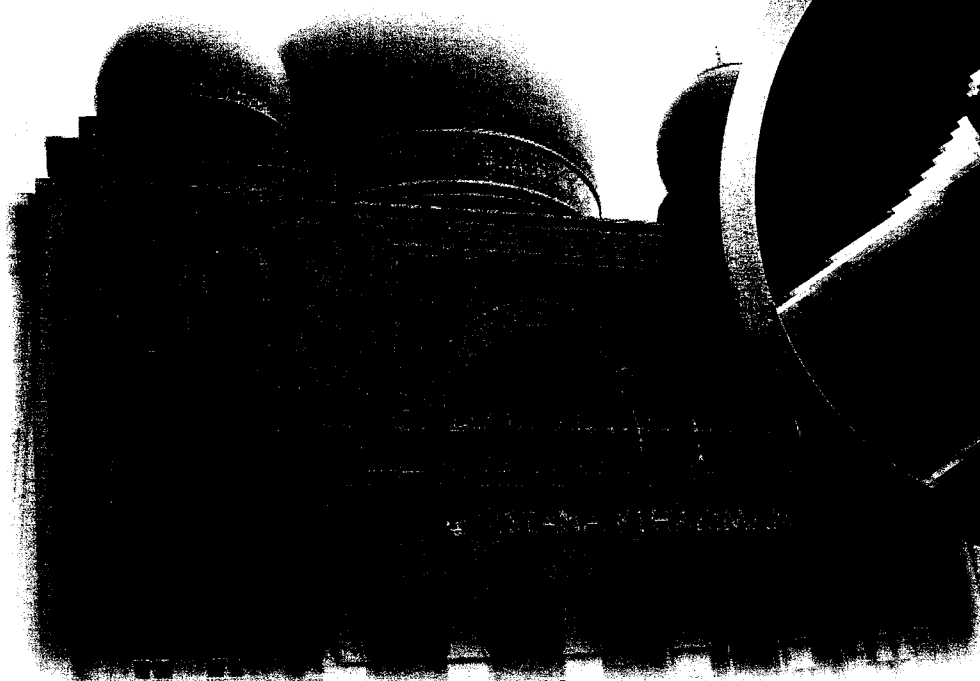


NATIONAL CONFERENCE ON DISPUTE RESOLUTION 2011

*Transformation of Mechanism
and Law of Dispute Resolution*

20 October 2011



Organised by:

**Arus Perdana Research Project UKM-AP-CMNB-20-2009/2
&
Faculty of Law Universiti Kebangsaan Malaysia**

Editors:

**Kamal Halili Hassan
Sakina Shaik Ahmad Yusoff
Sazanna Mohamed Isa
Che Norlia Mustafa**

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2	KAEDAH MENAFKAHKAN ANAK YATIM BERDASARKAN PERUNDANGAN ISLAM: SATU TINJAUAN LITERATUR Nurul Huda Yaakob & Abdul Bari Awang	374
3	RESOLUTION OF FAMILY DISPUTES : MEDIATION VS. LITIGATION Nora Abdul Hak, Nurdianawati, Irwani Abdullah, Noraini Md. Hashim & Nur Ezan Rahmat	383
4	MEDIATION IN SCHOOLS: IS IT THE WAY FORWARD? Syahirah Abdul Shukor	391
5	THE EFFECTIVENESS OF SULH AS AN ALTERNATIVE DISPUTE RESOLUTION IN RESOLVING SYARIAH COURT MATTERS Noor Aziah Mohd Awal & Jasri Jamal	400

THE EFFECTIVENESS OF SULH AS AN ALTERNATIVE DISPUTE RESOLUTION IN RESOLVING SYARIAH COURT MATTERS

1	TESTIMONY OF WOMEN IN THE CRIMINAL LAW OF IRAN Ebrahim Ghodsi	410
2	MONEY LAUNDERING IN IRANIAN CRIMINAL LAW Mehran Farahmand	420
3	ADR AND SPORTS Jady @ Zaidi Hassim, Zainatul Ashiqin Zainol & Kamal Halili Hassan	426
4	INSTITUTIONAL DISPUTE RESOLUTION IN SPORTS Parand Azizi	440

RESOLUTION OF FAMILY DISPUTES : MEDIATION VS. LITIGATION

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ABSTRACT

Family disputes, more often than not, are rarely concerned with matters of fact but almost invariably complicated by the intense and intimate emotions of the parties in conflict. Therefore, the utilization of Alternative Dispute Resolution (ADR) such as conciliation and mediation, independent of litigation will lead to a more satisfactory resolution of disputes rather than relying on the judgments of the court of law. It has to be borne in mind that in Malaysian society, family ties are still very strong and as such when matrimonial disputes arise and marriages are on tender-hooks, parties often seek assistance from family members to salvage the marriage. Mediation has come under the spotlight and watchful eye of many countries' legal systems for its ability to resolve conflicts between parties, reduce court case loads and reduce overall legal costs. Many jurisdictions already have existing legal provisions that give their courts the authority to order parties in dispute to mediation when deemed appropriate. In Malaysia, to encourage settlement of disputes through mediation including family disputes, the Bar Council established the Malaysian Mediation Centre (MMC) in 1999. The paper focuses on the development and advantages/merits of mediation as a suitable means of resolving family disputes as oppose to litigation. The law and the practice in some selected jurisdictions will be deliberated to study the performance of family mediation so far.

Keywords: Family, disputes, ADR, Malaysia

INTRODUCTION

Dispute resolution outside of courts is not new; societies world-over have long used non-judicial, indigenous methods to resolve conflicts.¹ What is new is the extensive promotion and proliferation of Alternative Dispute Resolution (ADR) models, wider use of court-connected ADR, and the increasing use of ADR as a tool to realize goals broader than the settlement of specific disputes. ADR processes may have application across many diverse areas that include commercial, legal, social, environmental, international and political settings.² Disputes that fall within the sphere of ADR processes may range from those within the judicial and administrative system or

¹ Stephen B. Goldberg, Frank E.A. Sander, Nancy H. Rogers, (1992), *Dispute Resolution : Negotiation, Mediation and Other processes*, (2nd ed., Little Brown and Co., New York), at 3-12

² see Tania Sourdin, (2002), *Alternative Dispute Resolution*, Puddingburn Publishing