



THE PROSPECTS AND CHALLENGES OF ISLAMIC
INSURANCE (*TAKĀFUL*) IN NIGERIA:
A COMPARATIVE LEGAL ANALYSIS WITH THE
MALAYSIA SYSTEM OF *TAKĀFUL*

BY

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ABSTRACT

The Nigerian insurance industries have introduced *takāful* (Islamic insurance) into its insurance market. This initiative is based on the apparent prospects for *takāful* operation in the country. The indicators of the prospects include the large Muslims population in the country who will prefer *takāful* to conventional insurance policies. Other indicators are the application of Islamic personal and criminal laws which are the branches of Islamic law in some of states of the country. However, the new *takāful* operation is being confronted with some problems. The main problem that is faced by the Nigerian *takāful* industry is the lack of a unified and reliable legal framework. Other problems are the lack of technical-know-how of the *takāful* operation and religious intolerance. This study addresses the problems that confront the Nigerian *takāful* operations. The study is a library based research. It relies on the available literatures on the subject of *takāful*, which are in both printed and electronic forms. The researcher at the course of the study discovered that, the Malaysian *takāful* industry is the most developed in the world. The industry developed through the country's *takāful* legal framework. The framework is embodied in the *takāful* Act, 1984. The law is viable as it helps the country to develop its *takāful* operations rapidly. The researcher therefore, suggests the adoption of the Malaysian *takāful* framework as a model for the development of the Nigeria *takāful* framework. The researcher concluded that if Nigeria should adopt the Malaysian *takāful* framework, it will help to overcome the problems faced by the Nigerian *takāful* operations and it will accelerate the development of the industry, in the country, to the world standard.

ملخص البحث

إنّ الشركات التأمينية في نيجيريا قد بادرت بتقديم التأمين إسلامي (التكافل) إلى أسواقها. وقد استندت هذه المبادرة على الفرص الظاهرة للتأمين إسلامي في ذلك البلد. ومن هذه الفرص, كون نيجيريا دولة ذات أغلبية السكان المسلمة, ومنها كذلك تطبيق قوانين الأحوال الشخصية في جنوبها والحدود في شمالها, وكلا القانونين من فروع الشريعة الإسلامية. وإثر تقديم التأمين الإسلامي في سوق التأمين النيجيري من قبل الشركات التأمينية, فإن عمليتها تواجه بعض مشاكل. ومن أهم هذه المشاكل, مشكلة عدم وجود الإطار قانوني الموحد والموثوق بها لعملية التأمين إسلامي في نيجيريا. ومن مشاكلها كذلك عدم وجود الخبراء المتخصصين في عملية التأمين الإسلامي وعدم السماحة الدينية من قبل أصحاب الملل الأخرى الذين هم من شعب نيجيريا. وقد درس هذا البحث هذه المشاكل. وانتهج الباحث طريقة البحث المكتبية. فاعتمد على المصادر والمراجع المتوفرة في موضوع التأمين الإسلامي. ويتكون المراجع المعتمدة عليها من المواد المطبوعة والإلكترونية. وهي كذلك دراسة مقارنة بين عملية التأمين الإسلامي في نيجيريا وماليزيا. واكتشف الباحث أثناء بحثه, بأنّ الشركات التأمينية الإسلامية في ماليزيا هي الأطور في العالم. وأنّ تطورها, إنما هي باعتمادها على الإطار القانوني للتأمين الإسلامي الماليزي. والإطار القانوني المذكور هو الممثل في قانون التأمين الإسلامي الماليزي لعام 1984. وقد ساعد هذا القانون في تطوير العملية التأمينية الإسلامية في ماليزيا بشكل هائل. وبناءً على ذلك, فإنّ الباحث يقترح لنيجيريا أن تتبنى هذا القانون كنموذج لتطوير قانونها للتأمين الإسلامي. ونتيجة البحث, أنه من الضرورة أن تتبنى نيجيريا قانون التأمين الإسلامي الماليزي كوصيلة لها للتغلب على المشاكل التي تواجه العملية التأمينية الإسلامية فيها وكما أن ذلك القانون سيساعدها في سرعة تنمية علمية التأمين الإسلامي فيها وفق المعيار المقبول دولياً.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standard of scholarly presentation and is fully adequate, in scope and quality as dissertation for the degree of Master of Comparative Laws.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Abdul Azeez Maruf Olayemi

Signature:.....

Date:

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**The Prospects and Challenges of Islamic Insurance (*Takāful*) in
Nigeria: A Comparative Legal Analysis with Malaysian System of
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This work is dedicated to my late mother who passed away in the year 1983 when I was in dire need of her. I beseech Almighty Allah to reward her with any spiritual reward that might accrue from this research.

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CHAPTER 1

INTRODUCTION

The reality that the Malaysian *takāful* regulatory framework is the most developed in the world cannot be disputed. The regulation is embodied in the country's *Takāful* Act 1984, (Act No. 312). The Act comprehensively provides for all legal requirements of the business. The provision of the law *inter alia* includes the governance and supervision of *takāful* industry and the licensing of *takāful* operators under the platform of its two schemes, which are the family *takāful* scheme and the general *takāful* scheme. The law also provides for the minimum deposit of the *takāful* operations and etc¹

However, the *takāful* operation which is now growing throughout the world is being introduced to Nigeria without any specific legal or operational framework. Although, the current practice of *takāful* in the country is the window system under a conventional insurance system, yet there should be a framework which will differentiate between the two practices. For example, the only notable practice of *takāful* in the country is that of African Alliance Insurance Company Ltd. The *takāful* plan introduced by the company is the group family *takāful* scheme. The plan of *takāful* under this scheme covers various groups who might enter into the contract of *takāful* with the company. The group can be the employees of a certain firm, members of a *masjid*, associations or societies. Thus, if a member of the group died or sustains a

¹ A±mad Sanusi Husain, "International Takāful in Malaysia," <<http://takaful-islamic-insurance-malaysia.blogspot.com/2009/01/international-takaful-in-malaysia.html>> (accessed 28 /8/ 2009).

permanent disability, the company shall be obliged to provide financial compensation to the person or his beneficiaries.²

Eventhough it is agreed upon that the family *takāful* system practice by the company is known under the system of *takāful*, yet, another question which must be answered is; under which framework or platform is the operation carried out, because, there is no any specific framework for *takāful* in Nigeria.

This humble research is an endeavour to propose a solution to the question of *takāful* framework in Nigeria. The researcher proposed the Malaysian *takāful* framework as a model for the country. The study also discusses the prospects and challenges of the new *takāful* system in the country, and it suggests possible ways to move the institution forward.

It is the opinion of the researcher that, Nigeria needs to borrow a leaf from Malaysian practice by putting a formidable *takāful* framework in place. It is only a reliable regulation that can give strength and engender high standards and greater discipline in the *takāful* business which in turn, will attract more consumer interest.

The issue of minimum capital requirement and solvency regime are also emphasized in the study. It is suggested that *takāful* should not be treated as a niche product under the traditional insurance system because Malaysia which is the role model and the leading country in *takāful* operation has a separate treatment for *takāful* industry. Thus, *takāful* must rather be seen as a sister product to the conventional system. It is by doing so that standard of the industry in Nigeria can develop into the world standard.

² Yusuf Tajudeen Olalekan, "Insurance in Muslim Countries: Nigeria's First Takāful Scheme in Focus", *Journal of Islamic Banking and Finance*, (April, - June 2006), at 70.

Finally, it is believed that this study shall open the window for further academic work which will all together constitute appropriate substances to current *takāful* system in Nigeria.

1.2 CHAPTERIZATION

The study addresses the issue of *takāful* framework for Nigeria and the prospects and challenges of the industry in the country, and it is divided into five chapters.

Chapter one is the introduction. It covers the statement of problem of the dissertation, the hypothesis, the aims and objectives of the study, the literature review, the methodology of the study and its scope and limitation.

Chapter two discusses the legal and operational framework of *takāful* in Malaysia. It also discusses the types of *takāful* operation in the country.

Chapter three deals with the *takāful* framework in Nigeria. The discussion in this chapter includes the development of Islamic insurance in Nigeria and the proposal for *takāful* framework for the country.

Chapter four discusses the prospects and challenges of *takāful* in Nigeria. On the prospect, the discussion includes various indicators of prospect for the practice of *takāful* in the country, such as the population of the Nigerian Muslims who are the majority and the application of *Sharī'ah* in the country, which *takāful* is a branch. However, on the challenges, the discussion focuses on issues like the societal challenges which mainly are the religious intolerance and the technical challenges which are aimed at sensitising the practitioners.

Chapter five is the conclusion. It includes discussion about the importance of *takāful*. It also reaffirms that Nigeria still have to learn from the Malaysian experience in order to develop it *takāful* operation. The study finally suggests

possible starting points for the establishment of a comprehensive *takāful* operation in Nigeria. The suggested options include window version of *takāful* operation for current insurance firms, *banca takāful* system for the conventional banks, and the adoption of cooperative *takāful* scheme by the cooperative societies. It is also suggested that the subject of *takāful* should be included in the syllabi of law schools as well as the business and insurance institutions in the country. It is concluded that legal framework for *takāful* in Nigeria is a necessity and *takāful* should be viewed as an economic mechanism which can benefit every citizen of the country rather than looking at it as an ordinary religious practice.

1.3 STATEMENT OF PROBLEM

The system of *takāful* is created under Islamic commercial law to serve the purpose of indemnity against any possible future financial or property loss and peril. Thus, since Nigeria is a Muslim country it should put in place a reliable *takāful* framework to cater for the needs of its citizens, because:

1. Muslim countries such as Malaysia and others have produced a reliable framework for their *takāful* operation. Why should Nigeria practice *takāful* without any *Sharī'ah* compliant framework? Is conventional insurance framework acceptable for the operations of *takāful*?
2. There is appropriate *modus operandi* for *takāful* practice in Malaysia, should Nigeria adopt it as a model for its own *takāful* modus operandi? Can the Malaysian model help to develop a world standard model for Nigeria?

3. The Muslim population in Nigeria is more than 80 million, constituting over 65% of the total population, why is this great population lacking a *Shari'ah* compliant insurance to indemnify their future?
4. There are challenges before the development of *takaful* in Nigeria. What are these challenges? Can the institution overcome the challenges?
5. Can *takaful* remove the monopoly of the conventional insurance in Nigerian insurance market? Can it be developed to break the monopolization of the conventional insurance and give the consumers the opportunity of choosing between many options?

1.4 HYPOTHESIS

Nigeria is a predominantly Muslim country, and *Shari'ah*, being a component of the Nigerian legal system, is adopted by some of its states. The people of the states accept the application of the criminal aspect of the law. Thus, since the application of *hudud* (the Islamic criminal law) which is the most stringent part of the law is acceptable to them, it is believed that there is a very high prospect for the development of a legal framework for *takaful* operation in Nigeria.

This hypothesis is based on the premise that Malaysia which is the most developed country in terms of *takaful* practices, shares many things in common with Nigeria. The development of a *takaful* framework for Nigeria should include the enactment of a reliable law, which will form an appropriate *modus operandi* for *takaful* operation in the country. This will enable Nigeria to actualize the quest of its citizens for the development of *takaful* in the country. It will also help the industry to overcome the lingering challenges.

1.5 OBJECTIVES OF THE STUDY

The study aims at proposing a *takāful* framework for Nigeria, and the suggestion of Malaysian *takāful* framework as a model for the country. It also intends to bring the prospects for *takāful* operation in Nigeria to limelight. The prospects include the presence of a very high population of Muslim faithfuls in the country. It is believed that since *takāful* is of their faith it shall be wholly acceptable to them. The study also aims to identify the challenges that confront *takāful system* in Nigeria. It however discovered that the main challenges are the lack of specific framework, the technical challenges, and the religious intolerance.

1.6 LITERATURE REVIEW

The concept of *takāful* is a central topic to the discussions on *Sharī'ah* today across the world. *Sharī'ah* scholars have written many books and articles on the topic. Some scholars wrote a separate book about the subject while others discussed it alongside other *Sharī'ah* issues. Some of the available literatures on the subject are as follow:

Books:

One of the most important literatures on this subject is *'Insurance in Islamic Economy*.³ The book discusses the economic aspect of insurance and its relevance to Islamic economy. It also discusses the measures that are adopted in the modern time for the organization of economy and finance which is insurance and that it has a key role in present industrial development as well as in large-scale organization of commerce, industry and agriculture. It includes that in certain respects, insurance is

³ Mu±ammad Najatullah Siddiqi, *Insurance in an Islamic Economy*, (UK: The Islamic Foundation, 1985), at 13.

more important than banking. However, he did not discuss the prospects and challenges of *takāful* in accordance with Nigerian perspective which is the main focus of the present research

Another important author in this direction is *Moḥammad Musleḥuddīn*. His book *Insurance and Islamic Law*⁴ discusses the basic notions of insurance and the fundamental principles of Islamic Law. The book deals with insurance, its origin, nature and development. It also discusses Islamic Law, particularly in its relation to transactions. It presents a summary of arguments on Islamic insurance, the assessment of the modern contract of insurance in the light of Islamic Law and the merits of mutual insurance. The book concludes by stating the factors which render the modern contract of insurance invalid under Islamic Law.

More so, the regulatory aspect of *takāful* is considered by *Aly Khorshid* in his book *Islamic Insurance, a Modern approach to Islamic Banking*.⁵ He includes that the regulation of *takāful* in Malaysia came up in 1984. The *Takāful Act 1984* is a comprehensive legislative framework for the operation of *takāful*. The Malaysian *Takāful Act* defines *takāful* in Sec. 2 as ‘*a scheme based on brotherhood, solidarity and mutual assistance, providing for mutual financial aid and assistance to the participants, in the case of need where the participant mutually agree to contribute for that purpose*’. Thus, the lengthy discussion of the author on the regulatory part of *takāful* in Malaysia is important to this research, since it will give a deep insight to the same regulation which is suggested for Nigeria.

⁴ Moḥammad Musleḥuddīn, *Insurance and Islamic Law*, (Delhi: Adam Publishers and distributors, 1982), at ix.

⁵ Aly Khorshid, *Islamic Insurance, A modern approach to Islamic banking*, (New York: Routledge Curzon, Taylor & Frances Group, 2004), at 113.

Sohail Jaffer, in his edited book, *Islamic Insurance, Trend, Opportunity and the Future of Takāful*,⁶ discusses the growth of the Islamic insurance market since the establishment of the first *takāful* operator in 1979. He showed through reliable research that there are currently over 250 *takāful* companies in existence globally and that projections show that total *takāful* premiums are likely to reach over US\$ 7bn by 2015. The book capitalizes on the exploration of the growth and global market for *takāful* and the factors driving such growth. He includes that although Islamic jurisdictions traditionally have one of the lowest insurance penetration rates in the world, but the uniqueness *takāful* cannot be denied. He suggests that, there is a need for Islamic financial services which will harness the development of profitable *takāful* market for the future. He also considers the corresponding development of the *retakāful* industry, which is the key to the growth of the direct *takāful* market. He asserts that although the first *retakāful* company was established in 1985 and that there has been a steady growth in the number of *retakāful* operators over the past 20 years, yet it has not been able to match the surge in the number of direct providers over the same period. This has made many *takāful* operators to resort to conventional reinsurers in order to manage their risk profile. Although several well-known international reinsurers are obtaining licenses to establish Islamic compliant reinsurance operations around the globe, the need for *Shari'ah* compliant reinsurance capacity remains vital.

Against this background, the book considers the different *takāful* models and mechanisms in existence. This encompasses an examination of the development of comprehensive life and non-life *takāful* products, the use of *takāful* as a wealth

⁶ Sohail Jaffer, *Islamic Insurance: Trends, Opportunities and the Future of Takaful*, (London: Euromoney International Investor Plc, 2007) at xiii.

management vehicle as well as the common misconceptions and concerns which arise in the provision of *takāful*.

He concludes that, among the problems been encountered by the *takāful* market are the legal, regulatory and operational hurdles, which are compounded by the fact that the regulation of *takāful* is at different stages of development in various jurisdictions around the world. As a consequence, there is no measure of international uniformity in the regulation and conduct of *takāful* business. Developing a consistent international approach to regulation is the key to facilitating the growth and global marketing of *takāful*. It is also apparent that the development of an Islamic capital and investment market together with an internationally recognized rating system will be critical to the corresponding growth and development of *takāful*. The book is useful for this research in the sense that it includes the discussion of *takāful* as a prospective poverty alleviation mechanism, and the regulatory problem the faces the system.

Further more, *Mo±ammad Ma'sūm Billah*, in his book '*Islamic Insurance (Takāful)*',⁷ gives the impression that today's commercial world is mainly dominated by the *ribā* (usury) based economic system. He asserted that insurance practice is not an exception to this problem, and that the phenomenon is dangerous in the eyes of *Shari'ah*, because *ribā* is strictly forbidden and that a *ribā* based-transaction is considered void *ab initio*.' He continued that, in the contemporary Muslim world, many jurists oppose the validity of insurance, because of the availability of the element of *ribā* in its practices. Meanwhile; there are also other jurists who accept an insurance practice upon designation of an alternative operational model based on *al-muḍārabah* (profit and loss sharing).

⁷ Mohammad Ma'sūm Billah, *Islamic Insurance (Takāful)*, (Malaysia: Ilmiah Publisher Sdn. Bhd, 2003) at 2.

He however, concludes that, the aim of his research is to come up with a preliminary model of insurance justified by *Sharī'ah* principles, which may suit our contemporary world. He divided the research into three chapters, the introductory and final remarks. The first chapter deals with the conceptual aspect of Islamic insurance while the second chapter focuses on the diversification of views among the jurists on the validity of insurance practices. However, the third and final chapter come up with a discovery of possible classes of insurance in practice, especially a model of life insurance justified by the *Sharī'ah* discipline, which may benefit the contemporary *Muslim Ummah*. The chapter also shed light on the basic procedural solution on insurance practices. The book is important to the study as it aims at eliminating all the doubts that surround *takāful* practice as regards to its compliance with *Sharī'ah*.

Articles:

One of the foremost articles on this study is that of *Moḥammed 'Ali Aḥmed* in his article *'The World of Family Takāful Windows*.⁸ He discusses *takāful* in Pakistan. He includes that since the late 1970s and early 1980s when the concept of *takāful* was successfully transformed into a commercial business enterprise, where three organizational structures are being followed by companies world-wide to market *takāful* products: these are dedicated *takāful* companies for family *takāful* and general *takāful*. Composite *takāful* companies and window family *takāful* operations by conventional life insurers. He discusses the first structure only in context of the insurance regulations in Pakistan as well as the market forces which will drive this business forward. He emphasizes why “windows are suitable for the growth of family *takāful* business in the market. The article is beneficial to the research in the sense that

⁸ Muhammed Ali Ahmed, “The World of Family Takaful Windows,” *Journal of Islamic Banking and Finance*, (January - March 2008), at 65.

the window *takāful* operation which is its subject matter is suggested in the research as a solution to the problem of the Nigerian *takāful* industry.

In addition, a paper by *Bryan Joseph* and *Mohammad Khan* entitled '*Islamic Insurance A competitively Priced Ethical Product with Potentially Widespread Appeal*',⁹ describes *takāful* as one of the fastest growing types of insurance worldwide. It explains that the industry has experienced growth rates of 10 - 20% per year in the Middle and Far East, in comparison with its conventional insurance counterpart. It adds that the return on capital for *takāful* products has averaged between 15% and 25%, and based on growth forecasts, the institution remains promising. It has been predicted that total *takāful* premiums will rise to \$7bn by 2015 and some of the world's largest *takāful* companies envision that approximately one-third of their premiums will come from Western countries by 2020. The paper is useful to the research as the study includes how *takāful* can contribute to Nigerian economy.

Moreover, *Shabnam Mokhtār*, discusses the development of *takāful* company in Malaysia in his article '*Overview of Takāful Industry in Malaysia*'¹⁰. He asserts that the *takāful* industry in Malaysia originates with the enactment of the *Takāful Act 1984*, and that *Syarikat Takāful Malaysia* was the first *takāful* operator in the country. It began operations in 1985. He includes that before 2006, there were only three local *takāful* companies in Malaysia which are; *Takāful National*, *Takāful Ikhlas* and *May Bank Takāful*, and that the *takāful* share then was revolving at 4% to 5%, however, this rise to 6.5% in 2006. This research shall benefit from the historical background of the establishment of *takāful* companies in Malaysia from the research.

⁹ Bryan Joseph and Mohammad Khan, "*Islamic Insurance a Competitively Priced Ethical Product with Potentially Widespread Appeal*"(n.p., n.d.), , at 11.

¹⁰ Shabnam Mokhtār, "Overview of Takāful Industry in Malaysia," (2008), *MIF Monthly Takāful Supplement*, Malaysia: The International Islamic Financial Centre, at T1.

In addition, *Ādam Ebrahim*, in his article, '*Asset management within the takāful industry*'¹¹ discusses *takāful* in Africa as a panacea to problems of Muslims in the continent. He mentioned that the problems include a significant proportion of the African Muslim population that are poor and inadequate social services. The author foresees that *takāful* can play a meaningful role in alleviating this problem by allowing affordable savings as well as appropriate levels of insurance cover. However, the book did not discuss the prospects or challenges of the institution in Nigeria specifically.

Furthermore, *Bahiah Wan Aris*, in his article, '*Takāful – an Option to Conventional Insurance: a Malaysian Model*'¹² discusses the models of *takāful* that are in practice in Malaysia. This is *muḍārabah* model. He explained that *muḍārabah* literally means 'profit sharing'. Thus, the *takāful* operator accepts and invests the *takāful* contributions (premiums) received from the *takāful* participants. The contract specifies how the profit will be shared between the participants and the *takāful* operator. For example the ratio may be on a 60:40 basis and so on. The literature is important to this study because the models of *takāful* in Malaysia are suggested as a model for Nigeria.

In their own article, *Hairul Azlan Annuar, Saiful Azhar Rosly and Hafiz Majdi Abdul Rashid* that is '*The Impact of Wakālah System on the Performance of Takāful Business in Malaysia*'¹³. They study the first *takāful* operator in Malaysia, which is *Syarikat Takāful Malaysia*. They explained that the company did not use the *wak`lah*

¹¹ Ādam Ebrahim Oasis, 'Asset Management within the *Takāful* industry', in *Islamic Insurance: Trends, Opportunities and the Future of Takaful*, ed. Sohail Jaffer, (London: Euromoney International Investor Plc, 2007) at 152.

¹² Bahiah Wan Aris, *Takaful- An Option to Conventional Insurance: A Malaysian Model*, Faculty of Business Management, University MARA, Malaysia, at 5.

¹³ Hairul Azlan Annuar, Saiful Azhar Rosly and Hafiz Majdi Abdul Rashid, '*The Impact of Wak`lah System on the Performance of Takaful Business in Malaysia*', at 493.

model of *takāful* because of the divergence of opinions among the *Shari'ah* scholar on whether the *takāful* operator can use part of the participant fund to pay for the management expenses or not. However, they include that the second *takāful* operator in the country which is *Takāful* National Sdn Berhad (TNSB) applies the agency system, since it holds a different view on the *wakālah* contract. In short since *wakālah* is in operation in Malaysia, the researcher suggests its adoption and application in Nigeria in this study.

The only available literature on *takāful* in Nigeria is that of *Yusuf Tajudeen Olalekan*. In his article, '*Insurance in Muslim Countries: Nigeria's First Takāful Scheme in Focus*.'¹⁴ He discusses Islamic insurance in the world over and focuses specially on Nigeria. He also emphasizes on the basic conceptual issues of *takāful*, reasons for the low penetration of insurance in Muslim countries, and managing the uncertainties of *takāful*. He then gave a brief explanation on the theoretical framework for Islamic insurance. He focuses on Nigeria which is a leading Muslim country in Africa. The country has gotten its first ever Islamic insurance scheme. He finally concentrates on the discussion about the issues that emanate from this innovation, the opportunities for policy decisions and practitioners as well as suggesting directions for future investigations. He however, did not discuss the prospects, challenges and the way forward for *takāful* practice in Nigeria. This lacuna is the part of the subject matter of the research.

To sum up, despite the availability of numerous literatures on the subject of Islamic insurance, the portion of Nigeria remains widely unoccupied. This research is an initiative to open the door of legal and academic works with regards to Nigerian perspective of Islamic insurance.

¹⁴ Olalekan, at 55.