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Awareness and perception of alternative dispute resolution methods in Penang

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Abstract

Alternative dispute resolution (ADR) methods serve as cheaper and faster options to settle disputes in place of litigation. Although the local government and relevant ADR bodies in Malaysia have been taking initiatives to promote ADR to lighten overloaded courts' load and create a peaceful and harmonious society, the awareness level still leaves room for improvement. This study aimed to investigate the perception and awareness level of ADR in Penang. Questionnaires were distributed to the course participants of an ADR training course in Penang. The analysis shows that while a large majority of the participants were aware of ADR before enrolling in the course, more than half of them believed that ADR methods were not actively utilised in Malaysia while about two-thirds believed that the general public was not aware of such options. Actions such as more media campaigns and greater institutional support should be undertaken to educate and heighten the public's awareness about the ADR's availability, processes and functions so that they could be translated into greater usage.

Keywords:
alternative dispute resolution; perception; adjudication; arbitration; mediation.

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1. Introduction

Conflicts have existed since time immemorial and will continue to exist as long there is competition for basic requirements (Ojo, 2023; Shamir, 2016). However, today's society has become more litigious, resulting in an increase in court cases over the years. Court cases are more adversarial in nature and could take up to three years to resolve (Yong, 2023), draining the parties both financially and emotionally. Along with the efforts to find less adversarial and effective ways to solve disputes other than traditional litigation, alternative dispute resolution (ADR) methods were established (Mohamad Bahri et al., 2023; Rahmat et al., 2022).

ADR is a collection of practices and techniques designed to allow legal disputes to be settled out of court (Mnookin, 1998). Options to resolve disputes without litigation include adjudication, arbitration, and mediation, being cheaper and faster options to solve conflicts (Fiadjoe, 2004; Mnookin 1998).

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The ADR movement started in developed countries such as the United Kingdom, Australia and America (Rahmat et al., 2022). In Malaysia, it has slowly gained popularity with the introduction of various Acts to regulate its usage such as the Mediation Act 2012, the Arbitration Act 2005, and the Construction Industry Payment and Adjudication Act 2012 (CIPAA) by the Malaysian government.

The usage of ADR has long been practised culturally in Malaysia, especially for mediation which has deep roots in cultural traditions and could be traced back to the days when it was done by community leaders (Ahmad et al., 2022). In older societies, the wise elders of the communities and religious leaders were entrusted with the capability to resolve disputes (Rahmat et al., 2022; Shamir, 2016). With a focus on *adat* (tradition in Malay societies) and Confucian values of yielding and compromise, conciliation and mediation are the traditional dispute resolution processes of various races in Malaysia (Fiadjoe, 2004). It is usually applied in various disputes of civil nature, such as family disputes among Muslims known as *Sulh* and non-Muslims (Rahmat et al., 2022).

The Malaysian government has also been actively promoting ADR, especially mediation among its people. These can be seen from the introduction of the Covid-19 Mediation Centre (The Malaysian Reserve, 2022) as well as free mediation services via court-annexed mediation initiated in 2010 and currently practised by courts in Malaysia (Choy et al., 2016).

Nonetheless, several studies found that the awareness level among the general public still leaves much to be desired (Muhammad & Hamid, 2015; Stoilkovska et al., 2015). According to Abraham (2021), although formal mediation has been introduced for the past two decades, it has only been utilised recently in Malaysia for the past decade. One such study in Malaysia's context by Muhammad and Hamid (2015) investigating the public's awareness of the existence of Dispute Resolution Department (DRD) established by the Internal Revenue Board Malaysia to help to solve tax disagreements after eight months of DRD's establishment revealed that although 52% of the respondents knew of its existence, less than 20% of the respondents understood DRD's background, function and objectives.

Additionally, there is a paucity of literature about ADR in developing countries such as Malaysia with most literature coming from the United States of America, Japan, Singapore, Korea and China (Ahmad et al., 2022). According to Hartmann-Piraudeau (2022), a German author and active mediator, although the use of mediation was widespread, the research about its impact was still in its infancy. Not much empirical evidence can be gleaned about Malaysians' perspectives on using ADR to solve disputes. For instance, when it comes to community mediation in Malaysia, Ahmad et al. (2022) concurred that only a little evidence could be obtained. Despite the various promotional efforts by the Malaysian government of ADR as the new paradigm to resolve disputes, the extent to which it translates to greater awareness and positive perception of ADR still remains largely unknown. With this in mind, this study aimed to investigate the current awareness and perception level of ADR in Malaysia. The following sections of the paper present the literature review and research methodology. They are followed by the results and a discussion of the implications.

2. Literature Review

2.1 Overview of ADR

ADR refers to dispute resolution techniques out of the judicial process typically consisting of arbitration, mediation and conciliation (Gabuthy and Lambert 2013; Mnookin, 1998;). ADR

techniques attempt to solve disputes in a non-confrontational manner; ranging from party-to-party engagement in negotiation to reach a mutually acceptable solution; to arbitration and adjudication where solution is decided by an external party (Shamir, 2016).

These mechanisms are commonly used in developed countries for most types of disputes (Gabuthy and Lambert, 2013). The ADR "movement" began in the United States in the 1970s arising from the need to find more efficient and effective options to litigation and had since gained traction worldwide because it has been proven to be a better option to resolve disputes (Shamir, 2016). Countries pioneering this field include Canada, New Zealand, Australia, and the United Kingdom, and ADR has become institutionalised as part of many courts and justice systems worldwide in recent years (Shamir, 2016). Arbitration, sharing procedural and practice similarities with litigation, was the first ADR method to gain acceptance, but as ADR undergoes further development, mediation has gained wider and greater acceptance due to its flexible and less informal processes (Shamir, 2016).

Conflict is defined as acute disagreement, a clash of ideas, values and interests (Fiadjoe, 2004). According to Fiadjoe (2004), while conflict is inevitable, the same might not apply to disputes, as disputes arise due to our inability to manage conflicts properly. ADR's popularity could be caused by the increasing load of court cases (Gabuthy and Lambert 2013). According to Yong (2023), Malaysia registered a total of 519 cases in the Federal Court, 6,307 in the Court of Appeal, and more than 15,000 in the High Court and subordinate courts in 2022 alone. Fiadjoe (2004) asserted that the public's dissatisfaction with litigation in the form of complaints about increasing costs, delays, bureaucratic procedures and court overload had contributed to ADR's traction. Furthermore, other complaints include being alienated from decision-making once a lawyer is engaged, total control loss of claim after handing it over to a lawyer, and fear of the adjudicative process formality. Furthermore, ADR emphasises early dispute settlements which can bring financial and emotional benefits to both parties (Fiadjoe 2004), often resulting in the ability to maintain and repair the relationship between parties in disputes (Hartmann-Piraudeau, 2022).

According to The Sun Daily (2016), there was an increasing trend in the number of cases being solved via ADR, especially mediation, since the introduction of the Practice Direction on Mediation in 2010. Kuala Lumpur Regional Centre for Arbitration (KLRCA) showed a marked increase over the past years by having registered 1,260 cases between 2010 and 2016 (The Sun Daily, 2016). KLRCA is now rebranded Asian International Arbitration Centre (AIAC) and continues to act as an independent and neutral venue for arbitration and other ADR proceedings locally and internationally (Asian International Arbitration Centre, n.d.). Other than AIAC, Malaysia International Mediation Centre (MIMC), formerly known as Malaysian Mediation Centre (MMC) is a body established under the auspices of the Bar Council of Malaysia on 5th November 1999 offering mediation services to the public to promote mediation as an ADR process (Kamaruddin and Shawkat, 2021; Malaysian International Mediation Centre, 2016). MIMC's panel of mediators consists of accredited mediators made up of lawyers and other professionals who have completed a 40-hour mediation skills training workshop by the Bar Council or other recognised bodies (Choy et al., 2016).

The newly elected government of Malaysia under the leadership of Prime Minister Anwar Ibrahim introduced the concept of *Malaysia Madani*, or the Civil Malaysia slogan in January 2023 (CNA, 2023). The word Madani, an acronym consisting of six core values, namely sustainability, prosperity, innovation, respect, trust and compassion, is about reforming Malaysia into a country that believes in humanity and prioritises people's needs with a fair and effective government (CNA, 2023). The practice of ADR, particularly the use of mediation to solve disputes, befits the notion of the new Malaysian government's emphasis on humanity and equality in Malaysia's

multi-racial and diverse society. This study focuses on three forms of ADR, namely adjudication of construction matters, arbitration and mediation which are most common in Malaysia (Arun et al., 2023).

2.2 Adjudication

Adjudication is an involuntary process, as it can be ordered by a court to force a defendant to participate in the process or else, suffer the consequences of a default judgment (Shamir, 2016). The adjudication process is open to the public with the judge, a neutral third party appointed by the state, having the power and responsibility to preside and decide on the dispute (Shamir, 2016). The trial judge's decisions are binding on the parties, subject to appeal to a higher court (Shamir, 2016).

2.2.1 Malaysia's Construction Industry Payment and Adjudication Act 2012 (CIPAA)

Malaysia has a long history of payment disputes in the construction industry with approximately 50% of construction projects experiencing payment issues, leading to a delay or abandonment in the completion of construction projects (CIPAA, 2021). According to Dato' Lim Chong Fong, a Court of Appeal Judge; in the past, a construction case could have taken at least three years to resolve in court leading to financial distress for many unpaid contractors and sub-contractors, but the situation has improved via the existence of a cheaper and faster 100-working-day procedure following the establishment of specialist construction courts in 2013 and CIPAA 2012 (CIPAA, 2021; Yong, 2023).

The purpose of CIPAA 2012 is to facilitate regular and timely payment, provide a process for faster dispute resolution through adjudication, offer remedies for payment recovery in the construction industry and address related and incidental issues (Asian International Arbitration Centre, n.d.). It is a "pay first and argue later" procedure with the CIPAA adjudication decision being binding and enforceable but not necessarily final in the sense that it could be resolved in arbitration or specialist construction courts (Yong, 2023). According to statistics, 75% of the roughly 800 construction disputes that are submitted each year are settled by statutory adjudication (Yong, 2023).

2.3 Arbitration

According to Shamir (2016), arbitration was the first ADR method to gain acceptance because many of its practices and procedures are similar to the judicial system. Arbitration is a part of commercial life. Arbitration involves a private and neutral third party (unlike a judge) who is likely to have expertise in the area of dispute, to arbitrate in a dispute (Fiadjoe, 2004). The dispute will only become a binding arbitration upon the agreement of both disputing parties whereby the arbitration procedures are set by both parties in their arbitration agreement. The arbitrator may deliver a principled decision and announce an award without providing any explanation (Fiadjoe, 2004). Still, it offers advantages relative to adjudication, in the sense that parties can choose their arbitrator and it is quicker as the procedures are less informal (Fiadjoe, 2004).

2.3.1 Arbitration Act 2005

Malaysia's arbitration legislation has now seen a major overhaul with the passing of the Arbitration Act 2005 (Davidson and Sundra, 2023). The Arbitration Act 2005 serves to reform the law related to reform domestic and international arbitration as well as the recognition and award enforcement (Arbitration Act 2005).

2.4 Mediation

Mediation is confidential, structured, future-oriented procedure, voluntary and open-ended, and the parties to the dispute are empowered to make mutually acceptable, out-of-court decisions regarding the solution (Hartmann-Piraudeau, 2022). Governed by the principles of neutrality, self-determination, voluntariness, and confidentiality, it ultimately has the goal of achieving an amicable resolution of the conflict (Hartmann-Piraudeau, 2022).

According to Shamir (2016), as mediation is a voluntary process between parties in dispute, they can still maintain their relationship after the dispute. In mediation, the focus is on the future, but it does not ignore the past, providing information about the issues and the causes of the conflict (Shamir, 2016). The process itself is informal and therefore offers flexibility to be suited to parties' needs (Hartmann-Piraudeau, 2022). Apart from offering the benefits of being private and confidential, as a mediator is bound not to share any information from one party to another or to outsiders without permission; it is generally faster, less costly (Kamaruddin and Shawkat, 2021) and convenient to both parties compared to litigation as it can be scheduled at a mutually agreed time (Shamir, 2016).

The traditional assumption is that the strongest of the parties in disputes will win (win-lose mentality) as the focus is on the parties' rights based on the culture of rights (Fiadjoe, 2004), but mediation is a process that focuses on the interests of both parties (Hartmann-Piraudeau, 2022). Ahmad et al. (2022) asserted that the use of litigation does not address the emotional aspects of disputants especially when it comes to family and neighbourhood disputes involving sensitive and emotional issues. Hence, even though a conflict may lead to a major dispute in the future, there is also a possibility of creative cooperation if both parties jointly work to go for a win–win solution with the assistance of an impartial mediator (Hartmann-Piraudeau, 2022; Shamir, 2016). As a result, mediation has proven to be useful in a variety of conflicts encompassing family disputes (Rahmat et al., 2022), business organisations such as conflicts between business partners, organisational disputes such as labour relations, environmental conflicts, community or neighbourhood conflicts, and victim-offender mediation (Ahmad et al., 2022).

According to former Chief Justice Tun Zaki Azmi (The Sun Daily, 2016), the growth of mediation could be due to the legal systems in many developed countries advocating mediation as a cheaper and quicker option to litigation, hence helping to reduce the backlog or burden of court cases. Along the same lines, Sobri (2021) stated that mediation is getting popular since the introduction of the Mediation Act 2012 which serves to regulate the practice.

2.4.1 Malaysia Mediation Act 2012

Malaysian Mediation Act 2012 is "an act to promote and encourage mediation as a method of ADR by providing for the process of mediation, thereby facilitating the parties in dispute to settle disputes in a fair, speedy and cost-effective manner and to provide for related matters" (Mediation Act 2012, 2012). Section 3 of the Malaysian Mediation Act defines mediation as a voluntary act with the mediator acting as a facilitator of communication and negotiation between the parties in dispute to help them to reach an agreement to the dispute (Mediation Act 2012, 2012).

2.4.2 Community Mediation in Malaysia

Mediation has long been practised in the past in Malaysia before the introduction of English common law (Khan, 2013). Back in the olden days, the role of a mediator was carried out by respected elders such as *"penghulu"* or "*Ketua Kampung"* (village head leader), or religious figures

such as *"imam"* (Islam religious leaders) (Ahmad et al., 2022, Khan, 2013). When the Indians and Chinese immigrants came to Malaya, they brought along their customs and practices which among others include the process of resolving disputes through mediation by the elders in the community (Ahmad et al., 2022). According to Khan (2013), the practice of *Sulh* (meaning to cut off dispute) in the Malay community can be traced back to Islamic religious teachings and had been practised in Malaysia since the Malacca Sultanate.

The Government of Malaysia's concern for the country's independence was to establish a strong identity and unity among the multi-racial and multi-ethnic citizens, which is crucial, especially since the incident of an interracial conflict on May 13, 1969 (Ahmad et al., 2022). In this respect, the Department of National Unity and Integrity (DNUI) was established in 1969 to ensure a peaceful, harmonious and integrated society; eventually, the *Rukun Tetangga* (RT or Peaceful Neighbour) programme was introduced in 1975 to ensure united multi-racial citizens in Malaysia (Ahmad et al., 2021; Khan, 2013). RT is a voluntary programme regulated by the Malaysian government and intended to create neighbourhood organisation made up of residents in particular residential areas around the country. The power and authority of RT were vested by the Peaceful Neighbour Regulation 1975 (Ahmad et al., 2022).

As part of DNUI's effort to promote peace in the community, it has initiated a variety of programmes such as the Community Mediation pilot project in 2008 to train RT Committee (community mediators) responsible to help residents in their neighbourhood to resolve disputes free of charge (2012, 2013). The programme was first piloted in Selangor, Penang, Johor, and the Federal Territory of Kuala Lumpur in 2007 and was extended to other states in Malaysia in 2008 (Khan, 2013). According to Ahmad et al. (2022), there are 1000 trained community mediators registered with the DNUI in their respective residences.

Mediation is usually used in civil disputes (Rahmat et al., 2022). Today, mediation has also been extended to matrimonial and household disputes (Ahmad et al., 2022). According to Mohamad Bahri et al. (2023), Malaysian public universities have also taken the initiative to implement the ombudsman concept to solve conflict among stakeholders and promote good governance, with Universiti Sains Malaysia (USM) being the first to establish an Ombudsman Office in 2011.

2.4.3 Pro-Bono Mediation

The growth of the mediation movement in Malaysia could be witnessed in the Malaysian government's efforts to provide pro bono (without charge) mediation. To assist Malaysians in solving contractual obligations due to the Movement Control Order (MCO), the Malaysian government established the Covid-19 Mediation Centre under the Temporary Measures for Reducing the Impact of the 2019 Coronavirus Disease Act 2020 (Act 829) to assist the public to resolve their disputes resulting from an inability to perform contractual obligation not exceeding RM500,000 in a good manner without having to go to court (The Malaysian Reserve, 2022).

PMC-19 received a total referral of 290 cases out of which 79 cases were resolved with a cumulative dispute value of RM3.8 million (The Malaysian Reserve, 2022). Although PMC-19 was officially closed on 23rd October 2022 (The Malaysian Reserve, 2022), it was nevertheless still a good initiative by the Malaysian government to alleviate the suffering of the people. Today, there are a few organisations offering pro bono mediation services such as the AIAC Pro Bono Mediation Initiative (Asian International Arbitration Centre, 2023).

2.4.4 Court-Annexed Mediation

The Malaysian judiciary introduced a free-of-charge, court-annexed mediation using judges as mediators in August 2011, aimed at encouraging litigating parties to mediate a solution to their disputes as an option to clear a backlog of court cases (Choy et al., 2016). However, court-annexed mediation is more formalised as the mediators consist of active judges and judicial officers act as mediators after litigating parties filed for action in court (Choy et al., 2016). With the establishment of the Court-Annexed Mediation Centre Kuala Lumpur, a 40% settlement rate of cases was reported between 2011 to 2013, alongside a rise in cases received during those years (Choy et al., 2016). Following its success, mediation centres had been set up in Kuala Lumpur, Kota Kinabalu, Kuching, Johor Baharu, Muar, Kuantan and Ipoh (Khan, 2013).

Table 1 presents a comparison between adjudication, arbitration and mediation as ADR options. Out of the three, mediation could be more advantageous by offering benefits such as voluntariness, privacy, empowerment and mutually acceptable solutions, resulting in a greater likelihood of a win-win solution for disputing parties (Mnookin, 1998; Shamir, 2016). This could lead to mediation being a more prevalent ADR form (Rahmat et al., 2022).

3. Research Methodology

A quantitative research method was employed. A questionnaire containing two sections were purposely designed for the study's specific context. Section A of the questionnaire solicited responses about the demographic profile of the respondents, while Section B contained questions about the respondents' awareness and perception of ADR in Malaysia.

The questionnaire was administered to the first batch of course participants of the inaugural course offered in April and May 2023 in USM, Penang to solicit their views about awareness and perception of ADR in Malaysia. The questionnaires were distributed to the participants on the second last day of the 40-hour course with permission from the organisers. The course contents provided an overview of ADR, but the contents were focused mainly on the principles and practice of mediation. Hence, accordingly to the course syllabus, the questions covered an overview of ADR, but were targeted more towards mediation.

The Professional Certificate in Alternative Dispute Resolution Practice is jointly offered by Advance Dispute Resolution Centre (ADRC) and USM (Yong, 2023). ADRC is a non-profit organisation founded under the auspices of Penang Muhibbah Consultative Goodwill Council (*Majlis Perundingan Muhibbah Negeri Pulau Pinang* or in short, "MPMNPP" in Bahasa Malaysia) to train the right people with the right calibre to undertake the training of future ADR practitioners to resolve societal disputes (Yong, 2023), similar to the principle of community mediation. In this sense, ADRC conducted an initial screening of the participants to determine suitability in terms of their work experience and education background to ensure their suitability to undertake the tasks. To ensure an effective course delivery, it also engaged a co-trainer from DNUI. A total of 26 participants out of a total 40 participants returned the questionnaire, resulting in a response rate of 65%. Data was analysed using Microsoft Excel. According to Hertzog (2008), a small sample size of between 20 to 30 respondents is adequate for an exploratory study.

Table 1: Differences between Adjudication, Arbitration and Mediation

Differences	Adjudication	Arbitration	Mediation
Voluntariness	No. It can be ordered by the court (Mnookin, 1998).	A process wherein parties to the dispute agree to submit their dispute to a neutral party, who will decide their case (Shamir 2016).	Voluntary process (Mnookin, 1998; Shamir, 2016:)
Confidentiality of the process	Proceedings are open to the public (Mnookin, 1998).	Private and less formal process than litigation in court (Shamir 2016).	The process is neutral, private and conducted in a safe environment (not open to the public) - matters revealed in mediation may not be raised in other proceedings (Kamaruddin and Shawkat, 2021).
Nature of process	Formal (Shamir 2016).	Formal. Usually involves commercial contracts, labour agreements and joint venture agreements (Shamir 2016).	Informal (Mnookin, 1998)
Role	The adjudicator is a judge, a neutral third party appointed by the state possessing the power to run the proceedings and resolve the dispute (Mnookin, 1998). The adjudicator could also be a third party appointed by a judge (Shamir, 2016)	An arbitrator is a private person and neutral third party chosen by the parties in dispute (Mnookin, 1998) who usually has expertise in the dispute's subject matter (Mnookin, 1998). For instance, professionals such accountants or engineers (Shamir 2016).	A mediator acts more as a facilitator and has no authority to impose decisions on the parties, designs the process to assist the parties to get to the root of their conflict, to understand their interests, and reach a mutually acceptable and amicable solution (Shamir, 2016), using skills such as re-framing, active listening, analytical and open-ended questioning skills at hand (Hartmann-Piraudeau, 2022).
Who makes decisions	Adjudicator (Shamir 2016).	Arbitrator (Shamir 2016).	Mutually accepted solutions by disputing parties who own it and are responsible for implementing it. The agreement is validated and ratified by the courts (Shamir, 2016).
Binding decision	Binding, subject to appeal to a higher court (Mnookin, 1998)	The decision may be binding or non-binding (depending on a prior decision and local laws) and the arbitrator's decision may be with or without a written explanation or opinion (Shamir, 2016). When binding, appeal to a higher court is not allowed. (Shamir, 2016).	A settlement agreement is not ordinarily subject to judicial review and can be enforced as a contract (Shamir, 2016).
Who makes decision?	The adjudicator (Mnookin, 1998)	The arbitrator (Mnookin, 1998).	The parties in dispute themselves (Mnookin, 1998)
Outcome	Usually a win-lose situation (Shamir, 2016)	Similar, closest to adjudication (Shamir, 2016)	Might result in a win-win solution (Hartmann-Piraudeau, 2022)

Source: Hartmann-Piraudeau (2022), Mnookin (1998), Shamir (2016)

4. Results

4.1 Demographic Characteristics of the Participants

The respondents were well represented in terms of gender with 58% males and 42% females. Age-wise, 50% were under the 40 to 49 years old, with only 8% between 20 to 39 years old, and 19% for groups both between 30 to 39 years old and between 40 to 49 years old. Only 4% are over 60 years old.

A large majority of the respondents had substantial working experience and held senior positions in their organisations. In terms of current working positions, 19% were directors. The rest consisted of senior managers (15%), managers (19%), senior executives (12%), junior executives (8%) and professional groups such as lawyers (27%). 38% possessed a total working experience between 21 to 30 years, followed by 23% between 11 to 20 years, 19% more than 30 years, 12% between 6 to 10 years and 8% between 0 to 5 years. All the participants who participated in the survey were based in Penang.

The respondents came from various industries. Those from the services industry made up the bulk of the participants at 53%. The others worked in manufacturing (19%), education (12%), construction (8%), finance (4%) and industry such as mining, water and electricity (4%).

However, only 15% of the respondents had prior experience in ADR. Only 12% were active in ADR practice. 19% reported that their current employers were active in ADR usage. A deeper analysis revealed those respondents who answered 'yes' to these three questions worked in the legal profession.

4.2 Respondents' Awareness and Perception of ADR

The findings indicate that the level of awareness of ADR availability among the respondents before enrolling in the course was quite high at 73%, as can be seen from Table 2. This is a positive sign as knowledge of ADR's existence is crucial to encourage its usage. However, this could be attributed to their specific background being from a select group of candidates with a keen interest in ADR.

Table 2: Results on respondents' awareness of ADR's availability before enrolling in the ADRC-USM Professional Certificate in ADR Practice course.

	Respondents	Percentage
Completely disagree	0	0.00
Moderately disagree	5	19.23
Somewhat disagree	2	7.69
Somewhat agree	3	11.54
Moderately agree	7	26.92
Completely agree	9	34.62
Total	26	100.00

Generally, among the three ADR methods, the awareness level of mediation was the highest at 69% as can be seen from the number of respondents indicating their agreement, followed by adjudication at 54% and arbitration at 50% (refer to Table 3). This shows that the relevant bodies have done a good job in promoting ADR, especially mediation, to the public.

Table 3: Results on respondents' awareness of the existence of the following ADR methods before enrolling in the ADRC-USM Professional Certificate in ADR Practice course

	Adjudication		**Arbitration**		**Mediation**	
	Respondents	Percentage	Respondents	Percentage	Respondents	Percentage
Completely disagree	3	11.54	3	11.54	2	7.69
Moderately disagree	3	11.54	2	7.69	3	11.54
Somewhat disagree	5	19.23	4	15.38	3	11.54
Somewhat agree	1	3.85	1	3.85	3	11.54
Moderately agree	8	30.77	8	30.77	6	23.08
Completely agree	6	23.08	8	30.77	9	34.62
Total	100.00	100.00	26	100.00	26	100.00

As for the awareness of prevailing laws governing the use of ADR (refer to Table 4), the highest level of awareness was recorded at 65% for the mediation act as indicated by agreement level, followed by 62% for the arbitration act and lastly, 54% for adjudication act. A possible reason for the lower awareness of the adjudication act could be attributed to its specificity of application in the construction industry. Hence, only those participants who were from the construction or legal industry could be knowledgeable of its existence.

Table 4: Results on respondents' awareness of the existence of the following laws of Malaysia governing ADR practice before enrolling in the ADRC-USM Professional Certificate in ADR Practice course

	Construction Industry Payment and Adjudication Act 2012		**The Arbitration Act 2005**		**Mediation Act 2012**	
	Respondents	Percentage	Respondents	Percentage	Respondents	Percentage
Completely disagree	3	11.54	3	11.54	3	11.54
Moderately disagree	6	23.08	4	15.38	4	15.38
Somewhat disagree	5	19.23	3	11.54	2	7.69
Somewhat agree	6	23.08	2	7.69	4	15.38
Moderately agree	3	11.54	5	19.23	4	15.38
Completely agree	5	19.23	9	34.62	9	34.62
Total	26	100.00	26	100.00	26	100.00

Table 5 shows that 62% of the respondents indicated awareness of court-annexed mediation in Malaysia. This proves that the Malaysian government's efforts to promote compulsory mediation to solve court cases are bearing positive fruits. 54% of the respondents were aware that pro-bono mediation services exist in Malaysia. However, this could be due to 23% of the participants were involved in legal responsibilities as part of their profession.

Table 5: Results on respondents' awareness of the existence of court-annexed mediation and pro-bono mediation in Malaysia

	Court-annexed mediation in Malaysia		**Pro-bono mediation in Malaysia**	
	Respondents	Percentage	Respondents	Percentage
Completely Disagree	3	11.54	3	11.54
Moderately Disagree	2	7.69	3	11.54
Somewhat Disagree	5	19.23	6	23.08
Somewhat agree	6	23.08	5	19.23
Moderately agree	2	7.69	2	7.69
Completely agree	8	30.77	7	26.92
Total	26	100.00	26	100.00

However, only 47% of the respondents opined that there was an active usage of ADR methods to solve disputes in Malaysia (see Table 6). More than half of them believed otherwise. Only 46% agreed that mediation method to solve disputes were adequately utilised in Malaysia. A large percentage of the respondents, namely 69% also believed that the public was not generally aware of ADR methods in solving disputes.

Table 6: Results on respondents' perception of whether ADR methods are actively used to resolve conflicts in Malaysia, mediation as an ADR method in solving issues is sufficiently utilised in Malaysia and whether as a whole, the general public is aware of the ADR methods in solving disputes instead of pursuing litigation

	ADR methods are actively used to resolve conflicts in Malaysia.		**Mediation as an ADR method in solving issues is sufficiently utilised in Malaysia**		**As a whole, the general public is aware of the ADR methods in solving disputes, instead of pursuing litigation.**	
	Respondents	Percentage	Respondents	Percentage	Respondents	Percentage
Completely disagree	1	3.85	2	7.69	3	11.54
Moderately disagree	4	15.38	8	30.77	8	30.77
Somewhat disagree	9	34.62	4	15.38	7	26.92
Somewhat agree	7	26.92	5	19.23	4	15.38
Moderately agree	3	11.54	4	15.38	4	15.38
Completely agree	2	7.69	3	11.54	0	0
Total	26	100.00	26	100.00	26	100.00

Generally, a majority of the participants thought that the awareness level for mediation in Malaysia was still rather low, with 54% and 8% rated it as low and very low respectively (see Table 7).

Table 7: Results on respondents' grading of awareness level for mediation in Malaysia

	Respondents	**Percentage**
Very high	0	0.00
High	3	11.54
Medium	7	26.92
Low	14	53.85
Total	26	100.00

As can be seen in Table 8, most of the respondents agreed that mediation offered various benefits. However, there were varying opinions on the certainty of a claim resulting from using mediation, with 38% disagreeing to a certain extent.

Table 8: Results on respondents' opinions about the benefits of using mediation to solve disputes

	Faster processing time		**Cost-saving**		**No need to go to court**		**Certainty in claim**		**Maintaining the relationship between disputing parties**	
	No.	%	No.	%	No.	%	No.	%	No.	%
Completely disagree	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Moderately disagree	0	0.00	0	0.00	0	0.00	4	15.38	0	0.00
Somewhat disagree	0	0.00	0	0.00	0	0.00	6	23.08	0	0.00
Somewhat agree	1	3.85	1	3.85	2	7.69	7	26.92	1	3.85
Moderately agree	1	3.85	10	38.46	6	23.08	4	15.38	11	42.31
Completely agree	14	53.85	15	53.85	18	69.23	5	19.23	14	53.85
Total	26	100.00	26	100.00	26	100.00	26	100.00	26	100.00

Table 9 reports on the respondents' opinions of the activities which could be done to promote the public's awareness of mediation. The usage of media campaigns and positive examples solved by mediation solution tied at first place at 73%, followed by a tie between institutional support for mediation and mediation workshops at 65%.

Table 9: Results on respondents' opinion of activities which should be taken to raise awareness of the general public about mediation and their confidence in it

	Media campaigns	**Institutional support for mediation**	**Benefits from mediation in time and finances**	**Positive examples solved by mediation solution**	**Mediation workshops**
Responses	19	17	11	19	17
Percentage	73.08	65.38	42.31	73.08	65.38

5. Discussion and Recommendation

The results indicated that a majority of the respondents were aware of ADR's existence before the course enrolment. This is a positive finding but could be attributed to the fact that the respondents were a select group of experienced and educated knowledge workers. On the contrary, more than two thirds of the respondents believed that the general public's awareness level of ADR options in solving disputes was low. Less than half of them agreed that the mediation method to solve disputes was adequately utilised in Malaysia. This concurs with Muhammad & Hamid's (2015) study on awareness about DRD of IRB Malaysia that only half of the respondents surveyed were aware of its existence. Similarly, Stoilkovska et al.'s (2015) study based in Macedonia also found that the population had a lack of information about mediation and its benefits.

As adjudication and arbitration are usually deployed for commercial disputes, the processes are more formal and complicated. Hence, the most important stakeholder here is the government, who should play a leading role in working together with the relevant professions and judiciary to promote ADR and advise on the available options. In line with the efforts to make Malaysia an arbitration-friendly region, more empowered arbitration centres could be made available across the nation to ensure greater public accessibility and prevent a backlog of cases. AIAC, being the leading arbitration institution in Malaysia, is empowered to set its own arbitration rules (Yap and Saw, 2023). In line with this development, the Malaysian government is on the right track to set up the first arbitration centre in East Malaysia, called the Borneo International Centre for Arbitration and Mediation (BICAM) in 2023, covering Sabah, Sarawak and the Federal Territory of Labuan (Yap and Saw, 2023).

For disputes of civil nature involving community issues, ADR bodies could tie up with state assemblymen's local service centres which serve as an avenue for the public to voice their grievances and seek advice. In this sense, these local assemblymen should be equipped with knowledge on ADR options such as arbitration, adjudication and mediation so that they could provide the correct advice to the public accordingly. Their service centres could even be turned into community mediation centre providing an avenue to solve the community's non-commercial disputes. Additionally, ADR bodies could target the Human Resource (HR) departments of organisations to offer compulsory ADR training course for HR practitioners. For instance, it might be a practical option to make HR practitioners to be experts in mediation practice to solve internal organisational conflicts of non-commercial nature. As for commercial disputes, the HR practitioners should also be equipped with proper knowledge about ADR options so that they could advise the top management about less adversarial options instead of litigation.

Pertaining to the usage of adjudication as an ADR method, The Malaysian Lawyer (2018) suggested that the adjudication process to be streamlined. Although there has been a recorded increase in adjudication cases, but backlog arises due to the lengthy time it takes to solve the cases. According to The Malaysian Lawyer (2018), although CIPAA was meant to assist lay persons so that they can be self-represented in the adjudication proceedings, the process has become so complicated with the direct involvement of legal practitioners. This deters small industry players which see no difference between adjudication and litigation. Hence, a creative solution might lie in a decentralised online process in today's digital era, namely online dispute resolution (ODR). ODR is a sub-set of ADR which uses innovative digital means or platforms for litigants to solve disputes, which widens the public's access to justice (Rule, 2020). However, ODR would be feasible when supported by strong mechanisms in place for ruling enforcement purposes as it was not supported by institutional arrangement such as the power of the courts (Ast & Defains, 2020).

The use of blockchain technology might be useful in inspiring the public's trust in an ODR judiciary system via mathematical algorithm and a decentralised justice system (Ast & Defains, 2020). It was suggested that a dispute resolution system must meet three criteria to qualify as a decentralised justice system, namely perception of fairness, built as decentralised autonomous organisation and designed based on cryptoeconomic incentives (Ast & Defains, 2020). Members can participate in decision-making via a voting system as in a democratic government system, with the entire ADR process from handling evidence to ruling execution being fully automated with the help of blockchain technology, ensuring that it is free from the control of a single agent (Ast & Defains, 2020).

To promote greater awareness of mediation, Muhammad and Hamid (2015) suggested that more information such as statistical publication of successful cases solved by mediation should be put up on relevant websites to disseminate information about the availability of ADR options to the public. Similarly, most of the respondents in this research agreed that more media campaigns and examples of cases solved by mediation solutions should be made available to Malaysians from all walks of life. More intensive media campaigns highlighting the benefits of mediation should be carried out on a long-term basis. Conveying its benefits such as being less adversarial, more cost-effective and speedier than litigation could convince the public to opt for mediation to solve their disputes. Furthermore, the Council of Europe (2023) suggested promoting customised materials for different target groups such as draft practical handbook on mediation and arbitration prepared for mediators and lawyers; guidebooks on mediation and arbitration for judges, court staff and lawyers; and public information leaflets, posters, public service announcements and videos for the public to raise awareness and support effective implementation on mediation and arbitration mechanisms. The distribution channels include meetings, information desks, mediation bureau and in digital form to be accessible by wider set of audience (Council of Europe, 2023).

In essence, to increase the usage of ADR, knowledge of such options is most crucial to ensure a higher utilisation rate. A more coherent, standardised and continuous promotion efforts from all relevant private and public ADR bodies in Malaysia will ensure a greater success of its adoption. Rahmat et al. (2022) suggested that Malaysia could also study how other countries utilise publicity methods to promote ADR. For instance, to educate and increase the public's understanding of the mediation process and educate them that disputants had the freedom to choose the solutions to their disputes, China utilised an innovative method via a television reality show called Gold Medal Mediation (Zhang & Chen, 2017).

The public should also be informed about the competency of the mediators in terms of the training and skills to handle disputes needed to become a qualified mediator, to increase general confidence in reliability of mediation (Stoilkovska et al., 2015). According to Choy et al. (2016), the training programme for mediators should focus on the development of three competencies encompassing knowledge (for example, negotiation theory, mediation strategies, tactics, and processes in both negotiation and mediation), skills (for example, listening, analytical and questioning), and attitude (ethics, values and professionalism). Attention should be given to intercultural training as well given that Malaysia is a multi-racial country.

Institutional support for mediation plays an important role. The Malaysian government and relevant ADR bodies such as AIAC and MIMC should strive to provide resources such as mediation services and training workshops to the public. Clearer guidelines should be provided to increase the public's confidence about the reliability of the ADR process (Choy et al., 2016).

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