

Mitigation of Estate Distribution Disputes through Mediation-based ADR Approach

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Abstract

The many unresolved inheritance cases in Malaysia show that arising estate distribution disputes pose significant obstacles, revealing a need for better resolution. Considering the trial processes in both civil and Sharia courts are often associated with delays due to their respective procedural rules, this study aims to explore alternatives that facilitate faster and less burdensome dispute resolution. Through qualitative methods, the identified disputes are family disagreements, communication challenges, outsider interference, and third-party disputes, e.g., financial institutions. The findings suggest mediation is a valuable strategy to improve estate distribution and reduce pending inheritance cases due to its cost-effectiveness and straightforward procedure.

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

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1.0 Introduction

Frozen estates refer to unadministered estate distributions where no heirs formally applied for probate or letters of administration to manage the deceased assets (Yusoff et al., 2023). Similarly, Indonesia also struggles with a significant amount of frozen assets that lead to losses for beneficiaries. For comparison, the applicable laws for frozen assets in Indonesia are regulated by three applicable inheritance law systems which are the customary inheritance law system, the Western inheritance law system, and the Islamic inheritance law system (Yusoff et al., 2023, Maryani et al., 2022; Daud & Azahari, 2019; Nasution, 2019). However, there is no precise data on the number of frozen assets in Indonesia. Meanwhile, in Malaysia, the Public Trust Corporation Act 1995, the Probate and Administration Act 1959, and the Small Estate (Distribution) Act 1955 are the applicable laws governing the transfer of non-administered estates. Yet, there is a gap in Malaysian estate administration procedures, as the system cannot track down estates if beneficiaries have not filed an administration application (Yusoff et al., 2023). Nevertheless, according to Khairul Nisa Ismail, Chief Executive Officer of Sedania As Salam Capital (SASC), the value of frozen assets in Malaysia currently stands at RM90 billion, with 90% of the assets owned by Malays. Additionally, frozen assets in the real estate sector are estimated to be worth RM200 billion, 75% of which are owned by the Muslim population (Harian Metro, 2024; Kamarudin & Basar, 2022). Therefore, a significant portion of frozen estates remains unaccounted for, as the exact number of non-administered estates has yet to be determined. Hence, the value of frozen assets in Malaysia may exceed what is recorded.

Beneficiaries may have submitted an application to administer the estate, but the case is still pending due to several factors, such as disputes (Yusoff et al., 2023). Disputes or conflicts over inheritance distribution led to significant issues, where heirs could not utilize assets that should benefit them, leaving these assets frozen and unmanageable (Berita Harian, 2024; Aziz, 2016). Moreover, 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 (New Straits Time, 2023). Thus, the main objective of this study is to identify disputes in estate distribution and evaluate suitable ADR methods to address these conflicts efficiently.

2.0 Literature Review

The growing number of these conflicts is alarming as it negatively impacts the Muslim community's image in Malaysia. Mohd Zamro (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 lead to severe legal, economic, and social implications (Azmi & Muhammad, 2015; Ghazali Ibrahim, 2008). According to Arieff Salleh Rosman (2023), 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. Heirs often face financial challenges due to the high legal costs involved in resolving these disputes, which can 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 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 the deceased's death (Fadlin, 2022). According to Noraini Noordin (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 Syariah 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 main agencies responsible for managing inheritance matters:

Table 1. Estate Distribution Agencies in Malaysia

Agencies	Act Involved	Types of Assets	Assets Value
Civil High Court	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, Land Code & 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 will be frozen upon the person's passing until a valid probate is granted by the High Court. Therefore, it is important to prepare a thorough plan for managing the estate distribution to prevent assets from being left unused and frozen (Shafie, Wan Yusoff, & el-Edrus, 2016). The Syariah 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 the Department of Director General of Lands and Mines (JKPTG) once applications are submitted by individuals expressing their interest and rights to the inheritance distribution.

If a Wasiyyah exists and the value of the assets is less than RM600,000, the distribution will be under the jurisdiction of the High Court. Meanwhile, Amanah Raya Berhad (ARB) is entrusted to manage movable assets only, valued at RM600,000 or less, whether the deceased passed away testate or intestate. The procedure for estate distribution may vary depending on the value and type of the assets involved (Fazira et al., 2016).

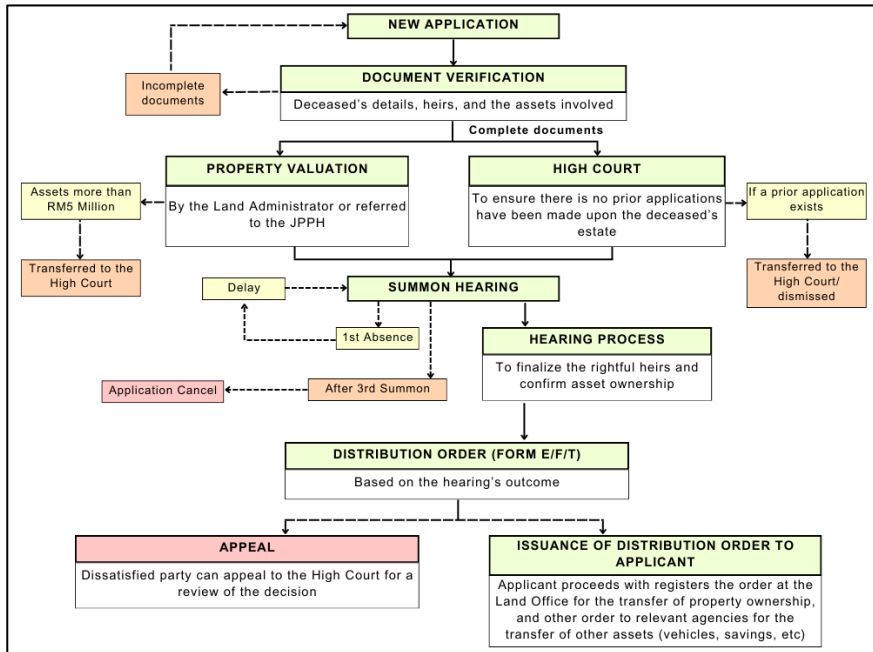


Figure 1: Flowchart Application for Small Estates (Distribution)
(Source: Website of Department of the Director General of Lands and Mines)

2.2 Issues and Conflicts of Estate Distribution

Many factors can contribute to the frozen assets either technical issues or disputes regarding the estate distribution. According to the Cambridge Dictionary, conflict is bound by a disagreement between people with opposing opinions or principles. A dispute is an argument arising from disagreements that prolong over time. The management of estate distribution involves the deceased's heirs. 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 likely losing title documents. These issues went downhill when property disputes occurred among heirs, especially when the property's value significantly increased, involving descendants such as grandchildren (Fazira et al., 2016). 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 (Ainan & Siti, 2020).

Family disputes may have roots in past disagreements, and conflicts may emerge even before the deceased's death. These unresolved conflicts then escalate to disputes resulting in damaged and strained family relationships and being left unsettled until the deceased passes away (Abdul Halim, 2006). Like in the case of *Hasiah binti Mat v Johan Ariffin bin Din and Others* [2009] MLJU 082, which can give the heirs emotional tension and disrupt the planning of inheritance distribution. The unresolved dispute that was brought to the court proceedings prolonged the inheritance distribution. Another contributing factor is the community's lack of knowledge and understanding regarding the methods and procedures involved in estate distribution and management (Mohd Faizul, 2023; Rashid & Yaakub, 2015). According to Abdul, Low, and Partners, one of the most significant challenges in inheritance distribution is the lack of knowledge of Faraid principles where many individuals are putting their reliance on others to manage it. Inheritance distribution planning is made to ensure that the heirs can inherit the deceased's assets following Syariah principles (Mohamad Ali, 2022). However, planning without the proper knowledge and understanding can lead to conflicts, delays and failure in distributing the legacy (Mobidin, Sulaiman, Shukur, & Ali, 2019). For instance, in the case of *'Saribanun bte Hj Meridon v Abd Samad bin Yaacob & Ors* [2007] 4 SHLR 118', the court ruled that the will was invalid because it did not comply with specific conditions outlined under Sharia law. This shows that many Muslims in Malaysia still lack knowledge in the management of estate distribution, which results in the outbreak of disputes and conflicts (Noraina, 2020; Azmi & Muhammad, 2015).

Other than that, some individuals may intentionally neglect their responsibilities as heirs and tend to procrastinate (Fadlin, 2022). Although other parties are willing to manage the inheritance distribution, the process can still be hindered due to the lack of cooperation among the heirs. Another thing that could hinder the process is when heirs do not have complete documentation to proceed with the distribution process and subsequently abandon the process halfway (Mobidin, Sulaiman, Shukur, & Ali, 2019). According to the JKPTG (2019), if there is a lack of documentation or incomplete information, the heir must cancel the first application and apply for a new application. Thus, according to Amanah Raya (2024), one of the reasons for the delayed distribution of funds is the difficulty in reaching heirs. Many cases involve either heirs who have moved, incorrect addresses, or lack of interest in their family's inheritance distribution, making them difficult to trace. Inheritance distribution can become more complicated and time-consuming if the assets are complex to value, such as financial investments or family businesses.

Besides, there is also a perspective that the responsibility for the estate distribution falls solely on the eldest child (Rusnadewi, 2010). Estate distribution applications are processed by JKPTG where the heirs are summoned to a hearing through a notice of proceedings. According to JKPTG, the applicant and heirs must attend the scheduled hearing upon notice of proceedings once the applications are processed, but one conflict can arise when an heir deliberately refuses to cooperate because they know they are only eligible for a

small share of the distribution. However, the estate distribution application will be canceled if a situation such as an heir fails to participate in the hearing after three summonses (Bahagian Pembahagian Pusaka, 2023). There have been cases where an heir deliberately 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'.

Intervention from outsiders is when the deceased had a close-family-like relationship with individuals outside their immediate family, or in Islamic terms, those who are not Fardu 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 (Yanie Baharom, 2019). According to existing law, an illegitimate child is not eligible to inherit any share from the deceased's estate distribution. The Shafie and Maliki schools of thought hold that individuals who are close to the deceased but are neither Fardu nor Asobah heirs are not entitled to the inheritance if the deceased does not have a rightful heir. Instead, the deceased's estate distribution shall be handed over to Baitulmal (JAIS, 2023).

Conflicts may also arise from disputes with third parties, such as banks, due to debts, mortgages, or insurance issues. One common situation occurs when the deceased has outstanding debts with a bank, which places a burden on the heirs to take responsibility for repayment. Disputes often emerge when the heirs disagree with the amount of debt claimed by the bank (MAIS, 2021). In such cases, the heirs are expected to settle the deceased's debts (MAIS, 2023). One of the main responsibilities in estate distribution is, first, managing the deceased's burial, where the estate distribution fund is used to cover expenses for the deceased's burial to the end. The fund is later used to settle the deceased's debts and fulfill their will (Ahmad Solehin, 2021). However, disagreements can occur when the heirs refuse to bear full responsibility for paying off these debts. Therefore, the involvement of legitimate authorities or mediators is crucial to reaching a fair and legal resolution that satisfies all parties involved.

2.3 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution is a set of techniques and practices that allow legal issues to be resolved out of court by avoiding legal litigation. Chief Justice of the US Supreme Court, Warren Burger, first started off the out-of-court settlement as a dispute resolution mechanism in 1976. It was taken well and appreciated by academicians, practitioners, and communities (Rusli Subrata, 2023; Adi Nugroho, 2019). 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.

Indonesia has already adopted an alternative method of resolving disputes through deliberation which is an ideology of Pancasila. The 4th pillar ideology of Pancasila encourages the resolution of problems through deliberation to reach a harmonious agreement that leads to proper justice and wisdom (Rusli Subrata, 2023). Meanwhile, 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 in Malaysia have been used to address disputes in finance and Islamic banking (Nurul Husnah, 2017).

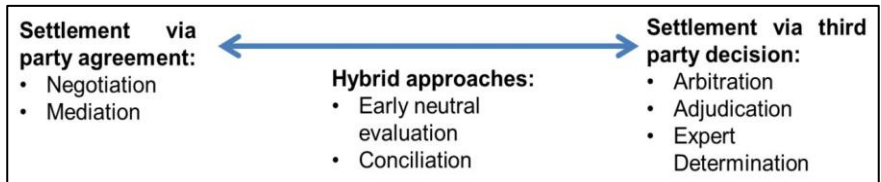


Figure 2: Key forms of alternative dispute resolution
(Source: *Models of Alternative Dispute Resolution*, 2014)

The early stage of evaluation and conciliation involves an evaluative to help parties make up their minds without enforcing a formal decision. Firstly, for the arbitration method, the conflicting parties present their case to an unbiased and expert arbitrator with legal knowledge. 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 (Gill, Williams, Brennan, & Hirst, 2014). This differs from the mediation method, where a neutral third party facilitates discussions but does not impose a decision, allowing the conflicting parties to reach a mutually agreed-upon solution (Nur Khalidah et al., 2017). The mediator identifies the issues and prioritizes the interests and benefits of both parties. However, mediators do not have the authority to make final decisions or coerce either party to agree (Bing, 2010). In Malaysia, mediation is regulated by the Mediation Act 2012 (Act 749) but does not apply to government elections, criminal cases, or mediations conducted by judges, magistrates, court officers, or the legal aid department (Nurul Husnah Omar et al., 2017).

On the other hand, conciliation is also a non-binding procedure that involves persuading conflicted parties to reach an agreement and is a straightforward process. Conciliation may come off similar to mediation in most aspects except the conciliator has a more active role in proposing solutions and assisting the parties in resolving their dispute. Settlement in conciliation is amicable because the conciliator does not dictate the terms or decisions (Gill et al., 2014). Sulh is another ADR method that is particularly used in communities where Islamic practices form part of the legal or social framework. Sulh is a form of mediation and conciliation used to resolve disputes, mainly in cases involving religion and matrimonial matters (Wahed, 2015; Shuaib, 2008). 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 (Wall & Callister, 1999).

Table 2 is an example of a case study summary from the Legal Ombudsman Report, Models of Alternative Dispute Resolution in 2014. The selection of cases was guided by the research team's assessment which was conducted in collaboration with the Legal Ombudsman of whether an organization was likely to demonstrate characteristics that could provide valuable insights for the Legal Ombudsman. The purpose of these case selections was to illustrate some of the key approaches to ADR (Gill et al., 2014).

Table 2. Case Study Summary

No.	Organization	Event Example
1	Ontario Ombudsman	Combine early resolution and high-profile systemic investigation approaches.
2	Irish Financial Services Ombudsman	Incorporated formal mediation into an adversarial, quasi-legal ADR scheme
3	New Zealand Banking Ombudsman	Facilitation and conciliation approaches and using case fees to incentivize resolutions
4	Small Claims Mediation Service (Her Majesty's Court and Tribunals Service)	High-volume court-annexed telephone mediation service
5	Furniture Ombudsman	Voluntary ADR mechanism, adjudicating on an industry code of practice
6	eBay/ PayPal	High-volume of online dispute
7	UK European Consumer Centre	Consumer conciliation and advocacy approach
8	PhonepayPlus	The scheme focused on regulation and combining conciliation with formal adjudication using panel decisions.
9	New Zealand Law Society's Lawyers Complaint Service's Early Resolution Service	An approach in a legal jurisdiction, focusing on early resolution of disputes
10	Australia Financial Ombudsman Service	Telephone conciliation conferences and panel decision-making

(Source: Models of Alternative Dispute Resolution, 2014)

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 the major legal sources of legislative texts, including statutes, codes, regulations, and recommendations. The interview is done through online meetings with the help of Webex and Google Meet. 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. Content analysis is used to review the relevant literature on issues related to frozen estates. Meanwhile, descriptive analysis is used 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 respondents' answers and discussion.

Table 3. 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 Results

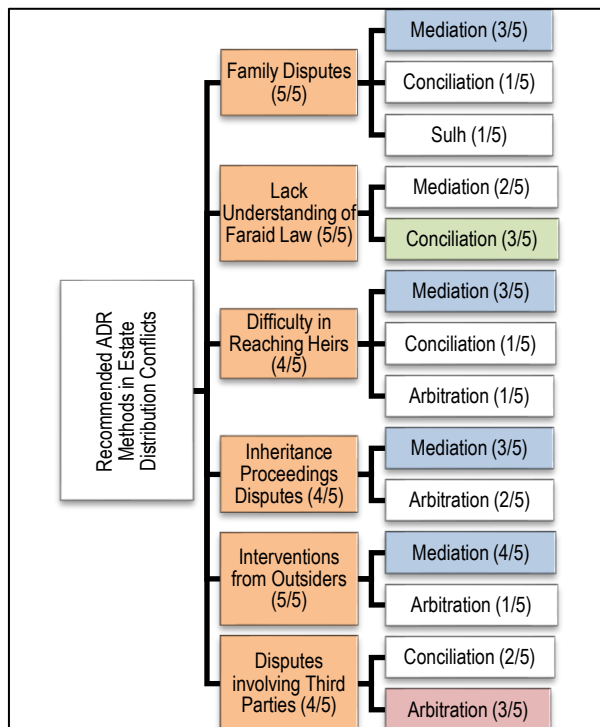


Figure 3: Analysis result of suitable ADR methods

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 ADR methods' adaptability 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.

5.0 Discussion

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. Also, disputes may 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 have no interest in their family's inheritance distribution and lack immediate attention to the Shariah requirements relevant to Faraid for Muslims. Things can go south when there is intervention from outsiders. It is very clear that an illegitimate child is not entitled to inherit any of the deceased's assets according to the applicable law in Malaysia, and the third parties in the context of non-family members have no rights to claim unless permitted by the lawful heirs through a valid testament by the deceased. Meanwhile, disputes emerge between third parties usually financial institutions, due to the deceased outstanding debts, mortgages, or insurance issues. It is a very common situation when heirs find the burden to take responsibility for repayment as they feel entitled to the asset.

This study shows that the listed conflicts are indeed happening and can barely be resolved through litigation in court, especially if family members are involved. 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 due to being 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.

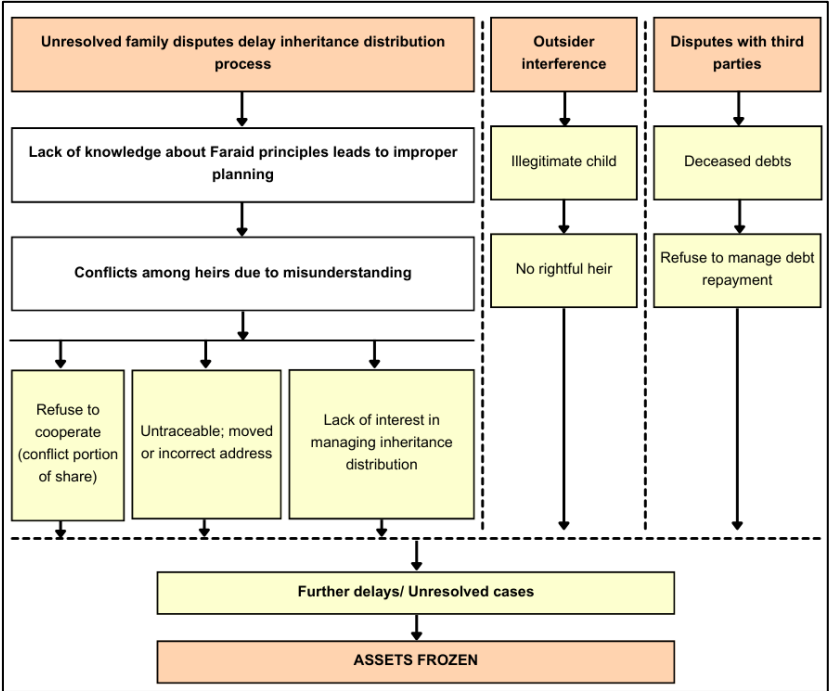


Figure 4: Discussion of estate distribution disputes linked to frozen assets

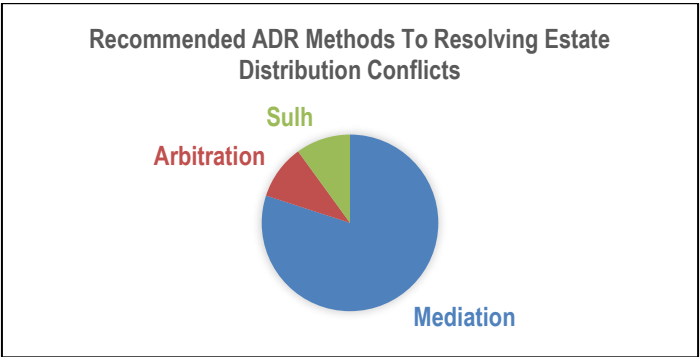


Figure 5: Analysis of suitable ADR methods

6.0 Conclusion

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 disputes regarding estate 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 and easily accessible to the public. Moreover, there is a significant gap in the years of experience among the final selected representatives of respondents, particularly between those with 2 years and those with 20 years of experience. This may affect the consistency of the research findings.

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.

Article 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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