

# Preliminary Study on Online Sulh-Based Mediation Community

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**Abstract.** Islam promotes peace and conciliation in resolving disputes, and dispute resolution is a portion of Islam which guideline is provided by the Al-Quran which is through a third party or by sulh, which literally means “to cut off a dispute”. The paper discusses a preliminary study of the integration between the sulh concept and the mediation using the online dispute resolution (ODR) technology to be used by a community in Malaysia. The study will highlight the feasibility study in term of economical, technological and operational. The information will be gathered through the means of documentation, such as from legal journal, article, previous requirement studies, related previous ODR works as well as other countries documentation for that matter. A group of sulh officers were interviewed to gather the initial requirement analysis. The challenges will be analyzed and the prototype of Online Sulh-Based Mediation Community will be developed.

**Keywords:** ODR, Sulh, feasibility studies.

## INTRODUCTION

In managing the family related dispute, sulh is introduced to solve the problem outside the court. Sulh is a process of resolving the disputes among two or more parties with the sulh officer (third party mediator) that responsible to make sure the parties involve are satisfied with the outcome or the result (Raini et al, 2013). Sulh is one of the peaceful dispute resolution method involving the discussion between parties that enable them to come to one solution which agreed by all the parties involved. In general, sulh will benefit the ummah as it will shape the people to live in harmony because the process of resolving the dispute outside the court eliminates the long queue issues and it will satisfy all parties. Sulh has been implemented in Malaysian Syariah Court since 1998 to resolve 18 types of cases related to family disputed. Currently sulh sessions are conducted manually and face to face meeting between parties and sulh officer.

Information Technology has become crucial in our society. It changes people to do their work especially in various are such as education, business, communication and law. The emerging of internet as communication tool has increase drastically especially in Malaysia with the innovation in various industries including law. Online Dispute Resolution (ODR) is defined as the combination of mediation, arbitration and court proceeding using the Internet, website, communication online, database and other

technologies. This enable the process of resolving the dispute can be done via internet or online. The increasing number of registered case in Syariah Court indicates the necessary of new method in resolving dispute by the integration of sulh concept and Online Dispute Resolution (ODR) to resolve the issue faster and benefits to all the parties.

This paper will discuss the feasibility study on developing the Online Sulh-based mediation in three perspectives: Technology feasibility, Economical feasibility and Operational feasibility (Kendall & Kendall, 2015). The initial requirement analysis will be discussed based on the interview session conducted.

## **FEASIBILITY STUDIES ON ONLINE SULH-BASED MEDIATION PROTOTYPE**

The feasibility study assesses the operational, technical and economics merits of the proposed project. There are three types of feasibility conducted to make sure the proposed project is technically, economically and operationally feasible (Kendall & Kendall, 2015). Technical feasibility assesses current technical facilities are available and sufficient for the proposed Online Sulh-Based ODR system. E-Syariah was launch in 2002, is the seventh E-Government initiative. The objective is to upgrade the quality of services of the Syariah Courts. This shows that the basic technologies facilities such internet, email communication, website are enables at all Syariah Courts in Malaysia. ODR software is designed to make dispute resolution process faster and more effective by implementing the concept of Alternative Dispute Resolution (ADR) and enable its use via internet. The process of reaching the decision and agreement still with the presence of the third-party mediator. The ODR platform is based on document management system that manage the electronic document life cycle with appropriate software, equipment, method and process. (K.Mania, 2015) suggests two forms of communication to be used in ODR system which are synchronous and asynchronous form. ODR system with synchronous form enable communication in real time using Messenger or Skype whereas the other form utilize email communication as the communication is not conducted as the same time. The existing ODR systems use either one of the form or combination of two forms communications depends on their requirement.

The economic feasibility determines whether the time and money are available to develop the system which include the cost of purchasing software, hardware and new equipment. Due to time constraints and based on initial requirements study conducted, a prototype on Online sulh-based will be develop using the free software available in the market such as C # and SQL server.

The operational feasibility determines whether the human resources are available to operate the system. In this project, we have approached and interviewed 5 sulh officers from 5 Syariah Courts in Malaysia. Since E-Syariah was launched, each Syariah Court implemented one or more innovations as in table 1 to help them increase their productivity and efficiency. These innovations came from their own initiatives that indicates that they are ready with more new system and innovation.

**TABLE (1).** Innovation in Several Syariah Courts in Malaysia.

<b>Court Name</b>	<b>Innovation Product</b>	<b>Remark</b>
JKSM Pulau Pinang	E-SIAP & I PINTAS	To speed up trial case involving one side proceeding trial
JKSM Selangor	Fast Track	Solve divorce case in 6 working hours after filing.
JKSM Perak	My Solve	Divorce application
JKSM Wilayah Persekutuan	SiKeT (Sifar Kes Tertunggak) Do It Yourself	Speed up overdue case

## INITIAL REQUIREMENT ANALYSIS

This phase is crucial to get the initial requirement for the Online Sulh based mediation system. To identify the boundaries of the system, who should use the system, the data and information, interview sessions have been conducted. The objectives of these interview are to answer the following questions:

1. How can alternative dispute resolution can be applied to solve family disputes?
2. What are the best way to integrate sulh and ODR?
3. What are procedures, processes and role of sulh mediation center currently and using online dispute Resolution (ODR)?

In brief, the informants of the interviews are shown in Table 2.

**TABLE (2).** Informants of Interview.

<b>No</b>	<b>Informant</b>	<b>Institution</b>
01	Sulh officer	Jabatan Kehakiman Syariah Negeri Sembilan
02	Sulh officer	Jabatan Kehakiman Syariah Negeri Kelantan
03	Sulh officer	Jabatan Kehakiman Syariah Negeri Melaka
04	Sulh officer	Jabatan Kehakiman Syariah Wilayah Persekutuan (Putrajaya)
05	Sulh officer	Jabatan Kehakiman Syariah Negeri Selangor
06	Syariah Lawyer	Persatuan Peguam Syarie Malaysia (PGSM)
08	Mediator	Majlis Peguam Malayasia (Bar Council)
09	Mediator	Singapore Mediation Council

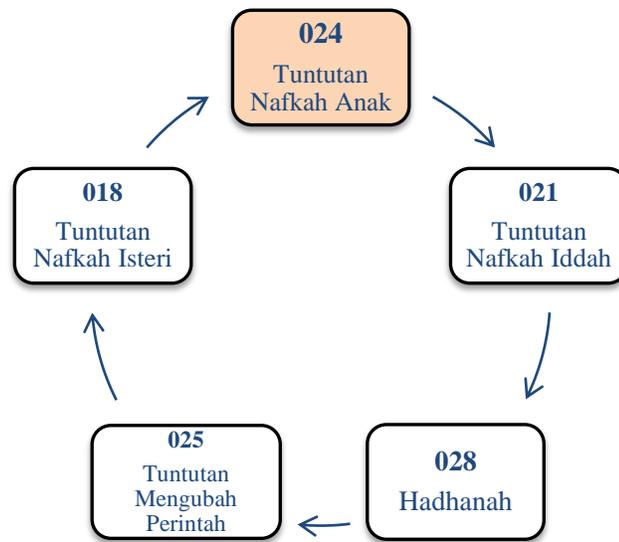
Sulh is part of processes in Syariah Courts in Malaysia. There are 18 cases that need to go through sulh process based on *Arahan Amalan Jabatan Kehakiman Syariah Malaysia No.1 Tahun 2010* as shown in Table 3.

**TABLE (3).** List of Cases That Need to Go through Sulh Process (source: *Arahan Amalan Jabatan Kehakiman Syariah Malaysia No.1 Tahun 2010*)

<b>Case Code</b>	<b>Case Name</b>
009	<i>Tuntutan Gantirugi Pertunangan</i>
016	<i>Tuntutan Mutaah</i>
017	<i>Tuntutan Harta Sepencarian</i>
018	<i>Tuntutan Nafkah Isteri</i>
019	<i>Tuntutan Nafkah Kepada Pihak Tidak Berupaya</i>
020	<i>Tuntutan Cagaran Nafkah</i>
021	<i>Tuntutan Nafkah Iddah</i>
022	<i>Tuntutan Mengubah Perintah Nafkah</i>
023	<i>Tuntutan Tunggakan Nafkah</i>

024	<i>Tuntutan Nafkah Anak</i>
025	<i>Tuntutan Mengubah Perintah Hak Jagaan Anak/Nafkah Anak</i>
026	<i>Tuntutan Mengubah Perjanjian Hak Jagaan Anak/Nafkah Anak</i>
028	<i>Tuntutan Hadhanah</i>
049	<i>Tuntutan Gantirugi Perkahwinan</i>
059	<i>Tuntutan Hak Tempat Tinggal</i>
060	<i>Tuntutan Perintah Supaya Tinggal Bersama Semula</i>
062	<i>Tuntutan Isteri Kembali Taat</i>
063	<i>Tuntutan Mas Kahwin</i>

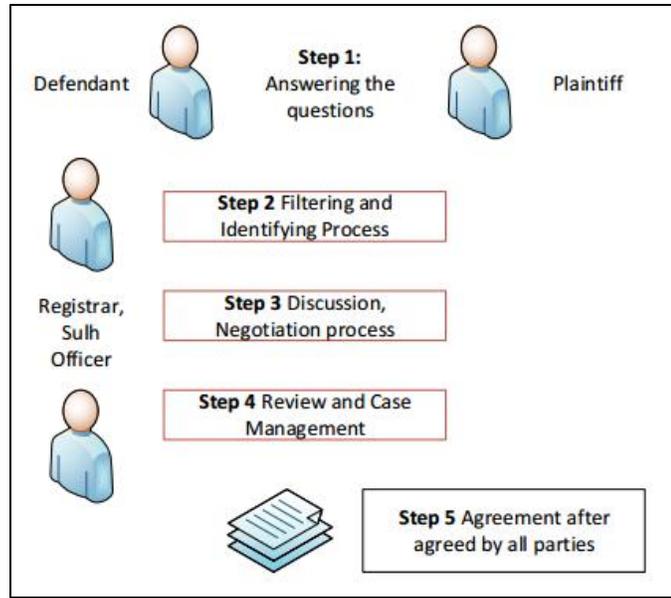
Based on the interview, not all the cases are suitable to be resolve using ODR due to the complication of the resolving process of each case. Most of the informants suggested to start with 5 cases as initial project as shown in figure 1. However, only case no 024 is chosen in Online Sulh-Based Mediation prototype.



**FIGURE 1.** 5 Suggested Cases.

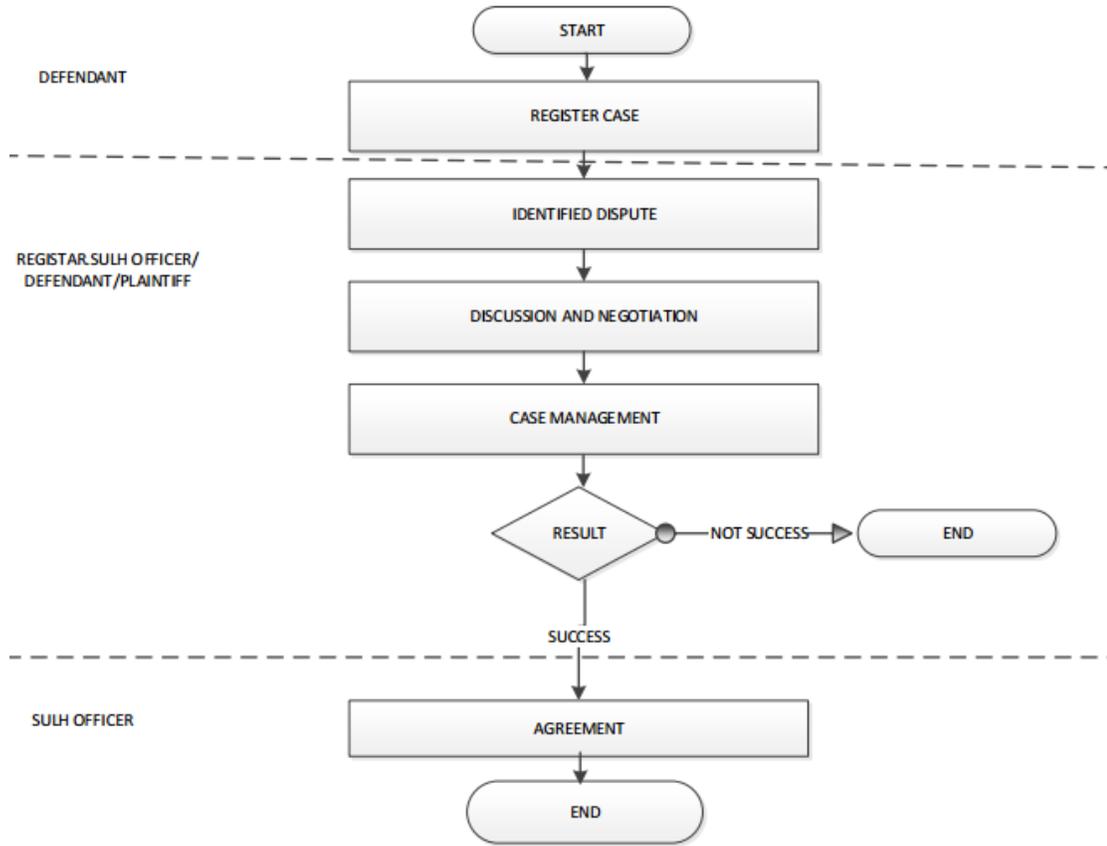
### **Conceptual Online Sulh-Based Mediation Model (Prototype)**

The conceptual Online Sulh Based Mediation Model prototype is illustrated in figure 2. The defendant needs to answer a few questions to filter whether she can use the system. Once she passed the questions, she need to fill in the necessary information to complete the case registration. Registrar then received the case and escalated to the sulh officer. Sulh officer will identify the case and start the discussion with the two parties involved after the notification has been sent to the other party via email. Once both parties agreed and happy with the decision, sulh officer review and come out with the agreement that will be endorse in the Syariah court later.



**FIGURE 2.** Conceptual Online Sulh-Based Mediation Model (Prototype).

After reviewing the current process and procedure of sulh session, figure 3 shows the proposed flow of the prototype.



**FIGURE 3.** Flow chart of Proposed Online Sulh-Based Mediation Prototype.

Four roles of user are identified, namely defendant, plaintiff, registrar and sulh officer as shown in Table 4.

**TABLE (4).** User Roles.

User	Role
Defendant	1. Register case online 2. Check progress 3. Be able to agree or not to agree with the solution
Plaintiff	1. Register case online 2. Check progress 3. Be able to agree or not to agree with the solution
Registrar	1. Receive/approve register case 2. Assign case to sulh officer
Sulh Officer	1. Accept case 2. Initiate the sulh 3. Write the agreement

The Online Sulh-Based Mediation prototype will be using the internet as it is a web based application. Currently, the asynchronous form of ODR is proposed as the discussion and negotiation will be done not in real time.

## CONCLUSION

There is about time Syariah Courts in Malaysia to utilize the technologies to solve family disputes to speed up the process, improve effectiveness and efficiency. The integration between sulh concept and Online Dispute Resolution (ODR) is considered as positive initiative. The opportunity for improvement in resolving the disputes is high especially in utilizing the current advanced technologies.

Despite the advantages, there are issues like confident level to use the online system and the level of IT literacy of end users need to be handled properly. Now, not all the family disputes cases can be resolved using ODR. This require further studies in the current process and procedures in Syariah Courts. The security issues are also need to be tackled to make sure the system is reliable and available all the time.

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