

Significance of Jurisprudential of Cooperative Insurance Contract

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Abstract--- *This study addressed the theoretical introductions concerning insurance jurisprudential rules, identified them, and demonstrated their importance and scholars' opinions about their validity. The study addressed jurisprudence adaptation for a cooperative insurance contract and its judgment and attempted to deduce it based on jurisprudence rules related to the cooperative insurance contract, including "no harm, no disadvantages," "the action was taken by the governor is based on public interest," "all the contracts of donations are not affected by impeaching validity," "subordinates are more exposed to forgiveness than others," "things are allowed," "need is equivalent to necessity, either a general or private," "ransom is imposed on the mindful adult in case of mistake and semi-deliberate acts." The study concluded with the necessity of employing the jurisprudential rules to find out the best solutions.*

Keywords--- *Jurisprudential, Rules, Cooperative, Insurance Contract.*

I. INTRODUCTION

All praise be to Allah, who included praise in His book of mercy and considered that praise as a supplication for those who merit paradise and peace and prayer be upon our prophet Mohammad Ibn Abdullah and all his family and companions.

It is well-known that studying jurisprudential rules has an essential role in keeping the diverse branches with few words and their role in identifying evidence; when the rule evidence is specified, the evidence of many of its sections will be determined. Therefore, this topic is as important as all the other sciences of Sharia.

The topics of insurance contracts have magnificent importance among the other legal sciences issues, in that they combine between transactions and worship. Since its emergence in the form of compensation, modern jurists and juristic groups agreed upon its inadmissibility due to the element of uncertainty related to not considering the consequences. Based on this jurisprudential situation, jurisprudential groups and scholars' commissions provided an alternative solution known as cooperative insurance.

Hence, it was necessary to demonstrate the cooperative insurance contract's ruling side in a separate study and highlight its applied and theoretical sides. This topic was investigated in the current study.

This study seeks to demonstrate the jurisprudential rules' role in recognizing the cooperative insurance contract's legal judgments. It aims at identifying the concepts of jurisprudential rules and cooperative insurance contracts as well as documenting a cooperative insurance contract according to the jurisprudential rules by demonstrating the relationship between them.

II. BRIEF BIOGRAPHICAL BACKGROUND

There is a paucity in the previous studies that addressed this topic, as long as the researcher knows, even though many studies addressed jurisprudential rules or cooperative insurance contracts. These studies included:

Kamel (2000), major jurisprudential rules, and the impact of their financial transactions, Omar Abdullah Kamel, Dar Al-Kotobi, Egypt, first edition, 2000. The researcher addressed the major jurisprudential rules and their legal origins and the subsidiary rules included under that.

Al-Saifi (2010), insurance for banking deposits in Islamic Banks. The researcher addressed the definition of cooperative insurance and banking deposits, then demonstrated the importance of banking-deposit insurance, the risks for doing so, the methods of encountering that, and the forms of banking-deposit insurance the legal judgments related to that.

Al-Tamimi, Al-Eisawi (2016), life insurance, and its impact on heritage. The researcher addressed life insurance and its impact on heritage by defining heritage and cooperative insurance. The researcher demonstrated the situation of that insurance among the other multiple sections, then mentioned the legal judgment and adaptation for cooperative and commercial insurance contracts to recognize its impact on heritage.

Al-Qorrah, Daghi (2010). The concept of cooperative insurance, its meaning, controls, and obstacles, and economic jurisprudential study. The study aimed to demonstrate the reality of cooperative insurance, demonstrating jurisprudential adaptation of it, identifying the difference between cooperative insurance and commercial insurance, and demonstrating the general controls and principles of cooperative insurance.

III. FINDING AND DISCUSSION

1. The First Chapter: The Jurisprudential Rules, their Definition, Importance, and Proof

Jurists define the two-word term based on two calculations: one is combined, and the other is a title, a noun

indicating a specific object. The introductions related to that object were investigated and demonstrated by researchers and scholars; therefore, we will mention them briefly without repetition or details.

Rule (linguistically): It has been derived from the root (qaad/ sat), which is the opposite of stood (Ibn Manthour, 711 AH). Therefore, the intended meaning is the basis and origin of a sure thing.

Rule (conceptually): For example, (Al-Gerjani, 740 AH) defined rule as (a whole issue applying to all the partial matters (Al-Gerjani, 740 AH).

The researchers suggest that the rule is a whole issue applying to the majority of its partial matters. In this vein, it is dealt with as exceptional; therefore, the definition gives a transparent image about the general concept of the rule before it is customized to a particular art or science, such as linguistics or the science of original rules.

The word jurisprudential refers to confinement and caution to sort out the non-jurisprudential items, such as the rules of religion and language, etc. Linguistically, jurisprudence is defined as knowing and understanding a particular matter; we say: did you know the issue? /Did you understand it? Jurisprudence is conceptually defined as (obtaining knowledge of the practical legal judgments acquired by detailed shreds of evidence).

The contemporary scholars defined jurisprudential rules as a compound term. For example, Shpeir defined it as (a whole practical legal issue that includes the judgments of its topic partials) (Shpeir, 2007). In this context, he expressed the jurisprudential rules in terms of being legal, whole, and related to the acts of those competent and including its partials by power. However, this definition is limited to being only legal restrictions relating only to the syntactic and logical rules; the (practical) limitation related to practical judgments, such as dogmatism and fundamentalism, and the (wholism) limitation related to partial judgments (Shpeir).

The importance of the jurisprudential rules: In the context of this requirement, we address several texts referring to the importance of jurisprudential rules for scholars and fundamentalists, including Al-Qorafi, who stated that: " these rules are important and beneficial in jurisprudence. When the jurist knows about it, he will gain more appreciation, the manifestations of jurisprudence will prevail and the approaches of legal opinion are demonstrated so that scholars are best distinguished from each other... "(Al-Qorafi).

Imam Ibn Rajab says: " these rules are important with great advantages, whereby they inform the jurist about the jurisprudential comments on the issues that he didn't consider, arrange the diverse issues in a single route, eliminate distracters and link the divergent issues with each other. "(Ibn Rajab). Imam Al-Zarkashi Al-Shafei, in his book " Al-Manthour Fi Al-Qawaid," stated that: "controlling the diverse prevailing issues in unified laws will keep and control them." (Al-Zarkashi). Al-Soyouti Al-Shafei, in his book "similarities and counterparts" stated that: "the art of similarities and counterparts is a great art through which we can realize the facts, manifestations, limitations, and secrets, where the jurist has the skill of understanding and mastering it, has the ability to documentation as well as the ability to identify the judgments of the non-written issues and the events that do not come to an end over time; therefore, some scholars suggested that: jurisprudence is the knowledge about counterparts." (Al-Zarkashi)

Therefore, jurisprudential rules have several advantages, including saving many branches with few words, developing jurisprudential ability among scholars and jurists, enabling them to be discrete, say legal opinions, document issues, and recognize the judgments of new events.

2. *The Second Chapter: Cooperative Insurance Contract; Jurisprudential Adaptation, and Proof*

Some jurists suggested that an insurance contract should be based on three contracts: mandate, speculation, and donation, while others added a collective contract and collateral contract. Some jurists adopted an insurance contract to three parts. The first part is the five contracts mentioned above, the second part is the cooperative insurance contract based on a specific way for compensation, and the third part is the cooperative insurance contract based on a specified donation. We will demonstrate each of them as follows:

The first part: the cooperative insurance contract is composed of several contracts (Daghi, 2009) as shown by the nature of the insurance process in the Islamic insurance firms, which is represented by:

1. Collective insurance contract (cooperative agreement): it is represented by the cooperative agreement which gathers the insurance parties, where the relationship between them is based on cooperation and exchange as well as tolerating risks and consequences that may affect anyone of them; it is a collective commitment.

2. Donation contract: it is the relationship that is established between insurers in the cooperative insurance contract based on donation. Each assured donates others with the due amount of compensation that should be paid to those adversely affected assured individuals. At the same time, the assured takes compensation when he is exposed to harm.

3. Mandate contract: the relationship organized by the agent (the insurance firm or the agent), under which the company manages the insurance processes on behalf of assured individuals.

4. Collateral contract: it is the mission through which the insurance company pays the due financial obligations to the adversely-affected individuals in case the due amount was not covered from the assured portion; the firm can retain the due amount from the installment paid by the assured, later on, considering it as an interest-free loan.

5. Speculation contract: the insurance company (speculator) invest the existing amount of insurance installments from the assured, where the profits are divided between them according to the agreement provided that the investment is made in the legislated methods. The portion of the company is added to the account of Shareholders, and the portion of the assured is added to the total of insurance installments that they have.

The second part: cooperative insurance contract: compensation of a specific type. This type of adaptation is demonstrated by Mostafa Al Zarqa who said: " the right adaptation that should be stated in cooperative

insurance (as well as salary system) is that it is not a private specific type of donation as suggested by Prof. Al-Dareer, but it is a specific type of compensation" (Al-Zarqa, 1961). Furthermore, each contractor takes a portion based on his contribution, where the insurer takes the insurance installments that are paid to him, while the assured takes a certain amount in compensation for the paid installments related to the expected risks. It is clear that Al Zarqa wanted to gather between commercial insurance and other types as he suggests that there are no differences between them, stating that: "there are no differences in all those claimed suspects between the commercial and cooperative contracts in terms of nature and content for each of them (Al-Zarqa)."

The third part: cooperative insurance contract: a donation of a specific type. Type of adaptation is demonstrated by Mohammad Al Ameen Al-Dareer who sought to contradict uncertainty in the cooperative insurance contract, especially when a donation is paid for a certain commitment and not for free as in the case of charitable insurance (Al-Ghanaym, 2010).

Al-Dareer stated that: "in my opinion, it is a specific type of donation that has no equivalent in the known contracts of donation in Islamic jurisprudence. Furthermore, insurance based on a paying fixed amount of money is seen as a new compensation contract with certain elements (Al-Dareer)". He added that if cooperative insurance were accompanied with uncertainty, as in the case of fixed installment, this type of uncertainty would not affect it since it is included in donation contracts which do not imply uncertainty; the intention is eliminating harm, but not profit.

The researchers suggest that the first part is more suitable for the jurisprudential adaptation of cooperative insurance contract since several contracts intervene to achieve the insurance process, known as the compound contracts (Hammad). Therefore, Al Zarqa statement that it is merely compensation is related to the legal cautions, as in the case of commercial insurance; however, the relationship between shareholders is based on donation and cannot be seen as compensation of a specific type. Furthermore, when donators pay money, they do not wait to take compensation for that. Therefore, those thinking that such cautions would affect its validity recommend not adopting it.

Al-Dareer's statement that it is a specific type of donation was based on the relationship that connects shareholders in cooperative insurance. Such a case had an impact on finding out a new contract that gathers those relationships with each other. However, this documentation should not be done in such away.

The judgment of cooperative insurance: The contemporary scholars addressed this issue and divided it as follows:

The pure cooperative insurance (cooperative associations, social welfare system pension system, health insurance). Scholars have no disagreement about its legitimacy (Al-Khafif), where it is considered as a donation contract as shown in jurisprudential adaptation and related to cooperation in doing favorable actions willingly to reduce the risk that may take place to any one of the shareholders; it aims to achieve profits as the case of fixed-

installment insurance companies (Al-Zuhaili, 2015). The Islamic Research Academy at Al-Azhar approved it in (1385 AH-1965A), the seventh Muslim Scholars Conference in (1392 AH - 1972 AD), and the Islamic Jurisprudence Academy in Makkah Al-Mukarramah (1398 AH - 1987 AD). The Islamic Research Academy at Al-Azhar concluded that: "the insurance performed by cooperative associations and shared by all the parties to satisfy the needs of members is legislated; it is included under cooperation for good deeds." Scholars, as well as Jurisprudential academies and conferences, advocate the legitimacy of this part as follows:

1. The Quranic verse {And cooperate in righteousness and piety, but do not cooperate in sin and transgression} (Surat Al-Ma'ida, verse: 2).

2. Prophet Mohammad peace be upon said: "The believers in their mutual kindness, compassion, and sympathy are just like one body when one of the limbs suffers, the whole body responds to it with wakefulness and fever" (Muslim, Sahih Muslim).

3. Prophet Mohammad peace be upon said: "A faithful believer to a faithful believer is like the bricks of a wall, enforcing each other" (Al-Bokhari, Sahih Al-Bokhari).

4. Prophet Mohammad peace be upon said: " When the people of Ash`ari tribe ran short of food during the holy battles, or the food of their families in Medina ran short, they would collect all their remaining food in one sheet and then distribute it among themselves equally by measuring it with a bowl. So, these people are from me, and I am from them." (Muslim, Sahih Muslim).

The evidence was taken from the Quranic verse and the prophet's Hadith urge people to cooperate and prevent damage and harm among each other. The idea of insurance is built upon pure cooperation based on pure donation.

5. This part does not include usury, gambling, uncertainty, or any other caution implied in commercial insurance which is based on compensation (Al-Qorra).

Advanced cooperative insurance (investment): it is the insurance done by Islamic insurance firms specialized in the field of insurance. However, scholars differed in two perspectives: the first one advocated the permissibility of cooperative insurance, including Mohammad Abu Zahra (Al Zarqa), Ali Al-Khafif (Al-Khafif), Mostafa AlZarqa (Al Zarqa), Mohammad Amin Al-Dareer (Al-Dareer), Wahba Al-Zahili (Al-Zuhaili), Mohammad Boltaji (Boltaji), Ali Al Qorra Daghi (Al-Qorra), Mahmoud Al-Sartawi (Al-Sartawi), Ali AlSawwa (Al-Sawwa), Mohammad Shpeir (Shpeir), Ahmad Molhim (Molhem) and Mohammad Mostafa Al-Shanqiti (Al-Shanqiti).

The second perspective, the inadmissibility of cooperative insurance due to the similarity between cooperative insurance and commercial insurance was advocated by scholars, such as Eissa Abdo (may God have mercy on him), Shawkat Olayyan, Suleiman bin Thanian, Mohammad Suleiman Al-Ashqa, and Hamad Hammad Abdulaziz Al-Hamad.

The Evidence of the First Team of Scholars Were as Follows

First, the Holy Quran: The Quranic verse {And cooperate in righteousness and piety, but do not cooperate in sin and transgression} (Surat Al-Ma'ida, verse, 2.).The Quranic verse {And do good that you may succeed} (Surat Al-Haj, verse77).

Second, the Prophetic Sunnah: Abu Hurairah narrated that the Messenger of Allah (peace be upon him) said:"If anyone relieves a Muslim believer from one of the hardships of this worldly life, Allah will relieve him of one of the hardships of the Day of Resurrection. If anyone makes it easy for the one who is indebted to him (while finding it difficult to repay), Allah will make it easy for him in this worldly life and the Hereafter, and if anyone conceals the faults of a Muslim, Allah will conceal his faults in this world and the Hereafter. Allah helps His slave as long as he helps his brother." (Muslim, Sahih Muslim). Al-Bukhari related to Abu Musa that the Prophet (peace be upon him) said, "When the people of Ash'ari tribe ran short of food during the holy battles, or the food of their families in Medina ran short, they would collect all their remaining food in one sheet and then distribute it among themselves equally by measuring it with a bowl. So, these people are from me, and I am from them." (Al-Bokhari, Sahih, Al-Bokhari).

The similarity of the previous texts is that cooperative insurance is included in all types of favor. All the previous texts show that cooperation should be in all domains and that the best evidence for permissibility is related to its intention of the authenticity of cooperation.

Third, Comprehensible

- Cooperative insurance is considered as a system that is based on donation, but no compensation. It was included under the intentions of Islamic Sharia which aims to satisfy the interests of people and save them from exploitation.

- Cooperative insurance is related to cooperation in righteousness and piety; the shareholder pays money as a kind of donation, where it is not affected by usury, gambling, uncertainty, and the relationship between insurance parties is known as (conditional donation) (Al-Qorra). AlQorra Daghi states that: "I think that conditional donation contract with certain conditions in favor of the donator or others, or the donation for reward is valid to be a good basis for the process of organizing the insurance contracts in general" (Al-Qorra).

The Evidence for the Second Perspective

The second team of scholars provided the jurists' evidence about the inadmissibility of commercial insurance as follows (Thonayan):

- 1- Insurance contract has high levels of uncertainty, and too much uncertainty will cancel compensation contracts due to lack of knowledge; Abu Hurairah narrated: Allah's Messenger (peace be upon him) forbade a

transaction determined by throwing stones, and the transaction which involves some uncertainty (Muslim).

The evidence here is that the person who shares in assurance could pay the installment amount for a long time without obtaining any compensation in comparison with another sharer who pays for a short time and gains compensation; indeed, this is considered as extreme uncertainty and affects the cooperative insurance contract (Molhem).

2- Cooperative insurance contract includes two types of usury (an increase of loan amount and exchange of unequal quantities), which is deprived in Islamic Sharia. Allah, the Almighty said in the Holy Quran: {O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers. If ye do it not, Take notice of war from Allah and His Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly} (Surat Al-Baqara, verse, 278-279'0).

The evidence here is that the sharer pays more than he would take in case a certain accident or event took place, and here usury applies with its two types. When he pays a certain amount of money, then an accident takes place, there will be a decrease or increase in comparison with the money that he paid; this is called an exchange of unequal quantities. When he pays installments, then he receives compensation, later on, there will be an increase in loan amount (Thonayan).

3- Cooperative insurance contract includes gambling, which is deprived in the Islamic Sharia since there is a possibility of loss or gain due to uncertainty in doing so. Allah, the Almighty said in the Holy Quran: {O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful}(Surat Al-Ma'ida, verse: 90).

The evidence here is that the sharer pays the insurance installment based on uncertainty; he could gain in case the expected risk took place or could lose in case the expected risk did not take place, and this is called gambling (Al-Ghanaym).

A cooperative insurance contract is a contract of compensation, but not a donation, in that each sharer has to donate to others (obligation), which is different from the contract based on donation, where one party donates while the other does not have to do so (Thonayan).

Discussion and Preference

First, the Evidence of Permissibility

1-These verses and Hadiths urge Muslims to cooperate and help each other, where no specific way was determined for cooperation, and the issue is optional (Al-Zarqa).

2-The act of the Ash`ari tribe in this Hadith indicates the cooperation between relatives to reduce the

impact of negative events on the family members; this act is included under the title of donation, without knowing whether to take little or more. Therefore, the elements of usury, gambling, and uncertainty are absent (Boltaji).

Second, the Evidence of Inadmissibility

1-Insurance contract is a donation contract, but not a compensation one, and thus little uncertainty is not forgiven.

2-The principle of cooperative insurance is based on cooperation and consolidation among people, as shown by the previous verses and Hadiths.

3- Donation in the cooperative insurance contract is organized, but no absolute.

4-The suspicion of usury in an insurance contract is related to (surplus) which is considered as a donation to compensate for the assured risk; usury exists in the cases of compensation, but not donation (Al-Sayid).

5-Gambling is depraved in compensation contracts; in this case, the contract is a donation with no gambling.

By examining the evidence of the two teams and discussing them, the researchers outweigh the first perspective which advocates the permissibility of advanced cooperative insurance for the following reasons:

- Strong evidence for those who permit cooperative insurance.
- The idea of cooperative insurance among the individuals of the Islamic nation is seen as a necessary component, and so it is permitted. Indeed, some cooperative insurance companies didn't apply it in the right way, and thus affected adversely on the opinions of some scientists; accordingly, we shouldn't deprave performing a certain thing because misapplying it by some cooperative insurance companies.
- People's need for this type of insurance that companies practice according to the rules of Islamic Sharia.

3. The Third Chapter: The Jurisprudential Rules Establishing Cooperative Insurance Contract

The first requirement: "no harm and no disadvantages" (Ibn Najim): This is one of the major jurisprudential rules discussed in Islamic jurisprudence.

The relationship between cooperative insurance and the rule "no harm and no disadvantages": Based on the previous discussion for the cooperative insurance contract, it is manifested that it is an idea for releasing risk and harm that affect individuals. This idea is acceptable as shown by those who permitted it concerning the validity of the cooperative insurance contract. The idea agrees with the intentions of the Islamic Sharia relating to

cooperation in doing good deeds and benefaction; it is also a requirement that is agreed upon by most judgments of Islamic Sharia. In his book (Al Waseet), Al-Sanhouri said: (it is organized cooperation between a group of people to eliminate risk, in that if some individuals were exposed to risk, others would cooperate with them to face that by paying a little amount of money to reduce the severity of risk) (Al-Sanhouri).

Mostafa Al Zarqa says that: (the existing concept in the minds of law scholars about the insurance system is that it is a cooperative system which leads to eliminating problems and dividing them by the total amount of installments instead of tolerating all the harm by one person. He adds that Islam, in all its legislations related to organizing social and economic life, aims to establish a society based on absolute cooperation for rights and duties) (Al Zarqa). Therefore, the idea of cooperative insurance about which jurists talked focuses on eliminating risks and creating an atmosphere of cooperation between people; Islam permits this idea according to the rule of "no harm and no disadvantage". All human beings are exposed to different kinds of risks that cannot be tackled without cooperation from others, following the Quranic verse: "Help ye one another in righteousness and piety, but help ye not one another in sin and rancor". Therefore, the jurisprudential academies, seminars, and conferences decided about the permissibility of cooperative insurance contracts.

The rule stating "the action taken by the governor is based on public interest" (Ibn Najim): This rule has many other phrases among the previous scholars. For example, "the governor's position from subordinates is like the guardian of the orphan's property" (Al-Shafe' i), « the governor's action based on conditions" (Al-Sarkhasi), or "the custodian should act by the interest of the minor" (Ibn Taimiah).

The origin of this rule refers to the words of Imam Shafe' I (Al-Shafe' i) based on the speech of Omar Ibn al-Khattab who said: Indeed, I placed myself on the property of Allah SWT as the property manager for the orphans. If I need it, I will take it. If I am no longer in need, I will give it back. The same goes for when I do not need it; then I would distance myself from it (from using it) (Al-Kharsani).

The relationship of the cooperative insurance contract with the rule stating" the action taken by the governor is based on public interest". It is well known that cooperative insurance aims to create a kind of assurance for participants in the face of risks that may affect their life and property. Given that it is a new contract, jurists discrete according to the legal jurisprudential controls and agreed upon its validity and permissibility. They divided it into several parts, including people's insurance, referred to as (cooperative social insurance) (Shpeir) which includes, pension system, the social welfare system, and health system. The government performs these types of insurance in order to satisfy the needs of employees and workers with no intention to gain profits (Shpeir). They represent contracts that are based on donation, but no compensation. When the government acts in such a way, it establishes social, political measures referred to as the financial, legal policy, which is based on the principle of managing resources and expenditures to satisfy the needs of the public. Wahba Al Zahili states that: (there is no objection to permit social insurance in urgent cases powerlessness, aging, unemployment, and pension, where the government is responsible for the welfare of its citizens in such cases (Al-Zohaili).

The rule stating " all the contracts of donations are not affected by impeaching their validity". Scholars induced this rule from Al Maliki doctrine (Al-Dareer), and it was more evident when mentioned by Al Qorafi in his book " the luminaries of lightning in the core differences ". In the twenty-fourth difference, he said that Malik, may Allah have mercy upon him, divided acts into three parts: the first one is compensation, which aims to increase the amount of money, where legislation required the necessity of avoiding harm and uncertainty that would, in turn, cause a loss in money in case of risk. The second part is benevolence, which does not aim to gain profits, such as charity and donation. Legislation encouraged people to do this charitable action whenever possible. The third part is neither compensation nor benevolence. The intention, in this case, is to establish tranquillity and empathy; it could be affected by uncertainty or harm (Al Qorafi). Ibn Taimiah agreed with Al-Maliki; he said that: harm affects compensation contracts, but not donations contracts (Ibn Taimiah).

The relationship between a cooperative insurance contract and the rule stating "all the contracts of donations are not affected by impeaching their validity". The relationship of the rule in relating the judgment of cooperative insurance is manifested by the interests included in the cooperative insurance contract, which is reducing risks. Since the contract is free from compensation, there will be no uncertainty, injustice, or usury (Al-Fangari). This contract is included within donation contracts that are not affected by uncertainty (The decision of the Council of Senior Scholars in the Kingdom of Saudi Arabia No. 51 dated 4/4/1397 AH), knowing that prophet Mohammad peace upon him prevented us from trading based on uncertainty (Muslim, Sahih Muslim). However, Al-Maliki doctrine decided that all donation contracts are not affected by uncertainty (Al Qorafi). Ibn Taimiah also agreed with this legal opinion (Ibn Taimiah). Therefore, the company's system stated that the paid installment for insurance is based on donations. Accordingly, installments are considered as donations from the assured, and the company should be committed to paying compensation in case of risk. This type of donation in Islamic Sharia is called "reward donation", which is a benefaction intended as a financial compensation (Al-Khorshi, considering it as a type of sale (Al-Nawawi).

The rule stating " subordinates are more exposed to forgiveness than others» (Al-Soyouti). The origin of this rule refers to the rule stating " subordinate is subordinate". This rule was mentioned using different phrases by some scholars, for example, Al Zarkashi stated that: "things are forgivable if they are subordinate, but unforgivable if they are intended" (Al-Zarkashi). Ibn Najeem also mentioned a similar statement by stating that "what is forgivable as implied is unforgivable as original"(Ibn Najim). The journal of legal judgments stated that: " what is forgivable for subordinate is unforgivable for principal" (The Journal of Legal judgments, p.54.), "implied certainty is forgiven, but the origin is unforgivable" (Ibn Al-Qayim, the superb of benefits, part 3, p. 27), and "what is accepted as subordinate is not accepted as independent" (Ibn Taimiah).

The previous rule implies that all the required legal conditions should be available in the source (the intended) as opposed to the subordinate that is no intended per se, where forgiveness is the dominant case as subordinates are forgiven in conditions related to uncertainty, unawareness, and so on. Regarding the meaning of subordinate (Ibn Taimiah), Al Fadani says: " it is the item belonging to the contracted-upon object in term of the

decision, while in case it was related to independence, it is not a subordinate, and thus it is not submitted to forgiveness (Al-Fadani).

The relationship of the cooperative insurance contract with the rule stating "subordinates are more exposed to forgiveness than others" The cooperative insurance contract is legally permitted. Due to the suspicions about it in terms of not being different from commercial insurance concerning uncertainty and exploitation, the rule mentioned above will apply. Moreover, the current financial contracts relating to scale, ren, etc. are included within the following:

1. A subordinate insurance contract, not intended originally in the contract.
2. Investment of the insurance surplus in the fund of document-holders in a traditional way.

The jurisprudential relationship for each of them, legally, is related to "subordination, but not the intention", where the aim exceeds the limits of just gaining profits. It is admissible, in jurisprudence, that "subordinates are more exposed to forgiveness than others", which means that subordinate is forgiven as long as it is subordinate, while the case does not apply when it is leading. We mentioned some of the rules relating to subordinates, such as the rule of similarities and counterparts, where Ibn Najim stated: " what is implicitly forgivable is unforgivable by origin."

Accordingly, an insurance contract is a subordinate to the original contract. If the contract was signed for a sure thing and insurance followed that, then insurance is a subordinate. Therefore, we can notice that cooperative insurance mainly aims to achieve people's interests and eliminate their burdens.

The rule stating "things are allowed"(Al-Sarkhasi). This rule was mentioned in different words, including:

Things are allowed, depraved, or refused (AlZarkashi).

Things are permitted (AlZarkashi)

The solution is the origin of things (Ibn Abdin).

Actions are allowed (Ibn Al-Qayim).

The rule applies that Allah, the Almighty permitted many things, prohibited many things, and did not provide the judgments of others. The judgment that must be issued concerning the non-mentioned issues is permissibility as well as the denial of embarrassment until the evidence states inadmissibility and prevention (Al-Borno).

The relationship of the cooperative insurance contract with the rule stating "things are allowed". We previously mentioned the judgment of cooperative insurance and the controversial issues among scholars. Based on that, we concluded with the permissibility of cooperative insurance with certain conditions, such as being free from usury and being based on cooperation; therefore, it is away from dissipation, where it has advocated it correctly.

When considering the issuance of an absolute judgment about contract among scholars, the idea of new contracts is not well-accommodated since the analogy is used to come up with the appropriate provider based on previous judgments. Therefore, some scholars would give a legal opinion of inadmissibility.

The topic of the cooperative insurance contract is one of the contemporary applications to the rule stating "contracts are allowed". So, a cooperative contract is permitted, and this judgment is valid until definitive evidence is induced about its inadmissibility. Indeed, the rule stating "contracts are allowed" is considered as legal evidence for the permissibility of insurance contracts (Bohai's). The legal controls are considered as a response to those who do not consider the jurisprudential rule as legal evidence; they are restricted to the negation of the legal violation.

The rule stating "ransom is imposed on the mindful adult in case of mistake and semi-deliberate acts" (Bohai's). If we look at the topics of ransom and sane, especially in the ruling side, we find that the previous rule concerning the sane is merely one part of the jurisprudential rules relating to this topic. Indeed, several forms were cited in terms of sane and insane, including:

- If the property of certain people were capable enough to mind, it would not exceed them to those coming after them (Ibn Qodama).
- The ransom payer does not hold a particular condition (Ibn Qodama).
- The ransom payers are not submitted to deliberate action (Ibn Abdin).

The rule implies that the original case among jurists: Hanbali, Hanafi, and Shafe' I (Al-Kasani) imply that the faulty semi-deliberate ransom extends to three years to reduce the burden on ransom-payer without the offender's money as a type of cooperation. The ransom-payer is the one who pays ransom and ransom was called a mind since it protects blood. Al-Maliki regarded that as deliberate (Ibn Jizi).

The relationship of the cooperative insurance contract with the rule stating "ransom is imposed on the mindful adult in case of mistake and semi-deliberate acts". Before addressing the relationship between the rule and cooperative insurance contract, we should raise a question stating that "can the companies of cooperative insurance replace the ransom-payer? Indeed, this issue is controversial among jurists, as follows:

First, Abdul Qadir Al-Amari and Mohammad Ata Al-Sayid (The Journal of the Islamic jurisprudence Academy, eighth circle, 8th edition, 1994) stated that the issue of paying the ransom might change based on traditions by the following:

The person committing a particular offense cannot afford to pay the ransom on his own since not all people are rich. The government cannot also afford to pay ransom for most people from the state's treasury when they cannot afford that (The Journal of the Islamic jurisprudence Academy, eighth circle, 8th edition, 1994). Mohammad Ata Al-Sayid adds that when the prophet peace is upon him noticed cooperation and consolidation concerning the matters of ransom paying; he permitted that. However, things became different in the current time in that the tribal connections among people became weaker, and relatives are less consolidated with each other, mostly when things are related to paying money. Therefore, as jurists, we noticed that it is necessary to address this issue from a broader perspective relating to insurance (The Journal of the Islamic jurisprudence Academy, eighth circle, 8th edition, 1994).

Second, Abdullah Bassam suggested that cooperative insurance companies cannot perform the role of ransom payer, since it is different based on several perspectives:

1- Fanaticism is common among relatives.

2- Tribalism is related to lineage consolidation, which has its roots and origins; this is absent among participants in professions and business.

3- The existence of kinship ties among relatives, a case that is absent among sharers in professions and business (The Journal of the Islamic jurisprudence Academy, eighth circle, 8th edition, 1994).

We may respond to the saying of Abdullah Ibn Bassam by suggesting that his suggestion is right in the tribal societies. In contrast, the urban societies substitute that by establishing cooperative associations to create a state of cooperation among them (The Journal of Sharia and Law Sciences, May 2009).

Third, Taqi Adding Al Othmani differentiated between lifestyles in communities; ransom paying is tribal in the tribal communities, while insurance companies do the job in non-tribal communities prevailing and this is the prevailing case in most Islamic countries. This is demonstrated by the action of Omar Ibn Al-Khattab, who submitted the issue of ransom paying to the people of the tribunal, who do not belong to a specific tribe. Therefore, we may confirm that the actual standard in determining ransom paying is cooperation (The Journal of Sharia and Law Sciences, Vol.36, Issue 1, May 2009).

Fourth: Abdul Qadir Odeh suggested that the state may afford to pay the ransom on behalf of those who cannot pay it by imposing individual taxes for these types of expenses. The Western countries assigned specific funds for this purpose. Since the government is committed to taking care of poor and unemployed people, it is more feasible for it to be committed to compensate the heirs of the murdered (Odeh).

We may respond to Al-Sheikh Odeh by suggesting that what he said is similar to the intention of Sharia concerning the ransom-paying system. This system is achieved currently in cooperative insurance companies. Moreover, cooperative insurance companies work according to administrative laws and regulations set by the state

and thus could be considered as one of the legal measures that are performed to achieve the interests of people related to legal cooperation (Al-Zoqaili).

Discussion and Preference

The Perspective of Taqi Addine Al Othmani is more preferred based on the different nature of communities; the societies based on cooperation under the tribal concept are different from the urban societies that are not governed by such a tribal system and dependent on cooperative companies, where these companies represent the ransom-paying party. The shreds of evidence related to that are diverse and similar to the pieces of evidence of cooperative insurance legitimacy, including (Al-Zoqaili):

1- Accidental offenses in the period of the prophet peace are upon him and the successive periods are not measured analogously to that in the current era, mainly that the road accidents taking place currently result in numerous death cases. Furthermore, the majority of drivers committing these accidents are poor and cannot pay the ransom without the assistance of cooperative companies.

2- A cooperative insurance contract is a donation contract mainly aiming at reducing expected risks by paying a certain amount of money in compensation to harm, which is similar to distributing the amount of ransom to the individuals of the tribe. Collecting the ransom's amount is not exclusive for the ransom-paying party as others could perform it. The Ransom-paying party is not intended per se, in that the intended action is related to cooperation, which exists in this type of insurance.

3- Substituting ransom-paying party by cooperative insurance companies in paying the accidental crime ransom is an optimal way to satisfy needs in the light of the recent developments related to extended divergence among people and weak links between them.

Furthermore, the existence of ransom-paying systems in Islamic jurisprudence is an excellent example of the legitimacy of cooperative insurance. The relationship between the previous jurisprudential rule and cooperative insurance contract is inevitably achieved, where accidental murder ransom is imposed on the family or tribe's members, and risks are distributed to the participants in cooperative insurance. Al Zarqa, may Allah have mercy upon him, stated that: "ransom-paying system is a good habit that was prevalent in the pre-Islamic period about distributing financial costs among individuals. Legislation approved this idea due to the public interest achieved through it and regarded it as an obligatory one in accidental murder crimes". He also added, " in analogy, the similarity is sufficient between the measured and measured-upon item in the judgment's focal point relating to reason; this can be noticed in Islamic ransom-paying system as well as the new insurance system in some of its branches" (Al Zarqa).

The rule stating "what is insured or not insured to be discharged from shipping". (Al-Qorafi): The implied meaning in the rule is that if they were afraid of a total loss, they would throw some cargo to protect themselves in the first place. Malik, may Allah have mercy upon him, stated that: " if some cargo was discharged to

avoid harm, other non-affected traders on the same ship should participate in compensating the harmed party for his loss, since the disposed of cargo aimed at protecting their goods. So, they should estimate the amount of loss and divide the portion of compensation equally among them based on the share of each of them" (Al-Qorafi).

The relationship of the cooperative insurance contract with the rule stating "what is insured or not insured to be discharged from shipping": The idea of discharging some cargo from the ship to save the life of its passengers is an excellent example of the legitimacy of cooperative insurance, where the passengers are traveling onboard the ship share risks; they cooperate to face the urgent cases that entail cooperation. Cooperative insurance is based on the principle of sharing risks; it is like the ship and participants are like passengers and the risk which may take place to one of the participants is similar to the risk that may happen to the ship and requires cooperation to face it.

The statement of Imam Malik, may Allah have mercy upon him, " if some cargo was discharged to avoid harm, other non-affected passengers on the same ship ..." (Al-Qorafi) is related to affording the individual's loss by distributing that to a group of people; this is the idea on which cooperative insurance was based (Boltaji), which lies within the rule stating " what is insured or not insured to be discharged from shipping".

IV. CONCLUSION

This study addressed the topic of cooperative insurance in terms of jurisprudential rules. The study demonstrated the different jurisprudential aspects of this type of insurance and displayed all the perspectives that discussed the issue. The study aimed to create jurisprudential standards that include this type of insurance. The study also attempted to compare cooperative insurance and (legal ransom). After investigating the opinions, the study concluded the following:

- Advanced cooperative insurance is a compound contract of several other contracts, represented by cooperation contract, donation contract, agency contract, speculation, and collateral contract.
- The legitimacy of progressive cooperative insurance managed by companies is controversial; the researchers agree upon its legitimacy according to the legal controls.
- Establishing the origin of the cooperative insurance contract in terms of the ruling side according to the previous jurisprudential rules.

The researcher recommends paying more attention to addressing the issues relating to an insurance contract in the Islamic companies in each new transaction while taking into consideration the legal controls.

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