

# CASE STUDIES OF THE PRACTICE OF NOMINATION AND *HIBAH* BY MALAYSIAN *TAKĀFUL* OPERATORS

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## **Abstract**

*Nomination is a process whereby a policyholder who purchases the insurance policy should name someone to benefit from the policy in the event of the policyholder's death. Nomination is purposely performed to ensure the beneficiaries receive the takāful benefits promptly. The current practice of the nomination clause in family takāful operation is basically vague because the Takaful Act 1984 does not expressly provide any rule to that effect. This study aims to examine the status of nominees for Muslim participants and non-Muslim participants in family takāful as stipulated in the takāful nomination form. It is significant to clarify the status of the nominee, either as a beneficiary or an executor, in order to avoid any misconception among the legal heirs in the future. Besides this, the study also seeks to assess how far the related concept of hibah to the nomination in family takāful is currently implemented by the takāful operators in Malaysia. Hibah seems to be an alternative for Muslim participants to allocate the takāful benefits to the right beneficiaries without adhering to the Islamic law of inheritance (farā'id). This study adopts the document analysis to identify whether the takāful nomination form is standardised and clarified in respect of the status of the nominee for each takāful operator in Malaysia. Samples of eight licensed takāful*

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*operators are selected in this study. The results of this study found that the takāful nomination form is not standardised among all the takāful operators. The status of the nominee is not clarified in some takāful nomination forms either as a beneficiary or an executor. In addition, the application of hibah seems to violate the nature of hibah itself as hibah should take place during the lifetime of the participant. This study concludes and proposes some recommendations for takāful operators to provide better and enhanced implementation of nomination and hibah in family takāful.*

**Keywords:** *takāful*, *hibah*, nomination, *takāful* operators.

## I. BACKGROUND OF STUDY

In legal terminology, *takāful* is “a scheme based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants, in case of need whereby, the participants mutually agree to contribute for that purpose”.<sup>1</sup> Based on the concept of *tabarru'*, all the *takāful* participants agree to relinquish a sum of contribution channelled to the *takāful* fund. A sum of contribution from all participants aims to provide assistance to other participants in the event of a calamity.

Specifically, family *takāful* is an alternative saving scheme of life insurance in accordance with Shari'ah with long term financial objectives. Family *takāful* is important in the sense that it gives protection to the beneficiaries of the participant financially if any calamity or death happens in the future. The central concern of the family *takāful* plan is the distribution of *takāful* benefits in the event of the participant's death. Therefore, the participant is required to name a person as a nominee to receive the *takāful* benefits.

Nomination is a process whereby a participant who purchases the *takāful* plan should name the beneficiaries to benefit from the policy in the event of the policyholder's death. The *takāful* operator shall distribute the *takāful* benefits to the nominee. The distribution

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1 Section 2 of Takaful Act 1984.

of *takāful* benefits differs for Muslim participants and non-Muslim participants. A nominee is merely an executor for a Muslim participant whereas for non-Muslim participants, a nominee is an absolute beneficiary. It is a fact that in distribution of *takāful* benefits for a Muslim participant, the Islamic law of inheritance (*farā'id*) applies. Nevertheless, currently in practice, some *takāful* operators in Malaysia provide an option of giving *hibah* in nominations to the participants in a family *takāful* plan. In such a case the nominee will be the sole beneficiary through *hibah*. Hence, the status of the nominee in such a nomination is uncertain; i.e., is the nominee a sole beneficiary or merely an executor who is subject to the Islamic law of inheritance (*farā'id*).

## II. STATEMENT OF PROBLEM

A nominee is obligated to undertake his or her responsibility as an executor to distribute the *takāful* benefits according to the Islamic law of inheritance (*farā'id*). Upon the death of the participant, the *takāful* operator will distribute the *takāful* benefits to the nominee and the *takāful* operator is free from any liability. However, after the distribution is completely handed over to the nominee, the problem still arises regarding the status of the nominee. This is likely to happen due to the absence of rules regarding nominated property in Malaysia.

The Takaful Act 1984 does not expressly provide any rules regarding the recipient of the *takāful* benefits. According to the Takaful Act 1984, the *takāful* benefits need to be paid to the “*proper claimant*”. Proper claimant means “*a person who claims to be entitled to the sum in question as executor of the deceased or who claims to be entitled to that sum under the relevant law*”.

The Shari'ah Advisory Council of the Central Bank of Malaysia on 21<sup>st</sup> April 2003 stipulated that the *takāful* nomination form should be standardised and must clearly identify the status of the nominee either as a beneficiary or mere executor. Therefore, the status of a nominee needs to be clarified in the contract to avoid unfair distribution to other beneficiaries who can claim the right for the *takāful* benefits.

According to the resolution issued by the Sharī‘ah Advisory Council of Bank Negara on 21<sup>st</sup> April 2003, participants can give the *takāful* benefits as *hibah* since it is a right of the participant itself. Having said that, there is no formal *fatwā* regarding the provision of *hibah* in family *takāful*. This study looks into the issues of nomination and the relevance of *hibah* to the nomination in the *takāful* industry in Malaysia. Clearly, there are inherent issues in determining the standard practice of nomination and *hibah* in family *takāful*. It is important to identify these issues distinctly so as to ensure the five norms of the *maqāṣid al-Shari’ah*, which are religion, life, family, intellect and property, are well preserved and protected.

### III. SIGNIFICANCE OF STUDY

The demand for family *takāful* is currently expanding as most people consider it a financial protection for their dependants if any misfortune or unexpected risk happens in the future. Any misconception regarding the nomination may lead to confusion and conflict among the dependants in receiving the benefits of the policy monies. In addition, it would be of practical significance to examine the application of *hibah* in the *takāful* industry as part of the mechanism of estate management. Since the *takāful* industry is quite new and currently expanding compared to the conventional insurance industry, there are many issues not yet resolved and the industry still needs supervision by the regulators.

By using the document review method, this study looks into the status of nomination applied in reality in Malaysia and the relevance of *hibah* in the *takāful* industry. Both documents, which are the *takāful* nomination form and the *hibah* form, provide broad coverage and sufficient details of the practice of nomination and *hibah* in family *takāful*. From a review of the *takāful* nomination form, this study will provide crucial insights into the literature by revealing whether the nomination practice among the *takāful* operators in Malaysia is standardised and follows the Islamic law of inheritance (*farā’id*). On the other hand, the *hibah* form is reviewed in the form of the content of the contract to see how far the concept of *hibah* is being implemented

in the *takāful* industry. This research is expected to provide a better understanding of the nomination and *hibah* process in family *takāful* and at the same time, provide recommendations for standardising the nomination practice in the *takāful* industry.

#### IV. NOMINATION IN FAMILY TAKĀFUL

A family *takāful* is a long-term policy which provides protection in the form of *takāful* benefits to the dependants of the participant in the event of calamity or death. Normally, a family *takāful* has a long term horizon which ranges from 10 to 30 years. According to Nik Ramlah (1992), the operation of family *takāful* is similar to an endowment policy whereby the amount of *takāful* benefits will be received by a participant based on the amount of contributions that he has agreed to at the initiation of contract and profits earned from investment of his contributions.

Therefore, the contributions paid by a participant purposely serve as a donation to the *takāful* fund which provides mutual indemnity among the participants and acts as a savings and investment instrument for financial assistance of a participant's dependants (Engku Ali & Odierno, 2008).

##### *A. Administration of Family Takāful Fund upon Participant's Death*

Under the *takāful* plan, the contributions paid by the participants in family *takāful* are channelled to the Family Takāful Fund, which goes into different accounts, mainly known as Participant's Special Account (PSA) and Participant's Account (PA).<sup>2</sup>

According to Engku Ali and Odierno (2008), the *takāful* benefits which are to be paid by the *takāful* operator to the nominee of the participant consist of the balance from the PA prior to the death of the

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2 Participant's Special Account (PSA) is an account where a portion of contributions is paid by participants for the purpose of investment and saving and Participant's Account (PA) is an account where a portion of contributions is paid by participants for the purpose of *tabarru'* (Central Bank of Malaysia 2006).

participant and the unpaid amount of *takāful* contribution from the date of the participant's death until the date of maturity of the *takāful* certificate from the PSA.

Nonetheless, scholars and *takāful* practitioners are of the opinion that money from the PA is considered as inheritance whereby the nominee is responsible to distribute it according to the Islamic law of inheritance (*farā'id*) since this money is the right of the participant during his life. On the other hand, money from the PSA (*tabarru'* account) which is considered as *takāful* benefits, is not part of the inheritance since it is not the right of the participant during his life.<sup>3</sup> If the money from the participant's special account is not considered as inheritance, then the option of *hibah* may be relevant in distribution of this entire money. Based on earlier opinion<sup>4</sup>, the status of both accounts in the family *takāful* fund is ambiguous, thus this would lead to a dilemma in the status of the nominee in family *takāful*. The status of both accounts in the family *takāful* fund should be clear in order to clarify whether the distribution of *takāful* benefits can be subject to the other tools of estate planning such as *hibah*, *waṣiyyah* or *farā'id*.

### *B. Nominations in General*

Nomination is a process whereby a policyholder who purchases the insurance policy should name someone to benefit from the policy in the event of the policyholder's death. The practice of nomination in family *takāful* aims to distribute the *takāful* benefits to the beneficiaries promptly without going through the lengthy administrative delays of estate administration as it is not subject to the Probate and Administration Act 1959 and the Wills Act 1959 (Ismail, 2009). There are two types of nominations. Firstly, in the case of nomination in a life insurance policy, a nomination has the effect of creating a trust in favour of the nominee. The provision of Section 23(1) of the Civil Law Act 1956 applies in the case of nomination in a life insurance policy. Secondly, there are statutory nominations in

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3 See Konvensyen Perwarisan Harta Islam (2007).

4 Mohd Tarmizi Ahmad Nordin, Former CEO Etiqa Takaful Berhad in Konvensyen Perwarisan Harta Islam (2007).

the case of nomination made under the Employee Provident Fund Act 1991 and Co-operative Societies Act 1993.

### *C. Nomination Affecting Family Takāful Participants*

The status of the nominee is still being debated and has become an issue in family *takāful* (Ismail, 2009). Due to the absence of any rules as to the status of nomination in the Takaful Act 1984, it leads to conflict among the competing claimants. According to Hussain (2009), a nomination clause in a typical conventional life insurance policy may enable a Muslim to violate the rules of *mīrāth* and *waṣiyyah*, as the person nominated may be an heir and/or may end up getting more than one-third of the participant's estate. The reason is that a nomination, although made by the participant during his lifetime, only becomes effective on his death.

In the case of *Re Ismail b Rentah* (1940), the deceased nominated his daughter to receive his shares in the event of his death.<sup>5</sup> The decision made by the judge showed that the nomination did not confer the right on the nominee to take the money beneficially as it is part of the estate in Islamic law. In this case, the daughter merely acted as a trustee for all the beneficiaries. Here, the distribution of money was subject to the Islamic law of inheritance (*farā'id*) (Marican, 2004).

According to Marican (1997) nomination is governed by Islamic legal doctrines, which are as follows:

- i) A person can make an inter vivos gift<sup>6</sup> of a definite ascertainable thing;
- ii) A mortis causa gift<sup>7</sup> is treated as a disposition of will;
- iii) A Muslim may not make a will of more than one-third of his property;
- iv) Excess in the limit of a bequest is not permitted unless with the consent of heirs.

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5 [1940] MLJ 98.

6 An inter-vivos gift is thus a gift made while someone is alive.

7 The giving of the gift which is made in expectation of approaching death.

In the case of *Re Man bin Mihat (1965)* and *Re Bahadun bin Haji Hassan (1974)*, the decision made by the judges failed to distinguish between a gift *inter vivos* and a bequest. The decision of the judges seems to contradict the principle applied in *Re Ismail b Rentah (1940)* because, according to the latter case, the disposal of property affected by nomination should be subject to the Islamic law of inheritance (*farā'id*).

Due to these legal complications in the practice of nomination and to avoid misconception among Muslims, a *fatwā* was issued by the National Council of Muslim Religious Affairs in Malaysia in 1979; it stated that:

*“Nominees of the funds in Employees Provident, Post Office Savings Bank, Bank, Insurance, and Cooperative Society are in the position of persons who carry out the will of the deceased or the testator. They can receive the money of the deceased from the sources stated to be divided among the persons who are entitled according to the Muslim Law of Inheritance.”*

Based on the above *fatwā*, a nominee in a family *takāful* is a mere a trustee and the distribution of the benefits over the policy will be in accordance with the principle of *mīrāth*<sup>8</sup> and *waṣīyyah*. A nominee has an absolute right to receive the *takāful* benefits but not become an absolute owner of the *takāful* benefits. A study done by Mohd Ma'sum Billah supported the fact that a nominee who is a person named by the participant is a mere trustee and not an absolute beneficiary (Billah, 2000). He further mentioned that a nominee acts as a trustee in a family *takāful* whereby a trustee will receive the benefits of the policy on behalf of the insured's heirs and this will be distributed according to the principle of *mīrāth* and *waṣīyyah*.

A nominee is governed by the principle of nominees which is from the doctrine of *amānah*. This is consistent with the definition provided by Al-Mirghīnānī (1985) which mentioned that a nominee

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8 The succession which is concerned with the distribution of the estate left by the deceased person.



is a person who is being given a trust to bear the responsibility of the policyholder's property. The word "trust" here refers to the doctrine of *amānah* which is the principle of nominees.

#### *D. Nomination: Takaful Act 1984 vs. Insurance Act 1996*

The Takaful Act 1984 does not emphasise the status of a recipient of *takāful* benefits compared to the Insurance Act 1996. Therefore, the arguments that follow will focus on both statutes regarding to whom the distribution of *takāful* benefits should be allocated. Section 65(4) of the Takaful Act 1984 reads as follows;

*In this section, 'proper claimant' means a person who claims to be entitled to the sum in question as executor of the deceased, or who claims to be entitled to that sum under the relevant law.*

A "proper claimant" mentioned here in the provision is very general and includes all possible legal heirs. It is presumed that for the Muslim policyholder in family *takāful*, it should be distributed according to the principle of Islamic inheritance (*farā'id*) whereas in the case of a non-Muslim participant who holds a family *takāful* plan, the *takāful* benefits shall be distributed according to the Distribution Act 1959 (Ismail, 2009). For a non-Muslim policyholder, a nominee is considered as an absolute beneficiary because the *takāful* benefits are not part of the estate. It was clearly provided by the provision under Section 167(1) and Section 167(2) of the Insurance Act 1996 that the nominee acts as an executor and not as an absolute beneficiary. Thus, the *takāful* benefits will be distributed among the beneficiaries of the participant without violating the principles of Islamic inheritance (*farā'id*).

#### *E. Inconsistency in Fatwas on the Effect of Nominations by Muslims*

Currently, only Section 167 of the Insurance Act provides that a nominee of a Muslim policy owner shall distribute the policy

monies according to Islamic law. However, the Federal Government proclaimed that a new rule is being set up to ensure that all Muslim funds in the Employees Provident Fund, Post Office Savings Bank, Banks, Insurance and Cooperative Societies are subject to the Islamic law of inheritance (*farā'id*).

There is a disagreement between the Sharī'ah Advisory Council of Central Bank Malaysia and the National Council of Muslim Religious Affairs regarding the status of the *takāful* benefits. The Sharī'ah Advisory Council of the Central Bank Malaysia issued a resolution that the *takāful* benefits can be given away as *hibah* to the nominee provided that the participant is willing to make a gift to the nominee (Shariah Advisory Council, 2003). It is presumed here that when the *takāful* benefits become the *hibah* property, the *takāful* benefits no longer adhere to the Islamic law of inheritance (*farā'id*). However, the National Council of Muslim Religious Affairs issued a *fatwā* that the *takāful* benefits are part of the estate of the deceased and must adhere to the Islamic law of inheritance (*farā'id*).

Marican (2004) has stated that the *fatwā* regarding the property affected by nominations provided by the National Council of Muslim Religious Affairs is similar to the *fatwās* issued by the Islamic authorities of the states of Pahang, Selangor, Negeri Sembilan and Kedah. They are of the same opinion that property affected by nominations forms part of the residuary property of the deceased and must adhere to the Islamic law of inheritance (*farā'id*).

In relation to the issue of inconsistency of *fatwās* on the effect of nominations by Muslims, immediate action needs to be taken to ensure that the nominee acts as an executor only and properties under nomination must adhere to the Islamic law of inheritance (*farā'id*).

## V. HIBAH IN FAMILY TAKĀFUL

*Hibah* can be defined as “a voluntary contract that results in uncompensated ownership transfer between living individuals” (Al-Khaṭīb al-Sharbinī, p. 396, in Zuhaily, 2003, p.539). In other words, it can be referred to as giving ownership of one's property to

another without any rewards.<sup>9</sup> The permissibility of giving *hibah* can be found in the Quranic verses and *hadīths*. Allah said in the Qur’ān:

“*But if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with good cheer*” (Sūrah al-Nisā’, 4:4).

Zuhaily (2003) quoted a *hadīth* narrated by Abū Hurayrah in which Prophet Muhammad (peace be upon him) said, “*Exchange gifts so that you may love one another*” (Zuhayli, 2006, p.3989). The above Quranic verse and *hadīth* clearly show that Allah enjoins Muslim to give charitable gifts.

Islamic law stipulates that each contract should fulfil certain conditions in order to be valid and this includes the *hibah* contract. The contract of *hibah* becomes valid if four constituents or pillars (*arkaan*) have been fulfilled. The four constituents in the *hibah* contract are the donor, donee, subject matter and *ṣīghah* (offer and acceptance). The donor here is the owner of the subject matter of the gift. The donee can be anybody who is capable of managing the property. The subject matter refers to any property which is owned by the donor, it needs to be in existence at the time the *hibah* is made and must be a valuable object. The *ṣīghah* here indicates the offer made by the donor and the acceptance made by the donee.

There are three types of *hibah*: unrestricted *hibah*, temporal *hibah* (*‘umrā*) and provisional *hibah* (*ruqbā*).

- **Firstly**, unrestricted *hibah* refers to the transfer of property without any specific conditions and consideration in return.
- **Secondly**, temporal *hibah* (*‘umrā*) is given for the duration of the donor’s or donee’s lifetime.
- **Thirdly**, provisional *hibah* (*ruqbā*) is a gift contingent upon the donor’s or donee’s life whereby, if the donor dies before the donee, the ownership of the gift will be transferred to the donee upon fulfilment of certain conditions.

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9 This definition is consistent with the Mejlle (p.131).

Looking into the concept of *hibah* as a mechanism of estate management can be an alternative to the policyholder in family *takāful* to give the right of ownership to whomever he trusts. Buang (2008) explained that *hibah* is seen as the best solution due to the nature of a bequest in Islam, which only permits a maximum of one-third of the property to be distributed in the event of death.

#### *A. Hibah as a Mechanism of Estate Management in Family Takāful*

Currently, the concept of *hibah* is widely practised in the family *takāful* products offered by some of the *takāful* operators. For instance, Takaful Ikhlas is the first *takāful* operator which provided in its family *takāful* plan a form for *hibah*. The policyholder can give away the *takāful* benefits as a form of *hibah* in the event of the death of the policyholder. According to Mohd Noor and Abdullah (2008), when the *takāful* benefits are given away as *hibah*, the *takāful* benefits are not part of the estate and the Islamic law of inheritance (*farā'id*) shall not be applicable to that effect. Furthermore, the other legal heirs cannot claim the *takāful* benefits once the *hibah* is put into effect. The fraction of the *takāful* benefits which is given away as *hibah* depends on the participant's consideration because Islamic law does not provide the specific proportion of property to be given as *hibah*.

Ismail (2009) agreed that the Islamic law of inheritance (*farā'id*) shall not be applied once the *hibah* is put into effect, on the ground that the *takāful* benefits are the right of the participant and the *takāful* operator gives the freedom to the participant to make *hibah*. The participant may want to give a certain portion as a *hibah* to those he thinks are qualified. In practice, the application of *hibah* in *takāful* products leads to an issue whereby there is no ruling provided to that effect. Hence, arguments between the legal heirs and the donee arise due to the lack of knowledge on the concept of *hibah* and its implications.

## *B. Issues of Hibah to the Nomination in Family Takāful*

There are differences of opinion regarding the application of *hibah* in nomination being adopted in the family *takāful*. Some of the opinions hold that *hibah* in family *takāful* should not take effect after the participant dies. This is because the *takāful* benefits have not yet existed at the time the *hibah* contract is made. They argue based on the fact that *hibah* should take effect during the lifetime of a person.

The concept of *hibah* is now being customised to fit the needs of current development in Islamic banking and *takāful*. Nevertheless, there are inherent issues regarding the practice of *hibah* in family *takāful*. The main issues are:

### *1. Contradiction with Islamic Law on the Nature of Gifts (Hibah)*

Generally, *takāful* benefits are owned by the policyholder if the policyholder is still alive at the maturity of the policy. However, if the policyholder dies before the maturity of the policy, then *hibah* will take effect at this point. With regard to the practice of *hibah* in family *takāful*, it indicates here that *hibah* takes place after the death of the policyholder. Thus, it goes against the nature of *hibah* itself which is to take effect during the lifetime of the policyholder.

In addition to the above, Kahf (2006) stresses that the owner of a policy cannot defer any distribution of *takāful* benefit till after death. Due to this, he believes that any distribution which takes effect after death is subject to certain conditions which are:

- ❖ The distribution of the estate must not surpass one-third of the estate net of expenses and debts. It is reported by Sa'd ibn Abī Waqqāṣ in the *ḥadīth*:

*The Prophet came to visit me in my sickness. I was then at Makkah and did not like to die at a place from which I had migrated. The Prophet of Allah said: "May Allah have mercy on Ibn Nafra'." I*

said, "O Prophet! I am wealthy and my only heir is my daughter. Permit me to make a will of my entire property." He said, "No." I said, "Can I make a will of two-thirds of my property?" He said, "No." I said, "Permit me for a third." The Prophet replied, "You may make a will of a third, although this is also too much. For you to leave your heirs well to do is better than leaving them poor and in want whilst others meet their needs." <sup>10</sup>

- ❖ The estate must not be distributed to any of the heirs whose entitlements to *farā'id* are clearly provided in the Qur'ān.<sup>11</sup> This rule is mentioned in the *ḥadīth* reported by Abū Umāmah in which Prophet Muhammad said:

"Allah has already given to each entitled relative his proper entitlement. Therefore, [there can be] no bequest in favour of a legal heir."<sup>12</sup>

Based on the above, it is assumed that the distribution of the estate after the death is considered as *waṣiyyah* and not as *hibah*. However, the practice nowadays seems to contradict the nature of *hibah* itself since *hibah* should only take effect during the lifetime of the policyholder.

## 2. Evasion of the Islamic Law of Inheritance (*Farā'id*)

The *takāful* benefit which is owned by the deceased during his lifetime must be distributed in accordance to the Islamic law of inheritance (*farā'id*) (Kahf, 2006). In other words, *hibah* cannot be implemented after death. Halim (2009) mentioned that any form of gift (*hibah*) after the death is considered as a tactic to avoid the Islamic law of inheritance (*farā'id*). She observed that the use of a living trust (*hibah*) among Muslims should be given attention to in order to harmonise with Islamic law.

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10 *Sahih Al-Bukhari*, p.3.

11 There is already a specific set of laws regarding inheritance (*mīrāth*) and bequest (*waṣiyyah*) in Islamic law; particularly relating to the categories of heirs and their entitlement to the estate of a deceased person.

12 *Sahih Al-Bukhari*, p. 6.

### 3. Ownership of *Takāful* Benefit

At the time the *hibah* is made, the *takāful* benefit is not yet owned by the deceased during his lifetime. Abū Ḥanīfah and al-Shāfi‘ī mentioned that taking possession (*qabḍ*) is a condition for the validity of *hibah* (Nasir, 2002). Without delivery of possession, the property will then pass to the donor’s heirs, even if the offer was accepted by the donee (Pearl, 1979).

Likewise, Kahf (2006) mentioned that, based on the opinions of the jurists, any property which was not owned by the deceased during his lifetime (in the case of *hibah* in *takāful*), must be according to the Islamic law of inheritance (*farā’id*). Referring to the above literature, the *takāful* benefit is not owned by the policyholder during his lifetime. *Hibah* in family *takāful* is deemed to be completed when the policyholder or the donor dies. The ownership of the *takāful* benefit is transferred to the donee or recipient of *hibah* after the death of the policyholder.

### 4. Absence of Ruling on *Hibah* in the *Takaful* Act 1984

Currently, there is no ruling mentioned in the *Takaful* Act 1984 regarding the application of *ibah* in *takāful* (Muhamad, 2008). This leads to many problems regarding *hibah*.

### C. Issues of *Waṣiyyah*

*Waṣiyyah* is one of the tools that can be used for disbursing the property of the deceased. Typically, a *waṣiyyah* is referred to as a gratuitous gift of property by its owner to another, contingent on the giver’s death, and the gift takes effect on the giver’s death (Yahya, 2004). In implementing *waṣiyyah*, there are two rules which need to be taken into consideration by the testator. According to Marican (2008), the *waṣiyyah* should not be made in favour of any of his legal heirs and the transfer of property should not exceed one-third. He further mentioned that most of the jurists have opined that the one-third rule in *waṣiyyah* aims to help those people who are not listed as Quranic heirs. For instance, parents can use a form of *waṣiyyah* to be given to their adopted child.

According to Omar and Abdullah (2009), nomination is similar to the concept of *waṣiyyah* because nomination takes effect upon the death of the nominator. In contrast, Muhamad (1997) explains that the nominated property is not considered as *waṣiyyah* property or *hibah* property. He states that the recipient of *hibah* of the nominated property does not have any rights if the donor is still alive. The transfer of the property to the *hibah* recipient only takes effect upon the nominator's death. The transfer of property after the nominator dies is considered as *waṣiyyah* according to Islamic law. However, the *waṣiyyah* on the nominated property is irrational because the nominees are appointed among the legal heirs. Basically, this is against the nature of the *waṣiyyah* itself. On the other hand, *hibah* should be given to the recipient during the lifetime of the donor. However, in the case of *hibah* in family *takāful*, *hibah* is transferred to the recipient upon the death of the participant. There is a contradiction in the nature of *hibah* itself in family *takāful*.

## VI. RESEARCH METHODOLOGY

This study adopts a qualitative research methodology to examine the issues of nomination in family *takāful* from both a theoretical and practical aspect. Two approaches are adopted in this study: library research and field research. The exploratory study on the issues of nomination in family *takāful* was done by assessing the relevant literature within a variety of sources of knowledge. For library research, a review and analysis of the literature, which included academic journals, conference papers and statutes, was done.

The second stage involved field research, which was carried out to examine the issues of nomination in family *takāful*. Primary data was collected through document analysis. All documents related to nomination issues were collected from eight licensed *takāful* operators in Malaysia. The eight licensed *takāful* operators are as follows:



**Table 1: Licensed Takāful Operators in Malaysia**

No.	Takāful Operators	Date Incorporated
1	CIMB Aviva Takaful Berhad	2006
2	Etiqa Takaful Berhad	September 1991
3	Hong Leong Tokio Marine Takaful Berhad	19 <sup>th</sup> June 2006
4	HSBC Amanah Takaful (Malaysia) Berhad	11 <sup>th</sup> August 2006
5	MAA Takaful Berhad	2 <sup>nd</sup> May 2006
6	Prudential BSN Takaful Berhad	2006
7	Syarikat Takaful Malaysia Berhad	22 <sup>nd</sup> July 1986
8	Takaful Ikhlas Sdn. Bhd.	2002

All the documents served as primary data in order to identify the status of standardisation of the nomination practice in family *takāful* and the application of *hibah* to nomination in the *takāful* industry in Malaysia.

This study reviews both the nomination form and the *hibah* form which are provided by all *takāful* operators in Malaysia.

## VII. MAJOR FINDINGS

All the *takāful* operators provided *takāful* nomination forms under the family *takāful* scheme. However, not all the *takāful* operators provided their participants with an option of *hibah* in distributing the *takāful* benefits.

The data from both sources of documents were collected to analyse whether the *takāful* nomination form provided by all operators was standardised in terms of the contents of the contract between the participant and their nominees. This is to ensure that the nominee clearly understands his responsibility to carry out the distribution of *takāful* benefits in the event of the participant's death. In addition, the *hibah* form was also analysed to identify the extent to which the concept of *hibah* was properly applied in family *takāful*.

According to the *takāful* operators which provided the *hibah* form, the application of *hibah* is an alternative for a Muslim participant in family *takāful* without having to be subject to the Islamic law of inheritance (*farā'id*). Below is the list of the *takāful* nomination forms and *hibah* forms which were reviewed in this study:

**Table 2: Review of Takāful Nomination Form and Hibah Form**

Name of <i>Takāful</i> Operators	Documents reviewed and analysed	
	Nomination	Hibah
Syarikat Takaful Malaysia Berhad	√	√
Takaful Ikhlas Sdn. Bhd.	√	√
Hong Leong Tokio Marine Takaful	√	Not provided
CIMB Aviva Takaful	√	Not provided
Etiqa Takaful Berhad	√	Not provided
Prudential BSN Takaful Berhad.	√	Not provided
MAA Takaful Berhad	√	√
HSBC Amanah Takaful (Malaysia) Berhad	√	√

The following discussions explain in detail the practice of nomination and the application of *hibah* in family *takāful* by all the *takāful* operators. The findings are further summarised in table form in Table 4 below.

#### *A. Syarikat Takaful Malaysia Berhad*

Syarikat Takaful Malaysia Berhad is the first *takāful* operator in Malaysia. It began operations on 22<sup>nd</sup> July 1986 with a capital of RM500 million. The various types of family *takāful* schemes provided by Syarikat Takaful Malaysia Berhad are Takaful mySiswa, Takaful mySinar, Takaful myImpian, Takaful myMedicare, Takaful myRawat, Mortgage Takaful Plan, Takaful myInvest, Takaful myGraduan and Investment Funds.

Syarikat Takaful Malaysia Berhad provides its participants of the family *takāful* scheme with a nomination clause in its proposal participation form in family *takāful*. In this proposal form, the participant can nominate those who he thinks qualified to receive

the *takāful* benefits upon his death. Syarikat Takaful Malaysia Berhad does not provide any notes in the proposal form regarding the responsibility of the nominee either as a trustee or beneficiary. Basically, the *takāful* agent will explain to the participant the nomination and the distribution of the *takāful* benefits for Muslim and non-Muslim participants.

In the proposal form of family *takāful* provided by Syarikat Takaful Malaysia Berhad, the Muslim and non-Muslim participant names the nominee, together with the percentage of distribution. However, if the participant is willing to make any changes to the nomination, he can do so by nominating a person as an assignee, a beneficiary or a proposed *hibah* recipient as specified in the proposal, called Proposal for Endorsement and Additional Cover – non-Financial Changes. Syarikat Takaful Malaysia Berhad provides *hibah* of *takāful* benefits through nomination in this proposal form. The participant may distribute the *takāful* benefits as a *hibah* to those he thinks is qualified.

### *B. Takaful Ikhlas Sdn. Bhd.*

Takaful Ikhlas Sdn. Bhd. was established in 2002. Among the basic products of family *takāful* offered by Takaful Ikhlas Sdn. Bhd. are Ikhlas Saving Takaful, Ikhlas Education Takaful, Ikhlas Education Takaful Classic, Ikhlas Lifesyle Takaful, Ikhlas Capital Investment Linked Takaful, Ikhlas Premier Investment Linked Takaful and Ikhlas Wanita Takaful. Takaful Ikhlas Sdn. Bhd. provides the nominee form for the participant in family *takāful* as well as a proposal form of *hibah*. In the nominee form, it is clearly stated the conditions of distribution of *takāful* benefits which are applicable to the Muslim participants and non-Muslim participants subject to respective personal laws.<sup>13</sup>

For the Muslim participant, the first nominee shall be responsible to distribute the *takāful* benefits to the right beneficiaries in accordance with the Islamic law of inheritance (*farā'id*) whereby Section 65 of the Takaful Act 1984 shall apply and any order from the Shari'ah courts. In the event the first nominee dies, then the second nominee shall

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13 Muslim participants are subject to the Islamic law of inheritance (*farā'id*); whereby non-Muslim participants shall adhere to the Distribution Act 1958.

shoulder the same responsibility in distributing the *takāful* benefits according to the Islamic law of inheritance (*farā'id*). However, for a non-Muslim participant, it will be different because if any of the nominees die before the participant, then it shall be distributed according to the percentage of shares stated in the nominee form. In the case where the nominee acts as an administrator, the percentage of shares shall not be applied.

Due to this, Takaful Ikhlas Sdn. Bhd. provides the Muslim participant with an option of *hibah* if he or she chooses. In essence, Takaful Ikhlas Sdn. Bhd is the first *takāful* operator to provide an option of *hibah* under the family *takāful* scheme. In order to protect the charitable trust of the dependants, Takaful Ikhlas Sdn. Bhd. stipulates certain individuals eligible to receive the *takāful* benefits as *hibah*. These individuals are parents, husband or wife, children and siblings. It is the policy of Takaful Ikhlas Sdn. Bhd. to provide a clear status of the nominee as executor in the case of a Muslim participant. The application of *hibah* to the nomination in family *takāful* has an effect whereby the status of the *takāful* benefits is not considered as part of the estate and the *farā'id* distribution shall not apply.

### *C. Hong Leong Tokio Marine Takaful*

Hong Leong Tokio Marine Takaful was incorporated on 19<sup>th</sup> June 2006. Hong Leong Tokio Marine Takaful is a joint venture company with Hong Leong Bank Berhad, Tokio Marine & Nichido Fire Insurance Co., Ltd and Hong Leong Assurance Berhad. Among the family *takāful* products offered by Hong Leong Tokio Marine are Mortgage Reducing Term Takaful, Comprehensive Mortgage Takaful, Single Contribution Investment-Linked Family Takaful, (HLTMT i-Invest), HLTMT i-Save and HLTMT i-Grad.

A participant who participates in any of HLTMT's family *takāful* schemes shall be provided with a nominee form. Hong Leong Tokio Marine Takaful provides a clear status of the nominee's responsibilities for a Muslim and Non-Muslim participant in its nominee form. The first nominee for a Muslim participant is responsible to distribute the *takāful* benefits to the legal heirs according to the Islamic law of inheritance (*farā'id*). This is subject to Section 65 of Takaful Act 1984 and any order from the Shari'ah

courts. In case the first nominee dies first, then the second nominee shall take upon the same responsibility. For a non-Muslim participant, the distribution of the *takāful* benefits shall be distributed equally according to the percentage stated in the nominee form if any of the nominees die before the participant.

However, Hong Leong Tokio Marine Takaful does not provide an option of *hibah* for a Muslim participant. Instead of *hibah*, Hong Leong Tokio Marine Takaful has an initiative to provide for Muslim participants an option of Ḥajj by proxy for those who participate in any of HLTMT family *takāful*'s schemes. Ḥajj by proxy offered by Hong Leong Tokio Marine is managed by TH Travel & Services Sdn. Bhd., a wholly owned subsidiary of Lembaga Tabung Haji. In the Ḥajj by proxy form, it is indicated that an amount of two thousand five hundred Malaysian ringgits (RM2500.00) from the total *takāful* benefits payable by the participant shall be discharged for the purpose of Ḥajj by proxy. Therefore, the remainder of the *takāful* benefits after deduction from the service of Ḥajj by proxy shall be subject to the Islamic law of inheritance (*farā'id*).

#### D. CIMB Aviva Takaful

CIMB Aviva Takaful Berhad, owned by the CIMB Group, is the fifth entrant in the *takāful* industry in Malaysia. Several of the family *takāful* products offered by CIMB Aviva Takaful Berhad are EasyLife Takaful Series, Mortgage Reducing Term Takaful (MRTT), Xpress Cash Awam-i Protector Plan, MyKid Takaful Edu Plan and Takaful Child Protector.

CIMB Aviva Takaful Berhad provides a nomination form for the participant in family *takāful*. The form, called Nomination under Takaful Act 1984, needs to be completed by the participant who must understand the conditions of nomination provided in the form. There are certain conditions the participants need to fulfil before nominating a person to become a nominee.

It is stated in the nomination form provided by CIMB Aviva Takaful Berhad that the nomination can only be effected upon the participant's life whereby the participant provides the payment of contract monies in the event of his death. The participant should have attained the age of 18 years to nominate a natural person to receive

the benefits upon the participant's death. A nominee shall receive the entire amount of the *takāful* benefits if only one nominee is nominated by the participant. In the case of two or more nominees named, the participant may state the percentage of the *takāful* benefits to be distributed among the nominees. However, all nominees shall receive in equal shares if there is no percentage agreed upon.

Besides that, the participant may appoint himself as a sole or joint trustee of the policy monies. The *takāful* benefits do not form part of the participant's estate, they are also not subject to the participant's debt. If there is no trustee named by the participant, the nominee shall act as a trustee. If the nominee is not competent, Amanah Raya Berhad shall be the trustee of the *takāful* benefits. In the case the nominee dies before the participant and the participant does not make any subsequent nomination, the other nominees shall receive the benefits according to the proportion agreed.

In summary, it can be identified here in the nomination form provided by CIMB Aviva Takaful Berhad that the trustee and nominee shall carry different responsibilities where the trustee shall exercise a duty to keep the money in safe custody until the beneficiary reaches the age of 18 years and the nominee is an absolute beneficiary. However, this only applies to a non-Muslim participant who participates in the family *takāful* product scheme.<sup>14</sup>

The nomination form somehow does not mention which law is applicable to the distribution of *takāful* benefits to the Muslim and non-Muslim participant. The manner and governing law for the distribution of *takāful* benefits and the responsibility of the nominee should be made clear; whereby a Muslim participant shall be subject to the Islamic law of inheritance (*farā'id*) and a non-Muslim participant shall follow the Distribution Act 1958. In addition, CIMB Aviva Takaful Berhad does not provide an option of *hibah* as a mechanism of estate management in *takāful*.

#### *E. Etiqa Takaful Berhad*

Etiqa Takaful Berhad was formerly known as Takaful Nasional Sdn. Bhd. Etiqa Takaful Berhad offers various family *takāful* products,

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14 The trust is only applicable to a non-Muslim participant.

such as Takaful Sakinah, Takaful Mesra, Takaful Warisan, Takaful Ehsan, Takaful Medic Save Rider and many more.

Etiqa Takaful Berhad provides a nomination section in its family *takāful* proposal form. Important notes regarding nomination are provided to the Muslim participant and non-Muslim participant in the proposal form. It is stated in the proposal form for Muslim participants that the first nominee shall receive the *takāful* benefits wholly as cited under Section 65 of the Takaful Act 1984. The first nominee is responsible to distribute the *takāful* benefits to the legal heirs in accordance with the Islamic law of inheritance (*farā'id*). In the event the first nominee dies, the *takāful* benefits shall be received wholly by the second nominee.

For non-Muslim participants, the nominees shall receive the *takāful* benefits according to the percentage of shares provided in the proposal form, which is subject to the Distribution Act 1958. If the first nominee dies before the participant, the *takāful* benefits shall be distributed equally to the other nominees and shall also be subject to the Distribution Act 1958. Etiqa Takaful Berhad only provides the nomination in its family *takāful* proposal form. There is no proposition of *hibah* provided by Etiqa Takaful Berhad to Muslim participants.

#### *F. Prudential BSN Takaful Berhad*

Prudential BSN Takaful Berhad (PruBSN) was incorporated in early 2006 whereby this *takāful* operator was formed through the partnership of Prudential Holdings (Prudential) and Bank Simpanan Nasional (BSN). Among the family *takāful* products offered by Prudential BSN Takaful Berhad (PruBSN) are Takafulink, Takaful Health, PruBSN Warisan, PruBSN Asas, Takafulink Cerdik, PruBSN Impian and PruBSN Kasih.

From the nomination form provided by Prudential BSN Takaful Berhad (PruBSN), some important notes are highlighted for a participant's understanding regarding a nomination in family *takāful*. It is indicated in the form that for a Muslim participant, a nominee shall be given the *takāful* benefits wholly if only one nominee is named. Where two or more nominees are named, the participant needs to indicate the percentage of shares for each of the nominees. If no percentage of shares is specified for the nominees, then the

nominees will receive in equal shares. It is clearly mentioned in the nomination form that a nominee who is deemed a proper claimant shall act as an executor.

Therefore, an executor has the responsibility to distribute the *takāful* benefits in accordance with the Islamic law of inheritance (*farā'id*) as stated in Section 65 of the Takaful Act 1984 and upon any order from the Sharī'ah courts. The participant needs to let the nominees realise their responsibility so that there is no misconception in the future. The *takāful* benefits shall be distributed according to the percentage of shares of each nominee if any of the nominees dies before the participant.

As for non-Muslim participants, the nominee shall receive the entire amount of *takāful* benefits if only one nominee is named. If two or more nominees are named, the distribution of the *takāful* benefits will be according to the percentage of shares stated in the nomination form. The *takāful* benefits will be equally distributed to the nominees if the participant does not mention any proportion to be given out. In the event any of the nominees dies before the participant, then the *takāful* benefits shall be distributed according to shares specified in the nomination form. Further, in the case of a participant who has any compassionate benefits, this benefit shall be paid to any of the nominees with an obligation that the money is used for funeral expenses upon the participant's death.

### G. MAA Takaful Berhad

MAA Takaful Berhad is a joint venture company between MAA Holdings Berhad (MAAH) and Solidarity Company BSC (C) of Bahrain, one of the leading companies in the Arab world. MAA Takaful Berhad offers various family *takāful* products such as Takafulink, Takafulink Single Invest, Takafulink Education, Cancercare, SmartMedic 100 and Structured Invest.

MAA Takaful Berhad provides a *Wasī* Nomination Form to their participants who participate in any of their family *takāful* products. For a Muslim participant, the nominee shall distribute the *takāful* benefits under relevant laws of Sharī'ah. It is indicated in the *wasī* nomination form that a nominee shall act as an executor only. For a non-Muslim participant, the relevant law, which is the Distribution



Act 1958, shall be applied in distributing the *takāful* benefits to the nominee. The nominees shall receive the amount of *takāful* benefits based on the percentage of shares provided in the *waṣī* nomination form. It is indicated in the *waṣī* nomination form that a nominee shall act as an executor only.

MAA Takaful Berhad implements the concept of *hibah* in the distribution of the *takāful* benefits for family *takāful* products. This can be done through the *hibah* nomination form provided to a participant if his intention is for the nominee to receive *takāful* benefits as a beneficiary and not merely as an executor. In the *hibah* nomination form, two sections are provided. The first section is for a participant to name the beneficiary to receive the *takāful* benefits as a *hibah*. In the second section, it is to be completed by the participant, to name any trustees if a beneficiary is not competent yet to manage the *takāful* benefits. However, if there is no trustee appointed, Amanah Raya Berhad shall be the public trustee for the *takāful* benefits. *Hibah* can be revoked if the nominee is a child or grandchild.

#### H. HSBC Amanah Takaful (Malaysia) Berhad

HSBC Amanah Takaful (Malaysia) Berhad was established on 11<sup>th</sup> August 2006. HSBC Amanah Takaful (Malaysia) Berhad is widely known for diverse family *takāful* products, such as HSBC LifeSelect Regular, HSBC LifeSelect Single, HSBC Lifestyle Protector Plan, HSBC Lifestyle Protector Plus Plan, HSBC Lifestyle Saver, HSBC Anytime Extra Protector, Takaful Cards Protector, Takaful Mortgage Protector and Takaful Mortgage Protector Plus.

Regarding the nomination practice, HSBC Amanah Takaful (Malaysia) Berhad provides clear indication of nomination for Muslim and non-Muslim participants. There are two sections separately provided for the Muslim participant and non-Muslim participant. A Muslim participant may decide to appoint a person as an executor or as a proposed *hibah* recipient. Therein, a participant may appoint a person named to carry out the responsibility as a *waṣī* (executor) whereby the distribution of the *takāful* benefits is subjected to the Islamic law of inheritance (*farā'id*) or any order from the Sharī'ah courts. The participant has a right to revoke the appointment of any *waṣī* without his or her consent.

HSBC Amanah Takaful (Malaysia) Berhad shall pay the *takāful* benefits to any of the *waṣī* being appointed if there are more than one *waṣī* named. Upon all the *takāful* benefits being paid to the *waṣī* (executor), HSBC Amanah Takaful (Malaysia) Berhad shall be discharged from any liabilities. On the other hand, a Muslim participant may give the *takāful* benefits as a *hibah* to the proposed *hibah* recipients on condition that the proposed *hibah* recipient is a legal spouse, child, parent and/or sibling. In the event any of the proposed *hibah* recipients die before the participant, then his or her name shall be removed from the list of proposed *hibah* recipients. The non-Muslim participant needs to declare a revocable trust in respect of all the *takāful* benefits to be given to the beneficiaries named in the nomination form. Thus, a non-Muslim participant shall appoint a person to become a trustee on behalf of the beneficiaries. If there is more than one trustee, HSBC Amanah Takaful (Malaysia) Berhad shall pay the *takāful* benefits to any of the trustees.

## VIII. SUMMARY OF THE FINDINGS

### *A. Nomination in Family Takāful*

**Table 3: Nomination Practices for Muslim and Non-Muslim Participants**

Name of <i>Takāful</i> Operator	Nomination	
	Muslim Participant	Non-Muslim Participant
Syarikat Takaful Malaysia Berhad	No clarification on the distribution of the takaful benefits for Muslim participant.	No clarification on the distribution of the takaful benefits for non-Muslim participant.
Takaful Ikhlas Sdn. Bhd.	The nominee is responsible to distribute the takaful benefits to the legal heirs in accordance with the Islamic law of inheritance ( <i>faraid</i> ). Subject to Section 65 of the Takaful Act 1984 and any order from the Shariah courts.	The takaful benefits shall be distributed to the nominees upon certain percentage of shares provided in the nomination form.

Hong Leong Tokio Marine Takaful	The nominee is responsible to distribute the takaful benefits to the legal heirs in accordance with the Islamic law of inheritance ( <i>faraid</i> ). Subject to Section 65 of the Takaful Act 1984 and any order from the Shariah courts.	Nominee shall receive the takaful benefits upon certain percentage of shares provided in the nomination form.
CIMB Aviva Takaful	No clarification on the distribution of the takaful benefits for Muslim participants. The notes on trust provided in general terms.	No clarification on the distribution of the takaful benefits for non-Muslim participants. The notes on trust provided in general terms.
Etiqa Takaful Berhad	The nominee is responsible to distribute the takaful benefits to the legal heirs in accordance with the Islamic law of inheritance ( <i>faraid</i> ). Subject to Section 65 of the Takaful Act 1984 and any order from the Shariah courts.	The nominees shall receive the takaful benefits according to the percentage of shares provided in the proposal form which is subject to the Distribution Act 1958.
Prudential BSN Takaful Berhad	Nominee acts as an executor. The distribution of the takaful benefits is subject to the Islamic law of inheritance ( <i>faraid</i> ) or any order from the Shariah courts.	Nominee shall receive the takaful benefits upon certain percentage of shares provided in the nomination form.
MAA Takaful Berhad	Nominee acts as an executor. The distribution of the takaful benefits is subject to the Islamic law of inheritance ( <i>faraid</i> ) or any order from the Shariah courts.	ful benefits shall be distributed to the nominees upon certain percentage of shares provided in the nomination form. It shall be subject to the relevant law which is the Distribution Act 1958.
HSBC Amanah Takaful (Malaysia) Berhad	Nominee acts as an executor. The distribution of the takaful benefits is subject to the Islamic law of inheritance ( <i>faraid</i> ) or any order from the Shariah courts.	Appointment of the trustee on behalf of the beneficiaries upon the trust created. The trustee shall carry out the responsibility to distribute the takaful benefits to the beneficiaries named.

### B. *Hibah* in Family *Takāful*

**Table 4: Implementation of *Hibah* in Family *Takāful***

Name of <i>Takāful</i> Operator	<i>Hibah</i>
Syarikat Takaful Malaysia Berhad	No requirement on the proposed <i>hibah</i> recipients provided.
Takaful Ikhlas Sdn. Bhd.	The proposed <i>hibah</i> recipients should be the legal spouse, parent, sibling and/or children only.
Hong Leong Tokio Marine Takaful	<i>Hibah</i> letter is not provided.
CIMB Aviva Takaful	<i>Hibah</i> letter is not provided.
Etiqa Takaful Berhad	<i>Hibah</i> letter is not provided.
Prudential BSN Takaful Berhad	<i>Hibah</i> letter is not provided.
MAA Takaful Berhad	No requirement on the proposed <i>hibah</i> recipients provided.
HSBC Amanah Takaful (Malaysia) Berhad	The proposed <i>hibah</i> recipients should be the legal spouse, parent, sibling and/or children only.

From the analysis of the *takāful* nomination forms, it is shown that the status of nominees in family *takāful* is not clearly specified in the contract in terms of responsibility of being an executor or a beneficiary. Thus, the agent of family *takāful* needs to explain to the participant clearly the responsibility of a nominee for Muslim and non-Muslim participants. The distribution of the *takāful* benefits for Muslim participants is through the Islamic law of inheritance (*farā'id*) and for non-Muslims the Distribution Act 1958 applies. Further, it can be concluded in the analysis that the application of *hibah* has not yet been implemented in the nomination practice of some *takāful* operators.

## IX. CONCLUSION AND IMPLICATIONS

There are two major findings in this study. Firstly, the content of the nomination form of all *takāful* operators is not standardised. Secondly, the application of *hibah* in family *takāful* seems to violate the nature of the Islamic law of gift (*hibah*).

### *A. Non-Standardised Nomination Form for All Takāful Operators in Malaysia*

The findings show that the nomination form is not standardised in terms of content of the contract as provided by all *takāful* operators in Malaysia. The content of the nomination form of some *takāful* operators fails to clarify the status of a nominee, whether the nominee is an executor or a beneficiary in family *takāful* for a Muslim and non-Muslim participant. Syarikat Takaful Malaysia Berhad and CIMB Aviva Takaful do not provide any clarification in the document regarding the status of the nominee.

The findings also show the inconsistencies in connection with the theoretical framework which supports the fact that the nominee merely acts as an executor for a Muslim participant and as an absolute beneficiary for a non-Muslim participant. Besides this, the effect of nomination for a Muslim participant is different from a non-Muslim participant as the distribution of the estate of a deceased Muslim is governed by Islamic law. The significant effect of the absence in the clarification of the status of the nominee will lead to the claim of *takāful* benefits by other beneficiaries in the future due to misunderstanding the nominee's responsibility.

### *B. Improper Application of Hibah Letter to the Nomination*

This study found that not all *takāful* operators provided the *hibah* letter in relation to the nomination in family *takāful*. Among the

*takāful* operators that provide *hibah* are Syarikat Takaful Malaysia Berhad, MAA Takaful Berhad, Takaful Ikhlas Sdn. Bhd. and HSBC Amanah Takaful (Malaysia) Berhad. In relation to the resolution issued by the Shari‘ah Advisory Council of Bank Negara, the *takāful* benefit can be given as *hibah* since it is a right of the participant. However, the application of *hibah* to the nomination in the *takāful* industry in Malaysia violates the nature of *hibah* itself because such *hibah* as presently practised is given to the recipients upon the death of the participant.

## X. RECOMMENDATIONS

This study proposes the following suggestions for future development and improvement in nomination in family *takāful*.

- 1) The amendment of the status of nominee in the Takaful Act 1984 is crucial. It is necessary that the word “trust” must be used in the meaning of “proper claimant” in order to avoid any conflict among the legal heirs and as a matter of ensuring justice, together with the protection of *maqāsid al-Shari‘ah*.
- 2) The Central Bank of Malaysia should take action to ensure that the nomination practices in Malaysia are standardised in terms of the content of the contract as well as the practice of giving *hibah* in family *takāful* to make it comply with Shari‘ah and to be consistent with the principle of *hibah*.
- 3) There is a need of *farā‘id* law to be properly enforced so that Muslims can protect their own rights in the distribution of the estate, especially in relation to the nominated property. This is to ensure that the beneficiaries are able to claim their rights and to avoid any unclaimed nominated property.
- 4) Nomination law is necessary to be implemented to regulate the related matters of nomination in Malaysia.
- 5) Depending on the nature and the objectives of the family *takāful* plan, this research proposes some suggestions to the *takāful*

operators regarding the application of the *hibah* letter based on certain conditions which are:

- (a) If the *takāful* benefits are given during the lifetime of the participant, then the *hibah* letter can be applied.
- (b) If the *takāful* benefits will be given after the participant died, the *waṣiyyah* letter is more applicable to this situation.

## XI. CONCLUDING REMARKS

This study has addressed the issues in nomination and *hibah* in family *takāful*. The objectives were to review and examine *takāful* nomination and the *hibah* form of *takāful* operators in Malaysia within the content of the contract. Besides this, this study also aimed to identify the status of the nominee and the relevance of *hibah* to the nomination. By using a document-based study, this study provided the findings of nomination practice in the *takāful* industry in relation to the content of the contract specified in the nomination form and the *hibah* letter. It is found in this study that the *takāful* nomination form is not standardised by the *takāful* operators in Malaysia and the application of *hibah* in the *takāful* industry is inappropriate because *takāful* benefits are given after the death of the participant. The application of *hibah* in the *takāful* industry is still new and needs further improvement to make it consistent with the needs of society, in culture and in religion.

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