

## **Alternatives to Settlement of Conflicts in Islamic Banking: An Analytical Study**

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**ABSTRACT:** The emergence and spread of Islamic banks in most parts of the world and its international and daily dealings with the international financial institutions created disputes and conflicts between Islamic banks that are governed by the Shari'ah in all their dealings, and between traditional institutions that are governed by the regulations and laws that are contrary to Islamic law. Thus, there is a need for a way of settling these disputes, such as litigation, suit, and the consequence of that requires the presence of the litigant parties, and advocacy at the judiciary, and the requirement of evidence and witness and litigation cost etc. The question is what is the possibility of implementing the judicial ruling and compelling the party at fault of implementing the ruling? The aim of this study is to explain the Shari'ah ruling in issues relating to financial conflicts and how to resolve the dispute between them and strengthen the role of Islamic jurisprudence in the lives of contemporary people and its ability to deal with emerging issues and to create Shari'ah criterion or alternative ways of settlement of disputes between them. The study adopted the descriptive and analytical method by referring to ancient and modern sources to find out Shari'ah matters relating to the study, and to express the views of ancient and contemporary scholars with authorities and their strength and to select the best view in the conflicting issues. The study found some results, among which are: There must be differentiation between International law and international arbitrators who rely on the rule that are based on justice and equality between the States and the laws that are based on the beliefs and rules contrary to Islamic law.

**Key word:** Alternative, Settlement, Disputes, Islamic banks

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### **I. CONFLICTS IN ISLAMIC BANKING AND THEIR TYPES**

**Alternative methods:** They are those mechanisms that the parties resort to in case of dispute between them, rather than the ordinary courts, in order to reach to a solution to the dispute. From this definition, litigation is out of this meaning, as it is not considered as an alternative means of resolving differences through litigation in the event of a dispute between them (Kuwaiti Jurisprudence Encyclopedia: 8/451).

**Conflicts:** conflict is a disagreement about the right or interest or a legal issue to a particular state, or where a person holds a right and another person denies and rejects that right, or where one or more people are unable to agree on a specific matter. This means the lack of agreement or consensus on the goals.

Differences occur between traders because of many reasons, such as conflict on the price, defect, violation of terms and conditions etc. And contractors with Islamic financial institutions are not immune from controversy that normally happens between traders. There is probability of the occurrence of conflict and disagreement in buying and selling, lease etc. between the contractors. There are various pictures of these which are difficult to be identified, but I will refer to the most important ones:

**First picture:** disputes occurring in the applicable law in international contracts carried out by Islamic financial institutions.

**Second picture:** disputes as a result of delay in payment and payment of dues, profits and also currency fluctuations.

**Third picture:** disputes in the agency contracts (investment), such as non-compliance with specifications of the sale, or a sham contract, or not sending invoices that determine the quality of Sales and specifications.

**Fourth picture:** disputes due to documentary credits, and payment of credit value to the beneficiary after receiving the documents conforming to specifications, and also in cases of destruction of the subject matter before or after delivery.

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**Fifth picture:** compensation for losses paid by insurance companies, or the total or partial destruction, which affects partners' funds, and how to distribute benefits to partners.

**Sixth picture:** disputes in leasing contracts, such as changing the fare according to the schedules, or disagreement on a particular index in the case of changing fare.

**Seventh picture:** disputes as to the distribution of profits, and financial benefits, and how to plan for exit strategy in the consolidated bank financing.

#### **Jurisdiction and its authority**

Identifying place of domicile: for example, if there are two judges in a town, and each one of them is in his/her locality, and a conflict occurs between two men from the two different localities, and one prosecutor wants to bring the case to the judge in his locality while the other prosecutor refuses (Bahr al-Raa'iq: 7/193). To illustrate the opinion of jurists in this matter, we need to distinguish between the two cases:

**First case:** Where the plaintiff cannot be differentiated from defendant.

**Second case:** Where plaintiff can be distinguished from the defendant.

**First case:** If it is not possible to differentiate between the plaintiff and the defendant, for example when they are equal in the claim, like when both of them is requesting for something and also is requested from him or her, such as disagreement on the estimated sale price, or share of ownership; the scholars differed as to the appointment of a competent judge into three views:

**The first opinion:** the nearest judge to the case decides it; and if they are same in nearness, election would be conducted, and this is the opinion of Shafi'i jurists (Raudatu at-Talibin: 11/121), and Hanbali (Kashf al-Qana: 6/292).

**Second opinion:** if the defendant is not known, then everyone of them may ask for his right from the judge he wishes; if there is difference regarding which judge to refer to firstly, then the first judge referred to by one of the litigants is to decide the case; if this is not clear, and each one of them referred to a particular judge, then the first judge to send summon to one of the litigants should decide the case, and if that is impossible to be known, then voting should be conducted between them, and this is the opinion of Maliki jurists (HashiyatDasuqima'a as-Sharh al-Kabir: 4/135).

And the opinion of Malikis: it is for everyone of the litigants to request his right from any judge he wishes, if one of them claimed against another in front of a judge and let the other party to claim in front of another judge, if they differ pertaining to the judge to go to first, then the first judge referred to by one of the parties should decide the case, and the party who referred to the judge is plaintiff while the other party is defendant; and if they went at one time, or the first party to go is not known, then the first party to receive a summon from one of the judges will be the defendant and the other party plaintiff. And if it not possible to know that, then voting should be conducted, and the one who won is the plaintiff while the loser is the defendant.

**Third opinion:** the parties will be stopped from the case until they decide on one judge, and this is also one of the opinions of Shafi'i jurists (Raudat at-Talibin: 11/121), and also one of the opinions of Hanbali jurists (Al-Insaf: 11/169).

#### **Evidence:**

**First:** the evidence of the first opinion: they relied on logic from two sides:

1- If each of the litigants provides a judge, then there is no need to go to the judge in the far distance (Kashf al-Qana: 6/292).

2- If the judges are equal in nearness, then voting should be conducted, the winner between the judges should decide the case (Matalib ul an-Nuha: 6/464-465).

**Second:** the evidence of the second opinion:

The consideration in appointing a judge in a case is on the plaintiff, and if the litigants differ, then everyone of them is considered as plaintiff, and can claim his right from any judge he wishes, and if they are equal voting should be conducted to know the plaintiff and the defendant.

**Third:** evidence of the third opinion:

Lack of agreement on one judge leads to the prolongation of the conflict between the two litigants, and the origin is that judgment cuts dispute.

#### **Best view:**

The best is the first opinion, because in their statement there is equality between the litigants in deciding the place of the judgment, and stopping the dispute, and if they are equal in nearness then only voting can solve the issue, and this ensures justice and equality between the two litigants. And this can be applied in disputes between contractors in Islamic financial institutions, if knowing the plaintiff and defendant is impossible, then they can refer to the nearest court, for example to select a neutral country in the proximity. And if they fail to agree then voting should be conducted to decide.

**Second case:** If it is possible to differentiate between the plaintiff and defendant, there is a difference of opinion between the scholars on how to determine the judge who will decide the case, there are three opinions:

**First opinion:** The plaintiff is the right person to select the place of litigation, if he wishes he selects his place, and he wishes he selects the place of the defendant. This is also the opinion of Abu Yusuf from Hanafis (Al-Bahr ar-Raa'iq and Hashiyat Ibn Abidin: 7/193), and some Malikis (Tabsirat al-Hukkam: 1/84), Shafi'is (Mugni al-Mujhtaj: 4/380), Hanbalis (Kasshaf al-Qana: 6/292).

**Second opinion:** The defendant is the right person to select the litigation place, if he wishes he selects his place or the plaintiff's place. This is the opinion of Muhammad Ibn al-Hasan from Hanafis (Lisan al-Hukkam fi maa'rifat al-Ahkam: 222). It was mentioned in Bahr al-Raa'iq: (the correct view is that the consideration is on the place of the defendant), (Hashiyat Ibn Abidin ala al-Bahr ar-Raa'iq: 7/193). It was mentioned in Sharh al-Kharshi ala Khalil: "If there is a dispute between two litigants and they select different judges, the judge selected by the person claiming for right should be the right one to decide the case" (al-Kharshi Ali Khalil: 7/145). It was mentioned in Kasshaf al-Qana: "If there is a conflict between two parties with regard to place of litigation, the opinion of the plaintiff should be preferred" (Kasshaf al-Qana: 6/292).

**Third opinion:** We differentiate between multiplicity of judges in the same country, and between multiplicity of judges in different countries, and this is the opinion of Maliki jurists (al-Kharshi ala al-Khalil: 7/145). The opinion of Malikis is divided into two cases:

**First case:** the multiplicity of judges in the same country, and this case is divided into two sections:

**Section one:** if the two litigants are from different countries but under the same judge, then the case should be decided in the place of the judge whether it is plaintiff's or defendant's country; no consideration of where both the plaintiff and defendant are located, but the consideration is the place where the judge is located (Tabsirat al-Hukkam, 1/84).

**Section two:** If there are several judges in the same country, and the two litigants are from the same country, then the plaintiff should be the person to select the judge and place of litigation; this opinion agrees with the opinion of the majority of scholars (As-Sharh as-Sagir: 4/234).

**The second case:** the multiplicity of judges in different countries, which means that each and every one of the litigants is in the state of another judge. Dasuqi said: "I know that dispute in question if the plaintiff and defendant live in the same or different countries, and they are under different judges" (Hadiyyat al-arifin: 2/357).

In this case, Maliki jurists distinguish between whether the claimed property is a real estate or in kind and between debts. Thus, this case is divided into two:

**Section one:** if the claimed property is a real estate or in kind, the Maliki scholars have two different opinions. Sheikh Adawi says: "and his saying specifically on real estate, there are two opinions in both in kind and real estate" (Hashiyat al-adawi ala al-Kharshi: 7/174).

**The first opinion:** the case should be decided where the house is located or where the claimed property is located (Hashiyat Dasuqi: 4/164). This is the opinion of Ibn Majshun (Tartib al-Madarik: 3/136-144). And the meaning of this view: the case is to be decided where the claimed property is located, and no regard to the location of plaintiff and defendant. Thus, for example if there is a conflict between a bank in Indonesia and a bank in Malaysia on a real estate located in Saudi Arabia, the Saudi courts should decide the case.

**The second opinion:** the case should be decided where the defendant is located, no regard to the location of the plaintiff and the claimed property (Sharhminah al-Jalil: 4/211).

**Section two:** if the conflict is on debts, it seems the Maliki jurist agree that the case should be decided where the defendant is located, whether the defendant is located in the country of the plaintiff, or his country, and whether the claimed property is located there or not (Hashiyat Dasuqi ala as-Shar al-Kabir: 4/164). In other words anywhere the plaintiff finds the defendant the case should be decided there. It was mentioned in Sharh al-Kharshi: "if it is on debt, the case is to be decided where the plaintiff is attached" (al-Kharshi ala Sharh al-Jalil: 7/174). In Hashiyat Dasuqi: "unlike what is related to receivables like debt, the case is to be decided where the plaintiff is attached by consensus of the jurists" (Hashiyat Dasuqi al ash -Sharh al-Kabir: 4/164).

#### **Evidence:**

**First:** the evidence of the first opinion: they rely on logic from two ways:

1- The plaintiff is the origin of the dispute, and if he left it there is no case, thus, he should be given the option, if he wishes he takes the case to the judge of his place, or if he wishes he takes the case to the judge of the defendant's location (Hashiyat Ibn Abidin ala al-Bahr Raa'iq: 7/193).

2- The plaintiff is the one with the right to initiate the case, then he should be given that right (Matalib ul an-Nuha: 6/464).

This evidence was discussed that the consideration of the defendant should be better, because he wants to defend himself, and the plaintiff wants to claim a right from him, and he who requested for safety is better than who claims something else (Hashiyat Ibn Abidin ala al-Bahr Raa'iq: 7/193).

**Second:** the evidence of the second opinion: they relied on logic:

That the defendant is looking for his safety, as the origin is the presumption of his innocence, and may be the plaintiff makes him to approve what he has not done, thus, giving consideration to the defendant in initiating the

case is better, because he is trying to defend himself, and the plaintiff is claiming something from him, and he who requested for safety is better than who seeks for something else (Hashiyat Ibn Abidin ala al-Bahr Raa'iq: 7/193). This evidence may be discussed that the litigation is the right of the plaintiff and he should have the right to initiate the case in his place instead of the defendant (KasshafQana: 6/292).

**The best view:**

We have to differentiate between where the claimed property is debt or in kind. In case of the former, the holders

**The second opinion:** is the best, which considers the defendant of having the right to select the place of the litigation, because their evidence is stronger, and because he wants to defend himself, and maybe he is innocent and should be forced to travel to the plaintiff's place because of travelling and litigation costs especially if it is repeated.

But, where the claimed property is real estate, or factory or something fixed, the opinion of some Maliki jurists that the case should be decided where the property or defendant is located, and this opinion makes it easier for the litigation and viewing the property and will accelerate the solution to the case. This is in case of dispute between Muslims (plaintiff and defendant) and not a Muslim and non-Muslim.

**Ruling on litigation between a Muslim and non-Muslim**

If a case between two litigant parties, a Muslim and non-Muslim is brought in front of a Muslim judge, it is compulsory to decide the case between them in accordance with the Shari'ah based on the unanimous opinion of the jurists (Al-Um: 5/259), (Al-Mugni: 12/383). Ibn Qudamah said: "If a Muslim and a dhimmi bring litigation, the jurists are unanimous that the case must be decided, because injustice between the parties must be prevented" (Al-Mugni: 12/383). And Imam Malik Ibn Anas said: "any issue between a Muslim and a Christian, I am of the opinion that it should be decided based on the Islamic law" (Al-Mudawwanah, 4/395, 417). Imam Shafi'i said: "If a Christian brings a case to him he should decide for or against him with Islamic law" (Al-Um: 5/259). It was also mentioned in Ma'alim al-Qaryah fi ma'alim al-Hisbah: "if they bring a case to us with Muslims we must decide between them, because a judge for non-Muslims should not judge for Muslims". It appears from these texts: "the Muslim judge must decide any case in which one of the parties is a Muslim (plaintiff or defendant) regardless of his nationality or his location or type of lawsuit. Imam Baji said: "because any ruling between a Muslim and non-Muslim must be based on Islamic law (al-MuntafaSharh al-Muwatta: 5/187).

The Shari'ah is the main source of law between the Muslims in their dealings with others, and for Muslim resorting to Shari'ah in all his dealings is a worship sanctioned by explicit Shari'ah texts. Allah (May He be exalted) says: (And this (He commands): Judge thou between them by what Allah hath revealed, and follow not their vain desires, but beware of them lest they beguile thee from any of that (teaching) which Allah hath sent down to thee.) (Maidah:49). One should not think that in ruling with the Shari'ah between a Muslim and non-Muslim there is bias for the Muslim against others; each religion or state or system protects its citizens and those related under its rules and regulations, but ruling with the Shari'ah is ruling with justice between Muslim and others.

The conflicts that occur between Islamic banks themselves or between them and other international traditional banks, if the case is brought to a Muslim judge, he must decide based on the Islamic law; thus, the Islamic financial institutions should take note that "any disputes between two parties must be referred to the Islamic courts," but if a Muslim is forced to go to non-Islamic courts then it is permissible for him to accept the courts and their regulations.

**Views and Proposals of international organizations and jurists**

Having dealt with the opinion of jurists on deciding place of litigation, now we will take a look at what is currently applied in many countries on this matter, because dispute between contractors in Islamic institutions is inevitable, and thus, the international organizations and jurists embarked on appropriate solutions. The opinions and suggestions of international organizations and jurists varied to several trends, perhaps the most important ones that are applied today in many countries of the world are three:

**First trend:** the principle of the will of the parties (the Internet and private international law: 36): there is almost a consensus between legal systems of different countries that international contracts are governed by the law of the will of the parties, that is the law they explicitly or implied agree to apply in the event of dispute between them. They normally agree on inserting a clause in the contract specifying the law to be applied in the event of dispute, and it is mostly the law of the seller's or buyer's country (contracts for electronic commerce in the private international law: 4/1653).

Although, based on the 'law of the will' parties are free to choose the applicable law, but some big companies to protect their interests obliges Contracting Parties with the companies on the application of the law of the company's headquarters, and this is called acquiescence contracts. However, international agreements did not

ignore this, and decided to exclude contracts that are harmful to the weak party (consumer) and that which provides protection to him less than the law of his nation (Internet and private international law:36). Thus, the applicable law in this case is the law of the weaker party or the consumer if the principle of the 'law of the will' will deprive the average consumer of the protection afforded by the law of his state or where he lives (contracts for electronic commerce in the private international law: 4/1654). The principle of 'law of the will' is excluded in this case.

**The second trend:** the jurisdiction of the nation or place of domicile of the defendant in the absence of a prior agreement between the disputants with the court to be referred to. And this is based on what is well-established internationally that the plaintiff goes to the defendant's court in the defendant's country (legal aspects of electronic commerce and mechanisms: 4/1594). The defendant's court shall have jurisdiction over cases provided by the plaintiff even if he is a foreigner in the plaintiff's place of residence.

**The third trend:** the court where the contract is concluded. The place where a contract is concluded may be known by several ways, including:

- 1- The place where the subject matter is delivered and services are performed. Thus, the court of this place have jurisdiction to hear the case (legal aspects of electronic commerce and mechanisms: 4/1594).
- 2- The place where the acceptance is concluded (the International and private international law: 33).

These three trends may raise some reservations for some jurists; if the judge is a non-Muslim or the court is non-Islamic and the litigants are Muslims, or between a Muslim and non-Muslim litigants as mentioned before from the jurists' texts. Looking at these three trends, the first trend does not represent a violation of Islamic texts, if the two litigants or one of them is a Muslim, and they agreed to refer to Islamic court and a Muslim judge; there is nothing wrong in what they agreed in the agreement by taking the case to the court of one of them. The Prophet (peace and blessings of Allah upon Him) emphasized this when he said: "“Muslims are bound by their conditions except the one which prohibits the permitted one or permits the prohibited one”". Now, we need to tackle the issue of forcing Muslims to resort to non-Islamic courts and a non-Muslim judge, is it permissible for him to execute the contract?

Some Hanafi jurists addressed the issue of a Muslim resorting to a non-Muslim judge, and they approved accepting his judgment based on necessity and public interest (Rad al-Muhtar: 6/252).

But the second trend is the jurisdiction of the defendant's court; the Islamic jurisprudence established this hundreds of years before the contemporary legal systems, as Muhammad Ibn Al-Hasan mentioned it and this is the fatwa in the Hanafi school of law, and this is the opinion of Majallat al-Ahkam al-Adliyyah, it was mentioned in it: "“If one of the litigants request to take the case to a particular judge, and the other party requested the case to be taken to another judge in a country that has many judges, then the judge selected by the defendant should decide the case (Majallat al-Ahkam al-Adliyyah: Article 1803). For the third trend, it may be refuted by what was mentioned regarding the second trend about resorting to a non-Islamic courts and a non-Muslim judge if the contract was made, or carried out in a non-Muslim country.

#### **Arbitration of Muslim to non-Islamic courts**

**Literal meaning of Arbitration:** refers to judgment. Judgment: judging with justice (Lisan al-Arab: 12/141-1420). Someone judges in something if he puts his matters in it (Mu'jammaqayis al-Lughah: 2/91).

**Technical meaning of Arbitration:** Ibn Nujaim al-Hanafi defined it as: "“the appointment of a judge by the conflicting parties to judge between them”" (al-Bahr Raa'iq: 7/24). The Mejlle defined it as: "“the appointment of a judge by the conflicting parties with their consent to decide between their case and arbitration”" (Article 1790).

**Ruling on arbitration:** is permissible according to the majority of scholars with the exception of one opinion of the Shafi'is (al-Bahr Raa'iq: 7/27). The majority jurist relied on hadith and consensus and atharon the permissibility of arbitration. From hadith, it was narrated by Nasa'i from Abi Shuraih that the Messenger of Allah (peace and blessings of Allah upon Him) said: "“Allah is the real judge, He said 'my people differed on something and came to me and I judged between them, and both parties agreed with me. He said 'this is beautiful, who is your eldest child? He said: Shuraih. He said: You are Shuraih's father”" (Nasa'i, Kitab al-Adab: 2/585).

**Consensus:** Arbitration has occurred between a big number of senior companions, and no one denies it, Mawardi said: and this made it a consensus (Mugni al-Muhtaj: 4/378). It was unanimously agreed that the Prophet (peace and blessings of Allah upon Him) implemented the judgement of Sa'ad Ibn Mu'az when the Jews agreed to consent to his judgment with the Messenger of Allah (peace and blessings of Allah upon Him) (Al-Bahr Raa'iq: 7/25).

**As for Athar:** Umar and UbayIbnKa'ab litigated to Zaid Ibn Thabit and Umar arbitrated a Bedouin to Shuraih before appointing him as a judge, Usman and Talha Ibn Jubair arbitrated to Jubair Ibn Mat'am, and they were not judges (al-Mugni: 14/92).

### **Requirements of arbitrator**

The majority jurists require (al-Kharshi Ali Khalil: 7/145) in an arbitrator the requirements of a judge, which are: capacity, Islam, freedom and masculinity, and he must be just and not convicted for slander etc.

Some Hanfi jurists are of the opinion: that the requirements of a judge are not compulsory for an arbitrator. It was mentioned in Matalib Ul An-Nuha: "it is not required for an arbitrator the requirements of a judge, i.e. the ten qualities" (Matalib ul an-Nuha: 6/472). He is also required to be: known and not unknown; if for example it is mentioned that the arbitrator should be the first person to enter the mosque that is not permissible (Bahr Raa'iq: 7/26).

**Place of arbitration:** The majority of scholars consider that arbitration in marriage, curse (li'an), retribution and hudud is not permissible, while the Hanafi jurists permit arbitration in the blood, marriage, curse (li'an) and hudud (Matalib Ul an-Nuha: 6/471). What concerns us in this matter: is that the majority of jurists permit arbitration in money with the exception of one Shafi'i view (Raudat Talibin: 11/121). Arbitration is permissible if the parties agree to refer to it in the event of conflict between them, provided the arbitrator has integrity and impartiality.

### **Referring a Muslim to non-Islamic courts**

Some contracts provide for the application of the law of a particular state such as adhesion contracts in the event of difference between the contractors, and no freedom is left for the other party to select the applicable law in case of conflict. Sometimes a Muslim contractor is forced to succumb to the non-Islamic courts for fear of losing his interest, or pursuant to custom or international law that does not differentiate between Muslim and others.

What is the ruling in this case? Is it permissible to resort to non-Islamic courts, and to accept non-Muslim arbitrators?

The researchers differed in this issue (Research of Journal of the Islamic Fiqh Academy) between an expanded view which considers that resorting to International courts, and international cooperation in order to eliminate the causes of conflicts is recognized and encouraged by Islam (the principle of arbitration in Islamic jurisprudence: 4/156), and thus, it is permissible to resort to the International courts. And between the narrowed view that requires in order to resort to the arbitrators, there must be Muslims amongst them, and must adhere to the provisions of Islamic law in the arbitration, or the law or the rules used by the arbitrators must not contradict the Islamic law or its general purposes (Arbitration in Islamic jurisprudence: 4/156). It seems that it is inevitable to differentiate between international law and international arbitrators who are resorting to rules of international law which are based on justice and equality among nations and individuals, and between the regulations and laws of the states, which are based on the beliefs and rules contrary to Islamic law. International law, which claims to be based on the principles of justice and equality and supports the oppressed are the principles sanctioned and encouraged by Islamic law. The reasons for that are as follow:

1- What was reported by Abdurrahman Ibn Awf, that the Messenger of Allah (peace and blessings of Allah upon Him) said: "I have witnessed the 'Hilf or mutibi', and I do not want to breach it even if I will get red camels" (Narrated by Ahmad in his Musnad: 1/190-193). Ibn Hajar said: "Half al-Mutibin was before the prophet hood with sometimes mentioned by Ibn Ishaq and others, and a big number of Quraish gathered and agreed to help the oppressed, and to be just between people and so on, and this continued after the prophet hood. It is learned from this hadith that they continued that in Islam" (Fathi al-Bari: 10/518).

**The significance:** Quraish before Islam agreed on helping the oppressed from the oppressor, and the Prophet (peace and blessings of Allah upon Him) approved that agreement, and showed his readiness to answer who called him after Islam (Sirah an-Nabawi: 61). This also shows that Islam recognizes the principles of justice that is consistent with its principles and rules, even if they come from non-Muslims, provided that the principles of these organizations are on the basis sanctioned by Islamic law.

2- This Shari'ah is built on justice (Majmu Fatawa Sheikh al-Islam: 2/351). Allah said: (Allah commands justice, the doing of good) (an-Nahl:90), and (We sent aforetime our apostles with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice) (al-Hadid:25). Wherever the signs of justice appear that is where the ruling of Allah is (at-Turuq al-Hukmiyyah fi as-Siyash ash-Shar'iyyah:21).

It has been proven that the Prophet (peace and blessings of Allah upon Him) ordered his companions to migrate to Abyssinia (Fath al-Bari: 7/232) to seek for justice and escape from oppression and to live under the ruling of its king Negus, even though he was then a disbeliever.

Ibn Qayyim says: "each way that ensures justice cannot be said to contradict the Shari'ah; thus, it cannot be said that a fair policy is contrary to the Shari'ah, but it is approved by the Shari'ah, and it is part of it" (at-Turuq Hukmiyyah fi as-Siyasah ash-Shar'iyyah: 21).

Ibn Taimiyyah says: "Allah helps a fair state even it is unbeliever, but does not help an unjust state even it is Muslim" (Majmu'atawa Sheik al-Islam: 28/63). Thus, alliance and compact to do good and justice is part of cooperation ordained by the Qur'an: (Help ye one another in righteousness and piety, but help ye not one another in sin and rancor) (Maidah: 2).

As for the laws and regulations specifically for states, resorting to them is part of necessity, and necessity is measured by its gravity, and resorting to it is regarded as part of necessity for a Muslim (arbitration in Islamic jurisprudence: 4/200). The Islamic Fiqh Academy in its ninth session mentioned that: "if there are no international Islamic courts, then it is permitted to refer states or institutions to non-Islamic international courts to decide what is permissible by the Shari'ah" (Islamic Fiqh Academy resolutions:95).

#### **A proposal to establish an Islamic tribunal:**

In the absence of an active Islamic role for arbitration in banking cases, I suggest the establishment of a global Islamic body for arbitration, and to follow the Organization of the Islamic Conference or any other Islamic prestigious and internationally recognized body and to select its judges from all Islamic countries. This will save effort, time and money; this body may be present on line via internet and electronic means, so that the procedures and lawsuit and judgments can be done electronically. And this body should have Muslim judges issuing judgments based on the Shari'ah.

## **II. CONCLUSION**

The following are the most important findings and recommendations which we have reached through this research:

- 1- There are several ways to settle disputes between conflicting parties, and we mentioned four ways, which are:
  - a- If the plaintiff cannot be differentiated from the defendant, the nearest judge to them decides the case; and if they are equal in proximity, then voting should be conducted between them.
  - b- If it is possible to distinguish between the plaintiff and the defendant, then the defendant should have the right to select the litigation place if the claimed property is debt.
  - c- If the claimed property is real estate, or something fixed, we have preferred the opinion of the Maliki jurists that says the case should be decided in the place where the property is located.
  - d- Resorting to arbitration in the absence of special courts that judge with the Shari'ah.
- 2- The jurists are unanimous that a case between two parties must be decided based on the Shari'ah in case of a Muslim and non-Muslim parties.
- 3- There are three trends according to the jurists in deciding place of litigation, the first: is the law of the 'will of the parties'; second: jurisdiction of the Court or the home of the defendant; and third: the court where the contract is concluded.
- 4- Arbitration is permissible according to the majority of scholars, with the exception of one of the opinion of Shafi'is, and is considered a way of solving financial disputes.
- 5- There must be a distinction between international law and international arbitrators who refer to principles that are based on justice and equality, and between the laws of states which are based on beliefs and principles that are contrary to the Shari'ah. Rules which are based on justice and equality are sanctioned by the Shari'ah, but the ones for states are not approved.
- 6- We propose the establishment of a global Islamic Arbitration for settlement of disputes between the Islamic financial institutions to constitute Muslim judges, and follow one of the Islamic bodies universally recognized.

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