Takyīf Fiqhī of *Takāful* Contract from Shariah Perspective: A Comparison between AAOIFI, IIFA and the Malaysian Shariah Resolutions and Practices

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ABSTRACT

The juridical adaptation (*takyīf fiqhī*) of the *takāful* contract remains a subject of intense scholarly debate within Islamic finance, reflecting divergent methodological approaches to reconciling modern financial products with classical jurisprudence. This paper provides a comparative analysis of the *takyīf fiqhī* of *takāful* from the perspectives of three major standard-setting bodies: the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the International Islamic Fiqh Academy (IIFA, or *Majma' al-Fiqh al-Islāmī*), and the resolutions and practices prevalent in Malaysia. The study begins by tracing the linguistic roots and conceptual evolution of *takāful*, distinguishing it from its conventional insurance counterpart and pre-modern risk-sharing practices like *'āqilah* and *tanāḥud*. The core of the analysis critically examines the distinct contractual frameworks employed by each authority. AAOIFI's Standard No. 26 conceptualizes *takāful* through a tripartite structure, anchoring the participant's relationship in a binding donation commitment (*iltizām bi-tabarru'*). In contrast, the Malaysian model operationalizes this through a hybrid *tabarru'-hibah* system, which, while commercially effective, introduces juristic ambiguities concerning ownership and reciprocal benefit. The IIFA, however, champions a paradigm rooted in the Qur'anic principle of mutual cooperation (*taʿāwun*), framing *takāful* as a novel cooperative covenant (*'aqd taʿāwunī*) governed by mutual forbearance (*musāmāḥah*). This paper employs *tarjīḥ* (juristic preference) to evaluate these competing models, arguing that the IIFA's *taʿāwun*-based framework, validated by the Prophetic precedent of *tanāḥud*, offers a theologically and jurisprudentially more coherent foundation. It effectively resolves the ontological tensions inherent in the *tabarru'* and *hibah* models regarding ownership of the fund, the permissibility of unequal benefits, and the inherent *gharar* in risk-sharing, thereby affirming *takāful*'s authentic nature as a manifestation of divinely ordained mutual responsibility.

Keywords: *Takyif Fiqhi*, *Takāful* contract, Islamic insurance, AAOIFI, IIFA and Malaysian Shariah Resolutions

INTRODUCTION

The term *takāful* (التكافل) derives from the Arabic root (كفل), meaning "to guarantee", "to support", or "to take responsibility". Its morphological form (*tafā'ul*) implies mutual reciprocity, rendering *takāful* conceptually as "mutual guarantee" or "joint responsibility". This is reflected in the Qur'anic account of the custodianship of Maryam (Qur'an 3:44) and the protection of Prophet Mūsā (Qur'an 20:40), where *yakfulu* denotes assuming guardianship. Classical Arabic usage, however, does not equate *kafālah* or *takāful* with the technical mechanisms of modern insurance.

Pre-Islamic and early Muslim societies developed communal risk-sharing practices, such as *'āqilah* (عَاقِلَة), a tribal system mandating collective payment of blood money (*diyah*) to victims' heirs and *tanāḥud/munāḥadah* (تَنَاهُد/مُنَاهَدَة), voluntary pooling of resources (e.g., food) during crises, notably among the Ash'arī tribe. While these reflect Islamic principles of solidarity, they were neither systematic financial products nor precursors to modern insurance. Modern insurance, as a commercial institution, emerged in 13th-century Italian maritime trade (e.g., Genoese contracts of 1347) and later spread globally' (Holdsworth, 1917). Its introduction to Muslim

societies sparked scholarly scrutiny, with early *fatāwā* like Ibn ʻĀbidīn rejecting conventional insurance models (Ibn ʻĀbidīn, 2003).

In Arabic, *taʾmīn* (تأمين, "insurance") remains a neutral term, qualified as *taʾmīn islāmī* (Islamic insurance) or *taʾmīn taʿāwunī* (cooperative insurance). While in Malaysia, *takāful* is a proprietary term for Sharīʿah-compliant insurance, legally distinct from conventional "insurance" under Malaysia's *Takāful* Act (1984) and IFSA (2013).

The evolution of Islamic insurance jurisprudence unfolded through pivotal *fatāwā* and institutional resolutions across the 20th and 21st centuries (Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), 2017; International Islamic Fiqh Academy, 2024; Rabitah al-'Alam al-Islami, 1978). In 1906, Sheikh Muḥammad Bakhīt al-Muṭīʿī, Grand Mufti of Egypt, formally prohibited conventional insurance in his article *Aḥkām al-Sūkūrtah* (أحكام السوكورتاه) (Ikaz, 2011). By 1965, Egypt's *Majma' al-Buḥūth al-Islāmīyyah* (Islamic Research Academy) introduced a critical distinction: it permitted state-administered cooperative and social insurance as vehicles for communal welfare (*maṣlaḥah*), while deliberately deferring judgment on commercial insurance due to unresolved juristic concerns (al-Qaradaghi, n.d.). This bifurcation between cooperative and commercial models became foundational for future discourse.

In 1968, the Fatwa Council of Al-Azhar hardened its stance, issuing a comprehensive prohibition (*taḥrīm*) against commercial insurance while tacitly upholding the permissibility of non-profit alternatives (al-Qaradaghi, n.d.). This position was further codified in 1977 when Saudi Arabia's *Hayʾat Kibār al-ʿUlamāʾ* (Council of Senior Scholars) explicitly endorsed cooperative insurance as Sharīʿah-compliant, while unequivocally banning commercial insurance (Muwaffaq, 2021) . Their ruling catalyzed broader acceptance, with the *Majmaʿ al-Fiqhī* of the Muslim World League (Rābiṭah) affirming this view in 1978 (Rabitah al-'Alam al-Islami, 1978) and the OIC's *Majmaʿ al-Fiqh al-Islāmī* formalizing it in 1985 through Resolution 9 (9/2), which recognized cooperative *takāful* as grounded in *tabarruʿ* (charity) and *taʿawun* (cooperation) (International Islamic Fiqh Academy, 2024).

Legislative milestones paralleled these juristic developments. Malaysia's *Takāful* Act (1984) emerged as the world's first dedicated legal framework for Islamic insurance, institutionally separating *takāful* from conventional models. Standardization advanced in 2006 when AAOIFI released its Sharīʿah Standard No. 26, detailing operational models (e.g., *wakālah*, *mudārabah*) and risk-sharing principles (Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), 2017).

The most significant modern refinement came in 2013, when the OIC's *Majma'* adopted Resolution 200 (6/21), comprehensively addressing *taʾmīn taʿāwunī* (Islamic Cooperative Insurance) with guidelines on hybrid contracts, investment ethics, and surplus distribution (International Islamic Fiqh Academy, 2024). That same year, Malaysia enacted the Islamic Financial Services Act (IFSA), strengthening *Takāful* governance and consumer protection (Islamic Financial Services Act, 2013), followed by the *Takāful* Operational Framework (2019), which optimized risk management and Sharīʿah compliance protocols (*Takāful* Operational Framework, 2019).

The objective of this assignment is to discuss the *takyīf fiqhī* (fiqhi adaptation) of *takāful* contract from the Shariah perspective by doing a comparison between AAOIFI, Majma' al-Fiqh al-Islāmī, OIC and the Malaysian perspectives.

DISCUSSION

It is important to understand that a *takāful* product in practice may comprise more than one Shariah contract, and it is governed by more than one document. Contracts such as *hibah* (as practiced in Malaysia), *juʿālah*, *muḍārabah* and *wakālah bil ajr* may be included in a *takāful* product. Scholars have discussed on *takāful* contracts and they have differing opinions on the *takyīf fiqhī* for *takāful*.

Takyif fiqhi for *Takāful* from Majma' al-Fiqh al-Islami perspective.

The Majmaʿ al-Fiqh al-Islāmī (OIC) classifies Islamic cooperative insurance (*al-taʾmīn al-taʿāwunī*) as a "novel contract" (*ʿaqd jadīd*)—distinct from classical juridical categories—yet firmly rooted in Qur'anic principles of

mutual cooperation (*taʿāwun*). In its landmark 1985 Resolution 9 (9/2) and refined 2013 Resolution 200 (6/21), the Majma' anchors *takāful*'s legitimacy in Allah's command (International Islamic Fiqh Academy, 2024):

"Cooperate in righteousness and piety, and do not cooperate in sin and aggression" (Qur'an 5:2).

This theological framework redefines insurance beyond commercial transactionalism, positioning it as a collective covenant (*ʿaqd taʿāwunī*) where participants pool contributions into a non-profit fund, assume joint liability for specified risks, and prioritize mutual assistance over profit-seeking.

While *takāful* manifests through multiple contractual instruments (e.g., *wakālah*, *muḍārabah*), the Majma' emphasizes that its core juridical essence remains singular whereby the participant-to-participant relations is based upon solidarity, and not compensation. The relationship among members is governed by forbearance (*musāmāḥah*) and mutual permissibility (*ibāḥat huqūq baʿḍihim li-baʿḍ)* where participants voluntarily relinquish individual claims to contributions, permitting others to access the fund when harmed. Here, ambiguities (*gharar*) in risk exposure are tolerated under the principle of mutual grace which also free from the elements of riba. Unlike commercial insurance, contributions are not premiums exchanged for guaranteed payouts.

This structure finds its precedent in Sunnah where it is mentioned under the concept of *tanāhuḍ al-rifāq* (تناهد الرفاق), mentioned in the book of Adab ash-Shar'iyyah by Ibn Muflih where *tanāhud* is described as follows (Ibn Muflih, 1999):

"وَمَعْنَى النَّهْدِ أَنْ يُخْرِجَ كُلُّ وَاحِدٍ مِنْ الرُّفْقَةِ شَيْئًا مِنْ النَّفَقَةِ يَدْفَعُونَهُ إلَى رَجُلٍ يُنْفِقُ عَلَيْهِمْ مِنْهُ وَيَأْكُلُونَ جَمِيعًا , وَإِنْ أَكَلَ بَعْضُهُمْ أَكْثَرَ مِنْ بَعْضٍ فَلَا بَأْسَ..."

"The meaning of An-Nahd ***(النهد)*** *is that each member of the group contributes something from their provisions. They give it to one man who manages the spending for them from this pool, and they all eat together. Even if some eat more than others, there is no harm"*

Imam Ahmad ibn Hanbal has attributed this practice to the practice of righteous predecessors and considered it as prevalent custom **(العرف)** and established practice **(العادة)** while mentioned that it is part of cooperation (*taʿāwun*). It was also mentioned in the book that the Shafiites and others has considered it as sunnah (Ibn Muflih, 1999). As narrated in Sahih Muslim, hadith no. 2500:

حَدَّثَنَا أَبُو عَامِرٍ الأَشْعَرِيُّ، وَأَبُو كُرَيْبٍ جَمِيعًا عَنْ أَبِي أُسَامَةَ، قَالَ أَبُو عَامِرٍ حَدَّثَنَا أَبُو أُسَامَةَ، حَدَّثَنِي بُرَيْدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ، عَنْ جَدِّهِ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى، قَالَ قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم " إِنَّ الأَشْعَرِيِّينَ إِذَا أَرْمَلُوا فِي الْغَزْوِ أَوْ قَلَّ طَعَامُ عِيَالِهِمْ بِالْمَدِينَةِ جَمَعُوا مَا كَانَ عِنْدَهُمْ فِي ثَوْبٍ وَاحِدٍ ثُمَّ اقْتَسَمُوهُ بَيْنَهُمْ فِي إِنَاءٍ وَاحِدٍ بِالسَّوِيَّةِ فَهُمْ مِنِّي وَأَنَا مِنْهُمْ " .

"Abu Musa reported that Allah's Messenger (ﷺ) said: When the Ash'arites run short of provisions in the campaigns or run short of food for their children in Medina they collect whatever is with them in the cloth and then partake equally from one vessel. They are from me and I am from them."

This is a foundational model for communal risk-sharing that conceptually parallels modern *takāful*. This practice permitted those who run short of food (eg. travellers, those in war campaigns, etc.) to voluntarily pool resources (النهد) under a designated fund manager, accepting unequal consumption (e.g., some eating more than others). This practice is different from *an-nithār* (النثار), which involves taking [things] through snatching, scrambling, and grabbing as mentioned in Adab ash-Shar'iyyah.

Through this practice, we could see elements such as voluntary contribution, non-compulsion, shared risk, and social solidarity which mirror *takāful*'s core operational framework, which replaces conventional insurance's risk-transfer with cooperative risk-sharing.

As for the relationship between insurance fund and the managing party is as follows:

a. Regarding management of insurance business: relationship is according to agency contract, with or without pay.

b. Regarding investment, the relationship is governed by either an agency or a *muḍārabah* contract. When an agency contract is used, the agency can be against pay or not. When using *muḍārabah*, the managing party is entitled to a share in the profit as per the agreement, whereas loss is borne by the capital owner, except in case of negligence or default or breach of conditions or regulations.

As for the ownership of the fund contributions and returns on their investment is that the contributions and net returns on their investment are considered the rights of cooperative insurance fund, whereas the rights of policyholders in the fund are determined according to the insurance system and entitlement conditions regarding compensation and insurance surplus.

***Takyīf fiqhī* for *takāful* from AAOIFI perspective.**

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) approaches *takyīf fiqhī* for *takāful* through a tripartite contractual framework, articulated in *Sharīʿah Standard No. 26 (Islamic Insurance)*. First, relationship among the participants is based on *mushārakah* which leads to the establishments of a company that has articles of association and all other documents. Second, relationship between the company and the policyholders' fund is based on Wakalah with regards to the management and *muḍārabah* or investment agency (وكالة بالاستثمار) relationship in regard to the investment of the fund's asset. Third, relationship between the policy holders and the fund which takes the form of donation commitment (التزام بالتبرع) at the stage of making contributions, and indemnification commitment (التزام الصندوق بتغطية الضرر) at the stage of providing compensation for injury as per regulations and underlying constituent documents (Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), 2017).

From here, we could see that AAOIFI's most significant departure from the Majmaʿ lies in its conceptualization of participant contributions as *iltizām bi-tabarruʿ* (التزام بالتبرع)—a binding donation commitment.

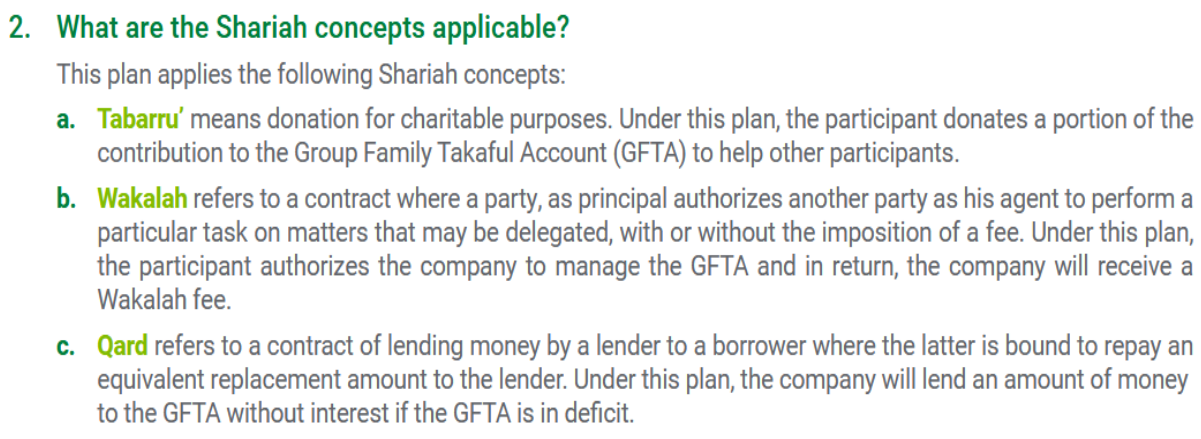
***Takyīf fiqhī* for *takāful* from Malaysia perspective.**

IFSA 2013 interprets "*takāful*" as an arrangement based on mutual assistance under which *takāful* participants agree to contribute to a common fund providing for mutual financial benefits payable to the *takāful* participants or their beneficiaries on the occurrence of pre-agreed events (Islamic Financial Services Act, 2013).

We can see that IFSA 2013 has defined "*takāful*" as an "arrangement" and not the contract itself. On the other hand, "*takāful* contract" refers to the whole legal documents that bind the participants and the *takāful* operator.

From here, we can agree that from Shariah perspective, we should differentiate between the Shariah contract (*takāful* contract) and the specific *takāful* product agreements which comprises of multiple Shariah contracts.

In Malaysian practice of *takāful* operators, the relationship between *takāful* participants is based on *tabarru'* concept whereby participant donates a portion of the contribution to help other participants.



2. What are the Shariah concepts applicable?

This plan applies the following Shariah concepts:

a. **Tabarru'** means donation for charitable purposes. Under this plan, the participant donates a portion of the contribution to the Group Family Takaful Account (GFTA) to help other participants.

b. **Wakalah** refers to a contract where a party, as principal authorizes another party as his agent to perform a particular task on matters that may be delegated, with or without the imposition of a fee. Under this plan, the participant authorizes the company to manage the GFTA and in return, the company will receive a Wakalah fee.

c. **Qard** refers to a contract of lending money by a lender to a borrower where the latter is bound to repay an equivalent replacement amount to the lender. Under this plan, the company will lend an amount of money to the GFTA without interest if the GFTA is in deficit.

Figure 1: Product Disclosure Sheet, *Takāful* myClick term, *Takāful* Malaysia

Some *takāful* providers have *hibah* in their *takāful* product as we can see below:

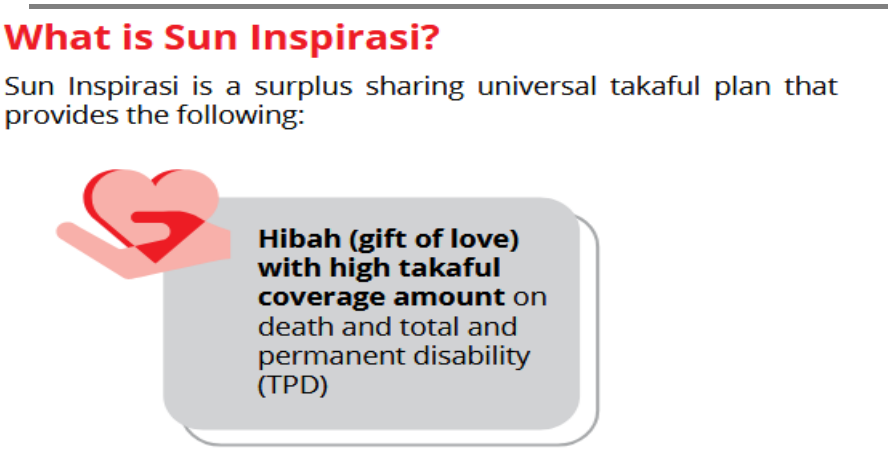


Figure 2: Sun Inspirasi, Cimb Islamic

Tarjīh on takyīf fiqhī for takāful

The juridical adaptation (*takyīf fiqhī*) of *takāful* remains contested across three dominant frameworks: the AAOIFI's contract-centric *tabarruʿ* model (*iltizām bi-tabarruʿ*), Malaysia's hybrid *tabarruʿ-hibah* system, and the Majmaʿ al-Fiqh al-Islāmī's *taʿāwun*-based paradigm. A critical *tarjīḥ* (preferential weighting) reveals fundamental tensions between classical jurisprudence and modern operational realities, necessitating a return to the *taʿāwun* framework as the most Shariah-coherent foundation.

Tabarru'

The jurists did not formulate a comprehensive definition for "voluntary gratuitous transfer" (التبرع) itself. Rather, they defined its specific types – such as bequest (الوصية), endowment (الوقف), gift (الهبة), and others. Each definition of these types delineates only its particular essence.

Nevertheless, the meaning of "voluntary gratuitous transfer" (التبرع) according to the jurists – as inferred from their definitions of these types – does not depart from being (Wizaratul Awqaf wa as-Shu'un al-Islamiyyah, 2006):

بَذْلَ الْمُكَلَّفِ مَالًا أَوْ مَنْفَعَةً لِغَيْرِهِ فِي الْحَالِ أَوْ الْمَآلِ بِلَا عِوَضٍ بِقَصْدِ الْبِرِّ وَالْمَعْرُوفِ غَالِبًا

"The legally competent person bestowing property or a benefit upon another, either immediately or ultimately, without compensatory consideration, predominantly with the intent of righteousness and benevolence."

We can see the confusion in Malaysian practice whereby *tabarru'* is meant by donation when *tabarru'* is actually not only donation but rather a gratuitous transfer of property or benefit. This makes donation part of *tabarru'* but not the whole *tabarru'*. *Tabarru'* is more than just a donation or gift (hibah) but it also includes other gratuitous transfer as mentioned above. Thus, *tabarru'* should be treated as a category of *'aqd* rather than individual *'aqd*.

Hibah

Majallah al-Ahkam al-Adliyyah, has defined Hibah as follows (Majallah Al-Ahkam Al-'Adliyyah, 1884):

تمليك مال لآخر بلا عوض

"Transfer of ownership of property to another without compensation."

in Fathul Qadir (Ibn al-Humam, 2003):

فهي تمليك المال بلا عوض

"Transfer of ownership of property without compensation."

in Mawahibul Jalil (Al-Hattab, 2003):

الهبة تمليك بلا عوض

"Hibah is transfer of ownership without compensation"

In Tuhfatul Muhtaj (Ibn Hajar al-Haytami, 1983):

التمليك بلا عوض هبة

"Transfer of ownership without compensation is Hibah"

In Kashshaf al-Qina' (Al-Buhuti, n.d.):

الهبة تمليك جائز التصرف مالا معلوما مجهولا تعذر علمه موجودا مقدورا على تسليمه غير واجب في الحياة بلا عوض

"Hibah is the transfer of discretionary ownership over an identifiable asset, where unknown elements are unavoidable, physically existing, capable of delivery, and given voluntarily during one's lifetime without compensation."

There are problems and confusion when using *hibah* as the basis for *takāful*. Firstly, is on the ambiguity of ownership. Classical *hibah* requires full ownership (*milkiyyah*) of the transferred asset. However, participants never "own" future *takāful* benefits (e.g., potential payouts 10x exceeding contributions), rendering the analogy juridically void. Secondly is on the recipient confusion. One must ponder whether a *hibah* giver be the beneficiary himself (eg. in general *takāful*, accident, Total Permanent Disability) where participants receive payouts from their own donations. This violates *hibah's* requirement where *hibah* should not return to the giver.

Another problem is intentional misalignment. Agents promote *tabarruʿ* using Qur'anic verses on charity, but participants intend financial protection—not altruism when they subscribe to a *takāful*. This creates a cognitive dissonance where customers perceive contributions as premiums, not donations.

Treating *takāful* as a new contract under the basis of *ta'āwun* would eliminate these problems as it is governed by forbearance (*musāmāḥah*) and mutual permissibility (*ibāḥat ḥuqūq baʿḍihim li-baʿḍ)* where participants voluntarily relinquish individual claims to contributions, permitting others to access the fund when harmed.

The *tanāḥud* practice cited by the Majmaʿ offers a validated *Sharīʿah* blueprint (International Islamic Fiqh Academy, 2024):

- Voluntary Pooling: Like the Ashʿarīs' food fund, *takāful* contributions are collective resources managed for mutual benefit—not "donated" assets.
- Flexible Distribution: Some consuming more than others (*"even if some eat more"*) mirrors variable *takāful* payouts based on need, avoiding rigid *hibah* rules.
- Managed by Custodian: The designated fund manager (*"one man who manages spending"*) parallels the *takāful* operator's role under *wakālah*.

CONCLUSION

The comparative analysis of the *takyīf fiqhī* (juridical adaptation) of the *takāful* contract undertaken in this assignment reveals a complex landscape of scholarly interpretation, shaped by institutional perspectives and operational realities. While AAOIFI, the Majmaʿ al-Fiqh al-Islāmī (OIC), and Malaysian practice all strive to establish a Sharīʿah-compliant foundation for Islamic insurance, their conceptual frameworks diverge significantly, leading to distinct classifications and attendant jurisprudential challenges. Upon rigorous

examination of the arguments and evidence presented, the framework articulated by the Majmaʿ al-Fiqh al-Islāmī emerges as the most conceptually sound, theologically coherent, and practically sustainable paradigm for understanding the essence of *takāful*.

AAOIFI's approach, enshrined in Standard No. 26, offers valuable operational clarity through its tripartite contractual dissection. However, its core reliance on characterizing participant contributions as an *iltizām bi-tabarruʿ* (binding commitment to donate) introduces significant juridical tensions. While *tabarruʿ* (gratuitous transfer) as a broad category encompasses various forms of giving, its application within *takāful* creates dissonance. The fundamental nature of *tabarruʿ* – the irrevocable transfer of ownership (*tamlīk*) without compensatory consideration (*ʿiwad*) – clashes with the reciprocal expectations inherent in the *takāful* arrangement. Participants contribute expecting financial protection for themselves or their beneficiaries; they are not making a purely altruistic donation where they relinquish all future claim. The problematic reality, particularly evident in life/family *takāful* products, where participants or their beneficiaries often receive payouts significantly exceeding their contributions directly from the fund built partly on their "donation", starkly contradicts the classical conditions of *hibah* (a subset of *tabarruʿ*). This inherent contradiction – where the "donor" becomes the primary beneficiary – creates an ontological flaw in AAOIFI's *takyīf*.

Malaysian practice, while innovative and commercially successful, further compounds these conceptual difficulties by explicitly incorporating *hibah* into its operational model. As illustrated in product documentation, *hibah* is often presented as the mechanism for beneficiary nomination. This directly confronts classical definitions of *hibah* found in authoritative texts across the *madhāhib* all emphasizing the irrevocable transfer of ownership of a known asset without compensation, where the donor cannot be the beneficiary. The Malaysian model navigates this by contractual stipulation (*shart*), but this does not resolve the underlying jurisprudential incompatibility. The promotional dissonance – framing contributions as charitable *tabarruʿ* while marketing *takāful* as financial protection – further highlights the awkwardness of forcing *takāful* into the procrustean bed of classical donation contracts.

In stark contrast, the Majmaʿ al-Fiqh al-Islāmī transcends these contractual constraints by anchoring *takāful*'s legitimacy not in a specific, pre-existing nominate contract (*ʿaqd muʿayyan*), but in the fundamental Qur'anic principle of *taʿāwun* (mutual assistance and cooperation) articulated in Surah al-Mā'idah (5:2): *"Cooperate in righteousness and piety, and do not cooperate in sin and aggression."* This theological grounding elevates *takāful* beyond mere commercial transactionalism, positioning it as a collective covenant (*ʿaqd taʿāwunī*) rooted in social solidarity (*takāful ijtimāʿī*). Within this framework, participant contributions are not conceptualized as *tabarruʿ* donations to others, but as mutual commitments into a shared fund (*ṣundūq al-taʿāwun*) owned collectively by the participants themselves. The relationship among participants is governed by the principles of mutual forbearance (*musāmāḥah*) and mutual permissibility (*ibāḥat ḥuqūq baʿḍihim li-baʿḍ*) – participants voluntarily relinquish strict individual claims to their specific contributions, permitting the fund to be accessed by any participant who suffers a defined loss. This mutual agreement inherently tolerates the unavoidable element of *gharar* (uncertainty) regarding who will benefit and when, as it is subsumed under the overarching grace (*musāmāḥah*) inherent in the cooperative pact.

The brilliance of the Majmaʿ's approach lies in its validation through a robust Prophetic precedent: the practice of *tanāḥud* or *nahd* among the Ashʿarī tribe, explicitly praised by the Prophet (PBUH) in Sahih Muslim (Hadith no. 2500). This practice, meticulously documented in classical sources like Ibn Mufliḥ's *Ādāb al-Sharʿiyyah*, involved travelers pooling their provisions (*nafaqah*) into a common fund managed by one individual. Crucially, consumption from this pool was based on need, not strict proportionality – *"even if some eat more than others, there is no harm."* This Sunnah-based model provides an exact analogue for modern *takāful*: voluntary contribution to a common pool, managed by a designated custodian (the *takāful* operator under *wakālah*), with benefits distributed based on verified need (the occurrence of the insured event), accepting that some will draw more than they contributed. It resolves the ownership question – the fund belongs to the participants collectively. It resolves the *gharar* issue – uncertainty is inherent in mutual aid and accepted under *musāmāḥah*. It resolves the reciprocal benefit dilemma – drawing more is the *purpose* of the arrangement, not a violation of donation rules. It also avoids the problematic characterization of the operator's role regarding the fund; the operator acts

purely as a manager (*wakīl*) for the participants' collective asset, not as a party receiving "donations" or engaging in a profit-sharing venture (*mudārabah*) with the fund itself as the capital owner.

Therefore, while AAOIFI provides necessary operational standards and Malaysia demonstrates practical market application, the Majmaʿ al-Fiqh al-Islāmī offers the superior foundational *takyīf fiqhī*. Its *taʿāwun* paradigm, validated by Qur'anic injunction and Prophetic Sunnah, provides a theologically robust and jurisprudentially coherent explanation for the *essence* of the relationship among *takāful* participants. It successfully distinguishes *takāful* from both conventional insurance (risk transfer for profit) and classical donation contracts (*tabarruʿ*), establishing it as a unique, Islamically mandated mechanism for mutual financial protection grounded in solidarity. This framework readily accommodates the use of auxiliary contracts like *wakālah* (for management) and *mudārabah* (for investment) governing the relationship *between the participants and the operator*, without distorting the core cooperative nature *among the participants themselves*. Adopting this Majmaʿ-endorsed *takyīf* as the primary conceptual lens is crucial for ensuring the continued Sharīʿah integrity, theoretical clarity, and authentic development of the global *takāful* industry. It moves beyond contractual patchworks to affirm *takāful*'s true nature: a manifestation of divinely ordained mutual responsibility (*takāful*) within the Muslim community.

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