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İKTİSAT KAYNAĞI OLARAK HİSBE LİTERATÜRÜ VE YAHYA B. ÖMER EL ENDÜLÜSİ'NİN AHKÂMU'S-SÛK ADLI ESERİ*

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ÖZET

Hisbe ve/veya ahkâmu's-sûk literatürü, iktisat çalışmalarında gözden kaçırılmaması gereken kaynaklar arasında yer almaktadır. Bu alanda yayınlanmış eserler doğrudan sosyal ve iktisadî hayatla ilgili düzenlemeleri konu almaktadır. Hisbe kaynakları, İslam kentlerinin kültürel ve sosyal ilişkileri, ekonomik koşulları, pazarı, alım-satım işlerinin yönetimi ve devletin piyasaları düzenlemesiyle ilgili konularda zengin içeriğe sahiptir. Bu eserler iki grupta incelenebilirler. Birinci grup esreler, bir İslam kentinde piyasanın nasıl olması gerektiğini açıklayan teorik çalışmalardır. İkinci grup ise doğrudan pratiği, uygulamada ortaya çıkan problemlere sunulan çözümleri ele almaktadırlar. Her iki gruba giren hisbe eserleri de İslamî bir sistem içerisinde piyasanın nasıl olması gerektiğini ortaya koymakta, teorik ve pratik öneriler sunmaktadır. Tüm bu öneriler, toplumsal sistemin genel dengesinin kurulması amacına hizmet etmektedir. Herhangi bir sebepten ötürü dengenin bozulması, toplumsal sistemin karmaşaya sürüklenmesine, gruplar arası çatışmalara ve parçalanmaya sebep olacağından, siyasî, sosyal ve iktisadî alanlarda tüm toplum gruplarının ihtiyaçlarını gözeten etkin bir yapı kurulması amaçlanmaktadır. Hisbe eserlerinde dinî, sosyal ve iktisadî alana ilişkin konular yer almaktadır. Satıcı ve alıcılar arasındaki ilişkileri düzenleyici, devletin piyasa içerisindeki yerini belirleyici ve piyasanın düzenini koruyucu hükümler içermektedirler. Bu çalışmada, hisbe alanında yazılmış ilk müstakil eser kabul edilen Yahya b. Ömer el-Endülüsî'nin Ahkâmu's-Sûk adlı kitabı incelenmiştir. Eser, yazara sorulan sorulara verilen fetvalardan oluşmaktadır. Kitabın incelenmesinde tüm ayrıntılara girmek yerine iktisat biliminin belli başlı konularının çerçevesine sokulabilecek pazar yapısı, devlet-piyasa ilişkileri ve fiyat oluşumu gibi konuların ele alınması tercih edilmiştir.

Anahtar Kelimeler: Ahkâmu's-sûk, Yahya b. Ömer el-Endulusi, hisbe, hisbe kitapları, İslam ekonomisi.

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HISBA LITERATURE AS A SOURCE OF ISLAMIC ECONOMICS AND YAHYA IBN OMAR AL-ANDALUSI'S AL-AHKAM AS-SUQ

ABSTRACT

Hisba and/or *al-Ahkam as-Suq* literature take place among the sources that should not be left out of account considering economy studies. The works published in this field directly covers the regulations related with the social and economic life. *Hisba* sources have a rich content regarding the cultural and social relationships of Islamic cities, economic conditions, market, the management of purchase and sales in the market and the market regulations of the state. The *hisba* works/books can be analyzed in two groups. The first group of the works is theoretical studies which explain how a market should be organized in an Islamic city. The second groups of *hisba* studies on the other hand, directly covers the practice, the solutions offered for the problems emerged during practices. Both groups of works reveal how the market should work in an Islamic system and offers theoretical and practical advices. All these suggestions serve to the aim of establishing the general balance (equilibrium) of the social system. As the imbalance in the system stemming from any reason would lead to the chaos of social order, conflicts among groups and disintegration, there is a need for the establishment of an effective structure which takes the political, social and economic needs of all social groups into consideration. And *hisba* books handles the subjects related to social and economic realms. They overwhelmingly contain rules/findings regulating the relationships between the firms and the consumers, determining the role of state in the market and protecting the order of market. In this study, Yahya b.Omar al-Andalusi's book *Al-Ahkam as-Suq* which is known as the first *hisba* book has been analyzed. The book consists of the fatwas decreed for the questions addressed to the author. In the analysis of the book instead of covering all the details, it is preferred to handle the issues such as market structure, state-market relations and price formation which are considered among the basic concepts of economics.

Key Words: Al-Ahkam as-Suq, Yahya b.Omar al-Andalusi, hisba, Islamic economy, economic history.

INTRODUCTION

The intellectual heritage of the Islamic world gives one the possibility to have access to rich resources in every field. This heritage of written sources involves invaluable literature for the studies to be conducted in the discipline of economics. The sources at hand are the sites of the practical applications of the period they have been written in addition to being references for social and economic mentality of those times. At the same time they own the features of guiding the studies in the field of economics but especially in Islamic economics.

It is not possible to reject the significance of the *hisba* or *al-Ahkam as-Suq* literature within the studies of Islamic economics. *Hisba* studies directly treat the issues about social and economic life. The *hisba* literature consists of detailed information regarding the social and cultural relationships in Islamic cities, economic conditions, administration of exchange affairs, market and the market regulation of the state. These works reveal how the market should work in an Islamic system and offer theoretical and practical advices. The target of these advices is the conservation of the general balance/equilibrium of the social system. Due to the fact that the imbalance in the system for any reason would lead to the chaos in the system, conflicts among groups (classes) and disintegration it is targeted to establish an effective structure in which political, social and economic needs of all social groups would be taken into consideration. The *hisba* institution serves to the establishment of the balances in religious, social and economic realms within the social system. The works in *hisba* field treats the issues related to religious, social and economic lives of the society.

In this study, the book of Yahya ibn Omar al-Andalusi, "*Al-Ahkam as-Suq*" which is accepted as the first *hisba* book is going to be evaluated. *Al-Ahkam al Suq* that was written in the third century after Hegira is an important work as it is the first independent book written in that field. The book reflecting the views of Maliki School was written with a practical approach. The book consists of the fatwas given to the questions addressed to the author (Yahya ibn Omar al-Andalusi). In the analysis of the book the concepts of economics are going to be utilized. Through the analysis, instead of covering all the details, the content that could be treated within the framework of economics has been selected. The basic fields of analysis have been the definition of the market in that era, the basic qualifications of the market, state-market relationships and the price formation in this work.

1. *HISBA* AS AN INSTITUTION

2.1 *Hisba* and *Muhtasib*

Hisba occupies a significant place among Islamic state institutions. Ibn Khaldun considers the execution of *hisba* affairs as a religious obligation. This obligation is basically the responsibility of the ruler. He is responsible for assigning proper people for this position. We can deduce from the definitions of *hisba* and the responsibilities of *muhtasib* that the field of services for the *hisba* institution is quite expansive. If we run an eye over the explanations of Ibn Khaldun regarding the responsibilities of *muhtasib*, we see that *hisba* organization is responsible for the execution of many orders related to religious, social and economic life in a Muslim society.

According to Ibn Khaldun the person assigned as *muhtasib*, together with his associates, investigates the improper situations or wrongdoings and prevents them to be done and punishes the agencies. The *muhtasib* maintains the people to act in accordance with the general benefit of the city. The *muhtasib* controls many issues such as preventing the streets to be kept narrower, avoiding the overburdening of the animals, removal of the unnecessary stuff on the roads, the inspection of the teachers at school etc. The issues related with the order of the market are also under the authority and responsibility of the *muhtasib*. The trials related to the frauds in measures and scales, price issues, cheating and deception are among the charges of *hisba* institution and are tried by the *muhtasib*.

Similar to Ibn Khaldun, al-Mawardi defines the scope of duties for *muhtasib* in an expansive area. According to him, *muhtasib* maintains the good to be done by ordering them while preventing the evil to be done (Al-Mawardi, 1985). In this respect, it is understood that for al-Mawardi, *hisba* is the institution for prescribing the good and preventing the evil. Al-Mawardi puts the duties of *hisba* institution into three categories which cover this comprehensive definition. First category includes providing the obligatory religious services to be done, maintaining the building and the care of worshipping places, preventing the forbidden acts which stems from religious duties and related with the rights of God. The second category includes the duties related to human rights and implies the public duties such as building and maintenance of the roads, of the water channels, repair of the city walls etc. Among these it is possible to count the fulfillment of intra-individual responsibilities such as the maintaining the people to pay the living allowances for the relatives they are obliged to care for. The last category covers the duties including both categories and referring to duties such as respecting the *iddah* (period of waiting) for widowed women, protection of the rights of slaves and animals, keeping the streets clean and preventing the construction of the buildings harmful for the public etc. (Al-Mawardi, 1985)

The establishment of this institution which bears such important duties in Islamic societies relies upon Quran and the hadith of the Prophet. As evidence to the necessity of the foundation of *hisba* institution the 104th verse from the surah of Ali-Imran is referred. “And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful.”

Despite the fact that *hisba* as an institution developed in later times, its existence is justified and rested to the era of Prophet. Hence the first *muhtasib* is considered to be the Prophet himself. Prophet Muhammad has determined the first market place in Medina and supported its establishment. The following account regarding the establishment of the market in Madina is important as it depicts the sensitivity of Prophet himself on the selection of market place, the rules would be enforced in the market and increasing the demand for the market.

According to the report of Omar ibn Shabbah, when Prophet wanted to establish a market place (for Muslims) in Madina, he first went to the market of Banu Qaynuka Jews and then came to the land where the market of Madina had been established and had been used then and said: ‘Here is your market; no one will be left in hardship or oppression here and no one will be asked for market place tax…’ There was a market in Zaba’la in Yathrib region gathering around Ru’ma well of Madina before Islam. There was another market in al-Jisr quarter for Banu Qaynuka members and a separate market in al-Asbah and al-Safarih quarters. Also a market was settled on the road called Ibn Hayyayn Street. This existed before Islam and also active when Islam came and the region had been called Muza’him. Prophet had pitched up a tent and said: “This is where your market will be settled”. Then Ka’b ibn al-Ashraf (one of Banu Nadir Jews) came, get into the tent and cut its ropes. Then Prophet said: “I am certainly going to move this market to a place where will make him wilder.” After transferring the market to the place where current Grand Bazaar of Madina resides he commanded: “Here is your market, do not own permanent and stable corners or places here (that is to say every morning let the early comer settle his/her place and start his/her trade), there will be no tax here.” (Hamidullah, 2003)

This market place had been founded on a smooth area. Therefore a person who came there for shopping could easily see the every point of the market without any obstruct. (Essid, 1995) In this way, it could be possible for one to be aware what is going on in the market. At the same time the market place was in the center of Medina, close to the mosque and on the way to the entrance and exit to the city. (Ibid) Prophet especially cared while selecting the market place that it would be a place where everybody could meet their needs comfortably. On the other hand, the ability to view the market place from one end to the other provided the transparency and facilitated auditing. Another feature of that market was the lack of one tithe market tax that was prevalent at Arabian bazaars then. Thus, doing business without an extra cost for the sellers made this market more attractive. It can clearly be seen that Prophet who also previously dealt with trade and had been a reputable tradesman among his people had precisely detected the needs of the commercial world through the way he followed in determining the place and the rules of the market. Prophet displayed the same rigor with the supervision of the bazaar as with the selection of the place. He often used to go to the bazaar and inspect the craftsmen. Once Prophet realized that the wheat was wet when he put his hand into the product while he was checking a wheat seller. When he asked the reason the seller told that it got wet because of the rain. Prophet told him to bring the wet products to the surface in order for the people to see it and added: "The one cheating us is not one of us (our community)" (Muslim, *Kitâbu'l-İman*, 164 (102)). Prophet also assigned some people to do this job besides he personally inspected the bazaars. (Kavakçı, 1975)

After Prophet the inspection of the bazaars continued. In the period of rightly guided caliphs, the caliphs themselves inspected the markets like the Prophet. And they also assigned people to do this job. Similar to other political/state institutions *hisba* also began to take its institutional shape in the era of second caliph Omar. In the following periods, this institution has been existent in every Islamic city with the names such as "*sahib al-shurta*, *sahib as-suq*, *hisba* and others.

Similar to the other Muslim states, *hisba* organization had an important place in economic life for the Ottomans. While the exact date of the foundation of *hisba* establishment in the Ottoman state is unknown, it is widely accepted that it existed since the time of Osman Beg (the founder of the Ottoman state). The head of the hisba establishment was called *ihtisab ağası* (ihtisab chief) or *ihtisab emini* (ihtisab trustee). After the conquest of Istanbul by Mehmet II, the eighth of the judicial officers assigned to keep the social and economic order of the city have been the *ihtisab* chief. There was an *ihtisab* code for the *ihtisab* establishment to run its business. The position of *ihtisab* chiefdom or trusteeship continued to exist in Ottoman Empire till 1826. In 1826 the Ministry of *Ihtisab* has been founded and *Ihtisab* minister has been assigned as its head (Kazıcı, 1987).

2. 2 *Hisba* literature as the source of economics

As a result of the institutionalization of *hisba*, the books covering the issues which underline the duties and responsibilities of the *muhtasib*, explaining the legal regulations for social and economic life, including the rules and regulations to maintain the order of the market, guiding to the purchase and sale, answering the questions in these subjects began to be authored. In this way, the *hisba* literature came into existence.

It is possible to study the *hisba* literature in two groups. The books in the first group have a legal aspect. They consist of the general definition of the *hisba* establishment, the necessity of such an institution and the duties of the *muhtasib* (Dien, 1997). These books also include some practical advices for the *muhtasib*. The books of Ibn Taymiyyah and al-Mawardi are among the examples of this first category of the literature. The books in the second group mostly consist of the resolutions of the *muhtasib* to the problems he faced with, the advices and fatwas given to the questions addressed to him (Ibid). The details regarding the post of *muhtasib* and all situations faced in the course of duty are covered in these books. It is understood from the fatwas that the most important concern of the *muhtasib* is to sustain the balance of the market. *Muhtasib* punishes the cheater, controls the measures and scales and maintains the standards, checks the standards of the coins, prevents the fake coins to enter the market. The book that we are going to analyze in this study is an example for the books in the second category of *hisba* literature.

The *hisba* literatures are invaluable documents for the researchers studying history in general and social and economic history in particular. *Muhtasib* is the executer and supervisor of the religious, social and economic principles of Islam. In this regard, the *hisba* literature is the sources that contain profound knowledge regarding religious, social, cultural and economic life. The reason behind the formation of these books is not the guidance to the tradesmen. They are prepared to guide the officers responsible for the auditing and the inspection of the market in their job. The books includes the trading styles, the rights of producer, seller and consumer, the illegal situations stemming from the trader's acts beside enlightening the *muhtasib* for regulating the market (system).

The use of *hisba* literature by the economy historians will provide a rich content for better understanding of economic structure in Islamic cities. Firstly these books reveal how the religious, social and economic structure of the Islamic city had been imagined. They display the influences of geographical closeness and remoteness in the structuration of social life. It promotes the recognition of common cultures in close geographies and differences in remote geographical spaces. It is possible to trace the change that had come up with the changing time on decrees and running of the market via these books. Besides, it is also possible to see the unchanging universalistic principles reflecting the unity of Islamic societies irrespective of spatial and chronological differences among them.

Another advantage of *hisba* books is their helpfulness for economic analysis of the market mechanism. They offer information on basic issues such as market, the qualifications of the ideal market and price formation. We can classify the functions of *hisba* establishment as follows: regulation of the religious life, maintenance of the political stability of the administration, maintaining the maximum efficiency in the market through inspection/regulation, conservation of social unity/integration, promotion of social peace by the preservation of economic order. In this regard, these books reveal the role of political will over the market control and the limits of this will and explains the state-market relationships.

Hisba literature usually contains the subject matters classified under microeconomics. Unlike the *Kharaj* and *Amwal* books, these books do not contain the issues related to public funding and taxes. The issues that we meet in *hisba* literature are the issues of microeconomics such as production, consumption, market, goods, price and interest etc. In this regard, *hisba* books do not only appeal to the interests of social and economic historians but also provides rich materials for the scholars studying economics in general and Islamic economics in particular.

2. YAHYA IBN OMAR AL-ANDALUSÎ AND HIS *AL-AHKÂM AS-SUQ*

3. 1 Yahya ibn Omar al-Andalusî

His full name is Abû Zakariyâ Yahyâ ibn Omar ibn Yûsuf ibn Âmir al-Kinânî al-Andalusî. He was born in 828 (AH. 213) in Andalusia. He originally comes from Jaen (Ceyyan) but he was grown up in Córdoba. Yahya ibn Omar who started his education at an early age in Cordoba, did not stay long in Andalusia and traveled throughout several Islamic countries and took courses from the scholars there. Among the places he traveled we can mention Egypt, Hedjaz, Iraq and Africa (Al-Andalusi, 2011).

Yahya ibn Omar was among the prominent scholars of Maliki School. The authors wrote about his life speak his scientific/scholarly extent in high terms. His superiority in memorizing has widely been appreciated. According to him, the knowledge is first preserved and then transferred perfectly through memorizing. Therefore Yahya ibn Omar used to stay away from debate, did not join discussions and did not answer the questions addressed with the motive of argumentation. He taught many students from and outside Africa. In the books about his biography the abundance of the students attending his lectures in *Kayrawan* and *Susah* mosques are mentioned. These books also include the names of his students who became famous scholars.

Yahya ibn Omar not only raised students but also authored many books. Most of his books are lost during time. It is possible to count his books survived till now: *Al-Ahkam as-Suq, al-Kitab al-Montakhabeh, Ikhtilaf al-Ibn al Qasim wa'l-Ashab, al-Fadail-al Wudu' wa's-Salat, al-Kitab an-Nisa, An-Nazar ilalahi tabarakah wa taala Yawm al-Qiyamah, al-Kitab al Mizan, al-Kitab al-*

Waswasah, al-Kitab al-Sirat, al-Kitab al Ahmiyah al-Husun, Fadail al-Munastir wa al-Ribat, al-Kitab al-Redd ala al-Shafi, al-Rad ala al-Shuquqiyyah, al-Rad ala al-Morjiyyah, an-Nahy an Huduri Masjed al-Sabt.

Yahya ibn Omar passed away in 901 (h. 289) in Susah. He contributed to the teaching, defense and the expansion of Maliki School during the era he lived. He is one of the prominent and leading jurists of Maliki School. He put great effort for raising many scholars in Africa and Andalusia (Ibid).

3. 2 *Al-Ahkâm as-Suq*

The book which is widely known with the name of *al-Ahkam as-Suq* has also been called with different names. In the first manuscript the names "*al-qavl fi ma yanbaghi fihi min al-eswaq*" and "*al-Nazar wa'l-Ahkam ala asar al-Muslimin fi'l-Mavazin wa'l Zibat wa Jami' ahvali Aswaq al-Muslimin*" are mentioned. In the second manuscript the titles of "*al-Ahkam as-Suq*" and "*al-Aqdiyah as-Suq*" are found. Ismail Khalidi who wrote a detailed dissertation on the book presumes that it has been written on the last quarter of third century after Hegira (Ibid).

There is no doubt that the book belongs to Yahya ibn Omar al-Andalusi. The only book of the author reached today completely, is this book. The book consists of the answers given to the questions addressed to the author. The book is considered to be the first independent work on *hisba* field in the Islamic world.

There are two manuscripts of *al-Ahkam as-Suq* one in Africa and the other in Andalusia. The African copy is passed through Abu Jafar al-Kasri. This copy was printed and published by Farhad Dashravi, faculty member of the Faculty of Letters at University of Tunisia in 1975. Its Andalusian copy is reported by Ibn Shibl. Al-Vansharisi conveyed this copy in his work *al-Mi'yar* in which he collected the fatwas of Andalusian and Maghribi scholars. Also this copy was published by Mahmod Ali Mekki in al-Sahifah al-Ma'hadi al-Misri (Ibid).

Al-Ahkam al-Suq is the first independent work written on *hisba* field. It contains rich information about the market regulation, the rules of the market, purchase and sales issues, the goods in the market etc. In this respect it offers a general overview of the social and economic life of its time.

3. MARKET STRUCTURE IN *AL-AHKAM AS-SUQ*

The market is defined as the space where the ones who want to purchase a good or service and the ones who want to sell it come together. There is no need to a place for the market to come into existence. Nevertheless, the market occurred in the period that we are investigating and remaining under the scope of the duties of the *sahib as-suq* (market owner) implies the place where the sellers and the purchasers physically come together. However, this market should not be considered as a simply structured place where brings few craftsmen together. It is a place where consists of commercial institutions developed within a certain commercial model and where the relationships of the institutions with each other and with the state is defined. It is administered according to a certain hierarchy, rules and regulations. (Essid, 1995)

In the world of economics there is a common definition for the market. The bazaar and the markets of that period are also economically markets which brings the suppliers and the purchasers together. Then we can search for the answer of the question for Yahya ibn Omar that how an ideal market should be. When the fatwas in the book are examined, the basic conditions of an ideal market can be concluded. We can enlist them as transparency, non-existence of monopoly and cartels, prevention of forestalling, prevention of unfair competition, avoiding the cheating and the sales of *haram* (religiously forbidden) products.

4. 1 Transparency

Many fatwas that we see in *al-Ahkam as-Suq* emphasizes the issue of transparency. We mean by the transparency, that all purchasers and the sellers would have a full knowledge about the goods, the qualities and especially the prices of goods in the market. It is possible to refer many examples about the subject.

It is asked to Yahya ibn Omar that it would be possible to sell the products sold with scale like barley without any standard and with measures determined by the craftsmen. In such a case some of the craftsmen use larger some others use smaller scales. Therefore the measure of each may differ from each other. Yahya ibn Omar answers that the market of Muslims cannot work in this way. He says that the units of measure and scale have to be known by everybody and to have a general standard determined by the authority (Al-Andalusi: 99-100). The use of the same standard in the whole market and availability by everyone to these standard measures is one of the conditions of the transparency of the market. Hence, the consumer can properly know which product, at which quantity is sold at what price. The suppliers also learn which product can be sold at what price and which amount properly. This situation prevents the lack of information and unfair competition which would occur in a market without standard.

When the fatwas related to money and the ones that implies the miller could get a definite payment for grinding the grain are read together, (Ibid:104) it is understood that similar to the standardization of measures and scales, the prices of definite services are also defended to be standard. In this case, the suppliers and service providers get the payment of the product they sold or the service they provided at an amount in force in the whole market. The consumers pay a certain amount for the service they bought.

Other examples related to the transparency of the market are the fatwas about the promotion of definite standards in the products, providing the purchaser full knowledge related to the product and the prevention of deceitful image and the knowledge. It is asked to Yahya ibn Omar if dry foods such as wheat, beans, lentil, pea etc. have to be sifted before sale or not, in his response he says that they have to be sold after sifting (Ibid:117). The reason behind selling these products after sifting process is clear. They are picked over and cleaned from foreign substances in it such as hay, dirt, gravels and from rotten and poor quality grains. Thus the consumer gets full information about the product s/he bought. Again, Yahya ibn Omar says that the sellers have to be prevented from selling figs by cleansing them with butter or oil (Ibid: 117-118). Thus the seller is prevented from displaying his/her product different than its equivalents by doing deceptive advertising.

In another fatwa it is said that the person selling the sheep milk and cow milk by mixing them had to keep the buyer informed in this issue (Ibid: 134). If the seller is not selling pure sheep milk or pure cow milk and mixing these with each other, s/he has to keep the buyer informed about that. If one is selling the cream and the fat by mixing each, this also has to be declared (Ibid: 135).

On the issue of selling the old and new olive oil by mixing, (Ibid: 139) Yahya ibn Omar gives fatwa if and only if that would be possible if there was no difference between the quality of the products and by declaring it to the buyer (Ibid: 140). The seller has to openly declare to the buyer that the product is a mixed one. Even if the old oil mixed with the new oil had been better qualified, it has to be declared that the product is a mixture. Only in this way it would be possible for the buyer to have complete and true information about the products/goods supplied in the market.

It is possible to increase the examples on this issue. The fatwas in these examples explain that the seller and the buyer have to be provided with complete information regarding the products/goods. To catch a certain standard in the measure and scale units, the standard feature of the payment for a good or service in the market, the open declaration of the qualities and features of the goods, declaration of their ingredients etc., serve to the promotion of the transparency in the market. In this way, the buyers and the suppliers get accurate and full knowledge about the market and could learn which amount of which product is sold to what price.

4. 2 Banning monopolist tendencies and cartels

The second important aspect of the market is not to give permission to monopolist and cartel-like structures. Monopolistic steps such as emergence of a single person as the sole supplier of a certain product and controlling the market alone and circumvents the healthy functioning of the market. The monopolist's power to determine the price as s/he wishes leads to the dearness. Such a situation does harm the social wellbeing. Similarly, when the firms working in the same sector come together and form a cartel to control the supply and the prices of certain goods brings unfair competition and give damages to the consumers. It prevents other suppliers to enter the market. The formation of a fair market system which preserves the social balances is hindered. Especially the monopolistic tendencies and cartel formations for basic needs of the society such as food, brings serious damages to large segments of the society. What is expected from an ideal market is the free supply of the goods by the suppliers without harmful cooperation among themselves for the functioning of the market and selling their goods to the equilibrium price as a result of the supply and demand processes.

Yahya ibn Omar explains that the craftsmen's coming together and agree upon selling their goods to a price determined by them would harm to the people and corrupt the market (Ibid: 114). He also states that this is unacceptable and these actors have to be taken from the market (Ibid: 114). According to him, tradesmen's cooperation to form a cartel and to determine a price and sell their products to that price leads the market to corruption and harms to the social order. Such situations depraving the balance of the society have to be counteracted.

Yahya ibn Omar was asked if craftsmen like butcher, grocer, small dealer etc. could withdraw from the market for one or two days in favor of one among them. In such a day when other craftsmen withdrew, only the person who got the permission will sell. Here, the aim is to help the colleague who wants to finish the goods in his hand or to meet his urgent needs for some reason like marriage etc. This person cannot make any sales in the price of the product he sells and sell it to the normal (previous) price. The consumers will buy from that merchant as there will be no other supplier in the market. Here, in this case, Yahya ibn Omar says that it will not be permissible in cases that would be to the disadvantage of the public. However, if there is no damage or disadvantageous situation for the people then it can be permissible (Ibid: 147-148).

The example we mentioned above is not an effort to directly form a cartel in the market. Besides, as it enforces the people to buy the product supplied by the single supplier and removes the alternatives from the market it is contradictory with the general order of the market. Therefore it is not permitted. However when the solidarity and mutual aid is at concern, there is an open door in the fatwas. With the condition of the people not to be harmed and temporarily such an act can be permitted. If this happens permanently it will be strictly forbidden as it will lead to monopoly and harm the market.

4. 3 Prevention of *Ihtikar* (Hoarding)

Maintenance of the price stability in the market and to prevent the unnatural rises in the prices is important for the market to work properly and the social balances to be kept regularly. One of the situations which corrupts the natural working of the market and leads to artificial price rises is *ihtikar*.

Ihtikar is to give occasion to price rise by leading to the fall of supply in the market by stocking the products, especially food products. The aim of the hoarder is to gain large benefit by providing the prices to escalate. The hoarding not only corrupts the market but also negatively affects the society and lead to social depressions.

The damage of the hoarding to the market cannot be limited by certain regions. Due to the move of the products from the places with lower prices towards the places with higher prices, there occurs shortage of products at places where the prices are lower. The shortage is the main reason for price rise. Especially in the times of crisis and when the production is low, this behavior of the hoarders has an impact to exacerbate the crisis. In case of shortage the lower and the middle classes of the society which constitutes the larger segment of society cannot meet their basic needs or hardly meet them. If this unfair situation cannot be avoided, the social crisis or depression becomes inevitable.

Due to the damages it brings, hoarding is an undesirable action and the hoarder is an unfitting person for the market of believers. Prophet has many hadith on the evils of what hoarders do. His fellows also put efforts to prevent hoarding. If we remember here that Islamic economic system is a supply based economy which targets providing abundant supply in the market and to prevent shortages (Tabakoğlu, 1994), the conflict of hoarding with this system can completely be understood.

There are fatwas in *al-Ahkam as-Suq* regarding the prevention of hoarding. Yahya ibn Omar says that in case of harming people by hoarding the foods the goods of the hoarder has to be confiscated and sold in the market. The capital of these goods is paid back to the owners, and the profit is distributed among the poor as a lesson to them. If they repeat this act, then sanctions such as beating, exposure and imprisonment are applied (Al-Andalusi: 198-199).

Yahya ibn Omar asserts that the Bedouins bringing their products to sell in the market have to be prevented from selling their goods in the hostels and inns and to sell them in the market for everyone to be benefited. When a Bedouin asks him "I suffer a loss because of shopping at smaller units, it extend my stay in the city, when shall I turn back to my town? I cannot stay longer than a few days, what if I have to stay more than a few days?" he suggests to the Bedouin "Decrease your price and sell your goods quickly in the market and go back to your home. It is understood that in case of staying longer if you suffer loss you sell a demandable good. And you want to sell it quickly and to go back to your town. In this case, do not do that, because it harms the Muslims. Instead be patient, sell your goods with current price in the market and this would not harm the people." (Ibid: 199-201). One of the reasons behind preventing the goods coming to the market from outside to be sold outside the market is to avoid the hoarding. The hoarder who will stock the products with high demand in the market by purchasing it before it entered the market, causes to the shortage and rise in the prices. In this case, both the producer sold the product before entering to the market and the consumer buying it from the hoarder, suffer from damage.

He is asked if a person who bought his annual needs without the intention of hoarding could sell it in case of rise in the prices. He answers that this would not be possible (Ibid: 201-202). This is because even though the intent of this person is not hoarding he wants to profiteer from an artificial rise in the prices. And this sale is to the disadvantage of the public. Therefore such a sale cannot be permitted.

4. 4 Not to allow cheating and unfair competition

One of the causes behind the malfunctioning of the market is unfair competition. Unfair competition affects the transparency of the market and causes to the obscurity. It brings the deception of the consumers and the suppliers. The ones entering to an unfair competition create demand for their goods, increase their sales and derive improper benefit by exploiting this situation. Such a situation is not desired in a transparent market. The unfair competition which usually occurs with the misuse of right to compete and to harm others might emerge in different ways or styles. In each of these, use of a right which is not in fact belonging to the party against another party or display of a non-existing superiority is at stake.

To deceive the people in exchange of goods with different methods lead to unfair competition. Many acts such as showing the non-existing aspect of a product as if it exists, or considering a lower quality product equal with a better quality one, making fraud in measures and scales, and deceptive advertising causes to unfair competition in the market. Deception and unfair competition are also related with the transparency of the market. It is impossible to talk about a transparent market where these acts exist.

Most of the deceptive acts are related with unfair competition. For example, a dealer selling a deficient product not only deceived the consumers but also derives improper benefit by misusing the competition right against other suppliers. The dealer who sells the low and high quality products by mixing with each other not only deceives the consumer but also causes to other dealers to suffer damage. We see many fatwas in *al-Ahkam as-Suq* which forbids deception and unfair competition. Instead of mentioning all we are going to refer some of them here.

Yahya ibn Omar is asked if the bakery sells improperly cooked or low weight bread to the dealer who is going to be the one to be punished. He says that if the dealer is aware of the defects of the bread before buying it, both has to be punished. He asserts that the one selling improper bread had to be punished and expelled from the market of Muslims because of his crime (Ibid: 124-126).

He is asked about the situation of the baker who mixes the low quality flour into the flour he uses for baking. He says that the person doing this despite a warning in the first time has to be punished and expelled from the market (Ibid: 126-127).

Yahya ibn Omar passes what he took from Haris ibn Miskin and he from Ibn Vahb. And Ibn Vahb quotes from Malik ibn Anas. To Malik it is asked about the person who rubs pitch on his scale in order for the measured good to weigh more. His answer is to punish the person and to expel from the market (Ibid: 129).

With the same quotation chain above, Yahya quotes from Malik. It is asked to Malik about the situation of the person who adds lower quality food- not a forbidden one- into a better quality food. He says that "He does this in order for that low quality product to be sold" and adds "He corrupts that product. The Almighty God said: "And do not pick the inferior things to give away, when you yourselves would not accept it except with eyes closed. (Surah al-Bakarah, verse: 267)" He thinks he earned something but harms his religion (faith). These people have to be punished. This is deception. They have to sell the two products separately." (Al- Andalusi: 131)

In another fatwa Yahya ibn Omar tells that selling of the dates which picked before maturation and poured vinegar over it is forbidden even if this is explained to the customer as it is a harmful method for the health of human beings (Ibid: 148-149).

4. 5 Avoiding the sales of *haram* (forbidden) goods

Another aspect of the ideal market and could be derived from *al-Ahkam as-Suq* is not to permit the sale of forbidden goods. Despite the fact that Islam left a large space for the people in their practices, it has forbidden to do some deeds and to utilize from certain goods. These kinds of deeds should not appear or take place in the market of the Muslims. Similarly the sales of religiously forbidden goods are also forbidden in the market for sale.

The decrees related to the prohibition of the sales of haram goods take place in *al-Ahkam as-Suq*. The reporter quoting the book of Yahya ibn Omar says that some of the *kadis* (jurists) of Abdullah ibn Ahmad ibn Talib wrote letters to him and stated “Some copper pots are used for making wine. These pots cannot be used for another usage and they are also hired for making wine”. He replied the jurists “If these pots are not used for any other reason except making wine then break them and give the copper of them to the owners. Prevent the ones making and selling these pots.” The reporter asked Yahya ibn Omar “Do you agree?” and “Yes, I agree” he replied (Ibid: 163-164).

It is asked to Yahya ibn Omar about the slippers making sound: “Are the shoemakers prohibited from making these slippers? Women buy and wear these shoes and they make sound. They wear them in the bazaar and public places. Sometimes a guy can hear the voice of those shoes and raises his head while busy with his work. Are the shoemakers prohibited from making such shoes? If they continue to make them even though it is forbidden what to do in this situation? Are the women prohibited from wearing these shoes?” Yahya ibn Omar issued the fatwa “The shoemakers are prohibited from making rattling, slippers; if they continue despite the prohibition they are punished. And women are also prohibited from wearing them.” (Ibid: 171-173)

4. THE ROLE OF THE STATE IN THE MARKET REGULATION

We emphasized the necessary conditions for healthy functioning of the market by getting inspired from the fatwas in *al-Ahkam as-Suq*. The second important question here is what the role of state in the regulation of market would be. Is the state intervener in the formation of the market? What is the role of the state for the market to gain the qualifications above and to preserve them? What is the role of state in the functioning of the market?

One of the basic functions of the state in Islam is to sustain justice in the society. The state is responsible for sustaining the social and economic justice among the citizens and to make necessary legal and institutional regulations. Maintaining the necessary order in the markets, establishment of the necessary institutions and taking the necessary measures for well-functioning of the market, making the regulations for the conservation of the rights of the sealers and the costumers, prevention of the organizations which disrupt the proper functioning of the markets are counted among the duties of state to sustain the social justice.

For Yahya ibn Omar the role of state in the market regulation is crucial. Therefore he starts his book by explaining what the ruler should do in order to sustain the order in the market:

> A justice-seeking governor has to inspect the market of his people and to assign the most trustable person of the country for this position. This person controls the measures and scales, weighting units and all scales. If there appears anyone changing these, he punishes that person in accordance with his crime. Then he expels him from the market till he becomes regretful and adopts the right behavior again. If he (inspector) does this it is expected that may God forgive his sins and smoothen the business of his people (Ibid: 95-96).

> The governor inspect whether there are fake coins or coins with copper in the market. If he finds such people, either individual or group, he strictly punishes them. He orders them to be exposed to the society and then imprisons them for some time. He takes promises for the preservation of the standards of the money from the craftsmen in the bazaar. This is the wise way for the governor to protect his people and to do well for their world and other faith. It is expected them to get closer to their Lord (Ibid: 96-97).

As it is understood from the quotation, the role of the state in market regulation for Yahya ibn Omar is the supervision and the establishment of necessary organs for auditing. The state has to have a strong role in the control of the market to function properly.

If the market is left by itself without auditing/control, it might be subject to several interventions from inside and outside. This obstructs the normal functioning of the market and depraves its balance. State has to intervene in this situation and end the action corrupting the market. Otherwise this situation to the benefit of certain individuals and groups might cause to the harm of other purchasers and sellers.

The state is firstly responsible for the foundation of a transparent market system. Hence the purchasers and the suppliers can have proper knowledge about the goods and services. In order to sustain this, the first step is the maintenance of standardization in measures and scales. In the market standard units are used. The equivalence in the payment of the goods and the services are also similarly standardized. State put efforts for the standards of the goods in the market and bans the deceptive advertising for preventing misinformation about the product. He establishes the necessary mechanisms to protect the transparency of the market and fulfills its duty of control.

In an ideal market, it is expected that monopolies and cartels not to emerge. Sometimes a dealer can tend to be the sole supplier of a certain good or service and to make extra profit. Sometimes the supplier of a certain good might come together and to form a cartel to gain excessive profits. The state must not permit such formations. Preventing the forestalling is also among the market supervising duty of the state. The forestaller makes stocks in order to increase the prices artificially and to profiteer this situation. The state has to prevent the forestaller and the artificial price rise.

To prevent the religiously forbidden goods to be sold, to prevent the deception and unfair competition, doing the necessary regulation on monetary fields are among the duties of the state. The state sustains the order of the market by its supervising mission and sustaining it through the institutions it created. The price formation in the market and the role of state in this field will be treated in the coming parts, so we do not refer this issue here.

Yahya ibn Omar not only assigns the control and supervising duty to the state but also hold the people responsible for it. In case of lack of a governor to make the control or when the government lacks fulfilling this duty, the community elects people among experienced, learned and wise people and delegates this authority for the control of the market to these people (Ibid: 103). In the past, several craftsmen organizations were founded in Islamic societies. These organizations found among the craftsmen also provided the solidarity among them. At the same time these organizations fulfilled the duty of supervising the market in many issues from prices to quality and functioned as a link between the state and the craftsmen. The *Akhi* organizations (guilds) in the Saljukids and craftsmen unions in the Ottomans are the products of this mentality. These organizations were established for sustaining internal supervision besides mutual aid and solidarity. Duties such as determination of the prices, determination of the goods and standards and price control were fulfilled by these organizations. Another mission of craftsmen organizations was to regulate the relationships between the state and the craftsmen.

5. PRICE FORMATION

How the prices would and should be formed in the market, the role of the state in price formation, the question whether the state would be able to intervene the prices are amongst the basic points of debate in economics. The issue of price was discussed by the Muslim scholars form the early times on. The main point of the debate has been whether the state would put restraint on the prices or not. In this issue the scholars followed two different paths. The scholars in the first group defend that the price formation has to be left completely to the market and determined by the supply and demand. The scholars in the second group defend the state to put restraint on the prices. Both groups support their views with hadith of the prophet and the practices of the fellow followers of the Prophet.

The price discussions are also treated in the *hisba* literature. These debates evolved within the framework of the discussions of the scholars. In the focus of the debates the issue of *narh* (officially controlled price) took its place. The thought that setting the prices free would cause extreme rise in the prices and this would lead to expensiveness, brought the debates of controlled price into the scene.

Like other *hisba* authors, Yahya ibn Omar also treats the price issue in *al-Ahkam as-Suq*. His views of price formation can be classified under two titles: Firstly price formation in a market with ideal qualifications. According to him, in such a market intervention to the price and controlled price policy is not true. Second is the price formation in a market with attempts to disrupt the balance of the market. In such a case the situation disrupting the balance of the market has to be intervened and then the prices have to be left their natural formation.

6. 1 Price formation in an Ideal Market

Yahya ibn Omar is asked for a fatwa regarding the price restraint applies to the dealers selling oil, honey, olive oil etc. In the question it is stated that when the prices are set free the people suffer from harm. He is asked to explain whether it is legitimate or permissible to put price control and if it is permissible how the person who pulls the prices down despite such a regulation should be punished (Ibid: 107). Yahya ibn Omar responds to this question with detail. In this answer we can see his view about price formation.

You want me to answer whether it is permissible to put *narh* (restraint) on the prices to the goods sold by Butchers, bakers and similar craftsmen in the market and people are in need of. You claim that in case of avoiding price restraint for these goods they harm people. For all the Muslims it is necessary to follow the practices of our Prophet. If they follow the *sunna* what they love comes for them from their gracious Lord. This is taught us in His Book by our Lord. The Almighty Allah reveals about the bumptious oppressors: “Had the people of the towns believed and turned righteous, We would have opened for them the blessings of the heaven and the earth; but they rejected the truth, so We seized them by what they were doing.” (Surah al-A’râf, verse: 96) In another verse it is said: “Had they observed the Torah, and the Gospel, and what was revealed to them from their Lord, they would have consumed amply from above them, and from beneath their feet.” (Surah al-Mâidah, verse: 66) which means the worldly blessings would be granted to them.

On the issue you asked me about there is a hadith of the Prophet. In this hadith reported by Anas ibn Malik, the people came to the Prophet and asked “O the Messenger of Allah, put a restraint on our prices” and he replied them “O people! The rise and the fall of your prices are in the hand of Allah. I do not want to be the oppressor on the goods and the souls of anyone.” (Al-Andalusi: 108-110)

Yahya ibn Omar, reports another hadith of Prophet from Ibn Vahb in order to clarify the issue. When the Prophet is asked to put restraint over prices he gets angry and says “The market (the prices of the market) is in the hands of Allah. He makes them rise and fall. But go and tell them (those stocking their goods) to bring their goods to the market, not hide and sell as they wish. I do not want to be judged because of such a practice I will bring about among you”. (Ibid: 110). Yahya ibn Omar also quotes the views of Malik against *narh* (price-setting) and he states that he agree with him and says that it is not possible to put control on price (Ibid: 112).

According to Yahya ibn Omar, if the market functions well the prices emerge according to the demand and supply and there must not be any intervention to this from outside. Any intervention from outside might cause to the malfunctioning of the market. The second hadith reveals that tradesmen should not hide their goods and sell them openly in the market. The artificial rises in the prices are not tolerated.

6. 2 Price formation in unfair competition, monopoly and cartel situations

While Yahya ibn Omar opposes to the restraints on prices in ordinary/natural progress of prices he also opposes to artificial interventions to the market and prices. According to him the prices that would be formed in an ideal market protects the social balance. However the disruption of the balance in the market and artificial price rises or falls with some interventions causes to corruption and damages the dealers and the consumers. These situations are not to be permitted.

Yahya ibn Omar, defends that if there is a consensus in the market without any artificial effect and if one decreases the price of that good he has to be expelled from the market. He thinks that in a balanced market the price occurs at the equilibrium point of supply and demand and the suppliers can earn a reasonable profit to meet their cost. If anybody attempts selling under this price, it will disrupt the equilibrium and will cause to negative side effects such as forestalling. The supplier selling under the price of the market may be planned to sell lower prices for a short period of time, removing other suppliers from the market and then form a monopoly. Then he could increase the price and sell with extreme profits. Or other suppliers can apply to forestalling by hesitating to sell their goods. In this case there occurs the price rise stemming from the shortage. After the rise of the prices the other suppliers also start selling their goods.

Therefore to the person who sells below the market price one should say "Either sell your goods at same price in the market or leave the market in order for the other suppliers to compete" (Ibid: 115). That is because other suppliers will hesitate to sell when they see one selling below their prices. They prefer stocking their products not to sell it with a cheaper price. In this case the consumer cannot find any alternative and buy the good with lower price irrespective of its price and quality. If this person is permitted to stay in the market this will harm the society and corruption and dearness will emerge (Ibid: 115). Yahya ibn Omar brings the practice of second caliph Omar as evidence to his view. When Omar ibn al-Khattab saw a person selling dry grapes under the market price told him "Either raise your price or get out of our market!" (Ibid: 116).

As he refused the suppliers to disrupt the price balance in the market by lowering the prices, he also refuses their consensus to sell their products to a certain price to earn more profit. He also says that consensus of the dealers and forming cartels would harm to the public and these people have to be expelled from the market (Ibid: 114). Similarly, according to him the goods of the forestallers causing price rise in foods and damaging people have to be confiscated and sold in the market. The capital of the goods paid back to the owner and the profit is distributed among the poor. If they do this again then they are punished with beating, exposure in the public and imprisonment (Ibid: 198-199).

We can summarize Yahya ibn Omar's view on the price as follows: The prices are set free in an ideal market where there is no monopolistic tendency, cartels or unfair competition. The price is determined by the supply and demand. In such a situation any intervention to the prices would harm to the balance of the market and causes to injustice. In the markets with monopolistic tendencies and cartels these formations are prevented. Monopoly, cartel and forestalling in the market are prevented. After removal of corrupting factors, prices are not intervened.

6. CONCLUSION

The *hisba* literature is important resources that would be able to get utilized in many fields with their rich content. These books directly deal with the issues related to the regulation of social and economic life. In this respect they provide the scholars and researchers of history especially social and economic history, a significant content. It is possible to get detailed information about the Islamic societies in the period those *hisba* books had been written. It is possible to get detailed knowledge on the issues about social life such as daily lives, social relations, traditions, social strata, clothing, eating and cleaning habits etc. for social historians. For the researchers studying economic history, they have a content that would enlighten the issues such as the structure of the markets and bazaar, ways of trading, the products sold in the market, the sectors, production systems, produced goods, seller and purchaser relations, state and market relations, the measures and scales at use in the period and money matters.

Hisba books do not provide content for only historians. They also offer significant knowledge for studies of economics and especially Islamic economics. We can see that these books cover many issues discussed by the economists. The issues directly discussed by the economics such as market, market structure, supply and demand regulation, production, consumption, price formation, state-market relationships etc. in the *hisba* literature. In the studies of Islamic economics, using the sources of Islamic history -primarily the *hisba* works would contribute to the field significantly and will provide authenticity to this field.

Al-Ahkam as-Suq of Yahya ibn Omar that we analyzed in our study is a book that should not be overlooked due to its rich content and being the first independent work in this area. In this study, the issues in *al-Ahkam al-Suq* has been analyzed under three main titles; the structure of the market, state-market relationships and price formation. According to *al-Ahkam as-Suq* the ideal market is close to the concept of today's competitive market definition and owns five basic features. The first of these qualifications is transparency. The three other features serve to the sustenance of the first principle, transparency. The fifth is related with the prohibitions of the religion. These four principles are; the lack of monopoly and cartel, prevention of forestalling, prevention of unfair competition and prohibition of the sale of forbidden products.

When we look at state-market relationships, according to Yahya ibn Omar the role of state in the market is regulation and supervision. The regulation of the market, avoidance of the unfair situations, sustaining the continuity of the market and removal of the acts that will harm the ideal market and the inspection of the market are among the duties of the state.

The author defends liberalism in price formation. For him, the price is formed by the supply and demand factors in an ideal market. Such a price provides the suppliers with reasonable amount of profit and the consumers what they need. In this case, any intervention form within or outside disrupts the equilibrium of the market. And this is to the disadvantage of all the segments in the market. Then there should not be a price control in an ideal market. If there occurs monopolistic or cartel formations in the market, then the state should impede such a situation. After this intervention the prices are left to its natural formation.

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