

# Court-Annexed Mediation as Civil Case Management: The Malaysian Model

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## ABSTRACT

Court-annexed mediation (CAM) has been formally incorporated into Malaysia's civil justice system as part of judicial case management under the Rules of Court 2012 (ROC 2012) and Practice Direction No. 2 of 2022 (PD 2/2022). This article examines the extent to which mediation is integrated within Malaysian civil procedure, focusing on its legal positioning as a case management mechanism rather than a stand-alone alternative dispute resolution process. Adopting a doctrinal legal methodology, the study undertakes a close textual and purposive analysis of Order 34 of the ROC 2012 and the mediation procedures prescribed in PD 2/2022. The analysis demonstrates that mediation may be directed by the court at multiple procedural stages, including during trial and on appeal, and that mediation outcomes are given formal procedural effect through consent judgments, recorded settlements, and issue-specific dispositions. These features indicate a high level of institutional integration, characterised by judicial oversight, procedural timelines, and enforceable obligations on parties. The article argues that Malaysia has developed a distinct model of mediation-based civil case management, which enhances procedural efficiency while raising important doctrinal questions concerning judicial discretion and the limits of party autonomy. By conceptualising CAM as an integral aspect of civil case management rather than a stand-alone alternative dispute resolution mechanism, this article contributes to a clearer understanding of Malaysia's evolving civil justice model and offers insights relevant to other jurisdictions seeking to institutionalise mediation within their procedural frameworks.

**Keywords:** Court-annexed mediation; civil procedure; case management; Malaysian judiciary; Alternative dispute resolution

## INTRODUCTION

The civil justice system increasingly faces pressure to deliver timely, cost-effective, and proportionate dispute resolution (Choy et al., 2017). In response, courts in many jurisdictions have strengthened judicial case management and incorporated mediation into civil procedure as a means of managing caseloads and reducing reliance on full adjudication (Wahed, 2025). Rather than functioning solely as a private or voluntary alternative to litigation, mediation has increasingly been positioned as a court-connected process embedded within procedural rules and judicial control. This development reflects a shift in civil justice systems from trial-centric adjudication towards models in which settlement is actively facilitated as part of the litigation process. Within this context, court-annexed mediation (CAM) has emerged as an important tool for managing caseloads, encouraging early resolution, and reducing reliance on full trials.

In Malaysia, the integration of mediation into civil procedure has evolved considerably over the past decade (Abraham, 2023). The integration of mediation into civil procedure is anchored in Order 34 of the ROC 2012 (ROC 2012), which governs case management, and further operationalised through the Practice Direction of the Chief Justice No. 2 of 2022, which prescribes detailed procedures for court-annexed mediation in the High

Courts and Subordinate Courts. Together, these instruments empower judges to direct parties to mediation, impose procedural obligations once mediation is triggered, and recognise mediation outcomes within the formal structure of civil proceedings. Mediation in Malaysia is therefore not merely encouraged as a policy matter, but is legally structured as part of the procedural lifecycle of a case.

Existing scholarship on mediation in Malaysia has primarily examined mediation from policy-oriented, access-to-justice, or empirical perspectives, focusing on its benefits in reducing costs, expediting dispute resolution, or improving settlement compliance (Azahari, 2010; Che Rosli et al., 2024; Khan et al., 2020; Rahmat, Zain, et al., 2022). While these studies provide valuable insights, they pay comparatively little attention to the doctrinal positioning of mediation within civil procedure itself. In particular, the extent to which mediation has been incorporated into judicial case management, rather than operating as a distinct or parallel dispute resolution mechanism, remains under-analysed. This gap is doctrinally significant because the legal character of mediation within civil procedure determines the scope of judicial discretion, the procedural obligations imposed on litigants, and the consequences of participation or non-participation in mediation. This article addresses that gap by examining mediation as a component of civil case management under Malaysian law. Adopting a doctrinal legal methodology, it analyses the ROC 2012 and Practice Direction No. 2 of 2022 (PD 2/ 2022) to determine how mediation is legally integrated into the management of civil cases, including the stages at which mediation may be directed, the procedural requirements imposed on parties, and the formal treatment of mediation outcomes. Accordingly, this article asks the following research question, to what extent has mediation been incorporated as part of civil case management under Malaysian civil procedure.

The article proceeds as follows. The next section reviews the literature on mediation and judicial case management, identifying the limits of existing scholarship and situating the Malaysian framework within broader doctrinal debates. The methodology section explains the doctrinal approach adopted in analysing the relevant procedural instruments. The findings section sets out the ways in which mediation is integrated into civil case management under Malaysian law, followed by a discussion of the implications of this integration for judicial discretion, party autonomy, and procedural fairness. The article concludes by reflecting on Malaysia's model of mediation-based civil case management and its significance for contemporary civil justice reform.

## LITERATURE REVIEW

### Mediation and Judicial Case Management

The integration of mediation into civil procedure has increasingly been examined in connection with the broader evolution of judicial case management and contribute to the modernisation of legal systems worldwide (Storrow, 2017). Mediation offers a party-driven, flexible, and often faster alternative to litigation, while judicial case management provides the structural backbone for efficient, fair, and transparent court administration (Cabral, 2018). Within this framework, mediation is no longer viewed solely as a party-initiated alternative to litigation, but as a tool that may be deployed by judges to manage cases more effectively. Scholars have noted that court-connected mediation reflects a shift in judicial function, from passive adjudication towards active facilitation of settlement, particularly in civil justice systems facing persistent backlog and delay (Wahed, 2025).

Mediation, as a form of ADR, traditionally involves a neutral third party who assists disputants in reaching a mutually satisfactory agreement (Latukau et al., 2022). CAM has therefore been conceptualised as a hybrid mechanism that combines consensual dispute resolution with judicial oversight. CAM serves as a vital ADR process wherein the court typically refers parties to mediation as a means to alleviate the heavy caseloads typically associated with litigation. Edmon discusses how this referral can mitigate court backlogs and promote more expedient resolution of civil cases by enabling disputants to engage in collaborative problem-solving with the assistance of a neutral mediator (Edmon, 2024). One of the primary characteristics of CAM is its hybrid nature; it is typically mandated by the court at the initiation of a case but allows for voluntary participation by the parties towards the conclusion of the mediation process. This structure empowers parties, giving them significant control over whether to reach a settlement without coercive pressure, which is regarded as a fundamental characteristic of the mediation process (Fei, 2015). Moreover, CAM can enhance access to justice, an essential principle within any legal framework, by providing a quicker and often less expensive method of settling conflicts compared to conventional court proceedings (Mnookin, 2002).

CAM is increasingly recognised for its effectiveness in resolving family disputes, among other types of conflicts. Research has indicated that the process is particularly therapeutic, allowing parties to address emotional grievances stemming from relationships (Jen-T'chiang, 2010). It has been observed that parties entering CAM tend to view the mediation as a fair process that not only motivates them to resolve their issues but also leads to agreements that are more likely to be adhered to compared to traditional court outcomes (Wall & Dunne, 2012). This increased likelihood of compliance is attributable to the sense of ownership that parties feel over the mediated agreements (Rahmat, Zain, et al., 2022).

### **Efficiency, Access to Justice, and Challenges of Court-Annexed Mediation**

Mediation is frequently credited with reducing litigation costs, shortening the lifespan of disputes, and alleviating court congestion (Grajzl et al., 2026). Empirical and normative studies further suggest that mediated outcomes may improve party satisfaction and compliance, particularly where parties retain a sense of ownership over the settlement process (Nolan-Haley, 2025; Welsh, 2025b). From this perspective, CAM is often presented as a pragmatic response to the limitations of adversarial litigation. Mediation provides an alternative pathway to dispute resolution that is often more accessible and less intimidating for parties than formal court proceedings. The inclusion of CAM can reduce both financial and procedural barriers, thereby making the justice system more approachable and enhancing meaningful public access to justice (Siddiqui, 2023).

Despite the promising advantages of court-annexed mediation, several challenges hinder its effective implementation. A recurring concern relates to voluntariness and party autonomy, especially where mediation is mandated or strongly encouraged by judges. Scholars caution that judicial pressure, even when subtle, may undermine the consensual nature of mediation and blur the line between facilitation and coercion (Hedeen, 2005; Welsh, 2025a). This concern is amplified in systems where non-compliance with mediation may attract procedural or cost-related consequences. Another significant challenge of CAM is pertaining to the issues on the outcome of CAM, the mediated settlement agreement. A successful CAM often results in a mediated settlement agreement that contractually binds the parties. This means that once the parties agree and sign the settlement, it becomes a binding contract. Nonetheless, the binding nature of mediation settlements can be influenced by the specific terms agreed upon and the willingness of parties to comply voluntarily (Sulistianingsih & Fibriani, 2023). For instance, the enforceability of international mediated settlement agreements has been a significant issue, which the Singapore Convention aims to address (Tan, 2023).

### **Malaysian Scholarship on Mediation: Scope and Limitations**

CAM in Malaysia has been a significant development in the country's legal landscape, aimed at providing an effective alternative dispute resolution mechanism under the Malaysian courts (Choy et al., 2017). The practice involves mediation sessions facilitated by the judges or mediators from the institutions listed under the Annexure A of the Practice Direction No.2 of 2022. CAM in Malaysia is judge-led, with judges and registrars serving as mediators. Settlement agreements reached are recorded as consent judgments, giving them binding effect (Choy & Rajoo, 2017; Choy et al., 2017). Outside this judicial framework, however, mediated settlements are treated as contracts enforceable under the Contracts Act 1950, requiring a fresh action in the event of breach (Nasrul et al., 2024).

Additionally, Malaysia has signed the Singapore Convention on Mediation (SCM) (Tan, 2023) (Tan, 2023). The SCM provides an international legal framework for the enforcement of mediated settlement agreements resulting from international mediation. Malaysia's engagement with the principles of the SCM has the potential to enhance the country's mediation landscape by facilitating cross-border enforcement of MSAs and broadening the scope for international business mediation (Che Rosli et al., 2024). Malaysia is yet to formally ratify the SCM, as at the time of writing.

Malaysian scholarship on mediation has grown steadily over the past two decades, reflecting increased judicial and legislative interest in alternative dispute resolution. Existing studies have examined mediation in specific contexts, including family disputes, medical negligence, and commercial conflicts, often emphasising mediation's advantages in terms of efficiency, cost reduction, and relationship preservation (Abraham, 2023; Azahari, 2010; Nasrul et al., 2024; Rahman & Ishak, 2022; Rahmat, Randawar, et al., 2022; Wahed, 2025). Other contributions have explored Malaysia's broader mediation landscape, including the Mediation Act 2012

and the potential implications of international instruments such as the Singapore Convention on Mediation (Che Rosli et al., 2024; Choy et al., 2017).

While these studies provide valuable insights into the development and benefits of mediation in Malaysia, they tend to approach the subject from policy-oriented, empirical, or comparative perspectives. The focus is frequently placed on why mediation should be promoted, how mediation outcomes may be enforced, or whether mediation enhances access to justice. What is largely absent, however, is a sustained doctrinal analysis of how mediation is legally positioned within Malaysia's civil procedural framework, particularly in relation to judicial case management. In particular, limited attention has been given to the role of the ROC 2012 and PD 2/ 2022 in structuring mediation as part of the procedural lifecycle of civil litigation.

As a result, the extent to which mediation functions as an integral component of civil case management, rather than as a parallel or optional dispute resolution process, remains under-explored in Malaysian legal scholarship. This article contributes to the existing literature by addressing this doctrinal gap. Rather than assessing mediation through policy outcomes or empirical performance, it focuses on the legal architecture governing court-annexed mediation within Malaysian civil procedure. By analysing Order 34 of the ROC 2012 and PD 2/ 2022, the study clarifies how mediation is formally incorporated into judicial case management, the scope of judicial discretion in directing mediation, and the procedural consequences that flow from mediation participation and outcomes. In doing so, the article reframes court-annexed mediation in Malaysia as a structurally embedded case management mechanism, offering a doctrinal perspective that complements and deepens existing discussions on mediation and civil justice reform.

## METHODOLOGY

This article adopts a doctrinal legal research methodology to examine the extent to which mediation has been incorporated into civil case management within the Malaysian civil justice system. Doctrinal research is centered on the analysis of legal texts, including legislation, case law, and other legal documents (Hutchinson, 2013). It involves systematising and interpreting legal norms to solve legal problems, clarify ambiguities, and structure legal rules in a coherent manner. The focus of the analysis is not on mediation outcomes or policy effectiveness, but on the legal architecture that positions mediation within the procedural management of civil cases. A doctrinal approach is therefore appropriate, as the inquiry centres on the interpretation and application of formal legal sources governing civil procedure.

The primary materials examined are Order 34 of the ROC 2012, which establishes the framework for judicial case management, and PD 2/ 2022, which prescribes the matters and procedures relating to court-annexed mediation in the High Courts and Subordinate Courts. These instruments are analysed through close textual and purposive interpretation to identify how mediation is legally integrated into the procedural lifecycle of civil proceedings. Specifically, the analysis focuses on four doctrinal aspects: (i) judicial powers to refer cases to mediation, (ii) the procedural stages at which mediation may be directed, (iii) the procedural obligations imposed on parties once mediation is triggered, and (iv) the formal procedural consequences of mediation outcomes. Secondary legal sources, including scholarly commentaries and peer-reviewed journal articles, are used to support doctrinal interpretation and situate the Malaysian framework within broader debates on mediation and judicial case management. No empirical or socio-legal methods are employed, and the analysis is confined to the interpretation of legal texts and procedural instruments. By clearly delineating the scope and method of analysis, this article aims to provide a precise doctrinal assessment of court-annexed mediation as a mechanism of civil case management in Malaysia.

## FINDINGS

The doctrinal analysis of Malaysian civil procedure demonstrates that mediation is formally incorporated into civil case management through a structured legal framework grounded in Order 34 of the ROC 2012 (ROC 2012) and PD 2/ 2022 (PD 2/2022). The findings reveal that mediation is integrated through four interrelated doctrinal mechanisms: judicial referral powers, procedural timing, enforceable obligations on parties, and formal procedural consequences arising from mediation outcomes.

First, Malaysian civil procedure confers broad powers on judges to direct mediation as part of case management. Order 34, which governs case management, authorises the court to take steps necessary for the just, expeditious, and economical disposal of proceedings, providing the general foundation for judicial intervention in settlement processes. PD 2/2022 operationalises this authority by expressly providing for both mandatory and discretionary referrals to mediation as part of the case management process. For road traffic accident cases, paragraph 5(i) stipulates that the Court shall refer the matter to mediation before trial is fixed, making mediation a compulsory procedural step. For all other civil matters, paragraph 5(ii) authorises the Court to direct mediation where the judge considers the case suitable and the parties agree, or where the parties themselves apply for referral. Notably, PD 2/2022 states that referral may occur at any stage of the proceedings, including during case management, interlocutory applications, trial, post-trial (before judgment), and even during the appeal stage which indicates that mediation is procedurally embedded throughout the litigation lifecycle rather than limited to early case management.

Secondly, mediation is procedurally embedded within the sequencing and scheduling of civil cases. Under Annexure C of PD 2/2022, once the Court has recommended or directed mediation, the parties must submit the Mediation Registration Form (C-1) within seven days. The Court must then fix a mediation date within one month of registration, demonstrating that mediation forms part of the Court's scheduling obligations. PD 2/2022 further requires the Court to fix a subsequent case management date within one month of referral so that the status of mediation can be monitored (para. 13). This reflects a high degree of integration, as mediation is not treated as an external process but is instead supervised within the Court's case management calendar. The integration is even more pronounced in road traffic accident cases, where mediation and trial dates must be set in accordance with the strict sequencing requirements in Annexure B, with mediation fixed no later than one month after the trial date is set.

Thirdly, the framework imposes enforceable procedural obligations on parties once mediation is triggered. They must attend the mediation session, whether physically or via video conference and comply with all procedural and technical requirements. Annexure C outlines detailed rules for online mediation, including mandatory pre-session preparations, conduct requirements during the session, document-sharing protocols, and prohibitions on recording the proceedings. Failure to attend mediation without reasonable justification may result in the matter being referred back to the trial judge, who may impose adverse procedural or cost-related consequences (Annexure C, para. 8). Additional procedural duties arise in specific categories of cases. For example, in road traffic matters, parties must file requisite documents including police reports, sketch plans, photographs, and medical reports before mediation may proceed (Annexure B). Where expert reports are required, they must be filed within three months after close of pleadings, failing which the case may proceed to trial or be withdrawn with liberty to refile.

Fourthly, mediation outcomes are accorded formal procedural consequences under Malaysian civil procedure. Where mediation is successful, paragraph 15(a) of PD 2/2022 provides that parties may dispose of the case through a consent judgment, a recorded settlement agreement, or a notice of discontinuance. These mechanisms give mediation immediate procedural effect and operate as recognised modes of case disposal under Malaysian law. Partial settlements are also accommodated: if mediation resolves only some issues such as liability but not quantum in road traffic cases whereby the Court may record a judgment on the resolved issues while allowing the remaining issues to proceed to trial. In contrast, where mediation fails, paragraph 15(b) states that the case shall revert to its original procedural track, with the Court issuing directions for further conduct. PD 2/2022 also preserves the confidentiality of mediation by prohibiting the use of communications made during mediation in subsequent proceedings and by barring mediators from being called as witnesses (para. 17), thereby ensuring that integration with case management does not compromise fairness. Integration is further reinforced regardless of the mediation mode adopted. PD 2/2022 regulates judge-led mediation (Annexure C), institutional mediation (Annexure D), and private mediation (Annexure E). While institutional and private mediators operate outside the judiciary, the referral, scheduling, reporting obligations, and outcome recording remain under the supervision of the Court. Even in private mediation, mediators must meet the qualifications prescribed by the Mediation Act 2012, and the parties must notify the Court of their agreement to proceed within seven days (Annexure E). This demonstrates that mediation is procedurally linked to case management irrespective of the mediator's identity.

Overall, the legal framework shows that mediation is deeply embedded within Malaysia's system of civil case management. Judicial referral powers are broad and available at multiple procedural stages; mediation is

sequenced within the Court's scheduling obligations; parties are subject to procedural duties arising from mediation; and mediation outcomes directly influence the procedural termination or continuation of the case. These provisions collectively establish mediation as an integral component of civil case management in Malaysia rather than an ancillary or informal dispute resolution mechanism.

## DISCUSSION

The findings demonstrate that mediation in Malaysia has moved beyond a supplementary dispute resolution mechanism and now operates as a structural component of civil case management. Through the combined operation of Order 34 of the ROC 2012 and PD 2/ 2022, mediation is institutionally positioned within the procedural lifecycle of civil litigation. This integration reflects a deliberate shift in judicial philosophy, whereby courts assume an active role in steering cases towards settlement while retaining ultimate control over procedural progression. Mediation, in this sense, is no longer external to adjudication but is embedded within the court's managerial function.

From a case management perspective, the breadth of judicial referral powers is particularly significant. The ability of judges to direct mediation at virtually any stage of proceedings, including during trial and at the appellate stage indicates that mediation is conceived as a flexible tool for managing disputes rather than a preliminary filter confined to early case management. This distinguishes the Malaysian model from systems in which mediation is restricted to pre-trial phases. The mandatory referral of road traffic accident cases further strengthens this integration by transforming mediation from a discretionary option into a required procedural step for defined categories of disputes. In these respects, Malaysia has adopted a model of mediation-based case management that prioritises procedural efficiency and the reduction of contested trials.

The structured timelines and reporting obligations imposed under PD 2/ 2022 reinforce mediation's procedural centrality. Registration deadlines, fixed mediation dates, and mandatory status updates ensure that mediation does not interrupt or delay the progress of a case. Instead, mediation is synchronised with the court's scheduling framework and monitored through subsequent case management hearings. This alignment suggests that mediation is designed to operate as an extension of the court's control over case progression, rather than as an autonomous process dependent solely on party initiative. As a result, mediation in Malaysia functions as a judicially supervised settlement process, closely linked to the objectives of case management under Order 34.

However, the depth of integration also raises important questions concerning party autonomy and voluntariness. While mediation is traditionally understood as a consensual process, the Malaysian framework introduces elements of compulsion, particularly in mandatory mediation categories and in situations where judicial encouragement exerts significant procedural pressure. Once mediation is directed, parties are bound by attendance requirements and exposed to potential procedural or cost consequences for non-compliance. Although PD 2/ 2022 preserves confidentiality and safeguards the right to trial where mediation fails, the practical distinction between encouragement and compulsion becomes less clear in a system where judges exercise extensive managerial authority. This tension reflects a broader challenge inherent in court-integrated mediation models, where efficiency objectives must be balanced against the foundational principle of voluntary settlement (Hedeen, 2005; Nolan-Haley, 2025).

The integration of mediation outcomes into formal case disposition mechanisms further highlights mediation's role as a case management instrument. The availability of consent judgments, recorded settlement agreements, and notices of discontinuance as the stipulated outcomes ensures that successful mediation leads to immediate procedural finality. Partial settlements also operate as issue-narrowing devices, aligning mediation outcomes with recognised case management techniques aimed at streamlining trials. These features enhance the functional attractiveness of mediation within civil procedure, but they also reinforce its juridical character, distinguishing court-annexed mediation from purely private mediation that relies on separate enforcement mechanisms.

At the same time, the uniform application of procedural control across different modes of mediation, which are judge-led, institutional, and private highlights the court's continuing supervisory role. Even when mediation is conducted by non-judicial mediators, the court retains authority over referral, scheduling, reporting, and outcome management. This blurs the conventional boundary between adjudication and alternative dispute resolution, suggesting that mediation in Malaysia operates within a court-centred dispute resolution continuum rather than

as an alternative pathway. While this enhances procedural coherence and predictability, it may also constrain the flexibility typically associated with mediation, particularly where institutional or private mediation is selected by the parties.

Overall, the Malaysian framework reflects a strong commitment to integrating mediation into civil case management as a means of managing disputes more efficiently and reducing reliance on adjudication. The extent of this integration is substantial, extending across procedural stages, case categories, and mediation modes. Nevertheless, the success of this model ultimately depends on how judicial discretion is exercised in practice. Without careful calibration, there is a risk that mediation may be perceived less as a consensual opportunity for settlement and more as an obligatory procedural hurdle. This underscores the importance of maintaining clear doctrinal boundaries between judicial encouragement and procedural coercion within a mediation-based case management system.

## CONCLUSION

This article set out to examine the extent to which mediation has been incorporated into civil case management in Malaysia. The doctrinal analysis of the ROC 2012 and PD 2/ 2022 demonstrates that mediation is no longer positioned as an external or optional adjunct to civil litigation but has been formally embedded within the procedural framework governing the management of civil cases. Judicial powers to refer parties to mediation, mandatory mediation in defined categories of disputes, structured procedural timelines, and formal recognition of mediation outcomes collectively indicate a high level of integration. Mediation in Malaysia operates as a judicially supervised mechanism that is interwoven with case progression rather than isolated from it. The ability of courts to direct mediation at multiple procedural stages, coupled with enforceable obligations relating to attendance, scheduling, and reporting, reflects a model of mediation-based case management in which settlement is actively facilitated as part of the court's managerial function. The treatment of mediation outcomes, whether through consent judgments, settlement agreements, or partial disposition of issues further reinforces mediation's role in shaping procedural outcomes within civil litigation. At the same time, the depth of integration highlights inherent tensions within court-annexed mediation frameworks. While the Malaysian model prioritises efficiency and judicial control, it also raises questions about the boundaries of voluntariness and the scope of judicial discretion. The preservation of confidentiality safeguards and the continued availability of adjudication where mediation fails mitigate some of these concerns, but the balance between effective case management and party autonomy remains a critical consideration. Overall, this study concludes that Malaysia has adopted a substantively integrated model of court-annexed mediation as civil case management. By embedding mediation within procedural rules and judicial practice, the Malaysian civil justice system has repositioned mediation as a central feature of dispute resolution rather than a peripheral alternative. This model offers a useful reference point for jurisdictions seeking to incorporate mediation into their civil procedures, while also underscoring the need for continued doctrinal clarity and judicial restraint to ensure that mediation remains a facilitative, rather than coercive, component of civil justice.

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