The Collection of *Waqf* through Insurance Companies: A Critical Analysis of the Malaysian Experience

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Abstract: It has been claimed that insurance companies have successfully convinced young and middle-income people to contribute to *waqf*. This departs from the normal practice that it is older and wealthy people who contribute to *waqf*. This paper is a critical study on how this scheme is managed, particularly when done through a profit-making institution such as an insurance company. The study relies on interviews with relevant parties as well as on written materials. It has been found that through a combination of several Islamic principles, all related parties are benefiting from the scheme, which appears to complement the conventional method of collecting *waqf*.

I. Introduction

No Muslims have denied that after their death, they will still benefit from their previous acts of charity (among others, through *waqf*). The Prophet (peace be upon him) in a tradition narrated by Abū Hurayrah said: "When a person dies, all his good deeds cease except for three: an ongoing act of charity, beneficial knowledge and a righteous son who prays for him." (al-Tirmidhī, n.d.: 3/660, al-Dārimī, 1986: 1/148).

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At the individual level, one of the major challenges that a person might face is how to maximize their contribution to charity, whilst taking their other financial commitments and constraints into account. There are two options: either to reduce the contribution according to present financial constraints, or to wait until free of those constraints, *i.e.* in later years, and then increase the contribution to charity. However, the latter option is not guaranteed, since people never know when they are going to die, nor what other constraints might arise in the future. Is there a way to harmonize these two options?

For collectors of *waqf*, individuals or organizations, the biggest challenge is to attract Muslims to contribute, to maximize the collection and to manage it in the best possible way. In Malaysia, an insurance company has introduced a '*Takāful Waqf* Plan', which it claims is successful in overcoming those problems. In other words, through this plan, contributing to *waqf* is not a privilege exclusive to wealthy and older people. People from all walks of life can participate in it regardless of age or economic background.

It would be very interesting to study how this plan is managed, particularly as it is done through a profit-making institution, namely an insurance company. The success of a method cannot be established without comparing it with some other method. Accordingly, this study first looks at the conventional way of collecting *Waqf*. In Malaysia, this is normally done through the *Waqf* Department of the Council of Islamic Affairs in all states in the Federation of Malaysia.[1] Here, we rely on information gathered from the Council of Islamic Affairs in the Federal Territory (Kuala Lumpur). The time frame of the study is limited to the three years 2002, 2003 and 2004.

As for insurance companies, the only one that has introduced the *waqf* plan thus far is Syarikat Takaful Malaysia Berhad. The achievement of this plan, and its related statistics, are studied and compared with the conventional way of collecting *waqf*. The operational part of this plan is also explored.

The hypothesis of this research is that the management of *waqf* through insurance companies can attract younger middle-income contributors, and that this method complements the conventional method of collecting *waqf*.

II. Definition and Basis of *Waqf*

The plural of *waqf* is *awqāf*. The related verb is *waqafa*, which literally means to detain (*al-habs*) (Ibn Manẓūr, n.d.: 9/359, al-Jawharī, 1978: 4/1440).

As for the technical definition of *waqf*, Muslim scholars differ, depending on their positions on some elements and conditions of *waqf* (al-Sarakhsi, 1989: 12/27, al-Ḥaṭṭāb, n.d.: 6/18, Ibn Qudāmah, 1984: 6/206). However, they are agreed on the basic concept of *waqf* which is the permanent dedication of a portion of one's wealth for the pleasure of Allah. This means that a portion of a person's property is alienated from him/her and 'transferred'[2] to Allah. In other words, the ownership thus 'passes' from the person making the *waqf* to Allah. Therefore, it should not be inherited, gifted, mortgaged, *etc*. Essential to the scheme is that the corpus of the property remains intact while income derived therefrom, or the property itself, is used for certain philanthropic activities for the sake of Allah. It is regarded as *ṣadaqah jāriyah* (on-going charity).

The general aims of *waqf* include assisting the needy, helping the oppressed, improving the lives of the downtrodden, regulation of the economy, raising the standard of living of the people, dissemination of sciences and knowledge, constructing and administering mosques, shrines, libraries, schools, clinics, hospitals, welfare centres, *etc*. In addition, *waqf* elevates the thinking and purifies the conscience of human beings of selfishness and love of the world. It also cultivates the spirit of helping one another in the society, and joining in mutual care and love.

There are many Qur'ānic verses that in general encourage Muslims to give some portion of their property for charity purposes. There is no dispute among Muslim scholars that *waqf* is considered a form of charity. Among those verses is the one in *Sūrah Āl ʿImrān* which reads: "By no means shall you attain *al-birr* (virtue, righteousness), unless you spend (in Allah's cause) of that which you love; and whatever of good you spend, Allah knows it well." (Qur'ān, 3:92) When this verse was revealed, one of the Companions of the Prophet (peace be upon him), Abū Ṭalḥah approached the Prophet (peace be upon him) about giving his beloved orchard of date-palms called *Bayraḥā'*. The Prophet (peace be upon him) then said: "… It is a profitable property. I have heard what you have said and I recommend that you distribute this amongst your relatives." On that, Abū Ṭalḥah said: "O Messenger of Allah! I will do [so]." So he then distributed that orchard amongst his relatives and cousins (al-Bukhārī, 1987: 2/814).

Another verse which indicates the validity of *waqf* is as follows: "And do *al-ṣalāt* and give *zakāt*, and lend to Allah a goodly loan. And whatever good you send before you for yourselves (*i.e.* non-obligatory acts of worship and charity, as well as the obligatory prayers, charity, fasting, *ḥajj*, *etc.*), you will certainly find it with Allah, better and greater in reward" (Qur'ān, 73:20) The word "goodly loan" has been interpreted by Muslim scholars as the charity for the sake of Allah (al-Ṭabarī, 1954: 11/682, Ibn Kathīr, 1989: 4/564, al-Qurṭubī, n.d.: 17/216).

There are also many proofs from the traditions of the Prophet (peace be upon him) on the validity of *waqf*. One of them is narrated by Ibn ʿUmar that ʿUmar bin al-Khaṭṭāb obtained some land in Khaybar and went to the Prophet (peace be upon him) to consult him about it. ʿUmar said: "O Messenger of Allah, I obtained some land in Khaybar better than which I have ever had, what I should do with it?" The Prophet [*pbuh*], said: "If you like you can give the land as *waqf* and give its fruit in charity." ʿUmar then gave it in charity (as *waqf*) on the condition that it would not be sold nor given to anybody as a gift and not inherited, but its yield would be given in charity for the poor, for kith and kin, for freeing slaves, for Allah's cause, for the travellers and guests; and that there would be no harm if the guardian of the *waqf* ate from it according to his need with good intention, and fed others without storing it for the future (al-Bukhārī, 1987: 2/982).

In another tradition, cited earlier, the Prophet (peace be upon him) said, "When a person dies, all his good deeds cease except for three: an on-going continuous act of charity, beneficial knowledge and a righteous son who prays for him." (al-Tirmidhī, n.d.: 3/660, al-Dārimī, 1986: 1/148) In his comment about this tradition, al-Nawawī (n.d.: 11/85) said that it is a proof on the validity of *waqf* and its great reward.

Apart from these proofs from the Qur'ān and the traditions of the Prophet (peace be upon him), the validity of *waqf* has also been confirmed by the consensus (*ijmāʿ*) of the Companions of the Prophet (peace be upon him) (al-Qurṭubī, n.d.: 6/339).

III. Conventional Method of Collecting Waqf

It is a well-known practice in Malaysia that through this conventional method, the contributor will dispose moveable or immoveable property for the benefit of *waqf* recipients. The recipients are of two types, namely specific recipients and general recipients. In most cases, the trustee for *waqf* properties is the Council of Islamic Affairs.

Until the end of 2004, the Council of Islamic Affairs, Federal Territory administered the total amount of 1,008,137 square feet of land area, which is divided into the following categories:

Mosques - 3
*Muṣalla*s - 5
Schools - 1
Residential Houses - 9
Shop Lots - 1
Vacant Lands - 7

There is no official figure on the value of the properties. However, taking into account the probable value of land in Kuala Lumpur, which is at the average of about one hundred ringgit (RM) per square foot,[3] it could be assumed that the value of *waqf* properties in the Federal Territory alone may exceed RM 100 million.

As far as the contributors are concerned, the majority disposed of their properties at the age of fifty and above (Hjh. Kamariah, 2005, personal communication, 12 January 2005). Furthermore, based on the value of the property, it can also be assumed that the majority of them are rich.

IV. *Waqf* through Insurance

The only insurance company in Malaysia that has introduced, and is currently managing, a "Takaful *Waqf* Plan", is Syarikat Takaful Malaysia Berhad (referred to hereafter as Takaful Malaysia).

Takaful Malaysia is the first *takāful* operator in Malaysia. It was incorporated on 29 November 1984, has an authorized capital of RM 500 million and paid-up capital of RM 55 million. It has been converted into a publicly quoted company with its shares listed on the Main Board of the Kuala Lumpur Stock Exchange since 31 July 1996. It is a subsidiary company of BIMB[4] Holdings Berhad, which holds 74.25% of its equity.

In line with its corporate objective, which reads: "To provide *takāful* services (Islamic Insurance) at the highest standard of efficiency and professionalism to all Muslims and the population in the country", the company has been awarded MS ISO 9001:2000 Certification. Furthermore, on 14 January 2004, Takaful Malaysia won the 'Best Provider of Takaful Services Award' from Euromoney, an international financial publication based in London.

The company is operated under the directive of a Board of Directors and supervised by a *Sharīʿah* Supervisory Council. The council plays a very important role, which is to ensure that all products offered by the company are in line with *Sharīʿah* rules and regulations (*Sharīʿah* compliant).

V. The Takaful *Waqf* Plan

The general concept of the Takaful *Waqf* Plan is designed to enable any individual to save regularly with the aim of accumulating a fund that can be left as a donation under the waqf system. Through this plan, the participant (contributor) could accrue a considerable sum of money, through the accumulation of the *takāful* instalments, paid regularly over a certain period of time, which would then be sufficient to be endowed as *waqf*. Benefits payable under the plan, either upon the untimely death of the participant, or upon its maturity, are to be remitted by Takaful Malaysia to the institution named as the *waqf* recipient.[5]

Regarding the operation of the Takaful *Waqf* Plan, Takaful Malaysia allows any individual between the ages of 18 and 70 to participate in the plan. The individual must decide on the following:

(i) To make a pledge of the amount to be contributed.[6]

(ii) To agree the time period for the plan. The plan provides the flexibility to the participant to choose the period from either 5, 10 or 15 *etc*. up to 45 years. However, the plan must mature upon the participant attaining the age of 75.

(iii) Taking (i) and (ii) into account, the instalment can be calculated. However, it cannot be less than the minimum sum of RM10.00 per month. It can be paid either on a monthly or yearly basis.[7] The method of payment should be decided. It can be paid directly to the company, or through salary deduction, or bank standing instruction.

(iv) The recipient of the *waqf*: The participant must name the institution that will receive his contribution. Currently, institutions in the list are mosque building funds, orphanages, education funds, *etc*.

The participant then signs a contract with Takaful Malaysia whereby all contributions before its maturity will be divided into two accounts:

(i) *Participant's Account*:

The relationship between Takaful Malaysia and the participant is based on the principle of *muḍārabah muṭlaqah* (al-Sharbīnī, n.d.: 2/310 ff.)

Muḍārabah is the term for a joint venture between an owner of capital (participant) and an entrepreneur (Takaful Malaysia) who contributes the business effort. The profit is shared by both parties according to the agreed ratio. The term *muṭlaqah* means unrestricted to any particular kind of business or investment. Based on this principle, Takaful Malaysia uses its discretion to utilize the amount in this fund in any appropriate business or investment.

According to the contract of Takaful *Waqf* Plan, any monthly profits are to be divided between the participant and the company at the ratio of 70:30. The participant's profit is then divided (currently at the ratio of about 1:99) between the Participant's Account and the Participants' Special Accounts (see below). The amount paid to the company is considered as income for the company. This covers the costs of managing the plan, and it is how a profit-making company like Takaful Malaysia generates its income from the plan.

It should be noted here that the participant may withdraw from the plan prior to its date of maturity. However, he or she must agree from the beginning (*i.e.* upon signing the contract) to relinquish the whole balance in this account, which must be paid to the *waqf* recipient. In other words, the participant is no longer the real owner of whatever amount there is in the account. This is to avoid any claim that it is part of a disposable inheritance (in the event that the participant dies before the plan matures).

(ii) *Participants' Special Accounts:*
Based on the principle of *tabarru*', the participant will donate a small amount (currently about 1%) (Md. Azmi Abu Bakar, 2005, personal communication, 29 December 2005) of the *takāful* instalment into this account for the purpose of solidarity, brotherhood and co-operation among the participants.

In the event of death[8] of any participant, Takaful Malaysia pays to the *waqf* recipient the *takāful* benefits, which comprise the balance from the Participant's Account, and the unpaid amount of *takāful* instalments for the period from the date of his death until the date of maturity.[9] For this purpose, the latter are made up from the Participants' Special Accounts. It should be noted here that this payment, based on the principle of *tabarru*', is coming from other participants in the plan who are still living. In this way, the intention of the participant to contribute a certain amount of *waqf* before his death will still be fulfilled even though he died before the maturity of his plan.

Upon the maturity of the plan, the company will pay the *waqf* recipient the balances from the Participant's Account, including the actuarial surplus (if any) arising from the Participants' Special Accounts.

It can be observed from the above discussion that there are three *Sharīʿah* instruments involved in managing the Takaful *Waqf* Plan, namely, *muḍārabah*, *tabarru*' and *waqf*.

Prior to the maturity of the certificate, the first two instruments are applied. At this stage, the instalments are paid in cash, and not in the form of property. This contradicts the normal practice of *waqf* where the contribution should be in the form of property (moveable or immovable items). However, it has been clarified by the Shariah Advisory Board that prior to the maturity of the certificate, the instalments are yet to be considered *waqf*. At this stage, the person is still in the process of managing his wealth for the purpose of contributing it as *waqf* at the point of maturity. Once the certificate has matured, all cash money will be given to the recipient of the *waqf*, and it is expected that the money will be used to purchase or finance moveable or immovable properties.

VI. Achievements and Strengths of the Takaful *Waqf* Plan

Over the three years (2002–04), the plan successfully attracted 5000 participants, most within the ages of 30 to 40 years old. The total amount of their pledge was RM7.5 million. The average pledge of contribution for each person was RM1,500. Up to the end of December 2004, about RM 600,000 had actually been collected from the participants (Md. Azmi Abu Bakar, personal communication, 29 December 2005).

The statistics above indicate the following:

i) The plan has successfully attracted a significant number of participants with the following characteristics: Young participants (age range between 30 – 40 years old) and middle-income participants. This can be inferred from the amount of their pledge and the instalments paid every month.

ii) Even though the pledge amount from each participant is relatively small, the total collection is significant because of the great number of persons who participated in this plan.

It can be observed from the above discussion that the strengths of this plan are as follows:

i) The innovative combination of three instruments in *fiqh muʿāmalāt*, namely *muḍārabah*, *tabarru*' and *waqf*, which has made this plan workable through a profit-making institution such as Takaful Malaysia. All concerned parties (the company, participants and recipients) are g benefiting from this plan.

ii) The plan has successfully attracted young middle-income participants. This is against the conventional way of *waqf* collection that normally attracts older wealthy contributors.

iii) The plan makes available an opportunity to all Muslims regardless of their age and economic status to plan and take part in *waqf* programmes. They do not have to wait until they have surplus in their property to contribute.

iv) Through Participants' Special Accounts, the intention of a person to contribute a certain amount of *waqf* will be fulfilled even if he or she should die before the maturity of his certificate.

VII. Some *Sharīʿah* and Technical Issues Related to the Takaful *Waqf* Plan: Through written materials (such as brochures, forms, certificates, etc) of the Takaful *Waqf* Plan, it was found that there are some unclear *Sharīʿah* issues related to this plan. This does not mean that the issues have not actually been addressed according to *Sharīʿah* rules and regulations, but that the issues have not been made known to parties involved in the plan. Among such issues are the following:

(i) The certificate mentions that any profits generated from the investment of the *takāful* instalments is to be distributed in accordance with the principle of *muḍārabah* at the ratio of 70:30 (participant and company). However, nothing is mentioned about the loss. According to the *muḍārabah* principle, the company does not bear the loss if it is not due to negligence on its part. If this actually happens, the amount of money in the participants' accounts will be less than what is expected. In the end, they would be unable to donate the intended amount of money for *waqf*.

In actual practice, this is most unlikely to happen. The money will normally not be invested aggressively. The investment is done at secured places for example in Islamic bonds issued by the government, *etc*. Although this is the case, the participants should be informed clearly about all consequences of their investment under the principle of *muḍārabah.* This is to prevent any *gharar* in the contract.

(ii) As mentioned above, in the event of the death of any participant, Takaful Malaysia will pay to the *waqf* recipient the *takāful* benefits which comprise the balance from the Participant's Account and the unpaid amount of *takāful* instalments for the period from the date of death to the date of maturity. Such payment will be made from the Participants' Special Accounts.

The related question is: What if the fund in the Participants' Special Accounts is not sufficient to cover the said payment? For instance, a person makes a pledge to contribute a large sum of money (e.g. a hundred million) for *waqf* and he will pay an instalment of ten million a year for ten years. After the first payment, the person dies. This means that another ninety million will be paid to the *waqf* recipient from the Participants' Special Accounts. Another instance is when a large number of participants die in a disaster. In both cases, the total amount of money in the Participants' Special Account may not be enough to meet the pledge of those participants who had died.

There is no clear statement in the contract on what action is to be taken in such a situation, *i.e.* will the responsibility to pay be taken by the company, or by other participants who are still living? Even though this is by its very nature a most unlikely eventuality, it is appropriate to have a proper plan to manage the risk of it, and to inform participants from the very beginning.

(iii) In the *waqf* declaration, the participant declares and agrees that proceeds of the *takāful* benefits, payable by Takaful Malaysia, be paid to the recipient in accordance with the Islamic principle of *waqf*. In other words, based on the principle of *wakālah*, the participant is authorizing the company to act on his behalf in making the payment to the recipient.

There is no clear information on the procedures that will be undertaken by the company when making payment to the recipients, except a general statement in the certificate that the company will act in accordance with Islamic principles.

At the stage of payment, the *takāful* benefits are still in the form of cash, which cannot be considered as *waqf* property (al-Zuḥailī, 1985: 8/162). It is the responsibility of the company, as the agent or representative (*wakīl*), to ensure that the money is utilized by the recipient to develop or purchase moveable or non-moveable properties that, under *Sharīʿah*, can be considered as *waqf* properties.

Another important matter at the final stage is the offer and acceptance (*ijāb* and *qabūl*) of the *waqf*. Muslim scholars are of the opinion that in general, *waqf* only needs an offer. However, for *waqf* to specific recipients (*waqf khāṣ*), some Muslim scholars are of the opinion that both offer and acceptance are required (see: al-Sharbīnī, n.d.: 2/376).

In order to satisfy the customers (participants) of this plan, it is suggested that the company should inform them about the final arrangement. The company should make known to the participants the following:

(i) The acceptance of *waqf* by the recipients.

(ii) The final arrangement between the company and the recipients to develop or purchase moveable or immoveable properties, that are recognized under *Sharīʿah* as waqf properties.

VIII. Conclusion

The above discussion indicates that the two methods of collecting *waqf* complement each other. The target groups of contributors are also different. As far as young and financially average contributors are concerned, the Takaful *Waqf* Plan is a good solution. They do not have to wait until they have enough money to buy properties and dispose them as *waqf*. Through the scheme, they can plan for their *waqf*, and they can start contributing through instalments at a rate that is convenient to them.

The involvement of profit making companies such as Takaful Malaysia has facilitated the process of *waqf*. It is especially interesting to note the contribution of an innovative combination of several Islamic principles, such as *muḍārabah*, *tabarrū* and *wakālah*, to the success of the scheme. All parties benefit through this scheme.

The administrator of this scheme need not be an insurance company. It is open to any institution, which can collect instalments and invest them. Thus, banks, building societies and others could manage the scheme. With the introduction of this scheme, it is hoped that all levels of people in the community would be able to participate in *waqf*, which is not exclusive for those wealthy and older people.

Notes

1. Malaysia comprises fourteen states, and with its own Council of Islamic Affairs.
2. In fact, Allah owns everything. Thus, 'transfer' here carries the technical meaning that a person is no longer a legal owner of the property that has been given away as *waqf*. The property is thereafter dedicated to certain philanthropic activities for the sake of Allah.
3. Based on the price of some *waqf* land sold under the principle of *istibdāl*. For example, a piece of land (3398 square feet) at Kampung Baru had been sold to a company at the price of RM 300,000. Please refer also to advertisements in local newspapers on land for sale (The Star, 17 January 2005:15).
4. Bank Islam Malaysia Berhad.
5. Brochure on the Takaful *Waqf* Plan issued by Takaful Malaysia.
6. It is very important to ensure that the amount of pledge is reasonable. For example, it is unacceptable for a sixty-year-old person to make a pledge to contribute one

million with monthly instalments of one hundred. This is to avoid injustice to other participants of the plan.

7. The amount of money saved for *waqf* is more with larger instalments and longer participation period.
8. The following conditions apply:
(i) that the information and particulars disclosed and declared by the participant in the proposal and declaration form are true and correct;
(ii) that the death of the participant is not due to or arising from suicide and other causes prohibited by the *Sharīʿah*;
(iii) that the participant has not made a request to surrender the certificate prior to the date of his death;
(iv) that on the date of his death, all due *takāful* instalments are paid to the company.
9. This is the insurance (*takāful*) element of the plan.

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