The Implementation of Kafalah in Islamic Banking and Finance Organizations in Malaysia

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Abstract - The concept of Islamic Banking and Economics is recognized essentially, it is now our responsibility to establish Kafalah as an individual concept. An attempt has been taken in this article to define Al-Kafalah, to recognize its superior structures and values, and to prove the clearness of its entity. However, the fact is traditional authors used to deny the contributions of Islam towards Islamic contract. But in Islam, the administrative applications were impending from the beginning of civilization the messengers of Allah (SWT) and it concluded in the last prophet Muhammad (SAW). Nowadays, the golden history of the Muslims is controlled day by day by secular and money-oriented managerial concepts due to lack of research and deviation from Islam. Unfortunately, many managerial concepts from conventional side persist inappropriate to the organizations of Muslim society. Accordingly, Islamic Organizations from family to the national level cannot appear dynamic role in appraisal to conventional groups. Thus, it is recommended in the present study to practice Kafalah based on Shariah principles and application of motivational practices according to Quran and Sunnah. Finally, the restraints and possible helpful measures of Kafalah have been pointed out.

Index Terms - Kafalah Implementation, Islamic Finance, Malaysia

I. INTRODUCTION

The Shariah contract-based monitoring policy is anticipated to promote clearness and reliability of Shariah contract application. It enhances the certainty and strengthens Shariah compliance of the contract by IFIs. One of the Shariah contracts is Kafalah which is used by the IFIs. Kafalah denotes to a contract that creates a guaranteed party’s indicated liability as a joint liability of the guaranteed party and the guarantor. Kafalah is used by the IFIs to offer guarantee services, such as a letter of credit and shipping guarantee, bank guarantee in the perspective of Islamic financial transactions. It is also used as one of the contracts to increase several primary Islamic financial products, mostly for risk-minimization purposes, such as Musharakah, Mudharabah, Murabahah, Ijarah, Salam, and Istisna and Tawarruq. The nature of Kafalah is to deliver guarantee on the fulfillment of the requirement of the guaranteed party’s liability. Kafalah is obligatory on the guarantor. The mechanisms of a Kafalah involve to the contracting parties, namely the beneficiary (makful lahu), the guarantor (kafil), and the guaranteed party (makful ‘anhu), which is an offer (ijab) and acceptance (Qabul) and Subject matter based on the evidence of Bank Negara Malaysia.

The management of the Kafalah is also focused on the study of Bank Negara Malaysia which is based on the rights and obligations. It actually depends on the guarantor may offer Kafalah without conditions (unrestricted Kafalah) or with conditions (restricted Kafalah), the guarantor under an unrestricted Kafalah will be liable in accordance with the terms and conditions of the original liability and also the guarantor may offer a restricted Kafalah whereby the terms and conditions of the guarantee are identified. The stated terms and conditions may comprise time, actual date, activate events, amount or any additional terms and conditions of the guarantee which are acceptable by Shariah, the beneficiary can claim his rights from the guaranteed party the full amount of the liability from either of them or a part of the liability from the guaranteed. If the guaranteed party is unable to settle his liability, it depends on the guarantor requires a condition that the beneficiary will first claim from the guaranteed party and will only claim from the guarantor. The Kafalah contract remains enforceable unless otherwise specified and if the beneficiary grants the guaranteed party an extension period to settle the liability, such extension shall also apply to the guarantor, if the guaranteed liability becomes claimable before its maturity due to the demise or dissolution of the guaranteed party or any agreed trigger events. However, if the extension period to resolve the liability which is still due is approved by the recipient to the guarantor instead of the guaranteed party, in which, an extension may not be
automatically applied to the guaranteed party. The IFI may develop a complete governance and oversight framework for the Kafalah so that, it is conducted based on good business practices and Shariah compliance. The Board of Directors of an IFI must guarantee the complete internal policies governing Kafalah transactions are accepted, recognized, and followed to at all time by the IFI. The application of Kafalah contract is in line with the IFI’s business and risk management policies. Even they must control the internal policies are studied frequently in order to persist current, significant and suitable to confirm the operational conduct and risk profile of Kafalah transactions are achieved correctly. The Board must approve any material changes to the internal policies. There are lots of Shariah-related matters which are recognized by the Shariah Committee (SC). The Bank and internal policies established by the IFI conduct independent reviews regularly to assess compliance with the standards.

The IFI may include the terms and conditions which have Shariah requirements in the Kafalah contract. They cover the main terms including the roles and responsibilities of the contracting parties, tenure of guarantee, guaranteed amount, fees and charges, purpose of guarantee, expiry date and claim period, claims procedure, recourse and recovery terms with the recourse period, forms of notification and payment method, fee refund procedure, if applicable, in the event of early breach of the Kafalah contract; and collateral including the types of securities, tenure, and criteria to issue the collateral or security. There are also two more issues such as breach and accomplishment events of the Kafalah contract and requirements for all contracting parties to confirm constant compliance with Shariah.

II. KAFALAH IS THE SERVICE BASED CONTRACT IN ISLAMIC FINANCE

2.1. Legality
Kafalah can be seen in the Sunnah of the Prophet Muhammad S.A.W., where Abu Qatadah asked the Prophet to pray for a man to whom he (Abu Qatadah) had been a guarantor for a debt (Al Bukhari, Al-Jami’ Al Sahih, 3/94).

In more recent times, AAOIFI Shariah Standard No.5 has stated that guarantees are allowed with regards to contracts of exchange and also contracts of property.

2.2. Condition
In Kafalah there are four basic rules and conditions the parties must adhere to (Al-Zuhayli, 2003; Badri & Bouheraoua, 2013; Dusuki, 2011).

a. Guarantor who is of sound mind has legal capacity and willingly gives his consent and agreement to the contract.
b. Debtor, he does not need to have legal capacity and can even be a minor, insane person or a bankrupt.
c. Creditor who must be known to all parties.
d. Guaranteed object or asset. This asset must be an actual asset that is possible to collect from the guarantor. It should be an asset that can be legally owned and sold should the debtor fail to fulfill his obligations.

2.3. Application of Service Based Contracts
According to (Rifki Ismal, 2010), Kafalah is the guarantee for a loan and all loans must be repaid in due course according to Islamic law. The law allows the lenders to demand some sort of security for the loan in the cases where the borrower fail to repay the loan. As for the Shariah Advisory Council of Bank Negara Malaysia, kafalah is defined as a guaranteed contract on certain asset, usufruct and/or services provided by a guarantor to the parties involved. In international trade and finance, kafalah plays an important role in facilitating trade across border by which the bank is asked as a guarantor of payment in the international trade transaction. Islamic banks are able to offer bank guarantee, standby letter of credit and shipping guarantee using the concept of kafalah.

However, this study also focuses on all of the classical instruments; there are only some of them which are available and well developed in the Indonesian Islamic banking industry. In the forms of equity-based financing, there are Musharakah and Mudarabah contracts while in debt-based financing there are Murabahah, Salam, Istisna, Ijarah and Qardh. In service-based financing or simply named as the other types of financing, there are Wakalah, Kafalah, Sharf and Hiwalah. Rifki Ismal also studies on this paper about particular data investigation on the share of financing instruments over total financings from December 2000 to September 2008 suggests that Murabahah, Salam and Istishna are the most utilized financing instruments dominating 59.5 percent of the total financings. Following those instruments are Musharakah and Mudarabah (equity-based financing instruments) with the share of 36.4 percent of the total financings. Finally, there are Ijarah, Kafalah, Wakalah, Hiwalah and Sharf (the other types of financing instruments) as the least usable financing instruments with the share of only 4 percent of the total financings.
Additionally, kafalah can be used to indemnify a third party from financial losses if one party fails to perform its part of the deal. Such application is used in the form of letters of guarantees (Kureshi and Hayat, 2014). In Malaysia, the guarantee facility is not only issued by Islamic banks but also by financial institutions such as Cagamas SRP Berhad and Credit Guarantee Corporation Berhad (Badri and Bouheraoua, 2013).

2.3.1. The use of Kafalah in RHB Islamic Bank

According to Maryam Sofia Mohd Suhaimi, Maryam Syamilah Md Fauzi et al in 2016, the practice in Malaysia had shown that Kafalah concept is usually practiced by Islamic Banks in trade financing sector in two products which are bank guarantee-i and shipping guarantee-i. For this segment, we will be focusing on the bank-guarantee-i product from RHB Islamic Bank (RHB Group, 2016). The diagram illustrates how Kafalah is undertaken in a letter of guarantee by RHB Islamic Bank.

**The Structure Flow of Islamic Bank Guarantee (IBG) from RHB Islamic Bank**

Maryam Sofia Mohd Suhaimi, Maryam Syamilah Md Fauzi et al also say that customer enters into a contractual agreement with the beneficiary to fulfill an obligation and customer approaches RHB Islamic Bank to request the issuance of Islamic Bank Guarantee (IBG) facility as well. Moreover, RHB Islamic Bank issues IBG to the customer, as a surety to discharge the liability of beneficiary in case the customer defaults. In return, a sum amount of fee is charged to the customer. For instance, in the event of default by the customer, the beneficiary will claim from RHB Islamic Bank. RHB Islamic Bank makes immediate payment on first demand provided the claim meets all the conditions of the guarantee. In addition, if there is no default, the beneficiary will return the IBG to the customer followed by RHB Islamic Bank’s cancellation upon maturity.

**2.3.2. Shariah issues based on the above structure**

In bank guarantee-i, the guarantor (RHB Islamic Bank) charges the customer a certain fee. However, this practice remains a matter of debate among Shariah scholars (Badri and Bouheraoua, 2013). This is because some scholars like Hanafi, Shafie, Maliki and Hambali schools did not permit charging fee for a guarantee due to the nature of the contract (benevolent contract) and in the condition the customer defaulted, the relationship between the guarantor and guaranteed party will change into debtor creditor, thus, charging a fee will lead to riba.

In contrast, some contemporary scholars like Shaykh Ahmad Ali Abdullah from the OIC International Islamic Fiqh Academy permits charging a fee provided that the guarantee is not in the form of a loan (Qard). Besides that, there is no issue on riba as the commitment provided from the guarantor is considered as counter value following the fiqh maxim - al kharaj bi daman (profit comes with liability). The Shariah Advisory Council of Bank Negara Malaysia has allowed charging fee on letter of guarantee based on this basis.

As a resolution, the stand of the Islamic Fiqh Academy of the Organization of Islamic Cooperation (IFA-OIC) and Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) is that charging a fee for guarantee is only allowed when it involves the actual cost such as legal fees, documentation, administrative costs and stamp duty.
A. The method used by RHB Islamic Bank in determining the actual cost

RHB Islamic Bank used one of the three methods in charging fees on bank guarantee-I which is by calculating the actual cost (Syed Alwi et al., 2014). Although this method is allowed by AAOIFI, one thing to ponder is how the bank calculates its actual cost. There are always risks that the bank imposed unnecessary fees to increase the profit margin.

B. The guarantee that the customer will pay back to the bank

RHB Islamic bank and some other banks accept collateral or pledge or cash deposits from the customer before agreeing to issue the letter of guarantee to secure the bank’s risks. Islamic banks are not exposed to any cash outlays unless their customer defaults on the performance of a certain act (Kureshi and Hayat, 2014).

III. The Application of Al-Kafalah in Malaysia

The establishment of BIMB in 1983 marked a milestone in the Malaysian banking system as it provided an alternative to the existing conventional system. Having operations based on Islamic principles which prohibit interest, it is able, therefore, to fulfill the needs of the Muslim population. At present, BIMB offers services which are similar to those services available at other conventional commercial banks. BIMB accepts savings and demand deposits under the principle of Wadiah. It also accepts time deposit which is known as “investment deposit” under the principle of Mudharabah. It grants credit facilities such as project financing under principles of Mudharabah and Musyarakah, lease financing under the principles of Al-Ijara and Al-Takjiri, hire-purchase financing under the principles of Al-Bai Bithaman Ajil, trade financing under the principles of Mudharabah, Musyarakah, and Wakalah, and guarantee under the principles of Al-Kafalah according to Sudin Haron, Noraffifah Ahmad and Sandra L. Planisek in 1994.

In 1998, Sudin Haron studies that although Pakistani banks and BIMB seem to have many Sharia principles for their fixed charges category, these principles can be grouped together within the principles of service charges. In Pakistan for example, development charges and service charges are terms used in imposing charges on customers. Similarly in Malaysia, the principles of al-wakalah, al-kafalah, al-hawalah, and al-ujr are terms used by BIMB to represent the nature of services rendered to customers and how charges will be imposed on customers for using these services. Iran also has an additional principle within this category called ‘joalah’. This concept refers to the undertaking of one party ja’el or employer (either bank or customer) to pay a specified amount of money or wage to another party in return for rendering a specified service in accordance with the terms of the contract. This principle, therefore, is similar to the principles of commission and service charges of other countries.

Another study is conducted by Rosita Chong, Raihana Firdaus Seah Abdullah , Alex Anderson, and Hanudin Amin in 2009 that variable rate of financing (VRF) was first introduced in Malaysia in 2003 and has been widely applied to house, property, trade financing and other type of financing. The introduction of VRF by the Malaysian’s Islamic Banking industry (Central Bank of Malaysia) is to ensure that the fund user enjoys a competitive rate of repayment in time of economic volatility, where the market interest rate (BLR) fluctuates.

In the other study, Bouaziz Cheikh says in 2013 that other early traditions practiced by Islamic and pre-Islamic Arab tribes also constitute the origins of Takaful; these include Diya, Kafalah, Aqd muwalat, Ju’hala, Daman Khatar Al-Tariq and Hilf. Diya is the indemnity paid as “blood-money” to the next of kin or the injured party of a murder victim; Kafalah is a surety-ship whereby a third party guarantees the performance of another party involved in a contract, it was used to assist victims of hazards on trade routes.

In addition, Zakaria bin Bahari says in his research that bank’s income can be generated from equity financing profit i.e musyarakhah and mudharabah instruments. Profit also can be generated from debt financing activities by using BBAJ AITAB, and murabahah and from money/ securities instrument. Non-financing income such as fees, commissions and guarantees and custodial services contribute to the bank’s profit. Some muamalat principles such as al-wakalah al-kafalah, ar-rhanu and al-wadiah are applied in services activities.

IV. Kafalah as a Hybrid Contract in Contemporary Islamic Banking and Finance Application

Hybrid contract in which several contracts are combined in one transaction however it does not come out with a new name of aqd. Yet the name in each aqd stated in the contract and it is practiced on that transaction. For example: qardh and murabahah, or qardh and syirkah al-milk, or qardh and ijārah, or qardh and ijārah muntahiyah bi al-tamliki in taking over the financing; Kafālah wa al-ijārah on Islamic credit card and wacad for wakālah wa al-murābahā, www.ijsrp.org
wakālah wa al-ijārah, wakālah wa al-mushārakah, and so on in current account (Rekening Koran) and line or overdraft financing facility; wakālah in murābahah financing or called as murābahah bil wakālah and wakālah bil ujrāh on L/C financing, RTGS, Factoring. In Islamic bank, even the caqd wakālah bil ujrāh, which majority used in General and Life Islamic Insurance; Kafālah bil ujrāh on L/C, Bank Guarantee, financing for multi services and multi-use, Islamic credit cards; Mudhārābah bil wakālah, mudhārābah bil ujrāh, mudhārābah bil istisnae in linkage program; Hiwālah bil ujrāh on factoring financing and bay wa ilājārah on REPO SBIS and Sukuk; and Qardh, rahn and ijārah in one transaction on the product of gold pawn in Islamic bank according to Dr M. Ataur Rahman and Dr. Md. Golam Mohiuddin in 2014.

V. FEE-BASED ISLAMIC BANKING CONTRACTS

Obiyathulla Ismath Bacha says in 2004 that Islamic banks offer these same services through use of a number of items. Short term working capital financing in the form of Murabaha (cost-plus) and trade financing largely thru Bai Bithaman Ajil (deferred sale). In addition Ijarah, Kafalah and Hiwalah facilities of Islamic banks match leasing, Letters of Guarantee (Bank Guarantees) and the Fund transfer services, respectively, of conventional banks. Moreover, Shahida bt. Shahimi & Abd. Ghafar B. Ismail et al say in another research that in Islamic law, kafalah is the creation of an additional liability with regard to the claim, not to the debt. Bank Negara Malaysia (2004) defines the concept as guarantee provided by a person to the owner of goods, who had placed or deposited his goods with a third party, whereby the guarantor and the third party must meet any subsequent claim by the owner for his goods. In other words, the third party becomes surety for the payment of a debt or obligation, if unmet by the person originally liable. It is similar to a pledge given to a creditor that the debtor will pay the debt, fine or any other liability. The contract of kafalah is capable of becoming the basis of more sophisticated vehicle for a financial intermediary to undertake financial and performance guarantees and underwriting of financial claims, which are integral parts of modern banking and capital markets.

They also say that in Islamic banking, intermediation contracts provide agents with a set of tools to perform financial intermediation and to offer fee-based services for economic activities. The contracts like kafalah (guarantee), amanah (safe keeping), wakalah (agent) and ju’alah (promise/reward) complement the functions of Islamic banks as financial intermediaries by offering services for a fee to facilitate economic activities of consumers, corporate and public sector. For example, on the liabilities side, a bank can offer general custodial services for consumers and corporate (or representative of capital owners who is able to direct the management of investment more closely) in return for fee income. These contracts have not received due attention of researches in the context of their usage in intermediation in spite of their vital role in performing many of the functions which modern financial intermediaries are performing. Through these contracts, other functions of a financial system such as custodial services, brokerage, consulting, guarantees and insurance can be designed.

According to Shahida bt. Shahimi & Abd. Ghafar B. Ismail et al in 2006, the vast potential of fee income at Islamic banks along with the lack of attention given to the underlying contracts of fee income motivate us to examine the factors that may affect the nontraditional activities in these institutions. By doing so, this study contributes to the extant literature by two ways. First, they broaden the study of nontraditional activities in US commercial banks originated by Rogers and Sinkey in 1999 by examining Islamic banks in Malaysia. Second, they introduce the influence of credit risk measured by non-performing loans such as ex-post credit risk, instead of loan loss provision (LLP) used by Rogers and Sinkey in 1999. They find that the LLP is not an accurate or direct measure of credit or default risk on loans offered by banks such as ex-ant credit risk.

Conventional commercial banks, Islamic banks also offer certain services for which they receive a fee. These include letters of guarantee (kafalah), bills of exchange (hawalah), such as cheques and bankers drafts, and agency services (wakalah) said by Dr M. Ataur Rahman, Dr. Md. Golam Mohiuddin in 2014. According to Jocelyn Grira, M. Kabir Hassan et al, there are several approaches that a government could take in order to design a Shari’ah compliant deposit insurance system5. In this paper we will discuss and consider an Islamic-based contract for our mathematical formulation, which is “guarantee with fee” (kafalah bil ujr). This contract of guarantee with fee is a contractual guarantee given by a guarantor to assume the responsibilities and obligations of the party being guaranteed should claims arise. As consideration for the guarantee, a fee is paid by the guaranteed party to the guarantor, which is similar to deposit insurance premium in conventional finance, but comply with Islamic rules.

They also say that the whole “guarantee with fee” (kafalah bil ujr) process works as follows: Islamic banks accept mudarabah deposits from the investors in a profit-loss sharing mudarabah contract and make loans in profitable and Shari’ah-compliant projects. In this financing agreement, project-owners share the project after tax net-income with Islamic banks if the project is successful, but lose their investment in case of project defaults. To reduce the default
risk and enhance the creditworthiness of the project, the guarantor intervenes by providing financial mudarabah deposit guarantees. If the project turns out to be successful, the guarantor gains the deposit guarantee fee, and Islamic banks and project-owners share the after-tax net-income according to their profit sharing agreements.

This chart below plots the interactions between mudarabah certificate holders, Islamic banks (IB) and the insurer in the arrangement of deposit insurance contracts, “guarantee with fee” (kafalah bil ujr). IB initiates investment and requires outside financing in the form of Islamic profit sharing debt. The guarantor intervenes by providing a financial guarantee in order to improve the investment creditworthiness. If the investment is made, each stakeholder receives part of the return generated by the investment. The chart illustrates the cash inflows to and outflows from the investment to the different stakeholders.

![Cash flow chart in deposit insurance contracts (kafalah bil ujr)](chart)

5.1 Shariah Issue of Charging Fees for Guarantee

According to Dr. Azman Mohd Noor and Muhamad Nasir Haron, the major Shariah issue is the question of whether charging a fee (kafalah/ guarantee) is allowable. Among the legal consequences is that all the premiums paid by the member institutions will be treated as considerations for the protection and guarantee of the deposits. In other words, the fees paid by the members are actually compensations against the guarantee. As such, all the accumulated payments belong to PIDM. The Shariah basis for this is kafalah bi al-ajr.

5.2 Latest Resolution of Shariah Advisory Council BNM

The Shariah Advisory Council of BNM in its 54th meeting held on 27th October 2005 / 23rd Ramadan 1426 and in its 55th meeting held on 29th December 2005 /27th Zulkaedah 1426, resolved that the above Islamic guarantee (by charging guarantee fee) mechanism provided by the credit guarantee company to the Islamic financial institutions offering Islamic financing products to customers is permissible. Nevertheless, the SAC of BNM in the 80th meeting, dated 7th January 2009 resolved that PIDM operation in managing insurance for Islamic deposits can be operated based on the principle of kafalah bi al-ajr. The premiums paid by the member institutions to PIDM are regarded as ujrah or fee for service and as such shall belong to PIDM.

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Since it is a compensation for the service (protection), PIDM can structure the charges either at a lump sum payment or by installments.

5.3. Juristic Opinions on the Rule Regarding Charging Fees for Guarantee

The great majority of Islamic jurists have always considered it unlawful to charge a fee for a guarantee. They are the jurists from Hanafites, Shafiites, Malikites and also Hanbalites who claimed that it is unlawful to charge fee against a guarantee. They hold that it is permissible to give guarantee; however, to take any rewards from it is prohibited. There are evidences and justifications that show why such charges are not permissible as follows:

Al-Kafalah is a tabarru contract, however if it is associated with a fee imposed by the guarantor, it becomes a contract of commercial exchange (mu'awadhah) which is not allowable. The condition of charging a fee for a guarantee will amount to uncertainty (gharar) which is unlawful. The guarantor who guarantees the debt of another person for a fee will engage in riba by asking the guaranteed person to pay back more than what he owed which is the debt in full plus the fee for the guarantee.

Ibn Qudamah argues: “The guarantor is obligated to honor the payment of debt, when he pays it, it becomes the obligation of the guaranteed person, and as such it becomes a debt. Hence, if the guarantor takes fee, it becomes a loan which generates profit to the creditor.

In the same vein, Al-Dusuqi of the Malikites argues: “The guarantor when he pays the debt to the lender, he will ask the debtor (under his guarantee) the same amount with addition to the fee. This is not allowable as it is a loan with extra payment.

VI. ISLAMIC BANKING PRODUCT DEVELOPMENT

A mufawadah partnership is based on wakalah (agency) and kafalah (surety) that entails full commitment from the partners. To achieve this purpose, all partners should maintain equality in capital, labor, liability and legal capacity. It declares each partner to be an agent of and surety for the other. In an ‘inan partnership, the equality of legal capacity and contribution by each partner is not necessary according to Muhamad Muda, Abdullaah Jalil.

6.1. Meezan Bank’s New Deposit Product, Meezan Kafalah

According to A. Ahmad Siddiqi, H. Qur, Meezan Bank is introducing a unique saving product with Takaful cover which is all ready for “roll-out” with a grand launch. The latest addition to Meezan’s bouquet of offerings Meezan Kafalah (MK) is indeed a first in the industry. This product shall be a harbinger for a positive change in the industry leading to moderate sales incentives from the current huge sales incentive trend in Takaful / Insurance industry that is causing sales by deception. Meezan Kafalah has a unique structure where the customer can-

(i) withdraw all his investment without any deductions at any time, unlike the bancatakaful/ banc insurance where the customer faces hefty erosion of investment in case of withdrawal within the first seven years and
(ii) The takaful cover contribution shall be made by the Bank on behalf of the customer.

VII. THE INSTRUMENTS AND BUSINESS MODEL OF MICRO FINANCING IN IMFIS

Dr. M. Ataur Rahman, Dr. Md. Golam Mohiuddin say that Islamic Micro Finance Institution can offer a wide-array of Islamic financial instruments addressing various, needs and demands of the client especially among the micro and small enterprises. Among these instruments are Murabahah (mark-up sale), this contract can be used for sale and purchase an item, such as motorcycle financing, Mudharabah, this contract that can be used for investment in which Islamic bank act as capital provider and the customer acts as an entrepreneur, such as car financing, house financing and so on where the profit divided in accordance with the stipulated agreements while the loss is borne by the capital provider. Musharakah, this contract that can be used for joint venture where Islamic bank act as financier for some business that need for capital injection, Istishna, this contract that can be used for construction of houses to be ordered by the buyer, Iljarih, this contract is used for lease, the lease usually ends with ownership at the end of the period, Wakalah, kafalah, and many more.

VIII. KAFALAH INVOLVES IN THE RELATIONSHIP BETWEEN THE ISSUER AND THE CARD HOLDER

A. Ahmad Siddiqi, H. Qur says in his paper that Prof. Dr. A.H. Omar explained the view point of Al-Azhar saying: the relationship between the issuer and the Card holder can be resembled to the transaction of Kafalah (guarantee) in Islamic Jurisprudence, due to the following arguments.
A. Meaning of Kafalah (guarantee)
The issuing bank guarantees the card holder to the buyer (trader). According to Islamic Jurists Kafalah means the acceptance of responsibility for a gazette right on a person. Law experts also say that the issuer is considered the guarantor of the card holder. Moreover there are three parties involved in a guarantee as the card agreement is held also among three parties.

B. Guarantee before occurrence of debt
To consider the card agreement as a guarantee is possible because the Card (guarantee) is issued before the debt occurs. Jurists explain it as guarantee before the existence of debt, as Imam Sirakhsi says, if a person says to the other, “Give something to a person, it is valid” 13. Like this are the quotations of Maliki, Shafee & Humbl Jurists.

C. Cash Guarantee
The Bank demands the Card holder to have a balance for a debit card. Although this relationship; appears to be Wakalah (Agency) but it can be Kafalah too as some Hanafi jurists say, if a person takes cash guarantee for a cash debt, it is legitimate 14.

D. Reception after payment
The issuer pays first to the buyer then gets back his money from the card holder. This pattern has been illustrated in jurist’s examples that guarantor has no right to demand money before payment.

E. Credit line
The issuer bank gives the Card holder a credit line to which he can purchase goods or get cash. This behavior also has been mentioned in jurists quotations like, “If a person says that he is responsible of a debt of (1-10 Dirhams) for someone, so it is an acceptable.

F. Right of Card Cancellation
The Bank reserves the right to cancel the card anytime. Jurists allow for that saying, “The guarantor has the right to withdraw his guarantee and he is the guarantor only for the transaction completed”.

IX. THE RELATIONSHIP BETWEEN THE TRUSTEE AND THE CASH ENDOWMENT ACCOUNT
The relationship between the fund manager or operator and the cash waqf endowment account is based on mudarabah or wakalah concept, therefore the fund manager will be sharing profit according to ratio agreed up front, the relationship can be similar to takaful operators in Islamic insurance. However if the concept is based on kafalah the fund manager will be entitled for fee according to Abdul Ghafar Ismail Mohd Ezani Mat Hassan Norazman Ismail Shahida Shahimi
X. KAFALAH AND RIBA
Monzer Kahf says in 2006 that if risk taking justifies return the Kafalah, which is a case of extreme risk taking, must be most rewarding in terms of return. But it is known, in Shari’ah as declared by the OIC Islamic Fiqh Academy’s resolutions that a reward on Kafalah is more prohibited than Riba because it amounts to an increment on a promise to give a loan while Riba is an increment on an actually given loan.

XI. KAFALAH AND TAKAFUL
Zia Ahmed says in his research that in case of Takaful, every individual survives under the kafalah (guarantee or surety-ship) of the group. Takaful will provide cover to all entrepreneurs and individuals in the society against the spiritual and material losses. In primitive society, people lived together in form of families or tribe, where their needs were fully met and protected, through cooperation and mutual help. Consequently, they were fully protected against all sorts of loses. It was the old method of insurance.

XII. KAFALAH PROGRAM
According to Abdulhameed Al-Khateeb, Ahmad Faloudah, Moayd Bahumayd and Aasim Zafar in 2015, Kafalah is a Saudi program that supports small and medium enterprises by introducing loans for them to improve gross domestic product and provide job opportunities for increasing employment. This program contributes in development of Saudi society in the whole regions of KSA. The beneficiaries from loans have invested in different fields, construction, property, and trade or even in stocks which has reflected a positive impact on Saudi economy.

XIII. RECOMMENDATION & CONCLUSION
According to Dr. Azman Mohd Noor and Muhamad Nasir Haron, as far as Takaful Benefit Protection scheme is concerned, it is suggested that the premiums payable to PIDM is directly borne by the Takaful Risks Fund which represents contributions of all participants for their mutual help and indemnification which is realized through takaful benefits. Therefore, the guarantee and protection actually come from the risk fund performed by Takaful operator on behalf of the fund. The takaful contractual relation clearly defines the position of the operator which is only an agent (wakeel), not a guarantor. The usage of kafalah as a fiqh adaptation for absolute assignment is not contrary to Shariah. Kafalah itself is a recognized contract in Islamic transaction. Kafalah literally is assurance; its original meaning is related to joining and commitment. Ahmad Basri Ibrahim and Ahmad Fadhil Hamdi Mohd Ali
say in 2015 that Bank Negara Malaysia in its Kafalah Concept Paper defines kafalah as a contract where the guarantor (kaifil) conjoins the guaranteed party (makful ‘anh) in assuming the latter’s specified liability. To conclude, the protection of takaful benefit is justified for the benefits of the takaful participants and for a prudent and robust Islamic financial system. But as far as Shariah compliance is concern, the structure of kafalah bi al-ajr contract perhaps needs reconsideration since it may look like conventional insurance model. The possible alternative is takaful tabarru model.

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