from time to time. However, the operator has absolute discretion to vary the rates of commission payable to the agent. The operator will pay a commission for every family takaful plan sold.

This clause is in line with the opinion of jurists particularly the Shafie jurists. It is stressed that the remuneration will only be paid if it is part of the contractual agreement. The agents in Family Takaful are paid agent as they received a commission from the takaful operator, Etiqa Takaful Berhad.

Further, Clause 7 of the Family Takaful Agency Agreement also indicates that the agent must conduct the agency business with reasonable skill and diligence to promote and preserve the interests and enhance the reputation of the takaful operator. Clause 4 states that the agent shall collect all the contributions in respect of the family takaful business and promptly submit the same to the takaful operator. The agent only acts as a trustee on behalf of the takaful operator in receiving all monies in the business as stated in Clause 11.

Moreover, this research will determine whether the conditions of *wakalah*

in the Family Takaful Agency Agreement had complied with the Shari'ah principles or not as it has been discussed earlier. Regarding the element of offer and acceptance, the pronouncement must either be in writing or verbal. As explicitly mentioned before, this agreement had been pronounced by way of writing. Both parties will only put down their signatures on the last page of the agreement after they read and understand the terms and conditions of the contract. Therefore, it fulfills the element of offer and acceptance in the agency contract.

With regard to the element of the principal and the agent in this agreement, the principal is takaful operator which is Etiqa Takaful Berhad. Etiqa Takaful Berhad is a company which owns the takaful business and has absolute discretion over the business. The agent shall acts in accordance with the directions or instructions given by the company, failure to do so will lead to a termination of a contract. The agent must be a person who has a sound mind and has the ability to understand the nature of the contract. Clause 9 of the Family Takaful Agency Agreement emphasizes that the operator shall be entitled to terminate this agreement if the agent becomes mentally incapacitated. Hence, only person who has a sound mind will sign this agreement.

Lastly, the element of object or subject matter in the Family Takaful Agency Agreement is permissible under Shari'ah principles as its product relates to the matter of education, death claim, total and permanent disability, pension compensation and others. The shared contribution given by the participants in this agreement is for the purpose of helping those who are in need of those particular matters. There is no element of uncertainty as its concept is based on donation and mutual co-operation. All the participants involved in the agreement are willing to help each other when there are difficulties occur between them.

3.1.2. Implication of fiqh in Etiqa Takaful Berhad's decision

Etiqa Takaful Berhad comes to the decision of using the concept of *wakalah* in their operation by referring to the opinion of the four scholars in Islam. The four Islamic legal schools have their own opinions pertaining to business matters with varying degrees of agreement and disagreement among them. The Shafi'e jurists view is that covering such expenses from the *mudarabah* capital or its realized profits will lead to the element of *gharar* (uncertainty) and the presence of *gharar* makes the *mudarabah* contract to be null and void. The other schools of law have held the view that expenses can be deducted from the business account or realized profits depending on the nature of the expenses (Daud n.d).

The Hanafi jurists and the Maliki jurists would confine the permissibility to the case of journey and its related expenses to cover both the lodging and food. The Hanbali jurists, on the other hand, do not limit it to the case of journey whereby the manager that is the *mudarib* may deduct his management expenses from the account even during his stay in his hometown. These expenses are related to necessary expenses such as food, cloth, lodging, salaries of employees and others. However, it must be at the standard norms of the society or industry. According to Hanbali jurists also, all expenses must be deducted from the gross profit, if any, and in the event of no profit, it could be reimbursed from the capital (Daud n.d).

Etiqa Takaful Berhad charges the portion of management expenses related and traceable to the takaful funds, as well as commissions of the agent, against the funds. That leaves only the portion of management expenses which are not related to the takaful funds to be borne by the company through shareholders' funds. Therefore, we could say that Etiqa Takaful Berhad follows the interpretation of the Hanbali jurists

due to a high correlation between what it practices and the school's view, with regard to management expenses. Although in Malaysia we conform to Shafi'e jurists view on devotional matters, on matters concerning business transactions or *mu'amalat* we tend to take various views from the other schools too.

Furthermore, the agency system is in fact approved by the Shari'ah, as verses from the Quran testify. One of the verses that testify this approval is Surah Al Kahf, Verse 19, which tells of the episode when one of the companions in the cave was chosen to buy food from the city:

"...Now send ye then one of you with this money of yours to the town, let him find out which is the best food (to be had) and bring some to you, that (ye may) satisfy your hunger therewith..."

The Shari'ah scholars have unanimously agreed that this verse relates to the permissibility of the agency system. As *wakalah* is permissible in Islam, Etiqa Takaful Berhad uses it in its business operations. They believe in the combination of effective cost management and the motivational aspect of the agency system, where the harder the agents work in bringing in the premium, the more commission that they will earn and consequently the more profitable the company will be. It also thinks that by having fixed salaried marketing officers would not make a good business sense as it feels that fixed costs of a company should be kept to the minimum (Hairul and Barizah 2010).

4. Conclusion and Recommendation

4.1. Conclusion

The emergence of the concept of agency is important to all people, as it is practiced on a large scale in their daily activities. Commercial activities such as investment activity, share trading, and capital investment as well as marketing activities

depend largely on the skills and expertise of the agent. The agent also plays a vital role in ensuring the best performance and the excellent achievement of a company, especially if the company relies solely on the role of agents to maintain its business.

The finding of this research shows that the takaful operation in Etiqa Takaful Berhad relies solely on the role of agents to market and promote their products. The agents shall act in accordance with the agreement signed by both parties as to the duties and work to be done by the agent. Binding agreement between the agent and the principal in Etiqa Takaful Berhad is the Family Takaful Agency Agreement and the General Takaful Agency Agreement. Basically, both agreements are similar. However, it differs from the area covered by both agreements as discussed previously.

As an alternative to conventional insurance, takaful operations and practices need to really comply with the shari'ah principles. Although it is known as takaful from the surface, it must comply with the shari'ah principles; some people still has a doubt to use the products in takaful operations. Some people believe that the takaful operation is similar to conventional insurance because the two concepts use the same method to promote their business, namely the agent.

Hence, this research examines the compliance of Etiqa Takaful Berhad with the shari'ah principles. Etiqa Takaful Berhad is one of the biggest takaful operators in Malaysia. It finds that the practice of *wakalah* in Etiqa Takaful Berhad is in accordance with the Islamic teachings through its practices and business managements. The agreements created by the company also comply with the principles of contract in Islam.

Lastly, the agency system should be further strengthened as it has important role in takaful business. Indirectly, it can enhance the development of Islamic finance in Malaysia as well as make it known to the society that it is a good system and can

completely replace conventional insurance in this industry.

4.2. Recommendation

The agency system is a good system in helping the development and performance of takaful business. However, there are some problems that need serious attention in order to ensure the benefit of this system. As discussed previously, there are three different areas of the agent's job in carrying the takaful business.

In the acquisition of takaful application, the different ways used by the agent to achieve their target will impede the basic agreement and understanding between the principal and the agents. It can be suggested that, once the takaful company receives any complaint or relevant information which relates to the issue, an in-depth investigation may be conducted. If the agents are found to be guilty of misleading the public, the company may immediately terminate the agent's contracts.

Apart from this, the company may produce enough stocks of brochures of the products and plans offered to be distributed freely to the public. In order to ensure that the agent does not produce their own version of publications, a constant reminder may be given through training or in company's bulletins.

Furthermore, in the problem of the collection of the contribution from the participant, the agents can continue to be reminded of the consequences of misusing contributions money through training, seminars and in company's bulletins. The company may also disburse directly to the participants either renewal notice or lapse notice and periodic collection statement.

In this way, the participants will be notified whether the contributions that they had paid had been received by the company or not. If there is a difference occurs between the amount paid and the amount received by the company, the participants

either can inform the company, or confront the agents themselves. This will ultimately, prevent the misappropriation of contributions. Lastly, on the issue of delivering certificates to the participant, the takaful company may email or post it directly to the participants in order to prevent this problem from appearing again.

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