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Innovative Solutions for Child Maintenance Arrears in Islamic Family Law in Malaysia: A Technological and Holistic Policy Approach

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ABSTRACT

Child maintenance is a critical legal and moral responsibility under Islamic family law, primarily borne by the father. Despite clear judicial orders by the Syariah Court, the issue of unpaid or delayed child maintenance continues to rise in Malaysia, contributing to socioeconomic and psychological hardship for affected children. Traditional enforcement mechanisms have proven to be limited in ensuring consistent compliance. This study explores innovative approaches to resolving child maintenance arrears by integrating technological tools and proposing holistic policy reforms. It identifies the existing Syariah legal framework and enforcement gaps, and further analyses how systemic inefficiencies such as lack of coordination among agencies, outdated procedures, and insufficient digital support contribute to the problem. Adopting a qualitative doctrinal methodology supported by interviews with legal practitioners and analysis of statutes, scholarly works, and media reports, the study highlights the need for transformative change. Among the proposed innovations are the establishment of a centralized digital monitoring system for maintenance payments, automated legal notifications, and inter-agency data integration. In addition, policy suggestions include streamlined court processes and legislative refinement to support proactive enforcement. This article contributes a forward-looking perspective by shifting the focus from reactive enforcement to preventative and technologically enabled strategies. It offers practical insights to lawmakers, Syariah institutions, and policymakers aiming to improve the protection of children's rights through more effective, coordinated, and sustainable solutions. Ultimately, it seeks to enhance public accountability, restore trust in the legal system, and secure the welfare of children in line with the objectives of Islamic law.

Keywords:

Child maintenance; Syariah Court; children's welfare; technological solutions; policy reform

1. Introduction

Children have a fundamental right to receive maintenance to support their daily lives. This right is firmly acknowledged by Malaysian law and is rooted in the principles of Islamic family law. Child maintenance refers to the financial responsibility borne primarily by the father, covering the child's

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essential needs such as food, clothing, shelter, education, and healthcare. The term nafkah, from a linguistic perspective, means to give or spend wealth, and can also signify releasing something or providing sustenance. Technically, nafkah refers to all basic human necessities including food, drink, clothing, and accommodation [1]. More specifically, Abu Hanifah defined nafkah as food, clothing, and shelter, with an emphasis on food. Imam Malik interpreted it as anything that strengthens and sustains the human body without extravagance. Imam al-Shafi'i viewed nafkah as the obligation of a husband to provide for his wife, children, dependants, and even animals, with a sufficient and appropriate amount. Imam Ahmad ibn Hanbal defined it as whatever is necessary to prevent a person from perishing, including food, side dishes, clothing, and housing [2].

According to Islamic law, a financially capable biological father is obligated to provide maintenance for his children. In situations where the father is either deceased or incapable, this duty falls upon the next eligible heir in accordance with the established order of inheritance. The obligation is supported by Qur'anic guidance that underscores the father's responsibility to provide for the mother and child in a just and reasonable manner, and within his means. These verses indicate that maintenance is both a legal duty and a moral commitment, reflecting Islam's emphasis on fairness, compassion, and family support [3]. This duty is further illustrated in the hadith of the Prophet Muhammad (PBUH), where Hindun binti 'Utbah complained that her husband, Abu Sufyan, failed to provide sufficient support for her and their children. The Prophet allowed her to take from his wealth what was reasonably necessary without his permission [4]. This hadith affirms a woman's right to claim maintenance on behalf of her children and highlights the obligation's gravity. Child maintenance ensures a child's survival, development, and well-being, and is in line with the objectives of Islamic law (*Maqasid al-Shariah*), which emphasize the protection of religion, life, intellect, lineage, and property [5]. Consistent and sufficient maintenance contributes to safeguarding these five essential values, thereby supporting holistic child development and preventing neglect [6]. The maqasid framework, as articulated by Imam al-Ghazali, highlights the preservation of public interest (*maslahah*) and the prevention of harm [6]. Maintenance aligns with the category of necessities (*dharuriyyat*), which are fundamental for human survival and dignity. Furthermore, enforcement of child maintenance orders supports the application of key Islamic legal maxims such as "harm must be eliminated," "bringing benefit and repelling harm," and "blocking the means to corruption."

Despite the clear legal and moral basis for child maintenance in Islamic law, Malaysia continues to face serious challenges in ensuring consistent enforcement of maintenance orders. Arrears remain a pressing issue due to systemic inefficiencies, such as outdated enforcement procedures, lack of coordination among Syariah institutions and government agencies, and insufficient integration of digital support systems. Existing scholarship has largely examined the doctrinal basis of nafkah or the legal duties of fathers, but limited attention has been given to practical and innovative solutions for addressing arrears within the Malaysian context. Therefore, the objective of this study is to explore innovative approaches to resolving child maintenance arrears by integrating technological tools and proposing holistic policy reforms. Specifically, it identifies weaknesses within the current Syariah legal framework and enforcement practices, and proposes solutions to strengthen institutional coordination and efficiency. The significance of this study lies in its potential to safeguard children's rights, support the *maqasid al-shariah*, and contribute to a more effective and sustainable Islamic family law system in Malaysia.

2. Methodology

This study adopts a pure legal research approach, combining both qualitative and doctrinal methodologies to explore and analyse the issue of child maintenance arrears under Islamic family law in Malaysia. The research is designed to provide both theoretical insights and practical implications, particularly in proposing innovative technological and policy-based solutions. Data were gathered from both primary and secondary sources. Primary legal sources include statutory provisions, particularly Syariah enactments enforced in the state of Selangor, which serve as the legal framework for the enforcement of child maintenance. Secondary sources comprise scholarly articles, textbooks, policy papers, and credible news reports relevant to the topic. To strengthen the empirical dimension of this research, semi-structured in-depth interviews were conducted with three Syariah legal practitioners who have direct experience handling child maintenance cases in the Syariah courts. These informants provided valuable perspectives on the implementation, challenges, and potential improvements of current enforcement mechanisms. The interviews were transcribed verbatim, and the resulting textual data were filtered and thematically categorized based on the structured interview questions. This thematic analysis facilitated the identification of core issues, and the mapping of recurring patterns related to the research problem. The process of interpretation was carried out by analysing the linguistic expressions and thematic content within the transcripts. To analyse the collected data, the study employed critical and descriptive content analysis. This allowed for a systematic examination of both legal texts and qualitative interview responses, ensuring a comprehensive understanding of the current enforcement landscape and the feasibility of proposed innovative solutions. The triangulation of legal analysis and field insights enhances the reliability and richness of the study's findings. This multi-method approach not only strengthens the depth of legal interpretation but also ensures that the research remains grounded in real-world practice, making its recommendations both academically sound and practically viable.

3. Discussion and Result

3.1 Enforcement Mechanisms of Child Maintenance Orders under Islamic Family Law

The obligation to provide child maintenance lies primarily with the father or the responsible party designated by the court. This duty remains binding even after a divorce [7]. To address non-compliance in fulfilling child maintenance obligations, the law has outlined enforcement procedures as provided under Sections 73 to 81 of the Islamic Family Law (State of Selangor) Enactment 2003 (IFLS 2003). Section 73(1) clearly states that a father is responsible for maintaining his child. A court order for maintenance is considered a binding obligation, and failure to comply renders the unpaid amount a legal debt. If unpaid within a certain period, it becomes classified as arrears [8]. In legal terms, the defaulting party is the judgment debtor, and the one seeking enforcement is the judgment creditor. Arrears can be claimed under Section 70 of IFLS 2003, where the amount depends on the father's financial capability, varying from case to case. What remains crucial is the father's commitment to fulfilling his responsibility.

The enforcement of such court orders is further detailed in Sections 147 to 174 of the Syariah Court Civil Procedure (State of Selangor) Enactment 2003 (SCCPs 2003). Enforcement and execution are distinct concepts; the former refers to the legal mechanism to compel compliance with a court order, while the latter involves the specific methods used to give effect to that order [9].

Section 147(1) mandates that any party against whom a judgment is issued must comply, including those involving child maintenance. The three main mechanisms under Sections 148 to 150 SCCPs 2003 include:

1. **Seizure and Sale:** Property—both movable and immovable—owned by the judgment debtor may be seized and sold, as per Section 160. The court's bailiff carries out this task, issuing an inventory and notice to the debtor. Debtors are often given the opportunity to repay before assets are auctioned.
2. **Hiwalah:** Under Section 161, this mechanism allows the court to direct third parties (e.g., employers, trustees, banks) indebted to the judgment debtor to redirect funds to the creditor. This approach requires no objection from the third party and only applies to monetary judgments payable directly to the creditor.
3. **Committal Order:** As a last resort, the court may issue a committal order—effectively a warrant of arrest—against defaulters. This may be suspended if the debtor agrees to repay within terms. Upon payment, the debtor is released.

Another enforcement method is the Order for Possession, under Section 149, allowing transfer of real property ownership to the claimant if its value is sufficient to cover the debt [10]. Movable Property Delivery Orders, under Section 150, provide for direct recovery of specific items or their assessed monetary value. The court also has discretion under Section 148(3) to apply other statutory mechanisms, such as Attachment of Earnings Orders under Section 159(d), where wages are directly deducted to fulfill maintenance payments [11]. This is most effective for debtors with stable employment. Another mechanism is the Judgment Debtor Summons (SPP) under Sections 175–185. It compels the debtor to appear in court to explain their non-compliance and financial capacity [12]. The court evaluates not just formal income but also other financial indicators before issuing further orders. Should the debtor persist in defaulting, a Notice of Judgment may be issued under Section 179, giving at least seven days' notice before a committal order is considered.

3.2 Challenges in the Enforcement of Child Maintenance Orders

This study finds that various challenges hinder the effective implementation of child maintenance enforcement mechanisms. Interviews reveal that enforcement of child maintenance orders in the Syariah Court faces issues related to financial constraints, limited infrastructure, public awareness, and procedural complexity. Authorities need to enhance public awareness of available mechanisms and address weaknesses in implementation to ensure more efficient enforcement. Although the law provides comprehensive provisions for enforcing child maintenance, not all mechanisms are optimally applied. Commonly used tools include Earnings Withholding Orders, the Judgment Debtor Summons (SPP), and Committal Orders [9].

Generally, applications for child maintenance enforcement are initiated by the custodian—typically the mother—following a divorce. Failure to comply with maintenance orders is seen as a form of abuse. Mechanisms such as SPP, earnings withholding, hiwalah (third-party debt transfer), and committal orders are most frequently utilized. Notably, hiwalah is increasingly employed to address arrears, supported by good cooperation from banks and financial institutions when such notices are issued by the court. Bailiffs handling these cases often require the debtor's bank statements to assess their capacity to pay. However, some individuals attempt to evade enforcement by transferring funds to alternative accounts, making enforcement more difficult. Enforcement through seizure and sale of assets also poses practical challenges. These processes require a deposit to be paid in advance to facilitate enforcement, yet the court lacks a designated account for collecting such funds. Additionally, the Syariah Court often does not have storage facilities for seized items, nor established procedures for their sale—unlike Civil Courts, which are better equipped in this regard.

Some judges require the issuance of a Notice of Judgment following SPP before approving asset seizure, creating procedural inconsistencies [13].

The Syariah Legal Aid Division (BSK) also faces enforcement challenges, such as non-cooperation from parties involved. Some respondents fail to appear in court or intentionally provide incorrect residential information, making it difficult to trace them. Furthermore, delays in obtaining financial data from relevant agencies hinder case progression, leading to repeated adjournments. Effective case resolution often requires the presence of both parties, making non-compliance a major obstacle. A warrant of arrest cannot be issued unless the debtor fails to appear despite being summoned for a settlement session [14]. Courts must first conduct a thorough investigation. Only when the court is satisfied that the debtor is intentionally avoiding court despite successful service of summons can a warrant be issued. In some cases, police assistance is required to execute the warrant. However, enforcement by police may fail due to unfamiliarity with Syariah Court procedures, jurisdictional issues, or outright refusal to act [15].

The penalties imposed on defaulters who fail to attend hearings or neglect their obligations are often insufficient. This leads to the perception that Syariah Court orders can be disregarded, undermining justice for affected parties—especially children and ex-wives [16]. The complex procedures involved in enforcing maintenance orders can significantly delay justice. In Islamic legal tradition, justice relies on evidence presented in court, and enforcement is closely tied to the quality and timeliness of that proof [17,18]. Another challenge is the lack of public awareness regarding enforcement mechanisms. Many single mothers are unaware of their rights and the role of the BSK in assisting them. This lack of knowledge contributes to confusion and uncertainty regarding legal rights and responsibilities related to marriage, divorce, and child support obligations.

3.3 Recommendations for Improvement: Innovative Solutions to Child Maintenance Arrears in Malaysia's Islamic Family Law

Technology plays a vital role in today's world, serving as a key driver of innovation, efficiency, and connectivity across all aspects of life [19]. This study proposes several innovative and holistic improvements to address the ongoing challenges in the enforcement of child maintenance orders under Malaysia's Islamic Family Law. One key recommendation is the development of an integrated digital platform, e-Nafkah, to streamline the monitoring, enforcement, and reporting of child maintenance payments. This system should be user-friendly and linked to relevant agencies such as the National Registration Department (NRD), Inland Revenue Board (LHDN), financial institutions, and enforcement bodies such as the Royal Malaysia Police (PDRM). It would allow for real-time tracking of payment compliance and facilitate direct communication with courts. Another suggestion involves the formulation of a Smart Maintenance Order Policy, consisting of a standardized set of operating procedures (SOPs) that simplify the application and enforcement process. This includes a maintenance calculator, automated e-filing templates, and infographics that explain legal procedures in simple terms. These tools would increase accessibility and reduce delays in court proceedings.

Additionally, the study recommends establishing a Specialized Child Maintenance Enforcement Unit within the Syariah Court system. This unit would work in collaboration with the Legal Aid Department and the Syariah Legal Aid Bureau (BSK) to manage enforcement cases efficiently and provide support services to single mothers and children. It would also serve as a liaison between petitioners and third-party agencies. To further enhance public understanding, a National Legal Literacy Campaign focusing on child maintenance rights should be launched. This initiative would utilize social media, mosques, NGOs, and schools to disseminate vital information about legal rights,

responsibilities, and available support mechanisms. Incorporating such modules into pre-marital courses and community-based clinical legal education (CLE) programs can also help raise awareness.

Another innovative measure is the implementation of a Digital Child Maintenance Card linked to bank accounts or e-wallets of the custodial parent. This system would enable automatic salary deductions by employers, monitored through the e-Nafkah platform. Consistent and traceable payments would significantly improve the well-being of the child and reduce enforcement complications. Moreover, the study highlights the need for cross-border enforcement of Syariah Court orders, especially for arrest warrants. A centralized digital validation system should be established in cooperation with PDRM to allow enforcement of court orders across state lines. This would overcome jurisdictional challenges that currently hinder the effective execution of warrants [20]. These recommendations emphasize a shift from reactive enforcement to a proactive, technologically empowered, and community-responsive system. By addressing legal, procedural, and institutional gaps, these proposals aim to strengthen the overall protection of children's rights and ensure justice is effectively delivered within the Syariah legal framework. These recommendations are summarised in the figure below:

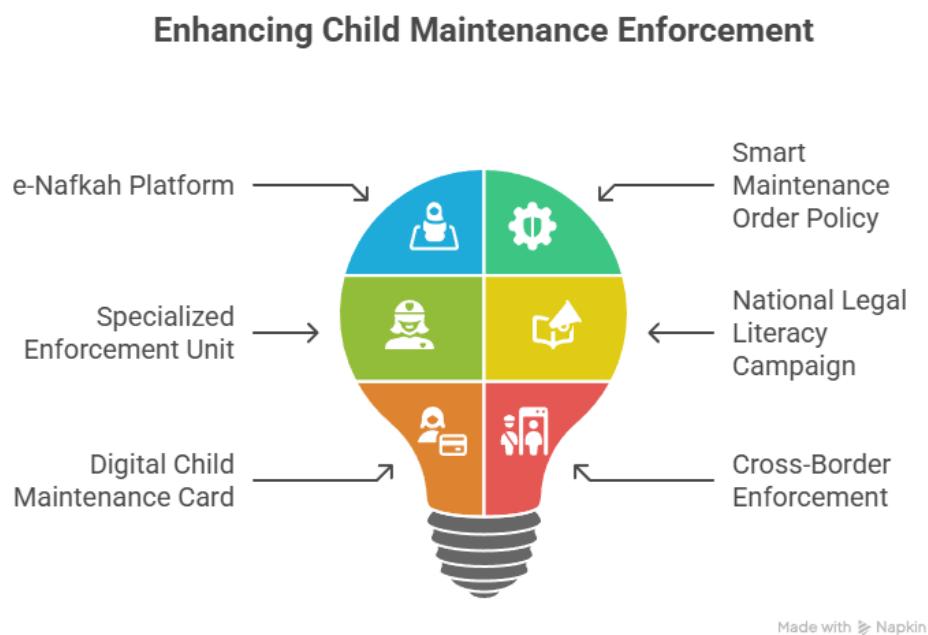


Fig. 1. Innovative solutions to child maintenance arrears in Malaysia's Islamic Family Law

5. Conclusions

The enforcement of child maintenance orders under Malaysia's Islamic Family Law remains a critical yet challenging aspect of protecting the rights and welfare of children. While statutory provisions under the Islamic Family Law Enactments and the Syariah Court Civil Procedure Enactments are comprehensive, their practical implementation faces various obstacles, including procedural complexities, insufficient infrastructure, lack of public awareness, and limitations in inter-agency coordination. These challenges have resulted in enforcement mechanisms such as seizure and sale of property, earnings withholding orders, and committal proceedings being underutilized or delayed, ultimately affecting the timely and fair delivery of justice. This study highlights the need for

a transformative approach that integrates technological innovation and holistic policy reform to strengthen enforcement mechanisms. Proposed initiatives such as the e-Nafkah integrated digital platform, automatic salary deductions, digital child maintenance cards, and cross-border enforcement systems would significantly enhance the efficiency, transparency, and accessibility of maintenance order enforcement. Similarly, initiatives like legal literacy campaigns and the establishment of a Specialized Child Maintenance Enforcement Unit would ensure that single mothers and custodial parents receive the necessary support and guidance. In essence, the proposed innovations aim to modernize enforcement procedures, bridge existing legal and operational gaps, and safeguard the fundamental objectives of *maqasid al-shariah*, namely, the protection of life, lineage, and property. By combining robust legal frameworks with proactive technological solutions, the enforcement of child maintenance can become more effective, fair, and sustainable. Ultimately, this approach not only benefits children and custodial parents but also strengthens public trust in the Syariah legal system.

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