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A Proposed Legal Solution in Resolving Family Disputes  
With the History of Domestic Violence

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## Research Highlights

This research highlights the possible issues arising from the current mechanisms of resolving Muslim family disputes with the history of domestic violence and whether the mechanisms are suitable to be used in the said family disputes. Litigation and mediation are current mechanisms of resolving Muslim family disputes. Syariah Court is the court that resolves Muslim family disputes in Malaysia. In practice, mediation is part of the procedure in the Syariah Court. Based on the previous research, the issue of power imbalance will arise in the mediation process when resolving family disputes with the history of violence. Consequently, it made mediation as an inappropriate mechanism to resolve the family disputes when there is the history of violence.

The study proposed online mediation as an alternative mechanism to resolve family disputes with the history of violence. The results indicated that online mediation may reduce the issue of power imbalance in the mediation process by itself. Online mediation is significant to be used especially when the country make mediation as a mandatory process to go through in order to resolve the family disputes.

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## Research Objectives

The objective of this research is to review how family disputes with the history of violence are being resolved in Malaysia particularly Muslim family, and analyses what online mediation may offer to overcome the emerging problems arise from the said mechanism of dispute resolution.

## Methodology

This research adopted doctrinal research. Being so, research methodologies of library research and critical analysis were used in analysing relevant materials, data, and information. A search of library books, library online databases, Google Scholar relating to family disputes and domestic violence was undertaken. A search of articles in relevant





journals also was undertaken with the keywords of mediation in family disputes, domestic violence and mediation involving violence. A critical analysis on relevant Acts such as Domestic Violence Acts 1994, Penal Code of Malaysia, Islamic Family Law Enactments, Islamic Family Law (Federal Territories) Act 1984 and Syariah Court Civil Procedure (Federal Territories) Act 1998 relating to domestic violence and family dispute also was undertaken.

## Results

Resolving family disputes with the history of violence by using the current mechanisms of dispute resolution is critical. Current mechanisms of resolution is litigation and mediation. Since mediation is part of the Syariah Court process, the disputing parties have to go through mediation first before the case is being brought to the Syariah Court. If the disputes have successfully resolved by mediation, the agreement will be made as a consent judgment. However, not all types of family disputes are suitable to be resolved by mediation. The history of violence in family disputes may deter the victim to attend any meeting (Jen-T'Chiang, 2010) and will raise power imbalance (Nor Fadzlina, 2011) issue in the mediation session. Research depicted, the existence of power imbalance is one of the factors of the failure of resolving family disputes in the Syariah Court. (Safei, 2009) The mediator plays a significant role in dealing with power imbalance issue. (Baylis & Carroll, 2005) The mediator should put safeguards in place to ensure the participants are safe and the outcomes of mediation are fair and just for all involved. Nevertheless, the mediator may not suspect the history of domestic violence and the existence of power imbalance if the mediator lack of training and experience.

## Findings

The findings of this research are current Syariah court-annexed mediation is not suitable to be used in order to resolve the family dispute with the history of violence. Communication technologies in online mediation such as e-mail, chat room, instant messages, (Gramatikov & Klaming, 2011) electronic conferencing, online chat, video-conferencing, (Poblet et al., 2010) facsimile and telephone (Rossi et al., 2017) may create protective environment and may reduce power imbalance in mediation process by focusing on the issue than on the emotions.





Therefore, online mediation is more suitable to be used in resolving family disputes with the history of violence and can be another option to the disputing parties who did not want to meet each other.

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