

Utilisations of Takaful Surplus for Flood Victims in East Coast of West Malaysia: a Suggestion

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Abstract: The study examined the possibility of using takaful surplus fund to assist those in needs within the society such as flood victims. Takaful is an insurance which is in line with Shariah principles. One of its inherent attributes is an arrangement whereby participants agreed to pay a fixed amount of money into a pool of fund based on the Islamic concept of *tabarru'*. In any unfortunate event faced by the participants, the unfortunate participant will be compensated for loss suffered from the pool of fund contributed by all participants. Takaful surplus is an excess of the participants' contributions after deducting the claims made by the participants. The surplus of takaful should be properly distributed to those victims as they had lost their valuable properties or their family members based on the concept and principles of *tabarru'* and kindness. This study mainly focuses on the problems and solutions that are faced by flood victims in East Coast of West Malaysia such as lack of food, shelter, medicine and daily supplies. The research focused and suggests legal possibility of utilising the takaful surplus for the benefit of the flood victims in the East Coast of Malaysia. The study applied doctrinal method which consists of library research of statutory provisions, journal articles, reports as well as relevant policies affecting utilisation of takaful money to aid those in need.

Key words: Takaful • Surplus • Victims • Flood • East Coast of West Malaysia

INTRODUCTION

Takaful is an Islamic term which means insurance. It is derived from the word kafalah which literally means looking after one another. Technically, it means guarantee over something [1]. The working mechanism for the takaful is when a participant contributes a certain amount of money which is often called as premium to a Takaful pool. It is an Islamic way of joint guarantee in which a group of people who is known as participants put their financial resources together with certain exposure of risks. The principles of takaful is in-line with the Shariah teachings as halal concepts of *tabarru'* which means contribution or donation [2]. In any circumstances where there are loss or damage suffered, the takaful operator will pay out the money claimed by the participants accordingly. Only when operator's obligation of assisting the participants achieved, the takaful surplus will be paid out for other purposes. The payment of

takaful is based on the concept of social solidarity, cooperation and mutual indemnification to the possible losses to be suffered by its members; wherein the participants pay premiums collectively to the operator in return for indemnification of loss or damage that might be suffered by them [3]. As not every takaful participants would be claiming for indemnification, there is bound to be a surplus from the pool of fund. This paper analyse on the possibility of using the surplus fund from the takaful pool to assist non-takaful participants, in particular the flood victims from the East Coast of West Malaysia.

In the course of the study, qualitative method was adopted, making full use of the library doctrinal research. Analysis was made of relevant statutory provisions, reports as well as relevant policies affecting utilisation of takaful money to aid those affected by flood. Legal justifications from Quran and Hadith are put forward to ensure the utilisation of surplus fund would be in line with the Shariah concept.

As any other country in the world, Malaysia also suffers from its own set of natural disasters. Fortunately, Malaysia does not suffer from volcano eruptions, earthquakes, or tsunami on an annual basis but Malaysia does faced flood as one of its major natural disasters. Regarded as a common natural disaster which commonly occurs in either developed or developing countries, flood leaves a devastating impact on the victims either from the economic, social and health perspectives. National governments need to utilise up to billions of dollars to repair infrastructures and damages caused by flood. Malaysia's worst flood in a decade, which occurred in 2014, was estimated to cause the government over 1 billion Ringgit Malaysia of damages [4]. The estimation concerns damage to infrastructures alone. Thus, this study put forward the suggestion on how to assist the flood victims by utilising the surplus fund from a takaful pool.

Giving the surplus of the fund to the flood victims is the spreading of the goodness and piety to the people in need which is in line with the Islamic teachings, as stated in the in the *al-Quran* in surah *al-Maida: 2: Help each other to goodness and heedfulness. Do not help each other to wrongdoing and enmity. Heed Allah. Allah is severe in retribution.*

This paper is organized as follows. It starts with an explanation on calculation of takaful surplus and the legal justifications for the application of such surplus for the benefit of the society. The method of distributions of the surplus fund are presented and the paper reasoned out the difficulties faced by the flood victims. Final sections of the paper provided legal justifications for the usage of the surplus fund from the takaful pool in assisting the flood victims

Formula to Calculate Takaful Surplus: In general, *takaful* surplus is normally defined simply as an excess of the participants' contributions over claims in the risk pool (Participant's Risk Fund or hereinafter referred as PRF). The actuarial calculations required in deciding the real measure of surplus in a *takaful* undertaking anytime by no means less complicated than its conventional insurance counterpart. This is true especially when the actuarial tools regarded as indispensable under conventional insurance institution practices may also be utilized in *takaful* plans. However, it is conceded that there exist few major differences in any actual practise; in deciding on the surplus in both *takaful* and insurance institution, particularly when the former ought to dependably fit in with the Shariah principles.

PRF Review (Inflow)	PRS Expenses (Out Flow)
Takaful Surplus	
= Participation' Contribution	> Claim/ benefit of payment
Investment Profit	Re Takaful
	Wakala Fee (if relevant)
	Reserve & Provision
	Other operating expenses

Fig. 1: Takaful Surplus Equation

Source: The Commercialisation of Islamic Insurance (Takaful) [5]

Takaful administrators may likewise vary from each other as far as their plans of action are concerned, which could then influence the level of surplus recorded at a specific time. Some operators may invest the PRF and immediately acquire a certain portion from the investment profit, while others might not. Notwithstanding the distinctive edges and points of view engaged in defining the surplus, it is perhaps much easier to describe the subject based on the following formula or equation [5].

Based on the above Figure 1, the *takaful* fund is likely to record a surplus if the amount credited into the PRF during a particular time period is larger than its corresponding outflow, which comprises claim payments and other operational expenses including reserves. Conversely, a zero surplus or shortage is probably going to be recorded in circumstances where the PRF incomes are equivalent to or not exactly the ensuing PRF costs separately. The latter situation may normally occur during the first few years of a newly launched *takaful* operation, whereas the former will usually be achieved when the *takaful* operation has shifted from its introductory phase to a more stable phase for instance, growth or maturity [5]. Thus, in short, insurance or underwriting surplus is the excess of the total premium contributions paid by policyholders during the financial period over the total indemnities paid in respect of claims incurred during the period, net of reinsurance and after deducting expenses and changes in technical provisions [6].

Legal Opinion with Regards to Surplus Entitlement and Distribution: The distribution of surplus in the *takaful* industry is greatly influenced by several legal rulings issued on the ownership of the surplus itself. Surplus is commonly judged as the property of the participants because it was basically derived from an unused portion of the participants' contribution. However, some writers argue that the surplus is actually detached from the participants' ownership since the contributions are normally paid on the basis of *tabarru* [7].

One of the ruling regarded that surplus belongs neither to the participants nor the operator. Both parties do not have the right to claim for *takaful* surplus based on the reason that the participants' contributions are considered to be pure *tabarru*. The reason being as the participants have earlier on willingly agree to contribute a portion of their money gratuitously to a *takaful* fund for the benefit of other participants without any consideration or return, thus it should remain as such. According to Ma'sum Billah, the term *tabarru* is similar to *sadaqa*, charity, or *hiba*, gift, whereby it is unlawful for the donor to seek any benefit from the donated property after it is given away [8]. As the participants had relinquished their rights to the amount that had been contributed, therefore any surplus that arises therein should go to charity instead [9]. The shareholders of the *takaful* only act as mere trustee and therefore do not have any ground to make a claim. This view also had been supported by Soualhi, who maintains that the participants' contribution is to be considered as pure *hiba*, hence will render the amount donated to be no longer under their ownership. He also further argued that based on the concept of *hiba bi shart al-iwad*, conditional gift for a consideration; it renders the surplus as no longer belonging to the participants.

The Accounting and Auditing Organisation for the Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB), generally state that the participants' contributions are mere *tabarru*, donations, or *iltizam bi al-tabarru*, commitment to donate.

The guidelines for Islamic Insurance issued by AAOIFI and IFSB are as follows:

- Islamic insurance is based on the commitment of the participants to make donations for the sake of their own interest [6].
- This standard shall apply to the contributions made on the basis of donation by the policyholders relating to general insurance. The standard shall also apply to the portion of contributions made on the basis of donation by the policyholders relating to insurance on persons (*takaful*) [6].
- In a *takaful* arrangement the participants contribute a sum of money as *tabarru* commitment into a common fund that will be used mutually to assist the members against a specified type of loss or damage [10].

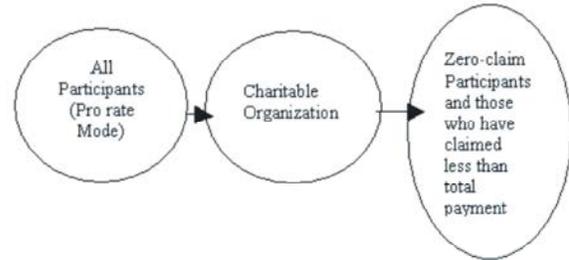


Fig. 2: Methods of Distributing Surplus in a Takaful Undertaking Source

- *Tabarru`* commitment is a type of Islamic financial transaction that is fundamental to *takaful* schemes. It is the amount contributed by each *takaful* participant to fulfil obligations of mutual help and to pay claims submitted by eligible claimants [10].

Since the two most recognized bodies in the Islamic finance industry laid down guidelines which support that the participants' contribution was based on the concept of *tabarru*, so it would be justifiable that the surplus arises from the contribution can be used for charity, i.e. donation for the flood victims in East Coast states of West Malaysia.

Methods of Distribution of Takaful Surplus: In the year of 2013, AIA Public Takaful Bhd (AIA Public) has declared a total surplus distribution of RM8.5mil [11]. On 18th November 2016, Hong Leong MSIG Takaful Berhad has declared a surplus distribution of RM7.3 million for the financial year ended 30th June 2015 [12]. To put to good use either as Corporate Social Responsibility, a portion of the surplus could be channelled for charitable purposes to benefit the community as a whole.

There are a number of ways to distribute *takaful* surplus. Nonetheless, *takaful* surplus is also subjected to certain undertaking in allocation of sources as illustrated in Figure 2 above. Generally, the *takaful* surplus is required to be allocated to all participants on basis of pro-rate mode. The pro-rate mode is a mode which focuses on generality in *takaful* distribution based on the ratio that will be provided during the annual meeting of the *takaful* operators. The amount of distribution will only be revealed after all the *takaful* operators have agreed for the ratio of distribution [5]. Any participant with a claim record may still be eligible for surplus distribution provided that his claim amount is less than his overall *takaful* contributions.

In contrast to the zero-claim participants who may receive surplus in proportion to their total contributions, the latter will only gain the surplus in proportion to the difference between the contributions paid and the claims received. Therefore, currently there was no single method of distributing an underwriting surplus in a *takaful* undertaking. It appears that each and every *takaful* operator is free to choose any method as long as it is approved by the Shariah committee [9]. As far as *takaful* operators in Malaysia are concerned, the majority tend to justify their rights in sharing the surplus with the participants based on the contract of *jialah* [6]. The study proposes that since it has been declared that *takaful* operators are free to choose the methods of distributing, apportion of the surplus can be allocated to flood victims via providing them with sufficient daily supplies, food and medicine supplies as well as financial assistance.

Distribution for Takaful Participants: *Takaful* participants are protected and provided with specific allocations in case of any unexpected natural disaster for example flood, earthquake and fire. This is in line with their agreement wherein participants joining the *takaful* are required to pay a certain amount monthly as premium installment, indemnifying them of losses due to the afore mentioned disasters. Thus, some of the events are normally listed out in the claim list, which are provided to participants as reference for future use. In case of any unexpected events participants are required to inform the *takaful* operator and provide all relevant details; personal details as well as incident details and the basis of their claim [21].

Participant are required to have a copy of the report. For participants who have been paying the premium consistently, the claim will usually proceed smoothly, if the report provided details about investigation carried out on the incident.

Solution for Non-Participants Based On Concept of Tabarru: As for non-participant, it is known fact that the *Takaful* contracts are based on the concept of *tabarru'* (donation) whereby all participants who join the *takaful* plan agree to mutually assist and guarantee between them, should disasters or accidents occur. The concept of *tabarru* is mainly on donation and thus the distribution of surplus of *takaful* is considered as donation based on *tabarru*. In *takaful*, those who participates either family *takaful* products or general *takaful* products will allocate certain or whole amount of his contribution into a fund.

The fund is named as the Risk Fund. The purpose of the fund is as the aid to any participants and non-participants facing calamity. Islam provides the solution to an insurance system implementation which adheres to the Shariah principles [13].

The contract of *tabarru'* is introduced as it is practical and safer. Each participant in a *Takaful* system allocates some or all of his contributions to be donated for the purpose of helping others who are facing calamities.

Difficulties Faced by the Flood Victims: Flooding is a natural incident and it is one of Malaysia's most devastating natural disaster. According to D/iya *et al* [14], flood ensues when a river bank, either natural or artificial in any part of the river system, overtopped; causing the high water flow to extend over the floodplain. Heavy rainfall will likely contribute to this flood scenario. The Malaysian Drainage and Irrigation Department categorises two types of flood which occurs in Malaysia, namely flash flood and monsoon flood. Though both might occur due to heavy rainfall, the main difference between the two lies in the period of time for the river flow to recede to normal level. Comparatively, monsoon flood takes a longer time for the water level to be at normal level, even up to weeks whereas a flash flood might last a mere few hours before the water recedes [14].

East Coast states of West Malaysia comprises of the states of Pahang, Terengganu and Kelantan. Annually, the three states face both Southwest and Northeast monsoon seasons which bring heavy rain to these states, particularly the Northeast Monsoon during October to March. The heavy rainfall, particularly in the month of November and December yearly, has led to severe floods all over the states of Terengganu and Kelantan and certain areas in Pahang. Though these East Coast states have always experienced severe floods, the flood of 2014 was the most devastating in decades of flood history of Malaysia [15]. The flood occurred from 15 December 2014 till 3 January 2015 in Terengganu and Kelantan and affected almost 200,000 residents and causing the death of 21 people nationwide [4].

The damage caused by the flood of 2014 impacted almost 541,896 flood victims, of which 58.9% were from the state of Kelantan. It caused damage to 6,698 houses, whilst 2,076 homes were totally destroyed. Victims were put up in 1,335 evacuation centres, of which almost 46 thousand evacuees were from the states of Kelantan and Terengganu. It causes loss of RM 2.85 of public property (roads and infrastructures) and almost RM560 million

losses in personal and private property [16-17]. The cost of damages suffered by the three states of Terengganu, Kelantan and Pahang was a staggering 204 million Ringgit Malaysia compared to the other six states on the West Coast of Peninsular Malaysia totalling 133.6 million Ringgit Malaysia [4].

Flood incident causes disruption to social lives of the victims and their economic wellbeing. During their evacuation period and post-flood incident, victims faced difficulties such as lack of shelter, food, medicine and daily supplies and damage to their homes.

The heavy rain and possibility of flood during the monsoon season, forced people in flood affected areas to flee to find safer place. Usually victims were evacuated in temporary evacuation centres such as school halls, community halls and other place that can secure victims from being affected by the flood. However, the existing shelters, were not enough to accommodate victims due to limited spaces a temporary evacuation place can only hold about 250 to 600 victims at one time. The victims also have very limited space in these evacuation centres due to the density of people in each place. Privacy and sanitation issues were among major concerns in these evacuation centres.

Another major problem faced by flood victims is obtaining adequate food supply. Heavy downpour complicates the transfer of food since many roads were closed due to flood. For example, worst-hit areas in Terengganu are Kemaman, Dungun, Kuala Terengganu and Hulu Terengganu. Although urban area experienced flood, yet it was not affected as badly hit as the rural areas. Accessibility to urban flood area, was still available. However, accessibility to rural area, especially areas nearer to river basins proves to be difficult. The only access to help victims in these areas was by boat, helicopter or heavy transport. The amount of food which can be distributed to the victims in those area was very limited due to the above reasons.

Obtaining proper and sufficient medication and health treatment is one of the challenges faced by flood victims. When flood disaster occurred, diseases can easily spread, food can be contaminated posing risks to the evacuees' or victims' health. In evacuation centres shelter, victims usually find it hard to take care of their daily hygiene due to lack of personal hygienic daily supplies. Apart from that, sharing the same toilets also leads to spreading of germs infection. Hospitals in affected area also faced shortage of medicinal supply, for example, Hospital Kubang Kerian in Kelantan during

the flood of 2014 faced acute blood shortage due to lack of supply and over whelming use of blood to save life [18].

Disruption and damage to public utilities and facilities, contributes to worsen the flood disaster. Destroyed or submerged communication electricity and telecommunications cables resulted in loss of communication and electricity disruptions. Damage to roads and rails interrupted inter-train services to rural areas of Kelantan hindering rescue operations to victims [4]. Matters became worse when rescuers themselves were affected by the flood causing in loss in manpower for rescue operation. During the flood of 2014, the National Security Council, the responsible body to spearhead rescue operations during flood suffer severe setbacks its own personnel fall victims to the flood incident. Loss of communication and accessibility due to damage to public utilities and facilities, had to a certain extent, affected the smoothness of rescue and assistance operations during the 2014 flood incident [18].

The aforementioned difficulties suffered by flood victims as discussed, reflects the need for financial assistance to them. Post-flood incident, victims incur extra cost to re-build their homes and even to start a livelihood, particularly rural communities. Many of the victims in the worst hit-area of Kelantan and Terengganu were small sustenance farmers, who were hit hard with financial losses due to destruction of their agricultural crops [4]. Thus, this study proposes that a proportion of surplus fund out of *takaful* pool, be allocated to assist these severely affected flood victims in the East Coast states of West Malaysia. The following discussions, provides justifications for the suggestion based on verses from al Quran, Hadiths and opinion of jurists.

Legal Justifications

Quranic Verses: Islam enjoins its followers to cooperate with one another in all matters of goodness and reminded not to assist in wrongdoings. This is known as the concept of *amar maaruf nahy munkar* (*enjoining towards righteousness and prohibiting deviation*). Using the surplus fund from the *takaful* pool to assist those in needs, on the basis of *tabarru* is a type of doing good deed and therefore in line with Shariah principles

Surah Al-Maida: 2 provides - *Help each other to goodness and heedfulness. Do not help each other to wrongdoing and enmity. Heed Allah. Allah is severe in retribution.*

Further in surah *al-Munafiqun*: 10 provides - *And spend in the way of Allah from what, We have provided you before death approaches one of you and he says, My Lord, if only You would delay me for a brief term so I would give charity and be among the righteous.*

Surah *al-Baqarah*: 274 states - *Those who spend of their goods (in charity) by night and by day in secret and in public shall have their reward with their Lord: on them shall be no fear nor shall they grieve.*

In Surah *al-Baqarah*: 110 further provides - *And be steadfast in prayer and regular in charity: and whatever good ye send forth for your souls before you ye shall find it with Allah; for Allah sees well all that ye do.*

The above quoted verses encourage the Muslims to join hands with others to help those in need of assistance. The verses are proof that Islam promotes and makes it a duty to assist each other in doing good and righteous deeds. As many of the flood victims are from poor resource and rural dwellers, an allocation from the *takaful* surplus to provide a bit of financial assistance in their time of need for them is in line with the above quoted Quranic verses and will be considered as a worthy good deed by Allah.

Hadiths: *Takaful* is not a newly invented system of Islamic insurance, as it is based on the concept of mutual assistance and solidarity which is very well explained and elaborated in detail in following Hadiths.

A hadith which was reported both in *Sahih* Bukhari and Muslims strengthened the justifications for Muslims to assist each other in times of difficulties.

The place of relationships and feelings of people with faith, between each other, is just like the body; when one of its parts is afflicted with pain, then the rest of the body will be affected (Al-Bukhari hadith, no. 6011; Muslim hadith, no: 4685).

A preaching from the Prophet PBUH which signifies that Muslims, should stand in solidarity and assist other Muslims brethren who are having difficulties and ease their troubles. Usage of *takaful* surplus fund under *tabarru* principle to assist flood victims who are having trouble financially, signifies a practical approach of preaching. This practise can reinforce sense of peace, harmony and brotherhood amongst Muslims and non-Muslims alike.

In another hadith where Abu Hurairah narrated that the Messenger of Allah said:

If anyone relieves a Muslim believer from one of the hardships of this worldly life, Allah will relieve him of one of the hardships of the Day of Resurrection. If anyone makes it easy for the one who is indebted to him (while finding it difficult to repay), Allah will make it easy for him in this worldly life and in the Hereafter and if anyone conceals the faults of a Muslim, Allah will conceal his faults in this world and in the Hereafter. Allah helps His slave as long as he helps his brother.

Again in this hadith, it is evident that Muslims are encouraged to protect each other and ease the troubles of another including financial hardships.

A hadith reported by Imam Ahmad bin Hambal, reads as follows:

By my life, which is in Allah's power, nobody will enter Paradise if he does not protect his neighbour who is in distress' (Al-Naisaburi, hadith no. 46)

All the above quoted hadiths stressed on the requirement to help person, Muslim or non-Muslim who faced difficulties in their life, be it financially or any other hardships. Applying this preaching to the possibility of using surplus fund from the *takaful* pool in assisting the flood victims, it is clearly justifiable. The surplus fund can be utilised to fulfil the victims' basic needs such providing for food, clothes and shelter to enable the victims to carry out with their daily lives. Expenses for medical treatments, particularly for the life threatening diseases which requires long term care and rehabilitations can also be paid out to particular flood victims who lost their livelihood due to the flood, to assist them in footing the bill. Despite the fact that flood victims might not be participants in the *takaful* scheme, the concept of *tabarru*, as agreed by *takaful* participants earlier on should be employed assist flood victims who are having financial difficulties in meeting their basic needs of food, clothing, shelter and medical treatment. It would be more than justifiable in situations where a family loss its sole bread winner, leaving the family to fend for themselves. A financial assistance is just what the family require

Juristic Opinions: Al-Sharbini [19], *sadaqah* may also be given to the rich, just as it is given to those who are less fortunate, those in need, travellers or those who are ill.

This signifies that the concept of *sadaqah* has a wide scope and not limited solely as a means of aid to the poor. Parties of a *takaful* fund mutually agree to give *sadaqah* in order to help each other should any one of them fall into misfortune under the concept of *tabarru*. Furthermore, applying the *sadaqah* principle, the issues arising from the status of the money in the *tabarru* account, the status of compensation awarded to the family of the insured when he dies and the distribution of surplus among the participants and the *takaful* company, can be settled in line with Shariah.

Al-Qurahdaghi [20] opines that the pool fund of *takaful* is in fact an entity in itself, which is known as *shakhsyiyah i'tibariyyah* (legal entity). It is similar to *baitul mal* or *waqf*, which are acknowledged by Muslim scholars as *shakhsyiyah i'tibariyyah*. Thus, if the account fund is regarded as a legal entity in itself, this means that the content of this account 'belongs' to that account and not to the participants. It can therefore legally decide as to what it wanted to do with the monies, which might include utilising it for the benefit of the flood victims according to Shariah principles.

CONCLUSION

Since the principle of *takaful* is based on the concept of *tabarru*, the relationship of brotherhood should be enshrined without any limitation of boundaries. The flood victims in the East Coast states of West Malaysia should be given a help even for those who are the non-participants for the contribution of *takaful*. The operator of the *takaful* should fully utilize the surplus of the *takaful* fund to help those victims and not to keep it as a profit. There is no point of keeping the surplus of the *takaful* fund while there are people who are struggling or suffering to live. If the surplus of the fund is given to the victims, it will be deemed as charity. According to Surah *Al Baqarah*: 215, it provides:

They ask thee what they should spend in charity. Say: Whatever you spend that is good, is for parents and kindred and orphans and those in want and for wayfarers. And whatever you do that is good, God knows it well."

This reflects the whole concept of Islamic brotherhood which promotes helping each other in time of need regardless of religion or creed.

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