

Improving Estate Distribution Process through Alternative Dispute Resolution Method: Practitioner's Perspective

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ABSTRACT

The many unresolved inheritance cases in Malaysia show that estate distribution disputes arising pose significant obstacles, revealing a need for better resolution. News has spread that more than RM90 billion estates in Malaysia are still frozen due to disputes and the failure of consensus between heirs regarding the estate distribution. 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 estate distribution dispute resolution. Many factors can contribute to the frozen assets, either technical issues or conflicts regarding estate distribution. Through an integrative literature review and qualitative methods, five respondents with expertise in the relevant field were selected for the interviews. Among the respondents were Advocates and Solicitors, Inheritance Consultants, PTG Administrative Officers, officers from the Small Estate Distribution Unit of JKPTG, and an Assistant Manager of Operations from Amanah Raya Berhad (ARB). The identified disputes are family disagreements, communication challenges, outsider interference, and third-party disputes, e.g., financial institutions. The findings show that family disputes, lack of knowledge of Faraid law, and interference from outsiders are the most agreed-upon issues among all respondents. Mediation makes it into the majority vote as a valuable strategy to improve estate distribution due to its cost-effectiveness and straightforward procedure. Mediation is less complex than other ADR methods. The whole process is informal and does not require strict court procedures, making it more accessible and acceptable to the public. Estate distribution should be carried out with complete cooperation from the deceased's beneficiaries, the administrative agency, and all other parties involved. Hence, ADR is a viable solution to help speed up the estate distribution, prevent unnecessary prolongation, maintain family privacy, and help reduce the court's workload.

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

INTRODUCTION

Frozen estates refer to unadministered estate distributions where no heirs formally applied for probate or letters of administration to manage the deceased's assets (Yusoff et al., 2023). Similarly, Indonesia also struggles with a significant amount of frozen assets that lead to beneficiary losses. 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 the application to administer the estate, but the case is still pending due to 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 Times, 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.

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. 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 loss of 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).

Issues and Conflicts of Estate Distribution

Family disputes may have roots in past disagreements, and conflicts may emerge even before the deceased's death (Badrul Hisham et al., 2025). These unresolved conflicts then escalate into disputes, resulting in damaged and strained family relationships and being left unsettled until the deceased passes away (Abdul Halim, 2006). For example, 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 one. 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 a 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 proceedings notice. 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 (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 or Asobah heirs are not entitled to 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 (Badrul Hisham et al., 2025).

Incompetent estate distribution management can lead to severe legal, economic, and social implications (Azmi & Muhammad, 2015; Ghazali Ibrahim, 2008). Hence, according to Arief Salleh Rosman (2023), estate distribution management is not only limited to collecting, managing, and protecting the assets but also to ensuring that the assets can be distributed well without causing difficulties to the beneficiaries of the assets. 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.

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). The viewpoint emphasizes that ADR serves as an effective alternative dispute resolution for estate distribution. This is due to its adaptable procedures, assured confidentiality to safeguard familial privacy, save costs, and diminished formalities to avert lengthy disputes (Badrul Hisham et al., 2025).

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 Omar, 2017).

The early stage of evaluation and conciliation involves an evaluator 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 that 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 a 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).

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 source 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. The data received were analyzed through descriptive analysis to deliver what and why based on the respondents' answers and discussion.

Table 1 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 (ARB)	20

FINDING & DISCUSSION

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 reaching out to heirs, disputes in inheritance proceedings, and disputes with third parties. Additional conflict, according to Respondent R1, is financial constraints. Lack of savings and preparation for the afterlife is quite a common issue among Malay communities. Family members who did not have the money then failed to appoint a consultant who could help and guide them to manage their inheritance.

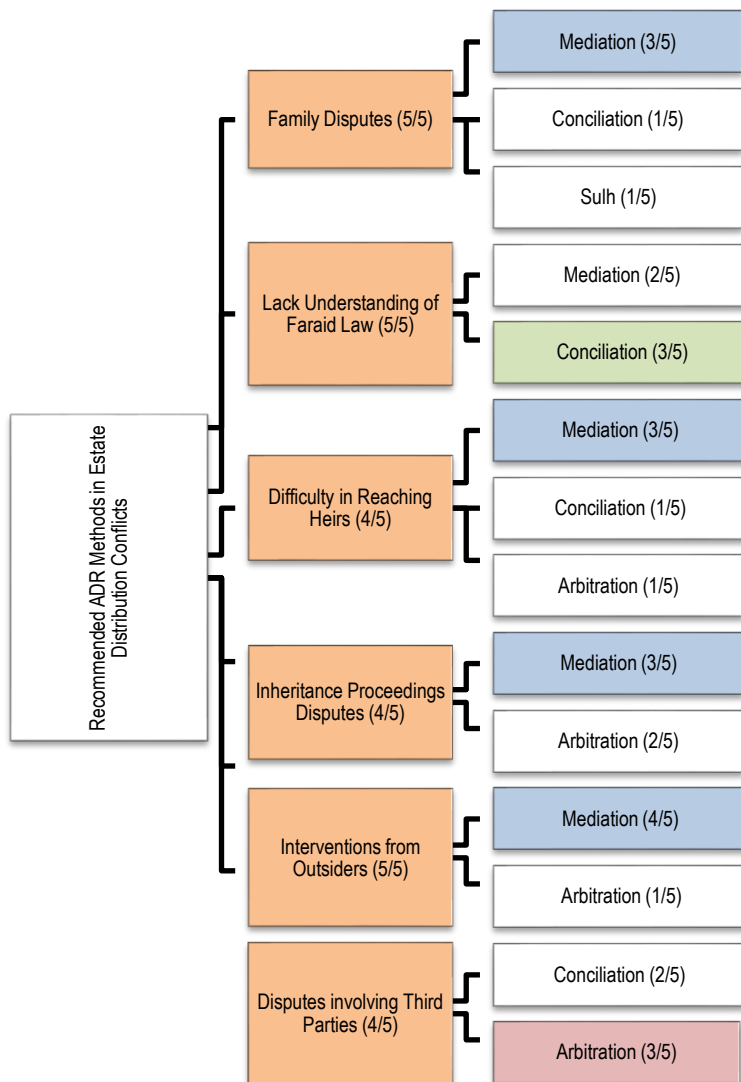


Fig. 1 Recommended ADR methods in estate distribution conflicts

As shown in Figure 1 below, to highlight ADR methods' adaptability according to respondents' opinions on each conflict's characteristics. 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. From this analysis, Sulh is the least preferred method compared to Arbitration, Mediation, and Conciliation. From these findings, respondents seem more aware of mediation than other ADR methods. Nonetheless, all respondents acknowledged the benefits of ADR in resolving conflicts effectively and recommended suitable ADR methods for each estate distribution conflict.

Respondents mainly agreed that unresolved family disputes are the causes of the delay during court proceedings. The issues arise when family members lack knowledge regarding the principles of Faraid, resulting in planning and making decisions without proper understanding. This then leads to conflicts among heirs where misunderstanding and miscommunication occur. R2 added “family members become more inattentive when the intended messages are understood wrongly”. The stage of miscommunication depends on how well the family members can tolerate and turn down their egos. Also, R4 pointed out that heirs' refusal to cooperate because they know they are entitled to only a tiny share is a common dispute. R5 claimed the worst cases are when Muslim heirs lack immediate attention to the Shariah requirements relevant to Faraid principles. R1 and R3 said 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. The third party in the context of non-family members has no rights to claim unless permitted by the lawful heirs through a valid testament by the deceased. R5 supported disputes between third parties, as it is very true where heirs find the burden of taking responsibility for the deceased's debt repayment. R3 states that it is because they have a sense of entitlement to the asset, and the deceased's debt should not have been counted as the deceased has passed away.

According to the respondent, the six listed conflicts are a very well-connected sequence. R5 states that unresolved family disputes obviously will worsen when one of the family members, especially the head of the family, dies. A poor relationship, coupled with ego and a lack of knowledge about Faraid principles, will lead to inefficient planning and management. R4 emphasizes that this inefficiency will cause chaos to escalate into greater conflict, such as misunderstandings of one another and their respective negative narratives. R5 added "they feed into their negative perceptions about each other". From the flow, this conflict will then be the cause for the heir not to want to cooperate and cannot be contacted. The same goes for outsider interference. Both R3 and R4 said they often encounter situations where the deceased does not have rightful heirs to claim, compared to an illegitimate child appearing in the frame. R3 remarked that the allegedly illegitimate children are not bold enough to make a scene, as seen in television dramas. In fact, it is not easy for them either. R3 added that in cases he has seen, the allegedly illegitimate children preferred to remain unknown and refrain from getting involved.

Meanwhile, R1 and R2 stated that some families do not have internal conflicts among themselves but still refuse to cooperate in settling the debts of the deceased because they believe they have absolute rights to the estate. R1 highlighted that the issues in estate distribution conflicts start with the smallest miscommunication, as everyone is in a fragile emotional state. The harmful argument can escalate, especially when it involves family members. Conflicts within families are particularly difficult to resolve, as family hierarchy and seniority are taken very seriously. As a result, older family members, such as the deceased's siblings, often believe that their opinions should carry more weight, and the deceased's children are not in a position to challenge or question them.

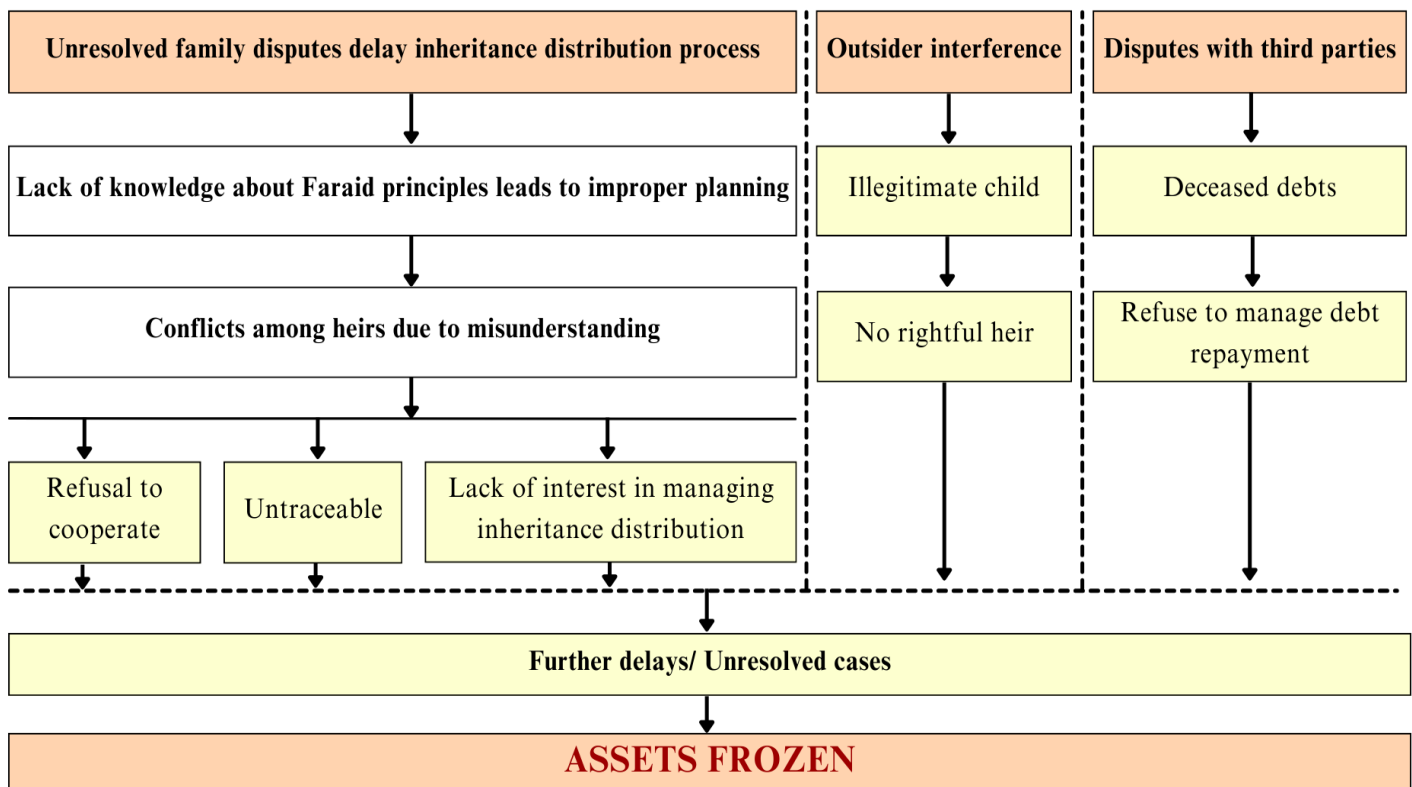


Fig. 2 Discussion of estate distribution disputes linked to frozen assets

RECOMMENDED ADR METHODS TO RESOLVING ESTATE DISTRIBUTION CONFLICTS

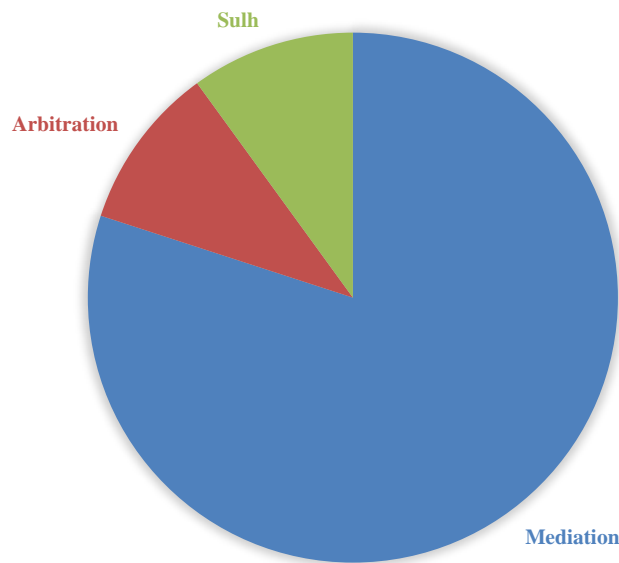


Fig. 3 Findings analysis of suitable ADR methods

These findings show that the listed conflicts are indeed happening and can barely be resolved through litigation in court, especially if family members are involved. R1, R2, and R5 believe that ADR methods, especially mediation, can improve communication skills between the conflicting parties to reach an agreement. R4 added that the whole non-formal process makes it easier for the conflicting parties to comprehend and come up with a solution that can satisfy all parties involved. All respondents emphasized that ADR is time- and cost-saving. R1 particularly mentioned families facing financial constraints. Courts are burdened with a high number of cases. Delays and rescheduling are a common occurrence. R3 and R4 believed that the ADR method is a viable solution to help speed up the estate distribution and prevent unnecessary prolongation. To sum up, all respondents acknowledge the advantages of ADR, especially its being less complicated than the courts' litigation. The whole process is said to be trustworthy as it is fully disclosed to maintain privacy and preserve the image of the family. 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.

Table 2 Respondents' Feedback On The Adr Method In The Process Of Estate Distribution

Respondents	Feedback
R1	Increase the knowledge and skills of professionals and estate administrators regarding ADR methods.
R2	Strengthening early planning for asset management prior to death to ensure that any conflicts that arise will be resolved by experts according to the plan, as evidenced.
R3	Estate administration agencies should consider the ADR method in resolving inheritance distribution issues.
R4	Appoint an appropriate professional to be a mediator.
R5	A need for legal guidelines for the ADR method in any conflict that arises in the process of dividing the estate.

As shown in Table 2, respondents have provided feedback on how to apply the ADR method to resolve conflicts in the inheritance distribution. R1 proposed that there should be a bigger initiative on how to spread

and increase professionals' knowledge to suggest the application of ADR instead of going to court. Clients or families may not be aware of the existence of ADR and have a vague opinion towards ADR. To adapt and spread the alternative methods, professionals and estate administrators should know better how to deliver the information. Therefore, mediators need to strengthen their knowledge of estate distribution and professionalism before assisting a conflicting family. R2 then suggested that the family must strengthen their planning to avoid conflicts. R3 stressed the need for estate administration agencies to implement ADR practices in managing the increasing number of estate disputes, especially considering that ADR is not a new approach in Malaysia. Meanwhile, R4 highlighted in appointing a well-experienced mediator for families that have bigger issues. Lastly, R5 suggested that ADR methods be applied according to legal guidelines. R5 also emphasized that there is a need for an official framework for both the estate administrator and the client (families) to refer to when conflicts occur.

In short, 3 out of 5 respondents agreed with the use of mediation because it is easier to explain and understand for the public. Apart from the cost being relatively inexpensive, and maintaining privacy, mediation can resolve disputes without having to attend court proceedings every time a discussion between conflicted parties fails. Mediation is informal and does not require strict court procedures. It could have been a greater help in reducing the court's workload and minimizing frozen assets, thereby helping to preserve family relationships from breaking down over estate matters.

CONCLUSIONS

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 these many disputes regarding estate distribution contribute considerably to the growing number of frozen assets, negatively affecting society's social and economic well-being. ADR is presented as an acceptable approach for handling difficult inheritance cases, 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 nature. Unlike court cases, cases that are solved through ADR are not well documented. The consultant may document it well, but it is still not accessible or readable 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 accuracy 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. Thus, 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 general awareness and practicality of mediation as an appropriate method for resolving inheritance distribution disputes instead of depending heavily on courts. 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 in our estate distribution procedure as an official framework in a bigger research scope. It would be appropriate for further research on the implementation of ADR in Malaysia to be conducted to design it as one of Malaysia's estate distribution conflict settlement procedures.

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