



LEGAL FRAMEWORK AND STRUCTURE OF  
COMMUNITY MEDIATION IN MALAYSIA:  
A PROPOSAL

BY

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## ABSTRACT

Community mediation is an extremely beneficial programme that enables the people to solve their neighbourhood problems within the community, without the hassle of bringing the matter to court. Under the Department of National Unity and Integration (DNUI), Malaysia has initiated a community mediation programme, however, it is without a proper legal framework or organisational structure, hence the DNUI and the community mediators faced many challenges such as no governing law, proper place to conduct mediation sessions and lack of continuous training. Ho Kek Hwa (2009) highlights the challenges faced by the DNUI. A proper institutionalised community mediation would, on the other, ensure effectiveness of the programme besides offering many other advantages to the nation. Thus, to streamline the practice of community mediators in Malaysia, a legal framework and a proper organisational structure of an institutionalised community mediation programme is necessary. One of the objectives of this study is to examine the current practice of community mediation in East and West Malaysia, Singapore and Kerala, India. Major part of the study is focused towards the proposal of a legal framework and organisational structure of community mediation in Malaysia with the intention to institutionalise the programme. A qualitative legal research has been conducted on the current practice of community mediation in Malaysia, Singapore and India. A hundred and seventy five (175) respondents comprising of directors and officers of DNUI, judges of high court and native courts, *Penghulu* (headman), professional mediators, community mediators and *Rukun Tetangga* (Peaceful Neighbourhood) committee members were interviewed. The findings of this study reveal that the current community mediation programme needs to be revamped and regulated. This study further proposes a new Malaysian Community Mediation Act 2015. Overall, this study is a notable solution to the dispute solving mechanism in Malaysia and a significant contribution to the existing literature on community mediation in Malaysia.

## ملخص البحث

يعد الإصلاح المجتمعي من البرامج ذات الأهمية القصوى التي تسمح لأفراد المجتمع بحل مشكلاتهم في مجتمعاتهم المحلية دون الحاجة إلى التدخل أو المشاحنة والوصول إلى المحاكم. تحت وحدة الوطنية المدججة المتكاملة (DNUI) أنشئت ماليزيا برنامجا للإصلاح المجتمعي، ولكن هذا البرنامج لا يحتوي على هيكل قانونية ولا تشكيل منظّمي بعد، لهذه الأسباب فإن (DNUI) يواجه العديد من التحديات مثل عدم وجود قانون خاص به، وعدم توافر أماكن مخصصة لجلسات الإصلاح أو التوسط كما أن البرنامج يفتقر للتدريب المناسب والمتواصل فيه. أشار هو كيك هوا (HO KEK HWA,2009) إلى التحديات التي تواجه (DNUI) من ناحية، ومن جهة أخرى فإن أهمية وجود تأسيس وتنظيم، يؤكد ويضمن فعالية عالية للبرنامج بجانب طرح العديد من الامتيازات الأخرى للشعب. وبالتالي، يحقق تنظيم ممارسة برنامج الإصلاح المجتمعي في ماليزيا، لهذا فمن المهم وجود هيكلية قانونية ومؤسسية للسماح لهذا البرنامج بتحقيق الأهداف المرجوة منه. من أهم أهداف هذه الدراسة، هو فحص الممارسة الموجودة حاليا للإصلاح المجتمعي في شرق وغرب ماليزيا، سنغافورة ومدينة كيرلا في الهند. كذلك تسعى هذه الدراسة على التركيز نحو طرح هيكل قانوني وتنظيمي للإصلاح المجتمعي في ماليزيا بغرض تأسيس البرنامج. وقد تم بحث قانوني ونوعي لدراسة وفهم ممارسة الإصلاح المجتمعي المتبعة حاليا في المجتمع بماليزيا، سنغافورة والهند. مئة وخمس وسبعون استجابة متمثلة في مدراء ومسؤولون من (DNUI)، وقضاة للمحاكم العليا والمحاكم المحلية، ووسطاء مختصون ومصلحون محليون، ورؤساء مجتمعات محلية سلمية، تمت مقابلتهم وأخذ آرائهم. أما النتائج التي تم التوصل إليها من خلال هذه الدراسة فقد أوضحت أن برنامج الإصلاح المجتمعي الحالي يحتاج إلى التطوير ووضعه في إطار قانوني. عموما، فإن هذه الدراسة تقترح قانونا جديدا للإصلاح المجتمعي في ماليزيا ٢٠١٥ خصوصا إن هذه تقنية توفر حلا للمشكلات والخلافات المحلية في ماليزيا بالإضافة إلى أثراء المعلومات والمادة الأدبية الموجودة حول الإصلاح المجتمعي في ماليزيا.

## APPROVAL PAGE

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## DECLARATION

I hereby declare that this dissertation is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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*Rahela, Hasanah, Aminulla, Nur Hafiza and Khairah.*

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Constitution of the Islamic Republic of Pakistan 1973  
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Indian Arbitration Act 1899 (India)  
Legal Services Authority Act 1987 (India)  
Mediation Act 2012 (Act 749) (Malaysia)  
Native Courts (Practice and Procedure) Rules 1995 (Malaysia)  
Native Court Enactment 1992 (Enactment No. 3 of 1992) (Malaysia)  
Native Courts Ordinance 1992 (En. No. 3 of 1992) (Malaysia)  
Peaceful Neighbour Regulation 1975 (PU (A)279/75) (Malaysia)  
Rukun Tetangga Act 2012 (Act 751) (Malaysia)

## LIST OF ABBREVIATIONS

|          |   |
|----------|---|
| ADR      | Alternative Dispute Resolution  |
| CMC      | Community Mediation Centre  |
| CMU      | Community Mediation Unit  |
| DNUI     | Department of National Unity and Integration  |
| DPM      | Dispute Prevention and Management services  |
| Etc.     | And so forth  |
| IIAM CMS | IIAM Community Mediation Service  |
| IIAM     | Indian Institute of Arbitration and Mediation   |
| IKLIN    | <i>Institut Kajian dan Latihan Integrasi Nasional</i><br>(National Integration Research and Training Institute) |
| IMI      | International Mediation Institute   |
| IMYC     | Ministry Committee on Youth Crime   |
| IPOS     | Intellectual Property Office of Singapore   |
| IPTO     | Insolvency and Public Trustee's Office  |
| KAN      | <i>Ketua Anak Negeri</i> (The Chief of Native)  |
| KLRCA    | Kuala Lumpur Regional Centre for Arbitration  |
| LAB      | Legal Aid Bureau  |
| MMC      | Malaysian Mediation Centre  |
| Nafcm    | National Associate for Community Mediation  |
| NYC      | National Youth Council  |
| QAP      | Qualifying Assessment Programme   |
| SCMC     | Singapore Community Mediation Centre  |
| SLA      | Singapore Land Authority  |
| USA      | United States of America  |

# **CHAPTER ONE**

## **INTRODUCTION**

### **1.0 INTRODUCTION**

This chapter examines the preliminary issue in this research beginning with the concept of mediation and community mediation and the practice of mediation in Singapore, Australia and Malaysia in the first section. This is followed by the research questions, objectives of the study, the hypothesis, literature review, scope and limitation, research methodology and structure of the thesis. The research questions identify scope posing the central question guiding this study. The objectives in the third part of the chapter are significant in showing the direction of this study and the tasks that the researcher needs to undertake. The section on scope and limitation sets the extent or boundaries of the research. The research methodology explains how the research is carried out to answer the research question. It focuses on the research design, the approach to take in the necessary direction of the research. Finally, the outline of this research in 8 chapters will be summarised in the structure of this thesis within.

Community mediation, a process to resolve conflicts within a community has been widely practised in developed and developing countries, Singapore has established the practise of community mediation since 1998. The drawbacks of litigation and the excellence result of community mediation processes are the reasons for the practitioner to embrace the mediation practise. Malaysia promotes harmony life and tries her best to provide the same to her citizens. For example, the establishment of the Department of National Unity and Integration (“DNUI”) with the

mission to increase and strengthen unity and societal harmony; is one of the efforts of the Malaysian Government in ensuring the citizens live a peaceful life. The Department has initiated many programmes in its effort to promote unity and integration in this country. *Rukun Tetangga* (Peaceful Neighbourhood) is one of the programmes. Under *Rukun Tetangga*, a Community Mediation pilot project was initiated in 2008. However, there is no specific rules and regulation governing this practice specifically, no administrative centre to conduct the mediation session and no proper training given to the mediators. It is essential to ensure that Malaysia has an effective institution that could resolve disputes between its citizens from different races, ethnicities, religion and culture as well as to maintain the current peace.

This thesis studies the current practice in Malaysia and the selected jurisdiction i.e., India and Singapore, and thereafter suggests the best legal framework and administrative structure for Malaysian community mediation. The followings are the detail of this introductory chapter.

## **1.1 BACKGROUND OF THE STUDY**

Mediation is one of the methods of the alternative dispute resolution (ADR).<sup>1</sup> It is a process that uses a third party (a neutral party to the conflict), known as the mediator, to clarify communicate between the parties on their positions.<sup>2</sup> There are many definition of mediation. For example according to Liebmann,

Mediation is a process by which an impartial third party helps two (or more) disputants work out how to resolve a conflict. The disputants, not

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<sup>1</sup> Syed Khalid Rashid, "The Importance of Teaching and Implementing ADR in Malaysia", *Industrial Law Report*, Vol. 1 (2000): i. *Current Law Journal Online*, <<http://www.cljlaw.com> > viewed on 21 October, 2012.

<sup>2</sup> David A. Hardcastle, Patricia R. Powers, Stanley Wenocur, *Community Practice: Theories and Skills for Social Workers*, (New York: Oxford University Press, 3<sup>rd</sup> edition, 2011) at 286.

the mediators, decide the terms of any agreement reached. Mediation usually focuses on future rather than past behaviour.<sup>3</sup>

ADR has religious roots, namely in the three main monotheistic religions, Judaism, Christianity and Islam, that apply ADR to resolve conflicts among their followers.<sup>4</sup> In Islam, *waṣāṭa* is the common term for mediation which means a benevolent and non-binding procedure to end a dispute<sup>5</sup>. For centuries mediation has been the traditional method of settling disputes within the Arab world. In many urban societies in the Middle East, the problems were often resolved by the elders in a community meeting since there was no formal court mechanisms designed for that purpose.<sup>6</sup> The community meeting process serves as a vital function in the local community in the Middle East is community mediation. It plays the same role as community mediators.

Community mediation is a method that applies the mediation process to resolve conflicts between persons within the same community and may be applied to resolve disputes occur in the workplace or with local organizations, such as health practices, and local council authorities.<sup>7</sup>

Community mediation is not a new method of dispute resolution in Malaysia. It has been practised by the Malays long time ago without them realising it. Wall and Callister (1999) in enlightening the practise of dispute resolution in Malaysia explain

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<sup>3</sup> Marian Liebmann, *Community and Neighbour Mediation*, (Great Britain: Cavendish Publishing Limited, 1998) at 2.

<sup>4</sup> See G. Sofia Avilova, "Attaining Democracy in Georgia: Using Mediation to Rescue Georgia's Democratic Transformation", *Michigan State Journal of International Law*, Vol. 17 (2008-2009): 465 – 490 at 476 LexisNexis <via: <http://www.lexis-nexis.com/terms/general/>> (accessed on 28 January, 2011).

<sup>5</sup> Said Bouheraoua, "Foundations of Mediation in Islamic Law and Its Contemporary Application" in Mohammad Naqib Ishan Jan, Ashgar Ali Ali Mohamed (eds.) *Mediation in Malaysia: The Law and Practice*, (Kuala Lumpur: LexisNexis, 2010) at 387.

<sup>6</sup> See Cheri M Ganeles, "Cybermediation: A New Twist on an Old Concept", *Albany Law Journal of Science & Technology*, Vol. 12 (2002): 715 LexisNexis <via: <http://www.lexis-nexis.com/terms/general/>> (accessed on 28 January, 2011).

<sup>7</sup> See Loukas A. Mistelis. "ADR in England and Wales", *The American Review of International Arbitration*, Vol. 12 (2001): 167 LexisNexis <via: <http://www.lexis-nexis.com/terms/general/>> (accessed on 28 January, 2011).

that the conflicts in the cities in Malaysia were either tolerated, managed or required police intervention. But, in the villages, the members of the community adopted different approach to resolve dispute. The disputes normally will be reported to the village administrator (*Ketua Kampung*) or to the religious mosque leader, an *Imam*.<sup>8</sup> The ethnics of India and Chinese are also familiar with mediation as dispute resolution in solving problems within their community. G Raman (1998) states that the Indians and Chinese resolved their disputes through mediation by elders of the community, clans or guilds prior to the introduction of English common law.<sup>9</sup>

In Australia, mediation has developed through government financing and non-government financing. There are numerous community mediation centres that address both small civil and neighbourhood disputes.<sup>10</sup> For example, in South Australia, the Government has established Australian Community Legal Centres under the territory council to operate Southern Community Justice Centre. The purpose of this Southern Community Justice Centre is to provide free legal assistance, court representation (in some cases) and/or referral in many areas of law to people, simultaneously function as operator of Community Mediation Services with the objectives to assist the people with their neighbourhood disputes.<sup>11</sup>

In Singapore, the Ministry of Laws has established the Community Mediation Centre under the Community Mediation Unit.<sup>12</sup> The Community Mediation Centres

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<sup>8</sup> James A Wall & Ronda Roberts Callister, "Malaysian Community Mediation," vol. 43 (1999) *Journal of Conflict Resolution* at 345.

<sup>9</sup> G. Raman, *Probate and Administration in Singapore and Malaysia: Law and Practice*, (Singapore: LexisNexis, 2005) at 4.

<sup>10</sup> See Cheri M Ganeles, "Cybermediation: A New Twist on an Old Concept," vol. 12 (2002), *Alb. L.J. Sci. & Tech* at 715 LexisNexis <via: <http://www.lexis-nexis.com/terms/general/>> (accessed on 28 January, 2011).

<sup>11</sup> Government of South Australia <http://www.sa.gov.au/government/entity/1741/2009> (accessed on 30 January, 2011); Legal Services Commission of South Australia <http://www.lawhandbook.sa.gov.au/print/ch25s12.php/2011> (accessed on 30 January, 2011).

<sup>12</sup> Ministry of Laws, Singapore Government <http://app2.mlaw.gov.sg/AboutMinLaw/WhatMinLawDoes/CommunityMediation/tabid/243/Default.aspx/2009> (accessed on 30 January, 2011).

were set up by the Ministry of Law to resolve social and relational conflicts amicably through mediation.<sup>13</sup> The Singapore Community Mediation Centres Act (Chapter 49A) provides for the establishment and operation of the Community Mediation Centre. The Act came into force in January 1998 and shortly after it was enforced, Singapore's first Community Mediation Centre was officially opened in November 1998. The Ministry of Law supervises the Community Mediation Centres and remains an active promoter of mediation and ADR.<sup>14</sup>

Singapore and many other countries have established community mediation Centres or institutions as early as from the 1970's. Malaysia may look at their experience to structure a Malaysian model. The reasons to adopt ADR process i.e., mediation and to propose a legal framework and a structure of community mediation in Malaysia is to increase access to justice for disadvantaged groups, enhance the community's involvement in the dispute resolution process and further strengthening social stability and forging a civil society.<sup>15</sup> It is important for the Government to provide an avenue to the Malaysian in resolving disputes at the community level that could promote integration and avoid polarisation considering the nature of the community i.e. multi-races, multi-ethnics and multi-cultural.

The advantages of mediation attracted people to apply this method such as less expensive and generally more personal in nature enables a poorer party to spend less money.<sup>16</sup> It is a recent innovation that is speedier, more humane and less expensive

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<sup>13</sup> Community Mediation Centre, Singapore Government <http://www.spf.gov.sg/epc/procedures/purviewotheragencies.htm/2010> (accessed on 30 January, 2011).

<sup>14</sup> See Loong Seng Onn, Singapore Academy of Law, <http://www.Singaporelaw.sg/content/Mediation.html>

<sup>15</sup> See Aida Othman. "Introducing Alternative Dispute Resolution In Malaysia: Prospects and Challenges" vol. 2, (2002), *Malayan Law Journal Article*. ccxxiv.

<sup>16</sup> See Avilova, n. 4. at 486.

alternatives to the court, and the citizens could receive a more expeditious and self-generated process to justice.<sup>17</sup>

The outcome of mediation is a win-win situation, whilst in litigation there will be a losing party which results might cause the disputants to hate each other and afterward cause irreparable damage of their relationship. In mediation both parties share the same focus i.e., to settle the dispute or solve their problem rather than to defeat each other. On the contrary, mediation by its nature of informality and mutuality is designed to reduce both economic and the emotional cost of dispute settlement. The stress and emotional cost of litigation might create conflicts in the personal life and community relations, especially if the case involves disputants from different ethnicities and religion.<sup>18</sup>

Mediation will encourage a more participatory or democratic society by educating and changing peoples' modes of communication or methods of resolving disputes. People involved in a conflict are encourage to look at conflict as an opportunity to improve their situation, families, communities and society as a whole.<sup>19</sup> According to Sir Lawrence Street (1997), the proper place for mediation mechanism is within the community justice centre that establish by the legislation for resolving interpersonal frictions that unavoidably arise within local communities. Hence, the

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<sup>17</sup> Karen Grover Duffy, "Introduction to Community Mediation Program: Past, Present and Future" in Karen Grover-Duffy, James. W. Grosch, Paul. V. Olczak (Eds). *Community Mediation: A Handbook for Practitioners and Researchers*, (New York: Guilford Press, 2<sup>nd</sup> edition, 1991) at 24.

<sup>18</sup> Laurence Boulle, Teh Hwee Hwee, *Mediation Principles Process Practice*, (Butterworth Asia, 2000) at 31; See Lee Hun Hoe, "Alternative Methods of Dispute Settlements" vol. 1 (1987) *Current Law Journal* 423; See Joseph P. Folger, Robert A. Baruch Bush, *The Promise Of Mediation: The Transformative Approach To Conflict*, (John Wiley & Son, 2<sup>nd</sup> edition, 2004) at 9-10.

<sup>19</sup> See Thomas J Moyer. "Mediation as a Catalyst for Judicial Reform in Latin America", vol. 18 (2003) *Ohio State Journal on Dispute Resolution* 619 LexisNexis <via: <http://www.lexis-nexis.com/terms/general/>> (accessed on 30 January, 2011).