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Legal Protection of Public Money in the UAE Legislations and Islamic Law

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Abstract--The study aims to assess the legal regulation and institutional framework for protecting and controlling public money in the United Arab Emirates, as well as comparing it with the provisions of Islamic sharia. The study begins with the concept of protecting public money, its importance, images, and types, and then analyzes the legal texts for the protection of public money in the UAE legislation and Islamic law. Then it identifies the challenges facing the protection and control of public money in the United Arab Emirates. The researcher relies in his study on the descriptive and analytical approach. The study reaches several results, the most important of which are: the UAE legislator protects the public money from any violation through a set of laws that forbid to dispose public money, its seize, or its acquisitive prescription. The study also reaches several recommendations, the most important of which are: the legislator has permitted to dispose public money in accordance with legal conditions and regulations. Thus, any disposal violation will be invalid. The study also recommends the necessity of continuous work on developing legislations that regulate and control the protection of public money in the UAE.

Keywords--Emirati laws, Islamic sharia, legal protection, public money.

Introduction

Public money enjoys double legal protection, civil and criminal protection. This is due to the situation it embodies in terms of allocating them to the public interest regardless the way its use, whether it is directly used by the public or by allocating it to serve a public utility. The UAE legislator, and the Islamic Sharia before that, stipulates this protection of public money by recognizing its inviolability and by imposing its protection on every citizen. Public money in general are money that belongs to the state, whether it is real estate or movable property that the state provides a protection for. On this basis, public money differs from private money in that the latter is owned by individuals. Public money in this study is a set of proceedings or actions that the state or lawmen can take to protect public money at its disposal that is intended for public interest. This protection could be constitutional, civil or penal, this is what we will explore in this study. We will also review the nature of public money and the general principles and laws related to public money and then the legal protection that was approved by the UAE legislator for public money in light of the provisions of Islamic Sharia, as follows:

Literature Review

Literature Review represents one of the most crucial parts of any scientific research. A scientific research is not proper nor integrated if it does not have the literature review section. Therefore, it can be said that literature review is one of the things that researchers and students pay a high attention to because of its importance as a major and significant element of scientific research. Here, we review the most important studies related to the subject of study:

- [Al-Khafaji \(2010\)](#), study entitled: Legal Protection of Public Money. In his study, the researcher defines Public Money, its scopes and types, and clarifies the criterion for distinguishing between Public Money and private Money. The researcher touches on the legal protection of Public Money by reviewing the constitutional protection and civil protection of Public Money. The author has followed the method of comparative scientific research in his research. At the end of the research, the author reviews the criminal protection of this Money in accordance with the provisions of Iraqi law and comparative Egyptian law.

The researcher concludes that the problem related to the tightening in some articles of laws providing for criminal protection of public finance is that these tightened laws will encroach the public money and compromise the entity of the state. The researcher recommends the necessity of the existence of a special law or any other legislative form that would specify the full legal protection of public money. The researcher also recommends the necessity of laying down rules to differentiate between public Money and private Money

- [Bin Haqsha \(2002\)](#), reviews in his study the public utilities and money of a state. He reviews the nature of public utilities and money in both Egypt and France, as well as reviewing the civil protection of public money in the countries under study.

The researcher also reviews the aspects of criminal protection for public utilities and money from an objective point of view. Moreover, he reviews the aggression on public utilities and money by non-specialized government employee. In addition, the researcher reviews the mechanism for protecting public money in Islamic laws. The researcher concludes his study by presenting the aspects of criminal protection of public money from a procedural point of view. The study concludes with a number of results, the most important of which are the crimes committed by the government employees. The study shows the deficiencies in comparative laws ([Khadija, 2017](#); [Al-Zoubi, 2016](#)).

It also concludes that the different legislations have singled out many laws against crimes against public utilities and money by the normal individual. The researcher recommends the necessity of tightening penalties to limit the spread of corruption crimes, and the necessity of developing new regulations that are proportionate and compatible with Islamic laws to protect public money, especially in this era when new forms of investment that benefit the state and citizens have emerged.

In her thesis for a master's degree, [Aya Akl \(2017\)](#), addresses the legal protection of public money in Palestinian laws and in light of the provisions of Islamic laws. The researcher explains what public money is, its sources, and its criteria. The researcher also explains the regulation of protecting public money in Palestinian laws compared to Islamic laws. Moreover, she explains the guarantees established by Palestinian laws and Islamic laws to protect public money. In addition to that, she explains the extent of the permissibility of disposing of public money by clarifying the conditions for the validity of this disposition and the authorities authorized to do so in accordance with what has been stipulated in Palestinian laws and the provisions of Islamic laws and in accordance with what is specified by the provisions of Shariah and jurisprudence.

The researcher has used the comparative method and the descriptive analytical method in her research. At the end of her study, the researcher reaches several conclusions and recommendations, the most important of which is that Palestinian laws and the provisions of Islamic laws have set laws protecting public money against any misappropriation. She also concludes that it is permissible to dispose of public money provided that it is to be in accordance with conditions and controls set by the law and Sharia. In the event that these conditions are violated, the ruling on these transactions is legal nullity. The researcher recommends a set of recommendations, the most important of which is granting jurisdiction over public lands to the Legislative Council. The researcher also recommends that the issuance of disposal of public lands is to be in accordance with laws since this matter is one of the sensitive matters affecting the components of the state and all generations as so any defect would consequently harm the public interest ([Zikry, 2005](#)).

What is public money?

In order for the state to be able to operate its various utilities and perform its multiple duties, it needs movable and immovable money to spend on the various aspects of its activities. This money is called public money or state money. In

order to accurately identify the concept of public money and determine the scope of protection set for it, it is necessary to define public money, determine its scope and types, and the standard that distinguishes it from private money of the state. The clarification of public money is as follows:

Public money

It is money owned by the state, whether it is publicly owned, over which the state exercises its authority in its capacity as the owner of public power, or it is privately owned by the state and is subject to the rules of private law. Another definition of public money is that it is a group of money that belong to a public authority. The definition used in this study is the one stating that public money is movable and immovable property owned by the state or public legal persons that are allocated for the public benefit (Brahmi, 2013).

Here we note that there are several conditions that this money must met in in order for it to be given the description "public". These conditions are the following:

- This money must belong to the state or to public corporate bodies in order to be considered public money.
- This money should be for the public interest

Islamic laws define public money as: "It is all money whose owner is not obligated, not exclusively, or specifically, and the legislator permits the public to benefit from it all." According to the Islamic laws, Public money includes everything included within state budget, money that is not owned by individuals anymore, as well as public facilities designated for all people such as mosques, public parks, hospitals, government buildings, public transport vehicles, power lines, water pipelines in the streets (Zoroub, 2007).

Types of public money

Scholars of jurisprudence has differed in the methods of classifying public money. Some scholars have classified public money according to the public entity that owns the money (state - governorate - municipality). Others have classified it on the basis of the type of money (land - sea - river -air). Some have classified it according to its purpose (military-religious-charitable-public). Some have classified it according to its nature (natural - industrial - movable) The best of these divisions and the most comprehensive of all types of public money is the division on the basis of the type of the money (land-sea-river-air) This division is as follows:

First: Land public money

It includes all money related to land transportation facilities, such as roads and streets, in addition to facilities designated for distributing water, electricity and gas, in addition to museums and military money. The land public money is divided into:

- Civil public money: it is the most common public money as it includes all money of a civilian nature. This money include all land transport facilities such as public roads, railways, and others. It includes all real estate and movable money that are allocated for public benefit such as museums.
- Public military money: The defense function is one of the most important functions in the state. Therefore, all the money that are used in this facility are considered public money, this money includes all military installations, including military equipment and accessories.

Second: Maritime Money

It includes the beaches of the seas, marshes, salt lakes, the continental extension, the facilities necessary for maritime navigation such as lighthouses and others.

Third: River public money

It includes rivers and their branches and navigable water courses, starting from the navigable point to the sea, canals and river ports. This line is determined by determining the average level of the river's level during a long period of time. It can be said that the public money in the river is either natural, such as rivers, or it is industrial, such as the banks, harbors, piers, buildings and bridges necessary to benefit from the river.

Fourth: Air public money

It includes all the land extensions necessary for air traffic and airports and for controlling air navigation. As for airspace, it includes airspace as high as the state's territory to the extent that its air defense means can reach ([Abdel Majeed, 2018](#)).

Principles and rules one the protection of public money⁵

The legal protection of public money in the state is one of the most important aspects contributing to improving and developing the economic and administrative entity in the state. The functions of the modern and contemporary state and its roles in the life of society have become different from its function and role in the past. The role of the modern state is no longer limited to maintaining public order, but rather to contribute to economic activity and promote the participation of individuals in this activity in many different ways. Therefore, the legal protection of public money is one of the most nominal and most important means maintaining the continuity and durability of administrative facilities in the service of the public interest ([Al-Khafaji, 2010](#)). Hence the importance of protecting public money that modern laws have devoted special attention to and have set rules that ensure the protection and sustainability of this money and achieve their intended purposes. Here we review the most important rules and principles related to the protection of public money. They are as follows:

- The Inadmissibility of disposing of public money

According to this rule, it is not permissible to conduct civil actions on public money, such as selling, wills, or donations, because this may lead to the termination of their allocation to achieve public benefit. If the administration did that, then public money could be recovered at any time due to the inadmissibility of disposing of this money (Al-Tamawi, 1979). This means that if the administration desires to dispose its public money, it must first remove the public benefit characteristic of this money. This is done by a law, decree, act, or after the fulfillment of the purpose for which this money is allocated for, it is for the public benefit. In this case, public money are converted into private money for the administration which then the state can dispose them, noting that the law creates a set of exceptions to this rule.

- The Inadmissibility of seizing public money:
As an extension of the rule that it is not permissible to dispose public money, it is also not permissible to sell public money forcibly following the seizure of a property as a way of demanding the heirs to repay the debt of their deceased father as this contradicts the idea of allocating public money for the public benefit. Also, the solvency of the state is presumptive, and therefore there is no place for seizing its money to ensure that it repays its debts. That is why it is not permissible to arrange any rights in rem or accessory rights related the public money such as a mortgage, or a right of concession, due to the consequent disruption of the functioning of public facilities, their good performance of services and the satisfaction of public needs. The basic principle is that this rule does not apply to private money owned by the state or public legal persons.
- The Inadmissibility of acquiring public money by prescription
This rule stipulates that it is not permissible to acquire public money by prescription through seizure as it happens in private money. The goal of this rule is to ensure the continuity of the allocation of public money for the public benefit. The inadmissibility extends to other forms of acquiring ownership for the same reason mentioned above. It is not possible to invoke the act of Acquisition of movable property by possession to acquire ownership of government movables. Likewise, the attachment of property act does not apply when acquiring ownership of public money since It cannot be argued that public money is less valuable than the money that it has been attached to it in order to have its value, because the rule in this area is that private money follows public money when attachment occurs as public money cannot be owned by prescription (Abdel-Wahhab, 2005). Here we point out that the Arab laws regulating the issue of protecting public money and in the context of civil protection for that money has provided for criminal protection of public money in order to prevent any kind of infringement and damage to this money in order to ensure the continuity of its allocation for public benefit and to ensure the good performance of public utilities.

There are many forms in which people abuse public money. Here are some of these forms: theft, embezzlement, breach of trust, failure to fulfill promises and contracts, destroying public money, lack of mastery of work, profiting from a job, wasting employees' time for other than the benefit of work, exploiting public money for partisan and factional purposes.

Legal protection of public money in the UAE laws

All countries possess a group of money and properties which they use to meet their needs and requirements. The management of this money and properties contributes to the advancement and prosperity of the state. Therefore, this money must be subject to legal protection, especially in light of the spread of public money crimes in most countries of the world. This is what prompted many countries and laws to pay great attention to the issue of public money due to the seriousness they pose, whether directed by the state or individuals. Therefore, many legal laws, including the Emirati laws, have singled out the issue of public money with special provisions that distinguish crimes related to public money from other crimes (Al-Sayed, 2014). The Emirati legislator has tried unremitting efforts to reduce crimes committed on public money, given the risks they pose to the economic and financial side. The United Arab Emirates has witnessed regulatory and legal development in protecting and controlling public money. Among the most important of these manifestations is the establishment of the money Prosecution under the decision of His Highness Sheikh Mansour bin Zayed Al Nahyan, Deputy Prime Minister, Minister of Presidential Affairs, Head of the Judicial Department No. (4) of 2009,

Its competencies were defined by Resolution No. (23) of 2009 issued by the Counselor Acting Attorney General of the Emirate of Abu Dhabi. The most important functions of the money Prosecution are the investigation and prosecution of crimes that occur against public money, the crimes of encroachment on public money stipulated in the Law on Combating Information Technology Crimes, and the crimes stipulated in Law No. (4) of 2000 in the matter of the Emirates Securities and Commodities Authority and Market. Public money crimes in the United Arab Emirates are classified under the umbrella of Federal Penal Law No. 3 of 1987 and its amendments, which defined these crimes in Articles (224 to 230). These crimes are the crimes of embezzlement and appropriation, facilitating and harming the appropriation of public money, and the crimes stipulated in Articles (234 to 239) related to bribery offenses. Within the framework of the protection imposed on public money in the UAE, the money Prosecution and the Anti-Corruption Department of the Audit Bureau oversee and protect public money from crimes and attacks, including monitoring, follow-up, investigation and trial procedures. It should be noted that Islamic laws was a pioneer in regulating the control and protection of public money. Islamic thought includes three types of control over public money, which are: self-censorship, which is exercised by the Muslim in himself, executive control exercised by the ruler, and popular control exercised by the Muslim community. This is what distinguishes Islamic laws from contemporary laws, as the self-censorship or what is known as the internal determination and heartfelt faith that a Muslim carries towards his Muslim brother and towards the Muslim community is what obligates him to preserve public money, and even to care for and develop it (Ibrahim, 1994).

Conclusion

Our study on the topic of "Legal Protection of Public money in Emirati Laws and Islamic laws" has reached a set of results and a set of recommendations. The study concludes with a number of results, which are:

- The Islamic Sharia is a forerunner of positive laws in protecting public money by establishing various limits and discretionary penalties and enacting appropriate laws for forms of assault on public money, whether the aggressor is a public employee or a private person.
- The UAE laws has worked to protect public money to preserve it from any assault. It also stipulated the inadmissibility of seizing public money, and the impermissibility of possessing public money by prescription.
- The UAE law permits the disposal of public money according to conditions and controls set forth by the law. The UAE law also specified the penalty for nullity in the event of violating these conditions and controls. The UAE law clarifies the forms of legitimate disposal of this money, the bodies responsible for this behavior, methods of managing, inspecting and developing it. It also stipulated the forms of abuse of that money and the penalties that are appropriate for these forms of abuse and the extent of their necessity for the public benefit and society.
- The most important forms of assault on public money are theft, embezzlement, breach of trust, lack of proficiency in work, wasting time and profit from the job, and the exploitation of public money for political, partisan and factional purposes.
- The most important reasons that lead to assault on public money are weakness of belief, ignorance of what is permissible and what is forbidden, non-application of the provisions of Islamic laws, and the failure of the rulers to carry the trust.
- Most of the crimes of public money are committed by the government employee. This means ensuring that competent and honest employees are appointed and that they are given the rights that are sufficient for them and their families so that they are keen to protect public money.
- Self-censorship of government employees is a safety valve and the first line of defense against job and financial deviation in all its forms and manifestations. This is the difference between the Islamic religion and man-made laws. Islam has sought to find the necessary means to achieve the effectiveness of self-censorship by raising the Muslim conscience to become a watchdog over himself and a guardian of public money.

Study recommendations

The study concludes with a number of recommendations, which we mention as follows:

- Realizing the benefit of Islamic laws as a model in protecting public money in the modern state.
- The researcher recommends the Emirati legislator to benefit from the experiences of the laws of comparative countries to benefit from them in order to develop the justice system and the laws in force in the country.

- Distributing pamphlets and periodicals on the crime of exploiting the government employee of his job, and explaining its provisions among all classes of employees in the state, especially those who occupy higher positions in it.
- Holding various meetings and workshops that promote a culture of concern for public money.
- Employing the print, audio, and visual media to participate in building a righteous country, through the implementation of continuous programs aimed at awakening the conscience and strengthening its sense of faith, which makes it a constructive element in society.

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