

The reality of Islamic Takaful Insurance in the light of the Algerian Insurance Law: Analytical reading of the exclusive decree N°09/13 -

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Abstract---In this research paper, we attempt to address the most important differences between conventional insurance and Takaful (Islamic) insurance, highlight the most important points of difference between them, and to shed light on one of the most important decrees included in the Algerian insurance law, which establishes the creation of mutual insurance companies without discrimination between one sector and another. The observer of the content of their rules may worry whether they really seek to apply Islamic insurance. In the end we concluded that it is not possible to establish a system for Islamic companies' insurance through the Algerian insurance law, as it differs in many points with the conditions set by the jurisprudence scholars for the establishment of Islamic Takaful insurance companies.

Keywords---Algerian Insurance Law, conventional insurance, Takaful insurance.

Introduction

The insurance sector is one of the most important sectors that countries seek to develop and improve due to the role it plays, because the national economy of each country is based on three main foundations: the banking system, the financial markets system, and the insurance system. Therefore, most legal systems at the international level have been concerned with setting rules governing the stages of the insurance contract.

However, the laws to which the insurance system was subjected, which are human made, proved their failure and shortcomings as they sought to transforming insurance from a means of protection

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and fragmentation of risk to a commercial means from which one party wins and another party loses. The fact that resulted in the financial crisis of 2008 with which the capitalist system collapsed together with the banks and the largest insurance companies AIG, to raise with it the cries of appeal to the Islamic economy, to give the opportunity to Islamic researchers who found a good opportunity to apply the theories of Islamic economics in the field of cooperative insurance, which totally differs from commercial insurance.

Essentially, this made the scholars decide on the permissibility of cooperative insurance and prohibit commercial insurance.

As for Algeria, the insurance system in Algeria has its own characteristics and advantages, as the issuance of the new insurance law N 07/95 of 25/01/1995 is a qualitative turning point in the course of the Algerian insurance system. Which opened the way for the establishment of Private insurance companies with national and foreign capital, but the observer and scrutiny of the Algerian legal Realizes that it did not establish a clear law regarding Takaful insurance, until in 2009 the executive decree was issued .No. 13/09, which allows the establishment of mutual insurance companies without discrimination between one sector and another, the contemplation of the provisions of this law constitutes the content of its rules whether they really seek to apply Islamic Takaful insurance or not, and on the above, the following research question is raised:

To what extent did the amendments to the Algerian insurance law contribute to the establishment of an Islamic Takaful insurance system?

The first axis: the concept of traditional insurance.

1- Definition of insurance:

Linguistic definition:

Derived from security, security is the source of the verb (to secure), security against fear, which means stillness of the heart

Legal definition: a carefully organized cooperation between a large number of people who are all at the same risk. Even if the danger materializes for some of them, everyone cooperates in confronting it, with a little sacrifice made by each of them, they avoid serious damage to those who are in danger of them.ⁱ

In Algerian legislation:

Defined by the Algerian legislator in Article 619 of the Civil Code as a contract under which the insurer undertakes to pay to the insured or the beneficiary in whose favor the insurance stipulated an amount of money or any other financial compensation in the event of the accident or the realization of the prior risk in the contract and this is in return for a premium or any other financial payment made by the insured to the insurer.

2- Types and characteristics of conventional insurance:

2-1- Characteristics of conventional insurance:

The most important characteristics of commercial insurance can be summarized in the following points:ⁱⁱ

- That the insurance contract is a probable contract,
- That the insurance contract is a compensation contract,
- That the insurance contract is imposed on both sides,
- That the insurance contract is a continuous contract,
- The insurance contract is an Adhesion contract of both parties.

2.2 Types of conventional insurance:

Nowadays, the forms of insurance are various, unlimited, and have become an integral part in building developed countries and covered many forms of risks and the most important types of traditional insurance are as follow:

1- Commercial Insurance: the first type that appeared in the world, and the most used among traders and people in general, for its ease of dealing. It is an optional insurance based on commerce aimed at making profit and increasing wealth for the insured company. The insured bears the burden Insurance that covers the insured risk by an additional percentage to cover administrative burdens and another percentage represents the profit aimed at this type of insurance and includes three categories, marine insurance, ground and aerial insuranceⁱⁱⁱ

2- Social Insurance: It aims to achieve solidarity among members of society, as it is a public system that seeks to ensure a minimum level of living of individuals through the eradication of poverty, disability and ignorance, and it is considered compulsory where the law determines who are beneficiaries and what are the conditions for restoration and deserve. Thus, that government bodies are the most common in the practice of this type of insurance, as it is characterized by the insured's failure to bear the insurance burden alone, but rather participates with a small part and the employer or the State shall bear the most part and the percentage shall be calculated on the basis of the idea of solidarity. Types of this insurance are: Old-age Insurance, Unemployment Insurance, Health Insurance, Permanent or Temporary Disability Insurance, work damages and family allowances.^{iv}

In general, it can be said that there are several types of insurance, which have emerged with the development of life in contemporary societies and do not need much in this research paper.

The second axis: Takaful insurance (Islamic):

The insurance contract is one of the relatively new contracts in the whole world, and it emerged first in Europe in the early fourteenth century, and did not appear in Islamic countries until much later, and Muslims did not know it until two centuries ago, through the connection of the East with the West, and the exchange of trade between them, and therefore it is not mentioned in the text that it is permissible or prohibited by the jurists of the Salaf Al-Saleh, and in their ancient references. The Syrian Scholar "Ibn Abidin" was the first who mentioned it in his footnote "Rad Al Mohtar Ala Adurr Al-Mukhtar, where the commercial insurance contract was considered as a corrupted contract. ^v

1- Definition of Islamic Insurance: Islamic insurance or what is currently known as cooperative or Takaful insurance, can be defined as follows:

It is an agreement between a group of people to compensate for damages that may be caused to one of them if a certain danger occurs to him in return for the donation of each of them with a subscription (fixed, or variable) to pay these compensations from him, as it consists of their subscriptions are a balance that can cover the damages that may occur during the period specified in the contract for one of them, if the damages increased from the subscriptions, in the future to face the dangers according to their agreement^{vi}

2- The legitimacy of Islamic insurance: Despite some individual jurisprudence that prohibits cooperative insurance, most international jurisprudence councils allows cooperative insurance, the most important councils are:

1. The Second Scholars Conference held in Cairo in 1385 AH.
2. The Seventh Conference, also held in Cairo in 1392 AH.
3. The First Conference on Islamic Economics held in Makkah in 1396H.
4. The Islamic world Conference in 1398 AH. Decision of the Council of Senior Scholars in the Kingdom of Saudi Arabia in its decision No. 300/2/1399.
5. The Islamic Conference in 1406 AH.

These conferences and jurisprudential councils that authorized Islamic insurance have set standards, so we will try in this paper to limit and rely on the most important provisions of the resolution of the Islamic Fiqh Academy in its first session held on 10 Shaaban 1398 AH in Makkah Al-Mukarramah at the headquarters of the Muslim World League.

Islamic Fiqh Council Resolution^{vii}:

After considering the subject of insurance of various kinds, after having read a lot of what the scholars have written about it, and after having seen also the decisions of the Council of Senior Scholars in the Kingdom of Saudi Arabia in its tenth session in Riyadh on 4/4/1397 AH by Resolution No. (55) of the prohibition of commercial insurance of all kinds.

After thorough study and deliberation of opinion on that, the Council of the Fiqh Council unanimously decided, except for His Eminence Sheikh / Mustafa Al-Zarqa Prohibition of commercial insurance of all kinds, whether on oneself, commercial goods, or otherwise, for the following evidence:

First: The commercial insurance contract is one of the probabilistic financial compensation contracts that include obscene gharar*, because the insured cannot that the time of the contract knows how much he gives, or takes, he may pay a premium, or two installments, and then the disaster occurs, so he deserves what he committed to who being insured, and the disaster may not occur in the first place, pays all the installments, and does not take anything, as well as the insured cannot determine what he gives, it is taken for each contract individually, and it is mentioned in the authentic hadith from the Prophet (peace and blessings of Allaah be upon him) that it is forbidden to sell gharar.

Second: The commercial insurance contract is a form of gambling because of the risk it involves in financial compensation, and the fine without a felony that caused it, and from the sheep for free, or for an unequivocal consideration, the insured may pay a premium of insurance, and then the accident occurs the insurer is fined all the amount of insurance, and the risk may not occur, however, the insurer enriches the insurance premiums free of charge, and if they control it ignorance was gambling, and it entered into the general prohibition of the facilitator in the Almighty's claim: **"O you who believe, but the wine and the facilitator and the monuments and sins are an abomination from the work of Satan, so avoid it, so that you may succeed"** (Surah Al- Ma'idah 90)

Third: The commercial insurance contract includes Riba Al Fadel and Riba Al Nasaa, if the company pays to the insured, his heirs, or the beneficiary more than he has payed for it, that Riba El Fadel, if the insurer pays that to the insured after a while, so it will be Riba ENasia, and both are forbidden by Shariaa (Islamic Rules).

Fourth: The commercial insurance contract is one of the forbidden bets, because both of them involve ignorance, deceit and gambling, and Shariaa does not allow betting except what is for the benefit of Islam with argument and Sunnah, and the Prophet (peace and blessings of Allaah be upon him) limited the license to betting with compensation in three words of the Prophet (peace and blessings of Allaah be upon him): **"There is no precedent except in a slipper, a hoof or a blad"**^{viii}; and there is no insurance from that, nor is it similar to it that's why it was forbidden.

Fifth: A commercial insurance contract in which taking the money of others for free, and taking money for free in commercial netting contracts is forbidden , it is included into the general prohibition according to the Almighty's claim: **"O you who believe, do not eat your wealth among you in vain, except that it be a trade with your consent"**(. Al Nisaa; 29)

Sixth: In the commercial insurance contract, the obligation is not required by Shariaa, the insurer did not cause the risk from it, nor did he ause its occurrence, but rather it was merely a contract with the

insured to guarantee the risk to estimate its occurrence in exchange for an amount paid by the insured to him, and the insured did not, he does work for the one who is safe, and it's forbidden(haraam).

The Council of the Academy: also unanimously decided to approve the decision of the Council of Senior Scholars in the Kingdom of Saudi Arabia No.(51) dated 4/4/1397 AH of the permissibility of cooperative insurance instead of the forbidden commercial insurance mentioned above for the next evidence:

- 1- Cooperative insurance is one of the donation contracts that are intended to authentically cooperate to break up risks, and to participate in bearing liability in the event of disasters, through the contribution of persons with cash allocated to compensate those who suffer damage, the cooperative insurance community does not aim for a trade, nor a profit from the money of others, but rather to distribute the risks among them, and cooperate to bear the damage.
- 2- Cooperative insurance is free from usury of both types: usury of FADEL, and usury of Nassia, so the contracts of shareholders are not usury, and they do not take advantage of what is collected of installments in usurious transactions.
- 3- It does not hurt the ignorance of the shareholders in cooperative insurance to determine what benefits them, because they are donors, there is no risk or deceit and no gambling. Unlike commercial insurance, it is a commercial financial netting contract.
- 4- A group of shareholders, or their representatives, invest the collected premiums to achieve the purpose for which this was established collaboration, whether doing so is a donation, or for a certain fee.

The Council also considers that the following principles should be taken into account in the development of detailed articles for the work of cooperative insurance:

- A. The cooperative insurance organization should have a center with branches in all cities, and the organization should have sections distributed according to the risks to be covered, and according to the different categories and professions of collaborators, such as having an insurance department health, and a second for disability and old-age insurance, etc. Or there will be a section to secure street vendors, another for merchants, a third for students, and a fourth for self-employed like engineers, doctors, lawyers, etc.
- B. The cooperative insurance organization should be very flexible, and away from complex methods.
- C. The organization shall have a higher council that decides on the work plans and proposes the necessary regulations and decisions that will be effective if agreed with the rules of Sharia.
- D. The government is represented in this council by the members it chooses, and the shareholders are represented by those chosen to be members of the Council to help the government supervise it, or reassure it of the safety of its functioning, and protect it from manipulation and failure.
- E. If the risks exceed the resources of the Fund so that it may necessitate an increase in premiums, the State and the participants shall bear these increases.

The Council of the Fiqh Council supports the proposal of the Council of Senior Scholars in its aforementioned resolution to undertake the development of detailed articles, this cooperative company has a group of experts specialized in this matter.

3- The legality of Takaful (Islamic) insurance:

• The Holy Quran :

- ALLAH Almighty says: **“And cooperate in righteousness and piety, but do not cooperate in sin and aggression.”** (Surah Al-Ma'idah,02).
- The Almighty also says to Quraysh's concerning their winter and summer journey “let them worship the Lord of this House, who fed them from hunger and made them safe from fear”. (Surah Quraish).

•Sunnah:

- The prophet says, - may God's prayers and peace be upon him-, in the hadith: **"Whoever relieves a believer of one of the distresses of this world, Allah will relieve him of one of the distresses of the Day of Resurrection"**-The hadith was narrated by Muslim on the authority of Abu Hurairah, may God be bless them-.
- The hadeeth of Abu Musa (may Allah bless him) said: The Messenger of Allah -may Allah's peace and blessings be upon him- said: **"If the Ash'aris are widowed in the conquest, or the lack of food for their children in the city, they gathered what they had in one garment, and then divided it among them in a vessel one together, they are from me, and I am from them"**- agreed Hadeeth -.

The idea of Takaful insurance has three basic elements: requesting security, assistance on risk inventory, and then precaution or the future, it is based on evidence from the Holy Quran and the Sunnah of the Prophet.

4- Characteristics of Takaful (Islamic) insurance:

Takaful insurance is unique in its characteristics that distinguish it from other types of insurance

- **Every member has the status of insured and insurer:**
- Meeting the characteristics of the insured and the insurer for each member, this is one of the most important characteristics that distinguish Takaful insurance from others. This insurer exchanges insurance among themselves, as they insure each other, so they combine two characteristics at the same time, insure and the insured meeting the characteristics of the insured and the insurer in the personality of all subscribers, what makes the depreciation and exploitation negated, because these funds placed as premiums are destined for their payers.
- **No profit component:** The objective of Takaful insurance is limited to providing insurance services to members in the best way and at the lowest possible cost. In other words, this type of organization does not seek to achieve any profit from undertaking insurance operations, as participants pay the insurance subscription with the intention of donating and not with the intention of making profits, and that is to avoid any risks that may occur. Accordingly, the insurance subscription with these bodies is determined on the basis of that amount sufficient to cover the expenses related to the insurance protection provided, and the realization of any surplus is evident that the subscription that is collected was more than it should be, which necessitates the return of the surplus to the insured.^{ix}
- **Separation between the funds of subscribers and shareholders:** In the Takaful insurance companies, the funds of the participants (the insured) and the shareholders' funds are separated by allocating separate accounts for each of them and adding the return on investment for each side to its origin.
- **insurance surplus:** Which is the property of the insurance fund, and the managing company has no right to take anything from it except in a legitimate way, and the entire surplus can remain as a cumulative reserve to strengthen the insurance fund, or to reduce insurance premiums, and the like, which is in the interest of the participants in the fund, and in the event of liquidation of the fund, the assets of the fund Take it at the nearest similar bank.
- **Commitment to the principle of fairness and protection of the fund's money:**

when estimating the compensation due to the managing company, whether that compensation is in return for investing the fund's money or managing its operations, and setting standards and the necessary executive mechanism.

- **The managing company commitment to the provisions of Islamic Shariaa:** in all its activities and investments.

5- The difference between Takaful (Islamic) and conventional insurance:

The most important differences between Islamic insurance and conventional insurance can be summarized as follows*:

- 1- Cooperative insurance is based on the idea of cooperation in righteousness and piety, while traditional insurance is based on the idea of making profits, and this profit is represented in the difference between the subscriptions collected from customers and the compensation given to those who suffered damage.
- 2- The traditional insurance contract is a netting contract between the insured and the company, according to which the policy pays the insurance premiums on the insurance, and the company pays to him sums insurance when the conditions are available from its own funds. As for the Takaful company, the insured donate the premiums to the insurance portfolio, and it donates compensation to them according to its conditions.
- 3- Islamic insurance companies invest surplus funds according to Islamic investment formulas, while commercial insurance companies invest funds according to the interest-usury system.
- 4- The insured in traditional insurance do not deserve any share in the insurance surplus, because it is entirely owned by the company, which is the profit intended for it from behind insurance operations. As for Islamic solidarity companies, the surplus is entirely owned by the portfolio, and all or part of it is distributed to the insured.

The third axis: the problem of applying Takaful insurance under Decree 09/13.

The essence of cooperative insurance in Algeria focuses especially on Executive Decree No. 09/13 issued on 01/11/2009 in Official Gazette No. 03 of 2009, which came as a legal effect of the text of Article 15 of Law 07/95 amended by Law No. 04-06 of February 20, 2006, which allowed establishing insurance bodies in the form of joint stock or joint stock companies. But before we go into details, it is necessary to address the reality of the insurance system in Algeria.

1- The legislative and regulatory development of the insurance market in Algeria: Those who follow the development of the Algerian insurance market can divide it into two important phases^{xi}:

A- The monopoly phase during the period from 1962 to 1995: This stage can be divided into three stages:

A-1- The first stage from 1962 to 1966: The public authorities issued a law dated in December 31, 1962 stipulated the continuation of the application of French legislation, except for what was contrary to and inconsistent with national sovereignty, as a result of which the legislative and regulatory texts in the field of insurance came into force, whether they were general such as the civil law and commercial law or specific such as the 1930 law related to land insurance, and the 1958 law related to compulsory insurance on cars. Until the issuance of the first Algerian legislation in the field of insurance under Law 63/197 of June 8, 1963, which represented the beginning of the actual activity of Algerian insurance.

A-2- The second stage from 1966 to 1988: The central authorities of the country decided to nationalize the sector in order to regulate its activity and exploitation, and to curb it. The dominance of foreign companies, and this intervention of the state was represented in the issuance of laws complementing the 1963 law stipulating the following:

❖ Order No127/66 of May 17, 1966 stipulating the monopoly of the state to exploit all insurance operations;

❖ Order No129/66 of May 27, 1966 provides for the nationalization of the sector, as all funds, rights and obligations that are incurred by foreign corporations are transferred after they have been nationalized to the state.

A-3- The third stage from 1988 to 1995: In 1990, the government decided to cancel the principle of specialization and allowing it to diversify the portfolio of insurance products and exploiting all available insurance contracts in order to activate competition between them as a motive to raise their profitability (with the exception of reinsurance confined to companies (CCR)), and in order to ensure the implementation of these reforms, the Algerian Federation of Insurance and Reinsurance (UAR) was established on February 22, 1994.

B- The stage of reforms and competition from 1995 to today: It is also called the stage of liberalization and openness, as the insurance sector went through two regulatory stages:

B.1 The first phase from 1995 to 2006: Where the Algerian insurance sector witnessed a new system and direction with the issuance of Ordinance 07/95 of January 25, 1995 related to insurances, which resulted in a real and radical reform process, and this Ordinance in Article 278 of it canceled all provisions contrary to it, especially Law No. 63/201 and Law No. 07 / 80, and opening the way for the birth of a new phenomenon that was not usual in the past, which is manifested in the competition between the public and private sector dealers as a strategic tributary to stimulate investment in the Algerian insurance market. In order to support and develop the insurance system to be an effective development tool, standards were set for establishing insurance companies and minimum capital, creating a profession for insurance brokers, defining the conditions for practicing the profession of agent and broker, and in order to regulate and monitor the state's activity of insurance companies operating in the sector, the National Insurance Council (CAN) was established.

B.2 The second stage from 2006 until today: In parallel with the foregoing, and in order to rectify the shortcomings and imbalances that the sector has known, a review of The Insurance Law, where Law 04/06 dated February 20, 2006 amending and supplementing Ordinance 07/95 was issued for many reasons and various justifications, including deepening reforms to meet the challenges of changing the rules of the competitive game in the environment of accelerated financial globalization, regional blocs, and merger alliances between companies, so Law 06/04 came To accelerate the process of liberalizing the market for foreign insurance companies, similar to the government's desire to anticipate the emergence of the phenomenon of financial corruption that some financial institutions have known in recent years in the insurance sector.

C- The issuance of Executive Decree No. 13/09 of January 11, 2009: Containing the model statute of form insurance companies Mutual and paving the way for Takaful insurance companies working in the Algerian market. It is worth mentioning and noting in this regard that the decision to actually separate personal insurances from damages insurances is considered one of the most important decisions that resulted from Law 06/04 (which became effective from March 13, 2011 after a 5-year deadline) in addition to raising the minimum social capital in the Algerian insurance system:

- **Insurance of persons:** 1 billion dinars for shareholdings; 600 million dinars for cooperative partnerships.
- **Damage insurance:** 2 billion dinars for shareholdings; 1 billion dinars for cooperative partnerships.
- **Reinsurance:** 5 billion dinars for joint stock companies that exclusively practice reinsurance activity.

2- Decree 13/09 and the problem of implementing Takaful (Islamic) insurance: Returning to Decree 09/13, which allowed the establishment of insurance companies in the form of a joint stock or mutual partnership, this decree contained four (04) articles and an appendix that represents a model law for partnerships of mutual form consisting of 35 articles divided into four chapters:

- ✓ **Chapter One:** General provisions (name, subject, duration, and headquarters - conditions for acceptance, resignation, dismissal, and deletion). Starting with Article 01 and ending with Article 10.
- ✓ **Chapter Two:** Management of mutual partnership (General Assembly - Board of Directors - General Manager). Starting from Article 11 and ending with Article 26.
- ✓ **Chapter Three:** Relates to financial provisions, starting with Art 27 and ending with Article 34.
- ✓ **Chapter Four:** It relates to various provisions included in the article 35.

After knowing the most important chapters included in Executive Decree No. 13/09, we will try to find out whether it matches the most important characteristics and criteria that were set for the legality of Takaful insurance, trying to analyze the most important legal aspects in this decree.

– **The first criterion: the non-profit nature of the company:**

The first criterion of the standards of Islamic Takaful companies is that they do not seek to make a profit- as we mentioned previously- it is meant by the lack of guarantee for compensation, the transfer of risk in return for compensation - that is, the lack of profitability to the insured.

– As for what is noticed in the decree through the first chapter of the decree13/09 in its first article states that: **“It is established between persons for those who are bound or will be bound by this Model Statute, a corporation in the form of partnership of a private law having a legal personality and having a non-commercial purpose.”**

– Undoubtedly, the mutual partnership is not a commercial partnership in the legal sense – it is civil, of course, and this indicates that it is **formally**, it is not a joint stock partnership, not a partnership, not a recommendation, and it is not a limited liability partnership according to the article544 of the Algerian commercial Code.

– Objectively that does not engage in one of the activities mentioned in the article02 of the Algerian Commercial Code, namely: individual business (sale for purchase - banking operations - brokerage and brokerage operations).

– Insurance contracts and other contracts related to maritime trade are not practiced because they are also commercial businesses according to the subject matter (Article02 BC C).

If we consider that the intent of Article 1 of the aforementioned decree is that the joint venture should not be subject to the activities of Article 02 (STC), this would be a clear and evident contradiction. Therefore, we can interpret the aforementioned article as saying that the activities of the corporation, i.e. its investment of the funds mentioned in Article 28 of the decree, are not in Confronting third parties - those dealing with the company - subject to the provisions of Article 02 including insurance contracts. Let's consider the following two conclusions:

A - The mutual company deals with insurance contracts only with the persons involved in them, while with third parties it can practice all civil activities in the legal sense.

B- Islamic insurance companies are broader than the mutual company in the concept Legal Takaful companies only that prohibit the practice of trade in the transfer of risks between the insured and the insurer, but with third parties can practice any civil or commercial activity except insurance of course.

2- - The second criterion: the nature of the relationship between the trustees and the company:

– The second criterion for Islamic Takaful insurance companies is the separation between the account of the insured and the account of the company, where the managers are mere agents of the insurers in the management of the company's funds.

– As for what is noted through the aforementioned decree, the second paragraph of the first article of the annex states that: **"the management of the company is subject to the legislative and regulatory texts related to insurance"**, i.e. the insured is a partner in the company at the same time?, Article 11 of the decree states that: **"the General Assembly shall be composed of all members who are involved in the non-late payment of their contributions"**, and this indicates that the insured is a partner at the same time.

– It should also be noted that Executive Decree 09/13 did not provide for this chapter, but at the same time it was not prohibited.

3 – The third criterion: insurance surplus:

– The essence of the distinction between cooperative insurance and commercial insurance lies in the distribution of the surplus insurance to the insurers of the Islamic Insurance Company and maintained by the Commercial Insurance Company.

– It is noticeable from the decree that the issue of surplus is regulated through Articles 33 and 34, where it is stipulated that the distribution of surplus exploitation can only be achieved after:

- The income of the fiscal year's output shall cover all burdens, including depreciation allocations and balances (Article 33).
- -Composition of the balances provided for in the laws and regulations in force - Solvency margin - (Article 34).

• Another point is what is the fate of the partner's money when he withdraws?, Article 10 of the decree states: **"Resignation, dismissal and cancellation shall not give the right to compensation the contributions paid and the rights of participation mentioned in Article 06 above."** Isn't that tantamount to taking people's money with falsehood? Wouldn't it have been better to consider the right of the resigned or dismissed participant to be granted the remainder of the purchases after accounting for the funds paid to those affected and the funds that redress the damages caused to the company.

Conclusion

The mediator of the insurance system in the Islamic system or in the traditional system finds that the goal behind it is to achieve security and avoid or mitigate the risk if it occurs, but the examiner realizes the most important fundamental differences between the two systems in the field of insurance service, where we find in the Islamic system seeks primarily to achieve solidarity and cooperation between the insured, unlike traditional insurance, in which the insured seeks to achieve profit, which makes resorting to Islamic insurance as the best solution and for insurance and risk mitigation especially in the Arab Islamic countries.

Algeria, as an Arab and Islamic country, must seek to adopt the Takaful insurance system as soon as possible in order to promote this area, especially since it can be part of the important elements in the development process if it is exploited in an appropriate manner in accordance with the controls of Islamic law.

Referring to what has been addressed through this research paper, it is clear that according to Decree 09/13, it agrees with the Islamic insurance system in part and violates it in many aspects, one of the aspects that corresponds to the possibility of establishing without requiring profitability to the insured, but it narrows its activity in terms of business and with a restriction that almost makes the establishment of this company impossible 5000 members.

In the end, it is possible to come up with a set of alternatives, which can contribute even a small part to activating the role of Islamic insurance and can be adopted in Algeria, and therefore we recommend the following:

- Moving away from trying to emulate Western laws in the field of insurance and relying on the most important recommendations and decisions recommended by the jurisprudential councils on how to establish Takaful (Islamic) insurance companies.
- Consolidation of the insurance culture in Algerian society, which is known for its reluctance, as insurance is practiced in limited and mandatory operations.
- Opening the way for the insurance industry to pioneer experiences in this field, such as the Saudi experience and the Sudanese experience, and trying to benefit from them.
- Trying to draft laws on Takaful insurance subject to Sharia texts under the authority of an Islamic body

References

ⁱ Ibid., page 264.

ⁱⁱ Houtia Omar, Houtia Abdel Rahman, la réalité des services d'assurance islamiques en Algérie, une intervention présentée au premier forum international sur « l'économie islamique, la réalité et les paris futurs », p. 05.

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- * Adhesion Contracts: A formula for concluding contracts that relies on the use of a standard form for the contract, which one of the parties to the contractual relationship prepares individually and presents it to the other party, who has no choice but to accept it as it is, or reject it without having the right to change the expressions contained therein or the terms and conditions that not to enter into a real dispute or bargaining over its terms with the party preparing this contract.
- iii Houtia Omar, Houtia Abdel-Rahman, previously cited reference, p. 05
- iv Ibid., page 05.
- * Ibn Abidin presented the idea of the insurance contract in his research on Al-Mustamin (Sukra), and he said: (An important requirement in what merchants do in terms of paying what is called Sukra al-Harbi for what perishes in the boat, and what we have decided shows the answer to what has been asked about in our time: It is customary that merchants If they hire a boat, they pay him its rent, and they pay known money to a man of war residing in his country, and that money is called: Soukra, provided that no matter what money in the boat perishes by burning, drowning, looting, or otherwise, that man is a guarantor for him in return for what he takes from them, and he has an agent A trustee in our house resides in the lands of the Islamic coasts with the permission of the Sultan. He collects from the merchants the money of the sukrah, and tomorrow something of their money perishes at sea, and that trustee gives the merchants a full replacement.
- v Houtia Omar, Houtia Abdel Rahman, reference cited above, p 06
- vi Hassan Ali Al-Shazly, Islamic Cooperative Insurance, Its Reality, Types, Legitimacy, Research Paper presented at the Conference on Cooperative Insurance, Islamic Research and Training Institute, April 2010, p. 13.
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