

TAKAFUL (ISLAMIC INSURANCE) PREMIUM: A SUGGESTED REGULATORY FRAMEWORK

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Premium or contribution in a Takaful contract is a form of monetary consideration² (*al- 'iwad*) from the participant's part, which is an obligation arising from a contract between the participant and the operator. An insurance contract is a contract of mutual co-operation in which the consideration is required not only from one party but from both parties, in which the operator is unilaterally bound by the contract. The obligation of the settlement of the respective considerations in a transaction of a mutual co-operation is justified by the commandment of *Allah (s.w.t.)*

"Help you one another in righteousness and piety".³

This *ayat* of the Holy *Qur'an* renders a duty to mankind to provide their mutual co-operation on bilateral basis. Furthermore, in an insurance contract once the policy is concluded, the participant is regarded as a principal debtor and must settle the agreed-contribution to the operator accordingly. In such a transaction the participant is under a duty to pay the contributions regularly according to the terms and conditions as stated in the policy. This is justified by the repeated sayings of the Holy Prophet (*s.a.w.*) in which the principal debtor is urged to settle his debt on time. The Holy Prophet (*s.a.w.*) said:

*"Abu Raza' reported that ... the Holy Prophet (s.a.w.) said: give it to him, and verily the best of man is he who is best of them in payment it."*⁴

The Holy Prophet (*s.a.w.*) also said:

*"Abu Hurairah « reported .. that a man demanded of the holy Prophet (s.a.w.) for a repayment of a debt ... and verily the best of you is he who is the best of you in repayment of loan."*⁵

An insurance policy is a binding contract, and therefore the performance of consideration from both parties, (the participant and operator) through the payment of contribution (by the participant) and the indemnification (by the operator) are obligations which must be fulfilled. This is justified by the *Qur'anic* sanction. *Allah (s.w.t.)* says:

*"O you who believe fulfil (all) obligations."*⁶

A participant in a policy is treated as the debtor who is under a contractual obligation to settle the agreed contributions on time. It is common to human beings that it is not possible to always settle the debt on time due to some unexpected reasons. In such a situation what could be the legal position of the participant and also the policy itself? Under Islamic law if a debtor due to some logical reason is unable to settle the debt on time, the debtor should not be pressured by the creditor, rather the creditor is advised to extend the necessary time for the settlement to remit the obligation with a kind heart. The Holy Prophet (*s.a.w.*) said:

*"Abu Qatadah reported : I heard the holy Prophet (s.a.w.) say: Who so gives respite to a debtor or grants him remission, Allah (s.w.t.) will save his from the calamities of the resurrection day."*⁷

The Holy Prophet (*s.a.w.*) also said:

*"Imran bin Hussein reported that the Messenger of Allah (s.w.t.) said : whoso has his dues from a way and he gives time to him (for payment), he will get his reward of charity every day."*⁸

It is therefore suggested that in an insurance policy if the participant is sometimes unable to pay the agreed-contribution on time the participant should neither be penalized nor the policy be forfeited with paid-contributions. But the participant should be given a reasonable time for the settlement of the unpaid contributions and the enforcement of the policy should be continued according to the terms and conditions contained in the policy.

However if the participant fails to settle the unpaid contributions within the given period the policy may be discontinued. This is because it is a contract of mutual co-operation. If, therefore, one party is unable to provide his agreed co-operation then it is unfair to the other party to continue the transaction with unilateral co-operation. Thus, if the policy is terminated due to failure of the payment of the contributions by the participant, the paid contributions should not be forfeited rather it is suggested here that the paid contribution should be returned to the participant with the share of profits made over the paid contributions after deduction of the charges due to the operator. The charges to the operator are the debt due on the participant which must be deducted from the paid contributions as justified by the saying of the Holy Prophet (s.a.w.) :

“Abu Hurairah reported that the Messenger of Allah (s.w.t.) said: Who so becomes insolvent and afterwards a man (creditor) takes hold of his exact property he is more entitled to it than others.”⁹

It is again suggested that under Islamic law, there is no circumstance which may render a policy forfeited with paid-contributions even if the participant commits a breach of good faith or any other offences. This is because an insurance policy is a financial transaction in which the paid-contributions are the lawful right of the participant, which cannot be forfeited just because of his evil acts. The participant may be charged for the wrongful acts (if any) in different ways by different laws but not by forfeiting his paid-contribution or depriving him (participant) from his lawful right (paid-contributions). The paid-contributions are a trust (*al-Amanah*) to the operator, and they, therefore, should be due only to the participant. This is because, under Islamic law, there is no justification for the trustee to refuse to render the entrusted articles to their proprietor once the depositor rightfully demands from the trustee.¹⁰ The justified by the *Qur’anic* injunctions:

“Verily Allah (s.w.t.) does command you to render back your trusts to those to whom they are due.”¹¹

Also Allah (s.w.t.) warned against those who betray a trust. Allah (s.w.t.) says:

Contend not on behalf of such as betray their own souls; for Allah (s.w.t.) loves not one given to perfidy and crime.”¹²

It is therefore submitted that under no circumstance in Islamic law can the paid-contributions of the participant be forfeited, but a deduction may be made out of the paid-contributions and the profits made from them so as to cover the charges (if any) due to the operator.

The question arises as to how the contributions paid by the policyholder should be regarded. Should the contributions be regarded as partial capital to a *Mudharabah* financing deal or should they be regarded as a total donation to a charitable fund or should the contributions be paid into two accounts (i.e. partial amount would be regarded as a capital to a *Mudharabah* financing deal, while the remaining partial amount will be given away to the charitable fund of the company as a *Tabarru’* standing or donation)? To resolve the above question some possible suggestions are made as follows;

In any kind of life policy, the paid contributions may be divided into two portions; one portion may be regarded as partial capital to *Mudharabah* financing arrangement while the remaining portion would be given away as a *Tabarru* (donation) which is kept in the charitable account of the company (operator). The percentage of allocation of the paid-contributions into two separate accounts may depend on the company’s policy. The reason is that an insurance policy is based on the principle of *al-Mudharabah* financing, in which the operator is under a

responsibility to pay the regular contributions, and in which the participant has the right over the portion allocated as capital to obtain a share of profits, and dividends and the capital, regardless of whether the risk runs over the subject matter of the policy or not. But the account credited in the charitable account of the company as *Tabarru'* (donation) would be utilized by the company to provide a material security for the beneficiaries of the deceased (participant) after the unexpected risk occurs over the subject matter of the policy. The reason why the portion of the contribution is allocated as a *Tabarru'* (donation) is that under Islamic law *Tabarru'* is like *Sadaqah* (charity) or a *Hibah* (gift).¹³ The nature of *al-Tabarru'* is that once the donor gives it as a *Tabarru'* the ownership from him (donor) is transferred immediately to the donee without any consideration. *Al-Nasafi* maintains that:

"The Hibah (or Sadaqah or Tabarru') is the making of another person owner of the corpus of property without taking consideration from the donor" ¹⁴

In an insurance policy, however, once the policy holder pays the amount as *Tabarru'* for the charitable fund, the participant may cease to have the right of ownership over the *Tabarru'* once it is given away as a charity without consideration. This is because if the risk occurs in the subject matter, the operator is under a duty to pay, *inter alia*, an amount of donation from the charitable fund only to the beneficiary of the deceased (participant) but not to the participant himself as the beneficiaries are the ones who entitled to it (the donation) on the basis of need, because the beneficiaries are in need after losing their bread winner (participant). Therefore, if the partial amount out of the paid contributions is given away as a *Tabarru'* without seeking any consideration for the participant this may not clash with the general principles of *al-Tabarru'*, *al-Sadaqah*, or *al-Hibah* .

In a general policy (operated by the Islamic insurance companies today),¹⁵ the policy holder pays a contribution on a short term basis in which both the operator and the participant mutually agree that the paid contribution in the policy is a like contribution to the fund which is used for a reasonable compensation against an unexpected which may occur to a subject matter of the policy. However, if the risk runs over the subject matter the fund will provide necessary compensation but if no risk runs over the subject matter, the paid contribution to the fund may remain as a contribution. But for a non-claim ground, the operator upon the maturity of the policy provides an amount of bonus to the participant depending on the company's policy.

In the light of the nature of a general policy, it is submitted that the contributions paid in the general policy on a short term basis is like a contribution (but neither a donation, a gift, nor a charity) to a mutual fund in which the participant is also regarded as a member of the fund and the designated members are the ones who have the right to seek material security against an unexpected risk if it occurs to the subject matter of the policy.

If, for instance, the paid contribution in a general policy is regarded as either *Tabarru'* (donation) or *Sadaqah* (charity) or *Hibah* (gift) instead of labeling it (the contribution) as a contribution (*al-Musahamah*) this certainly creates a clash between the principles of (*Tabarru'*, *Sadaqah* and *Hibah*) and the practices of general insurance in the sight of *Shari'ah* principles. The reasons for this clash may be pointed out as follows;

(i) The terms *Tabarru'*, *Sadaqah* and *Hibah* are in principle interchangeable and share a common meaning of 'donation'.¹⁶ In contrast the term *al-Musahamah* (contribution) ¹⁷ need not necessarily involve the idea of donation. This is because once a person creates a *Tabarru'*, *Sadaqah* or *Hibah* , they are made in favour of someone or something for love or affection or for spiritual achievement without seeking any form of consideration.¹⁸ This means that once the donor creates the above donations, the ownership of the donated property will immediately be transferred from the donor to the one in favour of whom the donation is made.¹⁹ The ownership in this situation is transferred in perpetuity, nature in which the donor ceases to have any form of right of benefit over the donated property after it is given away.

Under Islamic law, it is unlawful for the donor to seek any benefit over the donated property after the property is given away as a donation. This is indicated in the repeated sayings of the Holy Prophet (*s.a.w.*):

"Ibn 'Abbas ® reported that the Messenger of Allah (s.w.t.) said: He who takes his gift / donation back is like a dog which takes back its vomiting. There is no evil simile for us." ²⁰

“Ibn ‘Umar ® and Ibn ‘Abbas ® reported that the Messenger of Allah (s.w.t.) said: It is not lawful for a man to give gift and afterwards to take it back except a father regarding what he gives his child. The parable of one who gives a gift and then takes it back is like the parable of a dog which eats till when it is satisfied, it vomits and then takes his vomiting back.”²¹

But in *al-Musahamah* (contribution) once a contribution is made by a person, it need not necessarily be in favour of someone else but it could also be in favour of the contributor himself. Moreover, the nature of contribution is far from the actual nature of donation. In other words, in a contribution, the contributor does not cease his right of benefit over the contributed fund and the contributor also has the right to revoke the contributions even after it is given away, unless the contribution is given as a charity. This includes for example; a contribution made to a mutual fund for the purpose of seeking benefits for the contributors themselves in the future, in which the persons who make contributions are entitled to mutual help from the fund. This is justified by the Qur’anic sanction in which Allah (s.w.t.) commanded the believers to sustain mutual co-operation, which may include co-operation in consideration of voluntary contributions. Allah (s.w.t.) says to the effect:

“Help you one another in righteousness and piety, but help you not one another in sin and rancour.”²²

(ii) In a general insurance policy both the operator and the proposer mutually agree that the proposer will pay the agreed contribution to the operator in consideration of a future coverage with reasonable compensation against the risk if it occurs over the subject matter within the policy period. But if the risk does not occur the participant may have the right to claim for a non-claim bonus (NCB) from the insurer after the maturity of each policy.²³ If however, we regard the paid contribution as a donation (*Tabarru*), which according to Islamic law cannot either be revoked nor may the donor seek any benefit over it once it is given away, then this surely clashes with the fundamental principles of *al-Tabarru’* and the practices of insurance (especially if the contribution is regarded as *Tabarru’*). This is because the participant in practice reserves the right of claim in consideration of paid contribution despite the fact that the contribution has already been labeled as a *Tabarru’* in principle. But if we regard the contribution as *al-Musahamah* (contribution) it may not create a conflict between the fundamental principle of Islam and the practices of insurance because in a contributed fund the contributor has right to make a claim or get benefits from it. Therefore, in a general policy if a policy holder makes a claim for a coverage or no claims bonus (NCB) in consideration of paid contribution, since the contribution is considered as *al-Musahamah* or contribution, this will not contravene the *Shari’ah* principles.

A further distinction between *at-Tabarru’* and *al-Musahamah* is given in the following chart:

<i>al-Tabarru’ & al-Musahamah: Compared</i>	
<i>Donation (al-Tabarru’)</i>	<i>Contribution(al-Musahamah)</i>
This is in the legal, sense quite similar to <i>al-Sadaqah</i> and <i>al-Habah</i>	This differs from <i>al-Sadaqah</i> and <i>al-Habah</i> and of course <i>al-Tabarru</i>
It takes away the right of ownership from the donor soon after it is given away as <i>al-Tabarru</i>	It does not takes away the ownership of the contributor even after it is given away as <i>al-Musahamah</i>
The donor may reserve no right of benefit over <i>al-Tabarru</i> It is given away for the benefit of others	The contributor may retain any form of benefit over <i>al-Musahamah</i> It is no necessarily to be given for the benefit of others only, but the contributor also may benefit from it
It is given away in consideration of love, affection and spiritual reward	It is normally given away in consideration of material benefits which may be rendered to the contributor himself and all related persons as the case may be <i>al-Tabarru</i> .

It is therefore, submitted that *al-Tabarru* differs from *al-Musahamah* both in principles and practices. The property given away as *al-Tabarru* is given in consideration of no material benefit, for the donor but mainly for the consideration of spiritual benefit whereas in *al-Musahamah*, the contributor normally gives it away in consideration of lawful material benefit. Since the nature of an insurance policy is that the policyholder pays voluntary contribution in consideration of material benefits but not in consideration of spiritual benefits or reward, it follows that the contribution paid by the policyholder in the general policy is considered a contribution (*al-Musahamah*) but not as a *Tabarru* (donation).

Relying on the logical, evidential, and legal point of views and also on practicality, it is suggested that in a general policy the contributions, required by the insurer to be paid by the policy holder should be labeled as *al-Musahamah* (contribution) instead of *al-Tabarru* (donation), so that the practices of insurance with special reference to the contribution in a general policy may not contravene the relevant *Shari'ah* principles and at the same time the policyholder may be able to make a claim²⁴ in consideration of paid contributions in a lawful manner.

Under Islamic law, there are basically four categories of participant (according to their age factors) as proposed in Chapter Four of this research under the title of 'Participant' (under Islamic Law). Among these four categories of persons there are some who, although they are suggested to have the capacity to be participant, are unable to buy the policy themselves due to, *inter alia*, lack of understanding or maturity, but the relevant guardians may buy the policy for the minor, infant and foetus under their name and solely for their benefits. The question may arise here as to what would be the source(s) of contributions, who may pay them and whether it (the contributions) would be regarded as capital, or gift or donation? A suggestion is made to the effect as follows.

(i) A person regardless of sex who has reached the age of 15.²⁵ is regarded as having the age of *rushd* (age of majority)²⁶ and he / she has the right to hold own property and manage it²⁷ according to his or her wish without interference by the guardian. This is justified by the following *Qur'anic* sanction:

*"Make trial of orphans until they reach the age of marriage; if then you find sound judgement in them release their property to them."*²⁸

In an insurance policy, once a minor regardless of sex reaches the age of 15 he or she may have the right to buy a policy in which the payment of the contribution may come from his/her own property, since he or she is already a person capable of managing his/her own property without depending on the guardian. In this case the contribution may be regarded as the property of the policyholder and it (contribution) is supposed to be paid by the policyholder himself or herself.

(ii) A minor at any age below the age of 15 (regardless of sex) may be able to buy a policy for himself provided that the policy is advantageous for the minor, the minor has full understanding about the policy and of course the guardian should have complete supervision over the policy so that the minor will be protected from any form of deception. In this situation the contribution may either come from the minor's property itself, (if any), but if the minor does not own any property the guardian (if wishes) may pay the contribution for the minor policyholder, in which case the contribution may be regarded as a gift (*Hibah*) in favour of the minor himself for love and affection. This is because under Islamic law, there is no bar if one wishes to make a gift in favour of one's own minor child.²⁹ *Sayyidina 'Umar and Uthman* said that when someone makes a gift (*Hibah*) in favour of his own minor child it is valid once it is declared.³⁰

(iii) A minor or an infant (regardless of sex) at any age between the moment of birth and below the age of 15 who does not have proper understanding about the policy but the policy is beneficial for him or her. In this situation the guardian of the minor or the infant may buy the policy under the name of the minor or the infant in which the contribution first of all is to be paid out of the minor or infant's owned property (if any). But if the minor or the infant does not own any property the contribution paid by the guardian may be regarded as a gift (*al-Hibah*) in favour of the minor or infant (participant) for their benefits.³¹

(iv) Once a foetus exists in the uterus with *ruh* (soul), it has the right to be participant especially against the risk of health safety. An insurance policy aims at providing material security against unexpected risk be it against one's life, property, health or business. Therefore, everybody with life regardless of age including a foetus in the uterus is also at risk. But the nature of risk may vary from person to person depending on age or other factors. It is thus unfair to say that an insurance policy may provide a material security for the one who is adult against risk while excluding the one who is under aged or even a foetus although they are also at numerous risks, especially to their health safety, and so on.

In this situation the guardian of the foetus may buy the policy under the foetus' name (the name of the mother of the foetus), in which the guardian has to pay the contribution from his own estate since the foetus does not own any property until it is born. It is suggested that the contribution paid by the guardian should be regarded as a gift (*Hibah*) in favour of the foetus, so the foetus may be covered by the policy especially for Medicare if required. There is no restriction under Islamic law to make a gift in favour of someone love and affection, so long there is no consideration sought over it.³²

It is concluded here that the contributions paid by the participant in a life policy could be divided into two accounts, i.e., personal account and charitable account. The amount deposited in the personal account may be regarded as the capital of the policyholder and be treated under the principles of *al-Mudharabah* profit and loss sharing while the amount deposited in the charitable account may be labeled as *al-Tabarru'* (donation), in which the policyholder reserves no right of benefits as it is given away for the benefit of others. In a general policy however, the paid contribution by the policyholder should not be treated as *al-Tabarru'* (donation) but as *al-Musahamah* (contribution), in which the policyholder may retain his right of claim (if the risk occurs to the subject matter of the policy), and also of a no claim bonus (if the risk does not run over the subject matter) upon the maturity period. This suggestion does not clash with the fundamental principles of Islamic law especially the governing principles of *al-Tabarru'*, *al-Sadaqah*, *al-Hibah*, *al-Musahamah*, and *al-Mudharabah* financing nor with the chief objective of insurance practices under *Shari'ah* discipline.

In the light of the above and also in harmony with the Divine sanctions for a general insurance policy the following suggestions are made:

- (i) The contribution paid by the policy holder to the insurance company should not be regarded as a *Tabarru'* (donation) nor *Sadaqah* (charity) nor *Hibah* (gift);
- (ii) The contribution may be paid as a contribution in which the contribution could be labeled as *al-Musahamah* (contribution);³³
- (ii) The paid contribution could be credited in an account which may be named as a mutual fund;
- (iv) The fund may be divided into three accounts. Firstly, a percentage to be allocated for the company's management,³⁴ secondly, a percentage could be kept in a special account which can only be used for the compensation against the risk on the subject matter of the policy, while the third portion may be credited in an account to meet the no claim bonus upon the maturity of each policy (to be paid to the policyholder who has not made any claim during the policy period); and
- (v) The sources of this fund could be the paid contributions from the agreed policyholders. Therefore, the policyholders may be regarded as members of the fund and they are the ones who have the right to make a claim against the risk if it occurs to the subject matter within the policy period.

The reason for proposing the contribution in a general policy as *al-Musahamah* (contribution) instead of *al-Tabarru'* (donation) or *Sadaqah* (charity) or *Hibah* (gift) is that *al-Tabarru'*, *Sadaqah* and *Hibah* are interchangeable idea in nature, especially in the legal sense. In other words, once a person creates *al-Tabarru'* or

al-Sadaqah or *al-Hibah* in favour of someone or something, the right of ownership immediately will be transferred to the donee in perpetuity, in which the donor ceases to have any form of right of benefits over the donated property. Unlike *al-Musahamah* (contribution) which need not necessarily be created in favour of someone else; rather the contribution may also be made in favour of the contributor himself. For example this occurs if a group is preparing to go for a holiday, and the members of the group agree to contribute an amount of money to raise a fund for the benefits of themselves in case they need medical attention during the course of the journey. In this situation the contribution is for the common benefits of the members listed in the journey.

In a general policy therefore the policyholder does not contribute simply for the cause of charity, but he does it on a mutual understanding with the operator that in consideration of the paid contribution, the policyholder has a right to make a claim on the operator for reasonable material security should the risk occur on the subject matter of the policy. But if no risk occurs the policyholder may still have a right to claim for a no claim bonus (NCB) upon the maturity period of each policy.

If, therefore, the paid contribution in a general policy is regarded as *al-Tabarru'* (donation) or *al-Sadaqah* (charity) or *al-Hibah* (gift) it may clash with the fundamental principles of Islamic law. Under Islamic law, once a person declares a *Tabarru'*, *Sadaqah* or *Hibah* in favour of someone or something, the donor ceases the right of benefits over it soon after it is declared. This is indicated in the prophetic sanction:

"Ibn 'Abas « reported that the messenger of Allah (s.w.t.) said: He who takes his gift back is like a dog which takes back its vomit. There is no evil simile for us." ³⁵

But if the paid contribution in the general policy is regarded as *al-Musahamah* (contribution) instead of labeling it as a *Tabarru'*, *Sadaqah*, or *Hibah*, it may not clash with the rules of Islamic law. This is because, under Islamic law, there is no provision which prohibits the contributor in a mutually contributed fund (*al-Musahamah*) from claiming any form of benefit from the fund. The purpose of a mutual fund is to provide benefits equally for the participants, so long the benefit is sought from the mutual contributed fund within the legitimate circle. This is indicated in the *Qur'anic* sanction:

"Help you one another in righteousness and piety. But help you not one another in sin and rancour" ³⁶

To sum up, the paid contribution in the general policy may be labeled as *al-Musahamah* (contribution) so that the policyholder will not have any restriction in claiming any form of mutual benefit over the contributed fund (paid contribution to the insurance operator) and justified if the contributor in a contributed fund retains his or her right to claim any benefit accordingly.

Notes

- ¹ 1. The author is an Assistant Professor with Deptt of Business Administration, International Islamic University Malaysia
- ² See Musa, Mohamad Yusuf, "The Liberty of the Individual in Contracts and Conditions According to Islamic Law," in *Islamic Quarterly*, 2:1, 1955, p. 252, at 256 and 260.
- ³ *al-Quran, Surah al-Maidah*, 5: 2.
- ⁴ *Mishkatul Masabih, (Debt)*, Karim, al-Haj Maulana, Fazlul, (trans) *op. cit.*, Ch. XIII, No. 4, pp. 206-207.
- ⁵ *Mishkatul Masabih, Loc. cit* No. 5, p. 207.
- ⁶ *al-Quran, Surah al Maidah*, 5: 1.
- ⁷ *Mishkatul Masabih, (Debt)*, Karim, al-Haj Maulana Fazlul, (trans) *op. cit* Ch. XIII, No. 3, p. 206.
- ⁸ *Mishkatul Masabih, Loc. cit*, No. 288 W, p. 214.
- ⁹ *Mishkatul Masabih, Loc. cit*, No. 21, p. 216.
- ¹⁰ See Hamilton, Charles, *The Hedaya, op. cit* Vol. II, p. 472.
- ¹¹ *al-Quran, Surah an-Nisa*, 4: 58.

¹² *al-Quran, Surah an-Nisa*, 4: 107.

¹³ See Al-Hilli, Najm al-Din Abu Jafar, *Shara'i al-Islam*, Beirut, Vol. II p. 253; also in Khan, Muhammad Akram, *Glossory of Islamic Economics*, See *al-Tabarru*, p. 729.

¹⁴ Al-Nasafi, Abdullah b. Mahmud; *Kanz al-Daqaiq*, Cairo, n.d., p. 352.

¹⁵ Among them the *takaful* operators in Malaysia.

¹⁶ See al Hill, Najmuddin Abu Jafar, *Sharai al-Islam*, *op. cit.*, vol. II. p. 253 See also '*al-Hibah*', '*al-Sadaqah*', and '*al-Tabarru*', in Khan Muhammad Akram, *Glossary of Islamic Economics*, *op.cit.*, pp. 56, 117, 129; and also '*Gift*', '*Donation*' and '*Charity*' in *A Dictionary of Economics and Commerce*, English-Arabic, *op. cit.*, pp. 145, 99 and 52.

¹⁷ See '*Contribution*' in *a Dictionary of Economics and Commerce*, English-Arabic, p. 70.

¹⁸ al-Nasafi, *Kanz al-Daqaiq*, *op. cit.*, p. 352.

¹⁹ See Arabi, Oussama, "al-Sanhuri's Reconstruction of the Islamic Law of Contract Defect", in *Journal of Islamic Studies*, 6: 2, 1995, p. 153. 169.

²⁰ *Mishkatul Masabih, chapter of Hibah*, (Trans.) Karim Al-Haj Maulana Fazlul, *op. cit.*, Book II No, 18, p. 316.

²¹ *Mishkatul Masabih, loc. cit.*, No. 21, p. 318.

²² *al-Quran, Surah al-Maidah*, 5: 2.

²³ This is common practice of the Islamic insurance companies in the contemporary world including the practices of Syarikat *Takaful Malaysia Bhd.*

²⁴ See Mohamed, Abdullah I, "Stipulations for the Benefit of Third Parties in Islamic Law of Contracts," in *Journal of Islamic and Comparative Law*, Vol. 9, 1980, p. 7 at 8.

²⁵ It is argued by the majority of *Fuqaha* that a minor regardless of sex once he reaches hto the age of 15 is regarded as having *rushd* (age of majority) see Hamilton, C. *The Hedaya*, *op. cit.*, Vol. III, pp. 529 - 530.

²⁶ See Ali, A. Yusuf, *The Meaning of the Holy Quran*, *op. cit.*, n. 512 , p. 185.

²⁷ Because once a person becomes *rushd* (puberty) he has the right to manage his own property. See *The Mejelle* Art. 981.

²⁸ *al-Quran, Surah an-Nisa*, 4: 6.

²⁹ See *Aurangzeb V Daud Khan* (1957) *PLD* (Pesh) 85; See also *Mohd Afzal V Khursheed Begum*, (1975) *PLD* (pesh) 24, 27, 28.

³⁰ See al-Sarakhsi, *al-Mabsut*, *op. cit.*, Vol. XII, p. 51; See also Ibn Najaym, *Bahr al-Raiq*, Cairo, 1311 A.H., Vol. VII, p. 288.

³¹ Mahmasani, *al-Nazariyya al-amma li al-mujibat wa al-'Uqud Fi Al-Sharia al-Islamiyyah*, *op. cit.* Vol. II, p. 102.

³² See *A Code of Muslim Personal Law*, *op. cit.*, S. 183.

³³ See "Contribution" in *A Dictionary of Economics & Commerce*, English - Arabic, *op. cit.*, p. 70.

³⁴ Because it is a short term policy (unlike a life policy) in which the company may not get enough time to mobilize the paid-contributions and makes profits in order to manage the company accordingly.

³⁵ *Mishkatul Masabih, al-Hibah*, Karim (trans.), *op. cit.* Book II, No. 18, p. 316.

³⁶ *al-Quran, surah al-Maidah*, 5: 2.