



THE IMPACT OF FOREIGN CAPITULATION ON ISLAMIC SHARIA IN THE OTTOMAN EMPIRE

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Abstract: Capitulation was initially closer to trade agreements, but also related to the rule of law and justice. This article aims to explain how the impact of capitulation on sharia. This foreign capitulation became very detrimental after the Ottoman conquest stagnated. By conducting a literature study and descriptive analysis method, the writer describes and analyses the flood of goods, high taxes for the indigenous population cause a setback in the trading business. Capitulation also had an impact on bringing about the dualism of law and justice. Mostly Islamic Jurists who practice Hanafi schools believe that a part of hudud and qisas must be applied to non-Muslims who are in an Islamic state. As happened in Western Europe, that is, the law is linked to the territory without any exceptions and yet the enormous tolerance of the Ottoman Turks has been a factor of its destruction.

Abstrak: Kapitulasi pada mulanya lebih dekat kepada perjanjian dagang, akan tetapi terkait juga dengan kedaulatan hukum dan peradilan. Penulisan ini bertujuan untuk menjelaskan bagaimana dampak kapitulasi terhadap syari'ah. kapitulasi asing ini menjadi sangat merugikan setelah penaklukan Turki Usmani mengalami stagnasi. Dengan melakukan studi pustaka dan metode analisis deskriptif penulis menggambarkan dan menganalisis pembajakan barang, pajak yang tinggi bagi penduduk pribumi menyebabkan kemunduran dalam usaha dagang. Hal ini juga berdampak dalam memunculkan dualisme hukum dan peradilan. Jumhur fuqaha yang bermazhab Hanafi berpendapat sebagian dari hudud dan qisas haruslah diterapkan terhadap non muslim yang berada negara Islam. Seperti yang terjadi di Eropa Barat, yaitu hukum dikaitkan dengan wilayah tanpa ada pengecualian dan tetapi toleransi Turki Usmani yang sangat besar telah menjadi salah satu faktor kehancuran.

Keywords: *Foreign Capitulation; Islamic Sharia; Ottoman Turkey*

INTRODUCTION

The foreign capitulation was carried out long ago before the Ottoman Empire existed. At first, capitulation was a form of trade agreement that was related to tax, legal, political, and judicial systems.¹ The significant capitulation was obtained during the sultan Muhammad al-Fatih. Since Constantinople was conquered,

¹ Halil Inalcik, *Ottoman Empire the Classical Age 1300-1600* (London: Phoenix Press, 2013).

Venice was forced to submit to Ottoman rule. Venice is heavily involved in trade in the Mediterranean sea, especially in the Black Sea.² Venice and China have long signed capitulation agreements with many countries but always have a positive impact on politics and trade. Profit-for-profit obtained by the Venetians who gain the right to live and have villages around Istanbul named Galata. However, foreign capitulation carried out by the Ottoman Empire and France does not seem to bring many results. Foreign capitulation harms the Ottoman Empire such as the gradual abolition of Islamic Sharia.³ At first, this capitulation was just a trade agreement that had little to do with Islamic sharia. The Sultan is permitted by Islamic Sharia to issue a policy that is not in conflict with the shariah. However, the impact of this capitulation agreement can touch Islamic sharia and the Ottoman court and even cancel it entirely? How can capitulation have been a factor in the collapse of the empire which has been in power for 600 years?⁴ How can this capitulation agreement which is only a trade agreement be used and made a gap by the countries of Western Europe and Russia which had been subject to Ottoman hegemony can make capitulation as a weapon to intervene in Ottoman Turkish government affairs?.

Discussions on capitulation have often been written by many writers such as Farid Beik and are also found in journals, such as books, *Tarij al-dawla al-'aliyya al-'utmaniyya* by Farid Beik, Ihsan Haki and Ali Hasun, which explains at length about the agreement of capitulation made by Sultan Sulaiman I with the French King Francis I in 1530. The agreement which at the time benefited France and reduced the pressure of the Hapsburgs against the Ottoman Turks who had ruled Hungary and half of Austria. The Ottoman Turks pressured the Hapsburg authorities not to expand into French territory or claim France was part of the Hapsburg region.⁵ This study is also found in Halil Inalcik's book, entitled "The Ottoman Empire: The Classical Age 1300-1600 which depicts 300 years of distinctive Eastern culture as it grew from a military empire to become the most powerful Islamic country in the world which regulates the political temperature of Europe and Asia. He gave a striking picture of the superiority of religion and warfare in everyday life, as well as the traditions of state administration, social values, finance, and land policy.⁶ The author also compares articles written by Yassamine Mather in the journal *Critique*, about the destruction of the Ottoman Turks directly after World War I. The novelty of this paper is an explanation

² Angeliki E. Laiou, "Trade and Crusade: Venetian Crete and the Emirates of Menteshe and Aydin (1300-1415). Elizabeth A. Zachariadou," *Speculum* 59, no. 3 (July 1984): 712-14, doi:10.2307/2846345.

³ Muhammad Zuhaili, *Tarikh al-Qadha fi al-Islam* (Beirut: Muasasah Risalah, 1992).

⁴ Kaya Şahin, "The Ottoman Empire in the Long Sixteenth Century," *Renaissance Quarterly* 70, no. 1 (2017): 220-34, doi:10.1086/691834.

⁵ Muhammad Farid Bek Al-Muhami, *Tarij al-dawla al-'aliyya al-'utmaniyya* (Beirut: Dar al-Nafa' is, 2009).

⁶ Inalcik, *Ottoman Empire the Classical Age 1300-1600*.

of how foreign capitulation has had an impact on justice and justice in the Ottoman Empire which has indirectly worsened the economy and how the role of capitulation could destroy the Ottoman Empire directly after World War I.

This discussion uses a descriptive method by examining several Ottoman Turkish history books in various fields, such as the history of justice, economics, politics, and education. Based on the analysis of various dimensions of Ottoman Turkey the authors draw conclusions from the impact caused by the Capitulation which was originally only a trade agreement that provides benefits to Western European countries to get a wide market for their commodities and the circulation of a gold currency that can also support the Ottoman Turkish economy the result of commodity exchange.⁷ Like a double-edged knife, capitulation can be legally detrimental at the same time.⁸

THEORETICAL REVIEW

Capitulation in the history of international law is any agreement where one country allows another country to exercise extraterritorial jurisdiction over its own citizens within the boundaries of the previous country.⁹ This term must be distinguished from the military term “capitulation,” an agreement to surrender. There was no surrender in the initial capitulation made by the European authorities with a strong Turkish sultan but the agreement was motivated by a desire to avoid the tax burden on foreign traders.¹⁰ The capitulation in the case of China and other Asian countries was generated due to military pressure by European countries then considered an embarrassing insult to the loss of sovereignty and equality of these countries.¹¹

The legal explanation of this practice can be found in conflicting conceptions of sovereignty and law. Unlike the modern conception, which connects sovereignty with the region, the initial conception links it with humans. State sovereignty is considered only valid for its citizens. Citizenship privileges are too valuable to be extended to foreigners who live in their country, which their own country seeks to protect and apply jurisdiction to even when they live abroad. Therefore, all

⁷ K.A. Zhukov, Greece) Institutouto Mesogeiakōn Spoudōn (Rethymnon, and Hidryma Technologias kai Ereunas (Greece), *Ottoman, Karasid and Sarukhanid Coinages and the Problem of Currency Community in Turkish Western Anatolia: '40s-80's of the 14th Century* (Crete University Press, 1993), 115

⁸ V. Necla Geyikdagi, *Foreign Investment in the Ottoman Empire: International Trade and Relations 1854-1914 (Library of Ottoman Studies)*, 4 st (London: I.B. Tauris (January 28, 2011), 2011).

⁹ Umut Özsü and Thomas Skouteris, “International Legal Histories of the Ottoman Empire: An Introduction to the Symposium,” *Journal of the History of International Law* 18, no. 1 (October 30, 2016): 1–4, doi:10.1163/15718050-12340049.

¹⁰ Sevket Pamuk, *A Monetary History of the Ottoman Empire* (Cambridge: Cambridge University Press, 1999).

¹¹ Janet L. Abu-Lughod, *Before European Hegemony: The World System A. D. 1250 - 1350*, First issued as an Oxford University Press paperback (New York Oxford: Oxford University Press, 1991).112

assets and powers possessed by foreigners who live in a country must comply with applicable laws, it is reasonable to say that this law must belong to the children of the nation.¹²

THE CAPITULATION AND CONQUEST OF CONSTANTINOPLE

Since Constantinople conquered, Venice forced to submit to Ottoman rule. Venice is heavily involved in trade in the Mediterranean sea, especially in the Black Sea. Ptolemy Marcelo, the envoy from the Venetian Duke, came to Sultan Muhammad al-Fatih to renew the Adana agreement and provide additional elements in the agreement. Venice was the first European country to send its ambassador to Istanbul, which was the beginning of the Foreign Capitulation system in Ottoman Turkey. The sound of the agreement is as follows¹³:

Article I, There is no protection for criminal offences against other countries, thieves must be immediately handed over to the relevant countries and their stolen products.

Article II, Traders of the two related countries, are free to enter the two territories of the country, both land, and sea expeditions, without any obstacles.

Article III, Duke Nassau, and his people are included in this agreement and are exempt from paying taxes and any payment and are not prevented from carrying out any activities.

Article IV, All ships of the two parties are well received and do not get unfriendly treatment.

Article V, Venice pays a total fee of 436 Ducat (Venetian gold currency) as customs at Lepanto Harbor, cities in Soctari, Lisbon and Drifasto in Albania. This payment will be given to the Governor of Istanbul.

Article VI, all Venetian slaves are freed without paying a penny unless they enter the religion of Muhammad, he must pay one thousand Piasters in exchange for his release.

Article VII, regardless of absolute freedom for Venetian traders in the Ottoman territories, they are obliged to pay 2% of the total value of the goods they carry as well as for Ottoman traders who carry out activities in the Venetian region.

Article VIII, all ships entering and exiting the Black Sea and sailing to the open sea are permitted after obtaining permission from Istanbul and carrying the necessary logistical supplies and then sailing to the high seas.

¹² al-Izari *Daulah Usmaniyah Qi'raah Jadid li Awamil Inhitat*, (Beirut, ad-Dar al-Arabiyyah lil Ulum, 2003). 156

¹³ Yasir bin Abdul Aziz Rari, *Daur Imtiyazat al-Ajnabiah fi Suqut ad-Daula al-Usmaniyah* (Riyadh: Jamiah Ibnu Saud, 2001).141

Article IX, the trade commodities of Christian countries originating from the Black Sea and the Mediterranean to be sold through Venetian merchants where they are not permitted to carry goods belonging to Muslims.

Article X, every person who resides in Bira, must pay their debts to Venice except confiscated assets or related to the people of Geneva.

Article XI, Venetians are permitted to visit Patriarchs (Orthodox Christian leaders) in Istanbul.

Article XII, each country protects personnel and merchandise under the ship that is damaged in the waters of the two countries.

Article XIII, if a Venetian population dies without a will or inheritance, his inheritance may not be used, his inheritance shall be handed over to the consulate, judge, Pasya (governor) of the region to be submitted to the Venetian consulate general or other Venetian merchants until the Venetian Duke requests it.

Article XIV, does not help the enemies of the state related to the agreement.

Article XV, one of the parties, is not permitted to protect the enemies of the two countries concerned either hiding in fortresses, palaces, cities owned by the Duke in Rome, Albania. It must not provide financial support to the enemy, and the sultan has the right to declare war on the territory of the city and the country and fortress that protect it. However, war on territory or fortress does not mean breaking the peace or cancelling agreements, and this obligation also applies to the Ottoman State against the Duke of Venice.

Article XVI, the Venetians can send their consuls to Istanbul if needed according to applicable regulations. They have the authority to decide administrative matters and other problems they face. Let the sultan direct Pasya or the military district leader Romeli to assist the consul in adjusting the difficulty.

Article XVII, the Sultan, promised (Daula Usmaniyah), to repair and replace the damage and harm done to the person, property due to the Ottoman conquest of the city of Istanbul in accordance with the principle of justice.

Article XVIII, Venice has the right to import property and currency into the Ottoman state whether printed or in raw material without paying any tax on the condition that the metal that has not been written should be shown to the money printing office.

Article XIX, the debt of residents of Istanbul is written off, especially the citizens of Venice after Constantinople conquered, and the debt is no longer legally valid.

At a glance, the capitulation given by Muhammad al-Fatih to the Venetian kingdom was not different from that given by Sulaiman al-Qanuni to the throne of France.¹⁴ However, the foreign capitulation provided by Muhammad al-Fatih is more worthy of study because this happened when a great victory occurred, which was the phase of the era of medieval world history into the modern age. The conquest of Constantinople has opened up the European market for products of Eastern origin. The same agreement was also made with Moldavia in 1465.¹⁵ Geneva, which included in the agreement, enjoys tax relief facilities and the freedom to conduct trade activities throughout the Ottoman Empire,¹⁶ because Geneva has helped the Ottoman Turks to fight against Orthodox Christians who are enemies of Catholicism who live in the Ottoman territory. In this way, the Ottoman Turks had provided regulating trade activities in Europe because Venice was the country with the highest trade activity at that time in Europe.

Meanwhile, another major trader in Europe is Geneva.¹⁷ Russia did not miss, and it also applied to reap the rewards of the capitulation agreement through the rulers of Crimea.¹⁸ Ptolemy Marcelo sent from the Duke of Venice to Sultan Muhammad al-Fatih to renew the treaty of Adana and to provide additional elements of the agreement.¹⁹ Venice was the first European country to send its ambassador to Istanbul, which was the beginning of the Foreign Capitulation system in the Ottoman.²⁰

The new agreement was made during the time of Sultan Sulaiman al-Qanuni (1520-1566), a new agreement was held which was a foreign privilege. Among the most famous are foreign concessions in the Ottoman Empire, where France established its consuls in the Ottoman Empire. These consulates have their own laws, which are separate from the laws of the Ottoman Empire and demand that the French consul assist the Ottoman Empire.

After a while, these consulates spread within the Ottoman Empire and spread their functions until they became a state within the Ottoman Empire. Foreigners justified their privileges in the Ottoman Empire because the Ottoman Empire wanted to increase the volume of trade with Europe to stimulate internal

¹⁴ Özsu and Skouteris, "International Legal Histories of the Ottoman Empire."

¹⁵ Bryer, "Elizabeth A. Zachariadou."

¹⁶ Huri İslamoğlu-Inan, *State and Peasant in the Ottoman Empire: Agrarian Power Relations and Regional Economic Development in Ottoman Anatolia during the Sixteenth Century*, The Ottoman Empire and Its Heritage, vol. 1 (Leiden ; New York: E.J. Brill, 1994),151

¹⁷ Muhammad Farid Beik *Daulah Iliyah al-Usmaniyah* (Beirut: Dar an-Nafais, 1988), 157

¹⁸ Halil Inalcik Donal Quataert, *An Economic and Social History of the Ottoman Empire, 1300-1914*, 2 st, vol. 2, 1 vols. (Cambridge: Cambridge University Press (January 27, 1995),114

¹⁹ **Adana** (the pronunciation is [a'da.na]) was the fourth biggest city in Turkey and was the capital city of Adana Province.

²⁰ Meirison Meirison, "Legal Drafting in the Ottoman Period," *Jurnal Ilmiah Al-Syir'ah* 17, no. 1 (June 30, 2019): 39, doi:10.30984/jis.v17i1.806.

trade, so foreigners enjoyed large tax exemptions. This leads to the establishment of a state within the state and the protection of Ottoman citizens who are Catholic.²¹

Along with this capitulation agreement, France also gained relief from the pressure of the Holy Roman Empire, the emperor Charles Quint. Because Sultan Sulaiman had succeeded in taking the territory of Hungary and had banged on the gates of the city of Vienna, the Austrian capital.²² The contents of the agreement include:²³

Section 1. The two parties have entered into an agreement which both represents the sultan and the king of France, for peace and a lifetime MOU (Memorandum of understanding) of the two rulers. This rule applies to the entire territory and vassal (the country which is under the protection / under protectorate) of the two countries, fortresses, cities, civilian and military ports, oceans, islands and all territories conquered by the two countries later, it is permissible for residents of both countries to travel by civilian and military ships both sea and land in the territories of the two countries or returning to ports and cities to trade, giving them the freedom to carry out activities without any pressure on them and their merchandise.

Section 2. Residents of the two countries are allowed to buy and sell any goods which are not prohibited from being traded, they may transport them by sea and land from one country to another after paying taxes that apply to both countries in accordance with applicable regulations without paying anything that is outside the tax (illegal fees).

Section 3. When a Consular has been appointed by the king of France in Constantinople or in Piree (Greece), Alexandria (Egypt) then he is treated properly, he must be heard and punish all criminal cases both civil and military-related to French society will be held with French law without pressure from Shari'ah Judges on the Ottoman Empire.

Section 4. It is not permissible to process complaints filed by Turks or tax collectors against French nationals in Turkish territory, whether they are traders or civilians originating from France, as long as the party submitting the case does not have strong evidence/bonds that are written by the defendant's hand or an official reason from the Shari'ah court or the French consul. If the complete evidence of the complaint is not heard without a translator appointed by the consul.

²¹ D.M. Nicol, *Byzantium and Venice: A Study in Diplomatic and Cultural Relations* (Cambridge University Press, 1992), 21

²² *Calligraphies ottomanes, Collection du musée Sakip Sabanci, Université Sabanci, Istanbul*, (cat. exp., Paris, musée du Louvre, 2000), Paris, RMN, 2000, p. 15-22, p. 37-38.

²³ Farid Bek Al-Muhami, *Tarij al-dawla al-'aliyya al-'utmaniyya*.211

Section 5. Shari'ah Judges or Ottoman Turkish government officials may not listen to complaints of criminal acts committed by the French in the Ottoman territory based on complaints filed by the Turks or tax collectors will still be Shari'ah Judges or authorities bring the defendant to the place of Sadr A'zam (prime minister), if the incident took place outside the city of Istanbul then this case was brought to the highest employee in the region, there the tax collections testimony could be received.

Section 6. may not proceed with judging cases carried out by French traders and their guards and assistants relating to religious matters in front of the Shari'ah Judge or Sanjaq (Head of Regency Government) the court is conducted in front of the Palace. They are allowed to carry out their religious rituals, they must not be forced to convert to Islam or be considered Muslim, as long as they have not declared themselves converted to Islam.

Section 7, if there is a transaction between French and Turkish residents in the territory of Turkey, the Frenchman owes and then returns to France without paying his debt, the French consul is not responsible for his debt, or his relatives or other French people. The King of France is not responsible for the debt, but if he has confiscated goods, the goods can be taken wherever they are, both in the Ottoman territory and in France.

Section 8, shall not use or mislead the French merchants or their servants or their vessels and the logistics equipment they possess or their merchandise for the benefit of the sultan and others whether it is a facility owned by sailors and landowners, except by voluntary and permissible from the owner.

Section 9, French merchants and people in the Turkish region have the right to use all the facilities they have, as well as their will before their death, their property is distributed in accordance with the will they left, if they do not consent then their property is provided to the experts his heirs or representatives with the knowledge of the consul, in the absence of a consul then the Syariah Judge shall keep the property with the witness. If a consul is present then the Judge or the competent authority is not entitled to keep the property if the property is previously kept in the Turkish treasury of the Usmani state, then the property must be handed over to the consul, if the heirs request it to the consulate then the consul has to surrender the property.

Section 10, with the Sultan and King of France in this treaty, all the people of both countries in the two territories, whether sailing or traveling, some were in slavery or enslaved by war or by trade and then they were liberated from slavery and liberated as a respectable human being, it is done

solely by consul or dubious reports, this can be done if they move away from religious liberation from slavery. From this time onwards the Sultan and King of France, commanders, admirals, or other personnel under both countries or hired persons could not buy or detain prisoners of war for bondage even if it was done by pirates in the area both countries should not confiscate their property, if that happens then the culprit should be punished for breaching the peace agreement of both countries, the seized property should be returned to the owner in the event of privileges to the perpetrator should be replaced with moral and material damages performed as guaranteed by the supreme commander / al-Sheikh of Islam and the supreme judge (France).

Section 11, when both countries find a foreign ship, it must lower its anchor, and raise its national flag for its identity, it shall not be detained or intimidated by the two warships, in the event of loss or damage to the ship shall be forfeited and the damage. When a fleet of two countries meets they must notify by a cannon shot, and ask the captain of his identity and shall not coerce or pressure the ship.

Section 12, if a French ship comes to one of the ports of Turkey, logistics must be given a reasonable price without having to empty the cargo of the ship, then the ship is allowed to sail anywhere. If the ship arrives in Istanbul and wants to travel after being inspected and getting permission to leave the tax authorities, the ship may not be inspected elsewhere except in front of the Dardanelle Strait fortress without paying anything.

Section 13, if the ship breaks or sinks in the territory of the two countries accidentally, the surviving crew continues to obtain its independence, the goods may not be taken. If all crew members die, the goods obtained are handed over to the consul, the captains, tax officers, Shari'ah judges or state apparatuses have no right to take these items at all, if that happens then the culprit must be severely punished. The state apparatus must help smooth delivery of these items.

Section 14, if a slave owned by a Turkish man fled to a French house, the Frenchman should not be interrogated, all he could do was inspect the house and the vehicle and the ship. If the slave is obtained, the Frenchman can only be punished by the consul.

Section 15, if French people who live in Turkish territory for less than 15 years do not pay any tax and are not allowed to work in armory or other work, so will the Ottoman citizens residing in French territory. The King of France also included the Pope, King of England, and his brother the King of

Scotland included in this agreement, the agreement to these countries took effect eight months later.

Section 16, the two authorities sent the text of the agreement to the entire region and the authorities there after six months of the socialization of the regulation, the treaty law of the two countries came into force. There is no reason not to know of the agreement after six months the agreement was socialized in the territories of the two countries, including in Alexandria, Egypt, Mucilia, Norbone and all regions of the two countries. Complete the agreement.

Something that is hard to believe the Ottoman Empire entered into an agreement that actually benefited its old enemies in the crusade that lasted for hundreds of years. a power that no country in the world at that time was able to conquer. This agreement has undermined the dignity of the Ottoman Turks and Muslims and has canceled several items of Islamic law itself in the treatment of the Islamic state against non-Muslims in the Islamic region. This is not in line with the benefit of Islamic law, it may be due to the diplomacy skills; there are even historians who says this is treason and deception against a Sultan who has been complacent with wealth, women, and vast powers.²⁴

That way, France is the only country that holds trade, diplomatic, and legal rights in the Ottoman Empire. This agreement is the cause of foreign intervention that will destroy the Ottoman Empire in the future, France which is actually a member of the crusade that has long been waiting for the opportunity to regain control of Palestinian land and the Middle East. But for the time being, it cannot be done with military force.²⁵ The Ottoman Turks carried out these agreements and agreements in a state of space and there was no pressure from Western European countries.²⁶ Unlike the case with the capitulation held by China which at that time had been conquered by the British and was forced to succumb to the aggressors who came to their country.

When the Ottoman Empire suffered a significant setback in 1740, this weak empire granted France the right to capitulation which included three aspects:²⁷

1. Trade facilities, relief of export and import taxes.
2. Permission for permanent residence and freedom of French citizens to carry out their activities in the Ottoman territory

²⁴ Pankaj Mishra, *From the Ruins of Empire: The Revolt against the West and the Remaking of Asia* (New York, NY: Picador [u.a.], 2012).156

²⁵ Pennel, C.R. «The Ottoman Empire in North Africa: A question of Degree-Tripoli in Seventeenth Century.» In *Studies on Ottoman Diplomatic History*, vol. 5, ed. S. (Kuneralp, Istanbul.1993) . 35-55

²⁶ Zuhaili, *Tarikh al-Qadha fi al-Islam*.

²⁷ Halil İncalçık, *Devlet-i Aliyye, Osmanlı İmparatorluğu Üzerine Araştırmalar-I, Klasik Dönem (1302-1606): Siyasal, Kurumsal ve Ekonomik Gelişim, Türkiye İş Bankası Kültür Yayınları, İstanbul 2009, s. 49-53*

3. Settlement of civil and criminal cases is carried out in French consulate courts in all regions of the Ottoman Empire.

Not only until the agreement was also given to the non-Muslim minority groups who are Ottoman citizens who made the loss of the rule of Ottoman law. The Ottoman Turks had lost their sovereignty long ago when this Foreign Capitulation was enacted. This Foreign Capitulation Agreement remains in force without further renewal and it began in 1740. It was not only France that utilized this agreement but also other Western European countries and Russia.²⁸ So, the Ottoman Turks have become part of their countries. They like in their own country, applying their own laws have freedom of action. Even more free from their country in a variety of civil and criminal cases that are resolved by their respective consulates.

CHANGING SITUATION IN EUROPE AND THE IMPACT OF CAPITULATION

Basically the Ottoman Turks have the same rights to the countries of Western Europe in accordance with the Foreign Capitulation agreement. However, there has been a change in the basic legal application system in Western countries based on the rule of law. The jurisdiction is based on land owned by the state without exception. All legal actions are related to the territory of the state. Every citizen and foreigner must comply with the laws in force in that country.²⁹ So that foreign capitulation is only limited to trade agreements that no longer apply in the application of law.

However, this Foreign Capitulation has penetrated into all lines of life in the Ottoman territory.³⁰ This change in circumstances was not immediately read by the Ottoman Turks, because so far the Ottoman Turks did not have consulates or sent ambassadors to Western countries intensively. The Ottoman Turks have always felt invincible and cannot be expanded by any Western country or Russia.³¹ So far, the Ottoman Empire was a conqueror, not an object of colonialism. So that important information in Europe such as the development of industry, technology, law and culture cannot be captured carefully and clearly. Life in the West is so

²⁸ Will Smiley, "Freeing 'The Enslaved People of Islam': The Changing Meaning of Ottoman Subjecthood for Captives in the Russian Empire," *Journal of the Ottoman and Turkish Studies Association* 3, no. 2 (2016): 235, doi:10.2979/jottturstuass.3.2.03.

²⁹ Smiley, Will, "'When Peace is Made, You Will Again Be Free': Islamic and Treaty Law, Black Sea Conflict, and the Emergence of 'Prisoners of War' in the Ottoman Empire, 1739-1830", Unpublished PhD Dissertation, Cambridge University, Cambridge, 2012. 166

³⁰ Shaw, Stanford J., *Between Old and New, The Ottoman Empire under Sultan Selim III 1789-1807* (Cambridge, Unversisty Press, 1971),321

³¹ Ljubica Erickson (Editor), Mark Erickson, *Russia War, Peace And Diplomacy: Essays in Honour of John Erickson*, 1st Edition edition (April 1, 2007) (London: Weidenfeld & Nicolson, 2007).

contrary to Islamic Sharia that a kind of uncomfortable feeling arises for a long time living in Western Europe. Ottoman territory was flooded with foreigners and missionaries who did not submit to Ottoman Turkish law, including Jews who had been rescued from slaughter in Spain who lived in Eastern Europe (Poland, Romania, Bulgaria, Salonika and Greece) with Turkish permission Ottoman. Cultural friction both negative and positive occurs. They carry out activities in various forms both in the field of trade, social and culture³².

The Western Government makes this Foreign Capitulation agreement as a referee to intervene in the internal problems of the Ottoman Turks, such as taxation, application of the law, domestic and foreign political policies. With the existing Western influence, they can appoint and offer important positions to their cadres in the Ottoman territory in various ways. The negligence of the Ottoman government has made Western European countries more free to use natural resources in the Ottoman territory as an interpretation that deviates from this Foreign Capitulation agreement.³³ The consequences of this Foreign Capitulation agreement include that existing Western European citizens may not inspect their homes in the event of civil or criminal violations. They no longer pay taxes as did the citizens of the Ottoman Turks so stretching the Ottoman Turkish economy is getting weaker.³⁴ There are no more indigenous people who become import-export entrepreneurs or have large and medium industries. Due to the heavy tax burden as compensation from tax breaks or tax exemptions are given to Western European countries related to foreign capitulation agreements.³⁵

In the event of criminal and civil cases involving foreign nationals and Ottoman Turkish citizens, the presence of consuls must be present. All investigative processes must obtain consul agreement and signature. All court decisions must be signed by the consul (*turjuman*/translator), if the consul does not agree or sign the case decided by the court to be null and void and the legal consequences apply unilaterally which clearly harms the Ottoman citizens. Russia, Italy and Germany do not apply the law imposed by the Ottoman court unless the law is in line with the laws in their respective countries.³⁶

³² Akmaluddin Ihsan Oglo *Daulah Usmaniyah Tarikh wa Hadharah* (Istanbul: Yildiz Yayin Cilik, 1999). 161

³³ Abdul Ghaffar Mughal and Larbi Sadiki, "Shari'ah Law and Capitulations Governing the Non-Muslim Foreign Merchants in the Ottoman Empire," *Sociology of Islam* 5, no. 2-3 (June 21, 2017): 138-60, doi:10.1163/22131418-00503006.

³⁴ Deniz T. Kılınçoğlu, "Islamic Economics in the Late Ottoman Empire: Menâpirzâde Nuri Bey's *Mebâhis-i İlm-i Servet*," *The European Journal of the History of Economic Thought* 24, no. 3 (May 4, 2017): 528-54, doi:10.1080/09672567.2016.1259342.

³⁵ Levy, Avigdor, "The Military Policy of Sultan Mahmud II, 1808-1839", Unpublished PhD dissertation, (Harvard, Harvard University, 1968).331

³⁶ Ortaylı, Ýlber "Administrative Organization during the Tanzimat Period", In: Ýhsanođlu,Ekmeleddin, (ed.) *History of the Ottoman State and Civilisation*, Vol. 1, (Istanbul: IRCICA, 1999), p 380.

The Ottoman government realized this, but it was too late. The Ottoman Turks are no longer in the prevention phase but are already in the phase of treatment and amputation. The violation of the sovereignty of the Ottoman Empire is more and more harmful to the Islamic Sharia and the economy of the *ummah*. The Ottoman emissary had put forward demands on the Paris convention conducted in 1856 to cancel the Foreign Capitulation agreement but the demand was rejected even though Western European countries no longer applied the same agreement. They have adopted the principle of the rule of law that is associated with the territory and applies to every individual in their area.³⁷

ISLAMIC SHARIA RECEIPT

After the refusal of the abolition of the Foreign Capitulation agreement, the Sultan tried to codify the law so that it could be applied to individuals who were in the Ottoman territory. This rule is called the Sa'idiyah Rule or the Polish Sa'idiyah Rule issued in August 1857. The sovereignty of the Ottoman Turks is still being violated and continues to fight for its rights. This issue was again discussed in negotiations for the sake of negotiations between 1909 to 1913 to cancel this Foreign Capitulation agreement. However, these efforts did not produce results until the Lusanne conference after World War I held Turkey managed to break away from this Foreign Capitulation will still Western countries agreed to cancel it in 1923.³⁸ Every state has legal sovereignty that cannot be violated by any citizen in its jurisdiction. This can be done with the requirement that Turkey must form a comprehensive legal and judicial reform committee consisting of European consultants for five years. This consultant will provide direction and opinion and oversee the course of reforming the law and the judicial system. Islamic Sharia was made a victim of legal reform in Turkey as the price of canceling this Foreign Capitulation.

The situation in Egypt is even worse than the Ottoman Empire, and Foreign Capitulation has a worse impact, this is due ³⁹:

1. Muhammad Ali Pasya's policy which was very fascinated by Europe and wanted his country to be like European countries. It brings support and provides facilities for experts to settle in Egypt.
2. The authority of the regional government is sometimes higher than the authority of the central government in Istanbul.

³⁷ Ministry of Endowments & Islamic Affairs Kuwaiti Encyclopedia of Jurisprudence, Vol. 15,(Kuwait: That As-salasil Press. 1989),21

³⁸ Yassamine Mather, "The Fall of the Ottoman Empire and Current Conflict in the Middle East," *Critique* 42, no. 3 (July 3, 2014): 471-85, doi:10.1080/03017605.2014.972151.

³⁹ Karasu, Cezmi, "Kırım Savaşı Sırasında Osmanlı Diplomasisi (1853-1856)", Unpublished PhD Dissertation, (, Ankara, Ankara University, 1998).114

3. Regional governments in Egypt have been in debt to European countries without the knowledge of the central government. This makes Egypt pawned to Western European countries that really want the Suez Canal.

This deteriorating situation harmed the judiciary in Egypt. The influence of Foreign Capitulation in Egypt in the field of justice is worse than its impact on other areas of Ottoman Turkey.⁴⁰ Foreign consulates refused to implement laws originating from Ottoman Turks in Egypt which were made for the benefit of the Egyptian people. The law only applies if it is decided before the consul and the consul has the right to cancel the law that has been established in matters of ownership of movable and immovable assets. Buying and selling and pawning as well as civil and criminal disputes are carried out in accordance with applicable law in their country.⁴¹ If a foreign nation commits a crime against an indigenous population, then the foreign nation's law is enforced. Even worse, this capitulation agreement was made in the form of certificates that were usually sold to anyone who was wanted by the consul, especially minority groups who were Christians so that they had European nationality. For them, the Islamic Sharia Law no longer applies and they get tax breaks or abolition in conducting trading activities. The capitulation that was similar to a trade agreement has become a veiled occupation and will end with physical occupation followed by the military, which is actually part of a continuous Crusade. Britain as a country that controls the government and economy of Egypt which is de facto the territory of the Ottoman Turks have established power and maintain for a long time related to trade and their cotton industry in India and other Asian regions such as China.⁴²

This situation adds to the adverse impact on the court, namely the dualism of the judicial system, namely the judiciary based on Islamic law (sharia court and tribunal controlled by foreign consulates, especially the UK. The courts have numbered 17 courts that apply different rules also conflicting. There was chaos in deciding cases which were then mostly resolved by force and coercion. The traditions like this that use in Egypt until now so that the court is easy to sentence death to political opponents, confiscation, government intervention and foreign powers are extensive in the trials of Egypt both past and present.⁴³

⁴⁰ Century World War Andrew C. Hess, "The Ottoman Conquest of Egypt (1517) and the Beginning of the Sixteenth-Century World War," *International Journal of Middle East Studies* Vol. 4, No. 1 (January 29, 2009): 55-76, doi:10.1017/S0020743800027276.

⁴¹ Mughal and Sadiki, "Shari'ah Law and Capitulations Governing the Non-Muslim Foreign Merchants in the Ottoman Empire."131

⁴² Mohammad, Jamal Kamal (2001) *The Iltizām in aş -Şa'id countryside in Ottoman Era* (Unpublished MA Thesis), Cairo University.115

⁴³ Donald Quataert, *The Ottoman Empire, 1700-1922*, 2nd ed, New Approaches to European History (Cambridge, UK ; New York: Cambridge University Press, 2005).141

Khidewi Ismail assumed legal control in 1863 and had tried to cancel the Foreign Capitulation agreement which was related to legal and judicial matters. He wants to re-establish the rule of law that applies to all Egyptians and foreigners living in his territory. But his foreign minister, Nober Pasya, who is from Armenia, gave direction that the Egyptian government could not do that. So Khidewi Ismail issued a decision in 1867 to make reforms in anticipation of chaos in the existing law and justice sector.⁴⁴ He decided to appoint judges made up of Egyptians and foreigners whose legal sphere included civil and criminal matters except those related to property that remained within the scope of the Islamic Sharia Courts. He drafted a law governing new courts to be applied. Government officials protested that those who wanted the full applicable law to be handled by the sharia court, but this Nober Pasya bound them with the rules of Foreign Capitulation which had to be agreed upon by all parties under foreign pressure. Nober Pasya held consultations with countries related to this Foreign Capitulation for two years and then decided on the formation of a commission consisting of consultants in the field of law in which each country appoints its representatives to carry out consul justice activities in Egypt. In 1869 a large party was held to celebrate the making of the Suez Canal.⁴⁵ After that, the countries related to the Foreign Capitulation agreement agreed to establish a mixed court on the condition that French law must be applied in these courts, if the trial is related to the citizens of Egypt, France, Germany and the United Kingdom. The Committee's recommendations formed at the meeting have been issued but it still does not bind the countries related to Capitulation until a mixed court is established. The court will settle the case between foreigners and residents of Egypt.⁴⁶ The founding of the court began in 1876, Britain and France were the countries that were greatly benefited by the existence of a mixed court. The establishment of a diverse court did not seem to be of much use to Western European countries but still imposed this Foreign Capitulation on the grounds of customs and for various reasons. In 1875 procedures for complaints and complaints in civil and criminal cases were prepared, trafficking, civil transactions, criminal investigations, penalties for violations in marine trade through secretary Nober Pasya, French lawyer (Monori). They quoted these laws from French law and law ambiguously. Even this mixed court did not resolve the case but instead added to the complexity of the case. Foreign nations still use the consequences of

⁴⁴ Lâle Can and Michael Christopher Low, "The 'Subjects' of Ottoman International Law," *Journal of the Ottoman and Turkish Studies Association* 3, no. 2 (2016): 223, doi:10.2979/jottturstuass.3.2.02.

⁴⁵ Murat Çizakça, *Islamic Capitalism and Finance: Origins, Evolution and the Future*, Studies in Islamic Finance, Accounting and Governance (Cheltenham, UK ; Northampton, MA: Edward Elgar, 2011).141

⁴⁶ Linda T. Darling, *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire, 1560-1660*, The Ottoman Empire and Its Heritage, v. 6 (Leiden ; New York: E.J. Brill, 1996).111

the Foreign Capitulation that they have enjoyed so far. They enjoy freedom more than in their own country. They were not subject to the Sultan's law and were also tried relatively by the consul when they had problems with the indigenous population and the local government. The dispute continued not only between foreign nationals and Ottoman Turks but also between foreign nationals and their consuls respectively.⁴⁷ The mixed court was subsequently suspended for five years. The abolition of foreign capitulation was carried out after the Ottoman Turks completely collapsed in 1923 on condition that Islamic sharia be abolished from Turkish soil, whereas in the former Ottoman provinces such as Egypt was abolished in 1937. Even so, Western Europe persisted with the establishment of a mixed court for 12 years after that. The law used cannot be contrary to modern legislation. Besides, the applicable law supports the benefit of foreign trade and the elimination of Islamic sharia along with the existing judiciary in all regions. The thick Islamic system that still remains in Modern Turkey is *waqf* that can still be managed well without much government interference. This *waqf* institution is still functioning properly as an Islamic missionary institution and empowering the independence of the community. Thus giving a new belief to secular Islam has a place of discourse in politics.⁴⁸

CONCLUSION

The dominant foreign capitulation in the Ottoman Empire was carried out during the time of Sulaiman al-Qanuni (1520-1566) with Francois I the king of France. They are starting with the construction of consulates in several areas of the Ottoman Empire. These consulates have their own laws similar to the current embassy but have much broader authority. The consuls are like a state in a country that has an extension to the whole territory of the Ottoman Turks and can even regulate Christians who are citizens of the Ottoman Turks.

Because the door to Ijtihad had been closed, the role of the Sultan increased in taking legal policy as long as it did not conflict with Islamic sharia. However, this Foreign Capitulation right is only of momentary benefit. It has influenced the court system because the law only applies to Muslim natives, whereas foreigners and non-Muslim minority groups have enjoyed this foreign capitulation agreement. They have legal immunity, tax relief and business facilities so that the judiciary has become blunt for foreign nationals living in the Ottoman Empire and minority groups. This cannot be canceled quickly because it is related to debt and defeat in wars with Western Europe and Russia. French and Swiss material law began to

⁴⁷ Meirison, "Legal Drafting in the Ottoman Period."

⁴⁸ Yusi Septa Prasetia and Miftahul Huda, "Relevansi Tatakelola Wakaf Turki Terhadap Pengembangan Wakaf Produktif di Indonesia," *Justicia Islamica* 14, no. 2 (November 18, 2017), doi:10.21154/justicia.v14i2.1231.

be applied, which slowly shifted the function of Islamic justice. The capitulation could finally be abolished during Kemal Ataturk's marriage when all legal cases related to Islamic law were abolished in 1923 after the Lusanne agreement in Switzerland.

The State of Venice, as well as China, can enjoy the capitulation agreement in developing their economy because capitulation only applies in a small capacity on their states. In other words, capitulation only applies to traders who are involved in export-import transactions, not given to indigenous people who are of the same religion as Western countries with capitulation rights. The French state, for example, permits Britain and other Western countries to have the right to capitulation. This did not happen to Venice and China.

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