

## **The contract of employing people in Islamic jurisprudence (A comparative study)**

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### **Abstract**

In this study, I will address the concept of the contract of rented people in Islamic jurisprudence by studying the definition of the contract of rented people in language and in jurisprudence, and then developing the rented agreement in Islamic law and its importance, and then I am exposed to the contract of rented people in Islamic jurisprudence and other similar contracts, I concluded with a number of conclusions and recommendations. This study used the analytical inductive method, the historical approach, and the comparative method. One of the most important findings is that there are some issues and provisions that are imposed by the developments of the last century. They need to be addressed, such as the rules and regulations related to the organization, which in turn makes Islamic law a source of those laws, and one of the most important recommendations is the need to research the emerging issues in the modern era through the provisions of Islamic jurisprudence, in order to find rules and provisions for these developments and the existence of a legitimate basis, and to consider the importance of working in social and economic life, and urging the dissemination of the spirit of diligence among the members of the community, so as to work on the renaissance of the country and progress.

### **Introduction**

Praise be to Allah, the Lord of the Worlds, and prayers and peace be upon the faithful Messenger of Allah, and on his family and companions, and on those who followed him and his Sunnah until the Day of Judgment.

The agreement of rented people in Islamic jurisprudence or what is known in modern jurisprudence (contract of work) has become a subject of great importance in contemporary times. Hence, the research in this regard is on Ijara (employing people) in Islamic jurisprudence, and in this study I am dealing with the provisions concerning Ijara (employing people) In the sense that the rent agreement is generally divided into two types: the rent of persons, considering that the rent of persons is what concerns in this study.

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**The importance of studying :**

The importance of the topic comes from the importance of Ijara (employing people) in general, the rent of persons and especially in the Islamic jurisprudence, in addition to the jurisprudence of ancient jurists and modernists, but the recent legislation dealt with (contract work) with the beginning of the last century in the emergence and evolution, it was thought to understand many of the commentators on the contrary, that Islamic jurisprudence did not preserve the rights of the employee in the form provided by the provisions of modern legislation and international conventions and regional, hence emerged the urgent importance to clarify the provisions of contract with people in the Islamic jurisprudence, comprehensiveness and containment of all the rights that preserve the interests of the parties in this contract.

**Objectives of the study :**

This study aims to examine the provisions of the contract of employing people in Islamic jurisprudence, and the great interest given by the Sharia law to work in the Muslim community, so that it made it a duty and honor and dignity to rise to the distance of worship, and in turn attention to the wage and rights that must be obtained in return for his work, Should be carried out, the rights of employers, so that the jurisprudence is created

Islamic system maintains and balances the interest of society in the development and reconstruction, and the benefit of the wage earner, and the rights of the employer to obtain benefit.

**Research Methodology:**

The study follows the descriptive approach, the comparative analytical methodology with the historical method, so that the original sources in Islamic jurisprudence, and comparison whenever necessary, especially the provisions of the Sudanese law.

**Problem of the study:**

The problem of the study is that there is a lack of interest of the provisions relating to the employment of persons that came in the Islamic jurisprudence, and photographed by some of the commentators in the present era that it is inconsistent with the provisions of the current legislation of the provisions of the labor contract, which makes it an integrated system. Hence, the study problem can be formulated in the following ways:

- 1- What is the concept of the employment contract of persons in Islamic jurisprudence, and to what extent is it similar or different with what came in the contract of work in contemporary legislation?

- 2- What are the differences in the contract of leasing people from other contracts, so that it made a contract to have its specificity and provisions related to it?
- 3- Which consists of the employment of persons in the Islamic jurisprudence?

**Structure of the study:**

We are exposed to this subject through the following division:

The first topic: **The concept of the contract of employing people:**

- The first requirement: Definition of employment contract.
- The second requirement: the importance of work and its objectives in Islamic law.

The second topic: **Discrimination of labor contract from other contracts:**

- The first requirement: the employment of persons.
- Second requirement: employment contract and agency contract.
- Third requirement: Contract of work and contract of contract.
- Fourth requirement: employment contract and contracting works.

The third topic: **The foundations of the contractual relationship in the employment contract:**

- The first requirement: the formula.
- The second requirement: the contractors.
- Third requirement: utility.

**Conclusion.**

**Results.**

**Recommendations.**

**Sources and references.**

The first topic

**The concept of the contract of employing people:**

The first requirement

**Definition of employment contract:**

The term contract in language: It the obligation<sup>1</sup> of both parts of contraction, the agreement between two parties under which each undertakes to implement what they have agreed upon<sup>2</sup>.

Contract in term, some jurists distinguish between agreement and contract, that the agreement is the consent of two or more wills to establish, transfer, modify or terminate an obligation, such as agreeing to modify an

1- IbnMandhoor, Lisan AL Aab.

2- FayroozAbadi, AL Qamoos AL Muheet.

obligation, agree to a binding association or add a condition to it; the contract is more than the agreement. It is not a contract unless it is the originator of a liability or a carrier. If it modifies or cancels the obligation, it is not a contract.

Ijara (employing people) in term of jurists, means the sale of the benefit<sup>1</sup>, which is also means that the lessor gives the tenant a deliberate benefit<sup>2</sup>.

We find that the jurists of the four schools of thought have listed various definitions of the employment contract in Islamic jurisprudence, and despite the differences in the formulation of these definitions, but in fact they prove the compatibility of the definition with some restrictions.

The Hanafiya said : «Ijara is the sale of a benefit in exchange with a known reward.»<sup>3</sup>.

Al-Maalikiyah defines it as: «Selling known benefits with known compensation without any corruption .»<sup>4</sup>.

They also knew this definition because they did not see any difference between the two Arabic terms (Ijara and Kira`a)<sup>5</sup>. They say that ownership includes contracts that makes benefit from Ijara such as the sale of a gift, a charity, or anything else that can be possessed<sup>6</sup>.

The Shaafa`is defined it as follows: «A contract is based on a specific purpose that can be applied and permitted by known compensation.»<sup>7</sup> Some Shaafa`is went on to say that it is not permissible to make the marriage contract beneficial for others except for the husband and wife and this should be excluded from other definitions<sup>8</sup>.

While the Hanbalis defined the term as: «a contract on a given benefit which is taken little by little»<sup>9</sup>. It was also known as: «a contract on a permissible benefit known for a certain period of time, or a known work with known compensation.»<sup>10</sup>.

A person who benefits from another work of another person is the «tenant» as the term (employer) in the concept of contemporary law, and

1- Majalat AL Ahkam AL Adliya, p 72.

2- Mohammed Qadri Basha, Murshid al hiran Ela Marifat Ahwal AL Insan.

3- Ali Almirghinani, AL Hidayah Sharh Bidayat AL Muftadi.

4- Mohammed al Trabulsi AL Hattab, Mawahib AL Jaleel Lisharh Mukhtasar KHaleel.

5- AL Dusuqi, Hashiyat AL Dusuqiala AL Sharh AL Kabeer.

6- Abdul Gadir AL jajeeri, Kitab AL Fiqhala AL Madhahib AL Arba`a.

7- Mohammed AL Shirbeeni, Mughni AL Muhtajela Marifat AL Fadh AL Muhtaj.

8- Al Imam Al said AL Bakrilhanat AL Talibeen.

9- Mansoor AL Bahooti, Kashaf AL Qina`an Matn AL Qina`a.

10- Abdul Gadir bin Omar AL Sibyani, Neil al ma`arib bisharhdaleel al Talib.

the other who works for wage is known as a «worker»<sup>1</sup>. and the relationship between them is what is known as the contract of work, which is intended according to what the positive laws: «a contract which is committed one of its parties to do a work for the other under his supervision or management in return for wage»<sup>2</sup>.

And we see that the definitions of the jurists are all close in meaning, but differed in their terms. In Sudanese law, the Labor Law of 1997 defines the contract as: «any contract, written or oral, either express or implied, whereby any person under the supervision and management of the employer shall be employed in exchange for any wage of any kind, Subject to the provisions of the Law on apprenticeship and vocational training of 1974»<sup>3</sup>.

We note the Islamic jurisprudence in its definition of the employment contract stating the implied commitment of both parties to fully abide by the rights and guarantees and other conditions of employment stipulated in the Labor Law and its regulations whether mentioned in the contract or not ment, while the definitions contained in the Islamic jurisprudence is in its entirety to reflect the employment contract based mainly on benefit and compensation.

The definition we choose for the right employment contract is: «It is a contract that is lawful, intentional, permissible, and well-known.» which benefit the ownership of benefits, such as royalties and speculation, speculation and lending, and the gift of benefits and the commandment and loan.

#### The second requirement

#### **The importance of work and its objectives in Islamic law**

The philosophy of Islam in the report of rights is a philosophy valid for all time and place, since Islam did not recognize these rights in frameworks or rigid molds, but left to the Muslims to decide in the light of the provisions of the Koran and Sunnah scholars of the nation, Islamic law is a place to be included in all aspects of life. It shows the keenness of Islam to protect the property and guarantee of the legitimate gain, the unification of loyalty will liberate the people, it is a country of up freedom for unification through invalidated slavery, and it is a state law in which people invoke rulers to the well-known law with subjective rules<sup>4</sup>.

The word «work», whether it means manual work or mental work of others, contained in many verses of the Koran and the Sunnah, Allah (swt)

1- Majalat AL ahkam AL Adliya.

2- Haytham Hamid AL Masawra, AL Tashri al Ommali AL Islami, 2010 p 18.

3- Qanoon AL Amal 1974.

4- AL Tijani Abdul Gadir, Osool AL Fikr AL Siyasi 1995 p 85.

says (*And when the Prayer is finished, then may ye disperse through the land, and seek of the Bounty of Allah: and celebrate the Praises of Allah often [and without stint]: that ye may prosper*) [AL Juma`a 10].

And work has a positive value that Islam encourages it because of the achievement of the welfare of the community, the prophet, peace be upon him said (meaning not words): «The strong believer is better and loved to God than the weak believer.»<sup>1</sup>.

Islam encourages and motivates individuals to work so as to gain initiative, and rich blessing from the grace of God..

And if Islam has considered the work obligatory on the individual as it is not permissible for him to live on begging, robbery or looting»<sup>2</sup>.

Shari`ahas well, does not allow begging, because it is, a waste of human dignity, disruption of human strength and creative talent the prophet (peace be upon him) said that (in meaning not words) : «The one who asks people and he is not poor, it is as if he is eating embers,»<sup>3</sup> and this is why the shariah urged people to work, and if not, they would not be able to do so. In order to be able to obtain a work, the Islamic State must prepare suitable work for people, protect its rights, prepare the members of the society technically and scientifically, and establish training centers to enable them to carry out their duties<sup>4</sup>.

The Ijarah contract has taken a great deal of place among the scholars of Islam, which has made it an essential part of Islamic jurisprudence. It confirms that Islamic law And its provisions are valid for application at all times and places.

### The second topic

#### **Discrimination of labor contract from other contracts**

The contract of employment may be confused with other contracts, because it may be similar in many of its characteristics and provisions with these contracts. Hence emerges the importance of finding the difference between labor contract and the other contracts. The contract of employment is based on three elements: duration, wages and benefit. , Because duration is an essential element in it, and there is a close correlation between wage and duration, and in light of these elements, the labor contract should be distinguished from some other contracts.

1- IbnMaja, SunanIbnMaja, Dar Sahnoon 1992.

2- AL Tirmidhi, Sunan AL Tirmidhi Dar Sahnoon 1992.

3- Ahmed IbnHanbal, AL masnadMuasasatQurtuba, Hadeeth No 8730.

4- Ismail AL Badawi, AL Huriyat AL Aama` previous refrence p 384.

### The first requirement

#### **The contract of employing people**

The contract of employing people is known as the term of the labor contract, which is newly established in the language of the law, and it was not revealed until the beginning of this century where the contract of work is a kind of employment, They now differentiate between the contract of employment and the contract of labor through the dependency component and have difficulty distinguishing between the contract of employment and the contract of labor because the employed labor is required to perform a specific work for the other contractor, who in turn is obliged to enable the first to benefit one of his or her beneficiaries in return for an advance payment.

In Islamic jurisprudence, property rights are the most serious and most far-reaching. The right to property is the main focus of life. In fact, the right to property is subject to many restrictions, and the ownership of benefits is one of the most important ones. The Islamic jurisprudence dealt with the contract of employment, it dealt with it through organizing the employment contract as a whole, and it was known as the employment of a man for service and work.

We can see that the contract of employment is one of the types of rent<sup>1</sup>, bearing in mind that the jurists cited the contract on the benefit of man. And we see that the distinction here is based on the element of dependency also if there is supervision and supervision and dependence of the owner of the car to the occupant of the car we were in the contract of work, and if there is no supervision we were in a lease.

### The second requirement

#### **Employment contract and representation contract**

The two contracts are different in that employment contract has special protection in terms of its rights and guarantees. The representation does not have this character, on another hand the contract of employment differ from the representation contract, in that the contract of employment does not end with the death of the employer whereas this is not the case in the representation contract and in general they are both subject to each other<sup>2</sup>.

### Fourth requirement

#### **Employment contract and sale contract**

The contract of sale is one of the contracts that applied on property, like the ownership of money, yet an old opinion of the jurisprudence - influenced by the economic view of the work - that the worker sells his labor force to the

1- GadriBasha, Murshid AL HiranFiiMa`arifatAhwal AL Insan ,p80.

2- Dr. Yaseen Mohammed Yahya,Qanoon AL Amal AL Masri AL Sudani. 1991,p99.

employer in exchange for salary, The opinion is no longer acceptable because it makes the material thing that is transferred by the owner of the sale and the labor force equal, which is inseparable from the worker's character. Another opinion of the jurisprudence is an attempt to bring the work contract together with the sale contract on the basis of the work done by the labor himself<sup>1</sup>.

As for the distinction between the employment contract and the sale contract in the law, However, the old view regarded work as a commodity like any other commodities in the market<sup>2</sup>.

In the Islamic jurisprudence, there is rarely any confusion between the contract of work and the contract of sale. The first contract concerns work, and the second contract concerns property, jurists have stated that Ijara is like selling, because it is held in the contract of employing people.

According to their opinion, they have established the distinction between the two contracts on the basis of the idea of legal dependence between the worker and the employer<sup>3</sup>.

However, the distinction between them is mainly due to the criterion of legal dependency as a distinguishing feature of the contract of employment. If such dependency exists, the contract is a contract of employment. If it does not exist, it is considered as a contract of sale if its basic elements are available.

### The second topic

#### **The foundations of the contractual relationship in the lease contract**

The pillars of Ijarah in the Islamic jurisprudence is the corner of the side, and pillars are parts of it<sup>4</sup>. therefore a pillar is the strong side that holds it, in Islamic jurisprudence it is different, the public scholars<sup>5</sup> said that it is necessary for imagining the contract and its existence, whether it is part of it or concerns it.

Here are three pillars, namely: wording, contract and benefit.

#### First requirement

##### **wording**

The wording in the lease contract is the affirmation and acceptance or whatever is in place in all indications of the ownership of the intended benefit of the work, and it is correct in Ijarah to use any of the well-known words in

1- Dr. Yaseen Mohammed Yahya, Qanoon AL Amal AL Masri AL Sudani. 1991, p99.

2- Dr. Mohammed Jamal AL DI Zaki Egypt Labour ACT, 19982.

3- Al Zaylai, Tabyeen AL Haqiqsharh Kanz AL Daqaiqu.

4- Tahir AL Trabulsi, Tarteeb AL Qamoos AL Muheet.

5- Abdul Rahman AL Jaziri, AL Fiqhala AL Madhahib AL Arba`a.



establishing the contract as hired, worked, and accepted<sup>1</sup>.

The Hanafis consider wording to be the cornerstone of the contract because the corner has nothing to do but it was part of it, and justified in that wording alone is dependent on finding the contract and composition, if wording is found, contract is then found, and this does not exist for the contract and the contract<sup>2</sup>, However, this dispute between the Hanafis and the public scholars is no longer a problem because all the jurists agree that the contract will not be present unless these four things are available.

And the Shaafa`is say that considering wording as the cornerstone of the employment contract, it is to include both the affirmative and the acceptance of a word, and that there is no separation between them.

The majority of jurists went on to say that the contract is a link between two wills on the face of the result of a commitment between them, and they said that the basis in the contracts is the will of the contractors, which stands in place of what is affirmation and acceptance, although it is the basis of the contract because it is hidden and shows only the word that is the appearance of the affirmation, wording consists of affirmation and acceptance, and both the affirmation and acceptance may be verbal or implicit<sup>3</sup>, and the expression of will and words that the verbal phrase is the origin in showing the wishes of the contractors, because it is the natural way of understanding between people, the Hanafis have another opinion, namely, they said that wording with predicate verb form and question form are considered invalid<sup>4</sup>.

And the wording takes place in any term that helps to know the purpose of the contract, and in general in all contracts, the relying on the understanding of the intention of the two contractors, which does not require suspicion and conflict because in the Islamic law there are not any specific words of contracts to be formed and used, but make them absolute to people use which indicates their purpose and determine the meaning they intend to meet in the words of reward, the contract in which they are expected to work is the work and benefit comes in accordance with the contract and then added to the benefit of work<sup>5</sup>.

As for the silence in the Ijara, in jurisprudence it is considered as acceptance and satisfaction, and therefore there is no regard for silence in

1- Mansoor AL Bahooti AL Rawd AL Murbi, Dar AL Fikr p 214.

2- IbnA`abdeen, Cairo, Dar AL Nahda 1966.

3- IbnTaymia, Sheikh AL Islam, al Fatawa AL Kubra.

4- Majalat al Ahkam AL Adliya, Article No 435.

5- Abdul Rahman AL Jaziri, AL Fiqhala AL Madhahib AL Arba`a.

relation to the affirmative, as for the acceptance<sup>1</sup>.

And that there is no evidence of the requirement of wording to express this satisfaction, and it is not proved that the Prophet (peace be upon him and his companions may Allah be pleased with them) use affirmation and acceptance term. and we find Muslims in their markets us Ijara as a type of sale, as stated by Scholars.

The jurists say that writing the contract between the employer and the employee is permissible after the issuance of affirmation and acceptance, and we know that writing is evidence to indicate satisfaction. As for the evidence of the prohibition of taking Ijara by compromise. Allah (swt) says (.....) [Nisa: 29]. It is therefore necessary to express the will of the contractors<sup>2</sup>.

The public scholars went on to say that it is permissible to write the contract between the two contracts, whether they are able to read it or not, as long as the style and wording of writing are clear, and there is a statement of the Shaafa'is says that it is not permissible to write the contract between the two parts unless they are unable to speak<sup>3</sup>.

As for coercion in the law, the contract of employment is voidable if the worker is forced to participate and sign it. although coercion is rarely achieved at the conclusion of the contract of employment, but if the worker's need for his livelihood is exploited by the employer to dictate unfair conditions, a need, in this case is considered a coercive circumstance, and the explainers agree that the contract may be invalid<sup>4</sup>.

#### The second requirement

##### **The contractors**

It is necessary to conclude an employment contract by the presence of two contractors, the employer and the employee, who are required to be very reasonable and rational.

The contractor may resort directly to the contract with the employer, and may be one of the parties of the contract or both may represent other(s) in the conclusion of the contract<sup>5</sup>.

As for a youth to be employed or not, jurisprudents have different opinions in this issue<sup>6</sup>, some of them said that a youth is not allowed to work or to be employed unless he gets a permission from his parents, the majority of

1- Surat AL Nisa`a verse No 29.

2- AL kasaniBadai AL Sanai.

3- Ihab Hassan Ismail, Qanoon AL Amalp.217.

4- AL Fatawa AL Hindiya, Previous reference 411.

5- AL kasaniBadai AL Sanai.

6- Surat AL Nisa`a verse No 6.

jurisprudents say that ijara is valid if he gets a permission from his parents, but the shaafa`is stood against this opinion and they forbade to employ a youth, even if the is authorized to do so.

Allah (swt) says (*And give the women [on marriage] their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, Take it and enjoy it with right good cheer*) [Al nisa: 4].

The public scholars say that the validity of the contract between a youth and an employer depends on the permission of the youth from his parents, the practical life has proved that there are many distinguished boys who behave in accordance with the interests of their society, Allah (swt) says (*Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them; but consume it not wastefully, nor in haste against their growing up. If the guardian is well-off, Let him claim no remuneration, but if he is poor, let him have for himself what is just and reasonable. When ye release their property to them, take witnesses in their presence: But all-sufficient is Allah in taking account*) [Al nisa 6]<sup>1</sup>.

And the reason that a youth should get a permission from his father is that the contract is on behalf of the youth is pity and love for the interest of the young, and Kasani says: «Ijara of the father and the judge, is permissible because, the father is allowed to employ his young son and give him a chance to work, to gain training and make experience, «and we can say that all schools of Islamic jurisprudence agree that parents and all those who have guardianship have the right to represent their son and sign the employment contract on behalf of him<sup>2</sup>.

And eligibility in Islamic jurisprudence is the authority of the contract to require the effects of the employment contract that agreed upon, eligibility is therefore the authority of the person to do his own legal and judicial work.

It is required that the two contractions should be distinctive, so that the Ijara does not take place if the employee is insane or a child<sup>3</sup>.

Whoever contracts for the account of others for the purpose of the obligation must have the eligibility and side of the contract of the third party and obligate him to complicate it on other than contracts<sup>4</sup>.

The mandate shall be established for the contract if the contract is concluded as a trustee, trustee, trustee or agent. The contract that concludes the contract

1- Surat AL Nisa`a verse No 6.

2- AL Dirdir, AL Sharh AL Sagheer p 44.

3- AL Dirdir, AL Sharh AL Sagheer, past reference, p. 51.

4- AL Dirdir, AL Sharh AL Sagheer, past reference, p. 342.

as a guardian, guardian or value does not have the capacity to contract. The Islamic law permits the guardian who is the right father, and the grandfather in the case of the death of the father, the special boy's leave or permission to conclude the lease contract<sup>1</sup>.

It is required that the two contractions should be distinctive, so that the Ijara does not take place on the work of an insane or a child<sup>2</sup>.

Eligibility requires a person to contract himself for the same account, but whoever contracts for the account of others for the purpose of the obligation must have the eligibility side of the contract. The Islamic law permits the guardian who is the father, and the grandfather in the case of the death of the father.<sup>3</sup>

There are matters of the mind among the conditions for taking a lease, to employ a mad man or a boy who does not make a distinction is not allowed in Ijara. As for the boy who is able to distinguish what is good and what is bad, his employment is regarded as the reward for him, if he is authorized by his father. If he doesn't have the ability to distinguish then in this case he is employed as a slave. The Shaafa'is say that it is not correct to start work before puberty.

It is necessary that validity, the conditions of satisfaction and lack of defects should be available in both parties of the contract, and this law is not different from the Islamic law which requires that both contractors:

The employee and the employer should be able to distinguish between what is useful and what is not useful, if this condition is not fulfilled the contract of employment is considered void. **Destruction above**

#### Third requirement

#### **Benefit**

Both parties must be aware of the benefit and its place, knowing that ignorance of it and its place and may lead to the dispute. The worker must be aware of the length of work or service which is limited to the duration. And a person cannot be employed for something he cannot do, such as to ask illiterates to write<sup>4</sup>.

scholars state conditions of benefit, which is the corner of the employment conditions need to be achieved in order that the contract will be true, and almost schools of Islamic jurisprudence agree in these conditions in terms of

- 1- Journal of Justical Judgments, Article 447, Prof. Anwar Mahmoud Dabour, Introduction to Islamic Fiqh, Dar Al-thagafa Al-Arabia, 2nd. edition. 1987, p.395.
- 2- Al-Kasani, Badaie Al-Sanaie, past reference, B., p.155.
- 3- IbnTeimia, AL Fatawi AL Kubra'a, p 406.
- 4- AbdALRahman Bin MohammedAL Maliki, Irshad AL Salik 1972, p 77.

meaning, although they are different in words and some of the details, and these conditions are to be beneficial, and it is manageable and should be delivered, and be of financial value, and finally to be legitimate and permissible<sup>1</sup>.

Scholars said that originally, benefit is legal contract and then property follows, such as land cultivation and residential house. The scholars differed as concerns the contract, whether it is beneficial or property, there are three different doctrines, the first doctrine, the majority of scholars agree that contract should be held in both benefits and properties. The reason behind this, is that the benefits are may be disposed of, and that the reward is in the employment contract, whereas compensation is the wage or the money paid to the worker in the employment contract.

Abu Ishaq al-Marwazi, one of the Shaafa'is' scholars, see that what is to be agreed upon in the employment contract is the compensation because benefits are not existed<sup>2</sup>.

Ibn Taymiyyah, sees that all that is renewed and is substituted whether it is compensation or interest, should be included in the employment contract. Thus, Ibn Taymiyyah did not agree with the public scholars is clear that the contract in the employment contract is the property that occurs little by little with the survival of its origin, but agreed with the public that the contract in the employment contract is what benefited by the survival of its origin. And the contract which is based on the employment contract is the benefit<sup>3</sup>.

As for the wage earner whose benefit is for the whole society, his services are considered to be an interest that the state must provide to all people, because every benefit that the individuals gains is also regarded as a benefit for all community.

The scholars of Muslims agreed that work is considered as collective duty if some of Muslims performed certain work and it is enough for all other Muslims, as well as it can be individual duty if it is not sufficient for all the community, otherwise the whole nation should work and no one is allowed to stay without work unless there is a legal reason like children, old people and ill people. Jihad is an example of such collective duty<sup>4</sup>.

Muslim jurists went on to say that working to earn for living, to pay for a debt, is considered as an obligation on every Muslim. Many Muslim jurists and scholars did manual work, and we still read and hear about a large number

1- Nadira Mohammed Salim, Agd AL Amal, p 103.

2- AL KisaiBadai AL Sanai p 175.

3- AL Mawrdi, AL Hawi AL Kabeer, paper No.258.

4- TageiALDeen AL Nabhati, ALNidham AL Igtisadifii AL Islam.

of those who attributed to work and crafts they were engaged in, without feeling of any sense of shy or objection towards their jobs and crafts.

Work is a human activity for individual to gain self-realization on the one hand, and social self-realization on the other, and it can be a source of happiness and well-being for the individual and society, all the legislations have imposed a lot of restrictions on the contract of employment, and Islam has put the work in a high position equal to the rank of Jihad for the sake of Allah, Islam has set many restrictions and conditions, and surrounded it by many guarantees that the worker reserves his right, and does not even turn into forced labor and servitude.

### **Conclusion**

Praise be to Allah, the Lord of the universe, prayers and peace be upon the noble prophets and messengers of our Master Muhammad prayers and peace be upon him, and on his family and companions, and those who followed him to the day of religion.

At the end of this study, which dealt with « The contract of rented people in Islamic jurisprudence (A comparative study), which included the general concept of this contract in terms of definition and privacy to the specialty of other contracts and other components, and the provisions of Islamic jurisprudence, with easy comparison with the provisions of the Sudanese law, and some views of modern scholars, the writer concludes a number of conclusions and recommendations. Which aims to demonstrate the findings of this study.

### **Results:**

The findings of this study include the following:

- 1- There have been many definitions in the Islamic Law, all of them lies in the fact that the provisions of labor relations in Islamic law requires to go deep into the provisions of the relation between the parties of the work, this in turn, requires consideration of further study of the aspects from which each definition of perception is derived.
- 2- There are issues and provisions imposed by the developments of the last century that need to be addressed, such as the provisions and regulations relating to the organization of holidays, working hours, rest and work injuries, and others, which in turn makes Islamic law a source of those laws.

- 3- Work is regarded as honor and dignity of individual life, because he believes to spend on himself and his family.
- 4- There are some contracts which are regarded very similar to each other, however, the jurists have set several criteria to distinguish between these contracts, and the employment contract is based primarily on the elements of wages and dependency .
- 5- The two pillars (contractors and wording) on which the employment contract in Islamic jurisprudence is based on have been detailed in the books of Islamic jurisprudence.

**Recommendations:**

- 1- The importance of studying the provisions contained in the books of Islamic jurisprudence on the labor contract, because of the importance of this contract in the recent period, and to evaluate what has been written to explain and draw the views of the most likely benefits from them.
- 2- The need to discuss the emerging issues in the modern era through the provisions of Islamic jurisprudence, so as to find rules and provisions for these new issues and to find legitimate basis, so as to be consistent with the present period.
- 3- Consider the importance of work in social and economic life, and encouraging the spirit of work among the members of the community, so as to gain the renaissance of the country and its development, and work as stated in the Quran and Sunnah seeking for legitimate gains.
- 4- Including the Islamic rules and provisions contained in Islamic jurisprudence in contemporary legislation, based on the fact that the Islamic state is required to apply Islamic law in various aspects of life.

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