

Dispute Resolution in Islamic Banking Industry

Under The Iraqi Judiciary System

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ABSTRACT

Islamic banking transaction is based on an interest-free system that is prohibited to deal with *riba*. Several Islamic banks in Iraq are governed by the Central Bank of Iraq. Due to the lack of Islamic financial courts and lack of professional judges in the Islamic financial field, Islamic banking cases are handled by civil courts in Iraq. However, Islamic finance disputes should be considered by special courts with qualified judges in the field. The Judicial Authority in Iraq is not based on the Sharia system and the Sharia court specialised in Islamic finance in Iraq does not exist. As stated in Article 89 of the Iraqi Constitution of 2005 that the federal juridical power is comprised of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are regulated under the law. Thus, Islamic banking disputes fall under the civil courts and the Courts of First Instance are responsible to handle cases of debt, and contracts. Furthermore, these courts are not specialists in Islamic banking and finance transactions. Therefore, a particular court, i.e. the Islamic financial court, should be among these courts in Iraq for resolving Islamic banking disputes. In addition, the special court has to include qualified judges who are familiar with Islamic finance.

KEYWORDS: Islamic Banking, Disputes Resolution, Civil Court, Commercial Court, Legal Issues.

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The Islamic banking system is based on Sharia laws and regulations and it is the system that avoids dealing with interest which is part of the conventional banking system. The Islamic banking system, the same as the conventional banking system, is regulated by Acts such as Banking Law, Islamic Banking Law, and Financial Law. Each of the law that is applied to Islamic banks should consider that Islamic banking transaction is an interest-free banking system and it works according to Sharia principles. In Iraq, like other countries, Islamic banks have their roles in developing the country's economy and financial situation. Islamic banks in Iraq are regulated by the Islamic Banking Law 2015 and the Banking Law 2004. The Central Bank of Iraq (CBI) supervises all conventional and Islamic banks in Iraq to make sure that these banks are regulated properly under current laws and regulations. Besides that Islamic

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banks are supervised by Sharia supervisory boards, and each Islamic bank should have its own Sharia supervisory board to make sure that Sharia principles are applied by these banks. According to the Iraqi Islamic Banking Law 2015, each Islamic bank should have a special committee as it is stated in Article 7 (1) (a) 'Islamic banks shall establish a Sharia supervisory board with the approval of the CBI. Part (b) of Article 7 (1), furthermore, stated that each board should have 5 members with at least 3 of them being experts in Islamic Fiqh and Usul Fiqh, while the other member specialising in banking, legal and financial areas' (Islamic Banking Law of Iraq 2015).

Although the Iraqi Islamic banking system is regulated by a special Act which is Islamic Banking law 2015, there are still some legal issues related to this industry, such as the lack of a special court to deal with dispute resolution of Islamic banks.

Therefore, in the case of Islamic banks, there should be special courts that deal with any legal cases carried out by customers or Islamic banks. However, it is clear that in many countries Islamic banking cases are dealt with the same as conventional banking cases. In this context, the decision that is made by these courts could not be the right decision.

1.1 Purpose of This Paper

This paper purposes to examine the dispute resolution of the Islamic banking industry under the current Iraqi judiciary system. In addition, the challenges facing Islamic banks of Iraq in courts and how the courts in Iraq resolve Islamic bank disputes.

1.2 Research Method

This research applies a qualitative descriptive method and analyses legal cases related to Islamic banks in Iraq. The researcher describes the dispute resolution of the Islamic banking industry of Iraq under the judiciary system of Iraq and then analyses the result of the research. The data collection for this research is from primary and secondary sources. Thus, Acts, court cases, books, journals, and related websites are the main source for data collection for this study.

1.3 Findings

It is found that the current legal court system in Iraq is not proper for resolving issues that arise between Islamic banking institutions and their clients. The Iraqi courts have crucial rules in resolving legal cases. However, due to the lack of special courts in Iraq, the civil courts usually decide on the issues. Furthermore, judges who are appointed to these courts do not have a Sharia background. Therefore, the courts and the appointed judges are not capable of handling Islamic banking legal cases in Iraq.

2. Current Form of Iraqi Islamic Banking System

The current legal framework of the Islamic banking system should consist of an Islamic Banking Act as a regulation scheme, a central bank as supervision, and a Sharia supervisory committee as Sharia supervision.

However, the lack of an Islamic banking act in any country enforces Islamic banks to apply general banking law which is enacted to regulate conventional banks. Therefore, it is an issue for the Islamic banking system to not have a special Islamic banking act. In general, for Islamic banks to develop faster and assist the growth of the financial system there should be an Islamic banking act. Thus, for the current Islamic banking system to go parallel with the conventional banking system there should be a proper legal framework that consists of all the necessary regulations and rules, such as laws and instructions in addition to the Sharia supervisory board.

In Iraq, many Islamic banks operate under the supervision of the CBI. In addition, there is an Islamic banking Act for regulating these banks. (Salh and Hyland, 2020, 5) Furthermore, there are several Sharia scholars and bankers who manage the Islamic banking industry. Even though a shortage of experts and Sharia scholars for Islamic banks in Iraq is still considered a challenge for this industry but the current Islamic banking system still has its role in developing the country's economy.

Islamic banks in Iraq like other countries have an important role in developing financial and economic situations. Although the Islamic banking system in Iraq is not developed compared to the conventional banking system, it still keeps developing. The first Islamic bank, the Iraqi Islamic Bank for Investment and Development, was founded in Iraq in 1993. (Iraqi Islamic Bank). Following this, other Islamic banks were established to meet the needs of Muslims by operating under Sharia principles. (Jawad, 2014, 37). Islamic banks in Iraq provide several services and use different modes of finance to offer different services to Muslims in Iraq, such as *mudaraba*, *musharaka*, and *murabaha*.

Currently, 29 Islamic banks in Iraq operate according to the Sharia principles under the CBI supervision. One of the Islamic banks is a state-owned Islamic bank which is Alnahrain Islamic Bank, and ten of them are local Islamic banks. In addition, there are eighteen private Islamic banks (conversion companies previously). (CBI, Banks, 2023).

Several Laws apply to Islamic banks in Iraq, such as The Central Bank Law No.56, 2004, which *was issued on March 6, 2004. The Central Bank Law's purposes are achieving domestic price stability and promoting a competitive stable financial scheme. In meeting these principles the CBI will support sustained growth and economic opportunities for Iraqi society. The CBI supervises all banks in Iraq to ensure that they operate under the obligation of the current laws and regulations system in Iraq. The Banking Law No 94, 2004 is another law that is applied by Islamic banks in Iraq.* The Iraqi Bank Law was issued on 19 September 2004 and the law guarantees the legal framework for a banking system in Iraq in line with international standards and it enhances confidence in the banking system in the country. (CBI, Laws, 2023) The Iraqi Banking Law 2004 regulates all banks including Islamic banks. Furthermore, Islamic Banking Law No. 43, 2015 is the main law for regulating Islamic banks in Iraq. This law was enacted after 32 years since the first Islamic bank has been established. The Islamic Banking Law 2015 is a special Act for Islamic banks (Eidan. 2022, 62) in Iraq to ensure that Islamic banks do not breach Sharia laws. Anti-Money Laundering and Counter-Terrorism Financing No 39, 2015 is another law that should be applied by Islamic banks to protect these banks from money laundering and avoid terrorist financing.

It is noted that there is a special Islamic banking law for regulating Islamic banks in Iraq. Existing Islamic banking law is vital which enhances the industry to compete with conventional banks. However, it is preferred for the Islamic banking system to consist of

Islamic Banking Law, a special court to handle Islamic banking disputes, legal and Sharia experts in Islamic finance, and specialised judges who can deal with Islamic finance disputes. Hence, in Iraq, a special Islamic Act exists and there are numbers of Sharia scholars but the lack of an Islamic finance court or special court and shortage of expert judges to handle cases on Islamic finance disputes is still considered a fundamental issue of Islamic banks in Iraq. Thus, it is important to explain the Iraqi judicial system and types of courts in Iraq to know how to deal with Islamic banking disputes in Iraq.

3. The Judicial System in Iraq

Like other courtiers in the world, the judicial system of Iraq consists of several types of courts and each court handles different types of cases, for example, civil courts handle civil cases and criminal courts handle criminal cases. In Iraq, the judiciary is independent and no power is above the judiciary except the law as it is stated in Art. 88 of the Constitution 2005 (United Nations, Judicial Independence, 2023).

As it is stated in Article 89 of the Iraqi Constitution of 2005:

The federal juridical power is comprised of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are regulated in accordance with the law. (Art 89, Iraqi Constitution 2005)

Here the judicial system and courts in Iraq will be explained to determine which type of courts can handle Islamic banking disputes and Islamic financial legal cases.

3.1 The Higher Juridical Council

The Higher Juridical Council oversees the affairs of the judicial committees. As is stated in Art 90 of the

Iraq Constitution 2005 "The Higher Juridical Council shall oversee the affairs of the judicial committees. The law shall specify the method of its establishment, its authorities, and the rules of its operation". It is comprised of the following:

- The Court of Cassation: There are two Courts of Cassation now in Iraq; one is federal for all of Iraq except the one in Kurdistan Region, which is another cassation court just for the Kurdistan Region.
- The Supreme Court: There are sixteen Supreme Courts all over Iraq except in Kurdistan Region. (al-Saedi, 2008, 7-9).

The authorities practiced by the Higher Juridical Council are stated in Art 91 of the Iraqi Constitution 2005:

The Higher Juridical Council shall exercise the following authorities:

First. To manage the affairs of the judiciary and supervise the federal judiciary.

Second. To nominate the Chief Justice and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the Chief Justice of the Judiciary Oversight Commission, and to present those nominations to the Council of Representatives to approve their appointment.

Third. To propose the draft of the annual budget of the federal judicial authority, and to present it to the Council of Representatives for approval.

3.2 Federal Supreme Court

According to Art 93 of the Iraqi Constitution 2005:

The Federal Supreme Court shall have jurisdiction over the following:

First. Overseeing the constitutionality of laws and regulations in effect.

Second. Interpreting the provisions of

the Constitution.

Third. Settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others.

Fourth. Settling disputes that arise between the federal government and the governments of the regions and governorates, municipalities, and local administrations.

Fifth. Settling disputes that arise between the governments of the regions and governments of the governorates.

Sixth. Settling accusations directed against the President, the Prime Minister and the Ministers, and this shall be regulated by law.

Seventh. Ratifying the final results of the general elections for membership in the Council of Representatives.

Eighth. A. Settling competency disputes between the federal judiciary and the judicial institutions of the regions and governorates that are not organized in a region.

B. Settling competency disputes between judicial institutions of the regions or governorates that are not organized in a region.

It is worth mentioning here that the decisions of the Federal Supreme Court are final and binding for all authorities. As stated in Art 94 of the Iraqi Constitution.

3.3 Court of Cassation

The Court of cassation consists of a single court in the capital Baghdad and it is considered the highest

judicial body in the ordinary judiciary (Supreme Judicial Council, 2023). According to S1 Art 12 of the Judicial Organization Law No. 160, 1979:

The Cassation Court is the higher judicial body that practices the judicial monitoring over all courts unless the law stipulates otherwise. It shall consist of a president and five deputies as well as judges with an overall number of not less than thirty. Its headquarters shall be in Baghdad.

3.4 Public Prosecution Department

The Public Prosecution Department is regulated by Public Prosecution Law No. 159 of 1979. According to Chapter one, Art 1, the Public Prosecution aims to observe the decisions that are made by judges and represent society (Supreme Judicial Council, 2023).

3.5 Judiciary Oversight Commission

The Judiciary Oversight Commission is a part of the Judicial System in Iraq which oversees the judiciary and the decisions of the courts. Hence, it is the responsible body for overseeing the conduct of the judges and the staff in all the courts of Iraq. (Except for the Constitutional Court and the courts of the Kurdistan Region) (Supreme Judicial Council, 2023).

3.6 Other Courts in Iraq

There are two types of courts under the judiciary authority in Iraq: civil courts and Criminal courts:

3.6.1 First: Civil Courts.

Civil courts in Iraq are divided into five types of courts and each type of these courts handles different cases, The Courts of First Instance, the Courts of Appeal or Supreme Courts, the Courts of Personal Status, the Courts of Civil Matters, and the Labor Courts.

- The Courts of First Instance have one judge each. The courts handle cases of debt, real estate, contracts, and compensation for illegal work. The decisions of the courts are usually considered

primary and are reviewed by the Courts of Appeal, which consist of panels of three judges.

- The Courts of Appeal review the decisions that are made by the court of the first instance.
- The Courts of Personal Status have one judge each. These courts handle marriage, divorce, wills, and estates for Muslims.
- The Courts of Civil Matters each have one judge. These courts handle specific issues such as marriage, divorce, wills, and estates for non-Muslims.
- The Labor Courts have one judge each and this type of court handles these cases related to labor (al-Saedi, 2008, 10).

3.6.2 Second: Criminal Courts.

There are two different kinds of criminal courts in Iraq, depending on the age of the defendant, Criminal Courts for Adults and Juvenile Courts. Defendants in the Criminal Courts for Adults are adults who are the age of eighteen and over at the time when the alleged crime was committed. However, when the defendant is under the age of eighteen, his case will be handled by a Juvenile court. (al-Saedi, 2008, 10).

Looking at the aforementioned courts and their handling of cases, it can be seen that these courts do not deal with cases related to Islamic banks. It is noted that cases related to contracts and debt are dealt with by First Instance Courts. These courts are not specialised in financial issues or issues related to the bank in general and Islamic banks in specific. Looking at the Courts of Personal Status it is true that these courts deal with the issue for Muslims but only issues relating to personal statutes such as marriage, divorce, wills, and estates.

4. The Commercial Court in Iraq

The commercial court was established under Article 22 of the Judicial Regulation Code 2010. Art 22 allows for establishing a court of first instance that is

specialised in limited and determined cases. The Iraqi Higher Judicial Council issued statement No. (026 / Q / A) in 1/11/2010 according to which a court of first instance was formed to hear commercial cases that one of the parties should not be Iraqi. The commercial court has the authority to handle commercial cases that are related to foreign element; thus, any domestic commercial case is not handled by the commercial court. (Kadhim. and Ghanim, 2022, 92)

The reason behind the establishment of the commercial court is the growth of foreign investors, which increased after Iraq opened its door to foreign investment following the second gulf war in 2003. (Kadhim. and Ghanim, 2022, 92). The commercial court has the same process as the court of first instance where all procedures are followed in filing the cases until settling down the case. However, the commercial court emphasizes speed and transparency. The reason behind settling commercial cases speedily by the commercial court is that the court does not require notices to be sent through the Iraqi Ministry of Foreign Affairs, which is the standard but slow method of service when a non-Iraqi party is involved. Another reason behind settling commercial cases by the court speedily is that the commercial court has a smaller caseload and so can resolve disputes faster than regular courts of first instance. (Norri, 2014).

For the judges in commercial courts to be knowledgeable to handle international trade cases they should have specific information. Thus, these judges received special training to know how to deal with foreign commercial cases and obtained knowledge in resolving complex international disputes. (Al-Sarraf., 2016, 61-62)

It is argued that commercial court decisions are still subject to appeal, which is handled by the Court of Appeals along with normal cases. This could be an

issue for the commercial court and for judges that deal with commercial cases and disputes. The judges in the courts of Appeal may not have knowledge of international trade cases as they are not specialised in this field. Therefore, this can affect the decisions that are made in this type of case.

The commercial court handles these cases related to non-Iraqi nationality companies and cases. Hence, the Commercial Court has concentrated on this uncertainty by applying a provision of the Iraqi Civil Law, as stated in Art 3 that "Iraqi law should be applied to persons that have a foreign nationality in addition to their Iraqi nationality" (Iraqi Civil Law No. 40 of 1951, art. 3, sec. 2.). As for the nationality of companies, which are named as parties, the court refers to Iraqi Company Law 1997, which defines the nationality of a company as the place where the certificate of incorporation is issued (.Iraqi Company Law No. 21 of 1997, Art. 22). Therefore a company incorporated in Iraq would be considered to have the Iraqi nationality for the commercial courts' jurisdiction. It is worth mentioning here to determine that these types of cases are heard by the Iraqi commercial court, Disputes arising out of international sales contracts, Letters of credit disputes, Letters of guarantee disputes, General contractual disputes, Trademark infringement, and Commercial arbitration. (Al. Sarraf, 2016, 63)

The commercial court cannot decide on Islamic banking cases because this court is not specialised in Sharia law and it is not specialised in Islamic banking disputes. Furthermore, the judges that are appointed in the commercial courts received training courses in international commercial cases but not in the Islamic banking field. Most judges sitting on the bench are not familiar with the transactions and contracts involved in Islamic financial transactions (Oseni, 2009, 2). The nature of Islamic banking cases is different from that of commercial cases because

Islamic banking cases are related to Sharia regulation which requires judges to have special knowledge of Sharia law and regulation systems besides their knowledge in the commercial field. Thus, disputes in Islamic banks cannot be settled by a commercial court in Iraq.

5. Different Systems of Resolving Islamic Banking Disputes

Dispute resolution in Islamic banking can go into two stages. The first stage is going through mediation and negotiation which is advisable for the parties to resolve their disputes through negotiation. (Salh. 2021, 26). The second stage is court litigation, in which the disputes go to court to be resolved.

It is clear that the courts in common and civil law jurisdictions are inadequate to resolve Islamic finance disputes due to the shortage of knowledge about Sharia law. In addition, judges of these courts are unprofessional to apply effectively Islamic finance and Sharia concepts in dispute resolution. (Camille P., 2014). However, when there are no special courts to handle Islamic banking cases, the disputes shall be settled by civil and common law courts and judges who are unqualified in Islamic banking dispute resolution. Thus, judges in civil courts are experts in their field, i.e. civil law cases rather than Islamic finance legal cases. Therefore, it is difficult for Islamic banks and their clients to obtain their rights through courts, as the judges are not experts in Sharia legal system and Islamic banking field. (Dahlan and Palil, 2018, 15).

When there is no special court for handling Islamic banking disputes then the Sharia court if it exists has to handle these cases. Thus, some countries have Sharia courts and these courts settle Islamic banking cases. Looking the Kingdom of Bahrain for example, the Sharia court exists in this country and this court in Bahrain deals with all Sharia-related issues including Islamic finance cases. As a result, in Bahrain Sharia

courts cover all the issues of the personal status of Muslims and it implies that the Islamic finance judiciary is organized with Sharia courts since it refers to Islamic law. (Qonita, 2018, 75).

In Indonesia, the Religious Courts handle cases in Islamic banking and finance when there is a dispute. (Masse and Rusli 2018, 4). As it is stated in Art 55 of Law No 21 of 2008 on Sharia (Islamic) Banking "Settlement of disputes of Sharia (Islamic) Banking is conducted by a court in the Religious Court". Therefore, in Indonesia, the Religious Courts are a responsible party and the Courts should examine, decide and resolve cases in Islamic banking disputes. (Muhaimin, 2021, 6)

Looking at Malaysia as one of the developed countries in Islamic banking and finance, the situation is different, even the common law courts decide on issues relating to Islamic finance but the Judges who are appointed on these courts, in case of Islamic finance, request advice from the Sharia Advisory Council (SAC) which is Central Sharia Committee in Malaysia. As stated in s 56, the Central Bank Act 2009:

Where in any proceedings relating to Islamic financial business before any court or arbitrator any question arises concerning a Shariah matter, the court or the arbitrator, as the case may be, shall – (a) take into consideration any published rulings of the Shariah Advisory Council; or (b) refer such question to the Shariah Advisory Council for its ruling.

It should be mentioned here that the ruling given by the SAC is binding on the civil court (Hassan, Ilia. and Ibrahim, 2022, 335). Thus, the Malaysian method could be a good solution to deal with Islamic banking disputes in court when a special court for Islamic finance does not exist. However, having a special court for handling cases of Islamic finance could be

the best solution.

Besides that, in 2003 the Malaysian government established the Commercial Division 4 of the Kuala Lumpur High Court, which is a specialized court that handles and adjudicates Islamic finance cases (Dahlan and Palil, 2018, 14). However, the judges of the Commercial Division are familiar with conventional banking cases not Islamic banking cases. (Hassan, Ilia. and Ibrahim, 2022, 330). Therefore, referring to the SAC by the court and requesting advice from that council is preferred.

In a country like Saudi Arabia most of the disputes in Islamic finance, including banking disputes, are not examined by courts but by Special Committees such as the Committees for Banking and Financial Disputes and Violations, because the judges of these courts treat Islamic finance as same as conventional finance as there are no special regulations for Islamic banking (Abalkhil, 2018, 89).

On the other hand, in those countries that do not have a Shariah court and all cases related to Sharia issues of Islamic financial institutions are settled under the civil or common law court such as in the UK. The UK legal system is based on English law and the courts in this country are following case law. Therefore, any dispute in Islamic finance will be treated under common law courts, not Sharia courts as can be seen in the case of Beximco Pharmaceuticals Ltd v Shamil Bank of Bahrain.

In the renowned English case of Beximco Pharmaceuticals Ltd v Shamil Bank of Bahrain EC 2 [2004] EWCA Civ 19, one of the issues concerned the governing law of the contract. The contract stated that "subject to the principles of Glorious Sharia'a, this agreement shall be governed by and construed in accordance with the laws of England". At trial, the judge, when dealing with the question of the applicable law, referred to the Rome

Convention on the Law Applicable to Contractual Obligations 1980 and stated that the convention only made provision for the choice of law of a country, and did not provide for the choice of law of a nonnational system of law, such as Sharia law. It was held that a contract can only have one governing law and that parties to a contract can only agree to adopt the law of a country as the governing law of a contract. Therefore, according to English law, as Sharia law is a nonnational system of law it is not capable of being the governing law of a contract. (Jonathan L, 2012)

Hence, in the case of Beximco Pharmaceuticals Ltd v Shamil Bank of Bahrain. (Court of Appeal, Civil Division 28 January 2004) it is noted that judges decided according to English law, not Sharia law as it is not capable of being the governing law of contract. Besides, the judge stated that Sharia law is not the country's law (Foster, 2006, 3). Therefore, the decision cannot be made according to Sharia law. Judges in common law courts do not have knowledge of Islamic Sharia law and they do not make a decision according to the Sharia law. In this context, the decision may not be proper for Islamic banks (Salh, 2021, 28).

It is noted that Islamic banking disputes are settled by Sharia courts or civil courts. However, the issue of these courts still exists which is the lack of specialised judges in these courts. (Gordon B., 2019). Hence, in all cases, the decisions that are made by these judges may not be in favor of the Islamic bank as these judges cannot cover these issues due to the shortage of knowledge in the Islamic banking field (Olayemi, and al-Zabyani, 2014, 3).

6. Issues of The Iraqi Islamic Banks in the Current Court System

According to the earlier justification about courts in

Iraq, one of the main issues of the Islamic banks of Iraq is the lack of a special court for settling Islamic banking disputes when there is a conflict between Islamic banks and their customers. As it is mentioned earlier, there are several courts in Iraq and each court has its obligation. In the case of Islamic banks, the disputes are settled by the civil court and particularly the courts of first instance. However, the civil court is not specialised in issues involving Islamic finance, which is part of the Sharia system. Thus, handling Islamic banking cases by the civil court may not lead to making the right decision. Here it can be said that there are two issues for Islamic banks when there is a dispute, first, the lack of a special financial court, and second the lack of specialised judges in the current courts.

Firstly, the lack of a special court to handle banking cases in general and Islamic banking cases in specific are the first issue facing Islamic banks in Iraq. When there is no special court to deal with Islamic banking disputes, the civil or commercial court should handle these cases. However, looking at the civil court it can be seen that this court handles all civil cases, among them contracts. Nevertheless, Islamic banking disputes cannot be settled by these courts due to the lack of sufficient knowledge in this area among these courts.

Secondly, the lack of professional judges in these courts in Iraq is another issue for Islamic banks. There are many knowledgeable and expert judges sitting on the courts in Iraq. These judges have sufficient knowledge in their fields, such as civil, criminal, and commercial fields. However, most of these judges do not have sufficient knowledge of Islamic banking and finance. For settling Islamic banking cases and disputes to be handled by these courts, judges of these courts should have knowledge of, Islamic finance, Sharia, and general finance besides their knowledge of the law. In that context, all disputes in

Islamic banks have to be settled by the civil courts which are considered a challenge for Islamic banks in Iraq. Someone may argue that the civil court can settle Islamic banking disputes in Iraq. The argument could be true if the judges who are appointed in these courts have training in Islamic banking and finance. However, Islamic banking and finance is a very wide field and it needs qualified judges to examine and make a decision about the disputes in Islamic banking.

Establishing a special court for settling finance disputes in general and Islamic finance in specific is necessary. Like establishing a commercial court in Iraq in 2010 by the Iraqi Higher Judicial Council, a special court of first instance can be established for handling Islamic banking and finance cases. The particular finance court could consist of specialised judges who have knowledge of the law, Sharia, Islamic banking, and finance in general. Thus, Sharia boards of Islamic banks, Sharia scholars, and CBI can have their roles in establishing the financial court in Iraq. In addition, current judges can have a training course to obtain knowledge about Islamic banking and finance. Furthermore, the judges can request assistance from Sharia scholars and Sharia members of Islamic banks when necessary. Therefore, establishing a special court is the first step, and opening training courses for a group of judges could be the second step for resolving the lack of specific courts for dispute resolutions of Islamic banks.

Another solution is that civil courts can settle Islamic banking disputes but should handle the case by specialised judges in these courts. Hence, appointing judges who have experience in Islamic banking and finance in the civil courts is necessary. Accordingly, any Islamic banking cases filed to the civil court can be handled by these judges rather than other judges. In general, Islamic banking disputes should be handled by either a special court or by

specialised judges in civil courts. However, establishing a special court for dealing with Islamic finance disputes is preferred.

7. Conclusion

Islamic banking in Iraq is developed after the Islamic Banking Law has been enacted in 2015. The law enhances Islamic banks and regulates Islamic banking operations. However, there is still a main issue which is related to dispute resolution in the Islamic banking industry of Iraq. The current judiciary and court system of Iraq is not proper for Islamic banks in the case of disputes. All courts in Iraq are based on a conventional system except the Courts of Personal Status which handle marriage, divorce, wills, and estates for Muslims. Thus, the Islamic banking disputes should be settled by civil courts which are indeed not specialised in issues related to Islamic finance. Although, there are Commercial Courts in Iraq that handle trade cases with a condition that one of the dispute parties should be a foreigner. The Commercial Courts like other courts are not specialised in Islamic finance. In addition, the judges that are appointed in all courts in Iraq are not expertise in Islamic banking and finance. Therefore, all disputes of Islamic banks are settled by civil courts with judges who do not have sufficient knowledge of Islamic banking and finance. In this context, the decision that is made by these courts in case of disputes may not satisfy the Islamic banks and their customers.

In this case, there should be a solution for dealing with dispute resolution of Islamic banks in Iraq. Establishing a court of first instance by the Higher Judicial Council to handle Islamic banking and finance cases, like establishing commercial courts in 2010, could be the best solution. The new court can settle a dispute in Islamic banks in Iraq. On the other hand, appointing experts and knowledgeable judges in Islamic banking and finance in the civil courts that

have abilities to handle Islamic banking and finance cases could be an alternative solution. For the judges to have sufficient knowledge of Islamic banking and Sharia matters, they should receive training courses to be qualified for taking this type of case. In addition, the judges of these courts can request information about Islamic banking cases from Sharia scholars, economists, and members of Sharia boards of Islamic banks when there is a dispute. It could be said that the CBI should have a main role in dispute resolutions of Islamic banking and finance. The CBI can establish a central Sharia board for dealing with Islamic banking cases before they go to court. Some cases can be settled by the Sharia board and some other cases can be resolved by the central Sharia board. In case the dispute cannot be resolved by these two boards, the court could be the last destination to handle the case.

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