

## AN OVERVIEW OF THE FINANCIAL HISTORY OF MUSLIMS

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### Abstract

We did not state the name of our study as History of Islam Finance or History of Islamic Finance. The reason is, context of ‘finance’ concept in modern sense had a different basis and context of similar concepts of historical periods and of especially history of Muslims. Finance and near operations those are distinguished with meanings of obtaining of required funds and, in last century, mostly usage of these funds had shaped in a strong tendency of disintegration from first unity of human live and then economical one beginning with western centers. Adventure of Muslims with different political agents in societies and in different geographies, is not represent Islam as a religion but appearance of those in historical periods. In this manner, preference of usages comprises meaning of Muslims’ history, economics or fiscal/monetary experiences seems to be pointed instead of phrases like history of Islam, Islamic economics or finance. Hence it must be born in mind that phrases like Christian economics or Jewish finance have no meaning and do not have much place in literature. Despite the fact that decisions and practices of Muslim societies in these fields are based on holy sources, still they states human experience with its rights and wrongs. Thus, for human experiences state of ‘Islamic’ have a relative and arguable qualification. Especially in modern times this qualify show itself mostly problematic emphasis. In this text, finance/financing/financial statements tried to use for individual, firm, government and mostly in meaning of obtainment of capital and/or fund.

**Keywords:** Cash Waqf, Commercial Partnership, Murabaha, Usury Ban

### MÜSLÜMANLARIN MALİ TARİHİNE GENEL BİR BAKIŞ

### Özet

İslam’ın erken dönemlerinden itibaren Müslüman toplumlarda ticari-mali hayatın işleyişini teşvik edici ve kolaylaştırıcı meşru araç ve kurumlar üretilebilmiştir. Ticari-mali-finansal enstrümanlar, kurumlar ve pratikler kendi kodları içinde batı dünyasından çok daha önceki tarihlerde geliştirilmiş, nihayet batı orta çağının ilerleyen devrelerinde Akdeniz Avrupa’sı üzerinden bu coğrafyalara da taşınmıştır. Diğer yandan Müslümanların toplumsal hayatında esaslı bir yer işgal eden zekat kurumu, faiz ve haksızlık-aldatma-belirsizlik içeren tüm iktisadi işlemlere dair yasaklar, hisbe/ihtisap uygulamaları ve pazar denetimi gibi temel bazı kurumsal düzenlemeler, müslüman toplumların sosyal-iktisadi hayatını biçimlendirmede etkili olmuştur. Erken dönemden itibaren iktisadi-mali olaylar ve kurumsal gelişmelerin bir envanterini çıkarmak, bunları ayrıntılarıyla tartışmak takdir edilmelidir ki çalışmanın imkan alanı dışındadır. Ne var ki belli başlı gelişmelerin ve kurumsal uygulamaların ana hatlarıyla özetlenmesi amaçlanmıştır. Çalışmamızın öne çıkarmak istediği hususların başlıcası, bu literatürün önemine tekrar dikkat çekebilmektir.

**Anahtar Kelimeler:** Para Vakfı, Ticari Ortaklık, Murabaha, Faiz Yasağı

### Introduction

We did not state the name of our study as History of Islam Finance or History of Islamic Finance. The reason is, context of ‘finance’ concept in modern sense had a different basis and context of similar concepts of historical periods and of especially history of Muslims. Finance and near operations those are distinguished with meanings of obtaining of required funds and, in last century, mostly usage of these funds had shaped in a strong tendency of disintegration

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from first unity of human live and then economical one beginning with western centers. Adventure of Muslims with different political agents in societies and in different geographies, is not represent Islam as a religion but appearance of those in historical periods. In this manner, preference of usages comprises meaning of Muslims' history, economics or fiscal/monetary experiences seems to be pointed instead of phrases like history of Islam, Islamic economics or finance. Hence it must be born in mind that phrases like Christian economics or Jewish finance have no meaning and do not have much place in literature. Despite the fact that decisions and practices of Muslim societies in these fields are based on holy sources, still they states human experience with its rights and wrongs. Thus, for human experiences state of 'Islamic' have a relative and arguable qualification. Especially in modern times this qualify show itself mostly problematic emphasis. In this text, finance/financing/financial statements tried to use for individual, firm, government and mostly in meaning of obtainment of capital and/or fund.

If individuals, firms and governments could maintain their lives with their existing assets, resources and incomes it would not necessary to speak of another financing requirement. However they needed financing because their existing incomes could not meet their increasing expenditures by the way of individuals' tendency to spend more, firms' growing their business, expanding their fields of activity and increasing investments, governments' diversifying expense areas. In this World we live in, financing of individuals, corporations and governments poses a characteristic that formed by loans predominantly. Surviving of individuals, government and corporations seems possible almost only by loans and similar financing methods.

While individuals supplying their needs from other people or intermediaries, firms tends to fund raising by getting direct loans from financial intermediaries or by security issuance. For public getting loans by finance security issuance and seignorage appears as two main methods.

Financing needs that changes by time and conditions of societies met diversely and as a result of these conditions various financing relationships have arrived. Since the early period of Islam, it can be said that commercial transactions named as 'exchange by mutual consent' have not a loan (credit) dense characteristic. This is not mean that people didn't have borrowing-lending relationships or different options and instruments for payments. But relation between commercial activity and loans has not a feature compulsory and inseparable that is established in economic life-financial market relationship of modern times. Now, distinction between legitimate commerce and common financial instruments and operations that creates no added value become ambiguous, 'loans that profits (interests of loans)' are accepted as irreplaceable necessity of commercial-industrial life. This system, developed by based on the principle of handover of securities, or papers as they say, can be put in the voice in a similar tone easily like statement of polytheists of Mecca "commerce is like usury" as mentioned in Qur'an (Qur'an, Surah Baqarah, Verse:275). Characteristics, those are quite open to interest risk of operations ground upon financial instruments, securities and assets developed based on the principal of expected cash flows of future, become more complex compared to examples in history.

### **1. Early Period Financial Transactions and Institutions**

After the hegira to the Medina of Hazrat Prophet (Mohammad SAW) and first Muslims, it is known that various regulations and exercises about economic-fiscal area in the social structure that is working to build centered on oneness and justice. After this period (622-632 AD) Arabia,

Palestine, and south parts of Iraq came under the political domination of Muslim (Tabakoğlu, 2103: 125-126). After First Caliphs Period (632-661 AD), in the periods of sovereignty of Umayyad and Abbasid, Islam societies expanded into economic-fiscal area with an intensive money-finance net owing to assets and incomes gathered by conquers reached up to Atlantic, Spain and China in about a century. In this periods which are created detailed legal rudiments and regulations for manufacturers, merchants and consumers, as a matter of course financing needs and searches towards consumption, trade and investment came in to question.

### **1.1. Bayt al-Mal**

Bayt al-Mal that means treasury for meeting financing needs of public and societal segments, firstly seen in the Medina era of Prophet had a working towards income and expenditure areas in line with the Qur'an's orders. It was like an institution to gathering and allocating earnings like zakat and sadaqah, assets and incomes of captures, ransoms of war prisoners. It is narrated that, in this period, different locations such as house of the Prophet for cash, for agricultural goods a room on the upper floor of Masjid al-Medina and for animals a location near Medina had been used as a physical space. In addition to attendants such as Omar bin Khattab and Bilal Al-Habashi, it is understood that register clerks had charged with. With increasing of Islamic conquers, under the Caliphate of Omar bin Khattab, it is noticed that corporate structure of Bayt al-Mal as a fiscal institution had been developed. In the periods of Umayyad and later on Abbasid, it is seen that this institution developed with a dual structure as assets belong to Caliph and assets belong to public. It's narrated that Abbasids formed Bayt al-Mal Council apart from councils of war, army, sadaqahs those they took registers of income and expenses. In the periods of Mamelukes, Fatimids and Ottomans too, it became treasury that is recordings of incomes and expenses and income-expense items had been increased by diversifying (Erkal, 1992: 90-94).

Bayt al-Mal was a structure that gets loans for financing of jihad, gives loans to needy Muslims time to time, records these transactions and makes these transactions without usury. In modern economics-finance literature, some operations that calling with concepts of 'domestic borrowing' or 'credit' and involves providing a material benefit (interest) to funder had not a feature in the period of the Prophet, thus it should be noted that these are legitimate loan (karz) operations.

It is noted that legal process about demanded loans of some of the first Caliphates and some of Muslims for their needs from Bayt al-Mal, was performed towards Islam's principles and judgments, some methods had been employed such as relief or facilitation in case of difficulty to repayment and collection from heritage in case of death (Kallek, 2015:51-53).

### **1.2. Early financial instruments, operations and borders**

Examples about when Muslims needed to get loan, some seemingly commercial activities (pretense) that involves usury-doubt they done in order to acquire fund in exchange with their future incomes, are understood that was exceptional in these periods. Again, trade of same kind of goods/precious matters with each other was accepted as usury and forbade except in condition of being same weight and payment in advance.

In hadithes about usury ban, in trade of gold and silver's with their kinds advance and equal payment set as conditions, while in case of different kinds advance payment condition has

accepted suffice. For this kind of operations those named in Islam fiqh as “expend agreement” advance collection of payments in the place agreement had made (yeden-bi-yedin) was another condition for avoiding usury and possible disunities (Aybakan, 2009:138-139).

It is noted that substantial amount of funds was accumulated on some Muslims by the way of ‘**safety deposits (amanat)**’ given by their environment in early periods. It is narrated that Zubayr ibn al-Awam was accepting amounts deposited to him as loan, thus he get a chance to use those funds (Kallek, 2015:53-54).

In these early years of Islam, on a secondary market trying to make trade of a **sakk** document that represents deserving of a good or a product was forbidden because this transaction means selling value of a good without receiving it.

It is noted that Omar bin Khattab banned Hakim ibn Hizam who gathered big amount of profit on sakk trade (Malik, 1982:2/162). Even though Omar bin Khattab didn’t declare this intervention is for ‘selling a good without receiving’ there, later periods Zayd ibn Thabit and Abu Hurairah narrated that objection against putting of commercial use to sakks was for this reason.

In response to allowance of Muawiyah’s Hedjaz governor Marwan ibn Hakam to trade of sakks of famous Al-Djar port, they wanted to prevent that for the reason ‘selling before receiving’ is haram. It’s narrated that Marwan was recollected these documents by the hand of officers and returned them to owners (Malik, 1982:2/162).

Here, it is seen that there was an exclusionist attitude about trade of papers represents assets and debts by creating derivative markets and artificial price increases which are not on goods.

In early years of Islam incomes have rose by conquers, local rulers who have influent on control of villages and called ‘**dihkan**’ from Sasanid period was intermediary on collection of public revenues for Bayt al-Mal. Likewise in Middle East, ‘cehbez’ people known that since Sasanids, were a class provides loans to government.

In the period of Abbasids, Cehbezoes who held public tax resources (muqatta’at) as tax farming (iltizam) were contributory factors for public financing. Cehbezoes, in Abbasid Caliphs, Buyids and Seljuks periods, were carrying business of selling and converting into cash of some gifts, appraising purity of coins, jewelry and trade business, accepting deposits, giving loans, preparing documents such as credit letters for trade business between parties, trade bills called ‘suftece’ and cheques (sakk), lending to government for salary payments in exchange for tax incomes. It is seen that instruments like suftece and sakk held qualification of debit voucher or order of payment (Yeniçeri,1993:222-223).

### **1.3. Partnerships on Financing of Trade**

Muslims did not count usury ban as an obstacle for economic enterprises or a problem and they operated in commercial/industrial business (Udovitch,1967:260). It is understood that, on financing of trade, common solution for legitimate base happened as companies (partnerships).

There are types in Islamic commercial partnerships such as **mudaraba** which unites labor and capital together, **shirket-ul-amwal** (asset company) happened as capital partnership, labor partnership formed **shirket-ul-a’mâl/ebdân** and lastly **shirket-ul vucûh** (reputation company)

which is capital-free but makes business by relying on dignity. These partnerships were making possible to join and do business by only one of capital, labor or credit (Tabakoğlu, 2013:350).

Principles of sharing profit and loss, selecting of halal goods and products, commercial principles excludes all kind of cheat, manipulation and ambiguous or non-existing purchase and sell were creating borders of partnership as were the case with all other economic activities. Shaping with labor from one party and capital from other one, **mudaraba** (kīrad) represents an example of legitimate enterprise which is common and known in Mecca before the Prophet. It is narrated that Quraysh and other tribes, especially in caravan trade, adopted this partnership method suggested by Hashim, ancestor of Prophet, in response to seclusion of Arab merchants for aloneness and death into deserts when they bankrupt and count this as a matter of honor. Among examples of this type which is called **mudaraba** in Hanafiyya and **kīrad** or **mukarada** in Shafiism and Malikism, there are Khadijah's making avail of her goods into trade caravan of Damascus before her marriage with the Prophet, Omar bin Khattab's two sons' managing capital they took from governor of Iraq on the way back to Medina, and running of capital belongs to orphans by Omar bin Khattab is noted (kumaş, 2006:374-375). This partnership that avails joining of great number of people was made possible to finance big trade caravans. For earnable profit, a rate was determined instead of fixed value or amount. In case of loss, capital owners share it with capital and labor owners with waste of their efforts.

Similarity between mudaraba partnership and 'commenda' emerged in medieval Europe, most probably, as Udovitch mention long time ago, should be a consequence of contiguity with Islamic world. It is known that commenda partnerships those were adopted by Italian merchants beginning with 10th century had a significant role in Mediterranean trade by drawing investors and operators together. Muslims were too, using mudaraba method in long distance and overseas trades for a long time (Udovitch, 1969:9).

In Mudaraba partnership, it is accepted as possible to setting some conditions about characteristics and fields of business by financier (rabb-al-mal) as in liberating operator (mudarib). In this second case, operator who represents labor have an option to receive fund for other financiers, thus he can add bigger financial assets to the enterprise. Although  $\frac{3}{4}$  of profit had taken by financier and residue to operator, it was possible to change it by an agreement in regarding to characteristics of the job.

Also, '**mufavada**' which is constitutes on principle of equality, and '**inan**' which is not requires equality were applied as other legitimate company types. In mufavaza partnership, in addition to equal capital investment and equal profit-loss share, partners also can be guarantors and deputies of each others. But in inan partnership there are no requirements of equality of capital or profit (it is possible to share capital equal, profit unequal), in case of loss it is sharing in proportion of capital (investment) rates, and partners are each others' deputies but not guarantors.

Another partnership type is '**vucuh**'/'**mafalis**' company which have not any capital (investment) but in this type partners use their reputation to buying goods on account and selling, sharing profit and try to accumulate capital.

Another kind of transaction is a commerce which called '**salam**' and is making in the way of advance payment and delivery on account. It is narrated that the Prophet said "Whoever does selem agreement, so he has to do in known quantities, known scales, and known times" when

He saw, after Hegira, Muslims in Medina sell their farm products with one, two even three years of due dates in advance payment. Some conditions such as determination of delivery time and point, being *mutaqawwem* (halal and accessible in the market) of traded goods and advance payment considered as necessary (Aybakan, 2009:402-404).

In short, abovementioned trade and partnership methods, while creating opportunities to join capital into economic enterprises, shows numerous examples of establishing of these enterprises without tending to usury based credit loan search. Especially by the way of *mudaraba*, it makes possible to let business operator to participate in economic life without owning capital.

## **2. Historical Finance Experience Against Prohibition of Interest: The Ottoman Case**

Usury ban that existed during medieval age in Mediterranean and adjacent regions, was representing an effective border not only for Muslims but Christians too. The most important principal, usury ban that was regulating commercial-financial field was a common point almost all religions agreed with. On the other hand, while medieval age Muslim societies still officially had an edge with practices with usury content, European societies, by the effect of new religious-denominational interpretations, made this border controversial, and placed it, beginning of the modern era and continuous mercantilist periods, almost completely and officially an acceptable position. At least, continuing usury ban and fight with usurious trade by the help of dominant power of church until 13th century, thenceforth, seems like weakened. By reasons of burden of financing crusades, monopole activities of Jews in this field, and Catholic priest Thomas Aquinas' approach that tolerates loan operations aside from consumption uses made widespread the opinion that accepts 'interest' as normal instead of 'usury'. Reasons such as borrower's consent for this, people's rejection even if they need to borrow and lastly lender's exposure to some risks, were formed a basis for these kinds of transactions. From the ending of medieval age expanding of European trade geographically and commercially made this situation perceived almost completely on economical ground. Especially Calvin's disapprove of usury yet manifestly rejection of traditional church doctrine pave to way of theological ground of interest (Pıçak, 2010:71-73).

In times of this ban has not been stretched yet in Christian Mediterranean Europe, they used commonly trade partnerships called *commenda* which is similar to well-known and applied in Islamic World '*mudaraba*' and trade policies etc. on financing of commerce. In this region cities such as Venice, Geneva, Florence and Tuscany were tending to practices like opening credit and issuing bond for kings with first banking examples from beginning to 12<sup>th</sup> century and increased in number in 14<sup>th</sup> (Güran, 2017:60-61). Western and other parts of Europe usually learned commercial techniques, exercises like account and policy at the end of this period.

In Islamic World merchants who makes forward selling and lenders lends as *karz* were registering this transaction with the *qadi* and took a document (*huccet*) about this register. Also name of the witnesses were recording on this document. When making purchases, it is noted that related officers were collecting required money from taxmen (*multezim*) who operates tax farms (*iltizam/mukataa*) belongs to the state and took *huccet* from *qadi* commissioned on that place. This amounts were registering as set-offs for debts of taxmen to the state. Bill of parcels came from provinces such as Baghdad, Egypt, Diyarbakir could sent in cash or by drawing a policy on a merchant. Practices such as documents for transferring debt witnessing (*shahadah*) place-to-place in interpersonal debt operations, deputies authorized with debt collecting, selling

goods in condition of paying to another person, and collecting debt in another city (suftece). This last practice, suftece, even though were not approved by Ottoman faqihs in some fatwas because of the reasons putting route/transportation risk onto borrower, differences in cash changing and convenience to condition of advance payment, yet it was allowed (Sahillioğlu, 1975:110-136).

It is seen that aforesaid business partnerships were most common and accepted methods to put managing and capital together in Islamic societies. Except this method, it is known that lending transactions without usury (karz) were in common use between family members and immediate external environment for small-sized financing. In Ottoman example, regarding to shar'iyah records (court records), it is stated time-to-time that a great number of lending transactions were involving usury even if those were small rates (Pamuk, 2007:76).

In our opinion, exist of interest bearing loan that working on jewelers and moneylenders in Ottoman society as in most periods of history, doesn't have a meaning that this transactions were legitimate and approved by court records. This general situation encountered in qadi records, grounds on indirect transactions called muamele-i shar'iyah, Bey'ul-ine, bey'bi-l vefa bey'bi-l istiğlal or teverruk those are takes place in Islam fiqh literature. And most of these transactions were fund-raising operations in the manner of transferring and managing cash money to foundations in order to ensure foundations' continuity (Islahi, 2009:138-139). These transactions are examples those are grounded and implemented on bases of shar'iyah.

## **2.1.The Role of Waqfs on Financing Social Services and Investments**

According to approach which originates foundation practices back to the Prophet's time period, it's based on that example of valuable date garden as Omar bin Khattab's share on Khyber captures. When Omar bin Khattab asks the Prophet for his opinion about this property he answers: "Give it in charity (i.e. as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, nor bequeathed, but the fruits are to be spent in charity." So Omar gave it in charity, and it was for Allah's Cause, the emancipation of slaves, for the poor, for guests, for travelers, and for kinsmen. The person acting as its administrator could eat from it reasonably and fairly and could let a friend of his eat from it provided he had no intention of becoming wealthy by its means.

Foundations (waqfs), by the guidance of Qur'an's advices about charity, developed around Islam's religious-moral principles and functioned as quite important by expanding wide investment areas such as religious services, education, healthcare, social aid, public works. In addition to luxury consumption and wastage bans, especially aid (sadaqah) principle enabled incomes to spend for social benefits. Here, sadaqah jariya (continuous sadaqah) term mentioned in hadithes had an important effect as a stimulant of waqfs.

Waqfs those are voluntariness-based institutions between public and private sectors, undertook many burdens of states by supplying a lot of goods and services which are expecting from modern states. Instead of spending on state budget, they created a voluntarily financing system by the hands of all segments of society beginning with executive-army class, instead of spending on state budget. In Ottoman example, waqfs functioned on important political, economical and social matters in periods of establishment and expanding into the Rumelia region. It is known that there were opinions criticize waqfs those are experiencing expands and crises corresponding with social conditions they situated, in alleged preventing capital

accumulation by restraining individual entrepreneurship and detaining economic assets to circulate. But these critics are not persuasive even though there were some misappropriations around waqfs. These kinds of critics are ungradable statements trying to approach economic-fiscal processes separate from all political-economic conditions of Islam societies and outer world. It would be quite deceptive to consider these institutions as main reasons separate from political-economical crises periods.

Markets, inns, caravansaries, zawiyahs, water ways and roads, bridges, mosques, madrasahs and other various waqf buildings had expanded in quite important areas in socio-economic life of Ottoman country. Waqfs had significance on process of existing and developing of cities in Islamic world. It's seen that numerous of foundations established to meeting needs of indigents, widows and orphans, and had the aim of serving various civic services. Those are also provided production, investment and employment with regards to they became subjects of commercial-agricultural-industrial business.

In waqf system, resources of the financing were movables and immovables. Immovable assets such as inns, shops, lands, markets and bathhouses (hammam) etc. called akar constituted the backbone of waqfs. Movables were subjects to credit transactions on fund-accumulate-boxes. Endowed movables and immovables were called as *asl-i mal*. Religious foundations, education, healthcare foundations, public work foundations and other social services were financing with gained incomes (estate rent incomes, accretion incomes from managing of movables).

In a different base from financing methods towards needy social segments such as patient-disabled, poor, widow-orphan, older etc. seen in modern times' states, it is seen that solved in the basis of social solidarity and contribution. Obviously, main motive that made this possible were related with mentality and attitudinize exists in Muslim societies.

Speaking of which in Ottoman example, it's seen that money waqfs were common exercises in service on the purpose of serving for religious services, meeting education institutions' needs, supporting craftsmen-occupational groups, cleaning, public works and other various charity works. In money waqfs, gained incomes were spending on areas recorded on *waqfiyyah* (foundation certificate) by preserving endowed origin money, managed it by several methods consonant with *shar'iiyyah*. Money waqfs also had a significant role on allocation of small amounts as capital to needy people.

Lastly, it is understood that, by the help of *sadaqah/zakat* system, waqf order had an important and unique role on social services, social security and mitigation of risk by sharing in Islam societies.

## **2.2.Cash Waqfs and Murabaha**

It wouldn't be pointed to judge aforesaid transactions as clear usury/usurious transaction just by looking at those transactions' recorded amounts and rates as *ribh* (profit) in registry documents. Attention should be paid on these operations and practices, despite their suspicion of usury and arguable qualification in respect to providing benefit for debt return, at least formalistically were not usury credit so there are *fiqh* bases which demonstrates their legitimacy. It's find voice that Ottoman state opinion has ignore *shar'iiyyah* optionally for some pragmatic reasons, a practice which is known it's not agreeable in *shar'iiyyah* overlooked by protecting public welfare:



“...Ebussuud Efendi has defended activities of cash waqfs practically by saying lots of waqfs will collapse if they do not lend with interest (!) and it will damage to Islam society” (Pamuk, 2007:7).

However actually approach that is formulized with the name ‘muamalat al-shar’iyyah’ and do not accepted a clear usury operation as legitimate, represents an attitude other than considering legitimate to a prohibition in respect to it is a subject of judicial opinion even if it is arguable. In Ebussuud fatwas which supported shar’iyyah bases of this acceptance that became state’s official opinion after discussions concerning to the subject, this acceptance showed as forms about Hanafi ijtiyhads and rate of profits (15%) showed below (Düzenli, 2013:227):

“conditions contrary to the sharia in the foundation certificate (waqfiyah) is invalid”

“Firstly, it is necessary to determine the validity of cash waqf after that the necessity of waqf”

“It is forbidden to make more than fifteen percent debt transactions”

“The person who makes more than fifteen percent debt transactions is warned, scolded and imprisoned...”

If we look at practical conditions, with thousands of examples Ottoman money waqfs were about capitals composed from small accumulations and gained funds usually occurred as same modest levels. Trustee responsible from administration of waqf, wanted various assurances in order to guarantee repayments of funds and not damage to waqf’s budget. They tried to make operations by laying down conditions such as rehn-i kâvi (strong hypothec) or kefil-i melî (wealthy guarantor) and not to make business with untrustworthy ones. Meantime they try to prevent lends exceeds shar’iyyah rates (usually 15%) and clear usury transactions by taking under review. Although they could not prevent these kinds of attempts in practice, they tried to restrain by way of waqfs in response of indigents’ abuse by pawnbrokers high rated usuries. Also they intervened in some contracts that these pawnbrokers were a party by restricted rates that pawnbrokers’ demanded with legal rates. In Ottoman qadi registers, for borrowing-lending relationships some amounts that credit side demanded could became a subject of inquiry even if it had a qualification of ribah (interest) or not. In still, for operations of waqfs, being above of suspicion of ribah and making shar’iyyah-based contracts is frequently emphasized (İSAM.İKS, 2011:143, 278).

One of the methods adopted during these operations was occurring as sale of a good by its owner who seeks for fund (loan) then redeem by him with deferred payment and profit addition. So when he paid his debt he could take the good. In Ottoman waqfs, these consecutive operations called generally as ‘**bay’ul-ıynah**’ which was done on a symbolic good even if there is not any actual trade, sometimes occurred between seller and buyer and sometimes practiced by involving a third party (**tawarruk**). Except aforesaid transaction known as loyal sale/**bay’ bi-l wafa**, if person continues to benefit he sold as renter this operation called **bay’ bi-l istiğlal**. This practice that regarding jaiz (licit) by some of the Hanafi faqih on the grounds of exigency and social requirements is seen commonly in these days as ‘sell-rent-retake’ chain. It should be born in mind that these kinds of operations that seen problematic by fiqh schools, is criticized considering that is using mostly as credit contract in modern financial markets instead of actual good trade (Bayındır, 2015:183-185). Because purpose of contract is not trade in goods but lend and gain of a profit for borrower.

Fundamentally, practice identified as buying by seller and then reselling with addition of profit, called ‘murabaha’ and as a condition of being licit, cost of good and profit rate information were sharing with buyer. While according to Imam Malik this transaction have to done in that place and that moment, according to Imam Shafi it can be done with deferred payment (Ayub, 2017:238-239). Briefly it is regarding as possible to be in advance or deferred payment for classical murabaha operations. But existence of one/fixed price that determined in the end of the contract is mandatory condition. In other words, price is regarded as return of sold good, but not return of debt relief (riba) as asserted so often (Ayub, 2017:243). Today, modern murabaha operations are commonly practicing (by coming in for criticism) in the form of deferred payment and debiting by financial institutions. We assume that usury discussion that forms common reason of discussion is about if operation of a real purchase-sale and passage of title/collection done by a financial institution or not. In other saying, the reason is despite being no longer usury formalistically, transferring of a benefit as intention and content by providing loan which we can see same characteristics in Ottoman practices. On the other hand, a similar dispute comes to the fore with reminding of profit-loss participation center sharing rates to market interest rates and exercise of guaranteed profit.

### 2.3. A Late Period Experience in Public Finance: Ottoman “Esham” Practice

In Ottoman fiscal system, *iltizam* practice was an exercise developed for meet the state’s urgent cash needs, distinct from *emanet* method which was collection of tax revenues by the hand of officers. In *iltizam*, collection of tax incomes was put out to private for 1 to 3 years. Rising public expenses have tried to cover by advance payments (*muaccele*) and installments (*mueccelle*). At the end of the 17<sup>th</sup> century *malikane* method had developed in which time condition of tender became life-time and naturally advance payments had rose (Genç,1975:236). Increasing pressure of public expenses at the last quarter of 18<sup>th</sup> century had rose cash need and this time a new exercise called *esham* had implemented in Ottoman fiscal system.

Esham was about tax income sources (*mukataa*) of state, and was some kind of domestic borrowing exercise had applied for public finance by Ottoman Empire beginning from the end of the 18<sup>th</sup> century (1775) and continued until 1860s. Esham practice was an operation of life time sale of annual money incomes of state’s some tax sources as *sehims* (shares) in return of ‘*muaccele*’ (advance payment). Only a share that called interest of a *mukataa*’s annual incomes was selling but not all. Mehmet Genç who known with important studies about this subject explains the process with an example like this:

“...In the year of 1775, corresponding to 400.000 kurus share that called interest and was exceeding 190.000 kurus share that stated as asset of annual income that belong to Istanbul tobacco custom *mukataa*, *muaccele* value estimated for first group *esham* formed 160 *sehims* that each one has 2500 kurus annual income, were five year-long. Thus *sehim* buyer could gain 2500 kurus annual income for a life-time by paying 12.500 kurus *muaccele*. This rate we can name as rate of issue, besides were taking changeable values respect to volume of *esham* that supplied in 100 year period this system had practiced, efficiency of relevant *mukataa*, and states of war and peace, were also never drop down below of 5 years that estimated for first group and firstly rose to 5,5 and 6 and by the time it take values reaches up to 10 to 12...”

Genç is continuously telling it is arguable if this practice was legally interest but has a practically close qualification to interest of our time. And he recorded that indefinite condition like *sehim* (share) owner’s lifetime born a resemblance to insurance premium. He narrated that

everybody could, after took formal document from the state, by paying ‘kasr-ı yed’ tax that 10% of advance payment to the treasury sell their sehim (share) to others and after sehim owner’s death sehim has back to the treasury (Genç, 1995:376-378).

Being portioned to small shares and being open to all segments of society was make esham system widespread. But as things stand, even though issue rates of esham could monitored, difficulties about estimating state’s incomes and debt burdens that related to esham owners’ average lifetime were necessitate a critical calculation in process of system. While rates were around 18-19% in first years, could be controlled between 10-14% in the first quarter of 19<sup>th</sup> century, yet in continuous period some changes had tried in esham exercise, low rates had implemented with kaime exercise but depreciating kaimes made way for instability. It is understood that esham that had increased sales volume in 1860s, were differentiated to its classical qualifications and began to resemble modern bonds by opening to foreign markets. Increase of opportunity and weight of external debts in public finance made esham end (Genç, 1995:378-380).

In public finance, Ottoman esham practice functioned for the benefit of the states in the short term despite the reasons such as guaranteeing of amount of annual payment for esham owners, necessity to continuing of related mukataa’s efficiency, limited exterior intervention in the situation of state’s experiencing difficulty to pay to guaranteed amounts, difficulties of monitoring interpersonal sales and empty sehims and inharmoniousness of process calendars of interest payments and mukataa incomes. But state has seen the damage of the practice, tended to end system by the reasons of loss maker mukataas and increasing interest burden yet obliged to work system especially for meet war expenses (Cezar, 1986:79-88). It is seen that system couldn’t continued in consequences of other emerged developments that deepened Ottoman fiscal problems in medium/long term and external debts.

#### **2.4. Funds**

Despite Ottoman economic system was not a credit economy in basis, individuals who had idle funds, firstly statesmen and their close circle, society segments who had small and medium sized savings were transferring their funds to waqfs (foundations) and related ‘funds’. Both various waqfs and social cooperation funds were operating this money by shar’i treatments. It is known that artisan funds that partook of social security institution were established in Ottoman artisan system and these were worked in waqf system. With these transactions, waqfs and funds subsidies merchants and artisans with credits for time to time. Funds have accumulate their capital by operating muslim and non-muslim artisans’ donations and contributions and assets of some merchants and orphans (Tabakoğlu, 1998:303-304).

Also on the purpose of financing tax debts that known as **awarız** and usually had to be paid by neighborhood-village societies, ‘avarız funds’ were establishing. It is noted that benefited from those for not only taxes but also expenditures such as unexpected expenses, required infrastructure works, marriage and debts of indigents etc.

Briefly funds that established for social security and cooperation, were supplying credits in order to meet various requirements. Idea of not obliging to pawnbroker usuries was coming to the front in the operation of these funds.

It's known that advertency was common about assets belong to orphans because there were important warnings about this subject since the early ages of Islam. It's narrated that Omar says: "make trade with orphans' goods so zakat doesn't devour them" (Malik, 1982:2...?). Even though we don't have the information about orphan goods that protected in places like *bedesten* known as trade areas in Ottoman exercise were if used as commercial assets directly or not, still in known examples, both orphans' keep supported and these funds have been utilized by aforesaid methods. Same method was implemented for widows and indigents etc. too. *Cadileskers* and *qadis* had played a supervisory role in working and protection of these funds from misappropriation. In 1851, a need for an institutional control had emerged with *Ministry of Emval-i Eytam*, one year later it transferred to the body of *Shaykh al Islam* office and finally a council of itself created there in 1874 (Aydın-Yurdakul-Kurt, 2006:224-225).

In 19<sup>th</sup> century, small farmers' cash credit needs could meet by jewelers, pawnbrokers and merchants in Ottoman agricultural sector. It is noted that jewelers were supplying credits with smaller rates of usury (even if sometimes it reaches 20%) than pawnbrokers and merchants. Also it is known that pawnbrokers were supplying credits with rates up to 40% and merchants were supplying by 'salam'-giving loan in return of buying post harvest products under market price- (Güran, 1998:135-138).

In 1863, for the financing of agricultural producers, as a result of Danube Governor *Midhat Pasha's* efforts first funds had established in order to support agricultural producers. These funds were creating fund pools known as 'hometown funds' (*memleket sandıkları*) and aimed to meet credit needs of small agricultural producers. At the end of the 1867 capital of these funds had reached to 20 million *kurus*. In terms of capital size of funds that became prevalent nationwide, Danube and *Edirne wilayats* (provinces) were in the forefront. These cooperative-characterized funds were structures that both obtaining sources from its members and giving credit to members. For credits that giving with hypothec or bail 12% interest was implementing. These foundations that creates capital by resources such as managing of vacancies, sale of products and contributions of members, had problems with uncollectible loans, although tried to continue by placing an additional tax one tenth of *oshur* (tithe) in the name of 'Menafi-i Umumiye Sandıkları', after fiscal problems it converted to the *Ziraat Bank* (Güran, 1998:150-152). State's effort on creating an official credit market had gain a limited success, dependency on private credit markets had continued. Apart from these, it's known that firstly in Danube in the year 1866 by *Midhat Pasha*, a year later in *Istanbul* 'Emniyet Sandıkları' has established in order to giving credit in return of valuable items.

### **3. Islamic Finance between adherence to tradition and alienation from tradition**

Ottoman Empire was the focus of last effective political-economical experience circle of Islamic world. Undoubtedly apart from this experience, there have been Muslim societies existed in Far Asia and Indian region with different qualifications and accumulations. Ottoman political center that focused on equal competition and conflict with western world and around developments would affect the destiny of entire Islamic world in next two hundred years.

It's seen in Ottoman example that usury credit operations that was limited with activities of jewelers and pawnbrokers, had gained speed with establishment of joint-stock trade banks and entered in the process of institutionalization in the years before *Tanzimat*. In 1840 after the experience of 'kaima' that had qualification of interest bearing paper more than banknotes, n

1863 joint-stock type commercial banking gained speed, in the year of 1854 for financing Crimean War began to issuing of internal debt securities. Traditional structure had suffered an important change with tanzimat era banknote trials, issuance of internal debt securities, establishment of stock exchange market that these securities and bonds had operated and western legalizing attempts. Dualism of Tanzimat that presents both tradition and modernism together, converted to a secular characteristics with modernization of Republic, supported to modern banking and establishment of credit system gradually (Ortabağ, 2018:120-122).

It is propounded that Adapazari Islamic Commercial Bank (Adapazari İslam Ticaret Bankası) that founded in 1913 was differ from Osmanli Bankasi which is originally a foreigner bank and was having susceptibility to working adherent with Islamic principles. But it must be noted that this entrepreneurship has founded by a group of Muslim entrepreneurs as a reaction to favoring of existing credit institutions belonged non-muslims their co-religionist. It is subject of study that if its name was enough to guarantee its operations to convenience to shar'iiyah. The institution named 'Adapazari Islamic Commercial Bank Ottoman Joint-Stock Company' in 1919 and 'Adapazari Islamic Commercial Bank Turkish Joint Stock Company' in 1924. Finally in 1928 its name changed as 'Adapazari Turkish Commercial Bank Joint Stock Company' and 'Turkish Commercial Bank Joint Stock Company' in 1937. After transferred to Saving Deposit Insurance Fund in 1997, in year 2001 disqualified from banking activities and deposit collection (Hazıroğlu, 2017:265-267).

In year 1954, "Turkiye Vakıflar Bank-Turk Joint-Stock Company" (Türkiye Vakıflar Bankası Türk Anonim Şirketi) has been established by providing most of its capital by foundations (waqfs). An important share of this bank's capital has formed by 1069 money waqfs.

In Ottoman Turkey, in the period after 2<sup>nd</sup> Mashrutiyat (2. Meşrutiyet) banking entrepreneurships that represented disengagement with tradition, had continued to being indications of modern finance system that depended to western finance system's institutions and instruments in defiance of emphasizes about being 'domestic and national'.

In continuous time period, for Islamic (!) finance institutions, an interest-free bank that working on profit-loss basis founded by mastermind and pioneer Prof. Ahmad al-Najjar in Mit-Ghamr town of Egypt Arab Republic in the year 1963 and cooperative-banking practices in Muslim regions of India can count as first examples. Later, first commercial interest-free bank, Dubai Islamic Bank has founded and Islamic Development Bank that came into operation in 1975, Jeddah has played an important role on financing public projects in Islamic countries (Bayındır, 2005:40; Özal, 2001:47).

## **Conclusion**

Financial enterprises that described as Islamic, even though find place in mid-20<sup>th</sup> century, it can be said that driving factor was seeking for utilization of capital that Arab countries gained by way of increasing oil prices in 1970s. Through last decades requests that could be formulized with "what they have, let we have, but ours shall be Islamic" motto was like an abstract of two-century-long modernization attempts of Muslims. Aforesaid seeking strongly represents tend to spreading into not only economic-financial field but also almost every societal areas. Political-economic-cultural existence of Muslims that they tried to develop with reference of their own system of values and succeeded to improve important examples from the beginning and through historic eras, had evolved a passive and adaptive character that tending to drift

apart from their paradigmatic wholeness as a result of traumatic developments of last two centuries.

It is seen that institutions that founded in the name of Islamic banking are trying to define positions to themselves in terms of existing conventional system and its instruments, in addition to ground themselves on formal structures of traditional Islamic covenants, prioritizing 'seeming fit for shar'iyyah' instead of 'being fit for shar'iyyah' in respect to purpose and content, (naturally) trying to increase their shares in existing commercial-financial system and mechanism by operating in continuous profitability principle. Some operations of these banks that propounded to work with fundamental activities such as partnership, renting and cash purchase-forward sale, in direction of commercial principles of Islam that recommends keeping away from usury and *haram* (banned) products, are coming under fair/unfair criticism by considering problematic because of conventional system that they existing in.

In addition to impossibility of differentiation of aforementioned institutions ideally from institutions that runs openly and commonly interest based operations, it is seen that they are trying to differentiate in working principles. The fundamental problem, here, is their potential to transform conventional economic-financial system, will power that they can show, and practical intentions seen densely in operations that this willpower reflected. While a face of the problem is related with aforesaid institutions, other and maybe more important face is related with respondents. Along with approach of political authority, societal segments' attitudes and expectations about economic life are coming forefront as effective determinants.

Despite the conditions global economy and finance net imposed, Muslim societies how and to what extend will represent principles and susceptibilities of worldview they are members of? They must decide to volunteer for either gaining a position by enlarging funds they have in given system and process or convert existing circumstances from its foundation. People who thinks they can achieve both, are really believe it is possible? In our opinion the problem seems related with roots deeper than fund achieving and increasing share in sum of assets, in existing finance system which is constituted on borrow-debt dynamics. We think there is a need of an approach beyond profitability, growth and financial indicators and a roadmap, methods and instruments that this approach required. Furthermore it's necessary to pay regard to reality that this kind of choice might have some costs, financial gains and losses. Of course if a real transformation is aiming... While claim of transforming base character of process is criticizing with being not realistic on grounds of existing economic constraints and problems, they cannot suggest another exit. Thus it is being continued to promote system (with a good or bad grace) to regenerate itself despite the crises it experienced. It seems that a mental transformation is needed at first for a credit-based economic approach to convert an partnership economics that prefers to share risk, and aims although not big but fair and halal earnings. Early the problem showed as "economizing" of human life converted to a new dimension with 'financialization'. Unfortunately existence of people who pleased with existing treatment and continue of the system is being possible with complainers. It will be not easy this world which mostly surrendered to dominance of quantity, to understand or choice this truth. Because the truth has always wanted to be trivialize by describing as a dream or magic oftentimes, throughout the history of mankind.

Consequently Islamic finance (!), despite claims of adherence to tradition, contains risk of representing some kind of disengagement with tradition in itself under the oppression of insistent and corruptive effects of modern. Historic experiences of Muslim societies necessitate exploration of negative/positive examples in terms of being informative and a careful calculation. And this will be a work achieved by neither who utterly blesses aforesaid legacy nor who counts it worthless.

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