

## SULH AS AN INSTRUMENT OF ALTERNATIVE DISPUTE RESOLUTION (ADR): PRACTICE IN SYARIAH COURT OF NEGERI SEMBILAN

<sup>1</sup>Suhaizad Saifuddin\*  
<sup>2</sup>Nurul Fadhlina Che Daud  
<sup>3</sup>Nurul Akmar Mohamad Hilmi

<sup>1</sup>Senior Lecturer, Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia  
<sup>2</sup>Syariah Subordinate Court Judge of Rembau Negeri Sembilan, Malaysia  
<sup>3</sup>Syariah Subordinate Court Judge of Tampin Negeri Sembilan, Malaysia

*Corresponding author:* suhaizad@ukm.edu.my\*

### ABSTRACT

*Sulh is one of the Alternative Dispute Resolution (ADR) mechanisms recommended by Islam. This mechanism has been implemented through Majlis Sulh establishment, which was first introduced in the year 2000 in several Syariah Courts in Malaysia and later implemented in Syariah Court of Negeri Sembilan a few years after. Throughout its implementation, Sulh has successfully resolved many cases out of court without requiring lengthy time or costs. However, Majlis Sulh are not without challenges in assisting parties to resolve disputes without litigation. This writing aims to analyze the implementation of Sulh in the Syariah Court of Negeri Sembilan and propose appropriate suggestions to enhance the effectiveness of Sulh towards optimal achievement. This study applies a qualitative research framework. Primary and secondary data were obtained through library research and documentation. Besides that, data were obtained through interviews with three Sulh officers serving in the Syariah Court of Negeri Sembilan. All data were analysed using content analysis methods. The study shows that Sulh implementation through the Majlis Sulh in this state has successfully achieved the outlined objectives and positive level. However, several challenges have been identified in its implementation. To ensure the successful momentum in case resolution is maintained, several suggestions are proposed to ensure the implementation of Sulh maintains as an effective mechanism for Alternative Dispute Resolution in the Syariah Court of Negeri Sembilan in the future.*

*Keywords:* Sulh; Majlis Sulh; Negeri Sembilan Syariah Court; Alternative Dispute Resolution; Syariah Court

### INTRODUCTION

Litigation is one of the means to resolve disputes, especially in matrimonial issues. However, litigation can be the last resort in upholding justice. Therefore, the initial approach that can be applied is negotiation between the disputing parties (Hadenan et al, 2023). According to Webster's New World Law Dictionary (2006), Alternative Dispute Resolution (ADR) is usually defined as dispute resolution processes and techniques outside the court system. In

general, there are various forms of conflict resolution methods in society, whether involving legal institutions or mutually agreed-upon methods. This method is known as ADR, such as negotiation, conciliation, mediation, arbitration, combination of mediation and arbitration (med-arb), and ombudsman or the like (Raihanah, 2006). Essentially, the concept of peaceful settlement or consensus between conflicting parties without involving formal judicial institutions such as the court is a traditional practice among community

members. It has been widely practiced among nations worldwide. History also records that most societies, religions, and nations in the world, including Phoenicians, Romans, Greeks, Chinese, Hindus, Jews, Christians, and Muslims, use religious rules and customs rather than court systems or litigation processes to resolve civil disputes (Syed Khalid, 2006). This can be seen through the various terms and methods used by people of different nations and religions around the world to resolve disputes since ancient times. For example, the practice of mediation has been observed in China during the Zhou Dynasty almost 1,100 years ago. Similarly, mediation practices in Sri Lanka, Japan, Pakistan, and Nepal differ in methods and terminology. In Bangladesh, Shalish, a dispute resolution resembling arbitration, has been practiced in village communities (Raihanah, 2006).

Islam is a *syumul* religion. *Syumul* means that its teachings are perfect, complete, and encompass all aspects of human life in all layers of society, from individuals, families, communities to states. The comprehensiveness of Islam is evident because it consists of faith or creed, excellence, or morality, and Syariah or law. Islam highly encourages peace and discourages hostility. Islam requires that justice be upheld and must be eradicated. The rights and interests of individuals must be safeguarded and defended, they must not be violated arbitrarily. In addition, the interests and rights of the community also need to be preserved and defended. The existence of judicial institutions is important for resolving disputes and deciding disputes (Suhaizad, Ahmad 'Azam, Muhamad Helmi & Mohamad Azhan, 2021).

Therefore, Islam has provided several dispute resolution resolutions for its people for about 1,400 years as guidance. These dispute resolution resolutions resemble the concept ADR applied conventionally, meaning dispute resolution without litigation and court intervention.

Among the ADR encouraged by Islam are reconciliation (*Sulh*) and arbitration (*tahkim*).

*Sulh* is a concept of dispute resolution in Islam that promotes peace and harmony. It is a form of peace and resolution considered the best form of resolution in the Quran. According to sources, *Sulh* is practiced in various fields including marital disputes, contractual disputes, and family conflicts. It offers a win-win situation for all parties involved and plays a crucial role in promoting peace and resolving conflicts in Islamic law. Malaysia applies the mixed or hybrid system, where both common law and Islamic law. Islamic law is based on divine source of law, the Quran and Sunnah. These sources are as termed as the revealed sources of Islamic Law (Suhaizad, Hanifah Haydar, Mohamad Azhan, Mohamad Rizal & Fatimah Yusro, 2024). Among the aspects practiced in the Syariah Court in Malaysia is *Sulh*.

## METHODOLOGY

This research uses qualitative research methods discussed in non-doctrinal legal research. Several methods were applied for data collection in this writing, including literature review and interviews. This writing also obtained data from primary and secondary sources. For primary data, the required data are obtained through interview methods and legal documentation such as relevant statutes and references. Meanwhile, secondary data are obtained from other documentations such as heritage books, articles, and case statistics. This writing will obtain data through interviews that will be conducted. Semi-structured interviews will be conducted with three *Sulh* Officers serving in the Syariah Court of Negeri Sembilan and labelled as Informant 1, Informant 2, and Informant 3. Furthermore, to analyse the obtained data, the writer employs content analysis and descriptive analysis method.

## SULH FROM AN ISLAMIC PERSPECTIVE

*Sulh* linguistically originates from the Arabic word *al-Sulh*, which is a noun (*al-ism*) originating from the verb (*fi'il*) *salaha* which means *al-tasaluh wa al-musahalah*, i.e. reconciliation after conflict (*al-munazalah*) (Al-Nasafi, 1997). While Al-Raghib al-Asfihani (1972) states that *Sulh* is specifically meant to end disputes among humans. *Sulh*, on the other hand, is an agreement to end disputes between two conflicting parties (As-Syarbini, 1997). Whereas according to *Majallah al-Ahkam* (2002), *Sulh* is an agreement to resolve disputes with the consent of the parties and is valid with offer and acceptance.

Based on the given definitions, it can be concluded that *Sulh* is the decision or outcome of a settlement or agreement by the conflicting parties. This definition generally explains that *Sulh* resembles the concept of negotiation, i.e., resolving disputes by the conflicting parties without involving a third party or mediator. However, within a broader framework of dispute resolution methods, *Sulh*, which means peace, can be applied using a mediator, incorporating the principles of *tahkim* and *Sulh* representative as aligned with Syariah teaching. This mediated *Sulh* concept resembles conventional mediation.

The encouragement for *Sulh* can be seen through evidence from the Quran the hadith of the Prophet Muhammad (PBUH), and the consensus of scholars. Allah (SWT) in the Holy Quran, Surah An-Nisa', verse 128:

“And if a woman fears from her husband cruelty or desertion, there is no sin upon them if they make terms of settlement between them - and settlement is best. And present in [human] souls are stinginess. But if you do good and fear Allah - then indeed Allah is ever, with what you do, acquainted.”

*Sulh* is also mandated according to the saying of Allah (SWT):

“There is not good in much of their private conversation, except for those who enjoin charity, or that which is right, or conciliation between people. And whoever does that seeking means to the approval of Allah - then We are going to give him a great reward.” (An-Nisa':114)

Similar encouragement can be observed through the sayings of the Prophet Muhammad, who leaned towards reconciliation (*sulh*) through a hadith narrated by Amru bin `Awf:

“*Sulh* is permissible among the Muslims except the one which makes the unlawful as lawful and which makes the lawful as unlawful. Muslims are bind by their promises except promises that permit the unlawful as lawful and the lawful as unlawful.” (Sunan al-Tirmidhi)

The Prophet PBUH says in another hadith:

“Should I inform you of something that is higher in virtue than fasting, praying and charity?” They said, “Yes O Messenger of God” Then the Prophet said, “To make reconciliation (*sulh*) between people that are in conflict: enmity and malice tear up heavenly rewards by the roots” (Sahih Al-Jami' al-Saghir).

Moreover, *Sulh* is implemented with consent and compromise between the two parties. *Sulh* resolution between the conflicting parties is more appropriate and quickly achieves justice because the parties are more aware of what they are entitled to in any disputed right. This is explained by the Prophet Muhammad in a hadith narrated by Ummu Salawah:

“Indeed, I am a human being, and you come to me with your disputes. Perhaps one of you is more eloquent in presenting his argument than the other, so I judge according to what I hear from your statements. So whoever I give a right to his brother, let him not take it, for I have only

given him a portion of the hellfire.” (Al-Bukhari)

The above hadith explains that sometimes justice is not achieved through trial and judgment in court. This is because in a trial, one party may be more articulate in argumentation than the other and may obtain something that is not rightfully theirs. Therefore, discussion without a court decision is better and more important. Furthermore, the encouraged and advocated *Sulh* in Islam can eliminate feelings of resentment between conflicting parties and can further strengthen family ties and relationships among family members.

Furthermore, scholars unanimously agree that *Sulh* is a mandated and encouraged matter in Islam. Umar al-Khattab once wrote a letter to Abu Musa al-Asya`ari advising and guiding every judge in carrying out his duties, including the necessity of implementing *Sulh*. Among the contents of the letter state:

“Indeed, justice is an absolute obligation and a followed *Sunnah*. Understand a matter when it is presented to you, as a right is not beneficial to you if it is not executed. Act justly and fairly towards people in trial, opinions, and judgments, so that the noble do not feel greedy for your shortcomings and the weak do not despair over those who accuse and swear at them. *Sulh* must be made among the Muslims unless it legalizes what is forbidden or forbids what is permitted.” (Arnus)

#### BACKGROUND OF *SULH* IMPLEMENTATION IN THE SYARIAH COURT OF NEGERI SEMBILAN

The implementation of *Sulh* is among the ideas and efforts for improving the services and professionalism of Syariah judiciary institutions from the aspect of case management that has been given attention in the Syariah Court now (Raihanah, 2006). The implementation of *Sulh* in the Syariah Court has received elements of improvement from year to year in terms of legislative aspects and administrative

innovation and infrastructure. Case resolution in the Syariah Court highly depends on the skills and competencies of *Sulh* Officers who conduct the *Majlis Sulh* based on its formal procedures (Wan Azimin, Ahmad Hidayat & Zubaidi, 2002). In terms of *Majlis Sulh* management, Syariah Officers conduct it flexibly to provide effective solutions suitable for local and current situations (Said, 2010).

The Syariah Court of Negeri Sembilan has been conducting *Majlis Sulh* since 2006 until now. Throughout its implementation for nearly 17 years, the *Majlis Sulh* has helped many conflicting parties settle disputes peacefully, easily, and quickly. The *Majlis Sulh* means a mediation session between conflicting parties chaired by a *Sulh* Officer to settle disputes through *Sulh*. Referring to the *Sulh* Kit (2018), *Majlis Sulh* is defined as a guided negotiation session between two conflicting parties chaired by the Syariah Court *Sulh* Officer with the aim of reaching a mutual agreement in resolving a dispute peacefully without going through the trial process in court. At the early stage of *Majlis Sulh* introduction, no Syariah Officer was specifically assigned as the *Sulh* Officer. At that time, Syariah Judges performed the role of *Sulh* Officers for cases involving Hadhanah, Joint Property, Child Maintenance, Spousal Maintenance, Iddah Maintenance, and Mutaah. In 2008, two new Syariah Officers were appointed at the Syariah High Court of Negeri Sembilan and the Syariah Lower Court of Jempol as *Sulh* Officers. This somewhat alleviated the burden of judges who had to perform two duties simultaneously. However, in the Lower Syariah Courts in other districts, judges still conduct *Majlis Sulh*.

In 2010, *Sulh* began to be fully recognized and implemented with the presence of new Syariah Officers assigned as *Sulh* Officers in each district's Subordinate Syariah Courts. In the same year, a Practice Order was issued by the

Malaysian Syariah Judiciary Department regarding the determination of cases to be referred to the *Majlis Sulh* at the registration stage, totalling 18 cases, including cases for Engagement Compensation Claims, Muta'ah Claims, Joint Property Claims, Spousal Maintenance Claims, Claims for the Incapacitated Party's Maintenance, Maintenance Deposit Claims, Iddah Maintenance Claims, Alteration of Maintenance Order Claims, Arrears of Maintenance Claims, Child Maintenance Claims, Alteration of Child Custody Order/Child Maintenance Claims, Alteration of Child Custody Agreement/Child Maintenance Claims, Hadhanah Claims, Marriage Compensation Claims, Residence Rights Claims, Orders to Reunite with the Husband, Obedient Wife Claims, and Dowry Claims. In carrying out their duties, *Sulh* Officers must adhere to Syariah law and be bound by several main legal provisions, namely Section 99 of the Syariah Court Mal Procedure (Negeri Sembilan 2003) Enactment, Section 77 (5) (c) of the Administration of the Religion of Islam (Negeri Sembilan 2003) Enactment, Rules of *Sulh* Procedures Syariah Court of Negeri Sembilan (2016), *Sulh* Work Manual, and the Practice Order of the Malaysian Syariah Judiciary Department (Hasnizam, Maizatul Farishah & Norman, 2021).

The *Majlis Sulh* sessions are held for a period of 90 days or for three to four sessions as needed. The *Sulh* officer will do their best to settle the dispute during this period to reach mutual agreement and consent among the parties so that the case can be resolved voluntarily without the need to proceed to trial. The conventional trial process in the Court, which is lengthy and costly, does not satisfy the involved parties, leading to a shift in mechanisms, i.e., alternative case resolution through *Sulh*. Through this mechanism, not only does it resolve case backlog issues, but it also benefits the parties by saving costs, time,

and achieving voluntary resolutions (Ruzita et al, 2020).

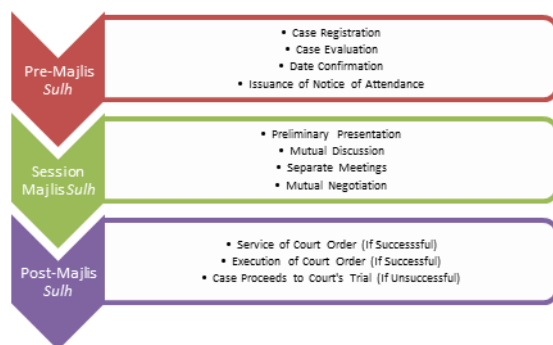
Furthermore, *Majlis Sulh* sessions are confidential, where the *Sulh* Officer will protect each party's statements during discussions without disclosing them to others. Due to confidentiality, *Majlis Sulh* only involves the *Sulh* Officer and the conflicting parties without the presence of lawyers or third parties from any side. Moreover, *Majlis Sulh* focuses more on the future interests of the parties rather than blaming the other party, and the resolution is open and does not harbor grudges.

The implementation of *Majlis Sulh* was expanded with the introduction of the One Stop Centre idea in Syariah Court Of Negeri Sembilan in May 2013, in line with the relocation of Syariah Court Of Negeri Sembilan from its old building located next to the State Mosque, Seremban to the new complex in Bandar Sri Sendayan. The local centre without court segregation (for the Syariah High Court of Seremban and the Syariah Subordinate Court of Seremban) involves registration counters, human resources, administration and finance divisions, judiciary divisions, and the establishment of the *Sulh* Unit. Therefore, all *Sulh* Officers in the districts are gathered and placed in the *Sulh* Unit at the headquarters and will work circuit-wise to settle *Sulh* cases in the districts. In 2021, there is an effort to standardize the *Sulh* procedure, which is faithfully managed by Syariah Judiciary Department of Malaysia (JKSM). Therefore, Negeri Sembilan is currently in the process of preparing draft amendments to welcome the efforts of JKSM to harmonize the *Sulh* Procedure Rules for the purpose of further improving and strengthening the implementation of *Majlis Sulh* in Malaysia.

## PROCEDURE FOR IMPLEMENTING *SULH* IN THE SYARIAH COURT OF NEGERI SEMBILAN

Referring to the *Sulh* Work Manual, the *Sulh* implementation procedure involves several structured stages to ensure that dispute resolutions are carried out fairly and efficiently. The following are the steps in managing the *Majlis Sulh*:

DIAGRAM 1. Implementation of *Sulh* Procedures in Syariah Court of Negeri Sembilan



Source: Authors

Diagram 1 above illustrates the process and procedure for conducting *Majlis Sulh* in the Syariah Court of Negeri Sembilan for all three levels of court starting from *Pre-Majlis Sulh*, followed by *Session Majlis Sulh*, and *Post-Majlis Sulh*. During the *Pre-Majlis Sulh* stage, the Plaintiff or Applicant will register the case at the registration counter. After that, the registrar will evaluate the case to determine whether it needs to go through the *Sulh* process, as well as identifying the jurisdiction of the case, whether the registered case falls under the jurisdiction of the Lower Syariah Court or the High Syariah Court. After the evaluation is made and it is found that the case needs to go through the *Majlis Sulh* process, the registrar will then allocate the case to the relevant *Sulh* Officer. At this stage, a date for the *Majlis Sulh* will also be set within 21 days from the date of registration of the case. Subsequently, the registrar will issue a Notice of Attendance for the *Majlis Sulh* to be handed to all involved parties.

During the session *Majlis Sulh*, the involved parties will meet with the *Sulh* Officer without the presence of lawyers. The disputing parties will present their issues and propose solutions. Mutual discussions will be conducted where the *Sulh* Officer will assist the parties in discussing and finding a resolution. If no resolution is reached, the *Sulh* Officer may arrange separate meetings with each party known as Caucus. After the separate meetings are conducted, mutual negotiations are carried out to reach an agreement. If a mutual agreement is reached, the *Sulh* Officer will draft a Settlement Agreement and the parties will sign the agreement in the presence of the *Sulh* Officer. This agreement is then submitted to the Judge to be endorsed as a Court Order. Conversely, if no mutual agreement is reached, the case will be referred to the Court for trial before the judge. During session *Majlis Sulh*, if one party is absent, the session may be adjourned to another date and the *Sulh* case resolution period will not necessarily be within 90 days. If the *Sulh* case resolution is successful, at the *Post-Majlis Sulh* stage, the court order or judgment will be handed over to the parties for execution. However, if *Majlis Sulh* fails, the case will be brought to a trial in the Syariah Court with jurisdiction.

## DISCUSSION AND FINDINGS

### EFFECTIVENESS OF MAJLIS *SULH* IMPLEMENTATION

In general, the effectiveness of *Sulh* implementation in Syariah courts throughout Malaysia can be shown through a high percentage of successfully settled cases. It illustrates that *Sulh* is capable of reducing deferred cases that have affected the reputation of Syariah courts so far (Adzidah et al, 2016). Specifically, the effectiveness of *Majlis Sulh* implementation in the Syariah Court of Negeri Sembilan can be portrayed through the following diagram:

TABLE 1. The statistics for *Sulh* Session registered cases and successfully resolved in year 2017-2021

YEAR	REGISTERED CASES	SUCCESSFUL CASES
2017	1456	684
2018	1340	639
2019	1456	740
2020	1086	559
2021	863	469

Source: Syariah Judiciary Department of Negeri Sembilan

Table 1 above shows the number of cases and successful cases settled through the implementation of the *Majlis Sulh* in the Syariah Court of Negeri Sembilan from 2017 to 2021. In 2017, a total of 684 cases out of 1456 cases were successfully resolved, equivalent to 65 percent success rate (excluding absent cases). Meanwhile, in 2018, a total of 639 cases were successfully resolved, representing 71 percent success rate (excluding absent cases). For the year 2019, 74 percent of cases were successfully resolved, which is 740 cases out of 1456 registered cases (excluding absent cases). In the following year, 559 cases were successfully resolved out of 1086 registered cases, representing 75 percent success rate (excluding absent cases). Whereas in 2021, 73 percent of cases were successfully resolved, which is 469 cases out of 863 registered cases (excluding absent cases).

The statistics above indicate that the *Majlis Sulh* has successfully achieved its objective of assisting disputing parties as well as the court. This is because more than 50 percent of the registered cases are successfully settled through the implementation of the *Majlis Sulh* each year. It undoubtedly saves financial costs and time for the disputing parties and the court as they do not have to attend trials in court. In addition, the implementation of the *Majlis Sulh* also reduces court trials and lightens the burden on judges.

### CHALLENGES IN IMPLEMENTING MAJLIS *SULH* IN THE SYARIAH COURT OF NEGERI SEMBILAN

There are three stages of *Majlis Sulh* implementation, namely the pre-*Majlis Sulh* stage, session *Majlis Sulh* stage, and post-*Majlis Sulh* stage. The pre-*Majlis Sulh* stage begins with the Plaintiff filing the case at the registration counter until the parties attend the *Majlis Sulh* in front of the *Sulh* Officer. When the Plaintiff files the case, the court registrar must schedule a meeting between the parties within 21 days from the date the case is registered. Subsequently, a notice of attendance is issued to the Plaintiff and Defendant, also known as the *Sulh* Attendance Notice.

According to Informant 1, among the initial issues and challenges faced by the court at this stage is when crucial details regarding the Defendant are not filled out completely by the Plaintiff, such as home address and phone number. This occurs due to several factors such as the Plaintiff and Defendant no longer being in contact after divorce, the Defendant not cooperating, or the Defendant being missing. Additionally, there are some Plaintiffs who believe that the court will help them obtain all the necessary information regarding the Defendant. The lack of complete information makes it difficult for the *Sulh* Officer to locate the Defendant, thus resulting in the postponement of the *Majlis Sulh* session. Furthermore, Informant 3 explained that the *Sulh* notice issued by the court does not have the authority to compel the Plaintiff's attendance like a summons. Typically, the first service of the *Sulh* Notice is done through delivery. If the Defendant is absent, a new *Sulh* Notice with a new date will be issued by the *Sulh* Officer, which is only served by mail. Serving notices in this manner certainly makes it difficult for the *Sulh* Officer to determine whether the Defendant has received the notice or not. Since the *Sulh* Notice does not bind attendance to the

Majlis *Sulh* and to facilitate the Majlis *Sulh* process, the *Sulh* Officer usually contacts all parties before the scheduled date. If the Defendant does not receive any notice or is absent, the *Sulh* Officer must reschedule a suitable date, which prolongs the Majlis *Sulh* beyond its intended duration. Indeed, if the Defendant cannot be contacted and does not attend the Majlis *Sulh*, it certainly inconveniences the attending Plaintiff.

Besides that, Informant 2 and Informant 3 agreed to state that issues and challenges are also identified in the service of *Sulh* Notices outside the jurisdiction of the state. The process of service of *Sulh* Notices outside the jurisdiction is quite complicated. The court receiving the case registration will send the *Sulh* Notice to the relevant court. This issue leads to the postponement of the Majlis *Sulh* date, which should have been set within 21 days, to another period. Delays in receiving reports of *Sulh* Notice acceptance by the Defendant can lead to difficulties for the *Sulh* Officer and Plaintiff. Typically, the distance between states such as Sabah and Sarawak with Negeri Sembilan becomes a factor in the delayed receipt of reports, resulting in case postponements.

For the session Majlis *Sulh* stage, Informant 1 revealed that it begins on the day of the *Sulh* meeting, which is set after 21 days. The Plaintiff and Defendant attending the Majlis *Sulh* shall register their attendance on a self-service basis using the form provided at the *Sulh* counter, *Sulh* Office level 1. Subsequently, the parties will be called according to the schedule set by the *Sulh* Officers. The Majlis *Sulh* held only involves disputing parties and *Sulh* Officers and is conducted in the *Sulh* room and in accordance with Islamic law, statutes, and the Rules of *Sulh* Procedure 2016. If there is a settlement and mutual agreement, a Settlement Agreement will be drafted, reviewed, and signed by the parties before being endorsed in front of the Judge.

At this stage, Informant 3 explained the first issue and challenge faced are when one or both parties fail to attend on the designated day, causing adjournments because the Majlis *Sulh* cannot proceed with only one party present. Furthermore, Informant 1 also stated that there are instances where both parties are present but unwilling to cooperate in the discussion. They only cross their arms and refuse to settle any claims. This requires the skills of the *Sulh* officers to persuade, explain, and convince them to participate in the discussion. Usually, to handle such parties, a Caucus session (i.e., one-sided discussion) is required. However, limited time becomes the next challenge in conducting a caucus because this session tends to be time-consuming.

According to Informant 2, the next issue and challenge arise when both parties are present but unwilling to engage in any discussion and resolution action because they do not accept the Statement of Claim (Plaintiff's claim document in a dispute) first. In Negeri Sembilan practice, *Sulh* Notices are sent to the Defendant party without the Plaintiff's Statement of Claim to prevent the Defendant from feeling that the claim is unfounded or excessive, resulting in the Defendant's absence and *Sulh* discussion cannot proceed. Therefore, in such cases, Majlis *Sulh* session is adjourned to give the Defendant party space to understand the Plaintiff's claim.

Informant 1 also revealed the aggressive attitudes of the parties to the extent of posing a security threat to the *Sulh* Officers also become an issue and challenge to be addressed. Parties should have an open mind and be tolerant in discussing matters in the Majlis *Sulh* so that both parties can achieve a cooperative, tolerant, and fair resolution. However, if the opposite occurs, the Court Police will be called to control and calm the situation. However, the challenge lies in the fact that the court police are responsible for courtrooms at



levels 2 and 3, causing delays for the court police to come down to level 1 to assist the *Sulh* Officers.

Furthermore, in the post-Majlis *Sulh* stage, which is the third and final stage in the Majlis *Sulh* negotiation process, Informant 3 explained some issues and challenges often arise when one party disagrees with the Settlement Agreement recorded in front of the *Sulh* Officer. This issue arises when parties change their minds after concluding negotiations in front of the *Sulh* Officer and refuse to sign the Settlement Agreement. This situation has caused conflicts between the parties and affected the agreements recorded during the session Majlis *Sulh*. Therefore, the *Sulh* Officer must renegotiate to ensure that the parties do not wish to continue the Majlis *Sulh*, and the case will be referred to trial sessions before a judge. This situation has affected the time of the *Sulh* Officer in handling the case and the time of other clients whom are waiting.

Additionally, Informant 2 and Informant 3 agreed to state post-Majlis *Sulh* issues and challenges arise when one or both parties represented by *Syarie* Lawyers refuse to sign the Settlement Agreement after concluding negotiations at the Majlis *Sulh*. Majlis *Sulh* discussions only involve *Sulh* Officers and the parties. *Syarie* Lawyers representing the parties are not allowed to enter. This matter is a Majlis *Sulh* regulation. The parties must make decisions sincerely without being influenced by any party, including *Syarie* Lawyers representing them. This issue arises when the parties have recorded their agreement; then, during session the *Sulh* Officer's preparation of the Settlement Agreement draft, the parties have referred to *Syarie* Lawyers representing them. Thus, the situation arises where the parties refuse to agree to the recorded agreement and refuse to sign the agreement. Therefore, the parties choose to continue the case to trial in front of a judge.

Moreover, based on Informant 2's statement, there are also instances where the Plaintiff or Defendant has failed or not complied with the Settlement Agreement endorsed before the judge, which becomes a court order. The Settlement Agreement made is based on the voluntary agreement of the parties without coercion from any party. The parties have made decisions and settled their claims in this court through harmonious and sincere negotiations during session Majlis *Sulh*. However, there are situations where the parties disagree with this court order and cause a breach of the court order. This situation will create conflicts between the disputing parties and may cause cases that have been peacefully settled in the Majlis *Sulh* to be brought back to court if one party files an order amendment or enforcement.

Furthermore, Informant 1 and Informant 2 revealed another issue and challenge in the post-Majlis *Sulh* stage is when one party is absent during the endorsement of the Settlement Agreement before the judge. For cases in the Majlis *Sulh* that have been completed in front of the *Sulh* Officer and have been signed by the parties, the agreement must be endorsed before the judge to make it a binding court order that can be enforced. Usually, this process is carried out on the same day the Majlis *Sulh* is completed. However, there are instances where Majlis *Sulh* cases that have been completed cannot be endorsed on the same day due to constraints such as the absence of a judge on that day or requests from the parties themselves. However, there are parties who do not attend the endorsement on the scheduled date. Thus, this situation has disrupted the smooth endorsement of the Settlement Agreement made. This situation causes the Settlement Agreement made not to be made a court order because it does not receive cooperation from one party. The court can set a new date to give parties an opportunity. However, if the situation persists, i.e., if one party is still absent, it can cause the status of the case to be

disrupted and will go through a trial process. This is because the signed Settlement Agreement must be endorsed before the judge with the presence of both parties.

### PROPOSED SOLUTIONS AND CONCLUSION

To address the current issues and challenges during the pre-Majlis *Sulh* stage, there are several recommendations that could be implemented. For issues regarding Defendant's personal details such as unobtainable current address, the court can assist the Plaintiff to obtain necessary information through the National Registration Department (JPN), Malaysia Employees Provident Fund (KWSP) and the like. Typically, such agencies would have the required up-to-date data or information. Besides, to address the issue of re-service of *Sulh* Notice that was not received by the Defendant, self-service similar to the first serve by the notice sender can be implemented. Through this method, *Sulh* Notice service to the Defendant is more assured and there are no issues of non-receipts by the Defendant. Regarding the issues of the delay in the service of *Sulh* Notice out of the jurisdiction, a specific system for serving and receiving the *Sulh* Notice to courts outside the jurisdiction can be established. Through this system, all serving and receiving processes will be conducted in the system without using postal services.

Additionally, among other proposed solution that could be implemented to overcome the issues and challenges raised during the session Majlis *Sulh*, firstly related to registering the parties at *Sulh* counters to avoid the parties being called late or not being called at all for Majlis *Sulh*. Other than posting instructions to register their attendance at the notice board outside the *Sulh* offices, a stamp stating "please self-register your attendance at *Sulh* counter" could be done and stamped on *Sulh* Notice or Postponement *Sulh* Notice as an

effort to overcome this problem. As an improvement to the *Sulh* notice delivery effort, the current MySms short-messaging system that is used by the department can be expanded in its usage. Besides using it as a notification for replacing Case Postponement Notices, it can also be used as summons to the Majlis *Sulh*. *Sulh* Notice continue to be issued according to the procedure while MySms serves as a supportive measure to ensure that the Defendant receives notifications promptly.

Besides, *Sulh* officers needs to master more knowledge and skills in body language, effective communication techniques and others as additional skills in resolving issues related to the attendance of parties during the Majlis *Sulh*'s sessions who are reluctant to participate in discussions. Based from experience, caucus implementation is very helpful in issues like this. However, time constraints are to be considered during these sessions. The practice in Negeri Sembilan, *Sulh* officers have schedules and case list under their respective names. This writing suggests that the Majlis *Sulh*'s cases are not assigned to specific *Sulh* officer so that if a case is resolved through a caucus, the next case can be handled by other *Sulh* officers (without waiting for a specific officer for that case) so that the caucus session can proceed smoothly and parties for the next session do not have to wait longer.

Meanwhile, to prevent the absence of Defendants who may perceive the Plaintiff's claims as excessive or unfounded, an improvement could be made by providing a synopsis of the claims so that the Defendants have some facts related to the Plaintiff's claims, allowing them to consider and make judgments before the *Sulh* meeting. Providing some information may help facilitate smoother proceedings of the Majlis *Sulh* without causing case delays at the Defendant's request. Regarding the aggressive attitudes of the parties that could lead to threats to the safety of the *Sulh*

Officer, the *Sulh* Assistant must play a crucial role since there are no dedicated Police Officers stationed in the *Sulh* Unit. The *Sulh* Assistant needs to be more aware of the attending parties and provide early assistance to *Sulh* Officers if there are any undesirable incidents. In Negeri Sembilan, there is only one *Sulh* Assistant, and it is recommended that only male staff be assigned as *Sulh* Assistant to handle unexpected threats that may arise during the *Majlis Sulh* session before receiving assistance from the court police. This writing also suggests establishing a security team consisting of court staff themselves, who can be ready to provide assistance if needed.

Furthermore, there are several suggestions that can be recommended to address issues and problems at the post-*Majlis Sulh* stage. In addressing the issue of *Sulh* agreements that cannot be endorsed in front of a judge due to the withdrawal of the parties' consent is to amend the terms of the agreement by incorporating a pledge from the Plaintiff and Defendant to comply with the Settlement Agreement made and signed in front of the *Sulh* Officer. Based on this pledge, if any party withdraws the settlement agreement made at the *Majlis Sulh* before being endorsed by the judge, legal action related to contempt of court can be taken. Additionally, the suggestion of online endorsement can also be considered for improvement. If endorsement cannot be carried out on the same day due to the absence of a judge or at the request of the parties themselves for reasons beyond control, the court can set a new date for online endorsement. It is also recommended to include terms in the agreement stating that the absence of either party during endorsement is allowed and the signed agreement binds the parties to make it a court order.

The implementation of *Sulh* through the *Majlis Sulh* at the Syariah Court of Negeri Sembilan has shown positive results

as an Alternative Dispute Resolution (ADR). *Sulh* implementation for family disputes in this state has also become the best method of resolution without involving lengthy court litigation process. However, behind the success of the *Majlis Sulh*'s implementation, there are identified issues and challenges that need to be addressed. Issues and challenges at each level need attention and appropriate improvements to ensure the goal of *Sulh* implementation, which is to save time and meet the demands of both disputing parties, is achieved. Therefore, all suggestions put forward must be taken into account and appropriate steps taken to ensure that the *Majlis Sulh* remains an effective ADR in the Syariah Court of Negeri Sembilan in the future.

#### ACKNOWLEDGEMENT

The authors received no financial support for the publication of this article.

#### CONFLICT OF INTEREST

The authors declared no potential conflicts of interest with respect to the publication of this article.

#### AUTHORS' CONTRIBUTION

All authors contributed to the design and implementation of the research, to the analysis of the results discussion and to the writing of the manuscript. All authors have read and agreed to the published version of the manuscript.

#### REFERENCES

Adzidah Yaakob, Mohammad Zaharuddin Zakaria, Asmidah Ahmad, Kamilah Wati Mohd, & Mustafa Afifi Ab Halim. (2016). *Pengenalan dan keberkesanan Sulh di Mahkamah Syariah*. Penerbit Universiti Sains Islam Malaysia.

- Al-Bukhari. (n.d). *Sahih al-Bukhari*. Dar al-Kutub al-‘Allamah.
- Al-Nasafi. (1997). *Talabah al-Talabah*. Dar al-Kutub al-‘Ilmiyyah.
- Al-Raghib al-Asafihani. (1972). *Mu`jam Mufradat Alfaz al-Qur`an*. Dar al-Fikr.
- Arnus. (n.d). *Tarikh al-Qada` Fi al-Islam*, al-Matba`ah al-Misriyyah al-Hadithah.
- As-Syarbini. (1997). *Mughni al Muhtaj*. Syarikat Maktabah wa Matba'ah Mustafa al-babi al-Halabi.
- Azimin Wan Adnan, Ahmad Hidayat Buang, & Zubaidi Sulaiman. (2022). Pemerkasaan pelaksanaan *Sulh* dalam kes-kes hartanah melalui pemakaian arahan amalan di Mahkamah Syariah di Malaysia. *UUM Journal of Legal Studies*, 13(2), 345-371. <https://doi.org/10.32890/uumjls2022.13.2.14>
- Hadenan Towpek, Ahmad Shah Affandie, & Zaenudin Hudi Prasojo. (2023). Amalan pengurusan *sulh* di Jabatan Kehakiman Syariah. *Journal of Syariah Law Research*, 8(1), 1-32
- Hasnizam Bin Hashim, Maizatul Farishah Binti Mohd Mokhtarii, & Norman Zakiyy Chow Jen T’chiangii. (2021). *Majlis Sulh: mekanisme pelaksanaan Jabatan Kehakiman Syariah Negeri Sembilan*. Seminar Antarabangsa Islam dan Sains 2021 “Wawasan Kemakmuran Bersama 2030” Thursday, 9 September 2021 Universiti Sains Islam Malaysia.
- Majalah al-Ahkam Johor*. (2002). Matba`ah Khairiah.
- Raihanah Hj Azahari. (2006). Modifikasi teori *Sulh* dalam Fiqh klasik berasaskan data-data kajian terbaru. *Jurnal Pengajian Melayu*, 17, 232.
- Rules of *Sulh* Procedures Syariah Court of Negeri Sembilan 2016.
- Ruzita Ramli, Dina Imam Supaat, & Hasnizam Hashim (2020). Arahan Amalan berkaitan *Sulh* bagi kes Hadhanah dan Nafkah Anak di Mahkamah Syariah Negeri Sembilan: Cabaran dan Prospek. *Jurnal Hukum*, 51(2).
- Said Bouheraoua. (2010). Foundations of mediation in Islamic law and its contemporary application. In Muhammad Naqib Ishan Jan & Ashgar Ali (Eds.), *Mediation in Malaysia: The law and practice* (p. 385-386). LexisNexis.
- Suhaizad Saifuddin, Ahmad ‘Azam Mohd Shariff, Muhamad Helmi Md Said, & Mohamad Azhan Yahya. (2021). Kepentingan aspek keterangan dalam penulisan alasan penghakiman kes jenayah Syariah di Malaysia: Satu Analisis. *Islāmiyyāt*, 43 (Isu Khas), 67 – 77.
- Suhaizad Saifuddin, Hanifah Haydar Ali Tajuddin, Mohamad Azhan Yahya, Mohamad Rizal Abd Rahman & Fatimah Yusro Hashim. (2024). Examining the application of standard of proof in criminal cases: A Comparative Analysis Of Islamic Law and Common Law In Malaysia. *Malaysian Journal of Syariah and Law*, 12(1), 11-22.
- Sulh Kit*. (2018). Negeri Sembilan Syariah Judiciary Department (JKSNS).