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INSURANCE CONTRACT AND ITS
PROVISION IN THE ISLAMIC
(LAW) SHARIAH

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DEDICATION

*With Genuine Humility, I Acknowledge Your Aid, O GOD!
In The True Spirit Of Islam, I Appreciate Your Grace, O GOD!
With All My Heart, I Thank You, O GOD!*

*Without Your Guidance And Love,
This Work Would Not Have Been Possible.
Were It Not For Your Help And Cause,
This Humble Contribution Would Have Never Become A Reality.*

*And If Is Worth Dedicating,
Please Bless It With Your Acceptance;*

It Is Dedicated To You, O GOD!

Refat Hadagha

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INTRODUCTION

Every member of the community in his day life is invariably exposed to the possibility of meeting catastrophes and disasters which may give rise to misfortunes and tragedies such as death, fire and motor accidents. A Muslim must believe in any catastrophe and disaster that befall him as *Qadha* and *Qadar* from Allah, and he must face these events of ill luck with strength of faith and patience. Nevertheless it is also the duty of every Muslim to find ways and means to avoid such catastrophes and disasters wherever possible, and to lighten his or his family's burden should such events occur.

Indeed it is the possibility of having to cope with such catastrophes and disasters that has made us realize the need to be adequately prepared especially in terms of financial resources. Most people naturally would wish that they would be able to provide their dependents a certain sum of money in the event of their untimely death as a measure to alleviate the hardship that their dependents may face following such death. A person who is exposed to the dangers of his house catching fire or his motor vehicle meeting with an accident would always wish that he would have enough money to repair his house or his motor vehicle in the event that such disasters did actually take place.

One way to cope with such an eventuality is by way of personal savings. However, such measure may not always be adequate as the sum of money required might be substantial and

it takes time to save, whilst a catastrophe or a disaster may strike at any time.

Therefore it becomes necessary for persons in the community to be prepared. As a matter of fact Islam encourages Muslims to do their utmost to be prepared and to seek cover in their activities as clear in the following Hadith:

«The prophet (s.a.w) told a Bedouin Arab who left his camel untied trusting to the will of Allah: Tie the camel and then leave it to Allah»⁽¹⁾

Until fairly recently, one form of cover which a Muslim can avail himself as means of protection against the consequences of catastrophes and disasters is through the conventional insurance policies. However, the participation by Muslims in the insurance policies offered by the conventional insurance companies has raised doubts from the viewpoint of the rules of the Shariah. Most of the Muslim jurists prohibited it. However, some of them allowed it.

In this research I will refer and discuss the opinion of different jurists, their discussion, controversy and then I will try to make the Islamic law and the most prominent view as intelligible and preferable.

This work is divided into five chapters. One deals with insurance, its origin, types, benefits and development. Another

(1) Ahmad abn Hanbal, Almusnad, Vol: 5. 206.

with the arguments against it. The third chapter deals with the evidences by those who consider the insurance acceptable. The fourth presents my own opinion. And the last chapter gives the Islamic solution to the problem.

There is also bibliography of the books that have been consulted in writing this work. The citations from the Quran are mainly based on the translation of Abdullah Yusuf Ali.

CHAPTER ONE

- DEFINITION OF INSURANCE
- TYPES OF INSURANCE
- A BRIEF HISTORICAL BACKGROUND TO THE EVOLUTION OF INSURANCE
- BENEFITS OF INSURANCE
- INTERNATIONAL ISLAMIC CONFERENCE THAT DISCUSSED INSURANCE CONTRACT
- OPINIONS OF THE SCHOLARS ON THE LEGALITY OF INSURANCE CONTRACT

Definition of Insurance:

Insurance is defined as:

"a device that has been developed to handle risk. Its primary function is to substitute certainty for uncertainty as regards the economic cost of disastrous events. Insurance may be designed more formally as a system under which the insurer, for a consideration usually agreed upon in advance, promises to reimburse the insured or to render services to the insured in the event that certain accidental occurrences result in losses during a given time period".⁽²⁾

"Insurance is the pooling of fortuitous losses by transfer of such risks to insurers who agree to indemnify the insureds for such losses, to provide other pecuniary benefits on their occurrence, or to render services connected with the risk".⁽³⁾

"..... a social device for reducing risk by combining a sufficient number of exposure units to make their individual losses collectively predictable. The predictable loss is then shared proportionally by all those in the combination. This definition implies both that uncertainty is reduced and that losses are shared... from the point of view of the individual insurance, insurance is a device that makes it possible for him to substitute a small, definite, cost (the premium) for a large but uncertain loss (up to the amount of insurance) under an

(2) Encyclopedia Britannica. Vol: 21, Insurance.

(3) George E. Rejda, Principles of Insurance, 23.

arrangement whereby the fortunate many who escape loss will help to compensate the unfortunate few who suffer loss".⁽⁴⁾

All definitions of insurance include the following essential characteristics:

- a) There must be pooling of losses, "so that in the process, average loss is substituted for actual loss".⁽⁵⁾
- b) The compensation must cover an unforeseen loss.
- c) The risk is transferred from the insured to the insurer, who is in a better financial situation.⁽⁶⁾
- d) The victim of the loss (the insured) is compensated for the loss.
- e) The risk must be insurable, and certain requirements have to be fulfilled before it qualifies as one.⁽⁷⁾

Types of Insurance:

There are four main types of insurance:

- a. Life insurance.

(4) Robert I. Mohr and Emerson Cannack, *Principles of Insurance*. 32.

(5) George E. Rejda, *op. cit.* 23.

(6) *Id.*, at. 24.

(7) *Id.*, at. 25.

- b. Property insurance.
- c. Liability insurance.
- d. Social insurance.

Life insurance may be defined as plan under which large groups of individuals can equalize the burden of loss from death by distributing funds to the beneficiaries of those who die. From the individual standpoint life insurance is a means by which an estate may be created immediately for one's heirs and dependents.⁽⁸⁾

There are three main life insurance policies: whole life insurance which is "permanent insurance that provides life time protection"⁽⁹⁾ term insurance, which provides protection for a temporary period such as five, ten or twenty years, or until the insured reaches a stated age.⁽¹⁰⁾

The third option among life insurance policies is endowment life insurance where the insurer undertakes to pay the insured person an agreed sum at the end of a specified number of years, or on the death of the insured, if sooner. ⁽¹¹⁾

Property and liability insurance are often hard to distinguish from one another, since the liability sometimes arises at the same time as the physical damage which is caused to the property. Property and liability insurance, also known as casualty

(8) Encyclopadia Britannica, Vol: 21, "Insurance" 684.

(9) George E. Rejda, op. cit. 535.

(10) Iat 331.

(11) Jordan Verner, Careers in Insurance. 21.

insurance, covers loss associated with hazards to persons and property, including legal hazards as well as those arising from accident and sickness. It does not include life insurance.⁽¹²⁾ Property insurance includes fires insurance, marine insurance, homeowners insurance, automobile insurance, aviation insurance and commercial property insurance.⁽¹³⁾

Liability insurance arises from the operation of law of negligence. Individuals who in the eyes of the law fail to act reasonably or to exercise due care may find themselves subject to large liability claims. There are at least four major types of liability insurance contracts:

- 1- Liability arising out of the use of automobiles.
- 2- Liability arising out of conduct of a business.
- 3- Liability arising from professional negligence.
- 4- Personal liability including the liability of a private individual operating a home, carrying on sporting activities, and so on.⁽¹⁴⁾

Social insurance provides protection against the social risks of premature death, old age unemployment, occupational and non-occupational disability, and catastrophic medical expenses of the aged and disabled.⁽¹⁵⁾ In most cases the social insurance is compulsory, imposed by the state. The state's interference with social insurance turns it from private into public insurance.⁽¹⁶⁾

(12) Encyclopedia Britannica. Vol: 21. "Insurance" 680.

(13) George E. Rejda, op. cit. 102.

(14) Encyclopaedia Britannica. Vol: 21, "Insurance" 680.

(15) George E. Rejda, op. cit. 472.

(16) Adil Abd Al-Hamid, Al-Taminat Al-Itimaniyya. 15.

A brief Historical Background to the Evolution of Insurance:

Marital insurance is regarded as the earliest of all the modern types of insurance hence the historians agree unanimously on the fact that traders practised this type of insurance more than seven hundred years. Despite this they disagree on the place where it appeared for the first time, and the nationality of the people who invented it.

The historian Filani who lived in the Fourth Century says the the insurance of cargos by ships for the sake of compensation at times of danger first emerged at Limrdia in Italy in 1182.

The first document of life insurance is the one recorded in London in the year 1583 insuring the life of Gibbons and this contract was agreed upon in the person of a lawyer by the name Richard Martin with an amount of 383 pound.⁽¹⁷⁾

During the 16th Century, the first marital insurance company was established in London.⁽¹⁸⁾

Land insurance came lately as far as its legal arrangements are concerned. It appeared in the 20th Century. The French law of 13.7.1930 came to legally and comprehensively orders this issue which makes it a pioneering law in this field.⁽¹⁹⁾

(17) Salamah Abdullah. Alktar wa Al-Tamin, 96.

(18) Abdul Sami. Al-Tamin Al-Islami. 19.

(19) Saced Abu Jaib. Al-Tamin byn al Hazer wal Ebaha.15 (1983).

Other kinds of insurance became important after the London fire in 1666 which destroyed building, property and wealth.⁽²⁰⁾

This was the evolution of insurance in the western world but in the Islamic world insurance was not known until the thirteen century.

None of the jurists touched on this issue before the Hanafi jurist Ibn Abdeen in this work Radul Muhtar.⁽²¹⁾ That was through insurance of goods imported by the foreign commercial agents living in the Islamic countries.⁽²²⁾

Benefits of Insurance:

Insurance render great services to individuals, society, and generally boosts the national economy. It plays a pioneering role in development and economic growth, fundamental functions related to insurance are as follows:

1. An element of safety

This connotes that insurance brings about safety, guarantee and security against risk. If any risk occurs the insured will be compensated so his benefits and wealth are safe.

(20) Abdul Sami, op. cit. 19.

(21) Ibn Abdeen. Radul Muhtar. Vol. 3, 249.

(22) Mustafa Alzarca, Nezam Al-Tamin, 31.

2. A way of guarantee

In order to get loans many people have to give pledge to the owner of the money and case that they do not return the money, he takes the pledge. However, for some reasons this pledge may be destroyed or spoiled. this discourages the owner to loan. However, if the person who wants the money insures the pledge this will encourage the owner to loan his money because his money will be guaranteed.

3. A ^omade of generating capital

Insurance leads to an important function and that it helps generate capital by the way of collecting shares paid by insured. the sums are utilized naturally in things which are beneficial as far as investment and income generation are concerned.⁽²³⁾

International Islamic Conferences that discussed Insurance Contract:

Many conferences have been held in the Muslim world to discuss the contract of insurance the most notable are as follows:

1. Second Islamic Fiqh week held form 1- 6 April 1961 in Damascus.

⁽²³⁾ Eessa Abdah, Al-Tamin Byn Al-Halal wa Al-Hram. 34- 35; ^oAbdul Sami. op. cit. 16.

2. Second Conference of Muslim Scholars held in Cairo, May and June 1965.
3. Symposia on Islamic Jurisprudence held in Libya, 6- 11 May 1972.
4. First International Conference on Islamic Economy held in Mecca, 21- 26 February, 1976.
5. The Islamic Conference held in Mecca, October, 1979.⁽²⁴⁾

Opinions of the Scholars on the Legality of Insurance Contract:

Despite all these conferences which I have mentioned above, the Muslim scholars still differ on the legality of the Insurance Contract. Thus, some agree with this concept and some disagree.

1. Muslim scholars who disagree to insurance contract:
Most of the scholars disagree to insurance contract. They believe that this insurance contract is prohibited and compensation should not be taken by the insured and no premium should be taken by the insurer. Among the scholars who are opposed to the idea of insurance contract are Alhanafī Ebn Abdeen, Muhammed Bakhit, Sheikh

⁽²⁴⁾ Mohammed Shawky. Al-Islam wa Al-Tamin, 14.

Mohammed Abu Zuhra, Ahmad Fahmi, Shawkat Alyan and the others.

2. Those scholars who have agreed to insurance contract:
The famous amongst these scholars who have legalized insurance contract are: Mustafa Zarqa, Abdul Ghane Alrajihee, Abdul Karim Alkhateen, Abdul Rahman Easa, Sheikh Ali Alkalif, Muhammad Musa and Jaafar Shaheedi. ⁽²⁵⁾

(25) Abdullah Nair Alwan, *Hokom Al Islam Fi Al Tamin*, 8. (1987).

CHAPTER TWO:

ARGUMENTS AGAINST THE CONTRACT OF INSURANCE

First: *Algarar*

Linguistically *Algarar* means danger. Technically it implies according to Shafaiyyah, Hanabaliyyah and Hanafiyyah: Selling something whose availability and non-availability is not known, or its quantity is not known, or it cannot be delivered. Imam Malik defines it as something whose completion or non-completion are not known.⁽¹⁾

Categories of *Algarar*:

The Muslim Jurists have divided *Algarar* into three divisions:

1. Large quantity. The Muslim jurists agree that it nullifies the contract like selling a bird in the air.
2. Small quantity. The Muslim jurists agree that it does not affect the contract, like the foundation of a house.
3. This category is in the middle position whether to attach it to the first category or attach it to the second one. This is the essence of the difference of the scholars.⁽²⁾

(1) Saaed Abu Jaib. *Alkamus AlFikhy*, 372 (1982).

(2) Ibn Arfa Almaliki. *Muahp AlJalel*, Vol. 4, 362.

Evidences of Prohibiting *Algarar*:

The prohibition of a contracts based on *Al-Garar* came in many prophetic sayings as in a Hadith where the prophet prohibits people to involve in trade in *Algarar* as narrated by Imam Muslem. Another Hadith narrated by Imam Ahmad and Ibn Maja that Abu Saeed Al-Kudri says that prophet Muhammad (s.a.w) prohibited selling things in the wombs of the animals till they bear them, another important Hadith is the prohibition of selling fish in the water.⁽³⁾

***Algarar* and Insurance:**

Algarar is considered as the biggest loophole which makes insurance prohibited. According to those who prohibit insurance, "commercial insurance⁽⁴⁾ includes probable mutual financial contracts based on bad '*garar*' because the insured cannot guarantee during the contract what to give and what to take. He may pay a share and an accident occurs and will deserve whatever the insurer has committed to. An accident may not occur and the insured will pay all the shares and shall not receive any premium. Similarly, the insurer cannot specify what to give or take in each particular instance.

(3) Abdullah Nair Alwan, *Hokom Al Islam Fi Al Tamin*, 33, (1987).

(4) Any insurance contract other than social insurance.

It is mentioned above that the prophet (s.a.w) has prohibited *Algarar*⁽⁵⁾

Scholars of law also consider insurance contract as hypothetical because what the insured pays for insurance and what the insurer pays as compensation are unknown.⁽⁶⁾

Those scholars in favour of insurance answered:

- Verily '*garar*' is changing the nature of trade whose results are specific into a way of gaining based on risk where profit will be by one at the expence of the other. Hence, it partakes much of gambling and pawning. This is clearly visible in things prohibited by the Shariah as in the selling of what comes from male camels, female camels, fish hooks and what the diver will bring from the bottom of oceans. All those categories prohibited by prophet Muhammad (s.a.w) are indicative of the fact that '*garar*' is not permissible in Islam. Therefore, the Muslim Jurists have decided that nothing should be sold when it is not quantified by the seller upon receipt for the purchases though specific in itself as in the case of selling a bird in the air or a fish in the water.

- However, if '*garar*' is not in the modalities illustrated above, it will not then affect the buying and selling process. No human action is completely free from

(5) This decisoin is emanated from a juridical conference held in Mecca in Shaaban, 1398.

(6) Abdul Sami, op. cit. 17.

venturing, risking or probability in their natural bounds. Furthermore, the jurists permit selling fruits on the trees when they are near ripeness though there is a degree of obscurity (جهالة) but minimal. The jurists also permit selling fruits which are successive (الثمار المتلاحقة). That is trees which bear fruit in successive periods where the period of succession is so short. Their argument is the benefit reaped from the trees though not known.

- We shall be a bit critical of what the scholars of law say about insurance contract that it is under the realms of hypothetical contracts because essentially it is not so. As far as the insurer is concerned, insurance contract is not hypothetical. It is true that an insurer might not know what to give or take for each particular contract but concerning a number of contracts he will be able to know all that based on pure statistics which is the corner stone of any insurance company. Concerning the insured, probability is out of it considering the rationale behind the contract which is security against risk. With this security, it makes no difference whether a risk is involved or not. If risk occurs, he will be compensated otherwise his benefits and wealth are safe. The involvement of risk or non occurrence of risk are considered after insurance. The fruits of peace and security enjoyed by the insured necessitate the payment of shares parallel to the indemnity. If it is claimed that security is not money parallel to the

compensation we can say that security is the highest quality of life which Allah has bestowed on man:

﴿فَلْيَعْبُدُوا رَبَّ هَذَا الْبَيْتِ * الَّذِي أَطْعَمَهُمْ مِنْ جُوعٍ وَآمَنَهُمْ مِنْ خَوْفٍ﴾⁽⁷⁾

"Let them worship the Lord of this house, who provides them with food against hunger and with security against fear (of danger).⁽⁸⁾

Man strives, struggles and above all pays exorbitant prices for the sake of bringing about security where in Shariah, you can have evidence against having security in compensation with something. We could see unanimity among scholars on the legality of a contract under which money can be paid in compensation of security and stability. This is in line with seeking a guard whose task is to guard which ultimately aims at bringing about security against a personal enemy. The job of a guard is not like a shoemaker, tailor or a maid. the immediate task of the guard is to bring about security.

- Presumably we accept the premise that there is an element of probability in insurance, the jurists still believe that if one tells another: "deal with Mr. A and whatever claim you have over him, I shall take the responsibility" in this case the responsibility is correct though its probable and ambiguous.

(7) Surat Quraish, Ayat: 3- 4.

(8) Abdullah Yusuf Ali, The Holy Quran Translation and Commentary, 2015. (1410H).