



OWNERSHIP OF FAMILY *TAKĀFUL* BENEFIT IN  
NOMINATION AND *HIBAH* CASES

BY

NAN NOORHIDAYU BINTI MEGAT LAKSANA

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International Islamic University Malaysia

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## ABSTRACT

Ownership indicates right over a property, which entitles a person with particular causes, either through his own effort by taking control of permissible things, or the efforts of others. In *takāful*, the efforts of the participant in taking up the policy and paying the monthly contributions, will entitle him the ownership of *takāful* benefits. This contention is based on the fact that one's effort becomes a justification for ownership. Therefore, upon the participant's death, the *takāful* benefits will be distributed among the heirs of the participant according to the law of *fara'id* or *hibah*. This study examines the issue of ownership over *takāful* benefits in the Participant Risk Fund (PRF). In PRF, the ownership of this fund is jointly collective by the participants; therefore, it has led to disputation among *Sharī'ah* scholars to determine the status of ownership of this fund. Besides, this study also identifies the validity of executing *hibah* in PIF as this issue is much related to the conditions of *hibah*. This research adopted semi-structured interviews to collect both qualitative and quantitative data from 11 *Sharī'ah* advisors, 11 *Sharī'ah* officers and three *takāful* experts from 11 *takāful* operators in Malaysia. This study finds that *Sharī'ah* scholars are not unanimous in determining the status of ownership in PRF. Besides, this study also finds that *hibah ruqba* is important based on the participant's intention for *maslahat* of his intended beneficiary. In the present *takāful* practice, all *takāful* operators in Malaysia distribute *takāful* benefits to the nominee whether as an executor through *fara'id* or as a beneficiary through *hibah*. The main contribution of this study is to explain the basis of IFSA 2013 provision that serves as material reference to all *takāful* operators in order to grasp the provision of IFSA 2013 in respect to distribution of *takāful* benefits. Finally, this study also confirms, by empirical study, that *hibah* distribution complies with Schedule 10, Para 3(1), IFSA 2013.

## ملخص البحث

الملكية تعني الحق في السيطرة على ممتلكة، والتي تؤهل الفرد -الذي معه أسباب معينة- على السيطرة على الأمور المباحة، سواء من خلال جهوده الخاصة، أو جهود الآخرين. في التكافل، تعدُّ جهود المشاركين في الأخذ بالبوليصة وسداد الاشتراكات الشهرية، سببًا للملكية فوائد التكافل. ويستند هذا الرأي على حجة أن جهود الفرد في شيء تبرّر ملكيته فيه. ولذلك، عند وفاة مشارك، يتم توزيع فوائد التكافل بين ورثة المشارك وفقا لقانون الفرائض أو الهبة. تبحث هذه الدراسة في قضية الملكية على فوائد التكافل في صندوق المخاطر التابع للمشارك (PRF). ويشترك المشاركون الملكية في صندوق المخاطر بشكل جماعي، وبالتالي أدّى ذلك إلى مناقشات بين علماء الشريعة لتحديد حالة الملكية في هذا الصندوق. وإلى جانب ذلك، تناقش هذه الدراسة صلاحية تنفيذ الهبة في صندوق الاستثمار التابع للمشارك (PIF)، وذلك لأن هذا الموضوع يرتبط أكثر بشروط الهبة. واستخدم الباحث مقابلات شبه منظمة لجمع البيانات النوعية والكمية من ١١ مستشار الشريعة، و ١١ موظفًا في الشريعة، و ٣ خبراء التكافل من ١١ شركة التكافل في ماليزيا. أثبتت هذه الدراسة أن علماء الشريعة اختلفوا في تحديد حالة الملكية في صندوق المخاطر التابع للمشارك (PRF). كما وجدت هذه الدراسة أن الهبة الرقبي مهمة، وذلك لأنها تقوم على نية المشاركين لمصلحة المستفيدين المعنيين. في ممارسات التكافل الحالية، يقوم جميع شركات التكافل في ماليزيا بتوزيع فوائد التكافل للمرشحين سواء بصفتهم منفذين من خلال الفرائض، أو مستفيدين من خلال الهبة. قدمت هذه الدراسة مساهمات عديدة، ومن أهمها شرح المبدأ الأساسي لقانون الخدمات المالية الإسلامية عام ٢٠١٣ (IFSA 2013)، كما تكون الدراسة بمثابة مرجع لجميع شركات التكافل من أجل استيعاب المبدأ الأساسي لقانون الخدمات المالية الإسلامية ٢٠١٣ فيما يتعلق بتوزيع فوائد التكافل. وأخيرا، تؤكد هذه الدراسة التجريبية أيضا أن توزيع الهبة يتوافق مع جدول ١٠، من قانون الخدمات المالية الإسلامية عام ٢٠١٣.

## **APPROVAL PAGE**

The thesis of Nan Noorhidayu Bt Megat Laksana has been approved by the following:

---

Nurdianawati Irwani Abdullah  
Supervisor

---

Akhtarzaite Abdul Aziz  
Co-Supervisor

---

Siti Salwani Razali  
Internal Examiner

---

Noor Inayah Yaakub  
External Examiner

---

Amir Hussin  
External Examiner

---

Najibah Mohd Zin  
Chairman

## DECLARATION

I hereby declare that this thesis 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.

Nan Noorhidayu Megat Laksana

Signature .....

Date .....

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*I dedicate this dissertation to my precious family;*

*My husband  
Mohd Safarizam Abdullah*

*My mother in law  
Nan Teh Megat Salleh*

*My daughter  
Qistina Batrisya*

*My son  
Rafael Hadif*

*My family*

*For their love, support, sacrifice, inspiration and constant prayers (du'ā').*

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## LIST OF ABBREVIATIONS

IFSA 2013	Islamic Financial Services Act 2013
PIF	Participant Investment Fund
PRF	Participant Risk Fund
HLMT	Hong Leong MSIG <i>Takāful</i>



## TRANSLITERATION TABLE

The English transliteration for Arabic names and terms followed in this dissertation is as follows:

### Consonants

ا	=	a	ط	=	ṭ
ب	=	b	ظ	=	ẓ
ت	=	t	ع	=	‘
ث	=	th	غ	=	gh
ج	=	j	ف	=	f
ح	=	ḥ	ق	=	q
خ	=	kh	ك	=	k
د	=	d	ل	=	l
ذ	=	dh	م	=	m
ر	=	r	ن	=	n
ز	=	z	و	=	w
س	=	s	ه	=	h
ش	=	sh	ي	=	y
ص	=	ṣ	ء	=	’
ض	=	ḍ			

### Vowels

#### Short

Fathah    َ

Kasrah    ِ

Dammah   ُ

#### Long

  = ā

  = ī

  = ū

# CHAPTER ONE

## INTRODUCTION

### 1.0 BACKGROUND OF THE STUDY

From the *mu'āmalah* perspective, which includes business relationship among people, *Islām* establishes a natural permissibility rule where something is not *harām* (unallowable) except when it is prohibited by *al-Qur'ān*, an authentic Sunnah (practice or saying) of Prophet Muhammad s.a.w. In *Islām*, the element of prohibition is relatively small if compared to the elements of permissibility which are extremely wide ranging.

One of the examples from *mu'āmalah* perspective, which is allowed by *Sharī'ah* is *takāful*. *Takāful* involves a relationship among people. Besides, the *takāful* system provides social and economic benefits to the individual and society. In other words, *takāful* becomes crucial to people in order for them to get protection, make savings and have medical coverage. *Takāful* is an alternative to conventional insurance which is far from the elements of *gharar* (uncertainty)<sup>1</sup>, *maysir* (gambling)<sup>2</sup> and *ribā* (usury)<sup>3</sup>.

In *Islām*, *gharar* can be defined as a contract where the results are not known or hidden (Nasser, 2011). Besides, according to Kassar (2008), *gharar* is also known as uncertainty that exists in a business context whenever commercial contracts fail to

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<sup>1</sup> *Gharar* has a range of negative connotations, for example, uncertainty, ignorance, hazard, risk, deception and others.

<sup>2</sup> *Maysir* means any activity which involves betting, whereby the winner will take the entire bet and the loser will lose his bet.

<sup>3</sup> *Ribā* was commonly practiced during the *jāhiliyyah* period, for example, buying on credit. When the period of credit has expired and a buyer could not settle his debt, the seller would extend the loan period and increase the amount of debt.

remove uncertainty, ignorance or insufficient level of knowledge by one party to a transaction.

In addition, *maysir* can be closely considered as any transaction or activity relating to games of chance or gambling. A contract that involves elements of *maysir* is void. *Ribā* is an unjustified increment in borrowing or lending money, paid in kind of money above the amount of loan, as a condition imposed by the lender or voluntarily by the borrower.

The establishment of Islamic banks and *takāful* within the Islamic market is relatively a new phenomenon. Bank Islam in Malaysia was established in 1983, followed by Syarikat *Takāful* Malaysia Berhad in 1984. On the other hand, conventional insurance has been in the Malaysian market since before independence (Bank Negara Malaysia).

Due to changes in the Malaysians' standard of living, most people have now realized that insurance is a crucial instrument to protect one from particular losses. It must be emphasized that insurance does not prevent misfortune from happening but it reduces the impact of losses that occur. Besides, many insurance customers look for the most attractive package according to recent market demands. Thus, *takāful* operators in Malaysia offer various types of product such as protection against loss, medical benefit and saving. This product is specifically designed for customers, which comply to the *Sharī'ah* requirements.

In order to serve the needs of customers, in Malaysia there are eleven *takāful* operators registered under Bank Negara Malaysia. The *takāful* operators are AIA Public *Takāful* Berhad, AmMet Life *Takāful* Berhad, Etiqa *Takāful* Berhad, Great Eastern *Takāful* Sdn. Bhd., Hong Leong MSIG *Takāful* Berhad, HSBC Amanah *Takāful* (Malaysia) Sdn. Bhd., MAA *Takāful* Berhad, *Takāful* Ikhlas Sdn. Bhd.,

Prudential Bsn *Takāful* Berhad, Syarikat *Takāful* Malaysia Berhad and Sun Life Malaysia *Takāful* Berhad.<sup>4</sup> Thus, customers may choose one or more *takāful* operators according to their interest to get the coverage.

Family *takāful* provides protection and long-term savings. The participant will be provided with financial benefits if he experiences a calamity. At the same time, the participant will enjoy long-term personal savings because part of the contribution will be deposited into an account for savings and investments.

According to Nasser (2011), Participant Investment Fund (PIF) refers to the investment which is done by the *takāful* operator on behalf of the participant and the profit will be shared between the participant and the *takāful* operator according to a pre-agreed ratio. Meanwhile, Participant Risk Fund (PRF) refers to the participant's contribution in the form of *tabarru'* which will be placed in this fund and will be used to fulfil the obligation of mutual help if any misfortune arises from death or permanent disability.

In family *takāful* plan, the participant is required to name one or more person(s) as a nominee to receive the *takāful* benefits upon the death of the participant. This is called the nomination process. Nomination refers to authorizing a person in a *takāful* policy to receive and administer the *takāful* benefits upon the death of the participant. The *takāful* operator takes the responsibility of distributing the *takāful* benefits to the nominee.

In distribution of *takāful* benefits, a nominee can be considered as an executor or a beneficiary. This is clearly provided Schedule 10, IFSA in Para 3(1) that the nominee (Muslim) acts as an executor or beneficiary. Thus, as an executor is

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<sup>4</sup> [www.bnm.gov.my/index.php?ch=li&cat=insurance&type=TKF&fund=0&cu=0](http://www.bnm.gov.my/index.php?ch=li&cat=insurance&type=TKF&fund=0&cu=0), viewed on 16 September 2012.

responsible to distribute the *takāful* benefit to the legal heir according to the law of *fara'id*. If a nominee receives *takāful* benefit as beneficiary, such distribution is done through *hibah* to reflect participant's wishing to give the *takāful* benefit. For non-Muslim, an executor can distribute the *takāful* benefit according to Distribution Act.

Thus, this study examines the issues on ownership of *takāful* benefit in Participant Risk Fund (PRF) that leads to the argument and disputation among *Sharī'ah* scholars in order to determine the status of ownership in this fund. This study also examine the status of executing *hibah* in the Participant Investment Fund (PIF) and Participant Risk Fund (PRF) which has direct relation to the issue of ownership in *takāful* benefit.

## **1.1 STATEMENT OF THE PROBLEM**

Firstly, there have been debates among *Sharī'ah* scholars in determining the ownership of *takāful* benefits in the Participant Risk Fund (PRF) which entitle the participant to give it as *hibah*. When a participant dies, there is no question regarding the inheritance of the Participant Investment Fund (PIF) as it is part of the deceased's own property which may constitute a part of his estate. However, the payment of *takāful* benefit from the Participant Risk Fund (PRF) for the death benefit is still questionable. This is because, the fund is jointly owned by all the participants through donation or *tabarru'*.

The second issue is the validity of time in executing *hibah* from the Participant Investment Fund (PIF) whether it should take effect after the participant dies or during the lifetime of the participant. According to Al-‘Āqil (1978), when a donor dies at the time of giving *hibah* to the receiver, the contract of *hibah* is considered void. This is

because, the condition of *hibah* includes offer and acceptance. The person who is offering the gift to the receiver should both exist at the time of executing *hibah*.

The third issue is, whether *takāful* benefit qualify as an asset for *hibah* or not. This is because the *takāful* benefits are intangible and have not been cashed yet as at the time executing it as *hibah*. According to one of the conditions in giving *hibah* is the subject matter of *hibah* (*māl*) should exist at the time of giving *hibah*. However, in nomination, the subject matter of *hibah*, for example, *takāful* benefit will only be effective after the occurrence of a defined event such as death, TPD or others. Therefore, the issue whether *takāful* benefit can be considered as an asset for *hibah* is still questionable in distribution of benefits to the beneficiary.

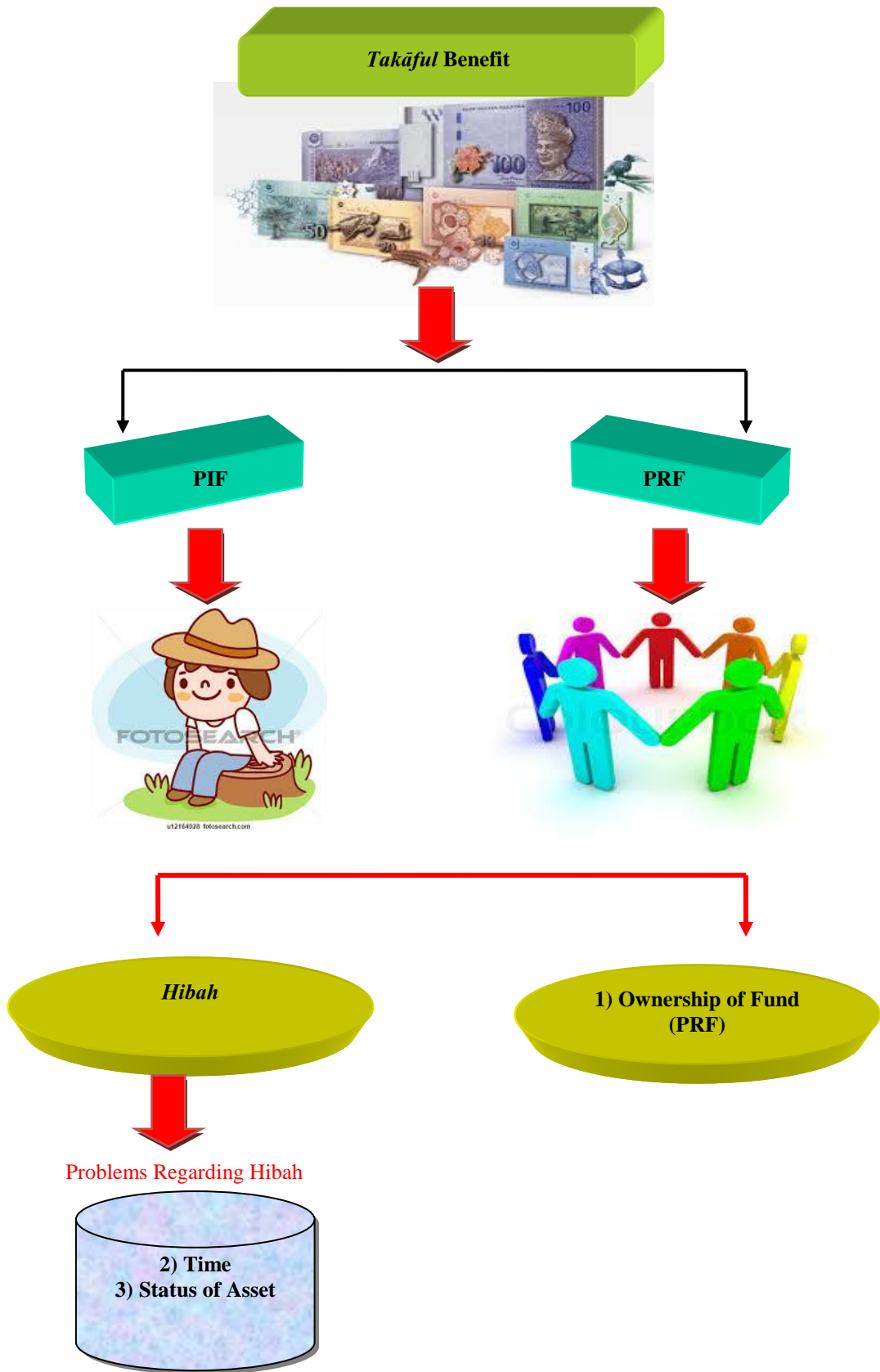


Figure 1.1 Summary of the Problem Statement

## 1.2 RESEARCH OBJECTIVES

The objectives of the study are as follows:

1. To examine the status of ownership in the Participant Risk Fund (PRF) that leads to the disputation among *Sharī'ah* scholars in determining the ownership of this fund.
2. To examine the validity of executing *hibah* in PIF, upon occurrence of certain event such as the participant's death, whether it should take effect after the participant dies or during the lifetime of the participant.
3. To examine whether *takāful* benefit can be considered as an asset for *hibah* or not qualify to be a form of property.
4. To recommend solutions in distribution of *takāful* benefits especially the issue on the status of ownership and *hibah*.

## 1.3 RESEARCH QUESTIONS

Specifically, there are four research questions to be answered in this study:

1. How far the status of ownership will effect the distribution of *takāful* benefits in the Participant Risk Fund (PRF)?
2. What are the issues that are related to *hibah* in family *takāful* and how far is the validity of executing *hibah* in the Participant Investment Fund (PIF)?
3. It is possible to consider *takāful* benefit as an asset for *hibah*?
4. What are the recommendations in order to provide better understanding in the issue of ownership and *hibah* in *takāful* benefit?