



Insurable Interest in *Takaful*: A Theoretical Contrivance for Islamic Insurers

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ABSTRACT

The *Takaful* (Islamic Insurance) is not only a key branch of the Islamic Financial System but also one of the important Islamic financial instruments and a strong tool for managing individual risks and business overturns. In terms of operational models, it shares some business setups with Islamic banking, and in a way, it is regarded as "a modern technical approach to Islamic banking operation," for it evolved, like Islamic banking, from the determination of Muslims to revive the Islamic way of life, particularly in the reorganization of finance and economy; an exertion often described as a very difficult *jihād*: Building a financial system where interest does not exist. Accordingly, this research attempts to propound some theories for assessment of insurable interest in Islamic insurance (*Takaful*). The theories, as analyzed are intended to serve as working tools for the present and future Islamic insurers, without limitation to differences in place and space. In doing this, the work is divided into five parts. The first part introduces the study while terminology clarification is undertaken in the second part. The third part examines the legal basis for the insurable interest in *Takaful*, while the conceptual precepts for the development and application of the theories are taken up in the fourth part with certain relevant study inferences forming the concluding part.

Keywords: *Takaful*, Islamic Banking, Islamic Insurance, Islamic Financial System

JEL Classification: G2

1. INTRODUCTION

Islamic insurance (*Takaful*) is a key branch of the Islamic Financial System (IFS), one of the important Islamic financial instruments and a powerful tool to manage individual risks and business overturns (Akhter, 2011). In terms of operational models, it shares some business setups with Islamic banking (Abdulrauph, 2014; Dusuki, 2012; Khorshid, 2004) and it is in a way regarded as "a modern approach to Islamic banking" (Aly, 2004). Like Islamic banking also, it evolved from the determination of Muslims to revive the Islamic way of life, particularly in reorganization of finance and economy (Abdulrauph, 2014; Zubair, 1998); an action described as a very difficult *jihād* (exertion of power in the service of Allah) by building a financial system without interest (Adesina, 2008). Like any other branch of the IFS, its major focus is to provide Muslims with a financial outlet that carries out funds' mobilization from surplus unit to deficit spending unit in a way

that is not in contravention with the principles of the *Shari'ah* (Adesina, 2008).

However, as a mark of difference between it and Islamic banking, a *Takaful* participant requires insurable interest in the subject of insurance for the contract of insurance to be valid. This is because insurable interest is a fundamental basis for the insured to take out a valid insurance policy on the subject of insurance under both the conventional and Islamic insurance systems (Fisher, 2013). In other words, insurable interest simply means that a person has no recognizable interest in a person or object. Therefore, he has no responsibility to preserve (insure) the person or the object. At the points of establishing and enforcing the contract, however, the insurance companies (the insurers) would need to ensure that the insured possesses the requisite insurable interest in the subject of insurance. In the conventional insurance, some legal measures have been established to assess the insurable interest (Yerokun,

2013). In that wise, the *Takaful* also deserves a guided assessment principles on insurable interest.

Commendably, *Takaful* has been increasingly successful as a competitive alternative to the conventional insurance scheme (Zubair, 1998). This statement is found to be in consonance with the observation raised by Dusuki when he says: “To date, the *Takaful* market is considered one of the fastest growing service industries” (2012). Despite this giant stride, the *Takaful* industry still needs to work on further improvements in areas such as accounting, regulation, jurisprudence and operation (Dusuki, 2012, p. 500). It is, therefore noted from these two observations that the theoretical principles for assessing the insurable interest of the insured would be very relevant to areas like regulation, jurisprudence and operation for further improvement. Hence, should there be the need for the *Takaful* industry to undergo any institutional reform with focus on regulation, jurisprudence and operation of assessment of insurable interest, development of workable theoretical assessment tools should be highly considered. Accordingly, this paper attempts to propound some theories for assessment of insurable interest in Islamic insurance. The proposed theories are intended to serve as working tools for the present and future Islamic insurers irrespective of time and space.

2. WORKABLE TERMINOLOGIES IN *TAKAFUL*

For an unimpeded understanding of this paper, certain basic terms need to be clearly conceptualized. Thus, terms like “insurable interest,” “Islamic insurance,” and “Islamic insurers” would be clarified for they served as the key terms to the study. With that, a good foundation would have been laid for a free flow of ideas and analysis.

2.1. Insurable Interest

In the conventional Insurance law, insurance is simply defined as “a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils” (Henry, 1971). The law requires that the party to be compensated for the loss of the specified subject should have legally recognizable interest in the specified subject and such interest must deserve protection. Thus, such legally recognizable interest is what is generally referred to as the insurable interest.

For one to have insurable interest in any object or person and therefore be entitled to insure same, one must stand to suffer by the loss of the subject and as well stand to benefit by the continuing existence of the subject (Okore, 2012). For this reason, Dusuki (2012) and other scholars alike posit that one is not entitled to insure another man’s property, or another man’s life, unless he has some definite financial interest in it. In the words of Yerokun (2013) is of the opinion that the insurable interest is the pecuniary interest in the subject-matter of insurance. What this connotes is that the loss to be suffered must be quantifiable in monetary terms. The approach to doing this is that the law has designated some relationships with an object or a person as capable of engendering such pecuniary interest. Insurable interest is also discussed in some

of the research works on Islamic insurance, and it still maintained as connoting that a person has insurable interest in something when a loss or damage would cause that person to specifically suffer a financial loss or certain other kinds of loss (Dusuki, 2012).

While the concept of the insurable interest in Islamic insurance may generally not be expressed in terms different from the above, the much emphasis placed on the expectation that the occurrence of loss or damage of the relevant subject would bring some correspondent financial loss to the insured might have been taken too far. This is because of the fact that apart from the expected suffering in the *Takaful* or other physical financial loss by the insured, his loss may also be quantifiable spiritually, such as bearing liability for derogation from some certain religious legal duties.

It is noted that the Islamic insurance policy may be in forms of children education *Takaful* plan, *Hajj* and “*Umrah Takaful* plan, Mortgage *Takaful* plan, or *Nikkah Takaful* plan, etc. (Akhter, 2011). Therefore, if we consider the issue of insurable interest of an insured person in the education policy taken out in favor of his children for example, one would see that the consequence of his failure to insure his children’s education is not really financial, but rather much more religious. Similar inferences can be drawn on the loss to occur in case the subject-matters in many other forms of Islamic insurance products that may be so appraised are not insured. For this reason, one is tempted to define insurable interest, from the Islamic insurance perspective, as the right-conferring, or duty-attached interest which a person (the insured or *Takaful* participant) has in the subject of insurance by which he would better enjoy the right or discharge his responsibility towards the subject or beneficiaries of the insurance with the support of the insurance policy. In other words, under *Takaful*, a person would have an insurable interest in a subject (an object or a person) if he stands to enjoy some rights or discharge some responsibilities towards a third party beneficiary or realize a targeted beneficial purpose through the insurance package, irrespective of whether or not he would suffer any financial loss by the loss of the subject-matter.

2.2. Islamic Insurance

Shakir (2007) is of the opinion that it is widely acknowledged that the Islamic insurance scheme, otherwise known as *Takaful*, is the alternative to contemporary insurance system. Thus, technically, *Takaful* is a concept of Insurance that is based on the principle of mutual cooperation and understanding among a pool of people who safeguard and jointly support each other. The purpose of *Takaful*, therefore, is to ascertain equity to parties involved and help the policyholder during moments of calamity or difficulty (Mher and Ahmad, 2011). As a mark of distinction from what is obtainable in the conventional insurance, *Takaful* guides against *riba* (usury or interest), *gharar* (uncertainty) and *maysir* (gambling), which are all inherent in the latter scheme (Mher and Ahmad, 2011, p. 25-26). Following this, the *Takaful* policyholder does not forfeit his premium for non-occurrence of the insured risk, rather an insured that incurs a loss or catastrophe will be compensated and the surplus is distributed back to the participants that have no claim during the policy period (Akhter, 2011).

Jurisprudentially, *Takaful* has been justified as falling into the orbit of the principle of *sadd al-dhara'i'i* (precautionary measure). By this principle, every Muslim is legally permitted to take preventive measures and arrange beforehand for compensation for the likely losses involved in case of pure risk, whether done individually or collectively (Zubair, 1998). This view had since been well founded, as opined by Kamali that the whole concept of *sadd al-dhara'i'i* is founded in the idea of preventing an evil before it actually materialises (Hashim, 1991).

Juristically, the legality of insurance has attracted supporting and opposing arguments among the scholars of Islamic law. According to Zubair (1998), some scholars approved all forms of insurance if they can be brought under the sphere of Islamic principles. Others disapproved all forms of insurance totally, while the third section of Islamic scholars accepts commercial insurance subject to certain limitations. The differences of the jurists on the matter have also been explained in accordance with the opinions of pre-modern and modern jurists on insurance. While some opponents have rejected the insurance scheme as a negation to the concept of *tawakkul* (sole reliance on Allah), the argument has been refuted on the ground that insurance is something a Muslim participates in it five times daily like prayer (*salat*), as it is nothing but a form of insurance premium in the hope of a divine dividend at the end of life (Ramin and Jean, n.d. p. 44-96).

In view of the foregoing, it is observed that Islamic insurance is an insurance scheme structured and practiced in compliance with the principles of *Shari'ah* (Islamic law) and it is technically known as *Takaful*. In a very concise description, it is explained as a scheme that is based on brotherhood, solidarity and mutual assistance to the members in case of need where each participant contributes a fixed amount to *Takaful* fund in its operational practice, as a mark differentiating it from the conventional system (Akhter, 2011).

2.3. Islamic Insurers

In *Takaful*, there are multiple parties or stakeholders (Billah, 2002). One of these is the Islamic insurer. Others are participants, nominees and beneficiaries (Dusuki, 2012). In the conventional insurance, an insurer is the underwriter or insurance company with whom a contract of insurance is made or the person who provides the benefits under an insurance contract (Yerokun, 2013). Given the different positions and roles of the insurers in the *Takaful*, it is significant to note that under the Islamic law, an alternative term to the insurer is "operator" (Billah, 2002). Thus, an Islamic insurer is a *Takaful* operator described as the one who undertakes on behalf of all participants, in consideration of contributions paid by the participants, to indemnify or provide a financial security against unexpected peril, which may happen on the subject of the policy (Dusuki, 2012).

Structurally, the Islamic insurers, in their various jurisdictions, operate either as full-fledged Islamic Insurance companies or as units in the conventional ones, and these are technically referred to as "Windows." In other words, a *Takaful* window refers to where a conventional Insurance company operates and runs a *Takaful* department (Abdulrauph, 2014). The Islamic insurer, like

its conventional counterpart, is usually an incorporated company or a registered cooperative society.

3. LEGAL BASIS FOR INSURABLE INTEREST IN ISLAMIC INSURANCE

The above clarification on terminologies, ordinarily, prepares the grounds for the study, as this will further enable us to proceed on to the exposition of the theories for assessing the insurable interest. However, the clarification made on the term insurable interest is not detailed enough to make one conclude that insurable interest is also required for, or relevant to the contract of *Takaful* or otherwise, as it has merely given a conceptual analysis of the term from both the conventional and Islamic insurance perspectives.

To this end, this segment examines the legal basis for the insurable interest in *Takaful*. This does not however rule out any contrary view rejecting it in the scheme. After all, insurable interest in the common law is generally not a requisite for the validity of a contract of insurance, except in the recognized exceptional circumstances (Keith and Norman, 1996). Whether the same position is maintained in Islamic law or not would be discovered from the ensuing analyses.

In Islamic law, interference with the affairs of another person without any justifiable legal basis is outlawed. For a Muslim to distance himself from getting involved in matters that do not concern him is a habit encouraged to beautify his religious dispositions. On this, Prophet Muhammad (P.B.U.H), as reported by Abu Hurayrah, says that: Part of someone's being a good Muslim is his leaving alone that which does not concern him (translated by Yushau, 2001). From the general expression of this *hadith*, it is deducible that matters relating to the contract of *Takaful* are also inclusive. Thus, part of someone's being a good Muslim is his leaving alone uninsured subjects (be it a person or an object) which do not concern him. Hence, to allow a person to take out a *Takaful* policy on a subject that does not concern him is to allow him validate such *Takaful* contract without the requisite insurable interest and thereby negates the purports of this *hadith*. This cannot be proved otherwise because the *hadith* can also imply that we should not force ourselves to assist or help others (Yushau, 2001).

From the provisions of the Qur'an, advancing the insurable interest as a fundamental principle of *Takaful* can also be well founded. For example, a deep thought on the provision of the Qur'an (6:164) on the concept of *wa la tazir waaziratun wizra ukhra* (no bearer of burdens can bear the burden of another) are very instructive in this regard. Therefore, a particular attention should be drawn to the legal principle deducted from that declaration of Almighty Allah, that which implies that to allow a person to take out a *Takaful* policy on a subject that does not concern him is to allow him validate such *Takaful* contract without the requisite insurable interest and thereby negates the purport of this Quranic provision. The conclusion one may reach from this Islamic legal point of view is that the insurable interest is a legal requisite for the validity of a *Takaful* policy. Thus, a critical appraisal of any *Takaful* package would very much support this proposition. In

order to be well informed about the significance of the argument, a clear understanding of the approach to assessing the insurable interest in the *Takaful* hereby becomes necessary.

4. THEORIES FOR ASSESSING INSURABLE INTEREST IN *TAKAFUL*

4.1. Backgrounds to the Theories

By simple descriptions, a theory either refers to a formal set of ideas that is intended to explain why something happens or exists or the principles on which a particular subject is based or an opinion or idea that somebody believes is true but that is not proved (Hornby, 2000). The last description seems to better explain the concept of theory in this particular work.

A close study of the operational system of the *Takaful* would reveal that a relationship between a person and another is a significant factor that induces *Takaful* policy that is to be embarked upon. At the time of payment of the *Takaful* benefits, the relationship between the insured and the beneficiary also becomes a significant consideration. Appreciably, the relationship is hinged closely to and greatly heralds the nature of insurable interest to be assessed for determination of the *Takaful*. It is therefore essentially conceived that in the *Takaful*, unlike the position in the conventional insurance system, much as the insured is required to possess the insurable interest at the formation of the contract, the beneficiary equally requires the same at its determination. Significantly from the foregoing, the current *Takaful* practice whereby a beneficiary is not required to have insurable interest on the basis of his relationship with the insured and also not required to enjoy prior express nomination by the insured for that purpose would most likely become less formidable (Dusuki, 2012).

4.2. Analyses of the Theories

It is strongly conceived that the insurable interest of the insured or the beneficiary, as the case may be, can be logically be accessed through the established theories on *nafaqah*, *ra'i*, *mirath/fara'id*, *al-halal wa al-haram*, and *maqasid*, among others that may further be conceived and developed. Some of the theories are notably good precepts for the Islamic insurers to see and determine who enjoy the requisite insurable interest. Also, some of them provide good legal principles to assess the insurable interest in the subject or the form of *Takaful* policy. Some explanations are hereby briefly provided on each of them as highlighted below.

4.3. *Nafaqah* Theory

An-Nafaqah is the legal principle of maintenance in Islamic law and it pertains to maintenance of the dependents (Ambali, 2003). In a simple term, it is a conventionally moderate sustenance for a living human, and which must not entail extravagance (Orire, 2007). As a legal arrangement, it entails the right and duty of the maintained and the maintainer respectively, once a relationship creating it exists between the two parties. Thus, maintenance is necessitated by three causes, namely; possession, blood, and marriage (Orire, 2007).

In applying the principle of *Nafaqah* to assess the insurable interest in the *Takaful*, it is significant to understand the relationships that

create the responsibility under the Islamic law. It is well established that relationships of parent/children, husband/wife, grand-parent/grand-children (no matter how high or low), direct blood relatives through father or mother (such as siblings, step brothers and sisters, uncles and aunts) are all the bases for maintenance responsibility of the have's towards the have-not's (Ismaa'eel, 1997). It can thus be theorized that people with any of the above relationships stand qualified to be accorded the insurable interest between one another, either in each other's person or property. As such, any of them can be allowed to opt for a *Takaful* policy in favor of the other. Such a *Takaful* policy could be well branded as *nafaqat Takaful* plan if it is aimed at discharging the responsibility behove on one in terms of maintenance. Thus, the plan can then be in form of general *nafaqat Takaful* or specific *nafaqat Takaful*. While the general type is taken out for the benefits of any person, the specific type may be taken out in favor of nominated beneficiaries. While the Islamic insurers would have no difficulty on the beneficiary at the maturity of the specific *nafaqat Takaful*, the ensuing issues on the entitled beneficiary with the requisite insurable interest for the general type at maturity may be resolved through the principle of the order of priority of the dependents. Thus Ambali (2003) posits that:

- The highest priority goes to the wives out of all classes of the dependants. Next to them are the children, with female children taking priority over the male ones. Next to the children are the parents with the mothers taking precedence over the fathers.

The Islamic insurers would therefore be properly guided by the *Nafaqah* theory to understand that the wife of the insured stands most entitled to be accorded the beneficiary status where none was specifically nominated by the insured. The failure of the insured to have so nominated her cannot therefore justify denying her the proceeds of the *Takaful*. Interestingly noted, therefore, is that the workability of this theory could be seen in the new regime of insurable interest in the life of the beneficiaries concerned in the Nigeria insurance law (Umezurike, 2009). As the law stands in that country, two persons now enjoy insurable interest in the life of the other once any of them stands in the position to maintain the other as prescribed either by the customary law or Islamic law. To this end, section 56 of the Nigeria Insurance Act, 2003 stipulates thus:

- A person shall be deemed to have an insurable interest in the life of any other person or in any other event where he still stands in any legal relationship to that person or other event in consequence of which he may benefit by the safety of that person or event or be prejudiced by the death of that person or the loss from the occurrence of the event.

In giving a special recognition to the theory of *Nafaqah* to regulate the insurable interest premised on a legal relationship, Section 56 (2) and (3) of the Insurance Act declares that:

- In this section, "legal relationship" includes the relationship which exists between persons under customary law or Islamic law whereby one person assumes responsibility for the maintenance and care of the other.

It is pertinent, at this junction, to state that the relationship that makes a person assumes responsibility for the maintenance and care of the other under the Islamic law recognizes the above

statutory provision because it is solely based on the principles of *an-Nafaqah*. Therefore, the *Nafaqah* theory for the assessment of the insurable interest in the *Takaful* is formidable and workable.

4.4. *Ra'i* Theory

In a trendy *hadith*, 'Umar narrated that the Prophet (P.B.U.H), while alerting the individuals about their responsibilities towards their respective subjects or charges, declared as follows:

- Each and every one of you is in the image of a rearing of a shepherd, and you are going to be queried on the welfare of the subjects under you; the *Imam* (leader of the Muslim community) is a shepherd and shall be queried about the welfare of his people, man is a shepherd over his household and shall be queried about their welfare, a woman is a shepherd in her husband's home and shall be asked how she goes about her roles there and a servant is a shepherd over the property of his master and he shall be queried on how he manages such (*Sahih al-Bukhari*, vol. 9/2, *hadith* No.2751).

Going by this *hadith*, it is glaring that a leader could have insurable interest over the affairs of his subjects, a man over the members of his households, the wife over the property of her husband and management of home generally, and likewise a servant (an employee for instance) over the property of his master or employer which are in his custody.

An exploration of the *Ra'i* theory could, therefore, serve as a basis for the Islamic insurers to entertain any *Takaful* plan from any person in the leadership position such as the government and the employers in favor of their subjects. Likewise, a man has insurable interest over the members of his household and can therefore insure anything connected to them just as an employee can also insure the property of his employers in his care. For instance, a group of employees can take out a Family *Takaful* with respect to the apartments given to them by their employers. Their insurable interest in the residential buildings can be grounded in the *Ra'i* theory as indicated.

4.5. *Mirath/Fara'id* Theory

Mirath or *Fara'id* in Islamic law is a study on the practical regulation and mathematical principles on the distribution of the estate of a deceased Muslim (Ambali, 2003). Hence, it is defined as the knowledge about distribution of the inheritance jurisprudentially (*fiqhan*) and mathematically (*hisaban*) (Al-'Uthaymin, 2012 and 2007). Zubair (1998) is of the opinion that *mirath* or *Fara'id* is a science that deals with the knowledge of estate division and the correct determination of the shares in an estate as well as the relation of the individual shares to the basic division.

In order to properly apply the principles of the *Fara'id*, one must be grounded in the knowledge of the kind of relationship that justifies inheritance because the acquisition of the heir status depends heavily on the existence of such relationship (Tajudeen, 2001). In other words, *mirath* guides us to know the one who is entitled to have or otherwise, the proportionate share that is entitled to by the relatives of the deceased from the estate left behind, and how the estate is to be shared among the legal heirs (Zubair, 1998). Oniye (2001) is, however, of the opinion that three

forms of relationships could lead to inheritance of a person by the other. These are blood relationship (*nasab*), marriage relationship (*nikah*) and master-slave relationship (*wala'*). Under the *nasab*, those that can inherit their relations are parents, children, husband, wives, son of son, daughter of son, uterine brothers and sisters, full brothers and sisters, consanguine brothers, uncles and their children, grandmother and grandfather (Ambali, 2003. p. 273-274). Going by these kinds of relationships, as mentioned for the assessment of the insurable interest in the *Takaful* in this theory, it is demonstrated that a person who-so involved is allowed to benefit from the insurance policy of the insured, and the insured is also allowed to take out a policy in the interest of any person mentioned within these kinds of relationships. Another notable area of interest in this kind of a theory is the determination of the order of priority to be accorded to those in the chain of the relationship in case of conflict of interest. In this regard, the theory shows that those with fixed portions of inheritance like the father, mother, husband and wife should take precedence over those who do not have. Again, if the *Takaful* benefits need to be shared between these people, the sharing formula in the *mirath* would also be highly useful (Oniye, 2001. p. 35; Ambali, 2003. p. 283-284). However, the application of the *mirath* theory stands challenging to some propositions already advanced in another quarters on the issue of the insurable interest of the beneficiary. By those propositions, it is contended that the beneficiary must be an ordinary and living person. So an artificial entity or unborn child cannot be nominated as beneficiary because he lacks the capacity to enjoy the accrued *Takaful* benefit. Contrariwise, an unborn child is entitled to inherit once s/he is born alive even if it is just for a second (Al-Sabuni, 2002). Therefore, denying an unborn child the beneficiary interest in the *Takaful* would be contrary to the principle of *Fara'id*. To this end, the *Fara'id/mirath* theory, as proposed in this work, would better guide the *Takaful* industry in according the necessary recognition to the unborn child as a being capable to benefit from the *Takaful* policy. In the same vein, the *Takaful* participant should be encouraged to take out the *Takaful* policy in favor of the unborn child, whether conceived yet or not. In fact, this presents an opportunity for the *Takaful* industry to develop a sort of 'Unborn Child Welfare *Takaful*' product which may be technically called *Takaful al-Janin*.

4.6. *Al-Halal wa al-Haram* Theory

Muslims, in all their affairs, individually or collectively, are expected to be conscious of the implications of the *halal* and *haram*. This is because in Islamic law, the subject of *al-halal wa al-haram* occupies a very significant place, as it permeates every other subjects of the law (Al-'Uthaymin, 2010). Going by definitions, *al-halal* is the permissible (*mubah*) which is not prohibited by the Lawgiver (*Al-Shaari'*), but rather authorizes it to be done, while *al-haram* is a matter which the Lawgiver prohibits to be done in a penal terms and thus stipulates punishment for whoever violates the prohibition in the hereafter just as the violation may also attract some punishments in this world (Al-'Uthaymin, 2010). In recognition of the general principle of Islamic law, al-'Uthaymin (2010) further buttress his view with the submission of Ibn Taymiyyah that anything that is not declared as *haram* is not *haram* and anything that is not *haram* is *halal* since there is no more than either *halal* or *haram*. It is, therefore, not

behave on any person or authority, other than the Lawgiver (Allah) to declare an act as either *halal* or *haram* (*Qur'an* 16:116). Such a kind of power was only delegated to Prophet Muhammad during his lifetime as the Messenger of Allah. Similarly, an act that will breed *haram* is also *haram*, just as anything that is *haram* cannot change its status by the mere change in its name. Therefore, the *Qur'an* and the *hadith* have stipulated that matters of *haram* are glaring and clarified (Al-Qaradawi, 2007).

In the light of the foregoing, if an insured or a beneficiary is denied the right of participation in the *Takaful* policy, that automatically amounts to declaration of the insurable interest of an insured or a beneficiary with respect to *Takaful* policy as *haram* without any legal authority. Therefore, the *Takaful* industry stands to greatly benefit more through the development of new products as long as they do not constitute or promote *haram*. Also, the Islamic insurers are requested to be at high alert to ensure that in no way should any matter of *haram* be involved in any *Takaful* policy being undertaken by them because once the *haram* sets in, then the insurable interest of the insured and or the beneficiary becomes legally extinguished.

4.7. *Maqasid* Theory

In its legislative exertions, Islamic law is guided by settled objectives. These objectives are known as *maqasid al-Shari'ah*. They are the general foundational objectives upon which the law of Islam is legislated. The position of Islamic law on all matters is that no exertion would be allowed where they tend to tamper in any way with the realization of the basic objectives of the law. Thus, where it is found that a package may hamper the freedom or sanctity of the religion of a Muslim (*ad-din*), destroy the life (*an-nafs*), damage family genealogy (*al-ird*), spoil the human intellect (*al-'Aql*), or unjustly deprive man of his belongings and properties (*al-mal*), such should not be made to advance in Islamic law because these are the basic values by which Islamic law seeks to protect at all times (Khallaf, 2003; Alamer, 2015). By the *maqasid* theory therefore, an insured should be able to enjoy insurable interest if it is found that the *Takaful* policy would promote or assist in the realization of any of those five values.

5. CONCLUSION

In this paper, special attention is given to the conceptual analysis of the insurable interest in *Takaful*. The study has revealed that the concept is well founded in the sense that it is greatly relevant to the Islamic insurance industry. For the element to be greatly explored by the Islamic insurers, a number of theories were propounded. Thus, it is revealing that through the theories of *nafaqah*, *ra'i*, *mirath/fara'id*, *al-halal wa al-haram* and *maqasid*, the Islamic insurance industry could professionally assess the insurable interest of the insured or the beneficiary as the case may be. There are many advantages that could be derived through the development of *Takaful* projects if the suggested theories and their conceptual frameworks could be properly harnessed and applied by the stakeholders. However, this study is not claiming to establish the principles on which the assessment of insurable interest in *Takaful* is based, but it is set out to establish a formal consortium of ideas needed to explain why an insured can be said to possess or

lack insurable interest in a particular subject of *Takaful*. With the theoretical propositions put forth in this study, a new jurisprudence is expected to be heralded on the issue of insurable interest and its assessment in *Takaful*. It is strongly believed, therefore, that a serious application of these theories would make the Islamic insurance industry a better financial institution relevance to the modern insurance realities within the confines of Islamic law.

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