

25-26 February 2014

St. Regis Saadiyat Island Resort,

Abu Dhabi

**Approaches to Address
the “Sticky” Qard al
Hassan Conundrum**



Approaches to Address the “Sticky” Qard al Hassan Conundrum

Azman Ismail

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The term '*qardh al-hasan*'

- Is a recent innovation. It did not exist in mainstream Islamic jurisprudential literature before the advent of Islamic banking. Having said that, it does not mean that it is not Shariah-compliant as alleged by those who hold to the literal view of the *hadith*, "Any innovation in our matter which is not a part of it must be rejected."

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Nowadays,

- The Shariah Advisory Council of Bank Negara Malaysia (BNM) resolved “that the word ‘hasan’ should be taken out after the word ‘qardh’ implying that qardh is an obligation for borrowers to repay their loan to lenders.”
- Bank Negara Malaysia and the Islamic Financial Services Board (IFSB) use the word qardh instead of qardh hasan in their official documents.

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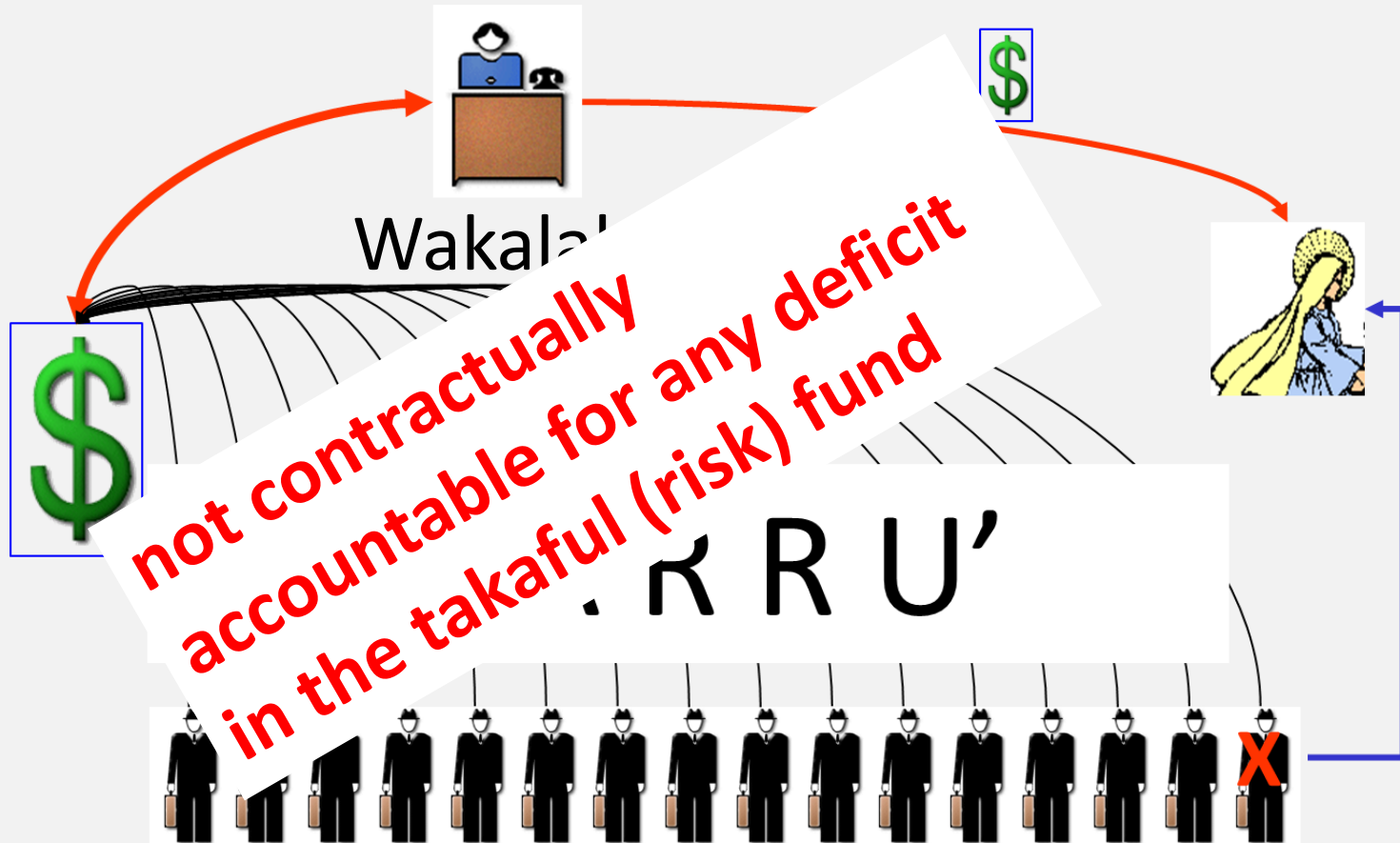
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THE INTERNATIONAL
TAKAFUL
— SUMMIT 2014 —

The rationale of Qard al Hassan



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What Is **Conundrum**?

co·nun·drum

/kəˈnəndrəm/ 

noun

1. a confusing and difficult problem or question.
synonyms: [problem](#), difficult question, [difficulty](#), [quandary](#), [dilemma](#); [More](#)
- a question asked for amusement, typically one with a pun in its answer; a riddle.
synonyms: [riddle](#), [puzzle](#), [word game](#); [More](#)

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What Is Conundrum?

co·nun·drum  *noun* \kə-'nən-drəm\

: a confusing or difficult problem

Full Definition of CONUNDRUM



1 : a riddle whose answer is or involves a pun

2 a : a question or problem having only a **conjectural** answer

b : an **intricate** and difficult problem

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Qard al Hassan Conundrum?

- In a "perfect world" a Takaful should be full fledged mutual company with no capital; however, for regulatory reasons, and because capital is necessary to start and expand a Takaful operation (***Chakib Abouzaid, Takaful Re***).
- According to the Law of Takaful insurance **in Sudan, the participants should pay** to the Takaful fund to cover any deficit (***Anonymous***).

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Continue...

- While the principle behind Qard Hassan is fairly clear, the accounting and solvency treatment of such a loan **seem to vary between jurisdictions and different companies** as well. This point needs to be debated further before any consensus can be arrived at ***(Solidarity, Bahrain)***.

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Continue...

- The issue of accounting recoverability of Qardhul Hasan also needs to be considered. If the auditors believe that the Qardh Hasan made in respect of a previous fiscal year (say 10 years back) has no prospect of being recovered then the Qardh booked in as a "loan" on the operator's books will have to be written off and in such a case, **such a loan will then be treated as a non-recoverable injection and written off from the operator's books (*Takaful Ikhlas*).**

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Continue...

- Here it is important to look at the concept of contract of loan in Islam finance, the loan is not generating any financial benefit for lender and become a liability for borrower to repay it in full by benefiting from the loan. Here the most important issue is the deficit of the policyholder raise from the start up costs, which the operator put on the policyholders, while the operator will enjoy the sharing of benefits and not the deficit. I mean the deficit raises in policyholders' fund has two types: **the deficit resulted from start-up costs and the one resulted from claims**...Therefore I think this needs more discussion , I think the first kind of deficit may be dealt with as an injection and the second one as a pure interest free loan **(Dr. Shaban M. Barwari, T'azur company)**.

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Source: ICMIF Website

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According to REUTERS (31 Jan 14)

- “The practice is criticised by some scholars as contradicting Islamic risk-sharing principles; they say qard hasan is meant to be used when a policy holders' fund runs out of money, rather than to handle recurring regulatory deficits. The abolition or replacement of qard hasan has long been on the industry's agenda, but a broad consensus has not been reached.”

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Actuarial Perspective?

- Is there an equivalent aspect in Takaful which we can use to solve this issue of qard hasan, or is it clear that qard hasan should be an injection from the point of view of the operator's fund? In this example as it stands now, the operator can sell unprofitable business in large volumes, continue to receive their wakalah fees and show large profits, and yet tie up their operators fund in interest free loans. Is this proper corporate governance? What about those profitable policies that were sold and now do have any surplus to share as they have funded part of the losses of the unprofitably sold business? **Is this fair? (Hasan Scott, Actuarial Partners)**

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My Conundrum?

GLOBAL TAKAFUL
TECHNICAL FEATURE

Qard al-Hassan in takaful from a fiqh muwazanat perspective

President of International Islamic Finance and Insurance (IIFIN) **Azman Ismail** discusses the application of a qard (loan) arising from a shortage in participants' fund, proposing different treatments based on how the deficit was accrued.



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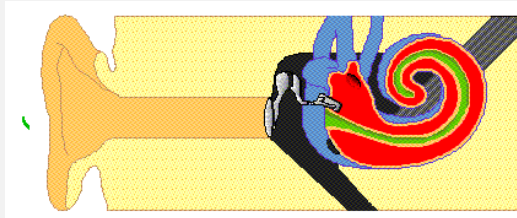
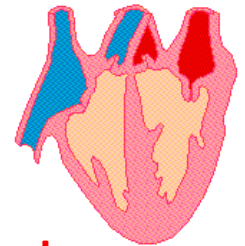
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My Current Views

- Have not changed from my earlier views
 - Some TOs’ argument not sustainable
 - Want to have the cake and it too
 - Different causes of deficit requires different treatments (Different cures for different sicknesses)



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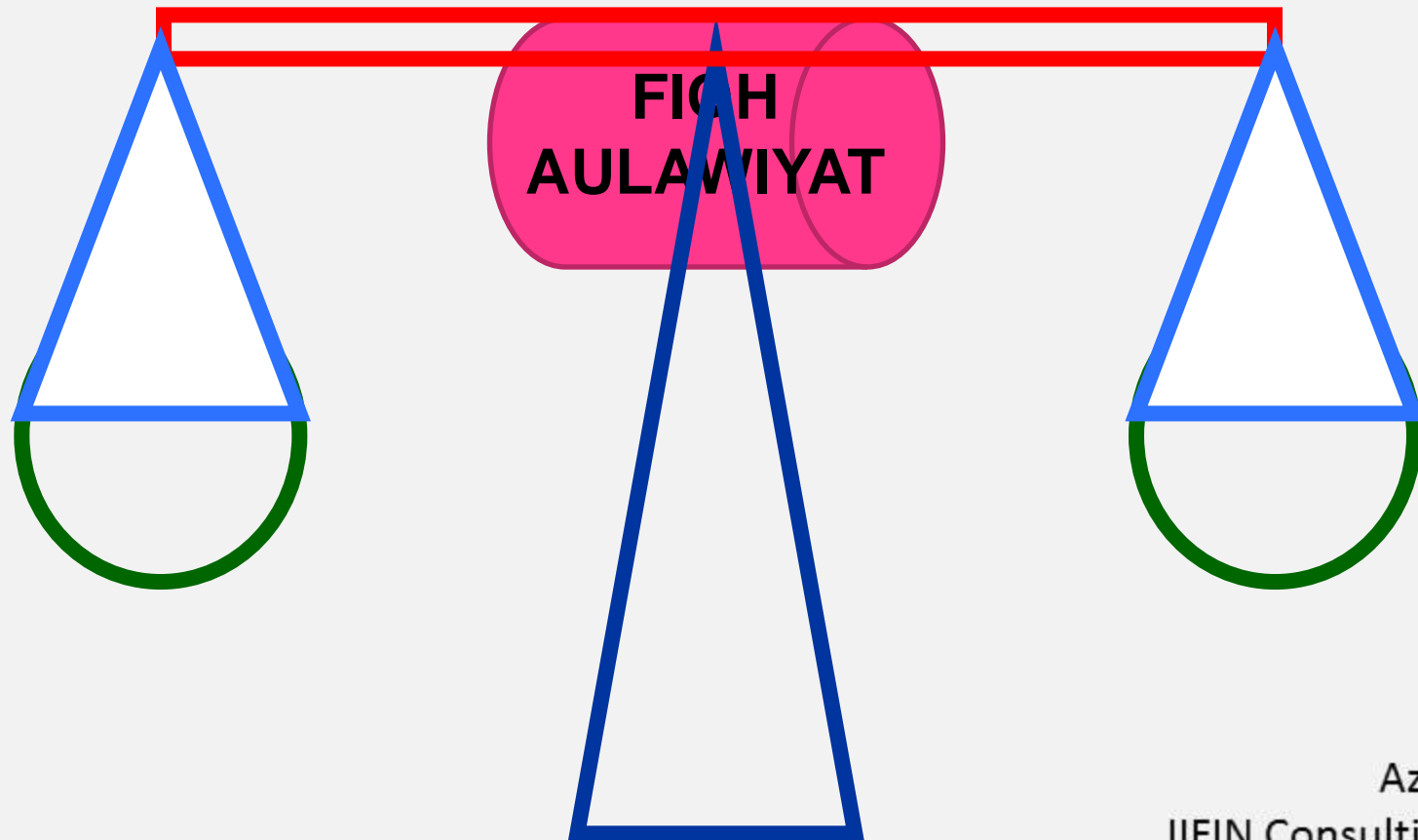
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THE APPROACH - PRIORITY JURISPRUDENCE



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- *qard hasan* is noble and in line with the underlying philosophy of *takaful*
- review of its application is appropriate based on *fiqh muwazanat* (jurisprudence of balances) where we need to balance between the various interests and harms
- “we need to understand not only the *fiqh* of *Shariah* but the *fiqh* of factual experience” (al-Qaradawi)

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أولوية العمل الدائم على العمل المنقطع

أولوية الأصول على الفروع

أولوية حقوق الجماعة على حقوق الأفراد

x LESSER

x UNCERTAIN

x INDIVIDUAL

x TEMPORARY

x SUBSIDIARY

x IMMEDIATE WEAK

✓ GREATER

✓ CERTAIN

✓ GROUP

✓ PERMANENT

✓ FUNDAMENTAL

✓ POTENT FUTURE

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MASALIH MAFAASID

إن درء المفاسد مقدم على جلب المصالح
إن المفسدة الصغيرة تغتفر من أجل المصلحة الكبيرة
تغتفر المفسدة العارضة من أجل المصلحة الدائمة

قواعد الأحكام في مصالح الأنام

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In the context of *takaful*

-
- to differentiate the contractual basis between a takaful operator from that of an insurer.
 - takaful operator is not contractually accountable for any deficit in the takaful (risk) fund, provided it is not guilty of misconduct or negligence

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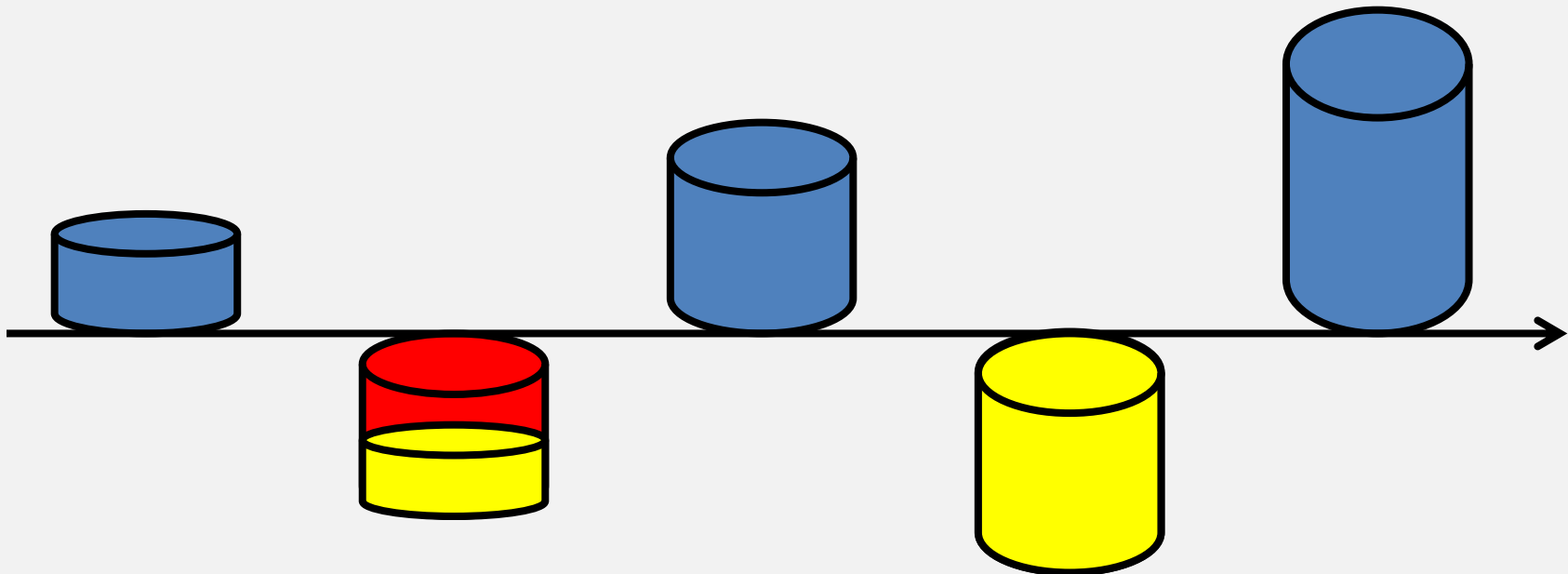
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Underwriting or actuarial deficit?



inter-generational subsidy which
would violate the principle of equity

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For Some Cases...

- Inter-generational subsidy would be in line with the concept of *takaful* and justified e.g. *retakaful*, especially those involving catastrophic losses
- That is why **both the IFSB and the BNM initially** suggested that *takaful* operators must give *hibah* instead of just *qardh al-hasan*, especially if the deficit is of a long term nature, although this is removed from the latest guideline, **probably due to protests from the *takaful* industry.**

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The Conclusion

Deficit arising from actual losses

- later participants may not want to subsidise the earlier participants
- Not equitable. Thus should be hibah-> fiqh awlawiyyat

Due to prudent reserving

- prudent reserving required by law.
- should be qardh

Many of us are emotionally attached to the philosophy of 'takaful', but the word 'taawun' is mentioned only once in the Quran whereas the word 'qist' is mentioned 22 times .