TOSHKENT DAVLAT YURIDIK UNIVERSITETI HUZURIDAGI ILMIY DARAJALAR BERUVCHI DSc.07/2025.27.12.Yu.01.02 RAQAMLI ILMIY KENGASH

TOSHKENT DAVLAT YURIDIK UNIVERSITETI

UBAYDULLAYEV ABROR QUTPILLA O‘G‘LI

ISLOM HUQUQIDA MOLIYA INSTITUTINING SHAKLLANISHI VA RIVOJLANISHI: TARIXIY-HUQUQIY TADQIQOT

12.00.01. – Davlat va huquq nazariyasi va tarixi. Huquqiy ta’limotlar tarixi

Yuridik fanlar bo‘yicha falsafa doktori (PhD) dissertatsiyasi AVTOREFERATI

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KIRISH (Falsafa doktori (PhD) dissertatsiyasi annotatsiyasi)

Dissertatsiya mavzusining dolzarbligi va zarurati. Dunyoda har o‘n yilliklarda sodir bo‘layotgan iqtisodiy inqirozlar jahon iqtisodiyoti uchun moliyaviy aktivlar diversifikatsiyasi nihoyatda muhim ekanini ko‘rsatmoqda. “Islom moliyasi rivojlanishi – 2025” hisobotida 2024-yil islom moliya aktivlarining umumiy hajmi 5,98 trillion AQSH dollarini tashkil etdi. Agar o‘sish hozirgidek davom etsa, 2029-yilga borib 9,7 trillion AQSH dollariga yetishi bashorat qilinmoqda. Ushbu o‘sishni shakllantiruvchi asosiy tendensiyalar qatorida transchegaraviy aloqa, tartibga solishni takomillashtirish va hukumatlarning strategik tashabbuslari qayd etilgan. Xalqaro moliya institutlarini qo‘llab-quvvatlashda Malayziya, Saudiya Arabistoni va Birlashgan Arab Amirliklari (BAA) yetakchilik qilmoqda, Malayziya va BAA beshta asosiy indikatorning har biri bo‘yicha kuchli beshlikka kirgan[1]. Shunday sharoitda islom moliyasiga e’tibor oshmoqda va uning huquqiy asoslarini yaratish, takomillashtirish va nazariy-huquqiy jihatlarini tadqiq etish ehtiyoji yuzaga kelmoqda.

Jahonda islom moliya institutlarining shakllanishi va rivojlanishiga doir bir qator ilmiy tadqiqotlar amalga oshirilmoqda. Xususan, islom huquqida moliyaviy munosabatlarni huquqiy tartibga soluvchi asosiy manbalar va tamoyillar, islom moliya huquqi sohasi va uning tarkibiy qismlari, hozirgi zamonda islom moliya huquqining o‘ziga xos xususiyatlari, XXI asrda islom huquqi moliya institutining huquqiy asoslari, islom huquqi moliya institutining zamonaviy rivojlanish yo‘nalishlari, ortiqcha mablag‘larni rasmiy iqtisodiyotga jalb etishda alternativ iqtisodiy mexanizm sifatida islom moliyasining huquqiy imkoniyatlari kabi bir qator yo‘nalishlarda ilmiy izlanishlar o‘tkazilmoqda.

Respublikamizda xalqaro islom moliyasi institutlari bilan hamkorlikda huquqiy asoslarni yaratish bo‘yicha ishlar olib borilmoqda, 2024-yil 27-iyul kuni O‘zbekiston Respublikasi Markaziy bankining 3536-sonli qarori bilan “Mikromoliya tashkilotlari tomonidan islomiy moliyalashtirishga oid xizmatlarni ko‘rsatish tartibi to‘g‘risida”gi nizom[2] tasdiqlandi. Ushbu Nizomga ko‘ra, mikromoliya tashkilotlari *salam, muzoraba, mushoraka, murobaha, istisna va ijara* kabi mahsulotlar orqali mijozlarni moliyalashtirish imkoniyatiga ega bo‘ldi. Biroq Qozog‘iston[3], Qirg‘iziston[4] hamda Tojikistonda islom moliyasi bo‘yicha barqaror normativ-huquqiy baza shakllantirilgan bir vaqtda, O‘zbekistonda sohani tartibga soluvchi huquqiy asoslarni ishlab chiqish va takomillashtirish zaruratining mavjudligi, aholi qo‘lidagi, mazkur sohada davlat boshqaruvini amalga oshiruvchi ayrim ijro etuvchi hokimiyat organlariga yuklatilgan vazifalarning deklarativ xususiyatga egaligi va ularni amalga oshirishning tashkiliy-

[1] ICD – LSEG Islamic Finance Development Report 2025. www.lseg.com/content/dam/data-analytics/en_us/documents/reports/lseg-islamic-finance-development-indicator-2025.pdf

[2] O‘zbekiston Respublikasi Markaziy banki boshqaruvining 2024-yil 19-iyuldagi “Mikromoliya tashkilotlari tomonidan islomiy moliyalashtirishga oid xizmatlarni ko‘rsatish tartibi to‘g‘risidagi nizomni tasdiqlash haqida”gi 23/4-son qarori. https://lex.uz/ru/docs/7036330

[3] Закон Республики Казахстан «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам организации и деятельности исламских банков и организации исламского финансирования» от 12 февраля 2009 года № 133-IV.

[4] О Национальном банке Кыргызской Республики, банках и банковской деятельности: Закон Кыргызской Республики от 12 августа 2022 года № 93 // Централизованный банк данных правовой информации Кыргызской Республики. URL: http://cbd.minjust.gov.kg/act/view/ru-ru/112431 (murojaat qilingan sana: 24.05.2026).

huquqiy mexanizmlari yetarli emasligi, islom moliyasini tartibga solishi lozim boʻlgan me'yoriy hujjatlarda boʻshliqlarning mavjudligi mazkur masalani ilmiy jihatdan oʻrganishni taqozo qilmoqda.

Oʻzbekiston Respublikasining "Nobank kredit tashkilotlari va mikromoliyalashtirish faoliyati toʻgʻrisida"gi OʻRQ–765-son (2022) Qonuni, "Banklar va bank faoliyati toʻgʻrisida"gi OʻRQ–580-son (2019) Qonuni, "Oʻzbekiston Respublikasining Markaziy banki toʻgʻrisida"gi OʻRQ–582-son (2019) Qonuni, Oʻzbekiston Respublikasi Fuqarolik kodeksi, Oʻzbekiston Respublikasi Markaziy banki boshqaruvining 2024-yil 19-iyuldagi 23/4-son qaroriga ilova – "Mikromoliya tashkilotlari tomonidan islomiy moliyalashtirishga oid xizmatlarni koʻrsatish tartibi toʻgʻrisida"gi Nizom hamda sohani tartibga soluvchi boshqa normativ-huquqiy hujjatlarda belgilangan va istiqbolda koʻrsatilishi lozim boʻlgan vazifalarni amalga oshirishda mazkur dissertatsiya tadqiqoti muayyan darajada xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yoʻnalishlariga bogʻliqligi. Mazkur dissertatsiya respublika fan va texnologiyalari rivojlanishining I. "Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy, ma'naviy-ma'rifiy rivojlantirishda innovatsion gʻoyalar tizimini shakllantirish va ularni amalga oshirish yoʻllari" ustuvor yoʻnalishiga muvofiq bajarilgan.

Muammoning oʻrganilganlik darajasi. Oʻzbekiston yuridik fanida tadqiqot ishi mavzusi bilan bogʻliq ayrim nazariy va amaliy muammolar milliy olimlar, jumladan, A. Saidov, N. Yusupova, A. Raxmanov, H. Yunusov, X. Muhamedov, K. Musayeva, A. Juzjoniy, M. Qosimov, S. Yusupov, M. Yoʻldoshev, Y. Tursunov, A. Normuratov, Sh. Shoraxmetov va boshqa olimlar ilmiy ishlarida tadqiq etilgan[1].

Mamlakatimiz islom huquqida moliya institutining muayyan davrlarga va asarlarga oid tarixiy-huquqiy va nazariy-huquqiy tahlili "Majallayi ahkomi adliya" misolida Sh. Avazovaning nomzodlik dissertatsiyasida (2008), Movarounnahrlik islom huquqi olimlari, jumladan, Margʻinoniyning "Hidoya" asarini tadqiq etish misolida S. Isxakovning nomzodlik dissertatsiyasida (2002), Saraxsiyning "Al-Mabsut" asaridagi moliyaviy munosabatlarni tadqiq etish doirasida M. Qosimovning yuridik fanlar boʻyicha falsafa doktori dissertatsiyasida (2021) oʻrganilgan, biroq islom huquqida moliya institutining shakllanishi va rivojlanishi mavzusi shu vaqtga qadar yaxlit tadqiqot ishi sifatida kompleks oʻrganilmagan[2].

MDH davlatlarida ushbu mavzuga doir masalalar V. Lazarev, G. Kerimov, L. Syukiyaynen, R. Bekkin, E. Baydaulet, M. Marchenko, F. Reshetov, A. Cherdansev, L. Vandenberg, G.E. fon Gryunebaum, Y. Reshetov, N. Jdanov, N. Tornau, M. Sadagbar, R. Gazizova, M. Kalimullina, A. Solodov, Y. Ledakova, N. Kozirinlar tomonidan, boshqa xorijiy mamlakatlarda mavzuga oid masalalar H. Kamali, M. Taqiy Usmoniy, K. Lyuis, M. Abdul Rauf, A. Lutfiy, M. Siddiqiy, J. Esposito, H. Kennedi, G.S. Hojson, K. Hitti, E. Fogel, M. Hadduriy, M. Iqbol, A. Khan, B. Vael Hallaq, J. Nasir, U. Chapra, A. Maududi, Ch. Tripp, Al-Ashker, M. Al-Jamal, D. Foster, G. Erkanbrak, Z. Hasanlar tomonidan tadqiq etilgan[3].

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[1] Mazkur olimlarning ilmiy ishlari dissertatsiyaning foydalanilgan adabiyotlar roʻyxatida berilgan.
[2] Mazkur olimlarning ilmiy ishlari dissertatsiyaning foydalanilgan adabiyotlar roʻyxatida berilgan.
[3] Mazkur olimlarning ilmiy ishlari dissertatsiyaning foydalanilgan adabiyotlar roʻyxatida berilgan.

Dissertatsiya mavzusining dissertatsiya bajarilayotgan oliy ta'lim muassasasining ilmiy-tadqiqot ishlari bilan bog'liqligi. Dissertatsiya mavzusi Toshkent davlat yuridik universitetining ilmiy tadqiqot ishlari rejasiga kiritilib, ilmiy tadqiqotlarning ustuvor yo'nalishlari asosida amalga oshirilgan.

Tadqiqotning maqsadi islom huquqida moliya institutining shakllanishi va rivojlanishi jarayonlarini kompleks tadqiq etish orqali O'zbekistonda islom moliya huquqining nazariy asoslarini mustahkamlash va huquqiy asoslarini takomillashtirishga qaratilgan taklif va tavsiyalar ishlab chiqishdan iborat.

Tadqiqotning vazifalari:

islom huquqida moliya institutining tushunchalari tavsifini aniqlash;

islom huquqida moliyaviy munosabatlarni huquqiy tartibga soluvchi asosiy manbalar va tamoyillarni tahlil qilish;

islom moliya huquqi instituti va uning tarkibiy qismlarini tadqiq etish;

islom moliya institutini huquqiy tartibga solishning vujudga kelishini tahlil qilish;

Arab xalifaligida islom moliya qonunchiligining rivojlanish jarayonini ochib berish;

islom moliya huquqining shakllanishida movarounnahrlik olimlarning qo'shgan hissalarini tahlil qilish;

XIX–XX asrlarda islom huquqida moliya institutining tadrijiy rivojlanishiga ta'sir ko'rsatgan siyosiy-huquqiy omillarni aniqlash;

hozirgi zamonda islom moliya huquqining o'ziga xos xususiyatlarini tahlil qilish;

XXI asrda islom moliyasini huquqiy tartibga solish modellari va xorijiy davlatlar amaliyotini o'rganish;

islom huquqi moliya institutining zamonaviy rivojlanish yo'nalishlari va O'zbekiston Respublikasi qonunchiligini takomillashtirish istiqbollarini tadqiq etishdan iborat.

Tadqiqotning obyekti islom moliyasiga oid munosabatlarni huquqiy tartibga solish jarayonida turli tarixiy davrlarda yuzaga kelgan hamda zamonaviy bosqichda xalqaro standartlar ta'sirida shakllanayotgan ijtimoiy munosabatlar tizimidir.

Tadqiqotning predmeti islom huquqining moliyaviy munosabatlarni tartibga soluvchi huquqiy asoslari, tarixiy rivojlanish bosqichlari, xorijiy mamlakatlar qonunchiligi va amaliyoti, ilmiy-nazariy qarashlar va huquqiy kategoriyalar hisoblanadi.

Tadqiqotning usullari. Tadqiqot olib borishda tarixiy, tizimli-tuzilmaviy, mantiqiy, qiyosiy-huquqiy, ilmiy manbalarni kompleks tadqiq etish, analiz va sintez, statistik ma'lumotlar tahlili va huquqiy prognoz qilish kabi usullar qo'llanilgan.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

bank-moliya qonunchiligida investitsiyaviy omonatlar sifatida foydani bo'lishish sharti bilan jalb etilgan pul mablag'larini omonat (depozit)ning klassik ta'rifidan istisno etish lozimligi hamda an'anaviy bank omonatiga qo'yiladigan huquqiy talablar islom moliyasi operatsiyalariga tatbiq etilmasligi asoslangan;

islomiy bank faoliyatini amalga oshiruvchi banklarga bevosita savdo faoliyati bilan shug'ullanish hamda yuridik shaxslarning ustav fondlaridagi ulushlarini (aksiyalarini) sotib olishga oid cheklovlarni tatbiq etmaslik zarurligi asoslab berilgan;

O‘zbekiston Respublikasi Markaziy bank boshqaruvining vakolatlari qatoriga islomiy bank faoliyatini amalga oshirish huquqini beruvchi litsenziyalarni berish, qayta rasmiylashtirish va chaqirib olishga doir eksklyuziv huquqlarni kiritish hamda regulyatorning ushbu sektordagi maqomi va huquqiy vakolatlarini belgilash zarurligi asoslangan;

fuqarolik qonunchiligida bank omonati shartnomasining huquqiy ta’rifini islom moliyasi tamoyillari bilan muvofiqlashtirish hamda omonat bo‘yicha daromad olishning foizlardan tashqari shakllarini nazarda tutuvchi qoida bilan takomillashtirish zarurligi asoslangan;

bank omonatlariga to‘lanadigan daromadlarni nafaqat foizlar, balki boshqa daromad va foizsiz omonat mexanizmlari bilan amalga oshirilishi mumkinligini fuqarolik qonunchiligida belgilash zarurligi asoslangan;

islom moliya huquqining o‘ziga xos tamoyillari, sherikchilikka asoslangan bitimlar va investitsion shartnomalarning konseptual-huquqiy tabiati tizimlashtirilgan hamda ularning qiyosiy-huquqiy tahlili oliy yuridik ta’lim tizimida tizimli nazariy bilimlarni shakllantirishning ilmiy asosi sifatida xizmat qilishi asoslab berilgan;

Tadqiqotning amaliy natijalari quyidagilardan iborat:

“Islom moliya huquqi”, “moliya huquqi” tushunchalariga mualliflik ta’rifi ishlab chiqilgan hamda islom huquqida moliya institutining moliya-bank tizimidagi o‘ziga xos konseptual-huquqiy tamoyillari yoritib berilgan;

islom moliyaviy munosabatlarini tartibga soluvchi zamonaviy qoidalar, xalqaro islom moliyasi standartlarining yuridik tabiati ochib berilgan;

islom moliyasini joriy etishning monistik, integratsion va dualistik modellari, ularning o‘ziga xos konseptual-huquqiy belgilari hamda milliy bank tizimida dualistik modelni qo‘llashning an’anaviy tizim bilan o‘zaro muvofiqlik (nisbat) mezonlari ko‘rsatib berilgan;

oliy yuridik ta’lim tizimida Islom moliya huquqi fanini mustaqil o‘quv moduli sifatida joriy etish zarurligi huquqiy jihatdan asoslab berilgan hamda ushbu soha bo‘yicha tegishli fan dasturlari va sillabuslarni ishlab chiqishda tadqiqot natijalaridan foydalanish imkoniyatlari aniqlangan;

O‘zbekiston Respublikasi Markaziy bankining islomiy bank faoliyati sohasidagi litsenziyalash va tartibga solish vakolatlarini mustahkamlash bo‘yicha “O‘zbekiston Respublikasining Markaziy banki to‘g‘risida”gi Qonunga qo‘shimchalar kiritish zarurligi asoslangan;

bank-moliya qonunchiligida investitsiyaviy omonatlarni omonat (depozit)ning an’anaviy ta’rifidan istisno qilish hamda “Banklar va bank faoliyati to‘g‘risida”gi Qonunga tegishli o‘zgartirish va qo‘shimchalar kiritish bo‘yicha takliflar asoslangan;

islomiy bank faoliyatini amalga oshiruvchi banklarga nisbatan bevosita savdo faoliyati va ustav fondlaridagi ulushlarni sotib olishga oid cheklovlarni tatbiq etmaslik yuzasidan bank qonunchiligini takomillashtirishga doir takliflar ishlab chiqilgan;

O‘zbekiston Respublikasi Fuqarolik kodeksining omonat shartnomasiga oid normalari doirasida omonatga to‘lanadigan daromadlar tarkibiga foyda ulushini ham kiritish va foizsiz omonat mexanizmlarini huquqiy jihatdan tan olish bo‘yicha qonunchilikni takomillashtirish takliflari ishlab chiqilgan;

Tadqiqot natijalarining ishonchliligi. Tadqiqot natijalarining ishonchliligi ishda qo'llanilgan usullar, uning doirasida foydalanilgan ilmiy-nazariy yondashuvlar rasmiy manbalardan olingani, xalqaro tajriba va milliy qonunchilik normalarining o'zaro tahlil qilingani, xulosa, taklif va tavsiyalarning amaliyotda joriy etilgani, natijalarning yetakchi milliy va xorijiy nashrlarda e'lon qilingani, vakolatli tuzilmalar tomonidan tasdiqlangani bilan belgilanadi.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqot natijalarining ilmiy ahamiyati undagi ilmiy-nazariy xulosa va takliflar O'zbekiston Respublikasida islom moliyasining huquqiy asoslarini takomillashtirish yuzasidan ilmiy tadqiqotlar olib borish, amaldagi qonunchilikni takomillashtirish hamda Davlat va huquq nazariyasi, Davlat va huquq tarixi, Siyosiy-huquqiy ta'limotlar tarixi fanlarini ilmiy-nazariy boyitish bilan belgilanadi.

Mavzuga oid ilmiy adabiyotlarni o'rganish va tahlil qilish asnosida islom huquqiy ta'limoti shakllanishidan to bugungi kunga qadar islomiy-moliyaviy munosabatlarni huquqiy tartibga solishdagi fundamental manbalar, siyosiy-huquqiy jarayonlar va ularning soha rivojiga ta'siri, ilmiy qarashlar va xulosalar, tarixiy rivojlanish bosqichlari bilan bog'liq masalalar Davlat va huquq nazariyasi, Davlat va huquq tarixi, Siyosiy va huquqiy ta'limotlar tarixi hamda Islom huquqi fanlari nuqtayi nazaridan monografik darajada tadqiq etildi.

Tadqiqot natijalarining amaliy ahamiyati O'zbekistonda islom moliyasini tartibga soluvchi normativ-huquqiy bazani takomillashtirish bilan belgilanadi.

Tadqiqot natijalarining joriy qilinishi. Dissertatsiya doirasida olib borilgan tadqiqot xulosalaridan olingan natijalar asosida:

bank-moliya qonunchiligida investitsiyaviy omonatlar sifatida foydani bo'lishish sharti bilan jalb etilgan pul mablag'larini omonat (depozit) ta'rifidan istisno etishga oid taklifi 2026-yil 27-martdagi "O'zbekiston Respublikasining ayrim qonun hujjatlariga O'zbekistonda islomiy bank faoliyatini joriy etishga qaratilgan qo'shimcha va o'zgartirishlar kiritish to'g'risida"gi O'RQ-1126-son Qonuni 3-moddasi 4-bandi ("Banklar va bank faoliyati to'g'risida"gi Qonunning 6-moddasi birinchi qismi ikkinchi xatboshisi)ni ishlab chiqishda foydalanilgan (O'zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasi huzuridagi Parlament tadqiqotlari institutining 2026-yil 20-maydagi 3/dn-74-sonli ma'lumotnomasi). Mazkur taklif islom moliyasi operatsiyalari asosida jalb etilgan investitsiyaviy omonatlarga bank an'anaviy omonatiga qo'yiladigan talablar tatbiq etilmasligiga xizmat qilgan;

bevosita savdo faoliyatini amalga oshirishga hamda yuridik shaxslarning ustav fondlaridagi ulushlarini (aksiyalarni) olishga oid cheklovlarning islomiy bank faoliyatini amalga oshiruvchi banklarga nisbatan tatbiq etilmasligiga oid taklifi 2026-yil 27-martdagi "O'zbekiston Respublikasining ayrim qonun hujjatlariga O'zbekistonda islomiy bank faoliyatini joriy etishga qaratilgan qo'shimcha va o'zgartirishlar kiritish to'g'risida"gi O'RQ-1126-son Qonuni 3-moddasi 5-bandi ("Banklar va bank faoliyati to'g'risida"gi Qonunning 7-moddasi o'ninchi qismi)ni ishlab chiqishda foydalanilgan (O'zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasi huzuridagi Parlament tadqiqotlari institutining 2026-yil 20-maydagi 3/dn-74-sonli ma'lumotnomasi). Ushbu taklif islomiy bank faoliyatini amalga oshiruvchi moliyaviy tashkilotlarda islom moliyasi qoida va tamoyillari asosida faoliyat yuritishni ta'minlashga xizmat qilgan;

O'zbekiston Respublikasi Markaziy banki boshqaruvining vakolatlari qatoriga islomiy bank faoliyatini amalga oshirish huquqini beruvchi litsenziyalarni berish, qayta rasmiylashtirish va chaqirib olish to'g'risida qarorlar qabul qilishni kiritishga oid taklifdan 2026-yil 27-martdagi "O'zbekiston Respublikasining ayrim qonun hujjatlariga O'zbekistonda islomiy bank faoliyatini joriy etishga qaratilgan qo'shimcha va o'zgartirishlar kiritish to'g'risida"gi O'RQ-1126-sonli Qonuni 1-moddasi 1-bandi ("O'zbekiston Respublikasining Markaziy banki to'g'risida"gi Qonunning 20-moddasi o'n ikkinchi xatboshisi)ni ishlab chiqishda foydalanilgan (O'zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasi huzuridagi Parlament tadqiqotlari institutining 2026-yil 20-maydagi 3/dn-74-sonli ma'lumotnomasi). Mazkur taklifning amaliyotga joriy etilishi O'zbekiston Respublikasi Markaziy bankining islomiy bank faoliyatini tashkil etishdagi maqomi va vakolatlari mustahkamlanishiga xizmat qilgan;

bank omonati shartnomasi ta'rifiga omonat summasini foizlar, shuningdek, boshqa daromadlar bilan yoki ularsiz qaytarish imkoniyatini nazarda tutuvchi qoidani kiritishga oid taklifi 2026-yil 27-martdagi "O'zbekiston Respublikasining ayrim qonun hujjatlariga O'zbekistonda islomiy bank faoliyatini joriy etishga qaratilgan qo'shimcha va o'zgartirishlar kiritish to'g'risida"gi O'RQ-1126-sonli Qonuni 2-moddasi 2-bandi (Fuqarolik kodeksining 759-moddasi birinchi qismi)ni shakllantirishda foydalanilgan (O'zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasi huzuridagi Parlament tadqiqotlari institutining 2026-yil 20-maydagi №3/dn-74-sonli ma'lumotnomasi). Mazkur taklif bank omonati shartnomasida omonatni foizlar bilan yoki ularsiz qaytarish imkoniyatini huquqiy jihatdan ta'minlashga xizmat qilgan;

omonatga to'lanadigan daromadlar tarkibiga foizlar bilan bir qatorda boshqa daromadlarni ham kiritish hamda O'zbekiston Respublikasi Fuqarolik kodeksining 763-moddasi nomini "Omonatga to'lanadigan foizlar va (yoki) boshqa daromadlar" deb o'zgartirishga oid taklifi 2026-yil 27-martdagi "O'zbekiston Respublikasining ayrim qonun hujjatlariga O'zbekistonda islomiy bank faoliyatini joriy etishga qaratilgan qo'shimcha va o'zgartirishlar kiritish to'g'risida"gi O'RQ-1126-sonli Qonuni 2-moddasi 4-bandi (Fuqarolik kodeksining 763-moddasi ikkinchi, uchinchi, to'rtinchi va beshinchi xatboshisi)ni shakllantirishda foydalanilgan (O'zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasi huzuridagi Parlament tadqiqotlari institutining 2026-yil 20-maydagi 3/dn-74-sonli ma'lumotnomasi). Ushbu taklif omonatga oid munosabatlarni nafaqat foizli bank modeli bilan amalga oshirish, balki islomiy moliya tamoyillariga asoslangan foizsiz omonat mexanizmlarini huquqiy jihatdan tan olish va qo'llash imkoniyatini ta'minlashga xizmat qilgan;

islom moliyasining huquqiy tabiatini tavsiflashga oid ilmiy natijalardan Toshkent davlat yuridik universitetida "Islom moliya huquqi" o'quv modulining fan dasturini shakllantirishda, jumladan, uning islom moliya huquqi tamoyillari, sherikchilik va investitsion shartnomalar hamda qiyosiy-huquqiy tahlilga oid qismlarini shakllantirishda foydalanilgan (Toshkent davlat yuridik universitetining 2025-yil 4-avgustdagi dalolatnomasi). Mazkur natijalarning tatbiq etilishi talabalarda soha bo'yicha tizimli nazariy-huquqiy bilimlarni shakllantirishga xizmat qilgan;

Tadqiqot natijalarining aprobatsiyasi. Mazkur tadqiqot natijalari 4 ta ilmiy anjuman, 2 ta xalqaro va 2 ta respublika ilmiy-amaliy konferensiyalari, davra suhbatlari va seminarlarda muhokamadan o'tkazilgan.

Tadqiqot natijalarining e'lon qilinganligi. Mazkur tadqiqot natijalari bo'yicha jami 13 ta ilmiy ish, jumladan, Oliy attestatsiya komissiyasining doktorlik dissertatsiyalarini asosiy ilmiy natijalarini chop etish tavsiya etilgan ilmiy nashrlarda 9 ta maqola (shundan 3 ta maqola xorijiy jurnalda) va to'plamlar tarkibida 4 ta ilmiy maqola chop etilgan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tarkibi kirish, o'n paragrafdan iborat uchta bob, xulosa, foydalanilgan adabiyotlar ro'yxatidan iborat. Dissertatsiyaning hajmi 156 betni tashkil etadi.

DISSERTATSIYANING ASOSIY MAZMUNI

Dissertatsiyaning Kirish qismida tadqiqot mavzusining dolzarbligi va zarurati, uning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo'nalishlariga bog'liqligi, muammoning o'rganilganlik darajasi, mavzuning dissertatsiya bajarilayotgan oliy ta'lim muassasasining ilmiy tadqiqot ishlari bilan aloqasi, uning maqsad va vazifalari, obyekti va predmeti, usullari, ilmiy yangiligi va amaliy natijasi, tadqiqot natijalarining ishonchliligi, ilmiy va amaliy ahamiyati, joriy qilinishi, aprobatsiyasi, natijalarning e'lon qilinganligi, dissertatsiyaning hajmi va tuzilishi haqida ma'lumotlar keltirilgan.

Dissertatsiyaning birinchi bobi **"Islom huquqida moliya institutining ilmiy-nazariy asoslari"** deb nomlanib, islom huquqida moliyaviy munosabatlarning fundamental nazariy-huquqiy asoslari, islom moliya huquqi tushunchasi va yuridik tabiati, moliyaviy munosabatlarni huquqiy tartibga soluvchi asosiy manbalar, umumiy (fiqhiy) qoidalar mazmuni va mohiyati, shuningdek, islom moliya huquqi institutsional tarmoqlarga ajratilgan holda umumiy tahlil qilingan.

Dissertant **islom huquqida moliya instituti** tushunchasini ham tarixiy, ham huquqiy jihatdan tahlil qilish, uning islom moliya huquqidagi o'rni va mohiyatini belgilab berish maqsadida olib borilgan tadqiqotlarda (X. Muhamedov, A.R. Raxmanov, S. Yusupov, M. Yo'ldoshev, Y. Tursunov, A. Normuratov, Sh. Shoraxmetov, K.K. Musayeva) ilgari surilgan nuqtayi nazarlarni qiyosiy tahlil qilgan holda, ushbu institut islomiy-moliyaviy munosabatlarni tartibga soluvchi huquqiy tizimning asosiy elementi sifatida shakllanganligi to'g'risidagi xulosaga kelgan. Shu nuqtayi nazardan, huquq manbalarining tasnifi va tarixiy rivojlanishidan kelib chiqib, ularning shakllanish manbalari, huquqiy tabiati hamda zamonaviy huquq tizimlaridagi o'rnini anglagan holda ta'rif berilishi maqsadga muvofiq degan xulosaga kelgan.

Tadqiqotchining fikricha, islom huquqida moliya instituti – bu islom huquqshunosligi (shariat) asosida vujudga kelgan, ijtimoiy-iqtisodiy adolatni ta'minlashga asoslangan, muayyan moliyaviy-huquqiy funksiyani o'zida aks ettirgan, tarixiy taraqqiyotning muayyan davrida normativ-huquqiy va institutsional jihatdan takomillashib, hozirgi davrda islom moliya huquqi sifatida namoyon bo'layotgan ijtimoiy-huquqiy munosabatlar tizimidir.

Shu bilan birga, tadqiqotda islom moliya huquqining o'ziga xos xususiyatlarini yanada aniqroq aks ettirish maqsadida dastlab an'anaviy moliya huquqi tushunchasi, mohiyati bir qator olimlarning yondashuvlari (S. Yusupov, M. Yo'ldoshev, Y. Tursunov, A. Normuratov, V.G. Petrova, I.N. Barsist, A.N. Kozyrin) asosida tahlil qilingan va moliya huquqiga quyidagicha ta'rif berilgan:

Moliya huquqi – davlatning moliyaviy faoliyati jarayonida yuzaga keladigan ijtimoiy munosabatlarni tartibga soluvchi pozitiv xarakterdagi huquqiy normalar yig'indisi bo'lib, u ommaviy-huquqiy munosabatlarni tartibga solishi va huquqiy tartibga solish doirasi ko'proq fiskal maqsadlarga qaratilgani bilan islom moliya huquqidan farqli hisoblanadi.

Shuningdek, "islom moliya huquqi" tushunchasiga quyidagi mualliflik ta'rifi shakllantirilgan:

Islom moliya huquqi – islom huquqiy tafakkurining tarixiy rivojlanish jarayonida shakllangan, Qur'oni karim, sunnat, ijmo va qiyos kabi shariat manbalariga, shuningdek, ratsional fikrlash (ijtihod) va islom huquqining umumiy tamoyillariga asoslangan, ommaviy-huquqiy va xususiy-huquqiy munosabatlar sintezidan iborat bo'lgan, moliyaviy jarayonlarni tartibga soluvchi mustaqil kompleks institut bo'lib, u iqtisodiy adolat, ijtimoiy barqarorlik va axloqiy tamoyillarga asoslangan fiskal, moliyaviy siyosatni amalga oshirishni maqsad qiladi.

Tadqiqotchi tomonidan islom moliya institutining huquqiy tabiatini ommaviy va xususiy huquq sintezi sifatida tavsiflovchi nazariy konsepsiya ilgari surilgan. Bunda soliq, jumladan, zakot majburiyati, baytulmol (g'azna) institutiga oid moliyaviy munosabatlar ommaviy-huquqiy tabiatga ega bo'lsa, muzoraba, mushoraka, murobaha kabi shartnomaviy institutlar xususiy-huquqiy asosga ega ekanligi tahlil qilingan. Ushbu ikki o'lchamlilik islom huquqi moliya institutining qiyosiy huquqshunoslik va huquq tizimlari o'rtasidagi o'zaro farqli jihatlarini anglashda alohida huquqiy kategoriya sifatida tadqiq qilish zaruriyatini asoslaydi.

Dissertant islom moliya huquqining huquqiy tabiati va tarixiy shakllanishidan kelib chiqib, unga xos bo'lgan quyidagi xususiyatlarni ko'rsatib o'tgan:

1) foizli moliyaviy amaliyotlarning taqiqlanganligi; 2) risk va foyda-zararlar o'zaro taqsimot asosida amalga oshirilishi; 3) noaniq taxminlarga asoslangan moliyaviy operatsiyalarga (g'arar) yo'l qo'yilmasligi; 4) taqiqlangan faoliyat turlari bilan shug'ullanish, iste'mol qilish, targ'ib qilishning mumkin emasligi; 5) shartnomalarning muqaddasligi.

Tadqiqotchining fikricha, islom huquqi moliya institutining manbalari uning o'ziga xosligining asosiy jihatini aks ettiradi. Islom moliya huquqi nafaqat huquqiy, balki, diniy-axloqiy xarakterga ega ekanligi, eng bosh manbalar hisoblanmish Qur'on va sunnatning barqaror va o'zgarmas qoidalardan iborat ekanligi sohaning statik xarakterini aks ettirsa, qiyos va ijmo kabi manbalari islom moliya huquqining moliyaviy munosabatlarni huquqiy tartibga solishdagi imkoniyatlari kengayishiga sabab bo'ldi. Islom huquqshunosligida norma ijodkorligining muhim usuli hisoblanadigan ijtihod institutining taraqqiy etishi va keyingi davrlarda islom huquqshunosligida umumiy (fiqhiy) qoidalarning ishlab chiqilishi islom moliyasining moliyaviy munosabatlarni huquqiy tartibga solishda dinamik xarakterini ochib berdi.

Bundan tashqari, islom huquqshunosligining umumiy (fiqhiy) qoidalariga oid tadqiqotlarda (Sh. Avazova, A.Sh. Juzjoniy, N. Yusupova, L.R. Syukiyaynen) ilgari surilgan nuqtayi nazarlar tahlilidan kelib chiqqan holda, dissertant "islom huquqining umumiy (fiqhiy) qoidalari" tushunchasiga "Islom huquqining tarixiy shakllanishi davomida mustahkamlangan, shariatning asosiy manbalariga zid kelmaydigan, barcha huquq maktablarining ta'limotlarini o'ziga singdirgan, qisqa matnlardan iborat bo'lgan ayrim ishlarning umumiy hukmlari" – degan mualliflik ta'rifini bergan.

Tadqiqotchi tomonidan islom huquqshunosligining umumiy (fiqhiy) qoidalari ilmiy tavsifidan kelib chiqqan holda uning quyidagi o'ziga xos xususiyatlari ko'rsatib o'tilgan: *"Umumiy (fiqhiy) qoidalar" bir muammo bo'yicha aniq hukm hisoblanmaydi, balki yuzlab masalalarga tatbiq etish mumkin bo'lgan islom tamoyillari hisoblanishi; umumiy qoidalarni ishlab chiqishdan maqsad islom huquqining normalarini yaxshiroq tushunish, ma'lum munosabatni tartibga solish uchun ko'plab qoidalar ichidan aniq hukmni aniqlab olish bo'lganligi; huquqiy manbalardan kelib chiqishi ya'ni ayrim fiqhiy qoidalar Qur'on va hadisdan, ayrimlari ijmo va aqliy istidlol (dalillash) asosida yuzaga kelishi.*

Shuningdek, dissertatsiyada umumiy qoidalarning o'ziga xos xususiyati beshta quyidagi ustuvor qoidalar zamiridan kelib chiqishi ta'kidlangan: *ishlar maqsadlarga ko'radir; aniq bo'lgan narsalar gumon bilan bekor qilinmaydi; mashaqqat yengillikni keltirib chiqaradi; zarar bartaraf etiladi; odat – huquq manbayi.*

Tadqiqotchining fikricha, islom moliya huquqi qoidalarining standartlashtirilishida islom huquqshunosligining umumiy (fiqhiy) qoidalari beqiyos ahamiyat kasb etadi va nazariy-huquqiy asoslar, jumladan, o'quv adabiyotlari yaratishda islom moliya huquqining manbalari qatorida umumiy (fiqhiy) qoidalarga ham urg'u berish nihoyatda muhim hisoblanadi.

Dissertant islom huquqida moliyaviy munosabatlarning institutsional tuzilmasini chuqurroq tushunish maqsadida sohani tarmoqlarga bo'lib tasniflab bergan. Tadqiqotchining fikricha, islom huquqining muomalatga oid munosabatlarini ularning moliyaviy xarakteridan kelib chiqqan holda quyidagi ikki asosiy tarmoqqa ajratish mumkin: 1) Islom moliya huquqi (Fiqh al-Māliyyah); 2) Islom meros huquqi (Fiqh al-Mawārith).

Dissertatsiyaning ikkinchi bobi **"Islom moliya huquqining shakllanishi"** deb nomlanib, unda islom moliya institutini huquqiy tartibga solishning vujudga kelishi va shakllanishi, islom huquqida moliya institutining shakllanishida movarounnahrlik faqihlarning o'rni hamda XIX-XX asrlarda islom huquqida moliya institutining tadrijiy rivojlanishiga ta'sir ko'rsatgan siyosiy-huquqiy omillarning vujudga kelishi tahlil qilingan.

II bobda amalga oshirilgan tarixiy-huquqiy tadqiqot islom huquqi moliya institutining rivojlanishini mualliflik asosida to'rt bosqichda davrlashtirish imkonini berdi: proto-institutsional shakllanish (VII asr); nasliy vorislik tizimiga ega sulolalar va fiqhiy mazhablar doirasida tizimli rivojlanish (VIII–XIII asrlar); G'arb huquqiy tizimlari ta'sirida klassik shakl inqirozi va islom huquqining moliya instituti transformatsiyasi (XIX–XX asrlar); islom moliya huquqining xalqaro standartlar asosida globallashuvi (XXI asr). Mazkur davrlashtirish tizimi islom moliya institutini statik emas, balki dinamik va evolyutsion huquqiy kategoriya sifatida tavsiflovchi metodologik asos bo'lib xizmat qiladi va ushbu bobda yuqoridagi to'rt davrning uchtasi tahlil qilinadi.

Tadqiqot tahlillaridan ma'lum bo'ladiki, islom huquqida moliyaviy munosabatlar dastlab tezlik bilan tartibga solinmagan hamda muayyan davrlar mobaynida murakkablashib borgan. Xususan, Muhammad payg'ambar (s.a.v.) davrlarida davlat boshqaruvida moliyaviy-huquqiy munosabatlar, jumladan, byudjet, soliq hamda valyuta bilan bog'liq jarayonlar asosan Madinada yo'lga qo'yila boshlandi. Jumladan, zakot Madinada hijriy ikkinchi yilda musulmonlar uchun muqaddas oy – ramazondan oldin farz sifatida joriy qilindi. Shu jumladan, xums hamda jizya soliqlari ham aynan shu davrda vujudga keldi.

Tadqiqotda baytulmol instituti islom davlatchiligi tarixida shunchaki g'azna emas, balki "markazlashgan moliyaviy-ma'muriy boshqaruv instituti" sifatida shakllangani aniqlandi. Nazariy jihatdan ushbu institutning Muhammad payg'ambar (s.a.v.) davridagi "adolatli taqsimot" bosqichidan, Abbosiylar davridagi "shaxsiy va ommaviy g'aznaning ajratilishi" (bayt ul-mol al-muslimin va bayt ul-mol al-xassa) bosqichigacha bo'lgan evolyutsiyasi davlat moliyasining institutsionalizatsiyalashuv jarayoni sifatida tavsiflanadi.

Shuningdek, tadqiqot davomida xalifa Usmon ibn Affon davrida Baytulmol (byudjet) xarajatlari tasnifi hamda miqyosi o'sgani yaqqol namoyon bo'ladi. Jumladan, xalifa Usmon davrida davlat byudjeti uch asosiy tur xarajatlardan iborat edi:

– ijtimoiy yordam va nafaqalar;
– joriy xarajatlar;
– sarmoyaviy xarajatlar.

Shuningdek, Muhammad payg'ambar (s.a.v.) vafotlaridan so'ng huquqning bosh manbasini sharhlashda bo'shliq yuzaga keldi, natijada islom huquqshunosligi norma ijodkorligida yangi ijtihod instituti rivojlana boshladi hamda roshid xalifalar o'z faoliyatida nafaqat Qur'on va sunnatga, balki ba'zi ushbu manbalarda zikr etilmagan masalalarda o'z ra'ylariga ham tayandilar.

Tadqiqotchi tomonidan ilk marta Muhammad payg'ambar (s.a.v.) va to'rt xalifa zamoni islom huquqida moliya institutining vujudga kelishining dastlabki davri sifatida yoki moliyaviy munosabatlarni huquqiy tartibga solishning ilk bosqichi sifatida belgilab olindi.

Dissertant tomonidan Umaviylar va Abbosiylar davri bo'lgan islom huquqiy ta'limoti yaratilgan davr islom huquqida moliya instituti rivojlanishining keyingi bosqichi sifatida belgilab olindi.

Umaviylar davrida (661–750) iqtisodiy va moliyaviy yozishmalarni markazlashtirish uchun Devon al-Barid va Devon ar-Raso'il nomli boshqaruv institutlari tashkil etildi, oltin dinor va kumush dirham zarb qilinib, moliyaviy barqarorlik va iqtisodiy mustaqillik kuchaytirildi.

Umaviylar davridagi huquqqa xos bo'lgan muhim fenomen hukmdorlar qonunlarni sharhlash bilan shug'ullanishni to'xtatishi bo'ldi.

Abbosiylar davrida (750–1258) esa moliyaviy munosabatlarni tartibga solishda huquqshunos va dinshunos olimlarning o'rni ortdi. Xususan, hukmdorlar buyrug'i bilan yozilgan asarlar, traktatlar moliyaviy boshqaruvda dasturulamal bo'lib xizmat qila boshladi. Jumladan, Abu Yusufning "Kitab al-Xaraj" asarida har bir soliq to'lovchini alohida soliqqa tortish zarurligi hamda mulkdan emas, balki mulkdan keladigan daromadni soliqqa tortish lozimligi asoslab berildi. Bu g'oya zamonaviy moliyaviy huquqdagi daromad solig'i konsepsiyasining ilk nazariy ildizidir.

Abbosiylar davrida islom huquqiy ta'limoti shakllandi, islom huquqining manbalari kengaydi, fiqhiy mazhablar doirasida moliyaviy-huquqiy munosabatlarni tartibga solish imkoniyatlari kengaydi, asta-sekin ijtihod eshiklari yopildi. X asr o'rtalaridan boshlab islom huquqshunosligida XIX asrga qadar uning yuridik tabiatiga ta'sir ko'rsatuvchi keskin o'zgarishlar ro'y bermadi.

Movarounnahrlik huquqshunos olimlar, jumladan, Burhoniddin al-Marg'inoniy, Shamsula'imma Saraxsiy, Abullays Samarqandiylar o'z asarlari orqali islom huquqiy ta'limotining moliyaviy qoidalarini sharhlash, tavsiflash hamda amaliyotda bir qancha misollar bilan qo'llash orqali sohaga beqiyos hissa qo'shdilar. "Hidoya"dagi oldi-sotdi, kafolat, pulni birovga o'tkazish, guvohlik, vakolat, da'vo, ishda pul bilan sheriklik, pulni saqlashga berish, qarz berish, sovg'a, ijara masalalaridagi yondashuvlar, Saraxsiy asari bo'lmish "Mabsut"dagi ribo, salam, murobaha, tavliya, vazia kabi munosabatlarning ochib berilishi, g'arar masalalariga chuqur to'xtalishi, "bitoqatu-l-i'timan" ("ishonch yorlig'i") orqali savdo qilish kabi XI asrda Movarounnahrda amalga oshirilgan moliyaviy munosabatlar asarda tavsiflanishi ushbu manbalarning ahamiyatini va islom huquqiy ta'limoti doirasida moliyaviy munosabatlarni sharhlash, tushuntirib berishdagi o'rnini anglatadi.

Shuningdek, tadqiqotda "Hidoya" asari tahlili asosida zakot to'lash majburiyati bo'yicha "moliyaviy-huquqiy layoqat" tushunchasi aniqlashtirildi. Abu Yusufning zakotni mutlaq (hatto aqli zaiflar uchun ham) majburiyat deb bilishiga qarshi o'laroq, Marg'inoniyning zakotni faqat aqli raso shaxslarga yuklashi islom moliya huquqida subyektning irodaviy-ruhiy holati yuridik majburiyatning asosi ekanligi haqidagi muhim doktrinal xulosani berishi yoritib berildi.

Tadqiqotchi tomonidan aynan XIX asrdan boshlab islom huquqida moliya instituti rivojlanishining uchinchi bosqichi kirib kelgani alohida ta'kidlanadi. Chunki XIX asrdan boshlab hatto nisbatan barqaror musulmon mamlakatlarining kolonial yoki iqtisodiy qaramlikka tushib qolishi ushbu davlatlarning huquq tizimiga ham ta'sir etmay qolmadi. 1840-yilda Usmoniylar imperiyasida g'arb tijorat huquqining tabiatiga monand Tanzimat islohotlari boshlandi. 1869-yilda shariat normalarini o'zida mujassam etgan Majalla fuqarolik kodeksi ishlab chiqildi, ammo ushbu hujjat shariatning tabiiy, o'ziga xos xususiyatiga zid edi, chunki shariat o'z mohiyatiga ko'ra, kodifikatsiya qilinmagan, huquqiy ta'limotlar (doktrinalar), prinsiplar, qadriyatlar va fikrlar to'plami hisoblangan.

Shunga qaramay, tadqiqotchiga ko'ra, aynan kolonial sekulyarizatsiya islom moliya huquqini institutlashgan davlat tizimidan chiqarib, din olimlarini ijtihodga ko'proq erkinlik bilan yondashish imkoniyatiga ega qildi va bu zamonaviy islom moliyasi institutlarining shakllanishiga metodologik zamin yaratdi.

Dissertatsiyaning uchinchi bobi **"Hozirgi zamon islom moliya huquqi"** deb nomlanib, unda bugungi islom moliya huquqining o'ziga xos xususiyatlari, ilg'or xorijiy mamlakatlarning qonunchilik evolyutsiyasi, xalqaro islom moliyasi institutlarining moliyaviy munosabatlarni huquqiy tartibga solishdagi tendensiyalari, shuningdek, O'zbekiston misolida islom huquqi moliya institutining zamonaviy rivojlanish istiqbollari tadqiq etilgan.

Mazkur bob doirasida tadqiqotchi tomonidan bugun islom moliya huquqiga yondashuv islom huquqiy ta'limotining yuridik tabiatidan birmuncha farqli ekanligi A. Saidov, L. Syukiyaynen, R. Bekkin, G. Kerimov, N. Tomau kabi sharq huquqshunos olimlarning qarashlarida ochib berilgan. Jumladan, g'arb olimlari huquqiy tafakkurida islom moliya huquqini mustaqil huquq sohasi sifatida baholashga intilish kuzatiladi. Biroq tadqiqotchi xulosasiga ko'ra, bu yondashuv islom huquqiy ta'limotining yuridik tabiatidan birmuncha farq qiladi. Chunki musulmon fiqhi an'anaviy ravishda ijtimoiy munosabatlarni huquqiy, diniy va axloqiy jihatdan yagona tamoyillar asosida tartibga soluvchi qoidalar majmuasidir.

Bugungi kunda islom moliyasi amalda bo'lgan davlatlarda uni huquqiy tartibga solishda uch turdagi model, ya'ni monistik, dualistik hamda huquqiy asoslarsiz tegishli qonunchilikka moslashuvchan (integratsion) turlari mavjudligini inobatga olsak, mazkur modellar orasidan dualistik model xalqaro maydonda nisbatan keng tarqalgan va sinalganligi hamda rivojlanayotgan davlatlar moliyaviy tizimida tanlov imkoniyatini yaratayotganligi bilan ham alohida e'tirofga sazovordir. Shu bois O'zbekiston Respublikasida islom moliyasini joriy etishda dualistik model asosida fuqarolik, bank, soliq va qimmatli qog'ozlar to'g'risidagi qonunchilikka maxsus islomiy-moliyaviy normalarni inkorporatsiya qilish, islomiy-moliyaviy xizmatlar va mahsulotlar bo'yicha alohida shariat muvofiqligi ekspertizasi institutini joriy etish taklif etiladi.

Dissertant tomonidan tadqiq etilgan hozirgi islom moliya huquqining yana bir o'ziga xosligi sifatida ushbu institut tarixida hali yuz bermagan yangi usul, jamoaviy ijtihod asosida, islom huquqiy ta'limotining umumiy asoslariga zid kelmaydigan yangi qoidalarni ishlab chiqish imkoniyati paydo bo'lishini yangi huquqiy fenomen sifatida baholash mumkin.

Ushbu bob doirasida islom huquqining zamonaviy olimlari: X.S. Rahmoniy, I.O. Shomiy, T. Mansuriy A.Sh. Juzjoniy, M.A. Qosimov va boshqalarning mulohaza va yondashuvlarini tahlil etgan tadqiqotchining o'rganishlari shuni ko'rsatadiki, zamonaviy islom moliyaviy institutlari xalqaro standartlar va qoidalarni ishlab chiqishda tarixda birinchi marta islom huquqining umumiy qoidalaridan (fiqhiy qoidalar) hukm manbayi sifatida foydalandilar hamda soha rivoji uchun o'ziga xos yangilik yaratdilar. Oqibatda xalqaro islom moliya standartlarining globallashuvi va universallashuvi ta'minlanmoqda va uni joriy etish yagona markazlashgan huquqiy tizimni barpo etish istiqbollarini kengaytirmoqda.

Tadqiqotchining fikricha, islom moliya huquqining bugungi kunda xalqaro-huquqiy tizimlar ta'sirida standartlashuvi va islomiy moliya munosabatlarining dinamik rivojlanish tendensiyasini inobatga olib, O'zbekistonda islom moliyasining huquqiy asoslarini mustahkamlash, sohaning ilmiy-nazariy asoslarini chuqur o'rganish maqsadida rivojlangan xorijiy mamlakatlar (Buyuk Britaniya, Malayziya, Turkiya, Saudiya Arabistoni) tajribasini inobatga olgan holda, yuridik oliy ta'lim muassasalarida islom moliya huquqini alohida fan moduli sifatida o'qitish taklif etiladi.

Dissertant tomonidan bugungi islom moliya huquqi nisbatan standartlashtirilgani (AAOIFI, IFSB qoidalari), jahonda keng tarqalgan huquqiy tizimlarning ta'siri natijasida o'zining ifodalanish shaklida o'zgarishlar sodir bo'lganini inobatga olgan holda, O'zbekistonda islom moliya huquqi va boshqa huquqiy tizimlar tegishli tarmoqlariga oid qiyosiy-huquqiy o'quv adabiyotlarini yaratish yuzasidan chora-tadbirlar rejasini ishlab chiqish taklif etiladi.

Tadqiqotda islom moliyasini huquqiy tartibga solish, uni joriy etishning dualistik modelini tanlagan xorijiy mamlakatlar (Malayziya, Bahrayn, Qatar, Qozog'iston va Qirg'iziston) tajribasini inobatga olgan holda, yangi "Islomiy bank faoliyati to'g'risida"gi mukammal qonun hujjatini qabul qilish zarurligi asoslantirilgan.

Yuqoridagi mazmunda qonunning qabul qilinishi asnosida dissertant "O'zbekiston Respublikasining Markaziy banki to'g'risida"gi, "Banklar va bank faoliyati to'g'risida"gi qonunlarga o'zgartish va qo'shimchalar kiritish zarurligi, shuningdek, Fuqarolik kodeksining tegishli moddalariga o'zgartirish va qo'shimchalar kiritish lozim ekanligini ta'kidlaydi.

"Banklar va bank faoliyati to'g'risida"gi Qonunning omonat (depozit) haqidagi bandiga qo'shimcha sifatida islomiy bank faoliyatini amalga oshirish maqsadida investitsiyaviy omonatlarga jalb etilgan pul mablag'lari bundan mustasno ekanligi belgilab qo'yilishi kerakligi taklif etiladi.

Tadqiqotchi tomonidan islom moliyasiga oid har qanday qonun hamda qonunosti hujjatlarini qabul qilishda islom moliyasiga oid terminlarni o'zgartirmagan holda foydalanish taklif etiladi. Natijada islom moliyasining muayyan institutlariga oid munosabatlarni noto'g'ri talqin hamda huquqiy me'yorlarni tushunishda noaniqliklar bartaraf etiladi.

XULOSA

Islom huquqida moliya institutining shakllanishi va rivojlanishini davlat va huquq nazariyasi va tarixi fani nuqtayi nazaridan tadqiq etish hamda tadqiqot oldiga qo'yilgan vazifalarni hal etish natijalari quyidagi ilmiy-amaliy xulosalarga kelishga, shuningdek, qonunchilikni takomillashtirishga oid taklif va tavsiyalarni ilgari surishga xizmat qildi. Xususan:

I. Ilmiy-nazariy taklif va xulosalar

1. Islom huquqi manbalarini tahlil etish natijasida shunday xulosaga kelish mumkinki, islom moliya tizimi o'ziga xos tamoyillarga asoslanadi. Bu tamoyillar nafaqat diniy-axloqiy mezonlar, balki islom huquqining jamiyatdagi iqtisodiy munosabatlarni tartibga solishdagi asosi ham hisoblanadi. E'tiborlisi shuki, ushbu tamoyillar islom huquqi vujudga kelgan ilk davrlardan boshlab turli tarixiy shart-sharoitlar va omillar ta'sirida shakllangan va bugungi kunda ham o'z ahamiyatini yo'qotmagan. Shu sababli islomiy-moliyaviy tamoyillar va institutlarning shakllanishi hamda rivojlanishini o'rganish, muhim nazariy va amaliy ahamiyatga ega.

2. Tadqiqotda bir qator soha olimlarining ta'rif va mulohazalarini tahlil qilgan holda, moliya huquqiga quyidagicha ta'rif berildi:

Moliya huquqi – davlatning moliyaviy faoliyati jarayonida yuzaga keladigan ijtimoiy munosabatlarni tartibga soluvchi pozitiv xarakterdagi huquqiy normalar yig'indisi bo'lib, u ommaviy-huquqiy munosabatlarni tartibga solishi va huquqiy *tartibga solish doirasi ko'proq fiskal maqsadlarga qaratilgani bilan islom moliya huquqidan farqli hisoblanadi.*

3. Tadqiqot ishida islom huquqida moliya institutining rivojlanishi, uning boshqa moliyaviy-huquqiy tizimlar bilan umumiy farqlarini aks ettiruvchi qoidalarini atroflicha tahlil etgan holda, islom moliya huquqining quyidagi mualliflik ta'rifi ishlab chiqildi:

"Islom moliya huquqi bu – islom huquqiy tafakkurining tarixiy rivojlanish jarayonida shakllangan, Qur'oni karim, sunnat, ijmo va qiyos kabi shariat manbalariga, shuningdek, ratsional (ijtihod) fikrlash va islom huquqining umumiy tamoyillariga asoslangan, ommaviy-huquqiy va xususiy-huquqiy munosabatlar sintezidan iborat bo'lgan, moliyaviy jarayonlarni tartibga soluvchi mustaqil kompleks institut bo'lib, u iqtisodiy adolat, ijtimoiy barqarorlik va axloqiy tamoyillarga asoslangan fiskal, moliyaviy siyosatni amalga oshirishni maqsad qiladi".

4. VIII asr o'rtalaridan ishlab chiqilishi boshlangan islom huquqining umumiy (fiqhiy) qoidalari shariat normalari amalda bo'lgan davlatlarda hozirga qadar moliyaviy munosabatlarni huquqiy tartibga solishda o'zining mustahkam o'rniga ega. Xususan, islomiy moliya institutlarini zamonaviy-huquqiy muhitga tatbiq etish jarayonida ushbu qoidalarning qo'llanilishi nazariy va amaliy jihatdan alohida ahamiyat kasb etmoqda. Masalan, AAOIFI o'zining shariat standartlarida "Ishlar o'z maqsadiga ko'ra baholanadi" (al-umūru bi-maqāṣidihā), "Mashaqqat yengillikni keltirib chiqaradi" (al-mashaqqatu tajlibu al-taysīr) kabi qoidalarni zamonaviy moliyaviy shartnomalar talqinida hukm manbayi sifatida tatbiq eta boshlaganligi tarix davomida misli ko'rilmagan hodisadir. Avvallari islom huquqining asosiy manbalari – Qur'on, sunnat, ijmo va qiyos yetarli deb hisoblangan bo'lsa, hozirda islom moliyaviy huquqi hujjatlarini ishlab chiqish va muqobil iqtisodiy mexanizmlarni asoslashda fiqhiy qoidalar uslubiy vosita vazifasini o'tamoqda. Bu esa ularning islom moliyasi huquqiy poydevorini mustahkamlashdagi tarixiy ahamiyatini yana bir bor tasdiqlaydi. Fiqhiy qoidalarning o'ziga xos jihati, ular bir muammo bo'yicha aniq hukm hisoblanmaydi, balki yuzlab masalalarga tatbiq etish mumkin bo'lgan islom tamoyillari hisoblanadi.

Fiqhiy qoidalarning ilmiy-nazariy asosda tavsiflanishi O'zbekiston huquqshunosligida islomiy-moliyaviy shartnomalarni sud va arbitraj organlari tomonidan talqin etishda yagona metodologik yondashuvni shakllantirishga xizmat qiladi.

5. Islom huquqida moliya institutining shakllanishi va rivojlanishi jarayonlarini tarixan to'rt asosiy bosqichga ajratilgan holda mualliflik davrlashtirilishi ishlab chiqildi hamda har bir bosqichning o'ziga xos huquqiy tendensiyasi ochib berildi.

Birinchi bosqich – VII asrda, ya'ni Arab xalifaligi asoschisi Muhammad ibn Abdulloh (s.a.v.) va to'rt roshid xalifa (Abu Bakr ibn Siddiq, Umar ibn Xattob, Usmon ibn Affon, Ali ibn Abu Tolib) davrida islom huquqida dastlabki moliyaviy munosabatlarni tartibga solish amaliyoti shakllangan bo'lib, bunda yangi soliqlar joriy etilgan, davlat g'aznachiligining dastlabki tashkiliy-huquqiy asoslari shakllantirilgan va asosiysi, islom moliya huquqining bosh huquqiy manbalari vujudga kelgan.

Ikkinchi bosqich –VIII–XIII asrlarni o'z ichiga olgan bo'lib, bu umaviylar va abbosiylar sulolalari davriga to'g'ri kelib, fiqhiy mazhablarning rivojlanishi ta'siri ostida islom huquqiy ta'limoti chuqur shakllanib, moliyaviy munosabatlarni tartibga soluvchi qoidalar aniq tafsilotlar bilan rivojlantirilgan.

Uchinchi bosqich esa XIX–XX asrlariga to'g'ri kelib, G'arb davlatlari huquqiy tizimlarining kuchli ta'siri ostida islom moliya huquqining qayta ko'rib chiqilishi, qonunchilik hujjatlarining "Majalla" kabi tizimlashtirilgan namunasi yuzaga kelishi bilan tavsiflanadi.

To'rtinchi bosqich XXI asr boshidan davom etayotgan hozirgi zamon davridir. Bu davrda AAOIFI (Islom moliya institutlarining audit va buxgalteriya tashkiloti), IFSB (Islomiy moliya xizmatlari kengashi) kabi xalqaro standartlar ishlab chiqilib, islom moliya institutlarini tartibga soluvchi tamoyillar huquqiy jihatdan globallashmoqda va bu jarayonda mazkur standartlarning muayyan mazhabga bog'lanmaganligi ularning universal ahamiyatini yanada oshirmoqda.

6. Movarounnahrlik Burhoniddin al-Marg'inoniy, Shamsul-aimma as-Saraxsiy, Abu Lays Samarqandiy kabi olimlar o'z asarlarida islom huquqiy ta'limotining moliyaviy qoidalarini sharhlash, tavsiflash hamda islom moliya huquqini amaliy misollar bilan asoslashlari natijasida soha rivojiga katta hissa qo'shdilar. Xususan, "Hidoya" asaridagi oldi-sotdi, kafolat, pulni birovga o'tkazish, guvohlik, vakolat, da'vo va ishda pul orqali sheriklik, pulni saqlashga berish, qarz berish, sovg'a qilish hamda ijaraga berish masalalari tahlil etilgan. "Mabsut" asaridagi ribo, salam, murobaha, tavliya, vazia kabi munosabatlarning ochib berilishi, g'arar (shubhali) masalalariga chuqur to'xtalishi, shuningdek, "bitoqatu-l-i'timan" ("ishonch yorlig'i") orqali savdo qilish kabi XI asrda Movarounnahrda amalda bo'lgan moliyaviy munosabatlarning ancha batafsil yoritib berilganligi islom moliya huquqi asoslari rivojiga samarali hissa qo'shgan va bugungi kunda ham mazkur sohaga oid muhim nazariy-huquqiy manba sifatida qimmatini oshirishga xizmat qiladi.

7. Bugungi kunda islom huquqi amalda bo'lgan davlatlarda islom moliyasini tartibga solishda uch turdagi model, ya'ni monistik, dualistik hamda huquqiy asoslarsiz tegishli qonunchilikka moslashuvchan (integratsion) turlar mavjudligini inobatga olsak, mazkur modellar orasidan dualistik model xalqaro maydonda nisbatan keng tarqalgan va sinalganligi hamda rivojlanayotgan davlatlar moliyaviy tizimida tanlov imkoniyatini yaratayotganligi bilan ham alohida e'tirofga sazovordir. Shu bois O'zbekiston Respublikasida islom moliyasini joriy etishda dualistik model asosida fuqarolik, bank, soliq va qimmatli qog'ozlar to'g'risidagi qonunchilikka maxsus islomiy-moliyaviy normalarni inkorporatsiya qilish, islomiy-moliyaviy xizmatlar va mahsulotlar bo'yicha alohida shariat muvofiqligi ekspertizasi institutini joriy etish taklif etiladi.

8. Dissertatsiyada islom huquqida moliya institutini tartibga soluvchi normalar qotib qolgan va o'zgarmas qoidalardan iborat emas, balki asrlar davomida o'z davriga mos ravishda rivojlanib borganligi, muayyan davrlarda "Majallayi ahkomi adliya" orqali hanafiy mazhabi o'ziga xos xususiyatlari bilan AAOIFI (Islom moliya muassasalari uchun buxgalteriya hisobi va audit tashkiloti) va IFSB (Islomiy moliya xizmatlari kengashi) standartlari orqali turli davrlarda zamon talabidan kelib chiqadigan muammolarga javob berish qobiliyatiga ega ekanligi asoslantirildi. Xususan, ilgari fiqhiy manbalarga tayangan va mahalliy sharoitlarga moslashgan islomiy-moliyaviy qoidalar bugungi kunda xalqaro tashkilotlar tomonidan ishlab chiqilayotgan normativ-

huquqiy standartlar asosida markazlashgan va kodifikatsiyalashgan tartibda shakllanmoqda.

9. XXI asrda xalqaro islom moliyasi institutlari tomonidan ishlab chiqilgan islom moliyasini huquqiy tartibga soluvchi standartlarni tahlil qilish orqali islom moliyasi standartlariga quyidagicha ta'rif beriladi:

"Zamonaviy islom moliyasi standartlari – islom huquqining asosiy manbalariga muvofiq bo'lgan va zid kelmaydigan, muayyan mazhab qoidalari bilan chegaralanmagan, turli huquqiy (fiqhiy) maktablarning zamon talablariga eng mos keladigan hukmlarini tanlab olish va ularni universal huquqiy me'yorlarga aylantirish oqibatida yuzaga kelgan va kelayotgan qoidalar yig'indisidan iborat".

10. Yangi davrda islom moliyasining yagona va tizimlashgan huquqiy asoslarini ishlab chiqishga intilish ortdi, natijada ko'plab islom huquqshunoslari uchun ijtihod (norma ijodkorligi) eshiklari bir qator nufuzli islom huquqi olimlarining sa'y-harakatlari bilan qayta ochildi hamda ushbu institut tarixida hali yuz bermagan yangi usul, jamoaviy ijtihod asosida islom huquqiy ta'limotining umumiy asoslariga zid kelmaydigan yangi qoidalarni ishlab chiqish imkoniyati paydo bo'ldi. Huquqshunos olimlar tomonidan islom moliyasi standartlarini ishlab chiqishda ilk marta eklektizm metodologiyasi joriy etildi. AAOIFI (Islom moliya muassasalari uchun buxgalteriya hisobi va audit tashkiloti) va IFSB (Islom moliyasi xizmatlari kengashi) standartlari tahlili islom huquqida "shaxsiy ijtihod" davri "jamoaviy ijtihod" (institutsional norma ijodkorligi) metodologiyasiga o'zgarayotganligini inobatga olib, ushbu hodisani "Huquqiy ta'limotlar tarixi"da Islom huquqida "Global islomiy moliya standartlashuv" bosqichi sifatida e'tirof etish va zamonaviy huquq manbalari tizimiga doktrinal darajada kiritish taklif etiladi.

11. O'zbekiston Respublikasida mulkchilikning turli shakllariga asoslangan bozor iqtisodiyotining rivojlanishi nafaqat milliy qonunchilik takomillashuvini, balki yuridik fan, yuridik ta'lim va yuridik amaliyotning ham yanada takomillashuvini taqozo etmoqda. Shularni e'tiborga olgan holda, islom moliya huquqi ilmiy-nazariy asoslarini chuqur o'rganish, tahlil etish va sohaga oid malakali, raqobatbardosh mutaxassislarni tayyorlash maqsadida yuridik oliy ta'lim muassasalarida Islom moliya huquqi asoslari nomli alohida o'quv modulini joriy etish taklifi ilgari suriladi. Ushbu modul quyidagi bo'limlarni o'z ichiga olishi lozim: a) islom moliya huquqining metodologik asoslari; b) islomiy moliya shartnomalari (muzoraba, mushoraka, murobaha, ijara, salam va boshqalar); d) islom moliya muassasalari uchun buxgalteriya hisobi va audit tashkiloti hamda Islom moliya xizmatlari kengashi standartlari hamda ularning O'zbekiston qonunchiligi bilan o'zaro nisbati; e) xorijiy tajriba va qiyosiy-huquqiy tahlil. Shuningdek, islom moliya huquqi sohasida malakali kadrlar tayyorlash asnosida islom moliya muassasalari uchun buxgalteriya hisobi va audit tashkiloti standartlarini o'zbek tiliga tarjima qilish va nashr qilish lozim.

II. Normativ-huquqiy bazani yanada takomillashtirish bo'yicha taklif va tavsiyalar

12. O'zbekiston Respublikasining "Nobank kredit tashkilotlari va mikromoliyalashtirish faoliyati to'g'risida"gi Qonuniga asosan mikromoliya tashkilotlari islomiy moliyaviy xizmatlarni ko'rsatishlari mumkin. Biroq ular banklar

singari keng moliyaviy operatsiyalarda ishtirok etish, omonatlarni jalb etish imkoniyatiga ega emas. Bu esa mamlakatimizda islom moliyaviy xizmatlari yuksalishiga olib kelmaydi. Ushbu masalaga oid ilg'or xorijiy tajribani tahlil qilgan holda, bizningcha, "Islomiy bank faoliyati to'g'risida"gi qonun loyihasini ishlab chiqish va qabul qilish taklif etiladi.

13. Islomiy bank xizmatlarini samarali yo'lga qo'yish maqsadida O'zbekiston Respublikasining "Banklar va bank faoliyati to'g'risida"gi Qonuni 6-moddasi to'rtinchi xatboshisini quyidagi qo'shimchalar bilan to'ldirish taklif etildi:

"Bunda islomiy bank faoliyatini amalga oshirish uchun investitsiyaviy omonatlar sifatida foydani bo'lishish sharti bilan jalb etilgan pul mablag'lari mustasno".

Shuningdek, mazkur Qonunning 7-moddasi quyidagi mazmundagi xatboshi bilan to'ldirish taklif etildi:

"Ushbu moddaning birinchi qismida nazarda tutilgan bevosita savdo faoliyatini amalga oshirishga oid hamda uchinchi qismidagi yuridik shaxslarni tashkil etish va (yoki) yuridik shaxslarning ustav fondlaridagi ulushlarini yoki aksiyalarini olishga oid cheklovlar, agar ushbu faoliyat islomiy bank faoliyatiga oid moliyaviy amaliyotlarni amalga oshirish maqsadida bo'lsa, islomiy bank faoliyatini amalga oshiruvchi banklarga nisbatan qo'llanilmaydi".

Bundan tashqari, ushbu Qonunning 32-moddasi birinchi qismini quyidagi tarzda o'zgartirish taklif etiladi:

"Aksiyadorlarning umumiy yig'ilishi, bankning kuzatuv kengashi va boshqaruvi hamda islomiy bank faoliyatini amalga oshiruvchi bankda islom moliyasi kengashi bankning boshqaruv organlaridir".

14. O'zbekiston Respublikasi Fuqarolik kodeksining 759-moddasi birinchi qismini quyidagi tarzda o'zgartirish taklif etildi:

"Bank omonati shartnomasi bo'yicha birinchi tarafdan (omonatchidan) qabul qilib olgan yoki uning nomiga kelgan pul summasini (omonatni) qabul qilib olgan ikkinchi taraf (bank) shartnomada nazarda tutilgan shartlar asosida va tartibda omonat summasini foizlar, shuningdek, boshqa daromadlar bilan yoki ularsiz (foizlar yoki boshqa daromadlarsiz) qaytarish majburiyatini oladi".

Shuningdek, mazkur kodeksning 763-moddasini quyidagi tarzda o'zgartirish taklif etildi:

"Bank omonatchiga omonat summasi uchun bank omonati shartnomasida belgilanadigan miqdorda foizlar va (yoki) boshqa daromadlar to'laydi.

Bank omonati shartnomasida to'lanadigan foizlar miqdori haqida shart bo'lmagan taqdirda, bank talab qilib olinguncha saqlanadigan omonatlarga to'lanadigan miqdorda foizlar to'lashi shart.

Agar bank omonati shartnomasida boshqacha tartib nazarda tutilgan bo'lmasa, bank talab qilib olinguncha saqlanadigan omonatlarga to'lanadigan foizlar yoki boshqa daromadlar miqdorini o'zgartirish huquqiga ega.

Bank foizlar yoki boshqa daromadlar miqdorini kamaytirgan taqdirda, foizlar yoki boshqa daromadlarning yangi miqdori ular kamaytirilganligi haqida omonatchilarga xabar berilganidan keyin qo'yilgan omonatlarga nisbatan qo'llanadi. Agar bank omonati shartnomasida boshqa muddat nazarda tutilgan bo'lmasa, ushbu xabarga qadar qo'yilgan omonatlarga nisbatan kamaytirilgan foizlar va (yoki) boshqa *daromadlar miqdori tegishli xabar berilgan paytdan bir oy o'tganidan keyin qo'llanadi.*

Omonatni muayyan muddat o'tgach yoki shartnomada nazarda tutilgan vaziyatlar yuz berganidan keyin qaytarish sharti bilan qo'yilgan omonat yuzasidan bank omonati shartnomasida belgilangan foizlar va (yoki) boshqa daromadlar miqdori, agar shartnomada boshqacha tartib belgilangan bo'lmasa, bank tomonidan bir tomonlama kamaytirilishi mumkin emas".

15. O'zbekiston Respublikasining "O'zbekiston Respublikasining Markaziy banki to'g'risida"gi Qonuni 20-moddasi o'n birinchi xatboshisini quyidagi tarzda o'zgartirish taklif etildi:

"Bank faoliyatini amalga oshirish huquqini beruvchi va islomiy bank faoliyatini amalga oshirish huquqini beruvchi litsenziyalarni berish, qayta rasmiylashtirish va chaqirib olish to'g'risida qarorlar qabul qiladi".

16. O'zbekiston Respublikasining "Lizing to'g'risida"gi Qonuni 14-moddasi uchinchi xatboshisiga quyidagi tarzda o'zgartirish kiritish taklif etiladi:

"Taraflarning xohishiga ko'ra lizing obyektining oldi-sotdi shartnomasi lizing shartnomasi kuchga kirishidan oldin yoki keyin tuzilishi mumkin.

Islomiy lizing xizmatlari ko'rsatilgan taqdirda, lizing obyekti lizing beruvchining mulk huquqida bo'lishi islomiy lizing shartnomasini tuzishning qat'iy shartidir".

17. O'zbekiston Respublikasi Markaziy banki boshqaruvining 2024-yil 19-iyuldagi 23/4-son qaroriga ilova "Mikromoliya tashkilotlari tomonidan islomiy moliyalashtirishga oid xizmatlarni ko'rsatish tartibi to'g'risida"gi nizomning "Oldindan to'lovga asoslangan moliyalashtirish (salam) xizmatini ko'rsatish"ga oid bo'limi yetmishinchi qismida mikromoliya tashkilotida oldindan to'lov obyektiga nisbatan mulk huquqi vujudga kelguniga qadar mikromoliya tashkiloti ushbu obyektni sotish bo'yicha shartnoma tuzishi mumkin emasligi belgilangan. Biroq AAOIFI (Islom moliya muassasalari uchun buxgalteriya hisobi va audit tashkiloti)ning 10-raqamli shariat standartlarida salam va parallel salam tushunchasi mavjud bo'lib, parallel salam bitimlarining tuzilishi va ularning shariatga muvofiqligi bo'yicha yo'riqnomalar berilgan. Parallel salam bitimlarida birinchi salam bitimi sotuvchisi (masalan, moliya muassasasi) ikkinchi salam bitimida xaridor sifatida ishtirok etadi. Lekin har ikki bitim bir-biridan mustaqil bo'lishi kerak va ular bir-biriga bog'liq bo'lmasligi lozim. Bu birinchi salam bitimidagi majburiyatlar ikkinchi bitimga ta'sir qilmasligi uchun muhimdir. Shu nuqtayi nazardan, nizomning ushbu qismiga qo'shimcha band yoki yangi qism kiritish orqali nizomda parallel salamga alohida izoh berish zarur, deb hisoblaymiz.

SCIENTIFIC COUNCIL DSc.07/2025.27.12.Yu.01.02 FOR AWARDING SCIENTIFIC DEGREES AT TASHKENT STATE UNIVERSITY OF LAW

TASHKENT STATE UNIVERSITY OF LAW

UBAYDULLAEV ABROR QUTPILLA UGLI

FORMATION AND DEVELOPMENT OF FINANCIAL INSTITUTIONS IN ISLAMIC LAW: HISTORICAL AND LEGAL STUDY

12.00.01. - Theory and history of state and law. History of legal doctrines

Dissertation for the Doctor of Philosophy (PhD) in Legal Sciences
ABSTRACT

Tashkent – 2026

The theme of the Doctor of Philosophy (PhD) dissertation is registered by the Higher Attestation Commission at the Academy of Sciences of the Republic of Uzbekistan under the number B2025.2.PhD/Yu1891.

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The defense of the dissertation will be held on "30" September 2026 at 9:30 at the Session of the Scientific Council DSc.07/2025.27.12.Yu.01.02 at Tashkent State University of Law (Address: 100047, Sayilgoh street, 35, Tashkent city. Phone: (99871) 233-66-36; Fax: (99871) 233-37-48, e-mail: info@tsul.uz).

The doctoral dissertation (PhD) is available at the Information Resource Center of Tashkent State University of Law (registered under No. 1493). (Address: 100047, Sayilgoh street, 35, Tashkent city. Phone: (99871) 233-66-36).

The abstract of the dissertation was distributed on "17" September 2026.

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INTRODUCTION (Abstract of the Doctor of Philosophy (PhD) dissertation)

Relevance and necessity of the dissertation topic. Economic crises occurring in the world every decade show that the diversification of financial assets is extremely important for the global economy. In the 2025 Islamic Finance Development Report, the total assets of Islamic finance in 2024 amounted to 5.98 trillion US dollars. If the growth continues as it is now, it is projected to reach 9.7 trillion US dollars by 2029. Among the main trends shaping this growth are transboundary connectivity, improved regulation, and strategic initiatives of governments. Malaysia, Saudi Arabia, and the United Arab Emirates (UAE) are leading in support from international financial institutions, with Malaysia and the UAE entering the top five in each of the five key indicators[1]. Under such conditions, attention to Islamic finance is increasing, and there is a need to create, improve, and research the theoretical and legal aspects of its legal framework.

A number of scientific studies are being conducted worldwide on the formation and development of Islamic financial institutions. In particular, scientific research is being conducted in a number of areas, such as the main sources and principles of legal regulation of financial relations in Islamic law, the institution of Islamic finance law and its components, the features of Islamic finance law in the modern era, the legal foundations of the Islamic law financial institution in the 21st century, modern trends in the development of the Islamic law financial institution, and the legal possibilities of Islamic finance as an alternative economic mechanism for attracting surplus funds into the official economy.

Work is underway in our republic to create a legal framework in cooperation with international Islamic financial institutions, and on July 27, 2024, by Resolution No. 3536 of the Central Bank of the Republic of Uzbekistan, the Regulation "On the Procedure for Providing Islamic Financing Services by Microfinance Organizations"[2] was approved. According to this regulation, microfinance organizations have gained the opportunity to finance clients through products such as *salam, mudaraba, musharaka, murabaha, istisna, and ijara*. However, while a stable regulatory framework for Islamic finance has been formed in Kazakhstan[3], Kyrgyzstan[4], and Tajikistan, the need to develop and improve the legal framework governing the sphere in Uzbekistan, the declarative nature of the tasks assigned to the population, individual executive bodies carrying out state governance in this sphere, and the insufficiency of organizational and legal mechanisms for their

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[1] ICD – LSEG Islamic Finance Development Report 2025. www.lseg.com/content/dam/data-analytics/en_us/documents/reports/lseg-islamic-finance-development-indicator-2025.pdf

[2] Resolution of the Board of the Central Bank of the Republic of Uzbekistan dated July 19, 2024 No. 23/4 "On Approval of the Regulation on the Procedure for Providing Islamic Financing Services by Microfinance Organizations." https://lex.uz/ru/docs/7036330

[3] Закон Республики Казахстан «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам организации и деятельности исламских банков и организации исламского финансирования» от 12 февраля 2009 года № 133-IV.

[4] О Национальном банке Кыргызской Республики, банках и банковской деятельности: Закон Кыргызской Республики от 12 августа 2022 года № 93 // Централизованный банк данных правовой информации Кыргызской Республики. URL: http://cbd.minjust.gov.kg/act/view/ru-ru/112431 (murojaat qilingan sana: 24.05.2026).

implementation, the presence of gaps in regulatory documents governing Islamic finance require a scientific study of this issue.

This dissertation research serves to a certain extent the implementation of the tasks defined in the Law of the Republic of Uzbekistan No. LRU-765 "On non-bank credit institutions and microfinance activities" (2022), the Law of the Republic of Uzbekistan No. LRU-580 "On Banks and Banking Activities" (2019), the Law of the Republic of Uzbekistan No. LRU-582 "On the Central Bank of the Republic of Uzbekistan" (2019), the Regulation "On the Procedure for Providing Islamic Financing Services by Microfinance Organizations" – the annex to the resolution of the Board of the Central Bank of the Republic of Uzbekistan No. 23/4 dated July 19, 2024, as well as other regulatory legal acts regulating this area.

The dependence of the research on the priority areas of development of science and technologies in the country. This dissertation research was carried out in accordance with the priority direction of the development of science and technology of the republic I. "Formation of a system of innovative ideas and ways to implement them in the social, legal, economic, cultural, spiritual and educational development of an information society and a democratic state."

The extent of the study of the research problem. In the legal science of Uzbekistan, some theoretical and practical problems related to the topic of research work have been studied in the scientific works of national scholars, including A. Saidov, N. Yusupova, A. Rakhmanov, Kh. Yunusov, Kh. Mukhamedov, K. Musaeva, A. Juzjani, M. Kasimov, S. Yusupov, M. Yuldoshev, Y. Tursunov, A. Normuratov, Sh. Shorakhmetov and other scholars[1].

The historical-legal and theoretical-legal analysis of the financial institution in Islamic law of our country on the example of "Majallai ahkomi adliya" was studied in the candidate dissertation of Sh. Avazova (2008), in the candidate dissertation of S.Iskhakov on the example of the study of the work "Hidoya" by scholars of Islamic law of Mawarannahr, in particular, Marginani (2002), and in the dissertation of M. Kasimov for the degree of Doctor of Philosophy (PhD) in Law (2021) within the framework of the study of financial relations in the work "Al-Mabsut" by Sarakhsi; however, the topic of the formation and development of the financial institution in Islamic law has not been comprehensively studied as a doctoral dissertation as a research work until now[2].

In the CIS countries, issues related to this topic have been researched by V. Lazarev, G. Kerimov, L. Syukiyaynen, R. Bekkin, E. Baidaulet, M. Marchenko, F. Reshetov, A. Cherdantsev, L. Vandenberg, G.E. von Grunebaum, Yu. Reshetov, N. Zhdanov, N. Tornau, M. Sadagbar, R. Gazizova, M. Kalimullina, A. Solodov, Yu. Ledakova, N. Kozirin, and in the countries of the far abroad, issues related to the topic have been researched by H. Kamali, M. Taki Usmani, K. Lewis, M. Abdul Rauf, A. Lutfi, M. Siddiqi, J. Esposito, H. Kennedy, G.S. Hodgson, K. Hitti, R. Gazizova, M. Kalimullina, A. Solodov, Yu. Ledakova, and N. Kozirin[3].

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[1] The scientific works of these scholars are listed in the bibliography of the dissertation.
[2] The scientific works of these scholars are listed in the bibliography of the dissertation.
[3] The scientific works of these scholars are listed in the bibliography of the dissertation.

Relation of the dissertation's theme to the scientific-research work of higher education institution where it was implemented. The topic of the dissertation is included in the research plan of the Tashkent State University of Law and is carried out on the basis of priority areas of scientific research.

The aim of the research is to develop proposals and recommendations aimed at strengthening the theoretical foundations and improving the legal framework of Islamic finance law in Uzbekistan by comprehensively studying the processes of formation and development of the financial institution in Islamic law.

Research objectives are to:

define the characteristics of the concepts of a financial institution in Islamic law;

analyze the main sources and principles of legal regulation of financial relations in Islamic law;

study the institution of Islamic financial law and its components;

analyze the emergence of legal regulation of the Islamic financial institution;

identify the process of development of Islamic financial legislation in the Arab Caliphate;

analyze the contribution of Transoxianian scholars to the formation of Islamic financial law;

identify the political and legal factors that influenced the progressive development of the financial institution in Islamic law in the 19th-20th centuries;

analyze the specifics of Islamic financial law in the modern era;

study of the models of legal regulation of Islamic finance in the 21st Century and the practice of foreign countries;

study of the contemporary development trends of financial institutions in Islamic law and the prospects for improving the legislation of the Republic of Uzbekistan.

The object of the research is the system of social relations that arose in different historical periods in the process of legal regulation of Islamic financial relations and are formed at the present stage under the influence of international standards.

The subject of the research is the legal basis of Islamic law regulating financial relations, stages of historical development, legislation and practice of foreign countries, scientific and theoretical views and legal categories.

Research methods. The research used methods such as historical, systemic-structural, logical, comparative-legal, comprehensive research of scientific sources, analysis and synthesis, analysis of statistical data and legal forecasting.

Scientific novelty of the research is as follows:

it is substantiated that funds attracted under the condition of profit-sharing as investment deposits in banking and financial legislation must be excluded from the classic definition of a deposit (savings account), and that the legal requirements imposed on conventional bank deposits shall not apply to Islamic finance operations;

the necessity of exempting banks performing Islamic banking activities from restrictions related to engaging in direct commercial activities and acquiring shares (equity interests) in the charter funds of legal entities is justified;

the necessity of incorporating exclusive rights concerning the issuance, re-registration, and revocation of licenses that grant the right to carry out Islamic banking activities into the scope of powers of the Board of the Central Bank of the Republic of Uzbekistan, as well as defining the regulator's status and legal competence in this sector is substantiated;

the necessity of harmonizing the legal definition of a bank deposit agreement in civil legislation with the principles of Islamic finance, as well as improving it by introducing a provision recognizing forms of return on deposits other than interest, is substantiated;

the necessity of providing in civil legislation that returns on bank deposits may be paid not only in the form of interest, but also through other forms of return and non-interest-based deposit mechanisms, is substantiated;

the specific principles of Islamic financial law, the conceptual-legal nature of partnership-based transactions and investment contracts are systematized, and the fact that their comparative-legal analysis serves as a scientific basis for shaping systematic theoretical knowledge in the higher legal education system is substantiated;

Practical results of the research are as follows:

the author's definitions for the concepts of "Islamic financial law" and "financial law" are developed, and the specific conceptual-legal principles of the financial institution within the financial-banking system in Islamic law are elucidated;

the modern rules regulating Islamic financial relations and the legal nature of international Islamic finance standards are disclosed;

the monistic, integrative, and dualistic models of the implementation of Islamic finance, their distinctive conceptual and legal characteristics, as well as the criteria for ensuring the compatibility and correlation of the dualistic model with the conventional system within the national banking framework, have been identified and substantiated;

the necessity of introducing the subject of "Islamic Financial Law" as an independent educational module within the higher legal education system is legally justified, and the possibilities of utilizing the research results in developing relevant course programs and syllabus for this field are identified;

the necessity of introducing amendments and addenda to the Law "On the Central Bank of the Republic of Uzbekistan" in order to strengthen the licensing and regulatory powers of the Central Bank of the Republic of Uzbekistan in the field of Islamic banking activities is substantiated;

proposals on excluding investment deposits from the conventional definition of a deposit (savings account) in banking and financial legislation and introducing relevant amendments and addenda to the Law "On Banks and Banking Activities" are justified;

proposals on improving banking legislation regarding the non-application of restrictions related to engaging in direct commercial activities and acquiring shares (equity interests) in charter funds to banks performing Islamic banking activities are developed;

proposals on improving legislation regarding the inclusion of a profit share within the structure of income paid on deposits and the legal recognition of interest-free deposit mechanisms within the framework of norms concerning the deposit contract of the Civil Code of the Republic of Uzbekistan are developed.

Reliability of the research results. The reliability of the research results is determined by the methods used in the work, scientific and theoretical approaches obtained from official sources, mutual analysis of international experience and national legislation, implementation of conclusions, proposals and recommendations into practice, publication of results in leading national and foreign publications, confirmation by authorized structures.

The scientific and practical significance of the research results. The scientific significance of the research results is determined by the scientific and theoretical conclusions and proposals contained in it, the conduct of scientific research on improving the legal foundations of Islamic finance in the Republic of Uzbekistan, the improvement of current legislation, as well as the scientific and theoretical enrichment of the disciplines "Theory of State and Law," "History of State and Law," and "History of Political and Legal Doctrines."

Based on the study and analysis of scientific literature on the topic, fundamental sources in the legal regulation of Islamic financial relations from the formation of Islamic legal doctrine to the present day, political and legal processes and their influence on the development of the sphere, scientific views and conclusions, issues related to the stages of historical development were studied at the monographic level from the point of view of the disciplines "Theory of State and Law," "History of State and Law," "History of Political and Legal Doctrines," and "Islamic Law."

The practical significance of the research results is determined by the improvement of the regulatory framework governing Islamic finance in Uzbekistan.

Implementation of the research results. Based on the conclusions of the research conducted in the dissertation:

The proposal to exclude funds raised under profit-sharing arrangements as investment deposits from the definition of a deposit in banking and financial legislation was utilized in drafting Article 3, paragraph 4 (second subparagraph of Article 6, paragraph one of the Law "On Banks and Banking Activities") of Law No. LRU-1126 of the Republic of Uzbekistan dated 27 March 2026 "On Introducing Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan Aimed at the Introduction of Islamic Banking in Uzbekistan" (Reference No. 3/dn-74 of the Parliamentary Research Institute under the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, dated 20 May 2026). Implementation of this proposal served to ensure the non-application of the requirements established for conventional bank deposits to investment deposits raised on the basis of Islamic finance operations;

The proposal regarding the non-application to banks engaged in Islamic banking of restrictions on carrying out direct commercial activities and acquiring shares (equity interests) in the charter funds of legal entities was utilized in drafting Article 3, paragraph 5 (tenth subparagraph of Article 7 of the Law "On Banks and Banking Activities") of Law No. LRU-1126 dated 27 March 2026 (Reference No.

3/dn-74 of the Parliamentary Research Institute under the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, dated 20 May 2026). This proposal served to ensure that financial institutions carrying out Islamic banking activities operate on the basis of the rules and principles of Islamic finance;

The proposal to include among the powers of the Board of the Central Bank of the Republic of Uzbekistan the adoption of decisions on the issuance, re-registration, and revocation of licenses authorizing Islamic banking activities was utilized in drafting Article 1, paragraph 1 (twelfth subparagraph of Article 20 of the Law "On the Central Bank of the Republic of Uzbekistan") of Law No. LRU-1126 dated 27 March 2026 (Reference No. 3/dn-74 of the Parliamentary Research Institute under the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, dated 20 May 2026). The implementation of this proposal has served to strengthen the status and powers of the Central Bank of the Republic of Uzbekistan in the establishment of Islamic banking activities;

The proposal to include a provision in the definition of a bank deposit agreement allowing for the repayment of the deposit amount with or without interest, as well as with or without other income, was utilized in drafting of Article 2, paragraph 2 (first subparagraph of Article 759 of the Civil Code) of Law No. LRU-1126 dated 27 March 2026 (Reference No. 3/dn-74 of the Parliamentary Research Institute under the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, dated 20 May 2026). This proposal has contributed to ensuring the legal possibility, within the framework of bank deposit agreements, of repaying deposits with or without interest;

The proposal to include profit sharing, in addition to interest, among income payable on deposits and to rename Article 763 of the Civil Code of the Republic of Uzbekistan as "Interest and (or) Other Income Payable on a Deposit" was utilized in drafting Article 2, paragraph 4 (second, third, fourth, and fifth subparagraphs of Article 763 of the Civil Code) of Law No. LRU-1126 dated 27 March 2026 (Reference No. 3/dn-74 of the Parliamentary Research Institute under the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, dated 20 May 2026). This proposal has served to ensure the possibility of not only implementing deposit relations through the interest-based banking model, but also legally recognizing and applying interest-free deposit mechanisms based on Islamic finance principles;

The scientific findings on the characterization of the legal nature of Islamic finance were used in the development of the syllabus of the academic module "Islamic Finance Law" at Tashkent State University of Law, including its sections on principles of Islamic finance law, partnership and investment contracts, and comparative legal analysis (Act of Tashkent State University of Law dated 4 August 2025). The application of these findings has contributed to the formation of systematic theoretical and legal knowledge in the relevant field among students;

Approbation of the research results. The results of this research were discussed at 4 scientific conferences, 2 international and 2 republican scientific and practical conferences, roundtables, and seminars.

Publication of the research results. A total of 13 scientific works have been published on the results of this research, including 9 articles in scientific publications recommended by the Higher Attestation Commission for the publication of the main scientific results of doctoral dissertations (including 3 articles in foreign journals) and 4 scientific articles in collections.

The structure and volume of the dissertation. The dissertation consists of of an introduction, three chapters involving 10 paragraphs, a conclusion, and a list of references. The volume of the dissertation is 156 pages.

THE MAIN CONTENT OF THE DISSERTATION

The introduction of the dissertation presents information regarding the relevance and necessity of the research topic, its connection with the main priority directions of the development of science and technologies of the republic, the degree of study of the problem, the connection of the topic with the scientific research works of the higher educational institution where the dissertation is being performed, its object and subject, goals and tasks, methods, scientific novelty and practical results, the reliability of the research results, scientific and practical significance, implementation, approbation, publication of the results, as well as the volume and structure of the dissertation.

The first chapter of the dissertation is entitled **"Scientific and Theoretical Foundations of the Institution of Finance in Islamic Law"** and analyzes the fundamental theoretical-legal foundations of financial relations in Islamic law, the concept and legal nature of Islamic financial law, the principal sources governing financial relations, the content and essence of general (fiqhi) rules, and provides a general analysis of Islamic financial law broken down into its institutional branches.

Having conducted a comparative analysis of views advanced in scholarly works (Kh.Mukhamedov, A.R. Rakhmonov, S.Yusupov, M.Yuldoshev, Y.Tursunov, A.Normuratov, Sh.Shorakhmetov, and K.K.Musayeva) on the concept of the institution of finance in Islamic law from both historical and legal perspectives, the researcher concluded that this institution was formed as a fundamental element of the legal system governing islamic financial relations. From this perspective, the conclusion was reached that the definition should be formulated with an understanding of the sources of their formation, their legal nature, and their place in contemporary legal systems, based on the classification and historical development of legal sources.

According to the researcher, "the institution of finance in Islamic law" is a system of social and legal relations that arose on the basis of Islamic jurisprudence (sharia), founded on principles ensuring socioeconomic justice, reflecting a specific financial-legal function, which was progressively refined in its normative-legal and institutional dimensions at a definite stage of historical development and is currently manifested in the form of Islamic financial law.

In addition, in order to more precisely reflect the distinctive characteristics of islamic financial law, the research first analyzed the concept and substance of conventional financial law on the basis of approaches by several scholars (S.Yusupov, M.Yuldoshev, Y.Tursunov, A.Normuratov, V.G.Petrova, I.N.Barsist, and A.N.Kozyrin) and concluded that financial law should be defined as follows:

"Financial law is a body of legal norms of a positive character regulating social relations arising in the course of the financial activities of the state; it differs from Islamic financial law in that it governs public-legal relations and its scope of legal regulation is primarily directed toward fiscal objectives."

Furthermore, the following authorial definition was formulated for the concept of "Islamic Financial Law":

"Islamic financial law is an independent, complex institution governing financial processes, formed in the course of the historical development of Islamic legal thought, grounded in sharia sources such as the Holy Quran, Sunnah, ijma, and qiyas, as well as in rational reasoning (ijtihad) and the general principles of Islamic law, constituting a synthesis of public-legal and private-legal relations, and aimed at implementing a fiscal and financial policy based on economic justice, social stability, and ethical principles."

The researcher has advanced a theoretical concept characterizing the legal nature of the institution of Islamic finance as a synthesis of public and private law. It is analyzed that financial relations pertaining to the zakat obligation and the institution of Bayt al-Mal (treasury) are of a public-legal nature, whereas contractual institutions such as mudarabah, musharakah, and murabahah are of a private-legal nature. This dual dimension substantiates the necessity of studying the institution of Islamic financial law in comparative jurisprudence as a distinct legal category for understanding its differential aspects vis-à-vis other legal systems.

Based on the legal nature and historical formation of Islamic financial law, the author of the dissertation identified the following distinctive features: (1) the prohibition of interest-based financial practices; (2) the distribution of risk and profit-and-loss on a shared basis; (3) the impermissibility of financial operations based on speculative uncertainty (gharar); (4) the prohibition of engaging in, consuming, or promoting prohibited types of activities; and (5) the sanctity of contracts.

According to the researcher, the sources of the institution of finance in Islamic law reflect the principal aspect of its distinctiveness. The fact that Islamic financial law possesses not only a legal but also a religious-ethical character, and that its primary sources — the Quran and Sunnah — consist of stable and immutable norms, reflects the static character of the field. At the same time, sources such as qiyas and ijma have contributed to the expansion of islamic financial law's capacity to legally regulate financial relations. The development of the institution of ijtihad — an important method of norm-creation in Islamic jurisprudence — and the subsequent elaboration of general (fiqhi) rules in Islamic jurisprudence have revealed the dynamic character of Islamic finance in the legal regulation of financial relations.

Drawing on an analysis of scholarly views on general (fiqhi) rules of Islamic jurisprudence (Sh.Avazova, A.Sh.Juzjoniy, N.Yusupova, and L.R.Syukiyaynen), the author proposed the following authorial definition for "general (fiqhi) rules of Islamic law": "general provisions applicable to certain works, comprising concise texts that have been consolidated throughout the historical formation of Islamic law, do not contradict the principal sources of sharia, and embody the doctrines of all schools of jurisprudence."

Based on the scholarly characterization of the general (fiqhi) rules of Islamic jurisprudence, the researcher identified the following distinctive features: *the general (fiqhi) rules do not constitute a specific ruling on a single issue, but rather Islamic principles applicable to hundreds of issues; the purpose of developing general rules was to achieve a better understanding of Islamic legal norms and to identify a specific ruling among many rules for regulating a given relationship; and their derivation from legal sources, with some fiqhi rules originating from the Quran and Hadith, and others arising on the basis of ijma and rational reasoning (istidlal).*

The dissertation further emphasizes that the distinctive feature of general rules derives from five fundamental maxims: matters are judged by their purposes; certainty is not removed by doubt; hardship begets facility; harm must be eliminated; and custom is a source of law.

According to the researcher, the general (fiqhi) rules of Islamic jurisprudence are of immense importance in the standardization of Islamic financial law norms, and it is critically important to emphasize these general rules alongside other sources of Islamic financial law in developing theoretical-legal foundations and educational literature.

In order to gain a deeper understanding of the institutional structure of Islamic financial law, the researcher has classified the field into the following branches: Islamic financial law (Fiqh al-Maliyyah) and Islamic inheritance law (Fiqh al-Mawarith).

The second chapter is entitled **"The Formation of Islamic Financial Law"** and examines the emergence and formation of legal regulation of the institution of Islamic finance, the role of Transoxanian (Mawarannahr) jurists in the formation of the institution of finance in Islamic law, and the emergence of political and legal factors that influenced the evolutionary development of the institution of finance in Islamic law during the 19th–20th centuries.

The historical-legal study carried out in Chapter II enabled the development of an authorial periodization of the development of the institution of finance in Islamic law into four stages: proto-institutional formation (7th century CE); systematic development within dynastic succession systems and fiqhi madhabs (8th–13th centuries CE); the crisis of the classical form and the transformation of the institution of finance in Islamic law under the influence of Western legal systems (19th–20th centuries CE); and the globalization of Islamic financial law on the basis of international standards (21st century CE). This periodization system serves as a methodological basis characterizing the institution of Islamic finance not as a static category but as a dynamic and evolutionary legal category.

The research demonstrates that financial relations in Islamic law were not immediately regulated but gradually grew more complex over definite historical periods. During the time of the Prophet Muhammad (PBUH), financial-legal relations in state governance — including budgetary, tax, and currency-related processes — began primarily to be established in Medina. In particular, zakat was made obligatory for Muslims in Medina in the second year of the Hijri calendar, prior to the holy month of Ramadan. Similarly, khumus and jizyah taxes also emerged during this period.

The research established that the institution of Bayt al-Mal in the history of Islamic statehood was formed not merely as a treasury but as a "centralized financial-administrative governance institution." From a theoretical standpoint, its evolution — from the "just distribution" stage during the period of the Prophet Muhammad (PBUH) to the stage of "separation of personal and public treasury" (Bayt al-mal al-muslimin and Bayt al-mal al-khassa) during the Abbasid period — is characterized as the process of institutionalization of state finance.

During the reign of Caliph Uthman ibn Affan, the classification and scale of Bayt al-Mal (budget) expenditures expanded markedly. The state budget under Uthman consisted of three principal categories of expenditure: social assistance and welfare; recurrent expenditure; and capital expenditure.

Following the death of the Prophet Muhammad (PBUH), a gap emerged in the interpretation of the primary source of law, and as a result, the institution of ijtihad began to develop as a new method of norm-creation in Islamic jurisprudence. The Rightly-Guided Caliphs relied in their activities not only on the Quran and Sunnah, but also on their own reasoned opinions in matters not addressed in these sources.

The researcher was the first to designate the period of the Prophet Muhammad (PBUH) and the Rightly-Guided Caliphs as the initial stage in the emergence of the institution of finance in Islamic law, i.e., as the first phase of the legal regulation of financial relations.

The author designated the subsequent stage in the development of the institution of finance in Islamic law as the period of the Umayyad and Abbasid caliphates — the era of the creation of Islamic legal doctrine.

During the Umayyad period (661–750 CE), administrative institutions such as the Diwan al-Barid and the Diwan al-Rasa'il were established to centralize economic and financial correspondence. The minting of gold dinars and silver dirhams strengthened financial stability and economic independence.

An important phenomenon characteristic of law during the Umayyad period was the cessation of rulers' engagement in the interpretation of laws.

During the Abbasid period (750–1258 CE), the role of jurists and scholars of religious law in the regulation of financial relations increased. Treatises and works authored at the behest of rulers began to serve as guiding manuals in financial governance. In particular, in his work "Kitab al-Kharaj," Abu Yusuf substantiated the necessity of taxing each taxpayer individually and argued for the taxation of income from property rather than the property itself. This idea is the earliest theoretical root of the income tax concept in contemporary financial law.

During the Abbasid period, the system of Islamic legal doctrine took shape, the sources of Islamic law expanded, the scope for regulating financial-legal relations within fiqhi madhabs broadened, and the doors of ijtihad were gradually closed. From the mid-10th century until the 19th century, no abrupt changes affecting the juridical nature of Islamic jurisprudence occurred.

Transoxanian (Mawarannahr) jurists — including Burhanuddin al-Marghinani, Shamsul-aimma al-Sarakhsi, and Abu Lays al-Samarqandi — made an invaluable contribution to the field through their works by interpreting, describing, and applying with numerous practical examples the financial rules of Islamic legal doctrine. The analysis of issues of sale and purchase, suretyship, transfer of money, testimony, agency, litigation, monetary partnership, deposit for safekeeping, lending, gifts, and leasing in "Al-Hidaya"; the elaboration of relations such as riba, salam, murabahah, tawliyah, and wadi'ah in al-Sarakhsi's "Al-Mabsut," the in-depth treatment of gharar issues and the description of commercial dealings through the "bithaqat al-i'timan" ("letter of credit") — reflecting financial relations practiced in 11th-century Mawarannahr — attest to the significance of these sources and their role in interpreting and explicating financial relations within the framework of Islamic legal doctrine.

Furthermore, within the research, based on the analysis of the work "Al-Hidaya," the concept of "financial-legal capacity" regarding the obligation to pay zakat was clarified. Contrary to Abu Yusuf's view of considering zakat as an absolute obligation (even for persons with mental disabilities), it was highlighted that Marghinani's imposition of zakat exclusively upon persons of sound mind provides an important doctrinal conclusion in Islamic financial law that the volitional-mental state of the subject constitutes the baseline of a legal obligation.

The researcher specifically emphasizes that the third stage in the development of the institution of finance in Islamic law began precisely in the 19th century, when the fall of even relatively stable Muslim countries into colonial or economic dependency also affected their legal systems. In 1840, Tanzimat reforms consistent with Western commercial law were launched in the Ottoman Empire. In 1869, the Majallat al-Ahkam al-Adliyya civil code incorporating sharia norms was developed; however, this document was contrary to the natural and distinctive character of sharia, which in its very nature is not codified but constitutes a body of legal doctrines, principles, values, and opinions.

Nevertheless, according to the researcher, it was precisely colonial secularization that removed Islamic financial law from the institutionalized state system while granting Islamic scholars greater freedom in approaching ijtihad, thereby creating methodological ground for the formation of contemporary Islamic finance institutions.

The third chapter of the dissertation is entitled **"Contemporary Islamic Financial Law"**, wherein the specific characteristics of contemporary Islamic financial law, the legislative evolution of advanced foreign nations, the trends of international islamic financial institutions in the legal regulation of financial relations, as well as the contemporary development prospects of the financial institution of Islamic law on the example of Uzbekistan are investigated.

Within the framework of this chapter, the researcher discloses through the perspectives of Orientalist legal scholars such as A. Saidov, L. Syukiyaynen, R. Bekkin, G. Kerimov, and N. Tornau that the contemporary approach to Islamic financial law somewhat differs from the legal nature of Islamic doctrinal legal theory. In particular, a tendency to evaluate Islamic financial law as an independent branch of law is observed within the legal thinking of Western scholars. However, according to the conclusion of the researcher, this approach differs somewhat from the legal nature of Islamic doctrinal legal theory. This is because Muslim jurisprudence (fiqh) is traditionally a set of rules that comprehensively regulates social relations based on unified legal, religious, and moral principles.

Considering that today there are three types of models in the legal regulation of Islamic finance in states where it is operational—namely, monistic, dualistic, and flexible adjustment (integrative) models within the relevant legislation without a specific legal framework—the dualistic model deserves special recognition among these models due to being relatively widespread and tested in the international arena, as well as creating choices within the financial systems of developing nations. For this reason, when implementing Islamic finance in the Republic of Uzbekistan, it is proposed, based on the dualistic model, to incorporate specific Islamic financial norms into the civil, banking, tax, and securities legislation, and to introduce a separate institution of Sharia-compliance expertise for islamic financial services and products.

As another specific characteristic of contemporary Islamic financial law investigated by the author of the dissertation, the emergence of an opportunity to develop new rules that do not contradict the general foundations of islamic doctrinal legal theory on the basis of collective ijtihad—a novel method that has not yet occurred in the history of this institution—can be evaluated as a new legal phenomenon.

Analyzing the opinions and approaches of contemporary scholars of Islamic law such as Kh.S. Rakhmaniy, I.O. Shomiy, T. Mansuriy, A.Sh. Juzjoniy, M.A. Qosimov, and others within the framework of this chapter, the studies of the researcher indicate that contemporary islamic financial institutions have used the general maxims of Islamic law (fiqh maxims) as a source of legal ruling for the first time in history when developing international standards and rules, thereby creating a distinct novelty for the development of the field. Consequently, the globalization and universalization of international islamic financial standards are being ensured, expanding the prospects for its implementation and the establishment of a unified centralized legal system.

"According to the researcher, considering the standardization of Islamic financial law under the influence of international legal systems and the dynamic development trends of Islamic financial relations, it is proposed to teach Islamic financial law as a separate course module in higher legal education institutions to strengthen the legal framework of Islamic finance in Uzbekistan and conduct an in-depth study of its scientific and theoretical foundations, drawing upon the experience of developed foreign nations (the United Kingdom, Malaysia, Turkey, and Saudi Arabia)".

Considering that contemporary Islamic financial law is relatively standardized (AAOIFI and IFSB rules) and that changes have occurred in its form of expression as a result of the influence of legal systems widely spread across the globe, the author of the dissertation proposes to develop an action plan for creating comparative-legal educational literature concerning Islamic financial law and the relevant branches of other legal systems in Uzbekistan.

Within the research, taking into account the experience of foreign nations that have chosen the dualistic model for the legal regulation and implementation of

Islamic finance (Malaysia, Bahrain, Qatar, Kazakhstan, and Kyrgyzstan), the necessity of enacting a comprehensive new legislative act "On Islamic Banking Activities" is justified.

In the course of enacting the law with the aforementioned content, the author of the dissertation emphasizes the necessity of introducing amendments and addenda to the laws "On the Central Bank of the Republic of Uzbekistan" and "On Banks and Banking Activities," as well as the necessity of introducing amendments and addenda to the relevant articles of the Civil Code.

As an addition to the clause concerning savings (deposits) in the Law "On Banks and Banking Activities," it is proposed to specify that funds attracted into investment deposits for the purpose of performing Islamic banking activities shall be excluded therefrom.

The researcher proposes to utilize islamic financial terms without modifying them when enacting any legislative or sub-legislative acts concerning Islamic finance. Consequently, it is deemed that this will eliminate misinterpretations of relations concerning specific institutions of Islamic finance and resolve ambiguities in understanding legal norms.

CONCLUSION

As a result of the analysis of the formation and development of the financial institution in Islamic law, the following scientific-theoretical and scientific-practical conclusions were made, as well as proposals and recommendations for improving the current legislation were put forward. Specifically:

I. Scientific and theoretical conclusions:

1. As a result of analyzing the sources of Islamic law, it can be concluded that the islamic financial system is based on its own unique principles. These principles constitute not only religious-moral criteria but also the baseline of Islamic law in regulating economic relations in society. Remarkably, these principles have been formed under the influence of various historical conditions and factors since the early periods of the emergence of Islamic law, and have not lost their significance today. For this reason, studying the formation and development of islamic financial principles and institutions holds important theoretical and practical significance.

2. Analyzing the definitions and opinions of a number of scholars in the field within the research, it was deemed necessary to define financial law as follows:

Financial law is a collection of legal norms of a positive character regulating social relations that arise in the process of the financial activity of the state; it regulates public-legal relations and differs from Islamic financial law in that the scope of its legal regulation is primarily directed toward fiscal objectives.

3. Having comprehensively analyzed the development of the financial institution in Islamic law and its rules reflecting general differences from other financial-legal systems within the research work, the following author's definition of Islamic financial law was developed:

"Islamic financial law is an independent complex institution regulating financial processes, which was formed during the historical development of islamic legal thought and is based on Sharia sources such as the Holy Quran, Sunnah, Ijma, and Qiyas, as well as rational reasoning (Ijtihad) and the general principles of Islamic law; it consists of a synthesis of public-legal and private-legal relations and aims to implement fiscal and financial policies grounded in economic justice, social stability, and moral principles."

4. The general (fiqh) maxims of Islamic law, the development of which began from the middle of the VIII century AD, maintain their firm position to date in the legal regulation of financial relations in states where Sharia norms are operational. In particular, the application of these maxims in the process of adapting islamic financial institutions into the contemporary legal environment holds distinct significance from both theoretical and practical perspectives. For instance, the fact that AAOIFI has begun to apply maxims such as "matters are judged by their purposes" (al-umūru bi-maqāṣidihā) and "hardship brings facility" (al-mashaqqatu tajlibu al-taysīr) as a source of legal ruling in the interpretation of contemporary financial contracts within its Sharia standards is an unprecedented phenomenon throughout history. While previously the primary sources of Islamic law—the Quran, Sunnah, Ijma, and Qiyas—were considered sufficient, currently fiqh maxims serve as a methodological tool in drafting Islamic financial law documents and substantiating alternative economic mechanisms. This reconfirmed their historical significance in strengthening the legal foundation of Islamic finance. The specific aspect of fiqh maxims is that they do not constitute a specific judgment on a single problem, but rather are islamic principles applicable to hundreds of issues.

The characterization of fiqh maxims on a scientific-theoretical baseline serves to form a unified methodological approach in the interpretation of islamic financial contracts by judicial and arbitration bodies in Uzbekistan jurisprudence.

5. An author's periodization was developed by historically dividing the processes of the formation and development of the financial institution in Islamic law into four main stages, and the specific legal tendency of each stage was disclosed.

The first stage—in the VII century AD, namely during the period of the founder of the Arab Caliphate, Muhammad ibn Abdullah (p.b.u.h.), and the four Rashidun Caliphs (Abu Bakr ibn Siddiq, Umar ibn Khattab, Uthman ibn Affan, Ali ibn Abi Talib)—witnessed the formation of the initial practice of regulating financial relations in Islamic law, wherein new taxes were introduced, the initial organizational-legal foundations of the state treasury were formed, and most importantly, the primary legal sources of Islamic financial law emerged.

The second stage—comprising the VIII–XIII centuries AD—corresponds to the period of the Umayyad and Abbasid dynasties, under the influence of the development of fiqh schools, islamic legal doctrine was deeply formed, and the rules regulating financial relations were developed with precise details.

The third stage corresponds to the XIX–XX centuries AD and is characterized by the revision of Islamic financial law under the strong influence of the legal systems of Western states and the emergence of a systematized model of legislative acts such as "Al-Majalla."

The fourth stage is the contemporary period continuing from the beginning of the XXI century. During this period, international standards such as AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions) and IFSB (Islamic Financial Services Board) have been developed, and the principles regulating islamic financial institutions are legally globalizing; in this process, the non-affiliation of these standards with a specific madhhab further increases their universal significance.

6. Scholars from Movarounnahr, such as Burhanuddin al-Marghinani, Shams al-Aimma as-Sarakhsi, and Abu Lays Samarkandi, made a great contribution to the development of the field by interpreting and characterizing the financial rules of islamic legal doctrine in their works, as well as substantiating Islamic financial law with practical examples. In particular, the matters of sale, guarantee, transfer of debt (hawala), testimony, agency, partnership in investment and work (sharikah), deposit (wadiyah), lending (qard), gifting (hibah), and leasing (ijarah) within the work "Al-Hidaya" were analyzed. The disclosure of relations such as riba, salam, murabahah, tawliyah, and wadiah within the work "Al-Mabsut," the deep emphasis on gharar (uncertainty) issues, as well as the fairly detailed illumination of financial relations operational in Movarounnahr in the XI century, such as trading via "bithaqat al-i'timan" ("letter of credence"), effectively contributed to the development of the foundations of Islamic financial law and serve to increase its value as an important theoretical-legal source concerning this field even today.

7. Considering that today there are three types of models in the legal regulation of Islamic finance in states where islamic law is operational—namely, monistic, dualistic, and flexible adjustment (integrative) models within the relevant legislation without a specific legal framework—the dualistic model deserves special recognition among these models due to being relatively widespread and tested in the international arena, as well as creating choices within the financial systems of developing nations. For this reason, when implementing Islamic finance in the Republic of Uzbekistan, it is proposed, based on the dualistic model, to incorporate specific islamic financial norms into the civil, banking, tax, and securities legislation and to introduce a separate institution of Sharia-compliance expertise for islamic financial services and products.

8. It is substantiated in the dissertation that the norms regulating the financial institution in Islamic law do not consist of stagnant and immutable rules, but rather have evolved over centuries in accordance with their respective eras, possessing the capacity to respond to problems arising from contemporary requirements in different periods through the "Majallai ahkomi adliya" with the specific characteristics of the Hanafi madhhab and through the standards of AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions) and IFSB (Islamic Financial Services Board). In particular, islamic financial rules, which previously relied on

fiqh sources and adapted to local conditions, are currently being formed in a centralized and codified manner based on regulatory-legal standards developed by international organizations.

9. By analyzing the standards for the legal regulation of Islamic finance developed by international Islamic finance institutions in the 21st century, Islamic finance standards are defined as follows:

"Modern Islamic finance standards are a set of rules that have emerged and continue to emerge as a result of selecting the rulings of various legal (fiqh) schools that best meet modern requirements and transforming them into universal legal norms, which are consistent with and do not contradict the main sources of Islamic law, and are not limited by the rules of a specific sect".

10. In the new era, the aspiration to develop a unified and systematized legal framework for Islamic finance has increased; consequently, the doors of Ijtihad (norm-making) have been reopened for many islamic jurists through the endeavors of a number of prominent islamic law scholars, and an opportunity to develop new rules that do not contradict the general foundations of islamic doctrinal legal theory on the basis of collective Ijtihad—a novel method that has not yet occurred in the history of this institution—has emerged. For the first time, the methodology of eclecticism was introduced by legal scholars in developing islamic finance standards. Considering that the analysis of AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions) and IFSB (Islamic Financial Services Board) standards indicates a shift from the era of "individual Ijtihad" to the methodology of "collective Ijtihad" (institutional norm-making) in islamic law, it is proposed to recognize this phenomenon in the "History of Legal Doctrines" as the stage of "Global Islamic Financial Standardization" in Islamic law and to incorporate it into the system of contemporary sources of law at the doctrinal level.

11. The development of a market economy based on various forms of ownership in the Republic of Uzbekistan necessitates the further improvement of not only national legislation but also legal science, legal education, and legal practice. Taking these into account, with the aim of deeply studying and analyzing the scientific-theoretical foundations of Islamic financial law and preparing qualified, competitive specialists in the field, a proposal is advanced to introduce a separate course module entitled "Foundations of Islamic Financial Law" in higher legal educational institutions. We deem that this module should comprise the following sections: a) Methodological foundations of Islamic financial law; b) islamic financial contracts (mudarabah, musharakah, murabahah, ijarah, salam, and others); c) the standards of the Accounting and Auditing Organization for Islamic Financial Institutions and the Islamic Financial Services Board, and their correlation with the legislation of Uzbekistan; d) foreign experience and comparative-legal analysis. Furthermore, in the course of training qualified personnel in the field of Islamic financial law, we deem it necessary to translate the standards of the Accounting and Auditing Organization for Islamic Financial Institutions into the Uzbek language and publish them.

II. Suggestions and recommendations for further improving the normative legal base:

12. According to the Law of the Republic of Uzbekistan "On Non-Bank Credit Organizations and Microfinancing Activities," microfinance organizations may provide islamic financial services. However, unlike banks, they do not possess the capability to participate in broad financial operations and attract deposits. This does not lead to the significant growth of islamic financial services in our country. Having analyzed advanced foreign experience concerning this issue, in our opinion, a proposal was advanced to develop and enact a draft legislative act "On Islamic Banking Activities."

13. In order to effectively establish Islamic banking services, it has been proposed to supplement the fourth paragraph of Article 6 of the Law of the Republic of Uzbekistan "On Banks and Banking Activities" with the following additions:

"Except for funds raised as investment deposits for carrying out Islamic banking activities with the condition of profit sharing."

It has also been proposed to supplement Article 7 of this law with a paragraph of the following content:

"The restrictions provided for in the first part of this article, relating to the direct implementation of trade activities, as well as the restrictions provided for in the third part regarding the establishment of legal entities and (or) the acquisition of shares or stakes in the authorized capital of legal entities, shall not apply to banks carrying out Islamic banking activities, if this activity is for the purpose of carrying out financial operations related to Islamic banking activities."

In addition, it is proposed to amend the first part of Article 32 of this Law as follows:

"The general meeting of shareholders, the supervisory board and management board of the bank, and the Islamic Finance Council in the bank carrying out Islamic banking activities are the governing bodies of the bank".

14. It has been proposed to amend the first part of Article 759 of the Civil Code of the Republic of Uzbekistan as follows:

"The second party (bank) accepting a sum of money (deposit) received from or addressed to the first party (depositor) under a bank deposit agreement undertakes, on the terms and in the manner stipulated by the agreement, to return the deposit amount with or without interest, as well as other income (interest or other income)."

It has also been proposed to amend Article 763 of this Code as follows:

"The bank pays the depositor interest and (or) other income for the deposit amount in the amount determined by the bank deposit agreement.

In the absence of a condition in the bank deposit agreement on the amount of interest payable, the bank is obliged to pay interest in the amount payable on demand deposits.

Unless otherwise provided by the bank deposit agreement, the bank has the right to change the amount of interest or other income paid on demand deposits.

If the bank reduces the amount of interest or other income, the new amount of interest or other income is applied to deposits made after the depositor is notified of *their reduction. Unless otherwise provided by the bank deposit agreement, the reduced amount of interest and (or) other income on deposits made before this notification is applied one month after the moment of the corresponding notification.*

The amount of interest and (or) other income established by the bank deposit agreement on a deposit with the condition of returning the deposit after a certain period or upon the occurrence of circumstances stipulated by the agreement cannot be reduced unilaterally by the bank, unless otherwise provided by the agreement."

15. It has been proposed to amend paragraph eleven of Article 20 of the Law of the Republic of Uzbekistan "On the Central Bank of the Republic of Uzbekistan" as follows:

"Makes decisions on the issuance, re-registration and revocation of licenses for the right to carry out banking activities and licenses for the right to carry out Islamic banking activities."

16. It is proposed to amend the third paragraph of Article 14 of the Law of the Republic of Uzbekistan "On Leasing" as follows:

At the discretion of the parties, the contract for the sale of the leased asset may be concluded before or after the entry into force of the lease agreement.

In the case of the provision of Islamic leasing services, a strict condition for concluding an Islamic leasing agreement is the ownership of the leased asset by the lessor.

17. In the seventh part of the section "Provision of Financing (salam) Services Based on Prepayment" of the Annex to the Resolution of the Board of the Central Bank of the Republic of Uzbekistan dated July 19, 2024 No. 23/4 "On the Procedure for Providing Islamic Financing Services by Microfinance Organizations," it is established that a microfinance organization cannot conclude a contract for the sale of this object until the microfinance organization acquires ownership rights to the prepayment object. However, AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions) Shariah standards number 10 contains the concepts of salam and parallel salam and provides guidance on the structure of parallel salam transactions and their compliance with Shariah. In parallel salam transactions, the seller of the first salam transaction (e.g., a financial institution) acts as a buyer in the second salam transaction. However, both transactions must be independent of each other and not dependent on each other. This is important so that the obligations in the first salam transaction do not affect the second transaction. From this point of view, we believe that it is necessary to provide a separate interpretation of parallel salam in the regulation by introducing an additional clause or a new part to this part of the regulation.

НАУЧНЫЙ СОВЕТ DSc.07/2025.27.12.Yu.01.02 ПО ПРИСУЖДЕНИЮ УЧЁНЫХ СТЕПЕНЕЙ ПРИ ТАШКЕНТСКОМ ГОСУДАРСТВЕННОМ ЮРИДИЧЕСКОМ УНИВЕРСИТЕТЕ

ТАШКЕНТСКИЙ ГОСУДАРСТВЕННЫЙ ЮРИДИЧЕСКИЙ УНИВЕРСИТЕТ

УБАЙДУЛЛАЕВ АБРОР КУТПИЛЛА УГЛИ

ФОРМИРОВАНИЕ И РАЗВИТИЕ ИНСТИТУТА ФИНАНСОВ В ИСЛАМСКОМ ПРАВЕ: ИСТОРИКО-ПРАВОВОЕ ИССЛЕДОВАНИЕ

12.00.01 – Теория и история государства и права. История правовых учений

АВТОРЕФЕРАТ
диссертации доктора философии (PhD) по юридическим наукам

Ташкент – 2026

Тема диссертации доктора философии (PhD) зарегистрирована в Высшей аттестационной комиссии при Академии Наук Республики Узбекистан под номером B2025.2.PhD/Yu1891.

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ВВЕДЕНИЕ (аннотация диссертации доктора философии (PhD))

Цель исследования заключается в разработке предложений и рекомендаций, направленных на укрепление теоретических основ исламского финансового права и совершенствование его правовой базы в Республике Узбекистан на основе комплексного изучения процессов формирования и развития института финансов в исламском праве.

Объектом исследования является система общественных отношений, возникающих в различные исторические периоды в процессе правового регулирования исламских финансовых отношений, а также формирующихся на современном этапе под влиянием международных стандартов.

Научная новизна исследования заключается в следующем:

обоснована необходимость исключения денежных средств, привлечённых в качестве инвестиционных вкладов на условиях участия в распределении прибыли, из классического определения вклада (депозита) в банковско-финансовом законодательстве, а также недопустимость распространения правовых требований, предъявляемых к традиционным банковским вкладам, на операции исламского финансирования;

обоснована необходимость неприменения к банкам, осуществляющим исламскую банковскую деятельность, ограничений, касающихся непосредственного ведения торговой деятельности, а также приобретения долей (акций) в уставных фондах юридических лиц;

обоснована необходимость включения в перечень полномочий правления Центрального банка Республики Узбекистан исключительных прав по выдаче, переоформлению и отзыву лицензий на осуществление исламской банковской деятельности, а также закрепления правового статуса и компетенции регулятора в данном секторе;

обоснована необходимость совершенствования правового определения договора банковского вклада в гражданском законодательстве путем его согласования с принципами исламского финансирования, а также посредством включения нормы, предусматривающей формы получения дохода по вкладу, отличные от процентов;

обоснована необходимость закрепления в гражданском законодательстве положения о том, что доходы, выплачиваемые по банковским вкладам, могут осуществляться не только в форме процентов, но и посредством иных доходов и беспроцентных механизмов вкладов;

систематизированы характерные принципы права исламских финансов, раскрыта концептуально-правовая природа партнёрских сделок и инвестиционных договоров, а также обосновано их значение как научной основы формирования системных теоретических знаний в системе высшего юридического образования на основе сравнительно-правового анализа;

Внедрение результатов исследования. На основе выводов и результатов, полученных в ходе диссертационного исследования:

предложение об исключении денежных средств, привлечённых в качестве инвестиционных вкладов на условиях участия в распределении прибыли, из определения вклада (депозита) в банковско-финансовом законодательстве использовано при разработке пункта 4 статьи 3 Закона Республики Узбекистан от 27 марта 2026 года № ЗРУ-1126 «О внесении дополнений и изменений в отдельные законодательные акты Республики Узбекистан, направленных на введение исламской банковской деятельности в Узбекистане» (абзац второй части первой статьи 6 Закона «О банках и банковской деятельности») (справка Института парламентских исследований при Законодательной палате Олий Мажлиса Республики Узбекистан от 20 мая 2026 года № 3/дн-74). Реализация данного предложения способствовала неприменению требований, предъявляемых к традиционным банковским вкладам, к инвестиционным вкладам, привлекаемым на основе операций исламского финансирования;

предложение о неприменении к банкам, осуществляющим исламскую банковскую деятельность, ограничений, касающихся непосредственного ведения торговой деятельности и приобретения долей (акций) в уставных фондах юридических лиц, использовано при разработке пункта 5 статьи 3 Закона Республики Узбекистан от 27 марта 2026 года № ЗРУ-1126 (часть десятая статьи 7 Закона «О банках и банковской деятельности») (справка Института парламентских исследований при Законодательной палате Олий Мажлиса Республики Узбекистан от 20 мая 2026 года № 3/дн-74). Реализация данного предложения способствовала обеспечению осуществления деятельности в финансовых организациях, осуществляющих исламскую банковскую деятельность, на основе правил и принципов исламского финансирования;

предложение о включении в перечень полномочий правления Центрального банка Республики Узбекистан права принятия решений о выдаче, переоформлении и отзыве лицензий на осуществление исламской банковской деятельности использовано при разработке пункта 1 статьи 1 Закона Республики Узбекистан от 27 марта 2026 года № ЗРУ-1126 (абзац двенадцатый статьи 20 Закона Республики Узбекистан «О Центральном банке Республики Узбекистан») (справка Института парламентских исследований при Законодательной палате Олий Мажлиса Республики Узбекистан от 20 мая 2026 года № 3/дн-74). Внедрение данного предложения способствовало укреплению статуса и полномочий Центрального банка Республики Узбекистан в сфере организации исламской банковской деятельности;

предложение о включении в определение договора банковского вклада положения, предусматривающего возможность возврата суммы вклада с процентами, а также с иными доходами либо без них, использовано при формировании пункта 2 статьи 2 Закона Республики Узбекистан от 27 марта 2026 года № ЗРУ-1126 (абзац первый статьи 759 Гражданского кодекса) (справка Института парламентских исследований при Законодательной палате Олий Мажлиса Республики Узбекистан от 20 мая 2026 года № 3/дн-74). Данное предложение способствовало обеспечению правовой возможности возврата вклада с процентами или без них в рамках договора банковского вклада.

предложение о включении в состав доходов по вкладам наряду с процентами иных форм дохода, а также об изменении названия статьи 763 Гражданского кодекса Республики Узбекистан на «Проценты и (или) иные доходы по вкладу» использовано при формировании пункта 4 статьи 2 Закона Республики Узбекистан от 27 марта 2026 года № ЗРУ-1126 (абзацы второй, третий, четвёртый и пятый статьи 763 Гражданского кодекса) (справка Института парламентских исследований при Законодательной палате Олий Мажлиса Республики Узбекистан от 20 мая 2026 года № 3/дн-74). В результате внедрения данного предложения обеспечена возможность осуществления вкладных отношений не только в рамках процентной банковской модели, но и правового признания и применения беспроцентных механизмов вкладов, основанных на принципах исламского финансирования;

Научные результаты, касающиеся характеристики правовой природы исламских финансов, были использованы при формировании программы учебного модуля «Право исламских финансов» в Ташкентском государственном юридическом университете, в том числе его разделов, посвящённых принципам права исламских финансов, партнёрским и инвестиционным договорам, а также сравнительно-правовому анализу (акт Ташкентского государственного юридического университета от 4 августа 2025 года). Применение данных результатов способствовало формированию у студентов системных теоретико-правовых знаний в данной сфере. Внедрение данных результатов способствовало формированию у студентов системных теоретико-правовых знаний в данной сфере;

Структура и объём диссертации. Диссертация состоит из введения, трёх глав, включающих 10 параграфов, заключения и списка использованной литературы. Общий объём диссертации составляет 156 страниц.

E'LON QILINGAN ISHLAR RO'YXATI
LIST OF PUBLISHED WORKS
СПИСОК ОПУБЛИКОВАННЫХ РАБОТ

I bo'lim (I part; I часть)

1. Ubaydullayev A.Q. Islom moliya huquqi: tushunchasi, mazmuni va istiqbollari // Huquqiy tadqiqotlar jurnali. 2023. № SI-2. B. 15–21. (12.00.00 №19) URL: https://www.tadqiqot.uz/index.php/law/article/view/7659

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II bo'lim (II part; II часть)

10. Ubaydullayev A.Q. Xorijiy moliyaviy qonunchilik va boshqaruvida islom moliyasini joriy etishning xalqaro modellari tahlili // Akademik Xodji-Akbar Rahmonqulov o`qishlari: respublika ilmiy-amaliy konferensiyasi. TDYU, 2025.- B. 59–65. URL: https://zenodo.org/records/21232790 (https://doi.org/10.5281/zenodo.21232790).

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