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Implementation of Mediation in Non-Muslim Family Dispute Resolution in Malaysia

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ABSTRACT

In the litigation arena, among the majority of cases tried in court, mediation is arguably one of the most effective alternative methods in resolving disputes among non-Muslim families in Malaysia. In contrast to the adversarial litigation process, mediation is an informal, flexible, and voluntary alternative dispute resolution method that focuses more on the needs and interests of the parties involved. However, mediation is still rarely utilised by the affected parties due to the lack of a robust framework and procedures that have resulted in mediation failing to achieve its objective as an effective alternative dispute resolution method in the case of non-Muslim family disputes in Malaysia. This study provides an overview of the need for effective frameworks and governance in order for mediation to achieve its potential success rate in resolving non-Muslim family disputes in Malaysia. This study uses a qualitative method that focuses on doctrinal research in parallel with library-based research through the analysis of selected materials, including journals, articles and textbooks. The results of this study are expected to provide an approach in terms of

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improving effective frameworks and administration to maximise the potential of mediation as an alternative method in resolving non-Muslim family disputes in Malaysia.

Keywords: Mediation; Alternative dispute resolution; Non-Muslim; Family dispute; Malaysia

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1. Introduction

Family is a fundamental component in the structure of human society. The close-knit family connection would ideally constitute an integral part of a human's life. As an interesting observation, there is no clear definition of what constitutes a 'family'. A British scholar, Diduck (2011), defines family as 'a manifestation of a close-knit or personal lifestyle based on interdependence and a foundation of affection.' Meanwhile, Siregar (2021) defines family through three main components, namely: (i) husband, wife and children; (ii) all blood relations; and (iii) all individuals living in the same household. Along with the continually shifting social structure, increased literacy and economic freedom among couples today, there are many disputes surfacing among families that have been garnering public attention.

Family disputes are a type of discord that occurs when there are disagreements between family members regarding particular issues, which may lead to a form of disharmony (Maksymova et al., 2021). Family conflicts can result from disagreements over the responsibilities, rights, and liabilities of each family member; they can also be brought on by strained interpersonal relationships among family members, and they can arise over child custody and spousal support in the event of a dissolute marriage. There has also been an exponentially growing number of divorce cases of late, the rise which could significantly be evidenced during COVID-19.

Family, being the pillar of any human society, cannot avoid facing various challenges and conflicts among its members, since family relationships involve close bonds as well as complex human emotions. In the past, parties to family conflicts or disputes had always turned to elders or authorities in the community to negotiate and settle the dispute in order to preserve the family attachment and relationship (Muhammad Saifullah, 2023). However, in line with social changes and the development of the legal system, more and more family disputes, especially those related to the institution of marriage, are now being brought to court for formal resolution. These disputes typically involve issues such as matrimonial property, alimony, maintenance and child custody.

Being a sensitive topic by nature, family dispute matters need a considerable review and definition. According to Spangler and Burgess (2017), disputes are easily resolved, brief disagreements that entail interests that are negotiable. Generally speaking, a family dispute is any disagreement within families or between members living in the same household, whether or not it involves violence. It is plausible to conclude from these definitions of families and disputes—which are consistent with Simpson's (1998) definition that a family

dispute is any disagreement that arises inside a family, whether it be between husbands and wives, parents and children, siblings, or other family members.

This study focuses on family disputes that have the potential to be resolved through mediation methods, particularly those involving issues such as maintenance of children, maintenance of wife, custody of children, alimony and matrimonial property, hence narrowing down to divorce matters in family law. Previous studies (Nair, 2021), Rahmat et al., 2022) in the field of law show that family disputes are usually focused on issues arising from the breakdown of the institution of marriage, particularly in the context of family law.

When disputes among families arise which essentially fail to be resolved internally, parties involved would resort to different methods of family dispute resolution. In Malaysia, family dispute matters are generally tried in courts, where the disputes are openly debated in court causing more agony and agitation between the disputing parties and their families. There have been many instances where family dispute matters tried in courts often pan out in a less-favourable outcome, where they end up disintegrating despite efforts to resuscitate the relationship. The welfare and interests of the child, as well as the psychological aspects of the parties involved in the dispute, are sometimes not fully considered by the court when making a decision. Compared to other sorts of conflicts, family conflicts are distinctive because, in contrast to other types of argument, the disputing parties have a close relationship, are well-known to one another and are familiar with each other's way of communication (Mohd Nasir et al., 2018).

Hence, court litigation in family dispute matters more often than not leads to antagonising the parties involved rather than resolving the issue at hand amicably. Another barrier in resolving family disputes in courts is the unreasonable delay in the court process and the backlog of cases, which makes court litigation in family dispute matters not much of a favoured option.

This study aims to assess the potential implementation of mediation as an alternative method of resolution in non-Muslim family disputes in Malaysia, focusing on divorce issues such as child custody, alimony, and matrimonial property. The study also aims to compare mediation under the Mediation Act 2012 with existing reconciliation mechanisms, as well as suggest improvements to the implementation of mediation in non-Muslim family law in Malaysia.

2. Concept and Scope of Mediation

In the last few decades, there has been a paradigm shift in family law in the United States, Europe, and other developed nations towards informality in dispute resolution, particularly for disputes involving child custody and other family matters such as divorce cases and inheritance disputes (Grande, 2020). According to the ninth Mediation Audit report released by the Centre for Effective Dispute Resolution in 2021, there were 16,500 mediations conducted in England and Wales, a 38% increase from the 12,000 reported in the 2018 report. The overall settlement rate was 93%, an increase from 89% in the 2018 audit. 73% of cases

were settled on the spot, and another 21% were resolved quickly following the mediation because of the progress that was achieved. Alternative resolution mechanisms were introduced in family disputes due to the increase in divorce cases, dissatisfaction with the complicated legal process, as well as the weakness of existing provisions in promoting reconciliation. From the statistics here, it is clear that mediation is the preferred option in some countries, such as the United Kingdom, as an alternative mechanism in resolving family disputes between families and the parties involved.

The scope of mediation in any mediation is to serve as an intermediary channel in a neutral, impartial and fair manner, and not to exercise its power or influence over the disputing parties. This is precisely demonstrated by Sourdin (2020), where the mediator does not make decisions for the disputing parties; Instead, he makes it smoother and gives suggestions to help the disputing parties reach an agreement. Sourdin also thoroughly discussed the essential qualities of a confidential, neutral and skilled mediator, as well as the ability to observe and mediate the session according to the core principles of mediation to ensure a successful resolution for the disputing parties. Sourdin's views also reflect the opinion of Crampton (2022), who states that the mediator is not a decision-maker but only a facilitator who helps the parties to reach a solution, on a voluntary basis. Crampton has clearly stated in his article that the resolution of conflicts through mediation ultimately falls into the hands of the disputing parties, who are expected to find a solution on their own. Mediators are not meant to have the power to modify the situation of the conflict, but they are expected to assist the warring parties in finding ways to resolve their conflicts.

Another point on the role of a mediator in a family dispute mediation is put forward by Brummans et al. (2022) that mediators' interventions must be viewed as conveying or translating what the disputants are thinking and feeling about the circumstance they are in, or as steps to move the mediation process ahead. In turn, mediation work consists of practices such as asking questions, reformulating or summarising what the parties are saying, and thus redefining what is said, as well as creating an externalising conversation.

Notably, it is prudent for the concept of mediation and the duties or responsibilities of the mediator to be spelt out accurately by academicians and, most importantly, the media of communication in order to provide sufficient awareness and information to the general public for mediation to reach public knowledge as a method of resolving family disputes in Malaysia, especially the parties involved and the stakeholders.

The birth of mediation as an alternative dispute resolution method is the result of widespread dissatisfaction with the procedural aspects of the law and the ineffectiveness of laws designed to promote solutions that can benefit all parties involved in the dispute without involving litigation. Family issues are considered complex and should be handled privately and informally. Mediation is an out-of-court method of resolving disputes, acting as one of the alternative mechanisms for resolving conflicts. In recent decades, this subspecies of the broader genus of Alternative Dispute Resolution (ADR) has gained global attention, recording importance in legal practice and academia (Reza, 2017). Examples of contemporary ADR include arbitration, negotiation, conciliation and ombudsmanship. The

Oxford Law Dictionary (2015) defines mediation as "a form of alternative dispute resolution in which an independent third party (the mediator) assists the parties involved in a dispute or negotiation to reach a mutually acceptable resolution of the points of conflict." In the case of *Anita Devi v. Satish Kumar*,[1] mediation is defined as a way to assist and persuade parties to reach a resolution regarding the subject matter of the dispute listed in a suit or proceeding. In contrast to litigation, which is based on judicial and adversarial procedures, mediation is an effective process in dealing with family disputes because of its unique characteristics, which include confidentiality, informality and its flexible process. Mediation uses a neutral third party, a mediator, to assist in guiding the parties involved in the dispute towards a mutually agreeable solution.

In the current situation in Malaysia, nonetheless, mediation is rarely referred to as an alternative method to resolve non-Muslim family disputes due to the lack of an effective framework and governance, which has led to an increasing rate of divorce cases. While it is noteworthy that not all divorces can be avoided by mediation alone, however the lack of efficient early dispute resolution procedures can increase disputes needlessly, extend the proceedings, lessen the likelihood of a peaceful resolution or reconciliation, causing higher divorce rates and more hostile separations from this inadvertently. In contrast to the Syariah system, which has more institutionalised mediation (usually through *sulh*), civil family mediation does not have a uniform, national framework. Before proceeding to court, parties are neither required nor highly urged to follow a clearly defined pathway like mediation.

3. Legal Framework for Mediation in Malaysia

Despite ways to improve the current approach to non-Muslim family dispute issues in Malaysia through mediation, for example with the implementation of the Mediation Act 2012,[2] the main problem faced in its implementation predominantly lies in the practice of mediation which is still rarely utilized by the affected parties (Abd Rahman Shah et al., 2022) due to the lack of an efficacious framework and procedure that has caused mediation to fail to achieve its objective as an effective alternative dispute resolution method in non-Muslim family disputes in Malaysia (Abdul Aziz et al., 2020; Jamaluddin et al., 2023). The Mediation Act, which plays the role of the main Act to monitor the mediation system, lacks efficiency as a framework for drafting the mediation process. The Mediation Act essentially facilitates the achievement of the intended goals of the Act, but there are several key issues that need to be addressed and improved to enhance the potential of the Act. This Act primarily reflects the existing procedural regulations for certain professional mediation institutions in Malaysia. Another notable aspect is the fact that the Mediation Act has a limited scope and application. This can be seen in the situation of court mediation centres where family disputes are often referred, but the Mediation Act itself does not apply, resulting in significant uncertainty and the absence of fixed regulations that should make mediation in family disputes more orderly and practical (Ooi, 2017). The lack of a framework and overall

[1] *Anita Devi v. Satish Kumar* (2020) High Court of Patna, MA No. 81/2014.

[2] Mediation Act 2012 (Act 749).

mediation administration means that the parties involved do not have confidence in the potential of mediation to resolve family matters in Malaysia. (Rahmat & Abdul Hak, 2020).

Family disputes are sensitive in nature and need to be resolved as peacefully as possible without the involvement of litigation, which may lead to a rather aggressive situation. Mediation is an effective method and can achieve its objectives and potential if fully utilised by the parties involved.

4. Conciliation And Mediation In Family Dispute Resolution

In Malaysia, mediation in family disputes is conducted by various mediums. This research focuses on family dispute matters, particularly divorce matters for non-Muslims, to highlight the need for a framework and governance for mediation in non-Muslim family disputes in Malaysia.

4.1 Conciliation under the Law Reform (Marriage and Divorce) Act 1976

As a well-known practice in Malaysia, marriage issues for non-Muslims will be heard by the conciliatory body under the Marriage Tribunal as a prerequisite before the parties resort to divorce as a litigation process in the courts. The definition of the conciliatory body is provided under Section 106 (3) of the Law Reform (Marriage and Divorce) Act, 1976 (LRA). Section 106(1) LRA specifies the appointment of the conciliatory body. According to the provision, only dissolution-related divorce petitions are permitted under Sections 51 and 52 LRA, unless the parties have first sought help from a conciliatory body and received a certification[3] that their efforts to reconcile the parties have failed. Attendance at the National Registry Department's (NRD) Marriage Tribunal is required by Section 106(5)(a) LRA.

The LRA encourages couples to try to reconcile their differences before getting divorced. The Marriage Tribunal can provide couples with the support they need to resolve their problems and save their marriage. The Marriage Tribunal can also help protect the interests of any children involved in the divorce. By attending marriage counselling under the Marriage Tribunal, couples can reach an agreement about child custody, visitation and financial support. This can help ensure that children are not affected by the divorce. In addition, marriage counselling can help reduce the stress and conflict associated with divorce. By resolving their problems through counselling under the Marriage Tribunal, couples can reach a mutually agreed solution in the best interests of everyone involved.

However, there are a number of shortcomings to this Act where the parties may directly apply for a divorce without being referred to the conciliatory body, including in circumstances where the respondent has been summoned to appear before a conciliatory body and has intentionally neglected to do so; if the petitioner claims that he or she has been abandoned by and has no knowledge of the whereabouts of his or her spouse; or if the court determines that there are unusual circumstances that make recourse to a conciliatory body

[3] Law Reform (Marriage and Divorce) Act, 1976 (Act 164), s. 106(5)(b).

'impracticable'.[4] Hence, the requirement for parties with marriage disputes to attend a conciliatory body is not mandatory; rather, parties are said to appear before the Marriage Tribunal as a step toward divorce rather than to achieve reconciliation.

The issue that requires critical scrutiny is where the Marriage Tribunal that functions as a conciliation body, ensures that the parties involved complete this process as a prerequisite for filing for divorce in court. As a conciliation entity, the counselling or reconciliation services or methods provided under the Marriage Tribunal should be voluntary so that the parties involved are more likely to utilise this method as an alternative medium for resolving their family disputes compared to the enforcement methods currently used. It shows that this approach has failed to achieve its goal as an alternative method in helping to resolve family disputes. On the contrary, the conciliation method under the Marriage Tribunal is only considered and used as an enforcement procedure that must be fulfilled by the parties involved, which ultimately not only does not achieve optimal results, but it also deviates from the nature or characteristics of true mediation that should be utilised by the parties involved voluntarily.

Another crucial point to note under the requirement of clause 106(5)(a) LRA is that a conciliatory body to whom a matrimonial dispute has been addressed must resolve it within six months. Although an attempt at reconciliation must be made during this six-month timeframe, the clause allows for adjournment of the procedures as needed. In place of the six-month time limit, the Federation of Women Lawyers (Suruhanjaya DiRaja Mengenai Undang-Undang Perkahwinan dan Perceraian Orang-Orang Bukan Islam, 1973) proposed a three-month term for attempts at reconciliation, stating that the process takes way too long for the parties in dispute to move on.

Notably, the qualifications needed for conciliatory body members are not specified in the LRA, which is the biggest concern regarding its expediency, as it lacks a mediation setting with experienced and well-trained mediators to handle marriage disputes between the parties. It merely states that the Minister or any person to whom the Minister may have delegated his authority in this regard must nominate all members of the conciliatory body. Despite the fact that it is acknowledged that qualified and experienced individuals should be tasked with mediating disagreements between couples facing marital disputes, as the process requires counselling, expertise, patience, and knowledge, in reality, the majority of the members of the conciliatory body lack the required qualifications, training and skill set.

As highlighted earlier, the conciliatory body handled by NRD under the Registration of Marriage and Divorce Division creates a vacuum between the disputing parties' chances of reconciling their relationship and the actual mediation tool which could potentially reduce the possibility of the increasing number of divorce cases in Malaysia; instead, it mostly plays a role as an intermediary for the parties to step forward to end their marriage. Arguably although the Government's intention is to endeavor a reconciliation between the disputing parties by setting up the conciliation body, the effort taken has been misplaced with officers

[4] *C v. A* [1998] 6 Malayan Law Journal 222 (High Court).

of NRD who have very limited or no experience or training in handling such issues are merely being a vehicle for the disputing parties in their marriage to bulldoze through to go on with their intentions of ending their marital relationship through the litigation process.

4.2 Family Mediation by Government

As for the mediation in family dispute matters offered by the Government, only the Legal Aid Bureau (LAB) currently offers mediation services to its clients, which include mediation for family issues for both Muslims and non-Muslims. Part VIA of the Legal Aid (Amendment) Act 2003 and the Legal Aid (Mediation) Regulations 2006 address, among other things, the process and procedure of mediation,[5] the appointment of mediators,[6] the code of ethics for mediators[7] and the issues that can or cannot be mediated. Legal Aid (Amendment of Second and Third Schedules) Order 2022 stipulates the issues that can be mediated under LAB, which include rights and obligations in divorce and custody proceedings, maintenance issues of wife and children, welfare of children and matrimonial assets. This mediation unit, led by a Director of Mediation, has reportedly contributed to the reduction of the case backlog, especially in family dispute matters.

However, it should be noted that mediation by LAB is only provided for those who fulfil the requirement, i.e. people in the lower-income category as provided under the Malaysian Legal Aid Department, hence it is not readily available for the general public, but with the exception of only those who can satisfy the criteria set by LAB. Arguably, although the effort taken by the Government is a noble one, mediation in family dispute matters should be readily available to all walks of life in the community in general, looking at the rate of divorce matters being filed in courts in recent years, which can be minimised with the intervention of mediation as a family dispute resolution method. The Government should look into the current mediation services provided in family dispute matters in LAB and try to leverage the mediation services to the general public through other mediums for maximum outreach and benefit to the general public.

4.3 Malaysian International Mediation Centre (MIMC)

The Malaysian International Mediation Centre (MIMC), formerly known as the Malaysian Mediation Centre (MMC), is an organisation founded on 5th November 1999, under the auspices of the Malaysian Bar Council. Currently, MIMC's goals include promoting mediation as an ADR technique and providing an appropriate outlet for successful dispute resolution. MIMC covers mediation services in matrimonial, civil and commercial matters for parties who voluntarily seek mediation services to resolve their disputes.

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5 Legal Aid (Amendment) Act 2003 (Act A1188), ss. 29A, 29B, 29C, 29D & 29E, Part VIA.

6 Legal Aid (Amendment) Act 2003 (Act A1188), s. 29F, Part VIA.

7 Legal Aid (Mediation) Regulations 2006, P.U. (A) 163/2006, Fourth Schedule.

In this study, where specific reference is made to family dispute matters, in particular divorce matters, it is to be noted that there is no provision requiring the cases to be referred to MIMC. Due to the exclusion of the provision, it is presumed that mediation is directed to the Centre on a voluntary basis in divorce matters. The Centre may accept cases at any stage, including pre-trial, legal processes, and during proceedings. Unless otherwise agreed by the parties, there is no formal set of guidelines to follow in Malaysia for mediation in family dispute matters. When the parties agree to hold the mediation in a specific institution known as a mediation centre, the rules of that mediation centre must be followed. On that ground, MIMC has its own set of rules and regulations to be adhered to not only by its members, i.e. mediators, but also by the parties in dispute who wish to seek its professional services for mediation in family dispute matters.

According to the MIMC Rules, the MIMC will submit the list of mediators on the panel to the disputing parties who have agreed to use its mediation services, and if the parties have not agreed on a mediator on its panel within seven days, the MIMC will designate a person on MIMC's panel to act as the mediator. The MIMC adopts the primary core of mediation, as the mediator's purpose is to assist the parties in reaching an agreement as stated in Rule 12 of the MIMC Mediation Rule. MIMC is also well focused on its own set of rules with the aim of accrediting mediators. MIMC emphasises that its mediators have the required experience, skill set, and training pursuant to its rules and standards to ensure people's confidence and reliability in the mediation services provided by MIMC. Another requirement under the Code of Conduct is for the mediator to remain impartial and neutral. It is a strict obligation for the mediator to follow the specific aspects provided in the Code when conducting the session.

Confidentiality is another salient feature adhered to strictly by MIMC in mediation. Rule 15 of the Mediation Rules provides for the preservation of confidentiality. Rule 16 also states that there will be no stenographic record, transcript, or official record. Neither will the proceedings be recorded on audio-visual media. It is noteworthy to state that MIMC has the most stringent confidentiality policies as compared to other organisations providing mediation services. Any kind of disclosure from the mediation session is strictly prohibited and closely monitored. As mediation of family dispute matters, especially marriage issues, concerns a high level of sensitivity where privacy and confidentiality are highly contributing factors for a more amicable and favourable solution, MIMC is on the right footing to ensure the core elements of mediation, i.e. confidentiality and neutrality, are not compromised in providing mediation services by providing sufficiently accredited, well-skilled and trained mediators under strict and structured rules.

In family dispute matters, particularly divorce cases, it should be considered that there is no provision requiring these cases to be referred to MIMC. Due to the exclusion of that provision, it is assumed that mediation is directed to the MIMC voluntarily in the case of divorce. This has resulted in very few divorce cases being referred to MIMC even though it can accept cases at any stage, including pre-trial, legal process, and during proceedings; and

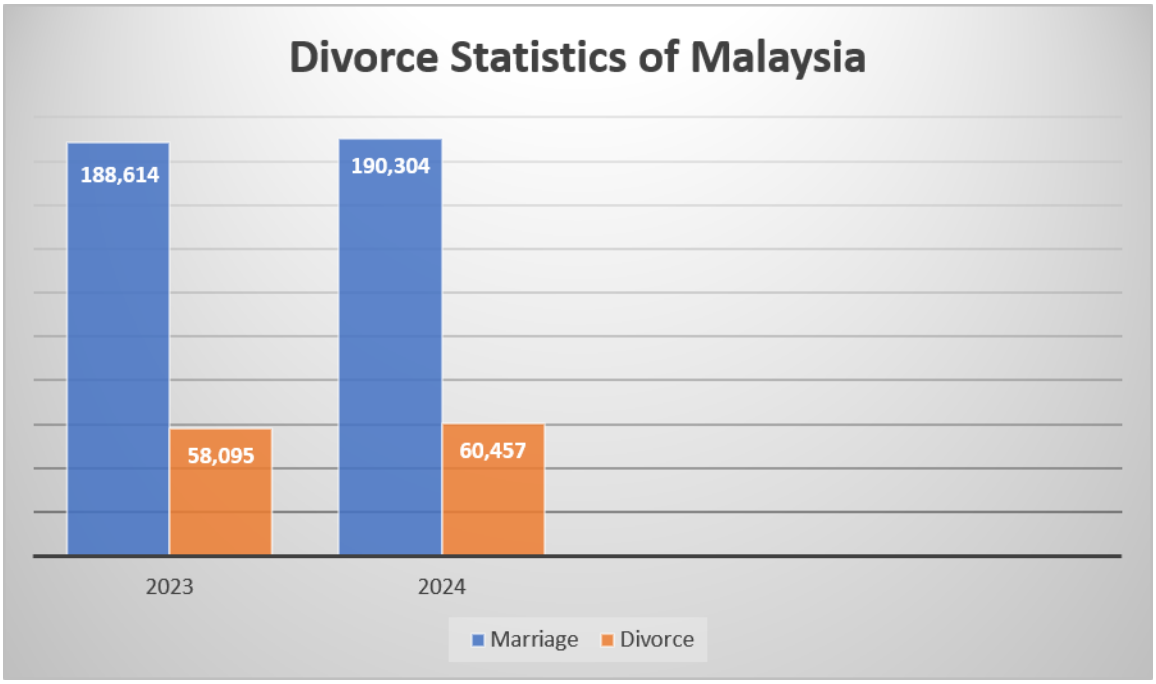
it can be said to be a highly potential medium for resolving non-Muslim family disputes and reducing divorce cases in Malaysia.

Based on the analysis and discussion regarding the types of mediation in family dispute cases currently provided in Malaysia and the need for resolution of family disputes under the Marriage Tribunal as regulated by the Malaysian Government, the general process of each method, as well as its challenges and weaknesses, it shows that the mechanism for resolving non-Muslim family disputes in Malaysia is very limited and the current methods for resolving family disputes, particularly divorce cases in Malaysia, require a more robust and efficient system.

This indicates the need for an effective framework and governance so that mediation can achieve its potential success rate in resolving non-Muslim family disputes in Malaysia. With the current existence of the Mediation Act 2012, but due to its lack of a robust framework, the development and potential of mediation as an alternative mechanism in resolving non-Muslim family disputes in Malaysia have still not achieved their optimal objectives. Through the results of this research, it is hoped that the objectives of mediation can be fully optimised with the proposed framework and administration that can benefit the stakeholders in general.

5. The Potential of Mediation as a Method for Resolving Family Disputes

Malaysia is facing a rather concerning number of divorce cases based on the statistics from the National Registration Department (NRD) for the year 2024, which amounted to 60,457, encompassing approximately 3 percent of the marriages registered in the same year, totaling 190,304 cases. Although the overall number of divorce cases is showing a slight downward trend nationwide compared to the previous year, where in 2023, a total of 58,095 divorce cases were recorded against 188,614 marriage registrations, indicating approximately 32 percent of divorce cases compared to marriage registrations in 2022. According to statistics, the number of non-Muslim divorces in Malaysia increased by 30.4% from 9,419 cases in 2020 to 12,284 cases in 2021. The crude divorce rate (CDR) for non-Muslims increased from 0.8 in 2020 to 1.1 in 2021. The data reflects a worrying trend of increasing divorce cases in Malaysia due to the peak numbers resulting from post-COVID-19 infections.



Source: Marriages, Divorces And Rujuk Statistics of Malaysia 2025 (National Registry Department)

According to the statistics department's census, Malaysia's population is approximately 35.7 million as of November 2024. Based on the breakdown of the population in Malaysia by ethnicity, 70.4 per cent of Malaysians were classified as Bumiputera, 22.4 per cent were ethnic Chinese, and 6.5 per cent were ethnic Indians. It is worth noting that, despite the diversity of races and cultures, mediation has had its grassroots from yesteryears in Malaysia in the form of mediation by the elders and religious establishments, where affected parties in disputes often would turn to these mediums as a dispute resolution forum (Bagshaw, 2015). Back then, the litigation process used to be considered an ignominious decision by the affected parties, who had always opted for a more harmonious and peaceful way of resolving their disputes. Based on the historical culture and tradition of all three major races in Malaysia in general, it is safe to deduce that Malaysians prefer friendly negotiation or consultation in resolving their disputes; hence, there is no doubt that mediation in family dispute matters could effectively work in the Malaysian communities. As Sourdin (2020) pointed out, the decline in litigation today may be ascribed in part to an increase in the use of ADR. As a result, there is little doubt that mediation will be readily accepted if the government adopts the correct approach.

Mediation is the most effective method of resolving family disputes compared to the court system, and it has emerged as a widely accepted approach to resolving marital issues (Mahantesh et al., 2022). This is due to the fact that mediation provides justice or resolution faster than the usual court methods, and compared to the courts, mediation creates a more friendly environment and encourages flexibility through its personal and confidential process. Another unique feature of mediation in family disputes is preserving family

relationships, especially for children who are spared the difficult and traumatic legal divorce process.

Mediation is well favoured for its less confrontational method, offering a secure setting for private and confidential dispute settlement. The rise of mediation as an important tool of Alternative Dispute Resolution (ADR) is owing to its nature, which acknowledges, addresses, and deals with the parties' legitimate and practical issues, which could otherwise be disregarded, in the process of achieving mutually positive outcomes, which also enables parties to maintain their relationships (Sobri, 2021). Mediation has been hailed for its effectiveness in resolving disputes when compared to the traditional approach of litigation or arbitration for several reasons, which include the non-confrontational process of mediation that leads to an amicable solution between the parties, the nature of the mediator who is neutral and helps the parties to communicate more openly to reflect on their issues and solutions and the fact that the mediation process by itself is less expensive.

The potential of mediation as a medium for dispute resolution is highly effective because it emphasises the importance and advantages of mediation as a channel for peaceful resolution between parties in a dispute, which ultimately strengthens relationships with better understanding and mutual respect. With the unique nature of mediation, where privacy plays an important role, the parties can reach a resolution based on mutually agreed terms that are more user-friendly and cost-effective because it is cheaper than the litigation process (Md Shah et al., 2019).

Although this can be concluded as a positive affirmation of the popularity of mediation as an alternative dispute resolution mechanism currently in Malaysia, mediation still fails to attract the attention and awareness of the public as it should. Many parties involved still do not have adequate knowledge about mediation, which causes the majority of them to turn to the traditional system, namely litigation, leading to an increase in divorce cases among non-Muslim families in Malaysia. Although the court strongly supports the mediation system as a mechanism to resolve family dispute matters in order to reduce the number of such cases, the level of public acceptance in utilising or accepting this service is quite concerning. One of the reasons for the ineffective public acceptance of mediation as a mechanism for resolving non-Muslim family disputes in Malaysia is the absence of a mandatory requirement for the use of mediation, as well as the lack of a competent legal framework to administer mediation.

6. Mediation Act 2012 Implementation Issues in Non-Muslim Family Disputes

The mediation statute was approved to promote and raise awareness among the public, as well as to keep pace with global trends (Rahmat et al., 2022). The implementation of the Mediation Act 2012 in the field of mediation aims to introduce and implement a predictable legal framework to address legitimate issues and to promote Malaysia as an effective centre for international dispute resolution.

However, from a legal perspective, this Act is considered loose and concise due to the lack of in-depth provisions. The provisions under the 2012 Mediation Act are somewhat limited and focus on general aspects such as agreements, appointments, and termination of mediators, costs, to name a few (Muhammad et al., 2019). Nevertheless, from another perspective, the lack of specific enforcement in the Act allows the use of mediation in its full capacity without any legal restrictions. This is in line with the flexibility and adaptability of mediation as an alternative dispute resolution mechanism where the scope and process of mediation are left to be determined by the parties in the session. This considerably fulfils the actual purpose of its notion, which not only allows mediation to be conducted in a flexible manner but also provides an opportunity for mediation to evolve in its application.

Although the Mediation Act has been introduced by Parliament with the aim of promoting and supporting mediation as an ADR technique and facilitating the resolution of disputes in a fair, timely, and cost-effective manner, the key provisions of the Act can be enhanced to encourage more use of mediation as a form of ADR. One notable aspect is the fact that although the practice of mediation has been confirmed in Malaysia with the enactment of the Act, there is no mandatory requirement to direct couples in divorce cases to use mediation as a platform to resolve divorce-related issues. By granting parties the right to initiate mediation simultaneously with any civil action, it allows them to pursue various dispute resolution paths concurrently without ensuring that the dispute will be resolved promptly, which undermines the purpose of ADR, particularly mediation in family dispute matters in this context. Mandating mediation in non-Muslim family disputes in Malaysia can be a lengthy process, requiring extensive research and effort from both the Government and the parties involved. However, mandatory mediation under this Act will be the most effective way to resolve family disputes amicably and reduce the divorce rate, which has shown an increasing trend recently in Malaysia.

7. Proposal to Mandate Mediation as a Mechanism for Family Dispute Resolution

Mediation Act 2012 has its limitations and inadequacies, notwithstanding the fact that its introduction is a positive step in the effort to streamline mediation. The Act has been largely perceived as merely a regurgitation of the current procedural guidelines of some professional mediation institutions. Stakeholders who are familiar with the Malaysian mediation framework have primarily long hoped for legislation to regulate the practice of mediation by mediators and the standardisation of competency requirements with minimal qualifications for mediators, whether or not through an accreditation system where an authority is given the power to confer or revoke accreditation. The current Mediation Act is also silent on the requirement of training and accreditation of mediators, which should rightfully be reviewed again and be considered for further analysis and amendment. This in turn has resulted in the development of numerous models of mediation training in Malaysian mediation institutions. It is important to note that mediators play a crucial role in family dispute matters where often although the mediators are not in the decision-making position, nevertheless the parties would look up to him for guidance and direction. With

that in mind, producing a sufficiently certified and accredited, well-trained mediator who possesses satisfactory skills in handling the parties in family dispute matters would instil public confidence and attract the use of mediation as a family dispute resolution method. Further, with the increased use of mediation, there is a greater demand for some type of standardised training, certification, and accreditation, particularly in areas such as family law, which should be important criteria to be considered for review in the Mediation Act by the Government.

The Mediation Act should be revisited by the Parliament to address the effective methods of mandating mediation, particularly in family dispute matters involving marriage issues prior to the matter being filed in court. Since lawyers are the first point of contact for the parties in dispute to file their divorce proceedings, it is incumbent upon the Government to introduce a system for the lawyers to be involved in the family mediation process, as well as for the lawyers to be able to charge a fee for their services, which will inadvertently help lawyers to have a positive attitude and involvement in mediation in family dispute matters.

The Government should also look into setting up an independent government agency or department with qualified, well-skilled and sufficiently trained mediators as a step towards mandating mediation in family dispute matters. In order for the divorce rate to be reduced substantially, the Government should consider abolishing the current counselling sessions under the Marriage Tribunal and establish a competent family mediation system through a government-backed agency such as Lembaga Penduduk dan Pembangunan Keluarga Negara (LPPKN) that can cater to married couples in Malaysia and ensure a more extensive public reach. Notably, officers from LPPKN do sit in for the counselling sessions handled by NRD; hence, it would be more beneficial to have mediation set up under LPPKN, which focuses on family issues as its core principle. It would be highly recommended that the LPPKN officers be provided sufficient training and accreditation in mediation in order to gain public confidence and support in mediation as a family dispute resolution method. Additionally, the Government should also consider the agency not just offering family mediation, but also a variety of services aimed at building family institutions. Counselling and assistance may be provided to assist couples in improving, enhancing, and preserving their relationship. Furthermore, the agency may provide mediation to help parties in disagreement negotiate more effectively and reach an amicable resolution. In doing so, it aims to contribute to the advancement of good practice in resolving family disputes, which will be of interest to policymakers, researchers, trainers, and practitioners in the field of family mediation, as well as a wide range of family law professionals working with families from various backgrounds.

Mandating mediation in non-Muslim family disputes in Malaysia is not only considered a constructive step but also critical at this time because many parties involved in family disputes face bleak situations due to insufficient advice and support, as well as the lack of proper channels to mediate misunderstandings and relationship conflicts that could potentially be resolved with the help and guidance of a trained family mediator.

The key challenge, however, is determining the process to mandate mediation in family law cases in Malaysia. Mandatory mediation should be designed following careful consideration of the program's appropriate structure, method, and outcome in the Malaysian context. The establishment of a mandatory mediation program could start with addressing the structural issues that must underpin the program's framework. Before establishing a program, it is incumbent to consider the underlying government policy, necessary legislation, and procedures, including the need to amend any civil procedure law and provide safeguards for participants, fees and funding, and overall issues affecting mediation in family dispute matters.

8. Conclusion

The divorce rate in Malaysia can be significantly reduced if the mediation process becomes an approach to resolving non-Muslim family disputes, namely the issue of marriage among the affected parties. In the current situation in Malaysia, parties dealing with family disputes fail to utilise mediation as an alternative method to resolve family disputes, especially because they lack awareness of this method (Lim, 2021).

Further, mediation as an alternative mechanism in resolving non-Muslim family disputes in Malaysia is still not fully utilised due to the weak framework and governance. In this regard, in-depth research or studies need to be carried out to improve and resolve current issues and problems according to the latest developments in Malaysia.

For the purpose of perfection, it is important to focus the study from the perspective of the formula or framework system and the governance of mediation to optimise the objectives and potential of the method so that it can benefit the parties involved in a more peaceful and positive manner and can encourage the improvement of the efficiency of handling the increasing number of cases in civil courts. To achieve these objectives, framework models that will have a positive impact and enhance the potential of mediation as an alternative mechanism in resolving non-Muslim family disputes in Malaysia need to be thoroughly investigated as a step towards achieving optimal mediation objectives, as well as proposing constructive recommendations for improving the framework and governance of mediation as an alternative dispute resolution method in non-Muslim family matters in Malaysia.

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Jayanthi A/P Suppiah: Contributed to the conceptualization, methodology, data curation, formal analysis, and writing the original draft, review and editing.

Nadhilah A. Kadir and Nur Khalidah Dahlan: Contributed to the writing, review, editing, and supervision of this study.

Conflict of Interest Declaration

The authors declare that they have no conflict of interest in this study.

Ethics Approval

This study did not involve human or animal subjects or personal data and therefore did not require ethical approval.

AI Usage Declaration

The following artificial intelligence tools have been used to assist in the research or editing of this article, but not to write, partly or wholly, the article:

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References

Abd Rahman Shah, H., Maszuriyati, D., Mohd Ali, N., & Abdul Ghafar, A. (2022). Sulh dan mediasi dalam kerangka undang-undang di Malaysia: Kajian perbandingan. In Yaakob, A., Abdul Ghafar, A. & Mohd Safian, Y.H. (Eds.), *Integrasi ilmu Naqli dan Aqli dalam disiplin Syariah dan undang-undang* (3rd ed., p. 54). USIM.

Abdul Aziz, N., Rahmat, N. E., & Abdullah, R. (2020). Best interest of a child doctrine in divorce cases: Resorting to family mediation practice. *Environment-Behaviour Proceedings Journal*, 5(15), 263–267. https://doi.org/10.21834/ebpj.v5i15.2413

Bagshaw, D. (2015). Mediation in the world today: Opportunities and challenges. *Journal of Mediation & Applied Conflict Analysis*, 2(1), 187–200. https://doi.org/10.33232/jmaca.2.1.5833

Brummans, B., Higham, L., & Cooren, F. (2022). The work of conflict mediation: Actors, vectors, and communicative relationality. *Human Relations*, 75(4), 764–791. https://doi.org/10.1177/0018726721994180

Crampton, A. (2022). "We make new families": Findings from a family court mediation study. *Family Court Review*, 60(3), 391–410. https://doi.org/10.1111/fcre.12663

Diduck, A. (2011). What is family law for? *Current Legal Problems*, 64(1), 287–314. https://doi.org/10.1093/clp/cur010

Grande, M. (2020, September 12). Family mediation v family litigation. Mediate.com. https://mediate.com/family-mediation-vs-family-litigation/

Jamaluddin, S. Z., Mohammad, A. T., & Wong, H. S. (2023). Application of mediation in elderly family issues in Malaysia: Lessons from Canada and Australia. *Kajian Malaysia*, 41(1), 62–84.

Lim, R. W. (2021, July). Understanding mediation in Malaysia: Does it actually work? *Empower Newsletter*, 7, 14–16. https://hlplawyers.com/wp-content/uploads/2021/07/Empower-Newsletter-July-2021.pdf

Mahantesh, G. S., Mamatha, R., & Sunil Kumar, L. (2022). Mediation in matrimonial disputes: A judicial perspective. *Webology*,19(2), 9018–9027.

Maksymova, N. Y., Hrys, A., Maksymov, M. V., Krasilova, Y. M., & Udovenko, J. M. (2021). Causes and criteria of disharmonies in family system functioning. *Linguistics and Culture Review*, 5(S4), 300–310. https://doi.org/10.21744/lingcure.v5nS4.1578

Md Shah, M. A. M., Mahzan, S., Sadikan, S. F. N., & Shahudin, M. H. (2019). Mediation as an alternative solution of resolving conflicts in Malaysia: A whither. *Journal of Global Business and Social Entrepreneurship* (GBSE), 5(16), 81–89.

Mohd Nasir, N. F., Zainol, Z. A., & Suhor, S. (2018). Mediating family disputes involving violence in Malaysia. *International Journal of Asian Social Science*, 8(12), 1120–1129. https://doi.org/10.18488/journal.1.2018.812.1120.1129

Muhammad, A. D. N., Muhamad, H. M. S., Abdul Hakand, N., & Mohd Salim, W. N. (2019). Family disputes in administration of estates: Analysis on mediation as effective dispute resolution mechanism in Malaysia. *Malaysian Journal of Consumer and Family Economics*, 23(S1), 15–32.

Muhammad Saifullah, A. H. (2023). *A practice and approach of mediators under the Shariah jurisdiction in resolving family conflicts in Malaysia* [Master's Thesis, University of Malaya]. ProQuest Dissertations & Theses. https://www.proquest.com/openview/21ff9c134fb14a264ffad9afe386d6fa/1

Nair, H. L. (2021). Mandating mediation in resolving family disputes in the Malaysian civil courts. *Legal Network Series (Article)*, (1), cxviii.

Ooi, S. S. C. (2017). *Mediation and the courts on settlement of disputes: An analysis on legislating courtdirected mediation in Malaysia* [Doctoral dissertation, University of Malaya (Malaysia)]. ProQuest Dissertations & Theses. https://www.proquest.com/openview/68b1df25fdb4f4c2f49d8c4011a06781/1

Rahmat, N. E., & Abdul Hak, N. (2020). Perceptions of the disputing parties towards reconciliation process at the marriage tribunal in Malaysia. *Universiti Teknologi MARA Journal of Legal Studies*, 2(2), 43–60. https://ir.uitm.edu.my/id/eprint/45016

Rahmat, N. E., Mohd Zain, M. I., Saripan, H., Randawar, D. K., & Othman, M. F. (2022). Mediation as an alternative mechanism to resolve family disputes in Malaysia: A comparative analysis with Australia and New Zealand. *Intellectual Discourse*, 30(2). https://doi.org/10.31436/id.v30i2.1818

Rahmat, N. E., Randawar, D. K., Mohd Nor, A., & Hussain, F. (2022). Certification and mediation training for the mediators in Malaysia. *Malaysian Journal of Social Sciences and Humanities*, 7(11). https://doi.org/10.47405/mjssh.v7i11.1945

Reza, S. (2017). The shortcomings of family mediation and restorative justice proceedings. *School of Oriental and African Studies Law Journal*, 4(2), 73–90. https://vlex.co.uk/vid/the-shortcomings-of-family-847575272

Riadi, M. (2021, September 15). Definisi, fungsi dan bentuk keluarga. Kajian Pustaka.com. https://www.kajianpustaka.com/2012/11/definisi-fungsi-dan-bentuk-keluarga.html

Simpson, B. (1998). *Changing families: An ethnographic approach to divorce and separation* (1st ed.). Routledge. https://doi.org/10.4324/9781003136033

Sobri, S. (2021, April 23). The rise of mediation as an alternative dispute resolution tool. *Praktis.* https://www.praktis.com.my/all-articles/the-rise-of-mediation-as-an-alternative-dispute-re/

Sourdin, T. (2020). *Alternative dispute resolution* (6th ed.). Thomson Reuters.

Spangler, B., & Burgess, H. (2017). *Conflicts and disputes: The difference between conflicts & disputes. Beyond Intractability*. https://www.beyondintractability.org/essay/conflicts_disputes

Suruhanjaya DiRaja Mengenai Undang-Undang Perkahwinan dan Perceraian Orang-Orang Bukan Islam (1973). *Report of the Royal Commission on Non-Muslim Marriage and Divorce Laws: The Law Reform (Marriage and Divorce) Bill 1972*. Jabatan Cetak Kerajaan.