

REVISITING LIFE INSURANCE IN ISLAMIC LAW

Dr. K. M. Zakir Hossain SHALIM¹

Abstract

Life insurance can provide individuals with an important financial planning tool through which they can obtain financial security for their families and businesses as the prime objective of life insurance is undertaking a responsibility towards safeguarding widows, orphans and other dependents of the deceased (assured / policyholder) from unexpected future material risks. However, it is not surprising that until now throughout the Muslim world the burning question of the day is whether life insurance is permissible or not? Indeed, a heated controversy has been raging over this problem, and Muslim jurists are divided into two groups on this issue. Some hold it permissible with certain conditions that should be imposed on it; and others reject it without considering any condition for its permissibility. Interestingly, both groups have supported their views, according to their understanding of the proofs and sources of Islamic law, which have created much confusion in the Muslim world. Hence, this article intends to re-examine the concept of life insurance and different views of Muslim jurists on this issue, in order to determine the preferable view in this regard.

Keywords: Revisiting, life insurance, Islamic law

İSLAM HUKUKUNDA HAYAT SİGORTASINA YENİDEN BAKIŞ

Özet

Hayat sigortası kişilerin aileleri ve ticaretleri için finansal güvenliklerini temin edebilecekleri önemli bir finansal planlama aracıdır. Hayat sigortasının temel hedefi, gelecekteki beklenmeyen maddi risklere karşı dulullar, yetimler ve vefat edenin geride bıraktığı diğer bakıma muhtaç kişilerin güvenliğini sağlamaktır. Fakat, sürpriz olmamakla beraber bugüne kadar müslüman alemindeki can yakıcı soru hayat sigortasının meşru olup olmadığıdır? Gerçekten de tartışma artmakta ve müslüman hukukçular bu meselede ikiye ayrılmış durumdadır. Bir kısmı bazı şartlar dahilinde ve onların uygulanmasıyla onu meşru görmekte, diğerleri ise hiçbir şartın meşru kılınamayacağından onu tamamen reddetmektedirler. İlginçtir ki her iki grup, kendi görüşünü İslam hukukunun kaynakları ve delilleriyle müdafaa etmekte ve bu durum

¹ Former Lecturer of Islamic Studies, Bangladesh Islami University (BIU), Dhaka, Bangladesh. Currently, part-time teaching staff of the Department of Fiqh & Usul al Fiqh and the Department of Economics, International Islamic University Malaysia (IIUM), Kuala Lumpur, Malaysia. E-mail: kmsalim@yahoo.co.in

İslam dünyasında karmaşaya yol açmaktadır. Dolayısıyla, bu makale konuyu ele almakta ve her iki grubun görüşlerini tahlil ederek tercihe şayan olan görüşü ortaya çıkarmayı amaçlamaktadır.

Anahtar kelimeler: yeniden ele almak, hayat sigortası, İslam hukuku

1. Introduction: The Concept of Life Insurance

David L. Bickelhaupt, a professor of insurance and finance at the college of administrative science, The Ohio State University, states that “life insurance is a contract by which the insurer, for a certain sum of money or premium proportioned to the age, health . . . and other circumstances of the person whose life is insured, . . . if such person shall die within the period limited in the policy, will pay the sum specified . . . to the person in whose favor such policy is granted” (David L. Bickelhaupt, 1993:120).” Lee Kham Khuan, the author of “*Life Insurance in Malaysia*” explains that a life insurance contract is a legal contract between the life insurance company (insurer) and the person proposing for insurance (insured). The insurer agrees to pay the insured a certain amount of money (sum insured) and any accrued bonus on the happening of some specified contingencies such as the death of the insured or his survival to the end of the contract. The insured agrees to pay a regular sum (premium) periodically to the insurer for a specified term or until the insured’s death (Lee Kham, 1993:2). According to Encyclopedia Britannica, life insurance may be defined as “a 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 (Encyclopedia Britannica, *Insurance*: 21/684.”

2. Dispute Among The *Fuqaha*’ About Life Insurance

The first marine insurance contract was signed in Italy in 1347 (Rispler, 1985: 23). From then there has been no evidence of any disagreement among the people or jurists of common law against the significance and validity of life insurance (Billah, 2003: 69).

Muslim jurists, however, are divided over the legality of modern contract of life insurance in Islam. There are mainly two groups. One of them rejects the validity of it as it, according to them, is contrary to the fundamental principles of Islam. And the other accepts it because according to them, it conforms to the *Shari’ah*.

In this section, an attempt is made firstly to examine the different views of the *fuqaha*’ and their evidences on life insurance. Secondly, according to available literature on this topic and researcher’s own analysis, the study in this section also will determine the preferable view in this regard. This sub section is divided into three main points. Point one deals with the views of opponents on life insurance and their evidences, while point two deals with the proponents’ views on life insurance and their evidences. Finally, point three discusses the preferable view on life insurance in Islamic law.

2.1. Opponents' View and Their Proofs

A group of Islamic jurists has rejected the permissibility of life insurance practice in Islam. Among this group are Muhammad Abu Zahrah (Musleh- Uddin, 1993: 151), Dr. Wahbah al-Juhaily (1986: 2/549), Shaykh Rajab al- Tamimi (1986: 2/55), Shaykh Abd Allah bin Zayd al- Mahmud (1986: 2/632), Shaykh Shawkat Aliyaan (1996, 219), Dr. Siddiq al-Darir (1961), Dr. Husayn Hamid Hassan (1979: 134-138) , Dr. Muhammad al-Dasuqi (1961: 139-142), Dr. Muhammad Biltagi, as well as many others. Their objections can be summarized in following points:

- a. Life insurance deals with *riba* (interest, usury).
- b. Life Insurance involves elements of *gharar* and *jahala* (speculation).
- c. Life insurance functions like *qimar* (gambling).

In the following pages, each of these objections and its supporting evidences will be discussed separately; while answers to these objections will be presented as well.

2.1.1. Riba (Interest, Usury)

The linguistic meaning of *riba* is 'increase' (Ibn Manzur, 19/17-20). Technically, it means increase in specific things (Al-Tabari, n.d.: 2/103). *Riba* is strictly prohibited in Islam by the *Qur'an*, *Hadith*, and by consensus of scholars. Regarding this prohibition, Allah says: O believers! fear God, and give up the *riba* that remains outstanding if you are believers (*Al-Baqarah*, 2: 278). Similarly, the Prophet forbade it in a *Hadith*. Jabir bin Abdullah, giving a report on the Prophet's farewell pilgrimage, said: The Prophet (p.b.u.h.) addressed the people and said, "All the *riba* of *al-jahiliyyah* is annulled, and the first *riba* that I annulled is our *riba*, accruing to Abbas bin Abdul Muttalib (Imam Muslim, 1999:11/10-145)." *Riba* has a bad impact on the society and therefore, it is strictly prohibited in Islam by the *Qur'an*, *Hadith* and consensus of scholars.

2.1.1.1. Relationship of Life Insurance with Riba

The National Religious Council of Malaysia (*Majlis Fatwa Kebangsan*) issued a legal opinion in 1974 that conventional life insurance is not permissible (*haram*) because it contains elements of *gharar*, gambling and interest (Rosly, 498). Similarly, in 1977, the council of Senior *Ulama'* in Saudi Arabia declared that all types of commercial insurance and life insurance are prohibited. The main reason for the prohibition is the interest carried with the insurance (.al- Zarqa', 21).

The question is to what extent is interest actually involved with life Insurance?

Based on opponents' view, two points in which interest is involved with life insurance can be summarized as follows:

2.1.1.1.1. Investment Process

"No one can deny the involvement of *riba* in insurance because the insurance companies invest most of their funds in interest- based securities, such as government bonds, private debt securities, and money market instruments (al- Zarqa, 491)." In the case of life insurance, the insured is given part of the profit made from this investment (Wahbah Juhaily, 551).

2.1.1.1.2. Unequal Return

Life insurance comprises *riba al- fadl* and *riba al- nasi'ah*. Muhammad Biltagi said: "The payment in insurance by the insurance companies to the insured or his heirs is not the same what was paid by the insured but it definitely is less or more." Therefore, the *riba al fadl* is involved in life insurance. On the other hand, life insurance also comprises of *riba al- nasi'ah* "because the insurer (insurance company) doesn't pay the agreed money to the insured (policy holder) in one time but during different periods of time (Biltagi, 98)."

Dr. Shawkat Aliyaan (1978: 215-17)) explained that a usurious transaction is a transaction in which one of the following conditions exists: 1. an increase of principle; 2. an increase fixed according to a time factor; 3. an increase stipulated in the transaction. His statement confirms the explanation above that the *riba al fadl* and *riba al- nasi'ah* are involved in the life insurance policy.

Some scholars argue that Muslims, who condemn *riba* as one of the major "defects" of insurance, are influenced by the wider notion of the term *riba*, not by that which is tied to loans and debts. The wider notion includes the fact that insurance compensations are collected without work and that the amount deposited with the company (the premium) is never returned to the insured in its original sum. It may be returned partially (in property and liability), or tens of times more than its original amount (in life insurance), or not at all. In later case, the company collects all the profits (Rispler, 1986: 49-50).

2.1.1.2. Refuting of this Objection

The defenders of life insurance respond as follows:

- a. Muhammad Nejatullah Siddiqi mentions that the view that the insurance contract inherently implies interest as the insured is promised an amount far in excess of what he will have deposited in installments before the occurrence of any accident. This opinion is based on the assumption that every such incremental payment is interest. This is a baseless assumption as the *Shari'ah* does not regard absolutely every increment as interest. Money paid as premium does not have the nature of a loan, and the payment of a claim does not amount to returning the loan with an incremental amount that may be considered as interest. In the true spirit of it, a premium payment is a kind of co-operative contribution towards the availability of a useful social service. This spirit is manifest in mutual insurance and in state-controlled insurance. Even in the case of private insurance we cannot rightly call a premium a 'loan'. It must be considered rather as the price of a service to be rendered if and when needed (Siddiqi, 35-36).
- b. As against typical interest bearing loans, the amount of claimed money received by the insured depends neither on the time period nor on the total money deposited in premium payments at the moment of occurrence of any accident. The amount actually depends on the extent of financial loss incurred in consequence of the accident. In cases like life insurance, the amount is agreed upon beforehand, but in other cases, such as fire, instead of being

stipulated in advance the amount of claim is decided after the accident, following the assessment of actual loss. In some other cases, like shipwreck, advance calculation and fixing of loss are based on knowledge of the value of the article (Siddiqi, 38).

- c. In life insurance one faces the difficult problem of how to assess the financial loss to his family caused by the death of a person at a particular age. Valuation of property and other goods according to objective standards is available only for compensating the financial loss caused by death. In light of this, the decision to calculate such a loss and then opt for a policy involving a particular sum is best left to the discretion of the individual concerned. The capacity and willingness of individuals to save are also important and relevant considerations that might be left to their discretion. All these matters can be re-examined. But even under present condition, the mere fact that insured may get more money than he has paid out in premiums, gives no grounds for considering the excess money as interest. If the problem is considered in relation to the pure form of insurance, i.e. mutual assurance, the money that a group of insured persons get is exactly the same as they have deposited as premiums- neither less nor more- because the rate of premiums is calculated on the basis of law of large numbers and the law of averages with a view to compensate the losses of the whole group (Siddiqi, 38).

2.1.2. Gharar and Jahala

Gharar and *jahala* are other unlawful elements which are believed to be involved in insurance. Linguistically, *gharar* means risk, peril and danger (*Al- Munjid*, 1975: 45-46), and *jahala* means ignorance or lack of knowledge (*Al- Munjid*, 108). Technically, it implies according to *Shafie*, *Hanbali* and *Hanafi* jurists: selling something whose availability or 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 is not known (.Abu Jaib, 1982: 372). According to al-Dasuqi and Shawkat Aliyaan, *gharar* also means deception and disguise, anything the result of which is invisible (Al- Dasuqi, p. 57). Al- Sanhuri explains that the difference between *gharar* and *jahala* is that *gharar* means to sell something whose availability is unknown. For example, birds in the air (before they are captured) and fish in the water (before they are caught). *Jahala*, on the other hand, means to sell something which does exist, but the quantity or size of which is unspecified. The prohibition of a contract based on *gharar* came in many prophetic sayings. For example, *Imam Muslim* narrated an *hadith* in which the prophet prohibits people to involve in trade with *gharar* (Imam Muslim, 1985: 63/554).

2.1.2.1. Relationship of Gharar with Insurance

How *gharar* involves in insurance in general and in life insurance in particular? Muslim jurists who objected insurance have identified following reasons:

- a. There is an element of *gharar* (unknown or uncertain factors in the operation of a contract) in both life and general insurance policies. This arises due to the uncertainty of the subject matter of the contract, or *maqud alayh*, whereas one

of its basic rules is that the subject matter must be clear. In such a contract, the insured, or the policyholder, agrees to pay a certain sum of premium and, in turn, the insurance company guarantees to pay a certain sum of compensation (sum insured) in the event of catastrophe or disaster. But the insured, or the policyholder, is not informed, for example, of how the amount of the compensation that the company will pay him is to be derived, nor is he certain of the amount and time (Fadzil Yusof, 1999: 13).

- b. In addition, a contract which is lopsided in favor of one party at the expense of the other contracting party is viewed as *gharar* too. Some examples of this type of *gharar* are: the loss of premium suffered by the policyholder if he has to cancel his policy before the policy acquires forfeiture status, or the practice of non-proportional refund of premiums against the unexpired period in the event of early retirement, or cancellation of the insurance contract by the policyholder (Yusuf, 13-14).
- c. According to M. Ma'sum Billah, any contract, in which either the subject matter or the object involves *gharar* or uncertainty, is deemed to be null and *void ab initio*. In a life Insurance contract, the subject matter is death. It is uncertain whether the assured's death will occur during the policy period or not. Thus, such uncertainty in the life insurance policy leads to the policy's invalidity (Billah, 57). A transaction which involves *gharar* is prohibited in Islam because a *Hadith* says:

2.1.2.2. Answers from Proponents

Scholars in favor of insurance argued:

- a. Verily, *gharar* changes the nature of trade with specific results into a way of gaining based on risk, in which the profit will be for one at the expense of the other. Hence, it partakes much of gambling and pawning. This is clearly visible in things prohibited by the *Shari'ah* as in the selling of what comes from camels and fish hooks, and what the diver brings from the bottom of oceans. All these categories prohibited by Prophet Muhammad (p.b.u.h.) are indicative of the fact that *gharar* is not permissible in Islam. Therefore, Muslim Jurists have decided that nothing should be sold when it is not quantified by the seller upon receipt for the purchase though specific in itself as in the case of selling a bird in the air or a fish in the water (Hadagha: 1995:22). However, if *gharar* is not in the modalities illustrated above, it will not then affect the buying and selling process. No human action is completely free from 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 but minimal. The jurists also permit selling fruits in successive periods where the period of succession is so short. Their argument is that the benefits reaped from the trees are not known (Hadagha, 22).

- b. Presumably we accept the premise that there is an element of probability in life insurance. Yet, jurists believe that if one tells another; "Deal

with Mr. A and whatever claim you have over him, I shall take the responsibility of it”, in this case the responsibility is correct though it’s probable and ambiguous. Likewise, the contract of life insurance with a sort of probability should also be sound.

c. Supposedly, we have succumbed to the fact that there is ambiguity in insurance; it does not lead to dispute. The prohibited ambiguity is the one which leads to dispute.

2.1.3 Qimar (Gambling)

Qimar is another element, which, according to some Muslim jurists, is a part of insurance in general and life insurance in particular. In the *Qur’an*, *qimar* does not appear independently, but under *maysir*, a game of chance, which is as strongly condemned in the *Qur’an* as wine. Allah says:

They ask you (O Muhammad (p.b.u.h.) concerning alcoholic drink and gambling. Say: "In them is a great sin and (some) benefit for men, but the sin of them is greater than their benefit." And they ask you what they ought to spend. Say: "That which is beyond your needs." Thus Allah makes clear to you His Laws in order that you may give thought. (*Al- Baqarah*, 2: 219).

Qimar was prohibited in Islam because it can harm the needy, and provide income without work. Gambling, or giving power to chance, is against monotheism inasmuch as it is an attempt to take fate into one’s hand (. (Rispler, 55).

2.1.3.1. Insurance and Gambling

The *Fiqh* Academy of the Organization of Islamic Conference (OIC), at its meeting in December 1985, resolved that no forms of insurance (life or general) conformed to Islamic principles because, according to the jurists, although the insurance business is based on a buy- and- sell contract it does not fulfill the Islamic characteristics of this type of contract because of the presence of the elements of *gharar*, gambling and *riba* (Yusuf, 13).

Based on this regulation, the fundamental question that has been on the table for long time is to what extent is *qimar* involved in insurance in general and in life insurance in particular; or how insurance is similar to gambling?

a. Al-Dasuqi has claimed that the gambling in insurance is on both sides. The insured may pay only one premium and be compensated—in which case the company loses. If no peril occurs, the insured may pay the premium, but without compensation, in which case the insured loses (Al- Dasuqi, 1967: 80). In the case of life insurance, it is certain that a person will die, and the gambling element is over the date of death, or how many premiums the insurer will pay until his heirs collect the agreed death benefits or face value of the policy (Ali al- Khafif, 39).

b. Ma’sum Billah has cited the opposing views on life insurance saying that it involves the element of gambling. In gambling, the gambler pays a certain amount of

money and subsequently hopes for a chance to gain an additional large amount of money. Similarly, in a life insurance policy, the assured always hopes for a chance to gain, which has the same nature as gambling, and, thus, transactions involving it are prohibited in Islamic *Shari'ah* (Billah, 57).

c. Faddzil B. Yusof has argued that the element of *maysir* (gambling) arises in insurance as a consequence of the presence of *gharar*, particularly in the case of life insurance. For example, when a policyholder dies before the end of the period of his insurance policy and after paying only part of the premium, his dependents will receive a certain sum of money, but he was not informed in the first place of how and from where it is to be derived (Yusuf, 14).

Based on above discussion, we may draw a picture of similarities between gambling and Life Insurance.

a. In gambling, a gambler pays a certain amount of money in order to gain an additional large amount of money by a chance. Similarly, in life insurance, a policyholder pays a certain amount of money and hopes to gain a large amount of money. Therefore, it is a transaction which aims to make a huge amount of clear profit. In gambling, the gambler sometimes gets a huge amount of money and sometimes he gets nothing but loses the whole amount of gambling money. Similarly, in life insurance (term), the dependents sometimes get a huge amount of money (if the policyholder dies), and sometimes a policyholder loses all his premiums' money if he is alive. This is like an act of gambling.

b. In gambling, a gambler doesn't know whether he or other party will get money? And also he doesn't know whether he will be gainer or looser? Similarly, in life insurance, the insured doesn't know whether incidents such as death and accident, will happen or not? If they happen then when? And also, the insured doesn't know how many premiums he should pay and how much money he will get back?

c. In gambling, the gambler depends on luck. Similarly, in life insurance, a life policyholder depends on luck whether to get insurance money or not.

2.1.3.2. Answers from Supporters to These Objections

Those *fuqaha* who support life insurance, say that there is no similarity between gambling and insurance. But they are different from each other. This is because a life insurance policy is for the protection of the material welfare of the orphans, widows and other dependents. Thus, it is a co-operative system, which aims to assist others (Al-Zarqa, 398). On the other hand, gambling is a game, evil and aversion (Al-Zarqa, 398). Al-Zarqa' says: "Gambling is a play based on luck, which aims to kill the moralities and efficiencies of human beings. In the *Qur'an*, Allah has characterized it as a root of evil, which leads to enmity and hatred among human beings, and prevent them from remembrance of Allah and his prayer. Insurance, on the other hand, is not like that, rather, it is a system on the basis of which remedy of the consequences of disasters befallen on human life, wealth and their activities could be made (Al-Zarqa, 90)." Therefore, a life insurance policy is extremely contrary to the gambling, like fire is

contrary to water (Billah, 63). Al- Darir has acknowledged that in the insurance policy there is safety against danger, whereas gambling creates danger, so how can an insurance policy be equal to gambling?

In order to show the difference between insurance and gambling, Muhammad Nejatullah Siddiqi, has argued that the evil of gambling lies in the fact that the gambler willfully seeks out, through betting and wagering, risk which was not there earlier or which, even if it did exist, it did not personally concern him. Buying lottery tickets, betting and staking on horse races, football matches, and games of cards or chess are examples. All possible forms of gambling and its current practices have one thing in common- the risk of financial loss, which the gambler courts by betting or wagering, could have been avoided, if he wanted to do so. However, the case of insurance is fundamentally different. The occurrence of peril against which and the effect of which the insured seeks protection does not depend on whether he is insured or not (Siddiqi, 27-28).

He adds that the second fundamental difference between gambling and insurance, relates to the hope of gain. The financial motivation for gambling is provided by the gain in the event of wining, while in case of insurance it consists in the desire of having protection against the loss that one suffers in the event of the occurrence of the apprehended peril (Siddiqi, 28).

The objection that the insured buys insurance policy in order to get a huge amount of clear profit is also baseless. This is because the stipulated money that the insured will get in such a case which cannot be considered as profit. It only provides him relief from the loss that has already incurred. It does not in any way help him add to his wealth. By contrast, the money won by a gambler does increase his wealth. For him, it is in the nature of absolute profit. The latter seeks clear profit, while the former seeks protection against probable loss. Compare the case of one who gets a prize of a million pounds from a lottery ticket, with a ship-owner who gets the same amount after shipwreck from insurance as agreed value of the ship. The economic status of the ship-owner is still the same as it was before shipwreck. He is not any wealthier now for having received this insurance money. By contrast, the lottery winner is absolutely wealthier now than he was before (Siddiqi, 28-29). Likewise, in life insurance, after dying of policyholder, the dependents get insurance money. By this money, they don't increase their wealth but they use it for their protection during difficulties in their life.

Another objection to life insurance that it is a play of gambling in the nature that a policyholder in insurance sometimes gets a huge amount of money and sometimes gets nothing in return, also doesn't make high sense of logic to proponents. Siddiqi says the amount of money that the insured gets against payment of a small amount as premium provides compensation for actual losses. In addition, this method of loss-management helps maintain in the society condition of security conducive to the pursuit of economic activity. Pure risk—peril entailing only losses—is very discouraging to economic activity. Its economic role is altogether different from business risk that carries with it fear of loss as well as hope of gain. By contrast, the huge amount of money that a gambler wins does not compensate for any actual loss, and it also does not

perform any useful social or economic role. When gambling becomes popular to the society's members, instead of engaging themselves in productive activities, they tend to become more dependent upon betting, chance and luck, to gain wealth (Siddiqi, 32)

2.2. Proofs of Proponents of Life Insurance

In foregoing discussion, we have provided the objections of some *Fuqaha'* to life insurance. They have argued that life insurance is similar to *gharar*, *maysir*, *riba* and so on. We have also provided the answers of *Fuqaha'* who denied these objections and said there are no similarities between life Insurance and the above mentioned harmful elements in Islam. In the following pages, we will provide a few other proofs of proponents of life insurance, which might strengthen their stand on the permissibility of life insurance.

2.2.1. Wadiah (Deposit)

Wadi'ah is an agreement between two parties in which one party gives money to another to be kept for the purpose of safety. The origin of *wadiah* is mentioned in the *Qur'an* where Allah says: "Allah commands you to render back your trusts to those to whom they are due" (*al-Nisa*, 3:58). According to Dr. Muhammad Masum Billah, a life insurance policy is similar to a contract of '*al-wadiah* (deposit) whereby two parties in a financial transaction engage themselves with an agreement that one party deposits money as an *amanah* (trust) to the other to be kept for the purpose of safety (Billah, 68).

2.2.2. Diyyah (Blood Money) and Nizam al- Aqilah

Diyyah is mentioned twice in the *Qur'an*, both of them in verse 92 of *Surat al Nisa'*. According to the *Qur'an*, *diyyah* is the compensation due to the victim or his/her family, for an unintentional killing or bodily injury (Salam Madkur, 92/46).

The party responsible for the payment of the *diyyah* is also named *aqilah* (a group of people who are responsible for the payment of blood money). Who are the *aqilah*? The definition of *aqilah* varies according to time and place, but always includes people with a common interest in the defendant. At first, the tribe of the killer was considered his *aqilah* (Rahman, n.d.: 65). More specifically, *aqilah* includes the male agents or *asabah* of the defendant. The caliph Umar considered the combat unit as one's *aqilah*, even though during his days, army units were organized by tribal affiliation. He collected the *diyyah* by deducting from every soldier's salary. In term of similarity between *diyyah* and insurance, al-Zarqa' has stated that *diyyah* and insurance are similar, even though the insurance company cannot be for one's family only (Al-Zarqa', 1986: 102). Masum Billah (2003:69) says that a life policy is financial transaction, which had been undertaken by people before Islam, relying on the doctrine of *aqilah'* as a *urf* (custom) which had been accepted by the Holy Prophet (p.b.u.h.), whereby people of every tribe used to deposit a certain amount of money in order to pay blood money (as a compensation on behalf of the killer of their own tribe) to the heirs of the victim. According to him, a life insurance policy is based on the principle of mutual co-operation, as the doctrine of al- *aqilah* was also based on a kind of mutual co-operation. Therefore, Zarqa' has accepted the idea that there is great similarity between insurance and al-*aqilah* in the sense of co- operation (Billah, 69).

2.2.3. *Wala al- Muwalat*

This transaction is not mentioned in the *Qur'an*, but is mentioned in a *Hadith* (Tirmidhi, 4/236). Linguistically, it means support and can also mean the freedom of a slave (Al-Zubaydi, 339). Technically, it is the contract which takes place when a stranger, whose decent is unknown, says to another person: “you are my guardian and liable to pay compensation in case I commit any wrongful act and, in return, you will be emitted to inherit my property if I die (Al-Zarqa', 24).”

2.2.3.1. Similarities between *Wala al-Muwalat* and Insurance

The proponents of insurance have found the following similarities between insurance and above mentioned contract:

- a. It is a contract between two parties: sponsor (insurer) and the person sponsored i.e. insured (Hadagha, 1995: 55).
- b. Guarantee of the blood money by the sponsor is equal to the guarantee of compensation by the insurer (Ibid).
- c. Money that the sponsor gets after the sponsored is dead is equal to the money that the insured pays to the insurer.
- d. Al- *Zarqa'* (1995:24) claims that the *wala* contract was an early type of liability insurance.

2.2.3.2. Response from Scholars against Insurance

The scholars against insurance respond as follows:

Wala contract is based on purely moral support. In contrast, insurance does not have any moral underpinning but is rather based on material foundation. Thus, the two contracts differ in their orientation and aims (Hadagha, 29).

According to Muhammad Abu Zahrah, there is no similarity between insurance and *wala* because, in *wala*, a non-Arab joins an Arab tribe, while in the case of insurance, the insured does not join the company in a manner which, for example, grants him a say in their budget issue (quoted by Hadagha, 29).

2.2.4. Al- Maslaha (Public Interest)

Maslaha is derived from *Salah*, which is the opposite of corruption (Abu Jaib, 1985:4). Technically, it means to bring good and avert harm (Zubaydi: 2/4). According to Islamic Law, *Maslaha* basically preserves the following *Shari'ah* purposes: a. Preservation of religion; b. Preservation of life; c. Preservation of intellect; d. Preservation of progeny; and e. Preservation of wealth.

2.2.4.1. Relationship of Life Insurance with Maslaha

M. Masum Billah (2003:69-70) says that a life insurance policy is for the purpose of sustaining public interest. For example, the purpose of life insurance policy is to protect the orphans, widows and other dependents of the assured against future material risk and, thus, it is a transaction which is justified by the doctrine of *Maslahah Mursalah* (public interest). A transaction which aims to cater for public interest is lawful, because it eliminates hardship and offers a comfortable life for human beings,

which is in line with the *Qur'anic* injunction: "Allah (s.w.t.) intends every facility for you' He does not want to put you to difficulties." (*Surat al Baqarah*, 2: 185)

Generally, the supporters of insurance say that the one who observes the realities of life will see that man is surrounded by dangers, which cannot be counted. Some of these are natural; some are inflicted by individuals and some others are created by groups. The fear of their occurrences makes a person in constant uncertainty, which is tantamount to his loss of dynamism and vibrancy in investing his wealth. Thus, this leaves a resounding impact on the society and constitutes a stumbling block to the implementation of big economic projects leading to stagnation of the economy. After many experiments, insurance has been deemed as the most successful system leading to the individual psychological comfort. Moreover, this will bring about more economic prosperity, which makes insurance applicable to many aspects of life.

2.2.4.2. Scholars against Life Insurance Respond as Follows:

Refuters say that there is more harm in insurance than interest. It is co-operation for evil and not for good (Sami, 1985: 24).

Dr. Biltagi (...: 151-157) says that we cannot deny that the purpose of Islamic *Shari'h* is to bring out benefits for the human beings in this world. However, we should not forget that having benefits from this worldly life should be within the framework of Islamic *Shari'ah*. Therefore, although there are some benefits in mutual insurance, commercial insurance is not in line with *Shari'ah* because it contains unlawful elements such as *gharar*, *Qimar* and *riba*).

2.2.5. Darurah (Necessity)

Darurah means something not doing of which will lead to the perishing of human life or an organ of his body. The authority of *Darurah* is justified by the *Shari'ah*. Allah says in the Qur'an:

...But if anyone is forced by hunger, (and eats unlawful consumption) with no inclination to transgression, Allah is indeed oft-forgiving, most merciful (to him or her). (*Surat al-Ma'idah*, 5:3).

2.2.5.1. Relationship of Life Insurance to Öaurah

A life insurance policy is also justified based on the principle of *Darurah* (necessity). For example, it is an important duty for the guardian to work for the welfare of his/ her own dependents. It is in line with the tradition of the Holy Prophet (p.b.u.h.) who said to this effect: "It is better for you to leave your offspring wealthy than to leave them poor, asking others for help (Bukhari: 8/477)."

It is also noted that in the case of necessity, a prohibited thing could also be permitted in the eyes of the Islamic discipline (Billah, 71). The supporters of insurance also affirm that it has become necessary in our contemporary age to deal with insurance which cannot be escaped. People have realized their great need for it because it is the

only way to avert dangers of catastrophes and some of the mishaps that befall wealth and other assets.

2.2.5.2. Scholars against Insurance Respond as Follows:

Necessity cannot be used to justify insurance because there is corporate or mutual insurance, scope of which could be broadened to include all aspects of human need. It is further known that necessity cannot be resorted to unless there is no other way out (Biltagi, 162-163).

Necessity is permissible only in things which when left will lead to death or destruction of human organ. However, the necessities stated above are neither dealt by the insurance, nor they are mentioned in its list of the cases. According to a *Hadith*, once an Arab came to Prophet Muhammad (p.b.u.h.) and asked him what Allah made *halal* and *haram* among the foods? The Prophet replied: “Whatever is good is permissible for you and anything which is impure is unlawful for you unless you lack of food and you need to eat from it.”

This means in time of necessity, one can eat impure food and do an act which is not lawful. But if there is other way out to live, he or she is not allowed to eat impure food and perform deeds which are not lawful.

2.2.6. Hibah (Gift, Donation)

Hibah is a transaction according to which one gives a gift to another and expects no compensation. A life insurance contract evolves around an element of donation. M. Ma'sum Billah says that in the policy, the assured pays regular premiums for the protection of beneficiary(s) and such a payment of premiums is like a donation for helpless people. Moreover, once the insurer pays an amount of money together with an additional amount from the charitable fund to the beneficiary(s) of the assured (in consideration of the paid premiums) it also involves an element of donation. A donation is lawful in the Islamic jurisprudence as justified by the practices of the Holy Prophet (p.b.u.h.). It is mentioned in some *ahadith* that “The Prophet (p.b.u.h.) used to accept gifts.

2.2.6.1 Scholars against Insurance Respond as Follows:

According to the *Shari'ah*, a gift requires no compensation, which, of course, is not the case with insurance, since the insured pays premiums to the insurance company with the expectation of receiving compensation in the future. (Aliyan, 141-150).

There are situations where a *hibah* accompanied by a fixed compensation (*iwad malum*) is considered a proper sale transaction. Yet, in insurance, the amount of compensation is unknown at the time the contract is issued, and sometimes no compensation is granted at all (Al-Zarqa, 414-415).

2.2.7. Nizam al-Tqaud wa al-Ma'shat (Retirement and Pension Scheme)

A life insurance policy is similar to a retirement pension scheme. Al-Zarqa' (414-415) says: “The retirement and pension scheme is based on monthly salary cutting

system wherein the government cuts a certain amount of salary from its employees and gives back to them or their dependents with a high amount of profit when an employee takes retirement.” He then asks: “What is the difference between above mentioned system and Life Insurance? In these two types of contract, a person pays a certain amount of money time to time and he doesn’t know until what time he should pay, and how much amount will be there when he will get retirement? Furthermore, in return, his or her family gets more than he or she has paid to the government for the pension scheme.

M. Masum Billah quotes *Adil Salihi* who says that all scholars and sects of Islamic learning approved the concept of pension because it gives the subscriber security for himself and his family in the difficult circumstances of his leaving work or in case of death. Relying on his claim, Dr. Salihi poses a question: why should family security be lawful in one system and not in the other system when the method of operation is practically same? M. Masum Billah (70-71) adds that relying on the above justification, it is admitted here that a life insurance policy is like a retirement pension scheme which has been widely introduced during the time of caliph Umar, and therefore, it is not an unlawful transaction.

2.2.7.1. Scholars against Insurance Replied Negatively in the Following Terms:

Even if we assume the legality of pension, an analogy cannot be drawn between pension and insurance because of the following differences:

Insurance is a commercial contract subject to specify principles overlapped by a number of ambiguities, while the system of pension is imposed by the state for the benefit of the workers in appreciation of their service, and amounts deducted from their monthly salary will be refunded. In contrast, the insurance company possesses the money paid and uses it only for its own benefits.

What is specified for the worker in the form of pension is regarded as a reward committed to by the benefactor responsible for the worker and his family. But this does not exist in insurance.

2.2.8. Mudarabah (Profit-Loss Sharing)

Mudarabah is an Islamic transaction often cited as being the most similar to insurance (Sami, 29). *Mudarabah* is defined (Lisan al-Arab: 2/32-33) as the case in which, for example, person A gives property to person B for trade. Both A and B share the profits at the conclusion of the commercial venture according to a percentage which has been set previously and is agreed to by both parties. Losses can be borne only by the investor, i.e., person A.

Mudarabah is not mentioned in the *Qur’an*, but, according to Mahmud Abu Saeed, it existed before Islam. Aliyaan seems to agree with this assumption, and relates that in the tribe of *quraysh*, the elderly had the money, while the young men were their traveling agents, and both sides shared the gains (1996: 119-131). *Mudarabah* is not mentioned in the *sunnah*, except for a tradition related by *Ibn Majah* on the authority of *Suhayb*, who said that the Prophet blessed the *muqaranah* transaction (interest-free loan). Although *mudarabah* seems to have no roots in the *sunnah*, it was widely practiced for long distance commercial trips before Islam, and therefore, jurists of

Hanafi, *Shafie* and *Maliki* schools discussed its nature. *Mudarabah* was the *hanafi* term used in Iraq, while the *Malikis* and *Shafies* called it *qira*, a term which was used in the Arabian Peninsula (quoted in Rispler, 76) . The *Hanafis* viewed *mudarabah* as a contract in its own right, while the *Shafies* and *Malikis* placed it between a partnership and a *locatio operarum* -a hire contract- (Gaiani, 251-252).

The question is: how much do insurance and *mudarabah* transactions really have in common?

As for life insurance, if the insured dies, his heirs receive large sum of money from the insurance company, even if he paid only one premium. In a *mudarabah* transaction, on the other hand, if the investor dies, his heirs receive only the amount which he invested.

Abd al-Sami al-Misri (251-252) views life insurance premiums as money invested through a *mudarabah* contract. As he describes it, the company traffics with the money, and shares profits with the insured. Moreover, if the insured is still alive after all the premiums have been paid, he receives the *mudarabah* capital plus profit, which is equivalent to endowment life insurance.

Insurance is similar to *mudarabah* in the sense that there are the insured and the company, or the investor and the agent. The insured investors provide the money, while the company agents invest it to the best of their knowledge. The company agents are free to do with the money everything they wish, as long as they are not negligent and as long as it does not contradict *Shari'ah* rulings.

The *Hanafis* permit a *mudarabah* with multiple investors and only one agent.¹ This could be compared to the insurance company which although has a separate contract with each insured, treats them all as one body for the purpose of calculating expenses, experience and investment return. *Mudarabah* of multiple investors can also be compared to group insurance, as the definition states: "Group insurance is a form of insurance that provides benefits to a number of persons under a single contract (Aliyan, 119)."

In the *mudarabah* the two parties decide the proportion of gain distribution before the agent sets out on the trip. In insurance, in order to distribute gain, the policy should be a "participating" one (Aliyan, 119).

2.2.8.1 Response from the Opponents

Dr. Shawkat Aliyaan rejects all comparisons between the two (Alyan, 119-131). He claims that while in *mudarabah* the profit is relative; in the insurance contract profit is fixed. Furthermore, he says that in a *mudarabah* contract, the owner of money bears all the losses himself; while in the insurance contract the insured does not share losses with the insurance company.

2.3. Preferable view

In our foregoing discussion, we have dealt with disagreement of jurists on life insurance, and arguments of its proponents and opponents. In this sub section, it is necessary to study and analyze the differences of these two groups and adopt what is closer to the spirit and essence of the *Shari'ah*. In order to make this easier and

appropriate, this sub-section will highlight some important clarifications which are given below:

2.3.1. Clarification of Proponents' Views on Life Insurance

Scholars, who have agreed on the principle and idea of life insurance, say that it depends on the principle of *bear the burden of each other*, which aims to help widows, orphans and dependents of the deceased from unexpected future material risks. They also say that insurance has become more important over the years with the advancement of civilization, industrialization, and increase of damage. Moreover, they agree that insurance, in general as known today with its present form and policy, is an innovation which was not known to the Muslim jurists in the past. They, however, claim that many Islamic transactions, such as *wadiah*, *kafalah*, *wakalah*, *hibah* etc. have similarities with the principle and idea of insurance. Furthermore, this is an act of *mudarabah* contract based on loss and profit sharing, which is a lawful business in Islam. In addition, they insist that the importance of insurance in general and life insurance in particular can never be avoided as they provide necessary financial securities and benefits to the individuals, societies, and states.

2.3.2. Clarification of Opponents' View on Life Insurance

Firstly: Scholars, who have rejected the permissibility of life insurance, say that it includes the elements of *gharar*, *maysir* and *riba*, which are prohibited in Islam. According to them, these elements in life insurance are essential, which cannot be avoided. They insist that the invalidity of life insurance in Islam is proved by the clear evidences and proofs of *Shari'ah*. They claim that this is an innovation which is different from *wadiah*, *wakalah*, *kafalah*, *jualah*, *mudarabah*, etc. They propose *zakah*, *sadaqah*, *waqf*, *ushr*, etc. as alternatives to the insurance in general and life insurance in particular. Furthermore, they argue that an Islamic government is eligible provide such financial securities to the individuals, societies as well as the state.

2.3.3. Clarification of the Philosophy of Different Opinions of Fuqaha' on Insurance

Based on different proofs of *Fuqaha'* in favor of or against insurance, it seems to us that two main ideologies worked for their different views on it. One is the ideology of the orthodox Muslims and the other is the ideology of reformist Muslims. To the orthodox Muslims, *Shari'ah* is still, as it has always been, divinely authoritative. To them, no code of conduct or even scale of values can be formulated by mere human reason: all necessity must be based on Divine Revelation. On the other hand, the reformist is a group of reform-minded Muslim thinkers intend to respond, rather than to react against the challenges of Western modernity. They seek to delineate an alternative to traditionalist position. They proclaim the need for Islamic reform. They blame the internal decline of Muslims, their loss of power, backwardness, and inability to respond effectively to European colonialism to a blind and unquestioned clinging to the past. They argue that Islam is capable of demonstrating its dynamism, flexibility, and adaptability. They believe in internal reform through a process of reinterpretation and selective adoption of western ideas and technology. In fact, there is no direct indication on insurance in the *Qur'an* or in a *Hadith*. Therefore, we assume that such different philosophies and ideologies of *Fuqaha'* have worked for their different views on life

insurance in Islam. If so, then what ideology should we adopt in terms of life insurance? Is it orthodox ideology that *Shari'ah* is still, as it has always been, divinely authoritative, therefore, life insurance is *harem*; or reformist belief, which maintains that “Islam is capable of demonstrating its dynamism, flexibility, and adaptability, and thus, internal reform should be through a process of reinterpretation and selective adoption of western ideas and technology”? Therefore, life insurance is *halal* as the unlawful elements in it are superficial, which can be avoided through the process of interpretation and Islamization of it.

In order to respond decisively to the above questions, we need to discuss a few more points in the following pages.

2.3.4. Is Life Insurance Different from Mutual Insurance?

Dr. Muhammad *Biltagi* and many others from opponents of life insurance have permitted mutual insurance because it is based on the principle of *tabarru'* or donation (Biltagi, 43). They have argued that “some *gharar* or uncertainties are acceptable in *Shari'ah* if they are based on the principle of *tabarru'* or donation, and therefore, mutual insurance is acceptable in Islam because it is based on the principle of *tabarru'* or donation” (Biltagi, 43). In this regard as we have seen that Dr. Rafiq Yunus al-Misri from proponents of life insurance, has remarked that some *gharar* or uncertainties are not only acceptable in *Shari'ah*, if it is based on *tabarru'* or donation but also acceptable even in a business transaction. For example, if anybody who lost his car says that “any one finds my lost car; he or she will get 10% of this car as a reward, according to *Shari'ah*, it is one type of agreement and transaction which is acceptable though there is uncertainty whether he will get this car or not. The *Shari'ah* has permitted it due to necessity. In addition, he has claimed that basically, mutual insurance is not *tabarru'* or donation but it is one type of business transaction. This is because, *tabarru'*, should not involve condition of getting back anything from the second party, whereas in mutual insurance, the participants pay premiums to the company with condition that they will get compensations in times of their difficulties. Therefore, there is no difference between life insurance and mutual insurance because both of them involve this condition. He has also remarked that the opponents of life insurance have opposed it because it aims at making profits; while they have accepted mutual insurance because it does not aim so. Then he has further asked whether making profit *haram* in Islam? To him, certainly, it is not, because, Islam has encouraged Muslims to be involved in businesses and to make profits out of them. So, why *ta'min tijari* in general and life insurance in particular should be *haram* in Islam?

2.3.5. Is life Insurance Similar to a Retirement Pension Scheme?

Al-Zarqa' and Rafiq Yunus al-Misri have confirmed that all contemporary scholars agreed on the validity of retirement pension scheme (Al-Misri, 90). Another contemporary scholar, Adil Salihi, similarly has acknowledged that “all scholars and sects of Islamic learning approved the concept of pension because it gives the subscriber security for himself and his family in the difficult circumstances of his leaving work or in case of death” (Salihi, 1995: 12). Relying on his claim, Salihi poses a question: why should family security be lawful in one system, i.e., retirement pension, and not in the other, i.e., life insurance, when the method of operation in both of them is practically the

same? Relying on this equation, it is admitted that “a life insurance is like a retirement pension scheme and there is no difference between them” (Al-Misri, 55).

2.3.6. Clarification of the Possibility to “Let People Put Their Money in Investments instead of Buying Insurance”!

Dr. Rafiq Yunus al- Misri, has raised an issue that some people would say that we do not need to buy insurance policy at all, instead we can invest our money in other investment companies where profits are more secured. Responding to this possibility, al-Misri says that by doing investment, individuals may make profits and can fulfill their personal needs. But, in case of major problems or natural disaster investments might not be much useful, while insurance can play a major role in such situations.

2.3.7. Reasons for Preference

After studying the arguments of proponents and opponents as well as the foregoing clarifications, the researcher has come to conclude and give preference to the view that life insurance is permissible in Islam, if some conditions are imposed on it and some modifications are incorporated in it to avoid some objections to it. The reasons for this preference and some of the proposed conditions for Muslims to practice life insurance are provided below:

First and foremost, we agree that the idea of life insurance depends on the principle of *bear the burden of each other*, which aims to help widows, orphans and dependents of the deceased from unexpected future material risks. This is in line with the saying of the Holy Prophet (p.b.u.h.). He (p.b.u.h.) advised every Muslim to help others at the time of hardships and difficulties as he said to the effect: “Whoever removes a worldly grief from a believer, Allah (s.w.t) will remove from him one of the grieves of the Day of Judgment. Whoever alleviate suffering of a needy person, Allah (s.w.t) will alleviate suffering from him in this world and the next world (Sahih Muslim, 1985:36).”

In addition, we agree that insurance, in general as known today with its present form and policy, is an innovation which was not known to the Muslim jurists in the past. But we maintain that many Islamic transactions, such as *wadiah kafalah*, *wakalah*, *hibah* etc. have similarities with the principle and idea of insurance. Furthermore, this is an act of *mudarabah* contract based on loss and profit sharing, which is a lawful business in Islam. In addition, we insist that the importance of insurance in general and life insurance in particular can never be avoided as they provide necessary financial securities and benefits to the individuals, societies, and states.

Regarding the involvement of the unlawful element of *gharar* in life insurance, we argue that such *gharar* is not an obstacle for the permissibility of life insurance in Islam due to its necessity. There are notable examples where Muslim jurists permitted some activities due to necessity of people for them, such as *jualah* agreement in Islam, which has some similarity with *gharar* (Al Misri, 67).

As for the claim of similarity between gambling and life insurance, we say that there is no similarity between them. This is because a life insurance policy is for the protection of the material welfare of the orphans, widows and other dependents (Billah, 63). Thus, it is a co-operative system, which aims to assist others (Al-Zarqa, 398). On

the other hand, gambling is a game, evil and aversion. Al- *Zarqa* ' says: "Gambling is a play based on luck, which aims to kill the moralities and efficiencies of human beings. Insurance, on the other hand, is not like that, rather, it is a system on the basis of which remedy of the consequences of disasters befallen on human life, wealth and their activities could be made (Al-Zarqa, 398)." Therefore, a life insurance policy is extremely contrary to the gambling, like fire is contrary to water (Billah, 63). Al- ÖarÊr has acknowledged that in the insurance policy there is safety against danger, whereas gambling creates danger, so how can an insurance policy be equal to gambling?

Moreover, we oppose the idea that "*riba* is involved in life insurance because the insurance companies invest most of their funds in interest-based securities" (Rosly, 498). We maintain that "The element of *riba* in it is superficial, not essential. This can be avoided through the process of interpretation and Islamization of it" (Al Misri, 50), i.e., many Islamic insurance companies should be formed, so that all of them would deal with other Islamic companies, not with conventional companies; and the participant's and company's money should be invested in *Shari'ah* based securities. We also do not agree with the idea that every incremental payment is interest. This is a baseless assumption as the *Shari'ah* does not regard absolutely every increment as interest. Money paid as premium does not have the nature of a loan, and the payment of a claim does not amount to returning the loan with an incremental amount that may be considered as interest. In the true spirit of it, a premium payment is a kind of co-operative contribution towards the availability of a useful social service. This spirit is manifest in mutual insurance and in state-controlled insurance. Even in the case of private insurance we cannot rightly call a premium a 'loan'. It must be considered rather as the price of a service to be rendered if and when needed" (Siddiqi, 35-36).

We also disagree with the view of opponents that "life insurance is not permissible in Islam because it aims at making profits; while mutual insurance is acceptable in Islam because it does not aim so, or it is based on the principle of *tabarru'* or donation". The essence of our disagreement is that "Basically, mutual insurance is not *tabarru'* or donation but it is one type of business transaction. This is because *tabarru'* should not involve condition of getting back anything from the second party, whereas in mutual insurance, the participants pay premiums to the company with condition that they will get compensations in times of their difficulties". Therefore, we claim that "there is no difference between life insurance and mutual insurance; rather it is one type of business transaction because both of them involve same condition of compensations for the participants in times of their difficulties (Al Misri, 50)."

Similarly, we agree with the view that "life insurance is similar to a retirement pension scheme" (Al Misri, 50). Al-*Zarqa* ' and Rafiq Yunus al-Misri have confirmed that all contemporary scholars agreed on the validity of retirement pension scheme. So, "why should family security be lawful in one system, i.e., retirement pension, and not in the other, i.e., life insurance, when the method of operation in both of them is practically the same"? (Billah, 70).

In addition, "insurance as a concept does not contradict with the principles of *Shari'ah*. In essence insurance is synonym to the system of mutual help in relation to the practice of blood money under the Arab tribal custom. The pooling of resources to help the needy is in fact in line with the principle of compensation and shared

responsibility among the community as practiced between the *Muhajirin* of Mecca and the *Ansar* of Madinah following the *hijrah* of the Prophet” (Yusuf, 1997: 1).

Although a Muslim must believe in any misfortune or catastrophe that befalls him as *qada* and *qadar* from Allah, and he must face these unfortunate events with resilience and strength of faith and patience, he must at the same time strive to avoid such events wherever possible and prepare to face the consequences should these events happened. This is possible through the Islamic life insurance.

In view of the fact that insurance is essential to serve the needs of banking, it is befitting therefore that Islamic insurance be used to protect the Islamic banking interests as well as the rights on the securities accepted by it. In this manner the Islamic banking transactions would be completely ‘Islamic’ (Ibid).

Moreover, life insurance policy is a welfare transaction aimed at compensating and providing material protection for, *inter alia*, the unfortunate offspring who have been left helpless, upon the death of deceased (policyholder or the assured). The prophet (*swa*) said: “Verily it is better for you to leave your offspring wealthy than to leave them poor asking others for help...”

Life insurance policy may constitute taking an initiative towards reducing the poverty rate and contributing towards one’s reasonable comfortable life without facing much difficulty. It is thus justified by the *Qur’anic* principle whereby Allah advised Muslims to seek a comfortable life from Him. He says to the effect: “Our Lord! Give us a comfortable life in this world and a comfortable life in the hereafter....” (*Al- Baqarah*, 2:201)

A life insurance policy may ensure mutual co-operation and brotherly feeling among people in society. This is because the assured pays the premium, which enables the insurer to invest, make a profit and ensure financial security for the assureds’ beneficiary. Such financial co-operation between both parties may build a strong brotherhood among them in a positive sense of economic well- being. Moreover, having a life insurance policy is a positive initiative by the assured towards better material status for his widow, offspring and others. Such mutual co-operation towards a positive goal is in fact encouraged by Allah (s.w.t.), who says to the effect: “*Sustain* a mutual co-operation among yourselves in righteousness and piety” (*Al-Ma’idah*, 5:1)

Many Islamic life insurance companies have been established in Sudan, Saudia Arabia, Bahrain, Bangladesh, Pakistan, Malaysia and other countries according to Islamic requirements of co-operation and solidarity, which make us to believe that the idea or principle of life insurance is absolutely in line with *Shari’ah* if it is free from *riba*.

2.4. Conditions for Preference

- 2.4.1. **Sincerity:** Parties involved in a life insurance policy must have a sincere objective before entering into an agreement that the policy is not for the purpose of material gain, but for a mutual financial technique of rescuing one against an unexpected loss, damage or peril.
- 2.4.2. **Investment Policy:** Participants’ premium contributions should not be invested in any *riba* based institution. Rather, they should be invested in

Shari'ah compliant investment funds which are now available in the market (Al Misri, 50).

- 2.4.3. **Business Policy:** In the business through investment of a portion of participants' premiums the principle of "profit-loss sharing" should be implemented, based on which both parties (insurance company and participants) should share both profit and loss.
- 2.4.4. **Accounting Standard:** In Islamic life insurance (family *takaful* accounting, the recognition of revenue income must be based on cash basis, in which income is recognized when cash is received; not on accrual basis in which income is recognized based on future anticipating. "This practice is crucial for the meaningful implementation of *al-mudarabah* principle, which forms the basis of the *aqd'*, where profits are shared between the participants and the *takaful* company when cash is received. Profit can only be shared and distributed based on the actual receipt. If the accounting practice is not based on cash, how could the process of sharing and distributing the profit is made"? (Abdul Rashid, 8)
- 2.4.5. **Surplus Distribution:** The surplus (excess money over participants' claims) should be repaid to the participants. It should not be distributed to the shareholders and company. This is because the AAIOFI Standard on *takÉful* states that the *Takaful* operator does not share in the (underwriting surplus). It also states that the underwriting surplus and its returns, less expenses, and payment of claims, remain the property (**milk**) of the policyholders, which is the distributable surplus. Based on these statements, some prophetic traditions on *hibah* as well as some jurists' opinions, Dr. Younes Soualhi remarks that "the underwriting surplus belongs exclusively to the participants"
- 2.4.6. **Surrender Benefits:** There should be surrender benefits in all types of life insurance and the portion of the PSA fund should be repaid to the participants.
- 2.4.7. **Transparency:** There should be transparency between company and participants. Everything, such as profits, losses, income, expenses, surpluses if any, should be clear to both company and participants. Surpluses should be repaid to the participants because they are the owner of them.
- 2.4.8. **Representatives:** There should be representatives of the participants in their life insurance company. It is not considered wrong, if the representatives share their knowledge and opinions with the company.
- 2.4.9. **Certificate:** On the date of enforcement of policy, all participants should be provided the "participation certificates" as proofs of their participation with company.
- 2.4.10. **Nomination:** The nominee in a life insurance policy should be treated as a mere trustee. He shall receive the benefits of the policy and distribute them among the legal heirs of the deceased in accordance with the principles of *Fara'id*.
- 2.4.11. **Cause of Death:** Under *takaful* policy, the cause of the death of the participant should not hinder the insurance company from paying the

benefits. The beneficiary (s) shall have the right to claim legitimate benefits from the operator of life insurance, regardless of whether the death of the participant is natural, caused by suicide or he has been killed while committing a crime.

References

- Al- Dasuqi, Muhammad Sayyed. (1967). *Al Ta'min Wa Mawqif al Shari'ah al Islamiyyah Minhu*. Cairo: n.d.
- Aliyyan, Dr. Shawkat, Muhammd. (1996). *Al-Ta'min fi al-Shari'ah wa al- Qanun*. Riyyi: Dar al- Shawaf.
- Al'iskandari, Abu al- Fadl. (1997). *Al-Ta'min wa Anwa'uhu al-Mualirah*. Suriya: Dar al- Isam.
- Al- Misri, Rafiq Yunus. (2001). *Al Khatar wa Ta'min*. Dimasqh: Dar al Qalam.
- Al-ÙabarÊ. (n.d.) *Jamiu al-Bayan an Ta'bil al-Qur'an*. Misr: Dar al-Ma'arif.
- Abdullah bin Zayd al- Mahmud. (1986). *Al- Ta'min Ala al-Hayat wa Bayna Butlanihi bil Barahini wa al- Bayynatt. Majallat Majmaa al- Fiqh al- IslÉmi*, Vol. 2.
- Ibn Abidin, Muhammad Amin. (1784–1836). *Hashiyat Radd al- Mukhtar ala al- durr al-Mukhtar*. Bayrut: Dar al – Fikri.
- Ahmad, Syaikh Mahmud Ahmad. (1977). *Economic of Islam: A Comparative Study*. Lahore: SH Publication.
- Ali, Mohammed. (1995, January). *Insurance and the Dialogue with Islam*. New Horizon.
- Ahmad, Geranmaye, “Life Insurance in Islam”, Paper presented at *the 1st International Summit on Islamic Insurance/ Takaful* in Dubai, United 'Arab Emirates, 11-12 November, 1996.
- Alhabsyi, Syed Othman, “The role and the responsibilities of the *Shari'aah* supervisory council”, Paper presented at the *1st International Summit on Islamic Insurance/Takaful*, Dubai, United 'Arab Emirates, 11-12 November, 1996.
- Billah, Mohd. Ma'sum. (2000). “*Islamic Insurance (Takaful)*”. Selangor: Ilmiah Publishers Sdn.Bhd..
- Billah, Mohd. Ma'sum. (2007). “*Applied Takaful and Modern Insurance: Law and Practice*”. Selangor: Sweet & Maxwell Asia. .

- David L, Bickelhaupt. (1983). *General Insurance*, (Illinois: Homewood, 1983)
- El-Ghazali, Abdel Hamid. (1994). *Profit versus Bank Interest in Economic Analysis and Islamic Law*. (IDB) Jeddah Saudi Arabia: Islamic Research and Training Institute.
- Gandy, Sami Gei. “*Insurance, a Possible Financial Intermediary in the Economic System*”, Paper presented at the third Seminar on Islamic Economic, The Catholic University of America, Washington D.C, 1990.
- Hadagha, Refat Mohammad. (1995). *Insurance Contract and its Provisions in the Islamic Law*. Unpublished Masters Thesis, International Islamic University Malaysia, Kuala Lumpur.
- Ibn Mohammad. (1983). *Issues in Islamic Economics*. Pakistan: Islamic Publication Ltd.
- Ibn Manḏur, M. Mukram. 1999, "*Lisan al-Arab*", cited in Razali Hj. Nawawi, *Islamic Law on Commercial Transaction*, Malaysia: CT Publication.
- Imam Muslim. (1999). *Sahihu al-Muslim*, Rendered into English: Addul Hamid Øiddiqi, Revised Edition. Delhi: Adam Publishers & Distributors.
- Khuan, Lee Kham. (1985). *Life Insurance in Malaysia*. (Kuala Lumpur: Life Association of Malaysia.
- Nik Ramlah Mahmood. (1997). *Takaful: The Islamic System of Mutual Insurance: The Malaysian Experience*. *Arab Law Quarterly*, Part.III.
- Naqvi, Syed Nawa Haider. (1981). *Ethics and Economics: An Islamic Synthesis*. UK: The Islamic Foundation.
- Noor, Hardinur Mohammed. (1996). Introduction to the General *Takaful* Business. *Takaful (Islamic Insurance) Concept and Operational System from the Practitioner's Perspective*. Kuala Lumpur: BIRT.
- Rispler, Verdit. (1985). *Insurance in the World of Islam: Origin, Problems and Current Practice*. Michigan: A Bell & Howell Company.
- Rosly, Saiful Azhar. (1995). *Islam and Life Insurance. Critical Issues on Islamic Banking and Financial Markets*. Kuala Lumpur: Dinamas Publishing.
- Rasyid, Syed Khalid. (1993). Islamization of Insurance: A Religio-Legal Experiment in Malaysia. *Religion and Law Review*, Vol. n, No. I, New Delhi: Institute of Objective Studies.

- Siddiqie, M.N. (1985). *Insurance in an Islamic Economy*. Leicester: Islamic Foundation.
- Sadiq, Chaudhry Mohamad. (1995). "Islamic Insurance (*Takaful*): Concept and Practice" in *Encyclopedia of Islamic Banking and Insurance*. London: Institute of Islamic Banking & Insurance.
- Samiullah, M. (1982). "Prohibition of Rib a (interest) & Insurance in the light of Islam", in *Islamic Studies*, Vol. 21.
- Thomas, Steven, 'Abdul Kadir. (1995). "What is Permissible Now"? in *The American Journal of Islamic Finance*, Singapore: First Printers.
- Ugi, Suhartu (1993). *Life Insurance in Malaysia: A Premium Comparison Between Islamic and Conventional Companies*, Unpublished Masters Thesis, International Islamic University Malaysia, Kuala Lumpur.
- Wahabah, al- Jul'ayli. (1986). Ta'min wa Iadat al- Ta'min. *Majallat Majma al- Fiqh al- Islami*, Vol. 2, no. 2.
- Yusuf, S.M. (1990). *Economic Justice in Islam*, IIU, Islamabad, Pakistan: Dawah Academy.
- Yusuf, Mohd Fadzli. "Analyzing the Development and Success of Takaful Worldwide". Paper presented at the *1st International Summit on Islamic Insurance/Takaful*, Dubai, United 'Arab Emirates, 11-12 November, 1996.
- Yusuf, Mohd Fadzli. (1996). "Brief Outline on the Concept and Operational System of *Takaful* Business (Islamic Insurance)", in *Takaful (Islamic Insurance) Concept and Operational System from the Practitioner's Perspective*, Kuala Lumpur: BIRT.
- Zulkifli, Ahmad Mazlan. (1996). "Working System of General *Takaful* Business," in *Takaful (Islamic Insurance) Concept and Operational System from the Practitioner's perspective*, Kuala Lumpur: BIRT.
- Zarqa', Mustafa Ahmad. (1962). *Aqd al-Ta'min*. (Damascus: n. , p.).