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## **Family Disputes in Administration of Estates: Analysis on Mediation As Effective Dispute Resolution Mechanism in Malaysia**

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### **Abstract**

A family dispute is one of the issues that occur in the administration of the deceased's estate. Such dispute may happen at any stage in estate administration, ranging from the application of letters of representation until the distribution of the deceased's asset. The occurrence of family dispute tends to affect the administration adversely and may lead to delay in the distribution which at the same time rendered the process incomplete. However, despite the seriousness of family dispute in estate administration, there is no specific method in resolving the problem apart from the litigation process. Litigation is less preferred in this case due to its inability to address the emotional grief suffered by the parties. Plus, it is time-consuming and has a relatively expensive cost. Mediation, on the other hand, is seen as a potential dispute resolution mechanism thanks to its effective method in addressing the core issues in a family dispute. This paper addresses the overview of a family dispute as well as analyses mediation in addressing and resolving the issue in the administration of a family estate. The study undertakes a library-based study as a selected research method through the analysis of selected materials including journal articles, textbooks, statutes as well as interview method. Findings from this paper indicate that mediation excels in resolving family disputes due to its ability to relieve the emotional distress suffered mainly by the beneficiaries. It is suggested that the administrative bodies primarily, should start to take the initiative in introducing mediation as an effort to improve the process of estate administration in Malaysia.

**Keywords:** Administrative bodies, mediation, estate administration, delay.

### **1.0 Introduction**

Family disputes which cause a delay in the administration of an estate are a serious issue which needs to be resolved promptly.

Continuous delay hinders the beneficiaries from obtaining their share of the inheritance due to the incomplete process in the administration of an estate. According to Fatin Afiqah and Mohamad Tahir (2015), there are around sixty billion ringgit worth of unclaimed assets whereby family disputes has been identified as one of the factors that lead to this problem. Therefore, priority should be given to the settlement of such disputes. Based on an analysis about the administrative bodies in Malaysia, there appears to be no department which specifically deals with issues pertaining to family disputes in the administration of an estate (Akmal Hidayah, 2012). Although certain administrative bodies such as the Estate Distribution Unit are seen as appropriate platforms to address family disputes, the absence of a suitable approach is seen as the lacunae in providing the solution to address issues related to family disputes. This ongoing problem in estate administration requires an appropriate solution, especially one which could address the emotional problems suffered by the parties involved. Mediation is recognised as one of the processes in ADR that practices leniency and a sociable approach in addressing the disputes. Therefore, this paper seeks to examine the application of mediation as a means of dispute resolution in family disputes in the administration of an estate in Malaysia. This paper also studies the current application of mediation in Malaysia, mainly focused on the bodies which adopt mediation as a means of dispute settlement and the areas covered.

## **2.0 Overview of Mediation**

Mediation represents a branch of Alternative Dispute Resolution (ADR) which focuses on achieving a settlement through a lenient approach compared to the traditional process of civil litigation. Mediation is a mode of dispute resolution which has been practised by many countries including Malaysia. In fact, mediation has been practised in Tanah Melayu long before the introduction of the civil court system. During this time, mediation was applied in matrimonial matters such as marriage and divorce among the local inhabitants (Raihanah, 2010). It was traditionally practised among the Malay society, which at that time was under the influence of Islam and the Malay custom. Therefore, it is safe to say that mediation is not something uncommon among the Malays. It has constantly and continuously been practised to date (Hanna, 2013). The application of mediation in Malaysia has evolved, where it has now been recognised as an official mode of settlement. This can be seen through the existence of statutory laws governing mediation

such as Legal Aid Act 1971 and Syariah Court Civil Procedure (Sulh) Federal Territory Rules 2004 which gives emphasis on the practice of mediation in certain areas such as matrimonial matter.

In Malaysia, mediation is governed under the Mediation Act 2012 (hereinafter known as “MA 2012”). However, the provisions under the Mediation Act 2012 are rather limited and focuses on general aspects such as agreement, appointment, and termination of mediators, costs, and others. From a legal perspective, this piece of legislation is considered to be loose and brief due to the lack of in-depth provisions (Mediation Act 2012). Based on another point of view, the lack of specific rulings in the said Act allows for the full utilisation of mediation without any restrictions by the law. This is in line with the flexibility and adaptability of mediation as an alternative dispute resolution whereby the scope and the process of mediation are left to be determined by the parties to the session. This would be best treated as a blessing in disguise, which not only allows mediation to be conducted in a flexible manner but also provides an opportunity for mediation to grow and expand in its application. In the area of administration of an estate, where the practice of mediation is still unfamiliar, this can be positively viewed as mediation can be applied without any serious constraints imposed by the relevant legislation.

The technical definition of mediation can be found in the Oxford Dictionary of Law which defines mediation as:

*A form of alternative dispute resolution in which an independent third party (mediator) assists the parties involved in dispute or negotiation to achieve a mutually acceptable resolution of the points of conflict (Oxford, 2015).*

Another definition can be found under the statutory interpretation of mediation under Section 3 of the Mediation Act 2012, which states:

*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 Act, 2012).*

The two definitions highlight several components of mediation

including the mediator and the mode of resolution under mediation. Both definitions also stress on the primary function of mediation which is to resolve the dispute between the parties.

### **3.0 The Roles of Mediator**

According to Abdul Rani (2014), a mediator confers a role undertaken by a neutral, independent third party in assisting the disputing parties to resolve their disputes. This is one of the distinctive features of mediation where the role of the mediator is regarded as supportive in nature, as opposed to the role of the court judge who decides on a case according to his jurisdictional authority. The mediator is assigned among persons who possess knowledge and skills in two specific areas. The first is the expertise in legal areas as the discussion in a mediation session typically involves law-related matters. Mediators should be able to address the legal and technical issues by answering queries and providing explanations to the parties. The second area is the expertise in psychology, as family disputes typically involve emotional distress, which needs to be addressed using the right approach. In most cases, the course of mediation and the chances of its success depend on how the mediator leads and controls the session. Aspects such as good communication skills as well as the ability to address and correspond to the issues are considered important to gain trust from the disputing parties (Rani, 2014).

In Malaysia, there is a specific legal requirement on the appointment of mediators. Under Section 7 of the Mediation Act 2012, the law requires mediators to possess the relevant qualifications. Experience in mediation is also required either through an actual study or formal training. They are also expected to meet the requirements of the institution in relation to mediators. Since there are several mediation-based institutions in Malaysia, each differs as to their rules and requirements. For example, if a person is a mediator registered and attached to the Malaysian Mediation Centre, he needs to comply with the requirements set by the institution.

### **4.0 Resolution under Mediation**

Resolution under mediation is achieved through the mutual agreement of both parties. This is based on the nature of mediation which requires both parties to play an active role from beginning to end, which is then concluded via an amicable agreement (Nora, 2012). This results in a win-win situation for both parties and avoids the situation of “the

winner takes all” as seen in the litigation process. The settlement in mediation is crafted to satisfy both parties (Asri Salleh, 2007). The ability to shape the settlement in accordance with the needs of the parties clearly signifies the adaptability of mediation as opposed to the strict and binding effects of the court’s judgment(Asri Salleh, 2007).

Apart from its resolution, mediation consists of several distinct features as opposed to litigation and other ADR mechanisms. The first is mediation is flexible in nature. This can be observed in several aspects of the mediation session. For instance, there are no specific procedural rules in mediation, as each session may be different from one another. Though every mediation session inherits common features, these practices are not binding and can be personally shaped by the mediator to accommodate the needs of a particular case (Wall, Stark and Standifer, 2001).

Theoretically, the initiation of a mediation session does not require a specific place. With the exception of the court-annexed mediation, the choice of the venue is left to be determined by the parties; they are free to select an informal location such as restaurants, cafes, or other informal places. This provides a stress-free and tranquil environment, unlike the courtroom, which may have an intimidating effect on the parties, especially those who are unfamiliar with the venue (Radford, 2001).

The final agreement in mediation is not dependent on limited types of remedies such as those available in court. Though the remedies are enforceable by the law and binding in nature, such remedies are limited to what has been provided by the law. The remedies are awarded by the court to the winning side. In mediation, however, the type and nature of solution are not grounded to any specific ruling, as long as the solution is in line with the law. As previously mentioned, the solution is reached upon the mutual agreement of both parties. It means that in mediation, no party will be at the losing end. The flexibility in drafting the solution at the end of the mediation session allows both parties to benefit from the settlement, which will be treated as binding (Mediation Act, 2012).

In terms of procedure, the Mediation Act 2012 does not provide many rulings regarding this. Therefore, no specific procedural rulings are available for mediation, unlike civil litigation where the rulings under the Rules of Court 2012 and Practice Directions must be strictly adhered to. In practice, the mediation procedure is subjected to the wishes of the parties as well as to the style of the mediators who are handling the session. Generally, a mediation session consists of several phases. It includes the introduction session, joint session, private caucuses, and

agreement. These stages are not definitive and are subjected to changes that may be imposed by other mediation institutions (Abdul Rani & Norjihan, 2014).

## **5.0 The Process under Mediation**

A mediation session typically begins with an introduction session by the mediator. During this session, the mediator explains the general concept of mediation. For example, the role of mediators, which is to facilitate rather than to be a judge to the parties, is clarified. Mediators also typically view mediation as being a voluntary process (Chester & Ronald, 1998 and Kwai, 2012). Put differently, the parties are willing to attend the session out of their own accord and wishes, without any compulsion from other parties (Chester & Ronald, 1998). The objective is to make the parties understand what mediation is all about in their capacity as laymen. They need to understand that mediation is a whole different session compared to the court litigation process. However, it retains the same goal, which is to assist the parties to achieve an amicable solution.

The joint session is a phase where each party will deliver their version of the story regarding the problem at hand. The parties will sit together in the session, and each of them will be offered the opportunity to express their views regarding the matter. At this stage, the mediator should take charge of controlling the session to avoid any unwanted arguments between the parties. Through the joint session, the mediator will be able to determine the extent of the problem as well as to evaluate the quality of the relationship between the parties. With this information at hand, the mediator will then be able to implement a suitable approach to address each party in the caucus session (Gary, 1997).

After the joint session ends, the mediator will call upon each party separately. This is known as a caucus session, where the mediator will communicate with each party one at a time. At this stage, the mediator will carefully address the issue and propose the parties a guideline to resolve such issue (Gary, 1997). Options will be given to the parties if any is available, together with an explanation of the implications. The parties will be left to make their own decisions. The solution is arrived at through discussion and agreement by the parties, and not upon the decision made by the mediator. Reaching a settlement is achieved by the active participation of all parties in the mediation session (Kwai, 2012).

## **6.0 Advantages of Mediation**

This section looks at the advantages of mediation and provides justification for its suitability as the means of settlement for disputes in relation to estate administration. Although some features of mediation which are similar to other types of ADR such as negotiation and conciliation, the overall characteristics of mediation, combined with its unique advantages, makes it a suitable form of ADR to handle the nature of circumstances present under such type of dispute. The advantages of mediation can be listed out under four main features, namely privacy and confidentiality, preservation of a relationship, unique solutions, and time efficiency. Despite having other advantages which are unlisted here, the aforementioned features are considered to be the most relevant to be discussed here to justify mediation as the most suitable ADR process to resolve disputes pertaining to the administration of an estate.

### 6.1 Privacy and confidentiality

The first advantage is that privacy and confidentiality are maintained in a mediation session. Any information from the mediation session will be undisclosed and made known to others and will stay only within the knowledge of the parties involved (Haneman, 2011). This way, any form of inquiries and interruptions from third parties including the court, can be avoided. In the Malaysian litigation system, cases being heard at the High Court, the Court of Appeal and the Federal Court will be recorded and documented in the law reports. These reports are categorized as public documents, which is normally being referred to by law students, legal practitioner, and academicians

In contrast, however, there is no documentation of the mediation session due to the confidentiality of information. Although such confidentiality benefits the parties involved, difficulties occur in analysing the effectiveness of mediation in practice as no concrete proof of what takes place in a mediation session can be found in any documentation or records. Any information obtained from the mediation session will be dealt with in strict confidentiality, which cannot be turned into evidence or be used against the maker of the statement in court.

The result and findings from the mediation will not be made open to the public, unlike the court's decision in court cases. The safeguarding of the confidentiality of information benefits the parties in two situations. Firstly, the confidentiality of mediation preserves the reputation and good name of the parties. Any findings which could tarnish the reputation of the parties will be unpublicised while the mediator is duty-bound to treat such confidential information discreetly (Radford, 2000). Secondly, the



confidentiality of mediation encourages the parties to be fully open during the mediation session, without worrying about the information being leaked outside the session. This allows the parties to be entirely honest not only to the mediator but also to themselves in delivering their words and opinions.

## 6.2 Preservation of relationship between the family members

The amiable approach in mediation is by way of prioritizing and preserving the emotional state of the parties, enables the mediation session to be concluded without ruining the relationship between those two parties (Chester, 1998). The joint participation and the mutual decision made by the parties in the session may improve their relationship with each other. Throughout the session, mediation seeks to repair and maintain the good relationship between the parties. What may have begun as a bitter or damaged relationship could be healed through the unique approach of mediation. This is because success in a mediation session depends on how well the parties can cooperate with each other (Haneman, 2011). A mediation session encourages the parties to communicate with each other as part of the process to mend the damaged relationship (Foster & Frances, 2001). Being able to interact in a positive and harmonious environment soothes the emotional wound between the parties, under the right guidance from the mediator.

The bad relationship among the beneficiaries in the administration of an estate is always seen as a cause for a family dispute. The damaged relationship between the beneficiaries usually causes dissatisfaction about another person's portion in the distribution of the deceased's estate. Hence, mediation would benefit the parties in dispute as to the ability to improve the relationship; it could be the key to solving many emotional issues among the feuding parties (Madoff, 2002).

## 6.3 Unique solutions

Another advantage of mediation is the ability of parties to discover unique solutions. The term 'unique' indicates the type of solution which may be different from what is being offered by the court process. Civil litigation offers limited legal solutions which may not accommodate the needs of the disputing parties. The type of legal solutions available is determined by the court upon the application made by the parties, and they are bound by the court's decision (Madoff, 2004). In addition, these solutions, also known as remedies, literally correspond to the legal issues (Madoff, 2004). Another factor to highlight is that the remedies awarded

by the court may not be beneficial to both parties. In the event of claiming for damages, for example, the losing parties will suffer detrimental effect after losing the case and this could further cause severe damage to the relationship between the two parties.

The solution offered under mediation is achieved based on mutual agreement among the beneficiaries (Love, 2001). Parties to the mediation session are allowed to propose their own solution or recommendation according to what may benefit both parties. This enables mediation to bring forth a wide selection of potential solutions, some of which may be unavailable under the litigation process. As the parties amicably accept the proposed solution, there is no dissatisfaction against one another, and there is no concept of a losing party in the mediation (Radford, 2001). Thus, mediation would be suitable to be applied to a family dispute in intestate cases, where arguments may occur due to feelings of dissatisfaction over another party's portion of entitlement over the estate. A specific arrangement on the conduct of mediation can be made in accordance with the wishes of the mediator in the hope of achieving an amicable settlement among the disputing parties, by offering solutions that benefit all.

#### 6.4 Time efficiency

Time efficiency is considered to be an advantage of mediation. Appointment for mediation can quickly and easily be set due to it being less formal (Radford, 2000). Unlike litigation, where the date set for court hearing may take up to several weeks subject to the number of available cases. However, access to mediation is much less complicated as it does not involve strict procedures. Mediation also excels in quicker settlement of cases, taking less time compared to the court process (Radford, 2000). This is due to the involvement of the persons in the session, whereby mediation focuses on the direct communication between the parties (Victoria, 2012). A court hearing, on the other hand, may involve witnesses who are not parties to the case which will be subjected to examination sessions by the court and lawyers. The more witnesses being called for examination, the longer it takes to finish the court hearing.

In addition, the settlement reached in mediation is considered as final. However, court decisions can still be appealed by the losing party. For instance, decisions from the High Court can be appealed to the Court of Appeal and subsequently, to the Federal Court. Cases brought up to the appellate courts may take years to settle. Therefore, if there are

issues that can be settled outside court, mediation should be considered as the preferred method of ADR.

### 6.5 Emotional benefits

Finally, mediation is capable of providing emotional benefits to the disputing parties. Some family disputes in the administration of an estate are associated with emotional disturbance suffered by the beneficiaries (Mary, 2000). Apart from the sorrow of losing the deceased, the sense of grief and anger sometimes fuels a beneficiary to override others and take matters into their own hands without proper consultation with the rest of the family members (Love, 2012).

For instance, a deceased's eldest son applied for letters of representation to become the administrator of the estate, without his siblings' agreement. Such cases have a tendency to turn into a civil suit initiated by dissatisfied family members in the event that problems occur during the administrator's administration of the estate. In addition, cases being brought to the civil court normally involve parties who are emotionally tormented over the estate's issues. At the same time, other emotional issues, such as grief and anger, need to be addressed as well. As the function of the court is limited to only addressing legal issues, the remaining ones who are mostly emotional issues are left unattended. Even if a decision is made by the court, the settlement of such cases did not resolve the emotional issues and the tormented family members. The losing party is forced to succumb to the reality of the case. It is likely that losing the case will further damage the relationship with the members of the winning side, which more or less result in the weakening of the family institution.

Mediation provides an alternative approach by specifically addressing the emotional issues which exist among the feuding parties. In addition to the settlement of the main issue, mediation notices the behavioural norms and the extent of communication between the parties (Gary, 1997). Mediators would be able to identify, highlight and look for a proper solution for issues associated with emotional distress. The element of confidentiality in mediation allows the parties to be more open and honest with their inner state, consequently allowing them to express their genuine feelings while being able to communicate directly with the other parties. Through mediation, the parties are able to express themselves under the supervision of the mediator (Gary, 1997). This enables them to voice out their true feelings, which not only provides a sense of relief but also enables the other party to properly understand

the situation from their perspective.

The settlement is crafted in a manner where the parties need to understand that not only the extent of the issues discussed but also the true reality faced by the other parties. Only by trying to understand one another will mediation have a chance of being successful in achieving an amicable solution. In short, mediation is a suitable mechanism to be applied in addressing emotional issues which cannot be addressed through the litigation process. It is safe to say that mediation cures and provides emotional benefits to the parties.

## **7.0 Implementation of Mediation into the Administrative Bodies in Malaysia**

The implementation of mediation in Malaysia should take into consideration the functions of the Estate Distribution Unit and Amanah Raya Berhad (ARB) as these bodies also handle family disputes within their jurisdiction. Therefore, it would be practical for mediation to be introduced to each administrative body in Malaysia. For this reason, an analysis of the suitability of mediation for each administrative body will be made. The analysis will include identifying the current practice of each administrative body in addressing disputes as well as determining their modes of dispute settlement. Mediation shall be proposed to suit the jurisdiction of each administrative body, either by replacing their current practice or by introducing mediation as a new mechanism for dispute settlement.

When comparing the mode of dispute resolution available to each administrative body, it was discovered that none of these institutions incorporates mediation as part of their dispute settlement mechanism, with the exception of the civil High Court. In fact, the civil High Court, through its court-annexed mediation program, shares the most resemblance with the United States' mediation model. It was found that only cases that fall under the scope of contentious probate proceedings will be subjected to a full hearing by the court. On the other hand, matters of estate administration can be both contentious and non-contentious. Therefore, it is important to determine whether mediation should be applicable to contentious matters or should it also include non-contentious matters as there are possibilities that family disputes exist even in non-contentious matters.

As for the Estate Distribution Unit, it would require a new mediation framework to be constructed to determine a suitable position for its implementation. After studying the procedures for estate

administration under the Estate Distribution Unit, it was concluded that mediation under this administrative body is suitable to be conducted prior to the issuance of an order from the land administrator or letter of administration. Since mediation is considered as a new segment of the practice of the land administrator, the implementation of this form of ADR may involve additional resources in terms of manpower, expertise, and cost. The current practice of the land administrator, which deals directly with the beneficiaries, makes it practical and suitable to include mediation as part of the dispute resolution process. The fee structure needs to be in line with the current practice of the Estate Distribution Unit as a government agency that provides affordable fees for its services.

With regards to ARB, it has a different practice than that of the civil courts or the Estate Distribution Unit in terms of conducting a hearing session. However, in its capacity as a personal representative, ARB frequently communicates with the beneficiaries either through a direct meeting or other means of communication. Since family disputes do occur in estate administration and such disputes could potentially harm the administration, the idea of implementing mediation into the practice of ARB seems feasible to address such disputes. In this matter, mediation can be conducted once a family dispute is identified in any of the following stages.

The first stage takes place prior to the issuance of letters of representation, while the second stage occurs during the execution and the distribution of the asset. Should mediation succeed in resolving disputes among the beneficiaries, ARB will be able to administer the estate smoothly and settle the case within a short period.

#### 7.1 Extension of Court-Annexed Mediation to probate and administration matters

Among the three administrative bodies in Malaysia, the High Court is the only institution with actual experience in handling a mediation. Since its introduction in 2010, court-annexed mediation has been practised as part of the dispute settlement process, aside from the traditional litigation practice (Practice Direction, No.5/2010). The court-annexed mediation was first established at Jalan Duta Court Complex, Kuala Lumpur, assumed under the name of Kuala Lumpur Court Mediation Centre (KLCMC) and is currently being expanded to other states as well.

The introduction of the court-annexed mediation was part of the judiciary's effort in increasing the rate of disposal of cases (Arifin Zakaria, 2010). Mediation is concurrently being used to encourage a solution via

an amicable agreement between the disputing parties. This form of agreement is preferable compared to the unilateral decision under litigation since both parties can actually consent to such agreement. The flexibility in forming agreements and solutions under mediation allows for an amicable settlement between the disputing parties.

Having said that, the current court-annexed mediation does not cover matters concerned with inheritance. The Practice Direction No.4 of 2016 specifies other types of cases such as accidents, defamation, matrimonial and commercials. Any arising legal issues under inheritance, especially issues pertaining to estate administration under the civil High Court can only be resolved through litigation. Disputing parties have no choice but to proceed via the contentious probate proceedings should they wish their case to be settled. Mediation can, therefore, be utilised to address the dispute being brought to the court via the court-annexed mediation.

It should be noted that the application for court-annexed mediation is limited to cases that fall under the category of contentious probate proceedings (Akmal Hidayah, 2012). The non-contentious matter involves a process of applying for letters of representation or for other related orders from the court, which does not involve serious issues to be tried. With the increased number of court cases, contentious probate proceedings alone may not be sufficient to resolve these cases (Akmal Hidayah, 2012).

Despite the arguments of the advantages and disadvantages of court-annexed mediation, it is believed that court-annexed mediation may be considered as an alternative to litigation for the resolution of issues in estate administration. The Practice Direction provides general guidance regarding mediation by the court (Practice Direction 4/2016). Although mediation is available for every hierarchy of the civil courts, the focus will be given to the superior courts, namely the High Court, the Court of Appeal, and the Federal Court. This is because jurisdiction relating to probate and administration matters falls under the hierarchy of the High Court (Practice Direction 4/2016).

## 7.2 Implementation of mediation under Estate Distribution Unit

Similar to the role of the civil High Court, the Estate Distribution Unit plays its part in issuing letters of representation to beneficiaries. In fact, the means of dispute resolution applied by the Estate Distribution Unit resembles the court's practice, which is via the hearing session. The hearing session enables the land administrator to ascertain the facts of

the case as well as to identify any arising dispute among the beneficiaries. However, a dispute among the beneficiaries in relation to the estate administration is not handled by the land administrator. In this matter, the focus is only given to the settlement of the matter, generally through the issuance of distribution order or letters of administration.

Limitations in terms of commitment, time, and manpower impede the Estate Distribution Unit from addressing the dispute that arises during the application, other than the administration application itself. Normally, if the land administrator discovered a dispute among the beneficiaries that impede the hearing or is preventing him/her from issuing a decision, the beneficiaries are advised to discuss and sort out the problem among them. The hearing will have to be adjourned, and the beneficiaries are expected to come to the next hearing session with the problem already solved. Otherwise, the disputes and problems faced by the beneficiaries may persist even after obtaining the orders from the land administrator. Estate administration may be affected as long as the dispute is unsettled. Therefore, mediation should be introduced under this institution to assist the land administrator in addressing the dispute. This way, the dispute can be addressed and solved via proper means. Upon its success, potential problems caused by an unsettled dispute from occurring throughout the entire period of estate administration could be prevented (Personal communication with Officer in Estate distribution Unit, January 2016).

### 7.3 Implementation of mediation under Amanah Raya Berhad

Although the true concept of mediation has never been practised by the ARB, the corporation did integrate the essential elements of mediation in their dispute resolution practice. The elements of discussion, negotiation, and gentle approach are parts of the practice in ARB, in dealing with beneficiaries under estate administration. ARB believes that disputes related to the estate administration are primarily the ones that could adversely affect the process and should not be taken lightly. Thus, such a dispute should be addressed and settled promptly. However, there is no standardisation for the practice of negotiation and discussion for each ARB branch. Such practice is subject to the availability of the staff who are experienced in conducting such meetings. Even so, such experienced officers are unavailable in every branch of the ARB. They share a similar problem with the Estate Distribution Unit, which is the lack of capable manpower in conducting a proper meeting session with the beneficiaries. According to the feedback by the ARB chief of head office

in Kuala Lumpur, an officer from the head office is required to go to the branch from time to time to conduct meetings due to the unavailability of capable officers (Personal communication with ARB officers, January, 2016).

The current mode of dispute resolution by the ARB, which is via discussion, may not always receive the desired result (Personal communication with ARB officers, January, 2016). There are instances where mediation meetings had to be held several times due to failure to reach mutual consent from the beneficiaries. In other cases, even if an agreement over one matter was achieved, an unresolved dispute tends to lead to other issues (Personal communication with ARB officers, January, 2016).

This is often due to the difficult relationship between family members as they may refuse to understand each other's position. Therefore, it is vital to ensure that the relationship between the beneficiaries is kept in good form. Otherwise, something needs to be done to repair the broken relationship.

Reliable methods to improve the relationship among family members can be found within mediation. This is because mediation enables the disputing parties to understand each other's position, including the hardships suffered by each side (Kwai, 2012). This could create an opportunity for them to forgive and repair the severed relationship. Therefore, the implementation of mediation in ARB could enhance the ability to effectively address family disputes and ensure a smooth process in the administration of an estate. For instance, mediation can be used to address the beneficiaries who are arguing among each other. The private caucus in mediation can be utilized by the mediator in identifying the core issues behind an argument.

## **8.0 Conclusion**

The proposal to implement mediation takes into account the current situation within each administrative body, where it is considered as an add-on module to their current practice. The differences in the implementation of mediation are essential to suit the distinct characteristics of each body, which also marks the flexibility of mediation as the suitable mode of dispute resolution. The distinct jurisdictions and procedural characteristics possessed by each administrative body require a proper consideration in implementing mediation. As for the civil High Court, the proposal to include mediation involves the extension of the current court-annexed mediation to inheritance related matters.



The implementation of mediation by the Estate Distribution Unit and ARB should take into account several aspects, including jurisdiction, procedural, and practical applications. These aspects are essential to ensure mediation can be applied without interfering with the status and authority of these administrative bodies, as mediation in this context is considered as an add-on to their current practices. As for the Estate Distribution Unit, the introduction of mediation indicates an additional service to its current practice. Therefore, it should be executed without burdening the land administrators, considering their lack of officers in handling estate administration. With mediation being practised by the Estate Distribution Unit, family members who are going through a family dispute will have a proper channel to address this problem. In exchange, this would enable them to completely understand and appreciate the decision made by the land administrator once their dispute has been resolved.

As in the case of the ARB, the implementation of mediation marks an improvement to its current method of discussion and negotiation. By having officers trained in mediation and have mastered the art of dispute settlement, disputes among family members could be resolved through mediation session or during the meeting process, subject to the situational needs. In the ARB's capacity as the personal representative, achieving mutual agreement among family members will greatly benefit the estate administration process and ensure the case is completed without delay.

Apart from the implementation of mediation by the administrative bodies, mediation could be promoted through will writing. This could be implemented by adding the mediation clause into the will of the testator. Mediation in this context is considered as conditional upon the occurrence of a family dispute, where agreement among family members seems impossible to achieve. Such inclusion indirectly reflects the love and concern of the testator towards his beneficiaries to encourage them to solve any problem as quickly as possible.

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