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PRINCIPLES OF TRANSACTIONS AND FINANCIAL PARTNERSHIP IN THE MIDDLE AGES: RETROSPECTIVE ANALYSIS

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Abstract
This article is devoted to the study of the principles of concluding transactions, the complex of commodity exchange, and on this basis the emergence of the institution of financial partnership in the Middle Ages. The author conducts a retrospective analysis of the understanding of the basic principles of commodity-money exchange in medieval society. The author summarizes that of all the writers, scientists, thinkers of the Middle Ages, the essence of such economic terms as transactions, purchase and sale, barter, financial partnership and others was most fully revealed in the works of lawyers - representatives of legal schools.

1 Problem identification and analysis

In the Middle Ages, which lasted in the East for a thousand years, people were closely connected by financial institutions that regulate their behavior within society. Various institutions of financial partnership and the conclusion of transactions have been developed by the Eastern peoples within the framework of the current norms of Islam. The study of these institutions, in addition to filling the existing gap in the history of the development of society, also provides an opportunity to understand the underlying causes and prerequisites of some processes in modern society.

Interestingly, the study of medieval financial norms and institutions from the perspective of the methodology of modern science began in the West. The publication of such a valuable book as “Partnership and Profit in Medieval Islam” by A.L. Udovich, [13] devoted to a thorough analysis of Islamic financial partnership institutions such as mudaraba and Musharaka, was preceded by the work of many researchers. But, undoubtedly, the author of this book, having studied the data of legal theological schools, has brought a lot of clarity into understanding the mechanisms of financial partnership.

The forms of manifestation of credit relations and the deposit of banking in the medieval Muslim world were studied by Nicholas Ray. [14] Timur Kuran initially wrote about the effectiveness of financial partnership in the form of mudaraba, but its excessive personification, in his opinion, later, in the era of capitalism, prevented the emergence of large joint-stock companies. [15] Ghislaine Lydon examined promissory notes (Suftaja) as an Islamic financial instrument on the example of medieval West Africa and the countries of the Middle East. [16]

In the Middle Ages, commodity-money relations between members of society included a complex of commodity exchange, purchase and sale, neighborhood, market relations, relations between parties, between citizens of the state. Among scientists and thinkers, in terms of determining the content of the above-mentioned economic terms, lawyers (fuqaha) played a prominent role. Lawyers, not only as theoreticians, but some as successful merchants, were familiar directly with the practical side of these relations, therefore, on all emerging issues they had a vision

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based on a deep knowledge of the Koran and Hadith. They, as righteous Muslims, are convinced that the answers to all questions, regardless of the place and time of their appearance, are contained in the Koran and Hadith. The function of the lawyer is to directly or indirectly find the only correct solution in these primary sources.

At the same time, as in the case of traditional sources of jurisprudence, the customs of people in the form of generally accepted institutions in society were recognized as an auxiliary source of law-making.

The worthy merit of medieval jurists was that they applied the principle of fairness in all aspects of transactions and financial partnerships. Fatwas of famous fakihs, in particular on the principles of concluding transactions, commodity exchange and the form of economic and legal relations, were later collected in reliable collections. To compare this definition with the modern definition of treatment, which explains the actions of capable citizens and legal entities aimed at establishing, changing or terminating civil rights and obligations, here are some examples.

Thus, the concept of "transaction" was interpreted in the famous work of Abul Hassan Kuduri (died 428/1063) – "Mukhtasar-al-Kuduri fi-al-fiqh Hanafi" as follows: "A transaction is an exchange that is used in two senses: 1) special transaction – a special transaction carried out in cash (gold and silver); 2) mass transaction – a transaction consisting of constituent elements of the exchange of items, goods, goods equated to exchange for money and consisting, as a rule, of four parts: nofiz (mandatory), mavkuf (deferred), fosid (vicious) and invalid (prohibited). At the same time, the first two types end positively for both the seller and the buyer, in their favor. And a vicious transaction is an illegal appropriation of an object of exchange, and a prohibited transaction is a transaction from which the owner of the property does not receive any benefit." [8]

The concepts of a clean transaction and a permitted transaction are also explained, where a clean transaction is a non–cash exchange of goods and things, and a permitted one is the purchase and sale of something non–cash for cash. [8]

Abdurahmon Juzairi in Kitab al-fiqhi alal masohib al-arbaa defines a transaction as follows: "A transaction means the exchange of identical goods and things or the exchange of goods and things for money. The first is called "saleable", and the second "adobe" is cash. In the dictionary, a transaction is defined as a transaction, that is, both a profitable and an unprofitable transaction. However, in Sharia, if there is no interest, then the transaction is considered not to have taken place, i.e. the sale of alcohol, pork and blood is considered illegal, since only loss and losses are bought in exchange for money." [13]

Ubaidullah ibn Masud, better known as Sadrushshariya, reflected on the definition of a transaction in his authoritative book, “Mukhtasari vikaya”, as follows: "A transaction is a person's participation in the process of alienating any property from his property through goods or, conversely, a person's participation in the process of appropriating any property to his property. A prerequisite for the transaction is the exchange of goods by mutual consent and the announcement in the form of the verb of the past tense "gave and accepted" (sold and bought).” [11]

From all the above quotes, it can be seen that medieval fakihs (jurists) were good experts in the basics of circulation, commodity exchange and forms of economic and legal relations, trade and commerce. At the beginning of the Middle Ages, fatwas of famous lawyers were not considered dogma, with an increase in practical knowledge in the field of agriculture, their students continued to improve the teachings of law schools, and in some cases, with the advent of new evidence, they changed the fatwas of their predecessors.

For example, there are disagreements between Imam Abu Hanifa and his followers regarding the clarification of the price per unit of goods sold, given the uncertainty of the total volume of this product. He believes that if the price per unit of goods sold, i.e. per meter of fabric, per bucket of wheat, etc. is known, but the total amount of goods sold is unknown, then the transaction is considered burdensome. Abu Yusuf and Muhammad Shaybani consider the transaction to be correct in this case, since during the transaction the buyer and seller can determine the exact quantity of the goods being sold. [11] In this case, the fatwa in Hanafi jurisprudence was given in accordance with the vision of the disciples, and not with the position of the imam.

In the Middle Ages, the essential issues concerning the principles of conversion were the prohibition of usury. According to the provisions of Sharia, jurists categorically prohibited usury. It follows from this that the second principle, the observance of which was considered mandatory, was

the prohibition of usury. Usury is explained in dictionaries by the meaning of excess, profit and abuse. [1] Explaining the meaning of usury according to the provisions of Sharia, jurists considered it a forbidden transaction, which consists of two parts: usury in trade and usury in loans.

Usury in trade means that those goods that are sold in measured containers, such as milk, butter, and those goods that are sold on scales in exchange for goods of the same sex, are sold with a certain margin and excess. For example, 100 pounds of grain are sold for 120 pounds in cash or with a delay.

Loan sharking. Someone is given a loan in the amount of a certain amount for the difference and an additional payment upon its return. For example, a loan in the amount of 5000 dirhams is provided on condition that the borrower undertakes to repay the specified amount in the amount of 5200 dirhams. It is precisely this excess of credit that is considered usury.

The third principle of financial partnership was considered to be the observance of fairness in business ethics. Abu Hanifa from Abdullah ibn Dinor, he from Abdullah ibn Umar betray what the Prophet (s) said: "Those who are not clean in trade are not with us." And such can be treachery and deception in trade, when cheaper goods are mixed with expensive ones and sold as expensive goods. Ali Kori, a well–known commentator on the collections of hadith "Musnad Abu Hanifa" wrote that in most versions of the transmission of this authentic hadith, the Prophet (s) said so when he saw in the market that soaked wheat was being sold. [6]

All of the above provisions allowed the lawyers, led by Abu Hanifa, to develop the Institute of Financial Partnership (musharaka), which also projected the principle of justice. Instead of usury, the jurists proposed a new principle of trade – complicity (musharaka - partnership), which they themselves constantly used. For example, regarding this, Abu Hanifa bequeathed to his senior disciple Abu Yusuf as follows: "Do not engage in trade yourself [when you hold the position of Qadi –U.F.], but hire another person whom you trust." [6]

Muwaffaq Makki, in his book "Manokibi Abuhanifa" (The Virtues of Abu Hanifa), very aptly quotes the story of Imam A'zama's trading partner, Hafs ibn Abdurrahman. Hafs says that one day Abu Hanifa sent him a certain number of fabrics and told him that there were defective fabrics among them, be sure to warn the buyer about this. But, Hafs, being carried away by trade, forgot to warn the buyer about the existence of defective fabrics. When Abu Hanifa found out about this, he ordered to donate to the poor all the proceeds from this transaction, [6] which amounted to an impressive sum of 30 thousand dirhams (A dirham is a silver coin weighing approximately 2.97 grams - U.F.).

According to the basic rules of Musharaka, a consensus has been reached among almost all Muslim theologians. They all agree that the parties to the contract must be legally capable, consciously commit such an act and strictly comply with the provisions established in the contract. But, according to the order of distribution of the profits received, opinions among Muslim theologians are far from uniform.

Thus, the share received by each participant must be agreed in advance, otherwise the contract will be invalid. At the same time, the size of the distributed share must be determined from the actual amount of profit received from joint business management. It should also be stipulated in advance about the share of each participant, it is not allowed for one partner to know it (for example, so many percentages), and for the other to receive the rest of the profit. Therefore, the share of each partner received by them at the end of the stipulated period should be agreed upon.

It should be noted that Abu Hanifa, unlike Imam Malik, Imam Shafi'i and other theologians, distinguishes between active and passive participation in partnership. According to it, provided that one of the participants in the transaction agrees in advance that under no circumstances does he participate in the musharaka process, then his share may be less than his share of the investment. For example, if his share of investments was 60%, then in this case, the amount due to him from the total profit at the end of the agreed period (month, quarter, etc.) can be determined by the parties less than this amount. However, according to Imam Abu Hanifa, the distribution of losses, in case of their occurrence, should occur exactly according to the funds invested by the partners. So if one of the partners invested 60% of the funds in musharaki, then his share in the distribution of losses will be similar, no more and no less. Almost all well-known Sunni theologians agree with Abu Hanifa on this.

Thus, the share of profit from musharaka is set according to pre-agreed points, and the share of losses must exactly correspond to the shares of the investment. Imam Abu Hanifa believes that

the invested funds should be of a monetary nature, that is, in a liquid form. In other words, musharaka should be concluded on the basis of monetary investments, not goods. Most jurists followed him on this issue, with the exception of Imam Malik and a number of other scholars. Imam Malik and his supporters allowed other forms of equity participation in musharaka, for example, participation in goods, provided that the value of goods would be determined in money at market prices on the day the contract was drawn up.

Abu Hanifa's argument in terms of the unacceptability of natural investments in musharaka is based on the fact that goods differ from each other, but money does not, when investing in goods, the owner does not lose the right to ownership of this product when the monetary investment in the form of monetary units is identical to each other. With commodity participation, when the invested goods are sold, another musharaka participant cannot claim the proceeds, since the goods still belong to their owner. Therefore, Abu Hanifa considers it unacceptable for a financial partnership when the share of one partner differs from the share of another.

In addition, Abu Hanifa refers to the fact that sometimes, when concluding a musharaka, the parties provide for the possibility of redistributing the invested investments, which becomes impossible with the commodity form of the musharaka contract. Also, in these cases, the value of the invested goods may change, which will cause an unfair division of the profits from musharaka's work.

Thus, it should be summarized that in Islam, the socio-economic doctrine of justice is based on the teachings of Muslim lawyers. In this regard, Muhammad Bakir al-Sadr correctly writes in the book "Our Economy" that "in Islam, the concept of justice is defined on the basis of legal relations. Wherever rights and property are defined, their correct distribution is called justice." [12]

This doctrine differs slightly from the metaphysical definition of justice by Kant [5] and other philosophers, Muslim jurists considered justice as a regulatory category. They saw it as an institutional, relative, and social phenomenon.

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Thus, goods entering into an equity investment are allowed only if musharaki participants cannot identify their own from someone else's, otherwise, the conclusion of a musharaki contract becomes unacceptable. In case of equal participation of Musharaki's partners in business management, each participant expresses the interests of the common team and will be considered a representative of other partners.

2 Summing up the results:

Thus, as follows from the above, in order to study the economic thought of medieval authors, it is necessary to focus primarily on legal scholars. It is to them that the first interpretations of economic terms and categories belong. Legal experts have given a clear definition of the transaction, outlined the legal framework of the financial partnership. Within the framework of law schools, some of their definitions are still valid within the framework of Islamic banking.

But, it should be noted some very important points regarding the use of musharaka as a financial instrument within the framework of Islamic banking, which is allowed even in a number of secular states, for example, by the relevant law in the Republic of Tajikistan. The fact is that according to the prescriptions of legal experts, any partner can terminate the contract if desired, which requires only notifying the other (other) partner in advance. Also, the musharak may terminate in the event of the death of one of the parties to the contract or in the case of incapacity (insanity) of one of the partners. All these cases have a number of negative consequences for the development of a joint business:

- firstly, with the liquid form of all assets, they can be divided in accordance with the above procedure between the parties to the musharaki contract, and if they are not in liquid form, the participants have the right to sell them or distribute them among themselves. If there is disagreement between the partners, for example, one is in favor and the other (the other) is against, then in this case it is definitely necessary to distribute the assets of the business. The difficulty arises when the assets of the business are expressed in the form of equipment and other fixed assets, then the other partners will have to sell the existing assets and distribute the funds received according to a pre-agreed scheme;

- secondly, if one of the participants wishes to terminate the contract, no matter what, he can force other participants to make a decision to liquidate assets through their sale, and divide the money received, or directly divide all assets between partners, in whatever form they are. Such an outing has a negative effect when other business partners want to continue the business.

The positive aspects of the developed institute of financial partnership include the main rule of conducting financial activities, which is that no one has the right to make a profit if they do not participate in potential risk and are not responsible for possible losses. Also, no one has the right to demand a fixed percentage for themselves when returning the funds provided on credit.

But this should not give us a false idea of the complete security of a financial partnership (musharaka), since when conducting Islamic banking, the main emphasis is not on profit sharing, but on the separation of possible risks and losses.

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