

Challenges of Implementing International Financial Law with the Perspective of Islamic Jurisprudence in Iran

Ghasemali Sabouri

Islamic Azad University (Dubai Branch)
(Corresponding Author: gh_sabouri57@yahoo.com)

Atefeh Amininiya

Islamic Azad University (Varamin Branch)

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ABSTRACT

One of the essential needs of human societies is the desire to evolve and achieve prosperity and facilities, which is made possible by financial transactions. These transactions are not possible except through the mechanisms of international law in the commercial and financial sectors. With the growth of such cooperation, the need for international laws and regulations in these two sectors has increased every day to the point that even countries' domestic laws to facilitate trade have become a part of international law. In this paper, international financial law and the challenges of its implementation, along with the role of Islamic Jurisprudence's financial law point of view, have been studied. A solution has been provided using the "Tazahom" perspective. Tazahom in Islamic jurisprudence means being between two interests, and naturally, these two are for the sake of society and based on the needs of today. In this paper, international financial law and tazahom have been studied, and the position of each in the international system and Islamic jurisprudence has been mentioned; by matching their form and content with each other, the result is not the conflict of interest between international financial laws (referred to by international financial organizations) with Islamic jurisprudence from this point of view.

Introduction

One of the human needs that leads to evolution is welfare, and in order to achieve facilities and welfare, it is necessary to use the services and goods of others. Ahmad Ibn Hanbal quotes the Prophet: "What good is a worthy property for a worthy servant." This view emphasizes that in order to achieve comfort, well-being, and facilities, it is necessary to use the goods, knowledge, and services of others; these transactions play a vital role in the formation of domestic and international trade. The domestic trade of any country can be subject to that region's specific laws and regulations. However,

international trade interactions must comply with internationally accepted regulations because all involved countries must approve them. Considering that the authority of each of the parties to legal claims has been included in international law and its actions have been responded to in the form of international laws and charters. By knowing the importance of international law, international financial and commercial law, we can understand the important role of financial law in determining the scope, limits and enforcement of commercial law. This research will examine the feasibility of implementing international financial law in Iran. For this purpose, first, we will mention:

- Amir al-Mu'minin's view of trade
- The concept of financial law
- International rights
- History of international financial law and its position in the international arena and the approach of different countries to it
- Challenges of implementing international financial law
- Adaptation of these conditions with the existing conditions in Iran

Amir al-Mu'minin's view of trade

From economic narrations, a piece of the sermon from Nahj al-Balagha¹, Amir al-Mu'minin Ali says:

*“that the God-fearing have shared the joys of this transient world as well as the next coming world, for they shared with the people of this world in their worldly matters.”*²

Amir al-Mu'minin continues:

*“They lived in this world in the best manner of living and ate the choicest food, and consequently, they enjoyed herein all that the people with ease of life enjoyed, and secured from it what the haughty and the vain secured.”*³

Definition of tazahom from an Islamic jurisprudential point of view

“Tazahom”⁴ is from the root of “Zahmat”⁵ and it means that whenever two rulings or two interests contradict each other in such a way that both cannot be acted upon, it is called a tazahom⁶.

Concept and definition of financial rights

Financial rights are the rules and regulations related to insurance, financial instruments, Commercial Banking, Capital Markets, and Investment Management.

Financial law is vital because it leads to the formation of banking and financial laws and creates a clear financial structure. Financial laws are an essential part of commercial law and a significant part of global economic law as well. The main task of financial laws is to clarify the legal obligations related to the transparency of financial transactions and to understand the implications of the laws, such as losses due to fraud and the establishment of structures or to compensate for overdrafts.

For these reasons, financial law is a more limited segment than commercial law. It focuses only on financial transfers and related financial markets or the hedging and risk coverage of such transactions.

Financial law from an Islamic jurisprudential point of view

Financial right is a privilege that the right of any country gives to individuals in order to meet their material needs. The purpose of creating a financial right is to regulate the relationship between individuals regarding the use of objects. Its direct purpose is to protect monetary and valuable interests⁷.

Features of financial law

- 1- Ability to trade. These rights can be traded in the trading market.
- 2- Ability to evaluate money. These rights have the ability to calendar in money.
- 3- Ability to transfer money to others
- 4- Ability to seize and supply. These rights can be seized to enforce the court order and provide a request to prevent the impossibility of enforcing the court order.

Financial regulation law and legal definition

Financial regulation oversees markets and financial institutions. Financial regulations require financial institutions to meet specific

¹ Letter 27: Instruction Given to Muhammad ibn Abi Bak,
² أن المتقين ذهبوا بعاجل الدنيا وأجل الآخرة، فشاركوا أهل الدنيا في دنياهم، ولم يشاركهم أهل الدنيا في آخرتهم
³ سكنوا الدنيا بأفضل ما سكنت، وأكلوها بأفضل ما أكلت، فحفظوا من الدنيا بما حظي به المترفون وأخذوا منها ما أخذة الجبابرة المتكبرون، ثم انقلبوا عنها بالزاد

⁴ Tazahom

⁵ conflict

⁶ AH Muhammad Kazim Khurasani, (1419)

⁷ Katozian, (1389)

requirements, restrictions, and guidelines. The primary purpose of financial regulation is to maintain the financial system's integrity. Financial regulations protect investors, maintain orderly markets, and promote financial stability⁸ (Blazek 2015).

Financial regulations include

- Enforce applicable laws
- Prosecute market abuse
- Providing Financial Services License
- Customer protection
- Investigate complaints
- Maintain trust in the financial system

Governmental or non-governmental organizations can manage financial regulation. For example, the US Securities and Exchange Commission (SEC) enforces US securities laws (Basel, 2019). In the Soviet Union and other socialist countries, the branch of law that determines its social relations and regulations is derived from the financial activity of each state. Government intervention in finance increased after the transfer of primary factors of production to state ownership and direct economic management and socio-cultural production to the government. The government accounts for a large share of national revenue, about half of which the government manages. By budgeting and using other governmental institutions, the government ensures the implementation of the accumulation, sharing, and spending of systematic assets and financial management. Financial activities are one of the types of direct activities and capabilities of government that are performed as one of the standard government laws. Because of its unique nature and its very different legal relations, financial law has created an entirely new branch of law. As a result of the size and importance of its subordinate provisions, it is known as an independent branch⁹.

There are three different and contradictory regulatory projects that shape the rules of financial law. These are based on three different perspectives on the nature of financial market relations. These are based on three different perspectives on the appropriate nature of financial market relations.

1. Participants' market activities include a central aspect of the source of the Financial Markets Act, which was initially established between England and Wales. Norms of the parties in creating standard methods are a fundamental part of how it is supervised for the parties. These market practices create internal norms that the parties abide by, thus influencing laws that lead to breaking the laws or through the courts or tribunals. The central role is to make the soft law; As a source of rules of conduct that have no legally binding force but have practical effects.
2. The second category, which attracts more financial law according to market standards, originates from filing a lawsuit. Often, the courts seek to reverse engineering in order to produce a beneficial business outcome. So, the law operates similarly to the market method in producing efficient results.
3. The third category of law-making in financial markets derives from domestic and international legislation and laws regulating financial services' performance. The three regulatory approaches are the longitudinal, legal, and consumerist approaches to financial relations. The EU Payment Services Guidelines, Securities Settlement Regulations, and other matters arising from the financial crisis or

⁸ Blazek, (2015)

⁹ Mikhailova-Golminov, (2018).

the regulation of financial trade have been used by MiFID II¹⁰. Regulatory oversight by the Bureau of Finance and the Bureau of Fair Trade has set specific rules to replace the additional rules of conduct and has seen new revivals since the 2008 financial crisis.

In addition to national and international financial regulations, other laws are used to stabilize financial markets by enhancing the usefulness of collateral. In Europe, there are two parallel bail stabilization regimes; IFRS 9 Financial Instruments and Financial Instruments Directive (No. 2) Regulations 2003. The European Document Development Guide is very curious if we see it through the glasses of just one legal issue. The law is enforced here through market practice and private law reform. The European Union has played an essential role in facilitating the transfer and realization of assets and liquidity in the markets. These rules apply well to short-term transactions such as repurchase agreements or derivatives¹¹.

With only the first two decades of the 21st century coming to an end, this short period was enough to bring globalization processes to the forefront of the global financial system architecture. The international financial system developed in the second half of the last century failed to meet the needs of society and, because of its polar nature, posed a threat to both the global economy and the economies of independent national nations. Since the 1970s, the monopoly role of the dollar as a global reserve currency has been weakening. At the same time, the economic potential of European countries is not only growing but also increases the stability of the national exchange rate. The national currency is

increasingly used in international transactions. In the 21st century, the introduction of the first transnational currency became the primary evidence of the evolution of the world financial system. Prior to the euro, currency was traded only at the national level. The introduction of the euro led to changes in the national legal systems of European countries and the implementation of international legal regulations. These processes affect the law of money and the provisions of the budget, taxes, and investment relations.

It is noteworthy that in the late twentieth century, the economic processes of integration intensified in other parts of the world: The Eurasian Economic Community (EurAsEC) operates in the Western Hemisphere; The Free Economic Community of North America (NAFTA) operates in the Western countries; Central Asian countries are taking tangible steps to establish a regional currency union. In addition to the world financial centers in London, New York, Zurich, and Geneva, it strengthens its role in new markets in Hongkong, Dubai, and Singapore as well. The world order is no longer polar.

International financial system and law

The international financial system as a complex phenomenon consisting of different groups of interconnected social relations is related to the flow of capital across the border. These relationships result from the banking system and the functioning of the global financial market, the activities of international currency, the development of investment projects, and the framework of credit relations and debt settlement. The public mentioned above and governmental relations groups, both internal and external, are interconnected, but at the same time, they are controlled by unique legal means. Since the international financial system includes multilateral relations, these

¹⁰ Directive 2014/65/EU, commonly known as MiFID 2

¹¹ Komai, Richardson, (2011)

instruments are influenced by national and international law (both private and public).

Implementation of international financial law

One of the crucial elements in economic assessments is information risk, related to the quality of information and financial reports. It is believed that the higher the quality of financial statements and the use of more reliable standards in the preparation and presentation of reports, the lower the information risk will have a positive impact on economic decisions and their consequences.

Accounting and auditing standards play a fundamental role in transparency and efficiency in the capital market, one of the financial law components. Because capital allocation decisions increasingly rely on understandable and credible financial information. As financial markets move toward complexity and globalization, differences between national and international standards have become more critical to investors and other users of financial information. The growth of international trade and capital flows and increasing economic cohesion over the past two decades have led to a desire to harmonize accounting standards among countries, so many countries have adopted international accounting and financial standards.

Another point is a tazahom; as mentioned above, tazahom means a conflict between two interests, and the implementation of financial rights between globalizing countries' financial systems and facilitating financial and business communication with other countries and problems of this relationship that may arise for different economic and financial and even political and security sectors of the country is one of the unique examples of tazahom.

Reasons for differences in the financial laws (financial law) of countries

- Legal origin
- Concentration of ownership
- Importance of financial standards
- Importance of capital markets

Conventional countries such as the United States and the United Kingdom emphasize shareholders and creditors who provide sources of capital; in contrast to civil law countries such as France and Germany, businesses rely heavily on employees - managers - banks, and the government for financing. Such a fundamental difference in the origin of countries' laws affects the importance of financial information, but ultimately the financial standards are the basis of financial statements and financial reports; It is based on the theory of the customary system (relying on capital suppliers and the information they need) that the concentration of ownership creates a different structure in capital markets.

As each country has its own sovereignty and laws to exercise, naturally, other laws that disrupt the sovereign role of governments are not accepted by them (Such as non-compliance with the laws of other countries in private international law when it is contrary to the public order of countries).

Conclusion

As explained above, different origins of laws in different countries have caused differences in laws and regulations related to financial law. Most of these laws and regulations in Iran originate from two sections of civil (social) law and Islamic law. This difference in the origin of laws and, consequently, different views on international events have caused differences in the macro foreign policies of different countries. As a result of the general

domestic and international policies and the origin of the laws, Iran has a purely legal conflict with various parts of the international financial system.

Because the main parts of accounting standards, as well as Iran's financial markets, are in line with internationalization and implementation of its laws, so there is no conflict with the international community in these areas, and only political conflicts are increasingly playing a role in the law.

On the other hand, the origin of different laws can be one of the problems in implementing financial laws. However, with the view of tazahom, two interests can be considered. Given that international financial law, which merely declares or requires procedures in the field of financial transactions or their technical mechanisms, does not conflict in principle with Islamic jurisprudential laws and principles of transaction. Therefore, it seems that these conflicts between Iran and the international financial system are not in principle but only in the explanation and implementation of a small part of them. These conflicts include the formal part of the rules and regulations, which can be resolved by amending or creating laws in line with this section because, as mentioned, these conflicts are not in principle and are only in the formal part of the rules, which are sometimes for decades, and by updating them, international laws and regulations can be implemented using reservation (in areas that conflict with the principles of domestic law).

CONFLICT OF INTEREST

The author (s) declares that there is no conflict of interest regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancy, have been completely observed by the authors.

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