

THE IMPLEMENTATION OF *MAJLIS SULH* IN SHARIAH JUDICIAL SYSTEM: A CASE STUDY IN SELANGOR

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Article history:

Submission date: 2 September 2024
Received in revised form: 1 October 2024
Acceptance date: 12 November 2024
Available online: 31 December 2024

Keywords:

Sulh, alternative dispute resolution, matrimonial cases, Shariah court

Funding:

This research did not receive any specific grant from funding agencies in the public, commercial, or non-profit sectors.

Competing interest:

The author(s) have declared that no competing interests exist.

Cite as:

Mohamad Asri, N. F., & A. Shukor, Haliza. (2024). The implementation of majlis sulh in shariah judicial system: A case study in Selangor. *INSLA E-Proceedings*, 7(1), 1–14.



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ABSTRACT

Sulh serves as a primary out-of-court dispute resolution mechanism designed to settle matrimonial conflicts without resorting to adversarial litigation. As a core component of Alternative Dispute Resolution (ADR) under Islamic Family Law, the effective implementation of *sulh* has significantly contributed to mitigating court backlogs, notably addressing the 2,736 unresolved cases recorded in the Shariah Court from 2020 until September 30, 2021, while simultaneously reducing the judicial workload. This study outlines three primary objectives: first, to identify the conceptual foundations of *sulh* from an Islamic perspective; second, to examine its operational implementation within the state of Selangor; and third, to propose strategic recommendations positioning *sulh* as a premier mechanism to alleviate systemic case backlogs. Employing a qualitative research methodology, this study utilizes a case study design, extensive literature review of journals and textbooks, and semi-structured interviews with key judicial informants within the Selangor Shariah Court framework. The findings indicate that while the implementation of *sulh* in Selangor aligns closely with Islamic jurisprudential principles, its execution faces distinct institutional and operational challenges that must be addressed to maximize its efficacy.

Introduction

Sulh can be defined as reconciliation or mediation (Hashim et al., 2024a). Meanwhile from Arabic words, *Sulh* comes from word *Salaha* which means reconciliation or doing good deeds according to Syed Sabbiq. In addition, according to Ibnu Qudamah, *Sulh* is an agreement between two disputed parties that may lead to peace reconciliation. *Sulh* is a form of Alternative Dispute Resolution (ADR) which is governed by the Syariah Court Civil Procedure Enactment 2004. The said enactment dealing with family conflicts gives the disputing parties the opportunity to reach an agreement without involving the intervention of a third party. This out-of-court settlement method is getting more response from the community because the community feels that this method is easier without need to go through the litigation process.

Sulh is considered as peacemaking between two conflicting parties assisted by a *Sulh* Officer or well known as a Mediator (Hashim et al., 2024b). The implementation of *Sulh* is an alternative created by Syariah Court in speeding up the resolution of cases registered in the Syariah Court. Before going through the trial process, the appropriate cases that have been registered need to go through the *Sulh* process first to discuss the disputes raised by the parties. If the parties during the *Sulh* Session successfully reach an agreement on the dispute amicably, the *Sulh* Officer will prepare a settlement agreement for the parties to sign. The signed settlement agreement will be sent to Yang Arif Hakim in court to be endorsed as a court order that binds the parties.

The first state that implemented and introduced *Majlis Sulh* in Malaysia is Selangor in the year 2001 and followed by other states which introduced a method of peaceful settlement called as *Sulh*. This was followed by Malacca in September 2002 also Negeri Sembilan and Pulau Pinang "*Sulh* has been a longstanding method utilized for settling conflicts within the Malay community since the 1600s or even earlier. The headman or Imam oversaw this process in each village, with the headman typically handling agricultural and community disputes, while the Imam took charge of family conflicts. Upon assuming a leadership role, individuals indirectly found themselves addressing the issues within their community. Consequently, some headmen or Imam reluctantly took on the role of mediators, performing this duty unofficially and adopting a non-assertive mediation approach".

The issue faced by the Shariah judicial system in Malaysia is the backlog of cases due to lengthy court procedures, with studies indicating there are 2736 pending cases 2020 until 30 September 2021. Therefore, this matter needs to be addressed to ensure the judicial system in Malaysia operates smoothly without a significant backlog of cases. Indirectly, the introduction of *Sulh* in the Malaysian judicial system can help reduce the backlog of cases in the Shariah Court".

Based on the Rule 5(2) Procedure for *Sulh*, Syariah Court Civil Procedure (*Sulh*) Selangor Rules 2001, it stated that

In a *Majlis Sulh*, every party shall appear in person and no *Pegulam Syarie* may appear or act as such for any party and no party shall be represented by any person without the leave of the Chairman".

The Al-Quran also mentioned *Sulh* in surah al-Hujurat verse 9:

Translation: And if two parties of the believer quarrel, make peace between them; but if one of them acts wrongfully towards the other, fight that which acts wrongfully until it returns to Allah's command; then if it returns, make peace between them with justice and act equitably; surely Allah loves those who act equitably.

(Surah Al-Hujurat, 49:9)

In surah An-Nisa verse 128:

Translation: And if a woman fears ill-usage or desertion on the part of her husband, there is no blame on them, if they effect a reconciliation between them, and reconciliation is better, and avarice has been made to be present in the (people's) minds; and if you do good (to others) and guard (against evil), then surely Allah is aware of what you do.

(Surah An-Nisa, 4:128)

Literature Review

Syasya (2020), in her research entitled “The Significance of Sulh in the Syariah Court,” examines the history of *sulh* and the significance of its application in decision-making as a forward-looking approach to resolving marriage conflicts and family matters. Utilizing a qualitative approach based on library and documentary research, the author notes that a primary reason communities prefer litigation over the *sulh* process is a lack of exposure and knowledge regarding the latter. Therefore, a critique of this article is that the researcher should have elaborated further on the operational mechanisms and distinct benefits of *Majlis Sulh* compared to litigation, which would better demonstrate its potential to attract disputing parties.

Mukhlis (2020), in his article titled “Online Mediation in Malaysian Shariah Court: Its Benefits and Challenges,” provides a detailed explanation of how *Majlis Sulh* can be conducted virtually via video conferencing due to the COVID-19 pandemic. Consequently, JAKESS introduced its “Operation Guidelines” to direct *sulh* officers, parties, solicitors, and court officials in conducting these sessions. This order applies to both parties who have settled their issues amicably and those who have not yet reached an agreement but wish to participate in online *sulh* during this period.

Meanwhile, Ruzita (2020), in an article entitled “The New Normal of Sulh Implementation in Child Custody (*Hadhanah*) and Child Support (*Nafkah*): Issues and Challenges,” highlights the emerging operational practices of *sulh* for *hadhanah* and child support cases in the Negeri Sembilan Syariah Court during the pandemic. Employing a qualitative methodology through casual interviews and data collection from previous case files, libraries, and websites, the study contributes valuable insights into improving the Syariah Court's judicial services, ultimately leading to a more effective resolution of child custody and support disputes.

Additionally, Nora et al., (2019), in their article “Literature review on Sulh in resolving child custody disputes in the Syariah Court in Malaysia,” offer a deeper understanding of the purpose and function of *sulh* or mediation in assisting parties to settle child custody issues. This article comprehensively discusses and analyzes the existing literature on the subject.

From a broader perspective of alternative dispute resolution (ADR), N. Khalidah Dhahlan, in her article “Alternative Dispute Resolution for Islamic Finance in Malaysia,” argues that to uphold justice and fairness in a multi-ethnic society, greater emphasis should be placed on ADR procedures within Islamic banking. She suggests that these mechanisms can enhance the implementation of Islamic banking laws for all customers, regardless of race or religion.

Shifting the focus to criminal justice, Norjihana Ab Aziz et al., (2016), in their article “The application of Sulh in Islamic Criminal Law,” examine numerous Qur’anic verses and Hadiths that permit the application of *sulh* in criminal cases. The authors note that Pakistan is one of the countries that has integrated *sulh* into its Islamic criminal law framework. However, a limitation of this article is its exclusive concentration on criminal cases, offering minimal emphasis on civil matters.

Emotional and psychological factors are also critical in these processes. Norman Zakiyy et al., (2022), in their study “Emotional Disorder as Obstacle to Sulh Settlement in Child Custody Cases in Malaysia,” examine the challenges posed when a party suffers from an emotional disorder during a *sulh* session. The authors argue that emotional instability can significantly hinder settlements, as it impedes the *sulh* officer's ability to perform facilitative duties effectively in accordance with the established *sulh* procedures and work manuals.

Conversely, the efficiency of this mechanism under movement restrictions was explored by Muhd Taufiq et al., (2021). In their article, “Civil Procedure in Syariah Subordinate Court, Kedah Darul Aman: Implementation of the Sulh Council under the Movement Control Order,” they describe the management of civil cases by the *Sulh* Council during the Movement Control Order (MCO). The study attributes the high rate of successful settlement agreements to the fact that *sulh* proceedings are faster and more cost-effective than open-court hearings. Furthermore, findings indicate that parties affected by the MCO agreed that the *Sulh* Council serves as a practical tool for resolving conflicts amicably while balancing the needs and interests of both sides.

In a related context, Sa'odah Ahmad (2022), in her article "Knowledge, attitude and practice of community mediators in Malaysia," observes that family and neighborhood disputes are highly sensitive and emotional. Consequently, they may not be ideally resolved through adjudication—the standard courtroom procedure—which often fails to address the emotional states of the disputants. Thus, community mediation represents a necessary alternative approach.

Finally, Nur Farahiyah Mohd Nasir et al., (2020), in their article "Prospect and Challenges of Using Online Mediation in Resolving Domestic Violence in Muslim Family Disputes in Malaysia," explain the specific challenges of Muslim family disputes. The authors analyze how online mediation can overcome these issues but cautiously note that mediation may not be an appropriate mechanism for cases with a history of domestic violence, as it could perpetuate injustice against the victim. Nevertheless, the paper concludes by advocating for online mediation as a viable alternative for standard, non-violent family disputes.

Methodology

This study employs a qualitative research design to gain in-depth insights into the application and challenges of *sulh* within the Syariah court system. To achieve this, a comprehensive case study approach is adopted, focusing specifically on the state of Selangor as the geographical and jurisdictional boundary of the research. Data collection relies significantly on secondary sources, including a rigorous review of academic journals, textbooks, case reports, and theoretical articles that discuss the abstract principles and practical legal frameworks of *sulh* in Malaysia.

To complement the library-based research, primary data was gathered through a semi-structured interview session conducted with a key research informant from the Petaling Syariah Subordinate Court, Selangor, who serves as an active Sulh Officer. This qualitative interview provides crucial, first-hand contextual insights into the operational realities, practitioner perspectives, and grassroots challenges faced during *sulh* proceedings. By triangulating the empirical data obtained from this expert informant with the thematic analysis of legal literature and past case files, this paper ensures a robust, reliable, and holistic analysis of the subject matter.

Sulh From Islamic Perspective

Sulh in Al-Quran

There are several verses in Al-Quran that discussed Sulh and of it are from Surah An-Nisa' Verse 128:

Translation: And if a woman fears ill-usage or desertion on the part of her husband, there is no blame on them, if they effect a reconciliation between them, and reconciliation is better, and avarice has been made to be present in the (people's) minds; and if you do good (to others) and guard (against evil), then surely Allah is aware of what you do.

(Surah An-Nisa, 4:128)

In this verse explains that it is necessary to make peace between husband and wife when there is disagreement within marital relationship. Most interpretations state that this verse tells about the wife of the Prophet Muhammad whose name is Sawdah bint Zam'ah that has made peace or *sulh* with the Prophet Muhammad because he was worried about being divorced by Prophet Muhammad. She has agreed to give up the overnight shift of the Prophet Muhammad to 'A'ishah with a condition The Prophet SAW did not divorce her.

According to Imam al-Qurtubi, the word *al-sulh* in this verse is the expression '*am mutlaq*' which means all peace that aims to give peace of mind and remove everything disputes that occur in a husband-wife relationship. Recommendations for doing this reconciliation is required and even encouraged because reconciliation between husband and wife is better from divorce or separation.

Another verse that discusses about Sulh is Surah al Hujurat Verse 9:

Translation: And if two parties of the believer quarrel, make peace between them; but if one of them acts wrongfully towards the other, fight that which acts wrongfully until it returns to Allah's command; then if it returns, make peace between them with justice and act equitably; surely Allah loves those who act equitably.

(Surah Al-Hujurat 49:9)

In this verse explain according to Imam Fakhr al-Din al-Razi, in this verse it is stated prompts and orders to be reconciled when there is a conflict in between two parties. If the prevailing party tyrannical or quarrelsome under the control of the government, then becomes an obligation to the government to defend the party who were oppressed and reconciled the conflict that occurred. And if the government is the one who quarrels or commits tyranny, then it is obligatory on the Muslims to prevent it by giving advice.

Most commentators state that this verse was revealed because there was a dispute between the Muslims and 'Abdullah bin Ubay. There is also an opinion that says that this verse brought down because of a dispute between the 'Aus and Khazraj. Apparently in this verse the question is explained peace that must be maintained by every Muslim.

Sulh in Hadis

Hadith text serves as a primary, authoritative source in Islamic jurisprudence (*Syariah*) that solidifies the validation of alternative dispute resolution. The Islamic faith strongly advocates for *sulh* (reconciliation) as one of the most effective methods for mitigating conflicts and restoring harmony. In prophetic tradition, Hadith encompasses the words, actions, tacit approvals (*taqrir*), and characteristics ascribed to the Prophet Muhammad SAW.

The significance of reconciliation over strict litigation is illustrated in a narration by Umm Salamah R.A, where the Messenger of Allah SAW said:

Translation: I am only a human being, and you bring your disputes to me. Some of you may perhaps be more eloquent in their plea than others, so that I give judgment on their behalf according to what I hear from them. Therefore, whatever I decide for anyone which by right belongs to his brother, he must not take it, for I am granting him only a portion of Hell.

(Narrated by al-Bukhari and Muslim)

This tradition explicitly reflects that while judicial rulings (*qada'*) are based on apparent evidence, the Prophet SAW subtly urged Muslims to prioritize mutual peace and internal honesty. It implies that amicable settlement through *sulh* is highly preferred before escalating family or financial disputes to a formal adversarial court level.

Furthermore, the explicit legality and operational boundaries of mediation are established in another fundamental tradition. On the authority of Amr bin Awf al-Muzani R.A, the Messenger of Allah SAW stated:

Translation: Reconciliation (*sulh*) is permissible among Muslims, except for a reconciliation that makes the unlawful (*haram*) lawful, or makes the lawful (*halal*) unlawful. And Muslims are bound by their conditions, except for a condition that makes the lawful unlawful or the unlawful lawful.

(Narrated by at-Tirmidhi)

Consequently, these prophetic traditions collectively validate *sulh* as a primary and highly recognized mechanism within Islamic law. Rather than viewing it merely as an alternative, the texts position *sulh* as the premier reconciliatory measure designed to preserve social cohesion, safeguard relationships, and prevent prolonged legal battles among fellow Muslims (Hashim et al., 2023).

Sulh during the time of the Prophet Muhammad SAW

The use of Sulh can also be seen through past events which took place during the time of the Prophet and his companions. The Prophet who was born as a great person and special are often seen acting as “mediators” or middleman be a facilitator to resolve a conflict and dispute between the parties who quarreled.

For example, during the Prophet’s time, a great flood caused Hajar al-Aswad to slide off its original position in the Kaabah. This caused a dispute in the circle Meccan dignitaries who represent their respective tribes to determine the tribe who deserves to put Hajar al-Aswad back in its original position. Conflict this almost led to a conflict between the rulers of Mecca, until Prophet Muhammad put himself as a mediator who acted as the facilitator resolves the dispute. With His Majesty's wisdom, it is suggested that Hajar al-Aswad be placed on a piece of cloth and then all the dignitaries of Mecca lift it together. Thanks to the idea that His Majesty threw, disputes among other problems were resolved and more serious conflicts were avoided.

Another occasion was during the signing of the Hudaibiyah Agreement Prophet Muhammad emphasized the path of peace rather than continuing the conflict. While Saidina Ali who was assigned as a scribe wrote the word 'Muhammad Rasulullah' on the agreement, the polytheists have asked that the word The 'Rasulullah' was deleted for denying that Muhammad was the messenger of God. At first Saidina Ali refused, but thanks to the patience and generosity of a prophet, Prophet Muhammad chose the path of peace and asked Saidina Ali to delete the words The “Rasulullah”.

Finally, during the reign of Umar Al-Khatab as Caliph of the Muslims the second, he sent a letter to Abu Musa Al-Ash'ari stating description and responsibilities of a qadi. In the letter, among the contents is "All kinds of tolerance and peace between Muslims is allowed, except for those who forbidding what is lawful and making lawful what is unlawful." Clearly about tolerance which leads to reconciliation is highly demanded to be used for the qadi to resolve dispute.

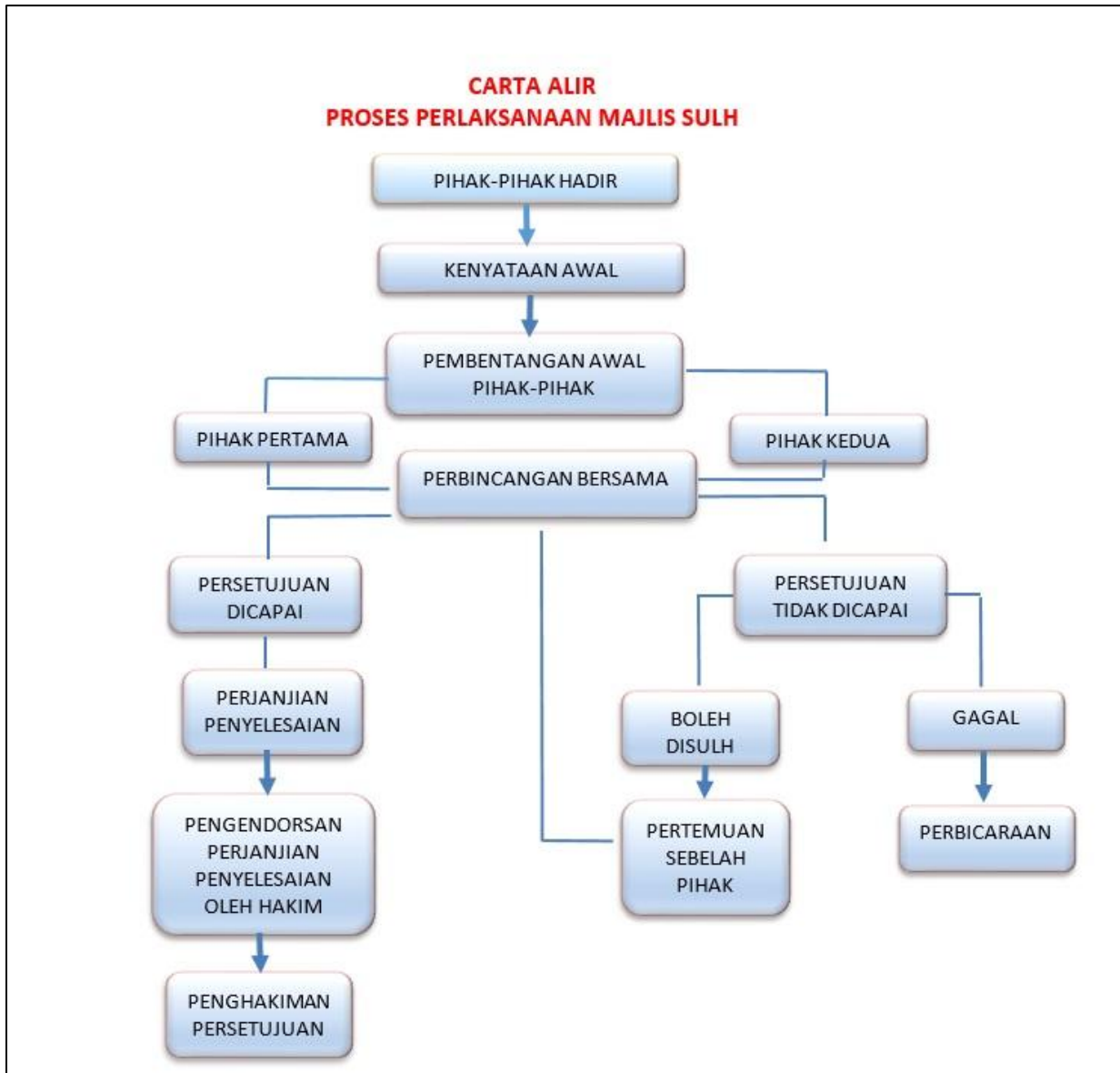
In conclusion, Prophet Muhammad and his companions were very concerned about peace in life. Any dispute must be resolved amicably first before using the *qada'* (judgment) service to save time, judge and establish friendships among people.

The Implementation of *Sulh* in Selangor

According to the Selangor Syariah Justice Department, Sulh means a joint discussion session between the parties involved in a dispute, involving one or more claims in the Selangor Syariah Court chaired by a Sulh Officer. If a peaceful agreement can be reached voluntarily between the two parties, it will be recorded by the Judge as a Court order without going through the trial process. *Sulh* was first introduced in August 2001 in the Selangor Syariah Court. However, the implementation of *sulh* formally started on May 1, 2002. At the initial stage of the Sulh organization in the State of Selangor, only 10 officers were appointed on contract in 9 Shariah Lower Courts and one in the Syariah High Court located in Selangor.

In order to implement this Majlis Sulh, the *Manual Kerja Sulh* has been introduced and drafted to save as a guidance to all Sulh officers. Among the objectives of the said Manual is to clarify and standardize the procedures that must be followed by all Sulh officers in handling the Sulh ceremony. The method of reconciliation (*Kaedah Sulh*) is one effective alternative for the community, alongside trial procedures and arbitration, to achieve resolutions. The effectiveness of implementing reconciliation in the Sharia Court of Selangor proves that this method can reduce the problem of delayed cases that has hindered the Sharia Court for some time.

Sulh Work Manual (Manual Kerja Sulh)



Sources: Jabatan Kehakiman Syariah Negeri Selangor

According to the procedural manual, a *sulh* session commences with the *sulh* officer introducing themselves to all attendees and providing a brief overview of the rationale behind the session. This is followed by a spiritual invocation, specifically the recitation of *Surah Al-Fatihah*. Subsequently, the officer establishes the ground rules for the proceedings, emphasizing guidelines such as granting each party an equal opportunity to speak and fostering uninterrupted listening. These ground rules are pivotal in ensuring that the environment remains calm, structured, and constructive throughout the session. Furthermore, the *sulh* officer explicitly informs the disputants that they are under no legal obligation to reach an immediate settlement; rather, the emphasis is placed on understanding each other's underlying grievances without compromising their respective legal rights.

Once the preliminary guidelines are laid out, the disputing parties are invited to present their arguments during the joint session. In cases where articulating the entire issue proves difficult, parties may highlight the core characteristics of the dispute and present their justifications for agreement or disagreement. Should the joint session reach an impasse, the *sulh* officer may exercise discretionary power to caucus—convening a private meeting with only one-party present—particularly if continuing the joint session is anticipated to unnecessarily prolong the dispute. Throughout this mechanism, the *sulh* officer functions strictly as a facilitator rather than a judge, aiming to guide the parties toward a mutually acceptable resolution. Consequently, the ultimate objective of the *sulh* process is not merely to enforce a consensus,

but to provide a balanced, fair, and equitable platform for negotiation; hence, the officer is not held accountable if the session does not culminate in an agreement.

Structurally, this process is anchored by four fundamental and universal characteristics of mediation: (1) the neutrality or impartiality of the mediator, (2) the voluntariness of the process, (3) the absolute confidentiality of the relationship between the mediator and the parties, and (4) the procedural flexibility accorded to the mediator. The efficacy of *sulh* heavily relies on the disputants' genuine commitment to resolving the conflict, which necessitates a mutual "give-and-take" mindset. This underscores the element of voluntariness, where parties are encouraged to communicate transparently, expressing both their emotional states and their realistic parameters for settlement.

To sustain the integrity of this framework, *sulh* officers must undergo rigorous, continuous professional training and capacity-building courses. To broaden their institutional exposure and practical experience—especially in managing diverse human behaviors—it is highly recommended that this training paradigm expand beyond local frameworks to incorporate international mediation benchmarks and cross-border training programs.

Jurisdictions of the Syariah Court in Handling Sulh

Within the jurisdiction of the state of Selangor, specific matrimonial claims and applications are legally eligible for resolution through *sulh*. These matters are categorically distributed between the Syariah High Court and the Syariah Lower Court, governed primarily by the Islamic Family Law (State of Selangor) Enactment 2003:

1. Syariah High Court

- i. Matrimonial Property Claims (*Harta Sepencarian*): Governed under Subsection 23(10)(b) and Section 122 of the Islamic Family Law (State of Selangor) Enactment 2003.
- ii. Child Custody Claims (*Hadhanah*): Governed under Section 82 of the Islamic Family Law (State of Selangor) Enactment 2003.

2. Syariah Lower Court

- i. Consolatory Gift Claims (*Mut'ah*): Governed under Section 58 of the Islamic Family Law (State of Selangor) Enactment 2003.
- ii. Wife's Maintenance Claims (*Nafkah Isteri*): Governed under Subsection 66(1) of the Islamic Family Law (State of Selangor) Enactment 2003.
- iii. Maintenance Arrears Claims (*Tunggakan Nafkah*): Governed under Subsection 70(1) of the Islamic Family Law (State of Selangor) Enactment 2003.
- iv. Child Support Claims (*Nafkah Anak*): Governed under Subsection 74(1) of the Islamic Family Law (State of Selangor) Enactment 2003.

Code of Ethics for Sulh Officers

First introduced on July 17, 2002, the Code of Ethics for *Sulh* Officers regulates the conduct and professional behavior of officers during mediation proceedings and throughout their tenure. This code is structurally divided into two primary sections. The first section outlines the general obligations of a *sulh* officer. Chief among these responsibilities is the duty to refrain from any actions that could compromise the integrity and perceived neutrality of the Syariah Court. Consequently, officers are prohibited from engaging in ambiguous social interactions that might cast doubt on their impartiality or capacity to uphold justice. Furthermore, the code strictly prohibits *sulh* officers from soliciting or accepting gifts under any circumstances.

The second section delineates the specific obligations of a *sulh* officer during the active management of a *sulh* procedure. To ensure optimal judgment, an officer is prohibited from conducting a session while experiencing physical or emotional distress, such as severe illness, hunger, or anger. To mitigate potential bias or conflicts of interest, officers are also barred from presiding over sessions involving personal friends or adversaries. Throughout the entire investigative and facilitative process, maintaining an objective and positive demeanor is mandatory.

Comparatively, the code of conduct for *sulh* officers heavily mirrors the ethical standards imposed upon Syariah Court judges. This close alignment suggests that from an ethical standpoint, a *sulh* officer is held to a judicial standard of accountability. The primary distinction lies in the scope of authority: unlike a judge, a *sulh* officer lacks the power to adjudicate, issue court orders, or hand down sentences. Instead, the officer operates strictly as a neutral mediator who facilitates amicable dispute resolution between conflicting parties. Despite this operational difference, both roles are fundamentally bound by the same ultimate objective—the administration of justice—which serves as the cornerstone of the Islamic legal system.

Statistics of Sulh cases in Selangor from JAKESS

Figure 1. Percentage of Sulh cases completed in 90 Days

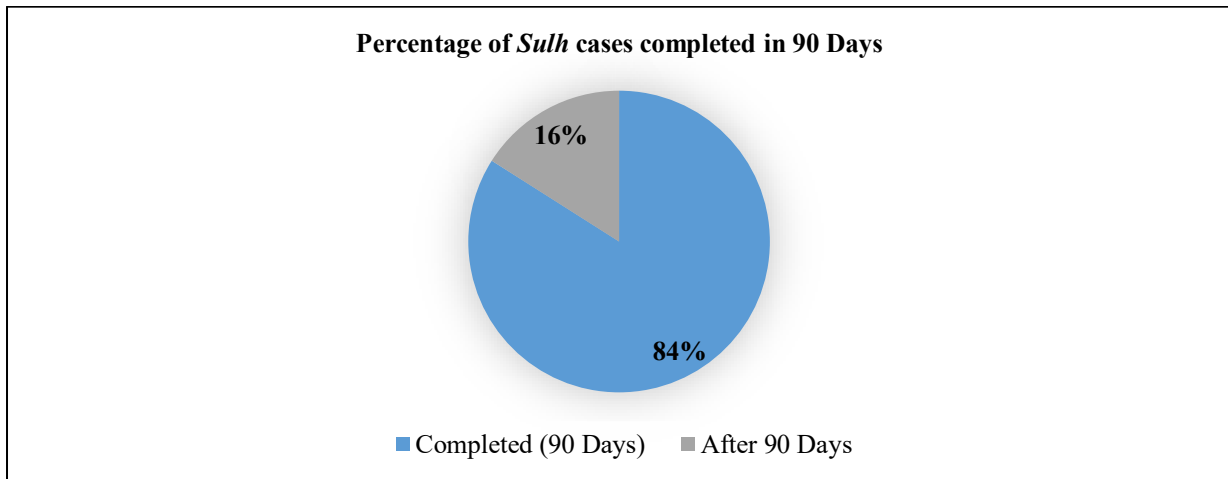


Figure 1 shows that from the cases that register, 84% refer to 2017 number of cases were success with Sulh session for 90 days while only 16% refer to 384 cases that success after 90 days. The main reason of the success was that after 90 the parties did not reach amicable agreement between them, and they decided to make another *sulh* session. When the parties decide to have another *sulh* session, it will take sometimes to make the appointment, and it can prolong until months.

Figure 2. Percentage of Sulh Cases Registered in 2020 and completed in 2020

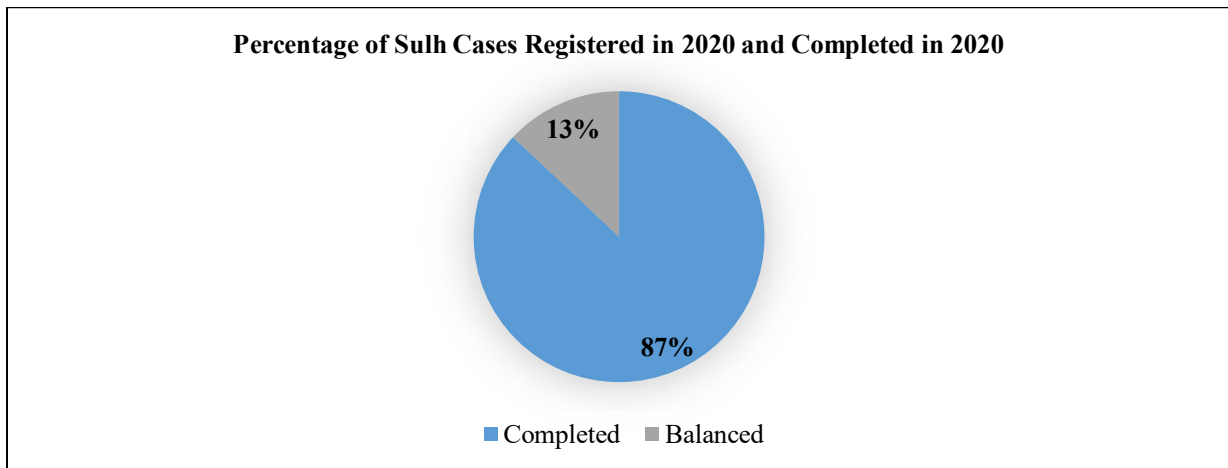


Figure 2 shows that 87% refer to 2089 cases were success and only 13% refer to 312 cases that are not completed. This statistic shows a good record of Sulh session in Selangor from 2020 The researchers can conclude that Sulh is the best method to resolve disputes in matrimonial issues. The remaining cases which were not completed in 2020 were due to the fact that the parties require another *sulh* session as they were unable to attend first session as scheduled.

Figure 3. Attendance of *Sulh* Session

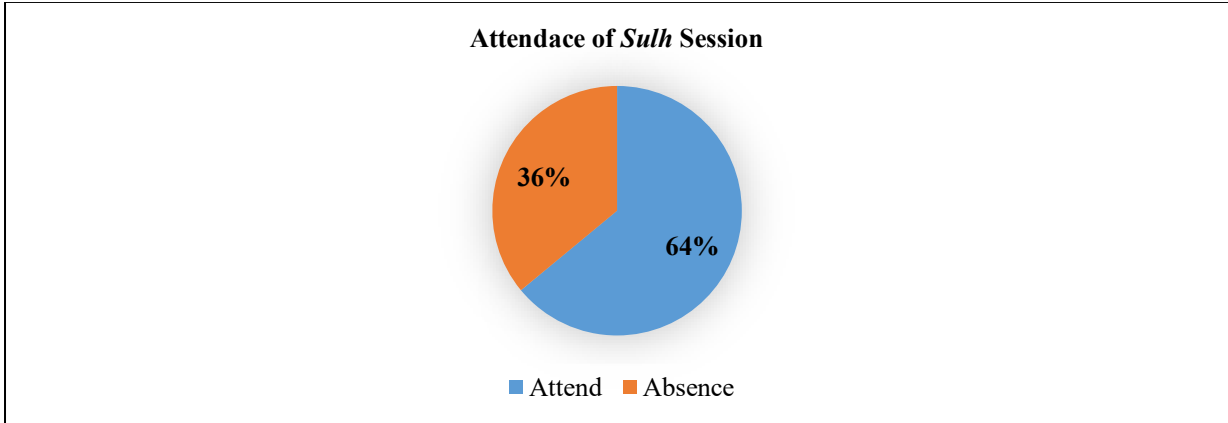


Figure 4. Result of *Sulh* Session

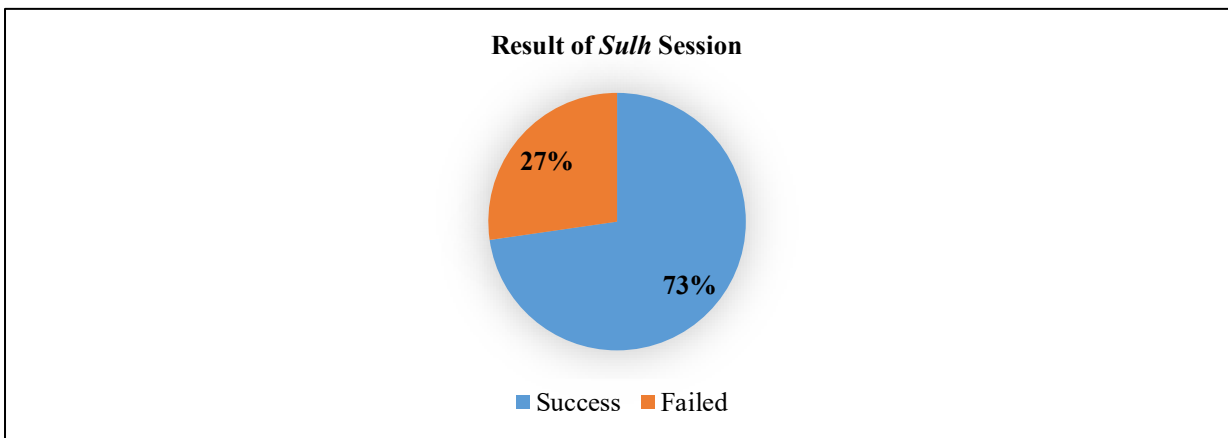


Figure 3 shows that 64% refer to 1537 cases that refer to *Sulh* in 2020 were success and client attend the session, while 36% refer to 864 number of cases did not attend the session because of transportation issues, financial problems and time constraints. Other than that, the next table shows that 73% refer to 1729 number of cases were success while another 27.6% refer to 648 number of cases failed due to failure to reach an agreement between the parties.

***Sulh* Cases**

In the case of Tauran bin Abdul Hamid v. Junaida bt Isa, a settlement agreement was reached to include the assets left above the agreement in the matrimonial property claim case conducted by both the plaintiff and the second defendant, who had both passed away. The agreed settlement judgment explains that the reconciliation mechanism plays a role in resolving complex aspects and issues related to jurisdiction that could lead to legal conflicts if the case were to be litigated. The judgment orders are binding on the parties, and the Sharia Court orders must be implemented by the relevant land administrators in accordance with legal provisions.

In this case, the presiding judge evaluated the conditions that meet the validity of the reconciliation as a case resolution. Based on the defendant's agreement to all the plaintiff's claims, he believed that the reconciliation conditions had been met. Judge Ismail Yahya stated:

According to Islamic law, reconciliation has its conditions. There are conditions on the involved parties, and there are also conditions on the property being reconciled. According to the conditions outlined by Islamic legal experts, I am satisfied that the defendant's actions agreeing to all of the plaintiff's claims have met the conditions of the involved parties and the conditions of the reconciled property. Therefore, I hereby make orders in this claim based on reconciliation or mutual agreement between the plaintiff and the defendant.

The judge's decision explains that the implementation of reconciliation is flexible and more straightforward, with the defendant simply agreeing to what is claimed in the plaintiff's pleading statement. The reconciliation process no longer needs to follow the procedures set out in the Rules of the Court of Malaya (*Sulh*) or the *Sulh* work manual, which also consumes time.

The purpose and objective of reconciliation to expedite court proceedings and allow parties to achieve this through such an approach that complies with the principles and conditions of reconciled property according to Islamic law. The settlement agreement judgment is issued after the judge is satisfied that a reconciliation settlement has been reached by both parties. The settlement agreement judgment is binding and cannot be withdrawn or appealed unless both parties agree. However, judicial review of these orders is allowed for the purpose of upholding justice.

Other than that, *Majlis sulh* is also capable of resolving disputes involving waqf properties. In the case of *Majlis Agama Islam dan Adat Melayu Terengganu v. Tis 'Ata 'Ashar Sdn. Bhd*, an agreement through reconciliation was accepted as a peaceful resolution between the parties. In this case, the presiding judge accepted the settlement agreement signed by the defendant, who agreed to all the plaintiff's claims. The parties agreed that the related property cannot be transferred by the defendant to any third party."

An example of *sulh* in a murder case is reported in the case of *Muhammad Yousuf v. The State and Another*. In this instance, all the lawful heirs of the deceased chose to pardon the accused, relinquishing their right to *qisas* and *diyat* without any objection to the acquittal. The Sessions Court determined that the agreement between the parties was authentic and voluntary, finding no legal impediment to its acceptance. Upon appeal, the higher court reviewed the case, acknowledged the compromise between the involved parties, and proceeded to adjudicate the murder case. The court allowed the appeal on the judgment of conviction, and the sentence was set aside and the offender was acquitted of the charge.

In the next case, to question and set aside a court order of consent that has been voluntarily and sincerely signed by both disputing parties contradicts the principles of Islamic law. When the disputing parties are given sufficient opportunity and time to declare their legal rights and responsibilities during the signing of a consent agreement drafted during a reconciliation session, there is no justification for challenging and unraveling that consent order.

So, in the case of appeal *Saria Abdul Rahim v. Jaslina Abu* the Singapore Court of Appeal rejected the appellant's appeal to include assets not previously contested in the requested court order. The court opined that the appellant, when signing the settlement agreement, was aware that the respondent possessed other assets besides the claimed marital home and was satisfied with the terms of the consent order. Therefore, the judge deemed it inappropriate to reconsider these assets, arguing that overtaking the order would prejudice the respondent since she had already accepted and acted upon the terms of the previously agreed-upon consent order.

A reconciliation agreement is a voluntary contract aimed at amicably resolving disputes. Therefore, questioning and overhauling a reconciliation agreement will not achieve the objective of resolving the dispute as outlined by Islamic law, especially in cases involving property claims.

Next, the principle of *res judicata* aims to prevent the same parties from raising the same issue in a competent court. No court is allowed to reconsider an issue that has been previously discussed and decided upon by the same parties. The meaning and principle of *res judicata* are further elucidated in Practice Direction No. 14 of 2002, which states that any decision on a case or the same issue by the same parties issued earlier by a court in one state should be respected by all levels of courts in other states. The principle of *res judicata* is accepted in the Islamic judicial system based on the foundation of upholding justice.

However, if there are elements of injustice and fraud in a prior judicial decision, Islam allows the related case to be reopened for the purpose of ensuring justice.

In the case of Ahmad bin Ngah and Another v. Asmara binti Sulung and 6 Others, the appellant was barred under the principle of *res judicata* from bringing an action for the confirmation of a gift in the Shariah High Court. The reason cited was that the appellant had previously made a claim on the same property against the same respondents in a case at the High Court of Malaya in Kuala Terengganu. Although, under the general rule, a consent order through reconciliation cannot be appealed, in some cases, a review of the judge's decision and order can still be subject to judicial review.

Analysis of the Discussion

Based on the preceding comprehensive review, several institutional, systemic, and operational challenges confront the execution and overall efficacy of *Majlis Sulh* within the Malaysian Shariah judicial framework. Primary among these challenges is the public's acute lack of systemic exposure and institutional literacy regarding the mechanism. While a substantial segment of the community may possess a superficial awareness of *Majlis Sulh*'s existence through contemporary digital media, interpersonal networks, or occasional mainstream news reporting, a profound cognitive gap persists regarding its actual operational functions, legal boundaries, and procedural frameworks. This widespread ambiguity breeds institutional apprehension; disputing parties—particularly those embroiled in emotionally charged matrimonial and family disputes—often express reluctance to utilize *sulh* due to a fear of the unknown. Consequently, rather than opting for this amicable, alternative dispute resolution (ADR) avenue, the public overwhelmingly gravitates toward conventional, adversarial litigation. This systemic dependency heavily counteracts the Shariah Court's strategic intent to expedite family law cases, reduce heavy docket backlogs, and provide a less traumatic resolution process for broken families.

Furthermore, operational stringencies embedded within the Shariah court's bureaucratic machinery inadvertently serve as a deterrent. Although the prescriptive guidelines detailed in the *Manual Kerja Sulh* (such as enforcing strict turn-taking when speaking, maintaining mandatory emotional decorum, and explicitly prohibiting parties from raising their voices) are structurally designed to preserve standard courtroom order, they can be perceived by lay litigants as overly rigid, intimidating, and emotionally restrictive. Compounding this structural aversion is the finality and legally binding nature of a successful *sulh* outcome. Because a consent order (*perintah persetujuan*) recorded at the conclusion of a successful *sulh* session carries the same weight as a formal court judgment and is generally non-contestable, disputants frequently experience psychological distress, fearing they might inadvertently compromise their permanent legal rights under high-pressure, mediated environments.

To counteract these anxieties and ensure the platform's foundational neutrality, the strict enforcement of the Code of Ethics for *Sulh* Officers becomes absolutely paramount. The code's internal checks and balances—such as barring an officer from presiding over a session while experiencing severe physical or emotional distress (including illness, hunger, or anger), and strictly prohibiting them from handling cases involving personal networks or adversaries—serve as vital structural safeguards against institutional bias. In events where a *sulh* officer exhibits manifest partiality or breaches these ethical thresholds, the legal framework explicitly empowers aggrieved parties to lodge administrative complaints. This structural accountability ensures that even though *sulh* operations are flexible, they do not deviate from the core tenets of Islamic justice (*'adalah*).

In addressing these multifaceted operational barriers, several strategic, policy-driven interventions must be systematically deployed:

- i. Institutionalization into Pre-Marriage Syllabi: It is highly recommended that a structured, comprehensive module detailing the mechanisms of *sulh*, *tahkim* (arbitration), and Islamic family counseling be permanently embedded into national pre-marriage courses. Providing early legal and procedural exposure ensures that couples understand the Shariah court's non-litigious dispute resolution avenues long before domestic friction manifests.

- ii. Targeted Public Awareness Campaigns: The Shariah Judiciary Department (JKSM) and state Shariah courts must intensify public relations campaigns to articulate the distinct, pragmatic advantages of *sulh* over litigation, specifically highlighting its cost-effectiveness, complete confidentiality, and its capacity to save substantial time.
- iii. Continuous Procedural Refinement: The standard operating procedures (SOPs) and manuals governing *sulh* sessions must undergo periodic, iterative reviews to strike a delicate balance between formal legal discipline and empathetic accessibility, thereby preventing disputing parties from feeling structurally overwhelmed by the process.

Finally, an examination of contemporary judicial trends reveals an analytical shift in how ADR is administered. Recent case laws and judicial pronouncements indicate that senior Shariah judges increasingly discourage a rigid, hyper-technical adherence to exhaustive procedural manuals—such as the legacy rules adapted from civil court structures like the Rules of the Court of Malaya. Courts have progressively recognized that a preoccupation with minor technicalities and overly labyrinthine operational steps is counterproductive, often introducing unnecessary delays to a system designed for swift relief. Instead, the judiciary strongly advocates for a substance-over-form approach that honors the true theological spirit of reconciliation in Islam. By prioritizing flexible, equitable mediation over dogmatic procedural compliance, *sulh* can fully realize its potential as an expedited, compassionate, and inherently just mechanism for conflict resolution.

Conclusion

In conclusion, this research underscores that the institutional implementation of *Majlis Sulh* yields profound, multifaceted benefits for the entire ecosystem of Islamic jurisprudence, significantly impacting the Shariah judicial system, the legal practitioners, and the disputing parties themselves. As an effective alternative dispute resolution (ADR) mechanism, *sulh* offers distinct advantages over traditional adversarial litigation. It fundamentally expedites the resolution timeline, thereby relieving disputants from the protracted delays typical of formal court trials. Furthermore, it mitigates the financial burdens of legal conflicts by offering a considerably more cost-effective avenue, all while operating within a flexible and less intimidating procedural framework. By shifting the paradigm from conflict to compromise, *sulh* effectively preserves the social and familial cohesion demanded by Islamic tenets.

To maximize the efficacy and reach of this mechanism, several institutional recommendations are proposed:

- i. Systemic Public Advocacy and Educational Integration: The Shariah Judiciary Department and relevant religious authorities must proactively enhance public literacy regarding *Majlis Sulh*. A strategic and highly viable method to achieve this is by permanently integrating a specialized *sulh* module into the mandatory national pre-marriage course syllabus. Providing this early procedural and legal exposure ensures that future spouses are well-equipped with knowledge of the Shariah court's non-litigious avenues long before domestic or matrimonial disputes manifest.
- ii. Active Collaboration of Syariah Legal Practitioners: Shariah lawyers must recognize their pivotal ethical and professional responsibility to actively encourage clients toward amicable settlements through *sulh*, rather than instinctively defaulting to aggressive litigation. Legal practitioners should act as facilitators of peace, guiding emotional disputants toward mutual concessions.

Ultimately, a concerted effort by both the judiciary and legal practitioners to prioritize *Majlis Sulh* will not only foster a more compassionate approach to family law but will also significantly elevate the institutional reputation of the Malaysian Shariah Judicial System by systematically eradicating systemic case backlogs.

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