

# THE ELEMENT OF GAMBLING IN CONVENTIONAL INSURANCE AND TAKAFUL

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## ABSTRACT

*Conventional insurance is said to contain the prohibitive elements of usury (al-riba), uncertainty (al-gharar) and gambling (al-maisir). However, the central idea of insuring a party against pure risk does not contradict the Islamic spirit. The Islamic model of insurance or takaful is supposedly to run without the usury, ambiguities and gambling elements. Some scholars, however are still questioning the Shari'ah legitimacy of Islamic insurance in view of the gambling (al-maisir) features found in the takaful operations. This study seeks to identify the gambling (al-maisir) element in the insurance and takaful. Four listed characteristics of gambling given in the study was found in conventional insurance. It can be concluded that conventional insurance resembles gambling, if not identical to it. However, it was found that conventional insurance has less resemblance to takaful because the listed characteristics of gambling was not found in takaful operation. This indicates that takaful business does not resemble gambling since it (i.e. takaful) has no resemblance to conventional insurance.*

Keywords: Insurance, takaful, gambling, tabarru', mudarabah

## 1. INTRODUCTION

The word 'insurance' has been defined as "a contract made by a company or society, or by the state, to provide a guarantee of compensation for loss, damage, illness, death, etc in return for regular payments".<sup>1</sup> The insurance arrangement involves the transfer of many different exposures to loss to one insurance pool, which then combines the numerous exposures.<sup>2</sup>

The insurance system accomplishes the redistribution of the cost of losses by collecting a premium payment from every participant in the system. In exchange for the payment of the premium, the insured receives a promise from the insurer to be compensated in the event of a loss. In most insurance systems only a small percentage of those insured suffer losses.<sup>3</sup> Thus, an insurance system redistributes the costs of losses from the unfortunate few members who experience it to all the members of the insurance pool (including those who suffer loss) who have paid premiums.

In the principle, the idea behind the concept of insurance is not objectionable to Islamic principles. According to Mohd Daud (1998), the Prophet (SAW) himself participated in self-help funds, common among pre-Islamic caravan traders. These were meant to protect merchants from pure risk such as the effects of raids, weather and other natural risks that might cause losses. Effectively, these were pools in which the merchants made refundable contributions and shared the benefits according to their contributions.<sup>4</sup>

Although, as a concept, insurance does not contradict the requirements of *Shari'ah*, Muslim scholars have generally concluded that the practice and operation of conventional insurance as currently practiced, do not conform to the rules and requirements of *Shari'ah*. The generally accepted view of the Muslim scholars is that the operation of conventional insurance as an exchange transaction under a buy and sell agreement does not conform to *Shari'ah* as it embodies the elements of *al-riba* (interest), *al-gharar* (uncertainty) and *al-maisir* (gambling).

Therefore, in June 1972 the Malaysia National Fatwa Council resolved that present-day life insurance as provided by the conventional insurance companies was not in line with the principles of *Shari'ah*. Similarly, in a

<sup>1</sup> see Oxford Advanced Learner's Dictionary, pp. 620.

<sup>2</sup> Mark S. Dorfman, *Introduction To Insurance*, Prentice-Hall, London, 1982, pp.4

<sup>3</sup> Ibid.

<sup>4</sup> see *Objectional Element In Insurance*, available at [www.cybermelayu.com/insurance/intro.htm](http://www.cybermelayu.com/insurance/intro.htm)

comprehensive deliberation, the Fiqh Council of The Muslim World League in 1978 and the Fiqh Academy of the Organisation of Islamic Conference (OIC), at its gathering in December 1985, resolved that no form of insurance, life or general, conformed to Islamic principles and therefore it was *Haram* (prohibited).<sup>5</sup>

This situation has posed a real challenge to the Muslim community, as the conventional insurance is unlawful in the eyes of the *Shari'ah*. Therefore a concept of cooperative insurance, named *takaful* has been introduced into the Muslim countries as an alternative to the conventional insurance. Fiqh Council of Organization of Islamic Conference (1985) in Jeddah resolved that cooperative insurance (*takaful*) is permissible and fully consistent with *Shari'ah* principles because *takaful* provides risk protection in accordance with *Shari'ah* using principles of *Ta'awun* (mutual assistance), brotherhood, piety and ethical operations.<sup>6</sup>

*Takaful* in Arabic, means joint guarantee.<sup>7</sup> It comes from the root word "*kafal*"; meaning, "to help". As the name implies, Islamic insurance or *takaful* seeks to provide mutual guarantee to its participants and their family members if any misfortune such as death, total permanent disability or critical illness occurs. In other words, the basic objective of *takaful* is to pay for a defined loss from a defined fund. Each member of the group pools effort to support the needy. It means mutual help among the group. *Takaful* business is unique as it combines activities of mutual protection and investment. The basic concept of *takaful* is the combination of both *tabarru'* (donation) and *Mudarabah* (profit and loss sharing) contracts. The primary contract which binds the participants is the contract of *tabarru'* as they mutually agree to help each other financially when one of them suffers from a defined risk. At the same time all participants agree to invest the pool of funds collected for investment purposes and share their profit according to an agreed ratio (between participant and *takaful* operator).

Although the Fiqh Council of Organization of Islamic Conference (1985) in Jeddah resolved that *takaful* is permissible and fully consistent with *Shari'ah* principles, however, a debate among the scholars is still on-going regarding the validity of *takaful*. Some of the scholars claim that gambling (*maisir*) still exists in *takaful* operations as practiced in the conventional system.

*Al-maisir* or gambling which is defined as games of chance for money, is not accepted at all by Islam. The prohibition with regards to games of chance is explicit in the following verse of the Qur'an:

*"O Believers! Intoxicants and gambling-and divining arrows are an abomination of Satan's handiwork. Leave it aside in order that you may prosper. Indeed Satan intends to sow enmity and hatred among you by means of intoxicants and gambling, and to prevent you from the remembrance of Allah and from prayer. Will you not, therefore, abstain from these things? Obey Allah and His Messenger and abstain from these things".<sup>8</sup>*

The above verses clearly state the prohibition of gambling in Islam. Gambling is prohibited in Islam because people who are involved in these games get money too easily, without hard labour, or receive a profit without working for it but based only on pure chance. The prohibition of gambling also arises from the premise that an apparent agreement between the parties is actually the result of immoral inducement provided by false hopes in the parties' mind that they will profit unduly by the contract. Therefore, people tend to continually involve in these unproductive activities, which strongly contradict with Islamic teaching.

The similar characteristics between gamblers and the insured may cause the insurance business to be claimed as similar to gambling. Therefore, if *takaful* operations are not different to conventional insurance practices, the holders of *takaful* policies also are similar to gamblers. Since gambling is clearly prohibited in Islam, the insured may live in sin, although they hold Islamic insurance, and will receive a punishment in the Hereafter. Consequently, Muslims may refuse to hold any insurance policy, which has become part of modern living, since the Islamic alternative also contradicts with *Shari'ah*.

## 2. NATURE OF GAMBLING

Gambling is one of the oldest and most popular interests in the world. Buying lottery tickets, betting and staking on horse races, football matches, games of cards or chess are examples of gambling. There are several features that categorize a game as a gambling game. Islam strictly forbids gambling or games of chance. The history of

<sup>5</sup> see *Seven Misconception About Insurance and Takaful*, available at [www.miligazette.com](http://www.miligazette.com)

<sup>6</sup> *Ibid.*

<sup>7</sup> see *Islam And Insurance*, available at [www.takaful.malaysia.com](http://www.takaful.malaysia.com)

<sup>8</sup> al-Qur'an, Surah Al-Maidah 5: 93-95

the unlawfulness of gambling is as old as the history of unlawfulness of wine because the prohibition of both has been declared simultaneously in verses of Al-Qur'an. The prohibition of gambling has been declared in two stages that are through Surah Al-Baqarah and Surah Al-Maidah.

The first stage of prohibition was revealed through verse 219 of Surah Al-Baqarah in the month of Rabiul Awwal, 4 A.H. (August 625 A.D.).<sup>9</sup>

يَسْتَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ  
وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا

*“They ask you (O Prophet) about ‘khamr’ (intoxicants) and games of chance. Say: In both of them there is great harm although there is some advantage as well in them for men, but their harm is much greater than their advantages”*

Allah in this verse mentions the game of chance (gambling) as characteristic of great sin, which has paltry benefits for mankind.<sup>10</sup> This verse is, therefore, a clear proof of the gradual prohibition of gambling.

The second and the last stage is through the revelation of verses 90 and 91 of Surah Al-Maidah in the month of Dhi-al-Qa'da, 6 A.H. (March, 627 A.D.).<sup>11</sup>

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ  
عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ. إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ  
بَيْنَكُمْ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ  
اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ.

*“O Believers! Intoxicants and gambling and divining arrows are an abomination of Satan’s handiwork. Leave it aside in order that you may prosper. Indeed Satan intends to sow enmity and hatred among you by means of intoxicants and gambling, and to prevent you from the remembrance of Allah and from prayer. Will you not, therefore, abstain from these things?”*

In these verses, Allah has totally declared gambling unlawful leaving no room for relaxation. For further discussion, we will focus on the definition of the gambling word and the verses of Al-Qur'an on prohibition of gambling in order to obtain the features of gambling. The features of gambling games from the *Shari'ah* viewpoint are itemized as follows: -

## 2.1 Element of Betting

In Islamic teaching, gambling or games of chance refers to the word ‘*maisir*’. Iman Mujahid, one of the famous *mufasirun*, through Tafsir al-Qasimi and Tafsir Kahzin explains that:

كُلُّ شَيْءٍ فِيهِ قِمَارٌ فَهُوَ مِنَ الْمَيْسِرِ<sup>12</sup>

*“Anything which has betting is gambling”*

Based on the above explanation, it can be summarized that from the Islamic perspective any activities (not only games) in which people are required to make a bet could be categorized as gambling. The bet is not necessarily in terms of money, but may include house, land, business, wife and the like. Imam Malik (Allah be pleased with him) says that gambling is of two categories; a game of chance that is partaken with a view of sport (fun) and the game of chance, which involves betting. The latter is a game that prohibited in Islam.<sup>13</sup>

<sup>9</sup> Muhammad Iqbal Siddiqi, *Why Islam Forbids Intoxicants and Gambling*, Kazi Publications, Lahore, Pakistan, 1981, pp. 130.

<sup>10</sup> Ibid., pp. 136.

<sup>11</sup> Ibid.

<sup>12</sup> see *Tafsir al-Qasimi*, vol. 3, pp. 552 and *Tafsir Kahzin*, vol 1, pp. 178.

<sup>13</sup> Muhammad Iqbal Siddiqi, *Why Islam Forbids Intoxicants and Gambling*, pp. 131.

## 2.2 Easy and Huge Amounts of Money

Literally, according to Muhammad Iqbal Siddiqi (1981), the word 'maisir' is derived from the following roots:

- i) Yasara (يسر) : To become gentle, to draw lots by arrows
- ii) Yasar (يسار) : Affluence
- iii) Yusr (يسر) : Convenience; ease
- iv) Yasr (يسر) : Dividing a thing into a number of shares

All the above connotations are vividly found in the word 'maisir' from the root word 'yusr' (يسر) which literally means 'easy' and something attained with no effort. Gambling is termed 'maisir' because of the element of earning money or winning something without toil and exertion. On the other hand, the word 'maisir' also comes from the root 'yasar' (يسار), or affluence, which means that 'maisir' or gambling is an activity that involve profit or huge amounts of money. Allah (SWT) forbids all forms of games of chance, on the basis that a person loses by means of pure chance; whilst if he is fortunate to have gained anything, it would be gained by pure luck having not earned it, thus not even deserving it.

## 2.3 Element of Guaranteed Profit

In Arabic, gambling is defined as 'al-qimar'. In Munjid dictionary, the word 'qimar' means:

كُلُّ لَعِبٍ يُشْتَرَطُ فِيهِ أَنْ يَأْخُذَ الْغَالِبُ مِنَ الْمَعْلُوبِ شَيْئًا سِوَاءَ مَا كَانَ بِالْوَرَقِ أَوْ غَيْرِهِ<sup>14</sup>

*"Any games that make the winner earns something from the loser"*

Therefore, in Arabic, 'qimar' means a game that involves betting in terms of money, land, property or any other kind of goods in which the loser must pay to the winner. In other words, the winner of the game has a right to claim on the loser's bet.

## 2.4 Disrupt cooperation

Gambling is an activity devoid of cooperative spirit. It introduces enmity and hatred among those who gamble their wealth. On this point, the Qur'an says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ. إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمْ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصْنَعُكُمْ مِنْ بَيْنِكُمْ أَعْدَاءً وَهَاتِفَةً أُولَئِكَ يَشْرِكُونَ اللَّهَ بِالَّذِينَ كَفَرُوا مِنْكُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ.<sup>15</sup>

*"O Believers! Intoxicants and gambling and divining arrows are an abomination of Satan's handiwork. Leave it aside in order that you may prosper. Indeed Satan intends to sow enmity and hatred among you by means of intoxicants and gambling, and to prevent you from the remembrance of Allah and from prayer. Will you not, therefore, abstain from these things?"*

From the above verses, Allah (SWT) clearly mentions that gambling is an abominable act of Satan. Satan sows in the hearts of man the seeds of enmity and hatred against one another. In the Jahiliyyah, a person would gamble away his wealth, possessions, and even his wife. When losing them, he would be very disappointed at his quick and unexpected loss, his anger would be inflamed, and he would be infuriated to see his belongings suddenly in the hand of the winner. This situation created much hatred between the two parties, so much so that fights and quarrels would erupt between the two. More often than not, these fights would involve an entire tribe, and it would last for many years. Therefore, gambling disrupts cooperation in society.

<sup>14</sup> see Munjid Dictionary, 21<sup>st</sup> Ed., pp. 653.

<sup>15</sup> al-Qur'an, Surah Al-Maidah 5:90-91

### 3. THE ELEMENT OF GAMBLING IN INSURANCE AND TAKAFUL

#### 3.1 Element of Betting

'Betting' has been defined as "the action of risking money on something of which the result is doubtful".<sup>16</sup> *Jumhur Ulama* of Shafie, Hanbali and Maliki School agreed that the element of betting is the main criteria that classify a game as a gambling game. For instance, to guess the outcome of the toss of a coin by two individuals is not a form of gambling (even it is a game of chance), unless both individuals stake their money on its outcome. These *Ulama* claimed that the element of betting is the main causes (*i'lat*) of the prohibition of gambling in Islam.

In most games of chance such as lotteries, poker and dice games, betting is intrinsically part of the game and all the players deal with uncertain events. Players must pay some amount of money as a bet, which is a requirement to play the game. If his guess is correct, for example on the outcome of the toss of a coin, he will win an amount of money from the loser or gambling operator. By contrast, he will absolutely lose all his bet if he guesses incorrectly.

On the other hand, an insurance contract is enforceable based on the payment of premiums. The insured has to pay a sum of money or several instalments as a premium to the insurer (insurance company) in order to be relieved of the uncertainty about a loss and to be compensated if the peril occurs. In Malaysia, by virtue of Section 141 (1) of the Insurance Act (1996), an insurer is not under any obligation to indemnify the insured against unexpected risks unless and until the insurer receives the agreed premium.<sup>17</sup> Once the premium is paid by the insured and the insurer receives it, the insurer is under an obligation to issue the policy. According to Mark S. Dorfman (1982), even though the insurer cannot legally force the insured to pay the premium, they may cancel the contract or deny any claim for payment if the insured failed to meet the conditions. Therefore, it clearly shows that payment of premium is an important condition of an insurance contract.

The nature of the premium in insurance is not really different to the bet in gambling, where both the insured and the gambler put an amount of money as a pledge on some uncertain event. Even though it is different in practice, as argued by some scholars, such as Muhamad Nejatullah Siddiqi (1985), who claimed that the premium is not similar to the stake in betting since the insured pays the premium in the desire to have protection against the loss that he may suffer in the event of the occurrence of the peril, while the gambler stakes his money in the hope, in the event of winning, to earn an absolute profit, but in terms of the underlying concept, it is not much different. This is because both the insured and the gambler deal with uncertain events, where they may win (the gambler's guess is right or the insured could cover his loss if the peril occurs) or they may lose (the gambler incorrectly guesses or the insured loses his premium paid if the peril does not occur during the policy period) and the probability of winning or losing is based on mere chance. Islam strictly forbids us from dealing with uncertain thing.

عن سعيد المسيب (رضى الله عنه) أن رسول صل الله عليه وسلم عن هي عن بيع الغرر<sup>18</sup>

*"Report by Said Ibn al-Musayyib (r.a), verily the Holy Prophet (SAW) forbade a transaction with uncertainty (gharar) in it."*

What this means is that the element of uncertainty (*gharar*) is evident in the conventional obligations.

Further more, it may be said that the contract of insurance is "an agreement under which each of the parties promises to pay money or its equivalent to the other according to the issue of an uncertain event", and this is exactly the definition of a wager.<sup>19</sup> Based on this reason, therefore, Afzalur Rahman (1990) claimed that the payment of a premium is similar to taking a stake in betting. Besides that, in a Judicial Conference held in Mecca in *Sha'ban* 1398 AH, some *Ulama* concluded that the insurance contract contains an element of betting. This is because the insured hopes to get the opportunity for a material gain, and, hence, this is similar to betting.<sup>20</sup>

<sup>16</sup> see Oxford Advanced Learner's Dictionary, pp. 103

<sup>17</sup> see *Insurance Act* (Malaysia), 1996, at S. 141 (1).

<sup>18</sup> Imam Malik bin Anas, *Kitab al-Muwatta*, (Arabic) op. cit, *Kitab al-Buyu*, no. 63, pp. 554, quoted by Mohd Ma'sum Billah, *Islamic and Modern Insurance: Principles and Practices*, pp. 85.

<sup>19</sup> see Oxford Advanced Learner's Dictionary, pp. 1335.

<sup>20</sup> Mohd. Ma'sum Billah, *Islamic and Modern Insurance: Principles and Practices*, pp. 66.

On the supply-side that is the insurance operators, the net amount of premium is determined by the same way as in gambling. It is always measured by the insurer's estimate of the risk formed upon an average of his previous experience of similar risks, together with an allowance for office expenses, other charges and profit. In other words, the actual amount of premium money to be paid by the insured will be determined by approximation and conjecture, representing among other things, the full insured value of the probable peril.<sup>21</sup> As future rates of mortality, interest and expenses cannot be accurately forecast, it is not possible to fix a premium, which on average, will exactly cover the risk. Thus, the basis on which a premium is determined is for all practical purposes the same as that of a stake in betting.

Under the Islamic insurance system (takaful), premium is termed as *Ra's-ul-Mal* or takaful contribution. In consideration for participation in the takaful policy, participants are required to pay takaful operator the contribution regularly. This contribution should be with the intention of *tabarru'*, as stated in the report to the Badan Petugas Khas<sup>22</sup>

*“under the Islamic insurance system, part of the contributions from every participant must be made with the intention of tabarru' – not for buying/selling, the existence of tabarru', makes the transaction permissible and valid according to the Shari'ah.”*

Under the takaful contract, the takaful benefit or '*manfaat*' (compensation) received by unfortunate participants is collected from *tabarru'*. This conforms to the words of Dr. Qaradawi when he mentioned in his book that *tabarru'* is termed as '*donation with a condition of compensation*'.<sup>23</sup> Hence, *tabarru'* would allow the participants to perform their deeds in sincerity assisting fellow participants who might suffer a loss or damage due to a catastrophe or disaster.

In view of this, it is possible to indicate that the function of takaful contribution paid by the participants is not similar to the premium paid by the insured under conventional insurance, since the latter paid the premium as a pledge on some uncertain event, while the former paid with intention of donation.

### 3.2 Element of Guaranteed Profit

In both gambling games and insurance, there exists the element of profit. The profit of the gambling operator (casino) and the insurance company is always certain, but the size of the profit is uncertain, which depends on the total number of gamblers that bet on the same event or the size of an insured's losses. However, the profit of the gambler or the insured is doubtful; he may gain or lose.

The profit for gambling operators and insurance companies is certain because the net amount of bet and premium are determined by the estimation of the risk, together with approximate commission, expenses, and profit. Thus, even if the peril occurs and the insured filed the claim, the insurance company still be able to enjoy some amount of profit which is already included in each premium payments. It is estimated that about 40-44 percent of premiums is absorbed by expenses, commission, and profit, while the insured benefits by only 50 percent of the valuation surplus.<sup>24</sup>

Similarly, as claimed by David M. Cordell (2001), the casino (gambling operator) will always enjoy the profit because the bettor's probability of winning, multiplied by the payoff on the bet (which is set by the operator), is less than the amount of the bet. In other words, on average they pay out less than the amount of the bet. Thus, the profit is still in the hand of the gambling operator even if the gambler wins the game. The more people who play and the more often they play, the more certain that the casino will win in the long run.<sup>25</sup>

Theoretically, however, the sources of profit earned by the takaful operator and the participants are strongly different to the profit earned by insured and insurance company. Profits under takaful scheme are generated by profit sharing in accordance with *al-Mudarabah* principles. By this principle, the takaful operator as entrepreneur (*al-mudarib*) will accept payment of takaful contribution from takaful participants who act as providers of capital. The takaful operator is responsible for providing and managing the collected takaful fund.

<sup>21</sup> Afzalur Rahman, *Economic Doctrines of Islamic Banking and Insurance*, pp 123.

<sup>22</sup> Mohd Tarmidzi Ahmad Nordin, *Tabarru' Differentiates Takaful from Insurance*, available at <http://www.insurance.com.my>.

<sup>23</sup> Qaradawi, *The Lawful and The Prohibited in Islam (English translation)*, pp. 276, quoted by Mohd Tarmidzi Ahmad Nordin, *Shariah Compliant Insurance*, available at <http://www.insurance.com.my>.

<sup>24</sup> Barou N., *Co-operative Insurance*, London, 1936, pp. 60-62, quoted by Afzalur Rahman, *ibid.*, pp. 205.

<sup>25</sup> David M. Cordell, *Insurance: Gambling, Insurance and Value Creation*, 2001, available at [www.fpanet.org/journal/articles/2001\\_issues/jfp1001-art6.cfm](http://www.fpanet.org/journal/articles/2001_issues/jfp1001-art6.cfm).

Thus, the takaful operator and the participants as business partners will share a profit based on the *al-Mudarabah* principles.

Besides earned profit from *al-Mudarabah*, under general takaful policy, the participants are also entitled to share the underwriting surplus, which is defined in the Takaful Act 1984 that:

*“if at the end of the period of takaful stated in schedule there is a net surplus in the company’s General Takaful Fund, the same shall be shared between the participants and the company in accordance with the principle of al-Mudarabah in the proportion 50% to participant and 50% to the company provided always that participant has not incurred any claim and/or received any benefit under this certificate whilst it is in force”.*

In contrast, in conventional practice, the insurance company totally earned the underwriting surplus and is not distribute to the insured.

On the other hand, although the formula of premium rating is applicable in determining the rate of takaful contribution (exclude loading for expenses),<sup>26</sup> but the takaful operator is not entitled to use the participants contribution since it will pooled in takaful fund as *tabarru’*, for the purposes of helping the unfortunate participants. The operator only has a right to share the profit from *al-Mudarabah*.

Thus, despite both takaful and conventional insurance contracts involving an element of profit, it comes from different sources. Profit for the latter is generated from insured’s premium (including unclaimed bonuses), while profit for the former is generated from profit sharing agreement under *al-Mudarabah* contract. Therefore, profit earned by takaful operator and participants is lawful in eyes of *Shari’ah* because it comes from investment activities and not from the premium collected.

### 3.3 Concept of Easy Money

As mentioned previously, the word gambling is akin to the word *‘maisir’* which means easy or something attained with no effort. Gambling is termed as *maisir* because it contains the element of earning money or winning something without any effort at all, or ‘easy money’. In other words, gamblers can receive huge amounts of money without any equivalent input from their side, but out of the loser’s expenses. Gamblers do not contribute any productive effort, such as physical skill or strategy, because the outcome of gambling is totally dependent upon chance. Islam strongly prohibits any profit that is earned without equivalent effort, especially if it is from other people’s losses.

In Islam, any profit from trade must contain the element of *‘iwad*, which means an equivalent counter value. According to the Islamic normative theory of profit, every increase (profit) must be attributed with risk-taking (*ghurmi*), value-addition (*kasb*) and liability (*daman*). As pointed by Ibn al-`Arabi (d. 543/1148)<sup>27</sup>, “every increase, which is without *‘iwad* or an equal counter value is *riba*”. Allah (SWT) strictly forbids *riba* as mentioned in the following verse:

28 وَأَحَلَّ اللَّهُ التَّيْعَ وَحَرَّمَ الرِّبَا

*“...Allah (SWT) has permitted trade and prohibited riba...”*

Therefore, it can be claimed that profit from gambling does not contain the element of *‘iwad* because the gambler who wins the game earns a profit without the attributes of risk, value added or liability.

Since the insurance contract works under the principle of selling and buying<sup>29</sup>, any profit that insurance company received from the transaction should also contain the element of *‘iwad*. Once the insurance company issues the policy (after receiving the first premium), they are liable on the risk that is faced by the insured, which is now transferred to them as an insurer. Besides the insured’s risk, the company will also face their own risk regarding the outcome of the policy such as the risk that they might require to compensate the cost of a loss which is larger than the premium paid by the insured or where there are many claims at the same time.

<sup>26</sup> Zolkiffly Aziz, *Actuarial and Technical Aspects of The Takaful Business*, pp. 101-114; *Takaful (Islamic Insurance) Concept and Operational System From The Practitioner’s Perspective*, BIMB Institute of Research and Training Sdn. Bhd., Kuala Lumpur, (1996).

<sup>27</sup> Saiful Azhar Rosly, *Iwad as a Requirement of Al-Bay: A Critical Analysis*, IJUM Journal of Economic and Management, IJUM Publisher, Selangor, Malaysia, 2001, vol. 1 (2), pp. 4.

<sup>28</sup> Al-Quran, Surah Al-Baqarah 2:275.

<sup>29</sup> *Objectional element in insurance* available at [www.cybermelayu.com/insurance/intro](http://www.cybermelayu.com/insurance/intro)

One of the legal principles that bind the insurance contract is the principle of insurable interest. This principle specifies that the insured must lose out financially if a peril occurs, or must incur some other kind of harm if the loss takes place.<sup>30</sup> In other words, if any peril occurs, the financial loss is certain in the insurance contract. Thus, by issuing the policy, the insurance company has the liability to compensate the insured's financial loss. Besides that, the insurance company has put some added value to the policy by providing consultation services to the insured through insurance agents or brokers. Most of the insurance companies pay all or part of the expenses of hiring, training and motivating the new agents.<sup>31</sup> The insurance company also has to put some effort in to managing the insurance fund and must properly invest the fund in a profitable portfolio. As dealing with the risk, liability and some value addition, thus the profit earned by the insurance company might contain the 'iwad element.

However, the existence of 'iwad is only true in the cases where the peril occurs.<sup>32</sup> But, if profit earned by the insurance company comes from the unclaimed benefit (in cases where peril does not occur), the profit no longer contains the element of 'iwad.

On the other hand, if the insured receives a compensation payment larger than the cost of the loss or the value of premium paid, then the excess money cannot be claimed to contain the element of 'iwad. This is because by holding the insurance policy, the insured has transferred his risk and has no more liability on any financial losses. Therefore, the insured as well as the insurer (in case the peril does not occur) is similar to the gambler in earning easy money.

As mentioned previously, all profit (income) emerging from takaful business is generated from an *al-Mudarabah* contract. Under *al-Mudarabah*, the legal relationship between the policyholders and the company is one of partnership, as the takaful participants are regarded as the provider of capital while the company as the manager (*al-mudarib*) is responsible to administer the fund in a good and profitable manner. Because of this, the profit from the investment cannot be claimed as 'easy money' or earned without equivalent counter value.

Similarly, for a takaful participant, if there appears a situation where the participant receives the benefit payment larger than paid contribution, then the excess money actually comes from the profit sharing in *al-Mudarabah*. Since Islam recognizes *al-Mudarabah* contract, excess money earned by the participants and takaful operator is lawful in eyes of *Shari'ah*.

### 3.4 The Spirit of Cooperation

Based on the nature of gambling, it could be said that the spirit of cooperation does not exist either among the players or between the player and the operator, instead, it might cause dissolution in society. Allah (SWT) clearly mentions that gambling is an abominable act of Satan through verse 91 of Surah al-Maidah:

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ

*"Indeed Satan intends to sow enmity and hatred among you by means of intoxicants and gambling...."*

Dissolution may happen because a person not only gamble away wealth and possession, but even his wife (especially during the Jahiliyyah). Therefore, if he loses, he would be infuriated to see his belongings suddenly in the hand of the winner and this situation creates much hatred between two parties. It is for this reason that Allah (SWT) forbade gambling.

The absent of spirit of cooperation is clear with the casino bet, where the casino and the bettor are on opposite sides. When the cards are revealed, either the casino will win or the bettor will win, but not both. Similarly, there is no cooperation between the players. Although in certain games such as a lottery, it is possible to have more than one winner at one time, it does not mean that the players together agreed to buy the same ticket. It just accidentally happened because they actually do not know each other. Logically, each player must always hope that other players will not buy a ticket with the same number because the more players betting on the same ticket, the less money each will receive if that ticket wins.

<sup>30</sup> George E. Rejda, *Principles of Insurance*, pp. 63.

<sup>31</sup> *Ibid.*, pp. 524.

<sup>32</sup> Insurance company is always gain either the peril occurs or not. The detail discussion has provided in the previous section.

The same situation appeared under the insurance practices, where the spirit of cooperation does not exist among the insured. This is because the policy is issued on an individual basis. Besides, the relationship between the insured and insurer is no more than the ties of buyer and seller because the insurance contract is based on the buying and selling principle. Under this principle, the insured would purchase insurance cover from an insurer as seller and in consideration would pay the price in the form of a premium, where in return the insured would receive a certain monetary benefit as compensation from the insurer in the event of loss or damage.<sup>33</sup> As claimed by Muhammad Muslehuddin (1990), conventional insurance divides insurer and insured into two distinct parties and breaks the insured into separate units, each dealing independently, according to his own free will, with the insurer who, in a speculative manner, undertakes the losses or rather, the pure risk of the insured. Thus instead of division, transfer of losses arising from pure risk takes place<sup>34</sup> and therefore the spirit of cooperation disappeared.

In fact, the profit of an insurance company is generated from underwriting surplus that is the net amount of premium collected after deducting the amount paid out as compensation. The profit is distributed among the shareholders and not among the insured. There is no intention of the shareholders or the company to give any share of the profit to the insured<sup>35</sup> and clearly shows that cooperation does not exist between the insurer and insured. Allah (SWT) prohibited any kind of accumulation of profit and wealth by way of unjust enrichment. He commanded to the effect:

لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِمَّنْكُمْ<sup>36</sup>

"....do not eat up your property among yourselves in vanities, but let there be amongst you traffic and business by mutual goodwill..."

Besides the above argument, Sulaiman ath-Thniyyan (1999) had also stated that since the insurance company is a business it is concerned primarily with making profit. To protect the money they receive in premiums from the clients, a conventional insurance company invests most of its funds in "risk-free" types of securities. Only small portions of its funds are invested in other areas. The profits of these investments earning 'riba' (interest) stay with the company and do not get handed over to the clients.<sup>37</sup> Moreover, insurance companies dealing with term insurance also give out loans, using the money collected from clients, and charge interest, which they again keep for themselves. These profits, which are not shared with their clients, are greatly in excess of their expenses, thus supporting the fact that insurance companies are not in business for purely humanitarian purposes<sup>38</sup> and strongly support the fact that the spirit of cooperation between the insured and insurer is absent. As Afzalur Rahman (1990) said, "conventional insurance has all the evils of capitalism, such as exploitation, profiteering, enrichment of one at the cost of other, etc. Above all, it converts future unforeseeable risk (or losses) into a fixed cost and then transfers them, instead of dividing them among the members to pay for the losses, which is clearly gambling".<sup>39</sup>

The takaful concept is based on the Islamic principle of al-Takaful and *al-Mudarabah*. The word 'takaful' itself means "joint guarantee". Section 2 of the Malaysian Takaful Act 1984 defines Takaful as "a scheme based on brotherhood, solidarity, and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose".<sup>40</sup>

The spirit of cooperation significantly exists in a takaful contract, both between the participants and between the operator and participants. For instance, Section 2 of Malaysia Takaful Act 1984, clearly shows the existence of the cooperation spirit between the participants. *Tabarru'* contract requires each policyholder to willingly relinquish a portion of his paid premium or contribution to other policyholders who may need financial assistance. In other words, by signing a takaful contract, each participant agrees to uphold this spirit of cooperation and mutual solidarity and help each other through the takaful system.

Besides that, one interesting feature in takaful is that the fellow participants act both as insurer and insured as they are mutually contributing to and mutually benefiting from the fund. Thus, there is a need to state as clearly as possible that unlike conventional insurance which applied the concept of risk transfer (from insured to

<sup>33</sup> *Difference Between Takaful and Conventional Insurance*, available at [www.takaful-malaysia.com](http://www.takaful-malaysia.com).

<sup>34</sup> Mohammad Muslehuddin, *Insurance and Islamic Law*, Islamic Publication, Ltd., Lahore, Pakistan, 1990, pp. 17.

<sup>35</sup> Afzalur Rahman, *Economic Doctrines of Islamic Banking and Insurance*, pp. 178.

<sup>36</sup> Al-Qur'an, Surah an-Nisa, 4:29.

<sup>37</sup> Sulaiman ath-Thniyyan, *Insurance: The Illusion of Security*, Al-Jum'ah, vol. 11 (12), 1999, pp 20-21, 25, quoted by Shameelah R. Balkhi.

<sup>38</sup> Ibid.

<sup>39</sup> Afzalur Rahman, *Economic Doctrines of Islamic Banking and Insurance*, pp. 66.

<sup>40</sup> Norashimah Mohd Yasin, *Socio-Economic Benefits of Takaful/Islamic Insurance*, *Al-Nahdah*, vol. 19 (2), Dec. 1995, pp. 43-44.

insurer), in takaful, it falls under the donation contract, which is intended to divide losses (among the participants) and spread liability according to the community pooling system. As mentioned by Mohd Fazli (1999), "in takaful, it is collective community based organization designed to eliminate the burden of individual losses by mutually sharing the risk. No risk is transferred from one to another and there is no exploitation, or enrichment of one person at the expense for another".<sup>41</sup>

The spirit of cooperation between takaful operator and participants clearly exists through their relation as partnership in *al-Mudarabah* contract. Under this contract, they mutually agree to share any profit generated from the investment. For instance, under Family Takaful scheme, profit from the Family Takaful Investment Fund (after deducting a portion of the investment profit for the company) shall be credited into the individual participant's account on a yearly basis, and the sharing of the profit or surplus is allocated only after the obligation of helping the unfortunate fellows has been completed. In contrast, under conventional insurance, the surplus of investment is transferred to Shareholders' Fund as revenue and will not be distributed to the policyholders. In addition, the participants are also entitled to share the underwriting surplus, if any, with the takaful operator.

#### 4. CONCLUSION

Insurance has become an integral part of modern life. In the industrialized societies, very few individuals live without being involved in some form of insurance transaction. For instance, in most countries, third party liability insurance is compulsory for motorized transport, mortgage insurance as legal requirement to housing loan and the like. However, most Muslim scholars claimed that the conventional insurance is unlawful in the eyes of *Shari'ah* since it contains the element of *maisir* or gambling (besides other elements such as *riba* and *gharar*).

Generally most of the characteristics of gambling discussed in this paper are applied in insurance contract. From the theoretical analysis, we found that the characteristics, such as the element of betting, guaranteed profit, and the absent of spirit of cooperation, clearly emerged in operation of insurance business. However the similarities between insurance contract and gambling on certain characteristics depended on the specific situation. For instance, profit for insurance company might contain the element of *'iwad* only if it is earned under a situation where the peril occurred (after paying the compensation), but the element of *'iwad* disappears if the profit is earned under unclaimed situation.

The focus is given on the question whether operation of takaful is similar to the conventional insurance. The question arises due to the misconception in some Muslim countries regarding the validity of *takaful* transactions in *Shari'ah*. From the analysis of theoretical aspect, we found that the concept of *tabarru'* and *al-Mudarabah* contract in *takaful* operation make it totally different from conventional insurance. This is because the relationship between *takaful* operator and participants is as a business partnership and not as insurer and insured as applied under conventional insurance. In other words, the element of gambling does not appear in the *takaful* contract as far as the endowment policy is concerned.

This study raises additional issues for future research. There is a need to examine the demand side i.e. view of the policyholders and see whether their views produces the same results as in this study. The view of policyholders may provide significant findings since they actually deal with the purchase of insurance policy.

<sup>41</sup> Sulaiman Ath-Thniyyan, *The Illusion of Security*, Al-Jumuah, vol. 11 (12), 1999, pp. 25, quoted by Shameelah R. Balkhi.

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