

## THE ROLE OF INSURANCE TO ACT AS AL-`AQILAH IN PAYING DIYAH THAT IS RESULTING FROM ACCIDENTS, AN ANALYTICAL STUDY

Ahmad Bin Muhammad Husni  
Amin Bin Muhammad Husni

### ABSTRACT

*Insurance is the most important contemporary issues and emerging among Muslims, as it bears several concepts that one finds himself to stand with it. The study of legitimacy and practical application must be covered, to see if this issue that have occupied the Muslims for more than sixty years through international and scientific conferences complies with Maqasid Sharia Islamiyah and its foundation. The issue of payment of diyah by the contemporary insurance companies is considered as one of the most important jurisprudence issues emerging at the present time. As the routine among the people when requesting the diyah, to concentrate on the amount of compensation paid by the contemporary insurance companies. Particularly as result of car accidents and what are the alternatives they have provided through these councils when there is no Al-`Aqilah or baitulmal for Muslims and what about the inability of Al-`Aqilah itself to pay diyah due to certain circumstances or the need of the Muslim community to such a type of contracts. Thus, i adopted in this study the inductive and analytical approach to gather the views of fuqaha, researchers, their evidence and arguments on the subject and texts related to it trying to perform fundamental and judicial analysis to suit the contemporary reality and the intent of the Sharia, and to the practical approach which study of the subject in the field and applied study. I concluded the study, that for the commercial companies must be served as Al-`Aqilah in the payment of diyah for the mistaken offender from their insurer, and that does not differentiate between diyah and compensation in terms of the claim and the jurisdiction.*

Key words: the insurance, Al-`Aqilah, diyah, accidents.

### PREFACE

Praise be to Allah Who created man, taught him the evident and rise him over the jinn. I praise Him the Almighty on the very much virtue, broad grace, and I bear witness that there is no God but Allah alone and has no partner and I bear witness that Muhammad is His slave and His Messenger, best of mankind and the best sons of Adam, peace be on him, his family, his companions and peace and recognition of many to the Day of Judgment. The Almighty said: (O ye who believe, fear Allah He should be feared and do not die except as Muslims) (Al-Imran: 102). The insurance contract is from the contracts that are relatively new in the whole world, it is more new in the Islamic world than in the rest of the world, with the mention legal scholars, that the history of the emergence of the insurance contract in Europe was in the early fourteenth century AD, and has not appeared in Muslim countries only after that long time, perhaps known to Muslims only two centuries ago, through the east-west connection, and the exchange of trade between them. so, we will not aspire to provide texts for it is permissible or forbidden by the fuqaha of the righteous salaf, and from their old references.

### THE DEFINITION OF INSURANCE:

There are different expressions of legal scholar and contemporary fuqaha in its definition:

The definitions from legal that: a contract is committed to the insurer in which leads to the Insured, or to the beneficiary who set the condition of insurance in his favour an amount of money, or income salary or any other financial compensate in the event of an accident, or occurring danger indicated in the contract, in the exchange of instalment or any financial payment performed by the insured for the insurer.

This is the definition of the Egyptian civil law in Article No. 747, as taken by many of the Arab laws (Slimani: 1996, 422). This definition highlights the elements of insurance and demonstrates that the relationship between the insurer and insured as a compensation relationship and the amount of insurance is in exchange for insurance instalment (Qara Dagi: 1425H, 5). However, if it the payment taken longer and frequency that is resulted from frequent use of the (or) in it, and the mentions of the word the insurer, the insured and the insurance, thus, this payment is performed, for their participation with the definite word in the origin of derivation. Moreover, the definitions of contemporary fuqaha is the definition Dr. Suleiman bin Thunayan as: a commitment of party to another to compensate by paying cash to him, or who he is appointed, when occur a potential accident described in the contract, in return of receiving an amount paid by him to the other than either a cash or instalments payment or so (the son of Thunayan: 1993, 78-91). Zarqa defined it as: "a contractual system based on the compensation, aimed to cooperate on the restoration of the emergency damage, by regulatory bodies, carrying on its contracts in technical way on the fundamental and statistical basis" (Zarqa: 1984, 19). In addition, Hemeyer from French added: as the process by which one of the two parties, who is the insured received payment in return of an instalment he paid, as a commitment to himself or for others from the other party who is the insurer, by which the latter pledged to pay when a certain risk is occurred. That is by collecting a set of the risks and to offset them, according to the laws of statistics "(Dradkh: 2008, 87).

## TYPES OF INSURANCE:

There is different types of insurance based on various considerations:

First, is divided in terms of form taken by the Insurance Commission in the managing of insurance (Ibn Thunayan: 1993, 71), into three sections:

1 - commercial insurance (or insurance with a fixed-instalment) (or conventional) which is usually meant when mention the word insurance, and it is committed to the insured to pay certain amount to the insurance company based on the involvement, to be borne by the insurer (the company) to compensate when any damage affects the Insured. In the case no damage or accident occurred to the insurer, the entire instalment paid by the insured belong to the insurer, cannot be refunded to the insured (Zuhayli: 1986, 548).

As has been the stated the definition of Dr. Saliman IbnThunayan for the insurance in general and it applies to the exact of commercial insurance. Also, it separates the insured (the involved insurance company) from the insurers who contracted insurance company with each one of them separately and bear the damages occurred to the insured. If the contract expired and no damage happened to the insured, the entire amount paid by him goes to the insurer, and nothing to the insured (Ibn Thunayan: 1993, 78-91)

2 - Cooperative Insurance (or Exchange) (or subscribe): The cooperative insurance is generally based on the idea: that the distribution of the harmful consequences of a particular incident on a group of individuals, its meant, the initiative of groups of people to ensure themselves by compensating the damage that may affect any of them whenever specific risk occurred. Instead of leaving the one who befall the disaster to him bears the consequences alone (Melhem: 2003, 51). This insurance has two forms:

The first form: Simple cooperative insurance (or direct exchange): this mean a group of people cooperating to avoid damage caused by the particular risk, so that each of them paying a sum of money to be compensate from the injury risk by one of them from the total of those contributions. If there still any instalment left, it will be return to them and If the instalment not fulfilled, the insurer will take from them (Alverwor: 1407 H, 2 / 572).

Second form: Insurance Cooperative Complex (or Exchange advanced), is like simple insurance collaborative in origin but administered by a specialized company such as the agency. All the insured involved are working in this company, and constitute the general assembly, then the management Board (Melhem: 2003, 76). The motivation for this form is that the simple cooperative insurance in which a limited number of insured known each other but if there is many of them, there will be many risks so, there are in need of separate department dealing with their affairs. This department regard as one of them on the basis of the agency paid a well-known amount as insurance company.

3 - The social insurance (or the public) is meant by: that action by the country or one of its general assembly in favour of a class in society against the dangers that they face in themselves leads to their inability to gain a permanent or temporary basis, which is to provide insurance the people who depend on their livelihood to earn work from some of the dangers that they face such as the risk of unemployment, sickness, work injury and aging. This insurance is mandatory to be financed with subscriptions paid by beneficiaries and employers, and the country here bears greatest burden. Its example is social insurances, health, pensions, and other general insurances (Shanqeeti: 2001, 2 / 478). This insurance is social action taken by the country in order to secure the future of its citizens and prevent their sudden impact of accidents it considers a donation from the country not a compensation contract, thus, the permissibility of this type of insurance did not differ among more of the researchers because it a donation contract, it does not affect its ignorance, and ambiguity. Among those who permitted it is by the Seventh Conference of the Muslim Scholars, which was held in Cairo in 1392H and other (Melhem: 2003, 73).

Second, are divided in terms the risks of the insured from or the nature of the interest intended to be protected by insurance into three sections:

1 - Securing money and property (or damage) is meant by: Each insurance held for the protection of of money and property against the risks that may be exposed. This type is the most comprehensive types of insurance, where it is comprising securing all the property of nations, groups, and individuals, whether on land or sea or air (Ibn Thunayan: 1993, 73).

2 - Responsibilities insurance (civil liability) and is meant by: all that arises from the responsibilities of the individual or group to the other because of negligence or wrongdoing or damaging by any reason (Shanqeeti: 2001, 2 / 482). This insurance for the risks that affect others because of the insurer behaviours, intended to release the custody of the insurer from his responsibility towards those risks. That also includes many types of partial insurance, such as vehicle insurance against civil liability, as well as for aircraft, ships, trains insurance and businesses and professions insurance that may damage the others, such as securing engineers, doctors, pharmacists, contractors, and others (Ibn Thunayan: 1993, 74-77).

3 - Personal insurances: What is meant by: the insurance, which aims the insured person to secure the dangers that threatening his body, such as the deaths, the loss of organ, aging, disease, and all things that may causing him to be enable for earning and work (Ibn Thunayan: 1993, 80-85). The most famous types:

A - Life insurance1 (Qara Dagi: 1405 H, 364).

---

<sup>1</sup> They are the main types of life insurance, namely:

1 - Life insurance in the case of survival: the insured pays the amount of insurance to the insurer in the condition the insurer still alive to the time

- B - Insurance against accidents.
- C - Insurance against the disease.
- D - Insurance against the aging.

As noted, there is an overlapping between the second and the first of the insurance; for that the last three sections, counted by others as the commercial insurance; on the basis that in most cases to be deal commercially (Navigator: 2001, 909).

When talking about the types of insurance is worth noting that there is what is called the (re-insurance), which intended the insurance company (whom insured people) to use direct contract at a larger insurance companies to secure part of the risks that may cause them; for fear of risks error in estimating the potential risks, and thus, the inability to compensate. Therefore, the direct company is resorting to re-insurance at larger companies to assure itself and reassure their insurer (Ibn Thunayan: 1993, 91).

#### DEFINITION OF DIYAH:

Technically: The majority of Hanafi jurists define the diyah as a substitute of a life, Sarkhasi said: diyah is a mandatory payment as a substitute for human damage which is life. Then he said: Al-`arsh is the same but for non-human damage, as well as the value for all damages. However, the diyah is a special name substitute of a life because the linguistics do not expel the derivation from all its position for the intention to customize the definition (Sarkhasi: 1993, 26/59).

Ibn Arfah from the Maalikis defines Diyah as: diyah is money should be paid for killing free human being on behalf of his blood or wound, estimated according to shari'a not by ijhtihad. As to be paid in case of killing non-human the value of a horse and alike, and for killing a slavery is his value and the set by government. (Dradkh: 2008, 19).

Imam Shafie named diyah on what needs to be for criminal committed on human or other than human (Shafie: 1996, 6/75), and this view the same as to the Mawrodi. They were some of the Shafie's views of diyah on what needs for human's crime, and Al-arsh on the crime committed to other than human if its estimated, and for the government if it was not estimated (Mawardi: 1973, 234), and this also the view of Maalikis, Hanbali and others (Ibn Sahnoun: 1999, 14/479). While the Hanbali view it as: money is giving to the victim or his heirs due to a criminal. (Bahooti: 1983, 6/5).

We do not think the difference in terming the word diyah on what needs on the crime committed to other than person is verbal difference, In the sense that everyone agrees that the Al-`agela bears what needs to be for criminal on person or other than that on its conditions, whether we called diyah or Al-arsh. The disagreement is due to the naming. Thus, the diyah is money estimated to be paid due to the crime committed on a person or other than a person, because of a criminal. (Bahooti:1983, 6/5).

The fuqaha are agreed Al-`Aqilah do not bear diyah if the killing was intentionally and the qisas dropped under suspicion or agreement (Alkasana: 1998, 7/236). They differed in the diyah for semi-intention killing:

As the majority of fuqaha agreed that Al-`Aqilah bear the diyah in the case of semi-intention killing (Sarkhasi: 1993, 26/65). in contrast to this in some of the Malikis, Zaahiris and Al-imamiah, that saw the diyah must be on the wealth of the offender because he does not deserve kindness and support due to the presence of intention to the crime, if Al-`Aqilah bear this diyah, the offender may later dare to re-murder (Ibn Hazm: 1352 AH, 10/436).

The majority of Malikis considered semi-intention killing almost as intention killing in terms of bear diyah and it is from the wealth of the offender, and they responded to hadeeth: and the semi-intention killing which was occurred by lash and stick. "This was narrated by Abu Dawood and others". Ibn Wahoby said: This is not true hadeeth (Al-Qurtuby: 1976, 1/479). But Zayla'i was quoted from the saying of Abu Al-Qattan as: is a true hadeeth from the narration of of Abdullah ibn Amr ibn al-Aas, the difference which took place will not matter. It Narrated by Ahmad, Shafi and Ishaq in their books.

Al-`Aqilah bear the diyah on condition not proved by conciliation, or confession but on the evident: This is because the confession is restricted argument to the self-confessed (Sherbini:1955, 4/95). Al-`Aqilah bear the diyah on the criminal committed to other than person if exceeded the half tenth of the diyah and the amount was estimated according to shari'ah. However, if Al-arsh was estimated through the Government of justice, is not bear by Al-`Aqilah (Alkasana: 1998, 7/275).

#### AL-`AQILAH DEFINITION:

The league male of the offender by family relationship and loyalty. Ibn Qudaamah said: Al-`Aqilah who holds the mind and `Aqil diyah called the `Aqila as it discrete to the tongue of the guardian murdered, it also called Al-`Aqilah because they prevent for the offender and `Aqila meant prevention, So, some of sciences called `Aqila because it prevents from taking the injured (Ibn Qudaamah: 1972, 9/514).

Mawradi said: Al-`Aqilah are the guarantors of the diyah and taken responsibility from the offender league. (Mawradi: 1994, 12/340).

---

specified in the contract, but if he died before that time there is nothing to the insurer or to his heirs.

2 - Life insurance in the case of death: the opposite of the previous, the insured pays the amount of insurance only if the insurer dies before the time specified in the contract, and the one will benefit appointed by the insurer in the contract.

3 - Combination: the insured pays the amount of insurance to the insurer that lived to the time specified at the contract or paid to the appointed by the insurer. See also: the insurance's contracts for Dr. Alferfor (within researches the Journal of Conference); The second session, 2 / 574; Insurance for Dr. Isa Abdu, p. 21; *Shariah* study for Dr. Shanqeeti, 2 / 482; Research *Fiqh Almuamalat* for Dr. Qara Daghi, p. 268.

Ibn Hazm said: is fine for diyah of the unintentional killing and the fledgling of the fetus. (Ibn Hazm:1999, 11/259). And known to some Hanbali as: whoever fine third of diyah and more because of the crime by others. (Bahooti: 1983, 6/59).

A more comprehensive definition: Al-`Aqilah is all the league who is verified by the support and sympathy in continuation. The league is confirmed by mentioned ahaadeeth. So, whoever is verified by the supporting, he is taking the meaning of the League and also what narrated from the action of Omar Bin Al Khattab who make Aqil those who do not have Aqil on the people of his army council (diwan).

The assigned people to pay the diyah from the Al-`Aqilah:

Murder: every free, adult and wealthy man shall bear from the Al-`Aqilah. So, the child, the insane and women do not bear diyah. However, Ibn Abidin quote for their participation if they are of the people of diwan and began killing. This is also the view of the Alkasana (Ibn Abidin: 1994, 5/423). While the offender, the Hanafis and Maalikis agreed his involvement with the Al-`Aqilah to bear the diyah, Jassaas quoted as evidence for that, the narration of Omar (may Allah be pleased with him) he said to Salama bin Naeem whoever killed a Muslim, thinking that he is non-muslim: that to you and your people diyah (Alkharchi: 8/46). The Shafi'is and Hanbalis view that the offender does not involve with Al-`Aqilah in bearing diyah, and Shafa'is added that his parents and progeny are excused (Alcherazi: 1988, 2/212).

And Al-`Aqilah for the offender is his diwan if he belongs to diwan from Hanafis view, Diwan are the fighters are free, mature and adults' men to be diyah taken from their money. If the offender has no diwan, his tribe from his kinship can be so, because they are his own support. The view of the majority that Al-`Aqilah of the offender are his kinship's tribe because the Prophet (PBUH) allows diyah to be spent from the tribal by kinship.

Hanafis also answered by the companions agreed in the time of Umar (may Allah be pleased with him) on a diyah on the people diwan, which indicates that they understood that the ruling in the era of the Messenger of Allah reasoned by supporting, when the support has become in their time on diwan, they transferred Al-`Aqilah to it (Alkasana: 1997, 7 / 256). The poor from Al-`Aqilah, does not require anything from diyah at some view of the fuqaha (Shirazi: 2002, 2/213), and quoted from Maalikis opinion that it does amount of diyah on the rich base on his capabilities and on below him also based on the capability, the diyah distributed to them according to their money capability (Ibn Jizzi: 2000 .298). Therefore, it understood from their statement the poor does not require to pay anything for diyah.

The quote of Imam Shafi'i: on the obligatory of half a dinar per person if he is rich - and a quarter dinar if he is poor (Shafi'i: 2001, 6/116). And frequency reports on Hanbalis, in the narration from Ahmad that the amount charged by the individual from Al-`Aqilah set by the ruler as in waiving provision, and this means that the poor could pay a certain amount, since poverty does not prevent the Waiving provision from rule as it became debt on his duty, so is diyah. In the narration: Imam Ahmad has commanded upon the rich half of the diyah, and for the average quarter of it. This means that the poor does not require anything from the amount of diyah (Dardeer: 1989, 9/658). It is obvious that he not required with anything from because Al-`Aqilah is supporting by money and the poor is not eligible for this support.

Guidelines for the diyah and murder expiation in car accidents, namely:

If the driver is aggressor, the expiation will be on the driver and diyah on Al-`Aqilah: and the term aggressor refer to do things are forbidden, such as slept while driving, exceeding the speed limit or red light, unable to drive, park in a place not intended for parking and visually impaired (ibn Quddama: 1999, 11/359).

If the driver is careless the expiation on him and diyah on Al-`Aqilah. The carelessness includes leaving what he must do as one who drive car with obsolete tires and a defect in the car brakes or steering (Al-Sheikh: 2001, 11/234).

The contributors in the error of killing, the expiation on each one of them and diyah on Al-`Aqilah as much as the error rate: is obligatory for expiation on each one per killed person, all the same whether the error rate is low or high as an accident between two drivers one exceeds the speed and the other goes the opposite way of the road (Quraafi: 1994, 2/207-208).

If the caused of the accident by the driver who wanted to act safety, there is no diyah to those who killed on his Al-`Aqilah and no expiation for him:

As one who his car ruined or there was a hole in the middle of road that directly causes the incident, in that case there is no guarantee to the driver (Ibn Baaz: 1999, 21/359).

If the the murdered aggressor there is no expiation for others and no diyah to him on the wealth of others but the guarantee from his wealth guarantee for destruction he caused and the diyah on his Al-`Aqilah : such as a driver followed the instructions and came a second driver from behind and hit the car and the second died or he hit a car parked in an authorized place to be parked and died or died because of the fall of his car in a hole on it warning signs or a person threw himself in front of a car while it passing and he was stepped (Ibn Baaz: 1999, 22/379). A guarantee will be on the direct driver and the one threw himself if there was a guarantee by causing as he the aggressor.

If the driver not aggressor and not careless there is no expiation in the murders with him and no diyah to their heirs on his Al-`Aqilah : as he is not mistaken and not the caused even if he was the causing there is no guarantees to him only if he aggressor or careless such as a good condition tire is burst or occurring of disruption that loses the driver the control of his car (Alkasana: 1997, 7/273). Said Sheikh Abdul Aziz bin Baz: If the accident was not the driver caused in all ways there is no guarantee on him (Ibn Baz: 1999, 22/397), and Shaykh Muhammad ibn Uthaymeen said: every accident is not because of carelessness of the driver nor his aggressive there is nothing upon him (Ibn Uthaymeen: 2000, 17/110).

Basic principle is that the direct killing upon him expiation and diyah on his Al-`Aqilah: like stepping a person on the road or move his car killing man under it, in this case he guarantor, although he does not intend or not aggressor. Thus, Allah has enjoined diyah and expiation in the mistaken murder as stated earlier that the expiation and diyah obligatory to the charged and non-charged person.

Who is required to provide diyah if there is no Al-`Aqilah?

The majority of fuqaha agreed that Baitulmal to bear diyah of the Muslim offender, if he has no family kinship or diwan. According to the doubt judgments: "whoever has no diwan or district then his Al-`Aqilah is baitulmal as apparent in the narration and on the fatwa. According to the narration from Abu Hanifa, it must be on the wealth of the offender." The statement of Imam Shafi'i to be responsibility of baitulmal if the offender has no kinship and he said: and all proved to have no kinship as non-Arab or a founder or other if he has no loyalty, for Muslims to be as his Al-`Aqilah since he is loyal to Islam as they are, and they can take his money if he dies (Shafie: 2001, 6/117). Sherbini following evidence on this by saying the Messenger of Allah (PBUH): the meaning (I can be as inheritor for those with no inheritor to be Al-`Aqilah for him). Narrated by Abu Dawood and Nesaie and Abu Hayyan (Sherbini: 1997, 4/97). Dardeer says: "Then the baitulmal if the offender is a Muslim" (Dardeer: 1989, 4/283). Hattab saw that the baitulmal bear diyah with a presence of few Al-`Aqilah in number or cannot afford the diyah (Hattab: 1978, 6/286). The view of Ibn Hazm that if Al-`Aqilah is unable then diyah on all Muslims in the category of debtors (Garmon or Garm) from Zakat and because they are Garmon (Ibn Hazm:1999, 11/56), and contradicted by Hanbali in saying, they obligate diyah to the wealth of the offender if there were no his Muslim or dhimmi Al-`Aqilah, because Al-`Aqilah on the leagues whether they are inhabitant or not, and if they found the heir of non-League, he cannot be as Al-`Aqilah, and baitulmal is not bearing diyah under the reason being of no heir to him, with correlation between inheritance and bearing diyah (ibn Qaddama: 2000,9/649).

The absence of baitulmal:

Fuqaha differed on whether the absent of baitulmal or was unstable. Or it is unable to pay diyah Bhillolh darkness without. The majority viewed the mandatory of diyah on the offender for it proved on him initially, as Al-`Aqilah it with sympathy and cooperation. If the baitulmal and Al-`Aqilah are absent, diyah should be returned to the offender and do not neglect the blood of a believer (ibn Qaddama: 2000, 8/383). Some of the fuqaha agreed that there is nothing on the offender, because the diyah obligatory to Al-`Aqila from the beginning (Ibn Qaddama: 2000, 8/385).

Amount that is borne by Al-`Aqilah or the state from diyah:

Al-`Aqilah bears: fuqaha differed in the amount borne by each member of the Al-`Aqilah from the diyah, Hanafis said that is not to be taken from everyone more than four Dirhams. If their number is less, the closest the tribes of the kinship to them are included, whether they are from the people of diwan first (Alkasana: 1997, 7/322). Shaafi'is goes to the opinion that it should on the average person quarter dinar and to the rich half Dinar (Shafie: 2001, 6/116). The majority of fuqaha agreed not to determine the amount that paid by the individual from Al-`Aqilah, but to leave the selection to the ijthad of the judges in the distribution of diyah to the Al-`Aqilah (Ibn Hazm: 1999, 11/58). Sherbini says: The fact that the rich pay half Dinar and average quarter Dinar is not known in the text and news, but they considered the meaning of sympathy (ibn Qaddama: 2000,4/99). The achieving of the meaning of sympathy is different according to time and place, thus, it determines by Ijthad and rule of the judges.

The state: If Al-`Aqilah is absent it become obligatory the diyah to be borne fully from baitulmal: a hundred camels, and camels may be reversed to the value of money (Sarkhasi: 2001, 26/78). Or a thousand Dinars of gold each Dinars weighted one (Jumaili: 1995, 315), if this diyah, is obligated by the rule of a judge. In the case of the peace agreement the amount is less, and the paying by the baitulmal is what agreed upon the offender with the heirs of the victims on the nature and the amount of diyah (Abu Zahra: 1998,639).

And money per camel was sufficient at the time of the Prophet (PBUH) to feed one hundred men. And one hundred camels enough to feed ten thousand men, so the amount of diyah,are: the value of feeding ten thousand men. (Dradkh: 2008, 51). Here,preferably a Board of scholars and specialists to work on determine the amount of diyah legitimacy in the present, as is the case in Saudi Arabia and the United Arab Emirates and Jordan. And Allah knows best.

Deferment the payment of diyah: fuqaha are agreed the diyah can be delayed to three years, if was borne by Al-`Aqilah. As well as that is obligated on the wealth of the offender mistaken and adopted of the crime-free from the Al-`Aqilah believe and there was no other evidence. The documented in Omar judgment (may Allah be pleased with him) by making diyah delayed for three years(Shafi'i: 2001, 6/112). According to some fuqaha that it is permissible for the imam to request the diyah to paid by Al-`Aqilah immediate with no postpone as the quote of Dr. Khaled Jumaili from Imam Ibn Taymiyah said: It is no delayed for Al-`Aqilah if the Imam see the benefit "(Idris: 1986, 516).

And a summary of this opinion deferral is justified with the interest and facilitation. If the diyah to Al-`Aqilahl or the offender was insolvent (unable to pay), to facilitate this is achieved by allowed the payment instalment for three years. But if the diyah from the baitulmal: the interest diyah to be pay altogether where no harm to the baitulmal to pay it. If the diyah to the offender and he is wealthy, the interest is determined by the judge either payment by defer or accelerate.

#### CONCLUSION AND RECOMMENDATIONS:

The mandatory the value of diayah is not to be less than the value set legally, which is 4250 grams of gold, because it is the same amount of one thousand dinars of gold as stated in the hadeeth, if there was agreement with those who take the place of the modern Al-`Aqilahl to increase value for diyah, there is nothing wrong with the use of it and take it. Especially since the companies of non-Muslim country are paid in accident a higher value, the Muslim should not be less than non-Muslims in the amount of compensation, as Islam prevails and not prevailed.

And that the compensation that is taken by the inheritors is divided to them according to the assessment of the inheritances legitimacy, calculated from amount of diyah or more than it. The amount of compensation is not to be determined by the number of inheritors, but the amount identified as agreed with Al-`Aqilahl, that making the payment of diyah's victim for the offender for the links combined the Al-`Aqilahl with the offender. However, this could be expanded in its forms to cover ministries, unions, insurance companies, the state and others to achieve intentional of the sharia that there is no blood waste in Islam. As that there is no elimination of the basic forms of the League and the diwan but expands upon it on the interest of the diyah payment.

If this is so, is not permissible to combine diyah and the modern compensation, because diyah itself is compensation. If the diyah shall be to the Al-`Aqilahl or the offender was capable to pay it, this matter not considered of Zakat. But if the diyah to the incapable offender and the judge prove it: the offender becomes a Garm, and the Garemon from the category of receiving the Zakat. It remains to mention Al-hammala, is Al-`Aqilah (such as, insurance company or the kinship) bears money to pay for other to prevent temptation or corruption, this payment consider as zakat for the offender, though he is rich.

There are multiple diyah for multiple deaths in mass accidents in order to preserve the rights of people at all and are borne by Al-`Aqilah (League), or Islamic Insurance Company, the expiation is sufficient to be one expiation borne by the fault himself, because the rights of Almighty Allah are based on forgiveness, and because the reason for these accidents is one not numerous.

The most correct view to the contemporary fuqaha that is almost had settled upon shari'a ruling after so many legal studies, economic and legitimacy of the insurance contract in general and all its types is a corrupt contract religiously because it includes three causes of the reasons for corruption contracts religiously which are riba with its types and immoral ambiguity and corrupted Conditions

Some fuqaha see the insurance contract for the accidents, including the type contained in the question is permitted, due it needed for the time being until the establishment of Islamic insurance.

What I see and many others have seen that if the insurance by agreement is compulsory which the government request to agree on it for car license, the sin on it goes off from the suspicions as the government imposed this insurance by law and a person cannot obtain a car license without it.

As more than that, which is optional comprehensive insurance that I see the Muslim to avoid it because it contains suspicions. The Muslim can take precautions by saving by himself every year or month the amount of instalment that was going to be paid to the insurance company and he can save as much amount as he can. Also, devoted it for the payment of what may arise from accidents with taken caution and follow all rules imposed by the traffic laws and the means of safety from accidents. He can also cooperate with some of his trusted for t request of the cooperative insurance among themselves as the way we have mentioned.

This can also imitate the opinion that says premising this type of insurance due of the need, this opinion is conditioned on this insurance to be temporarily until the presence of Islamic insurance. If this so, there are now in some Islamic countries, Islamic insurance company, such as Islamic Arab Insurance Company, based in Dubai, UAE. Thereby, for the Muslim must insured with it and the companies mentioned, though they did not get rid of all the suspicions and still deal with conditions like conditions of commercial insurance contracts, yet, they have taken some steps to free the contract from suspicion of riba debt and some aspects of exploitation. This is a step towards an Islamic insurance as full which better and away from suspicions of others, and Islamic insurance followed by other national insurance companies, and it is forbidden for a Muslim to deal with the foreign companies. Allah guides to the right and the Almighty knows best.

#### SOURCES AND REFERENCES

- Abdo, Isa. , 2002. *Ataamin baina al-hel wa attahrim*. Cairo: Dar Al-i'tesam.
- Abu Zahra, Muhammad. , 1998. *Al-jareemah wal oquba fil fiqhi al-islamy* . Cairo: Dar al-fikir al-gharby.
- Abu Hussein, Ahmed bin Faris bin Zakaria. , 1994. *Al-maqais fil lughah* . Editor:Shihab al Din Abu Amr. Beirut: Dar al-fikir. The first edition.
- Adharer, Asadeq Muhammad al-Amin. , 1995. *Al-qhurar wa atharuh fi al-'ogud fi al'fiqh al-islami*. Jeddah: Selselat Saleh Kamel, fil al-igtisad a-islamy, second edition.

- 'Alian, Shawkat. , 1981. *Ataamin fi shari'a wa al-qanoon*. Riyadh: Dar al-Rashid, the second edition.
- Alkasana, Abu Bakr ibn Masood. , 1998. *Badaa'i assana'i'e fi tarteeb asharai'e*. Beirut: Dar al-Ihya atturath al-'araby.
- Alkhrshi, Mohammed. , 1990. *Sharh mukhtasar al Khalil*. Beirut: Dar al-fikir.
- Al-Mallah, Hussein. , 2001. *Fatwa nashataha, tatawrah, usolaha wa tatbeeqaha*. Beirut: Al-maktaba al-mu'aserah. The first edition.
- Al-masri, Tawfiq. , 2001. *Al-khatar wa taamin (Hal ataamin atejari jaez shar'ian)* Damascus: Dar al-Qalam. The first edition.
- Al-Qahtani, Misfer Ben Ali. , 2003. *Manhaj istenbat ahkam nawaazil al-fiqhya al-mu'sera*. (Derasah Taselaih) Jeddah: Dar al-Andalus al-khadhra. The first edition.
- Alverwor, Mohammed Abdul Latif. 1407 H. 'Oqud ataamin wa i'adatun ataamin fi al-fiqhi al-islami. Dr. Mohammed Abdul Latif Alverwor (within the research journal of al-Mujma' for the organization, the second session).
- Al-Zubaidi, Morteza Mohammad Husseini. , 1992. *Taj al-'arose min jawaher al-qamus*. Egypt: Al-matba'a al-khaitiah. The first edition.
- Bahooti, Mansour bin Yunus ibn Idris. , 1983. *Kashshaaf al-gena' 'an matn al-igna'*. Beirut: 'alam al-kutub.
- Bahooti, Mansur bin Yusuf ibn Idris. In 1989. *sharh muntaha al-iradat*. Riyadh: Maktaba Riyadh al-hadeetha .
- Biltaji, Mohammed. , 2000. *'Oqud ataamin min wajhat al-fiqhul al-islamy* . Cairo: Maktaba darul ameen . The first edition.
- Bukhari, Muhammad ibn Ismail. 1987. *Al-jame'a asaheh*. Editor: Dr. Mustafa Deeb Albga. Beirut: Dar Ibn Kathir wa Al Yamamah. The third edition.
- Dardeer, Abu Barakaat Ahmad ibn Muhammad ibn Ahmad. 1966. *Assharhu assageer ala agrab al-masalik*. Editor: Mustafa Kamal Wasfi.
- Dradkh, Ibrahim Mohamed Khair Yoseph. , 2008. *Daf'u addiah min gebal sharikat ataamin al-mu'asirah*. Amman: Dar nafais.
- ElDesoki, Mohamed Ben Ahmed. In 1989. *Hashiat ElDesoki ala asharhul kabeer*. Cairo: Dar ihya al-kutub aldeniah
- Elviroz abadi, Muhammad ibn Ya'qub. 1987. *Qamus al-muheet*. Editor: Matab aturath fi muases arresalah. Beirut: Muases arresala. Second edition.
- Fangari, Mohamed Shawky. In 1988. *Islam wa Taamin*. Riyadh: Dar Taviv, Third Edition.
- Framuz, Mohammed. 1329 H. *Durar al-hukam fi sharh Gurar al-ahkam*. Egypt: Matba'ah Dar Al sa'adaha
- Hammad, Hamad Ban Al-Hammad In 1989. 'oqod ataamin haqiqtah wa hukmuha. Medina: Maktaba addar. The first edition.
- Hattab, Abu Abdullah Muhammad bin Abdul Rehman al-Maghribi. , 1978. *Mawahib algalilee lesarh mukhtasar khalil*. Beirut: Dar al-thought.
- Ibn Abidin, Muhammad Amin ibn 'Umar. , 1994. *Radd al-muhtar ala Durr alMukhtar sharh Tanweer Al-absar*. Editor: Adel Abdul-mawjud and his companion. Beirut: Dar al-kutub al-'ilmiah. The first edition.
- Ibn Hazm, Ali bin Ahmed Azzahri. 1352 AH. *Al-mahala*. Editor: Ahmad Shaker. Beirut: Dar al-thought.
- Ibn Humaam , Muhammad bin Abdul Wahid. , 1993. *Fath al-Qadeer*. Beirut: Dar al-fikir.
- Ibn Jizzi, Abu Abdullah Muhammad ibn Ahmad. , 2000. *Al-qawanin Al-feqhia*. Editor: Abdul Karim Al-fadhily. Beirut: Al-maktabah Al-'asria .
- Ibn Najim , Zain-Din ibn Ibrahim ibn Muhammad al-Hanafi. , 1993. *Bahar arraiq sharh kanz addaqaiq* Beirut: Dar al-ma'refah. The third edition.
- Ibn Qayyem Jawziyah , Shams al-Din Abu Abdullah Muhammad bin Abu Bakr. , 1995. *Atturuq al-hakmiah fi assiasa asharia* . Editor: Zakaria Amirat. Beirut: Dar al-kutub al-'ilmiah
- Ibn Rushd, Mohammed bin Ahmed bin Mohammed. , 2000. *Bedayat Al-mujtahid wa nehayat al-mugtasid*. Editor: Abdul Majeed Tohme Halabi. Beirut: Dar al-ma'refah.
- Ibn Quddama, Abu Muhammad Abdullah Bin Ahmad. , 1999. *Al-mughani*. Editor: Abdullah Mohsen Turkey. Riyadh: Dar 'Alam al-kutub
- Jerf, Mohammed Saad. , 2007. *Derasah shaiah hawla ataamin* . Paper presented to the accounting standards for Islamic financial institutions in Bahrain.
- Manee', Abdullah. , 2002. *Ataamin bain Halal and Haram*. Riyadh: King Faisal Centre for Research and Islamic Studies.
- Mawardi, Abu Hassan Ali bin Mohammed bin Habib. , 1994. *Al-Hawi*. Al-kabeer: Editor: Ali Mohamed Moawad and Adel Abdul-Jawad. The first edition . Beirut: Dar al-Kutub al-'elmiah.
- Mawardi, Ali bin Mohammed bin Habib. , 1973. *Al-ahkam assultania wa welayat addeniah*. The third edotion . Cairo: Dar al-fikir.
- Melhem, Ahmed Salim. , 2003. *Ataamin al-islami*. Amman: Dar al-'ilm. The first edition.
- Najdi, Abdul Rahman bin Mohammed Qasim al-'simi. 1405 h. Cairo: Matba'h almadani. The first edition.
- Qara Dagi, Ali Mohiuddin. 1425 H. *Al-janib attatbeqi letaamin al-Islami*. (Takaful), A paper presented to a conference in Sudan.
- Quraafi, Abu al-Abbas Ahmad ibn Idris Senhadji. 1998. *Al-furuq*. Beirut: Dar al-Kutub al-'ilmiah.
- Salous, Ali. , 2003. *Fiqha al-bai'a wa al-estithaq wa attatbeeq al-mu'asera*. Doha: Dar al-thaqafa. The first edition.
- Samarqandi, Mohamed Ben Ahmed. , 1993. *Tuhfat Fuqaha*. Beirut: Dar al-kutub al-'ilmiah. Second edition.
- Sarkhasi, Ahmad ibn Abi easy. , 1993. *Al- Mabsoot*. Beirut: Dar al-kutub al-'ilmiah. The first edition.
- Shabir, Muhammad Usman. , 1996. *Al-mu'amalat al-maliah al-mua'sera fi al-fiqh al-islamy*. Jordan: Dar Al Nafaes. The first edition. . Beirut: Dar al-fikir.
- Shafi'i, Abu Abdullah Muhammad bin Idris. , 1996. *Mosuso Imam Shafi'i " kitab al-umm*". First Edition. Egypt: Dar Qutaiba.
- Shanqeeti, Mohammed. , 2001. *Derasa shar'iah leaham al-oqud al-maliah al- mustahdatha*. Medina: Maktaba al-'olum wa al-hekam Second edition.
- Sherbini, Mohammed bin Ahmed al-Khatib. In 1955. *Mugani al-muhtaj ila ma'refat ma'ani alfaz al-menhaj*. Cairo: Matba'at al-isteqama.
- Shirazi, Ali bin Ibrahim bin Yousef Abu Ishaq. In 1987. *Al-Muhadhab fi al-fiqh Shafi'i* . Damascus: Dar al-qalam.
- Slimani, Abdel-Salam. , 1996. *Ijtihad fil fiqhi al-islamy dhawabethu wa mustaqbaluh*. Morocco: Wazaratul awqaf wa sheon al-Islamiah ..
- Swailam, Sami. , 1423. *Waqfat fi qadhiat ataamin*. R & D center at Al Rajhi Banking and Investment Corporation.
- Thunayan, Suleiman Ibrahim. , 1993. *Ataamin wa ahkamuh*. Riyadh: Dar haqeeq, the first edition.

Zuhili, Wahbah. 1407 H. .Ataamin wa i'adatul ataamin. Dr. Wahbah Zuhili (within the research journal of Al-mujama' of the organization, the second session).  
Zuhili, Wahbah. , 2002. Al-muamlat al-maliah al-mu'asera . Beirut: Dar al-fikir alhadeeth, the first edition.

Ahmad Bin Muhammad Husni  
*Department of Fiqh & usul al-Fiqh.*  
*Kulliyah of Islamic Revealed Knowledge & Human Sciences, (KIRKHS)*  
*International Islamic University Malaysia.*  
*Email: ahmedking25@gmail.com & ahmedking@iium.edu.my*

Amin Bin Muhammad Husni  
*Kolej Dar al-Hikmah,*  
*Sg. Ramal Dalam, 43000 Kajang,*  
*Selangor, Darul Ehsan, Malaysia*