

SULH IN CHILD MAINTENANCE CLAIMS: THE PRACTICE AT THE SHARIA COURT IN SARAWAK, MALAYSIA

*(Pelaksanaan Kaedah Sulh dalam Tuntutan Nafkah Anak di Mahkamah Syariah
di Sarawak, Malaysia)*

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ABSTRACT

Sulh is the resolution of disputes without Court trials in Islam. It has been clearly stated in the statute related to the Sharia Civil Procedure Ordinance 2001 (Sarawak) in Section 99. Sulh has been used in the case of child maintenance claims in the Sarawak Sharia Court. The case will be distributed to the Sulh Council before Court trials. The study objective is to assess the Sulh implementation in the child maintenance claims cases in the Sarawak Sharia Court in Sarawak, Malaysia from 2014 to 2020. The study of child maintenance claims cases at the Sarawak Sharia Lower Court and Sarawak Sharia High Court of the Kuching Division, Sarawak was done from June 2021 to June 2022. Qualitative research methods via documentation were used. Descriptive content analysis was used to analyse the collected data. This study found that the number of Sulh council for child maintenance claim cases from 2014 to 2020 showed an increasing trend with a 100% completion rate.

The success of Sulh depends on the commitment and skills of the Sulh officers during the implementation and involves the understanding and cooperation of the disputing parties. Although various approaches have been taken to resolve child maintenance claims cases, the Sulh method is the most effective option compared to the trial method, whereby the disputing parties can resolve the child claim case harmoniously and quickly. Sulh has changed the scenario of child maintenance claims resolution in Sarawak, whereby the Sulh method has expedited the resolution of these cases. However, the resolution is still subject to Sharia law. Some fine-tuning is still needed to strengthen the existing Sulh implementation and a standard guideline for effective Sulh implementation throughout the Sarawak Sharia Courts would be very beneficial to the Sarawak Sharia Judicial Department.

Keywords: *Sulh*, *Sulh* method, *Sulh* Council, *Sulh* officer, child maintenance claim

ABSTRAK

Sulh ialah penyelesaian pertikaian tanpa perbicaraan Mahkamah dalam Islam. Ia telah dinyatakan dengan jelas dalam statut berkaitan Ordinan Tatacara Mal Syariah 2001 (Sarawak) dalam seksyen 99. Sulh telah digunakan dalam kes tuntutan nafkah anak di Mahkamah Syariah Sarawak. Kes itu akan diagihkan kepada Majlis Sulh sebelum perbicaraan Mahkamah. Objektif kajian adalah untuk menilai pelaksanaan Sulh dalam kes tuntutan nafkah anak di Mahkamah Syariah Sarawak di Sarawak Malaysia antara tahun 2014 dan 2020. Kajian kes tuntutan nafkah anak di Mahkamah Rendah Syariah Sarawak dan Mahkamah Tinggi Syariah Sarawak Bahagian Kuching, Sarawak telah dilakukan dari Jun 2021 hingga Jun 2022. Kaedah penyelidikan kualitatif melalui dokumentasi telah digunakan. Analisis kandungan deskriptif digunakan untuk menganalisis data yang dikumpul. Kajian ini mendapati bilangan majlis Sulh bagi kes tuntutan nafkah kanak-kanak, dari 2014 hingga 2020, menunjukkan trend meningkat dengan kadar penyelesaian 100%. Kejayaan Sulh bergantung kepada komitmen dan kemahiran pegawai Sulh semasa pelaksanaan dan melibatkan persefahaman dan kerjasama pihak yang bertikai. Walaupun pelbagai pendekatan telah diambil untuk menyelesaikan kes tuntutan nafkah kanak-kanak, kaedah Sulh adalah pilihan yang paling berkesan berbanding kaedah perbicaraan, di mana pihak yang bertikai dapat menyelesaikan kes tuntutan anak secara harmoni dan cepat. Sulh telah mengubah senario penyelesaian tuntutan nafkah anak di Sarawak, di mana kaedah Sulh telah mempercepatkan penyelesaian kes-kes ini. Namun begitu, keputusan penyelesaian kes tuntutan nafkah anak melalui kaedah Sulh masih tertakluk kepada undang-undang Syariah yang termaktub. Penambahbaikan masih diperlukan untuk memantapkan pelaksanaan Sulh sedia ada dan garis panduan yang seragam untuk pelaksanaan Sulh yang berkesan di seluruh

Mahkamah Syariah Sarawak akan sangat bermanfaat kepada Jabatan Kehakiman Syariah Sarawak.

Kata kunci: *Sulh, kaedah Sulh, Majlis Sulh, pegawai Sulh, tuntutan nafkah anak*

INTRODUCTION

Islam strongly encourages peace in any type of dispute or conflict that arises among Muslims. It covers any disputes between interested parties regarding certain rights in particular disputes or claims in the Sharia Court. The proposed peace is based on the concepts of willingness and tolerance between the disputing parties. In resolving a dispute, the parties have only two choices. The first is to resolve the case through the litigation process in Court, and the second is through an out-of-Court settlement process. In Islam, dispute resolution without going through litigation procedures is known as Sulh. In principle, there are two definitions of Sulh, which are based on the Islamic perspective and also according to the Islamic law practised at the state level. As per Sarawak, the Sulh process is handled by the Sulh Officer, who is an expert negotiator, to resolve the parties' disputes without going through the time-consuming trials in court. Sulh according to linguistics means "ending a dispute" or "doing good" (al-Bajuri 2001). According to the Sharia term, it is "an agreement that ends a dispute" (al-Khateeb al-Sharbini 1944). Majallah Al-Ahkam Al-Adliyyah, al-Sheikh Nazzam and Qadri Basha explained Sulh as "an agreement that ends a dispute voluntarily and is satisfied" (Raihanah Azahari 2005).

Sulh is a support service provided by the Court to the parties involved in a civil lawsuit case (Arahan 2019). The Sulh process is handled by the Sulh Officer, who is an expert negotiator to resolve the parties' disputes without going through the time-consuming trials in court. The Sarawak Sharia Civil Procedures Ordinance, 2001 stated in Section 99;

"The parties to any proceedings may, at any stage of the proceedings, hold Sulh to settle their dispute in accordance with such rules as may be prescribed or, in the absence of such rules, in accordance with Islamic Law"

The Quranic verse in Surah al-Hujurat indicates the encouragement of Sulh implementation;

"And if two groups of believers fight each other, then make peace between them."

(Surah al-Hujurat, 9)

“If a woman fears indifference or neglect from her husband, there is no blame on either of them if they seek ‘fair’ (Sulh) settlement, which is best.”

(Surah al-Nisa, 128)

There are clear arguments in the al-Quran and hadith for the implementation of Sulh. The Prophet Muhammad (PBUH) also showed his tendency towards peaceful settlement through a hadith narrated by at-Tirmizi, “Reconciliation (Sulh) is permissible between Muslims, except one which makes unlawful (haram) something which is lawful (halal), or makes lawful (halal) something which is unlawful (haram) (Bulugh al-Maram, al-Hafiz Ibn Hajar Al-Asqalani with Brief Notes from the Book Subul-us-Salam written by Muhammad bin Ismail As-Sanani 2002). This hadith shows that voluntary settlement was the choice of the Prophet Muhammad (PBUH) over the trial method. This clearly shows that the practice of consensus like this does not violate Islamic law at all because Islam itself encourages us to practice the practice of negotiation, which is through the practice of Sulh (Rusnadewi Abdul Rashid & Nor Hisyam Ahmad 2013).

The implementation of Sulh in the Sarawak Sharia Court is based on several pieces of laws, including:

- (a) Sarawak Islamic Council Ordinance, 2001 [Chapter 41]
- (b) The Sarawak Sharia Court Ordinance, 2001
 - Chapter 42; Section 10; Subsection 10 (1), 10 (2), 10 (3) (a) and 10 (3) (b)
 - Chapter 44; Section 11; Subsection 11 (1), 11 (2) (a) and 11 (2) (b)
- (c) Section 3, the Sharia Civil Ordinance, 2001
- (d) The Sarawak Draft Rules of Civil Procedure (Sulh), 2013
- (e) The Islamic Family Law Ordinance, 2001 [Chapter 43]
- (f) The Sulh Work Manual of the Malaysian Sharia Justice Department, 2014
- (g) The circular regarding the implementation of the order of the Chief Registrar JKSS-600-20(10)
- (h) The Malaysian Sharia Justice Department Practice Order 3/2002 (Application of Sulh)
- (i) The Malaysian Sharia Justice Department Practice Order 7/2002 (Method 7: To Keep and Dispose of the Records of Sulh Officers)
- (j) The Malaysian Sharia Justice Department Practice Order 8/2002 (Procedure for Submission of Sulh Notices).

Any cases related to Sulh must be registered and handled by the Sulh Council before proceeding to court. If the case could be resolved during the Sulh process, the parties do not have to bring their case to the court for trial. The resolution between the parties shall be signed in agreement and will be enforced as a Court Order. No appeal is allowed after the order is enforced. (Arahan 2010).

The use of Sulh is very suitable because the parties involved can resolve their disputes peacefully and in a calm manner during a Sulh meeting, whereby both parties are in attendance and officially mediated by a Sulh officer. Each resolution will be made into an agreement and recorded before the judge and become a Court order, which takes effect immediately. (Mohamad Zakian Dio 2010). Tan Sri Sheikh Ghazali Abdul Rahman, former Chief Sharia Judge of the Malaysian Sharia Judiciary Department once stated that the implementation of Sulh will currently be streamlined from time to time and will be the 'core business' of Sharia Courts throughout Malaysia in an effort to speed up the resolution of cases in Sharia Courts (Ghazali Abdul Rahman 2006). As such, nowadays, all Sharia Courts in Malaysia have used and implemented the Sulh method to expedite the resolution of cases and as a case-solving method other than the method of a court trial.

With regards to the area of research, viz. child maintenance, according to Islamic law, it refers to the obligation for child maintenance due to the marriage contract between the husband and the wife, in addition to kinship and ownership (Ibnu al-Muqri 2013). The provision of child maintenance is clearly delineated by the Islamic Family Law Ordinance (Sarawak) (2001). The father is fully responsible for child maintenance, as demanded by the Sharia Law. As such, the Sharia Court can order the father to pay child maintenance by pledging any property belonging to him.

The reluctance and negligence of the father in paying child maintenance will harm the child's welfare. The claim for child maintenance, which is to be applied for, must be reasonable and able to meet the needs of the growing child such as food, school or university fees, and medical fees. However, there are limitations in the law, whereas the child maintenance payment only applies until the children reach the age of 18 years old, as stated in Sections 72 and 79 of the Islamic Family Law Ordinance (Sarawak) (2001).

Problem Statement

Child maintenance is a highly publicised topic among the Muslim community. Child maintenance claims cases are among the highest number of cases filed in the Sarawak Sharia Court, Kuching, Sarawak. Delays in their resolution still occur. As a result, the children suffer the effects of paternal neglect due to legalities-associated factors. Thus, a prompt and effective solution to this problem is crucial to ensure the children are protected. Due to the importance of child maintenance to protect the rights of the children and with the hope to enhance and expedite the child maintenance claims process, the researcher aims to study the implementation of Sulh for child maintenance claims cases at the Sarawak Sharia Court in Sarawak, Malaysia.

Objective

The research objective is to assess the Sulh implementation in the child maintenance claims cases in the Sarawak Sharia Court in Sarawak, Malaysia from 2014 to 2020.

Significance of the study

This study aims to create awareness about the implementation of Sulh in child maintenance applications in the state of Sarawak. It could also assist in expediting the resolution of the child maintenance cases at the Sharia Courts in Sarawak. It can help to rectify the Muslim community's misconception of the presence of deliberate delay in resolving child maintenance claims and can minimise the ever-rising number of pending cases in Malaysia, especially in Sarawak. The effectiveness of the implementation of Sulh in the Sarawak Sharia Court will be demonstrated through the assessment of the percentage of cases successfully resolved. A study of the implementation of Sulh in the resolution of child maintenance claims in the Sarawak Sharia Court, Kuching Division in Sarawak will assist the Sarawak Sharia Judiciary Department in formulating a better action plan and the appropriate strategies towards an enhanced Sulh implementation in the child maintenance cases.

METHODOLOGY

Research design

This was a qualitative study that employed a qualitative research method, where data was collected through document analysis. This research methodology is the most appropriate method to conduct research and determine effective procedures to answer the research problems that have been identified. In order to carry out this study effectively, the methodology that was devised involved a qualitative study design because according to Crawford & Irving (2009), qualitative methods are suitable for exploratory studies. Since this study was concerned with the implementation of Sulh, qualitative research was used to analyse the implementation of the Sulh method in the Sharia Courts of the Kuching Division in Sarawak. In accordance with an exploratory study, the case study was chosen as the research design while interviews and document analyses were used as research methods (Neuman 2010; Ahmad Naqiyuddin 2008). In line with the research that has not been studied much in terms of theory and practice, this study found that the approach, techniques, methods, issues, and case studies by earlier researchers of Sulh are still relevant and served as a guide and reference. As a guide for writing, a reference to Raihanah (2005), who touched upon the Sulh method in Islamic Law and its

connection with Sharia Court issues was made. Siti Noraini Mohd Ali & Zulkifli Hasan (2006) were also cited, whereby the implementation of Sulh and its effectiveness in the Selangor Sharia Court were reviewed. These references from past studies were done, for example, Arnold's study in 2007, which still used Porat's list of information policy issues even though the list was presented in 1977. A study by Sturges (2009) also referred to a study by Baark in 1985. Thus, in this study, some past studies in Malaysia related to Sulh concepts were still used as a reference and guide.

Research location

The Sharia Lower Court and the Sharia High Court of the Kuching Division, Sarawak were chosen as the locations for the study. The Kuching Division was chosen because of the highest density of the Sarawakian population there. The total population for the year 2020 in Sarawak was 2,907,500, with the Kuching Division population at 812,900 (Department of Statistics Malaysia (2020)). This option was also made after considering the statistics calculated by the Sarawak Malay Cultural Foundation (Yayasan Budaya Melayu Sarawak), in which the Malay Muslim population in Sarawak was 568,133 (Yayasan Budaya Melayu Sarawak 2010).

Data collection & data analysis

For the purpose of this study, child maintenance claims cases which have been registered during the period of 2014 to 2022 were collected and analysed. Data collection was done from June 2021 to June 2022. The focus was on the number of child maintenance claims cases undergoing Sulh from 2014 to 2020. Data regarding the cases of child maintenance claims was obtained from the Shariah Court of Sarawak. This helped to study the effectiveness of the Sulh method in the child maintenance claims implemented in the Sarawak Sharia Court between the years 2014 and 2020. A total of 188 child maintenance claims case files were examined at the Sharia Courts of Sarawak, namely the Sharia High Courts and the Lower Sharia Courts in Kuching, Sarawak. The data was analysed via document analysis.

RESULTS

The results of the document analysis are presented in the tables below.

TABLE 1 The number of child maintenance claims cases managed by the Sharia Lower Court, Kuching, Sarawak from 2014 to 2020

Year	Number of child maintenance cases	Case resolution status					
		Successful resolution via the Sulh method		Unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court		Directly referred to trial in the Sharia Court as requested by the parties involved	
		N	%	N	%	N	%
2014	11	4	36.36	2	18.18	5	45.45
2015	11	4	36.36	3	27.27	4	36.36
2016	19	15	78.95	3	15.79	1	5.26
2017	15	4	26.67	3	20.00	8	53.33
2018	16	13	81.25	2	12.50	1	6.25
2019	15	5	33.33	3	20.00	7	46.67
2020	17	7	41.18	4	23.53	6	35.29

Source: Child Support Case Code 024 Registered in E-Sharia 2014-2020 (Unpublished)

Table 1 shows the number of cases and the percentage according to the status of case resolution through the *Sulh* method for child maintenance claims under the Sarawak Syariah Lower Court according to the status of case resolution for the period 2014-2020. The highest number of cases (19) with successful resolutions via the *Sulh* method occurred in 2016. The years 2014 and 2015 showed the least number of cases with successful resolutions via the *Sulh* method, i.e. only 11 cases. The highest number of cases, with unsuccessful resolution via the *Sulh* method and referred to trial in the Sharia Court, occurred in 2020, recording 4 cases; while 2014 and 2018 showed the lowest number of cases, with unsuccessful resolution via the *Sulh* method and referred to trial in the Sharia Court, i.e. 2 cases. The year 2017 showed the highest number of cases (8), which were directly referred to trial in the Sharia Court as requested by the parties involved, but the years 2016 and 2018 showed the fewest cases, which were directly referred to trial in the Sharia Court as requested by the parties involved, i.e. 1 case. Only the years 2016 and 2018 showed that the number of cases implemented under the *Sulh* method, which managed to reach a consensus between the parties involved, was more than 50% compared to the other years within the study period. In all the years recorded, less than 30% of the cases had unsuccessful resolutions via the *Sulh* method and were referred to trial in the Sharia Court. Less than 50% of the number of cases under *Sulh* were directly referred to trial in the Sharia Court as requested by the parties involved every year, except for 2017 (more than 50%).

TABLE 2 The number of child maintenance claims cases managed by the Sharia High Court, Kuching, Sarawak from 2014 to 2020

Year	Number of child maintenance cases	Case resolution status					
		Successful resolution via the Sulh method		Unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court		Directly referred to trial in the Sharia Court as requested by the parties involved	
		N	%	N	%	N	%
2014	1	0	0.00	0	0.00	1	100.00
2015	16	3	18.75	7	43.75	6	37.50
2016	7	4	57.14	2	28.57	1	14.29
2017	42	9	21.43	11	26.19	22	52.38
2018	17	2	11.76	2	11.76	13	76.47
2019	13	3	23.08	3	23.08	7	53.85
2020	23	10	43.48	7	30.43	6	26.09

Source: Child Support Case Code 024 Registered in E-Sharia 2014-2020 (Unpublished)

Table 2 shows the number of cases and the percentage according to the status of case resolution through the Sulh method for child maintenance claims under the Sarawak Syariah High Court for the period 2014-2020. The highest number of cases with successful resolutions via the Sulh method occurred in 2020. There were no cases with successful resolutions via the Sulh method in 2014, while 2018 showed the lowest number of cases with successful resolutions via the Sulh method (2 cases). The highest number of cases with unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court occurred in 2017 (11 cases), while the years 2016 and 2018 showed the lowest number of cases with unsuccessful resolutions via the Sulh method and referred to trial in the Sharia Court (2 cases), but no cases with unsuccessful resolutions via the Sulh method and referred to trial in the Sharia Court were recorded in 2014. The year 2017 showed the highest number of cases that were directly referred to trial in the Sharia Court as requested by the parties involved (22 cases), but the years 2014 and 2016 showed the fewest cases (1 case). All years within the study period showed that less than 25% of the cases implemented under the Sulh method managed to reach an agreement between the parties involved in all years, except 2016 and 2020, which recorded between 40 and 60% of cases with successful resolutions via the Sulh method, and 2014 because there were no cases with successful resolutions via the Sulh method. All the years recorded less than 45% of cases, with unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court except 2014, whereby no cases with unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court

were noted. More than 50% of the number of cases under Sulh were directly referred to trial in the Sharia Court as requested by the parties involved every year except for the years 2015, 2016 and 2020.

DISCUSSION

The Sulh method is one of the most effective alternatives for the Muslim community to obtain prompt resolution for child maintenance claims. The study on the implementation of the Sulh method in child maintenance cases shows an increasing preference towards the Sulh method as the method to resolve child maintenance claims at the Sharia Courts in Sarawak, Malaysia.

For the child maintenance cases in the Sharia Lower Court, only the years 2016 and 2018 showed that the percentage of cases implemented under the Sulh method, which managed to reach a consensus between the parties involved, was more than 50% compared to the other years within the study period. This is because the Sulh method is beginning to be accepted and receiving a better understanding by the disputing parties about the merits and impacts of the Sulh method in the resolution of their cases. Sulh not only saves time but also gives space to disputing parties to discuss openly and can resolve cases quickly.

All the years studied recorded that less than 30% of the total cases had unsuccessful resolutions via the Sulh method and were referred to trial in the Sharia Court. This situation happened because the parties did not reach an agreement during the Sulh ceremony. If the parties do not reach any agreement with the terms and conditions of the discussion, then the conciliation is considered a failure and the parties will be referred to the court for trial (Draft Rules of Procedure of Mal Sulh (Sarawak) 2013).

Less than 50% of the total cases under Sulh were directly referred to trial in the Sharia Court as requested by the parties involved every year, except for 2017 (more than 50%). This was due to one or both of the parties involved failing to attend the Reconciliation ceremony even though the Reconciliation Notice had been sent. The disputing parties also withdrew from the Sulh council on the grounds that there was no negotiation to be discussed and they wanted to continue directly to trial.

All years within the study period show that less than 25% of the cases implemented under the Sulh method managed to reach an agreement between the parties involved in all years, except 2016 and 2020, which recorded between 40 and 60% of cases with successful resolutions via the Sulh method and 2014 because

there were no cases with successful resolutions via the Sulh method. All the years recorded less than 45% of cases with unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court except 2014, whereby no cases with unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court were noted. More than 50% of the number of cases under Sulh were directly referred to trial in the Sharia Court as requested by the parties involved every year except for the years 2015, 2016 and 2020.

For the Sharia Lower Court, the highest number of cases with successful resolutions via the Sulh method occurred in 2016 because the disputing parties understood and agreed to use the method since there are many benefits obtained from using the Sulh method.

The years 2014 and 2015 showed the least number of cases with successful resolutions via the Sulh method, i.e. only 11 cases. The Sulh method was still newly introduced and implemented in the Sarawak Sharia Court in 2014. The infrastructure for the Sulh ceremony was not yet sufficient and the method has been implemented in stages, whereby it was only implemented in the Sharia Court of the Kuching division before being expanded to other divisions. The year 2015 was also the year of introduction to the Sulh method in the Sarawak Sharia Court and the registration of Sulh cases was relatively slow (Interview with the Chief Registrar of the Sarawak Syariah Judicial Department, 2023)

The highest number of cases in the Sharia High Court with successful resolutions via the Sulh method occurred in 2020. This is because the Sulh officers already have better skills and experience with increased competence and are well-trained in handling Sulh cases.

There were no cases with successful resolutions via the Sulh method in 2014, while 2018 showed the lowest number of cases with successful resolutions via the Sulh method (2 cases). The year 2014 was when the Sulh method was still newly used and the first case was registered in the Sharia High Court. It was found that the parties involved were not present and the case was further referred to trial because the disputing parties were not interested in the implementation of the conciliation method. On the other hand, the year 2018 showed that the parties lacked confidence in the Sulh method and did not want to negotiate in a peaceful way even though the evidence and advantages of the Sulh method had been made known. The parties were also found to be absent resulting in their cases being subsequently referred to several hearings.

The factors that may affect the success of the implementation of Sulh are due to internal factors within both parties. The parties involved must be eager to settle claims outside of court. They must also be willing to negotiate. Both parties must be ready to discuss sincerely and openly rather than emotionally or being spiteful, as well as both parties are aware of the implications and continue with a trial if necessary.

The highest number of cases with unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court occurred in 2020, recording 4 cases. Acceptance of the Sulh method is getting better and disputing parties can accept the method as an alternative solution. The Sulh officers are also very competent and have been trained to become certified officers in mediation, which has influenced the number of child support claim resolutions via the Sulh method. This led to a significant lessening of unsuccessful cases which were referred to trial in the Sharia Court.

The years 2014 and 2018 showed the lowest number of cases, with unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court, i.e. 2 cases. As mentioned before, 2014 was the year of introduction to the implementation of the Sulh method and was only enforced in the Sharia Lower Court and the Sharia High Court in Kuching Division. Acceptance of the Sulh method is quite good and found to be acceptable by the disputing parties. The minimal number of cases that were not successfully resolved by the Sulh method is due to the less likelihood of no agreement being reached between the disputing parties.

The highest number of cases with unsuccessful resolution via the Sulh method and referred to trial in the Sharia Court occurred in 2017 (11 cases). On the other hand, the years 2016 and 2018 showed the lowest number of cases with unsuccessful resolutions via the Sulh method and referred to trial in the Sharia Court (2 cases). This was due to the absence of most of the parties in the Sulh meeting, despite the Sulh meeting notice having been sent to the disputing parties.

However, no cases with unsuccessful resolutions via the Sulh method and referred to trial in the Sharia Court were recorded in 2014. There was only one case registered in 2014 and it was subsequently directly referred to the trial method because the parties involved were absent during the Sulh meeting.

The possible contributing factors for the failure of Sulh in child maintenance claims cases are one of the parties or both parties being too emotional or for reasons of being vengeful, having no capacity to make any decisions, having no real commitment to resolve disputes, having no proper preparation, having difficulty in making decisions and intolerance occurring between the parties involved. Sarawak's

vast geographical factor could also be the reason for the failure of the Sulh because of difficulty in logistics, resulting in the parties' failure to attend the Sulh council as per the appointment set.

The data for the Sharia Lower Court showed that the year 2017 had the highest number of cases (8), which were directly referred to trial in the Sharia Court as requested by the parties involved. This showed the autonomy of disputing parties, where they can decide to withdraw from the Sulh meetings or not attend the Sulh meetings without a reasonable reason.

Meanwhile, the years 2016 and 2018 showed the fewest cases, which were directly referred to trial in the Sharia Court as requested by the parties involved, i.e. one (1) case. This is due to the disputing parties accepting the Sulh method well. They also acknowledged that the Sulh method is an alternative to the trial method, which takes up more time and is slow to be resolved, compared to the Sulh method. It is quick and easy to implement, especially if both parties reach an agreement to be finalized in the mediation agreement.

A similar trend is shown for the Sharia High Court. The year 2017 showed the highest number of cases, which were directly referred to trial in the Sharia Court as requested by the parties involved. The trial method takes a long time and it is slow to achieve resolution. On the other hand, the Sulh method is quick and easy to implement, especially if both parties compromise and have a mutual agreement during the Sulh meeting. Thus, the disputing parties are more likely to prefer the Sulh method over the trial method.

However, the years 2014 and 2016 showed a single case each, with direct referral to trial in the Sharia Court as requested by the parties involved (1 case). As explained before, the number of Sulh case registrations in the settlement of child support claims is the least because 2014 was the first year that the Sulh method was implemented in the Sarawak Sharia High Court, while in 2016, all child maintenance claims cases were sent for resolution via the Sulh method, according to the number of cases registered in the e-Sharia system.

CONCLUSION

The researchers highly recommend, based on the findings of the study, four main emphases to strengthen the implementation of Sulh in the case of child maintenance claims at the Sarawak Sharia Court, Kuching Division in Sarawak, Malaysia. Firstly, a pre-Sulh preparation session may motivate disputing parties to be more willing to find a solution, be open-minded, and have the nature of contentment. Both parties

must be ready to give and take and willing to negotiate sincerely and openly, instead of emotionally or on a vendetta. Accredited competency is also crucial. The Sulh officers in charge need to be accredited and undergo expert training. These can be obtained through having training and partnerships with the Mediation Center (Malaysian Bar Council) and ACCORD Group (Australia). The knowledge and skills acquired can enhance the ability of the Sulh Officer to handle the Sulh session. An awareness campaign regarding Sulh should be done as some members of the community may even be doubtful, hesitant or refuse to use Sulh. An interactive pro-Sulh campaign should be done to encourage public advocacy regarding Sulh. The Sulh services can be promoted via social media, town hall sessions, seminars, or webinars to help the public understand the concept of Sulh. Finally, the online Sulh Council can overcome the logistic issues due to geography or restrictions resulting from pandemics, such as COVID-19.

REFERENCES

- Abdul Karim Mohd Nuli. (Januari 5, 2021). Pelaksanaan Kaedah Sulh di Mahkamah Sharia Sarawak (Awang Indra Awang Mostapha, Penemuduga) [Komunikasi Persendirian]. Ketua Pendaftar, Jabatan Kehakiman Syariah Sarawak.
- Arahan Amalan. Kompilasi Tahun. (2001-2019), Jabatan Kehakiman Syariah Sarawak.
- al-Bajuri, I. 1999. Hashiyah Bajuri Al-Haramian, 1. Beirut: Dar Ihya Turath al Arabi.
- Crawford & Irving. 2009. Information literacy in the workplace: A qualitative exploratory study Retrieved from <https://journals.sagepub.com/doi/10.1177/0961000608099897>[21 November 2022].
- Department of Statistics Malaysia. Retrieved from https://www.dosm.gov.my/v1/uploads/files/6_NewsletterNewsletter%202020/DOSM_DOSM.SARAWAK_1.2020_Siri-87.pdf.
- Ghazali Abdul Rahman. 2006. Penyelesaian Kes-kes Kekeluargaan Melalui Manual Kerja Sulh. In A. M. Yaacob & S. S. Md Supi (Eds.), Manual Undang-Undang Keluarga Islam. Institut Kemahiran Islam Malaysia.
- Ibnu al-Muqri, Ismail Bin Abu Bakr Bin Abdullah al-Muqri. 2013. Rawdh al-Thalib wa Nihayah Mathlab al-Raghib.

- Islamic Family Law Ordinance, 2001 (Sarawak) and Sharia Civil Procedure Ordinance, 2001 (Sarawak).
- Jabatan Kehakiman Sharia Sarawak. Retrieved from <https://syariah.sarawak.gov.my/page-0-335-53-MENGENAI-KAMI.html>.
- Mohamad Zakian Dio. 2010. Prinsip-prinsip Asas dalam Mediasi Keluarga. Muzakarah Pegawai-pegawai Sulh Seluruh Malaysia (Kali Ketiga).
- Raihanah Azahari. 2005. Sulh dalam Perundangan Islam. Kertas Kerja Seminar Isu-isu Mahkamah Sharia VII. Anjuran Universiti Islam Antarabangsa Malaysia.
- Rusnadewi Abdul Rashid & Nor Hisyam Ahmad. 2013. Pengurusan harta melalui hibah: Kepentingan dan manfaat dari pelbagai aspek untuk kemajuan ummah. *Jurnal Hadhari* 5(1): 91–104.
- al-Sharbini, Shams al-Din Muḥammad Ibn Muḥammad al-Khaṭīb. 1944. *Mughni al-Muḥtāj ila Ma‘rifati Ma‘ani Alfaz al-Minhaj*, vol. 2. Bayrut: Dar Iḥya’ al-Turath.
- Salleh Buang. 2002. Kertas Kerja Kursus Mediasi Mahkamah Sharia Selangor.
- Siti Noraini Mohd Ali & Zulkifli Hasan. 2006. Pelaksanaan Sulh dan keberkesannya di Mahkamah Sharia Selangor. Sulh Produk Baru Mahkamah Syariah, *Berita Harian*, 17 September 2002.