

MEDIATION AS AN ALTERNATIVE DISPUTE RESOLUTION IN FAMILY DISPUTES

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ABSTRACT

The traditional approach in resolving family dispute is adversarial in nature where the parties argue over matters pertaining to ownership of property, future financial management and custody of children. According to this approach, dispute is likened to a battle where one party will be the winner and the other party will be the loser. This litigation process is normally time consuming, parties in dispute feel less satisfied with the decision and also involves higher legal fees. Sometimes, the court's decision does not fully take into account the welfare and interest of the children and the psychological aspect of parties involved in the dispute. The current trend in the family laws of several countries like Singapore, Australia and United States of America is to give priority to the alternative method in resolving family disputes. This trend is resulted from general dissatisfaction with the procedural aspects of the law and the ineffectiveness of the provisions intended to encourage reconciliation that can benefit all parties involved in the dispute. This alternative method is known as mediation or *sulh* in Islamic law. Family mediation tries to help the disputants in handling impacts resulted from family disputes. In Malaysia, the application of a court-based *sulh*, as an alternative method in resolving family disputes among the Muslims is still limited. Empirical studies conducted in the Selangor Judicial Department and the Syariah Court of Federal Territories revealed that in general, the approach of resolving dispute amicably through *sulh* provide satisfaction among the parties in disputes with regard to the resolution or agreement achieved. Besides, with the help of the *sulh* officer as a mediator, the disputants were able to discuss their problem rationally and try to find the best solution themselves. This amicable resolution preserves well being and healthy relationship not only among the disputants but also the children of the marriage. It can be also concluded that *sulh* is in line with one of the strategic thrusts of the National Family Policy i.e. to ensure that laws, policies, procedures and enforcement of laws prioritize the family well being perspective.

Key words: *sulh* (mediation), alternative dispute resolution, family disputes

INTRODUCTION

In the last few decades, there is a widespread trend in family law in the United States of America, Europe and other industrialized countries, towards informality in dispute resolution particularly for disputes involving custody and other issues about children (Wall & Dunne, 2012; Nolan-Haley, 2012; Wilson-Evered, Macfarlane, Zeleznikow & Thomson, 2011). Increased rates of divorce, general dissatisfaction with the procedural aspects of the law and the ineffectiveness of the provisions intended to encourage reconciliation, resulted in the introduction of an alternative mechanism for helping parties to deal with the consequences of their family disputes (Kim & Oka, 2011; Emery, Sbarra & Grover, 2005; Conneely, 2002, Kelly, 2001). This alternative mechanism is known as family mediation which was claimed by its proponent to be more family friendly.

Alternative dispute resolution (ADR) is not new to Islam. Islam which is not only a religion but a way of life provides a framework in which relations between human beings are facilitated and conducted. In everyday life, dispute or conflict is inevitable. Islam advocates amicable settlement of every dispute to avoid antagonism between parties. It is irrefutable that many relationships, whether family or businesses are destroyed by the process of litigation (Ananat & Michaels, 2008; Lizardi, Thompson, Keyes & Hasin, 2009). Therefore, resolving disputes through alternative mechanism such as mediation establishes a productive relationship for the future.

Mediation which is known as *sulh* in Islamic law refers both to the process of restorative justice and peacemaking and to the actual outcome of that process (the contract entered into by the disputants containing agreed private settlement out of court). In many instances, the Qur'an refers to the principle of resolving disputes through negotiated settlements or settlements out of court in the form of mediation, conciliation and arbitration. In many instances, the Qur'an refers to the principle of resolving disputes through negotiated settlements or settlements out of court in the form of mediation, conciliation and arbitration. For example in al-Nisa':35:

"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".

This verse explains that, if a dispute arises between husband and wife it is encouraged to settle the dispute amicably by using a method known in Islamic law as *tahkim* (arbitration). *Tahkim* is one form of mediation (*sulh*). Dispute undeniably will affect the rationality or the mental state of the disputants. This will cause the inability for them to see the dispute clearly. The failure to see the issue at hand will create misunderstanding and this will further aggravate the dispute. It is acknowledged that resolving conflicts through *sulh* establishes a productive relationship for the future. In divorce for an example, an amicable settlement would generate in the parties concerned, a sense of respect for each other even though they have separated. *Sulh* in family dispute is similar to *sulh* in other area, which is pertaining to property as well as non-property. In addition, *sulh* may be conducted for dispute arises during the subsistence of marriage or after divorce.

Mediation has grown so rapidly and managed to alter judicial practice in the West (Emery, 2012). Today, it continues to be at the forefront of change in family law. Broad development in law and in psychological research are said to be the central reason for the development of mediation especially in the area of child parental responsibility dispute which is traditionally known as child custody and visitation (Emery 2012; Emery, 1994). The proponents of family mediation often allege that family mediation is the universal remedy which alleviates the bitterness and enmity of family disputes (Welsh, 2012). In the area of divorce, mediation has been promoted among others as a way of increasing efficiency in the dispute resolution process, enhancing satisfaction of the disputing parties and escalating compliance with divorce agreements (Emery, 2012; Amato 2010). The literatures on family mediation highlighted that the primary reason of many judicial systems globally in adopting mediation is to decrease backlog cases and costs for both litigants and the courts (Kuhner 2005, Pearson, 1993; Kelly, 1990; Trost, 1988).

Several researchers assert that family lawyers have a tendency to take a conciliatory and cooperative rather than adversarial approach to practice (Douglas & Murch, 2002). The trend of using alternative dispute resolution has an impact on the development of policy interest in mediation (Kitzmann, Parra & Jobe-Shields, 2012). This may be based in part on the belief that mediatory approaches and negotiated outcomes are less costly in financial and emotional terms than court-assisted outcomes, particularly where children are involved and provide better basis for continuing parental responsibility following divorce.

The Ex-Deputy Minister in the Prime Minister's Department, Datuk Shahrizat Abdul Jalil proposed the establishment of a Family Court to deal with matrimonial and family matters as part of the Malaysian Judicial System in 2000 (Chelvarajah, 2000). The Malaysian Bar Council agrees that Family Court would promote specialization as well as to instil a more humanitarian and amicable aspects into the resolution of family and matrimonial matters (Chelvarajah, 2000). The Malaysian Bar Council also believes that issues of divorce, judicial separation, matrimonial property, child custody and support, guardianship of infant, adoption and domestic violence are highly sensitive and emotional human issues that may not be entirely appropriate to be resolved by the present court system which is mainly adjudicatory in nature (Chelvarajah, 2000). Pending the setting up of the Family Court, the Women's Crisis Centre of Penang suggested reforms of current legal framework that includes among others mediation (Devaraj, 2002). They believe that even if mediation cannot solve all the disputes in the proceeding, the issues to be litigated may be narrowed down (Devaraj, 2002).

A national Seminar on Alternative Dispute Resolution was held on 4 and 5 February 2002 by the Legal Division of the Prime Minister Department, Putrajaya. One of the resolutions of this seminar was to enhance the use of mediation and it was suggested that a law pertaining to mediation be enacted. The Federal Territory of Kuala Lumpur was the first state to draft the procedure pertaining to *sulh* and the application of *sulh* was extended to other states in Malaysia through Practice Direction No.3/2002 of the Department of Syariah Judiciary Malaysia (JKSM).

The Department of Syariah Judiciary Selangor introduced Majlis Sulh (Mediation Council) in 2002. The enforcement of *sulh* in the Syariah Courts of Selangor is based on sections 94, 99 and 131 of the Selangor Syariah Court Civil Procedure Enactment 2003 and sections 47 and 48 of the Selangor Islamic Family Law Enactment 2003. The Syariah Court Civil Procedure (Sulh) Rules 2001 governs its implementation in procedural aspect. By virtue of section 99 of the Selangor Syariah Court Civil Procedure Enactment 2003, any parties to a proceeding may convene *sulh* at any stage of the proceeding in order to resolve their dispute according to the established rules and procedure. In the absence of such rules and procedure, they can resort to *hukum syarak* (Islamic principles).

According to Rule 3, of the Selangor Syariah Court Civil Procedure (Sulh) Rules 2001, if the Registrar, upon receiving any summon or application for any action, felt that there is reasonable possibility of reconciliation between the parties, he shall not determine the hearing date within three months from the registration date of the case; as soon as practical determine the date for *sulh* to be conducted between the parties and serve the notice with regard to the date of *sulh* to the parties. However, it is important to note here that the parties must give their consent to resolve their disputes by mediation (Sa'odah & Nora, 2010a). This means that they will be given an option whether to go for mediation or proceed for court adjudication. If they choose court adjudication the Registrar has to

determine the date of the hearing. In short, it is mandatory for the Registrar to inform the option for mediation to parties in dispute but it is up to the disputants to decide whether they want their dispute to be resolved by mediation or not (Sa'odah & Nora, 2010).

For the purpose of facilitating the smooth running of *sulh*, JKSM came up with the Sulh Work Manual (the Manual) and the Ethical Code of Sulh Officer (the Code). The Manual serves as a standard that defines Sulh Officers or mediator's role, guiding them in their day-to-day practice and protect parties in disputes (users) as well as the credibility of the profession (Sa'odah & Nora, 2010a). On the other hand, the Code prescribes ethics of the mediators. Thus, these rules assist the mediators in performing Majlis Sulh while regulating their conduct. Ongoing training was also given to Sulh Officers in order to enhance their skill as mediator. On 14th February 2007, 24 Sulh Officers received Certificate for Conducting Mediation, after successfully attended a five days intensive training and passed the examination conducted by The Accord Group, which is an Australian mediation consultant. The training was conducted in Kuala Lumpur. Attending the training course also qualify the mediators for Associate Membership of the United Kingdom Chartered Institute of Arbitrators without having to undertake the usual examination.

Among the cases encouraged by the Syariah Courts to be settled through *sulh* are disputes over inheritance of family wealth, cases or claims related to responsibility in marriage such as outstanding maintenance as well as cases or claims arising out of divorce such as *mut'ah* (compensation for divorce), *harta sepencarian* (matrimonial property), *iddah* maintenance, *hadhanah* (custody) and maintenance of children (Sa'odah & Nora, 2010b). Rule 1(2) the Selangor Syariah Civil Procedure (Sulh) Rule 2001 restrict *sulh* to the application of divorce. In other words, *sulh* is not the place to discuss divorce but the effect thereafter (Sa'odah & Nora, 2010a).

The statistics for *sulh* from May 2002 to December 2006 provided by the Department of Selangor Judiciary revealed that the successful rate of *sulh* was 64 per cent as compared to 34 per cent cases referred for trial. The rate of adjourned cases was only 2 per cent. On the other hand, the statistics for *sulh* from 2005 to 2010 provided by the Syariah Courts of Federal Territories revealed that the successful rate of *sulh* was 51.8 per cent as compared to 27.1 per cent cases referred for trial. It was found that the successful rate in Federal Territories was lower than the rate in Selangor because 21.1 per cent of the disputants failed to attend Majlis Sulh. However, from the successful rate we can infer that by implementing *sulh*, the Syariah Courts especially in Selangor not only manage to resolve disputes amicably but also able to unclog the court calendar (Sa'odah & Nora 2010b).

The National Family Policy 2011 advocates the concept of "family well-being" based on family values such as caring, honesty, justice and equity regardless of status, gender and age. This policy prioritizes family perspectives in all socio-economic development efforts to ensure quality generation. One of the strategic thrusts of this policy is to ensure that laws, policies, procedures and enforcement of laws prioritize the family perspective. Family dispute, in particular divorce, has a traumatic effect and the legal system does not openly respond to the emotions and trauma experienced by not only by the parties in dispute but also their off springs. Therefore, it is submitted that amicable resolution of family disputes by way of *sulh* as practised by the Syariah Courts is in line with the above mentioned strategic thrust.

The present study intended to provide an empirical data with regards to the effectiveness of *sulh* implemented by the Syariah Courts in the states of Selangor and the Federal Territories of Kuala Lumpur and Putrajaya, taken from the perspective of the stakeholder (user satisfaction evaluation). The effort devoted to evaluation and programme improvement enhances the likelihood that *sulh* programmes and practices will be effective and utilized to the greatest degree possible.

SATISFACTION WITH MEDIATION AND *SULH*

This study aimed firstly, to describe the social demographic characteristics of the users of *sulh* in Selangor and Federal Territories of Kuala Lumpur and Putrajaya, secondly, to determine the users' level of satisfaction with *sulh*, and lastly to determine whether there is a difference in satisfaction with *sulh* between male and female users.

Evaluating mediation programme is important and helps to ensure that services are continually improved and refined. User satisfaction evaluation is an excellent opportunity to involve clients in the process of evaluating mediation programme. In fact, it is a central feature of most definitions of service or programme effectiveness (McMuttly, 2000). Moreover, it adds important client perspective to evaluation of the services or programme. According to Kotler and Clark (1987), satisfaction is the state felt by a person who has experienced a performance (or outcome) that has fulfilled his or her expectations. Rad & Yarmohammadian (2006) defined it as the willful accomplishment which results in one's contentment. Satisfaction is thus a function of relative levels of expectation and perceived performance (McMuttly, 2000). It is a judgment that a product or service feature, or the product or service itself, provided (or is providing) a pleasurable level of consumption-related fulfilment, including levels of under or over fulfilment (Oliver, 2010). According to Beck & Sales (2001), "increase satisfaction, in turn, is presumed to increase respect for the legal process, the legal actors, and the outcome of the legal proceeding (e.g., the agreement produced from mediation) and increase the likelihood of compliance with the results". Satisfaction is the consumer's fulfilment response. Bigne, Moliner & Sanchez (2003) found that the overall service quality have a significant relationship with satisfaction.

With regards to the effectiveness of family mediation, research has generally found it to be an effective and satisfying means for resolving dispute outside the litigation process in court. Benefits attributed to successful mediation reported in the literature include the avoidance of financial and emotional costs of litigation, the opportunity to develop or maintain a constructive parental relationship and a belief that agreements are workable and fair under the existing circumstances (Emery, 2012). User satisfaction has been remarkably high in all studies and settings on a large number of process and outcome measures.

Studies conducted by Emery et al. (2005) revealed that parents were more satisfied with mediation than with adversary settlement six weeks after dispute resolution, a year and a half later and twelve years following the initial settlement. It is also interesting to note that there was no difference in the level of satisfaction for parties of mandatory versus voluntary mediation program. This highlights the capability of mediation to work well in both scenarios. At the same time, it serves as a successful rebuttal to the notion that mediation cannot be effective and liked, unless participation is voluntary.

Pearson and Thoennes (1986) conducted a large scale empirical evaluation of mediation services in three court-annexed programmes. The research was known as the Divorce Mediation Research Project (DMRP), conducted in 1981-1984. The result revealed 85 to 91 per cent of the mediation parties who reached custody or visitation agreement in DMRP was satisfied with the services and would recommend it to others. Even those who failed to reach agreement believed in mediation and would recommend it to others (62 to 79 per cent). An interview with the parties after one year lapse found parties' satisfaction remains strong (90 per cent) and they reported that they were glad to use mediation as a mechanism of resolving their disputes.

In a research conducted by Bickerdike (2003), 75 per cent of the respondents reported overall satisfaction with the process of mediation while 60 per cent were satisfied with the outcome. Respondents involved in property issues reported higher satisfaction than those who used mediation to discuss parenting issues. Long term satisfaction was found to be higher for parties who reached agreement in mediation than for those that reached impasses in mediation. Furthermore, perception of fairness of the outcome was highest in mediation as oppose to other methods of agreement.

Evaluation studies of family mediation services that were carried out in Australia by Bordow and Gibson (1994), Maloney et. al (1995, 1996) revealed that the mediation process used led to full agreement between 44 per cent to 71 per cent of cases, partial agreement in 11 per cent to 39 per cent of cases, and between 17 per cent to 18 per cent failed to reach agreement. These evaluations also demonstrated high level of satisfaction with nearly three quarters of users saying they would use mediation process again and liked the process even if some did not like the substantive outcome.

A similar result can also be seen in an evaluation study that was conducted by the Hong Kong Polytechnic University on the Pilot Scheme of Family Mediation from May 2000 to April 2003. The result of the study revealed that almost 80.5 per cent of the respondents stated that they were 'satisfied' or 'very satisfied' with the mediation service that they received. Further interviews with the participants in the programme showed that they had positive experience. Of those who had reservations about mediation, many still said that they would recommend mediation to others. This showed their appreciation of mediation value. Those who were unable to reach settlement attributed the failure to themselves rather than to the mediators.

The findings regarding gender differences in satisfaction with mediation continue to be a point of some controversy. Some researchers have found greater differences in satisfaction with mediation than with litigation among men than among women (Bickerdike, 2003), whereas others have found no gender differences (Kelly, 1989; Kelly & Duryee, 1992; Sullivan, Schwebel, Lind, & Shimberg, 1997).

In 2001, Emery et. al., conducted a long-term follow-up data on families who had been randomly assigned to mediate or litigate their child custody disputes. In comparison with families who litigated custody, nonresidential parents who mediated were more involved in multiple areas of their children's lives, maintained more contact with their children, and had a greater influence in co-parenting 12 years after the resolution of their custody disputes. The increased involvement of nonresidential parents who mediated did not lead to an associated increase in co-parenting conflict. Parents who mediated also made more changes in their children's living arrangements over the years. For the most part, the changes apparently reflect increased cooperation and flexibility. Satisfaction

declined for parents (especially fathers) in both groups over time, but fathers remained much more satisfied if they mediated rather than litigated custody. Few differences in satisfaction were found between mothers in the 2 groups. The 12-year follow-up data indicate that, even in contested cases, mediation encourages both parents to remain involved in their children's lives after divorce without increasing co-parenting conflict.

As far as Malaysia is concerned, Raihanah had examined principles of *sulh* according to the Islamic law, Malay *adat* and its application in the Syariah Courts of Selangor in 2005. The study analyzed 500 *sulh* cases (from May 2002 to December 2003). The result revealed that the application of *sulh* has its own virtue and genuine purposes as recommended by the Islamic law. She agreed that *sulh* developed positive and constructive means of resolution of family disputes. Furthermore, her research revealed that *sulh* succeeded in reducing backlog cases in the Selangor Syariah Courts. This finding was also supported by Adzidah et.al (2010), in her research at the Federal Territories of Kuala Lumpur Syariah Court. However, these studies did not cover either the effectiveness of *sulh* from the aspect of enforcement nor the satisfaction of users or consumers of *sulh*. Hence, the present study is very distinct, important and timely.

METHODOLOGY

Sample

Selangor

Data was collected from August 2007 to April 2008. Respondents of this study comprised of users of *sulh* selected by using purposive sampling technique. The chosen courts represent the geographical zones in Selangor. The relevant courts were Lower Syariah Court of Sabak Bernam, Lower Syariah Court of Kuala Selangor, Lower Syariah Court of Sepang, Lower Syariah Court of Bandaraya Shah Alam and Lower Syariah Court of Hulu Langat. Two hundred and fifty questionnaires were distributed via mail to the respondents. Each questionnaire was prefaced with a cover letter explaining the objective of the survey and emphasized the confidentiality of responses and the voluntary nature of the respondent. Self-addressed envelopes were provided to each respondent for returning completed surveys. Reminder postcards were sent to the entire sample one month after the survey questionnaires were sent. 128 questionnaires were received, garnering a response rate of 51.2 per cent. According to Babbie (1990) and Hager (2003), a return of 50 per cent is adequate as a mean of minimizing non-response bias.

Federal Territories of Kuala Lumpur and Putrajaya

Data was collected in April 2012. Respondents of this study comprised of the users of *sulh* selected by using purposive sampling technique. The chosen courts represent the Kuala Lumpur and Putrajaya Syariah Courts. Three hundred respondents were invited by telephone conversation to participate in the survey. Out of the three hundred invitations, only eighty gave their agreement to be the respondents of the study. Each questionnaire was prefaced with a cover letter explaining the objective of the survey and emphasized the confidentiality of responses and the voluntary nature of the respondent.

MEASUREMENT

Satisfaction with *sulh* was measured using *Satisfaction with Sulh Scale* (Sa'odah, 2007). Respondent were asked to indicate their level of satisfaction on a five point Likert scale, with 1 labelled 'strongly disagree', 2 labelled 'disagree', 3 labelled 'slightly agree', 4 labelled 'agree' and 5 labelled 'strongly agree'. Higher scores indicate higher satisfaction.

The items covered several key dimensions of users' satisfaction with *sulh* process: safety, courtesy and respect, convenience, service, fair and reliable court function, clarity and outcome, and overall satisfaction. Safety was measured by one item (for example: I felt safe when attending *sulh*). Convenience was measured by two items (for example: The times scheduled for mediation was convenient). Service was measured by one item (for example: The mediation services help me resolve my problem). Courtesy and respect were measured by one item (for example: The *sulh* officer treated me with courtesy and respect).

The construct on fair and reliable court function was measured by five questions (for example: The agreements reached were fair). Clarity and outcome were measured by two items (for example: I understood the consent agreement reached at the end of the mediation process). Overall satisfaction was measured by one item (for example: Overall, I was very satisfied with the mediation services provided to me). The final section in the questionnaire contained five open ended questions designed to acquire respondent's further opinion or comment with regard to *sulh* (for example: What did you like most about *sulh* process?). Questionnaires were in Malay language.

RESULTS

1. Socio-demographic characteristics

Selangor

The average age of the respondents was 33.5 years with the minimum age being 22 and the maximum age being 55. 45 per cent of the respondents were between 21 to 30 years old and 36 per cent are between 33 to 40 years old. These results showed that respondents of this study were mostly young adult who experienced divorce early in their marriage. This is in accordance with the findings of *The Malaysian Community and Family Study 2004* conducted by the National Population and Family Development Board (LPPKN).

As for the respondents' educational level, results revealed that nearly half of them (49 per cent) have obtained moderate educational qualification (SPM, STPM and certificate). 29 per cent of the respondents obtained high level of education either from college or university (diploma, degree and masters) while 19 per cent obtained education up to form three in the secondary school (SRP/PMR).

Result showed that machinery operators, technician and industrial worker are the leading occupation of the respondents (21 per cent). This is followed by full-time housewife or homemaker at 15 per cent; services workers at thirteen percent; business and self-employed at 10 per cent; professional, clerical and others at 9 per cent each; senior offices and managers at 7 per cent; elementary occupation at 6 per cent and armed forces at 1 per cent. The finding indicated that occupation of the respondents is a reflection of their

educational background. Since half of the respondents were moderately educated, it can easily be comprehended why machinery operators, technician and industrial worker are the leading occupation of the respondents (20 per cent). It can also be concluded that majority of the female respondents of this study are homemakers.

Data from the study also revealed that the average income of the respondents was RM1359.45. More than one third of the respondents (36 per cent) earned between RM1001 to RM3000 per month. 27 per cent of the respondents earned between RM0 to RM500, 27 per cent earn between RM500 to RM1000 and 6 per cent earn between RM3001 to RM4000. The remaining four per cent of the respondents earned between RM4001 to RM6000. Looking at the distribution of income of the respondents, it can be summarized that majority of the respondents (90 per cent) earn RM3000 and below per month. This result was interrelated with the educational background and occupation of the respondents. As discussed above, half of the respondents were moderately educated and more than one third work as machinery operators, technician, industrial worker and homemaker. This clearly explained why majority of the respondent earned RM3000 and below per month.

With regards to the respondents' number of children, they ranged from 0 - 10. A little over one third of the respondents (32 per cent) have two children, 28 per cent have one child, 11 per cent has four children, 9 per cent have three children, 7 per cent have five children, 3 per cent have six children and 2 per cent have ten children. The remainders (8 per cent) have no children at all. From the data, it can be construed that two third (69 per cent) of the respondents have three children and below.

Kuala Lumpur and Putrajaya

The average age of the respondents was 35.75 years with the minimum age being 27 and the maximum age being 55. 70 per cent of the respondents were between 27 to 37 years old and 22 per cent were between 38 to 48 years old. These results showed that respondents of this study were mostly young adult who experience divorce early in their marriage. This is in accordance with the findings of *The Malaysian Community and Family Study 2004* conducted by the National Population and Family Development Board (LPPKN).

As for the respondents' educational level, results revealed that 36 per cent of the respondents obtained moderate educational qualification (SPM, STPM and certificate) while 45 per cent of the respondents have obtained high level of education either from college or university (diploma, degree and masters).

Result showed that administrative officer were the leading occupation of the respondents (40.7 per cent). This was followed by clerical worker at 28.4 per cent, others at 7 per cent, technician at 5 per cent, teacher/nurse/manager at 8 per cent, armed forces at 2 per cent and house wife at 2 per cent.

Data from the study also revealed that the average income of the respondents was RM2490.86 with the maximum income being RM12000. Majority of the respondents (79 per cent) earned between RM1001 to RM3000 per month. 13.6 per cent of the respondents earned between RM3001 to RM6000, 4.9 per cent earned between RM0 to RM1000 and 1.2 per cent earned between RM6001 to RM9000. The remaining 1.1 per cent of the respondents earned between RM9001 to RM12000. Looking at the distribution

of income of the respondents, it can be summarized that majority of the respondents (83.9 per cent) earned RM3000 and below per month. This result was interrelated with the educational background and occupation of the respondents.

With regards to the respondents' number of children, they ranged from 0 - 10. Majority of the respondents (79 per cent) have three or less children, 13.5 per cent have more than four children and 7.5 percent have no child at all. From the data, it can be construed that majority (79 per cent) of the respondents have three children and below. This finding is in accord with the finding in Selangor.

2. Satisfaction with *sulh*

Selangor

The finding in this section answers research question: What is the level of users' satisfaction with *sulh*? The satisfaction score was constructed by giving a graded score, where strongly 'disagree' counts one to 'strongly agree' with five. The score was later recoded into three categories, namely low, moderate and high. The results revealed that majority (87 per cent) of the respondents reported that they were highly satisfied with family mediation. In addition, 13 per cent of the respondents reported that they were moderately satisfied with family mediation. It is interesting to note that none of the respondents reported having low satisfaction with family mediation.

On the issue of safety, 86 per cent of the respondents 'agree' or 'strongly agree' that they felt safe when attending family mediation. However, one respondent 'disagree' that the location of the family mediation (a designated room located in the Syariah Court) was convenient to him. He was of the opinion that the room should be sound proof so that users of family mediation would not be distracted by noise from outside. When asked whether they agree that family mediation was able to help them resolve their dispute, 74 per cent of the respondents said they 'agree' or 'strongly agree'.

The feedback from respondents also suggested that the mediators were impartial (70 per cent 'agree' or 'strongly agree'), knowledgeable (71 per cent 'agree' or 'strongly agree'), courteous (81 per cent 'agree' or 'strongly agree'), understood the issues involved (69 per cent 'agree' or 'strongly agree'), empathetic (70 'agree' or 'strongly agree') and were able to respect the right of the respondents to make decisions themselves on issues of dispute (73 per cent 'agree' or 'strongly agree'). On the question of whether they understood and were satisfied with the consent agreement reached at the end of family mediation, 78 percent said 'agree' or 'strongly agree' that they understood the agreement while 81 per cent stated 'agree' or 'strongly agree' that they were satisfied with the agreement reached.

When the respondents were asked if they would recommend family mediation to any person having similar problems, 97 per cent replied 'agree' or 'strongly agree'. In conclusion, parties of *sulh* were, on the whole, positive about the service. Of the 100 respondents in the survey, 88 per cent reported 'agree' or 'strongly agree' that they were satisfied with the service given to them. It is also interesting to note that, none of them reported 'disagree' or 'slightly disagree' with the service.

Kuala Lumpur and Putrajaya

The results revealed that most (61.7 per cent) of the respondents reported that they were highly satisfied with family mediation. In addition, 38.3 per cent of the respondents reported that they were moderately satisfied with family mediation. It is interesting to note also that none of the respondents reported having low satisfaction with family mediation.

On the issue of safety, 67 per cent of the respondents 'agree' or 'strongly agree' that they felt safe when attending family mediation. Out of 81 respondents, 53 (65%) 'agree' or 'strongly agree' that the location of the family mediation (a designated room located in the Syariah Court) was convenient to them. When asked whether they agree that family mediation was able to help them resolve their dispute, 57 per cent of the respondents said they "agree' or 'strongly agree'.

The feedback from respondents also suggested that the mediators were impartial (68 per cent 'agree' or 'strongly agree'), knowledgeable (70 per cent 'agree' or 'strongly agree'), courteous (77 per cent 'agree' or 'strongly agree'), understood the issues involved (65 per cent 'agree' or 'strongly agree'), empathetic (71 'agree' or 'strongly agree') and were able to respect the right of the respondents to make decisions themselves on issues of dispute (77 per cent 'agree' or 'strongly agree'). On the question of whether they understood and were satisfied with the consent agreement reached at the end of family mediation, 65 percent said 'agree' or 'strongly agree' that they understood the agreement while 79 per cent stated 'agree' or 'strongly agree' that they were satisfied with the agreement reached.

When the respondents were asked if they would recommend family mediation to any person having similar problems, 69 per cent replied 'agree' or 'strongly agree'. The users of *sulh* were, on the whole, positive about the service. Of the 81 respondents in the survey, 69 per cent reported 'agree' or 'strongly agree' that they were satisfied with the service given to them.

All in all, the studies in Selangor and Federal Territories of Kuala Lumpur and Putrajaya revealed a more or less similar findings pertaining to respondents' satisfaction with *sulh*, i.e. majority/most of the respondents reported that they were highly satisfied and had a very positive experience of resolving their disputes by *sulh*.

3. Mean differences on satisfaction with *sulh*.

Selangor

The finding in this section answers research question: Is there any difference in satisfaction with *sulh* between male and female users? Exploratory data analysis (EDA) was conducted to examine data distribution. Results showed that the assumptions of normality and equal variance were met. Therefore, t-test was a valid statistical technique used for comparing the mean scores for satisfaction with *sulh* between male and female respondents. The result for the comparative analysis is presented in Table 1 as follows:

TABLE 1 COMPARISON ANALYSIS FOR SATISFACTION WITH *SULH* FOR MALE AND FEMALE RESPONDENTS IN THE SELANGOR SYARIAH COURTS.

| Variable | Mean (SD) | | t-value | Df |
|--------------|-------------|---------------|---------|----|
| | Male (n=49) | Female (n=51) | | |
| Satisfaction | 4.22 (.327) | 4.00 (.378) | 3.069* | 98 |

Note: SD=Standard deviation
 Df=Degree of freedom
 P<.05*

As seen in Table 1, result revealed that significant difference ($t=3.069$, $p<.05$) is detected on the means scores of satisfaction with family mediation among male and female respondents. From the result, it can be seen that male respondents are found to exhibit higher level of satisfaction compared to female respondents. In other words, this suggests that male respondents were more satisfied with family mediation than female respondents. This finding confirmed the study conducted by Emery et. al (2001), that found fathers remained much more satisfied than mothers, if they mediated rather than litigated the dispute.

Kuala Lumpur and Putrajaya

The result for the comparative analysis is presented in Table 2 as follows:

TABLE 2 COMPARISON ANALYSIS FOR SATISFACTION WITH *SULH* FOR MALE AND FEMALE RESPONDENTS IN FEDERAL TERRITORIES OF KUALA LUMPUR AND PUTRAJAYA SYARIAH COURTS.

| Variable | Mean (SD) | | t-value | Df |
|--------------|----------------|---------------|---------|----|
| | Male (n=26) | Female (n=55) | | |
| Satisfaction | 3.67 (.674) | (.635) 3.86 | -1.15 | 79 |

Note: SD=Standard deviation
 DF=Degree of freedom
 P>.05

As seen in Table 2, result revealed that no significant difference ($t=-1.15$, $p>.05$) was detected on the means scores of satisfaction with *sulh* among male and female respondents. It can also be seen that female respondents were more satisfied with *sulh* compared to male respondents. This result supported findings of the studies conducted by Kelly, 1989; Kelly & Duryee, 1992 and Sullivan, Schwebel, Lind, & Shimberg, 1997.

On the whole, the studies in Selangor and Federal Territories of Kuala Lumpur and Putrajaya provided a different result as regard to satisfaction with *sulh* between male and female respondents. Thus, it is submitted that the findings regarding gender differences in satisfaction with mediation continue to be a point of some controversy.

CONCLUSION

The picture formed by findings from the survey was that an impressive majority of the users of *sulh* in the Selangor Syariah Courts and the Wilayah Persekutuan Kuala Lumpur and Putrajaya Syariah Courts were satisfied with the service that they received. Some respondents expressed satisfaction with the service notwithstanding the fact that they were unable to resolve their entire disputes and reach an agreement. Of those who had reservations about family mediation, many still reported that they would recommend family mediation to other would be users. This suggested that the respondents appreciated the value of *sulh* even though not everything had gone their way. Many accredited the failure to reach an agreement to them rather than to the mediator (Sulh Officer). Thus, it can be concluded that *sulh* is very effective in resolving dispute amicably. The spill-over result of this would be the decrease of backlog cases in court. In the survey, about 79 per cent of the respondents in Selangor and 56 per cent respondents in the Federal Territories of Kuala Lumpur and Putrajaya endorsed the view that *sulh* promoted amicable, fast and fair settlement and also gave opportunity for an open discussion on issues of dispute. In other words, the most important benefit delivered by *sulh* is evidently the resolution of disputes between the disputants in a more reasonable and peaceful manner. This, of course, will promote a more harmonious relationship between the divorcees and, most importantly, better co-parenting if they have children. In other words, *sulh* focuses on the welfare of not only the users but also their offspring. It can be also concluded that *sulh* is in line with one of the strategic thrusts of the National Family Policy i.e. to ensure that laws, policies, procedures and enforcement of laws prioritize the family well being perspective

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