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Islamic Insurance (*Takaful*) in Nigeria: The Urgent Need for Legal and Regulatory Reforms

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Abstract: The concept of insurance originates from mutual assistance in times of need and distress, rather than as a commercial enterprise for profit-making as practiced today. In conventional insurance, the relationship between the insurer and the insured is that of buyer and seller, which differs fundamentally from Islamic insurance (*takaful*). *Takaful* promotes shared responsibilities, solidarity, mutual assistance, and cooperation to protect participants (policyholders) against risks and misfortunes in accordance with the policy terms. Consequently, profit maximization is not *takaful*'s primary objective. This study examines *takaful* in Nigeria with emphasis on the need for an improved legal and regulatory framework. It provides conceptual clarification of Islamic insurance while addressing common misconceptions about *takaful* and explaining why conventional insurance violates Shariah principles. The research further analyzes the meaning, essential elements, and distinctive features of *takaful*; compares the profit mechanisms of conventional insurers and *takaful* operators; highlights key differences between conventional insurance and Islamic *takaful*; explores the foundational principles of *takaful* under Islamic law; and clarifies the governance and regulatory requirements for *takaful* operations.

Keywords: *Takaful*, Insurance, Legal, Regulatory, Framework, Nigeria.

Research Paper

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1.0 INTRODUCTION

The concept of insurance evolves from mutual help in times of need and distress, rather than a business proposition for profit-making as practiced today. In conventional insurance, the relationship between the insurer and the insured is that of buyer and seller. This is not the case with Islamic insurance (*takaful*). *Takaful* promotes shared responsibilities, solidarity, mutual assistance, and cooperation to protect participants (policyholders) against risks and misfortunes in accordance with the policy. Hence, profit is not the main objective of *takaful*. *Takaful* is an Arabic word stemming from the verb *kafal*, meaning "mutual cooperation" or guaranteeing each other (Stagg-Macy, n.d.). It is both legally and commercially known and referred to as a system of insurance based on Islamic principles, regarded as an alternative to commercial insurance. *Takaful* is a legally binding agreement between all the participants of the scheme to pay any of its members who suffer loss as specified in the *takaful* policy documents (Vogel & Hayes, 1998).

Following the economic meltdown of 2009, the global financial market was in turmoil, and *takaful* has now grown to become a convenient alternative method of insurance coverage for Muslims and enlightened non-Muslims worldwide. *Takaful* has been familiar since the time of the Muhajirun and Ansar following the prophetic migration from Makkah to Madinah in the 7th century AD ("Muhajirun," n.d.) (for Wikipedia). Social welfare notions are used as a criterion for business practice and remain one of the innovative elements of Islamic law developed in response to contemporary financial transactions. Islamic finance accounts for 1.5% of the total global assets, with a growth rate of 15–20% annually, reaching $15 billion in 2015 (G20, 2019).

After the economic meltdown of 2009, the capitalist West made a giant stride to shift its attention to the Islamic Middle East, where non-interest financial transactions thrive (Muhammad, n.d., p. 13). The G20 countries called a summit in 2009 in Pittsburgh, whereby certain resolutions and action plans for financial inclusion were made (Zairi, n.d.) (for the publication on gpfr.org). It was observed that more than two billion adults continue to lack access to financial services, the majority of whom were from Muslim countries, where the population stood at 24% of the global population (Zairi, n.d.) (for the publication on gpfr.org). Commitments toward improving access to financial

services were made, particularly to liberalize financial products to reach the segregated, low-income earners, and rural dwellers in order to propel sustainable growth.

The Northern Nigerian population is made up of a majority of Muslim faithful (Sani & Umar, 2018; Shehu & Sani, 2019) who shun conventional insurance on account of the presence of gambling, high risk, and interest-taking, which are absolutely prohibited by the religion of Islam. The existing conventional insurance is largely avoided due to market fraud and sharp practices, widely believed to be a pastime of its practitioners. Once a system is in place which, if implemented effectively, will satisfy both Muslims and non-Muslims alike, thereby enhancing the penetration of insurance in the otherwise segregated section of the population.

Following the introduction of Islamic insurance, Islamic banking, and the Islamic capital market in Nigeria, a great deal of hope for the Muslim populace was raised that an avenue for their economic development (which is Shariah-compliant) was opened. Before the introduction of *takaful*, the existing insurance systems were the conventional (Western type of insurance) and customary insurance, which was basically a self-help scheme organized in a traditional way whereby the risk or peril of a particular person is taken care of and regarded as the problem of the family or the community as a whole. However, after the introduction of the *takaful* insurance system, the customary system faded into oblivion, leaving the space for conventional and Islamic insurance (*takaful*).

2.0 Statement of Research Problem

The noble intention of NAICOM to reduce the endemic gap in insurance penetration, the efforts to subsume the Muslim population of Nigeria into financial inclusion, as well as the willingness to pursue a Shariah-compliant financial alternative in Nigeria, will not happen in the absence of adequate, clear, and consistent legal and regulatory backing in the legal regime of Nigeria. The intention of NAICOM derives from the financial inclusion strategy adopted by the Central Bank of Nigeria (Central Bank of Nigeria [CBN], 2018). Several researchers have exposed the inadequacy of NAICOM's legal powers to regulate *Takaful* in a way that realizes financial inclusion, investor confidence, and Shariah compliance toward achieving Islamic Law objectives (Maqasid al-Shariah).

In Nigeria, Islamic personal law is applicable only at the Shariah State court level in the northern parts of Nigeria. These courts lack jurisdiction to adjudicate on insurance, as it falls under the Federal Exclusive Legislative List. The courts with jurisdiction to adjudicate insurance matters are the Federal High Court and State High Court (Constitution of the Federal Republic of Nigeria, 1999, s. 250(2)). On the other hand, *Takaful* insurance is derived from Shariah, the source of which is the Al-Qur'an and the authentic traditions of the Prophet Muhammad (SAW). Despite the stated commitment to boost insurance coverage by the authorities, the legal and regulatory contradictions, inadequacies, and potential conflicts have neither been addressed nor has any attempt been made to acknowledge the existence of such huge obstacles.

3.0 METHODOLOGY

This research is an attempt to analyze the legal framework of Islamic insurance vis-à-vis conventional insurance. The research will be conducted in the context of the Nigerian legal and regulatory setting. The method adopted is an armchair research approach, otherwise known as doctrinal research. Being a legal research, this work is confined to analysis of legal literature vis-à-vis the intendment of legislators and regulators. This research depends mainly on primary and secondary sources of law, both in English and Arabic, such as the Holy Qur'an, Hadith, Fiqh books, statutory instruments, textbooks, research papers, reports, and other reliable sources including articles, seminar papers, periodicals/journals, and web sources.

3.1 Conventional Insurance in Nigeria

Insurance is one of the means aimed at alleviating the burden of individual victims of loss or risk, given its fundamental role in spreading risk, embodied in human instinct. Insurance was introduced to Nigeria at the advent of colonial rule through what is known and referred to as "Received English Law" (Interpretation Act, Cap. 192, LFN 1990, s. 32(1).

The concept of insurance is incapable of being universally defined. This assertion was given judicial support by Templeman in the case of Department of Trade and Industry v. St Christopher Motorist Association Ltd (All England Law Reports, 1974, p. 395), where he said: "It was undesirable that there should be an all-embracing definition because of the tendency to obscure and occasionally exclude that which ought to be included." Insurance is an English word which literally connotes guarantee, security, or pledge (Oxford English Dictionary, n.d.). Whereas in its legal and economic sense, it refers to "an agreement in which a person makes regular payments to a company and the company promises to pay money to the person insured, or to pay money equal to the value of something (such as a house or car) which is damaged or stolen" (Merriam-Webster, n.d.). In the economic sense, it means the act of insuring or assuring against loss or damage by a contingent event; a contract whereby, for a stipulated consideration called premium, one party undertakes to indemnify or guarantee another against loss or damage by certain specified risks (Oxford English Dictionary, n.d.).

According to one definition, insurance is: "an agreement whereby an insurer undertakes (in return for the agreed premium) to pay a policyholder a sum of money (or its equivalent) on the occurrence of a specified event" (Khan, 2008). The specified event must have

some element of uncertainty about it; the uncertainty may be either the fact that although the event is bound to happen in the ordinary course of nature, the timing of its occurrence is uncertain, or the fact that the occurrence of the event depends upon accidental causes and the event therefore may never happen at all (Khan, 2008).

Judicially, the meaning of conventional insurance was provided in the locus classicus case of Lucena v. Crawford (1806) (Bos. & P.N.R., n.d., p. 269) to mean: "a contract by which one party, in consideration of a price paid to him adequate to the risk, becomes security to the other that he shall not suffer loss, damage, or prejudice by the happening of the perils specified to certain things which may be exposed to them."

From the foregoing, insurance arises from a contract between an insurer and an insured whereby the former undertakes to provide against a risk apprehended by the assured. In other words, it arises where a person, in consideration of the payment of money, agrees to pay a certain sum of money to another person upon the happening of an uncertain event or upon the happening of an uncertain event as to time (Okany, 2001, as cited in Shamsi, Ishaq, & Abdulkarim, 2018, p. 29).

3.1.1 Functions of Insurance

Insurance is an economic activity closely linked to banking and securities markets, although performing different functions. As seen above, what insurance does and how it works can be said to be the function of insurance. The primary functions include the provision of a degree of certainty. Insurance provides certainty of payment at the occurrence of loss. It reduces uncertainty of loss through better planning and by its administrative application of the concept of probability (Okany, 2001, as cited in Shamsi, Ishaq, & Abdulkarim, 2018, p. 29). It offers protection against probable chances of loss when both the timing and extent of loss are unknown before the calamity occurs. This is usually done through loss control practices designed to reduce the likelihood of claims being made against an insurance company (Investopedia, n.d.).

Risk sharing is also a primary function. Since both the risk and the loss are uncertain, in case of any catastrophe befalling any member of a group, the risk is shared among all members who are exposed to the same risk. There are other functions of insurance regarded as secondary functions, such as prevention of loss. In this regard, insurance companies take measures in collaboration with other institutions to prevent or reduce the chance of occurrence of a calamity in a particular area. This can be seen when an insurance company collaborates with fire departments, health organizations, and educational institutions to prevent losses to society generally (Institute of Chartered Accountants of India [ICAI], 2008).

Provision of capital occurs as payment of premiums accumulates with insurance providers; the funds are then invested in productive ventures. The scarcity of capital is reduced to a bare minimum or even eliminated. Economic development results from the combined effects of primary and secondary functions of insurance, as insurance companies provide incentives to individuals and organizations through their efforts to work hard while being protected from loss, damage, destruction, etc. Capital efficiency, protection of labor, and protection of assets are the pillars of economic development guaranteed by insurance providers.

3.2 Legal Framework of Insurance in Nigeria

Nigeria is a former British colony and as such shares almost all political and economic heritages with its former colonial master (Taiwo, 2014, p. 21). Discussing the legal framework of insurance business in Nigeria entails the discussion of Nigeria's colonial history. The emergence and existence of commercial insurance practice is relatively recent. It is traceable to the British pattern which was introduced into Nigeria during British colonial rule. English law and practice that were obtainable in England comprised mainly of the English Common Law, Doctrines of Equity, and the Statutes of General Application that were in force in England as of 1st January 1900. Other components of Nigerian corpus juris include the various customary laws (which do not offend natural justice, equity, and good conscience), Islamic law, and case law.

The historical link between the federating units of Nigeria began from 1903-1960, that is, from colonization to independence. There were series of enactments in the form of ordinances introduced to the territory known and referred to as Nigeria, made by the colonialists for easy administration of the territory. Those English laws imported into Nigeria include the Interpretation Act section 32(1) (Interpretation Act, Cap. 192, LFN 1990). Furthermore, identical provisions can be seen in different regional High Court Laws and Miscellaneous Provisions Laws, etc. For example: Section 2 (Miscellaneous Provisions) Law 98.

By virtue of this provision, the common law and equitable principles enshrined in case law and statutes are now part of Nigerian laws. The insurance principles of England are now the insurance law in Nigeria. The Constitution of the Federal Republic of Nigeria 1999 included insurance under the Exclusive Legislative List (Constitution of the Federal Republic of Nigeria, 1999, Second Schedule [Legislative Powers]). Nigeria has gone through different phases of insurance legislative history, from colonial ordinances, civilian legislations in the form of Acts, and military Decrees, etc. The Life Assurance Act 1774, The Fire Prevention (Metropolis) Act 1774, The Policies of Assurance Act 1882 culminating into what came to be known as the Insurance (Special Provision) Decree 1988 (Omo-Eboh, 1990, p. 45). The Insurance Act 2003 is the evolution of Decree

No. 59 of 1976, which constituted the first all-embracing insurance legislation in Nigeria by putting together the provisions of the various previous laws. "The Act covers a great deal of details from specific licensing requirements such as minimum capital, to supervisory reporting and corrective measures. By establishing such requirements in law, it gives little flexibility for National Insurance Commission (NAICOM) to create supplementary legislation" (Omo-Eboh, 1990, p. 45).

The Nigerian insurance industry can be divided into four groups: those regulated by the National Insurance Commission (NAICOM), forming the largest group which is the main subject matter of the Insurance Act 2003 as stated above. The Insurance Act is an all-embracing enactment combining the previous legislations on the subject. It is a federal law that covers the entire Nigeria. The subject of insurance in Nigeria falls within the Exclusive Legislative List reserved by the Nigerian Constitution for the federal legislature (Constitution of the Federal Republic of Nigeria, 1999, Second Schedule [Legislative Powers]). This means that no state or local government legislature can make valid law on the subject.

3.2.1 Conceptual Clarification of Islamic Insurance (*Takaful*)

Takaful is a noun which stems from the word "*kafalah*," an Arabic word meaning "guarantee." *Takaful* means "guaranteeing each other." The main and original concept as practiced during the time of Prophet Muhammad (SAW) was to pool resources to pay for events/losses that individually none of the members of the pool could afford (Khan, n.d.). The word *Takaful* stands for shared responsibility, the characteristic of which is al-*musharakah*, meaning sharing. It is often expressed as shared responsibility, shared guarantee, collective assurance, and mutual undertakings (Billah, n.d.).

Takaful has been technically and economically defined in two ways. It is defined as a scheme thus: The concept started and continued as a cooperative system and developed into the present commercial ventures on the principles of mutual cooperation rooted within the parlance of Islamic economic/commercial jurisprudence based on the Qur'an and the Traditions of Prophet Muhammad (SAW). Allah (SWT) says in the Holy Qur'an: "Cooperate in good and pious deeds and do not cooperate in evil and aggression." In another verse, He also says: "Do good deeds so that you may succeed."

In the Hadith we read: "Believers, in their mutual love and empathy towards each other, are like one body; if one member suffers, the rest of the members will look after it and protect it." Also: "Anyone who relieves the anguish of a believer, God will relieve his anguish on the Day of Resurrection. Whoever helps a person in difficulty, God will help him in this life and the afterlife. Whoever gives shelter to a Muslim, God will shelter him in this life and in the afterlife. God will help a worshipper when the worshipper helps his brother." Another Hadith says: "If the Ash'ariyyin lacked supplies during a raid or their families lacked food in the city, they gathered what they had in one garment and divided it among themselves equally; then they are part of me and I am part of them."

Muslim jurists made immense contributions towards developing legal literature with different approaches and opinions based on different principles found in the works of schools of thought, especially the orthodox schools. Modern Islamic scholars developed different ways and drew up new broad perspectives for its practical application within the conventional insurance market. Accordingly, the distinct character of this form of mutual financial scheme is that the contract is based on the divine virtues of cooperation, mutual help, shared responsibility and benefit, brotherhood, and solidarity. In addition, all aspects of the contract should be transparent to all parties involved. Another distinct characteristic is the fact that in *Takaful*, the participants are both the insurers and the insured. The concept and usage of the word *Takaful* in the current commercial setting is to be more understood as a hybrid of mutual and commercial insurance under conventional insurance.

To this end, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) explained the concept of *Takaful* as follows: "Islamic insurance is an agreement between persons who are exposed to risks to protect themselves against harm arising from the risk by paying contributions on the basis of 'commitment to donate.' Following from that, the insurance fund is established and it is treated as a separate legal entity which has independent financial liability. The fund will cover compensation against harm that befalls any of the participants due to the occurrence of the insured risk (perils) in accordance with the terms of the policy" (AAOIFI, 2007, Shariah Standard No. 26[2]).

3.2.2 The Basic Principles of *Takaful* under Islamic Law

It is important at this juncture to note primarily that *Takaful*, according to Islamic values, has the following as its basic principles: Policyholders cooperate among themselves for the common good. Every policyholder pays his/her subscription to help those who need assistance. Losses are divided and liabilities spread according to the community pooling system. Uncertainty (*gharar*) is eliminated in respect of subscription and compensation. No one member of the scheme derives advantage at the cost of others (El-Qora Daghi, 2006; Alsalih, 2004; Alzarqa, 1964).

3.3 Forms of *Takaful*

Takaful insurance has two applicable forms. The first form is based on the participation of persons who are exposed to similar risks and form a society with the aim of helping each other in distributing the financial

loss which any of them may incur during the period of the agreement. In this case, members who have subscribed to this insurance do not pay any premium or monetary amounts except for expenses required to establish the society. These expenses are paid in the form of membership dues (Ahmed, 2012).

The second form of *Takaful* insurance involves the payment of premiums in advance. Each member in this insurance pays a premium when joining. Paying a premium in advance enables subscribers to compensate affected members immediately when an incident occurs and the loss is validated (Ahmed, 2012).

As shown above, the *Takaful* insurance system includes a number of contractual arrangements that intertwine in a complementary way to legitimize modern commercial *Takaful*. These are the principles of *musharakah*, *mudarabah*, *Wakalah*, *waqf*, etc., which were originally separate and independent contractual arrangements under Islamic commercial jurisprudence. Modern scholars have developed ways to integrate these known contracts to establish the legitimacy of Islamic insurance (AIMS Education, n.d.).

When the Grand Council of Islamic Scholars approved the *Takaful* system as Sharia-compliant insurance, no specific structures were mentioned. It is therefore legitimate for intending *Takaful* operators to adopt any applicable model, provided it complies with Shariah principles (Khan, 2008). The models currently used by different operators (adapted to suit their business objectives without contradicting essential religious tenets) are itemized below (Rosely, 2010).

3.4 *Mudarabah* Mode

This is a principal-agent contract, where the owner of the capital (investor/depositor) enters into a partnership with the owner of a specialized skill (professional manager, or *Takaful* operator) to invest capital and share the profits and losses of the investment. This model is so called because the contract is utilized on each side of the *Takaful* operator's balance sheet, integrating both assets and liabilities. It envisages depositors entering into a contract with a *Takaful* operator to share the profits accruing from the *Takaful* business.

The basic concept is that both the mobilization and utilization of funds are conducted on the basis of profit-sharing among the investor (depositor) and the *Takaful* company. In this model, the shareholders are paid a pre-agreed proportion of any surplus generated by the policyholder's fund in return for running the insurance operation for *Takaful* business (Rosely, 2010, p. 133). However, any loss in this type of contract is borne by the capital provider, except where fraud or willful negligence is established against the *mudarib*. In the case of losses or a zero result, the operator will not be paid for the work done (Billah, GhlamAllah, & Alexakis, n.d.).

Furthermore, the capital provider (*rab al-mal*) does not perform any executive functions in this arrangement (Bambale, n.d., p. 195). Unlike in the *Wakalah* model, compensation cannot be tied to the actual performance of the joint venture (Bambale, n.d., p. 195).

3.4.1 Wakalah

Wakalah is another contractual concept employed in modern Takaful undertakings. It is a situation in which an agent (wakeel) is authorized to act on behalf of a principal to carry out a predefined task in return for remuneration (*ujrah*). A service charge may be fixed prior to the commencement of business, either as an absolute figure or as a percentage of the turnover. Such fees (*Wakalah* fees) are the sole entitlement of the operator, without any share in the profits (Saleh, n.d.). As with the Mudarabah model, the *wakil* does not share in the losses if the policyholders' fund incurs a deficit, although it may provide *qard hasan* (an interest-free loan) to cover such losses (Khan, 2008, p. 135).

3.4.2 Hybrid (Mudarabah and Wakalah) Model

A combination of *Mudarabah* and *Wakalah* is commonly used by some *Takaful* set-ups. In this arrangement, *Wakalah* is employed for underwriting functions, while *Mudarabah* governs the investment fund (Saleh, n.d., p. 168). The *Takaful* operator receives *Wakalah* fees from participant contributions, and any underwriting profit is distributed among participants. Meanwhile, profits from the investment fund are shared between the operator and participants according to a pre-agreed ratio (Saleh, n.d., p. 168). This hybrid model has gained rapid popularity due to its potential for high profit returns and strict Shariah compliance.

3.4.3 Waqf Model

Following a series of debates among scholars, particularly in Pakistan, the concept of the *Waqf* model was introduced (Khan, 2008, p. 135). This model operates as a non-profit venture rooted in charitable principles. Under this scheme, operators establish a charity fund to assist participants in need by collecting donations from willing subscribers (Tobias & Younes, 2010). To avoid *gharar* (uncertainty) and *maysir* (gambling), prohibited by Shariah, the concepts of *Waqf* (endowment) and *tabarru*' (donation) were adopted as alternative solutions (Tobias & Younes, 2010).

Under this model, participant contributions create a charitable trust fund, from which financial assistance is provided to members facing catastrophic losses. The *Waqf* model aims to:

a. Provide aid to subscribers when losses occur;
b. Distribute benefits to participants per pre-agreed terms; and

c. Donate to charitable causes with approval from the Shariah board.

Primarily adopted by charitable organizations and governments, this model is most prevalent in Pakistan and South Africa (Khan, 2008, p. 129).

3.5 Wadi'ah Model

This is a special scheme proposed by Islamic commercial jurists to address the lingering challenge of *retakaful* (Islamic reinsurance). Based on the Islamic principle of Wadi'ah (safekeeping contract), this model integrates *Takaful* practices rooted in *Mudarabah* (profit-sharing), *Wakalah* (agency), *tabarru'* (donation), and *Wadi'ah* (custody) (Billah, n.d.).

Islamic jurisprudence offers multiple Shariah-compliant contractual arrangements suitable for *Takaful* operations. Modern scholars have identified these through Qiyas (analogical reasoning) applied to other Islamic contracts ('Uqud), such as '*Aqilah* (tribal solidarity), *Muamalat* (commercial transactions), *Kafalah* (guarantee), and *al-Wa'dul* Muslim (binding promise) (Billah, n.d.).

The 20th century witnessed gradual growth in Shariah-based insurance practices across Muslim and non-Muslim countries. While progress is commendable, further development is needed to meet modern societal demands. Although certain conventional insurance practices remain incompatible with Shariah prohibitions (e.g., *gharar*, riba), contemporary Islamic scholars must innovate alternative models that eliminate prohibited elements entirely.

The Organization of Islamic Cooperation (OIC) has initiated steps to establish an International Re-Insurance Corporation (Billah, n.d.). Today, global research on Shariah-compatible insurance aims to refine theoretical frameworks and practical applications, ensuring the Muslim Ummah (community) can fully benefit from ethical insurance solutions.

3.6 General Principles of Conventional and Islamic Insurance: A Comparison

The preceding analysis was conducted to establish a foundation for examining the legal, structural, and operational differences between the two insurance systems. Insurance is fundamentally a financial arrangement that redistributes the costs of unexpected losses through a risk-sharing mechanism between two parties (Seyed & Asmak, 2017, p. 482). While both systems share similar objectives in risk-sharing and loss mitigation strategies, their jurisprudential foundations differ significantly.

At this critical juncture, it is essential to analyze these systems across several key dimensions:

1. Jurisprudential Foundations: The legal sources and principles governing each system;
2. Contractual Elements: Essential components of insurance contracts in both frameworks;
3. Shariah Compliance: Requirements for Islamic insurance (*Takaful*);
4. Governance and Regulation: Comparative regulatory frameworks;
5. Risk Management: Approaches to risk assessment and mitigation;
6. Participant Responsibilities: Obligations of policyholders/participants; and
7. Reinsurance Mechanisms: Conventional reinsurance versus *Retakaful*.

This comprehensive comparison will critically evaluate the compatibility (or incompatibility) of these systems, ultimately demonstrating whether *Takaful* can be successfully implemented within Nigeria's insurance industry while achieving its desired objectives.

3.6.1 Jurisprudential Basis

Jurisprudentially, the basis of law in the Western parlance is human action. This perception made English jurists express different and conflicting views about what law is. On one hand, law was viewed from a natural point of view. These groups of jurists were branded as naturalist lawyers. They deemed law to be divine and therefore dealing with natural cause and effect (Friedman, 1953, p. 211). Disagreeing sharply with the naturalist scholars, the positivist scholars viewed law from the practical application of law. In its strict sense, law is the command of the sovereign backed up by sanctions (Hart, 1994). Like the naturalist scholars, the positivist view of law was also challenged assiduously on many points (Hart, 1994, p. 71). The sovereign contemplated by the positivists is located in man, and this reflects the stance of conventional insurance. On the other hand, the utilitarian scholars view law as the greatest happiness or good of the greatest number of members of society. According to Jeremy Bentham, law is law if it serves the interest of the greatest number of people the law is intended to serve. Since this law is not divine, what serves the purpose of the greater majority today may not do so tomorrow. Thus, Islamic insurance, though it only serves the interest of Muslims and is accepted by Muslims while still at an infancy stage, may not be good law in Bentham's view (Bentham, 1931, p. 3). In another view, the sociologist scholars viewed law as the need of society. Thus, according to this school of thought, law is only law if it satisfies and accords with the needs of society (Muslehuddia, 2012, p. 3). Therefore, if society prides itself on social vices, approves the granting and taking of *'riba'* (interest) or gambling or games of chance, the law that approves of these is good law. The spirit of conventional insurance aligns with this. Islamic law, being divine, knows what is good and bad for society, and this is what it sanctions. Therefore, Islamic insurance is not out to satisfy the whims and caprices of man or society but those of the divine. Similarly, Savigny of the historical school viewed law as the custom that lies deeply in the minds of

men. To know what law is, one needs to know the history and/or customs of a particular group or society (Muslehuddia, 2012, p. 3). Thus, whether the customs or history of a people negate common sense or conflict with divine rules, that will be the law according to this school of thought. If this is the case, conventional insurance, which is the product of English customs, is alien to Nigerian customs and practices. The importation of English law through colonization brought this to Nigeria. This is why conventional insurance is totally a reflection of English customs incompatible with Islamic law. Invariably, therefore, conventional insurance will differ significantly from Islamic insurance.

To this end, Islamic law jurisprudence generally views law as divine and holds that nothing qualifies to be law unless it has divine character. Thus, Islamic law is an ideal code of behavior ordained by Almighty Allah (SWT). This fact was amply captured by Anderson when he opined: "To the Muslim, there is indeed an ethical quality in every human action, characterized by *Qubh* (ugliness, unsuitability) on the one hand or *Husn* (beauty, suitability) on the other. But this ethical quality is not such as can be perceived by human reason; instead, man is completely dependent in this matter on divine revelation. Thus, all human actions are subsumed, according to a widely accepted classification, under five categories as commanded, recommended, left legally indifferent, reprehended, or else prohibited by Almighty God. And it is only in regard to the middle category (i.e., those things which are left legally indifferent) that there is in theory any scope for human legislation" (Coulson, 1964, p. 85).

Flowing from the above is that law is law under Islamic law when it comes directly from Almighty God. The only way man can legislate is within the extent and scope of the general Islamic law categorized as indifferent, and any laws made must be in accordance with the general principles of Shariah as ordained by God. Thus, Islamic insurance, though not directly mentioned in the primary sources, must be modeled and structured in line with the general requirements of Shariah. This was aptly recognized by Coulson: "Law, therefore, does not grow out of and is not molded by society as is the case with Western systems. Human thoughts, unaided, cannot discern the true values and standards of conduct; such knowledge can only be attained through divine revelation, and acts are good or evil exclusively because God has attributed this quality to them. In the Islamic concept, law precedes and molds society; to its eternally valid dictates, the structure of state and society must conform" (Anderson, 1959, p. 3).

The appellation 'Islam' attached to Islamic insurance suggests that everything about its jurisprudence must reflect Islam and is therefore far from man-made law. Its divinity presupposes that Islamic insurance must be wholly conducted according to the dictates of Shariah. Thus, all factors condemned by Shariah in commercial transactions must be avoided (Arbouna, 2008). Therefore, the jurisprudential differences between Islamic law and English law lie in the fact that while Islamic law derives all its sources from divinity, English law derives its own from man. The quality and quantity of the two are therefore incomparable. This also suggests that the operation and conceptualization of the two systems will differ. English law, unlike Islamic law, is rationalistic in nature and depends heavily on human vagaries and rationality. Stating the clear jurisprudential differences between Islamic law and secular law, Jackson, J., has this to say: "The divine law of Islam finds its chief source in the will of Allah as revealed to the Prophet Muhammad (SAW). It contemplates one community of the faithful, though they may be of various tribes and in widely separated locations. Religion, not nationalism or geography, is the proper cohesive force. The state itself is subordinate to the Qur'an, which leaves little room for additional legislation, none for criticism or dissent. This world is viewed as but the vestibule to another and a better one for the faithful, and the Qur'an lays down rules of behavior towards others and towards society to assure a safe transition. It is not possible to separate political or juristic theories from the teaching of the Prophet (SAW), which establishes rules of conduct concerning religious, domestic, social, and political life" (Jackson, 1955, p. vii). The foregoing exposition indicates that the ultimate aim of Islamic law, unlike man-made law, is to reform human conduct and behavior temporally and spiritually. This is to achieve the purpose and goal of life: the satisfaction of the Almighty and the attainment of eternal life.

3.6.2 Governance Regulatory Requirement

The most important and most serious regulatory challenge facing the *takaful* insurance industry in Nigeria today has to do with the provisions of the Insurance Act, 2003 (Jackson, 1955, p. vii). This is the primary legislation regulating insurance business in Nigeria. This Act makes no express reference to Islamic insurance in all its sections. Section 1, which is the main section that provides for the scope of the Act, conspicuously omits *takaful* insurance. The Act applies to all insurance business and insurers, other than insurance business carried on by insurers of the following description: a friendly society that does not employ any person whose main occupation is canvassing others to become members of the association or collecting contributions; or a person whose business is established outside Nigeria engaged solely in reinsurance transactions with insurers authorized pursuant to the provisions of this Act to carry on any class of insurance business, but not otherwise; however, that is an association of persons established with no share capital for the purposes of aiding its members or their dependents where such association collects subscriptions towards the funds of the association for its members or a company or any other body (whether corporate or unincorporated). Perusing the provisions of Section 1 above reveals an express

omission of Islamic insurance (*Takaful*). This is a serious omission and poses a grave danger to the viability of the insurance industry in Nigeria. Recognizing this regulatory gap, insurance actors have endeavored desperately to bridge it by formulating policy guidelines for the *takaful* industry. The policy guidelines so released conflict with the provisions of the Act (Gambo, Saad, & Kasim, 2014).

The Insurance Act serves as the legal basis for the operation of insurance business in Nigeria. It is an Act of the National Assembly, and therefore any issue relating to the operation and regulation of insurance in Nigeria must derive from it. Any contrary arrangement will be null and void. Moreover, while the Act is a product of legislators, the policy guidelines are products of delegated authorities and therefore have less legislative power. Therefore, where there is a conflict between the provisions of the Insurance Act and those of the policy guidelines, the Act shall prevail. In essence, if the provisions of the policy guidelines were challenged before a court of law in Nigeria on the basis of conflicting with the Act, the policy guidelines would be invalidated. Consequently, the operation of *takaful* insurance would also fail. Furthermore, the Act sets standards for the registration, regulation, and administration of insurance business in Nigeria (Ahmad, 2009; Divanna & Shreih, 2009). The Act also provides financial and prudential requirements for insurance businesses in Nigeria (Ahmad, 2009; Divanna & Shreih, 2009). The Act vests the National Insurance Commission with the responsibility of administering and enforcing its provisions (Insurance Act, 2003, s. 86). The Act states: "Subject to the provisions of this Act, the National Insurance Commission (in this Act referred to as the Commission) shall be responsible for the administration and enforcement of this Act and is hereby authorized to carry out the provisions of this Act" (Insurance Act, 2003, s. 86). NAICOM is the institution charged with regulating the insurance industry in Nigeria, including *takaful* insurance. This body is also established based on common law insurance principles. The officers managing it are trained under conventional insurance systems and have little or no knowledge of *takaful* or Islamic insurance. Thus, this presents another institutional framework challenge to the operation of *takaful* insurance in Nigeria.

The investment portfolio provisions contained in Section 25 of the Insurance Act (Insurance Act, 2003, s. 25) are a potential source of conflict with the *Takaful* Operational Guidelines, 2013. The basic requirement of investment in *takaful* is compliance with Shariah principles. This presupposes that the investment must be free from Shariah-prohibited elements, namely interest, uncertainty, and gambling. The *Takaful* Operational Guidelines require operators to establish investment policies for the Participant's Risk Fund (PRF) and Participant's Investment Fund (PIF). However, Section 25 of the Insurance Act, which is the main regulatory law, provides for investments by insurers in a manner entirely different from the *takaful* guidelines. There is no express exemption of *takaful* from the requirements of Section 25 of the Insurance Act. Furthermore, interest is a key component of admissible assets under Section 24(13) of the Insurance Act, whereas under *takaful*, interest is prohibited. This view, however, depends on the purification concept stipulated in Section 4.4(a) of the *Takaful* Operational Guidelines. What remains unclear is whether Section 25 of the Insurance Act will apply to *takaful* insurance. If the provisions of the Act apply alongside the *takaful* investment regulations in the Guidelines, *takaful* operators must also meet the requirements of Section 25 of the Act. The supremacy of the Insurance Act in regulating insurance business in Nigeria has been clearly stated in Section 100 of the Act (Insurance Act, 2003, s. 100). The murky nature of these general and regulatory challenges facing *takaful* insurance does not bode well for its smooth application in Nigeria. A harmonization of these statutory and regulatory provisions in the frameworks cannot be overemphasized.

3.6.3 Challenges

Conventional insurance has existed in Nigeria since colonial days (Yusuf & Babalola, 2015). Until recently, it was the only risk-mitigating venture available for both Muslims and Christians in Nigeria. This was made possible because all enabling legal regimes recognized only this form of insurance (Yusuf & Babalola, 2015). Similarly, the necessary framework for the establishment of *takaful* insurance by Muslims has been lacking, despite its existence in other jurisdictions.

In view of the foregoing, the challenges discussed under this topic shall be classified into two major categories: legal challenges and non-legal challenges. The legal challenges include challenges with respect to the adjudication of insurance disputes and challenges regarding regulatory frameworks. The non-legal challenges include challenges related to awareness and marketability of *takaful* products, lack of manpower to manage and administer *takaful* insurance, capital requirements and management, and risk management.

3.6.4 Legal Challenges

The legal challenges for the successful operation of *takaful* in Nigeria include challenges with respect to the adjudication of Islamic insurance disputes and regulatory challenges concerning *takaful* operations. These challenges are discussed below:

3.6.5 Challenges with Regards to Adjudication

Every society has its own well-established dispute settlement mechanism to deal effectively with disputes arising from the day-to-day activities of its members. Some societies adopt an accusatorial system, while others adopt an inquisitorial system. Others still adopt Islamic law. Some Muslim-dominated states

employ a mixed system, with common law operating alongside Islamic law.

Islamic insurance disputes are disputes emanating from Islamic principles of contract or commercial transactions. As such, these disputes ought to be resolved through dispute resolution mechanisms established by Shariah. Using any other means may not only be counterproductive but may also undermine the prospects of *takaful* insurance. It is with this conviction that the dispute resolution mechanisms for *takaful* insurance under the Nigerian legal system become imperative.

It is elementary law that jurisdiction forms the superstructure upon which the judicial power of a court is founded. In other words, jurisdiction is the lifeline, bedrock, and foundation of all judicial and quasi-judicial proceedings. Consequently, any decision reached without jurisdiction by a court or tribunal is generally considered null, void, and of no legal effect whatsoever (All Progressive Grand Alliance v. Anyanwu, 2014). In the recent case of GTB v. Toyed (Nig) Ltd & Anor (LPELR-4181, 2016, p. 20, paras. A–D), the Nigerian Court of Appeal, per Ndukwe-Anyawu, J.C.A., restated this fundamental principle:

"The law is well settled and no longer admits any argument that jurisdiction is the very basis and lifeline of every matter upon which any court tries or hears a case. Metaphorically speaking, it is the lifeblood of all trials, whether at the trial court or on appeal, without which all such proceedings are nullities, no matter how well conducted or how sound the resulting judgment may be. It is simply a nullity" (Madukolu v. Nkemdilim, 1962; PetroJessica Enterprises Ltd v. Leventis Technical Co. Ltd., 1992; Onuorah v. KRPC Ltd, 2005; Essien v. Essien, 2010).

The preeminence of jurisdiction as a sine qua non in judicial proceedings is such that objections to jurisdiction can be raised at any stage, before, during, or after proceedings, before the same court or even for the first time on appeal to higher courts, including the Supreme Court (Madukolu v. Nkemdilim, 1962; PetroJessica Enterprises Ltd v. Leventis Technical Co. Ltd., 1992). Despite the clarity of the law on this point, Nigerian courts routinely encounter jurisdictional challenges in both civil and criminal cases. These often compel defendants or accused persons to file preliminary objections to the court's jurisdiction. Sometimes, courts may raise such objections suo motu. Regardless of how the objection arises, it remains elementary that the court must resolve it before proceeding to the substantive matter (Abubakar v. Nasamu, 2012; A.G. Adamawa State v. A.G. Federation, 2014).

Indeed, the Supreme Court in Ajayi v. Adebiyi (2012) (S.C., 2012, p. 30, para. C), per Adekeye JSC, held inter alia that a jurisdictional objection, or an application to strike out a suit for incompetence on jurisdictional grounds, is not a demurrer. Thus, it may be filed and adjudicated even before the defendant submits a statement of defense or without any defense being filed at all.

Moreover, it is standard practice for lawyers, upon receiving an originating process like a writ of summons, to scrutinize it for jurisdictional flaws that could terminate the opponent's case preemptively. Given this reality, every court or tribunal must confirm its jurisdiction before undertaking judicial or quasi-judicial functions to avoid futile exercises.

4.0 Challenges with Regards to Adjudication

In this part, it is intended to examine the jurisdiction of various superior courts in Nigeria. This is to help facilitate an understanding of the meaning and scope of their jurisdictions, as well as the factors that confer or may deprive them of such jurisdictions, and the implications for *Takaful* cases. The discussions here, given the constraints of space and scope, will by no means be exhaustive of the jurisdictions of each court but will highlight major aspects. Likewise, inferior courts will not be specifically discussed but will be referenced where appropriate.

4.1 The Federal High Court

The Federal High Court as we have it today was first established in 1973 and was originally known as the Federal Revenue Court under the Federal Revenue Act of 1973 (Decree No. 13 of 1973) which established it. It was subsequently renamed as the Federal High Court under section 230 of the 1979 Constitution of the Federal Republic of Nigeria. In discussing the jurisdiction of the Federal High Court, it should be noted from the outset that no other court in Nigeria has had the scope of its jurisdiction subjected to so much litigation as the Federal High Court. Several reasons may be advanced to support this point, but foremost among them is the fact that the Federal High Court and the High Courts of the Federal Capital Territory, Abuja and those of the States are on par (Constitution of the Federal Republic of Nigeria, 1999, s. 252(1)) in the hierarchy of courts in Nigeria and share concurrent and even conflicting jurisdiction over several matters. There are several cases that support this point, though it is not within the scope of this discussion to examine the complex intricacies of the Federal High Court's contentious jurisdictional history.

4.1.1 Original Jurisdiction

Generally, a High Court of a State has original civil and criminal jurisdiction as well as appellate and supervisory jurisdiction. A High Court of a State also has concurrent jurisdiction with other courts of coordinate jurisdiction such as the Federal High Court, National Industrial Court, and the High Court of the Federal Capital Territory, Abuja. For its original jurisdiction, section 272(1) of the 1999 Constitution provides thus:

"272. (1) Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

(2) The reference to civil or criminal proceedings in this section includes a reference to proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction."

In addition to the Constitution, there are also laws of individual States as well as their peculiar rules of court regarding the jurisdiction of the High Court. By the provisions above, it is clear that save for matters within the exclusive jurisdiction of the Federal High Court under section 251 of the Constitution, the original jurisdiction of a High Court in civil and criminal matters is quite broad and covers matters provided for under the law of the State or any enactment of the National Assembly.

Further to the above provision of section 272 of the 1999 Constitution, section 286(1)(a) also vests the High Court of the State with expansive jurisdiction over federal causes. In other words, a cause or matter which is the subject of an Act of the National Assembly may be litigated at the High Court of a State subject to the provisions of the Constitution (A.G. Ondo State v. A.G. Federation, 2002). Put differently, an Act of the National Assembly may also confer jurisdiction on the High Court of a State regarding federal causes.

4.2 Concurrent Jurisdiction

Concurrent jurisdiction basically relates to the exercise of jurisdiction over the same subject matter by courts of coordinate jurisdiction. Does this mean conflict? Not necessarily so. It simply means that each court, though autonomous and independent of the other, could exercise jurisdiction over the same subject matter that is not exclusive to either. In Nigeria, the High Court.

4.2.1 Courts with Jurisdiction over Insurance Disputes in Nigeria

State High Courts, being courts with coordinate jurisdiction with the Federal High Court, National Industrial Court, and the High Court of the FCT, Abuja, do exercise concurrent jurisdiction over certain subjects that are not mutually exclusive to each other. Common subject matters include applications for the enforcement of fundamental human rights as well as pure contract issues or disputes arising from banker-customer relationships. In the case of Bronik Motors Ltd v. Wema Bank Ltd (1983), an attempt by the defendant to oust the jurisdiction of the High Court of a State was struck down by the Supreme Court, holding that section 8 of the Federal High Court Act 1973 (as amended), which purported to oust the jurisdiction of the State High Court, was null and void for being inconsistent with section 236(1) of the 1979 Constitution. The Supreme Court then concluded that where both the Federal High Court and a State High Court exist in a State, they both have concurrent jurisdiction in matters pertaining to fundamental human rights. This was also the position of the Supreme Court in the cases of Tukur v. Government of Gongola State (1989) and Grace Jack v. University of Agriculture Makurdi (2004). It should be noted also that the criminal jurisdiction of the Federal High Court under sections 251(2) and (3) of the 1999 Constitution is not exclusive but is also exercised concurrently with the State High Courts.

The debate over the extent and limits of the jurisdiction of the Federal High Court and the State High Courts in Nigeria is age-long. While much of that debate has subsided due to pronouncements of the apex Court in a series of cases, it would however appear that questions of law arising therefrom continue to linger in a few instances. One such case where some controversy and debate continue amongst practitioners is that of the court vested with jurisdiction to adjudicate insurance claim disputes.

The issue of the court vested with jurisdiction over insurance claims has however been addressed by the courts in two recent cases: Sun Insurance Nigeria Plc v. Umez Engineering Construction Company Ltd (LPELR-24737, 2015) and Ydro-Tech Nigeria Ltd & Anor v. Leadway Assurance Co. Ltd & Ors (LPELR-40146, 2016). The former was a decision of the Supreme Court, while the latter was decided by the Court of Appeal. Both will now be briefly examined below.

4.2 Alternative Dispute Resolution and *Takaful*

Under the Nigerian legal system, there is provision for resolution of disputes through an informal system of resolving disputes outside the court system called Alternative Dispute Resolution (ADR). This is statutorily justified by the Arbitration and Conciliation Act (Arbitration and Conciliation Act, 2004). In Nigeria, therefore, disputes may be resolved using ADR methods instead of litigation through the courts. It should be noted, however, that resolving disputes through the ADR system in Nigeria is governed by the provisions of the Arbitration and Conciliation Act, which is modeled on the common law ADR system. This therefore means that even where parties to a *takaful* dispute choose to refer their dispute to be settled through ADR, it is the provisions of this Act that will apply. Being a common law model, it may not be compatible with Islamic dispute resolution, and conflicting decisions that go against the principles of Shariah may likely result.

4.2.1 Regulatory Framework of *Takaful* (Islamic Insurance) In Nigeria

Like any other establishment in the general insurance industry/business, *Takaful* (Islamic Insurance) industry is regulated by laws, rules, regulations or guidelines that control its operation. The main laws that guide the operation of *Takaful* in Nigeria are the Insurance Act of 2003 and NAICOM *TAKAFUL* OPERATIONAL GUIDELINES OF 2013 which shall be overviewed hereunder:

Insurance Act (2003)

The Insurance Act of 2003 applies to all insurance businesses and insurers. The Act is the primary legislation that regulates insurance companies in Nigeria, and makes provision for Requirements and Applications for Registration, Modes of Operation of Insurers, Winding Up, Premiums and Commissions, Insurance of Properties, General Insurance, Life Insurance, Offences and so on (Insurance Act, 2003, s. 2). The Insurance Act of 1997 established the National Insurance Commission with the responsibility to ensure effective administration, supervision and regulation of insurance businesses and by virtue of Section 1 of the Insurance Act 2003, it is conferred the power to register insurance businesses. In perusing the Act, it is obvious that the Act did not expressly make provisions for *Takaful* which is a grave flaw. However, the Act by virtue of its provisions granted NAICOM the power to regulate insurance businesses. The implication is that they can establish guidelines to regulate the operations of any insurance business. Hence, this resulted in the establishment of the NAICOM *TAKAFUL* OPERATIONAL GUIDELINES 2013.

4.2.2 The National Insurance Commission (NAICOM)

In 2013 National Insurance Commission issues the Guidelines for *Takaful*-Insurance, pursuant to Section 7 of the NAICOM Act 1997. According to the guideline, the *Takaful*-Insurance Guidelines provide guidance on elements unique to the operations of a *Takaful*-Insurance Operator. These Guidelines must be read in conjunction with all other relevant legislations, guidelines, and circulars that the Commission has determined to apply to *Takaful*-Insurance Operators. The Guidelines serve as the primary regulatory framework for *Takaful*-Insurance transactions.

Section 1 of the guideline made provisions for the introduction of the guideline, the concept of *Takaful*, and what the Guideline entails, such as scope, objectives of the guidelines and implementation. More so, the guidelines viewed *Takaful* as a form of insurance that is compatible with the principle of the *Shari'ah* (Islamic Law). A market survey undertaken by the Commission indicated a significant religiously based objection to conventional insurance. A number of financial principles inspired by *Shari'ah* are shared by other Abrahamic faith. To this end, *Takaful*-Insurance aligns with elements of mutual insurance, ethical financial management, and is accountable to all insuring public regardless of faith.

4.2.3 Challenges of Regulatory Framework for the Operation of *Takaful* Insurance in Nigeria

The most important and most serious regulatory challenge facing the body *takaful* insurance industry in Nigeria today has to do with the provisions of the Insurance Act, 2003 (Arbitration and Conciliation Act, 2004). This is the main primary legislation regulating insurance business in Nigeria. This Act makes no express reference to Islamic insurance in all its sections. Section 1 which is the main section that provides on the scope of the Act conspicuously left out *takaful* insurance. Per scoping the provisions of section 1 above reveals on expression omission of Islamic insurance (*Takaful*). This is a serious omission and a grave danger to the survivability of insurance industry in Nigeria. Discovering this regulatory gap, the insurance actors endeavor desperately to bridge this gap by formulating policy guidelines for insurance industry. The policy guidelines so released are in conflict with the provision of the Act (Gambo, Saad, & Kasim, 2014).

The Insurance Act legal basis for the operation of insurance business in Nigeria. It is an Act of the National Assembly and therefore any issue relating to operation and regulation of insurance in Nigeria must flow from it. Any contrary arrangement will be a nullity. More so, while the Act is a product of legislators, the policy guidelines are products of delegated authorities and therefore have less legislative power. Therefore, where there is a conflict between the provisions of the insurance Act and that of the policy guidelines that of the Act shall prevail. In essence therefore, where the provisions of policy guidelines were challenge before a court law in Nigeria on the basis of conflicting with the Act, the policy guidelines will be impeached. Consequently, the operation of *takaful* insurance will also fail.

Furthermore, the Act sets standard for the registration, regulation and administration of insurance business in Nigeria (Ahmad, 2009; Divanna & Shreih, 2009). The Act also provides for financial and prudential requirement for the insurance businesses in Nigeria (Ahmad, 2009; Divanna & Shreih, 2009). The Act vests the National Insurance Commission with the responsibility of administering and enforcing the provisions of the Act (Insurance Act, 2003, Section 86). The Act provides; "Subject to the provisions of this Act, the National Insurance Commission (in this Act referred to as in the commission) shall be responsible for administration and enforcement of this Act and is hereby authorized to carry out the provisions of this Act" (Insurance Act, 2003, Section 86). NAICOM is the Institution charged with the responsibility of regulating insurance industry in Nigeria. This includes *takaful* Insurance. This body is also established based on

common law insurance. The officers manning it also those trained under conventional insurance are with little or no knowledge of *takaful* or Islamic insurance. Thus, another institutional framework challenge on the operation of *takaful* insurance in Nigeria. The investment portfolio provisions contained in Section 25 of the Insurance Act (Insurance Act, 2003, Section 25) is a potential source of conflict with the *Takaful* Operational Guidelines, 2013. The basic requirement of investment in *Takaful* is its compliance with Shariah principles. This presupposes that the investment must be devoid of the Shariah prohibitive elements namely, interest, uncertainty and gambling. The *Takaful* Operational Guidelines impress on the operator to establish investment policies for the Participant's Risk Fund (PRF) and Participant' Investment Fund (PIF). However, Section 25 of the Insurance Act, which is the main regulatory law provides for investment by an insurer in a totally different way from the provisions of the *takaful* guidelines. There is no express exemption of *takaful* from the requirement of Section 25 of the Insurance Act. Furthermore, interest is a key component of admissible assets under Section 24 (13) of the Insurance Act, while under *takaful* interest is the averting factor of the transaction.

This view, however, depends on the purification concept stipulated in Section 4.4(a) of the *Takaful* Operational Guidelines. What remains unclear is whether Section 25 of the Insurance Act will apply to *takaful* insurance. If the provisions of the Act apply besides the regulation of *takaful* investment in the Guidelines, the *takaful* operator must also meet the requirement of Section 25 of the Law. The supremacy of the Insurance Act in regulating insurance business in Nigeria has been clearly stated in Section 100 of the Act (Insurance Act, 2003, Section 100). The murky nature of this plethora of general and regulatory challenges facing *takaful* insurance will not bode well for its smooth application in Nigeria. A harmonization of these statutory and regulatory provisions in the frameworks cannot be overemphasized.

4.2.4 Findings

From the summary presented above, the following major findings emerged:

Firstly, *takaful* insurance is a sui generis - that is, a special type of insurance business that needs to comply with the requirements of Shariah. It differs in both structure and form. By mandating and requiring compliance with Shariah, it must eschew all behaviors, dealings, and practices prohibited by Shariah. Thus, employing the resources of the venture into gambling, alcoholism, or interest is prohibited. This type of insurance is therefore more ethical and thus a better and more reliable alternative to conventional insurance.

Secondly, the legal and institutional frameworks for the operation of insurance business in Nigeria are not favorable to the smooth, effective, and successful operation of *takaful* insurance. They present many hiccups and are not favorably disposed towards its success and survival. The legal and institutional frameworks are not friendly or conducive for the operation of *takaful* insurance in Nigeria as it currently exists. Additionally, *takaful* insurance employs Islamic law principles of contract, like *mudarabah*, *musharakah*, ijarah etc., in modeling its products and services to conform with ethical and religious requirements. Failing to comply with these essential principles may introduce *gharar* or usury prohibited by Shariah.

Thirdly, though both systems require monetary consideration - called premium in conventional insurance and *tabarru* (donation) in *takaful* insurance - they differ significantly in many aspects. Premium in conventional insurance belongs to the company or insurers, while *tabarru* in Islamic insurance belongs to both policyholders (insured) and insurer (company). The consideration in conventional insurance may be employed in all ventures provided they are profitable, even if unethical. In Islamic insurance, *tabarru* can only be employed in Shariah-screened ventures.

Fourthly, both deal with risk management, but conventional insurance deals with risk transfer from the insured to the insurer, while Islamic insurance involves risk sharing between the insured and insurer. This makes the business of *takaful* insurance more reliable and equitable.

Fifthly, the management of *takaful* insurance is more cumbersome and expensive in Nigeria. Operators need to comply not only with Shariah prescriptions but also with insurance laws in Nigeria and international frameworks for insurance business generally and *takaful* insurance specifically. Similarly, *takaful* insurance operations must employ Advisory Council of Experts (ACE) in their governance structure, which entails additional expenses.

Sixthly, the practice of *takaful* insurance faces issues inimical to Shariah dictates. For example, conceptualizing consideration payable by parties to *takaful* insurance as *tabarru* (donation) is problematic, as donations in Islam do not belong to the donor, who cannot lay claim to them or dictate their use.

Seventhly, this research finds that *takaful* insurance suffers from a dearth of adequate and requisite manpower to effectively manage the sector. This inadequacy may adversely affect its sustainability. Another finding is that adjudication of Islamic insurance disputes will constitute a major obstacle, as such disputes fall under the jurisdiction of Federal and State High Courts in Nigeria's legal system. These courts are manned by judges learned in common law but without knowledge of Shariah or Islamic commercial law specifically.

Closely related is that even Shariah Courts of Appeal, with judges learned in Islamic law, lack jurisdiction to hear Islamic banking and insurance disputes. Furthermore, these judges may lack expertise in this specialized area of Islamic law. These factors may yield counter-productive results for this nascent sector.

This research also finds that the best dispute resolution mechanism for *takaful* insurance is amicable methods like mediation, conciliation, negotiation, or arbitration - the approach used in jurisdictions like Malaysia and customary to Islamic law.

Furthermore, the research identifies many impediments impacting the legal and regulatory development of *takaful* in *takaful*-dominated systems, including: compliance with multiple laws and regulatory bodies; governance and manpower requirements; inadequate and inefficient legal frameworks; lack of awareness; and consequent marketability challenges.

Finally, this research finds many lessons from jurisdictions like Malaysia that could improve Nigeria's system, including: establishing separate legal frameworks for *takaful* regulation; vesting jurisdiction over *takaful* disputes in special courts; using Alternative Dispute Resolution mechanisms; and providing specialized training for judicial officers. Malaysia also has laws dedicated to insurance business and special authorities monitoring insurance transactions using Shariah-compliant structures.

4.2.5 CONCLUSION

This research concludes that *takaful* insurance serves as a complementary and more ethical alternative to conventional insurance, operating on Shariah principles to address unmet needs, particularly for Muslim communities, while gaining global acceptance with potential to displace conventional insurance long-term. However, Nigeria's legal and regulatory frameworks remain fraught with uncertainty and are currently unconducive to *takaful*'s survival, threatening to render its promised economic benefits merely wishful thinking without urgent reforms. The study further finds Nigeria's adversarial common law dispute resolution mechanisms fundamentally incompatible with *takaful*'s Islamic nature, recommending arbitration instead, and warns that despite *takaful*'s superior ethical foundations, it risks collapse under current regulatory and judicial challenges unless immediate corrective actions are taken, including specialized personnel training and streamlined legal frameworks to properly harness its potential as a viable insurance alternative.

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