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## IMPLEMENTATION OF MEDIATION IN THE ESTATE DISTRIBUTION DIVISION (EDD) TO RESOLVE ESTATE DISPUTES

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### ABSTRACT

*Disputes among family members can disrupt the administration of estate if they are not properly addressed. Despite the existence of the Estate Distribution Division to cater estate administration cases, the approach by the agency does not take into account the emotional grievance suffered by the family members which tend to be the cause of family disputes. Without proper means to address family disputes, cases involving incomplete estate administration will continue to increase to the detriment of the stakeholders including the family members, beneficiaries and the government. Research found that mediation is an excellent tool in resolving family disputes in estate administration due to its flexibility and ability to address emotional issues. This paper looks into the possibility of implementing mediation in the Estate Distribution Division in addressing the family disputes in estate administration. This research employs library-based research with specific references to articles, case laws and statutes including but not limited to the Mediation Act 2012 and Small Estates (Distribution) Act 1955. Findings show that the Estate Distribution Division is perceived as a suitable administrative body to implement mediation due to its coverage of most estate cases in Malaysia. Mediation will be able to assist in the resolution of disputes, preventing adverse issues that would result in delay and incompleteness of estate administration in Malaysia.*

**Keywords:** Mediation, Estate Distribution Division, Family Disputes, Inheritance, Beneficiaries

### INTRODUCTION

Estate disputes are an unfortunate common occurrence within estate administration. Such disputes may disrupt the overall process of estate administration, which affects not only the family members of the deceased, but also other beneficiaries and the government. One such negative impact is delay, which can bring about emotional strain on the family members the longer the process is delayed and negative economic effects on not only the estate and family of the deceased, but also the government as any property belonging to the deceased is essentially left in limbo in regards to its ownership (Roslan & Ahmad, 2022).

The Estate Distribution Division under the Department of Director-General of Land and Mines (JKPTG) (“the Division”) receives the highest amount of estate cases out of all administrative bodies involved, having the jurisdiction over movable and immovable property valued up to RM5,000,000 and covering approximately sixty-five percent of the total applications for estate distribution in the country (Ibrahim et al., 2024).

As such, with estate disputes becoming commonplace and persistently affecting estate administration, there is a need to address the issue in a way that would not prolong the process any further, especially with the number of cases the Estate Distribution Division covers every day. Mediation is already recognised as an effective tool in resolving various kinds of disputes, including family and probate (Badrul Hisham et al., 2025). Thus, the objective of this paper is to explore the possibility of implementing mediation in the Estate Distribution Division in order to resolve the estate disputes that may disrupt the process of estate administration if left unaddressed.

## METHODOLOGY

This paper adopts a library-based approach by referencing published articles and statutes, namely the Small Estates (Distribution) Act 1995, which provide key provisions relevant to the discussion of the Estate Distribution Division. The Mediation Act 2012 is also referred to in order to give a better understanding on the concept of mediation.

## RESULTS AND DISCUSSION

### Estate Distribution Division

The Estate Distribution Division is one of the four main administrative bodies involved in the process of estate administration in Malaysia. In its amendment in 2022, the maximum threshold for the value of small estates that the Division had jurisdiction over was increased from RM2,500,000 to RM5,000,000, allowing the Division to take on more cases from its counterparts in Amanah Raya Berhad and the Civil High Court. Furthermore, the Division no longer hears applications strictly limited to immovable property, with its scope now expanded to include movable property as well. As mentioned earlier, the Division handles approximately sixty five percent of the total estate distribution applications in the country, equivalent to 60,000 cases annually (Ibrahim et al., 2024).

When the deceased’s family submits the relevant documents and their applications are processed, the Division will verify the value of the estate’s assets with the Valuation and Property Services Department. This is to ensure that the assets that are sought to be distributed do not exceed the maximum threshold set out in the Small Estates (Distribution) Act 1955. If the answer is negative, then the Division will issue a notice to attend a hearing which both the applicant and other heirs to the estate’s assets are mandated to attend. If all affairs are in order, the assets will be distributed. The Division will distribute the estate according to *Faraid* or Section 6 of the Distribution Act 1958 respective to whether

the deceased was Muslim or non-Muslim (Benjamin Tham & Co, 2021). It should be noted that the Division does not have the jurisdiction to hear applications for testate estates.

### Mediation

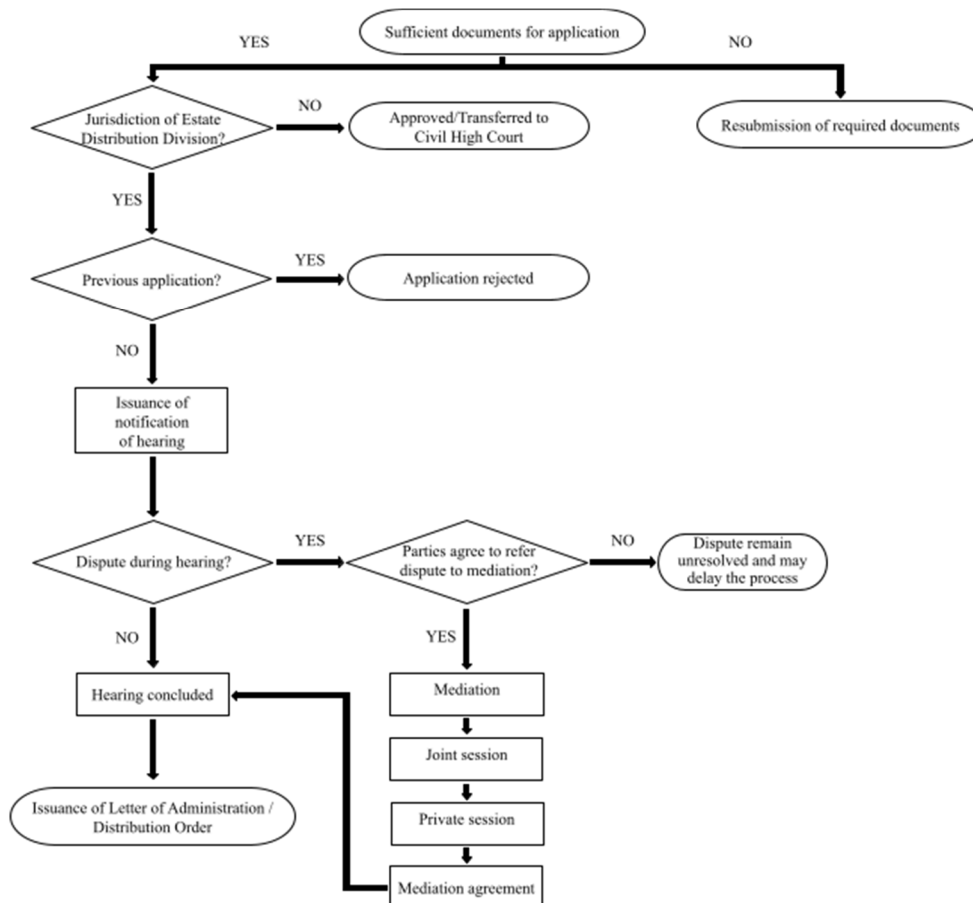
Mediation is recognised as an effective tool to resolve disputes in Malaysia and is an alternative to litigation. The implementation of mediation is already well-practised in Malaysia as seen by its implementation in various institutions such as both the Civil and Syariah courts in the forms of court-annexed mediation and *sulh* respectively. Section 3 of the Mediation Act 2012 defines mediation as “*a voluntary process in which a mediator facilitates communication and negotiation between parties to assist the parties in reaching an agreement regarding a dispute.*”

Mediation carries many advantages which makes it a suitable dispute resolution method as compared to litigation, especially in regards to family or inheritance disputes. Mediation is preferred to other alternative dispute resolution methods as it is the most well-known and easily understood, especially in regards to family disputes (Badrul Hisham et al., 2025). The nature of mediation makes it flexible and allows more autonomy to the parties to agree on a settlement between themselves, rather than allowing a third-party to impose a decision on the parties. This allows for more creative solutions which are tailored to the parties’ respective interests than those strictly provided under the law (Kamarudin & Ab Aziz, 2014). Furthermore, it is more cost and time-effective as compared to litigation (Drs Nasrul et. al, 2022), as the courts are already faced with a high number of cases which often suffer from procedural delays that prolong the disputes. Additionally, mediation provides the space to navigate emotional turmoil and tension more so than the courtrooms. This makes mediation a fitting avenue to resolve family and inheritance disputes which are often fraught with high emotional tension and stress.

Generally, the process of mediation begins with the mediator’s introduction where the mediator provides an overview of the session and the principles of mediation. This is followed by the disputing parties’ opening statements, where each party explains their respective positions in the dispute. Then, a joint discussion session is held wherein the parties explain the issues in depth. A joint negotiation session is then held to brainstorm potential solutions that the parties may be open to. Last but not least, the session ends with the settlement of the dispute if the parties can resolve their differences. Should the session require so per the mediator’s view that the parties would be more open to sharing information privately in a one-on-one session, among other reasons, a private session between each party and the mediator known as a caucus will be held (Drs Nasrul et al., 2019).

The above process is flexible and simple enough to be implemented in the process of estate administration in the Division. The authors of this paper propose that after the applicant and the deceased’s heirs are issued the notification of hearing and should a dispute arise during the hearing, the parties shall be presented with the option to refer their dispute to mediation. Should they refuse, their dispute remains unresolved without the help of a neutral and impartial third-party mediator which may jeopardise the process of administering the deceased’s estate down the line. However, should the parties agree to refer their dispute to mediation, the general process of mediation would apply. At the end of the mediation session, if the parties successfully resolve their dispute, the Estate Distribution Officer will draft a mediation agreement which the parties will review and sign if the contents of the agreement

are satisfactory. This agreement will be binding upon both parties. The signing and release of the agreement marks the conclusion of the hearing, after which the Estate Distribution Officer will issue a Letter of Administration or Distribution Order. This process can be summarised as follows:



**Figure 1.:** Flowchart on the proposed implementation of mediation in the Estate Distribution Division

The addition of mediation into the process of estate distribution in the Division is not expected to incur significant cost except for the training of the Estate Distribution Officers in the skill of mediation that is required of them. Furthermore, the jurisdiction of the Division is only limited to intestate cases which means that should disputes arise as to the contents or validity of the deceased’s will, the parties would still need to refer their dispute to the courts.

## CONCLUSION

Understanding the importance of mediation in the overall process of estate administration can help parties make informed decisions when they are faced with financial or emotional difficulties to



manage the deceased's assets following their loved one's death. All in all, the findings of this paper indicates that by implementing mediation in the administrative bodies such as the Estate Distribution Division, estate disputes are more effectively resolved before adverse implications such as delay and incomplete estate administration could take root. Without the need to refer estate disputes to the courts, it is hoped that the implementation of mediation in the Estate Distribution Division will lessen the burden on the deceased's family and provide them a seamless process to distribute the deceased's assets to the rightful heirs, in addition to preserving the harmony of the family institution.

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