

**THE VOICE OF THE CHILD IN SULH (MEDIATION)
PROCEEDING**

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INTRODUCTION

- The UNCRC is expressed in terms of principles, not specific processes. In such a complex area as hearing children's voices in custody disputes, it is by reflection on those **PRINCIPLES** in the light of the culture, experience and resources of each jurisdiction, that a **COMPREHENSIVE PROCEDURAL FRAMEWORK** can best be found.

MAIN POINT

- CASE STUDY IN WILAYAH PERSEKUTUAN OF
SULH COUNCIL
- LEGISLATION/ PRACTICE DIRECTION / SULH
WORKFLOW

DISCUSSION

- Debates on the welfare of parents against children should not be ignored in weighing the circumstances of a divorce case.
- Undeniably children are in equal footing of having procedural rights to justice but the protection of parents' well-being must not be overlooked.
- It is frequently an issue of how would judges balance the principle of fairness to parents as well as the welfare of a child in judging custody dispute.

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- Decisions which maintain some equilibrium within the power imbalances inside families can also have important consequences for the way relationships between generations develop and are exercised.
- In maximising the pursuit of justice in custody battle which employs an adversarial mode of trial, many countries are currently undergoing significant reform in introducing children's participation in family law decision making processes.

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- It is therefore aimed at giving a considerable proportion of opportunity to adult and children to be heard fairly in court.
- Notably all types of family proceedings in Malaysia value the wishes of a child as embedded in its legislation. However judges are left with wide discretionary power in determining the best approach in upholding the children's wishes in presiding cases before them. Thus, the way that judges exercise discretion in family justice proceedings profoundly affects the extent to which children's voices can be heard in those proceedings.

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- ▶ There is a substantial body of research currently supports the advantages of children's participation.
- ▶ The literature mostly focuses on several dimensions on child participation, namely benefits and risks, models, forms, methods of hearing child's view, as well as participation rights but less still is known about 'best practice' in children's participation in family law decision-making internationally, including what mechanisms, procedures and practices are in place to support family courts, professionals, parents, policy makers and, of course, children themselves in local settings.

conclusion

- This comparative studies, hence, intend to illustrate this gap between domestic legislative framework and current judicial practices in offering opportunities for children to express their views and to have these taken seriously.

- The existing legal provisions for the conduct of *Sulh* in the Syariah Court of Federal Territory are comprehensive for the management of family conflict involving disputing couples. The main artillery that is most needed by a mediator is his mastery of family law to give him control of the discussion, more so when it relates to the rights of the beloved children. The children are often fought over as a result of the couple's divorce. The past climate of family justice was in favour of paternal rights whereas maternal traits later became the determination factor for child custody. But now, it shifts to giving the children a right to voice out and determine their future.