



# darulfunun ilahiyat

RESEARCH ARTICLE / ARAŞTIRMA MAKALESİ

## Mediation and *Sulh* as an Alternative to Litigation: A Study of the Syariah and Civil Courts Practices in Malaysia

### Davaya Alternatif Olarak Arabuluculuk ve Sulh: Malezya'da Syariah ve Hukuk Mahkemeleri Uygulamaları Üzerine Bir İnceleme

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#### Abstract

Malaysia is a country that practices a dual legal system in which the family matters of Muslims fall within the jurisdiction of the Syariah Court. *Majlis Sulh* (Mediation Council) is a form of alternative dispute resolution (ADR) used by the Syariah court to reduce the backlog of cases in the courts. Meanwhile, the Court Mediation Centre is the avenue for non-muslims to resolve their family disputes amicably. Here, mediation is not limited to family matters; it is also applicable in other disputes, including traffic accidents and contract cases. Mediation involves low costs, short timeframes, and informal processes compared to litigation. Mediation has now become a part of the procedures in certain courts. This paper aims to examine and compare the mediation practices in Syariah and civil courts in Malaysia using qualitative methodology and library-based research by reviewing scholarly literature, analysing legal documents and seeking expert views. This will be followed by an analysis of the comparison of court-annexed mediation practices, with emphasis on the process, procedures, scope, jurisdiction, and challenges. The paper then offers suggestions on how some challenges in implementing court mediation methods can be overcome. Finally, the findings of the study show that there are differences in the mediation practices and challenges in these two courts, but the best practices can be adopted to improve the process and practice of mediation in the courts.

**Keywords:** *Sulh*, Mediation, Conciliation, Court Annexed Mediation, Alternative Dispute Resolution (ADR)

#### Öz

Malezya, Müslümanların aile meselelerinin yetki alanına girdiği ikili bir hukuk sistemi uygulayan bir ülkedir. Syariah Mahkemesi'nin Majlis Sulh (Arabuluculuk Konseyi), Syariah tarafından kullanılan bir alternatif uyuşmazlık çözümü (ADR) biçimidir. Mahkemelerde birikmiş davaları azaltmak için mahkeme. Bu arada, Mahkeme Arabuluculuk Merkezi gayrimüslimler için bir caddedir. Aile anlaşmazlıklarını dostane bir şekilde çözmek. Burada arabuluculuk sadece aile meseleleri ile sınırlı değildir; Aynı zamanda uygulanabilir. Trafik kazaları ve sözleşme davaları da dahil olmak üzere diğer uyuşmazlıklarda. Arabuluculuk, düşük maliyetleri, kısa zaman dilimlerini ve dava ile karşılaştırıldığında gayri resmi süreçler. Arabuluculuk artık bazı mahkemelerde prosedürlerin bir parçası haline geldi. Bu makale, Malezya'daki Syariah ve hukuk mahkemelerindeki arabuluculuk uygulamalarını nitel kullanarak incelemeyi ve karşılaştırmayı amaçlamaktadır. Bilimsel literatürü gözden geçirerek, yasal belgeleri analiz ederek ve uzman arayarak metodoloji ve kütüphane tabanlı araştırma Görünümler. Bunu, aşağıdakilere vurgu yaparak, mahkeme eki arabuluculuk uygulamalarının karşılaştırılmasının bir analizi izleyecektir. Sürec, prosedürler, kapsam, yargı yetkisi ve zorluklar. Makale daha sonra bazı zorlukların nasıl olduğuna dair öneriler sunuyor. Mahkeme arabuluculuk yöntemlerinin uygulanmasında aşılabilir. Son olarak, çalışmanın bulguları gösteriyor ki arabuluculuk uygulamalarındaki farklılıklar ve bu iki mahkemedeki zorluklar, ancak en iyi uygulamalar şu şekilde benimsenebilir: Mahkemelerde arabuluculuk sürecini ve uygulamasını iyileştirmek.

**Anahtar Kelimeler:** Sulh, Arabuluculuk, Uzlaştırma, Mahkeme Eki Arabuluculuk, Alternatif Uyuşmazlık Çözüm Yolları (ADR)

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## Introduction

Malaysia is a country that practices a dualism legal system that separates the responsibility and jurisdiction of the federal and state administrations as enshrined in the Federal Constitution. In the context of the Syariah court, the source of its jurisdiction is based on List II of the State List. The Federal Constitution empowers the state legislatures to administer Islamic law and all Islamic matters in their respective states, except the Federal Territories. Each state in Malaysia has its own Islamic Religious Council and Syariah Judicial Department that administers and resolves disputes faced by the Muslim community in their respective. The law and jurisdiction of the Syariah court is only applicable to Muslims and matters related to the Islamic religion cause the settlement of Muslim family cases to be subject to the jurisdiction of the Syariah court according to the state. While family cases of non-Muslims, other criminal and civil cases are under the authority of civil courts. It cannot be denied that the provision of jurisdiction by the Federal Constitution has shaped the development of Syariah and civil law and judicial institutions in Malaysia, including the implementation of the conciliation process and mediation as one of the alternative dispute resolution methods at the initial process in court before going to trial.

In general, people in this country often see claims in court through the litigation process as the best dispute resolution in claiming their rights. The fact is, a litigation solution through the trial process in the courtroom will lead to high cost or financial implications, take a long time, and affect the future relationship between the disputing parties. This is because the disputes and evidence presented in court during the litigation process are not secret and difficult; in fact, they sometimes humiliate the parties and open the chest. Furthermore, the decision taken by the judge in the court is not always able to satisfy the parties.

However, since the Syariah and civil courts introduced alternative dispute resolution through formal mediation, which became a procedure that must be attended by the parties in certain cases, the mediation process or *sulh* council began to gain public attention. Syariah courts have begun to encourage settlement through mediation under the provisions of Section 99, the Syariah courts Civil Procedure Act (Federal Territories 1998 [Act 585]), and since 2001, the practice of formal mediation in the court has been introduced. A few years later, the civil court began to introduce formal mediation under Rule 34 Rule 2 (2) of the Rules of Court 2012, which refers to the mediation process according to Practice Direction No. 5 of 2010. With the increase in social and family conflicts, contracts, and high-traffic accident cases, dispute resolution through mediation mechanisms is an alternative to the litigation process because it is faster, cheaper, and has the potential to resolve

disputes more effectively. It can also be considered a therapeutic experience because the disputing parties learn something about better ways to deal with conflicts that may arise in the future<sup>1</sup>. This contrasts with the more formal and subject litigation process to a specific procedure that requires proof and evidence related to a conflict before the judge makes an assessment and decision according to the law. In fact, the litigation process causes only one party to win (win-lose situation).

This paper discusses the practice of court-annexed mediation in both Syariah and civil courts in Malaysia using qualitative methodology and library-based research by reviewing scholarly literature, analysing legal documents and seeking expert views. The first part of this article explores the concept of mediation as an alternative dispute resolution. The practice of court-annexed mediation is also explained in terms of legislation and practice in Malaysia by making a comparative analysis from the aspects of history, background, procedure, process, jurisdiction, and challenges faced by both courts. The final part of this article concludes and closes based on studies and comparisons conducted so that some of the challenges in the implementation of formal mediation methods in court can be overcome.

### **Mediation As An Alternative Dispute Resolution Mechanism**

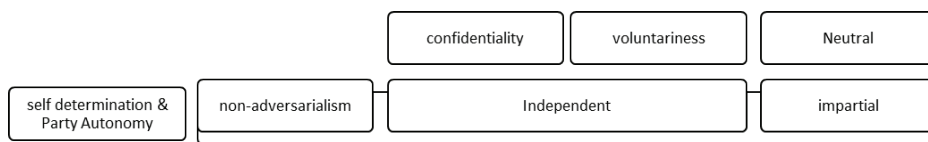
In recent times, Alternative Dispute Resolution (ADR) has been widely recognised in most countries as a conflict resolution mechanism that has the potential to speed up dispute resolution between the parties without having to go through the litigation process. Various forms of conflict that arise can be resolved in various ways through the ADR mechanism according to the type of conflict and the readiness of parties. Each option for solution in ADR should be seen as a different process, however in certain circumstances it can be used in combination between the two methods, for example in Med-Arb, which is a process that combines mediation and arbitration.

According to the Glossary by the Australian National ADR Advisory Council (NADRAC), Mediation is a process in which parties involved in a dispute, with the assistance of a dispute resolution practitioner (mediator), identify the issues in dispute, develop options, consider alternatives and work to reach an agreement. The mediator has no advisory or determinative role in relation to the content of the dispute or the outcome of its resolution, but may advise or determine the mediation process in which resolution is attempted. Mediation can be done voluntarily, under a court order, or subject to an existing contractual agreement<sup>2</sup>.

- 1 Laurence B., *Mediation: Skills and Techniques* (Australia: Butterworths, 2001); N. Z. Chow J-T'chiang, "Court-Annexed Mediation In Resolving Disputes Relating To Family In Malaysia: What We Need To Know Before We Go Forward," *Malaysian Journal of Syariah and Law* 2, no. 1 (2010), <https://doi.org/10.33102/mjssl.vol2no1.33>.
- 2 Australian National ADR Advisory Council (NADRAC), *Glossary*.

Mediation usually emphasises important skills, including the ability to analyse parties concerns, common grounds and assist them in resolving disputes based on their interests and needs without reliance on legal provisions, rules and court trial procedures. The use of a collaborative problem-solving process allows disputing parties to engage together in this process with the help of a mediator. Mediation is a process in which the parties, assisted by a neutral and impartial person, systematically isolate the issues of dispute with the aim of developing options, considering alternative solutions and reaching a mutual agreement based on their needs<sup>3</sup>. Boule explains the five core features that must be present in describing mediation as follows<sup>4</sup>:

“Mediation is a decision-making process; where the disputing parties are assisted by an outsider, namely the Mediator; who are try to help the parties in the decision making process; to reach a decision agreed upon by each of them; without an intermediary having a role as a decision maker.”



**Diagram 1.** Boule (2011) principles of the mediation process

Boule also lists the principles or values of a mediation process that consist of confidentiality, voluntariness, non-adversarialism, neutrality, impartiality, independence, self-determination, and consensuality of outcomes<sup>5</sup>. Based on the core characteristics and principles of mediation discussed by Boule, a dispute resolution process can be defined as a mediation process if it has the core and values as above. According to Black’s Law Dictionary, the mediation method is an effort to resolve disputes in legal aspects through the active role of the middle party to find a solution formula and make both disputing parties satisfied with the solution that has been produced<sup>6</sup>.

The Malaysian Mediation Act 2012 (Act 749) defines mediation as: “A voluntary process where a mediator facilitates communication and negotiation between the

3 J. Folberg and A. Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation* (San Francisco: Jossey-Bass Publishers, 1984), 392.

4 Laurence B. *Mediation, Principles, Process, Practice*, 3rd ed. (Australia: Lexis Boule, 2011).

5 Ibid.

6 Black’s Law Dictionary.

parties to help the parties reach an agreement regarding a dispute.”<sup>7</sup> This Act does not suggest a specific process or procedure in performing mediation. Section 9 of Act 749 outlines the mediator’s role to facilitate mediation, determine how mediation is conducted and at the same time must act independently and fairly. Subsection (2) also explains the role of the mediator to help the parties reach a satisfactory resolution of the dispute. In certain circumstances, the mediator may suggest some options to help the parties reach an agreement. However, it should be emphasised here that this act does not apply to the mediation process conducted by the courts and the Legal Aid Department and some other matters as stated in paragraph 2(a) and its Schedule, Paragraph (b) and (c) of Act 749.

According to the Legal Aid Act 1971 (Act 26), “mediation” includes— (a) carrying out any activity for the purpose of promoting discussion and dispute resolution; (b) bringing together any of the disputing parties for the purposes mentioned in paragraph (a), either at the request of one of the disputing parties or at the initiative of the Director General of Legal Aid; and (c) taking follow-up action on any matter which is the subject of any such discussion or settlement.”<sup>8</sup> The mediation referred to in Act 26 is quite general and it recognises discussions that can lead to conflict resolution. According to the Legal Aid Department (JBG), mediation is stated as a “process in which disputing parties resolve their disputes voluntarily and peacefully with the help of a mediator.”

Meanwhile, in the latest Practice of the Chief Justice No. 2 Year 2022<sup>9</sup> related to Mediation Matters and Procedures (Mediation) for cases in the Civil High Court and Lower Court, the role of the mediator is explained through the function of mediation, which is to facilitate negotiation between the parties and find a solution to the dispute.

The function and purpose of the mediation is suggested to be similar to the function of *Sulh* carried out in the Syariah court<sup>10</sup>. Although there is no specific

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7 Malaysian Mediation Act 2012 (Act 749).

8 Legal Aid Act 1971 (Act 26).

9 Dated 28 March 2022, which comes into force on 1 April 2022.

10 Hendun Abd Rahman Shah, Norfadhilah Mohd Ali, Norsuhaida Che Musa, Adzidah Yaakob, Mustafa ‘Afifi Ab Halim, “*Sulh* dan Mediasi Dalam Talian dalam Konflik Kekeluargaan di Mahkamah Syariah Malaysia: Prospek dan Cabaran Norma Baharu,” *Ulum Islamiyyah* 34, no. 3 (2022): 1-14, accessed November 5, 2024, <https://uijournal.usim.edu.my/index.php/uij/article/view/490>; Wan Azimin Wan Adnan and Ahmad Hidayat Buang, “The Implementation of *Sulh* involving Real Estate Claims of Muslims in Shariah Court in Malaysia: A Survey of Previous Studies,” *Journal of Shariah Law Research* 4, no. 1 (2019): 27-54; Aida Othman, “Alternative Dispute Resolution (ADR) in Malaysia: Prospects and Challenges,” *Malayan Law Journal* 2 (2001): ccxxiv-ccxlv.

legal provision in Syariah courts that explains *Sulh* as a form of alternative dispute resolution (ADR) similar to mediation, past studies are sufficient to show that the ADR principle has been implemented in Syariah courts for a long time under the name of *Sulh*. In the Rules of Criminal Procedure (*Sulh*) (Terengganu) 2014, *sulh* is defined as “negotiation, agreement and settlement of cases by the parties in the *Sulh* Council.” The similarity between *sulh* and mediation is from the aspect of describing the function and purpose where both are mediation processes managed by an independent third party, whose authority rests on the agreement of the parties and facilitates negotiations between them<sup>11</sup>.

The definition of the mediation process above directly describes the mediation process recognised by NADRAC. The mediator’s role there is only limited to non-advisory facilitation. It is also the same as the definition of mediation by Folberg and Taylor in their book *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation*. As a country that has practised mediation as an alternative to litigation as early as 1980, the management, standards and monitoring of the mediation process in Australia is more organised and systematic<sup>12</sup>. According to Shonk, the mediation process itself has several forms and types that can be adapted according to the conflict. He listed seven types of mediation including Facilitative Mediation, Evaluative Mediation, Transformative Mediation, Med-Arb and Arb-Med<sup>13</sup>.

The mediation process that is usually emphasised in mediation training or courses in Malaysia and also practised by most mediators is more in the form of traditional facilitative mediation, where a mediator only plays the role of facilitator. This mediation process requires the mediator to use certain skills to build the trust of the disputing parties by helping them explore each other’s interests to help the parties reach an agreement in their negotiations voluntarily without any suggestions or recommendations from the mediator. It emphasises an approach based on interests and not on rights. In Malaysia, facilitative mediation is popular and is used by most private mediators.<sup>14</sup>

11 Ibid; Mohammad Hafiz Mohd Zaki, Mazbah Termizi, and Muhammad Ridhwan Saleh, “Mediation v *Sulh*: A Comparative,” paper presented at the International Conference on Dispute Resolution, Modern Trends in Effective Disputes Resolution, International Islamic University Malaysia (IIUM), August 9-10, 2017.

12 J. Folberg and A. Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation* (San Francisco: Jossey-Bass Publishers, 1984), 392.

13 K. Shonk, “Types of Mediation: Choose the Type Best Suited to Your Conflict,” Program on Negotiation, Harvard Law School, 2022, <https://www.pon.harvard.edu/daily/mediation/types-of-mediation-choose-type-best-suited-conflict/>.

14 Seumas Tan, *Mediation Skills and Techniques: A Practical Handbook for Dispute Resolution and effective Communication* (Kuala Lumpur, Sweet & Maxwell Asia, 2012). Also based on authors’s observation and experience in the field.

Based on the opinion of Shonk, Evaluative Mediation emphasises the role of the mediator who becomes more than a facilitator. In certain circumstances, mediators can make recommendations and suggestions and express opinions<sup>15</sup>. Rather than focusing primarily on the fundamental interests of the parties involved, evaluative mediation is likely to help the parties assess the legal merits of their arguments and make determinations of fairness. Evaluative mediation is commonly used in court-mandated/court-annexed mediation. The mediator is a judge or judicial officer who has legal expertise in the field of dispute. Although mediation is usually defined as a completely voluntary process, the mediation process conducted by the court obligates the parties in certain cases to attend and cooperate. This is because it has become part of court procedures to promote quick and cost-effective solutions and as an alternative to litigation.

Although NADRAC has developed a benchmark definition that the mediator does not have an advisory or decisive role on the content of the dispute or the outcome, in practice, mediation is a flexible process. For NADRAC, if mediators have a role to advise, they should be called conciliators. Generally, conciliators need to play more roles than mediators because they are required to actively encourage the disputing parties to reach a solution and make recommendations on the terms of the solution<sup>16</sup>. The role of this conciliator is the same as that of a mediator in evaluative mediation who can make recommendations and suggestions and express opinions<sup>17</sup>.

It can be concluded that in the context of the practice of mediation, *sulh* and conciliation in the court mediation in Malaysia, the purpose and role of mediation in ending the dispute between the parties is emphasised compared to the way or process that needs to be carried out during mediation. Therefore, most of the mediation and settlement processes that are implemented follow traditional mediation methods that are facilitative. However, there is also the implementation of mediation that is evaluative, especially in the mediation process through the civil court where the mediators who conduct mediation at the court mediation centre are judges and legal officers.

### **Mediation Practice In The Malaysian Syariah Courts (*Sulh*)**

The organisation of the settlement of disputes through reconciliation or conciliation in cases under the jurisdiction of the Syariah Court is based on the verses of the Qur'an and the Sunnah. According to Adnan and Buang, *sulh* is

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15 Ibid.

16 Alwi Abdul Wahab, *Court-Annexed and Judge-Led Mediation In Civil Cases: The Malaysian Experience* (PhD diss., University of Melbourne, 2013).

17 Ibid.

defined as reconciliation based on an understanding of the use of the word *as-sulh* in the Qur'an, which is taken from Arabic words<sup>18</sup>. Literally, *sulh* means ending a dispute, while terminologically *sulh* means an agreement to end a dispute between disputing parties peacefully<sup>19</sup>. Dispute resolution methods, mainly in family issues, are guided by verses in the Qur'an and Hadith such as in verse 35 of Surah An-Nisa:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا  
مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنْ اللَّهُ كَانَ عَلِيمًا  
خَبِيرًا

*“If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers. If they seek to set things aright, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things.”*<sup>20</sup>

The method of appointing a conciliator or arbitrator in a conflict between husband and wife in the legal provisions of section 47 and section 48 of the Islamic Family Law (Federal Territories) 1984 has its basis on the above verse. Although this provision does not specify the process of appointing a conciliator or arbitrator as one of the alternative dispute resolution (ADR) processes, this mechanism has been used since the official existence of Islamic family law. The appointment of a *Hakam* in the Syariah court is synonymous with the practice of arbitration, which empowers the appointed panel of *Hakam* to make decisions for the disputing parties. It is different from the mediation method, which outlines the mediator's role only as a facilitator who does not make decisions for the disputing parties.

Therefore, the definition of *sulh* is seen to emphasise the ‘main purpose’ of the implementation of *sulh* in the Syariah court itself, which is to make peace or find a way to resolve a conflict amicably with the help of a third party. This means that the term *sulh* can also refer to dispute resolution methods including mediation, the Conciliation Committee and *Hakam*/arbitration in issues of Islamic household and family problems in the Syariah court<sup>21</sup>.

18 Wan Azimin Wan Adnan and Ahmad Hidayat Buang. «The Implementation of *Sulh* involving Real Estate Claims of Muslims in Shariah Court in Malaysia: A Survey of Previous Studies.» *Journal of Shariah Law Research* 4, no. 1 (2019): 27-54; Aida Othman “Alternative Dispute Resolution (ADR) in Malaysia: Prospects and Challenges,” *Malayan Law Journal*, vol. 2 (2001), ccxxiv-ccxliv.

19 Wahbah al-Zuhaylī (1989), *al-Fiqh al-Islāmī wa Adillatuh*. Dimashq: Dār alFikr.

20 Abdullah Yusuf Ali, *The Holy Quran Translation and Commentary* (PCI Islamic Vision, King Fahd Holy Quran Printing Complex. 1410h/1989).

21 R. Azahari, “*Sulh* dalam Perundangan Islam: Kajian di Jabatan Kehakiman Syariah Selangor Darul Ehsan (JAKESS)” (PhD Diss., Universiti Malaya, 2005).



*Sulh* is generally understood as one of the more holistic reconciliation methods and is not limited to the mediation process alone<sup>22</sup>. *Sulh*, in its general term, includes various forms of peaceful resolution such as arbitrator, conciliator, negotiator and alternative dispute resolution (ADR) methods. These methods are also implemented to help the parties discuss their claims well and quickly without having to attend the trial process in front of a judge, which is time-consuming.

Nevertheless, based on the Rules of *Mal* Procedure (*sulh*) and JKSM's practice direction related to *sulh*, it usually refers to the mediation process conducted by *Sulh* Officers appointed as dispute resolution mediators in the *Sulh* Council as stipulated in Rule 5, *Mal* Procedures (*Sulh*) (Federal Territories) 2004:

*(1) Sulh shall be held in a Council attended by both parties and chaired by the Registrar or any public officer appointed by the Chief Syarie Judge for that purpose.*

The e-*syariah* portal also explains that the *sulh* practised in the Syariah court is the same as the mediation process. Based on the discussion above, it can be concluded that there is a similarity between the practice of *sulh* in the Syariah court and the mediation process that promotes the peaceful settlement of disputes between the parties with the help of neutral and impartial mediators. The goal of *Sulh* stated in Rule 9 (1)(d) Rules of *Mal* Procedure (*Sulh*) (Terengganu) 2014 is to achieve a voluntary dispute resolution based on the agreement of the disputing parties themselves without any coercion. Although this provision is not in the rules of *mal* procedure (*sulh*) in other states, in practice the mediation carried out through the *sulh* council in most Syariah courts in Malaysia is the same as the general mediation process, which is facilitative.

### **Scope and Application of Sulh in Malaysian Syariah Courts**

The practice of conciliation in the Syariah court, which is synonymous with mediation, can be seen through the mediation process recommendations in the *Sulh* Work Manual and the Rules of *Mal* Procedure (*Sulh*) of the states in Malaysia. The organisation of *Sulh* as a form of alternative dispute resolution is stated in section 99 of the Syariah Court Civil Procedure Federal Territory Act 1998 (Act 585):

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22 Zainul Rijal Abu Bakar, "Sulh in Malaysian Syariah Courts," paper presented at the *2nd AMA Conference: Rediscovering Mediation in the 21st Century*, Sheraton Imperial Hotel, Kuala Lumpur, 2011; Hendun Abd Rahman Shah, Maszuriati Ab Azizi, Norfadhilah Mohd Ali, and Abidah Abd Ghafar, "Sulh dan Mediasi dalam Kerangka Undang-Undang di Malaysia: Kajian Perbandingan," in *Integrasi Ilmu Naqli dan Aqli Dalam Disiplin Syariah dan Undang-Undang (siri-3)*, ed. Hendun Abd Rahman Shah and Fadhline Alias (Nilai: Penerbit USIM, 2022), 55-70.

*The parties in any proceeding may, at any stage of the proceeding, convene a sulh/conciliation to resolve their dispute in accordance with any prescribed method or, in the absence of such method, in accordance with Hukum Syarak.*

This provision of section 99 (Act 585) gives space to disputing parties to resolve their disputes through *sulh* as long as the decision or order has not been issued by a judge. In 2002, the JKSM issued the *Sulh* Work Manual and Code of Ethics for *Sulh* Officers. In addition, the employment scheme for *Sulh* Officer (LS41/LS44) was created by the Public Service Department (JPA) specifically to help the court handle cases that can be resolved without having to be brought to trial in Court<sup>23</sup>. Prior to the existence of a special position of *Sulh* Officer in the Syariah court, to help resolve and reduce the backlog of cases in the open court, this practice of mediation was implemented by the Syarie Judge based on the provisions of section 99. The absence of provisions specifically for the definition of *sulh*, which is usually explained in section 2 under the heading of interpretation in any act or enactment of the Syariah court, gives space to the trial judge to order the case to be referred to any session of *sulh* or act as a mediator between the disputing parties outside the trial process.<sup>24</sup>

The formal implementation of the mediation process through the *Sulh* Council in the Syariah Court institution has been introduced in Malaysia by the Federal Territory and Selangor in 2002. This was later followed by other States through the Syariah Court Procedural Act/Enactment, Procedural Rules of the *Sulh*, Work Manuals for *Sulh* and Practice Direction of the Malaysian Syariah Justice Department (JKSM). Practice Direction No. 3 of 2002 encourages the use of *Sulh* for all cases after being registered. However, it was later replaced by the JKSM Practice Direction No.1 of 2010, which lists 18 cases that can be brought to the *Sulh* Council, excluding divorce applications as they are subject to other provisions under section 47 of the Islamic Family Law Act/Enactment. The following is a list of cases that need to be referred to the *Sulh* Council first before it goes to the trial procedure.

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23 Adzidah Yaakob, Mohammad Zaharuddin Zakaria, Asmidah Ahmad, Kamilah Wati Mohd, and Mustafa 'Afifi Ab Halim, *Pengenalan dan Keberkesanan Sulh di Mahkamah Syariah* (Nilai, Negeri Sembilan: Penerbit USIM, 2016).

24 Wan Azimin Wan Adnan and Ahmad Hidayat Buang. «The Implementation of Sulh involving Real Estate Claims of Muslims in Shariah Court in Malaysia: A Survey of Previous Studies.» *Journal of Shariah Law Research* 4, no. 1 (2019).

**Table 1.**

*JKSM Practice Direction No.1 of 2010: Determination of Cases That Need to Be Referred to the Sulh Council at the Case Registration Stage*

<i>Cases referred to the Sulh Council during the Stage of Registration of Cases in the Syariah Court</i>
009-Breach of the Promise to Marry
016-Claim for Muta'ah
017-Claim for Jointly Acquired Property
018-Claim for Maintenance of Wife
019-Claim for Maintenance
020-Claim for Collateral Maintenance
021-Claim for Eddah Maintenance
022-Claim to Amend Maintenance Order
023-Claim for Maintenance Arrears
024-Claim for Children Maintenance
025-Claim to Amend Child Custody/Child Support Order (Children Maintenance)
026-Claim to Amend the Child Custody/Child Support Agreement
028-Claim for Hadhanah
049-Claim for Marriage Compensation
059-Claim for the Right to Residence
060-Claim for an Order for Husband to Live Together Again
062-Claim for Wife Return to Obedience
063-Claim for Mas Kahwin

However, the Terengganu State *Mal* Procedure Rules (*Sulh*) (2014) and several other states have detailed the process of implementing *Sulh* and the code of ethics of *Sulh* officers in their rules. Currently, the state of Terengganu has added divorce applications as one of the cases that can be referred to the *Sulh* Council (*First Schedule, Rule 2*).

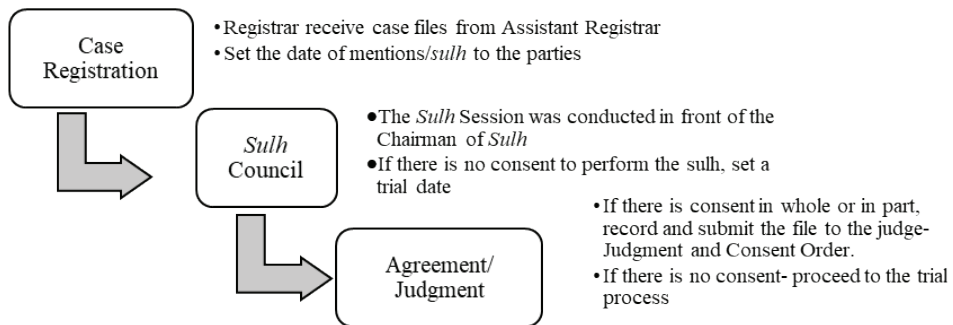
In terms of Mediator ethics, the *Sulh* Officer's Code of Ethics has been created by clearly listing the general and special responsibilities and things that the *Sulh* Officer cannot do as a mediator. Among them is that the *Sulh* Officer cannot give an opinion on a matter or situation that is being discussed or is likely to become an issue in any *Sulh* Council because his opinion can then be used by a party to support his argument (General Responsibility, 1(g) Code of Ethics *Sulh* Officer, JKSM). This is an important principle in Facilitative Mediation and is one of the reasons why the mediator should refrain from giving opinions or suggestions to the parties.

### **Procedures and Processes for the Implementation of the *Sulh* in Syariah Courts**

The development of the Syariah court administration that has been implemented now has made the *şulh* process part of the administrative practice and *mal* procedure. *Şulh* is one of the effective alternative dispute resolutions for the community. The

process of formal mediation in the Syariah court through the *Sulh* Council only occurs after the parties have registered their claims or applications in court as stated in the JKSM Practice Direction No.1 Year 2010. It is a form of mediation that is mandated by the court to the *Sulh* Officer (court-annexed/mandated mediation)<sup>25</sup>.

The implementation of *sulh* proceedings begins when the Court accepts every application under the jurisdiction of mal such as claims resulting from divorce such as jeddah maintenance, child maintenance and child custody rights between husband and wife or related groups. The following diagram shows the working process of *sulh* proceedings in the Syariah court.



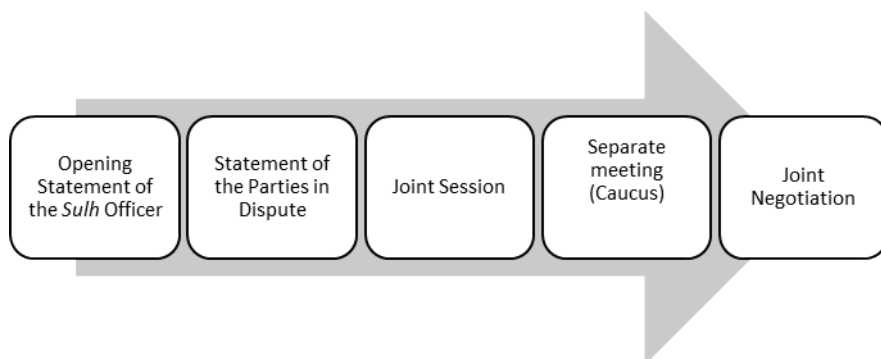
**Figure 1.** Handling of Sulh Proceedings in Syariah Courts

In general, the conciliation process as understood by the local community refers to the implementation of mediation in the *Sulh* Council in the Syariah court, which is bound by the Rules, Practice Direction, *Sulh* Work Manual and *Mal* Procedure (*Sulh*) according to the provisions of the states. When an application related to cases that can be brought to the *Sulh* is registered in the court, the registrar will set a date for the *Sulh* Council within three months and deliver the notice to the parties involved (Rule 3). This *Sulh* Council will be conducted by a *Sulh* officer and can only be attended by the disputing parties (Rule 5). Lawyers are not allowed to participate in this session except with the permission of the *Sulh* officer. If an agreement is reached, the *Sulh* officer will prepare a draft agreement and submit it to the parties for signature and then deliver it to the court to be recorded as a Consent Judgment (Rule 6). The *Sulh* officer must ensure that the Settlement Agreement does not contain any terms that conflict with Islamic law and relevant State laws, especially if it affects the rights of other persons including their children. The *Sulh* officer may allow either party to consult their respective lawyers regarding the

25 Chow Jen-Tchiang, N. Z. (2010). Court-Annexed Mediation In Resolving Disputes Relating To Family In Malaysia: What We Need To know Before We Go Forward. *Malaysian Journal of Syariah and Law*, 2(1). <https://doi.org/10.33102/mjssl.vol.2.no1.33>.

draft of the Settlement Agreement before signing. In the meantime, the *Sulh* officer should advise the concerned parties not to change their agreed terms.

Uniquely, Rule 4 states that if the parties or one of them does not appear without a plausible reason on the appointed date, the absence shall be considered a contempt and the Court may initiate contempt of court proceedings in accordance with section 229 of the Act. Although compulsory attendance of the parties is considered the rule, in practice, the absence of one party causes the case to proceed to trial. Nevertheless, the *sulh* Rules in Terengganu (2014) and several other states such as Negeri Sembilan (2016), Kedah (2017), Sabah (2018), Perak (2016), Perlis (2018), Sarawak (2014) and Penang (2019) do not state the same. Absence of the parties or one of the parties or if any party withdraws from the *Sulh* session, will cause the session to end. Thus, the case will be brought to trial. As for the execution of the *sulh* council, the Rules of *Mal* Procedure (*Sulh*) explain that the mediation process in the court is carried out in the following manner:



**Figure 2.** Implementation of the Mediation Process in the Sulh Council in the Syariah Court (based on the Sulh Work Manual and Rule 9 of the Mal Procedure (Sulh) Terengganu, 2014)

The implementation of mediation in this *sulh* council is the same as that in the facilitative mediation model. The effectiveness of *sulh* as an alternative dispute resolution method has been proven in scientific studies by Hak, (2011) and Yaakob (2016).

## Mediation Practice In Malaysian Civil Courts

### Background of the Establishment of the Court Mediation Centre

In general, court mediation refers to mediation where judges and judicial officers act as mediators for disputing parties after they have filed their case in court<sup>26</sup>.

26 “e-Kehakiman,” accessed November 5, 2024, <https://www.kehakiman.gov.my/ms/e-kehakiman>

In road accident cases, mediation is mandatory whether the parties agree or not. However, when a case is referred to mediation, this does not deny the parties the right to litigate in court because if they cannot reach an agreement, then the case will return to court. The advantage of mediation in court is that there is no cost of the parties.

Mediation is an alternative to litigation that involves a win or lose situation among disputing parties. This mediation practice has become part of the process or procedure in court in most developed countries in the world, including the United States, the United Kingdom, Australia, Canada, New Zealand, Singapore and Hong Kong.

In Malaysia, the high increase in civil cases filed in court continuously has caused the court system to face a serious backlog of cases. In addition, strict adherence to rules and procedures in court has made the litigation process very formal. In some cases, technical flaws and procedural compliance cause the justice of a case to not be upheld. The legal cost that is increasing in most cases that are brought to court also causes most of the poor people to not get proper justice<sup>27</sup>. Tun Abdul Hamid Mohamad, the former Chief Justice has emphasised the importance of mediation in court because according to him, the mainstream judicial system is not capable of dealing with the increase in cases within a reasonable period.

The absence of legal provisions and sources of authority to instruct the parties to use the ADR process is said to be one of the reasons for the dumping of pending cases in court<sup>28</sup>. Efforts to overcome and reduce the backlog of cases led to the idea of introducing mediation as an alternative dispute resolution process in the civil justice system as early as 2005. The former 13th Chief Justice, Tun Arifin bin Zakaria, was one of the reasons behind the successful realisation of mediation as a core component in the court system<sup>29</sup>.

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27 Alwi Abdul Wahab, *Court-Annexed and Judge-Led Mediation In Civil Cases: The Malaysian Experience* (PhD diss., University of Melbourne, 2013).

28 Choong Choong Yeow Choy, Tie Fatt Hee, and Christina Ooi Su Siang, "Court-Annexed Mediation Practice in Malaysia: What the Future Holds," *University of Bologna Law Review* 1, no. 2 (2016), <https://doi.org/10.6092/issn.2531-6133/6751>.

29 Bernama, "Tun Arifin Zakaria Bersara Sebagai Ketua Hakim Negara," *Astro Awani*, March 31, 2017, accessed November 5, 2024, <https://www.astroawani.com/berita-malaysia/tun-arifin-zakaria-bersara-sebagai-ketua-hakim-negara-137563>.

## Rules and Practice Directions Related to Mediation in Civil Courts

In 2010, Practice Direction No. 5 of 2010 (Practice Direction on Mediation) (PD) was issued by the Office of the Registrar General of the Federal Court at that time to empower mediation in court. The PD, which came into effect on 16 August 2010, allows High Court Judges, Sessions Courts and Magistrates and court registrars to instruct the parties to undergo mediation at the pre-trial case management stage as stated under Rule 34, Rule 4 of the Rule of the High Court 1980 (Order 34 Rule 4 of the Rule of the High Court 1980) or Rule 19, Rule 1(1) (b) of the Rule of the Lower Court 1980 (Order 19 Rule 1(1)(b) of the Subordinate Courts Rule 1980) or at any appropriate stage whether the trial has commenced or not. This PD lists 6 types of cases that can be resolved through mediation, including cases that are financial claims such as traffic accidents, defamation suits, family conflicts, commercial and contractual, and intellectual property cases. Only traffic accident-related claims are made mandatory for mediation in civil courts. This PD also explains the 2 ways mediation can be carried out, the first is mediation conducted by a judge (judge-led mediation) or mediation conducted by a mediator agreed by the parties. In fact, lawyers representing disputing parties must cooperate and help them resolve their disputes in the best possible way, such as through mediation. However, at the initial stage, the recommendation to mediate in court showed some reactions among the judges. There are judges who refuse to conduct mediation in court because it is not clearly stated in the Court Rules<sup>30</sup>. In 2012, several amendments were made to the existing court rules, including an amendment to Rule 34, Rule 2(2), which provides for mediation as one of the methods that can be referred to during pre-trial case management to ensure that justice is achieved quickly and economically. The mediation process referred to in this Regulation is the mediation process in Practice Direction No. 5 of 2010. With the formal insertion of mediation into court rules, it is now part of the civil justice system in Malaysia.<sup>31</sup>

Under the court mediation program, all cases must first be filed in court before they can be registered for mediation. However, for “running down” cases, i.e., cases involving claims for personal injuries (personal injuries) and other claims for compensation (damages) as a result of road accidents, these cases will automatically be referred to the court’s mediation officer before the case is determined for trial. This is under Practice Direction No. 2 of 2013- “Mediation Process for Road

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30 Abu Backer, H.S. “Mediation - It Is Ultra Vires,” *Infoline - The Official Newsletter of the Malaysian Bar*, 2005.

31 Joyce Low, “Promoting Ethical Practice in the Mediation Community,” paper presented at the 2nd AMA Conference 2011, *Rediscovering Mediation in the 21st Century*, published in *Asian Journal on Mediation* (Singapore: Singapore Mediation Centre, 2014).

Accident Cases in the Magistrate's Court and Sessions Court." The 2013 Practice Direction states that out of 779 accident cases that have been registered for mediation by the Kuala Lumpur Court Mediation Centre, the resolution rate is almost 50%.<sup>32</sup>

In 2016, another Practice Direction related to court mediation was issued and cancelled Practice Direction No. 5 of 2010. The objective of Practice Direction No. 4 of 2016 (PD 2016) is to encourage the parties to resolve their disputes without going through a trial or appeal. Appointed lawyers are also encouraged to cooperate and help the parties agree through this method. Most of the items mentioned in PD 2016 are the same as PD 2010 except that some things like the term "judge" in PD 2016 are mentioned including High Court Judges or Judicial Commissioners, Sessions Court Judges, Magistrates or High Court Registrars. The addition of "modes of mediation" includes mediation by external institutions such as the Kuala Lumpur Regional Centre for Arbitration (now known as the Asian International Arbitration Centre).

However, recent developments related to the practice of mediation in civil courts have seen some more comprehensive amendments. The Chief Justice's Practice Direction No. 2 Year 2022 (PD, 2022) related to Mediation Matters and Procedures (Mediation) for Cases in the High Court and Lower Court dated 24 March 2022, which is aligned with Order 34 Rules 1A and 1B of the Rules of Court 2012, explains in more detail 12 matters related to the practice of court mediation, namely Application, Interpretation, Case Referral to the Mediation Process, Types of mediation, Mediators for the mediation process, Location of the mediation process, Notification regarding the status and/or results of the mediation process, Cost of conducting mediation, Confidentiality, Cancellation, Exceptions, and finally the effective date of this practice direction is April 1, 2022. The summary is as follows:

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32 Statistic provided by Ms. Ooi Sheow Yean, Head of the Mediation Centre, High Court of Penang, during an interview session Oct 2023.



<b>Table 2.</b>		
Summary of the scope and process of mediation in civil courts based on the Chief Justice's Practice Direction No.2 of 2022		
<b>Chief Justice Practice Direction No.2 of 2022</b>		
Case Reference to the Mediation Process	Road Accident Cases-referred to the mediation process before the trial is fixed.  Civil Cases-refer the parties to the mediation process if	(a) (a) The judge is of the view that the case can be resolved through mediation and the parties agree or; (b) (b) The parties request the court to refer to the mediation process.
Mediation Process	Can be conducted at any stage of the proceedings	
Mediation Types	Judge-led mediation	
	Mediation by institutions that provide mediation services	
	Mediation by a Private Intermediary agreed by the parties	
Mediator in Judge-led mediation	(a) Courts that have a Mediation Centre (b) Courts that do not have more than one judge (c) Courts with only one Judge	Mediator- Judges who are inaugurated as Mediator  The judge will act as an intermediary through case swapping. The same judge acts as a mediator, provided that both parties agree. Otherwise, the mediation will be conducted by another judge who will be determined by the Head of the Mediation Centre in the state concerned.

Location of the Mediation Process	(a) Judge-led mediation	(i) Court mediation centre or (ii) Any location within the court premises
	(b) Private Mediation Institution as agreed by the parties	(i) Any location designated by the intermediary, (ii) Any place agreed by the parties, (iii) Parties cannot use the facilities of the Court Mediation Centre/Court premises
Mediation status/ decision- The parties must inform the court of the status of the mediation process being conducted. If completed, notify the court within 2 weeks from the date of completion.	(a) Successful mediation	The parties can- 1. Record the consent judgments, 2. Record settlement agreements 3. Filing a Notice of Dismissal.
	(b) Mediation fails	The parties shall comply with any court order in relation to the handling of the case in the original proceedings.
Mediation handling costs	(a) Judge-led mediation (b) Mediation by private institutions/ intermediaries	-Free -Subject to stipulated/agreed costs
Confidentiality	The parties shall ensure-	(a) Closed mediation process- only attended by the parties /authorised representatives with counsel (if any) (b) Any disclosures, confessions, and communications made during the mediation process are confidential and without prejudice; (c) All communications during the mediation process shall not be made part of the proceedings record; and neither party may call an intermediary to testify in relation to the mediation process conducted

With the issuance of PD 2022, this has cancelled Practice Direction No. 2 of 2013 related to the “Mediation Process for Road Accident Cases in the Magistrate’s Court and in the Sessions Court” and the relevant Federal Court chief registrar’s office letter. It also cancels Practice Direction No. 4 of 2016 related to Mediation.

However, any action or proceeding that has started or is pending before the effective date of PD 2022 may continue.

### **The Court Mediation Process and Procedure**

The source of reference or guidance provided to help judges and judicial officers conduct mediation is the Rules for Court-Assisted Mediation, which was introduced in 2011. Due to the lack of major legal provisions related to mediation by judges in court, these 2011 Rules are provided as guidelines to assist judges and judicial officers. These 2011 rules contain 16 sections, covering the role and responsibilities of judicial officers as mediators the mediation process, the mediation process, and successful mediation, including guidelines for the termination of the mediation session.

In accordance with the principle of impartiality in the mediation process, a judge who acts as a mediator is not allowed to mediate a trial involving the same parties if the case brought to the mediation fails. This means that the judge who hears the case must not be the same judge who conducts the mediation unless the parties agree. If the disputing parties do not agree, the judge shall submit the case to another judge. The basic function of a mediator in court is as a facilitator in the initial mediation process and then as an evaluator in the second stage, especially in the caucus session. This is a manifestation of the impartiality of neutral mediators that must be maintained throughout the mediation process, including the duty to exercise caution, tact, and diplomacy. The 2011 Rules also cover guidelines on how to conduct a mediation session from the first meeting with the disputing parties, to the actual mediation session, and the closing session, whether a settlement is reached or not. These guidelines are governed by the basic principles of mediation, which are confidentiality, party autonomy, fair treatment, impartiality and neutrality. The Principle of Confidentiality is at the heart of mediation. All disclosures, admissions and communications made in mediation sessions are confidential and cannot become part of any record. The mediator cannot be compelled to disclose information obtained during the mediation or to testify as a witness or negotiator in any judicial proceeding, unless all parties to both the Court proceeding and the mediation proceeding agree to it.

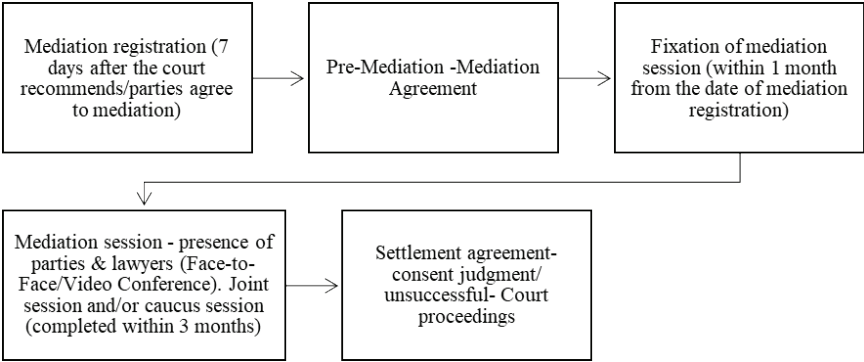


Figure 3. Summary of the Judge-led Mediation Procedures at the Court Mediation Centres

In the mediation process in court, disputing parties are encouraged to be present with their lawyers during the mediation session unless they are not represented by a lawyer. In cases where mediation is successful, the mediating judge will record a consent judgment on the terms agreed to by the disputing parties. However, if mediation is unsuccessful, the case will be returned to the hearing judge for trial. Accordingly, any party may at any time withdraw from the mediation if that party no longer wishes to continue with the mediation.

### Conclusion

It is well known that the conventional view of the role of the judiciary in the administration of justice is to judge (not mediate), apply the law (not interests), evaluate evidence (not facilitate), make relevant orders (not accomodate), and make a decision (not settle)<sup>33</sup>. However, in the context of court mediation, especially in civil courts, the role of judges who also act as mediators has brought a new narrative to the justice system in Malaysia. At the same time, in the Syariah court, section 99 also allows, apart of *sulh* officer, the Syariah court judge to play the role of mediator if deemed appropriate. The creation of the position of *sulh* officer in the Shariah court system is also seen to play an important role in the settlement of cases amicably without the parties having to go to trial in court.

However, some of the challenges identified in the practice of mediation in both courts include; ensuring that each mediator or *sulh* officer has sufficient professional training to implement the mediation process according to the principles outlined. In addition, the reluctance of some disputing parties or their lawyers to attend the

33 Choong Choong Yeow Choy, Tie Fatt Hee, and Christina Ooi Su Siang, "Court-Annexed Mediation Practice in Malaysia: What the Future Holds," *University of Bologna Law Review* 1, no. 2 (2016), <https://doi.org/10.6092/issn.2531-6133/6751>.

mediation process without reasonable cause is also seen as a challenge that needs to be properly addressed. In the Syariah court, because the rules of *mal* procedure (*sulh*) limit the role of lawyers in the *sulh* council, there is a challenge where lawyers do not encourage the parties to attend mediation sessions in court. Although some states such as the Federal Territory and Selangor consider non-attendance as a contempt of court, the latest development of the *mal* procedure (*sulh*) in many other states as discussed above, shows that the provision of contempt of court is no longer stated in the *mal* procedure (*sulh*). The absence of the parties only causes their case to be subjected to trial proceedings in court. This has similarities with the practice in civil courts. The difference in the provisions between states in Malaysia needs to be streamlined and standardised according to best practices in strengthening the justice system in this country.

Significant differences between the two courts can also be seen in the management of cases during registration. In the civil court, the parties can choose to resolve their case using court mediation services through a judge (judge-led mediation), or choose to resolve their case by using a mediator from an institution such as AIAC, MIMC or from among private mediators according to the agreement of both parties. This is differ in the Syariah court, where, once a case is registered, the parties are referred to the *sulh* council, which is conducted by the court's *sulh* officer. With the increasing number of family cases, and various background of the parties; the burden on the court and *sulh* officer can be reduced if the parties are also given the opportunity to choose their own mediators among those who have credentials as mediators, either from certain institutions or private mediators/*syarie* lawyer. In addition, if there is a tendency for the disputed matter to be resolved amicably when the trial has just started, is underway or during the appeal stage, encouragement should be given to help the parties resolve their dispute through the mediation process either by a judge or a *sulh* officer.

Although the general view of the community, including the disputing parties, usually sees a judge as someone who is respected because the judge is the person who has the authority to decide cases in court, the community must be given the understanding that in the mediation or *sulh* process, judges or judicial officers as mediators do not make any decision in favour of the disputing parties. This is because based on the basic principle of mediation, which is the autonomy of the parties, the decision-making power in a dispute still rests in the hands of the disputing parties. The mediation process in court also ensures that justice can be maintained in a win-win manner. The community needs to be exposed to education and awareness about the importance of alternative dispute resolution such as mediation and conciliation.

In conclusion, the study in this paper found that mediation or *sulh* practices and challenges in both courts have their own differences and special features. Therefore, best practices can be taken between the two to improve the process and practice of *sulh*-mediation in court. In addition to reducing the backlog of cases in court, the *sulh* process carried out in Syariah and mediation in civil courts has played a very important role in bringing the direction of a more equitable and harmonious justice system in Malaysia. This view is expressed in the hope that *sulh* or mediation conducted in court can serve as a more effective and appropriate dispute resolution medium instead of litigation in the future.

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## References/Kaynakça

- Abu Backer, H. S. "Mediation - It Is Ultra Vires." *Infoline - The Official Newsletter of the Malaysian Bar*, 2005.
- Aida Othman. "Alternative Dispute Resolution (ADR) in Malaysia: Prospects and Challenges." *Malayan Law Journal* 2 (2001): ccxxiv-ccxlv.
- Adzidah Yaakob, Mohammad Zaharuddin Zakaria, Asmidah Ahmad, Kamilah Wati Mohd, and Mustafa 'Afifi Ab Halim. *Pengenalan dan Keberkesanan Sulh di Mahkamah Syariah*. Nilai, Negeri Sembilan: Penerbit USIM, 2016.
- Ahmad Ibrahim. "Civil Law and Syariah Law: Conflict of Jurisdiction." In *The Administration of Islamic Law in Malaysia*, edited by Ahmad Mohamed Ibrahim, 37-60. Kuala Lumpur: Penerbit IKIM, 2000.
- Alwi Abdul Wahab. *Court-Annexed and Judge-Led Mediation In Civil Cases: The Malaysian Experience*. PhD diss., University of Melbourne, 2013.
- Bernama. "Tun Arifin Zakaria Bersara Sebagai Ketua Hakim Negara." *Astro Awani*, March 31, 2017. Accessed November 5, 2024. <https://www.astroawani.com/berita-malaysia/tun-arifin-zakaria-bersara-sebagai-ketua-hakim-negara-137563>.
- Boulle, Laurence. *Mediation, Principles, Process, Practice*. 3rd ed. Australia: Lexis Boulle, 2011.
- Boulle, Laurence. *Mediation: Skills and Techniques*. Australia: Butterworths, 2001.
- Choong Yeow Choy, Tie Fatt Hee, and Christina Ooi Su Siang. "Court-Annexed Mediation Practice in Malaysia: What the Future Holds." *University of Bologna Law Review* 1, no. 2 (2016). <https://doi.org/10.6092/issn.2531-6133/6751>.

- Chow Jen-T'chiang, N. Z. "Court-Annexed Mediation In Resolving Disputes Relating To Family In Malaysia: What We Need To Know Before We Go Forward." *Malaysian Journal of Syariah and Law* 2, no. 1 (2010). <https://doi.org/10.33102/mjssl.vol2no1.33>.
- Hendun Abd Rahman Shah, Norfadhilah Mohd Ali, Norsuhaida Che Musa, Adzidah Yaakob, Mustafa 'Afifi Ab Halim, "Sulh dan Mediasi Dalam Talian dalam Konflik Kekeluargaan di Mahkamah Syariah Malaysia: Prospek dan Cabaran Norma Baharu," *Ulum Islamiyyah* 34, no. 3 (2022): 1-14, accessed November 5, 2024, <https://uijournal.usim.edu.my/index.php/uij/article/view/490>.
- Hendun Abd Rahman Shah, Maszuriti Ab Aziz, Norfadhilah Ali, and Abidah Abd Ghafar. "Sulh dan Mediasi dalam Kerangka Undang-Undang di Malaysia: Kajian Perbandingan." In *Integrasi Ilmu Naqli dan Aqli Dalam Disiplin Syariah dan Undang-Undang (siri-3)*, edited by Hendun Abd Rahman Shah and Fadhlina Alias, 55-70. Nilai: Penerbit USIM, 2022.
- Genn, H. *Court-Based ADR Initiatives for Non-Family Civil Disputes: The Commercial Court and Court of Appeal*. Lord Chancellor's Department, Research Secretariat, 2002. Accessed February 22, 2010.
- Folberg, Jay, and Alison Taylor. *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation*. San Francisco: Jossey-Bass Publishers, 1984.
- Shonk, Katie. "Types of Mediation: Choose the Type Best Suited to Your Conflict." Program on Negotiation, Harvard Law School, 2022. <https://www.pon.harvard.edu/daily/mediation/types-mediation-choose-type-best-suited-conflict/>.
- Mohammad Hafiz Mohd Zaki, Mazbah Termizi, and Muhammad Ridhwan Saleh. "Mediation v Sulh: A Comparative." Paper presented at the International Conference on Dispute Resolution, Modern Trends in Effective Disputes Resolution, Universiti Islam Antarabangsa Malaysia (UIAM), August 9-10, 2017.
- Mohd Fuad Mohd Salleh, and Jamilah Othman. "Peranan Pegawai Sulh dalam Penyelesaian Konflik Keluarga Islam." *JUTEKS: Jurnal Teknikal & Kajian Sosial* 7 (2008): 37-48.
- National Alternative Dispute Resolution Terms*. Nexis Butterworth, 2003.
- Nora Abdul Hak. "Family Mediation in Asia: A Special Reference to the Law and Practice in Malaysia." *IIUM Law Journal* (2007): 121-148.
- Ooi, C. S. S., Choong, Y. C., and Tie, F. H. "Court-Annexed Mediation Practice in Malaysia: What the Future Holds." *University of Bologna Law Review* 1, no. 2 (2016).
- Raihanah Azahari. "Pelaksanaan Sulh di Jabatan Kehakiman Syariah Selangor Darul Ehsan (JAKESS): Satu Sorotan Awal." *Jurnal Syariah* 12, no. 2 (2004): 43-78.
- Raihanah Azahari. "Sulh dalam Perundangan Islam: Kajian di Jabatan Kehakiman Syariah Selangor Darul Ehsan (JAKESS)." PhD diss., Universiti Malaya, 2005.
- Raihanah Azahari. *Sulh dalam Kes Kekeluargaan Islam*. Kuala Lumpur: Penerbit Universiti Malaya, 2008.
- Ramizah Wan Muhamad. "Sulh sebagai Alternatif Penyelesaian Kes di Mahkamah Syariah." In *Kaedah Perundangan Bidangkuasa dan Tatacara Mahkamah Syariah*, edited by Farid Sufian Shuaib, Mohd. Hisham Mohd Kamal, and Tajol Aris Ahmad Bustami, 128-141. Kuala Lumpur: Dewan Bahasa Pustaka, 2005.
- Ramizah Wan Muhamad. "The Theory and Practice of Sulh (Mediation) dalam the Malaysian Syariah Courts." *IIUM Law Journal* 16 (2008): 33-35.
- Seumas Tan, *Mediation Skills and Techniques: A Practical Handbook for Dispute Resolution and*

- effective Communication* (Kuala Lumpur, Sweet & Maxwell Asia, 2012).
- Sulh Officers Code of Ethics*. Department of Syariah Judiciary, Malaysia (JKSM), 2002. Released by Dato' Sheikh Ghazali bin Hj. Ab. Rahman, former Chief Syariah Judge.
- Sulh Work Manual*. Department of Syariah Judiciary, Malaysia (JKSM), 2002.
- Syed Khalid Rashid. "Alternative Dispute Resolution in the Contexts of Islamic Law." *The Vindobons Journal of International Conventional Law and Arbitration* 8, no. 1 (2004): 95-118.
- Garner, V., B. A. *Black's Law Dictionary*. 7th ed. West Group, 1999.
- Wahbah al-Zuhayli. *al-Fiqh al-Islami wa Adillatuh*. Dimashq: Dār al-Fikr, 1989.
- Wan Azimin Wan Adnan and Ahmad Hidayat Buang. "Pelaksanaan Sulh Dalam Kes Melibatkan Tuntutan Hartanah Orang-Orang Islam Di Mahkamah Syariah Di Malaysia: Tinjauan Terhadap Kajian Lepas: The Implementation of Sulh involving Real Estate Claims of Muslims in Shariah Court in Malaysia: A Survey of Previous Studies." *Journal of Shariah Law Research* 4, no. 1 (2019): 27-54.
- Tun Arifin Bin Zakaria. "Speech by YAA Tun Arifin Bin Zakaria Chief Justice of Malaysia at the Opening of the Legal Year 2015, 10 January 2015 Main Hall, Ministry of Finance, Precint 3, Putrajaya." *MLJ* 1 (2015): cxxxii.
- Zainul Rijal Abu Bakar. "Sulh in Malaysian Syariah Courts." Paper presented at the 2nd AMA Conference: Rediscovering Mediation in the 21st Century, Sheraton Imperial Hotel, Kuala Lumpur, 2011.