

The Fiqh-Based Views Of Sheikh Mustafa Al-Zarqa In Terms Of Insurance

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ABSTRACT

This study aims to explore the impact of fiqh-based views of Sheikh Mustafa Al-Zarqa on insurance contracts. It aims to identify the aspects of agreement and disagreement between the fiqh-based views of Sheikh Mustafa Al-Zarqa in this regard and other views. In terms of the fiqh-based views of Sheikh Mustafa Al-Zarqa in terms of insurance, the researchers found that the name of this Sheikh has been always linked with considering insurance halal. The latter Sheikh states – in his writings and Fatawi- that insurance is halal. He suggests that insurance of all type is halal. That applies to insurance on things, insurance against liability, and life insurance. In addition to claiming that insurance is halal, the latter Sheikh believes that insurance is Wajib (obligatory) in some cases in order to preserve lives, or properties (e.g. orphans' properties). He sheds a light on the proofs provided by the ones who consider the business insurance contract haram. He sheds a light on the proofs provided by the ones who consider some types of insurance haram and other types of insurance halal. He confirms that the insurance contract is a form of compensation contract. He adds that such compensations aims at providing both of the contract parties with benefits. To illustrate more, the insurance company shall receive the installments paid by the insured people. As for the insured people, they shall enjoy a sense of security against risks. That is because the insured people shall get a compensation in case they suffered from any damage.

INTRODUCTION

The scholar Sheikh Mustafa al-Zarqa is considered one of the pioneers of Islamic thought in the last century, as he is a profound jurist, with great talent, who possessed the ability to relate and analyze, delve into the depths of texts, and understand the sayings of jurists. The old jurists, until he became proficient in fiqh, and was able to know the poor from the fat, the weak from the strong, the good from the corrupt, and he had a great jurisprudential faculty, and he left us a great scientific wealth in various fields, especially in the field of Islamic economics.

The term insurance, in its modern concept and in its forms and forms that are currently available, is - as Sheikh Mustafa Al-Zarqa sees it, "a multi-method and image-saving method for immunizing a person against the various risks that are expected in his life or in the course of his activities and his economic effectiveness. Potentially unavoidable, such as drowning and burning, crippling disease, the loss of some of the essential organs in the work necessary to practice the aspects of human activity, and what was unnatural, but from burglary, such as theft, murder, shock, and other types of risks and their various forms affecting the life of a person, his pursuit and the life of his family. (Al Zarqa Mustafa,1976).

The issue of insurance is one of the most controversial topics in Islamic economics. Until this moment, contemporary Muslim thinkers have not reached an agreed formula on the legality of insurance, whether among economics, law or Sharia scholars. Opinions diverged between them, especially between two parts, one of which has a modern legal composition, and the other part is purely legal. (Ata Allah, 2001).

Sheikh Al-Zarqa explains the difference in opinion between the jurists who build their opinion on insurance from an Islamic point of view, and contemporary Sharia jurists who believe that insurance is absolutely forbidden, that the jurists view insurance as "a form of gambling and betting in which the fixed profit of the insurance company that plays the role of the yasser * The one who manages the game, and mixes it with usury, whose actions do not stop him, so it was natural for the judgments of the two teams to differ as long as the basic building on which the insurance system is based contradicts its concept of this opposite for each. (Al Zarqa Mustafa,1984).

STATEMENT OF PROBLEM

The fiqh of Sheikh Mustafa Al-Zarqa included many Islamic solutions for financial transactions based on a stock of knowledge, science and fiqh owned by Sheikh Al-Zarqa through his studies and

discipleship at the hands of many Muslim thinkers. The fatwas of Sheikh Al-Zarqa and his books included an explanation and analysis of many jurisprudential fiqh on Islamic financial transactions, which would contribute to the development of Islamic financial work at any time, based on the fact that the Islamic approach is suitable for facilitating human life at any time, as was the consensus of many Islamic jurists and thinkers. Here the problematic of this study revolves around the following question: What are the most prominent features of Sheikh Mustafa al-Zarqa's fiqh in insurance?

The Importance Of The Study

Studies in Islamic financial fiqh represent a special importance for researchers, in order to know the various aspects of the cultural legacy of the Islamic economic system, and the jurisprudential rooting for it by examining the scientific output of a group of Islamic economists throughout its ancient and contemporary history, which helps in building an economic theory that constitutes the reference for all transactions. Islamic finance today, and in the future, with the rapid changes in economic and financial approaches, and the requirements to adapt to it in accordance with Islamic law. With the emergence of discrepancies and differences among the jurists in each era, and facing every new thing regarding the development of daily transactions, especially those related to economic aspects, there was a famous opinion of Sheikh Al-Zarqa when he said: "The legal rulings that change with the change of time, no matter how they change with the difference of time, the principle There is one thing in it, which is to fulfill the right, bring interests, and ward off evil, and the change of rulings does not change except by changing the means and methods that lead to the end of the Shar'a. Product, and I succeed in correcting treatment." (Al Zarqa Mustafa, 1998).

Sheikh Mustafa Al-Zarqa wanted to show that the Sharia includes constants and variables, so the constants cannot be approached. As for the presumptive rulings, they were not determined by the Sharia, but rather they were left absolute, so that the jurists at all times could choose what is the best, in a way that does not contradict the principles and principles of Islamic law, then this change is due to a change in norms, circumstances and interests, over time, or to the different environments in The same time, this change is to fulfill the right, bring interests, and ward off evil. So a change is a change in the means and tools that reach the goal and purpose of the Al Shar'a and it is not a change to the aims and general goals of the law.

Based on the foregoing, it can be said that the importance of this research stems from the fact that it tries to present a discussion of the visions and perceptions left by Sheikh Al-Zarqa with regard to the issue of insurance, since Sheikh Al-Zarqa is one of the most important ones who called for the necessity of adapting to the changes and financial changes to suit the changes of the modern era without contradicting the constants. And the legal principles, which opens more horizons towards finding new Islamic solutions to financial problems, depending on the ideas, visions and perceptions he left in the various fields of Islamic economic work.

Previous Studies

Through research and exploration in Jordanian university libraries and public libraries and through online databases, the researchers noted that there were no previous studies dealing with Sheikh Al-Zarqa's fiqh in insurance, and only what Sheikh Zarqa himself wrote in this field was available, in a book titled "The Insurance System Its Reality." And the legal opinion about it "and a research entitled" The insurance system, its position in the economic field and the position of Islamic law on it "in addition to some researches that deal with certain topics of Sheikh Al-Zarqa, including two academic studies, one discussing the defects of Al-Rida and their impact on the contractual will of Sheikh Mustafa Al-Zarqa, and the second talking about the theory The contract according to Sheikh Mustafa Al-Zarqa and his most prominent scholarly contributions, and his jurisprudential views on it compared to the opinions of advanced jurists, and as far as I know, they are the only two studies that dealt with one of his views that contributed to building Islamic banking and financial fiqh . And recent studies that dealt with some aspects of Sheikh Al-Zarqa's thought are:

First: The study of Sabah and Al-Ajouri in 2014 entitled "Defects of Al-Rida and their Impact on the Decadal Will of Fiqh Sheikh Mustafa Al-Zarqa: A Comparative Study".

The study showed that Sheikh Mustafa Al-Zarqa has a smooth and distinct style in dealing with jurisprudential issues, regardless of verbal complexity. And that the defects in the contract are divided into two parts: defects accompanying the formation of the contract, or arising due to an emergency after the formation of the contract but have an effect on the previous satisfaction. And that the coerced contract valid is dependent on the authorization of the obliged. The study also showed that the error has an effect on contracts, but it took into account Sheikh Zarqa's opinion that two important matters should be taken into consideration: the first: the stability of the deal, and the second: respecting the real will of the contractor. Sheikh Mustafa Al-Zarqa was unique in citing the urgent defects of satisfaction due to the imbalance of implementation. Sheikh Al-Zarqa believes that in the event that the deal is separated from the buyer and since he has bought the whole, only some have been fulfilled, so he gives the buyer a choice to take the remainder with his share of the price or to void the contract.

Second: Al-Ajouri study in 2013 entitled *The Theory of the Contract by Fiqh Al Sheikh Mustafa Al-Zarqa: A Comparative Study*.

Through this study, the researcher tried to shed light on the most important issues of contract theory, showing the most prominent scientific contributions of Sheikh Mustafa Al-Zarqa, and his jurisprudential views on it compared to the opinions of advanced jurists. The study included introducing Sheikh Mustafa Al-Zarqa, in terms of his birth, upbringing, and scientific and jurisprudential output. It also included aspects of Islamic law's interest in contracts as theory and order. In this study, the will was defined linguistically and idiomatically, its divisions, and its role in establishing contracts, as well as the authority of the will. The study dealt with the general effects of the contract, which are: enforcement, binding and obligatory. The defects of the satisfaction accompanying the birth of the contract were dealt with, and the preferences of Sheikh Zarqa were mentioned in the various jurisprudential issues related to it.

The researcher dealt with the termination of the contract and the dissolution of the contract, its nullity, and the expiry of the obligation, and a distinction was made between dissolution and nullity. And the origin of the dispute between the jurists is to differentiate between false and corrupt.

The researcher talked about the divisions of contracts and their forms, as the study intended to explain the difference of jurists regarding the creation of new contracts that are not named Sharia and dealt with images from contracts emerging in the modern era as illustrative examples of the contemporary fiqh position of Sheikh Mustafa Al-Zarqa, the most prominent of which was the insurance contract. The queen of Sheikh Mustafa al-Zarqa al-Faqih emerged in this matter by adopting the ruling that a commercial insurance contract is permissible, and by discussing the evidence, I concluded that the ruling for such contracts is more likely.

Third: Abu al-Basal's 2010 study entitled "Mustafa Ahmad al-Zarqa ... the Jurist of the Age and the Sheikh of Jurists".

This study provided a review of a set of information gathered from a number of papers, articles and lectures left by Sheikh Al-Zarqa, and the aim of this presentation is to provide a brief general definition of Sheikh Al-Zarqa, and the author of the study is one of those who accompanied Sheikh Al-Zarqa and taught him, and he had a great impact in changing his life path Scientific, and because the author was deeply affected by Sheikh Al-Zarqa and his love for him, he used to record every sign and entry, and every word, joke, or scientific or literary joke that the Sheikh mentioned in his lectures or outside, and the author gathered many papers, poems, and letters, which the Sheikh used to send him The blue.

The study consists of two chapters, the first chapter of which deals with profiles of Sheikh Al-Zarqa's neighborhood, and articles written by a group of writers about him. While the second chapter deals with an introduction to the books of Sheikh Al-Zarqa, where the author of the book reviews the most important ideas dealt with in the books of Al-Zarqa.

Fourth, Abboud's 2003 study, entitled "The Fiqh Method of Sheikh Mustafa Al-Zarqa".

This study deals with the jurisprudential and fundamentalist approach of Sheikh Mustafa Al-Zarqa through his jurisprudential works. The study talked about the life of the sheikh, his scientific

biography, the age in which he lived, his sheikhs, and its effects. And I dealt with his approach to the fundamentals through his writings on this topic, whether the original sources are the book, the Sunnah, Ijma and al-Qiyas, or the dependency, which is desirability, reclamation and custom. The study showed the Sheikh's approach to fiqh from the theoretical point of view, as well as the applied process, and dealt with the fiqh of Sheikh Zarqa and his position on it, and his opinion on the jurisprudential schools. Finally, the method of the Sheikh's concern with civil laws and how to build them from Islamic fiqh was reviewed.

STUDY METHODOLOGY

The Study Is Based On The Following Approaches

First: The Descriptive Approach: This approach is considered one of the most appropriate scientific research methodologies to study the fiqh of Sheikh Zarqa in insurance contracts, and it is the first step towards achieving a correct scientific understanding, as through it we are able to grasp all the dimensions of this fiqh, define it, and describe and depict all its characteristics and features with all accuracy. And that is by gathering information about these characteristics and particles in a quantitative and qualitative manner, then classifying and classifying this information to reach the accurate facts contained in this thought, as it is in reality, without entering into an analysis of the causes and motives of this reality, or the factors affecting it.

Second: The Analytical Approach: The attempt to properly understand Sheikh Mustafa al-Zarqa's fiqh in insurance, contained in his books and fatwas, requires the use of the scientific analysis method, with the aim of being able to read, examine, analyze, and interpret the data provided by these books and fatwas, in a way that enables the researcher to reach an understanding accurate for the perceptions contained in this literature on insurance ideas.

Third: The Comparative Approach: The importance of this approach is summarized in the current study by comparing the jurisprudential propositions about insurance contracts, in the fiqh of Sheikh Mustafa Al-Zarqa with the various jurisprudential propositions, and finding elements of consistency and contradiction that lead to firm conclusions about Sheikh Zarqa's fiqh in insurance and the methodology for dealing with changing data in This field is currently and in the future.

Commercial Insurance In The The Fiqh-Based Views Of Sheikh Mustafa Al-Zarqa

The name of Sheikh Mustafa Al-Zarqa was associated with the permissibility of insurance, and he himself declared that, and confirmed this in his writings on insurance and in his fatwa. Sheikh Al-Zarqa has permitted all kinds of insurance: insurance on things, against liability, and insurance after death, which is mistakenly called "life insurance."

Sheikh Mustafa Al-Zarqa was not satisfied with the permissibility, but also went further, seeing that insurance "becomes an obligation in some cases, in order to protect lives, and some properties such as orphans' properties and endowments."

Before reviewing the distinction or difference that characterized Sheikh Mustafa Al-Zarqa's position on insurance, the researcher reviews some of the basic concepts and legal adjustments related to the subject of insurance. (Al Zarqa Mustafa,1962).

The Concept Of Insurance

Insurance in the language is taken from the trust that is against betrayal, so it is said: He insured insurance, entrusted and entrusted him, and so-and-so secured such-and-such: that is, he trusted him and reassured him, or made him trustworthy over him.

And insurance is a term denoting a special contract by which insurance companies pay an amount in the event of a specific accident to a person who pays them a portion of the money.

And insurance is from security as well, which is self-tranquility, the elimination of fear, and the basic principle is that it is used in the stillness and reassurance of the heart, and it is against fear and panic

In the terminology, insurance is defined as "a contract concluded between two parties, one of which is called the insured and the other is called the insured. Other finances paid by the insured to the insured.(Jabra, 2015).

The Arabic Language Academy defined insurance as "a contract that one of the two parties, who is the insured, is obligated by the other party, who is the trustee, to perform what is agreed upon upon fulfillment of a condition or deadline in return for a known cash return. (Al Dasoqi,1967).

As for the definition of the Supreme Council of Islamic Affairs, it was more accurate as it defined insurance as: "A contract between a trustee and an insured professional body, requiring the first to pay the second in known financial installments, or one payment, in exchange for bearing the risk of a risk that may be insured by paying the insured person or the beneficiary. From insurance an estimated financial compensation if the insured risk is realized. (jasim,2015).

The insurance contract is considered one of the most controversial Islamic financial instruments between supporters and deniers, and this may be due to the fact that it is strange in features and characteristics about Muslim contracts, as some see. Finance was not present at the time, and necessity did not require it at that time.

Insurance, as a social idea, is an acceptable and welcome system of course, as it is cooperation between a group of people to pay risks that threaten them, so that if some of them are affected, they cooperate to break it up in exchange for a small amount that they provide. Relatives; And other examples of cooperation between members of society. (Al-Ajouri,2014).

The increasing risks that threaten souls and money in the modern era have made insurance a paramount necessity to mitigate the effects of these risks, and therefore it was formulated in technical templates that are considered relatively modern, as it was not considered by the early jurists, which led to The difference of opinion in Islamic fiqh in the current era between permissible for all or some of its forms and preventing it or some of its forms.

The insurance contract is one of the new contracts in Islamic financial dealings, and it has no basis in Islamic fiqh , although some of the jurists have touched on its meaning when talking about security, despite the difference between them, where the guarantee does not require a counterpart. Ibn Abdin mentioned it in his footnote under the name "Sukra". Ibn Abdin was famous for being the first to issue a fatwa that an insurance contract is not permissible. (Al Baqmi,2013).

Types Of Insurance

In terms of form, insurance is divided into two types:

First: reciprocal or cooperative insurance: It is a system in which a group of individuals who face a similar risk subscribe, so that each of them provides a certain amount in the form of a subscription, and the sum of these sums is sufficient to compensate those of these individuals who are exposed to harm, and the aim of that is to reduce the harm caused and the losses resulting from it. The aggrieved, not the goal is to make a profit. And this system is managed by these individuals so that each of them is a believer and a believer in him, and the purpose of this system is the human side only. (sadi,1983).

The second: which is called commercial insurance (straight line): and in this system, the insured is obligated to pay a specified premium to the insurer, which is the insurance company owned by individuals or institutions contributing to it. (Abdallah,1987).

Fiqh conditioning for commercial insurance contract

The Islamic jurisprudential heritage did not know this type of contract, and no legal text was mentioned on this subject, and the judgment of the companions and the hard-working imams was not exposed, and Sheikh Mustafa Al-Zarqa says: "We do not know any of the late scholars of the schools of thought from the pre-modern class who searched in the insurance contract to find out the position of fiqh . The Islamic one from it is the scholar Muhammad bin Abdin, the author of a footnote to the confused response to al-Durr al-Mukhtar, explaining the enlightenment of sight in the fiqh of the Hanafi school of thought, because the method of insurance was not known in our eastern countries until the thirteenth century AH, where the commercial connection between East and West strengthened during the industrial renaissance in Europe. And that is by insuring the goods brought from European countries by foreign commercial agents who were residing in our country to conclude import deals. (Al Zarqa 1962).

With the emergence of commercial insurance systems in later ages, Islamic researchers began to study this topic and they had three directions in it:

The first trend: the prohibition of commercial insurance contracts, and many of them Al Hanafi Ibn Abdeen agreed with this view

And the blind friend who also forbidden him for the sake of al-Gharar, Muhammad Abu Zahra, and Sheikh Abdullah al-Qalqili, the former Mufti of the marginal kingdom of Jordan, who forbade him of all kinds.

The same applies to several Islamic jurisprudential bodies such as the Council of Senior Scholars in the Kingdom of Saudi Arabia, as well as the Council of the Islamic Fiqh Council of the Organization of the Islamic Conference, as well as the Islamic Fiqh Council of the Muslim World League, which decided in its first session held on 10 Shaban 1398 AH in Makkah Al-Mukarramah: Prohibition of insurance of all kinds, whether it is for self, commercial goods, or other funds ", and other jurisprudential bodies and institutions.

Sheikh Al-Zarqa points out that one of the most important owners of this opinion and those who go to the absolute prohibition of the insurance contract is the scholar Sheikh Muhammad Bakhit Al-Mutai'i Al-Hanafi, the ancient Grand Mufti of Egypt, and he is the oldest researcher on the subject of insurance after the scholar Ibn Abdin, and his fatwa came in response to a referendum of some Anatolian scholars in the era Al-Othmani, where he answered them with his fatwa with a letter printed at the Nile Press in Egypt in 1906.

Sheikh Al-Mutai'i used to believe that insurance is a form of gambling, as he says: "The insurance contract is a legally corrupt contract, because it is dependent on a risk.

The second trend: This trend goes towards the permissibility of a commercial insurance contract, and a group of contemporary researchers and jurists went to it, and at the forefront of those who went in this direction was Sheikh Mustafa Al-Zarqa, who relied on a clear document and solid evidence on the permissibility of an insurance contract in an practically existing legal financial system. In our life, it is one of the global systems as well, and it is applied and benefited by Islamic Sharia scholars employed in every country, and they see it as a necessary legal and rational basis for working in the state's jobs, namely, the retirement and pension system.

There is also Rafiq Al-Masry who published many contributions on the subject of insurance in various newspapers and magazines and compiled them in a book entitled "Risk and Insurance: Is Commercial Insurance Legally Permissible?"

The third trend: Supporters of this trend claim that some types of insurance are permissible and others are forbidden. Such as permitting insurance on money while prohibiting life insurance, or saying that insurance is permissible against the dangers arising as a result of acts of worshipers, as is the case in acts of theft, with the prohibition of insurance against risks that may be caused by diseases, or permissibility of insurance against accidents that may be exposed to Cars, airplanes, ships, or factories, with the prohibition of any insurance to the contrary.

Characteristics Of A Commercial Insurance Contract

Ahmed Salem Melhem refers to the characteristics of a commercial insurance contract, where he defines them as follows:

First: The commercial insurance contract is a netting contract, as each of the parties to the contract gets in return for the money that he paid, as the company submitting the insurance contract acknowledges its obligation to compensate the insured in return for receiving the installment or the financial payment that the insured pays, and in return for this payment Financial: The insured obtains a guarantee and a commitment from the insurance company to compensate him financially for any damage resulting from any risk he is exposed to from the risks covered by the insurance contract.

Second: The commercial insurance contract is a contract that includes the obligation for both parties, so the insured is bound by the insurance contract to pay a financial payment or a premium to the company, and in return, the company, according to the contract, has to pay a sum of money as

compensation for the insured if he is exposed to danger, but in the event that the insured is not exposed He has any risk, as the company will not bear any obligation.

Third: The commercial insurance contract is a probabilistic contract that carries a suspicion of deception for both parties, so the insured pays the financial installment incurred according to the insurance contract, and he does not know if he will be exposed to any risk and thus gets compensation from the company in return for the installments he paid, and the insured does not He knows how much compensation he will receive from the company, and in return, the company gets the premium from the insured, and it does not know whether it will compensate him or not, nor does it know how much compensation it can offer to the insured if he is exposed to any danger, and this, according to Melhem, is deceived. The contract is also affected by the subject of the contract

Fourth: The commercial insurance contract is like a compliance contract, as the insured has no right to amend or change any of the insurance conditions, which are usually formulated in a way that achieves the goals of the insurance company and protects its interests.

Sheikh Zarqa and his discussions of the evidence of permissibility and prohibition of insurance

Sheikh Mustafa Al-Zarqa carried the banner of defending insurance and defended the defense of the desperate without weakness until the end to allow the commercial insurance contract, and Sheikh Al-Zarqa discussed all the evidence presented by those who denied insurance and even those who prohibited types and permitted other types.

With regard to the evidence presented by those who denied insurance, especially with regard to the Prophet's prohibition of selling ambiguity, and in his refutation of this evidence, Sheikh Mustafa Al-Zarqa believes that there is no prejudice in the insurance contract because the purpose of insurance is to guarantee safety, and this guarantee takes place when the insured signed the insurance contract, whether Whether or not a risk has occurred, the insurance contract, according to Sheikh Al-Zarqa, "takes a fixed installment of the amount and time, based on the calculation of the probabilities between him and all his trustees." Therefore, in the event of any ambiguity, it is a simple deception that does not affect the contract.

As for saying that the prohibition of insurance contracts is due to the fact that they are considered a form of gambling and forbidden gambling, Sheikh Zarqa discussed this evidence by emphasizing the idea that the focus of insurance is the process of organizing the cooperative purpose of the cooperative that it contains.

Sheikh Al-Zarqa believes that gambling is a game that depends on luck, and it is an immoral issue that destroys human effectiveness, as it is a rope of Satan as mentioned in the Holy Quran, and there is no room for comparing this social and moral scourge with the insurance system that relies on the idea of dealing with disasters that A person is exposed to it, whether in his body, money or work, the system provided by insurance helps to divide the impact of the disaster on the person and reduce its effects.

The insurance contract according to Sheikh Al-Zarqa is a contract such as netting, and this netting brings benefit to the two parties to the contract, as the insured company earns from the installments that the insured pays, and the insured gains a sense of security against the risk, so he will receive compensation for any damage that befalls him, as for gambling. It has no analogues for this trade-off. Sheikh Al-Zarqa stresses an important issue as well, which is that the basis for the prohibition of gambling is not an economic basis so that a balance can be made between it and insurance in terms of the compensation process, as the basis for the prohibition of gambling is legal, ethical and social in the first place.

As for measuring the prohibition of insurance against the prohibition of betting, this issue Sheikh Zarqa believes is related to the issue of gambling, as betting is also a process based on luck and chance, and has the same moral, social and economic effects, in addition to the fact that betting has nothing to do with mitigating the effects of disasters or disasters. Risks to economic activity.

There is a very important suspicion on which many fatwas and opinions have accumulated regarding the prohibition of the insurance contract, especially life insurance, and this suspicion is that insurance is a challenge to the divine will, and in this regard Sheikh Zarqa believes that the reason for this

suspicion is the absence of a deep understanding of the insurance system and its basic idea. It does not mean that the believer guarantees that the insured will not be exposed to an accident or danger, as some believe, as this issue is beyond human capacity, and no human being can believe that another human being can guarantee that for him. As for insurance, it is an innovative idea that suits the developments of contemporary life and solves many of its social problems, and it is also compliance with the command of God Almighty, who says in his dear book, "Collaborate in righteousness and piety, and do not cooperate with sin."

There is another suspicion related to the mechanism of insurance companies employing the money they collect from their insurers, as many believe that insurance companies invest these funds in usurious projects to achieve profits for them, and the sums that the insured can receive are amounts that include interest, and this is forbidden.

In this context, Sheikh Al-Zarqa clarifies that his opinions and fatwas about the insurance contract relate to the insurance system itself and not to the financial investments and commercial businesses that insurance companies make, and the extent of the legitimacy of these actions is another matter. As for the insured's receipt of money that includes usurious interest, especially in the life insurance contract, Sheikh Al-Zarqa believes that what is related to these funds is included in the terms of the insurance contract, and these conditions can be dealt with separately from the idea of insurance and any clause of the contract can be judged Insurance separately.

When Sheikh Al-Zarqa talks about the rules and texts of Islamic law that allow insurance, he is judging the validity of the insurance contract in terms of it being a contract or a system that, according to his original idea, leads to a legitimate social interest, and that does not mean ruling on the legality of every condition of the contract concluded between the insured and the insured. Ruling on the legitimacy of the system in itself by Sheikh Al-Zarqa does not mean that it has approved all the economic means and tools that insurance companies can resort to, and it does not mean the approval of all what some people know in some countries or places to be insured in. The contract, and to every method used by insurance companies, which, according to Sheikh Al-Zarqa, is a separate matter from the ruling on the validity of the system itself, as this is subject to Sharia standards in contractual terms and the nodal location.

As for the permissibility of insurance and its evidence, the authors of this trend, in the forefront of which Sheikh Mustafa al-Zarqa, have inferred more than one analogy, as some jurists tried to measure the insurance contract on some contracts and legal systems in Islamic fiqh , including:

The measurement of the insurance contract is based on the system of al-Aqilah: This system has its origin in the issue of blood money for the dead man, since if the killer kills a dead person, he collected blood money from camels, so her mind extinguishes the guardians of the murdered, that is, pulling her in her mind to hand it over to them and take it from him, and the wise is the group and relatives from the father who give blood money The dead man, including the hadeeth, the blood money for al-Aqla. (Al-Qarafi,1988).

Sheikh Mustafa Al-Zarqa says: "If someone commits a felony of unintentional killing that is the original obligation of blood money or qisas, then blood money is distributed among the members of his sane mind who usually have a fight between him and them, and they are the adult men of his family and clan, and everyone who advocates for them is considered one of them. The blood money is paid to them. Without a difference between the rich and the poor, the near and far, according to what is mentioned in the books of Islamic fiqh.

Sheikh Al-Zarqa asks, "What is the obstacle to opening a door for organizing this cooperation in the restoration of disasters, making it binding on the path of contracting and free will, just as the Shariah made it mandatory without contracting in the system of rationalities? People have achieved it on a large scale by means of contracting and netting in which little is paid for the maintenance of a lot and the restoration of great damage from various disasters, in order for this section to be able to benefit from every person willing, noting that this expansion of the scope is within the circle of cooperation delegated to him legally in a non-compulsory manner.

The opposition to this opinion came on the basis of the owners of this opposition denying the authenticity of the analogy in itself, and they say that if it is true that it is a correct analogy, then it is a presumptive analogy, and for them the presumptive analogy is not an argument. Some of them said that if we accept the analogy here, then it is an analogy with the difference, so cooperation in the insurance contract is an assumed matter that has no basis in reality, because there is no link between the insured, while cooperation in the rational system is not assumed, rather it is real, because the sane person is linked by kinship and blood. . Also, there is no cooperation between the insured and the insured, as the relationship between them is purely commercial.

It was also said that the Aqilah system is an obligation from the fiqh to a group of people bound by kinship and blood, and they are obliged to commit crimes from each other, and the sane is not a voluntary obligation to bear something in exchange for compensation, as is the case in the insurance contract.

It should be noted here that accidental or intentional killing may or may not take place, and some may bear it, while others cannot bear it because nothing has occurred to him, and from here arises ambiguity, and yet it is permitted by the jurists.

Some of the jurists went on to measure the insurance contract on the loyalty contract, considering that the insured pays the compensation that he decides on the insured, and this is the requirement of the loyalty contract, as the guardian of the loyalty pays the blood money for a reasonable felony if he commits it. Thus it is possible to measure and consider the insured as the guardian of loyalty, and the insured is similar to what is reasonable on him, and the amount of compensation corresponds to the blood money, and the owners of this opinion go on to say that ambiguity is present in the loyalty contract just as it is in the insurance contract, there is a risk in entitlement and ignorance in the amount and the term. Loyalty according to some jurists, including the Hanafis, although the deception in it outweighs the deceit that exists in the insurance contract, so it is more appropriate for the insurance contract to be permissible.

Sheikh Muhammad Abu Zahra objected to the measurement of the insurance contract against the loyalty contract by saying: We were amazed at this comparison between the insurance contract with a company and the loyalty contract ... We could not imagine a combination between them ... It is an analogy with the big difference ... Some jurists saw the possibility of measuring the insurance contract over the mudarabah contract .

In this way, the insurance contract can be compared to the speculation contract, because the benefit in speculation is shared between the worker and the employer, and the benefit in insurance is also shared between the insurer and the insured, and on this basis it is possible to measure . (Al-Mess, 2016).

The jurists who oppose the validity of the analogy see that it is a speculative measurement, and this is not an argument, and those who argue for the validity of the analogy, some of them said that: No copy of the insurance contract can be measured against speculation, because the insurance premium is given out from the property of the insured, unlike the speculative contract, the money in it remains The property of his owner, and the speculator has nothing but the amount of the share agreed upon between them .

In addition, the owner of the money alone bears the loss in speculation, in the event that there is no contempt or negligence of the speculator, but in insurance, the insuring company does not share the trustee with anything from the profit, but rather it is unique to it, just as the trustee does not bear anything if the insured company loses . (Tantawi, 1997).

Some jurists tried to compare the insurance contract to a binding promise, and it is known that the Muslim jurists differed as to whether one of them promised someone else a loan or to bear a loss of something that he was not originally obligated to, and the question raised here was whether the promise becomes binding on which he must fulfill it or not be binding and not Fulfills it? Some jurists have answered that this promise does not bind the one who made it anything, and this is the opinion of the Hanafi , Shafi'i and Hanbali .

While the jurists of the Maliki school went three directions, as some of them said that this promise is not binding and not fulfilled at all, while others went to the contrary, saying that it is binding and resolved absolutely. A third group went on to say: It is necessary if there is a reason, as if one of them asks someone to loan him an amount of money, then the owner said: Yes, this is obligatory and he must fulfill it as the reason for seeking the debt is correct and he knows who abides by the promise, but if it is There is a valid reason for seeking a debt and he did not know anything about it. He may or may not abide by . (Jumah, 2014).

In an attempt to measure the insurance contract on the binding promise, Sheikh Mustafa Al-Zarqa says: We find in the obligations base room for graduating the insurance contract on the basis that it is a commitment from the insured to the trustee, even if without remuneration as a promise that he will bear the damages of the accident that he is exposed to, that is, to compensate him for the losses

And Sheikh Ali Al-Khafif believes that insurance has a stronger obligation than a promise, and the Malikis went to the necessity of fulfilling it as a judgment. Sheikh Mustafa Al-Zarqa adopted this view . (Ibn Nujaim,1999).

This opinion was met with an objection, as those who do not acknowledge the authenticity of the analogy have repeated their well-known saying that this is a speculative measurement, and not an argument. As for those who confirm the argument for analogy, they said that it is an analogy with the difference, for the following reasons:

- 1) The basis for obliging the promising person to fulfill this action if the promised proceeds the cause or the action based on the promise, is to pay the damage caused by the promise, because without the promise, the promised would not undertake this work, and nothing of that is in the insurance.
- 2) A binding promise is an act that takes place by will alone, and it is also a binding act for one side, while insurance is a disposable act that is binding on both parties to the contract. Therefore, it is not correct to look at the insurance contract on the basis that it is a contract based on a pledge on the part of the insurer only, as is the case in the case of a promise. Binding () .

Finally, Sheikh Mustafa Al-Zarqa says: "It is worthy of Islamic Shari'a jurists, and the insurance system has penetrated and made this penetration into the lives of people to mean by studying it, an analytical and detailed study based on the facts of reality and the guidance of the texts and rules of Sharia, and to determine its position on it with a necessary diligence in which it is sought to reach the ruling closest to the face of Sharia. Islamic law, which is similar to its jurisprudential system and its scientific guidance, and according to its texts and rules, whether negative or positive. This is because this Sharia - which is the eternal Sharia with a complete legal system with its private and general texts and its surrounding rules - can never stand puzzled about new incidents in which it will not find an answer. And not that it is devoid of sufficient evidence to determine its position and point of view in every situation and act of business and conduct its behavior as determined by its well-established scholars".

It can be said that Sheikh Al-Zarqa has excelled in his jurisprudential and scientific approach to the issue of insurance, as when Sheikh Al-Zarqa went to the permissibility of commercial insurance contracts, he aimed to demonstrate that this insurance saves lives, money and property from the risks that threaten them, as insurance contributes to mitigating the economic effects of These risks, which have increased in the modern era. (Hamad,1988).

Sheikh Al-Zarqa views the insurance contract as one of the netting contracts that achieve the interest of the two parties to the contract, as the insurance company earns from the installments that the insured pays, and the insured gains a sense of security towards the risks that he may be exposed to, so he is a guarantor that he will receive compensation for any damage. Fall ill.

Sheikh Al-Zarqa confirms the fact that insurance does not guarantee that the insured will not be exposed to an accident or danger. The primary purpose of insurance is to ensure safety, whether or not the danger occurs. In the end, it is a cooperative solidarity process that helps to divide the impact of the disaster on humans and reduce its effects.

REFERENCES

1. Ibn Hammad, Hamad (1988). *Insurance Contracts, Their Reality and Ruling*, Medina: Aldar Library.
2. Ibn Nujim, Al-Bahr Al-Ra'iq, *Explanation of Treasure of the Minutes, Part VIII (Kitab al-Mawwalah)*
3. Ibn Nujaim, Zain al-Din bin Ibrahim bin Muhammad (1999). *Al-Shabas and Analogues*, Riyadh: Nizar Mustafa Al-Baz Library.
4. Abu Al-Basal, Abdel Nasser (2010), *Mustafa Ahmed Al-Zarqa ... the jurist of the era and the sheikh of jurists*, Damascus: Dar Al-Qalam.
5. Abujaib, Saadi (1983). *Insurance between prohibition and permissibility*, Beirut: House of Contemporary Thought for Printing, Publishing and Distribution.
6. Al-Buqami, Najla bin Muhammad (2013). *Sukuk risks and hedging mechanisms, including: With an applied study of the sukuk of a troubled company*, Riyadh: Publications of the SABIC Chair for Islamic Financial Market Studies.
7. Jabra, Kamal Mahmoud (2015), *Insurance and Risk Management*, Academics for Publishing and Distribution.
8. Jumah, Haroun Nasr (2014) *General Principles of Insurance*, Amman: Amjad House for Publishing and Distribution.
9. Hassan, Samir (2005). *Financial derivatives and their role in risk management and the role of financial engineering in the manufacture of their instruments: a comparative study between man-made regulations and the provisions of Islamic law*, Cairo: University Press.
10. Hammad, Nazih (1993). *A Dictionary of Economic Terms in the Language of the Jurists*, Washington: International Institute of Islamic Thought.
11. Al-Khafif, Ali (1966). *Insurance*, Al-Azhar Magazine, Part VIII, Year 37.
12. El-Desouki, Mohamed El-Sayed (1967). *Insurance and the position of Islamic law*, the Supreme Council for Islamic Affairs in Egypt.
13. Zarqa, Mustafa Ahmed (1998). *The Introduction to General Fiqh : Islamic Fiqh in Its New Robe*, Damascus: Dar Al-Qalam, Volume Two.
14. Zarqa, Mustafa Ahmed Muhammad (2010). *Fatwas of Mustafa Al-Zarqa, Introductory Youssef Al-Qaradawi*, 4th floor, Damascus: Dar Al-Qalam.
15. Zarqa, Mustafa (1976). *The insurance system, its position in the economic field and the position of Sharia on it, according to the researches of the First International Conference on Islamic Economics*.
16. Al-Zarqa, Mustafa Ahmad (1975) *The Insurance System, Its Truth and Legal Opinion*, Beirut: The Resala Foundation.
17. Al-Sanhouri, Abd Al-Razzaq (1952), *Mediator in Explaining Civil Law*, Beirut: House of Revival of Arab Heritage, Part VII.
18. Sharaf Al-Din, Ahmed Al-Saeed (1986) *Insurance Contracts and Investment Guarantee Contracts*, Cairo: Dar Al-Nahda Al-Arabiya for Publishing and Distribution.
19. The Blade, the Friend Muhammad Al-Amin (2001). *The Position of Islamic Jurists on Insurance*, International Conference: *The Insurance Industry in the Islamic World*, Cairo, Volume 2.
20. Al-Dharier, Muhammad Al-Amin (1990). *Al-Gharar and its Impact on Contracts in Islamic Fiqh , A Comparative Study*, Beirut: Dar Al-Jeel.

21. Tantawi, Mohamed Sayed (1997), *Ijtihad in Sharia Law*, Cairo: Nahdet Misr for Printing, Publishing and Distribution.
22. A servant, Isa (1977). *Insurance between dissolution and prohibition*, Cairo: Dar Al-I'tissam.
23. Aboud, Yassin Muhammad Abd al-Rahman (2003), *The Fiqh Approach for Sheikh Mustafa Al-Zarqa*, unpublished doctoral thesis, University of Jordan, Amman.
24. Al-Ajouri, Sami Adnan (2013). *Sheikh Mustafa Al-Zarqa's Theory of the Contract: A Comparative Fiqh Study*, unpublished MA thesis, Al-Azhar University, Gaza, Palestine.
25. Al-Ajouri, Sami Adnan, and Sabah, Mazen (2014). *Defects of Al-Ridha and its Impact on the Decade Will of Sheikh Mustafa Al-Zarqa: A Comparative Fiqh Study*, Al-Aqsa University Journal, Volume 18, Issue 1.
26. Atallah, Barham Muhammad (2001). "Insurance and the Sharia of Islam," *Journal of the Contemporary Muslim*, Vol. 26, No. 102.
27. Atallah, Barham Muhammad (2001). *Insurance and the Sharia of Islam*, *Journal of the Contemporary Muslim*, Volume 26, Issue 102.
28. Alwan, Abdullah (1987). *The rule of Islam in insurance*, Dar Al Salam for printing, publishing, distribution and translation.
29. Alyan, Shawkat Muhammad (1996) *Insurance in Sharia and Law*, Al-Shawwaf House for Publishing and Distribution.
30. Alyish, Muhammad bin Ahmed bin Muhammad (d. T) *Fatah Al-Ali Al-Malik in the fatwa on the doctrine of Imam Malik*, Beirut: House of Knowledge, Part 1.
31. Al-Qarafi, Ahmad bin Idris Al-Senhaji (1998), *Al-Farouq*, Beirut: Dar Al-Kotob Al-Ulmiah, Part IV.
32. Al-Kwidlawi, Hussain Jasim (2015). *Insurance: a comparative legal fiqh study*, Cairo: Arab Studies Center for Publishing and Distribution.
33. Al-Mardawi, Ali bin Suleiman (d. T). *Equity in knowing the most correct of the disagreement*, Beirut: House of Revival of the Arab Heritage, Part XI.
34. Al-Masry, Rafiq Younes (2001). *Risk and insurance: Is commercial insurance legally permissible?* Damascus: Dar al-Qalam, Beirut: Dar al-Shamiya, Jeddah: Dar al-Bashir.
35. Al-Mess, Khalil (2016). *Studies and research of the Mufti Sheikh Khalil Al-Mayes: Part Three Investigations in the Issues of Contemporary Fiqh and Idea*, Beirut: Dar Al-Kutub Al-Ilmiyya.
36. Al-Najjar, Abdullah Mabrouk (1994). *Insurance contract and the extent of its legality in Islamic fiqh*, Cairo: Dar Al-Nahda Al-Arabiya.
37. Melhem, Ahmed Salem (2002). *Islamic insurance: a jurisprudential study that shows the reality of cooperative insurance in its theoretical and practical forms and its practices in Islamic insurance companies*, Amman: Dar Al-Information.
38. Melhem, Ahmed Salem (2002). *Islamic insurance: a jurisprudential study that shows the reality of cooperative insurance in its theoretical and practical forms and its practices in Islamic insurance companies*, Amman: Dar Al-Information.