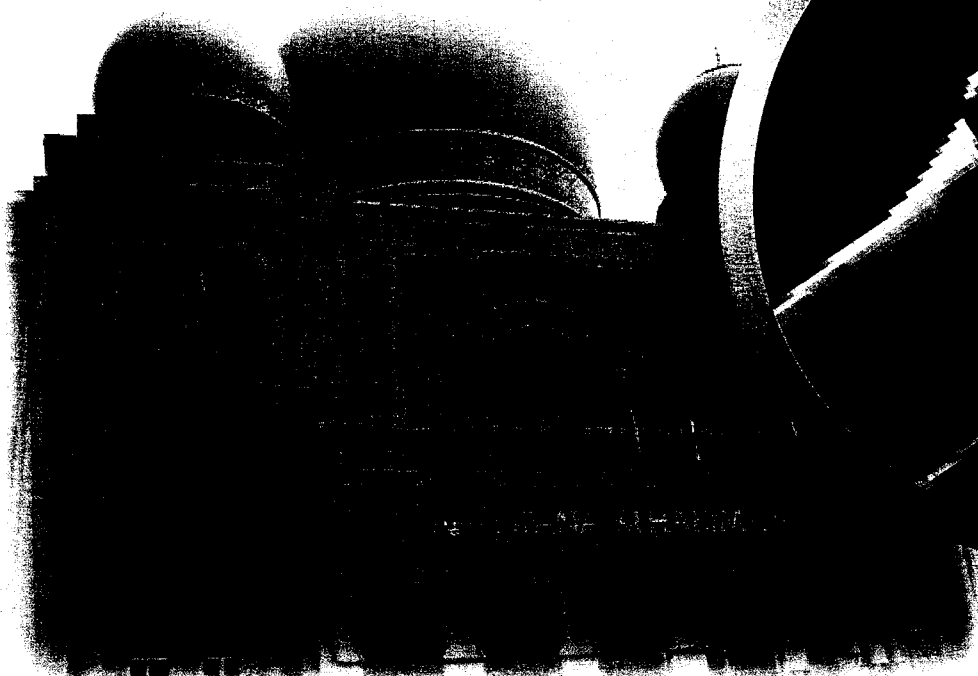


NATIONAL CONFERENCE ON DISPUTE RESOLUTION 2011

*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
Sakima Shaik Ahmad Yusoff
Sazanna Mohamed Isa
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Che Norlia Mustafa

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SULH (MEDIATION) IN THE SYARIAH COURT: SOME PROBLEMS AND PROSPECTS

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ABSTRACT

Islamic law considers any court-annexed framework for the resolution of disputes as part of the case management role of the judge. This paper examines the status of the court-annexed mediation programme of the Shari'ah Court in Malaysia. Issues especially relating to the backlog of cases, led to the introduction of sulh (mediation) as court-annexed process with a view to accessing the problems, and their resolution. Overcoming these operational challenges identified will go a long way in reducing the backlog of cases in the Shari'ah courts in Malaysia. A number of challenges are encountered in implementing this court annexed mediation.

Keywords: Sulh, Mediation, Syariah Courts

INTRODUCTION

The institutionalization of Alternative Dispute Resolution (ADR) processes in Islamic law in Muslim-populated countries has seen the appearance of the age-long practices such as *sulh* and *tahkim* at the corridors of the Shari'ah courts as ordained in the Qur'an. From the classical perspective, effective dispute resolution mechanisms are considered as part of the case management processes by a judge in the Shari'ah court. Therefore, the process of dispute resolution in Islamic law is a continuum of mechanisms that are most suited for a particular dispute before the court. This paper examines the court-annexed mediation practice of the Shari'ah court in Malaysia, its legal framework, challenges and prospects.

BACKGROUND OF SULH (MEDIATION)

There were public expressions in the 1990s, concerning the increasing number of backlog of cases and the dissatisfaction of many to the administration of justice system in the Shari'ah Court. The court recorded backlog of 63,306 cases between 1992 and 1995 alone.¹ It was attributed to insufficient manpower to handle the cases resulting in unnecessary delays in the administration of justice in the court. Fair minds prevailed, and decision to reactivate *sulh* (mediation) was made, especially with the realization and knowledge that mediation is a fully developing means of ADR in the West.

¹ See The Department of Syariah Judiciary Malaysia Profile, at <http://www.esyariah.gov.my/portal/page?_pageid=186,84988&_dad=portal2&_schema=PORTAL2> viewed on 20 January 2011.