

Litigation is a process by which an entity sues or makes a claim concerning a dispute or a disagreement in court. The litigation process must adhere to the principles of natural justice as well as procedural justice. Under the Islamic litigation process, known as *al-qada'* it is a process of settlement of claim or dispute by way of legal process. It is however interesting to note that when a dispute or disagreement arises concerning any products offered by the Islamic banking system, the court of law that resolves these disputes or disagreements are the civil courts and not the Syariah courts. This was established through the *Bank Islam Malaysia Berhad vs Adnan bin Omar* (1994) 3 CLJ 735 case. There are opinions based on literature review that Islamic banking is not only a system that is free from *riba'* but include laws, practices, procedures and instruments, which help in the maintenance and dispensation of justice, equity and fairness. In other words, the Islamic banking system will become a complete system only after it has its own Syariah law, which covers the entire spectrum of banking including Syariah court becoming the proper forum for any litigation process.

This study sought to overview the harmonization between civil and Syariah litigation process as well as to determine the problems of implementing Islamic banking cases under Syariah court. As such, set of questionnaires were developed to obtain the views of Syariah lawyers concerning the extent to which civil litigation is in harmony with Syariah litigation in Islamic banking. Apart from that, respondents' perceptions concerning problems of implementation of Islamic banking matters under Syariah are also sought. . A 4-point Likert was used with 1 = strongly disagree, 2 = disagree, 3 = agree, and 4 = strongly agree to elicit the opinion of the respondents and the data was collected from the respondents through survey study. The study was carried out among Syariah lawyers, Syariah High Court judges as well as members of the Advisory Board of Islamic banks in Malaysia. The sample of Syariah lawyers was obtained from the Syariah Lawyer Category in the Legal Directory published by the Bar Council. The Syariah Lawyer category consisted of 307 lawyers practicing throughout Malaysia. There were a total of 35 Syariah High Court judges in Malaysia and all of them were selected as respondents. Based on the information from the Central Bank of Malaysia, there were a total of 58 Advisory Board members from 16 Islamic banks (including the Central Bank) in Malaysia and all of them were selected as respondents as well.

Mail and interviews were the two methods used in data collection. The questionnaires were sent out to the lawyers through mail. Several personal visits to lawyers were also carried out during the process of data collection. The data collection among judges and members of the Advisory board was done through personal visits and interviews. During the visit they were interviewed and their responses were recorded in the questionnaire. Data was analyzed using descriptive statistics of mean and standard deviation. In interpreting the results, a mean of 1.0 to 2.50 indicates disagreement to the statements while 2.51 to 4.0 indicates agreement to the statements. A mean of 2.0 to 2.50 indicates the respondents are slightly inclined to disagree to a statement while 2.51 to 3.0 indicate the respondents

are slightly inclined to agree to the statement. Therefore this is an indication of weak agreement or disagreement by the respondents.

Base on the results, the respondents generally agree that most of the procedures in civil banking litigation are in harmony with Syariah litigation. Syarie lawyers, Syariah high court judges and the advisory board generally agree most of the process in civil banking litigation like summon, affidavit, appearance and subpoena are in harmony with Syariah litigation. There are only differences of opinions among the learned respondents in pleading and discovery. All respondents agree that a non muslim cannot be a judge in Islamic banking litigation. This is a strong views among Syariah judges (M=1.45; SP=0.83), followed by Syariah advisory board (M=2.00; SP=0.93) and then followed by *syarie* lawyers (M=2.16; SP=0.89). Respondents strongly disagree that a judge who is *fasiq* (this fact is known to public) can be a judge in Islamic banking litigation is in harmony with Syariah. The learned responded generally inclined to agree that a woman can be a judge. Syariah judges and advisory board members strongly disagree that number of witness and sex of the witness is not important in determining the admissibility of their evidence. They also strongly disagree that the weight of evidence between male and woman witness is the same as in harmony with Syariah litigation. Respondents also agree that there are legal hurdles, problem of human resource as well as limited references available which may be the problem in bringing the matters of Islamic banking within the Syariah court jurisdiction.

Keywords: Islamic banking, Litigation, Syariah, Civil, Harmony