

**THE CHALLENGES FACED by SULH OFFICER IN MALAYSIA: A
SPECIFIC CASE STUDY IN SELANGOR SYARIAH COURT**

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AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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ABSTRAK

Kajian ini membincangkan mengenai cabaran yang dihadapi oleh pegawai sulh di Malaysia khususnya di mahkamah syariah Selangor Darul Ehsan. Kajian ini bertujuan untuk mengetahui cabaran yang dihadapi oleh pegawai sulh, tetapi juga memfokuskan tentang pengertian sulh, peranan pegawai sulh seterusnya latar belakang kewujudan, kelayakan, dan etika. Kajian untuk memperolehi data yang lengkap, beberapa methologi telah digunakan iaitu melalui pemerhatian dan soal selidik. Kajian ini menunjukkan pegawai sulh mempunyai cabaran besar tidak kira dari luaran atau dalaman yang perlu dihadapi oleh pegawai sulh.

ABSTRACT

The research discusses about the challenges faced by sulh officers in Malaysia specifically in Selangor Syariah Court. The purpose of the research is to explain about the challenges and problems faced by sulh officers. Besides that, this research gives the explanation about the meaning of sulh, the role of sulh officer, the background, the qualification and ethics of sulh officer and the challenges and problem faced by sulh officers. The researcher uses the methodology of data collection such as observation and questionnaires in getting data. The research finding indicated that the challenges faced by sulh officer are in the form of external and internal challenges.

ملخص البحث

يتخذ هذا البحث العلمي عن تحديات موظف الصلح (الوسيط) في ماليزيا مع التركيز في المحكمة الشرعية بولاية سلنجهور دارالإحسان. يناقش هذا البحث عن التحديات التي يواجهها موظف الصلح في المحكمة فضلا عن مفهوم الصلح بعينة ودور الصلح وموظفة في المحكمة بالإضافة الى خلفياتهم ومؤهلاتهم وسلوك أعمالهم. اعتمدت الباحثة للحصول على المعلومات والبيانات ذات الصلة بموضوع البحث على الدراية الميدانية وذلك من خلال الجولة الاستطلاعية في المحكمة والاستبيانات. فوجدت الباحثة من خلال هذا البحث أن موظف الصلح يواجه عدة مشاكل وتحديات. وتأتي هذه المشاكل والتحديات من عوامل داخلية وخارجية وكلها يواجهها هذا الموظف بشكل منصف في أعماله.

ARABIC WORDS TRANSLITERATION SYSTEM TRANSLITERATION TABLE

1. ALPHABET

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ء	,	فأر	fa`r
ب	b	برد	burd
ت	t	تل	tall
ث	th	ثوب	thawb
ج	j	جدار	jidâr
ح	h	حليب	halib
خ	kh	خادم	Khâdim
د	d	ديك	dik
ذ	dhz	ذهب	dhzahab
ر	r	رفيق	rafiq
ز	z	زميل	zamil
س	s	سلام	salâm
ش	sh	شعب	sha ^c b

ص	s	صخر	sakhr
ض	d	ضيق	dayq
ط	t	طالب	tâlib
ظ	z	ظالم	zalim
ع	°	عقل	°aql
غ	gh	غلام	ghulâm
ف	f	فيل	fil
ق	q	قلب	qalb
ك	k	كلام	kalâm
ل	l	لب	lubb
م	m	مال	mâl
ن	n	نجم	najm
ه	h	هول	hawl
و	w	ورق	waraq
ي	y	يم	yam

2. Short Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
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ا	a	كتب	kataba
ي	i	علم	°alima
و	u	غلب	ghuliba

3. Long Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ا, ي	a	عالم, فتى	°âlim, fatâ
ي	i	عليم, داعي	°alîm, daî
و	u	علوم, أدعو	°ulûm, Ad°û

4. Diphthong

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
و	aw	نوم	nawm
ي	ay	ليل	layl
و	iyy	شافعي	Shâfi°iyy (ending)
ي	uww	علو	°uluww (ending)

ABBREVIATIONS

Dr.	doctor
Hj.	haji
n.a.	no author/no artist
n.d.	no date/no year
p.	page
pp.	pages
RA	radiya Allāh ^ʿ anhu / ^ʿ anha / ^ʿ anhum
SAW	salla Allāh ^ʿ alayh wa sallam
SWT	subhānahu wa ta ^ʿ ala
trans.	translator/translated by
vol.	volume

CHAPTER ONE

SULH

1.1 The meaning of Sulh

The Challenges Faced by Sulh Officers in Malaysia and specific case study in selangor Syariah court. The purpose of the research is to explain about the challenges of Sulh Officers as cooperation by parties, workload, skills and training, perception, communication, unpredictability, incentive, lack of services and salary. The meaning of Sulh is the counseling for court. That means inside the court and Sulh the counselor for the process in which the parties to a case abroad together in official meeting guided and arrange by the court and also following certain procedures if they are any resolution it will be come and order by the court and binding of both parties without hearing to follow the ordinary process of hearing in the court. Sulh Officer so importance to dispute a problem in Syariah Court and given benefits.

Sulh is the counseling for court that means inside the court and sulh counselor for the process in which the parties to a case abroad together in official meeting guided and arrange by the court, ether the sulh given a many benefit and less procedural but the sulh is highly technical job and the sulh Officer must have lot a preparation training and needs intellectuality. Allah says "There should be among you a group of people calling people to good, enjoying what is right and for bidding what is hateful they are the ones to attain success.

Knowledge of sulh Officer gives a benefits and Muslim should not judged by this spiritual piety towards Allah but also on his knowledge. The prophet said "Don't look at the Muslim prayers and fasting only but look at his honesty and knowledge, understanding". To be efficient in job the sulh Officer needs intellectual quality like knowledge, understanding and technical know how is many fields and the important thing

is the higher educational or intelligentsia derived from Russia and it was used in nineteenth century and intellectuality means condition or character of deep thinking usage in searching for answer or solution which aims to perfection through systematic thinking process. The characteristic of the intellectuality can be noticed at the creative thinking process, rational ideas and arguments in looking for answer or resolving a problem. The features intellectual of sulh Officer is knowledge; an Islamic knowledge culture is very wide in scope and wider still in its applications and implications. First off all the culture is as much applicable to worldly; as it is to spiritual knowledge this dual purpose of an Islamic knowledge culture is of great significance. Spiritual knowledge therefore leads Muslim to scientific, technological, and other forms of knowledge meant to provide worldly comfort to mankind.

Besides the basic of sulh is promoting the goodness in Surah Al Hujurat “Two parties or group are fitting and make peace both them”. In sulh procedure, justice is very important. Justice is a firstly features in procedural sulh in syariah court. Literally ‘adl means placing something in its rightful place where belongs it also means according equal treatment to others or reaching a state of equilibrium in transaction with them.’ Adl thus signifies a sense of moral rectitude and fairness in that things should be where there ought to be. The significant of sulh in a dispute the problem of both parties and justice is a first condition in procedure.

Justice and equality are, however, not identical in the sense that under certain circumstance. Justice may not only be achieved though inequality or unequal distribution of wealth¹ Justice is, in many ways a universal concept in the sense that its basic meaning does not seem to vary a great deal between the major legal traditions of the world.

¹ Mohammad Hashim Kamali. *Freedom Equality and Justice in Islam*. Ilmiah Publishers, Malaysia and the Islamic Foundation, UK. P.1.

Aristotle defined justice as avoiding too much or too little in the distribution of things and readjusting and compensating where the balance has been disturbed. The two aspects of justice namely corrective justice and distributive justice in this definition both conceive of justice as a social concept as it subsumes social relations and would have little meaning if it were to apply to an individual in total isolation from society. Yet in both the Islamic and western thought, justice is also understood as a moral virtue an attribute of personality within or outside the social context. Ancient Greek thought conceived of justice as an aspect of the character of the individual. Plato thus characterized justice as a right alignment of the individual soul, and Aristotle considered it as one of the virtues that is needed to lead an excellent life.

Having established the objectivity of its conception of justice the Quran also refers to it in particular instances and contexts. One such theme is the requirement of justice in the treatment of orphan except in the fairest way until he attains the age full strength, and give measurement and weight with justice. References to justice also occur in the context of polygamy where the Qur'an demands equitable treatment of the co-wives. The verses of polygamy actually begin with a reference to orphaned girl who are feared to be exposed to depravation and injustice.

In the event where a conflict breaks out between the different sections of the Muslim community, the Qur'an directs that effort should be made toward reaching a just settlement: If two parties among the believers fall into conflict try to make peace between them. But if one of them transgressor beyond bounds against the other, then fight the transgressor until it complies with the commands of God. When it so complies, and then makes peace with them with justice. For God loves those who are just.²

Military conquest is therefore not be used as a means of crushing the vanquished party. All are entitled to justice, not just as a matter of conformity of God. This would also

² Al Qur'an. Al Hujurat 49:8.

imply encourage justice, beneficence and generosity to others. The juxtaposition of Ihsan next to 'adl tends to open up the scope of justice to considerations of equity and fairness. Whereas justice is primarily regulated by law, the scope of Ihsan is not restrained by conformity formal rules.³

Ihsan can consist of forgiveness and returning well for evil, or doing a good turn and being generous those who may have neither claimed nor demanded justice. The reference of financial help in the text evidently accentuates the material dimensions of both 'adl and Ihsan. In any matters the justice is used not for sulh only to dispute the problem both of parties claimed with related to married according family law.

1.2 Authorities of Sulh in Islam

To render justice is a trust that God Almighty has conferred man, and like others trusts, is due fulfillment must be guide by a sense of responsibility beyond the confines of specific rules. The Qur'an thus reads in an address to the believers "God commands you to render the trusts that they are due, and when you judge between people, you judge with justice."⁴ The fact that the reference to amanat in this passage is immediately followed by reference to justice implies this to be one of the most important of all amanat.⁵

The occurrence of amanat in the plural also indicates that amanat is a wider concept which includes such other themes as government itself, which is an amana, and so giving testimony, taking care of the orphans, or of the waqf property, and so on. The Qur'an conception of justice also extends to personal virtue and standards of moral excellence that the believer is advised to attain as integral part of God consciousness." Be just, for it is closed to taqwa".

³ Mohammad Hashim Kamali. *Freedom Equality and Justice in Islam*. Ilmiah Publishers, Malaysia and the Islamic Foundation, UK.P:1.

⁴ Al Quran. Al-Nisa' 4:58.

⁵ Cf al Razi. *Al tafsir al kabir*.3.P:353.

Justice is vital in the Islamic teaching. Without justice, the society becomes lame and life becomes chaotic and this will lead to destruction. As a consequence, the Islamic syariat (law) requires the Muslims to uphold justice as justice is related to takwa (devotion to religion). Allah commands justice. Those who abide by the command will be highly rewarded; On the other hand, those who go against the command will be severely punished. Rasulullah was commanded to enlighten people to uphold justice as ordered by Allah "say that our God ask to uphold justice". These orders are repeated in Surah al-Fath and Surah al-Nisa'.

" قل امر ربي بالقسط وأقيموا وجوهكم عند كل مسجد وادعوه مخلصين له الدين كما بادلکم تعودون "

The meaning is ayah say" My Lord has ordered justice, and that you give your whole selves (to Him) at every time and place o prayer, and call upon Him, making your prayer true as it would be His sight like He created you in the beginning, like that you shall return.⁶

" ان الله يأمرکم ان تودوا الامنت الى اهلها واذا حکمتم بين الناس ان تحکموا بالعدل ان الله نعمًا يعظکم

به ان الله كان سمیعًا بصیرًا "

The meaning is ayah Allah commands you to fulfill your trusts to those to whom they (your trusts) are due, and when you judge between man and man, that you judge with justice. The teaching which He gives you! For Allah is He who hears and sees all things Allah requires that justice is implemented fairly even to own selves, families and relatives. In this matter, in carrying out justice, there should be no bias between wealthy

⁶Al Qur'an.Al-A'raf 7:29.

people and poor people. All humans are God creatures and they must be judged according to Al-Quran:

" يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىَٰ إِن تَعَدَلُوا وَإِن تَلَوْا أَوْ تَعْرَضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا "

The meaning is

O you who believe!, stand out firmly for justice as witness to Allah even against yourselves, or your parents, or your kin, and whether it be against rich or poor: For Allah can protect both for the best follow not the desire because you may swerve, and if you distort justice or decline to do justice surely, Allah is familiar with all that you do.⁷

Islam emphasizes on justice and must be implemented in any condition. The judges or qadhi should have profound and wide knowledge and understanding on syariah; devoted to Allah, honest and sincere, as well as, dignified. They are responsible to carry out fair judgment. Rasullullah saw mentioned;

“Qadhis are comprised of three groups. One group enters heaven and two more groups enter hell. The Qadhi who goes to heaven understands about truthfulness and gives punishment according to what is commanded. A person who does not carry out justice after knowing the truth will be sent to hell. The same goes to Qadhi who carries out his duties in ignorance will be sent to hell”.

In the effort to settle disagreements in a fair way according to Islamic law, the Qadhi or Hakim must start with trying to appease the parties involved in the disagreement. This is because the act of reconciling opposing parties can result in avoiding or preventing squabbles or disputes, and reinforcing relationships. Islam encourages peace or sulh in the effort of settling disputes or stopping clashes. Sulh can be carried out voluntarily, must not force or pressured by anybody. Sulh, in terms of syarak, is a contract to end the

⁷ Al Qur'an. Al-Nisa' 4:135.

disagreements between two parties. In other words, sulh is the contract that settles arguments willingly and it becomes valid through consent and approval. Sulh is a subject that has been explained clearly in the Al-Quran and Sunnah Rasullullah saw.

" وان امرأة خافت من بعلها نشوزا او اعراضا فلا جناح عليهما ان يصلحا بينهما صلحا والصلح خير
واحضرت الانفس الشحوان تحسنوا او تتقوا فان الله كان بما تعملون خبيرا".

The meaning is if a wife fears cruelty or desertion on her husband's part there is no blame on them if their arrange and agreeable settlement between themselves and such settlement is even though men's souls are swayed by greed. But if you do well and practice self-restraint Allah is well acquainted with all that you do.⁸

And another ayah”:

" لا حير في كثير من نجوهم الا من امر بصدقه او معروف او اصلاح بين الناس ومن يفعل ذلك ابتغاء
مرضات الله فسوف نؤتيه اجرا عظيما"

In this ayah Allah said there is no good in their most of their secret talks but (secrecy is allowed) if one thinks of a deed of charity or of justice, or of bringing together to the person who does this for good pleasure of Allah, we shall soon give him a reward of the highest.⁹

Allah said:

⁸ Al Qur'an. Al-Nisa' 4:128.

⁹ Al Qur'an. Al- Nisa' 4:114.

" وان طائفتان من المؤمنين اختلفتا فاصلحوا بينهما فان لغت احدهما على الاخرى فقاتلوا التي تبغى حتى

تقضى الى امر الله فان فات فاصالحوا بينهما بالعدل واقسطوا ان الله يحب المقسطين"

If two parties among the believers fall into a quarrel, you make peace between them but if one of them exceeds the bounds against the other, then all of you fight against the one who exceeds until it the one complies, then make peace between them with justice, and be fair. For Allah loves those who are fair and just.¹⁰

From 'Amr ibn 'Auf r.a., Rasullullah saw said;

".... sulh (a treaty of peace or a settlement of differences) is something commendable amongst Muslims with the exception a peace settlement which forbid something which is lawful or legalize something which is unlawful. The Muslims are tied to their promise (must keep their words) with the exception that the promise involves to forbid what is lawful or to legalize what is unlawful." Al-tirmizi

Khalifah 'Umar ibn al-Khatab r'a' stressed that sulh was a commendable act. The judge must allow the parties involve in the dispute to make a peace settlement. However, it must be understood that sulh could not legalize what is unlawful or forbid what is lawful. Actually, the sulh settlement is something very encouraging because at times the decisions or verdicts made by courts of law do not satisfy the conflicting parties, whereas sulh is a settlement which has resulted from consideration and willingness or consent of both parties.

Amir al mu'minin 'umar Ibn al Khattab r.a had written a letter to Abu Musa al Asyaari. In the letter, the compulsory guidelines that must be followed when judges were carrying out their duties were stated and it also clarified the principals of judging that should be abided. Besides, the letter also stated the strong basics that were required to guarantee the judicial administration in order to achieve its objective. He also mentioned "restore the

¹⁰Al Qur'an.Al-Hujurat 49:9.

disputes so that the conflicting party becomes peaceful because the verdict made by the judicial court can result in revenge.”

The members of the ulama have reached a consensus of opinion that sulh is the ordinance of god and should be contained in the liturgy and ritual of Islam. The settlement of conflicting parties through sulh is fulfilling the aspects of true justice because only both the conflicting parties are more aware of who are more rightful to the claim that is being made. Sulh, which is done voluntarily and under consideration between both disputing parties, enable to give justice which cannot be obtained through court hearings and verdicts. This is because in a court hearing, one party might be eloquent and won the claim due to this.

Rasullullah had explained this in one hadith which is narrated by Ummu Salmah, who said that the prophet mentioned, “In truth, I am a human being and you came to me to tell about your disputes. Perhaps, there are among you who are more eloquent when you are debating or explaining your arguments, therefore I will decide the verdict based on your explanations.”

Qadhi Abu Sujak al-Safahani in his scripture’ *Al-Ghayah Wa al-Takib*” wrote “.... Settlement could be reached by payment of a sum of property or anything that can be valued as property. There are two forms of settlement. 1) By awarding freedom and 2) by substitution. By awarding freedom means by receiving partial payment and by willingly let go part of it. In this matter, the settlement must not be conditional at all. By substituting refers to by substituting his claim with something else. In this matter, the selling and buying contract occurs.

CHAPTER TWO

SULH OFFICER IN MALAYSIA

2.1 Background

Sulh which exist nowadays was well known during the reign of Rasullullah s.a.w. History has proven how sulh (mediation) was performed until it has been practiced in the syariah courts especially in Selangor Darul Ehsan. The benefit of sulh concept which is emphasized by Islam is that it is the easiest simplest way to solve misunderstandings by both parties and it can dissolve anger and hatred. Sulh can also strengthen the family relation especially between and wife and can also avoid social problems that involves the children for example drug addiction and others. Sulh is most encouraged especially an in case that involves the family matters.

Through sulh, problems and weaknesses of a marriage need not be exposed in the court opening. Sulh first started during the reign of Rasullullah s.a.w based on a 'hadith' by Abdullah Ibnu Hadrud to settle his debt and they argued in the mosque until it was heard by Rasullullah s.a.w. Rasullullah s.a.w has called Ka'ab by using his fingers as a sign and to ask him to accept half of the money that is owed by Ibnu Hadrud. Ka'ab accepted the proposal and Ibnu Abu Hadrud pays according to the agreed amount.¹¹

Therefore it is clear that the sulh is the best way to avoid arguments and the role of the third party as mediator and stated in the hadith where Rasullullah s.a.w has shown an excellent role as to solve problems through discussion, mediator must also encourage the two parties to cooperate and to try as much as possible to settle the problem peacefully. It is very much emphasis that both parties in problems to achieve peace and this has been stated in section 87 Mal Selangor Enactment procedure , this is due to the possibility that

¹¹ Sahih Al Bukhari. Jld 3.

the Malaysia Syariah Court is using combination between adversarial and inquisitorial system.

The system is based in a hadith at Rasullullah as; “I am only a human and u brings to me your arguments. If any one of you forward an interesting claim until I didn’t decide it correctly where it gives right from one party to another the acceptance is only a piece of hell. The role of the sulh officer in dealing claim cases is very much taken care. Earlier every state has its own councilor which is manage by the Islamic Dept and the intention at the counseling session is to overcome problems which are related to the family affairs.

Sulh council which was firstly and operated in Selangor in 2002 is very committed in solving the problems. With the existence of sulh council, this shows the need to have a method or a way in settling family problems which has very much increased. This method is even much successful, where there are ere credible sulh officers in the syariah court and it gives a positive effect to the society. The achievement of the sulh council in Selangor had increased the quality of hearings and the enforcement of Syariah court laws.

It is clear that sulh where was introduced in the Islamic law is very suitable to applicable with the problems that our country. Is facing especially in related to the household issues. Peace is very much encouraged as to avoid disagreement.

2.2 Enactment of Sulh

All states in Malaysia have its own authority in rules and regulation in related to setting the procedures at the Syariah Court. It has authority on those who are Muslim and things that are said in the states list that is the syarak the personal laws of the Muslims. As per to inherit property, marriage, engagement, divorce and nafkah. Egypt has a provision in setting the sulh council which will manage peace sulh between the argued parties and the

guidance of Acara Mal (Mesir) No 13, 1968 Section 64. With this law, a command by the president Republic of Arab emirates no 1173, 1968 in related to sulh council has been declared.

Sulh concept or peace (mediation) which has been emphasized by Islam is a good way because through sulh can it can be abolish hatred on parties that are arguing and could strengthen the relation between them.

This is true especially in the relation among family, husband and wife. Therefore, sulh concept has been accepted in the Islamic society and there are plenty of cases, which are forwarded in the court, and the decision is the agreement by both parties. Therefore there are various states in Malaysia especially Selangor had use this concept and had coded sulh in Syariah Mal. Enactment Procedure Code Division XIV Syariah Selangor Enactment Procedure Code 1991 section 87 and alteration in alteration in Syariah Enactment Procedure Code Selangor 2003 section 99.

Section 87 states that a party in a proceeding is advise to use sulh as to solve grievances between them. The same section Ordinance Acara Mal Syariah (Sarawak) 1991 has a provision of sulh in related to settlement. Other enactment with related to sulh is through methodology of Tatacara Mal Sulh Selangor 2001 that is method 3, 5 and 6. Third method which the importance of third party in setting an agreement willingly and cooperation from all parties and this means that sulh plays an important role in solving problems which involves the two parties and this relevant to Al Qur'an and As Sunnah.

Other enactment, which is related to sulh, is the Islamic Laws Enactment Selangor no 2, 2003. Where the section VI and VII are matters that can be apply through sulh example nafkah, Children's welfare and others and section VII is the "hadhanah" or take care of the children others are the matrimonial claims. Cases, which is related and solve through sulh. Case: Zaleha binti Zakaria V Sahabudin b. Ali provided the Judgment by the Syariah