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The Need and Policy for Legislating the Principles of Islamic Financial Transactions as a Law Applicable in Litigation and Arbitration

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Abstract

This research deals with the importance of legislating the principles of Islamic financial transactions in litigation and arbitration as applicable law, because the applicable law is one of the most important legal issues that arise in the field of litigation and arbitration, the judge and arbitrator do not adjudicate the dispute according to his personal knowledge, but according to the applicable law agreed upon by the parties to the dispute or the law that is applied in accordance with the rules of conflict of laws. There are many precedents in the field of litigation and arbitration in which the question of considering Sharia as an applicable law was raised, and the answer was not to consider Sharia as an applicable law. This is because of the need of legislating the principles of Islamic Sharia in the field of Islamic financial transactions.

Keywords: legislation, Islamic financial transactions, applicable law, litigation, arbitration.

1. Introduction

Today, the world is witnessing widespread Islamic financial transactions in all economic, industrial, agricultural, and service sectors, which has resulted in the complexity of legal relations based on Islamic financial transactions and their cross-border extension. The diversity and complexity of legal relations associated with Islamic financial transactions result in disputes between the parties to these relations, which are referred to arbitration or the judiciary, and when the dispute is considered by the judge or arbitrator, a specific law must be applied to settle the dispute. There is a relationship between the nature of the dispute and the applicable law, as Islamic law is assumed to be the applicable law in Islamic financial transactions disputes. The choice of Islamic Sharia as an applicable law has been exposed to several legal and practical challenges, often cases of choosing Islamic Sharia as an applicable law under various arguments, the most important of which is the lack of legislatingIslamic Sharia in the field of financial transactions. This calls for working on a unified law that

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collects the principles of Islamic financial transactions and is the applicable law in litigation and arbitration on disputes of Islamic financial transactions.

1.1 The Problem Stated

It revolves around a number of questions that revolve around the possibility of considering Islamic law, in the field of financial transactions, as a law applicable in arbitration or litigation. As the essence of the dispute revolves around the identity of the legal rules that may be chosen as the applicable law in arbitration or litigation, and the search for this identity is by reference to the arbitration or litigation law that governs the arbitral or judicial case, and the arbitration or litigation law uses the term law, that is, a set of rules that the competent authority in the state (the legislative authority) issues to regulate a matter. Does this meaning apply to Islamic law in the field of financial transactions? We also note that the arbitration law has authorized the arbitral tribunal to choose the applicable law in the event that the litigants do not agree on it, so will Islamic law in the field of financial transactions has room in this choice if it is not codified in the form of a law issued by the legislative authority, and the problem of the doctrinal background of the arbitral tribunal and shopping between the schools of thought, in the event that Islamic law is chosen in the field of financial transactions as rules governing the dispute by arbitration, here the question arises, which doctrine of Islamic schools of thought the parties intend to apply?

1.2 Research Questions

This research has questions that are looking for an answer, and they are: 1- What is the intended law of Islamic law? 2- What are the problems facing Islamic Sharia in the field of financial transactions as a law applicable in arbitration or litigation? 3- What is meant by codifying the principles of Islamic financial transactions? 4- What are the legal controls to deal with the legislation of the principles of Islamic financial transactions? 5-What are the consequences of legislation of the principles of Islamic financial transactions as an applicable law?

1.3 The Importance of Research

This research is important to be researched, which is represented by the spread of Islamic financial transactions in various types of economic activities at the national and international levels, and the fact that countries allow their adoption as a means of trade exchange and in fulfilling their financial obligations. Consequently, their use is not confined to the borders of States but extends beyond them to extend across borders for adoption as a means of payment and credit. The importance of this study comes as an attempt to clarify the role of codifying the principles of Islamic financial transactions in the form of law in order to stabilize dealings between the parties to legal relations

arising from Islamic financial transactions by creating a unified local and international legal regulation that governs disputes arising from Islamic financial transactions.

1.4 Research Objectives

The research aims to clarify the concept of legislating the principles of Islamic financial transactions, the conditions and controls for codifying the principles of Islamic financial transactions, and the legal implications of this as applicable law. This is in order to clarify the legal reality of the application of the principles of Islamic financial transactions as a law applicable in arbitration or litigation in the absence of a law issued by the legislative authority in this regard. The research aims to evaluate the jurisprudence and arbitration in the field of choosing the principles of Islamic financial transactions as a law applicable in arbitration or litigation and to indicate the importance of arbitral and judicial principles as a motive in the search for a mechanism to codify the principles of Islamic financial transactions.

1.5 Research Hypothesis:

This research tries to prove the hypothesis of the success of codifying the principles of Islamic financial transactions in the form of a law issued by the legislative authority, where there is a direct proportion between the legislation of the principles of Islamic financial transactions and the promotion of its selection as a law applicable in arbitration and litigation.

2. The Concept of the Legislation of the Principles of Islamic Financial Transactions

The study of the nature of the legislation of the principles of financial transactions requires a statement of what is meant on the one hand, and determining their legal importance on the other hand. Accordingly, this section will deal with the meaning of codifying the principles of Islamic financial transactions and then deals with their legal importance.

2.1 Meaning of Legislating the Principles of Islamic Financial Transactions

We explain first, what is meant by the Islamic financial transactions law as an applicable law, and then what is meant by its legislation.

2.1.1 Meaning of Islamic Financial Transactions Law as an Applicable Law

An important question arises in this regard about what is meant by the Islamic financial transactions Law as applicable law, does it mean the law issued by the legislative authority in the field of Islamic

transactions, or can it be something else such as legal rules or the rules of justice and fairness or the custom followed? By reviewing the arbitration rules contained in national arbitration laws, international conventions on arbitration, and arbitration rules for arbitration centers, we find that they do not stipulate the exclusion of the application of Islamic law as the applicable law in the arbitration process when the parties to the dispute agree to do so. However, these rules are divided on the mechanism for determining the law applicable to arbitration, as the vast majority, if not all of them, of these rules, refer to the agreement of the parties to the dispute as a means of choosing the arbitration law. These legislations also allowed the arbitral tribunal to be free from the application of a particular law and to resolve the dispute in accordance with the rules of justice and equity. So the meaning of Islamic financial transactions law as an applicable Law in arbitration and litigation can be:

A-Law Issued by the Legislative Authority

The law in this sense is generally what is issued by the legislative authority of the binding rules that regulate or govern the behavior of individuals in their relations with each other as well as the relations of public authority with each other and its relations with individuals. The agreement may be based on the law relating to the contract in dispute, such as the law of the place of conclusion of the contract or the law of the place of execution, and the law chosen by the parties may have nothing to do with the contract in order to ensure that they choose a neutral law or a law that is evolving in its principles.

Therefore, Islamic law cannot be applied in the field of financial transactions as it is not a law issued by the legislative authority in the sense of the above.

B-Custom

The parties may agree that the dispute shall not be subject to any law but to the rules of custom and custom prevailing in commercial dealings. Custom means the steady behavior of members of society in a particular subject in a certain way that feels obligated. It appears from this definition that custom has two elements, one material, which is custom, and the other moral, which is the feeling of obligation. This meaning does not extend to Islamic law as it is not a custom, but rather a source of legislation in the Arab countries, and therefore Islamic law cannot be applied in the field of financial transactions as it is not a custom.

C-Rules of Justice and Fairness

The parties to the dispute may agree that the dispute is adjudicated in accordance with the rules of justice and fairness without being bound by law, and it means what the arbitrator or judge feels deep down is indicated by the sound mind and the spirit of natural justice between

people and suggested by the conscience of the judge or the enlightened living arbitrator based on giving everyone his right. This meaning does not apply to Islamic law, and therefore Islamic law cannot be applied in the field of financial transactions as a law obligatory in arbitration or litigation as not rules of justice or equity. We note that Islamic law cannot be chosen in the field of financial transactions as a law applicable in arbitration or litigation as it is not a law issued by the legislative authority that it is not custom and it is not a rule of justice and fairness.

However, free arbitration gives the arbitrator the power to be free from the principles of the law and ordinary trial procedures and rules the dispute according to the rules of justice and fairness that he derives from the heritage and history of his society, culture, religion, and people's customs. Several arbitration rules have referred to giving the arbitrator the right to adjudicate the dispute in accordance with the rules of justice and equity under the agreement of the parties to the dispute. Article (36/d) of the Jordanian Arbitration Law refers to this provision: "The arbitral tribunal may, if the parties to the arbitration expressly agree to authorize it to reconcile, decide on the subject of the dispute in accordance with the rules of justice and fairness without being bound by the principles of the law."

Since the rules of justice are inspired by the conscience of the arbitrator and based on the culture and religion of his community, the application of the rules and principles of Islamic law as a source of the rules of justice and fairness is only conceivable if the arbitrator is a Muslim or has a great knowledge of the principles of Islamic law.

2.1.2. Meaning of Legislation of the Principles of Islamic Financial Transactions

The legislation of the principles of Islamic financial transactions is meant as a form of legislation and means a set of legal rules related to the principles of Islamic financial transactions, which have been collected in one group ((Code) and relate to a form of financial transactions for the activity of the individual and is called the Islamic Financial Transactions Law.

The term legislation means to put the written legal rules related to one aspect of Islamic financial transactions in one group, as legislation is a later stage of legislation and aims to collect legal rules that deal with one subject so that it can be easily referred to. It should be noted that the term legislation is close to the word law and the word legislation, but it differs from it in its connotation. legislation is more specific in its meaning than the law and indicates the establishment of the legal rule by a competent authority, and the legal rule that comes in this way is one source of law. As for the term law, it is used to denote everything that falls within the official sources of law, it includes legislation,

religion, and custom, it is like calling the whole on the part. As for legislation, it is considered a form of legislation.

2.2 The Justifications for Legislating the Principles of Islamic Financial Transactions

The Justifications for legislating the principles of Islamic financial transactions in the form of a law issued by the legislative authority is the possibility of excluding it as a law applicable in arbitration or litigation, and this is clear from the arbitral and judicial applications on the one hand, and on the other hand from the mechanism for choosing the applicable law as stated in the arbitration and litigation legislation, and on the one hand the interpretation of Islamic law and the inability of judicial control. Accordingly, we will discuss the role of judicial and judicial precedents in excluding Islamic law, then we will address the role of arbitration and litigation law in excluding Islamic law, then we will address the role of interpretation of Islamic law in excluding its choice as applicable law, the inability of judicial control, avoiding forum and Islamic schools of thought shopping, and finally economic importance for legislation.

2.2.1. Exclusion in Arbitral and Judicial Precedents.

The principles of Islamic transactions have been excluded as a law applicable in arbitration or litigation according to a number of arbitral and judicial precedents. It was agreed that the application of Islamic law should be applied as applicable law, but the arbitral tribunal ruled out the application of Islamic law as not law. Petroleum Development Ltd v. Sheikh of Abu Dhabi. In which it excluded the application of Islamic law as it is not law. Similarly, in the case of Ruler of Qatar v. International Marine Oil Company, Ltd. And also in the case of Saudi Arabia v. Arabian American Oil Company (Aramco).

2.2.2. Exclusion in Arbitration and Litigation Laws

The arbitration and litigation laws have determined the mechanism for choosing the applicable law in arbitration or litigation, through which it is excluded that Islamic law in the field of financial transactions is the applicable law. The law applicable in arbitration or litigation includes the law applicable to arbitration or litigation proceedings and the law applicable to the subject matter of the dispute. The law applicable to arbitral proceedings is either linked to the agreement of the parties to the dispute, the decision of the arbitral tribunal, or the place of arbitration.

According to the agreement of the parties to the dispute, the parties to the dispute may agree to choose a specific law to be applied to the arbitration proceedings, and the parties to the dispute may agree on separate rules taken from some international rules in the field of commercial arbitration. The parties to the dispute may agree that arbitration shall be conducted in accordance with the arbitration rules

of an institution or an arbitration center. According to the arbitral tribunal, if the parties to the dispute do not agree to choose a law to apply to the arbitral proceedings, the law of arbitral proceedings shall be the prerogative of the arbitral tribunal.

With regard to the place of arbitration, one opinion goes on to link the arbitration proceedings to the procedural law of the place of arbitration. Some argue that the arbitral tribunal is only a judicial body and that the judge's place is the State in which he exercises his function, so the arbitrator must apply the law of the place where the arbitration takes place. Sometimes the parties to the dispute do not agree on the law applicable to the arbitration proceedings but have agreed to determine the place of arbitration since the law of the proceedings of that place is the one in which the arbitration takes place. If the parties to the dispute do not agree on the determination of the place of arbitration, the arbitrators shall choose the place of arbitration and thus the procedural law shall apply to that place. Linking procedural law to the place of arbitration is logical and natural, as it is not easy to arbitrate in a country by following the procedural law of a foreign country, especially since in many matters related to arbitration it resorts to the national judiciary.

Article (24) of the Jordanian Arbitration Law stipulates arbitration procedures in the manner mentioned above. Noting that this article requires the observance of the Jordanian Arbitration Law with regard to arbitration procedures, despite the choice of a specific procedural law, whether this law is the Jordanian Code of Procedure (Civil Procedure Law) or for a foreign country or the procedures followed in any institution or arbitration center.

As for the law applicable to the subject matter of the dispute, which is the most important, which can be Islamic law, the arbitral tribunal shall apply to the subject matter of the dispute the law agreed upon by the parties to the dispute (article 36) of the Jordanian arbitration law. The parties to a dispute usually expressly state their will to determine the law or rules applicable to the subject matter of the dispute. The agreement may be based on the law relating to the contract in dispute, such as the law of the place of conclusion of the contract or the law of the place of execution, and the law chosen by the parties may have nothing to do with the contract in order to ensure that they choose a neutral law or a law that is evolving in its principles.

The parties may agree that the dispute shall not be subject to any law but to the rules of custom and custom prevailing in commercial dealings. The contract that is the subject of the dispute may specify the applicable law, such as the law of the seller or the law of the buyer. The parties to the dispute may agree that the dispute shall be adjudicated in accordance with the rules of justice and equity without

being bound by law in accordance with Article (36/d) of the Jordanian Arbitration Law. This article requires that for this agreement to be expressed, it must be explicit and the arbitrators must be authorized to reconcile to settle the dispute.

If the parties to the dispute do not agree on the choice of the law applicable to the subject matter of the dispute, the arbitral tribunal in such a case shall choose the law of the subject matter of the dispute. Article 36 (b) of the Jordanian Arbitration Law stipulates that this law shall be the most relevant to the dispute. The arbitral tribunal should be guided by several indicators to determine the law closest to the dispute. For example, if the parties to the dispute use the form of a contract in force in a country, or the parties agree to choose a place for arbitration, or the law is the law of the country of performance of the contract or the law of the country of the conclusion of the contract and other indicators.

Whether the law of the subject matter of the dispute is determined by the agreement of the parties to the dispute or by the arbitral tribunal, the application of this law shall take into account the matters referred to in Article (36) of the Jordanian Arbitration Law, which are as follows: 1- Following the substantive rules in this law without the rules on conflict of laws. 2. Observing the terms of the contract in dispute. 3- Taking into account the current customs in the type of treatment, the custom followed, and the dealings between the parties to the conflict. Therefore, it is not possible to choose Islamic Sharia in the field of financial transactions as the applicable law in arbitration or litigation because it does not fall under one of the meanings of the above law.

2.2.3.Exclusion as a Result of the Interpretation of what is Meant by Islamic Law

The problem of what is meant by Islamic law as a law applicable in arbitration and litigation arises when Islamic law is agreed upon in the field of financial transactions as an applicable law, where the question arises about which doctrine of Islamic law in the field of financial transactions can be applied in this case, which raises the issue of shopping between the different Islamic schools of thought to search for the most appropriate doctrine for the dispute and for the litigants, which made the application of Islamic law as a law obligatory, the application is practically not possible.

2.2.4. Exclusion as a Result of the Non-subjection of Islamic Law to Judicial Control as a Law

Judicial control means methods of appeal, i.e. the legal means by which the parties to the dispute can appeal against the arbitration or litigation award that harms their interests in order to amend or cancel it. The first is that the arbitrator is like any human being who is fallible. The Jordanian legislator envisaged the achievement of the second

order by stipulating in Article (48) that arbitration awards may not be challenged by any of the methods of appeal stipulated in the Civil Procedure Law. In order to envisage the first order, it decided to claim the invalidity of the arbitration award if it is similar to one of the cases mentioned in Article (49) of the Arbitration Law.

Thus, one of the important issues in arbitration and litigation is the subject of judicial control over arbitration and litigation principles, where the legislator has drawn a way to appeal the decision of the judge or arbitrator, and one of the most important reasons for the methods of appeal is the error in the application of the law, and this is not conceivable about the application of Islamic law as it is not a law.

2.2.5 Avoiding Forum and Islamic Schools of Thought Shopping

One of the legal benefits of codifying the principles of Islamic transactions is to avoid shopping between Islamic arbitration and mediation centers, each of which adopts rules derived from different doctrines governing Islamic financial transactions. Where the litigants resort to choosing an Islamic arbitration or mediation center that adopts an Islamic doctrine that serves their interest. As the principles of Islamic financial transactions are codified in the form of a unified law that makes these centers apply the same law and thus avoid the problem of shopping between Islamic centers.

2.2.6 Economic Justifications for Legislation

It is noted that businessmen who arise between them commercial disputes can be classified into two categories in terms of means of earning, some of them take into account the control of God Almighty and ask for halal livelihood, and the other type stands at the goal of profit and gains as long as it is legally permissible. The first category of businessmen struggled to find and establish Islamic ways to achieve their commercial goals, as they succeeded in establishing Islamic banks which spread in the Islamic world. Even banks and financial institutions, whether Arab or foreign, which are managed through legal Murabaha methods, have adopted the Islamic approach in some of their dealings to attract their customers from Muslim traders. Since the economy is driven by banks and financial institutions, the adoption of such institutions of the Islamic approach in financing and deposit contracts is evidence of the success of the pressure of the Muslim merchant group in imposing the Islamic approach on an important part of commercial transactions. The aim of adopting the Islamic approach is to satisfy the group of merchants who believe that their trade will be lost in the event of adopting the non-Islamic approach in the conduct of their commercial affairs, the same group strives to adopt Islamic law in resolving disputes resulting from their commercial transactions so that legislation of Islamic rules comes as a means to achieve this ambition by adopting an Islamic law to resolve their commercial and civil disputes in arbitration and litigation.

3. Limits and Mechanisms of Legislation of the Principles of Islamic Financial Transactions

This section deals with the limits of legislation of the principles of Islamic financial transactions and then deals with the mechanisms of legislation.

3.1 The Limits for Codifying the Principles of Islamic Financial Transactions

Before starting to codify the principles of financial transactions, we believe that it is necessary to identify the most important limits that must be taken into account when codifying the principles of Islamic financial transactions to avoid application problems later, and these limits revolve around the legislative, compromise, supervisory limits, and public policy limit which we address in the following:

3.1.1 legislative Limit.

The idea of this type of control revolves around which Islamic schools of thought can be the source of the legislation of Islamic financial transactions on the one hand, and about the priority of any of these schools in the event of their multiplicity in codifying the principles of Islamic financial transactions. The answer to this question requires reference to the legislative limit in the Arab and Islamic countries, by referring to the UAE Civil Transactions Law, for example, we find that he identified Islamic doctrines that can be a source in the legalization of Islamic financial transactions, and he also set an arrangement for how to refer to Islamic doctrines as a source of legislation.

The first article of the UAE Federal Civil Transactions Law stipulates that: "Legislative texts shall apply to all matters dealt with by these texts in their wording and content. There is no justification for diligence in the resource of the definitive text. If the judge does not find a provision in this law, he shall rule in accordance with the Islamic Sharia. Provided that he takes into account the choice of the most appropriate solutions from the doctrines of Imam Malik and Imam Ahmad bin Hanbal, and if he does not find the doctrines of Imam Shafi'i and Imam Abu Hanifa as required by the interest..."

Accordingly, according to this legislative limit, it is necessary to take into account the choice of the most appropriate solutions to codify the principles of Islamic financial transactions from the doctrines of Imam Malik and Imam Ahmad bin Hanbal, and if he does not find the doctrines of Imam Shafi'i and Imam Abu Hanifa as required by the interest.

3.1.2 Compromise Limit

In light of the multiplicity of Islamic schools that can be a source for codifying the principles of Islamic financial transactions, and therefore

there is a difference between these Islamic schools in the subject of the principles of Islamic financial transactions, which requires reconciliation between them so that the issues agreed upon between these schools are taken and the disputed issues are left. This makes the legislation of the principles of financial transactions more objective, easier to apply, and a unanimous choice as a law applicable among the various followers of Islamic schools of thought.

3.1.3 Supervisory Limit

The aim of this limit is to prevent overlap or conflict between the Islamic Financial Transactions Law after its legislation and other legislation in the field of transactions that originate from Islamic Sharia, so there must be a parallel effort so that it combines the process of codifying the principles of Islamic financial transactions with its non-conflict or interference with another law regulating the same subject. For example, the UAE Civil Transactions Law and the Jordanian Civil Code come from Islamic law, which requires a comprehensive review of all laws taken from Islamic law to monitor the process of codifying the principles of Islamic financial transactions, so that they are consistent with the rest of the legislation and not conflicting or overlapping with it.

3.1.4 Public Policy Limit

Public policy is divided into internal public policy and international public policy, the former of which includes any act that contradicts the peremptory norms of law or violates the general interest of society. The second includes the principles and interests that are applied in international relations so that their violation constitutes a breach of international public policy. Some States adopt the idea of internal public policy and supersede international public policy, while others adopt the idea of international public policy and supersede internal public order. Based on this, the state that adopts the idea of internal public policy invokes its own concept of public policy, allowing arbitration or litigation by Sharia if this does not conflict with its internal public policy, while the state that adopts the idea of international public policy invokes international dealings to determine the permissibility or inadmissibility of arbitration or litigation under Islamic law.

3.2 The Mechanisms of Codifying the Principles of Islamic Financial Transactions

The legislation of the principles of Islamic financial transactions may take the form of developing an independent law governing Islamic financial transactions, and it may take the form of a system emanating from one of the national legislation derived from Islamic law that regulates civil transactions, and then we will address the mechanism of codifying the principles of Islamic financial transactions as a law, and then we will address the mechanism of legislation the principles of Islamic financial transactions as a regulation. Finally, we discuss the sources of legislation of Islamic financial transactions.

3.2.1 Legislation of the Principles of Islamic Financial Transactions in the Form of a Law.

The ordinary legislation or the law for the principles of Islamic financial transactions shall mean the legal rules issued by the legislative authority regulating Islamic financial transactions in accordance with the powers and competencies granted by the Constitution. This type of legislation is called ordinary legislation because it is issued in the normal way of issuing laws in the country. Constitutions generally make ordinary legislation enacted either by the legislative authority as a general asset, or by the executive branch as an exception. In order to ensure that the law is properly drafted, the work of drafting the law goes through several stages, and each stage has its goal in drafting the law. Constitutions generally make the development of ordinary legislation by the legislative authority go through five stages which are:

1-Proposal Stage

The Islamic Financial Transactions Law is developed either by a proposal that comes from the legislative authority and is called a proposal by law, or it comes from the executive authority and is called a bill. If this proposal is submitted by the legislative authority after observing the formal conditions stipulated in the Constitution concerned, it is sent to the government to be submitted in the form of a draft law. In the Arab Emirates, the Supreme Council of the Union as a legislative authority has broad powers under the principles of the Constitution (Article 47/2), it is a supreme legislative council and a supreme executive authority that transcends the Federal National Council as a legislative body and the Federal Council of Ministers as an executive body. Article 89 of the UAE Constitution gives the Federal National Council limited authority to discuss draft laws submitted to it, so it has the right to accept, reject or amend them, while this Council cannot initiate the proposal of laws.

2-Voting and Ratification Stage

At this stage, the proposed Islamic Financial Transactions Law shall be voted on, and the ballot may only take place in the presence of the

absolute majority of the Council in which the voting is taking place, the Federal National Council. If the legislation obtains an absolute majority of attendees, the project is considered issued.

3-Issuance Stage

This stage means the approval of the President of the Executive Authority of the Islamic Financial Transactions Law, and thus the birth of new legislation, as it serves as official publicity of the legislation. Constitutions usually specify a certain period of time for promulgation or for the expression of an opinion on legislation by the head of the executive authority, and if the head of the executive authority does not express his opinion on the matter, the law is considered effective.

The head of the executive authority is not obliged to issue the law, he has the right to object and may make amendments to the law. In both cases, the objection of the head of the executive authority does not cancel the legislation, but would only return the legislation to the legislative authority to vote on it again, so the object of the head of the legislative authority was called a deferral or arrest objection.

In the United Arab Emirates, the legislation is submitted after its approval by the National Council to the Council of Ministers, which in turn submits it to the President of the Union to be presented to the Supreme Council of the Union for ratification and issuance pursuant to Article (49) of the Constitution of the State of the Emirates.

4-Publication Stage

The new legislation is published in the Official Gazette of the State, which is an official newspaper issued at regular intervals by the executive authority that includes only legislation and declarations that constitutions require to be published in it. In the UAE, Article 111 of the UAE Constitution stipulates that "laws shall be published in the Official Gazette within two weeks at most from the date of their signature and issuance by the President of the Federation, after ratification by the Supreme Council..." Publication in the Official Gazette shall not be replaced by any other means of advertising, whether it is a daily newspaper or by visual, audio, or electronic means of advertising.

5-Entry into Force Stage

At this stage, the new law on the subject of Islamic financial transactions begins to be applied to facts and persons, and constitutions usually specify the passage of a certain period of time from the publication of ordinary legislation in the Official Gazette until it enters into force, unless the legislation itself includes another date for its entry into force. In the UAE, Article 111 of the UAE Constitution stipulates that "laws shall be published in the Official Gazette within two weeks at most from the date of their signature and issuance by the President of the Federation, after ratification by the Supreme

Council, and shall come into force one month after the date of their publication in the said Gazette, unless another date is stipulated in the same law.".

3.2.2 Legislation of the Principles of Islamic Financial Transactions in the Form of Regulations

Regulations are legal rules established by the executive authority in areas where constitutions are entrusted to the executive authority only, i.e. without interference from the legislative authority. Since independent regimes issue independence that is not linked to law, in their field they are equal to the law in terms of force and can even contradict it.

In the UAE, the enactment of independent regulations is the prerogative of the Council of Ministers under the supreme supervision of the President of the Federation and the Supreme Council and they are issued to implement laws by interpreting these laws. Laws are often limited to setting general rules, leaving the details to regulations issued for this purpose and placed by the executive authority as the most in contact with the public and the ablest to identify its needs. Thus, it is clear that the executive system is issued under the law, and therefore it cannot violate it by amending, adding, or deleting. For example, a system governing Islamic financial transactions is issued emanating from the UAE Civil Transactions Law.

3.2.2 Source of Legislations of Islamic Financial Transactions.

The source in the general sense is the source from which a certain fact emerges regarding Islamic financial law, and therefore what is meant by the sources of Islamic financial law is the Islamic doctrine from which the Islamic financial law derived its material, and gave it the character of binding. The sources of Islamic financial law vary according to the Islamic doctrines from which these sources are viewed, there is a material or objective source, which is represented by the factors that enter into the formation of the legal base and determine its content, and they are either social, economic, political, moral. it is noted in this objective source that it refers to a particular Islamic school of thought behind the legal base, and therefore it constitutes the entrance through which Islamic ideas leak into the law.

There is also the so-called formal or official source, which focuses on the means, procedures, means, or external artistic form by which the Islamic financial law appears in existence, this source, unlike the objective source, does not create the law, but its task is limited to drafting the law and bringing it into existence, and it is called official sources. This requires the existence of a legislative authority with authority to develop the Islamic Transactions Law, which has the burden of choosing the appropriate rules of the law. This requires the presence of people of knowledge and knowledge in the different

Islamic schools of thought. These persons undertake an in-depth study of the various Islamic schools of thought and draw agreed and disputed ideas in the field of Islamic financial transactions as a first stage. In the second stage, these ideas are classified according to the topics of Islamic financial transactions, and then these ideas are transformed into jurisprudential rules and then these rules are codified in the form of a law from the competent authority in the country.

4. Conclusion

It shows the most important findings and recommendations:

4.1 Findings

The most important findings that we reached through this study are as follows:

1-The spread of the application of Islamic financial transactions in various countries and in various commercial and industrial sectors requires the existence of a law regulating these financial transactions to resolve any dispute that occurs in them.

2- The failure to codify the principles of Islamic financial transactions resulted in the exclusion of the choice of Islamic Sharia as the applicable law in arbitration or litigation.

3- The multiplicity of Islamic schools of thought in the field of financial transactions raises the issue of interpretation of these schools on the one hand, and on the other hand to shop between these schools to choose the most appropriate for the subject of dispute and litigants.

4-Codifying the principles of financial transactions requires adherence to several limits to make the law enforceable without practical obstacles, so the legislation that defines the Islamic schools adopted in the country of legislation and the priority of referring to these schools must first be taken into account. It is also necessary to take into account the limit of reconciliation between these different Islamic schools of thought so that the issues agreed upon between these schools are taken into account and away from controversial issues between them, and it is also necessary to adopt the supervisory doctrine, which aims to review the legislation in force in the field of financial transactions before codifying Islamic financial transactions to avoid overlap and conflict between these legislations and the legislation of Islamic financial transactions.

5-The legislation of Islamic financial transactions can be in the form of a separate law or in the form of a regulation issued under a law regulating financial transactions.

6-legislation of Islamic financial transactions avoid forums and schools of thought shopping

4.2 Recommendations

The researcher believes that there are some recommendations imposed by his findings, and these recommendations are as follows:

1-Shariah, legal, and economic committees shall be formed to develop a unified law for Islamic financial transactions, which includes legal rules agreed upon between the various Islamic schools, which makes its selection as the applicable law in arbitration and litigation are possible at the practical level.

2- It is preferable to establish a unified law for Islamic financial transactions At the international level by one of the regional or international institutions. Such as the League of Arab States or the Organization of Islamic Cooperation.

3- Establishing arbitration and mediation centers that adopt unified rules that govern Islamic financial transactions.

4-Adopt lists of arbitrators and mediators from different Islamic schools of thought to allow disputants to choose from this list their arbitrator or mediator who trusts and represent their confidence.

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