

# Alternative Dispute Resolution in Islamic Law: Analysis on the Practice of *Sulh*

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**Abstract:** The legal adjudication by courts is now facing an increasing numbers of cases from time to time. As a result, this method of dispute resolution is now likely incapable of delivering the goods because of time consumption and expense. Thus, the need has been felt for quite some time for alternative modes of dispute resolution. Nowadays practice, Alternative Dispute Resolution (ADR) has become an effective dispute resolution and people praise it due to its ability to provide solutions by using different tools, rather than by using one tool to fit all needs. From Islamic law point of view, the practice of Al-Sulh as one method of the ADR. Sulh is one suggestion that has been enacted by Al-Qur'an, Al-Sunnah and Ijma'. This paper is explaining the Alternative Dispute Resolution in the view of Islamic law. It is proposed that since early era of Islam, ADR had been practiced through Sulh practice.

**Keywords:** the Alternative Dispute Resolution, Sulh, Islamic Law.

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## I. INTRODUCTION

The usual mode of dispute resolution - namely, legal adjudication by courts - is now proving to be more and more incapable of delivering the goods because of time consumption and expense. Moreover, the courts almost everywhere in the world are not finding it possible to cope with the ever-increasing number of cases coming up before them. Thus, the need has been felt for quite some time for alternative modes of dispute resolution.

The toolkit Alternative Dispute Resolution (herein after referred as ADR) consists of negotiation, mediation, conciliation, arbitration, ombudsman, expert determination and many other secondary and hybrid processes which have been formulated in time. Today, ADR has become an effective dispute resolution and people praise it due to its ability to provide solutions by using different tools, rather than by using one tool to fit all needs.

There are various definitions of ADR have been proposed by legal writers but all of these definitions convey substantial similarity i.e. out of court settlement of dispute. ADR is frequently recognised as a device aimed at resolving disputes between the parties in a manner so as to find a resolution expeditiously and economically.<sup>1</sup> Technically, ADR is "a mechanism used to achieve settlement of disputes other than the courts of law." According to V. Pradhan in *Mediation and Alternative Dispute Resolution, Development in Various Jurisdiction*, ADR refers "to diversified techniques in solving disputes without the use of court litigation." The term ADR has no exhaustive definition as it changes in accordance to the suitability of its process and type of settlement.

## II. ALTERNATIVE DISPUTE RESOLUTION (ADR) IS RECOGNISED IN ISLAMIC LAW

Islam also encourages people to solve their matters amicably rather than in an enmity creating manner. Hence, ADR is definitely not alien to Islamic Law as a mode to resolve disputes. ADR methods have been used by Muslims since the last 1400 years to settle their differences amicably and these methods have been mentioned and encouraged in the sources of

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<sup>1</sup> Ranjan Chandran & Chitravathy Balasingham. "Alternative Dispute Resolution: The Vision of Tomorrow". [1998] 2 MLJ iv; [1998] 2 MLJA 4; [1998] 2 MLJ iv; [1998] 2 MLJA 4.

Islamic law. This is because Islam is a religion which adores peace rather than fighting and loves compromise rather than confrontation.<sup>2</sup>

The Islamic ADR processes like *sulh* (negotiation, mediation, reconciliation, compromise of action) *tahkim* (arbitration), *fatawa* (expert determination), *hisbah* (ombudsman) and *med-arab* (a combination of *sulh* and *tahkim*) have been not only mentioned in the *Quran* but were practiced since the times of the Prophet (PBUH), who was a great supporter of the idea of amicable settlement of disputes.<sup>3</sup>

### ADR is permissible in Islam:

A famous letter which the second caliph of Islam - Umar bin Khattab - wrote to Abu Musa Al-Ash'ri after appointing him as a *qadi* (judge) contained rules to guide him in deciding cases. One of these rules spelled out the wide span of coverage of amicable settlement of disputes. The exact words of Umar are: "All types of compromise and conciliation among Muslims are permissible except those which make *haram* (unlawful) anything which is *halal* (lawful), and a *halal* as *haram*." This principle is directly based on the saying of the Prophet (PBUH) that "if somebody innovates something which is not in harmony with the principles of our religion, that thing is rejected".<sup>4</sup> In fact the original support that the *Quran* gives to the peaceful settlement of disputes forms the basis of the widespread support that the idea finds among Muslim. For example, the *Quran* says:

"The believers are but a single brotherhood, so make peace and reconciliation (*sulh*) between two (contending) brothers; and fear Allah, that ye may receive mercy".<sup>5</sup>

The *Quran* was here repeating the same thing it already stated in another *ayat* of the same verse, which is in the following words:

"If two parties among the believers fall into a quarrel, make ye peace between them.....with justice, and be fair: for Allah loves those who are fair (and just)".<sup>6</sup>

The Prophet (PBUH) was so supportive of the amicable settlement of disputes that he is reported to have expressed his readiness to condone the use of an exaggeration or mis-statement if it is for the sake of *sulh* (peaceful settlement). The *hadith* is as follows:

"Narrated Um Kulthum bint Uqba that she heard Allah's Apostle (PBUH) saying: 'He who makes peace (*sulh*) between the people by inventing good information or saying good things, is not a liar".<sup>7</sup>

Based on the aforesaid verses from *Quran*, and practices of the Prophet (PBUH) and His companions, it is irrefutable that ADR is permissible in the light of the main sources of Islamic Law (*Quran* and *Hadith*) and thus, known to Islamic Law as a mean to peacefully settle disputes to avoid animosity.

### III. SULH PRACTICE IN SYARIAH COURTS IS BASED ON THE ISLAMIC CONCEPT

*Sulh* is derived from the word 'salaha' (صلح) which means to do good deeds and according to Al-Jurjani in his "*Taarifat*" defines *Sulh* as: "An accord to end a dispute". The Ottoman Code, "*Mejelle*" defines "*Sulh*" in Article 1531 as: "A contract removing a dispute by consent. And it becomes a concluded contract by offer and acceptance".<sup>8</sup> The word *salaha* itself appears only once Surah *An-Nisa*: "And *sulh* settlement is best, even though men's souls are swayed by greed".<sup>9</sup> There are others Quranic verses which Allah (SWT) commands us to reconcile and make peace between two disputants such as the abovementioned verses from Surah *Al-Hujurat* verses 9-10.

Apart from that, *hadith* from the Prophet also mentioned about the concept of *sulh*. In one *hadith*, Prophet Muhammad (PBUH) was reported to have said that,

<sup>2</sup> Aishath Muneeza. "Is Conventional Alternative Dispute Resolution To Islamic Law?". [2010] 4 MLJ xcvi; [2010] 4 MLJA 97.

<sup>3</sup> Syed Khalid Rashid. 2008. *Peculiarities & Religiosity Underlining of ADR in Islamic Law*. Kuala Lumpur: International Islamic University of Malaysia (IIUM). pp. 1-2.

<sup>4</sup> Ibid, p. 1.

<sup>5</sup> Al-Quran. Al-Hujurat: 10.

<sup>6</sup> Al-Quran. Al-Hujurat: 9.

<sup>7</sup> *Sahih Bukhari*, vol. 3, p. 533.

<sup>8</sup> The *Mejelle*, *Majallah el-Ahkam-I-Adliya*. Article 1531, p. 255.

<sup>9</sup> Al-Quran. An-Nisa': 128.

“He who causes intentionally to death of another, it is left to the family of the deceased to decide on qisas of the taking of diyah....and if they agreed on sulh, it is for them”.

The Prophet (PBUH) had also encouraged compromise and mediation be made in both public and private matters. A well known *hadith* on this matters states:

“You bring me lawsuits to decide, and perhaps one of you is more skilled in presenting his plea than the other and so I judge in is favor according to what I hear. He, to whom I give in judgment something that is his brother’s right, let him not take it, for I but give him a piece of the Fire”.

Before His prophethood, the Prophet (PBUH) had been elected as a mediator to place the *hajarul aswad* (the black stone which is situated at one of the corner of *Ka'abah*) back to its place when the head of *qabilah* in Mecca were fighting each other to place it back by spreading away His turban so that they can carry the *hajarul aswad* together by holding each corner of His turban.

As we can see in practice, Syariah Courts in Malaysia have their respective *Sulh* departments which are responsible to conduct *sulh* process known as *Majlis Sulh* headed by *Sulh* officer and *Majlis Sulh* mostly conducts matrimonial disputes between spouses. From the above *hadith*, the practice of *Sulh* in handling marital cases and the appointment of *Sulh* officer are visualised by virtue that the Prophet acted as an arbitrator to any lawsuits presented before Him and He would judge such claims based on arguments he heard.

#### IV. CONCLUSION

Based on the discussion above, there is no doubt that ADR is not only permissible in Islam, but it is also recommended by the Prophet (PBUH) himself. The best example of ADR been practiced in Islam is Sulh. The application of ADR now has been extensively acknowledged in most Islamic countries as a supplementary to their court system in order to provide additional choices of means to speedily settle dispute without any procedural distraction.

#### REFERENCES

- [1] The Mejele, *Majallah el-Ahkam-I-Adliya*.
- [2] Aishath Muneeza. “Is Conventional Alternative Dispute Resolution To Islamic Law?”. [2010] 4 MLJ xcvi; [2010] 4 MLJA 97.
- [3] Ranjan Chandran & Chitravathy Balasingham. “Alternative Dispute Resolution: The Vision of Tomorrow”. [1998] 2 MLJ iv; [1998] 2 MLJA 4; [1998] 2 MLJ iv; [1998] 2 MLJA 4.
- [4] Syed Khalid Rashid. 2008. *Peculiarities & Religious Underlining of ADR in Islamic Law*. Kuala Lumpur: Ahmad Ibrahim Kuliyyah of Laws, International Islamic University of Malaysia (IIUM).
- [5] Nasimah Hussin & Ramizah Wan Muhammad. n.d. *Sulh in Islamic Criminal Law: Its Application in Muslim Countries*. Kuala Lumpur: Ahmad Ibrahim Kuliyyah of Laws, IIUM.
- [6] Jabatan Kehakiman Syariah Malaysia (JKSM), 21 August 2017. “Process of Conducting Sulh Session at Syariah Court”. <<http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BI/Portal%20E-Syariah%20Arahan%20Amalan/Portal%20E-Syariah%20Sulh/Portal%20E-Syariah%20Pengendalian%20Sulh>>
- [7] Ibrahim Barkindo. 2009. “The Role of Traditional Rulers in Dispute Resolution: An Islamic Law Perspective.” (Paper) *National ADR Summit for Traditional Rulers*. Asaa Pyramid Hotel, Kaduna. 6-7 October.
- [8] Said Bouheraoua. n.d. *Foundation of Mediation in Islamic Law and Its Contemporary Application*. Kuala Lumpur: Ahmad Ibrahim Kuliyyah of Laws, IIUM.
- [9] Ratno Lukito. n.d. *Religious ADR: Mediation in Islamic Family Law Tradition*. Yogyakarta: Syari’ah Faculty, State Islamic University Sunan Kalijaga.
- [10] Aida Othman. “Introducing Alternative Dispute Resolution in Malaysia: Prospects and Challenges”. [2002] 2 MLJ ccxxiv; [2002] 2 MLJA 224; [2002] 2 MLJ ccxxiv; 2002 2 MLJA 224.
- [11] Dr PS Sangal BSc. “Alternative Dispute Resolution: A Glance at the Law of Malaysia and India.” [1996] 3 MLJ xxix; [1996] 3 MLJA 29; [1996] 3 MLJ xxix; 1996 3 MLJA 29.