



MEDIATING FAMILY DISPUTES INVOLVING VIOLENCE IN MALAYSIA



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ABSTRACT

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Family disputes mean any disputes occurred among the family members. Family disputes normally being resolved by litigation or mediation as other alternatives. Researches depicted that, mediation is the worth consideration to resolve family disputes compared with litigation. Nevertheless, not all types of family disputes are appropriate to be mediated such as divorce with the history of domestic violence. This article is essentially aimed at reviewing on how family disputes are being resolved in Malaysia and how family disputes involving violence being mediate in Malaysia. The methods being adopted are doctrinal research. The finding of this research is to fill in the gap in the literature of the research on mediation in family disputes in Malaysia. Thus, this article concludes by suggesting for improvement of the mediation process and proposed new guidelines to screen for violence in the mediation process in order to resolve family disputes involving violence in Malaysia.

Contribution/ Originality: This study contributes in the existing literature on mediation in family disputes in Malaysia with emphasized on mediation involving violence.

1. INTRODUCTION

Family disputes are unique as compared to other types of disputes. This is due to the closed relationship between the disputing parties whereby the disputing parties are known, who had lived for many years and familiar with how the other will communicate as compared to other types of dispute. Litigation is the normal way of how to resolve family disputes in Malaysia whereby the disputing parties will go to the court seeking for justice according to the prescribed law.

Due to the weaknesses of litigation in the court of law such as backlog of cases, Sambo and Abdulkadir (2012) unacceptable delay in litigation process, and declining delivery of judicial works, Mohamed (2015) as well as the benefits of mediation, family dispute has mediation as an alternative dispute resolution before or after the divorce being commenced in the courts of law to overcome the problems. The benefits of mediation as agreed by the previous researcher such as cheaper, faster, flexible, private setting and confidential compared with litigation enhance the disputing parties to resolve the dispute amicably. By referring to the latest statistics, interview, and observation, previous researchers also prove that mediation is effective in resolving family disputes especially in Muslim family disputes in Malaysia (Hammad, 2014). Nevertheless, in certain circumstances, the family disputes are inappropriate to be mediated such as in the case where there is a history of domestic violence.

It has been reported by Women, Family and Community Development Minister, Datuk Seri Rohani Abdul Karim in a press conference after launching the 90-Day Campaign on Violence against Women in 2015 that Malaysia has 3,343 domestic violence cases and the disputing parties could not reconcile amicably by mediation even though mediation is the best resolution to resolve family dispute (Anon, 2015). Despite many domestic violence cases have been reported, many more hidden domestic violence cases have not been reported in Malaysia. Thus, this research is attempting to analyse the current scenario of how family disputes especially involving domestic violence are being resolved in Malaysia and its relationship with mediation. It is hoped that this research benefits the future researcher to do further research upon this matter as well as the legislator to improve current practice of mediation in family disputes.

2. RESEARCH MATERIAL AND METHODOLOGY

This research adopted doctrinal or library-based research. Primary and secondary sources were collected and analysed from the library. A search of library books, library online databases, Google Scholar was undertaken for research writing from the year of 2007 to 2017 with the keywords of conciliation/mediation in family disputes, domestic violence and mediation involving violence. The search was limited to research writing in English and Bahasa Malaysia. Relevant Acts, Enactments, and Rules also being referred to for the purpose of this research.

Literally, “family” can be divided into three definitions (Gerald and Kathleen, 2018):

- 1) Husband, wife, and children;
- 2) All blood relations;
- 3) All who live in the same household including servants and relatives, with some person or persons directing this economic and social unit.

The case of *Spencer v Spencer*,¹ define “family” as children, wife and children, blood-relatives, or the members of the domestic circle, according to the connection in which the word is used. Meanwhile, some of the previous researcher limiting the scope of the definition of “family” to a group of people who are related each other, especially parents (man and woman) and children (Masson *et al.*, 2008).

Apparently, the term of “family disputes” (Bagshaw, 1995) include any conflict between people who are related in some way, or who are part of a family or have been part of a family in the past. This can include:

- 1) Disputes within families, such as between couples, parents and children, siblings;
- 2) Disputes between families, such as adult siblings and their families, grandparents and their children’s families, blended or step-families, or
- 3) Disputes between separated couples and their families.

However, most of the legal research that been conducted previously referring “family disputes” as family disputes that being recognised by Family Law such as maintenance of children, maintenance of wife, custody of children, alimony and matrimonial property. It means the scope of “family disputes” to be discussed has been narrow into divorce matter in family law. It is supported by Su’aida Safei whereby she concludes that researcher in previous research refers the research to family disputes, mean as “family law disputes” (Su’aida, 2005).

Thus, “family disputes” in this research may be defined as any disputes that being recognised under Family Law as a family disputes, particularly between husband and wife relating to divorce matter (whether before or after divorce) such as whether to divorce or not, maintenance of wife and maintenance of children, domestic violence, custody of children and distribution of matrimonial property.

¹ 11 Paige (N. Y.) 159

2.1. Conventional Way to Resolve Family Disputes

Malaysia as a multi-religion country has two different kinds of family disputes which are Muslim family disputes and non-Muslim family disputes. Adhered to what has been laid down under the Federal Constitution of Malaysia, Syariah Court will resolve any Muslim family disputes and Civil Court will resolve any non-Muslim family disputes.² It means Muslim family disputes and non-Muslim has different jurisdiction in order to resolve family disputes. In Malaysia, Non-Muslim family disputes in the Civil Courts normally being adjudicated in the High Courts of the various states. However, any matters relating to custody, maintenance and adoption can also be heard in the lower courts, including the Sessions and Magistrates' Courts. On the other hand, Muslim's matrimonial cases are dealt with in the Syariah Courts which consists of Syariah Subordinate Court, Syariah High Court, and Syariah Appeal Court.

For non-Muslim family disputes, divorce process should be conducted according to the Law Reform Act (Marriage and Divorce) Act 1976. This Act is governing Non-Muslim family disputes, and made all marriages monogamous and abolished all of the previous customary laws and practices. The spouse may petition for divorce on the ground of irretrievable breakdown of marriage as what has been provided in section 53 of the Law Reform (Marriage and Divorce) Act 1976. Exception for a petition for divorce is matters prescribed under section 51 and section 52 of Law Reform (Marriage and Divorce) Act 1976 which in the case of conversion and joint petition. However, it has to note that, non-Muslim parties only can petition for divorce after two years of marriage and above except in exceptional circumstances or hardship suffered by the petitioner. As a consequence, the court will grant Decree Nisi (Divorce Order) if it is just and reasonable to grant the decree of divorce. On the other hand, the divorce process of Muslim family dispute should be made according to the Syariah Enactment in every state. Divorce on Muslim family disputes should be done in Syariah Court. If the divorce is pronounced out of court, the spouse will be penalised.

Basically, all the Enactments following the legal provision laid down under Islamic Family Law (Federal Territory) Act 1984, with certain states have a different arrangement of contents. Regarding legislation relating to sulh (mediation), for instance, in Selangor are Administration of Islamic Law (State of Selangor) Enactment 1/2003, Syariah Procedure Enactments (State of Selangor) 7/1991 and the Enactments of Syariah Courts Procedure (State of Selangor) No.4 / 2003 (KTMSS01 has not been updated according to 2003 Enactment), Syariah Court Civil Procedure (Sulh) (Selangor) Rules 2001, Islamic Family Law Enactments (State of Selangor) 2/2003 Sulh JKSM Working Manual and Chief Judge of MSS 1/2002 (Code of Ethics of Sulh Officer and Sulh Work Manual MSS), Chief Judge of MSS 9/2002 [Sulh Officer Office (Judge)], JKSM Practice Directive 3/2002 (Use of Sulh), JKSM Practice Directive 7/2002 (Methods of Practice keep and dispose Sulh Officer Records) and JKSM Practice Directive 8/2002 (Sulh Notice Submission Procedure) (Siti, 2008).

In practice, all of the family disputes out of divorces such as maintenance of wife, maintenance of children, custody and matrimonial property may be claimed in the courts of law by appointing a lawyer to represent the case after divorce being commenced. Apart from resolving disputes by litigation, the disputing parties in family disputes may also use mediation or sulh to resolve the dispute in a more amicable way. Mediation may make the disputing parties resolving the dispute faster by avoiding complex procedure and the disputing parties may meet and mediate in a private setting. Research depicted that, mediation give a big help to the courts of law in reducing the backlog of cases and disputing parties love to choose mediation as a medium to resolve the dispute so as to enjoy the benefit of mediation.

² See Second List of the Ninth Schedule of the Malaysian Federal Constitution

2.2. Mediating Family Disputes

Mediation was originally known as conciliation. It has to note that, in some countries like Australia and New Zealand, the term conciliation has been replaced by “family mediation”. There is the perception that mediation is another word for negotiation, but mediation is more than negotiation (Kamala, 2008). It means that mediation is not only a process of resolving the dispute amicably but one neutral third party are being appointed as a mediator to help the disputing parties to negotiate until arriving at a mutual agreement. The general concept of mediation is the disputing parties voluntarily want to resolve the dispute by mediation process. However, Malaysia has mandatory mediation where the provision for resolving the dispute by mediation is already prescribed by the law.

Apparently, mediation has always been the option that been chosen by disputing parties to resolve family disputes despite litigation in Malaysia. Mediation in resolving family disputes normally being done if there is an irretrievable breakdown of a marriage. By virtue of section 47 of the Islamic Family Law (State of Selangor) Enactment 2003, the “religious officer” will be appointed to chair a conciliation committee and facilitate the disputing parties to resolve the marital problems. It complies with section 55(2) of Law Reform (Marriage and Divorce) Act 1976 whereby when there is a possibility of reconciling in divorce mater, the court will refer the case to the mediation process to facilitate the spouse resolving the dispute amicably. A similar process also will be happened in Non-Muslim’s family disputes whereby by virtue of section 106 of Law Reform Act 1976, non-Muslim husband and wife have to refer a matrimonial problem to a conciliatory body appointed before divorce petition to a court. The process is called reconciliation or conciliation. Both of the provision abovementioned providing the medium how to save the marriage and reconcile from being separated. Nevertheless, many criticisms on this reconciliation process where the parties petition for divorce already made their mind and do not want to co-operate to reconcile which resulting divorce at the end of the process.

Further, mediation in the Syariah Court or known as Sulh is being conducted by Majlis Sulh prior to litigation to resolve matters arising out of divorce such as muta’ah (alimony), harta sepencharian (matrimonial property),’iddah maintenance (maintenance of wife), hadhanah (custody of children) and maintenance of children such as what have been provided under section 87 of the Syariah Civil Procedure (Sulh) Selangor Rules 2001. If the settlement achieved during the mediation process, the settlement will be signed in settlement agreement, but if no settlement reach during Mediation session, the cases will be brought before the Syariah Court as currently being practiced in every states in Malaysia. On the other hand, Legal Aid Department, Malaysian Mediation Centre and Court-annexed mediation also offer mediation process for resolving non- Muslim family disputes in divorce matters such as maintenance of spouses, or children, distribution of matrimonial property, claim for alimony and divorce.

Regarding sulh procedure, when Su’aida (2009) differentiate the procedure of sulh in Syariah Courts and mediation in Malaysian Mediation Center, it was found that both procedures are similar with starting by an introduction of the mediation process, followed by mediator’s opening, joint session, caucusing and parties sign a settlement agreement. This sulh procedure is written in Manual Kerja Sulh (Sulh Working Paper). The difference between sulh procedure and mediation in Malaysian Mediation Centre is sulh is part of the court proceedings while the disputing parties must voluntarily want to resolve the disputes by signing mediation agreement indicating their submission to mediation in mediation in Malaysian Mediation Centre or Legal Aid Department. In addition, it is compulsory for the disputing parties in Muslim family disputes to attend the mediation process and failure to attend Majlis Sulh is a contempt of court. Thus, action will be taken against the party concerned ³ while it differs with mediation in Malaysian Mediation Centre and Legal Aid Department whereby there is no provision of contempt of court in the mediation process.

³ Rule 4 of Syariah Civil Procedure (Sulh) Selangor Rules 2001

2.3. Type of Cases in Family Disputes That Can and Cannot Be Mediated

Literally, type of cases in family disputes can be categorized into two categories which are; family disputes that are suitable to be mediated and family disputes that are not suitable to be mediated. It can be seen in the previous family dispute resolution practices, articles, cases, thesis as well as proceedings, that family disputes which are suitable to be resolved amicably by the mediation process such as maintenance of children, custody of children, right of access, distribution of matrimonial property and alimony, whereas domestic violence is vice-versa.

Kamenecka-Usova (2014) suggested that mediation is a worthy process to resolve family disputes since it is more than just a mere dispute resolution, where it devotes considerable attention to non-legal emotional and relationship issues. It is supported by Abdul (2002) when she emphasised that the special nature of the dispute in family disputes which triggering pain, distress, anger, bitterness, hostility and an overwhelming sense of loss, made mediation as a more supportive medium to resolve the dispute since mediation focusing more to problem-solving and private ordering. However, it has to note that, not all types of cases in family disputes are suitable to be mediated.

Based on previous literature (Frank, 1984) family disputes has its own characteristics which make mediation is a suitable medium to resolve the dispute amicably; firstly, family disputes occur in family situations where there are continuing and interdependent relationships. Secondly, in family disputes, the conflicts often involve a complex interplay of emotional and legal complaints. Thirdly, is the fact that marriage breakdown leads to disputes with frequent impacts on some family members who are not legally competent such as children (requires special procedures and protections). Finally, the family itself represents a private ordering system that has the capacity for resolving its own disputes.

Meanwhile, Judy (1982) said that mediation is not likely to be helpful if one parent harbors intense anger at the other parent and uses the child in process, unless the mediation can help the parents to separate their conflict from the dispute over the child and Jessica and Thoennes (1982) has pointed to a number of situations that her research suggests are not suitable for mediation which are cases of continuing and severe financial pressure, cases where there is serious personal pathology, disputes including third parties such as grandparents, lovers or new spouses, and cases that come into the mediation process at too late a stage in the dispute.

Furthermore, Su'aida (2005) in her Master Thesis classified several features of types of cases in family disputes that can be mediated as well as types of cases that cannot be mediated. Sua'aida identified that cases that can be mediated are those cases which are moderate conflict, party commitment, and lawyer commitment, continuing relationship, power equality, party ability and multiple issues, adequate resources, no clear guidelines, privacy accepted and external pressure. Whilst Su'aida listed the cases that are not suitable to be mediated are matters of policy, pure legal questions, ulterior motives, personal danger, fact-finding required and credibility determinations, emotional problems an responsibility avoidance, value differences, court remedy needed and great urgency and power imbalance.

Most of the previous researches agreed that not all types of cases in family disputes are suitable to be mediated especially when there is a personal danger. Jessica and Su'aida Safei highlighted and categorised on the cases that relate to personal danger as one of the criteria of the cases in family disputes that are not appropriate to be mediated. It is supported and agreed by Sherry (2018); Clarke and Davies (1991) and Dafna (2015) mediation are not an appropriate way to resolve the family disputes involving violence. Apparently, the main example of cases in family disputes that are inappropriate to be mediated according to the asserted criteria that being categorised is any cases involving domestic violence.

2.4. Domestic Violence

Domestic violence may break the family relationship. Domestic violence happens when a woman or man regularly hurts his/her spouse physically or verbally such as beats or mentally tortures the other (Anon, 2006).

According to the United States Department of Justice, there are a few types of domestic violence namely physical abuse, sexual abuse, emotional abuse, economic abuse and psychological abuse [Guru et al. \(2015\)](#). Article 1 of the United Nations Declaration on the Elimination of Violence against Women, proclaimed by the United Nations General Assembly in its resolution 48/104 of December 20, 1993, defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. Protection against such violence is guaranteed in Article 3(h) of the Declaration, where it affirms women’s equal right to the enjoyment of a variety of rights, including the right to be free from torture and other cruel, inhuman or degrading treatment.

According to [Woman’s Aid Organisation Report \(2017\)](#) and [Roslina \(2010\)](#) the belief of men are superior and women are subordinate to men leads to gender stereotyping and subsequently to a power imbalance between men and women. This belief still exists in the culture and traditions of the Chinese, Indian and Malay in Malaysia. For example, a husband is acknowledged to have absolute authority over his wife, [Roslina \(2010\)](#) this leads to discrimination in the form of de-valuing the women and her contributions, which eventually escalates into violence, whether physical or psychological. Due to this belief, most of the literature in the previous research showed domestic violence are being seen as a “family matter,” [\(Kumaralingam, 2010\)](#) for instance, the police officers try to conciliate and dissuade the client to take a legal action against the one who commits the violence.

Malaysia ratifies Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1995, whereby in its General Recommendation No. 19 elaborates on the link between discrimination and gender-based violence, and the proactive measures a state must take to address violence against women. Thus, Domestic Violence Act 1994 comes to protect against domestic violence of married women/men and children, de facto wife/husband, former spouses, children below the age of 18, incapacitated adults who live as family members or other adults in order to comply with the ratification. However, it has been urged in [Woman’s Aid Organisation Report](#) that the Domestic Violence Act 1994 and other domestic laws still do not fully comply with CEDAW.

The reason why [Woman’s Aid Organisation Report](#) and also previous researcher contended as abovementioned because the Domestic Violence Act 1994 does not recognize domestic violence to a woman as a crime *per se*. [Mohamad \(2015\)](#) In contrast, it has been urged by the previous researcher [\(Kumaralingam, 2003\)](#) that children in Malaysia have been protected by Child Protection Act 1991 whereby any violence against children are specifically recognised as a crime compared with violence against woman. Domestic Violence Act 1994 attached to Penal Code classifications and processes for offended and criminal ones because criminal laws are federal issues and relevant to all Malaysians, however family laws diverse for Muslim and non-Muslim residents [\(Bahare et al., 2015\)](#).

Thus, all the provisions in the Penal Code relating to offences affecting human body such as criminal assault and force, wrongful restraint and wrongful confinement, kidnapping and abduction, causing hurt and causing grievous hurt, culpable homicide and murder, and the offences of causing miscarriage and offences relating to infanticide, miscarriages and concealment of birth apply to spouses amount to domestic violence. Nevertheless, the majority of domestic violence cases in Malaysia mainly fall under section 323 of the Penal Code for voluntarily causing hurt [\(Kumaralingam, 2003\)](#).

Domestic Violence Act 1994 provides protection to the woman by giving two kinds of orders, the interim protection order and the protection order to restrain the abuser from using domestic violence against the victim. Further, the Law Reform (Marriage and Divorce) Act 1976 also provides protection by providing an injunction against molestation as well as the right to apply for divorce based on the breakdown of marriage due to the unreasonable behaviour of the husband which the wife cannot be reasonably be expected to live with him or it will cause exceptional hardship to the battered wife if the marriage remains intact [\(Roslina, 2010\)](#). Nevertheless, it been critics that the interim protection order to prevent further order cannot be obtained immediately as it might only be sought if there is police investigation being carried out and in the long-term protection order. It has to note that,

this Interim Protection Order or Protection Order will cease to be effective when the investigation session has ended or when the criminal proceeding been commenced to the batterer ([Guidelines for Domestic Violence Cases, 2018](#)).

This Interim Protection Order or Protection Order can be made ex-parte by the victim or the Social Welfare Officer or the lawyer. If the Interim Protection Order been made ex-parte by the Social Welfare Officer, documents needed are letter from Social Welfare Department and power of arrest by police by virtue of section 7 of Domestic Violence Act 1994, police report, a certified letter from the police to a court stating the case in police investigation, medical report, identification card, birth certificate for children (victim) and other related documents. In order to obtain the Interim Protection Order or Protection Order, the victim should be brave to lodge a complaint to the police officer or Social Welfare Officer as provided under section 4 of Domestic Violence Act 1976. Then, police officer or welfare officer will provide shelter and advice to make a police report as well as to do the medical examination. The batterer also may be criminally charged when there is a complaint of domestic violence.

Apart from Domestic Violence Act 1994 provides the protection for the victims, Law Reform (Marriage and Divorce) Act 1976 and Islamic Family Law (Federal Territories) Act 1984 also provide remedies to protect the victim. Law Reform (Marriage and Divorce) Act 1976 provides an injunction against molestation as well as the right to divorce on the ground of unreasonable behaviour of the husband. It has to note that, the application for an injunction against molestation here only can be done after a petition for divorce or any matrimonial proceedings ([Roslina, 2010](#)). On the other hand, Islamic Family Law (Federal Territories) Act 1984 give ways to the wife to apply for a divorce by fasakh, khulu', ta'liq or annulment of marriage and an injunction against molestation as well as the wife also has the right to charge the husband under ill-treatment. Apart from the specific injunctions provided under Islamic Family Law (Federal Territories) Act 1984, Syariah Court Civil Procedure (Federal Territories) Act 1998 also provide a general injunction to restrain the batterer from doing any act which may jeopardise the victim.

2.5. Mediating Family Disputes Involving Violence in Malaysia

There is limited research on mediation in family disputes involving violence in Malaysia. However, many kinds of research regarding mediation in family disputes involving violence in other countries may give a big help to the future researcher.

In practice, mediation in family disputes in Malaysia will not receive any divorce cases with the history of violence and have to be brought to the Civil Court provided that there is a reasonable evidence to proof thereto. Many criticisms on this matter as there is no written legal provision existed in the Act or regulation or guidelines regarding screening process of issues of violence. This is because domestic violence often is hidden and difficult to prove. The victim might be fear to the batterer and anxious about the safety which ultimately not to report the violence to the police. Eventually, the victim agrees to a mediation process which contributes to power imbalance issue in the mediation process. It is similar to Sulh programme in the Syariah court whereby there have no legal provisions for power imbalance and exemptions for issues of violence ([Nor, 2011](#)). [Dafna \(2015\)](#) asserted in her article that normally most of the divorce involving violence cases, the batterers are more successful than the victims, for instance, at securing custody of their children. Unfortunately, when the custody of children is being given to the batterer, the children have more exposed to violence. The reasons why the batterer always wins in this combatant is due to the power imbalance between the batterer and the victim in mediating family disputes as well as the batterer preserving his or her aggressive paradigm. Other than that, during the mediation process, the mediator difficult to adhere to his or her commitment to neutrality. Thus, even the dispute may resolve faster compared with litigation, it may cause injustice to the victim in this case. The mediation process also potentially to be difficult and stressful. On the other hand, some researcher has different perspectives regarding mediating family disputes involving violence. According to the article written by [Rossi et al. \(2017\)](#) many benefits of mediation may apply to

the disputing parties who have a history of violence if mediation being used to resolve the disputes. It is supported by Jessica (1997) that although it is never considered appropriate to mediate violence, mediation supporters contended that sometimes mediation in this kind of situation may use to help a victim communicate safely with the batterer about stopping the violence, help a batterer and a victim explore treatment options, and help a family arrive at visitation arrangements that control the abuser's contact with the victim. Previously, Dale and Elisabeth (2009) conducting research on mediation in marital disputes in Malaysia by analysing a real case study of divorce involving domestic violence in Malaysia. From the case study, it was found that the mediator could not recognised the presence of domestic violence when there is no physical violence appeared on the victim. Unless the mediator is trained to recognised and understand the nature and effects of family violence, the violence may be identified. This case is the example of hidden domestic violence which affects the settlement between the victim and batterer during the mediation process. The researcher emphasised on the importance of the role of mediator to recognise hidden violence when conducting mediation. Further, the researcher differentiates the application of mediation involving violence in Malaysia and Australia. It was found that in Australia, by virtue of the Family Law Reform Act 1995, it has been compulsory for the mediator to screen separately for family violence to ensure the safety of the weaker party. Also, the mediation should only proceed;

- a) if the perpetrator has admitted the responsibility for the violence,
- b) the victim is aware of his/her legal rights and entitlements and is linked to the source of support,
- c) strict guidelines and rules are in place and enforced by two highly experienced trained mediators,
- d) the mediators use shuttle mediation or offer separate interviews,
- e) an advocate or support person is available for victims during the process

It can be seen that Australia use safer mode which is shuttle mediation as well as a screening process and been mediate by a specialist who is following specialist service guidelines when conducting mediation in family disputes which involve violence. Thus, the disputing parties who have a history of violence have more protection during mediation process.

3. CONCLUSION

The general purpose of the emerging of mediation is to resolve the dispute in an amicable way with win-win solution despite win-lose solution especially in family disputes. Nevertheless, not all types of family disputes are suitable to be mediated and need more precautions to ensure the issue of power imbalance and safety in the mediation process will not arise. The current practice of mediation in family disputes in Malaysia will not accept any cases with the history of violence. However, in some circumstances, there might be an existence of hidden domestic violence in the family institution. Therefore, this review of the current practice of resolving family disputes as well as mediating family disputes is beneficial to fill the gap in the current literature of mediation in family disputes in Malaysia and to the future researcher. It is proposed that the mediator in the mediation process should be trained how to tackle the mediation process which involved violence in Malaysia. By referring to the practice of other countries such as Australia in having screening process as well as screening guidelines, it is proposed that the legislator in Malaysia should look into this matter on how to improve the mediation process. Thus, it is suggested that Malaysia will have guidelines on how to resolve the family disputes which have the issue of power imbalance and violence.

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REFERENCES

- Abdul, H.N., 2002. Islamic arbitration (Tahkim) and mediation in resolving family disputes – a comparative study under Malaysian and English Law. PhD Thesis, Glasgow Caledonian University.
- Anon, 2006. The Malaysian Bar: Domestic violence. Available from http://www.malaysianbar.org.my/domestic_violence.html [Accessed 8 January 2018].
- Anon, 2015. 3,343 domestic violence cases reported. Utusan Online. Available from <http://www.utusan.com.my/berita/jenayah/3-343-keganasan-rumah-tangga-dilaporkan-1.141831> [Accessed 8 October 2017].
- Bagshaw, D., 1995. Mediating family disputes in statutory settings. *Australian Social Work*, 48(4): 3-12. DOI <https://doi.org/10.1080/03124079508412495>.
- Bahare, F., R. Shahnaz and J.K. Raziye, 2015. The national policy of Malaysia toward violence against women. *Public Policy and Administration Research* 5(3): 1-4.
- Clarke, G.R. and I.T. Davies, 1991. Adr-argument for and against use of the mediation process particularly in family and neighbourhood disputes. *Queensland University Technology Law Journal*, 7: 81-96. DOI <https://doi.org/10.5204/qutlr.v7i0.343>.
- Dafna, L., 2015. E-mediation in divorce disputes — the reality and the desirable. *Cordozo Journal of Conflict Resolution*, 16(479): 479 – 542.
- Dafna, L., 2015. Til death do us part : Online mediation as an answer to divorce cases involving violence. *North Carolina of Law & Technology*, 16(2): 255 -308.
- Dale, B. and P. Elisabeth, 2009. Mediation in marital disputes in muslim families in Malaysia, in mediation in Asia pacific region transforming conflict and building peace. London, New York: Routledge.
- Frank, S., 1984. Towards a functional analysis of family process. in Eekelaar, J and Katz, SN (Ed), *The resolution of family conflict – comparative legal perspective*. Toronto, Canada: Butterworth & Co.
- Gerald and H. Kathleen, 2018. *People law dictionary*. Publishers Fine Communication.
- Guidelines for Domestic Violence Cases, 2018. Available from http://wao.org.my/file/Garis+Panduan+Pengendalian+Kes+Keganasan+Rumah+Tangga+-+Final_compressed.pdf [Accessed 8 October 2017].
- Guru, D., S.R. Deepak, T.N. Tan and S.L. Lee, 2015. Domestic violence in Malaysia — is there a need to tweak the domestic violence act and the enforcement mechanisms? *Legal Network Series*, 1(77): 1-4.
- Hammad, M.D., 2014. Sulh management: Role, implementation, and its effectiveness by Sulh officer. *International Research Management and Innovation Conference 2014*, Kuala Lumpur. pp: 560 - 570.
- Jessica, P., 1997. Divorce mediation and domestic violence. Available from <https://www.ncjrs.gov/pdffiles1/nij/grants/164658.pdf> [Accessed 30 October 2018].
- Jessica, P. and N. Thoennes, 1982. Divorce mediation: Strengths and weaknesses over time. In H. Davidson, L.Ray and R. Horowitz (Eds), *Alternative Means of Family Dispute Resolution*. Washington D.C: American Bar Association.
- Judy, W., 1982. Developing mediation models for divorcing families with children. *Association of Family and Conciliation Courts Twentieth Annual Conference*, San Fransisco.
- Kamala, P.M.G., 2008. *Family law in Malaysia*. Selangor, Malaysia: Lexis Nexis, Malaysia Law Sdn Bhd. pp: 449.
- Kamenecka-Usova, M., 2014. Mediation for resolving family disputes. *International Conference of Society, Health, Welfare 2014*.
- Kumaralingam, A., 2003. A feminist critique of domestic laws in Singapore and Malaysia. *Asia Research Institute Paper No.6*.
- Kumaralingam, A., 2010. A feminist critique of domestic violence laws in Singapore and Malaysia, *Asia Research Institute; Roslina bt Che Soh @ Yusof, "The Cultural and Legal Perspectives on Wife Battering in Malaysia. The Law Review: 613 – 622.*
- Masson, J.M., R. Bailey-Harris and R.J. Probert, 2008. *Cretney principles of family law*. 8th Edn., London: Sweet & Maxwell.

- Mohamad, H.H., 2015. Is domestic violence a crime? Malaysian bar. Available from http://www.malaysianbar.org.my/general_opinions/comments/is_domestic_violence_a_crime.html [Accessed 14 January 2018].
- Mohamed, A., 2015. Court reform programmes: The Malaysian experience. *Amicus Curiae*, 102: 15-24.
- Nor, F.N., 2011. Mandating mediation in family law conflict in Malaysia: Exploring judges and lawyers' perspectives. 24th Annual International Association of Conflict Management Conference, Istanbul, Turkey. pp: 1-30.
- Roslina, B.C.S.Y., 2010. The cultural and legal perspectives on wife battering in Malaysia. *The Law Review*, 4: 613 – 622.
- Rossi, F.S., A. Holtzworth-Munroe, A.G. Applegate, C.J. Beck, J.M. Adams and D.F. Hale, 2017. Shuttle and online mediation: A review of available research and implications for separating couples reporting intimate partner violence or abuse. *Family Court Review*, 55(3): 390-403. DOI <https://doi.org/10.1111/fcre.12293>.
- Sambo, A.O. and A.B. Abdulkadir, 2012. Legal approach to domestic violence in Malaysia and Nigeria: An expository study of the experience in selected jurisdictions. *Legal Network Series*.
- Sherry, M., 2018. To mediate or not to mediate that is the question: The impact of domestic violence on mediation of family law disputes. Available from http://www.sherrymyerslaw.com/assets/To_Mediate_or_Not_to_Mediate.pdf.
- Siti, N.M.A., 2008. Implementation of Sulh and its applications in the Selangor Syariah judiciary department. *Shariah Law Reports Articles*, 3(1): 1-17.
- Su'aida, S., 2005. Mediation as an alternative mode of resolving family disputes in Malaysia. Master Thesis, University of Malaya.
- Su'aida, S., 2009. Majlis Sulh (Islamic Mediation) in the Selangor Syariah court and Malaysian mediation centre of the bar council: A comparative study. *Malayan Law Journal Articles*, 5(83): 1-13.
- Woman's Aid Organisation Report, 2017. Woman's aid organisation. Available from <http://www.wao.org.my/> [Accessed 12 January 2018].

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