

Requirements for Compensation in the Saudi System and Islamic Jurisprudence

Sultan Abdul Aziz Alotaibi and Dr. Kawthar Abdalla Bayoumi

Academy of Islamic Civilization, Faculty of Social Sciences and Humanities, Universiti

Teknologi Malaysia (UTM), Malaysia

Email: abdul20@graduate.utm.my, amkawthar@utm.my

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Abstract

This research aims to identify the requirements for the compensation in the Saudi system and Islamic jurisprudence. It highlights two types of damage: material and moral. It argues that the requirement for the existence of damage is what distinguishes administrative or civil liability from moral and criminal liability. Moral rules denounce and condemn sin without regard to whether this sin has achieved its evil purpose or not. In criminal law, criminal liability does not exist unless the intention of the perpetrator appears. The main hypothesis of this research is that damage entails compensation whenever it occurs. It concludes that compensation is one of the important principles in Islamic law to guarantee the rights of Muslims and preserve their property so that no one transgresses against another and that a Muslim does not transgress the rights of other Muslims.

Keywords: Compensation, Islamic Jurisprudence, Law, Saudi Arabia

Introduction

It is because of Allah's mercy on his servants that he created perseverant jurists and scholars who stay awake at night and exert the maximum efforts to convey knowledge to their contemporary generations and the generations that follow them so that they enlighten those sciences and knowledge and educate themselves with the culture of the Qur'an (Imad, 1990, p.385). Through this research, we look at an honourable principle from the content of our huge jurisprudential heritage, about which the jurists present research and investigation, and their views and opinions differed about it, except for the principle of the compensation for harm that occurs to a person as a result of the behaviour of others, whether this behaviour is intentional or spontaneous (Ahmed et al., 2021a; 2021b).

In this research, I did not commit myself to mentioning all the models and applications that derive from compensation and guarantee as a result of damage or destruction. Rather, I mentioned some models and applications that I saw important and revealing of these applications, although other models and examples revolve around what I will mention through the research.

First: Requirements for compensation in the Saudi System

Damage is the mainstay of liability, whether civil or administrative. If liability can be determined without mistakes, then it cannot be established, whatever its basis, without harm. This is known by reason and logic, as it is not conceivable that liability is established for an act that does not entail harm, even if it is a wrongful act. Because of that, the element of harm is always necessary for the existence of responsibility of both kinds, contractual or tortious. So, where there is no harm, there is no liability, and there is no exception to this rule. Before the judgment of compensation, damage shall be confirmed (Ahmed, 2012. P. 40).

On the other hand, the requirement for the existence of damage is what distinguishes administrative or civil liability from moral and criminal liability. Moral rules denounce and condemn sin without regard to whether this sin has achieved its evil purpose or not. In criminal law, criminal liability does not exist unless the intention of the perpetrator appears. The damage may be material or moral, and it is a loss that affects the victim in his money, such as damaging money or missing deals or events incurring expenses upon the harmed person. Therefore, study consumer behaviour is significant for this process (Alsharif et al., 2021a; 2021b; 2022; 2023).

The material damage, in turn, is divided into two parts: direct and indirect damage. The direct damage is the damage that is directly related to the mistake, i.e., the cause is linked to the result. It is the first and natural result of the mistake and the harmed person was not able to avoid it by making a reasonable effort. As for the indirect damage, it is the one that is not a direct result. It is the damage that is separated from the original mistake by another mistake. The researcher believes that the definition of damage is the harm that befalls the victim in one of his rights that are protected by law, whether in his body or in his money or in a legitimate interest (Ahmed, 2006, p. 55).

Accordingly, Proving the mistake against the debtor does not necessitate his contractual or tortious liability, so it is necessary to prove the occurrence of the damage, as the damage is considered a pillar of the contractual and tortious liability in Sharia and in law. There shall be a causal relationship between the mistake and the damage and that the damage occurs as a result of this mistake (Assad, 2014, p. 45).

This is because damage in contractual liability is the damage that befalls the debtor as a result of non-implementation of the contract or one of its clauses, while damage in tortious liability is the harm that befalls a person in one of his rights or in a legal interest. In general, damage is divided into direct, indirect, realized, and potential damage. It is also divided into moral and material.

Material Damage

It is the one that is related to money. It is more common in contractual liability than moral damage, and it financially and physically affects a person, in addition to other types of financial loss. For examples, the damage that befalls the goods in the contract of carriage, the damage that befalls the lessor as a result of the damage caused by the lessee to the leased property, the damage that befalls the merchant in the case of non-delivery of the goods or delay in their delivery if that results in missing a profitable deal, and the damage that the traveller suffers from if he is physically injured in an accident while on the road, which causes him total or partial disability to work (Halima, 2007, p. 33).

Moral Damage

It is the one that does not affect money but affects the person in terms of his sensitivity and consideration, such as feeling, affection, dignity, honor, or reputation. An example of moral damage is the failure of the negotiation which leads to damage to the business reputation of the harmed person, to undermine his financial credibility, to raise doubts about his professional ability, and the pain resulting from this loss of a loved one in an accident (Muhammed, 2001, p.56).

Conditions for the Damage that Entails a Guarantee

1. The damage shall be realized.

The actual or realized damage means the damage that has actually occurred, as if the goods have been damaged during transportation, or it is likely to occur in the future, which means that its realization is inevitable, not just a possibility. The Egyptian Court of Cassation supports this opinion as well, it states that "it is required for the judgment to compensate for material damage to cause damage to the financial interest of the victim, and that the material damage is realized by actually occurring or by its occurrence in the inevitable future (Ali, 2000, p. 66). Another example is that, when a person dies, the compensation requires proving that the victim was actually dependent at the time of the person's death on a continuous and permanent basis, and that the opportunity to continue to do so was real, and then the judge assesses the lost opportunity for the harmed person by losing his breadwinner. The judge decides compensation on this basis. As for the mere possibility of damage occurring in the future, it is not sufficient to judge for a compensation.

The question of realizing damage or not is an objective issue. This means that the judgment of which is up to the judge. The Court of Cassation has nothing to do with monitoring it when the conclusion of the concerned court is justified. It was stated in the judgment of the Egyptian Court of Cassation that "Deriving evidence of damage or its denial is independently up to the judge as long as the evidence that he adopted in his judgment is legally acceptable. But if the damage is not certain to occur in the future, and it is not actually achieved, then it is called potential damage, it is not compensated unless it is realized.

2. The damage shall be foreseeable and direct.

As the damage shall be foreseeable at the time of concluding the contract. The scarcity of compensation for the damage is due to the fact that it is the will of the parties that determines the obligations of the two parties, and the unforeseeable damage does not fall within the scope of the contract, so there is no compensation for it. It was stated in Article (221/2) of Egyptian Civil law that "if the obligation stems from the contract, the debtor who did not commit fraud or mistake is only bound to compensate for the damage that would normally have been foreseen at the time of the contract.

As for the Saudi system, the compensation for damage shall meet certain conditions. For example, the damage shall be realized and shall be with certain. Examples include immediate damage that actually occurred, causing death, wounding, or defaming a merchant's reputation and dismissing his customers. It can be a missed loss, which is the loss that the harmed person could have suffered if the damage did not happen. Therefore, neuroscience can be used to measure the percentage of harm (Ahmed et al., 2022; 2023a; 2023b).

The damage to be compensated shall be a direct result of the harmful act, so it is not permissible to blame the person for all the direct and indirect consequences of his action, finally: the damage shall be in the legitimate interest of the harmed person. This means that

the damage shall be inflicted on an acquired right or at least an interest for the harmed person. If the creditor demands implementation, he does not demand proof of damage, because the non-performance leads to proof of damage inevitably. If the creditor demands execution for exchange, then the case shall provide evidence of the damage he suffered as a result of the non-fulfilment or delay of the obligation. The implementation of this rule is limited to the judicial compensation estimated by the judge, and it is not taken into account in the legal compensation (Waleed, 1995).

The duty that falls upon the party in charge of legal control is to exert maximum efforts to prevent the damage from occurring from the person under control. If the person under control performs a wrong behaviour that harms others, then the law makes the person assigned to control him responsible for this behaviour. Accordingly, all employees in the commercial entity are subordinate to the owner of the commercial business, just as the commission agent is subordinate to the client in the commercial transaction as long as it is done for his account and the merchant is responsible for him in the commercial transaction. The provisions necessitating compensation shall apply if the act of the subordinate results in damage to a third party or the contracting party with the merchant in the commercial transaction.

Second: Requirements for compensation in Islamic jurisprudence

Damage represents the aspect that entails liability in Islamic jurisprudence if we use the more specific term in Islamic jurisprudence, which is the guarantee.

First: Definition of damage in Islamic jurisprudence.

Linguistically, damage is “what you do to harm your friend and benefit from it yourself”.

The basic rule in Islamic jurisprudence is to remove the damage. That is, the obligation to remove the damage of the one upon whom it was inflicted. The basis for this rule is what Malik narrated in Al-Muwatta’ that the prophet of Allah, may Allah’s prayers and peace be upon him, said: “there should be neither harming nor reciprocation harm”. Islamic Sharia is based on bringing benefits and warding off damage. There is another rule that falls under this rule: committing the lesser of two evils. Among its branches is the legalization of deterrents in the hudud, guarantee, restitution of the usurped or guaranteeing it in case of damage, and fault-based divorce.

Modern Islamic jurisprudence defined it as “every harm that befalls a person, causing him a financial loss in his money, whether it is caused by a lack of it, a lack of benefits, or the disappearance of some of its characteristics, and so on, Or a person is afflicted with a wound in his body that results in disfigurement in it, or inability to work, or weakness in his earnings, and so on.

Islamic jurisprudence distinguishes between two types of damage

Material damage

“Every harm that befalls a person, causing him a financial loss in his money due to an act, or afflicting a person in his body which results in his inability to work, or weakness in his earnings”.

Material damage is divided into parts, as follows

- **Criminal damage:** it is the damage and assault that are inflicted on a person’s body, which wound one of his limbs, and results in his disfigurement. Therefore, the legislator determines a penalty for him, so that it is stipulated that the damage causes an apparent

effect on the body of the victim. But if there is no effect, there is no penalty paid to the harmed person unless the damage is removed as a result of spending expenses for his treatment. This does not prevent the ruler from reprimanding the aggressor for his commission of a crime because every prohibited assault requires a reprimand.

- **Financial damage:** It is every damage caused by an act that resulted in the destruction of all or part of the money or a reduction of its value or missing one of its benefits.
- **Non-material harm:** It is represented in every damage that befalls a person in his honor, affection, or leads to the loss of a non-financial interest that he is committed to. Jurisprudence divides it into two types:
- **Vindictive damage:** it is the damage that befalls a person in his honor, such as an act or saying that is considered an insult to him, as in slander and insult, or that causes him pain in his body, such as beating that does not cause him an effect or affects his affection, such as contempt in addressing him, or humiliation in his treatment or in his religion.”
- **Moral damage:** it is the loss of a non-financial interest to which a person is committed, as in a commitment in which the obligor refrained from executing his obligation. For example, it happens when a trustee who refrains from handing over the deposit to its owner.”

Damage in Islamic jurisprudence has a specificity that distinguishes it from positive law, as it is governed by a number of jurisprudential rules. Some important and necessary clarification should be given here. Originally, the jurisprudential rule, according to the idiomatic definition, is “a universal jurisprudential issue that is applicable to all or most of its parts.”

The damage that is forbidden according to the rule of “there should be neither harming nor reciprocation harm” is considered a comprehensive case that applies to all cases that cause damage to others. The definition of damage in Islamic jurisprudence is distinguished by greater detail and interest among jurists than in positive law. The abstract damage in positive law and its being immediate and direct damage affecting a legal status may conflict with the idea of potential damage in dealing with the results that the act can lead to, which is what the positive law deals with (Ibrahim, 1999, p. 37).

Damage in the positive law is one of the pillars of liability while in Islamic jurisprudence it becomes the basic pillar upon which the guarantee is entailed. Positive law divides damage into material damage and moral damage. The material damage affects a person in his body, and the moral damage affects him in his reputation and honor. In Islamic jurisprudence, the damage is divided into material damage that affects a person in his body and money, and non-material damage that affects a person in his affection and honor and causes him to lose a non-financial interest. Regarding compensation for damage. In the positive law, compensation is made for both material and moral damage, while in Islamic jurisprudence, compensation is for material damage only.

Conditions of damage that incur the liability of administration in Islamic jurisprudence. Jurists require several conditions to be met to consider damage in this case, which are:

1. To be based on money that is legally valuable: Jurists define the valuable money as “what the owner owns and uses on behalf of someone else if he takes it.” Here, the question arises about the possibility of moral compensation in Islamic jurisprudence, where damage is not rectified financially? It is clear that Islamic jurisprudence agreed in principle that the act of aggression that causes moral damage, such as assault on honor, is considered a crime and shall entail reprimanding the offender. However, the jurisprudential dispute is over the possibility of financial compensation for the victim to console him for the assault, in addition to the disciplinary punishment?

The researcher believes that there is no legal text on this issue that prevents the imposition of this compensation when the interest requires it, just as there is no legal objection to combining material compensation for moral damage with a disciplinary punishment. The interest that is the purpose of the legislator, and justice that is the basis of the foundations of legislation, and the evidence of Sharia policy, all of these matters enable the ruler to legislate legislations that fulfil the interest, justice, and regulate the affairs of the state, provided that they do not contradict a specific legal text about that interest.

2. The damage shall be realized: the damage shall be realized, both now and in the future. But if it is suspected or most likely to occur, then the potential damage is neither actually realized, nor is it realized to occur in the future.
3. The damage shall be obscene and unjust: it may be obscene, so minor damage is not considered, and judgments are not based on it, which is referred to people's customs. It may be unjust, by transgression and injustice, or by way of arbitrariness in the use of the right, or by negligence.
4. The damage shall breach a legitimate interest: it must cause harm to what was originally legitimate, not to what it is illegitimate."

Positive law agrees with Islamic jurisprudence in terms of the conditions that shall be met for damage in order to be compensated, although Islamic jurisprudence added one condition, which is that the damage shall have occurred on money that is legally established. Compensation in Islamic jurisprudence aims to achieve an important consideration, which is restoring the financial balance as before the occurrence of the damage. The primary consideration in Islamic jurisprudence is the financial concepts and not the subject of obligation. Thus, Islamic jurisprudence is distinguished in its objective view by reporting the financial damage arising from the harmful act, while positive law suggests assuming mistakes through many forms of liability without the objective view of the area of liability.

Conclusion

Compensation is one of the important principles in Islamic law to guarantee the rights of Muslims and preserve their property so that no one transgresses against another and that a Muslim does not transgress the rights of his Muslim brother. The guarantee of benefits is an important matter when the usurped person has a lost reward. The jurists took into account the customs in the countries in which such matters occur. If the custom in a country suggests that the benefits that are due in the lease contract, such as real estate, clothes, and animals, then they must be guaranteed according to the prevailing customs in that country. As for the countries in which such customs do not exist, the jurists do not suggest a guarantee.

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