Islamic Takaful Insurance in Accordance with Executive Decree No. 21/81

التأمين التكافلي الإسلامي وفقا للمرسوم التنفيذي 21 /81

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الملخص:

جاءت هذه الدراسة لبحث التأمين التكافلي الإسلامي باعتباره بديلا شرعيا للتأمين التقليدي لما يقدمه من خدمات ذات آثار ايجابية على الحياة الاقتصادية والاجتماعية، فهو يساهم في تنشيط حركة الاستثمار عبر توظيف اشتراكات التأمين كما يسمح بترسيخ فكرة التعاون والتضامن بين أفراد المجتمع، عبر توفير تغطية تأمينية للأضرار الحاصلة بقل تكلفة، حظي باهتمام المشرع الجزائري فتبناه من خلال المرسوم 81/21 حيث حدده بشكل مطابق لمبادئ الشريعة الإسلامية، فاتحا المجال لشركات التأمين لممارسته بشكل حصري أو عبر نوافذ إلى جانب عمليات التأمين التقليدية، بيّن شروطه وحصر نماذج وصيغ الاستغلال فيه، كما نظم رصيد الصندوق وطرق توزيعه وأخضع مختلف عملياته للرقابة الشرعية ، لضمان تطابقها مع أحكام الشريعة الإسلامية عبر فرض رقابة داخلية و أخرى خارجية.

الكلمات المفتاحية: التأمين، التأمين التعاوني، التأمين الإسلامي، التأمين التقليدي، المرسوم التنفيذي81/21.

Abstract:

This study examines Islamic Takaful as a Sharia-compliant alternative to traditional insurance, emphasizing its beneficial effects on economic and social life. It contributes to stimulate investment activity through the use of insurance contributions and helps to reinforce the notion of cooperation and solidarity among members of society by providing insurance coverage for damages at the lower cost. It was adopted by the Algerian legislator by Executive No. 21/81, ensuring its compliance with the principles of Islamic law. This opened the way for insurance companies to operate it exclusively or through dedicated windows. In addition to traditional insurance operations, the legislator clarified the conditions and limited the types of business models and operating methods, and also regulated the fund's balance, and subjected its various operations to Sharia supervision by imposing internal and external controls.

Keywords: Insurance, Cooperative Insurance, Islamic Insurance, Conventional Insurance, Executive Decree No. 21/81.

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Introduction:

Takaful insurance is one of the most important products in the Islamic financial industry. It is a real alternative to traditional insurance systems because it eliminates elements of illegality and usury (riba). Its principles and regulatory framework are fully compliant with Islamic law. It works on the basis of mutual cooperation and solidarity among a group of participants who all agree to pay for any member who loses money, thereby mitigating the impact of potential future risks.

Islamic Takaful insurance has gained widespread acceptance both in Arab and non-Arab countries because it has many benefits. It promotes the spirit of cooperation and mutual solidarity by distributing losses through providing insurance coverage at a minimal cost for insured risks, financed through voluntary contributions from participants. It is also based on the fair distribution of any insurance surplus that comes in, which ensures that all members are treated fairly.

Islamic Takaful insurance contributes to economic development by stimulating investment activity through various models and operational structures that use insurance contributions. thereby creating employment opportunities, reducing unemployment, boosts productivity, and supports sustainable development by providing sources of financing.

In light of these advantages, the Algerian legislator has endeavored to establish and regulate Islamic Takaful insurance through amendments to Insurance Law No. 95/07 and the issuance of Executive Decree No. 21/81, which delineates the conditions and procedures for the practice of Takaful insurance.

This study aims to examine Islamic takaful insurance in the context of Algerian legislation, aiming to identify the diverse legal and regulatory frameworks that govern this insurance type in Algeria and assess their compliance with its principles. The research problem is formulated as follows:

What is the legal status of the Islamic takaful insurance system in Algeria?

To address this subject, a analytical approach was used to clarify the different terms and clauses pertaining to this type of insurance, along with an analytical approach that concentrated on the analysis of legal texts, especially those found in Decree 21/81.

This study is divided into two main sections in order to accomplish its goals. By outlining its concept and guiding principles and setting it apart from other insurance types with which it may be confused, the first section discusses the substantive framework of Islamic takaful insurance. The second section addresses the legal framework governing the practice of takaful insurance is covered in the second section. This includes the legal requirements for its operation, its management mechanisms and operational modalities, an examination of its financial aspects, and the Sharia supervisory oversight that are in place.

1-The Substance of Islamic Takaful Insurance:

Islamic takaful insurance is a Sharia-compliant alternative to traditional insurance

because it is based on Islamic law, which forbids usury, gambling, and excessive uncertainty (gharar). It aims to promote cooperation and mutual solidarity and help each other by sharing losses and sharing responsibility. Also, it contributes to financing economic projects by investing the insurance funds, and it serves as a savings mechanism for participants.

Accordingly, the following will be presented: first, to define its concept, and second, to distinguish it from other types of insurance that it could be confused with.

1.1- The Concept of Takaful Insurance

Defining Takaful insurance requires first explaining what it means, then examining its features and the rules that govern it.

1.1.1 Definition of Takaful Insurance

Takaful insurance has been referred to by various terms. It is called Islamic insurance because it follows the rules and principles of Islamic Sharia. It is also called cooperative insurance due to the organized participation and cooperation in compensating for the insured risk. Finally, it is called mutual insurance because the participants simultaneously assume the roles of insurer and insured at the same time. The following presents its definition, followed by its foundation according to Sharia.

A. Definition of Takaful Insurance

Takaful insurance is where a group of individuals exposed to one or multiple risks cooperate to compensate for losses that one of them may have. This cooperation is made possible by the fact that everyone agrees to pay money, which is then used to compensate the subscriber upon the occurrence of the insured risk.[1]

It is also defined as a collective insurance contract in which each person agrees to contribute a specified amount as a donation to cover the damages that happen when the insured risks happen. The idea behind this arrangement is that everyone involved will help each other out and work together. A specialized insurance company acting as a paid agent or by a body selected from among the policyholders elects the people who management of insurance operations is entrusted to.[2]

Takaful insurance is also a contract in which a group of people (the participants) agree to give each other a certain amount of money (the insurance premium) so that they can work together to mitigate risks and distribute their consequences listed in the contract. The participants all agree to compensate for actual damages that any of them suffer as a result of an insured risk. Insurance companies manage the insurance operations (acting as agents for a predetermined fee) and invest the participants' money on their behalf in exchange for a predetermined share of investment returns.[3]

All definitions agree that Takaful insurance is based on a cooperative system in which a group of people pays premiums into a fund, which are meant to be donations rather than profits. This fund is used to used to pay entitlements upon the occurrence of damage, managed by a company in accordance with the principles of Islamic Sharia.

The law defines Takaful insurance as a contractual system of insurance in which natural and/or legal persons, referred to as "participants", undertake to assist one another in the event of risks or upon the expiry of the Takaful insurance contract by paying a sum in the form of a

donation referred to as a "contribution". These contributions enable the establishment of a fund called the "Participants' Fund" or "Participants' Account." All activities and operations related to Takaful insurance must comply with the principles of Islamic Sharia.[4]

Observations:

- The definition given by the Algerian legislator is consistent with the definitions established in Islamic jurisprudence about Takaful insurance. This reflects the legislator's intent to establish a system that is fully in line with Islamic law.

- Takaful insurance is a contractual arrangement that brings together a group of persons, referred to as participants, who simultaneously assume the roles of insurer and insured. They sign a contract in which they agree to bear the consequences of the insured risk that could affect any of them.

- The contract gives rise to an obligation for the participants to pay contributions or premiums on a donation basis. These contributions are meant to compensate any member who suffers damage by a specific risk. This is because reflecting the principle of shared responsibility and loss distribution and making sure that damages are fairly distributed.
- A fund or account is established in which these contributions and revenues are deposited, and from which compensation is paid.

- All actions and operations related to Takaful insurance must be fully compliant with the principles and provisions of Islamic Sharia.

B. the foundation of takaful insurance according to sharia :

Islamic jurisprudence councils, bodies of senior scholars, and several conferences have approved and authorized Takaful (Islamic insurance), including:

- Resolution 9 (9/2) issued by the International Islamic Assembly stated that the alternative contract- i.e., to the commercial insurance contract prohibited by Islamic law- which complies with the principles of Islamic transactions is the cooperative insurance contract based on cooperation and donation, while calling on Islamic countries to work towards the establishment of cooperative insurance institutions[5].

- Resolution N° 200 (6/21) concerning Sharia provisions and controls for the foundations of cooperative insurance, which included a definition of cooperative insurance, its rules and controls, and distinguished it from commercial insurance based on uncertainty[6].

- Resolution N° 215 (11/22) concerning the completion of research and studies on cooperative insurance issues, pursuant to Resolution N° 200(6/21) of the council of the International Islamic Assembly concerning Sharia rules and controls applicable to the foundations of cooperative insurance. It included provisions relating to insurance surplus and a study of the basis for endowment for Islamic insurance in addition to issuing a series of recommendations underlining the need to work towards disseminating what was stated in council Resolution N° 200 (6/21) and in this Resolution, which will constitute a comprehensive reference for the principles and foundations governing cooperative insurance operations, it also recommended the need to include in Arab and Islamic legislations in the

field of cooperative insurance what was stated therein[7].

1.1.2 Characteristics and Principles of Takaful Insurance

Takaful insurance has unique characteristics that set it apart from other types of insurance. It is based on a set of principles established by Islamic law.

A. Characteristics of Takaful Insurance

Takaful insurance is distinguished by several key characteristics, most notably:

- Mutual Guarantee: In the Takaful scheme, everyone who takes part acts as both an insurer and an insured at the same time. Participants cover each other, and the contributions collected are ultimately returned to their contributors or used for their benefit.

- No Profit Motive: The goal of Takaful insurance is to provide coverage without making a profit. Contributions are paid on a donation basis to lessen the effects of possible risks. The amount of the contribution is only meant to cover the costs of the protection offered. If there is any extra money, it means that the contributions were more than what was needed, and any surplus must be returned to the participants.[5]

- Democratic Ownership and Governance: This principle is shown in the company's open membership policy, which lets anyone who wants to join the takaful insurance company do so without discrimination. It is also shown by how members are treated equally and fairly, whether they are new or founding members.[6]

- Investing Takaful Funds: The takaful insurance funds can be invested in accordance with Shariah principles. All takaful operations are also subject to Shariah supervision[7]

- Ownership of the Takaful Fund: The policyholders, people who put money into the fund, own it. They are entitled to the returns on their investments and any insurance surplus.

B. Principles of Takaful Insurance

Takaful insurance is based on a set of principles that include:

- Compliance with Shariah Principles and Prohibition of Forbidden Elements: It is imperative to adhere strictly to the tenets and regulations of Islamic law, steering clear of riba(usury), gharar (excessive uncertainty), and maisir (gambling) in takaful operations. Participants agree to pay their contributions as donations to help each other avoid harm and loss. This gives them both the role of insurer and insured. This arrangement stops gambling and speculation thereby eliminating elements of gambling and speculation

- Commitment to the Principle of Donation: Designating contributions as donations helps avoid gharar and meets the main goal of takaful, which is to lessen the severity of risks and share their burden as a group.

- The nature of the relationship between the Takaful Operator and the participants is restricted to the operator managing the insurance funds and operations under an

agency contract (wakala) with a predetermined fee, with a fixed fee established prior to the start of the fiscal year.[8]

- Existence of a Shariah Supervisory Board: To guarantee adherence to Islamic law, a specialized Shariah supervisory body conducts audits of the business's insurance and investment operations. The board has full authority to review all relevant data,

  records, and documents.[9]

- The surplus funds of the takaful fund must be invested in ways that follow Sharia law, which means that free from interest-based transactions can be made.

- The insurance surplus must be shared among the participants. It may also be allocated to reserves, used to lower future contributions, or given to charities according to the rules that have been approved. No part of the surplus shall accrue to the managing company. If it did, otherwise, the contract would be considered commutative.[10]

1.2- Distinguishing Takaful Insurance from Similar Forms

Takaful insurance may intersect with other conventional insurance types, either through shared technical foundations or due to similarities with certain non-profit insurance models. The following distinguishes Takaful insurance from commercial insurance, then from social insurance from commercial insurance, and then it will explain how it is different from social insurance.

1.2.1 Distinguishing Takaful Insurance from Commercial Insurance

This subsection first defines commercial insurance, then highlights the differences with Takaful insurance.

A. Definition of Commercial Insurance

Commercial insurance, which is also called private, voluntary, fixed-premium, or traditional insurance, is typically conducted by commercial entities aiming to generate profit. It is practiced by insurance associations through subscription and by joint-stock companies, with the latter being the most prominent and widespread entities. These businesses are their own legal entities, and their shareholders give them money in the hopes of making a profit. They are legally independent from the insured persons.

A joint-stock company concludes individual contracts with each insured person. In exchange for the premiums the insured person pays to the company, the company agrees to pay a certain amount of money upon the occurrence of the insured risk, as described in the contract. The company’s net profit represents the difference between the total premiums it collects and the total compensation it pays out. This profit is exclusively distributed to shareholders.[11]

The commercial insurance process is characterized by the following features:

- Commercial insurance companies are businesses whose main goal is to make money. The contracts they sign are commercial contracts.

- The insured and the insurer (the insurance company) have a commutative contract in which the insured agrees to pay insurance premiums in exchange for the insurer's promise to pay the agreed insurance amount upon the occurrence of the insured risk.

- Insurance companies add additional charges, like taxes, administrative costs, and a profit margin, to the net premium that the insured person has to pay. This usually makes the total premium amount go up.
- Insurance companies use the premiums they collect to invest the collected premiums for their own benefit and distribute profits exclusively to their shareholders.[12]

B. Distinguishing Takaful Insurance from Commercial Insurance

It can be distinguished based on the following criteria:

- Type of contract: Takaful insurance is a donation-based contract in which each participant voluntarily contributes to support each other and share losses rather than for profit. On the other hand, commercial insurance is a type of commutative contract in which the insurer agrees to pay compensation in exchange for the insured's premium payment upon the occurrence of the insured risk.
- In Takaful insurance, the participant is both the insurer and the insured at the same time. This eliminates conflicts of interest and prevents exploitation because the money that is contributed ultimately belongs to the contributors. In commercial insurance, on the other hand, the roles of the insurer and the insured are separate and distinct, with different and often conflicting interests. There is no principle of cooperation and mutual support.
- The objective of Takaful insurance is to cover damages caused by the insured risk without generating profit. It is clear that this is the case because any insurance surplus must be returned to the participants. The main goal is to get everyone involved in the insurance process to work together and support each other, thereby enhancing security and lessen the effects of risks. Commercial insurance, on the other hand, is a business that aims to generate profit. Any premiums that are higher than expenses and claims are considered pure insurance profit for the company.
- In terms of surplus, the surplus is the amount left over after premiums and their returns have been subtracted from claims and expenses. In commercial insurance, this surplus is exclusively owned by the insurance company and constitutes revenue accruing solely to its shareholders. In Takaful insurance, on the other hand, the insurance surplus belongs to all participants and is shared according to the rules.
- When it comes to premiums, Takaful insurance participants pay the premium as a voluntary donation to obtain insurance coverage against risks. In commercial insurance, on the other hand, the insured pays a set premium to the company in consideration for insurance coverage upon the occurrence of the insured risk.
- When it comes to investing, commercial insurance funds are not subject to Shariah compliance requirements, but Takaful insurance investments must strictly follow Islamic law.
- In case of a deficit: If there is a deficit in the participants' fund under Takaful insurance, all participants bear the deficit collectively. this may be addressed through benevolent loans (qard hasan). In commercial insurance, only the company's shareholders are responsible for the deficit.[13]

1.2.2 Distinguishing Takaful Insurance from Social Insurance

Social insurance is a way for people to work together and show solidarity in order to protect the public interest and promote social justice. This can sometimes cause problems with Takaful insurance. This may lead to overlap with Takaful insurance. The following first defines social insurance, then distinguishes it from Takaful insurance.

A. Definition of Social Insurance

Social insurance is administered by government bodies, which is also called compulsory, mandatory, or governmental insurance. I aims to ensure a minimum standard of living. The government is the insurer. It determines eligibility conditions, what types of coverage are available, and how many people are covered. Social insurance, on the other hand, does not aim to generate profit; instead, it is meant to help people in society. Its forms include health insurance, unemployment insurance, old-age pensions, permanent or temporary disability insurance, and work-related injury insurance.

In social insurance, the beneficiary does not bear the cost alone. Instead, employers and the state also pay for it. This is based on the principle of social solidarity, which is the main idea behind this system.

B. The Difference Between Takaful Insurance and Social Insurance

The distinctions between the two can be summarized as follows:

- **Freedom of Contract**: Takaful insurance governed by the principle of freedom of contract, which means that the participant is not required to sign the contract and is free to contract or not. Social insurance, on the other hand, is compulsory, and its rules are enforced once its legal conditions are met.
- Objective: The objective of Takaful insurance is to cover damages caused by risks by sharing responsibility cooperation and solidarity. Social insurance, on the other hand, is aimed at future security and social assistance. Both types of insurance have the same goal: not to generate profit.[14]
- In takaful insurance, the contribution is the contribution paid by the insured. In social insurance, on the other hand, the insured person's payments are supplemented by contributions from the state and/or employers employer.

2- Legal Regulations Governing Takaful Insurance

Pursuant to Article 203 203 of Order 95/07 about insurance, as amended and added to, the legislator issued an executive decree establishing the modalities for practicing takaful insurance and governing the management and organization of companies that do so. This included putting Shariah supervisory oversight in place to ensure that insurance operations comply with Islamic law

2.1- Procedures for Practicing Takaful Insurance

The legislator has defined the legal conditions and modalities for practicing Takaful insurance. It is also required that the established rules for its management be followed.

2.1.1 Forms and Conditions for Practicing Takaful Insurance

The lawmaker has defined the forms of practice of takaful insurance, and they have also set out the legal requirements that must be met in order to be allowed to do so.

A. Forms of Practicing Takaful Insurance

According to Article 2 of Decree 21/81, which defines the conditions and procedures for practicing takaful insurance, the latter may take one of the following forms:

- Family Takaful: This is a provident contract between the insurer and the insured. The insurer agrees to pay the subscriber or designated beneficiary a certain amount—either as capital annuity—upon the occurrence of the insured event (like death, permanent or total or temporary disability) or when the contractually agreed-upon maturity date comes. The subscriber must pay the premiums on time, as agreed. **This corresponds to personal insurance.**[15]

It's important to remember that this kind of insurance is not intended to compensate for damage, whether it's to life, health, injuries, or anything else. This is still true even if the people who signed the contract know that damage could happen. The insured amount is not intended to be contingent upon the existence or extent of damage. The purpose of the contract is to get the agreed-upon amount, no matter how big or small the damage is. In the case of survival insurance, the damage may not even exist.[16]

- General Takaful Insurance: This type of insurance covers risks affecting the insured's property rather than their person. Property insurance, which protects against damage to assets, and liability insurance, which protects the insured from claims made by other people, such as medical malpractice liability or car accidents, are the two main types of insurance.

B. Conditions for Practicing Takaful Insurance

To do Takaful insurance business, authorization must be obtained from the Minister of Finance, who makes the decision after consultation with the National Insurance Council.[17] The application for authorization must include the following:

- A request specifying the type(s) of insurance operations to be conducted.
- The minutes of the founding assembly.
- A copy of the company's founding contract.
- Proof of paid-up share capital.
- A copy of the company's bylaws.
- A list of the directors and administrative managers, including all personal data accompanied by documents verifying their professional qualifications.
- A forecast plan including all estimates related to operating expenses, especially the general expenses, premiums, money set aside to cover technical provisions, treasury estimates, and estimates related to the solvency margin.

- The main principles the company proposes to follow in the field of reinsurance.[18]

Article 7 of Executive Decree No. 21/81 provides that the application file for practicing Takaful insurance must include the requirements listed in Article 6 of the same decree[19]. These are:

- The operational model intended for approval.
- A list of the members of the Sharia supervisory committee, along with proof of their knowledge of Islamic law and their nationality for each member.
- The organizational framework the company intends to implement for practicing

  Takaful insurance.
- The company's commitment to maintaining a complete separation between the participants' account and the shareholders' account.
- The methodology adopted for distributing the balance of the participants' fund.
- Approval by the supervisory authority, accompanied by a certificate of compliance of Takaful insurance products with Islamic Sharia rules issued by the National Sharia Authority for Fatwa in the Islamic Finance Industry.[20]

2.1.2 Management of Takaful Insurance

The lawmaker defined the modalities for practicing Takaful insurance and limited the ways that Takaful insurance premiums can be utilized.

A. Regulation of the Practice of Takaful Insurance

Takaful insurance may be practiced through one of two modalities:

- As a dedicated insurance company exclusively practicing Takaful insurance, as long as the conditions above are met.
- As a "window" within a traditional insurance company that does traditional insurance business, this is an internal organizational unit. In this case, the company must keep its Takaful and regular insurance activities in technical, accounting, and financial terms, while still following the same rules as previously stated.

It is essential to underscore that in both modalities, the company is required to uphold distinct financial and accounting records for its Takaful operations. Specifically, it must have a separate account for the shareholders' capital account, as well as another account, the participants' fund, that records all revenues and expenses.

Accordingly, the following distinctions can be made within the framework of Takaful insurance:

- The Takaful Company: This company is established by shareholders within a partnership framework. It can take many forms and its goal is to offer insurance services to its members at minimal cost.[21]
- Shareholders (also called stockholders): These are individuals who establish the

company with the objective of engaging in Takaful insurance activities.

- Participants' Fund or Account: This is the account where contributions and investment income are deposited; it is used to pay claims and administrative expenses.[22]
- Participants (also called policyholders): These individuals pay Takaful contributions voluntarily with the intention of cooperation and mutual risk-sharing.

The contractual relationships between these parties are as follows:

- The relationship between the shareholders and the Takaful company is a partnership governed by the company's founding contract.
- The participants and the fund have an insurance relationship. The participants pay contributions into the fund, which then covers damages resulting from insured risks.
- The relationship between the company and the fund **is twofold**: first, a commercial relationship based on contracts like agency, profit-sharing, or ijarah (service contract), in which the company gets fees and financial returns for managing the fund's insurance and investment operations; and second, a non-profit relationship in which the company may give the fund benevolent loans.[23]

B. Methods of Utilizing Takaful Contributions

The company that runs the takaful insurance business invests and utilizes Takaful contributions in accordance with Islamic law. Article 9 of Decree 21/81 provides for several models:

- In the agency contract model, the takaful company acts as an agent for the participants. It manages the Takaful fund and oversees investment activities in exchange for a fixed fee that is a fixed percentage of the contributions made.[24]
- Profit-Sharing Model: This model says that the company will invest the participants' money and handle the insurance process, which includes collecting contributions and paying claims, in exchange for a set percentage of the technical and financial surpluses that are generated.[25]
- Hybrid Model: This model combines the mudarabah and agency approaches. The company runs the insurance business and invests the available contributions in exchange for a fee that includes an agency commission and a set percentage of the technical and financial surpluses.

It should be noted that the remuneration received by the company operating the takaful insurance, under all models, is determined where necessary by the Insurance Regulatory Authority.[26]

2.2- Financial Management of Takaful Insurance and Its Oversight

The financial management of takaful insurance primarily concerns the participants' fund status, as reflected in its revenues and expenses, especially those related to paying for insured risks. The legislator regulates these aspects, and Shariah supervisory oversight is required to ensure compliance of insurance operations with Islamic law.

2.2.1 Balance of the Participants' Fund

The fund balance is the technical result of the difference between revenues (which come from premiums and investment income) and expenses (which include claim payments and operating expenses). In this context, there are two different situations that may arise:

A. Positive Balance of the Fund

The positive balance of the fund, referred to as the insurance surplus, is what distinguishes takaful insurance from other types of insurance. It is the difference between the assets and liabilities of the insurance account over a certain time period, like one year. This does not constitute profit but rather a surplus.[27]

The participants' fund owns the surplus, not the managing company. The managing company may not appropriate any part of it except on a lawful basis. The whole surplus can be kept as a reserve to make the insurance fund stronger or to lower premiums for the people who are in it.[28] The lawmaker has set out the following ways to share the extra money[29]:

- Distribution could include everyone who took part, regardless of whether they were paid or not during the relevant financial year.
- Distribution could include all participants without distinction between those who received compensation and those who did not during the relevant financial year.
- The Distribution may be based on each participant's proportional contribution after deducting any compensation paid to them during the financial year. If the compensation exceeds their share of the surplus, they are not entitled to any share in the surplus.

B. Negative Balance of the Fund

In this case, there is no surplus; instead, the costs and insurance claims exceed revenues. In such cases, the takaful operating company may give the participants' fund an interest-free loan that must be paid back from any future positive balance. The company can't borrow more than 70% of its own money.[30]

2.2.2 Supervision of Takaful Insurance Operations

Supervision consists of Sharia supervision ensuring that takaful insurance operations comply with the principles and rules of Islamic law, in order to guarantee their legitimacy and validity. This oversight is like a Sharia audit that happens all the time on everything the takaful operating company does. Through Executive Decree 21/81, the lawmaker ordered this supervision and gave it to:

The Sharia Supervisory Committee[31]: a body established within the takaful company, composed of at least three Algerian members and have credentials that show they know a lot about the Islamic financial industry. The general assembly of the company chooses members based on the board of directors' suggestions. Members serve for three years, but their terms can be renewed. The members of the committee choose their own chairperson. If a member leaves, the company must follow the same steps to find a replacement.

The lawmaker says that the members of the committee must not be partners, employees, or shareholders of the Takaful insurance company to make sure that the committee is

independent. A service agreement governs their relationship with the company. It includes the pay and how it will be paid, which the general assembly decides based on the board's proposal.

To ensure independence, members must not be partners, employees, or shareholders of the takaful company. Their relationship with the company is governed by a service agreement, with remuneration determined by the general assembly upon proposal of the board.

The committee is responsible for supervising and monitoring all takaful operations and issuing opinions and/or decisions regarding their compliance with Sharia principles. The legislator has made its decisions binding and enforceable. The company is required to provide all necessary information and documents, while committee members are bound by professional confidentiality.

The auditor is responsible for verifying compliance of operations with the opinions and decisions of the Sharia Supervisory Committee. He is appointed by the board of directors upon proposal of the general management and is tasked with preparing reports submitted to both the committee and the board[32].

The **National Sharia Authority for Fatwa in the Islamic Finance Industry**: acts as an external supervisory body with the authority to issue certificates confirming the compliance of takaful insurance products with Islamic Sharia, required for authorization to practice takaful insurance[33].

Conclusion:

The Algerian legislator set up the framework for Takaful insurance by amending Insurance Law No. 95/07 and strengthening its institutionalization by issuing Executive Decree No. 21/81. This decree lays out the conditions and modalities for practicing Takaful insurance while trying to make sure that its rules are in line with Islamic law. The study reached the following findings and recommendations:

Study Findings

- Takaful insurance is a type of insurance that is based on the ideas of cooperation and solidarity. Participants agree to pay contributions on a donation basis to get insurance coverage against losses caused by insured risks at minimal cost. Islamic law's rules and principles govern the system.
- The legislator has set the conditions and modalities for practicing Takaful insurance through Executive Decree No. 21/81. The goal is to make the legal framework more in line with Sharia-compliant standards so that insurance services can be provided based on Islamic criteria.
- The legislator has defined three ways to use insurance contributions: agency, profit-sharing, and a mix of the two. It has also set rules for the participants' fund, including how to share any insurance surplus and how to grant benevolent loans in case of a negative fund balance.
- The legislator subjected Takaful insurance to Sharia supervision to ensure that its operations comply with Islamic law, by imposing internal supervision within the Takaful company, represented by the Sharia Supervisory Committee and the auditor,

as well as external supervision exercised by the National Sharia Authority for Fatwa in the Islamic Finance Industry before the commencement of Takaful insurance activities

Study Recommendations

- Use forums, conferences, and informational publications to raise awareness and promote the culture of Takaful insurance among people. These materials should make it clear how Takaful principles are in line with Islamic law.
- Complete the legal provisions regulating Takaful insurance by:
    - Establishing a legal framework to govern the contracts that come from the different models for utilizing Takaful contributions, making it clear what each party's rights and duties are.
    - Clearly outlining the Takaful company's duties as the manager of insurance funds to make sure it does its job without negligence, which protects the participants' money.
    - Making clear legal rules about how to liquidate the participants' fund and how to distribute any assets that are left over.

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