

Sulh (Resolution) of Family Dispute and its Application in The Shariah Courts of Malaysia

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Abstract

The resolution of family disputes through Sulh in Malaysia's Shariah courts represents a pivotal area of research that promotes peaceful conflict resolution, preserves familial bonds, and aligns with Islamic teachings and legal principles. This study examines the effectiveness of Sulh as an alternative dispute resolution (ADR) mechanism, emphasizing its capacity to address family conflicts in a culturally sensitive manner. By analyzing data from the Shariah Judiciary Department of Malaysia, which reported a considerable number of successfully resolved Sulh cases in 2021, the research underscores its role in expediting resolutions and alleviating case backlogs in Shariah courts. While Sulh demonstrates notable successes, public confidence in it remains limited compared to traditional litigation methods. The study seeks to identify factors contributing to the success of Sulh, proposing strategies to enhance its accessibility, transparency, and fairness. By offering actionable insights for policymakers, legal practitioners, and court administrators, this research aims to strengthen the Shariah court system's capacity to deliver justice efficiently, foster amicable agreements, and reduce the burden of extended litigation. Furthermore, the findings provide a foundation for legislative and legal reforms, including the development of comprehensive laws, guidelines, and training programs tailored to Sulh procedures. Ultimately, this research aspires to elevate public awareness and acceptance of Sulh as an effective ADR mechanism within the Islamic legal framework, promoting its broader adoption and understanding among Malaysians.

Keywords

Sulh; Resolution; Family Dispute; Syariah Court; Islamic Law

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1. INTRODUCTION

The terms "family" and "dispute" combine to form the phrase "family dispute". According to Mimi Kamariah (1999) and Mason et al. (2008), "family" denotes a group of individuals connected by kinship, particularly parents and children, while "dispute" signifies a disagreement or argument between individuals or groups. In family studies, this term refers to conflicts, disagreements, or quarrels arising within a family unit, encompassing various aspects of family life such as interpersonal relationships, parenting approaches, financial issues, inheritance matters, and allocating responsibilities.



In Islamic teachings, the family is regarded as a fundamental pillar of society, with strong and harmonious family bonds being highly emphasised. However, Islam acknowledges that familial conflicts and disagreements are natural due to differences in personalities, perspectives, and interests (Ghazali, 2020). On the other hand, family resolution is described as a crucial process that helps families address conflicts, enhance relationships, and foster well-being (Robinson & Moore, 2019).

Alternative Dispute Resolution (ADR) mechanisms have been introduced to mitigate familial disputes. ADR seeks to address unavoidable and often emotionally charged familial issues such as marriage, divorce, child custody, inheritance, and other related matters. The approaches encompassed by ADR include *Sulh* (negotiation), *nasihah* (counseling), *qada'* (court adjudication), *tahkīm* (arbitration), *muhtasib* (ombudsman), *fatwā of mufti* (expert determination), and *wali al-mazalim* (chancellor), among others. These methods promote autonomy, collaboration, and mutually beneficial solutions for families.

This study focuses explicitly on *Sulh* within familial contexts, as practised in the Shariah courts of Malaysia. In Islamic law, *Sulh*, a peaceful settlement method in ADR, is defined as an '*aqad* (contract) that resolves a dispute (Raihanah, 2008). A similar definition is provided by Wahbah Al-Zuhaili (1999). Rule No. 3 of the Shariah Court Procedure (Sulh) (Federal Territories) Rule 2004 interprets *Sulh* as the negotiation, agreement, and settlement of cases within the *Majlis Sulh* (Sulh Council). The process embodies reconciliation, compromise, and peaceful resolution, aligning with the broader objectives of Shariah law. *Sulh* is an alternative to litigation, enabling disputing parties to collaboratively identify acceptable solutions while upholding their dignity and preserving the family's well-being. In Islam, *Sulh* is applicable in all types of disputes except *Hudud* cases (Ramizah, 2008).

Numerous Quranic verses emphasise the principles of resolving disputes through peaceful negotiation and mutual agreement. One such verse states:

"If you fear a breach between them (husband and wife), appoint two arbiters, one from his family and the other from hers. If they wish for peace, Allah will cause their conciliation, for Allah hath full knowledge and is acquainted with all things". [An-Nisā: 35]

This command highlights the Quran's advocacy for amicable dispute resolution, reflecting the Islamic values of forgiveness and reconciliation. By emphasising these values, the Quran underscores the transformative power of compassion in mending relationships and fostering a harmonious society.

Shariah courts play a pivotal role in implementing Islamic law and resolving family disputes in Malaysia. Matters about Islamic law fall under state jurisdiction, as stipulated by Article 121(1A) of Malaysia's Federal Constitution, granting Shariah courts exclusive authority over such cases. This includes the practice of *Sulh* (mediation), governed by various legal provisions in each state. For instance, in Selangor, *Sulh* is regulated by Section 99 of the Shariah Court Civil Procedure Enactment 2003, Sections 47 and 48 of the Selangor Family Law Enactment 2003, and Rules 1–9 of the Selangor

Shariah Court Civil Procedure (*Sulh*) Rules 2001. Collectively, these enactments incorporate *Sulh* into Malaysia's Shariah legal framework.

The significance of *Sulh* is evident in the proactive measures taken by Selangor Shariah Courts, which established a *Sulh* Council (*Majlis Sulh*) in 2002. Sheikh Ghazali Abdul Rahman, former Shariah Chief Justice, emphasised that the courts require disputing parties to negotiate and mediate before proceeding to trial. To facilitate this, dedicated *Sulh* officers are assigned to Shariah courts, reinforcing the integration of Islamic legal principles with cultural values and societal dynamics (Hak, 2015; Berita Harian, 2003).

This study explores the application of *Sulh* in resolving family disputes in Malaysian Shariah courts. It aims to evaluate its effectiveness as an alternative dispute resolution mechanism, focusing on fostering peaceful settlements, preserving familial bonds, and ensuring justice in alignment with Islamic teachings and Malaysian law. Furthermore, the research identifies areas for improvement and provides recommendations to enhance the use of *Sulh* as a culturally sensitive and principled approach to resolving family conflicts.

2. METHOD

Data Collection

To finalise this research paper, data collection methods incorporated library research and fieldwork, including semi-structured interviews. Denzin and Lincoln (2005) emphasised that qualitative research employs diverse empirical materials—such as case studies, personal narratives, introspections, life stories, observational data, historical accounts, interactional analyses, and visual texts—that elucidate routine and significant experiences and meanings in individuals' lives.

The materials utilised in this study encompassed translations of the Quran, the Prophet's hadiths, peer-reviewed journals, scholarly articles, legal records, case files, and information from reputable online sources. A library-based approach aligned the research with Islamic and Western legal frameworks. Simultaneously, the fieldwork approach enabled a comprehensive analysis of the findings. Semi-structured interviews were conducted with three family law experts: two *Sulh* officers and one Sharie judge, each from a different Malaysian state. This diverse selection ensured the study captured a range of perspectives, highlighting both commonalities and differences in expert opinions. To ensure accuracy and depth, the interviews were audio-recorded with the participant's consent, providing detailed and reliable insights for the study.

Data Analysis

The research methodology will incorporate two primary approaches: the inductive approach and the juristic analysis method. In academic studies, the inductive approach typically begins with

formulating questions and generating responses to develop new facts or theories, often called the grounded theory of data collection and analysis (Creswell & Poth, 2018; Strauss & Corbin, 1998). Accordingly, this study will employ the inductive approach to explore the concept of *Sulh* defaults in Islamic law, analysing classical jurisprudential texts to enhance understanding of the topic.

The juristic analysis method will be utilised to conduct qualitative analyses, comprehensively representing recurring concepts in the subject matter found in literature, interviews, articles, and other sources (Alghafli, 2016; Sharif, 2019). The study will critically engage with both Islamic jurisprudence and Western legal literature related to the topic. Interview findings will also be integrated to enrich the analysis and provide well-rounded insights.

Participants

Three male participants were interviewed for this study. Two of them were directly engaged in *Sulh* sessions, serving as *Sulh* officers from the Shariah High Courts of Malaysia. The third participant was a Sharie judge with a decade of experience, including service as an ex-officio *Sulh* officer. Due to travel time constraints, two out of the three interviews were conducted virtually via Google Meet. Details of the participants are outlined in Table 1.

Table 1. Profile of the Expert Interviewees

Code	Pseudo Name	Introduction	Designation	Date Interviewed
R1	WAWA	Shariah Subordinate Court of Tumpat, Kelantan Darul Naim	Syarie Judge (Ex-officio <i>Sulh</i> Officer)	November 29, 2023
R2	MAB	Shariah High Court of Selangor Darul Ehsan	<i>Sulh</i> Officer	November 30, 2023
R3	MHZAR	Shariah High Court of Kedah Darul Aman	<i>Sulh</i> Officer	December 6, 2023

3. FINDINGS AND DISCUSSION

This study employed framework analysis to identify three primary themes and eight associated sub-themes. The first theme explores the conceptual understanding of *Sulh*, including its definition, connection to mediation, and the responsibilities of *Sulh* officers. Conversely, the second theme evaluates the effectiveness of the *Sulh* system, focusing on metrics for its evaluation and its impact on reducing case backlogs. The third theme proposes recommendations to enhance the *Sulh* system, emphasising the judiciary’s role and advocating *Sulh* as the preferred method for conflict resolution.

The eight sub-themes correspond to the research interview questions addressed in this study. Respondent inputs are categorised as R1, R2, and R3.

Theme 1: Conceptual Understanding of Sulh

Sub-theme 1: Definition and Scope of Sulh

R1: *Sulh* refers to a conflict resolution mechanism employed to address disputes. In Malaysia, *Sulh* is predominantly utilised to resolve family-related conflicts. As per the Shariah Court Civil Procedure (*Sulh*) (Kelantan), *Sulh* signifies negotiation, agreement, and the amicable resolution of disputes between involved parties during the *Sulh* Council proceedings.

R2: Rule No. 5 of the Shariah Court Civil Procedure (*Sulh*) (Selangor) Rules 2001 defines *Sulh* as negotiation, agreement, and dispute settlement facilitated during the *Majlis Sulh*. According to the Selangor Islamic Judiciary Department (JAKESS), *Sulh* involves a structured meeting between conflicting parties moderated by a *Sulh* officer. Its primary goal is to resolve disputes amicably and restore relationships between parties through peaceful means.

R3: *Sulh* functions as a platform where a neutral third party facilitates dispute resolution between conflicting parties. It is extensively employed in family law matters, such as marital dissolution in Malaysia. Under the Islamic Family Law Act, individuals intending to dissolve their marriage must undergo *Sulh* procedures before initiating formal judicial proceedings. If the marriage is deemed irreparable, a formal hearing before a Sharie judge follows.

Theme 1: Conceptual Understanding of Sulh

Sub-theme 2: Relationship Between Sulh and Mediation

R1: Sulh and mediation are interconnected as both methods aim to resolve disputes through facilitated dialogue. Both approaches emphasise preserving relationships and fostering mutual understanding among conflicting parties. Active participation is encouraged in both Sulh and mediation, empowering parties to take ownership of the resolution process.

R2: Both mediation and Sulh utilise an impartial third party, a mediator or Sulh officer, to support disputants. These methods offer alternatives to traditional legal proceedings, emphasising a cooperative and collaborative framework, especially in family conflict resolution.

R3: A shared objective of Sulh and mediation is maintaining the relationship between disputing parties post-resolution. The mediator or Sulh officer is pivotal in guiding disputants toward amicable solutions, ensuring effective communication and mutual respect.

Theme 1: Conceptual Understanding of Sulh

Sub-theme 3: Role of the Sulh Officer

R1: According to the *Syariah Court Civil Procedure (Sulh) Kelantan 2021*, guidelines exist for conducting the Council. However, Sulh officers are not strictly bound by these rules. For instance, while

the ice-breaking session is not mandated, officers may include it to ease tension between disputants. Effective facilitation by skilled Sulh officers and cooperative disputants can streamline the Sulh process. Beyond mediating sessions, Sulh officers assist Shariah judges in determining suitable cases for Sulh, such as divorce cases, even if not explicitly detailed in the guidelines. This flexibility allows disputants to reconsider critical decisions, such as divorce, fostering thoughtful outcomes.

R2: The role of Sulh officers remains consistent across Shariah High Courts and Subordinate Courts, focusing on assisting judges in resolving disputes outside conventional litigation. Differences emerge in case types, with the Shariah High Court handling higher-value cases, such as *hadhānah* cases exceeding RM 300,000.

R3: Sulh officers must maintain impartiality while facilitating the Council. Their role includes educating parties on legal and Sharia principles, especially when participants need a comprehensive understanding of the process or documents. Unlike judges, who face constraints due to high caseloads, Sulh officers can provide detailed guidance, expediting case resolution and reducing judicial backlogs.

Theme 2: Evaluating the Effectiveness of Sulh in Malaysia's Shariah Courts

Sub-theme 4: Comprehensive Assessment of Sulh's Effectiveness in Malaysia's Shariah Courts

R1: Sulh is pivotal, as in Practice Direction No.1 of 2010. Common disputes that can be resolved through the Sulh Council include spousal maintenance, *hadhānah* (custody), and other familial issues. These cases bypass formal litigation, which conserves time and facilitates mutual agreements among the parties involved. The effectiveness of Sulh is evident, with approximately 70% of cases being successfully resolved through this procedure within the Shariah courts.

R2: The efficiency of Sulh can be quantified through statistical data from various Shariah courts in Malaysia. For instance, in the Shariah High Court of Selangor, 2438 cases were registered under the Sulh Council from January to September 2023, with 360 cases still unresolved. Among these, 1124 cases were amicably resolved through Sulh, signifying that nearly half of the cases were effectively managed through this mechanism. This underscores Sulh's efficiency in facilitating dispute resolution.

R3: The effectiveness of Sulh in the Shariah courts of Kedah aligns closely with that observed in other states. The overarching aim of Sulh, consistent across states, is to streamline the resolution of disputes without the need for protracted court proceedings. Additionally, Sulh seeks to preserve amicable relationships among disputing parties, a stark contrast to formal litigation, where outcomes are determined solely by the presiding Shariah judge.

Theme 2: Evaluating the Effectiveness of Sulh in Malaysia's Shariah Courts

Sub-theme 5: The Impacts of Sulh on Case Backlogs

R1: Sulh serves as a mechanism to expedite court procedures. In contrast, traditional court proceedings necessitate formally presenting the case before a Shariah judge, requiring meticulous

management of "mention cases," which is often time intensive. Conversely, Sulh streamlines the process by eliminating the need for witness testimonies and legal representation, thereby avoiding protracted legal proceedings. Furthermore, Sulh can effectively identify the underlying interests of disputing parties, offering resolutions more efficiently than court litigation. For example, disagreements over minor issues, such as the mode of payment for child maintenance – whether by online transfer or cash – can be amicably resolved through Sulh, fostering peaceful dispute resolution.

R2: The legal framework actively supports the implementation of Sulh. Section 99 of the Syariah Court Civil Procedure Enactment enables disputing parties to negotiate at any stage of the proceedings, either through prescribed methods or by Sharia law. This provision applies whether the case is initiated or already in progress. Even after a trial, if the Sharie judge allows negotiations and the parties reach an agreement, the outcome is formalised as a consent order under Section 131 of the enactment. Notably, such agreements are final and cannot be appealed. Thus, cases resolved through Sulh avoid escalation to higher courts, significantly expediting case resolution and preserving relationships. For instance, disputes over child maintenance between former spouses, whether handled in court or outside, are often more effectively addressed through Sulh, minimising prolonged conflict.

R3: The active participation of disputants is pivotal in Sulh sessions. Their attendance and willingness to engage directly influence the timely resolution of cases. For example, in a Sulh Council handling 18 cases, including divorce disputes, parties willing to settle can express their divorce intention (*lafz al-talak*) before the Sharie judge. If one party refuses, the judge refers the matter to the Sulh Council for further deliberation. Both parties' commitment is essential to ensuring a successful resolution. Sulh alleviates the burden on Shariah courts by facilitating amicable settlements, preventing the backlog of unresolved cases.

Theme 3: The Effectiveness of Sulh in Shariah Courts in Malaysia

Sub-theme 6: Measuring User Satisfaction in Sulh Proceedings

R1: Currently, no formal feedback mechanism is provided to disputants following the conclusion of Sulh sessions to assess their satisfaction levels. However, prior studies, such as those by Sa'odah, have examined this issue. Despite the lack of direct research conducted by our team, it is evident that disputants generally reach mutual agreements during Sulh sessions, which are subsequently formalised before a Sharie judge. The court typically inquires:

1. Whether the disputant consents to the agreement before its formalisation.
2. If the agreement was made consciously.
3. If it was agreed upon willingly.

These inquiries affirm that the resolutions achieved through Sulh are consensual. Conversely, cases proceeding to litigation often result in dissatisfaction among the parties involved.

R2: Although a systematic feedback system is absent, Sulh officers informally gather client insights to improve future services. One notable instance was when a client expressed satisfaction about resolving their dispute within a week, highlighting the efficiency and fairness of the Sulh process by Shariah principles.

R3: Overall, client satisfaction is reflected in the high success rate of Sulh officers in resolving disputes. Statistics from the Shariah High Court of Kedah reveal that 88% of Sulh cases were resolved efficiently this year. Disputants acknowledge the practicality of the Sulh mechanism and express contentment with the decisions. For optimal satisfaction, it is crucial to ensure that disputants fully comprehend the Sulh process, including the irrevocability of a consent order once issued.

Theme 3: Recommendations for Enhancing the Sulh System

Sub-theme 7: Enhancing the Role of the Court in the Sulh Mechanism

R1: The Sulh mechanism remains under the centralised Sulh Unit within the Shariah Judiciary Department in Tunjong, Kelantan, where officers adhere to the Practice Direction for their duties. Currently, Sulh officers hold positions at the LS 44 level (unit head), but there is a recommendation to elevate these positions to LS 48 or LS 52, as practised in Selangor. Although certified as Sharie judges, their roles are limited to the subordinate court level, unlike their counterparts in Selangor. To enhance public awareness, promoting the Sulh mechanism to resolve disputes amicably rather than perpetuate conflict is vital. Additionally, Sulh officers require enhanced competency training from the JKSM. Such training should include exposure to cases outside their jurisdiction, such as joint property disputes, to broaden their understanding and capability in handling complex cases.

R2: Promoting *Sulh* widely should be taken to increase public awareness by implementing extensive educational campaigns. Social media platforms such as TikTok, X, and Facebook should also be utilised for effective outreach. The government should strengthen the competency of *Sulh* officers by providing them with robust and comprehensive training programs to enhance the *Sulh* system. This training will equip officers with the essential skills for efficient dispute resolution.

R3: The court should actively elucidate the benefits of *Sulh* to the public to foster a deeper understanding. The JKSM (Department of Syariah Judiciary Malaysia) recently initiated a program titled *Muakkad Sulh* aired on TV Al-Hijrah every Thursday. This initiative educates the public about Sulh's principles and procedures. In Kedah, collaboration with the Women's Development Department provides a dedicated platform to explain the types of cases that can be resolved through *Sulh*. This platform prioritises outreach to women, particularly single mothers, victims of domestic violence, and other vulnerable groups. Furthermore, offering specialised training courses in psychology, non-verbal communication, and counselling to Sulh officers can enhance the system's overall quality while encouraging public participation in *Sulh*.

Theme 3: Recommendations for Enhancing the Sulh System

Sub-theme 8: Insights into Promoting Sulh as a Primary Dispute Resolution Mechanism

R1: The legal provisions supporting Sulh are robust. Section 99 of the *Syariah Court Civil Procedure Enactment* allows parties in any stage of proceedings to engage in Sulh as a means of dispute resolution, adhering to prescribed methods or Sharia Law. Even if a Sharie judge is about to issue a decision, parties may still negotiate. Any agreement reached during such negotiations is formalised as a consent order under Section 131. This approach ensures that cases resolved through Sulh are final and cannot be appealed, as such agreements carry *res judicata* status under Section 34. Encouraging external agencies, such as the Legal Aid Department (JBG), to promote Sulh can further expand its usage. This process expedites resolutions, reduces case backlogs, and preserves relationships by avoiding prolonged disputes.

R2: In the Shariah courts of Selangor, all cases are initially referred to the Sulh Council, except for divorce applications. The Sulh process provides a faster and more efficient dispute resolution mechanism than conventional litigation. This approach can potentially significantly reduce the time required for case resolution. Furthermore, the courts can encourage the public to pursue alternative dispute resolution methods outside traditional court proceedings. Such advocacy may begin at the community level, particularly in smaller contexts like villages.

R3: Sulh can expedite the resolution of cases without requiring a formal trial. For example, cases involving spousal or child maintenance, which usually require 5 to 6 months for resolution, can be concluded in a single day if both the plaintiff and defendant participate in a Sulh session. Furthermore, the necessary legal endorsement can be completed on the same day if an agreement is reached during the session. Opting for Sulh as an initial course of action reduces the need for multiple court visits, offering significant savings in both time and cost.

The study highlights the comprehensive insights from analysing interview data with *Sulh* officers in three Malaysian states: Kelantan Darul Naim, Kedah Darul Aman, and Selangor Darul Ehsan.

1. **Understanding and Implementation:** Respondents demonstrated a profound knowledge of *Sulh*, recognising it as a peaceful and practical alternative to litigation, particularly for family disputes. Grounded in Islamic principles derived from the Qur'an and Hadith, *Sulh* offers an amicable and expedited resolution process.
2. **Effectiveness:** The system boasts a high rate of successful case resolutions. *Sulh* sessions streamline dispute resolution, reducing court backlogs while preserving relationships between disputants. This relational preservation is particularly advantageous for fostering harmony within families and communities.

3. **Role of Officers:** *Sulh* officers play a pivotal role by facilitating discussions, advising on legal and Shariah matters, and guiding disputants toward mutually acceptable solutions. Continuous professional development, including training in psychology, body language, and counselling, was recommended to enhance their effectiveness. Respondents also suggested implementing feedback mechanisms to improve client satisfaction and system efficiency.
4. **Recommendations for Improvement:** Key proposals included organisational restructuring, extensive promotion of *Sulh*, and training programs for officers. Emphasis was placed on encouraging *Sulh* as the primary option for resolving family disputes due to its flexibility and efficiency compared to traditional litigation.

4. CONCLUSION

In conclusion, this study provides critical insights into the effectiveness of the *Sulh* system in Malaysian Shariah courts and the areas in which it should be enhanced. The findings indicate that *Sulh* is an exceptionally efficient alternative for resolving family disputes, offering several advantages over conventional court litigation, such as reducing case backlogs, minimising costs, saving time, and fostering the preservation of post-conflict relationships. Nevertheless, certain areas require improvement, particularly in the training and professional development of *Sulh* officers, organisational reform, and the implementation of feedback mechanisms. Overall, the *Sulh* approach represents a mutually beneficial solution for disputing parties, given its emphasis on maintaining case confidentiality.

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