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TEKAFUL OSIGURANJE U TEORIJI I PRAKSI

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Rezime

Osiguranju, kao instrumentu zaštite pojedinca i zajednice, islam daje izuzetno veliki značaj i smatra ga nezaobilaznim elementom procesa ostvarivanja socio-ekonomske pravde u društvu. Shodno tome, kod islamskog koncepta osiguranja dominira socijalna u odnosu na komercijalnu komponentu. Međutim, zahtevi savremenog okruženja učinili su neophodnim postojanje šerijatski prihvatljivog komercijalnog osiguranja. S obzirom na to da su konvencionalni modeli osiguranja dobrim delom šerijatski neusklađeni, razvijeno je tekaful osiguranje, da bi se zadovoljile potrebe pojedinaca i institucija koji žele da da se osiguraju u skladu sa šerijatskim principima. U ovom radu, analiziraćemo proces evolucije tekaful osiguranja, njegove vrste i modele, vršićemo komparativnu analizu tekaful i konvencionalnog osiguranja, preispitujući argumente u prilog šerijatske problematičnosti konvencionalnog osiguranja, i na kraju, navesti izazove implementacije tekaful osiguranja u praksi.

Ključne reči: islamske finansije, osiguranje, tekaful, upravljanje rizicima, uzajamno osiguranje, mudareba, vekala

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Uvod

Koncept osiguranja je nastao kao posledica svevremene potrebe čoveka da ublaži negativne posledice neizvesnosti s kojom se svakodnevno suočava i zaštiti sebe i svoju imovinu. Shodno tome, istorijski razvoj koncepta osiguranja u potpunosti koindicira sa razvojem civilizacije. Proces evolucije koncepta osiguranja odvijao se u više faza (Masci, 2011, str. 27): primena prvobitnih oblika osiguranja, pojava polise osiguranja, osnivanje prvih osiguravajućih društava, nastanak socijalnog osiguranja, jačanje pozicije osiguravajućih društava na finansijskom tržištu i suočavanje sa problemom terorizma i prirodnih katastrofa. Potrebe za osiguranjem među prvima su postali svesni pomorski trgovci, čija je delatnost uvek bila povezana s brojnim opasnostima (Pak, 2011, str.4). U antičkom periodu, kada se pojavljuju rudimentarni oblici osiguranja, trgovački poduhvati osiguravani su na bazi ugovora o zajmu ili partnerstvu, a ne na bazi klasičnog ugovora o osiguranju (Homer & Sylla, 2005, str. 35). I u srednjem veku osiguranje je najaktivnije korišćeno u pomorskoj trgovini i ,,razvijano u mediteranskim lukama" (Ibid, str. 73). ,,Zasluge" za nastanak prvog osiguravajućeg društva, pak, nije ponela pomorska trgovina, već Veliki požar u Londonu, koji se desio u 17. veku i čije su strašne posledice podstakle osnivanje osiguravajućeg društva specijalizovanog za osiguranje imovine (Marović, Tepavac i Njegomir, 2013, str. 20). Međutim, dok god nisu primenjene naučne metode za procenu rizika koji se preuzima, osiguranje se moglo poistovetiti sa kockanjem. Moderno osiguranje se ne temelji samo na prostom transferu rizika sa osiguranika na osiguravača, već i na primeni aktuarskih metoda procene rizika, koje su omogućile kvantifikovanje verovatnoće realizacije osiguranih rizika i s njima povezanih ekonomskih posledica. Njihovom primenom stvoreni su uslovi za razvoj koncepta životnog osiguranja. Začetak ovog vida osiguranja se vezuje za dvojicu škotskih sveštenika (Robert Wallace & Alexander Webster) koji su u 18. veku formirali fond za osiguranje porodica preminulih sveštenika, primenjujući aktuarske metode prilikom procene životnog veka sveštenika, premije osiguranja i ukupnog fonda, dovoljnog za isplatu dogovorenih odšteta korisnicima osiguranja (Ferguson, 2009, str. 190–193). Savremeno osiguranje, u svim svojim oblicima, se ne može zamisliti bez primene aktuarskih metoda.

Tekaful je osiguranje zasnovano na šerijatskim principima. Prema principima Šerijata i konceptu opšteg dobra (maqasid shari'ah), zaštita pojedinca i zajednice je obavezna (Aris, Tapsir & Talib, 2012, str. 32), što ukazuje na neophodnost postojanja institucije osiguranja u muslimanskom društvu. Suština tekaful osiguranja sagledava se iz same etimologije reči *tekaful*. Reč *tekaful* je izvedena iz arapskog glagola *kafalah*, koji označava ,,uzajamnu garanciju" (Matsawali, et. al., 2012, str. 164; Aris, Tapsir & Talib, 2012, str. 30). Kod tekaful osiguranja zastupljen je koncept *tabarru*, koji u bukvalnom prevodu označava ,,doniranje, doprinošenje, nuđenje ili davanje" (Wahab, Lewis & Hassan, 2007, str. 376). Shodno tome, može se zaključiti da kod tekaful osiguranja osiguranici međusobno sarađuju radi zajedničke koristi, uplaćuju doprinose od kojih se formira fond, kao finansijska osnova za podršku osiguranicima kojima je pomoć potrebna, rizici i gubici se međusobno dele i eliminiše se mogućnost ostvarivanja koristi na štetu drugih (Wahab, Lewis & Hassan, 2007, str. 375-376; Swartz & Coetezer, 2010, str. 335; Aris, Tapsir & Talib, 2012, str. 31). Tekaful omogućava okupljenoj zajednici osiguranika da, kroz uzajamnu saradnju i etičko postupanje, zaštite život, imovinu i dostojanstvo (Abdullah, 2012, str. 540). Islamski koncept osiguranja je prošao kroz više faza razvoja (Hadžić, 2014, str. 152): *akillah*[1], *meakil*[2], komerci-

[1] Radi se o pomoći koju je zajednica pružala siromašnim porodicama, posebno porodicama čije su izdržavaoce ubili pripadnici neprijateljskog plemena ili naroda.
[2] Osiguranje definisano Medinskim ustavom (Hamidullah, 1989, str. 156), koje obuhvata tri elementa (Rispler-Chaim, 1991, str. 144): 1) al – diyah (krvarina), 2) al – fidya (otkup ratnih zarobljenika) i 3) socijalno osiguranje.

jalno osiguranje[3] i savremeno tekaful osiguranje[4]. Ključni momenat za inicijaciju razvoja savremenog tekaful osiguranja desio se početkom 19. veka, kada je šerijatski pravnik *Syed Ibn Abdin*, na molbu grupe muslimanskih trgovaca da dâ svoje mišljenje o šerijatskoj ispravnosti konvencionalnog pomorskog osiguranja, istakao šerijatsku neusklađenost konvencionalnog osiguranja i potrebu postojanja autentičnog islamskog osiguranja (Khan, 2011, str. 6). Zvaničan stav da je konvencionalno osiguranje šerijatski neusklađeno, usvojen je na konferenciji šerijatskih pravnika i ekonomista (First International Conference on Islamic Economics) u Meki 1976. godine (Ibid). Nedugo zatim osnivaju se i prva tekaful osiguravajuća društva u Sudanu u 1979. i Maleziji 1984. godine (Lim, Idris & Carissa, 2010, str. 2). Detaljniji prikaz funkcionisanja tekaful osiguranja u teoriji i praksi biće dat u nastavku, kroz predstavljanje modela tekaful osiguranja, argumenata u prilog šerijatske neusklađenosti konvencionalnog koncepta osiguranja i, na kraju, dostignuća i izazova u procesu implementacije koncepta tekaful osiguranja.

Modeli tekaful osiguranja

Primena šerijatskih principa u oblikovanju tekaful osiguranja dovela je do stvaranja specifične pravne, ekonomske i organizacione infrastrukture na kojima se koncept tekaful osiguranja temelji. Kod tekaful osiguranja ugovorne strane su osiguranici i tekaful operator (osiguravajuće društvo). Osiguranici uplaćuju doprinose od kojih se formira tekaful fond, a njime upravlja tekaful operator, koji nema vlasništvo nad fondom, već se samo o njemu stara (Wahab, Lewis & Hassan, 2007, str. 376). Dakle, tekaful operator nema ulogu osiguravača, već samo menadžera tekaful fonda, dok su osiguranici istovremeno i osiguravači (AlNemer, 2013, str. 235). Stoga, ne dolazi do transfera rizika sa osiguranika na tekaful operatora (Bhatty, 2010, str. 7), već teret rizika snose sami osiguranici (Wahab, Lewis & Hassan, 2007, str. 376). Obaveze tekaful operatora, s druge strane, su da upravljajući fondom očuva njegovu sigurnost, sposobnost izmirivanja odštetnih zahteva i ostvarivanja zadovoljavajuće stope prinosa, i osigura stabilno poslovanje u kontinuitetu (Aris, Tapsir & Talib, 2012, str. 36). Shodno navedenom, može se zaključiti da su imovina tekaful fonda i imovina tekaful operatora potpuno odvojene (AlNemer, 2013, str. 249).

Tekaful osiguranje može biti opšte (osiguranje imovine) i porodično (osiguranje života). Na osnovu prava i obaveza koje tekaful operator i osiguranici preuzimaju i obliku naknade koju tekaful operator dobija za svoje usluge, izdiferencirala su se četiri modela tekaful osiguranja (modeli predstavljeni na osnovu: Wahab, Lewis & Hassan, 2007; Akhter, 2010; Jaffer, et. al., 2010; Sadeghi, 2010; Kettell, 2011; Htay & Zaharin, 2012; Cheikh, 2013; Kassim, Odierno & Patel, 2013; Hadžić, 2014; Tahira & Arshad, 2014): mudaraba (Mudarabah), vekala (Wakalah), mešoviti i vakuf (Waqf) model.

Kod *mudaraba modela*, tekaful operator i osiguranici ostvaruju partnerski odnos, pri čemu tekaful operator ima ulogu *mudariba*, koji upravlja tekaful fondom i ulaže svoje vreme, napor i znanje, dok osiguranici imaju ulogu *rabbu l-mala*, odnosno ulagača kapitala bez prava na upravljanje fondom. U okviru fonda se formiraju rezerve za izmirenje odštetnih zahteva i investicioni račun na koji se prebacuju sredstva namenjena ulaganju. Ostvareni prinos na ulaganja osiguranici i tekaful operator dele prema unapred određenom ključu, dok gubitak u potpunosti snose osiguranici. S druge strane, pozitivna razlika između uplaćenih doprinosa i isplaćenih odšteta se na kraju obračunskog perioda isplaćuje

[3] Osnivaju se društva za uzajamno pomorsko osiguranje u periodu ekspanzije arapske pomorske trgovine, s ciljem zaštite trgovaca čiji su trgovački poduhvati često završavali neuspešno usled prirodnih nepogoda ili pljački, što je model koji su kasnije preuzeli Evropljani (Aris, Tapsir & Talib, 2012, str. 30).
[4] Prihvatanje i modifikovanje konvencionalnih modela osiguranja i institucija i nastanak savremenog tekaful osiguranja (detaljnije Sadeghi, 2010, str. 101).

isključivo osiguranicima[5]. Ukoliko, pak, uplaćeni doprinosi nisu dovoljni za pokriće odštetnih zahteva, tekaful operator daje tekaful fondu beskamatnu pozajmicu (Qard Hasan), koja treba da se izmiri iz budućih doprinosa nakon što fond ostvari pozitivan tehnički rezultat.

Kod *vekala modela*, tekaful operator ima ulogu zastupnika, odnosno agenta (Wakeel) fonda, dok su osiguranici njegovi principali (Muwakkil). Tekaful operator ima ulogu da upravlja tekaful fondom, stara se o njegovoj stabilnosti i održivosti, naplati doprinosa i isplati odšteta, zašta dobija unapred definisanu naknadu. Pored toga, postoji mogućnost da tekaful operator upravlja i investicionim računom tekaful fonda i da za to dobije dodatnu naknadu, koja je, takođe, fiksna. Fiksiranost naknade tekaful operatora i neusklađivanje sa ostvarenim rezultatima poslovanja fonda mogu demotivisati tekaful operatora da maksimira svoje napore kako bi tekaful fond ostvario natprosečne finansijske rezultate. Stoga se preporučuje isplata podsticajne naknade iz ostvarenog viška iznad isplaćenih odšteta.[6] Ovaj problem se može rešiti i primenom *mešovitog mudareba/vekala modela*. Kod ovog modela, tekaful operator kao *vakil* dobija fiksnu naknadu za upravljanje rezervama fonda. Istovremeno upravlja i investicionim računom u ulozi *mudariba*, gde naknadu za pružene usluge ostvaruje u obliku unapred definisanog udela u ostvarenom prinosu na investicije. Status ostvarenog viška iznad isplaćenih odšteta kod vekala modela je isti kao kod mudareba modela, odnosno višak pripada osiguranicima. Prakse se kod ova modela poklapaju i u slučaju manjka, jer i kod vekala modela tekaful operator pokriva manjak beskamatnom pozajmicom koja će biti vraćena nakon ostvarenja pozitivnog tehničkog rezultata.

Vakuf model tekaful osiguranja je različit od ostalih jer je njegova funkcija isključivo socijalna i humanitarna. U ovom slučaju tekaful fond se popunjava donacijama, njime upravlja tekaful operator i služi za pružanje finansijske pomoći socijalno ugroženim licima. Vakuf se osniva kao nezavisno pravno lice i tekaful fond je u vlasništvu vakufa, a ne uplatioca, tako da ostvareni višak i eventualni prinos na ulaganja ostaju u posedu samog fonda.

Analizom predstavljenih modela tekaful osiguranja, stručna javnost je dovela u pitanje legitimnost nekoliko bitnih elemenata ovih finansijskih aranžmana. *Jedan od spornih elemenata* je beskamatna pozajmica (Qard Hasan) koju tekaful operator daje fondu u slučaju negativnog tehničkog rezultata. Primena *kard hasana* u tekaful osiguranju otvara brojna pitanja (Jaffer, et. al., 2010, str. 20-21): određivanje visine pozajmice i njena usklađenost sa projektovanim tehničkim rezultatom koji je osnova za njeno vraćanje, dinamika vraćanja pozajmice, raspoređivanje tereta na postojeće i nove osiguranike[7], otpis duga u slučaju višegodišnjeg negativnog tehničkog rezultata i tretman *kard hasana* kao duga koji se uzima u obzir prilikom preispitivanja solventnosti fonda. Pitanje je da li će u krajnjoj liniji teret kard hasana snositi osiguranici ili akcionari tekaful operatora (Bhatty, 2010, str. 8). Primena *kard hasana* je posebno problematična kod mudareba modela, jer se obavezivanje tekaful operatora (mudariba) da dâ pozajmicu tekaful fondu (rabbu l-malu) kosi sa osnovnim principima mudareba aranžmana, prema kojima ostvareni gubitak, pa samim tim i negativni tehnički rezultat, u potpunosti pada na teret *rabbu l-mala* (Htay & Zaharin, 2012, str. 120). Od *mudariba* se ne očekuje da pruža ovaj vid podrške mudareba partnerstvu i bude garant tekaful fonda (Wahab, Lewis & Hassan, 2007, str. 381). *Drugi sporan element* je praksa pojedinih tekaful fondova da isplaćuju deo viška iznad isplaćenih odšteta tekaful operatoru.

[5] Postoji mogućnost da se deo viška zadrži u vidu sigurnosnih ili stabilizacionih rezervi (Jaffer, et. al., 2010, str. 23).
[6] Podsticajna naknada se usklađuje sa visinom ostvarenog viška shodno poslovnoj politici fonda (Wahab, Lewis & Hassan, 2007, str. 383).
[7] Postoji mogućnost da vraćanje pozajmice padne na teret pozitivnog tehničkog rezultata namenjenog osiguranicima koji su fondu pristupili nakon uzimanja pozajmice, pa samim tim nisu imali koristi od isplaćenih odšteta koje su nadmašile uplaćene doprinose prethodnih osiguranika, što je fond i dovelo u situaciju da mora da zatraži pozajmicu.

U vezi s tim postoje tri različita mišljenja (Jaffer, et. al., 2010, str. 22): 1. višak pripada isključivo osiguranicima[8], 2. višak pripada i tekaful operatoru zbog njegovog doprinosa ostvarenju viška i 3. višak se daje u humanitarne svrhe, jer se osigurani slučajevi nisu realizovali, pa samim tim nije bilo isplata odšteta, što je Božja zasluga, a ne zasluga tekaful operatora i osiguranika. U sporne elemente treba dodati i praksu pokrivanja troškova upravljanja fondom kod *mudareba modela* na teret kapitala fonda. Naime, može doći do situacije da ostvareni profit od investicija nije dovoljan za pokriće troškova i da se oni moraju pokriti prikupljenim doprinosima osiguranika, čime bi solventnost fonda i njegova svrha, kao i šerijatska ispravnost aranžmana bili dovedeni u pitanje (Htay & Zaharin, 2012, str. 119-120). Zbog svih navedenih spornih elemenata, koji su posebno problematični kod *mudareba modela*, islamske finansijske regulatorne institucije (poput Računovodstvene i revizorske organizacije za islamske finansijske institucije (Accounting and Auditing Organization for Islamic Financial Institutions – AAOIFI)) (Jaffer, et. al., 2010, str. 14), kao i stručna javnost i pružaoci i korisnici usluga tekaful osiguranja, podržavaju primenu *mešovitog mudareba/vekala modela* (Htay & Zaharin, 2012, str. 125). Kod ovog modela tekaful operator upravlja fondom u svojstvu agenta. Stoga nema pravnih prepreka za davanje beskamatne pozajmice fondu[9] i pokrivanje troškova upravljanja fondom, koji mogu biti uključeni u proviziju tekaful operatora. Takođe, upravljanje investicionim računom fonda se može sprovoditi uz puno poštovanje mudareba principa.S druge strane, ključna zamerka ovom modelu je to što tekaful operator može ostvariti ,,preterano veliku zaradu", jer ostvaruje pravo kako na *vekala* proviziju, tako i na udeo u dobiti od investicija (Htay & Zaharin, 2012, str. 124).

Tekaful vs. konvencionalno osiguranje

Prema svojoj osnovnoj funkciji, tekaful i konvencionalno osiguranje se ne razlikuju, jer je svrha oba koncepta osiguranja ublažavanje rizika s kojima se pojedinac i društvo u svom delovanju susreću i delimična ili potpuna nadoknada ekonomske štete koja nastaje realizacijom osiguranog slučaja. Njihova sličnost je posebno izražena kod konvencionalnog uzajamnog osiguranja (Kader, Adams & Hardwick, 2010, str. 163). Ipak, među njima postoje i brojne razlike. Najpre, analizirajući njihov razvojni put, može se videti da je islamsko osiguranje u svom začetku bilo prevashodno socijalno osiguranje, namenjeno jačanju jedinstva zajednice, solidarnosti i socijalnog mira. Tradicija islamskog socijalnog osiguranja je veoma duga, čemu u prilog govori činjenica da je bilo izuzetno razvijeno još za vreme života Muhameda s.a.v.s. i pravednih halifa, posebno Omera (Tolefat & Asutay, 2013, str. 11; Hadžić, 2014, str. 152). Konvencionalno osiguranje se bazira na transferu rizika sa osiguranika na osiguravača (osiguravajuće društvo), zašta osiguravač naplaćuje premiju kao cenu usluge osiguranja, dok, s druge strane, kod tekaful osiguranja osiguravajuće društvo ima isključivo ulogu agenta koji upravlja tekaful fondom i za to dobija odgovarajuću naknadu, a teret rizika solidarno snose osiguranici (Jaffer, et. al., 2010, str. 7). Kod konvencionalnog osiguranja, osiguravajuće društvo ima punu kontrolu nad viškom iznad isplaćenih odšteta i prinosom na investicije, ali i snosi teret manjka i gubitka prilikom investiranja, dok kod tekaful osiguranja osiguravajuće društvo snosi samo rizik upravljanja sopstvenim kapitalom, koji je odvojen od tekaful fonda (Bhatty, 2010, str. 7). Različit je i status uplata koje osiguranici vrše. Kod tekaful osiguranja uplaćuju se doprinosi u fond za uzajamno osiguranje, dok su premije, koje su zastupljene

[8] S obzirom na to da tekaful operator ne preuzima osigurane rizike, nema osnove da učestvuje u raspodeli viška (Jaffer, et. al., 2010, str. 22). Takođe, postoji mišljenje da se učestvovanjem tekaful operatora u raspodeli viška gubi jedna od ključnih razlika u odnosu na konvencionalno osiguranje (Wahab, Lewis & Hassan, 2007, str. 380).
[9] Mada postoje protivnici te prakse i u ovom slučaju (vidi Ibid, str. 386).

u konvencionalnom osiguranju, element kupoprodajne transakcije između osiguranika i osiguravača (Ibid). Priroda odnosa koji se kod konvencionalnog osiguranja formira između osiguravača i osiguranika i prava i obaveze koji iz tog odnosa proističu, doveli su do postojanja brojnih šerijatski neprihvatljivih elemenata kod konvencionalnog osiguranja: garara (Gharar), mejsira (Maysir) i kamate (Riba).

Garar se odnosi na nedovoljnu jasnoću ugovornih odredaba i neizvesnost ostvarivanja prava i obaveza (Jaffer, et. al., 2010, str. 7). Kod konvencionalnog osiguranja, u trenutku sklapanja ugovora, ugovorne strane ne znaju da li će se osigurani slučaj desiti i da li će, samim tim, osiguravač doći u priliku da izvrši svoju obavezu i isplati odštetu, jer je kompletna transakcija vezana za ostvarenje budućeg, neizvesnog događaja, nad kojim ugovorne strane nemaju kontrolu (El-Qalqili, 2017, str. 33). Drugim rečima, osiguranici plaćaju uslugu[10] za koju je neizvesno da li će uopšte biti pružena. Takođe, kod konvencionalnog osiguranja postoji i izražen agencijski problem, jer interesi osiguravača (agenata) i osiguranika (principala) nisu uvek savršeno usklađeni (Wahab, Lewis & Hassan, 2007, str. 374). Problem garara nije u potpunosti eliminisan ni kod tekaful osiguranja, ali je značajno ublažen (Jaffer, et. al., 2010, str. 7). Kod tekaful osiguranja je, takođe, neizvesno da li će se osigurani slučaj desiti i da li će, kada i u kom iznosu doći do isplate odštete, ali je izvesno da će teret odštete solidarno podneti sami osiguranici, a ne osiguravajuće društvo. Osiguranici će, takođe, zadržati eventualni višak iznad isplaćenih odšteta. Samim tim, tekaful osiguranici plaćaju osiguravajućem društvu uslugu upravljanja fondom, čije je pružanje sasvim izvesno, a ne uslugu zaštite od rizika. Kod ovog aranžmana je slabije izražen i agencijski problem.

Mejsir označava kockanje ili špekulisanje, što su šerijatski strogo zabranjene aktivnosti (vidi Kur'an 2: 219, 5: 90-91). U pitanju je težnja da se ostvari korist bez plaćanja adekvatne naknade, ulaganja napora ili preuzimanja obaveze, na bazi igre na sreću (Ayub, 2007, str. 62). Prisustvo mejsira kod konvencionalnog osiguranja ogleda se u činjenici da osiguranici uplaćuju premije, koje gube ukoliko se osigurani slučaj ne desi, ali ako se osigurani slučaj desi, ostvaruju pravo na odštetu čiji iznos može biti daleko veći od uplaćenih premija (Jaffer, et. al., 2010, str. 7). Na taj način, do izražaja dolazi problem *igre sa nultim ishodom*, koji kod tekaful osiguranja ne postoji, jer osiguranici osiguravaju sami sebe na principu uplate doprinosa, solidarno snose rizik, dele višak i dobitak i ne prenose teret rizika na nekog drugog (Ibid).

Kamata (riba) je u islamu strogo zabranjena (vidi detaljnije: Kur'an 2: 275, 2: 276, 2: 278, 2: 279, 3: 130; Chapra, 2000; Siddiqi, 2004; Chapra, 2006; Iqbal & Mirakhor, 2009). Samim tim, praksa konvencionalnih osiguravajućih društava da investiraju u kamatonosne instrumente je šerijatski neprihvatljiva, pa stoga tekaful operatori ulažu u finansijske instrumente koji nose beskamatni prinos (Jaffer, et. al., 2010, str. 7; Hussain & Pasha, 2011, str. 26).

Stav da konvencionalno osiguranje sadrži navedene šerijatski zabranjene elemente preovladava, ali nije jedini. Naime, u pogledu šerijatske prihvatljivosti konvencionalnog osiguranja postoje tri stava (Sadeghi, 2010, str. 102-103): 1. preovlađujući stav da je konvencionalno osiguranje šerijatski neprihvatljivo, 2. stav da garar i mejsir ne postoje kod konvencionalnog osiguranja, pa je stoga ono šerijatski prihvatljivo, i 3. stav da je šerijatski prihvatljivo konvencionalno osiguranje imovine, za razliku od konvencionalnog osiguranja života.

Zastupnici stava da je konvencionalno osiguranje šerijatski prihvatljivo i da kod njega nema zabranjenih elemenata, navode brojne argumente u prilog tom stavu (navedeno prema: Khan, 2011, str. 8-12).

[10] Radi se o nadoknadi štete u slučaju realizacije osiguranog slučaja.

Prvo, *garar* nije zastupljen kod konvencionalnog osiguranja jer su osigurani predmet, osigurani slučaj i maksimalni iznos odštete unapred definisani. Takođe, ni neizvesnost realizacije osiguranog slučaja i iskorišćenja usluge zaštite se ne mogu staviti u kontekst *garara*, jer naplata odštete nije jedina usluga koju osiguranje pruža. Za osiguranika su podjednako bitni psihički mir i sigurnost koje osiguranjem stiče, a to je usluga čije pružanje postaje izvesno samim potpisivanjem ugovora o osiguranju. *Drugo*, ni *mejsir* se ne može pronaći kod konvencionalnog osiguranja jer je motiv osiguranika sasvim drugačiji od motiva kockara. Cilj kockara je da relativno malim ulogom ostvari visoku zaradu. S druge strane, cilj osiguranika nije da malim ulogom (premijom) ostvari veliku finansijsku korist (naplati odštetu), jer je ostvarenje te koristi povezano sa realizacijom osiguranog slučaja, što osiguranik želi da izbegne. Ukoliko se osigurani slučaj ne dogodi, osiguranik će izbeći brojne neprijatnosti koje ekonomski štetan događaj donosi. To što će u tom slučaju izgubiti uplaćene premije, za njega ima sporedni značaj. *Treće*, postoji stav da savremena kamata nije identična sa šerijatski zabranjenom *ribom*.[11] Prema ovom stavu, *riba* se odlikovala time što je bila ,,previsoka" i naplaćivala se na potrošačke kredite, koje su imućni davali siromašnima. Dužnici vrlo često te kredite nisu mogli vraćati, što ih je vodilo u dužničko ropstvo, pa je upravo ova nehumana praksa jedan od razloga zabrane *ribe*.

Tekaful osiguranje u praksi

Tekaful osiguranje je godinama bio najbrže rastući segment globalnog tržišta osiguranja. Složena stopa rasta doprinosa kod tekaful osiguranja je u periodu od 2011. do 2018. godine iznosila 8,5% (IFSB, 2020, str. 36). U 2018. godini, rast doprinosa kod tekaful osiguranja je bio usporen i iznosio je 3,2% (IFSB, 2020, str. 36), što je na nivou stope rasta globalnog tržišta osiguranja (Swiss Re Institute, 2020, str. 8). Ipak, tekaful osiguranje, i pored visokih stopa rasta doprinosa koje je ostvarivalo godinama, i dalje ima veoma mali udeo na globalnom tržištu osiguranja. Naime, ukupan iznos doprinosa kod tekaful osiguranja je 2018. godine iznosio 27,07 milijardi američkih dolara (IFSB, 2020, str. 36), dok je iste godine ukupan iznos premija osiguranja na globalnom nivou iznosio 6.149 milijardi američkih dolara (Swiss Re Institute, 2020, str. 24). Razlozi zbog kojih tekaful osiguranje četiri decenije nakon osnivanja prvog tekaful osiguravajućeg društva nije ostvarilo sve svoje potencijale su brojni.

Prvo, zemlje sa većinskim muslimanskim stanovništvom, koje su i ciljno tržište za tekaful osiguranje, odlikuje niska zainteresovanost za usluge osiguranja. Na globalnom nivou, islamski svet učestvuje sa 25% u ukupnom stanovništvu, ali njegov udeo u ukupno naplaćenoj premiji je svega 5% (Frenz, Sridharan & Iyer, 2008, str. 45). U većini zemalja Bliskog istoka, udeo premija osiguranja u BDP-u *per capita* iznosi manje od 1% (Wahab, Lewis & Hassan, 2007, str. 372-373). Razlog tome je percepcija osiguranja koje tamošnje stanovništvo ima, smatrajući ga protivnim islamskim principima, pa je neophodno kod njih razvijati svest o prednostima koje osiguranje nudi i postojanju šerijatski usklađene varijante osiguranja (Ahmad, Masood & Khan, 2010, str. 13). Na tome treba dodatno raditi kod osiguranja života, prema kom postoji izražena averzija jer se shvata kao klađenje na dužinu života osiguranika i, stoga, na ovaj vid tekaful osiguranja otpada svega 30% tekaful tržišta (AlNemer, 2013, str. 237).

[11] Stav o različitosti kamate i *ribe* zastupa manjina. Najznačajniji šerijatski pravnici ovaj stav odbacuju, tvrdeći da je kamata potpuno identična *ribi*. Oni smatraju da nije definisan vrednosni limit koji kamata treba da pređe da bi se smatrala previsokom i zabranjenom ili umerenom i dozvoljenom. Pored toga, u vreme proglašenja zabrane kamate u Arabiji su postojali kako potrošački, tako i poslovni krediti, pa je samim tim kamata koja se naplaćuje kod obe vrste kredita zabranjena (vidi detaljnije: Siddiqi, 2004; Hadžić, 2005; Iqbal & Mirakhor, 2009).

Drugo, još uvek ne postoje opšteprihvaćeni principi funkcionisanja tekaful osiguranja, iako je *AAOIFI* definisala standarde koje su pojedine bliskoistočne zemlje prihvatile (Ahmad, Masood & Khan, 2010, str. 13). U praksi postoje tri načina za regulisanje tekaful poslovanja (Jaffer, et. al., 2010, str. 17): 1. postojanje jedinstvenog zakonskog okvira, koji je kreiran prema potrebama konvencionalnog osiguranja i kojim se tekaful osiguranje ne zabranjuje, ali se ne uzimaju u obzir njegove specifičnosti, što je pristup primenjen u nemuslimanskim zemljama, 2. postojanje jedinstvenog zakonskog okvira koji prepoznaje specifičnosti i potrebe tekaful osiguranja, što je praksa u Maleziji, i 3. postojanje posebnog pravnog okvira koji je kreiran u skladu sa specifičnostima i potrebama tekaful osiguranja, što je primenjeno u Bahreinu. Nestandardizovanost tekaful propisa izaziva brojne negativne posledice. Pojedina prava osiguranika u različitim zemljama su različito regulisana[12], a pojedine muslimanske zemlje čak i ne prepoznaju potrebu za tekaful osiguranjem[13] (Ibid, str. 16). Zatim, javlja se problem neefikasnog nadzora nad poslovanjem tekaful osiguravajućih društava u mnogim zemljama sa aktivnim tekaful tržištem i nepostojanja podrške nadzornih organa tekaful poslovanju (Bhatty, 2010, str. 6). Takođe, ugrožena je i efikasnost korporativnog upravljanja tekaful fondovima. Bez jasno definisanih principa koji ne ostavljaju mnogo prostora za dileme i diskreciono postupanje upravnih struktura, doći će do konfrontacije između menadžmenata tekaful fondova, prvenstveno fokusiranih na ostvarivanje profita, i šerijatskih odbora, zainteresovanih za šerijatska pitanja (Jaffer, et. al., 2010, str. 19). Poseban problem predstavlja ugrožavanje transparentnosti, koja zbog specifične prirode odnosa između osiguranika i tekaful operatora, ima veći značaj kod tekafula nego kod konvencionalnog osiguranja (Ahmad, Masood & Khan, 2010, str. 12).

Treće, uspešnost poslovanja tekaful osiguravajućih društava uslovljena je raspolaganjem stručnim kadrom koji poseduje adekvatna znanja iz oblasti osiguranja i šerijatskog prava, ali je ovaj kadar veoma deficitaran (Jaffer, et. al., 2010, str. 15-16; Lim, Idris & Carissa, 2010, str. 23; AlNemer, 2013, str. 237). Navedeni problem produbljuje činjenica da je pomenuti kadar potreban i upravljačkim i nadzornim strukturama, odnosno šerijatskim odborima koji kontrolišu šerijatsku ispravnost tekaful poslovanja (Jaffer, et. al., 2010, str. 15-16). Ipak, ovaj problem nije nerešiv. Štaviše, može se značajno ublažiti organizovanjem edukativnih programa za zaposlene, među kojima su brojni oni koji su se ranije bavili konvencionalnim osiguranjem i poseduju znanja iz te oblasti (Aris, Tapsir & Talib, 2012, str. 34).

Četvrto, finansijska snaga konvencionalnih osiguravajućih društava, između ostalog, bazira se na uspešnom investiranju dela prikupljenih premija i sopstvenog kapitala u različite instrumente finansijskog tržišta, koje odlikuju visok kreditni rejting i likvidnost. Međutim, sredstva tekaful fondova se ne mogu ulagati u većinu ovih instrumenata jer su oni uglavnom kamatonosni. Nedostatak kvalitetnih i likvidnih, šerijatski prihvatljivih finansijskih instrumenata je jedan od težih izazova sa kojima se tekaful fondovi i njihovi operatori susreću, jer je to faktor koji onemogućava ostvarivanje visokih profita (Kader, Adams & Hardwick, 2010, str. 163-164; Ahmad, Masood & Khan, 2010, str. 13). Pozitivan efekat na ublažavanje ovog problema je imalo kreiranje šerijatski usklađenih instrumenata, poput sukuka. Ipak, raznovrsnost ovih instrumenata je mala, što onemogućava diversifikaciju ulaganja i dovodi do pojave rizika koncentracije ulaganja (Jaffer, et. al., 2010, str. 19-20). Da bi se problem nedostatka šerijatski prihvatljivih finansijskih instrumenata prevazišao, neophodno je značajno angažovanje stručnjaka za osiguranje i šerijatsko pravo na polju finansijskog inženjeringa i inovacija, s ciljem kreiranja novih instrumenata koji će ispunjavati šerijatske i tržišne zahteve (Lim, Idris & Carissa, 2010, str. 23; Ahmad, Masood & Khan, 2010, str. 14). Proces inoviranja usluga osiguranja može biti koristan i za razvijanje šerijatski prihvatljivog obaveznog osiguranja, koje trenutno u većini zemalja ne postoji (Wahab, Lewis & Hassan, 2007, str. 373).

[12] U Saudijskoj Arabiji osiguranici imaju pravo na isplatu 10% viška iznad isplaćenih odšteta (Jaffer, et. al., 2010, str. 16).
[13] U šiitskom Iranu konvencionalno osiguranje se smatra šerijatski prihvatljivim (Ibid).

Peto, solventnost tekaful fondova mora biti prioritet tekaful osiguravajućih društava, jer je to ključni uslov za stabilnost poslovanja fondova, redovno izmirivanje obaveza i očuvanje poverenja osiguranika (Yusop, et. al., 2011, str. 66). Upravljanje solventnošću uključuje formiranje sigurnosnih rezervi, politiku raspodele viška iznad isplaćenih odšteta i davanje beskamatnih pozajmica tekaful fondu u slučaju manjka (Jaffer, et. al., 2010, str. 18-19), ali i utvrđivanje kapaciteta tekaful fondova za pokrivanje različitih rizika. Tekaful se uglavnom primenjuje kod osiguranja relativno malih rizika i pokriva lične potrebe za osiguranjem, dok je mogućnost njegove primene kod pokrivanja velikih poslovnih rizika veoma ograničena (Sadeghi, 2010, str. 104; Khan, 2011, str. 17). Da bi se to ograničenje savladalo i istovremeno očuvala solventnost tekaful fondova, neophodno je korišćenje usluga reosiguranja, odnosno retekafula. S obzirom na to da retekaful tržište nije razvijeno (Kader, Adams & Hardwick, 2010, str. 164; Lim, Idris & Carissa, 2010, str. 23), kao jedino rešenje, dok se postojeće stanje ne promeni, nameće se korišćenje usluga konvencionalnog reosiguranja, što šerijatski pravnici odobravaju (Sadeghi, 2010, str. 104).

Brojni izazovi sa kojima se tekaful osiguranje suočava ne smeju zaseniti značajna dostignuća ostvarena na ovom polju. Tokom četiri decenije postojanja institucionalizovanog komercijalnog tekaful osiguranja, ovo osiguranje je postalo globalno dostupna usluga koju nude brojne uspešne, solventne, adekvatnim resursima opremljene finansijske institucije, poput tekaful i konvencionalnih osiguravajućih društava i banaka, sa sve dostupnijom podrškom u vidu reosiguranja (Ahmad, Masood & Khan, 2010, str. 11). Potencijale tekaful osiguranja prepoznala su vodeća svetska osiguravajuća društva, poput Tokio Marine, AIG, Prudential, HSBC Insurance, Zurich, AXA, Munich Re, Swiss Re i Hannover Re, koja su uključila tekaful osiguranja u svoj portfolio usluga (Bhatty, 2010, str. 3). Interesovanje za tekaful osiguranje raste i među vodećim američkim osiguravajućim društvima, koja, ipak, još uvek pokazuju određeni oprez prema ozbiljnijem angažovanju u ovom sektoru (Abdul Rahman, 2009, str. 179). Među korisnicima usluga tekaful osiguranja ima sve više nemuslimana. U Maleziji je njihov udeo u ukupnom broju tekaful osiguranika većinski i iznosi 60% (Bhatty, 2008, navedeno u: AlNemer, 2013, str. 236). Ubrzanom rastu tekaful osiguranja pomaže i čvrsta povezanost sa, takođe, brzorastućim sektorom islamskog bankarstva, gde postoji primetna međusobna tehnička i finansijska podrška (Sadeghi, 2010, str. 106). Ipak, sistemima bankaosiguranja, koji su veoma zastupljeni na islamskom finansijskom tržištu, spočitava se favorizovanje bankarskog poslovanja i znatno slabija podrška sektoru tekafula prilikom promocije i distribucije njegovih proizvoda (Ahmad, Masood & Khan, 2010, str. 15).

Analizirajući razvojni put tekaful osiguranja, primetno je da je ostvaren značajan napredak i da se od početnog, na teoriji utemeljenjog, idealističkog shvatanja tekafula došlo do u praksi primenjivog koncepta (Sadeghi, 2010, str. 105). Ipak, balansiranje između poštovanja šerijatskih zahteva i zahteva savremenog, dinamičnog poslovnog okruženja je obaveza sa kojom će sektor tekaful osiguranja morati večno da se nosi (Ibid, str. 106). Uspešnost i održivost tekaful poslovanja biće direktno korelisani sa uspešnošću pomenutog balansiranja.

Zaključak

Zaštita ljudskog života i imovine spada među najznačajnije principe Šerijata, pa je shodno tome institucija osiguranja inherentan element šerijatski uređenog društva. Osnovna svrha postojanja šerijatski usklađenog, tekaful osiguranja, u prvim fazama njegovog razvoja, bila je stvaranje društva blagostanja, koje podstiče solidarnost, empatiju i pomaganje socijalno ugroženim članovima društva. Tek kasnije

se javljaju komercijalne, profitno orijentisane forme tekaful osiguranja. To je jedna od uočljivijih razlika između tekaful i konvencionalnog osiguranja, čija istorija razvoja započinje pojavom komercijalnih osiguranja, dok je institucionalizovano socijalno osiguranje produkt savremenog doba. Druga razlika između ova dva oblika osiguranja tiče se pravno-ekonomskih odnosa koji se u procesu osiguranja formiraju. Kod konvencionalnog osiguranja, osiguravajuća društva prodaju uslugu zaštite od rizika svojim osiguranicima, čime suštinski dolazi do transfera rizika sa osiguravača na osiguranika. S druge strane, kod tekaful osiguranja, osiguravajuća društva ne preuzimaju rizik osiguranika na sebe, pa stoga ne prodaju uslugu osiguranja u konvencionalnom smislu, već uslugu upravljanja fondom, koji osiguranici formiraju uplatom doprinosa. Na taj način, rizik ostaje na samim osiguranicima, koji ga kroz proces tekaful osiguranja međusobno dele i solidarno snose. U tekaful aranžmanima, osiguravajuće društvo može imati ulogu: *agenta*, koji upravlja tekaful fondom, uplatama doprinosa i isplatama odštete, i za to dobija fiksnu naknadu; *partnera*, koji upravlja rezervama tekaful fonda i investicionim računom i učestvuje u podeli dobiti od investicija, ali ne snosi gubitak; i *kombinovanu ulogu agenta-partnera*, pri čemu prvu ulogu vrši upravljanjem rezervama fonda, uz fiksnu naknadu, a drugu upravljanjem investicionim računom, uz učešće u investicionoj dobiti. Pojedine prakse kod tekaful osiguranja, poput beskamatnog kreditiranja tekaful fonda od strane osiguravajućeg društva i raspodele viška iznad isplaćenih odšteta između osiguravajućeg društva i osiguranika, izazivaju oprečna mišljenja i sporenje među šerijatskim stručnjacima.

Potreba za tekaful osiguranjem javila se usled šerijatske neusklađenosti konvencionalnog osiguranja, koje, prema mišljenju šerijatskih stručnjaka sadrži šerijatski zabranjene elemente: *garar* – jer se osiguranjem kupuje usluga čije pružanje nije sigurno, *mejsir* – jer osiguranje ima elemente kockanja zbog toga što osiguranik uplaćuje mali iznos u vidu premije koji mu može doneti veliki iznos odštete, ako se osigurani slučaj desi, i *ribu (kamatu)* – jer deo prikupljenih premija konvencionalna osiguravajuća društva ulažu u kamatonosne finansijske instrumente. Stav o šerijatskoj neispravnosti konvencionalnog osiguranja dominira, ali ne treba zanemariti činjenicu da postoje i oni koji mu se suprotstavljaju, posebno dovodeći u pitanje argumente u prilog prisustva garara i mejsira u konvencionalnom osiguranju. Postoje šerijatski stručnjaci koji smatraju da se šerijatska ispravnost konvencionalnog osiguranja imovine ne dovodi u pitanje, dok šerijatski stručnjaci šiitske provenijencije ne vide ništa sporno kod konvencionalnog osiguranja.

Sektor tekaful osiguranja je za četiri decenije svog postojanja postigao impozantne rezultate i godinama je bio najbrže rastući segment globalnog tržišta osiguranja. Osnovana su brojna tekaful osiguravajuća društva, a potencijal ovog tržišta uočila su i pojedina multinacionalna osiguravajuća društva, koja su počela da nude uslugu tekaful osiguranja. Ipak, pomenuta dostignuća padaju u senku činjenice da je tržišno učešće tekaful osiguranja na globalnom osiguravajućem tržištu i dalje zanemarljivo. Faktori koji doprinose održanju postojeće nepovoljne situacije su: *nedovoljna tražnja za uslugom osiguranja u muslimanskim zemljama*, koje su bazična tržišta za tekaful osiguranje, *disharmonija propisa koje uređuju tekaful osiguranje u različitim zemljama*, što ostavlja prostor za diskreciono odlučivanje lokalnih regulatornih vlasti i unosi neizvesnost u tekaful poslovanje, *nedostatak stručnog kadra koji podjednako dobro poznaje šerijatske propise i teoriju i praksu osiguranja*, *nedostatak šerijatski usklađenih finansijskih instrumenata*, što umanjuje investicione mogućnosti tekaful osiguravajućih društava, njihovu profitabilnost i konkurentnost, i *nedovoljna solventnost tekaful fondova*, što sprečava pokrivanje većih rizika. Pomenute prepreke ne smeju usporiti do sada postignuti ekspanzivan rast tekaful osiguranja, već njihovo savladavanje mora biti izazov koji **će** ujediniti napore šerijatskih i finansijskih stručnjaka, s jedne strane, i nacionalnih i međunarodnih regulatornih tela, s druge strane, kako bi se tekaful osiguranje unapredilo, i time ponuda usluga na globalnom tržištu osiguranja dodatno obogatila.

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TAKAFUL INSURANCE IN THEORY AND PRACTICE

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Summary

Islam attaches great importance to insurance, as an instrument of protection of the individual and the community, and considers it an indispensable element of the process of achieving socio-economic justice in society. Consequently, in the Islamic concept of insurance, the social component dominates over the commercial component. However, requirements of the modern environment have made it necessary to have Shariah-acceptable commercial insurance. Given that conventional insurance models are largely Shariah non-compliant, Takaful insurance has been developed to meet the needs of individuals and institutions that want to be insured in accordance with Shariah principles. In this paper, we will analyze the process of evolution of Takaful insurance, its types and models, perform a comparative analysis of Takaful and conventional insurance, reviewing arguments in favor of Shariah specific nature of conventional insurance, and finally, list the challenges of implementing Takaful insurance in practice.

Keywords: Islamic finance, insurance, Takaful, risk management, mutual insurance, Mudarabah, Wakalah

JEL Classification: G22, D47.

Introduction

The concept of insurance arose as a consequence of a people's all-time need to mitigate the negative consequences of the uncertainty they face on a daily basis and to protect themselves and their property. Consequently, the historical development of the concept of insurance completely coincides with the development of civilization. The evolutionary process of the insurance concept took place in several phases (Masci, 2011, p. 27): the application of the original forms of insurance, the emergence of insurance policies, the establishment of the first insurance companies, the emergence of social insurance, strengthening the position of insurance companies in the financial market and dealing with the problem of terrorism and natural disasters. Among the first, maritime merchants, whose activities have always been associated with numerous dangers, became aware of the need for insurance (Pak, 2011, p. 4). In the ancient period, when rudimentary forms of insurance appeared, commercial ventures were insured on the basis of a loan or partnership agreement, and not on the basis of a classical insurance contract (Homer & Sylla, 2005, p. 35). In the Middle Ages, as well, insurance was most actively used in maritime trade and was further "developed in Mediterranean ports" (Ibid, p. 73). The "credit" for the creation of the first insurance company does not go to maritime trade, but to the Great Fire in London, which occurred in the 17th century and whose terrible consequences encouraged the establishment of an insurance company specialized in property insurance (Marović, Tepavac & Njegomir, 2013, p. 20). However, as long as scientific methods were not applied to assess the taken risk, insurance could be equated with gambling. Modern insurance is not only based on the simple transfer of risk from the insured to the insurer, but also on the application of actuarial risk assessment methods, which have enabled the quantification of the probability of insured risks realization and related economic consequences. Their application enabled the creation of conditions for the development of the life insurance concept. The beginnings of this type of insurance are linked to two Scottish priests (Robert Wallace & Alexander Webster) who formed a fund to insure the families of deceased priests in the 18th century, using actuarial methods in estimating the life expectancy of priests, insurance premiums and the total fund sufficient to pay agreed indemnity to insurance beneficiaries (Ferguson, 2009, p. 190–193). Modern insurance, in all its forms, cannot be imagined without the application of actuarial methods.

Takaful is insurance based on Shariah principles. According to the principles of Shariah and the concept of the common good (maqasid shari'ah), the protection of the individual and the community is mandatory (Aris, Tapsir & Talib, 2012, p. 32), which indicates the necessity of the existence of an insurance institution in Muslim society. The essence of Takaful insurance can be seen from the very etymology of the word *Takaful*. The word *Takaful* is derived from the Arabic verb *kafalah*, which means "mutual guarantee" (Matsawali, et. al., 2012, p. 164; Aris, Tapsir & Talib, 2012, p. 30). In Takaful insurance, the concept of *tabarru* is represented, which literally means "donating, contributing, offering or giving" (Wahab, Lewis & Hassan, 2007, p. 376). Accordingly, it can be concluded that, in Takaful insurance, the insured cooperate with each other for mutual benefit, pay contributions to form fund as a financial basis for support of insured persons in need, share risks and losses, and the possibility of realizing benefits to the detriment of others is eliminated (Wahab, Lewis & Hassan, 2007, p. 375-376; Swartz & Coetezer, 2010, p. 335; Aris, Tapsir & Talib, 2012, p. 31). Takaful enables the assembled community of insured to protect life, property, and dignity, through mutual cooperation and ethical treatment (Abdullah, 2012, p. 540). The Islamic concept of insurance has passed through several stages of devel-

opment (Hadžić, 2014, p. 152): *akillah*[1], *meakil*[2], commercial insurance[3] and modern Takaful insurance[4]. The key moment for the initiation of the development of modern Takaful insurance happened at the beginning of the 19th century, when Shariah lawyer *Syed Ibn Abdin*, at the request of a group of Muslim traders to give his opinion on the Shariah correctness of conventional maritime insurance, pointed out the Shariah incompatibility of conventional insurance and the need for the existence of authentic Islamic insurance (Khan, 2011, p. 6). The official position that conventional insurance is Shariah non-compliant was adopted at the First International Conference on Islamic Economics in Mecca in 1976 (Ibid). Shortly afterwards, the first Takaful insurance companies were established in Sudan in 1979 and Malaysia in 1984 (Lim, Idris & Carissa, 2010, p. 2). A more detailed overview of the functioning of Takaful insurance in theory and practice will be given below, through the presentation of the Takaful insurance models, arguments in favor of Shariah inconsistency of the conventional insurance concept and, finally, achievements and challenges in the implementation of the Takaful insurance concept.

Takaful Insurance Models

The application of Shariah principles in shaping Takaful insurance has led to the creation of a specific legal, economic and organizational infrastructure on which the concept of Takaful insurance is based. In the case of Takaful insurance, the contracting parties are the insured and the Takaful operator (insurance company). Insured pay contributions from which a Takaful fund is formed, and it is managed by a Takaful operator, who does not own the fund, but only takes care of it (Wahab, Lewis & Hassan, 2007, p. 376). Thus, the Takaful operator does not have the role of insurer, but only the manager of the Takaful fund, while the insured are also insurers (AlNemer, 2013, p. 235). Therefore, there is no transfer of risk from the insured to the Takaful operator (Bhatty, 2010, p. 7), but the burden of risk is borne by the insured themselves (Wahab, Lewis & Hassan, 2007, p. 376). The obligations of the Takaful operator, on the other hand, are by managing the fund to preserve fund's security, ability to settle claims and achieve a satisfactory rate of return, and ensure stable business continuity (Aris, Tapsir & Talib, 2012, p. 36). Accordingly, it can be concluded that the assets of the Takaful fund and the assets of the Takaful operator are completely separate (AlNemer, 2013, p. 249).

Takaful insurance can be general (property insurance) and family (life insurance). Based on the rights and obligations that the Takaful operator and insured acquire and the form of compensation that the Takaful operator receives for their services, four models of Takaful insurance have been differentiated (models presented on the basis of: Wahab, Lewis & Hassan, 2007; Akhter, 2010; Jaffer, et . al., 2010; Sadeghi, 2010; Kettell, 2011; Htay & Zaharin, 2012; Cheikh, 2013; Kassim, Odierno & Patel, 2013; Hadžić, 2014; Tahira & Arshad, 2014): Mudarabah, Wakalah, mixed and Waqf model.

In the *Mudarabah model*, the Takaful operator and the insured establish a partnership, whereby the Takaful operator is playing the role of *Mudarib*, who manages the Takaful fund and invests his time,

[1] This is the help that the community provided to poor families, especially to families whose supporters were killed by members of an enemy tribe or people.
[2] Insurance defined by the Constitution of Medina (Hamidullah, 1989, p. 156), which includes three elements (Rispler-Chaim, 1991, p. 144): 1) al-diyah (bloodshed), 2) al-fidya (redemption of prisoners of war) and 3) social insurance.
[3] Mutual insurance companies were established during the expansion of the Arab maritime trade, with the aim of protecting traders whose trading ventures often ended in failure due to natural disasters or looting, a model later adopted by Europeans (Aris, Tapsir & Talib, 2012, p. 30).
[4] Acceptance and modification of conventional insurance models and institutions and the emergence of modern Takaful insurance (for more details, see: Sadeghi, 2010, p. 101).

effort and knowledge, while the insured have the role of *Rabbu l-mal*, i.e. the investor without the right to manage the fund. Within the fund, reserves for settling claims are formed, as well as an investment account to which funds intended for investment are transferred. The realized return on investments is divided by the insured and the Takaful operator according to a predetermined key, while the loss is fully borne by the insured. On the other hand, the positive difference between the paid contributions and the paid indemnities is paid exclusively to the insured[5] at the end of the accounting period. On the other hand, if the paid contributions are not sufficient to cover the claims, the Takaful operator gives the Takaful fund an interest-free loan (Qard Hasan), which should be settled from future contributions after the fund achieves a positive technical result.

In the *Wakalah model*, the Takaful operator has the role of agent (Wakeel) of the fund, while the insured are its principals (Muwakkil). The Takaful operator has the role of managing the Takaful fund, taking care of its stability and sustainability, collecting contributions and paying of compensations, for which it receives a predefined fee. In addition, there is a possibility for the Takaful operator to manage the investment account of the Takaful fund and to receive an additional fee for that, which is also fixed. Fixedness of the Takaful operator's fee and non-compliance with the achieved results of the fund's operations can demotivate the Takaful operator to maximize their efforts in order for the Takaful fund to achieve above-average financial results. Therefore, it is recommended to pay an incentive fee from the realized excess over the paid compensations.[6] This problem can also be solved by applying a mixed *Mudarabah/Wakalah model*. In this model, the Takaful operator as *Wakeel* receives a fixed fee to manage the fund's reserves. At the same time, they manage the investment account in the role of *Mudarib*, where they receive compensation for the services provided in the form of a predefined share in the realized return on investments. The status of the realized surplus above the paid indemnities in the case of *Wakalah* model is the same as in the case of *Mudarabah* model, i. e. the surplus belongs to the insured. The practices of these models also coincide in the event of a shortfall, because in the Wakalah model, as well, the Takaful operator covers the shortfall with an interest-free loan that will be repaid after achieving a positive technical result.

The Waqf model of Takaful insurance is different from the others because its function is exclusively social and humanitarian. In this case, the Takaful fund is filled in with donations, managed by the Takaful operator, and used to provide financial assistance to socially disadvantaged people. *Waqf* is established as an independent legal entity and the Takaful fund is owned by the *Waqf*, and not by the donators, so the realized surplus and possible return on investments remain in the possession of the fund itself.

By analyzing the presented models of Takaful insurance, the professional public questioned the legitimacy of several important elements of these financial arrangements. *One of the controversial elements* is the interest-free loan (Qard Hasan) which the Takaful operator gives to the fund in case of a negative technical result. The application of *Qard Hasan* in Takaful insurance raises a number of questions (Jaffer, et. al., 2010, p. 20-21): determining the amount of the loan and its compliance with the projected technical result that is the basis for its repayment, the dynamics of loan repayment, allocation of burden to existing and new insured[7], debt write-off in case of multi-year negative technical result and treatment of *Qard Hasan* as debt which is taken into account when reviewing the solvency of the fund. The question is whether the burden of *Qard Hasan* will ultimately be borne by insured or

[5] It is possible to keep part of the surplus in the form of safety or stabilization reserves (Jaffer, et. al., 2010, p. 23).
[6] The incentive fee is adjusted to the amount of the realized surplus in accordance with the business policy of the fund (Wahab, Lewis & Hassan, 2007, p. 383).
[7] There is a possibility that the burden of loan repayment will be borne by a positive technical result intended for insured who joined the fund after taking the loan, and therefore did not benefit from paid compensation that exceeded the contributions of previous insured, which led to a situation where the fund had to apply for a loan.

shareholders of the Takaful operator (Bhatty, 2010, p. 8). The application of *Qard Hasan* is especially problematic in the *Mudarabah* model, because the obligation of the Takaful operator (Mudarib) to lend to the Takaful fund (Rabbu l-mal) contradicts the basic principles of the *Mudarabah* arrangement, according to which the loss, and thus the negative technical result, completely falls on the burden of *Rabbu l-mal* (Htay & Zaharin, 2012, p. 120). *Mudarib* is not expected to provide this form of support to *Mudarabah* partnership and be a guarantor of a Takaful fund (Wahab, Lewis & Hassan, 2007, p. 381). *Another controversial element* is the practice of some Takaful funds to pay a portion of the surplus over the paid compensation to the Takaful operator. There are three different opinions in this regard (Jaffer, et. al., 2010, p. 22): 1. the surplus belongs exclusively to the insured[8], 2. the surplus also belongs to the Takaful operator due to its contribution to the surplus and 3. the surplus should be given to humanitarian purposes, because the insured cases were not realized, and therefore there was no payment of compensation, which is the merit of God, and not the merit of the Takaful operator and the insured. Another controversial practice is the practice of covering the costs of fund management in the case of *Mudarabah* models at the expense of the fund's capital. Namely, there may be a situation that the realized profit from investments is not enough to cover the costs and that they must be covered by the collected contributions of the insured, which would jeopardize the solvency of the fund and its purpose, as well as the Shariah-correctness of the arrangement (Htay & Zaharin, 2012, p. 119-120). Due to all the above-mentioned controversial elements, which are particularly problematic in *the Mudarabah model*, Islamic financial regulatory institutions (such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)) (Jaffer, et al., 2010, p. 14), as well as the professional public and providers and users of Takaful insurance services, support the application of a mixed *Mudarabah/ Wakalah model* (Htay & Zaharin, 2012, p. 125). In this model, the Takaful operator manages the fund as an agent. Therefore, there are no legal barriers to granting interest-free loans to the fund[9] and covering the costs of fund management, which may be included in the commission of a Takaful operator. Also, the management of the fund's investment account can be carried out with full respect of *Mudarabah* principles. On the other hand, the key objection to this model is that the Takaful operator can make "excessively large earnings", because it is entitled to both a large commission and a share in the return on investment (Htay & Zaharin, 2012, p. 124).

Takaful vs. Conventional Insurance

According to their basic function, Takaful and conventional insurance do not differ, because the purpose of both insurance concepts is to mitigate the risks that individuals and society face in their actions, and partial or complete compensation for economic damage caused by the realization of the insured event. Their similarity is particularly pronounced in conventional mutual insurance (Kader, Adams & Hardwick, 2010, p. 163). However, there are numerous differences between them. First of all, by analyzing their development path, it can be seen that Islamic insurance in its beginning was primarily social insurance, intended to strengthen the unity of the community, solidarity and social peace. The tradition of Islamic social insurance is very long, which is supported by the fact that it was extremely developed during the life of Muhammad s.a.v.s. and righteous caliphs, especially Omar (Tolefat & Asutay, 2013, p. 11; Hadžić, 2014, p. 152). Conventional insurance is based on the transfer of

[8] Since the Takaful operator does not acquire the insured risks, there is no basis to participate in the distribution of the surplus (Jaffer, et. al., 2010, p. 22). Also, there is an opinion that with the participation of Takaful operators in the distribution of surplus one of the key differences compared to conventional insurance is lost (Wahab, Lewis & Hassan, 2007, p. 380).
[9] Although there are opponents of this practice in this case as well (see Ibid, p. 386).

risk from the insured to the insurer (insurance company), for what the insurer charges a premium as the price of the insurance service, while, on the other hand, in Takaful insurance the insurance company has the role of agent managing the Takaful fund and the burden of risk is borne in solidarity by the insured (Jaffer, et. al., 2010, p. 7). In conventional insurance, the insurance company has full control over the surplus over paid claims and return on investment, but also bears the burden of deficit and loss on investment, while in Takaful insurance the insurance company bears only the risk of equity management, which is separate from the Takaful fund (Bhatty, 2010, p. 7). The status of payments made by the insured is also different. In Takaful insurance, contributions are paid to the mutual insurance fund, while premiums, which are represented in conventional insurance, are an element of the purchase transaction between the insured and the insurer (Ibid). The nature of the relationship formed in conventional insurance between insurers and insured and the rights and obligations arising from that relationship have led to the existence of numerous Shariah-unacceptable elements in conventional insurance: Gharar, Maysir and interest (Riba).

Gharar refers to the insufficient clarity of contractual provisions and the uncertainty of exercising rights and obligations (Jaffer, et. al., 2010, p. 7). In conventional insurance, at the time of concluding the contract, the contracting parties do not know whether the insured event will occur and whether, therefore, the insurer will get the opportunity to fulfill their obligation and pay compensation, because the complete transaction is related to the realization of future, uncertain events, over which the contracting parties have no control (El-Qalqili, 2017, p. 33). In other words, the insured pay for the service[10] for which it is uncertain whether it will be provided at all. Also, in conventional insurance, there is a pronounced agency problem, because the interests of insurers (agents) and insured (principals) are not always perfectly aligned (Wahab, Lewis & Hassan, 2007, p. 374). The problem of *Gharar* is not completely eliminated even in Takaful insurance, but it is significantly alleviated (Jaffer, et. al., 2010, p. 7). In Takaful insurance, it is also uncertain whether the insured event will happen and whether, when and in what amount the compensation will be paid, but it is certain that the burden of compensation will be borne by the insured in solidarity, and not by the insurance company. The insured will also keep any surplus over the paid indemnities. Therefore, Takaful insured pay the insurance company for fund management service, whose provision is quite certain, and not a risk protection service. In this arrangement, the agency problem is also less pronounced.

Maysir means gambling or speculation, which are strictly forbidden activities in Shariah (see Qur'an 2: 219, 5: 90-91). It is an aspiration to achieve a benefit without paying adequate compensation, effort, or commitment, on the basis of gambling (Ayub, 2007, p. 62). The presence of *Maysir* in conventional insurance is reflected in the fact that insured pay premiums, which they lose if the insured event does not occur, but if the insured event occurs, they are entitled to compensation whose amount may be far higher than the premiums paid (Jaffer, et al., 2010, p. 7). In this way, the problem of a zero-sum game comes to the fore, which does not exist in Takaful insurance, because the insured insure themselves on the principle of payment of contributions, bear the risk in solidarity, share the surplus and profit, and do not transfer the burden of risk to someone else (Ibid).

Interest (Riba) is strictly forbidden in Islam (see details: Qur'an 2: 275, 2: 276, 2: 278, 2: 279, 3: 130; Chapra, 2000; Siddiqi, 2004; Chapra, 2006; Iqbal & Mirakhor, 2009). Therefore, the practice of conventional insurance companies to invest in interest-bearing instruments is Shariah-unacceptable, and therefore Takaful operators invest in financial instruments that bear interest-free returns (Jaffer, et. al., 2010, p. 7; Hussain & Pasha, 2011, p. 26).

[10] It is about compensation for damage in case of realization of the insured event.

The view that conventional insurance contains the above-mentioned Shariah-prohibited elements prevails, but it is not the only one. Namely, with regard to the Shariah-eligibility of conventional insurance, there are three views (Sadeghi, 2010, p. 102-103): 1. the prevailing view that conventional insurance is Shariah-unacceptable, 2. the view that *Gharar* and *Maysir* do not exist in conventional insurance, and therefore it is Shariah-acceptable, and 3. the view that conventional property insurance is Shariah-acceptable, as opposed to conventional life insurance.

The proponents of the view that conventional insurance is Shariah-acceptable and that it has no forbidden elements, list a number of arguments in support of that view (listed in accordance to: Khan, 2011, p. 8-12). *First*, *Gharar* is not represented in conventional insurance because the insured subject, the insured event and the maximum amount of compensation are predefined. Also, the uncertainty of the realization of the insured event and the use of the protection service cannot be placed in the context of *Gharar*, because the collection of compensation is not the only service that the insurance provides. For the insured, mental peace and security that they acquire through insurance are equally important, and that is a service whose provision becomes certain by signing the insurance contract. *Second*, even *Maysir* cannot be found in conventional insurance because the motive of the insured is completely different from the motive of the gambler. The goal of gamblers is to make a high profit with a relatively small stake. On the other hand, the goal of the insured is not to achieve a large financial benefit (charge compensation) with a small investment (premium), because the realization of that benefit is related to the realization of the insured event, which the insured wants to avoid. If the insured event does not happen, the insured will avoid numerous inconveniences that an economically harmful event brings. The fact that in that case they will lose the paid premiums is of secondary importance to them. Third, there is the view that modern interest rates are not identical to Shariah-forbidden *Riba*.[11] According to this view, *Riba* was characterized by the fact that it was "too high" and was charged on consumer loans, which the rich gave to the poor. Debtors were often unable to repay these loans, which led them into debt bondage, so this inhumane practice is one of the reasons for banning *Riba*.

Takaful Insurance in Practice

Takaful insurance has been the fastest growing segment of the global insurance market for years. The compound annual growth rate of Takaful insurance contributions in the period from 2011 to 2018 was 8.5% (IFSB, 2020, p. 36). In 2018, the growth of contributions in Takaful insurance was slowed and amounted to 3.2% (IFSB, 2020, p. 36), which was at the level of the growth rate of the global insurance market (Swiss Re Institute, 2020, p. 8). Nevertheless, Takaful insurance, despite the high contribution growth rates it had made over the years, still has a very small share of the global insurance market. Namely, the total amount of contributions in Takaful insurance in 2018 amounted to 27.07 billion US dollars (IFSB, 2020, p. 36), while in the same year the total amount of insurance premiums at the global level amounted to 6,149 billion US dollars (Swiss Re Institute, 2020, p. 24). The reasons why Takaful insurance did not reach its full potential four decades after founding the first Takaful insurance company are numerous.

[11] A minority advocates the view of the difference between interest and *Riba*. The most important Shariah lawyers reject this position, claiming that the interest is completely identical to *Riba*. They believe that there is no defined value limit that the interest rate should exceed in order to be considered too high and prohibited or moderate and allowed. In addition, at the time of the ban on interest in Arabia there were both consumer and business loans, so interest charged on both types of loans is prohibited (for more details, see:Siddiqi, 2004; Hadžić, 2005; Iqbal & Mirakhor, 2009).

First, Muslim-majority countries, which are the target market for Takaful insurance, are characterized by low interest in insurance services. Globally, the Islamic world participates with 25% in the total population, but its share in the total premium collected is only 5% (Frenz, Sridharan & Iyer, 2008, p. 45). In most Middle Eastern countries, the share of insurance premiums in GDP *per capita* is less than 1% (Wahab, Lewis & Hassan, 2007, p. 372-373). The reason for this is the perception of insurance that the local population has, considering it contrary to Islamic principles, so it is necessary to develop awareness of the benefits that insurance offers and the existence of Shariah-compliant insurance (Ahmad, Masood & Khan, 2010, p. 13). There is a need for extra work on it in life insurance, toward which there is a pronounced aversion because it is understood as betting on the life expectancy of the insured and, therefore, this type of Takaful insurance accounts for only 30% of the Takaful market (AlNemer, 2013, p. 237).

Second, there are still no generally accepted principles for the functioning of Takaful insurance, although the *AAOIFI* has defined the standards that have been accepted by some Middle Eastern countries (Ahmad, Masood & Khan, 2010, p. 13). In practice, there are three ways to regulate Takaful business (Jaffer, et. al., 2010, p. 17): 1. the existence of a single legal framework, created according to the needs of conventional insurance and which does not prohibit Takaful insurance but also does not take into account its specifics, which is the approach applied in non-Muslim countries, 2. the existence of a single legal framework that recognizes the specifics and needs of Takaful insurance, which is the practice in Malaysia, and 3. the existence of a special legal framework created in accordance with the specifics and needs of Takaful insurance, which has been applied in Bahrain. The non-standardization of Takaful regulations causes numerous negative consequences. Some rights of insured persons are regulated differently in different countries[12], and some Muslim countries do not even recognize the need for Takaful insurance[13] (Ibid, p. 16). In addition, there is the problem of inefficient supervision of the operations of Takaful insurance companies in many countries with an active Takaful market and the lack of support from the supervisory authorities to Takaful operations (Bhatty, 2010, p. 6). Also, the efficiency of corporate governance of Takaful funds is endangered. Without clearly defined principles that do not leave much room for dilemmas and discretionary actions of administrative structures, there will be a confrontation between the managements of Takaful funds, primarily focused on making profits, and Shariah boards, interested in Shariah issues (Jaffer, et. al., 2010, p. 19). A special problem is jeopardizing transparency, which due to the specific nature of the relationship between the insured and the Takaful operator, is more important in Takaful than in conventional insurance (Ahmad, Masood & Khan, 2010, p. 12).

Third, the success of Takaful insurance companies is conditioned by the availability of professional staff who have adequate knowledge in the field of insurance and Shariah law, but this staff is very deficient (Jaffer, et. al., 2010, p. 15-16; Lim, Idris & Carissa, 2010, p. 23; AlNemer, 2013, p. 237). This problem is exacerbated by the fact that the mentioned staff is needed by both management and supervisory structures, i. e. Shariah boards that control the Shariah correctness of Takaful business (Jaffer, et. al., 2010, p. 15-16). However, this problem is not unsolvable. Moreover, it can be significantly mitigated by organizing educational programs for employees, among who there are many who have previously dealt with conventional insurance and possess knowledge in that field (Aris, Tapsir & Talib, 2012, p. 34).

Fourth, the financial strength of conventional insurance companies is, among other things, based on the successful investment of a part of the collected premiums and equity in various financial market in

[12] In Saudi Arabia, insured are entitled to the payment of 10% of the surplus over the paid compensations (Jaffer, et. al., 2010, p. 16).
[13] In Shiite Iran, conventional insurance is considered Shariah-acceptable (Ibid).

struments, which are characterized by a high credit rating and liquidity. However, Takaful funds' money cannot be invested in most of these instruments because they are mostly interest-bearing. The lack of quality and liquid, Shariah-acceptable, financial instruments is one of the more difficult challenges that Takaful funds and their operators face, as it is a factor that prevents high profits (Kader, Adams & Hardwick, 2010, p. 163-164; Ahmad, Masood & Khan, 2010, p. 13). The creation of Shariah-compliant instruments, such as *Sukuk*, had a positive effect on alleviating this problem. However, the diversity of these instruments is lacking, which prevents investment diversification and leads to the risk of investment concentration (Jaffer, et al., 2010, p. 19-20). In order to overcome the lack of Shariah-acceptable financial instruments, it is necessary for experts in insurance and Shariah law to be significantly engaged in the field of financial engineering and innovation, in order to create new instruments that will meet Shariah and market requirements (Lim, Idris & Carissa, 2010, p. 23; Ahmad, Masood & Khan, 2010, p. 14). The process of innovating insurance services can also be useful for developing Shariah-acceptable mandatory insurance, which does not currently exist in most countries (Wahab, Lewis & Hassan, 2007, p. 373).

Fifth, the solvency of Takaful funds must be a priority of Takaful insurance companies, as this is a key condition for the stability of fund operations, regular settlement of liabilities and maintaining the confidence of insured (Yusop, et. al., 2011, p. 66). Solvency management includes the formation of security reserves, the policy of allocating the surplus over the paid indemnities and giving interest-free loans to the Takaful fund in case of deficit (Jaffer, et al., 2010, p. 18-19), but also determining the capacity of Takaful funds to cover various risks. Takaful is mainly used in relatively small risk insurance and covers personal insurance needs, while the possibility of its application in covering large business risks is very limited (Sadeghi, 2010, p. 104; Khan, 2011, p. 17). In order to overcome this limitation and at the same time preserve the solvency of Takaful funds, it is necessary to use reinsurance services, i. e. re-Takaful. Given that the re-Takaful market is not developed (Kader, Adams & Hardwick, 2010, p. 164; Lim, Idris & Carissa, 2010, p. 23), the only solution, until the current situation changes, is the use of conventional reinsurance services, which Shariah jurists approve (Sadeghi, 2010, p. 104).

Numerous challenges that Takaful insurance faces must not overshadow the significant achievements made in this field. During the four decades of institutionalized commercial Takaful insurance, this insurance has become a globally available service offered by many successful, solvent, resource-efficient financial institutions, such as Takaful and conventional insurance companies and banks, with increasingly available reinsurance support (Ahmad, Masood & Khan, 2010, p. 11). The potentials of Takaful insurance have been recognized by the world's leading insurance companies, such as Tokyo Marine, AIG, Prudential, HSBC Insurance, Zurich, AXA, Munich Re, Swiss Re and Hannover Re, which have included Takaful insurance in their portfolio of services (Bhatty, 2010, p. 3). Interest in Takaful insurance is also growing among the leading American insurance companies, which, however, still show some caution towards more serious engagement in this sector (Abdul Rahman, 2009, p. 179). There are more and more non-Muslims among the users of Takaful insurance services. In Malaysia, their share in the total number of Takaful policyholders is in majority and amounts to 60% (Bhatty, 2008, cited in: AlNemer, 2013, p. 236). The rapid growth of Takaful insurance is also helped by a strong connection with the also fast-growing sector of Islamic banking, where is noticeable mutual technical and financial support (Sadeghi, 2010, p. 106). However, bank-insurance systems, which are highly prevalent in the Islamic financial market, are rebuked for favoring banking operations and giving significantly weaker support to the Takaful sector in promoting and distributing its products (Ahmad, Masood & Khan, 2010, p. 15).

Analyzing the development path of Takaful insurance, it is noticeable that significant progress has been made, from the initial, theory-based, idealistic understanding of Takaful to a concept applicable in practice (Sadeghi, 2010, p. 105). Nevertheless, balancing between compliance with Shariah requirements and the requirements of a modern, dynamic business environment is an obligation that the Takaful insurance sector will have to deal with forever (Ibid, p. 106). The success and sustainability of Takaful business will be directly correlated with the success of the mentioned balancing.

Conclusion

The protection of human life and property is one of the most important principles of Shariah, and consequently the institution of insurance is an inherent element of a Shariah-ordered society. The main purpose of the existence of Shariah-compliant, Takaful insurance, in the first stages of its development, was the creation of a welfare society, which encourages solidarity, empathy and helping socially disadvantaged members of society. Commercial, profit-oriented forms of Takaful insurance appeared subsequently. This is one of the more noticeable differences between Takaful and conventional insurance, whose history of development begins with the emergence of commercial insurance, while institutionalized social insurance is a product of the modern age. Another difference between these two forms of insurance concerns the legal and economic relations that are formed in the insurance process. In conventional insurance, insurance companies sell the risk protection service to their policyholders, which essentially leads to the risk transfer from the insurer to the insured. On the other hand, in Takaful insurance, insurance companies do not take on the risk of the insured, and therefore do not sell the insurance service in the conventional sense, but the fund management service, which (the fund) is formed by the insured paying contributions. In that way, the risk remains on the insured, who share it with each other through the process of Takaful insurance and bear it in solidarity. In Takaful arrangements, the insurance company may have the role of: *an agent*, who manages the Takaful fund, contribution and indemnity payments, and receives a fixed fee for it; *a partner*, who manages the reserves of the Takaful fund and the investment account and participates in the distribution of return on investment, but does not bear the loss; and *the combined role of agent-partner*, whereby the first role is performed by managing the fund's reserves, with a fixed fee, and the second by managing the investment account, with participation in the investment profit. Certain practices in Takaful insurance, such as interest-free lending to a Takaful fund by an insurance company and the distribution of surplus over paid indemnities between the insurance company and the insured, provoke conflicting opinions and dispute among Shariah experts.

The need for Takaful insurance arose due to the Shariah-inconsistency of conventional insurance, which, according to Shariah experts, contains Shariah-prohibited elements: *Gharar* – because, through insurance, the insured buy a service whose provision is not certain, *Maysir* - because the insurance has elements of gambling due to the insured paying a small amount in the form of premium that can bring them a large compensation, if the insured event occurs, and *Riba* (interest) - because part of the collected premiums is invested by conventional insurance companies in interest-bearing financial instruments. The position on the Shariah-incorrectness of conventional insurance dominates, but we should not ignore the fact that there are those who oppose it, especially questioning the arguments claiming the presence of *Gharar* and *Maysir* in conventional insurance. There are Shariah experts who believe that the Shariah-correctness of conventional property insurance is not in question, while Shariah experts of Shiite provenance do not see anything controversial with conventional insurance.

The Takaful insurance sector has achieved impressive results in the four decades of its existence and has been the fastest growing segment of the global insurance market for years. Numerous Takaful insurance companies have been established, and the potential of this market has been noticed by some multinational insurance companies, which have started to offer the Takaful insurance service. However, the above-mentioned achievements are overshadowed by the fact that the market share of Takaful insurance in the global insurance market is still negligible. Factors that contribute to the maintenance of the existing unfavorable situation are: *insufficient demand for insurance services in Muslim countries*, which are the basic markets for Takaful insurance, *disharmony of regulations governing Takaful insurance in different countries*, which leaves space for discretionary decision-making of local regulatory authorities and introduces uncertainty into Takaful business, *lack of professional staff who are equally well acquainted with Shariah regulations and insurance theory and practice*, *lack of Shariah-compliant financial instruments*, which reduces the investment opportunities of Takaful insurance companies, their profitability and competitiveness, and *insufficient solvency of Takaful funds*, which prevents covering higher risks. These obstacles must not slow down the expansive growth that Takaful insurance achieved so far, but overcoming them must be a challenge that will unite the efforts of Shariah and financial experts, on the one hand, and national and international regulatory bodies, on the other hand, to improve Takaful insurance and, thus, further enrich the offer of services in the global insurance market.

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