

# Sulh in Shariah Courts of Malaysia

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# INTRODUCTION

- The legal system of Malaysia consists of two: (1) Common law, applied by the civil courts; and (2) Islamic law, applied by the syariah courts.
- Sulh is one of the mechanisms of dispute resolution available in Islam.
- The concept of sulh is similar to mediation in the sense that it involves resolving dispute amicably with the assistance of a neutral third party.
- Islam encourages parties in conflict to resolve their disputes through amicable settlement (*al-sulh*) as it enables parties to reach an agreed way of settling their disputes.
- This is different from litigation as usually, it does not result in decision acceptable by both parties.

## Cont...

- Such encouragement can be seen in many verses of the Quran and in the Hadith of the Prophet Muhammad (pbuh).
- The verses and Hadith show that Islam encourages the use of sulh mainly because of its ability to resolve dispute peacefully and without affecting the existing relationship among parties.

# Definition of Sulh

- The word sulh literally means termination of a dispute. It is derived from the word saluha or salaha, which means to be good, right, proper, suitable, or the process of restoring something.
- It is a process of restoring justice amicably among disputants in order to attain the agreed settlement outside the court.
- Under the Islamic Law, sulh is considered as complementary to court adjudication and is highly recommended as compared to the other dispute settlement mechanisms.

## Cont'd.

- Rule No. 3 of the Syariah Court Civil Procedure (Sulh) (Federal Territories) Rules 2004 interprets “sulh” as negotiation, agreement and settlement of cases between the parties in the Majlis Sulh.
- In the event where a voluntary agreement is achieved by both parties, such agreement will be recorded before a Judge as an order of the Court without having to go through a trial.

# Sulh in the Shariah Courts

- In 2002, as a result of the meeting of Working Committee of Implementation of Action Plan to Address Backlog and Weaknesses of Shariah Cases, sulh was introduced as one of the dispute resolution mechanisms in the Syariah courts.
- The main reason for the introduction was to address issues pertaining to backlog of cases and to find a speedier way of resolving disputes.
- The first state to implement sulh was the Syariah court of Selangor, followed by the Federal Territories and as evidenced on the states' practice, the practice of sulh was then promoted to all other states' Syariah courts.
- JKSM as the body that manages administration of Syariah courts in Malaysia took proactive steps towards encouraging the use of sulh by issuing number of practice directions and amendment of the Syariah Court Civil Procedure (Sulh) (Federal Territories) Rules 2004.

## Cont'D.

- In order to make sure the quality of conduct of sulh, JKSM continues to provide training for sulh officers to enhance their skills as mediators.
- As a result, 24 sulh officers were issued with the Certificate for Conducting Mediation after completing training from the Accord Group (a company that provides mediation and mediation training based in Australia) in 2007.
- The training and other kinds of trainings are provided on year to year basis and hundreds of sulh officers from all states have benefitted greatly from it.

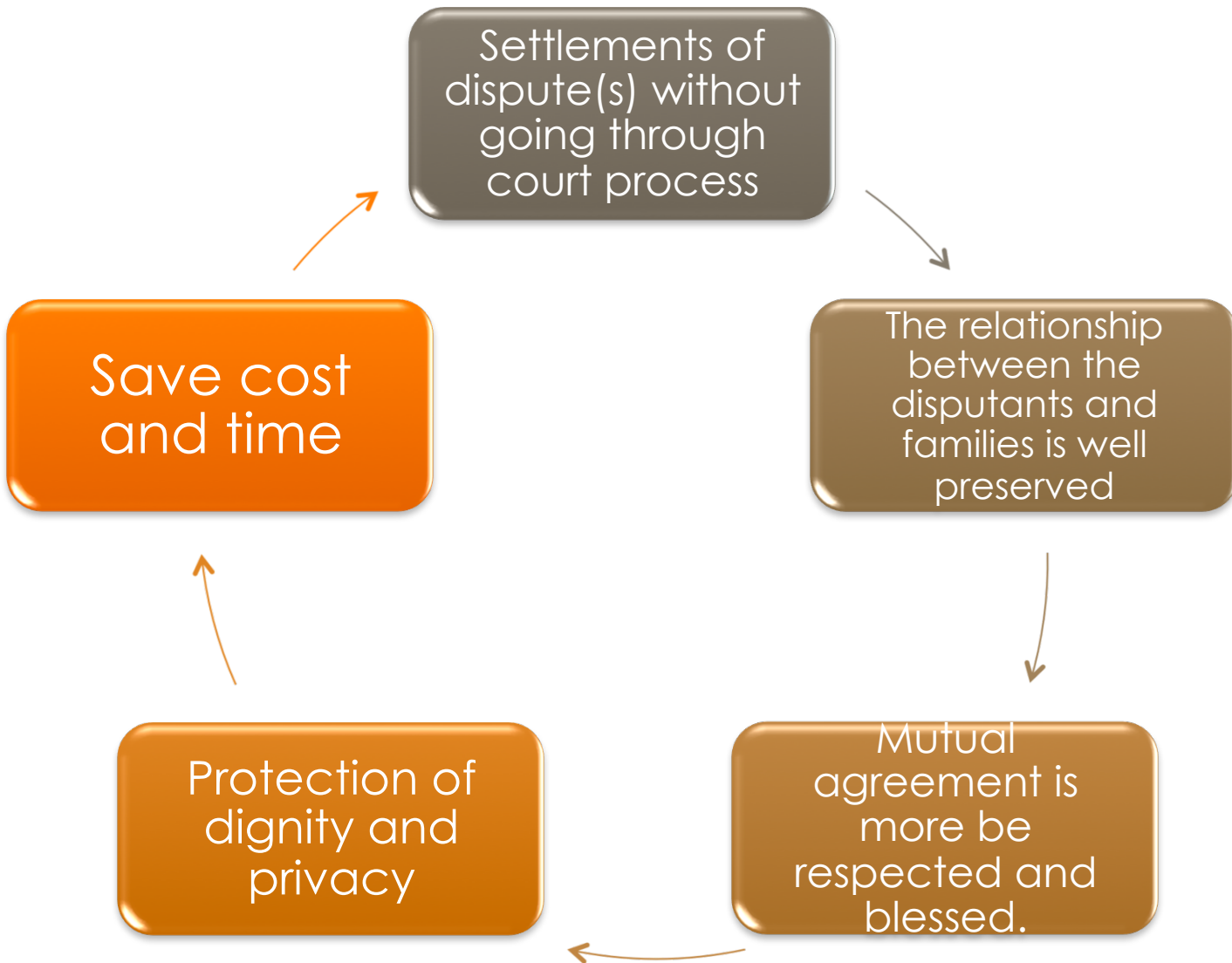


# LEGAL PROVISIONS

The relevant legal provisions, rules and regulations relating to the sulh process are as follows :-

- ❑ Section 99 of the Syariah Court Civil Procedure Federal Territory Act 1998 which provides that: “The parties to any proceedings may at any stage of the proceedings, hold sulh to settle their dispute in accordance with Hukum Syara’.
- ❑ Section 247(1)(c) of the Syariah Civil Procedure (Federal Territories) Act 1998 which clearly states to provide the procedure of sulh.
- ❑ The Syariah Court Civil Procedure (Sulh) (Federal Territories) Rules 2004
- ❑ The Sulh Work Manual JKSM 2002 and the Sulh Officer Ethical Code JKSM 2002
- ❑ The Practice Directions of Syariah Court:
  - ❑ Practice Direction No. 3 Year 2002
  - ❑ Practice Direction No. 1 Year 2010
  - ❑ Practice Direction No. 7 Year 2015

# ADVANTAGES



# APPLICATION THROUGH THE PROCESS OF SULH

Claims or applications which can be done using sulh are listed under Practice Direction No.3 Year 2002, which include:

- a. Claim for breach of contract of marriage/betrothal
- b. Claims arising from dissolution of marriage such as:
  - mut'ah
  - maintenance of iddah
  - arrears of maintenance
  - Right of Joint Property
  - Right of Dowry
  - Any reasonable ground
- c. Claim for custody of a child by looking at the children's interest in the period of marriage or after the dissolution of marriage.
- d. Claim of child maintenance
- e. Application for execution of court order.

## Cont'd.

Prior to the sulh proceeding, the court has to examine any possibility of settlement. If there is a possibility of settlement between parties, the Registrar shall:

- (a) not fix a date for the trial of the action within a period of three months from the receipt of the summons or the application;
- (b) fix a date, as soon as practicable, for the parties to hold sulh; and
- (c) serve the notice of the date fixed for sulh on the parties.

Failure to attend the sulh proceeding amounting to contempt of court.

*(Rule 3 of the Syariah Court Civil Procedure (Sulh) (Federal Territories) Rules 2004)*

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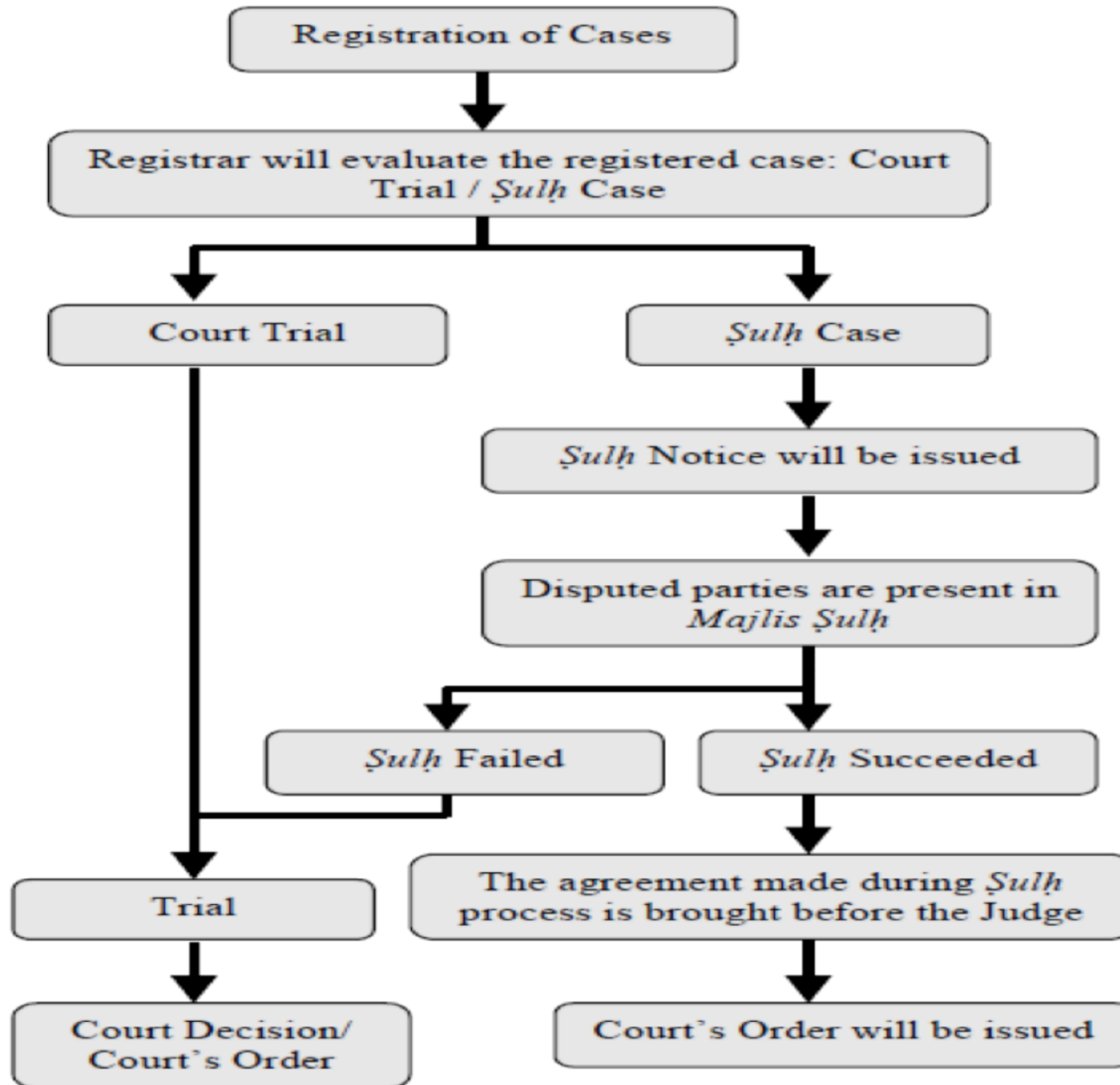
Once the sulh proceeding starts, the parties are bound to follow procedures as stated in Rule 5 of the *Syariah Court Civil Procedure (Sulh) (Federal Territories) Rules 2004*:

- (1) Sulh shall be conducted in a *majlis sulh* in the presence of the parties.
- (2) *Majlis Sulh* shall be chaired by a Registrar or any public officer appointed for such purpose by the Chief Syariah Judge.
- (3) In a *Majlis Sulh*, every party shall appear in person and no Syarie lawyer may appear or act as such for any party and no party shall be represented by any person without the leave of the Mediator.

## Cont'd.

- 4) The Mediator shall, where possible, assist the parties to resolve the dispute concerning the subject matter of the sulh and shall give each party an opportunity to be heard.
- 5) In a Majlis Sulh, the Mediator may take evidence from the parties, accept any document submitted and may, if he thinks necessary, adjourn the Majlis Sulh from time to time.
  - Once parties agree for a settlement, the Mediator prepares the draft agreement which will be confirmed and signed by the parties. The draft agreement will be sent to the court for judgment by consent.
  - In contrary, if parties fail to achieve settlement, the chairman will write a report containing his recommendations for the case.
  - The report will be sent to the court, which will later fix a date for hearing to continue.

## ŞULH PROCESS



# STATISTIC OF SULH IN MALAYSIA 2018

Negeri	2018			
	Daftar	Selesai - Berjaya	Selesai - Gagal	Selesai - Tidak Hadir
Johor	606	230	135	179
Kedah	576	222	58	218
Kelantan	298	40	35	73
Melaka	627	238	183	192
Negeri Sembilan	1,340	623	253	425
Pahang	434	100	87	235
Perak	996	376	142	257
Perlis	259	122	55	72
Pulau Pinang	426	160	87	164
Sabah	767	370	118	248
Sarawak	232	45	23	40
Selangor	3,223	1,390	635	1,112
Terengganu	1,119	710	77	327
Wilayah Persekutuan	1,426	666	256	453
<b>JUMLAH</b>	<b>12329</b>	<b>5292</b>	<b>2144</b>	<b>3995</b>

Sulh is undoubtedly a very constructive method in resolving disputes. This is evident in the statistic of sulh provided by JKSM as shown in Table 1. The successful rate of sulh was 83.9% as compared to 11.1% cases referred for trial. In other words, by implementing sulh, the Syariah Courts not only manage to resolve disputes amicably but it can also unclog the court calendar



# Challenges

## **1. Sulh facilities**

For a *sulh* session, an environment promoting confidence, security and privacy are essential for the parties to deliberate their disputes towards resolution. It is appropriate to have designated rooms for *sulh* sessions and such *sulh* rooms should be equipped with audio-visual facilities. These facilities will be useful for some preliminary videos or movies, for example, on the impact of divorce on the children.

## **2. Sulh officer and training**

## **3. Attitude of the parties**

## **4. Rescission of the settlement agreement**

There are situations where either of the parties rescinds the settlement agreement reached during the *sulh* session when they eventually appear before the judge for the issuance of the court order. This is perhaps influenced by a number of factors. It may be due to the influence of their respective lawyers, an abrupt change of mind or dissatisfaction with the agreement reached. In such a situation, the judge has no option but to proceed with the court trial.

# CONCLUSION

- A sulh practice in Syariah Court in Malaysia is proven practical, successful and vital alternative in resolving dispute in Islamic Legal System.
- It is a remarkable change for the administration of the Syariah Court in Malaysia especially in resolving dispute and at the same time managing to reduce the backlog of cases.
- The existence of *Sulh* officers actually help to reduce the workload of judges and create a scenario of tolerance among the society.