

# Maqasid Al Sharia and Takaful Operations: Issues and Challenges in an Emerging Industry

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## Abstract

This paper, using both doctrinal and qualitative research methods, conducts a study into *maqasid* al sharia as it relates to takaful and highlights the facets of *maqasid* that are specifically relevant to takaful in a bid to determine whether same have been achieved in the provision of takaful services. The study however limits itself geographically to the understudied takaful industry in Nigeria and within the study conducts a comparison with the Malaysian takaful industry as a benchmark. The paper therefore critiques takaful in Nigeria against the backdrop of identified *maqasid* and explores challenges to fulfilling the objectives of *maqasid* in the industry. The paper concludes with observations on issues ranging from inadequate legislation, education and training of industry personnel and the nature of takaful products provided.

**Keywords:** Takaful, Islamic Insurance, maqasid al shari'ah

## 1. Introduction

It has been suggested that Islamic financial services, being inseparable from the general principles of the sharia, must base their foundations on the *maqasid* al sharia to ensure the distinction from conventional finance (Vejjagic & Smolo, nd; Daud, 2012) as Islamic finance has the capacity to reorient and transform economies when the ethical and moral values (the *maqasid* al sharia) inherent within it are implemented. However it has, for quite some time now, been the argument of some Islamic scholars that the approach to Islamic finance has seen the change of the structure and form of conventional products to achieve *shari'ah* compliance without changing the substance (Laldin & Furqani, 2013; Abozaid & Dusuki, 2007; Yaakub & Mujani, 2013; Iqbal and Mirakhor, 2007; Al-Mobarak & Osmani, 2010 ). This paper looks at the concept of *maqasid* al sharia and how it should reflect in Islamic finance particularly takaful.

The growth of Islamic finance, particularly takaful, has seen its introduction not only in Muslim populous countries, but also in countries where the majority of its populace are not Muslims. It has also seen its introduction in African countries with the hope that it would serve as a tool for financial inclusion and a poverty alleviation tool and has with some measure of success grown in these areas too. Though takaful is now provided in a number of African countries this study limits itself to a look at the current practices within the takaful industry in Nigeria vis a vis the aims and objectives of the *maqasid* while using the takaful industry in Malaysia as a benchmark.

The paper is divided into five sections. The introduction is followed by a discussion on the concept of *maqasid* al sharia and its relation to Islamic finance while the next section localizes it specifically to takaful. Takaful operations in the area of study are then discussed and the last sections present observations, recommendations and summaries.

## 2. Maqasid Al Sharia and its Relationship with Islamic Finance

*Maqasid* al sharia, translated literally as the 'direction of the sharia (Dusuki & Bouheraoua, 2011) or as the guiding principles, higher objectives and intent of Islamic law and the welfare or advantage to be derived from the implementation of Islamic laws and principles (Kamali, 1998) has been defined from various perspectives. Imam Ghazali (in Dusuki & Bouheraoua, 2011) defined it from the perspective of the objectives meant for the protection of religion (din), life (nafs), property (mal), intellect (aql) and posterity (nasl). Dusuki and Bouheraoua (2011) mention Iman al Shatibi's (d 1388) views as legislation meant to protect man from his whims and place him on the proper path while Ibn Ashur (1978) sees *maqasid* al sharia as the purpose and wisdom behind every *shari'ah* ruling whose objective is to preserve social order and ensure healthy progress of the society.

Despite the varying definitions, all scholars agree that the basic concept of *maqasid* al sharia is the preservation and protection of public interest (masalih), which literally translates as welfare, interest or benefit (Chapra, 2000; Kamali, 2003) and the repulsion of harm through legislation by the lawgiver to the extent that Imam Malik even includes it as a source of law in as much as legislation derived therein does not contradict the fundamental principles of the sharia or clear cut legislation. In essence, masalih (public benefit) aims for acquisition of benefits and avoiding mafasid (harmful effects).

To do this, the objectives of the *maqasid* are categorized, in order of importance, by scholars (Ghazali, d1111; Al Shatibi, d1388) into Daruriyyat (essentials), hajiyya (necessaries) and tahsiniyyat (embellishments).

Daruriyyat, considered the most important of the classifications, comprises of those facets of life such

as life, intellect, property, faith and lineage which must be protected to ensure order and avoid chaos in this world and in the hereafter. The *hajiyya* are those which complement the *daruriyyat* by removing hardships and facilitating ease in daily life (Lahsasna & Sulaiman, 2010; Nyazee, 2002) with examples including legislations that permit the salam sale as an exception to rule that there must constructive possession before a valid sale can be effected (Abdul Aziz & Mohamed, 2013) while the protection of the *tahsiniyyat* are encouraged for the refinement and perfection of life as they ensure proper implementation of both *hajiyyat* and *daruriyyat* but whose absence will not lead to outright detriment (Dusuki & Bouheraoua, 2012). These include, amongst others, the permissibility of wearing good clothing, eating good food and extolling the virtues of giving charity.

In relation to Islamic finance, the protection of the *daruriyyat* (particularly the protection and preservation of wealth) is the most pertinent segment of *maqasid* to financial activities. As *maqasid* reflects the wisdom behind legislation in Islam, this becomes particularly highlighted when a study of rulings relating to financial matters is conducted. For example Islam encourages trade and the acquisition of profit through equity financing though it prohibits interest (*riba*) (Quran 2:275), has multiple legislations for the protection of property, makes the payment of zakat compulsory and prohibits transactions which contain uncertainty to protect transacting parties. In essence, these rulings and others like it indicate that the *maqasid* al sharia, relative to financial matters, aim to achieve *maslaha* by encouraging an economic system based on brotherhood and cooperation, social justice, justice and fairness in trade, equitable distribution of wealth and the elimination of poverty (Laldin & Akram, 2013) and highlight the fact that to ensure profit maximization is not the single underlying force behind economic activities (Daud, 2012).

### 2.1 *Maqasid Al sharia and takaful*

Takaful is a system of risk protection based on Islamic financial principles and though the basic principle just like conventional insurance, is the provision of indemnity for loss occasioned by the attachment of risk, it differentiates itself from conventional insurance in a number of ways. First, risk protection is provided by persons who face exposure to the same type of risk through a system of *tabarru* (donation) into a common pool which is used to provide indemnity (Maysami & Williams, 2006; Omar & Dawood, 2000) on claims unlike conventional insurance where risk is transferred to the insurance which provides indemnity in exchange for premiums (periodic payments) (Billah, 2011; Dikko, 2014; Archer et al, 2009;).

Also, the money paid by the insured to the conventional insurer in exchange for risk protection belongs to the insurer but the money paid to pool in as *tabarru* belongs to the contributors (Billah, 2011). Further, the conventional insurer may make any kind of investments including interest bearing ventures but a takaful operator may only invest in sharia compliant businesses and may not involve itself in interest bearing investments.

A number of studies have been undertaken to establish the relationship between *maqasid* al sharia and takaful so as to highlight facets of takaful that could satisfy the requirements of *maqasid*. The relationship between takaful and *maqasid* al *shari'ah* is established by the underlying principle behind takaful itself i.e whereby the preservation of wealth is achieved through the creation of a mechanism that provides a cushion against the devastation of loss of property thus satisfying one of the *daruriyyat*. This property may be corporeal such as tangible assets like houses or a car or it could be loss of income or even protection in times of death, ill health or injury (Vejjagic & Smolo, nd). The *maqasid* are also achieved by the implementation of risk protection based on the *tabarru* method which encourages unity, brotherhood and mutual cooperation as every participant pays with the intention of helping fellow contributors in times of need (Mansuri, 2006). An expansion of this concept is also provided by Fadzullah (2015) who believes concentrating and expanding on the mutuality inherent within takaful will ensure the achievement of *maqasid*.

In the same vein, Abdul Aziz & Mohamed (2013) view takaful as fulfilling the requirement of all three elements of *daruriyyat*, *hajiyyat* and *tahsiniyyat* as both the Qur'an and the hadith encourage wealth protection which is a fundamental facet of takaful and an element of *daruriyyat* but takaful also ensures that the deceased's family has the means of maintenance even after the loss of income from the death of a breadwinner. This would serve the purpose of both preserving life (*daruriyya*) and enhancing it (*hajiyyat*). Takaful also provides peace of mind via asset protection, indemnity for loss and provision of finances in times of need and even embodies mutual help and charity all of which are elements of satisfying *tahsiniyyat*.

Daud (2012) on the other hand, advances the argument that the satisfaction of the *maqasid* requirements in takaful must be done through the protection and advancement of religion. Therefore, the takaful operator has to go beyond the profit motive and compliance with basic *shari'ah* requirements and ensure that its vision, mission and core values reflect those of the sharia. This can be done by ensuring workers in the industry approach work as *ibadah* (worship) to God and should advance and educate others in the religion of Islam. In essence, they must through marketing, work values, products and services create a good reflection of the religion itself. While Ahmed (2012) projects that *maqasid* will be achieved if investments are made based on ethical and social responsibility considerations

However, from a different perspective, takaful encapsulates *maqasid* al sharia not only in the protection

of life and property but does so from the wider parameters of protection of human dignity. With wealth circulation as another positive feature of takaful and the fact that one of the purposes of the sharia is to ensure that human dignity is preserved through the elimination of harm and the provision of benefit, takaful should be extended to include protection for victims of unethical and inhumane actions such as rape, incest, domestic violence and child molestation (Abdullah, 2012).

In essence, to achieve satisfy the objectives of *maqasid* and achieve *masalih* the following must be done;

- i. Ensure compliance with the Islamic legal requirements applicable to every facet of takaful operations (Habib, 2012)
- ii. Establish a system that provides adequate protection against all risks (Abdullah, 2012).
- iii. Emphasis must be placed on encouraging the concept of brotherhood and communal protection and cooperation inherent within takaful (Mansuri, 2006; Fadzullah, 2015).
- iv. Ensure that core Islamic values are reflected in the operations of the takaful company (Daud, 2012)
- v. Ensure that takaful agents not only market products but also disseminate religious knowledge so that they help in the advancement of Islam (Daud, 2012).

### 2.2 Takaful operations in Nigeria in the light of *maqasid al shari'ah*

The marketing of takaful products in Malaysia however, is undertaken using an agency system where agents only qualify to be duly registered after passing the Takaful Basic Examination (TBE) a qualifying examination organized by the Islamic Banking and Financial Institute Malaysia (IBFIM). In the same vein, though the IFSA Act 2013 defines a person who may be authorized to carry on takaful business as one with 'the competence and experience suitable for involvement in the operation', the Malaysian Takaful Association insist that appointments to positions of operations, middle management and departmental heads of takaful operators are only open to persons with specialized knowledge in that field. Moreover, because Malaysia is a majority Muslim country, almost all takaful agents are Muslims who may act not only as agents of the product but of the religion also. In Nigeria however, most of marketing departments of the companies in all branches do not insist that takaful marketers must be Muslims or persons with special training in takaful though they are sometimes provided with just enough perfunctory knowledge on the subject to market the products.

### 3. Summary, observations and recommendations

The Nigerian takaful industry though almost 10 years old, is still in its early stages of development. This is evident from the system in place for the provision of the service and the types of products available. Investment plans predominate and most members of takaful units are inadequately educated in takaful laws and principles with only some heads of units as exceptions. This may be due to the fact that Nigerian law regulating takaful is silent on the knowledge adequacy and specialization requirements for all but members of the *Shari'ah* Supervisory Boards of takaful operators.

Another challenge faced by the industry is the lack of qualified and knowledgeable persons in Islamic finance in general and takaful in particular. Though interest in the study of Islamic finance is growing, emphasis is laid more on the banking sector than on Islamic insurance.

Takaful is a concept which should facilitate protection, assistance and cooperation in the realm of human life which is very much in line with the principles of *maqāṣid al-Shari'ah* which aims at securing benefits (*maṣlaḥah*) and repelling the harms (*mafsadah*) in human life. However, for takaful in Nigeria to achieve these identified desired objectives, the following are humble recommendations.

First, marketers of takaful products must work in such a manner as to maximize *maslaha* by being agents of religious inclusion and not merely promoters of a product. To do this they must be well educated in the Islamic financial principles particularly those underlying takaful and not just given a perfunctory understanding of how takaful works within the products they are trying to sell.

Takaful should provide a wider service of protection of property so that in the implementation of takaful, users are not only given protection against the devastation of loss of property or a breadwinner but should also, in the satisfaction of the requirements of *maqasid*, include such protection as health insurance, mortgage and debt insurance as is available in the Asian takaful industry, particularly in Malaysia. The predominance of investment plans in the Nigerian takaful industry may lead to the loss of 'mutuality' a necessary *maqasid* feature of takaful.

Further, like the Malaysian system, regulation must expand to consider eligibility requirements for operational staff of takaful operators which would include both management and marketing staff.

In effect, to achieve the proper reflection of the *maqasid al sharia* in takaful in Nigeria, the industry needs to become more well-rounded and encompassing than is available today.

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