

HIBAH IN TAKAFUL BENEFIT: ISSUES AND SOLUTIONS

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Abstract

This paper examined the validity of executing *hibah* in Participant Investment Fund (PIF), upon occurrence of certain event such as participant's death, whether it should take effect after participant dies or during the lifetime of the participant. This paper will also conduct an empirical study related to the issues in order to examine the theoretical aspects relevant to the practice of *takāful* industry. Besides, this study only focuses on the family *takāful* plan because it is related to death. For this research, the researcher adopted semi-structured interviews because this type of interview is able to collect both qualitative and quantitative data. The researcher has conducted interview session with 11 *Sharī'ah* advisors, 11 *Sharī'ah* officers and 3 *takāful* experts at eleven *takāful* operators in Malaysia. With regards to the issue of *hibah*, all *takāful* operators in Malaysia already applied *hibah* distribution and a nominee can be considered either as an executor or a beneficiary in nomination. Even though there are some *Sharī'ah* scholars disagreed with the implementation of *hibah ruqba*, the researcher found that *hibah ruqba* is relevant to be applied in nomination. In addition, the main contribution of this study is, to facilitate or monitor the application of *hibah ruqba* by all *takāful* operators in Malaysia.

Keywords: *Hibah*, *Takāful* Benefit, Participant Investment Fund (PIF) and Participant Risk Fund (PRF).

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Takaful Benefits in IFSA 2013

Distribution of *takāful* benefits after the death of the participant can be known as nomination process.

A *takāful* participant who has attained the age of sixteen years may nominate an individual to receive *takāful* benefits payable upon his death under the *takāful* certificate either as an executor or as a beneficiary under a conditional *hibah*

Schedule 10, Para 3(1), IFSA 2013



The beneficiary of the participant will be paid through *takāful* benefits under 3 conditions which are.....

- 1 a death occurs to the participant
- 2 the *takāful* plan matures (the period of *takāful* plan reaches its end)
- 3 participant terminate the plan before maturity period.



ISSUE IN HIBAH

Theoretical

2. According to Al-'Aqil (1978), when a donor dies at the time of giving *hibah* to the receiver, the contract of *hibah* is considered void. According to the *Hanafi* and *Shafie'*, *qabd* is a condition that binds the contract of *hibah*. The gift is void whether the donor or the receiver dies before the receipt.

Practical

2. The beneficiary of the participant will be paid through *takaful* benefit after the death of the participant.

How to solve the issues in *hibah* distribution?

This is clearly provided Schedule 10, IFSA in Para 3(1) that the nominee (Muslim) acts as an executor or beneficiary

Hence, there is a need to further examine the problem, to solve the issues regarding *hibah* distribution



RESEARCH OBJECTIVES

1

To examine the validity of executing *hibah* in PIF, upon occurrence of certain event such as the participant's death, whether it should take effect after the participant dies or during the lifetime of the participant.

2

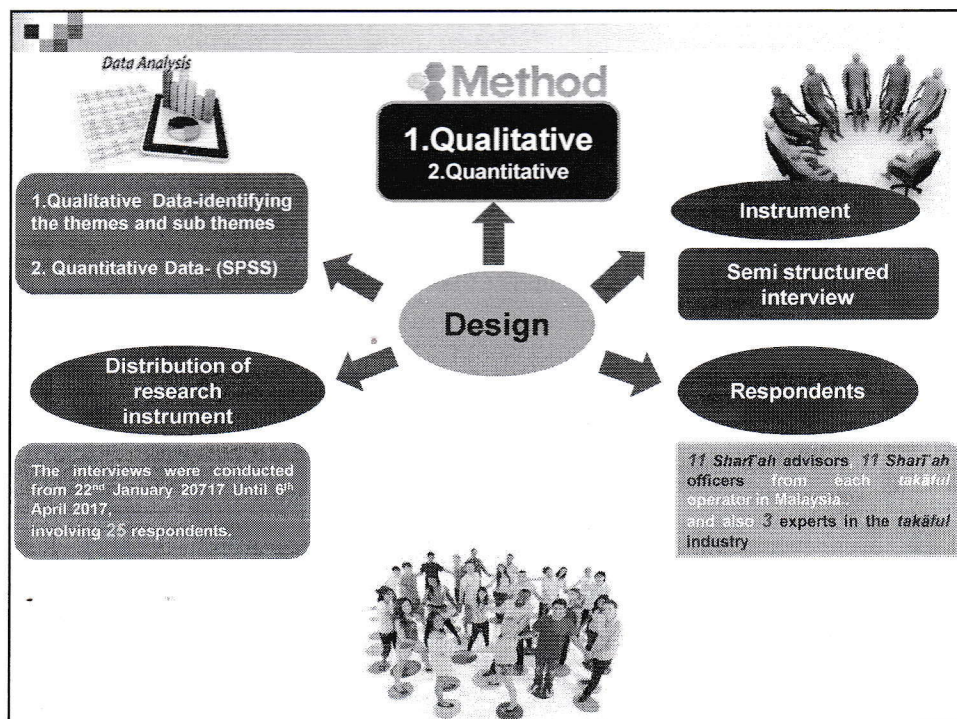
To recommend solutions in distribution of *takaful* benefits especially the issue on *hibah*.



LITERATURE REVIEW ON HIBAH

Hibah	Application to Hibah
1968: Definition and nature of Hibah in Shariah (Lane, 1968)	2008: Investigate the ownership of the <i>takaful</i> benefit and the issues of <i>hibah</i> in nomination (Azman Mohd Noor, <i>et al.</i> , 2008)
1978: Elements of Hibah which is cover the condition of Hibah in Islam (Al-Aqil, 1978)	2009: The status of nomination in <i>takaful</i> and the issue whether participants can give away <i>takaful</i> benefit as <i>hibah</i> (Azman Ismail, 2009)
1980: The meaning, concept and nature of hibah ruqba as implemented in Islamic finance (Al-Ayni, 1980)	2010: Examine the status of nominees for Muslim participants and non-Muslim participants and to assess how far the related concept of <i>hibah</i> to the nomination in family <i>takaful</i> practise by <i>takaful</i> operators in Malaysia. (Nurdianawati Irwani <i>et al.</i> , 2010)
1989: Hibahruqba (Al-Zuhayli, 1989)	2013: "...the effect of nomination as an executor or, as a beneficiary under conditional <i>hibah</i> . (Schedule 10, Para 3(1), IFSA 2013)
1992: Dallil on hibah ruqba (Ibn 'Abidin, 1992)	
1992: Hibah ruqba (Al-Hattab, 1992)	
1994: Hibah ruqba (Al-Syawkani, 1994)	
1994: The concept, conditions of hibah in Islamic finance (Ibn Qudamah, 1994)	
2003: The application, concept and meaning of hibah 'umra and its differs from hibah ruqba (Ibn Manzur, 2003)	
2006: The application, concept and meaning of hibah 'umra and its differs from hibah ruqba (Al-Dusuqi, 2003)	
2007: The meaning, elements, concept, conditions of hibah ruqba and the implementation of hibah ruqba in Islamic finance (Securities Commission, 2007)	
2009: Elements of Hibah which is cover the condition of Hibah in Islam (Haqqi, 1978)	
2010: The application of Hibah in Family Takaful (Mohd Shahrulnizam, 2009)	
2010: The differences between hibah ruqba and hibah 'umra (Sadafi, 2010)	

RESEARCH METHODOLOGY



FINDINGS



Discoveries



ANALYSIS OF THE INTERVIEWEES

Group	Male/ Female	Position/Institution	Years in Present Institution	Years in Present Position
11 Shari'ah advisors	Male	AIA Public <i>Takāful</i>	1-5	1-5
	Female	AM Family <i>Takāful</i>	1-5	1-5
	Male	Etiga <i>Takāful</i>	6-10	6-10
	Male	Great Eastern <i>Takāful</i>	1-5	1-5
	Male	HSBC Amanah <i>Takāful</i>	1-5	1-5
	Female	Hong Leong MSIG <i>Takāful</i>	1-5	1-5
	Male	MAA <i>Takāful</i>	1-5	1-5
	Male	Prudential BSN <i>Takāful</i>	6-10	6-10
	Male	Sun Life <i>Takāful</i>	1-5	1-5
	Male	Syarikat <i>Takāful</i> Malaysia Berhad	1-5	1-5
	Male	<i>Takāful</i> Ikhlas	1-5	1-5
	Male	AIA Public <i>Takāful</i>	1-5	1-5
11 Shari'ah officers	Male	AM Family <i>Takāful</i>	1-5	1-5
	Male	Etiga <i>Takāful</i>	1-5	1-5
	Male	Great Eastern <i>Takāful</i>	1-5	1-5
	Male	HSBC Amanah <i>Takāful</i>	1-5	1-5
	Male	Hong Leong MSIG <i>Takāful</i>	1-5	1-5
	Male	MAA <i>Takāful</i>	1-5	1-5
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	Male	Syarikat <i>Takāful</i> Malaysia Berhad	6-10	6-10
	Male	<i>Takāful</i> Ikhlas	1-5	1-5
	Male	Munich Re <i>Retakāful</i> Berhad	1-5	1-5
	Female	IIUM	1-5	1-5
3 <i>Takāful</i> experts	Female	IIUM	6-10	6-10



Findings_Research Objective

Research Objective- To examine the validity of executing hibah in PIF, whether it should take effect after the participant dies or during the lifetime of the participant

RQ: To what extent the validity of making hibah to the beneficiary without the existence of subject matter of hibah at the time of giving hibah?

Issue	Statement	Frequency	Percent
The validity of executing hibah to the beneficiary in PIF	Applied hibah ruqba and following IFSA 2013	21	84
	Investment fund subject to faraid	4	16

Reason for the findings

1

Reason for the majority of the respondents (84%) said that there is no issue pertaining to the executing of *hibah* from PIF

Supported by

- 1) Schedule 10, Para 3(1), IFSA 2013
- 2) *Shariah Resolutions in Islamic Finance* (2nd edition)

Currently *takaful* operators in Malaysia implement *hibah ruqba* when executing *hibah* to the beneficiary.

2

Reason for the respondents (16%) said that PIF is subject to faraid

Supported by

Al-'Aqil (1978), *Hanafi* and *Shafie* :

When a donor dies at the time of giving *hibah* to the receiver, the contract of *hibah* is considered void.



IMPLICATIONS



Regulator

IFSA 2013 needs to end this dispute by specifying a new schedule which addresses the issue over *takaful* benefit. This new schedule must state that *hibah ruqba* is one of the solutions to this problem.



Takaful Operator

All takaful operators need to educate or give a lot of information on the distribution process after the death of participants to the takaful agents- so that there is no dispute or conflict among family members



Takaful Agent

Explaining the procedure of the distribution of *takaful* benefit to the participant will help participant make a right step in nominating his family members.



Participant

Participant must be aware and think carefully who is deserving among his family members to receive *takaful* benefit whether as a nominee or a beneficiary.

CONCLUSION

The majority of the respondents agreed to proceed with the distribution of *takaful* benefit through *hibah* in Participant Risk Fund.

The issue regarding executing *hibah* in PIF is not relevance anymore because currently all *takaful* operators in Malaysia implement *hibah ruqba*.

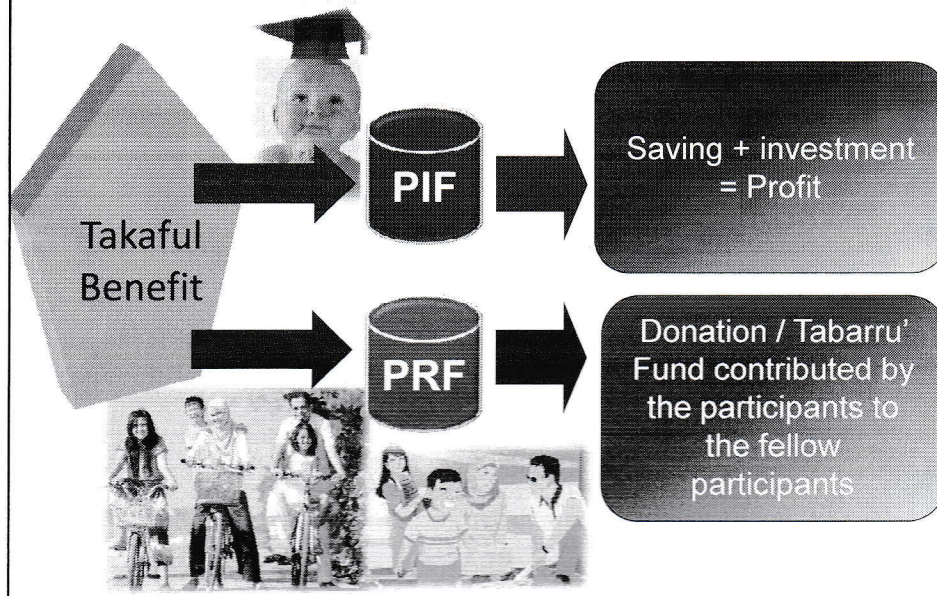
The study also confirms by empirical study that *hibah* distribution complies with Schedule 10, Para 3(1), IFSA 2013.



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Treatment of the Funds



Ownership of the Funds

Fund	Takaful Operator	Participant	
		Collectively	Individually
Investment Fund (PIF)	x		✓
Risk Fund (PRF)	x	✓	

PIF and PRF not owned by Takaful Operator, instead of handle the funds on behalf of participants

Based on Collectively

Based on Individually

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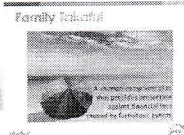


BACKGROUND OF THE STUDY

A family takaful plan is a long term saving and investment instrument which provide a financial benefits in the event of tragedy to the participant



FAMILY
TAKAFUL



A participant who enters into family takaful contracts will be grouped together with other participants who share the same risks with him/her such as death or total permanent disability

PIF is refer to the investment which is done by the Takaful Operator on behalf of the participant and the profit will be shared between the participant and the Takaful Operator according to a pre-agreed ratio

A participant will pay the contribution and will credited into separate accounts which are **Participant Investment Fund (PIF)** and **Participant Risk Fund (PRF)**

PRF refers to the participants' contribution in the form of *tabarru'* which will be placed in this fund and will be used to fulfill the obligation of mutual help if any misfortune arises from death or permanent disability

