

# THE IMPLEMENTATION OF *SULH* AT THE SYARIAH COURT NEGERI SEMBILAN: CHALLENGES AND RECOMMENDATIONS

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## Abstract

*Among the main factors that led to the complaints are delays and length of time in resolving dispute at the Syariah court (W.A Wan Adnan & A.H Buang, 2021). Due to these challenges in litigation process at Syariah Court that eventually Muslim community urges to have a better mechanism to resolve dispute at Syariah Court (N. Abdul Hak. 2021). The introduction of Sulh at the Syariah Court under the Syariah Judiciary Department to resolve cases involving Islamic matters (mainly commercial and family) for Muslims that are governed under Syariah Court Civil Procedure has attempted to address the demand of Muslim community for a better dispute resolution to a litigation process (R. Ramli et al., 2020). Although Sulh is voluntary process, the outcome of Sulh is legally binding (W.A Wan Adnan dan A.H Buang, 2021), therefore parties can enforce the settlement achieved in Sulh via settlement agreement prepared by the Sulh officer through court order. The aim of this research paper is to evaluate the implementation and challenges of Sulh at the Syariah Court prior and post pandemic Covid 19 including the procedures, laws, functions, and developments of Sulh. In addition, this research paper will propose a recommendation to overcome the challenges that have arisen.*

*Keywords: Challenges and recommendations for Sulh, Implementation and procedures of Sulh, Islamic mediation, Pre COVID-19 and post COVID-19, Syariah Court Negeri Sembilan*

## INTRODUCTION

Islam encourages parties in conflict to resolve their disputes through amicable settlement (al *Sulh*) as litigation will not always result in decision accepted by both parties. *Sulh* can be defined as a harmonious way to settle dispute between the parties which consists of negotiation, mediation, conciliation, and compromise (The Department of Syariah Judiciary Negeri Sembilan [JKSNS]). According to Malaysian Federal Constitution, Islamic law in Malaysia governs under the jurisdiction of state law hence each states has its own laws. Therefore, there is no uniformity in the practice of *Sulh* in states across Malaysia, hence each states have their own *Sulh* laws and Rules

pertaining to the application of *Sulh*. Since each state has its own Islamic law and for this paper, the state of the state of Negeri Sembilan will be referred in relating to the application of *Sulh* pre and post COVID.

## **METHODOLOGY**

The research methodology is based on descriptive, analytical, and comparisons using library-based methods and unstructured qualitative interviews in presenting the theoretical concept of mediation according to the Syariah Court in Malaysia in general and specifically at Syariah Court Negeri Sembilan. This study relies on primary legal sources such as the legal principles and laws relating to *Sulh* involving procedural laws and practice direction such as The Islamic Religion Administration (Negeri Sembilan) Enactment 2003 dan the Syariah Court Civil Procedure (Negeri Sembilan) Enactment 2003, Syariah Court Civil Procedure (Negeri Sembilan) Rules 2016, *Sulh* Work Process JKSM, Circular of the Chief Justice MSS 1/2002 (Code of Ethics for *Sulh* Officers and *Sulh* work Process MSS), Circular of the Chief Justice MSS 9/2002 [Jurisdiction of *Sulh* Officer (Judges)], and Practice Direction JKSM 3/2002 (Implementation of *Sulh*). It also uses secondary resources such as journal articles, law reports, historical reports, and virtual libraries available online. This research also employ research that employs methods taken from other disciplines to generate empirical data that answers research questions. It can be a problem, policy, or a reform of the existing law. Legal non-doctrinal finding can be qualitative or quantitative. This approach has also been chosen because mediation in court relating to Majlis *Sulh* not only involves laws and especially procedural laws in the Syariah court that govern the *Sulh* proceedings but also it involves the disputant parties that the legal doctrinal approach is unable to achieve.

## **RESULTS AND DISCUSSION**

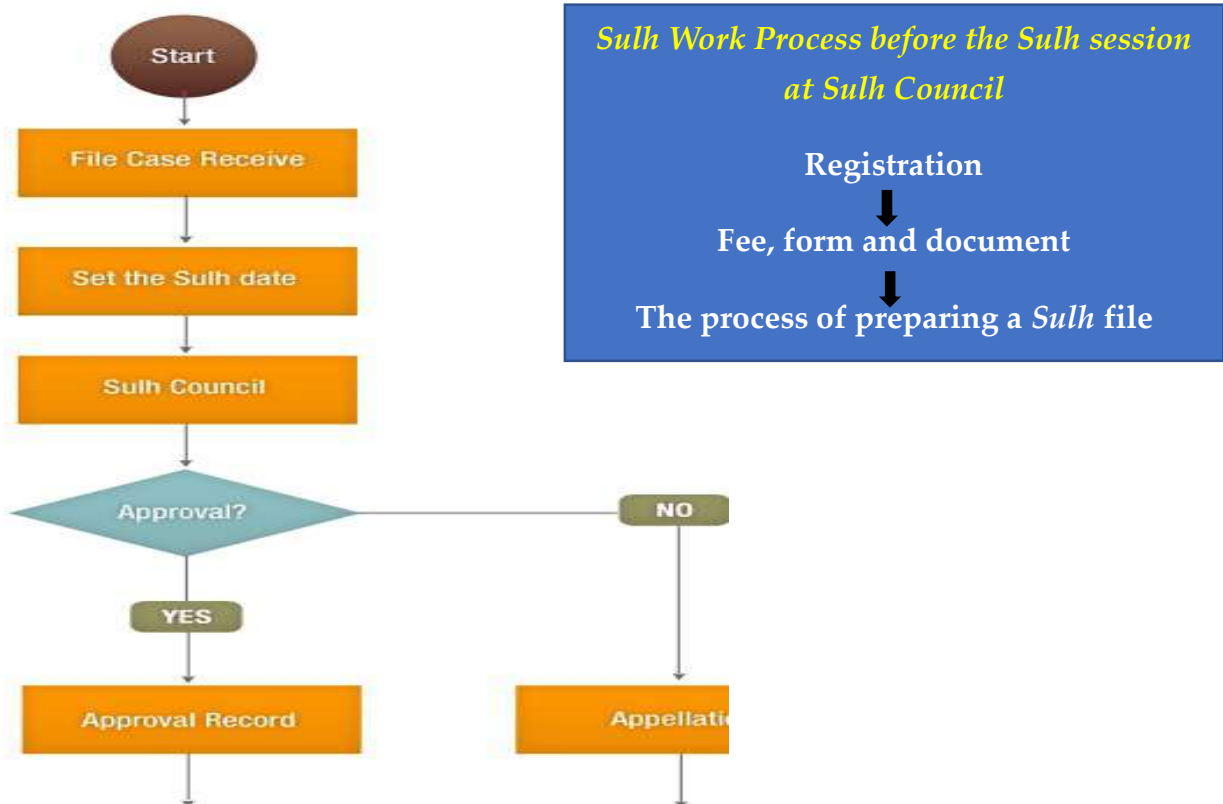
### **THE IMPLEMENTATION OF *SULH* AT THE SYARIAH COURT NEGERI SEMBILAN**

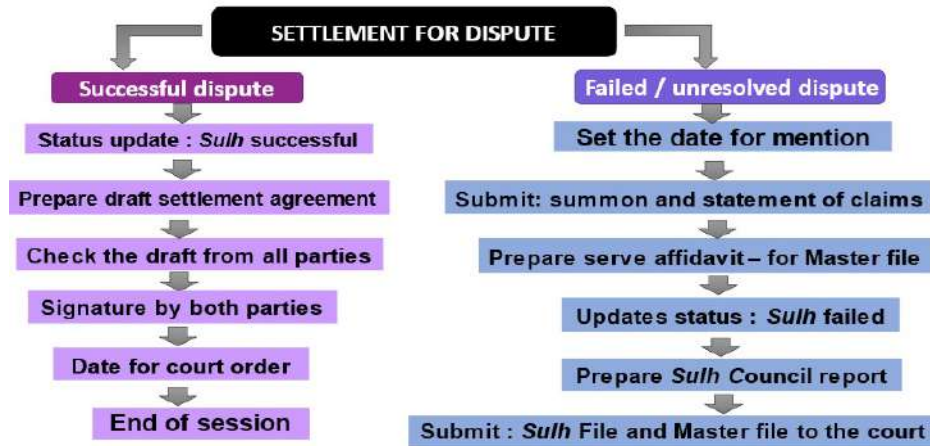
#### **Types of *Sulh* cases at Syariah Court Negeri Sembilan**

1. Compensation for marriage and engagement
2. Muta'ah (monetary given by husband to wife upon divorce)

3. Matrimonial Property Claims
4. Alimony – wife, children, disabled person, iddah’ etc
5. Hadanah (child custody)
6. Order for wife to obey husband
7. Right for residence home
8. Dowry, or
9. Any matter instructed by judges to resolve using *Sulh*.

**Sulh Proceeding Pre COVID-19**





Source for flow chart illustration by author: <http://www.esyariah.gov.my/>

### Procedures *Sulh* at Syariah Court Post Covid 19

- Guideline for Handling Operation at Syariah Court during MCO (PKPB 1.0)
- Electronic Checking system: postponed case, new date and new registration.
- Implementation of *Sulh* via physical session
  - Procedure similar to pre Covid 19 with additional SOP
  - Scanning QR Code
  - Social distancing, temperature scanning and sanitize
  - Limited numbers of parties
- Implementation of *Sulh* under *Sulh* Council via online session (Cisco Webex application)
  - Procedures in handling *Sulh* Council before *Sulh* session via online.
  - Procedures in handling *Sulh* Council during *Sulh* session via online
  - Procedures in handling *Sulh* Council after *Sulh* session via online
- Implementation of hotline service in relation to *Sulh* cases.
- Service for consultation and advice via MyCareCov19 (under government agencies)
- *Sulh* session at night

## **THE CHALLENGES OF *SULH* AT SYARIAH COURT NEGERI SEMBILAN**

### **The Challenges of *Sulh* Pre COVID-19**

Majority Muslim community is lack exposure and knowledge the function and roles of *Sulh* and *Sulh* Council at Syariah Court. Besides that, the misconception of *Sulh* Council as a medium for counselling rather than a medium to resolve dispute mutually between disputants. Furthermore, lack of enforcement for parties' attendance. Voluntarily to use *Sulh* that cause parties reluctant to participate in *Sulh*. Negative perception and attitude challenges faced by *Sulh* in Syariah Court Negeri Sembilan. Finally, lack of commitment such as parties' attendance and cooperation to resolve the dispute contributes to the challenges of *Sulh* at Syariah Court Negeri Sembilan towards the effectiveness of *Sulh* Council as a medium to resolve dispute is also one of the main challenges here.

### **The Challenges of *Sulh* Post COVID-19**

Among challenges of *Sulh* post Covid 19 is lack of enforcement law for online *Sulh*. Besides that, lack of facility for online *Sulh* (Cisco Webex application – parties not familiar) also contributed to the challenges is the additional job scope for *Sulh* Officer. Furthermore, the challenges faced by *Sulh* is the party's attendance for *Sulh* procedures whereby parties or party often absent during *Sulh* Council. Next the challenges in confidentiality especially during online *Sulh* Council whereby *Sulh* Officer unable to observe and ensure the *Sulh* operation was conducted in private to prevail the confidentiality. Furthermore, the challenges faced by *Sulh* officer is the overload of work when they have to conduct session at night due to overload unresolve dispute and lack of *Sulh* Officer besides lack of interest by *Sulh* Officer to use online mechanism for *Sulh* proceeding.

## **RECOMMENDATIONS TO OVERCOMES THE CHALLENGES IN *SULH* AT SYARIAH COURT NEGERI SEMBILAN**

Based on the challenges arisen, there are several possible actions can be taken in order to overcome the challenges. Among the possible action is to amend the Syariah Court Civil Procedure relating to *Sulh* that fit and practical to the current practice of *Sulh* in Syariah Court Negeri Sembilan. Furthermore, to implement various IT training and

workshop from time to time and related database training for both – dispute parties and *Sulh* Officer as an effort to expose and encourage the involves parties to use *Sulh*. The other recommendation to overcome the challenges is to change the perception of *Sulh* Officer towards the implementation of *Sulh* New Normal. In addition, it is crucial also to consider appointing more *Sulh* officer besides refining the scope of *Sulh* officer to overcomes the massive burden that becomes the challenges for *Sulh* officers at Syariah court. Lastly the possible action can be taken to prevail over the challenges of *Sulh* is to provides facility for online session at court – preserve confidentiality and encourage to use online medium for *Sulh* session.

## CONCLUSIONS

*Sulh* is the best way to resolve dispute amicably as well as provides better solution and high satisfaction among parties and also contribute to reduce backlogged cases at Syariah court. However, there are some challenges faced by *Sulh* under *Sulh* Council at Syariah Court need to address in order to ensure the effectiveness of *Sulh* to resolve dispute.

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