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DEVELOPING A STRUCTURED FRAMEWORK OF MEDIATION LANGUAGE (MEDL) FOR SYARIAH COURT MEDIATORS IN MALAYSIA

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ABSTRACT

Language becomes vital and integral in all aspects of mediation process. The competencies of the mediator in language contribute to the success of a negotiation process. The success of the mediation process not only depends on a well-structured process but also on the skills of mediators. Apart from being bounded to the basic principles of mediation, which are, fair, just (impartial) and neutral, a mediator needs verbal communication skills. In linguistics, it is called negotiation language. Negotiation language in mediation is unique, different from the negotiation language of other dispute resolution methods such as arbitration and litigation. This uniqueness becomes the main key to successful mediation process. It emphasises on the mediator's competency as the third party in creating a positive communication environment for both conflicting parties. The mediator must be trained with verbal skills, have the ability to change the negative elements into positive connotations without changing the real meanings conveyed by both parties through the right usage of diction, language and sentences. This study, therefore, seeks to identify the elements of negotiation language in mediation. Manuals of Sulh (Islamic mediation) that is used in the Syariah Courts of Malaysia are analysed using a linguistic, namely Lepsin Model. Following the Lepsin Model, a MedL Handbook / Manual will be developed. The result shows that a mediation language for specific purpose can be systematically developed for specific used such that at Syariah Court during mediation session and the like. This model will strengthen mediator's capability as negotiator as well as lead to a more successful process and achieve settlement. This study hopes to develop a negotiation language corpus in mediation that can be utilised as reference by mediators. As a dynamic process mediation should be strengthened in all aspects to become an effective platform of dispute resolution that contribute to a successful negotiation.

Keywords: mediation language, MedL, mediators, syariah courts, Lepsin

Introduction

Language becomes vital and integral in all aspects of mediation process. The competencies of the mediator in language contribute to the success of the negotiation process. Mediation is an alternative soft method to the conduct of lawsuit for the dispute resolution. It involves the intervention of a third party to facilitate communication and negotiation between disputing parties (Nora et al. 2016; Rafidah Mohamad Cusairi & Mahdi Zahraa 2015, 2016; Rafidah Mohamad Cusairi 2013; Moore 2003; Moffit 2005). There appear several basic qualities which the third party or the mediator in a mediation session should possess. He needs to be independent, does not have a personal interest or preference in any matter relating to the dispute, the disputing parties, their interests, and options for the settlement or the outcome (Rafidah 2013; Robert & Palmer 2005; Moore, 1994). Mediation promotes peace and mutual agreement. The mediator only plays roles in bridging the negotiation between the clashing parties towards achieving a peaceful agreement. Mediation is unique as compared to litigation, given that it focuses on the empowerment of parties i.e. the parties are given power and space to pave their own way to resolve the conflict (Rafidah 2013; Parkinson 1997). As an alternative method of resolution, mediation deals substantially with emotion and communication. It is channeled towards transforming negativity into positive and peaceful vibes. More importantly, mediation in family disputes involves emotional and communication struggles. When these are successfully handled, mediation could be effectively utilised at finding solutions. However, what is the example of effective mediation? What are the linguistic elements inherent in mediation? This paper aims to identify the elements of negotiation language in the mediation process. This study hopes to develop a negotiation language corpus in mediation that can be utilised as reference by mediators. As a dynamic process mediation should be strengthened in all aspects to become an effective platform of dispute resolution that contribute to a successful negotiation. Data of the study is derived from Manual of Sulh (Kaedah Tatacara Sulh) 2002 used at the Syariah Courts in Malaysia. Data is analysed according to the six stages of mediation namely:

  a. Introductory or opening stage

  b. Exploring position and interest

  c. Generating settlement

  d. Caucus (Private session)

  e. Finalising decision

  f. Drafting agreement

Data is analysed using a linguistic approach based on **LEPSIN model** developed by Munif Zarirruddin Fikri Nordin (2016). This model suggests four linguistic elements that are lexical, pragmatic, semantic and interpretation. In this study, the four elements are conceptualised as the following:

  a. Lexical: words, either noun or verb that can be used as the keywords in mediation session.

  b. Pragmatic: the way language is used in mediation.

  c. Semantic: meaning of words or sentence either implicit or explicit in the context of mediation.

  d. Interpretation: interpretation of meanings in the context of mediation.

The analysis involves matching data from the six stages of mediation with four linguistic elements as developed in Lepsin model.

  a. Introduction or opening stage }Lexical,

  b. Exploring position and interest } Pragmatic,

  c. Generating settlements and private session } Semantic

  d. Finalising decision and drafting agreement } Interpretation

2.0 Mediation in Malaysia

In Malaysia there is now a growing recognition of alternative routes in the resolution of many types of disputes. The acceptance to mediation as an alternative method of resolving marital conflict is significantly on the rise. Whereas mediation has long dominated courts proceedings in the West such as United States of America, United Kingdom and Australia in resolving commercial, community and family disputes (Hanna Ambaras Khan & Nora Abdul Hak 2015; McCrory 1981; Roberts 2008; Spencer & Brogan 2006). On our part in South East Asia, Singapore could be among the leading country that has a better and established mediation practice. At the Syariah Courts, *sulh* (Islamic mediation) practically refers to the similar mediation method applied at the Civil courts.

Mediation in family disputes is used to assist divorcing or separating spouses to go through the process in a peaceful way, to make joint and mutual decisions on their future arrangements and to work together as cooperative parents for future wellbeing of children (Davis 1988). Therefore, mediation is about improving communication between disputing spouses and keeping good family ties even after divorce or separation (Rafidah 2013).

A systematic and scientific research on mediation in Malaysia could have possibly been traced back three decades ago (Syarifah Zaleha & Sven Cederroth 1997). Nevertheless, the in-depth study on the potentiality of mediation as a method to resolve disputes in Malaysia is relatively new. Most of the available studies also cover the aspect relating to mediation as alternative to litigation (Syed Khalid Rashid 2000). This basically is in compatibility with the government's strong encouragement to mainstream peaceful and mutual agreements as the effective way of resolving family disputes in Syariah and Civil courts (Saodah Ahmad & Nora Abdul Hak 2010). The focus of study has been then shifted to creating specific laws on mediation even in a small scale and a narrowed scope (Hanna & Nora 2015).

There are two categories of bodies that manage dispute resolution in particular familial disputes in Malaysia. The bodies comprised of judicial and non-judicial bodies. The civil court is the judicial body that handles disputes involving non-Muslim parties while the Syariah court handles disputes involving Muslim parties. The non-judicial bodies are institutions and agencies namely Legal Aid Department, Marriage Tribunal, Department of Islamic Development Malaysia (JAKIM), Islamic Religious Department, Malaysian Mediation Centre, Kuala Lumpur Regional Centre for Arbitration (KLCRA), religious institution, private counsellors, Non-governmental Organisation, Lembaga Penduduk dan Pembangunan Keluarga Negara (LPPKN), Putrajaya Community Mediation Centre dan National Unity and Integration Department Malaysia (Nora et al. 2016; Ain Husna 2017).

1. Skills of The Mediator

Zilinkas (1995) and Bowling & Hoffman (2000) emphasise on the importance of mediation training to ensure that mediators have the required skills of competency for handling mediation. Not only that, but this will also help mediators gain trust from disputing parties without which it is difficult to determine between effective and ineffective mediators. Appointing someone as a mediator without due qualifications may cause injustice to the parties in mediation process.

Based on her study, Rafidah (2013) developed the profile of mediator comprising of the roles, functions, attributes and characteristics of mediation and mediator. Overall, the profile establishes guidelines of what mediators should and should not do while mediating parties, the attributes i.e. mediator's personal qualities and qualifications deemed essential to help mediators perform their roles and functions and, the characteristics to be observed throughout the mediation session. The mediator's profile sets as a guiding framework whereby mediators need to accomplish and observe so that they may become competent mediators or if possible, ideal mediators (Roberts 2008; Bowling & Hoffman) who have a combination of attributes, intellectual, moral and personal qualities.

The attributes of a good mediator are interestingly expounded upon in Goethe's description of Mittler (Goethe (1809/1971, as cited in Roberts, 2008, p. 140). The Mittler character describes a good mediator as someone who possesses 'knowledge relating to the matter in dispute, skills in analysis and problem solving, awareness of the moral dimension to the problem, and wisdom and compassion in his relations with people'. Nevertheless, Bowling and Hoffman argue the importance of training. This means that

without receiving proper mediation training a mediator will not be able to perform his/her job successfully regardless of the philosophical or professional orientation or model or skills adopted (Roberts; Bowling & Hoffman).

A mediator is required to obtain and maintain specific characteristics in order to perform his or her mediatory role. Two particular characteristics that are always associated with mediators are impartiality and neutrality, although neutrality has been the subject of many discussions and disagreements among mediation scholars. However, as well as impartiality, neutrality has also been described as one of the 'critical defining characteristics' of an independent mediator (Gerami 2009; Macfarlane 1997). Both characteristics are required to gain the trust of the parties involved and to ensure the effectiveness of the mediation process (Roberts 2007; Cormick & Patton 1980; McCrory). Section 9 (3) of the Malaysian Mediation Act 2012 requires a mediator to be independent and impartial when conducting mediation.

In brief, from an ethical viewpoint, impartiality refers to mediators being even-handed (Boulle as cited in Wolski 1996), unbiased (Gerami), fair (Macfarlane) and objective (Boulle) towards the parties during the mediation process (Boulle). In order to fulfil these criteria, a mediator must give his or her commitment to both sides and their legitimate interests, and must maintain an intermediary position between disputants. A mediator must not favour any of the parties involved, either in word or action (Folberg & Taylor1984). The need to be perceived as impartial and remain as such throughout the mediation session is therefore clearly apparent. These requirements show the difficulty to maintain impartiality in practice, as is assumed in theory (Boulle & Nesic 2010). The reason for this is addressed by Boulle, who suggests that partiality is as much a matter of party's perception as of objective behaviour (Boulle 2001). It is therefore more difficult for a mediator to manage and control. The bottom line is that if a mediator does not deliver his or her task accordingly, he or she will be open to challenge over his or her impartiality.

The impartiality of mediators could be safeguarded or at least assured in several ways. This includes a structural framework (Cobb & Rifkin 1991) of mediation and skills of mediators. As demonstrated in this paper, skills in mediation come from many one of which is the communication skill. As mediator's role is to induce common agreement between disputants, he or she must know how to negotiate using the correct negotiation techniques.

The recent study on mediation involving legal practitioners, former presidents of Bar Council and Malaysia Meditation Centre demonstrates that soft skills are crucially important in mediation training as they are the weapon that the mediator would direly need when conducting mediation (Hanna Ambaras Khan 2017). A mediator may be able to conduct mediation without a structured process but not without skills. A respondent in the study is quoted to suggest:

> "Mediator needs a lot of soft skill. In mediation, I think a good mediator is the one who has a lot of soft skill in getting a person who says no and making him to say yes. And that is an art. I think whoever is conducting mediation training, they must first understand the problem face by the community. In Malaysia we have various types of races, people with various religions. Therefore, in resolving their misunderstanding and dispute I think you need to provide soft skill. To me community mediation in Malaysia without soft skill is going to be a big problem. I don't think the mediator who has not being [taught] with soft skill can be able to resolve dispute within the community. Having said that whether the process alone is sufficient the process alone will not resolve the dispute. The process comes with soft skill. They can follow procedure. The procedure will say you'll have a joint session, you listen to A and you listen to B and then you facilitate. When you try to facilitate that is where you use your soft skill to help them to communicate. If you don't have the soft skill, you just have your process then that communicative concept in the joint session is withheld mediation process. For me a real mediation process involves the process together with the soft skill."

Negotiation language in mediation is unique, different from the negotiation language in other dispute resolution methods such as arbitration and litigation. This uniqueness becomes the main key to successful mediation process. It emphasises on the mediator's competency as the third party in creating a positive communication environment for both conflicting parties. The mediator must be trained with verbal skills, have the ability to change the negative elements into positive connotation without changing the real meaning conveyed by both parties by using the right choice of diction, the right language and sentence. This directly refers to the use of linguistic elements such as lexical, pragmatic, semantic and interpretation.

However, it is noteworthy that skill and competency in negotiation language is not a built-in quality. It requires systematic and intensive training based on specific modules. Moreover, mediators must not only possess academic qualification and knowledge relevant to the subject matter of the disputes (Rafidah 2013; Parkinson 2011; Roberts 2008), but must also be equipped with skills to assist him or her to mediate the parties, to manage conflicts, to control disputes between disputing parties and to bring the parties to achieve a peaceful and mutual agreement (McCrory). Without mastering specific skills, mediators may face difficulty to handle conflict and to gain trust from the parties and therefore they may err and fall into the trap of being partisan and biased Rafidah 2013, 2016; Brown & Marriot 1999; Roberts 2008). It is significantly manifested here that the linguistic skill could be among the indicators of mediator's impartiality and neutrality.

There are several institutions that conduct training and evaluation for accreditation purposes. They are Malaysian Mediation Centre (MMC), Kuala Lumpur regional Centre for Arbitration (KLCRA), Putrajaya Community Mediation Centre and Muslim Lawyers Association of Malaysia (PPMM). These institutions receive expert trainings from international mediation institutions such as The Accord Group, Sydney, Australia. The training and evaluation modules for each institution are different. The statutes, regulations and ethical codes vary among the institutions. They train and issue certificate to mediators who are registered in individual bodies or institutions. Similar training and certificate are also conducted and issued to Sulh officers and judges of the Syariah Courts.

Even though the available modules do emphasise on the negotiation aspect, they do not explain in detail the technique of language and speech. Combining with the author's personal experience attending mediation intensive course and training, this highlights the need of attention and effective strategies of development of language aspect. Likewise, Kaedah 5, Kaedah-Kaedah Tatacara Mal (Sulh) Selangor 2001, Syariah Civil Procedure Code (State of Selangor) [Enactment No. 7 of 1991] does not detail the linguistic style which should be used when conducting sulh. The Manual provides structural guidance relating to the sulh protocols such as introduction to sulh, interpretation of terms or technical definition of terms, procedure of Sulh including date, parties' attendance, process of sulh, report detailing recommendation to be forwarded to trial if necessary and cost implication. There is also emphasis on the negotiation skill, knowledge on subject matter of dispute as well as experience. However, language and communication skills are not clearly stipulated.

3.0 Analysis

This part contains the analyses pertaining to six stages of mediation i.e. the introduction, exploring position and interest, generating settlement, private session (caucus), finalising decision and drafting agreement against the four linguistic elements; Lexical, Pragmatic, Semantic and Interpretation with reference to the Manual of Sulh of the Islamic Judicial Department Malaysian (JKSM).

3.1 Lexical

The mediator and the parties agree to a number of guidelines they will follow in the mediation. This usually includes only allowing one person to speak at a time, treating all parties with respect, and confidentiality.

3.1.1   Introductory or opening stage

Based on example 4.1.1 below, there are nine guidelines to be followed at the introduction stage. In all these, lexical is identified the suitable linguistic element to be adopted for the purpose of asking (welcoming) parties to take their seats, introducing themselves, initiating confidence, clarifying

difference, setting ground rules, encouraging cooperation, stating the principle of confidentiality, expressing intention and informing about the immunity from courts proceedings.

Example:

"*Kenyataan Awal (Al Ta`Arruf) Pegawai Sulh*

a) *Pegawai Sulh selaku Pengerusi Majlis Sulh hendaklah meminta pihak-pihak mengambil tempat masing-masing.*

b) *Pegawai Sulh hendaklah memulakan majlis dengan memperkenalkan diri, membaca surah al-Fatihah dan doa yang disarankan (rujuk Lampiran 1).*

c) *Pegawai Sulh hendaklah memaklumkan pihak-pihak berkenaan tentang prosedur yang dipakai, sambil menimbulkan **keyakinan** pihak-pihak kepada proses sulh dan kepada diri Pegawai Sulh. Jika difikirkan perlu, galakkan kedua-dua pihak mengemukakan soalan sehingga Pegawai Sulh yakin mereka benar-benar faham apa yang hendak dijalankan.*

d) *Pegawai Sulh hendaklah menyatakan bahawa matlamat sulh adalah untuk mencapai penyelesaian pertikaian mereka secara sukarela berasaskan persetujuan mereka sendiri tanpa sebarang paksaan. Pegawai Sulh hendaklah menjelaskan perbezaan antara proses Sulh dengan kaedah-kaedah penyelesaian yang lain iaitu perundingan, timbangtara dan perbicaraan.*

e) *Pegawai Sulh hendaklah menggariskan peraturan sulh yang mesti dipatuhi antaranya:*

   i. *Semua pihak hendaklah bercakap mengikut giliran.*

   ii. *Apabila suatu pihak bercakap, pihak lain hendaklah mendengar dan memberi perhatian.*

   iii. *Apabila bercakap hendaklah dalam keadaan tenang dan tidak meninggikan suara.*

   iv. *Pihak-pihak hendaklah bercakap dan bertindak secara sopan dan tidak menyerang peribadi pihak lawan.*

   v. *Pihak-pihak tidak boleh berkomunikasi secara langsung antara mereka kecuali dengan kehadiran Pegawai Sulh.*

   vi. *Pihak-pihak hendaklah membuat akujanji akan mematuhi peraturan-peraturan ini.*

f) *Pegawai Sulh hendaklah menggalakkan pihak-pihak berkerjasama dan berusaha sebaik mungkin untuk mencapai penyelesaian secara **damai**.*

g) *Pegawai Sulh hendaklah menyatakan kepada pihak-pihak bahawa semua perkara yang dibincangkan dan dirundingkan di dalam Majlis Sulh ini adalah rahsia dan tidak akan didedahkan kepada sesiapapun.*

h) *Pegawai Sulh hendaklah menyatakan niatnya kepada pihak-pihak untuk membuat catatan sepanjang Majlis Sulh.*

i) *Pegawai Sulh hendaklah menyatakan kepada pihak-pihak bahawa dia tidak boleh dipanggil di dalam mana-mana prosiding mahkamah berhubung dengan kes itu."*

In 'c', the lexical element that could boost the confidence level of all parties are "berlapang dada" (open heart), "menyelesaikan" (resolve), "memahami" (understanding), "bersungguh-sungguh" (striving) and etc.

In 'f', examples of lexical element that can be used to create peaceful environment for the parties is the use of words such as "bekerjasama" (cooperate), "berusaha" (strive) and "berdamai" (make peace).

3.2 Pragmatic

The parties usually make their initial statements regarding their disagreement and define what they hope to resolve at the Mediation

3.2.1 Exploring position and interest

Example 4.2.1 below comprises four guidelines of exploring position and interests. This stage demonstrates the importance of how language is used, such as courtesy, politeness, positive context, creating conducive and peaceful environment.

> Example:

> **"Pembentangan Awal Pihak Yang Bertikai**

> a) Pegawai Sulh hendaklah meminta Plaintif/Pemohon membentangkan apa yang dipertikai olehnya, kesan yang timbul dan apa cadangan untuk menyelesaikannya.

> b) Pegawai Sulh kemudian hendaklah meminta Defendan/Responden **membentangkan apa yang dipertikai** olehnya, kesan yang timbul dan apa **cadangan** untuk menyelesaikannya.

> c) Setelah mendengar pembentangan kedua-dua pihak, Pegawai Sulh hendaklah membentuk satu peta konflik untuk mengenal pasti skop pertikaian antara kedua-dua pihak. Untuk tujuan itu, Pegawai Sulh hendaklah mengambil masa secukupnya dan tidak melakukannya dengan tergesa-gesa. Selain menyenaraikan perkara-perkara yang dipertikai oleh kedua-dua pihak dalam peta konflik itu, Pegawai Sulh hendaklah juga mengenal pasti sebab konflik itu timbul, halangan yang ada atau dirasakan ada kepada penyelesaian dan tindakan yang perlu dilakukan untuk mencapai penyelesaian.

> d) Pegawai Sulh hendaklah **menyusun dan mengurus maklumat** yang diperolehinya bagi menentukan:

> > i. isu atau masalah yang perlu diselesaikan;

> > ii. kedudukan pihak-pihak yang bertikai;

> > iii. kepentingan mereka;

> > iv. alternatif (opsyen) penyelesaian."

In 'b', a conducive and peaceful environment must be created to reduce tension so that the parties could feel that they are welcomed. Mediator may use terms such as "gembira dengan kehadiran semua" (delighted with their presence).

In 'd', the language must be used in positive context. For example, avoid giving negative ideas, such as the other party's faults or, pointing fingers.

3.3 Semantic

Each party discusses their interests and possible solutions to resolve their disagreement. Where appropriate, the Mediator may hold private and confidential sessions with each party to assist in determining further interest and/or discussing possible solutions.

3.3.1 Generating option for settlements.

In example 4.3.1 below, there are six guidelines of joint discussion or joint session that is to guide the parties toward finding solution relating to the disputed matters.

Example: 3:

"Perbincangan Bersama

    a) Setelah mendengar pembentangan awal kedua-dua pihak, Pegawai Sulh hendaklah meminta setiap pihak menyatakan pendapatnya tentang perkara yang dipertikaikan itu.

    b) Setelah mendengar pendapat setiap pihak, Pegawai Sulh hendaklah menjelaskan penilaiannya berdasarkan peta konflik yang telah disediakan sebelum ini dan berbincang dengan penuh yakin tentang kekuatan dan kelemahan pihak-pihak dalam kes yang berkaitan dan **<u>memujuk</u>** mereka menerima penilaiannya.

    c) Sekiranya kedua-dua pihak secara sukarela bersetuju menyelesaikan pertikaian mereka sepenuhnya, Pegawai Sulh hendaklah menyediakan satu deraf perjanjian penyelesaian yang merangkumi semua isu yang dipertikai

    d) Sekiranya kedua-dua pihak secara sukarela bersetuju menyelesaikan sebahagian besar pertikaian mereka, sambil rela menggugurkan selebihnya, Pegawai Sulh juga boleh menyediakan deraf perjanjian penyelesaian merangkumi perkara yang telah dipersetujui.

    e) Sekiranya kedua-dua pihak secara sukarela bersetuju menyelesaikan sebahagian dari pertikaian mereka sahaja, manakala selebihnya yang tidak berkenaan mereka menggugurkannya, Pegawai Sulh boleh menyediakan deraf perjanjian penyelesaian merangkumi perkara yang telah dipersetujui. Mengenai perkara selebihnya yang masih dipertikai, andainya masa untuk sulh tidak ada lagi ataupun pihak-pihak berkenaan tidak mahu meneruskan sulh (walaupun masa masih ada), Pegawai Sulh hendaklah merujuk perkara-perkara tersebut kepada Pendaftar untuk dibawa terus ke mahkamah untuk dibicarakan.

    f) Kecuali Pegawai Sulh berpuashati bahawa kedua-dua pihak telah mencapai persetujuan secara sukarela, Pegawai Sulh hendaklah memulakan pertemuan sebelah pihak."

In 'b', the role of the mediator becomes more complicated and challenging. This is because, at this stage, the meaning the mediator tries to convey to both parties must appear to be effective, fair, clearly understood, and satisfactory to all parties. Elements such as blame, order or instruction, pressure or duress must be avoided. The mediator must apply implicit persuasion skills in mediating the conflict.

3.3.2 Caucus or private session

Example 4.3.2 below comprises six guidelines regarding caucus or private session. The aim is to allow the disputing parties to disclose personal and privates matters that are confidential and could not be disclosed in the presence of the other party during joint session.

Example: 4:

"Pertemuan Sebelah Pihak (Kaukus)

    a) Pegawai Sulh hendaklah menjalankan pertemuan sebelah pihak mengikut giliran yang ditetapkan. Plaintif / Pemohon hendaklah dipanggil dahulu diikuti oleh pihak Defendan / Responden.

    b) Pegawai Sulh hendaklah memperkasakan setiap pihak untuk mengemukakan kes dan cadangan penyelesaiannya.

    c) Jika mana-mana pihak tidak mampu mengemukakan kesnya secara jelas kerana sebab-sebab tertentu seperti tidak cukup maklumat, tidak ada keyakinan diri, tidak ada kewangan, takut tindak balas, tidak mahir berkomunikasi atau ada kekurangan tertentu, Pegawai Sulh hendaklah bertindak sewajarnya untuk menyeimbangkan keadaan.

 d) Pegawai Sulh hendaklah mengenal pasti kekuatan dan kelemahan kes setiap pihak dan memaklumkan mereka supaya lebih bersedia untuk bertolak ansur.

 e) Pegawai Sulh hendaklah mencari ikhtiar penyelesaian dengan menggunakan pelbagai teknik, antaranya seperti berikut:

  i. Tanya atau minta cadangan dari pihak-pihak.

  ii. Nyatakan semula secara terperinci dan tersusun masalah yang dihadapi, supaya lebih mudah dikenal pasti dan difahami. Nyatakan ia sebagai satu "**masalah bersama**", tanpa meletakkan kesalahan (blame) pada mana-mana pihak.

  iii. Berasaskan peta konflik yang diwujudkan itu, lakukan sumbang saran (brainstorming), iaitu mengumpulkan semua idea penyelesaian tanpa mengambil kira merit atau kesesuaiannya.

  iv. Pada masa tertentu Pegawai Sulh hendaklah mendiamkan diri, bagi menggalakkanpihak-pihak berkenaan berusaha lebih bersungguh-sungguh menjana idea mereka sendiri.

 f) Pegawai Sulh hendaklah berlaku adil dan sama rata dalam memperuntukkan masa kaukus."

In 'e (ii)', the expression of a precise meaning is very important by both conflicting parties through methods such as question and suggestion. Meanings such as "shared problem" or "actual problem" must be highlighted and emphasised and clearly understood so that the disputing parties may work together peacefully.

3.4 Interpretation

The parties assisted by the mediator to craft resolutions mutually among and agreeable to both parties.

Once agreed between the parties, the resolution and its terms are formalised in a written agreement.

3.4.1 Finalising decision

Example 4.4.1 below relates to joint session and negotiation between the parties. There are two guidelines to be followed at this stage.

 Example: 5:

 Perundingan Bersama

 a) Selepas pertemuan sebelah pihak (kaukus) Pegawai Sulh hendaklah mengundang kedua-dua pihak untuk berbincang dalam sessi perundingan secara langsung antara satu sama lain. Matlamat perundingan bersama ini ialah **mencapai penyelesaian secara damai berasaskan persetujuan** kedua-dua pihak secara sukarela.

 b) Sekiranya perundingan bersama pusingan pertama atau pusingan awal belum mendatangkan hasil yang diharapkan, manakala Pegawai Sulh masih yakin penyelesaian secara damai bukan satu perkara yang mustahil, Pegawai Sulh boleh memulakan pusingan kedua dan seterusnya pertemuan sebelah pihak diikuti dengan perundingan bersama.

In 'a', the interpretation of meaning plays an important role in a joint meeting. The meaning interpreted or expressed by the mediator must be agreed by both disputing parties that leads to a mutual settlement between them. Therefore, the interpretation of meaning by the mediator is actually a kind of interpretation that leads to mutual settlement and agreement.

3.4.2 Drafting the agreement

Example 4.4.2 below relates to the courts order or judgement based on the agreement mutually agreed by the parties and, the return of the case back to the court. There are five guidelines for judgement and one guideline for returning the case to the courts.

Example: 6:

"Penghakiman Berasaskan Persetujuan

a) Di akhir prosedur sulh ini, Pegawai Sulh hendaklah memutuskan sama ada sulh yang dijalankan ini berjaya sepenuhnya ataupun tidak.

b) Sekiranya Sulh berjaya, Pegawai Sulh hendaklah menderaf satu Perjanjian Penyelesaian yang dipersetujui oleh kedua-dua pihak (sepertimana format dalam lampiran 3).

c) Pegawai Sulh hendaklah memastikan bahawa Perjanjian Penyelesaian itu tidak mengandungi apa-apa terma yang bertentangan dengan Hukum Syarak dan undang-undang Negeri yang berkaitan.

d) Pegawai Sulh boleh membenarkan mana-mana pihak merujuk kepada peguam masing-masing deraf Perjanjian Penyelesaian sebelum mereka menandatanganinya. Dalam pada itu Pegawai Sulh hendaklah **menasihatkan pihak berkenaan supaya jangan mengubah persetujuan mereka** kerana dipengaruhi sebaliknya oleh peguam mereka.

e) Setelah Perjanjian Penyelesaian ditandatangani oleh kedua-dua pihak di hadapan Pegawai Sulh perjanjian itu hendaklah disampaikan kepada Hakim supaya satu penghakiman berasaskan persetujuan boleh dibuat olehnya."

In 'd', the mediator's role is to advise the disputing parties to be consistent in their decision and not changing their agreement. The interpretation of meanings used by the mediator must be able to keep the parties' to their agreed decision.

"Kes Diserahkan Kembali

Sekiranya penyelesaian sepenuhnya tidak dicapai tetapi kedua-dua pihak bersetuju menyelesaikan sebahagian sahaja pertikaian mereka, Pegawai Sulh hendaklah **mempastikan apakah mereka mahukan perkara-perkara yang disetujui** itu direkodkan dalam satu Perjanjian Penyelesaian, manakala selebihnya diserahkan kembali kepada mahkamah untuk dibicarakan ataupun keseluruhan kes itu diserahkan kembali untuk pengadilan.

If mediation fails to achieve full settlement, the case must be return back to courts for trial. If this happened, the mediator must interpret and clearly explain the effects of the settlement agreement drafted or, the effects of returning the case to courts.

Conclusion

This study could significantly contribute towards developing a systematic model of negotiation language for mediation for the use of relevant agencies and institutions in Malaysia such as the courts, mediation centres, counselling units at the states' religious department, non-governmental organisations and etc. Needless to say, that mediation involves professionalism, requires skills and broad knowledge pertaining to the issues and problems faced by the disputing parties. Therefore, this give rise to the need of a module on linguistic skills developed based on the negotiation language to be fully benefited by the mediators in mediation. This module could be used to guide and train the mediators to mediate conflicts effectively thus achieve mutual agreement between disputing parties peacefully.

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