

HISTORICAL ORIGINS OF ŞUKŪK AS A POPULAR INSTRUMENT IN MODERN ISLAMIC FINANCE

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Abstract: Since the 1980s, a very rapid development has been observed in financing methods called interest-free finance or Islamic finance. Şukūk, also called interest-free or Islamic bonds, is undoubtedly one of the leading factors of this development. The main subject of this study is to find out the origins of şukūk in Islamic history. The first examples of şukūk as used in modern Islamic finance appeared in the markets in the late 1970s. For this reason, using the end of the 1970s as a turning point, our study sought an answer to the question of whether there were financial instruments similar to şukūk in the history of Islam before the 1970s, based on the similarities to the functioning of the şukūk types after the 1970s. In our study, although there are differences in various aspects in the history of Islam, it has been seen that there are instruments that are similar to the functioning of şukūk in the modern period in some other respects. Accordingly, it can be said that şukūk is an instrument that has its origins in Islamic history, but has been developed with a new understanding in the modern period.

Anahtar Kelimeler: şukūk, şakk, esham, cash foundations, ijaratayn, bay' al-'inah, bay' bi'l-istiğlal, bay' bi'l-wafa.

Modern İslami Finansta Popüler Bir Araç Olarak Şukūkun Tarihsel Kökenleri

Özet: 1980'li yıllardan itibaren faizsiz finans veya İslami finans olarak adlandırılan finansman yönü temlerinde çok hızlı bir gelişme gözlenmiştir. Faizsiz veya İslami tahvil olarak da adlandırılan şukūk, şüphesiz bu gelişmenin önde gelen faktörlerinden biridir. Bu çalışmanın ana konusu, şukūkun İslam tarihindeki kökenlerini ortaya çıkarmaktır. Modern İslami finansta kullanılan ilk şukūk örnekleri, piyasalarda 1970'lerin sonlarında ortaya çıkmıştır. Bu nedenle 1970'lerin sonunu bir dönüm noktası olarak kullanan çalışmamız, 1970'lerden sonraki şukūku türlerinin işleyişine benzerliklerine dayalı olarak 1970'lerden önceki dönemde İslam tarihinde şukūk benzeri finansal enstrümanların var olup olmadığı sorusuna cevap aramıştır. Çalışmamızda İslam tarihinde her ne kadar çeşitli açılardan farklılıkları olsa da diğer bazı açılardan modern dönemdeki şukūkun işleyişi ile benzerliklerin olduğu görülen enstrümanların olduğu görülmüştür. Buna göre şukūkun kökenleri İslam tarihinde olan, ancak modern dönemde yeni bir anlayışla geliştirilmiş bir enstrüman olduğu söylenebilir.

Keywords: şukūk, sak, esham, para vakıfları, icareteyn, bey'u'l-ine, bey' bi'l-istiğlal, bey' bi'l-vefa

INTRODUCTION

The production of services and goods necessary for the operation and growth of a country's economy becomes possible only when the companies that will produce such services and goods either have the necessary funds for production or obtain the funds by borrowing from other sources. For this reason, financing for production using various means is very important for the functioning of economies. In this context, there has been an increase in the use of financing methods based on real assets in recent years. Islamic banking and finance is one of such systems that use asset-based financing methods.

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It is observed that the interest in the Islamic financial system has increased especially after the 2000s. As a financing instrument operating in accordance with the principles of Islamic finance, the role of *şukūk* in this increase is significant. Before the development of *şukūk* in the modern era, although Islamic financial institutions were able to respond to small-volume financing needs, they were unable to provide financing for large projects, which is one of the most important requirements of development. *Şukūk*, which was developed to meet this need, has recently become the most attractive financial instrument in Muslim countries in particular and in all countries that aim to attract the resources of Muslim countries in general.

Şukūk, which has been an integral part of capital markets, has become one of the important capital instruments that provide financing in the development of countries. In general, *şukūk* is accepted as the most popular instrument used in Islamic finance in the modern era. However, when *şukūk* emerged still remains as a question to be answered. Is it a completely new financial instrument developed at the end of the 20th century, or is it an instrument that has roots in Islamic history? This issue is controversial among researchers. There are three possible answers to this question:

1. *Şukūk* is a financial instrument that has been used since the early days of Islam,
2. *Şukūk* is a new instrument developed in the modern era within the framework of the principles of Islamic Law on which the Islamic Finance industry is based, and
3. *Şukūk* is an instrument that has been copied from the conventional financial system and its origin should be sought in conventional finance.¹

In our study, we have made comparisons with the financial instruments used in the Islamic world from the birth of Islam to the period when modern *şukūk* emerged, in order to determine which of the above options would be a more accurate answer to the question about the historical origins of *şukūk*. In our evaluations, we examined the instruments used in financial activities from the birth of Islam until the birth of *şukūk* in the modern sense, which we think could form the basis of *şukūk* due to their similarities in their functioning, and tried to determine the historical origins of *şukūk*. Therefore, the limits of our work chronologically

1 Al-Ali, *Raising Capital on Şukūk Markets*, p. 35.

are between the birth of Islam and the late 1970s, when şukūk in the modern sense began to be used.

Although we limited our study chronologically between the birth of Islam and the late 1970s, when şukūk in the modern sense began to be used, the method we followed in our study mainly is based on the similarities in functioning of an instrument with the functioning of şukūk in modern Islamic finance, rather than following chronologically the development of financial instruments that we think have similarities with şukūk.

Therefore, we will start our study with a general preview of what kind of instrument şukūk is. Then, in the light of the evaluations we have made in the first part of our article, we will search the historical origins of şukūk.

1. A GENERAL PREVIEW ON ŞUKŪK

The word şukūk (صكوك) is one of the plural forms of the Arabic word *şakk* (صك). In addition to şukūk, the word *şakk* also has other plural forms such as *şikāk* and *aşukk*.² However, in Turkish and English works, the word şukūk is commonly used as it were a singular word. Şukūk, which literally means hitting, hitting, slapping, stamping, a document or record showing ownership, commercial agreement or a financial right,³ is an Islamic finance term defined by AAOIFI (The Accounting and Auditing Organization for Islamic Financial Institutions) as follows:

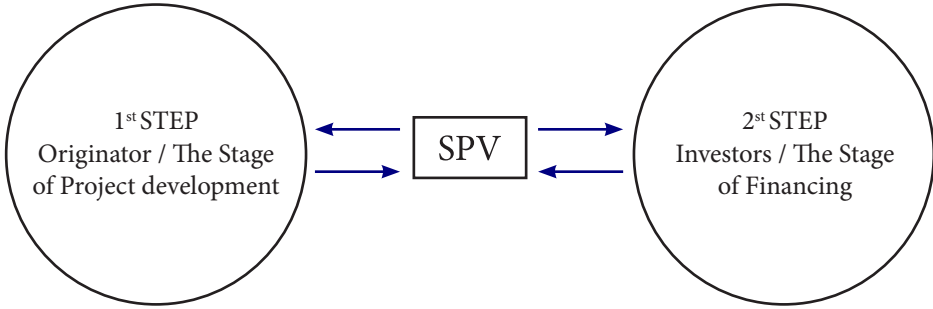
“Şukūk are certificates of equal value representing undivided shares in ownership of tangible assets, usufruct and services or (in the ownership of) the assets of particular projects or special investment activity, however, this is true after receipt of the value of the Şukūk, the closing of subscription and the employment of funds received for the purpose for which the Şukūk were issued.”⁴

When the studies on the functioning of şukūk in the modern period are examined, it is seen that, although there are many types of şukūk, the general way of operation of all these şukūk types mainly includes two main pillars, which are depicted in Figure 1:

2 Kallek, “Bir Hukuk ve Maliye Terimi Olarak ‘Sak’”, p. 157.

3 Lane, “Şakk” *Arabic-English Lexicon*, p. 1709; Ibn Manzur, “Şakk”, *Lisan al-Arab*, IV, 2474-75.

4 AAOIFI, *Shari’ah Standards*, Shari’ah Standard No. (17) “Investment Şukūk”, p. 468.

Figure 1: General operation of Şukūk structures⁵

Source: Author's own work

Figure 1 shows the şukūk transactions that an SPV (Special Purpose Vehicle) mediates between an actor with a fund deficiency and another actor who has excess funds and wants to use it in investments. In the main stage of this structure, which we describe as the first step, there are contracts selected from the types of contracts developed within the framework of Islamic law of obligations. The selection of the contract depends on the needs of the source institution in need of funds for a project or an investment it wants to realize. The selected contract shapes the basis of the şukūk structure. The contracts that form the basis of this step, which can also be called the stage of project or investment, may consist of a single contract, or it may be a mixed structure consisting of combining several contracts.

In the stage described as the second step, the funds needed for the realization of the project or investment in the first step are collected through a Special Purpose Vehicle (SPV) by issuing şukūk and the joint ownership of the investors obtained in the project or investment of the first stage in return for the funds they provide is evidenced through the issued şukūk.⁶ It is possible to call this stage as

5 Although the steps in Figure 1 are described by ordinal numbers of first and second, these descriptions do not aim to show the order of execution of the transactions in the operation of şukūk, but rather to distinguish the stages that make up the main parts of a şukūk structure. On the other hand, since the steps related to şukūk are usually initiated by a source institution that needs funding, it would not be entirely wrong to use these ordinal numbers for qualification of the steps.

6 This is the stage which causes şukūk to be called Islamic bonds due to the similarities with the bond issuance in traditional financial markets. However, in our opinion, it is not a very accurate approach to translate and see şukūk as the equivalent of traditional bonds, and to use the term “Islamic bond” as the translation of the word şukūk, as adopted in many English works as well as the Turkish studies that use these works as a source. Although the functions of şukūk have common aspects with bonds or bonds, they also have important differences. Expressing şukūk as Islamic bonds or bonds causes these important features of şukūk to be overlooked. For this reason, it would be more appropriate to use the term şukūk

the financing or funding stage. Accordingly, there are in general three important elements to be considered in the functioning of a şukūk:

1. An investment or project step structured based on contracts selected from Islamic law of obligations,
2. The funds required for the financing of the investment in question and the financing step in which these funds are collected,⁷
3. The principles determined by Islamic Law regarding financial transactions, which should be taken into account in the operation of two elements given above individually and in combination.

While investigating the historical origins of şukūk, these three elements should be taken into account both separately and as a whole. For this reason, in the following sections of our study, we will examine our subject respectively starting with the concept of “şakk”, which emerged in the early periods of Islam and has the same name as şukūk in the modern period, certain contracts used in Islamic law of obligations, which constitute the basis for the şukūk structures, some applications in the context of waqfs and finally esham.

Accordingly, the sub-headings of our study will be shaped as follows:

1. Şakk as a financial instrument
2. Contracts in Islamic Law of Obligations as the Basis of the Structures of Şukūk
3. Practices in the context of waqfs
4. Esham

as it is, without changing it, until a new financial term that better expresses the scope of şukūk is adopted. For more details about the functions of şukūk see Eriş, *Modern Finansman Aracı Olarak Sukuk ve İktisat Tarihi İçerisindeki Kökenleri*, p. 48 ff.; The issue of the inaccuracy of naming şukūk as Islamic bonds is also discussed in the works of some researchers working on şukūk. See for instance Safari et alia, *Şukūk Securities New Ways of Debt Contracting*, p. 22; Ali and Mufti, “Legal and Structural Anatomy of a Şukūk”, in Rahail Ali (ed), *Şukūk and Islamic Capital Markets*, p. 51; Salim, *Raising Capital on Sukūk Markets*, p. 30.

7 Murat Çizakça divides the second one of these elements into three sub-categories: income generation, securitization of the said income and establishment of an SPV necessary for the execution of the transactions at this stage. See for details Çizakça, “Domestic borrowing without the rate of interest: gharar and the origins of şukūk”, 2010. <http://mpr.a.ub.uni-muenchen.de/23205/> (date of access 11 June 2010).

1. ŞAKK AS A FINANCIAL INSTRUMENT

As mentioned above, şukūk is a plural Arabic noun and its singular is şakk. Şukūk, which literally has various meanings such as “written document, official report, certificate” is a legal, financial and commercial tool that has been used in different ways in Islamic history such as ration certificates (commodity coupons), debt note and payment order.⁸ Another meaning in which the term şukūk is used in Islamic history, especially during the Ottoman period, is a legal document in which the qadis recorded their verdicts and information about the case in question.⁹

Cengiz Kallek found out that the second caliph Umar was the first ruler in the history of Islam to issue *şukūk al-arzaq*, i.e. ration documents, in the form of a document showing the rights of those in need in the distribution of basic food items.¹⁰ Similarly, at the end of the 1st century AH (7th century CE), it is recorded that the Umayyad state administration paid the people who served in the army units using documents (şukūk) showing the right to buy a fixed amount of foodstuffs from the state’s granaries after the harvest.¹¹ It is worth to note that the şukūk distributed in the form of commodity coupons during the reigns of Caliph Umar and Marwan b. Hakam (b. 623-24 - d. 685) were sold by some şukūk holders for cash in the market before the maturity date written on it.¹² In particular, the fluctuations in the prices of foodstuffs have caused people to buy and sell the financial rights represented by such government payment documents before receiving them. It is understood that people living far from places where there are food items represented by şukūk could not wait for the delivery of these items due to their needs. Such a practice caused controversy at the time as on the one hand it contradicts the principles of Islamic Law in terms of selling the grain/commodity, which was the underlying asset represented by the şukūk, before it is received by the şukūk holder, on the one hand, selling the debt for the asset before receiving it is a debt.¹³ For this reason, it is recorded in the sources that ‘Umar canceled the

8 Kallek, “Bir Hukuk ve Maliye Terimi Olarak ‘Sak’”, 158-164.

9 Since the aforementioned use of the term *şakk* has nothing in common with modern şukūk, which is a financial instrument, other than the similarity in name, we will not go into the details of the use of şukūk in this sense. For detailed information on this subject, see Kaya, “Mahkeme Kayıtlarının Kılavuzu: *Sakk Mecmuaları*”, vol. 3, No. 5, 379-416; Kaya, “Sak” *DİA*, vol. 35, 586-587.

10 Kallek, “Bir Hukuk ve Maliye Terimi Olarak ‘Sak’”, p. 158; Kallek, *Asr-ı Saadet’te Yönetim Piyasa İlişkisi*, 83-84.

11 Hassan, *Sales and Contracts in Early Islamic Commerical Law*, 219-221; Khorshid, “Şukūk and Securitization” in Aly Khorshid (ed), *Euromoney Encyclopedia of Islamic Finance*, p. 281.

12 Coulson, *Commercial law in the gulf states*, p. 12.

13 Malik b. Anas, *Al-Muwatta*, p. 562, hadith no: 1998.

transaction concluded by Hızam on the grounds that he had sold it before receiving it, and that Marwan b. Hākam ordered such transactions to be stopped upon complaints about the trading of şukūk.¹⁴

In Sahih Muslim, there is a narration about şukūk functioning as a ration certificate:

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عَبْدُ اللَّهِ بْنُ الْحَارِثِ الْمُخْزُومِيُّ، حَدَّثَنَا الضَّحَّاكُ، بْنُ عُثْمَانَ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَّجِّ، عَنْ سُلَيْمَانَ بْنِ يَسَّارٍ، عَنْ أَبِي هُرَيْرَةَ، أَنَّهُ قَالَ لِمَرْوَانَ أَحَلَلْتَ بَيْعَ الرِّبَا . فَقَالَ مَرْوَانُ مَا فَعَلْتُ . فَقَالَ أَبُو هُرَيْرَةَ أَحَلَلْتَ بَيْعَ الصِّكَاكِ وَقَدْ نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الطَّعَامِ حَتَّى يُسْتَوْفَى . قَالَ فَخَطَبَ مَرْوَانُ النَّاسَ فَنَهَى عَنْ بَيْعِهَا . قَالَ سُلَيْمَانُ فَنَظَرْتُ إِلَى حَرَسٍ يَأْخُذُونَهَا مِنْ أَيْدِي النَّاسِ

Abu Huraira (Allah be please with him) is reported to have said to Marwan:

“Have you made lawful the transactions involving interest? Thereupon Marwan said: I have not done that. Thereupon Abu Huraira said: You have made lawful the transactions with the help of documents only, whereas Allah’s Messenger forbade the transaction of food grains until full possession is taken of them. Marwan then addressed the people and forbade them to enter into such transactions. Sulaiman said: I saw the sentinels snatching (these documents) from the people.”¹⁵

The view that does not deem the sale of şukūk in the secondary markets permissible in the modern era rules according to the outward appearance of this hadith. Accordingly, the sale of şukūk means the sale of something that has not yet been acquired. On the other hand, according to another view that interprets the hadith differently, it is permissible to sell şukūk. While the holders of the second view consider it permissible to sell the şukūk by the first owner, they do not deem permissible for the subsequent buyers to sell the şukūk.¹⁶

The use of the word şukūk in the above sense in the history of Islamic Law is also found in other hadith sources. In a narration in Imam Malik’s book Muvatta, the word şukūk is used as follows:

14 *Ibid.*

15 al-Nawawī, *Sahih Muslim bi sharh al-Nawawī*, X, 242-43.

16 Manjoo, “The ‘Ping-Pong’ of the Asset-Backed/Asset-based Şukūk-Debate and the Way Forward” in Mohammad Hashim Kamali and Abdul Karim Abdullah (ed), *Islamic Finance: Issues in Şukūk and Proposals for Reform*, 21-38.

وَحَدَّثَنِي عَنْ مَالِكٍ، أَنَّهُ بَلَغَهُ . أَنَّ صُكُوكًا، خَرَجَتْ لِلنَّاسِ فِي زَمَانِ مَرْوَانَ بْنِ الْحَكَمِ مِنْ طَعَامِ الْجَارِ فِتْبَايَعِ النَّاسِ تِلْكَ الصُّكُوكَ بَيْنَهُمْ قَبْلَ أَنْ يَسْتَوْفَوْهَا فَدَخَلَ زَيْدُ بْنُ ثَابِتٍ وَرَجُلٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى مَرْوَانَ بْنِ الْحَكَمِ فَقَالَا أَجْلُ بَيْعِ الرَّبَا يَا مَرْوَانَ . فَقَالَ أَعُوذُ بِاللَّهِ وَمَا ذَاكَ فَقَالَا هَذِهِ الصُّكُوكُ تَبَايَعَهَا النَّاسُ ثُمَّ بَاعُوهَا قَبْلَ أَنْ يَسْتَوْفَوْهَا فَبَعَثَ مَرْوَانَ الْحَرَسَ يَتَّبِعُونَهَا يَنْزِعُونَهَا مِنْ أَيْدِي النَّاسِ وَيَرُدُّونَهَا إِلَى أَهْلِهَا .

“According to Mālik, it reached him that during the time that Marwān b. al-Ḥakam was the governor of Medina, certificates (ṣukūk) were issued entitling the holders to receive specified quantities of food from the stocks stored in the market of al-Jār.¹⁷ The people set about trading these certificates among themselves, even though they had not yet taken possession of the food represented by the certificates. Zayd b. Thābit and one of the Companions of the Messenger of God (pbuh) went to see Marwān b. al-Ḥakam to complain about this. They said, “Have you permitted the people to obtain unlawful gains (ribā), Marwān?” He said, “I seek God’s protection! What do you have in mind?” They said, “These certificates that you have issued to the people: they have made a market out of them, buying and selling them among themselves. They resell them before taking full possession of the underlying food.” Marwān then dispatched the guard, ordering them to find the certificates, to seize any that were in the possession of persons other than their original recipients, and to return them to their designated recipients.”¹⁷

Another meaning in which the word *ṣakk* is used in legal, financial and commercial context is debt certificate. The use of the term *ṣakk* (*ṣakku haqq*) in the sense of debt securities is a practice that existed in pre-Islamic periods as well.¹⁸ As a matter of fact, such written instruments are frequently encountered in the Geniza documents. Throughout the history of Islam, Muslim societies used *ṣukūk* in the sense of documents representing their financial obligations arising from

17 Malik b. Anas, *Al-Muwatta*, p. 562, hadith no: 1998.

18 Kallek, “Bir Hukuk ve Maliye Terimi Olarak “Sak””, p. 159. Indeed, there are economic historians who found a document dating back to the 1600s BCE in Egypt issued by the treasury and warehouses of the state in return for the commodities entrusted to them. The document showed the value of the entrusted commodities, and gave its owner the right to receive commodity in the value and qualities written on the certificate when presented. Similar documents were also used in Phoenicia and Mesopotamia. For detailed information, see Döndüren, *Ahkāmü'l Kur'ân Kur'ân-ı Kerîm ve Fikhi Tefsiri*, V, 63.

commercial activities.¹⁹ In these documents, information about the debt such as the names of the debtor and the creditor, the date of issue, amount, maturity and payment method (in cash or in installments) were recorded.²⁰

The last form of the use of şukūk as a commercial and financial instrument in the history of Islam is its use as a payment order. As a matter of fact, due to its use in this context, some researchers, including Orientalists such as Joseph Schacht, have led some researchers to think that the Arabic word şakk constitutes the etymological origin of the word cheque used in western languages today adopted from the Muslim world.²¹

When the origins of şukūk in the history of Islamic finance are investigated in detail, although the term şukūk has been used in Islamic literature since the early period, including hadith sources, it is seen that the usage of şukūk in history was different from the functions it carries out today. Therefore, it would not be an accurate approach to see the şukūk used today as a revival of the şukūk used in the early periods, even though there are similarities between them in terms of names and representing a financial right. Because there are some important differences between the şukūk used in the early period and the şukūk that emerged in the modern period. First, the reason for the emergence of şukūk, which was used in the early period, was not to collect funds for investments, but to be a payment instrument that allowed people's rights to be recorded and represented their financial rights. The second difference is that the şukūk in the early period, unlike the şukūk in the modern period, were not structured documents based on the classical contract types existing in Islamic Law of obligations. Another difference is that the Muslim jurists of the early period did not look favorably on the sale of şukūk in the secondary markets. Whereas in the modern era, although majority of scholars do not deem negotiability of certain types of şukūk in the secondary markets permissible, they approve trading in some other types permissible in the secondary markets.

19 For examples of the use of sakk as debt securities in the early periods of Islam, see. Kallek, *Asr-ı Saadet'te Yönetim Piyasa İlişkisi*, 82-83.

20 Kallek, "Bir Hukuk ve Maliye Terimi Olarak "Sak"", p. 160; Goitein, *A Mediterranean Society: The Jewish Communities of the World*, p. 250 ff.

21 Kallek, "Bir Hukuk ve Maliye Terimi Olarak "Sak"", p. 161; Schacht, *Introduction to Islamic Law*, p. 78.

2. CONTRACTS IN ISLAMIC LAW OF OBLIGATIONS AS THE BASIS OF THE STRUCTURES OF ŞUKŪK

As we briefly mentioned above, one pillar of modern şukūk structures is the contracts developed within the framework of classical Islamic law of obligations. Although not all of them are actually used in today's Islamic financial markets, there are many types of contracts that are likely to form the basis of şukūk structures:

1. Murābaḥa
2. 'Istisnā'
3. Salam
4. İjara
5. Muḍāraba
6. Mushārakah
7. Wakālah
8. Muzāra'a
9. Musāqah
10. Mughārasa²²

Considering the types of sub-contracts developed under these main contract types,²³ the number of contract types used in şukūk structures approaches twenty. Although some of the sub-contract types such as *bay' al-'inah*, *bay' bi'l-wafā*, and *bay' bi'l-istighlal* were developed and mostly used in the later periods of Islamic history, circa 11th century,²⁴ the origins of the main types of contracts that form the basis of şukūk date back to the early days of Islam and even to pre-Islamic times.²⁵ Therefore, it can be said that the project or investment stage of şukūk structures is rooted in the early periods of Islam. Since there are many studies on the func-

22 For the details of the şukūk and other types of şukūk listed here, see Eriş, *Modern Finansman Aracı Olarak Sukuk ve İktisat Tarihi İçerisindeki Kökenleri*, 68-132.

23 For example, *bey' bi thaman ajil*, which is considered a sub-branch of murabaha, forward *ijara* or *ijara muntahiya bi al-tamlık*, which is a sub-branch of *ijara*.

24 See Kaan, "Finansman Kaynağı Olarak Bey' Bi'l-Vefa, Bey' Bi'l-İstiğlal ve Bey'u'l-İne", vol. 17, 223-251.

25 For example, it is known that *mudaraba* and *musharaka* are types of contracts that were also used by the Prophet in the period before his prophethood. See Kılıç, "Peygamberimizin Risâlet Öncesi Geçim Durumu", 195-202. There are postgraduate theses and researches on many of these contract types. For example, on the *Murabaha* contract, see Cebeci, *Modern İslam İktisadî Literatüründe Murabaha Tartışmaları*, 2010; On partnership agreements, see Udovitch, *Partnership and Profit in Medieval Islam*, 1970; Çizakça, *A Comparative Evolution of Business Partnerships*, 1996; On the contract of *ijarah*, see Bardakoğlu, *İslam Hukukunda ve Modern Hukukta İcare Akdi Özellikle Personel İstihdamı*, 1982.

tioning of the main contracts that we have named above, we will not deal with the same topics here again.²⁶ However, in the next section within the context of waqfs, we will talk about the sub-contracts of *bay' al-'inah*, *bay' bi'l-wafā*, and *bay' bi'l-istighlal*. Because these contracts have an important place in the operation of waqfs especially cash waqfs.

3. APPLICATIONS IN THE CONTEXT OF WAQFS

An important characteristic encountered when examining the history of Islamic law is that the institution of waqf played a very important role in the business and commercial life of the Muslim community. The institution of waqf has taken such a central role in the life of the society throughout the history of Islam that there have been some scholars who have called the Islamic civilization a civilization of waqfs.²⁷ Waqfs whose main areas of service can be grouped as religious services, education, public works and other social services,²⁸ have performed very different functions that appeal to all aspects of life. Throughout Islamic history, different types of waqfs such as charitable foundations and family foundations have developed. From among the types of waqfs, especially cash waqfs and *ijaratayn*, which played a central role in commercial and financial life of society, are the types of foundations important for our study.

3.1 Cash Waqfs

As mentioned above, one of the basic elements of the functioning of şukūk is the collection of funds needed for investments. In this sense, we see that waqfs were used as a means of raising funds to finance the projects of different sizes, especially in the period after the 15th century in Islamic history. Murat Çizakça argues that the origins of the element of income generation, which he states that constitute a part of the structure of şukūk in the modern period,

26 For detailed information on the subject, in addition to the sources mentioned in footnote 24, see Eriş, *Modern Finansman Aracı Olarak Sukuk ve İktisat Tarihi İçerisindeki Kökenleri*, 2021.

27 Gürsoy, "Para Vakıfları Kapsamında Sosyo-Ekonomik Bir Analiz: Davudpaşa Mahkemesi Kayıtları (1634-1911)", p. 159.

28 In the Islamic world, the issue of foundations is among the most interesting topics in academic circles. There are many studies in every language on the legal, historical, social, economic and other dimensions of foundations. See. Berki, *Vakıflar*, 1946; Akgündüz, *İslam Hukukunda ve Osmanlı Tatbikatında Vakıf Müessesesi*, 2013; Yüksel, *Osmanlı Sosyal ve Ekonomik Hayatında Vakıfların Rolü Üzerine Bir Araştırma (1585-1683)*, 1990.

can be traced back to the applications of cash waqfs,²⁹ the first known example of which was established in Edirne in 1423.³⁰ Theoretical discussions of cash waqfs go back as early as the 8th century, when they started to be the subject of academic works in the context of whether movables can be endowed, whether money could be considered a movable property, and if it could be entrusted, but there are no actual examples before the Ottoman state.³¹ The methods used for the management of money endowed to the cash waqfs also caused heated debates, especially during the 16th century Ottoman period, when cash foundations became widespread.³²

Ismail Kurt, who is known for his works on cash waqfs, lists the methods used in the operation of cash waqfs as follows:

1. Qard Hasan, that is, interest-free lending
2. Bida'a, that is, operating the endowed money for the purpose of 'charity' and giving the profit and capital to the foundation, in other words, operating the endowed money for the sake of Allah, without expecting anything in return and giving the entire profit and principal to the foundation,
3. Mudaraba, labor-capital partnership,
4. Musharakah partnership
5. Murābaḥa, that is, to buy goods in cash with the endowed money and sell them on a deferred basis by adding profit on it.
6. Transforming into real estate and lease (akara tebdil and ijar) which refers to buying real estate with the endowed money on behalf of the foundation and then leasing it and using the rental income to carry out the services of the foundation.

29 Çizakça, "Domestic borrowing without the rate of interest: gharar and the origins of şükük", 2010. <http://mpra.ub.uni-muenchen.de/23205/>. (11 June 2010).

30 Gürsoy, "Para Vakıfları Kapsamında Sosyo-Ekonomik Bir Analiz: Davudpaşa Mahkemesi Kayıtları (1634-1911)", p. 162.

31 Semiz, "Osmanlı Devleti'nde Para Vakıfları", 89-101.

32 Regarding the above-mentioned issues, there are various treatises written by the parties to defend their views. In this matter, Sheikh al-Islam Ebussuud Efendi and Bali Efendi from Sofia advocated the permissibility of cash foundations, while Çivizâde and Imam Birgivi, who became sheikh al-Islam in 1528, opposed them. These treatises have recently been the source of a number of studies. For detailed information on the topic, see Ebussuud, *Risala fi Qaaf al-Mankul wa al-Nuqud*, 477/2; Birgivi, *al-Sayf al-Sarim fi 'Adami Jawaz al-Waqf al-Manqul wa al-Darahim*, 1581; Şimşek, "Osmanlı Cemiyetinde Para Vakıfları Üzerinde Münakaşalar", vol. 25, 207-220; Güney, "Osmanlı'da Para Vakfı Uygulamasına Güçlü Bir İtiraz: İmam Birgivi'nin Para Vakfı Aleyhindeki Görüşleri", 13-32.

7. Muamala al-Shar'iyya or bay' al-'inah

8. Bay' bi'l-istighlal,

9. Bay' bi al-wafa.³³

Cash waqf was operated by one or more of the above-mentioned methods. The last three of the methods of cash waqfs, namely *muamala al-shar'iyya* or *bay' al-'inah*, *bay' bi'l-istighlal* and *bay' bi al-wafa*, are important in terms of their similarities with the functioning of şukūk. First of all, it should be noted that these methods, which were used by cash waqfs as the main purpose of issuing şukūk, were also used as methods of finding loans and financing in the Ottoman lands, especially in the 16th century and later.³⁴ The most commonly employed ones among these were *bay' bi'l-istighlal* and *muamala al-shar'iyya*. *Bay' bi al-wafa* was the least used method among them.³⁵ Before going into details about these three methods, among which there are many similar aspects, we can give Süleyman Kaya's following definition comprehending all credit and financing methods used in the Ottoman period, including these transactions: "It is the transfer of a certain purchasing power to another person in advance, on the condition that it is repaid at the end of a certain period or by the transfer of goods or benefits to be obtained at a future date."³⁶

3.1.1 Bay' bi'l-istighlal

Bay' bi'l-istighlal is essentially a type of *bay' bi al-wafa* contract. It is concluded as follows: a person in need of cash sells a movable or immovable property to a cash waqf, and then leases the sold property back for a certain period of time. In short, it is the owner's sale of his/her property on the condition that the buyer leases the property back to him/her. At the end of the lease term, the foundation sells the asset back to the original owner.³⁷ *Bay' bi'l-istighlal* works as follows:

33 Kurt, "Kredi Kaynağı Olarak Para Vakıfları", 315-339.

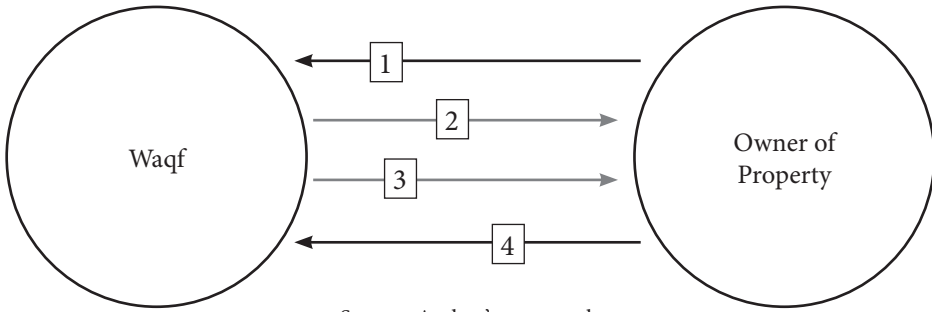
34 Kaya, "XVIII. Yüzyıl Osmanlı Toplumunda Kredi Temin Yöntemleri", 9-56.

35 In his study on the functioning of Üsküdar cash waqfs, Süleyman Kaya determined that the most used contract type in Üsküdar was *muamala al-shar'iyya*, while *bay' bi al-istighlal* came in second. Similar data are also expressed in Tahsin Özcan's study. See Kaya, "Para Vakıflarının Nakit İşletme Yöntemleri", 27-28.; Özcan, *Osmanlı Para Vakıfları: Kanuni Dönemi Üsküdar Örneği*, 373-375.

36 Kaya, "XVIII. Yüzyıl Osmanlı Toplumunda Kredi Temin Yöntemleri", p. 9.

37 Kaan, p. 238.

Figure 2: Operational Chart of Bay' bi'l-istighlal



Source: Author's own work

1. The person in need of cash comes to a waqf and sells an asset to the waqf and transfers its ownership.

2. The waqf pays the sales price to the person in need of fund.

3. The foundation then leases the purchased asset back to the seller.

4. At the end of the lease term, the original owner of the asset, which is the subject of the transaction, buys back the asset sold to the waqf by paying its price.

The point to be considered in this transaction of cash waqfs is that the money obtained from this transaction will be used as a fund in the needed area, as Murat Çizakça rightly pointed out. This makes the operation of cash waqfs to raise funds in this way essentially similar to the functioning of the modern *ijara şukūk*.³⁸ Çizakça also emphasizes that the basic functions of the foundation in this process are similar to the functions of SPV in the operation of *şukūk*.³⁹ As it is known in the *ijara şukūk*, with the funds SPV collects from the investors, it purchases an asset from the originator institution, then leases the same asset back to the originator institution, and at the end of the lease term, the subject asset is sold back to the originator institution at its original price. It is understood that in a *bay' bi'l-istighlal* transaction, the cash waqf, which is the party that buys a property with the funds endowed to it, leases the property back and then sells it back to its original owner at the end of the lease term, performs a function that exactly overlaps with the function of SPV.

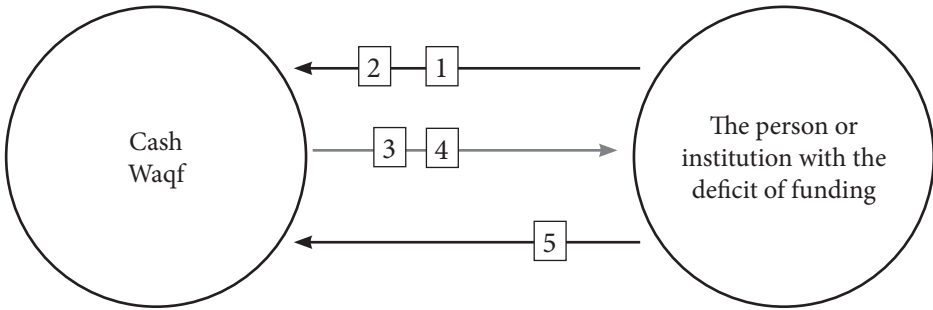
38 Çizakça, "Domestic Borrowing Without the Rate of Interest: Gharar and The Origins of Şukūk", 15-16.

39 Çizakça. "Domestic Borrowing Without the Rate of Interest: Gharar and The Origins of Şukūk", p. 16.

3.1.2 Muamala al-Shar'iyya or Bay' al-'Inah

Muamala al-shar'iyya or *bay' al-'inah* is a method which, in essence, achieves the same goal of a person or institution in need of funding by inserting the sale of a commodity into the process. In practice, in the operation of *bay' al-'inah*, which has different forms, it is possible to purchase/sell a commodity at a higher price on deferred payment, and then to sell/purchase the same commodity at a lower price paid in advance to the same person.⁴⁰ The steps of the process work as follows:

Figure 3: Stages of the operation of *muamala al-shar'iyya* or *bay' al-'inah*



Source: Author's own work

1. The person in need of money comes to a cash waqf to meet this need,
2. Sells a property to the cash waqf for a down payment of 5000 TL,
3. Cash waqf buys the property and makes the payment of 5000 TL, and then sells the same property back to the same person with a deferred payment of 5500 TL,
4. At the end of this transaction, the person in need of cash will have received a fund of 5000 TL and in return will have owed 5500 TL to pay the cash waqf at the end of a certain date.
5. The person who owes to the foundation pays his debt in installments at regular intervals.⁴¹

The process can also work in the opposite way. In other words, the cash waqf can sell a good at a higher price on a deferred basis to the person in need of cash, and then buy the same goods back at a lower price in cash. Both transactions have

40 Ibn Abidin, *Radd al-Mukhtār*, V, 461; Kaan, "Finansman Kaynağı Olarak Bey' Bi'l-Vefa, Bey' Bi'l-İstiğlal ve Bey'u'l-İne", p. 241.

41 Kaya, "XVIII. Yüzyıl Osmanlı Toplumunda Kredi Temin Yöntemleri", p. 11.

the same result, the person in need of the fund obtains the fund he needs in advance, and in return he owes a higher amount on a term basis.

This type of transaction, where there is serious debate about its legitimacy in Islamic law,⁴² is a form of transaction that is frequently used in *şukūk* structures, especially in Malaysia and some Gulf countries.⁴³

3.1.3 *Bay' bi al-Wafa*

Bay' bi al-wafa is a sales transaction made on the condition that the sold goods are to be returned upon the repayment of the purchase price. *Bay' bi al-wafa* contract is also known by other names such as *bay' al wafa*, *bay' al amanah*, *bay' al-jaiz*. In practice, *bay' bi al-wafa* can take place in different forms. For example, it can be concluded as a contract of sale that one person makes between them by saying, “I sell this property for such a price on the condition that you will return it to me when I return the sale price” or “I sell this property for such a price, on the condition that you will return it when I return the sale price, in return for the debt I owe you”.⁴⁴ It is controversial whether *bay' bi al-wafa*, a method invented to find interest-free loans, is a pledge, a voidable (*fasid*) contract, a valid contract, or a mixed contract formed in the combination of these.⁴⁵

3.2 *Ijaratayn Waqfs*

Ijara contract, that is, the leasing the waqf properties is the most important method of operating waqf properties. Renting the waqf properties can be in three ways:

1. *Ijara wahida waqfs*: This expression, which means single lease, is the form of leasing waqf properties with normal rent, while the waqf trustee receives only the normal rental fee and the lessor makes use of the leased waqf property during the lease contract.

42 For the details of the debates among the classical scholars on the legitimacy of *bay' al-inah*, see. Kaan, “Finansman Kaynağı Olarak Bey' Bi'l-Vefa, Bey' Bi'l-İstiğlal ve Bey'u'l-İne”, 242-246; Kaya, “XVIII. Yüzyıl Osmanlı Toplumunda Kredi Temin Yöntemleri”, 13-16.

43 Abubakar, “Using Bay al-Inah in Issuance of *Şukūk* in Primary Market”, 54-62.

44 Al-Zayla'i, *Tabyin al-Haqā'iq*, V, 184; Gözübenli, “Bey'bi'l-Vefâ (Vefâen Satış) ve Bey'bi'l-İstiğlâl”, p. 110.

45 Molla Husrev, *Durar al-Hukkâm*, II, 207; Ibn Abidin, *Radd al-Mukhtâr*, V, 276; Bayındır, “Bey' bi'l-Vefâ”, *DİA*, 20-2; Turan, “Bey' Bi'l-Vefâ ve Bey'u'l-İne ile Mukayeseli Olarak Günümüz Repo İşlemlerinin Fikhi Boyutu,” p. 123.

2. Muqata'a waqfs: It is a term used to express the type of lease agreement that has been developed within the framework of long-term leasing of foundation properties, also known as hikr, hukr, istihkar, and allows the planting trees and building on the waqf land.

3. Ijaratayn waqfs: ijaratayn, which literally means double lease, in terminology of Islamic waqf law, is defined as renting a waqf real estate in return for an advance rental fee (*ijara al-mu'ajjala* (إجارة معجلة) close to or equal to the real value of the waqf real estate, and in addition to this, a deferred rental fee (*ijara al-mu'ajjala* (إجارة مؤجلة)⁴⁶ to be paid every month or at the end of the year.⁴⁷

The leasing waqf properties is normally short-term and single leased. The long-term rental of waqf properties is a controversial issue among Muslim scholars.⁴⁸ According to Islamic waqf law, the repair and maintenance expenses of the rented waqf properties should be borne by the foundation as the lessor. However, throughout the history of Islam, due to the expenses cause by disasters such as fire as well as experiencing difficulties in meeting the expenses such as repair, modification and maintenance of waqfs that were ruined over time, first the rule about rental periods of the waqf properties was loosened and long-term rentals (*ijara tawila*) developed based on the principles of public need and benefit, in other words, due to social and economic conditions. Then double leased foundations (ijaratayn), which can be considered as a type of leased foundations, have developed. There are different views in academic circles about exactly when the waqfs with ijaratayn emerged. Among them, the earliest one dates the emergence of such foundations back to 1534.⁴⁹

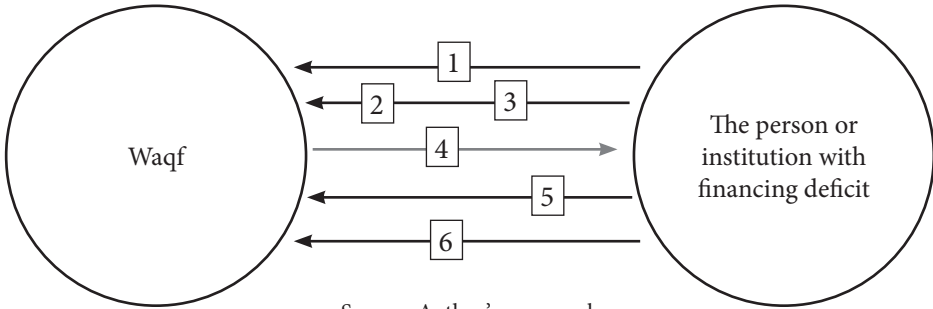
Although ijaratayn was generally used by foundations to cover the repair and renovation costs of their dilapidated properties, the importance of the system for our subject is that this system was also used by people who needed financing after the 18th century, with a process similar to *bay' bi'l-istighlal*. The system in question works as follows:

46 Akgündüz, "İcâreteyn", *DİA*, 389-392.

47 For detailed information about the leasing foundation property, see Akgündüz, *İslam Hukukunda ve Osmanlı Tatbikatında Vakıf Müessesesi*, 388-497.

48 For details of the views of the schools of Islamic law on this issue, see Akgündüz, *İslam Hukukunda ve Osmanlı Tatbikatında Vakıf Müessesesi*, 396-400.

49 For different views, see Akgündüz, "İcâreteyn", *DİA*, 389-392; Beyaztaş, *İslam Hukukunda Vakıf Gayri Menkullerinin Kiraya Verilmesi Usulleri ve İcâreteyn*, p. 57.

Figure 4: Operational Stages of Financing Method in Ijaratayn Waqfs

Source: Author's own work

1. The person in need of financing sells a certain real estate to a foundation for a certain price.

2. The Foundation delivers the price of the real estate purchased to the person in need of the fund.

3. The foundation that bought the real estate transfers the said real estate back to the person who sold it on an ijaratayn basis.

4. The person in need of the fund gives a part of the sales price he receives from the waqf as an advance rent (mu'ajjala) to the foundation.

5. The remaining part of the sale price is delivered to the person who sells the real estate.

6. The person who sells and then rents the property makes periodic payments in small amounts

As a result, as can be seen, the ownership of the real estate has been transferred to the waqf, the person in need of financing obtains a certain amount of fund, and the right of disposal of the real estate transferred to the foundation is taken over for life in return for a periodic payment of a small amount of rent. The foundation, which is a party to the transaction, on the one hand becomes the owner of the real estate, on the other hand, receives an income that comes at regular intervals.⁵⁰

When all these transactions used in the operation of foundations are evaluated, it is seen that there are more or less similarities with şukūk in terms of their func-

50 Kaya, *Osmanlı Hukukunda İcareteyn*, p. 88.

tioning. There is also a similarity between the objectives of such transactions and the goals that şukūk is trying to achieve, that is, to provide financing for a project or investment. In this context, the most important difference between them seems to be the volume of the funding that they provide. Even though the financing provided by the application of the aforementioned contracts used in the context of foundations in Islamic history is not comparable to today's şukūk in terms of being provided to a single person on the one hand, and the amount of which could buy several animals (though the number could be higher from time to time),⁵¹ on the other hand, in this regard one should take into account the economic conditions and social needs of both periods in order to make accurate comparisons.

4. ESHAM

Esham is the plural form of the Arabic word *sahm* meaning “share, lot”. In relation to our topic, the term esham, which is also used in its literal sense in different fields such as Islamic inheritance law, was used as an instrument in the Ottoman Empire's finances in the history of Islam.⁵² Political and economic developments in the Ottoman Empire in the 18th century also led to changes in finance. Like the *malikane* system developed after the wars that resulted in defeats between 1683 and 1699, the esham system was a domestic borrowing system developed upon the *malikane* system as a result of the Turkish-Russian war that resulted in defeat between 1768-1774.⁵³ Esham system was in use in the Ottoman finance from 1775 to the 1860s.

The Ottoman Empire's long-lasting wars resulting in defeat after the middle of the 18th century had a negative effect on its finances. In the words of Yavuz Cezar, wars, which had been a source of gain before the 18th century, became a cause of depression after the 18th century.⁵⁴ The fact that the wars ceased to be a source of income and turned into an expense item, on the one hand, became a threat of revolt for the state, which could not make the necessary payments, and on the other hand, forced the Ottoman finances seek new resources. In search of new sources for revenue, at first, a loan was taken from the sultan, and when this was

51 For details on the modern equivalents of the volume of financing provided in that period, and whether the financing in that period should be considered as financing for consumption or production, see Kaya, Süleyman, “Para Vakıflarının Nakit İşletme Yöntemleri”, 28-29.

52 Genç, “Esham”, *DİA*, 376-380.

53 Tabakoğlu, *Osmanlı Mâlî Tarihi*, p. 595.

54 Cezar, *Osmanlı Maliyesinde Bunalım ve Değişim Dönemi*, p. 28.

not enough to meet the needs, in the second stage, a type of war tax called *cebelli belediyesi* was collected from the owners of *malikane*. In addition to measures to increase revenues, measures to reduce expenses were also tried to be taken.⁵⁵ In addition to these, other measures such as debasement of money, confiscation of estates and borrowing from state officials, merchants and money changers were also tried in order to improve the finances. These measures did not become a solution to the problem, and some of the measures such as the debasement of money caused the depression to deepen with negative consequences. Fiscal policies tried were unsuccessful and, as a result, caused chronic budget deficits and inflation to worsen on the one hand, supported the redistribution and centralization of economic resources in favor of the center on the other.⁵⁶

Finally, a change was made in the tax farming (*iltizam*) system, which had been used as a tax collection system in the Ottoman Empire before the 18th century, and in 1695, the *malikane* system was introduced as a remedy for the cash needs of the treasury. It has been thought that the vicious circle of transferring *mukata'a*s for a short time in the tax farming system, which has a negative effect on production and this has a negative effect on the resultant taxation, thought to be overcome with *malikane* system. As in the tax farming system, the annual fixed income sources called *mukata'a* were sold to private individuals in the *malikane* system. However, unlike the tax farming system, this sale was started with the authority to save for a lifetime, not for a few years. The person who bought the *mukata'a* would make two types of payments to the treasury, one called *mu'ajjala* and consisting of a large amount for one time and the other a small amount annually.⁵⁷

Nearly 80 years after the *malikane* system, which had been developed out of the tax farming system in order to improve the financial problems experienced at the end of the 17th century, the *esham* system was born with the thought that it would be a solution to the financial problems caused by the Turkish-Russian war of 1768-74.⁵⁸ The *Esham* system was developed with the thought that it would be a remedy for the heavy indemnity payments imposed on the finances of the Ottoman Empire defeated by the Russians at the end of the war. Compared to the *malikane* system, where the taxation of a *mukata'a* is transferred for life to the highest bidder by auction, in the *esham* system, the *mukata'a* units in question are sold as shares and the annual income is divided into equal shares.⁵⁹

55 Tabakoğlu, *Osmanlı Mâlî Tarihi*, 591-592.

56 Aydın, *Osmanlı maliyesinde esham uygulaması (1775-1840)*, 30-37.

57 Genç, "Mâlikâne", *DİA*, 516-518; Cezar, *Osmanlı Maliyesinde Bunalım ve Değişim Dönemi*, p. 33.

58 Cezar, p. 79.

59 Çizakça, *A Comparative Evolution of Business Partnerships*, p. 179.

Based on the hypothetical example given by Yavuz Cezar, we can list the stages of operation of the esham system as follows:

1. An appropriate mukata'a is determined for the public offering by dividing it into shares, hence the annual net revenue operated by the government. For example, let's assume that there is a mukata'a with an annual gross revenue of 35000 guruh for a certain year and an operating expense and expenses of 20000 guruh for the same year. The net revenue of the mukata'a in question corresponds to 15000 guruh. This is a suitable mukata'a for esham.

2. In the next step, the net proceeds in question are divided into a certain number of shares, for example 100 shares. By dividing 15000 guruh by 100, the amount of revenue per share, i.e. 150 guruh, is determined.

3. In the third stage, a sale price for each share is determined and offered to the market for the bidders. At this stage, it is important to conduct a good market research so that the esham can be easily sold. For example, suppose the state has determined a value equal to 5 times, that is, 750 guruh, for each share of 150 guruh.

4. At the stage of placing the shares on the market, each person who pays the cash payment of 750 guruh called muaccele, "dellaliyye" and fees becomes the owner of a share. Anyone could buy shares, and there was no discrimination among individuals in the purchase of shares.⁶⁰

5. Shareholders are entitled to receive the mukata'a revenue of 150 guruh corresponding to their share from the state every year until their death in the following years. When the shareholder dies, his share is returned to the state, and the state can resell the returned share to another buyer who pays dues and other fees.⁶¹

The Esham system is a system that has risks on the one hand and advantages on the other for both the state and the shareholders. From the point of view of the shareholders, considering the cash they paid for the shares they bought and the annual payment of 150 guruh, it will only be after the sixth year that the investment they have made will increase in real terms. In other words, if the shareholder has a life of six years or more after purchasing the share, it means that he has made a profitable investment for himself. The longer the shareholder's lifespan, the more profit for himself and a loss for the state. When the esham is

60 Genç, "Esham", *DİA*, 376-380.

61 Cezar, 79-80.

evaluated from the state's point of view, while the annual return of the mukata'a, which is the subject of the esham, is 15000 gurush, it is sold at five times the value of this amount, that is, 75000 gurush, which is the amount that enters the state coffers in the year the sale is made. Of course, this is a positive situation for the state finances. However, considering that the annual 15000 gurush payment to be made by the state to the esham owners in the following years will be made and that it will continue as long as the esham owners are alive, the state's gain from this transaction will decrease as the time gets longer, and a while later, it will start to make a loss for the state.⁶²

The feature of dividing mukata'a income into shares in this way and selling each share separately in the esham system has led some academics such as Murat Çizakça to reach the conclusion that the operation of the esham system coincides with the securitization of funds in the operation of şükük. Because, in esham, there is securitization of a continuous income stream belonging to the state. Therefore, esham can be considered among the historical origins of şükük in terms of the securitization element it carries. However, when compared to the fund collected through şükük, the fund collected through esham differs as the latter is an already existing fund.⁶³ It is accepted by other researchers as well that securitization of incomes in the Ottoman Empire in this way is a similar practice to şükük.⁶⁴

Another aspect of the Esham system that is similar to şükük, or at least to certain types of şükük, is that it can be sold in secondary markets. Esham is allowed to be freely traded in the markets. However, as we explained above, because esham was a positive instrument for the state only for a certain period of time, the state collected a tax called "*kasr-ı yed resmi*" from the sale of esham in order to limit the mobility of esham in the secondary markets.⁶⁵

62 Çizakça, *A Comparative Evolution of Business Partnerships*, p. 180.

63 Çizakça, "Domestic borrowing without the rate of interest: gharar and the origins of şükük", p. 15.

64 Safari, et alia, "Şükük Securities, their Definitions, Classification and Pricing Issues" in Mohamed Ariff, et alia (ed.), *The Islamic Debt Market for Şükük Securities: The Theory and Practice of Profit-Sharing Investment*, UK, USA: Edward Elgar Publishing Limited, 2012, p. 1. In their article, Safari, Ariff and Mohamad claim that the esham-like practices go back to 1285. At this date, the Ottoman Empire collected the large amount of funds necessary for the repair of the destruction caused by the crusades by securitizing some assets in its treasury. See Safari, et alia, "Şükük Securities, their Definitions, Classification and Pricing Issues", p. 20.

65 Genç, "Esham", *DİA*, 376-380.

CONCLUSION

It cannot be said that şukūk, which has entered the financial markets after the late 1990s, is developed based on a single financial instrument existed in Islamic history. It seems accurate to conclude that şukūk is a financial security developed to meet the financial needs of the modern era by adopting features from various financial instruments of the past including the financial certificates with the same name existed in the markets since the early periods of Islam, certain bills used by the Islamic state as debt instruments throughout the history of Islam, various financial applications employed by waqfs, and a number of contracts developed by Islamic Law of obligations. On the other hand, it also seems inaccurate to claim that şukūk is a new financial instrument emerged at the end of the 1990s with no basis in Islamic historical accumulation.

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