

## **Alternative Dispute Resolution Method for Resolving Estate Distribution Conflicts**

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### **Abstract**

Conflicts over inheritance distribution led to significant issues, preventing heirs from utilizing assets meant to benefit them. In Malaysia, an accumulation of RM90 billion of frozen assets from unresolved inheritance cases highlights the need for improved resolution strategies. Using a qualitative approach with descriptive analysis, this study identifies key issues of conflicts, including family disagreements, communication challenges, outsider interference, and third-party disputes, e.g. financial institutions. The findings suggest mediation as an effective alternative dispute resolution method to resolve estate distribution disputes due to its timely and cost-effective solutions to address these conflicts and improve inheritance distribution.

**Keywords:** Alternative dispute resolution; estate distribution; inheritance; mediation

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### **1.0 Introduction**

Malaysia currently has RM90 billion worth of frozen assets, 90% of which are Malays' property (Siti Shamsiah, 2022; Kamarudin & Basar, 2022). Conflicts over inheritance distribution led to significant issues, where heirs cannot utilize assets that should benefit them, leaving these assets frozen and unmanageable. Furthermore, the trial processes in both Civil and Shariah Courts are often associated with delays (Anuar, Azmi & Sidek, 2023). This is due to the courts' adherence to their respective procedural rules in resolving cases. Considering these challenges, this study aims to explore alternatives that facilitate faster and less burdensome dispute resolution. Alternative dispute resolution (ADR) methods are known as non-litigation mechanisms to address certain disputes. One of the alternatives is mediation, which has proven effective for immediate dispute resolution, particularly in contexts involving relationships and family matters (Rijal, 2019). Mediation offers an informal, fair, and cost-effective approach, allowing conflicting parties to mutually agree on solutions without engaging in formal legal proceedings. Datuk Yong, a judge of the Court of Appeal, emphasized the importance of professionally managing political, criminal, economic, social, and family disputes to maintain societal harmony. He highlighted mediation as one of the most effective methods of the ADR framework (Yong, 2023). Thus, the main objective of this study is to identify the conflicts in estate distribution and evaluate suitable ADR methods to address these conflicts efficiently.

## 2.0 Literature Review

The growing number of these conflicts is deeply concerning as it negatively impacts the Muslim community's image in Malaysia. Muda (2016) identified key factors contributing to unclaimed or frozen inheritance, including the heirs' attitudes, lack of legal knowledge regarding inheritance distribution, and insufficient understanding of Faraid laws. Incompetent estate distribution management can have severe legal, economic, and social implications (Azmi & Muhammad, 2015). Heirs also often face financial challenges due to the high legal costs of resolving these disputes, which can even prolong the process. As Bahagian Pengantaraan Mediasi (2023) suggested, the delivery of legal services must be enhanced by implementing more efficient dispute resolution mechanisms, such as effective mediation services.

### 2.1 Estate Distribution Agencies in Malaysia

Management of estate distribution is a process of determining rights and transferring rights to possession of all ownership and assets legally after a deceased's death (Fadlin, 2022). According to Noraini (2018), the legal system in Malaysia, influenced by British administrative policies, has significantly impacted the Muslim Malay community's approach to managing estate and inheritance distribution. The Shariah Court is authorized solely to issue Faraid certificates, which identify the legal heirs, determine the share of inheritance based on Faraid principles, and address matters related to the confirmation of heirs' rights. In Malaysia, there are three central agencies responsible for managing inheritance matters:

Table 1. Estate Distribution Agencies in Malaysia

Agencies	Act Involved	Types of Assets	Assets Value
Civil High Court	Rules of Court 2012 & Probate and Administration Act 1959	Movable and Immovable	>RM5 Million
Department of the Director General of Lands and Mines (JKPTG)	Small Estates (Distribution) Act 1955 & Distribution Act 1958	Movable and Immovable	<RM5 Million
Amanah Raya Berhad	Amanah Raya Corporation Act 1995	Movable only	<RM600,000

(Source: AmanahRaya, 2024)

Under Malaysian law, the deceased's assets are frozen upon the person's passing unless a valid probate is granted by the High Court. Therefore, preparing a thorough plan for managing the estate distribution is essential to avoid assets being left unused and frozen (Azmi & Muhammad, 2015). The Shariah Court holds the authority to determine legitimate heirs and verify their respective shares by issuing an inheritance certificate. As illustrated in Table 1, small estate distributions are managed by JKPTG once individuals submit applications expressing their interest and rights to the inheritance distribution. However, if a Wasiyyah exists where the assets are valued at less than RM600,000, the distribution will be under the jurisdiction of the High Court. The procedure for inheritance distribution may differ depending on the value and type of the assets (Shafie & Wan Zahari, 2016; Bernama, 2022).

### 2.2 Conflicts of Estate Distribution

A disagreement between people with opposing opinions or principles binds conflict. Various problems arise from the abandonment of estate administration and distribution, as evidenced in cases involving disputes, overlapping claims, abandoned properties, difficulty in the distribution process of the deceased's estate, and the risk of losing title documents (Azmi et al. 2025) as well as fraud and forgery activities in estate distribution (Anuar & Azmi, 2025). These issues went downhill when property disputes occurred among heirs, primarily when the property's value significantly increased, involving descendants such as grandchildren (Shafie & Wan Zahari, 2016). Estate distribution management is not only limited to collecting, managing, and protecting the assets but also to ensuring that the asset can be distributed well without causing difficulties to the beneficiaries of the asset. Amanah Raya Berhad (ARB), for example, frequently faces four primary issues associated with heirs: the failure to provide complete documentation, disputes among heirs, dishonesty on the part of applicants in listing legitimate heirs, and the reluctance of heirs to pay ARB's service fees. Therefore, a common conflict around estate distribution is family disputes, lack of understanding of Faraid law, difficulty reaching out to heirs, inheritance proceedings disputes, intervention from outsiders, and disputes with third parties, e.g., banks.

Family disputes may have rooted in past disagreements, and conflicts between heirs may begin before the deceased's death. These unresolved disputes escalate to result in damaging family relationships, resulting in strained relationships being left unsettled until the deceased passes away, like in the case of *Hasiah binti Mat v Johan Ariffin bin Din and Others [2009] MLJU 0821*. Another contributing factor to frozen assets is the community's lack of understanding regarding the procedures in estate distribution and management (Mohd Faizul, 2023). According to Abdul, Low, and Partners (2022), one of the most significant challenges in inheritance distribution is the lack of knowledge of Faraid principles. Inheritance distribution planning is made to ensure that the heirs can inherit the deceased's assets following Shariah principles (Kamarudin & Basar, 2022). For instance, in the case of *Saribanun bte Hj Meridon v Abd Samad bin Yaacob & Ors [2007] 4 SHLR 118*, a dispute arose regarding the validity of a will allegedly made by the deceased. In this case, the court ruled that the will was invalid because it did not comply with specific conditions outlined under Shariah law. This shows that many Muslims in Malaysia still lack knowledge of the management of estate distribution, which has resulted in the outbreak of disputes and conflicts (Azmi & Muhammad, 2015).

Individuals may intentionally neglect their responsibilities as heirs and tend to procrastinate, according to Fadlin (2022). Although other parties are willing to manage the estate distribution, the heirs' unwillingness to cooperate might slow the procedure. Besides, there is also a perspective that the responsibility for the estate distribution falls solely on the eldest child (Rusnadewi, 2010). Estate distribution can become more complicated and time-consuming if the assets are complex financial investments or family businesses are difficult to

value. Hence, according to AmanahRaya (2024), one of the reasons for the delayed distribution of funds is the difficulty in reaching heirs. According to JKPTG, the applicant and heirs must attend the scheduled hearing upon notice of proceedings once the applications are processed. However, the estate distribution application will be canceled if an heir fails to participate in the hearing after three summonses (Bahagian Pembahagian Pusaka, 2023). There have been cases where an heir fails to inform other heirs about the estate distribution hearing, as seen in the case of *Hanizah binti Sulaiman v Abdul Kadir bin Sulaiman and others* [2018] MLJU 467.

There are also cases such as when the deceased had a close-family-like relationship with individuals outside their immediate family, or in Islamic terms, those who are not Fardhu heirs or Asobah heirs, such as aunts, uncles, sons of sisters, grandsons of daughters, and others (Amiruddin, 2012). Similarly, disputes may arise when an illegitimate child of the deceased claims rights to the inheritance (Baharom, 2019). The Shafie and Maliki schools of thought hold that individuals close to the deceased but neither Fardhu nor Asobah heirs are entitled to the inheritance even if the deceased has no rightful heir. Instead, the deceased's estate distribution shall be surrendered over to Baitulmal (JAIS, 2023). Another common situation occurs when disputes emerge when the heirs disagree with the amount of debt the bank claims. One of the primary responsibilities in estate distribution is managing the deceased's burial, where the estate distribution fund is used to cover expenses for the deceased's burial. Followed by the fund is later used to settle the deceased's debts and fulfil their will. However, disagreements occur when the heirs refuse to bear complete responsibility for paying off these debts.

### 2.3 Alternative Dispute Resolution (ADR)

Quoting Mnookin (1998), Alternative Dispute Resolution is a set of techniques and practices that allow legal issues to be resolved outside of court by avoiding legal litigation. This perspective highlights that ADR is a good alternative to estate distribution conflicts due to its flexible procedures and guaranteed confidentiality of proceedings to protect family privacy, lower costs, and fewer formalities to prevent prolonged disputes. The ADR method in Malaysia was first formalized with the introduction of the Arbitration Act of 1952. Then, the act was replaced by the Arbitration Act 2005. Among the ADR methods practiced in Malaysia are arbitration, mediation, conciliation, and the Sulh method (Nur Khalidah, 2017). For example, ADR methods have been used to address disputes in finance and Islamic banking (Nurul Husnah, 2017).

In the arbitration method, the conflicting parties present their case to an arbitrator, who is an expert with legal knowledge and is unbiased. The arbitrator examines the facts of the case and then decides. If the parties have agreed beforehand, the decision will bind them and lead to the issuance of an award. This differs from the mediation method, where a neutral third party facilitates discussions but does not impose a decision, allowing the conflicting parties to agree on a solution that is mutually beneficial (Nur Khalidah, 2017), prioritizing both parties' interests and benefits. However, mediators do not have the authority to make final decisions or coerce either party to agree. In Malaysia, mediation is governed by the Mediation Act 2012 (Act 749). However, the Mediation Act 2012 does not apply to government elections, criminal cases, or mediations conducted by judges, magistrates, court officers, or the legal aid department (Nurul Husnah, 2017). On the other hand, conciliation is like mediation but has a more active role in proposing solutions and assisting the parties in resolving their dispute. Conciliation may appear slightly more formal than mediation because the conciliator approaches the process formally. Conciliation is a non-binding procedure, and settlement in conciliation is amicable because the conciliator does not dictate the terms or decisions (Shinde, 2012).

Sulh is another ADR method used in communities where Islamic practices form part of the legal or social framework. Sulh in Malaysia started in the period of the Malacca Sultanate, which Islamic Law put together based on the Shafi'i school of thought, and Malay customary law as the applicable law. Sulh is a form of mediation and conciliation used to resolve disputes, mainly in religious and matrimonial matters (Wahed, 2015). Sulh differs from mediation, where a neutral third party assists conflicting parties. For example, the mediator for the local community in Malay society can either be the head of the village, Imam, Ulama (religious scholars), or judge in the Shariah court. It is best believed that conflicted parties would instead refer their family members and elders to resolve the dispute because matrimonial matters should remain behind closed doors to protect the image and to preserve the family institution.

## 3.0 Methodology

This study employs an integrative literature review and qualitative method, utilizing both primary and secondary data. Primary data is used as the main data collection where it is collected through semi-structured interviews, while secondary data is used as support resources. The interview is done through online meetings and with the help of Google Forms. The interview question is divided into three sections: respondents' background information, conflicts encountered in estate distribution, and recommendations for suitable ADR methods in estate distribution to ensure accuracy and enhance the understanding of the study and insights.

The process of descriptive analysis depends on the instrument of data collection, where the data obtained will be compiled, explained, and then analyzed (Soendari, 2012). Hence, five respondents with expertise in the relevant field were selected for the interviews, representing legal practitioners or lawyers, estate administration agencies, estate planning consultants, and land and mines administrators as shown in Table 2. The data received were analyzed through descriptive analysis to deliver what and why based on the respondent's answers and discussion.

Table 2. Description of Respondents

Respondents	Designation	Agencies	Years of Experience
R1	Advocates and Solicitors	Nur Shuhadah & Associates	10
R2	Inheritance Consultant	Wasiyyah Shoppee Berhad	2
R3	Administrative Officer	PTG	6

R4	Small Estate Distribution Unit	JKPTG	6
R5	Assistant Manager of Operations	Amanah Raya Berhad	20

4.0 Findings

As discussed in Section 2.0, there are six known conflicts in estate distribution: (1) family disputes, (2) lack of understanding of Faraid law, (3) difficulty in reaching out to heirs, (4) disputes in inheritance proceedings, (5) intervention from outsiders, and (6) disputes with third parties. Based on the interviews, all respondents agreed on the conflicts related to family disputes, lack of understanding of Faraid law, and intervention from outsiders in the estate distribution process. On the other hand, all respondents except for one, agreed on the other three conflicts: difficulty in reaching out to heirs, disputes in inheritance proceedings, and disputes with third parties.

All respondents acknowledged the benefits of ADR in resolving conflicts effectively to recommend suitable ADR methods in estate distribution. These help highlight the adaptability of ADR methods according to each conflict's characteristics, as shown in Figure 2 below. Most respondents agreed that four out of six conflict issues in estate distribution are best resolved through mediation, respectively, conflicts regarding family disputes, difficulties in reaching heirs, inheritance proceedings disputes, and interventions from outsiders. Conciliation was the preferred method for conflicts arising from a lack of understanding of Faraid law, while arbitration was most chosen for disputes involving third parties. Meanwhile, the Sulh method has never made it a majority vote for any conflict issue.

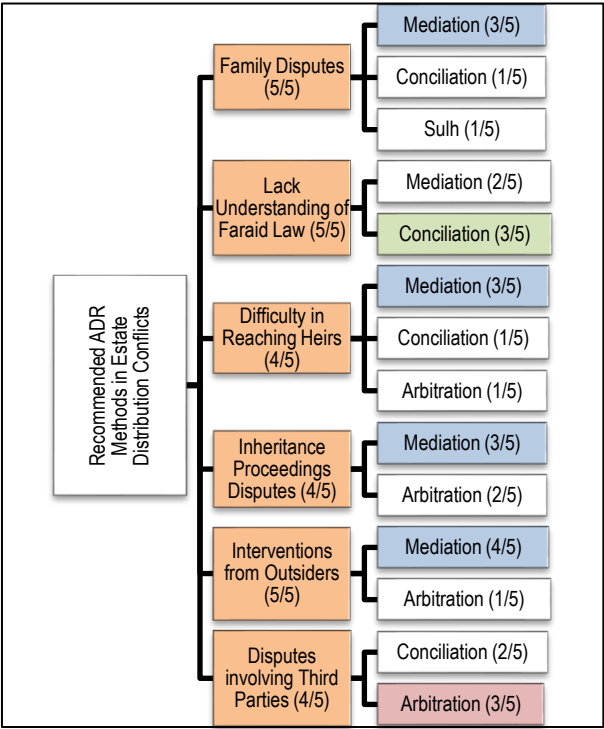


Fig. 2: Findings analysis of suitable ADR methods

5.0 Discussions

According to the findings, unresolved family disputes can delay the inheritance distribution during court proceedings. A lack of knowledge regarding the principles of Faraid results in planning without proper understanding, which leads to conflicts among heirs such as misunderstanding. Besides, disputes may also arise when an heir refuses to cooperate as they know they are entitled to only a tiny share. Moreover, many cases involve either heirs who have moved or whose addresses must be corrected, making them difficult to trace. Worse cases are when heirs need more interest in their family's inheritance distribution. Things can go south when there is intervention from outsiders. Furthermore, an illegitimate child is not entitled to inherit any of the deceased's assets according to the law, and third parties have no rights to claim unless permitted by the lawful heirs. Additional conflicts emerge from disputes between third parties, usually banks due to outstanding debts, mortgages, or insurance issues. Hence, it is a very common situation when heirs find the burden to take responsibility for repayment.

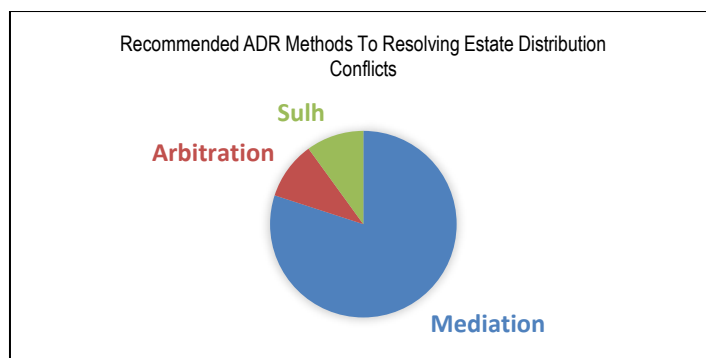


Fig. 3: Findings analysis of suitable ADR methods

This study shows that conflicts are indeed happening and can barely be resolved through litigation in court. ADR methods can improve communication skills between the conflicting parties, helping them understand each other and reach an agreement. All respondents emphasized that ADR is time- and cost-saving, particularly for families facing financial constraints. Courts are burdened with high cases, often resulting in delays and rescheduling. ADR is a viable solution to help speed up the estate distribution and prevent unnecessary prolongation. All respondents acknowledge the advantages of ADR as ADR procedures are less complicated than the courts' litigation. To conclude, as shown in Figure 3 above, respondents considered mediation the preferred method as it is more widely known and easier to understand than other ADR methods, which are rarely heard of.

## 6.0 Conclusion & Recommendations

Estate distribution should be carried out with complete cooperation from the deceased's beneficiaries, the administrative agency, and all other parties involved. This study shows that many conflicts in inheritance distribution contribute considerably to the growing number of frozen assets and negatively affect society's social and economic well-being. ADR is presented as an acceptable approach for handling inheritance difficulties, as these are primarily within family disputes. However, the limitation of this study would be the accessibility to successful ADR cases due to their confidential term. Cases that are solved through ADR are not well documented like court cases. Even if the consultant documents it well, it is not readable to the public.

Based on the analysis of the findings, a few recommendations have been identified to enhance efforts in efficiently resolving conflicts related to inheritance distribution. One recommendation is to examine the procedures necessary to implement the ADR approach. According to the study's findings, mediation can be part of the inheritance distribution process via the system developed by the estate administration agency. Consequently, it is recommended that the government devise proper strategies and steps to establish mediation as an official framework for the inheritance distribution process. This would increase the practicality and general awareness of mediation as an appropriate method for resolving inheritance distribution disputes. Therefore, involving legitimate authorities or mediators is crucial to reaching a fair and legal resolution that satisfies all parties involved.

To include this, this study may need a better and refined understanding of the whole implementation of ADR to our estate distribution procedure as an official framework. It would be appropriate for further research on the implementation of ADR in Malaysia to be investigated to design it as one of Malaysia's estate distribution conflict settlement procedures.

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## Paper Contribution to Related Field of Study

This study identifies that the proposed ADR method would help lessen the financial burden on deceased beneficiaries and resolve conflicts during inheritance distribution. Although there is yet to be an official framework to implement the ADR method, this study will help policymakers better understand the need for alternative resolutions to derive complete reliance on the court.

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