

Addressing Maintenance Arrears without Litigation: Family Support Division (BSK) Mediation as an Early Resolution Mechanism

Mohd Hazwan Ismail

Kulliyyah of Shariah and Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu'adzam
Shah (UniSHAMS), Kedah, Malaysia

*Corresponding Author Email: mhazwan@unishams.edu.my

DOI Link: <http://dx.doi.org/10.6007/IJARBSS/v15-i9/26464>

Published Date: 18 September 2025

Abstract

The issue of outstanding maintenance, particularly child maintenance and *nafkah iddah*, remains a significant challenge in the enforcement of Syariah court orders in Malaysia. Although Islamic legal provisions explicitly place the responsibility of maintenance on fathers or former husbands, non-compliance persists, thereby undermining the welfare of children and divorced women. This study examines the role of the Family Support Division (BSK) in implementing mediation as an alternative early resolution mechanism for outstanding maintenance claims. Adopting a qualitative approach through library research, observation, and interviews, the study evaluates the effectiveness of mediation in terms of success, failure, and issues of non-attendance by parties. Data from 2024 reveal that 69 cases of maintenance arrears were registered with BSK, amounting to a total of RM665,039.51. Of these, 26 cases (37.68%) were successfully resolved through mediation, 20 cases (28.99%) failed to reach agreement, while 23 cases (33.33%) could not proceed due to the absence of parties. Further analysis shows that when both parties attended, the success rate increased to 56.53%, compared to 43.47% that failed to achieve consensus. These findings underscore attendance as a critical factor in ensuring the effectiveness of mediation. Despite challenges such as uncooperative attitudes, emotional conflicts, and wide discrepancies in claims, mediation continues to offer advantages in terms of time, cost, and a more conciliatory approach compared to full litigation. This study recommends enhancing public awareness, strengthening mediator facilitation skills, and reinforcing compliance mechanisms to ensure greater commitment to mediation sessions. Hence, mediation has the potential to serve as a complementary instrument within the Syariah judicial system, safeguarding maintenance rights, protecting the welfare of children and divorced women, and reducing the litigation burden on the courts.

Keywords: Child Maintenance, Maintenance Arrears, Mediation, Legal Framework, Syariah Court

Introduction

Maintenance refers to the provision of essential needs that must be provided by a husband or father to his wife and children. It is a legal and religious obligation that arises from the existence of marriage and the formation of a family through the presence of children. This duty must be fulfilled regardless of whether the husband or father is wealthy or of limited means, as the amount is determined based on his financial capacity and the customary practices of the community. The obligation only ceases when the marriage is lawfully terminated, or when the children reach maturity and are able to support themselves independently.

This discussion examines the position of maintenance obligations imposed on the husband or father, particularly in circumstances where such responsibilities may become burdensome for the provider.

Spousal and Child Maintenance

The obligation of maintenance for both wife and children is placed upon the biological father or husband. This responsibility has been explicitly established in the Qur'an, particularly in verse 233 of Surah al-Baqarah, where Allah SWT declares:

“And the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis. No person shall be burdened beyond his capacity.” (Qur’an, 2:233)

In the verse, it is clearly stated that the obligation of child maintenance lies with the father, who must provide food and clothing for the mother and child. This obligation is based on the father’s financial capacity, with the purpose of fulfilling the essential needs such as food, clothing, medical care, and shelter (Al-Marghinani, 2001).

From the perspective of definition, jurists have offered various interpretations of the term *nafaqah* (maintenance). According to Ibn ‘Ābidīn, maintenance refers to the provision of necessities by the person responsible to ensure the survival of those under his care (Ibn ‘Ābidīn, 1996). Meanwhile, Abu ‘Abdullah explained that maintenance consists of fulfilling basic needs without extravagance (Abu ‘Abdullah Muḥammad bin ‘Abdullah bin ‘Ali, 1317H). Al-Sharqawi further defined maintenance as a specified measure of food that must be provided by the husband or father for his wife and children (al-Sharqawi ‘Abdullah, 1309H/1891M). This explanation was elaborated by al-Buhuti, who emphasized that maintenance encompasses essential provisions such as bread, clothing, drink, accommodation, and other primary necessities (Mansur ibn Yunus ibn Idris al-Buhuti, 1974). In Malaysia, there are statutory provisions that mandate a father to provide maintenance for his children. Section 73(1) of the Islamic Family Law Enactment (State of Penang) 2004 (Enactment No. 3) stipulates that:-

“Except where any agreement or order of the Court otherwise provides, it shall be the duty of a man to maintain his children, whether they are in his custody or in the custody of another person, either by providing them with reasonable accommodation, clothing, food, medical care and education having regard to his means and station in life, or by paying the cost thereof.”

Similarly, with regard to the obligation of maintenance by a husband towards his wife, as well as the obligation of a former husband towards his wife during the period of *'iddah*, Section 60 of the Islamic Family Law Enactment (State of Penang) 2004 (Enactment No. 3) provides as follows:

(1) Subject to Islamic law (Hukum Syarak), the Court may order a man to pay maintenance to his wife or former wife.

Both of these provisions are consistent with Islamic law, which places the responsibility of maintenance upon a father or husband. However, subject to Islamic law and the confirmation of the Court, a wife may lose her entitlement to maintenance if she is found to be *nusyuz* (recalcitrant) or unreasonably refuses to comply with the lawful wishes or commands of her husband.

The Responsibility of Maintenance and the Role of the Family Support Division (BSK), Department of Syariah Judiciary Malaysia

Fundamentally, the responsibility of a father or husband to provide maintenance does not cease even in the event of unemployment or loss of income. The obligation of maintenance continues, albeit according to his current financial capacity. This duty also remains binding upon those who have been subjected to a court order requiring its fulfilment (Nora Abdul Hak, 2004). This is because maintenance pertains to basic necessities such as food, shelter, clothing, education, and healthcare. The payment of maintenance can only be discontinued if there exists another court order that annuls its enforcement. Therefore, if a father or husband fails to fulfil such payment beyond one month, it will be considered as arrears or a debt of maintenance (Enactment 4). According to Shaykh Wahbah al-Zuhayli:

"It is not considered a debt upon the father in respect of his child's maintenance unless it has been ordered by a qadi, or with the qadi's permission, that it be regarded as a debt due to the father's absence or his incapacity to spend. Furthermore, the obligation of maintenance for the child, according to the fuqaha', lapses with the passing of time if no debt has been established or no authorisation has been granted. This is because the duty of child maintenance is imposed upon the father solely to fulfil the immediate needs of the child, and once the period has passed, the necessity is deemed to have expired." (Wahbah al-Zuhayli, 1997).

The same principle is affirmed under Section 132(2) of the Syariah Court Civil Procedure Enactment (Penang) 2004 (Enactment 4), which provides that:

"If any installment allowed under an order made pursuant to subsection (1) remains in arrears for a period exceeding one month, such order shall be deemed to have lapsed, and the judgment creditor may proceed with the execution to recover the entire amount then payable under the judgment. However, the judgment debtor may apply for a fresh order."

With the issuance of a maintenance order by the court that is subsequently not complied with, arrears of maintenance inevitably occur. A study by MH Ismail and J. Sulong (2020) found that the total number of registered cases of maintenance arrears across all states in Malaysia from 2017 to 2019 amounted to 6,574 cases. Of this figure, Penang alone recorded arrears totaling RM573,297.00. This data clearly reflects the seriousness of the issue of

maintenance arrears, which places a heavy burden on creditors and demands due attention from the relevant authorities.

Therefore, in pursuing such arrears, the creditor (former wife or mother) must lodge a complaint with the Family Support Division (Bahagian Sokongan Keluarga, BSK). BSK is a government agency under the Department of Syariah Judiciary Malaysia (JKSM) mandated to enforce matters relating to arrears of spousal maintenance, post-divorce maintenance (*nafkah iddah*), and child maintenance. Since the responsibility of providing maintenance is assessed in light of the financial capacity of the husband, former husband, or father, an initial investigation and discussion process will be undertaken. The enforcement mechanism of BSK through mediation is facilitated by the Legal Advisory Unit (Unit Khidmat Nasihat Perundangan, UKNP). Through UKNP, mediation is conducted between the parties to ascertain the debtor's financial status at the preliminary stage, with the aim of resolving the matter without resorting to court litigation (MH Ismail, 2024a).

Therefore, the objective of this study is to examine the resolution of maintenance arrears arising from non-compliance with court-ordered payments, with a particular focus on mediation as the mechanism of settlement. The Family Support Division (Bahagian Sokongan Keluarga, BSK) facilitates the mediation process by summoning both parties, particularly the debtor, to negotiate a resolution of the arrears (Halimatus Saadiah binti Kariya, 2015). This process is conducted by BSK officers together with the creditor and debtor through in-depth discussions. BSK officers act neutrally, without favoring either party, with the primary aim of ensuring that maintenance arrears are settled and the creditor's rights are restored (Hanna Ambaras Khan, 2020).

Since cases registered with BSK have not yet reached the stage of litigation, more time is available for thorough discussions. In this context, fairness is also extended to the debtor, particularly when financial hardship arises due to loss of employment or income. The flexibility afforded in mediation allows debtors to explain their circumstances and work towards a more equitable resolution, without the pressures commonly experienced in court proceedings.

To safeguard the rights of dependents, a channel for complaints is also provided in cases of non-fulfilment of obligations by the debtor. When a complaint is lodged by the creditor, BSK issues a notice of attendance requiring both parties to meet with a mediation officer. Discussions typically involve at least two parties at one time. However, if both parties are unable to negotiate face-to-face, mediation will proceed in caucus (separately with each party), ensuring that the dispute can still be effectively addressed.

This study is significant as the number of maintenance arrears continues to rise annually. Many cases filed directly in court through litigation leave debtors with little opportunity to justify their non-payment. Court proceedings are often constrained by limited time and high costs, particularly for legal representation. Consequently, decisions are made without comprehensive and lengthy deliberations, rendering litigation alone less effective. Mediation, by contrast, provides sufficient time and space for both parties to voice their concerns, which not only enhances satisfaction and reduces conflict but also contributes to lowering the number of arrears cases brought before the courts.

Literature Review

Previous research has extensively examined the issue of maintenance arrears and their resolution mechanisms. Before a case proceeds to litigation, mediation at the preliminary stage has been recognised as a more peaceful and harmonious alternative, provided both parties reach an agreement. In the context of Islamic law, Ismail and Sulong (2020) emphasise that the obligation of maintenance is a fundamental responsibility of a father towards his children. In cases where the father is absent, the duty is transferred to the grandfather or other male heirs within the family. Failure to fulfil this duty results in the arrears being considered a debt that must be settled (Ismail & Sulong, 2021). Nevertheless, the process of claiming maintenance is often delayed because it is usually filed only after the conclusion of major proceedings such as divorce. Bureaucratic hurdles and complex legal procedures further contribute to these delays, ultimately jeopardising the welfare of children and custodial mothers (Ismail & Sulong, 2022).

The consequences of delayed maintenance payments on children are significant. Brooks-Gunn and Duncan (1997) highlight that children raised in poverty are more likely to experience developmental issues, health problems, and exposure to various social disadvantages. These effects extend beyond the physical domain to include emotional and spiritual well-being. Moreover, court proceedings for maintenance claims can take several months before a decision is reached, leaving children's welfare neglected during the waiting period. Cases involving larger claims or multiple parties typically take even longer to resolve (Ismail, 2018).

Similarly, Yusoff et al. (2024) stress that arrears in child maintenance directly affect children's socio-economic wellbeing. The absence of an effective mechanism to ensure timely payments undermines their development, health, and social welfare, thereby reducing their overall quality of life. Inconsistent or non-existent payments could potentially be addressed through mediation, which allows for an examination of the root causes of non-payment (Ismail, 2024b). Supporting this, Nasir et al. (2018) found that mediation facilitates faster access to information on maintenance issues, with lower costs and greater confidentiality compared to court litigation.

While existing studies underscore the importance of maintenance, the impact of arrears, and the potential of mediation, research gaps remain. Much of the literature has concentrated on the responsibility of maintenance and the effects of non-payment, but less attention has been given to the actual effectiveness of mediation as an enforcement mechanism, particularly in addressing arrears. This study seeks to fill that gap by evaluating the role of mediation as an early-stage dispute resolution tool that can expedite the settlement of arrears, reduce the litigation burden on the courts, and safeguard the welfare of children and former spouses.

Problem Statement

Arrears of maintenance, particularly *'iddah* maintenance and child maintenance, remain one of the most pressing issues in the Syariah Courts, as there are former husbands or fathers who neglect their responsibilities despite having been ordered by the court. Consequently, former wives and mothers are forced to shoulder the financial burden, which ultimately undermines both their welfare and that of their children. In 2024 alone, the total arrears of both types of maintenance recorded in Penang are as shown in the following table:

Table 1

Total Arrears of Iddah Maintenance and Child Maintenance in BSK, Penang 2024

Number of	Monthly	Case Register	Arrears
1	January	17	RM 185,624.51
2	February	7	RM 80,600.00
3	May	12	RM 76,805.00
4	June	10	RM 132,150.00
5	July	6	RM 14,150.00
6	August	8	RM 56,550.00
7	October	9	RM 119,160.00
Total		69	RM 665,039.51

Sorce: BSK Section Penang

Based on Table 1, a total of 69 cases of arrears in *iddah* maintenance and child maintenance were registered at the Family Support Division (Bahagian Sokongan Keluarga, BSK), Penang Section, within the seven-month period recorded in 2024. The overall arrears amounted to RM665,039.51, reflecting the substantial financial burden borne by recipients as a result of defaulters' failure to fulfil their obligations.

In terms of arrears value, January recorded the highest amount, RM185,624.51 involving 17 cases, followed by June with RM132,150.00 across 10 cases, and October with RM119,160.00 involving 9 cases. These figures indicate that in certain months, arrears may rise significantly even though the number of cases registered is not particularly high, suggesting the presence of large-scale arrears cases. Conversely, July recorded the lowest total arrears of RM14,150.00 with only 6 cases, demonstrating the variability in the scale of arrears among parties involved. Overall, the data clearly demonstrates that maintenance arrears remain a major challenge in the enforcement of Syariah court orders. The accumulation of arrears amounting to hundreds of thousands of ringgit not only affects the welfare of children and former wives but also places pressure on the Syariah judicial institutions to identify more effective mechanisms for resolution. Thus, the role of BSK through mediation prior to enforcement is crucial to curb the increasing trend of arrears in the future (Ibrahim, 2021).

Referring specifically to the arrears recorded in Penang in 2024, it is evident that there is a lack of awareness among former husbands and fathers regarding the importance of fulfilling their maintenance obligations. This duty is not only a legal requirement but also a mandatory religious obligation under Islamic law. Failure to discharge this duty has compelled former wives and mothers to file complaints with BSK, which in turn has led to defaulters being summoned for mediation sessions. However, attendance rates among defaulters remain low, despite the fact that mediation at BSK provides an opportunity to identify the root causes of non-payment and to devise early solutions before cases escalate to the enforcement stage (Ismail & Sulong, 2020).

The effectiveness of mediation at BSK remains inconsistent. While some cases have been successfully resolved, others have failed to reach agreement due to emotional tensions, relational conflicts, or significant disparities in claims. This situation is further compounded by the tendency of parties to proceed directly to litigation without considering mediation as an alternative, even though BSK mediation offers a potentially quicker, more cost-effective,

and less adversarial mechanism that can reduce the burden of litigation on the Syariah Courts (Shah et al., 2024).

Research Methodology

This study employs a qualitative approach (Siti Uzairiah, 2017), combining both library research and fieldwork for data collection. The qualitative method was chosen because it allows the researcher to observe, examine, and develop an in-depth understanding of particular phenomena. Qualitative research typically emphasizes social elements in human behavior (Howell, 2013) and involves the interpretation and explanation of collected data (Willis, 2007).

For the library research, data were obtained from a variety of secondary sources, including classical fiqh texts, doctoral theses, academic journals, conference proceedings, scholarly papers, court case studies (Bakar, 1991), textbooks, theses, newspaper articles, and materials from social media (Walliman, 2011). These secondary sources encompass existing information and previous research relevant to the study's theme. Through filtering and analysis, these materials were utilized to address the research questions and objectives.

Meanwhile, the fieldwork was conducted through two primary methods: observation and interviews. Observation was carried out directly on cases in court (Pelto, 2017). Interviews were conducted both face-to-face and online, depending on the respondents' availability. An unstructured interview method was adopted to provide room for open, in-depth, and interactive discussions between interviewer and respondent (Ahmad Sunawari Long, 2009; Pelto, 2017). Interviews also complemented the observation method by providing the primary data necessary to strengthen the study's findings.

All collected data, whether secondary or primary, were analyzed using content analysis. This method involved examining the data based on themes, factors, meanings, and concepts aligned with the research questions and objectives. The analysis also assessed the extent of compliance with theoretical, practical, and legal provisions in religion and law. Data were then categorized, interpreted, and generalized based on textual understanding. In this process, the researcher examined frequently repeated words, identified patterns in respondents' answers, and linked findings with the theoretical framework (Walliman, 2011; Pelto, 2017).

Overall, qualitative analysis in this study combined both deductive and inductive approaches. The deductive method evaluates a set of data to arrive at logical conclusions, while the inductive method generalizes findings based on observation (Pelto, 2017). The integration of these approaches enabled the research findings to either support or challenge the hypotheses based on the collected information.

The scope of this study is limited to the issue of resolving child maintenance arrears through mediation. Once supporting data were gathered, the combination of theory and practice was analyzed through content analysis to address the research questions and subsequently unravel the research problem.

Data Analysis

The study reveals that arrears in maintenance payments occur nationwide, primarily due to defaulters' non-compliance with court orders by failing to provide financial support under their responsibility. As a result, complaints were lodged, and the Family Support Division (BSK) registered cases for mediation at the preliminary stage before court orders were enforced through litigation.

According to the report, from January to December 2024, mediation statistics were recorded as shown in the table below:

Table 2

Mediation Negotiation Statistics

YEAR	NEGOTIATIONS			
	SUCCESSFUL	UNSUCCESSFUL	ABSENT	TOTAL NEGOTIATIONS
JANUARY	0	0	0	0
FEBRUARY	0	0	0	0
MARCH	2	1	1	4
APRIL	4	1	2	7
MAY	1	1	2	4
JUNE	3	4	3	10
JULY	4	2	3	9
AUGUST	5	0	4	9
SEPTEMBER	4	3	4	11
OCTOBER	1	1	0	2
NOVEMBER	2	3	3	8
DECEMBER	0	4	1	5
TOTAL	26	20	23	69

Source: Report, BSK Penang Section

Referring to Table 1, which recorded a total of 69 cases of arrears in *nafkah iddah* and child maintenance registered at the Family Support Division (BSK) Penang, Table 2 provides a breakdown of the mediation statistics conducted throughout the year. Out of the total, 26 cases (37.68%) were successfully resolved, 20 cases (28.99%) failed to reach an agreement, while 23 cases (33.33%) could not be conducted due to the absence of the parties. These statistics indicate that the success rate of mediation is significant, highlighting its potential as an effective early mechanism for addressing maintenance arrears without resorting to full litigation.

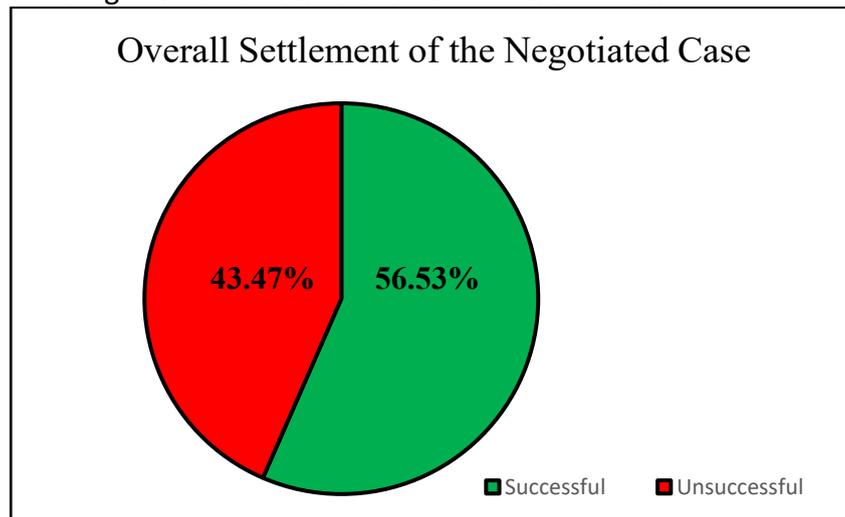
Nevertheless, the high rate of absenteeism, exceeding one-third of the total mediation sessions, remains the main factor undermining the effectiveness of this process. The absence, particularly of the maintenance debtor, hinders the proper conduct of mediation and consequently contributes to a relatively high rate of failure.

Overall, the data suggests that although mediation successfully resolved more than one-third of the recorded cases, its effectiveness remains inconsistent. Factors such as the parties' commitment to attend, their cooperative attitude during discussions, and the role of facilitators in managing negotiations are crucial aspects that must be strengthened for

mediation to function as a reliable early settlement mechanism before enforcement actions are pursued.

However, when attendance of the debtor at mediation sessions is taken into account, the success rate appears more encouraging, with 26 cases successfully resolved compared to 20 unresolved cases. The following pie chart illustrates the percentage of party attendance in mediation sessions:

Pie Chart 1: Percentage of Successful and Unsuccessful Attendance



Source: Report, BSK Penang Section

The pie chart above illustrates the overall outcome of mediation cases involving the presence of both parties. From the total number of recorded cases, 56.53% of mediations were successfully resolved through mutual agreement, while 43.47% were unsuccessful as no consensus was reached despite the attendance of both parties.

These findings demonstrate that when both parties are present, the likelihood of reaching a settlement through negotiation is considerably higher compared to failure. This confirms that party attendance is a critical factor contributing to the effectiveness of the mediation process. Nevertheless, the relatively high failure rate of 43.47% also reflects persistent challenges in reaching an agreement, whether due to emotional tension, uncooperative attitudes, or significant differences in the maintenance claims brought to the negotiation table.

Overall, the pie chart shows that the presence of both parties enhances the effectiveness of mediation. However, it also highlights the need for additional supportive strategies, such as more effective facilitation approaches, stronger motivation for compliance with maintenance obligations, and greater emphasis on the religious duty of providing *nafkah*, in order to further improve the success rate of mediation in the future (Mohd Afiq Najhan Mahamad Isa, 2024).

Research Findings

Mediation conducted by the *Bahagian Sokongan Keluarga* (BSK) has proven to be effective as an early mechanism in addressing issues of maintenance arrears. Based on the collected data, 56.53% of cases were successfully resolved when both parties attended the mediation sessions. This success clearly demonstrates the significant potential of mediation in resolving

disputes related to maintenance in a more harmonious manner, without the need to undergo lengthy litigation. Mediation not only reduces the workload of the courts but also provides space for the parties involved to reach more practical solutions, while emphasizing the value of *musyawarah* (consultation) as advocated in Islamic teachings (Mohd Afiq Najhan Mahamad Isa, 2024). This is consistent with the principles of Islamic law, which prioritize reconciliation (*sulh*) in resolving disputes (Bakar et al., 2025).

This can be illustrated in the case of *Maznah v. Kamaruz* (2016), where the debtor failed to pay *nafkah iddah* amounting to RM260 during the *iddah* period, as well as child maintenance of RM960 for two children, with arrears accumulated between October 2015 and March 2016. Nevertheless, the debtor attended the mediation session in court, admitted the arrears, and agreed to settle them in full through a lump sum payment.

However, the success of mediation is heavily dependent on the presence of both parties. Statistics show that 33.33% of cases could not proceed because one of the parties failed to attend. This indicates that compliance with attendance requirements is a critical factor in ensuring the effectiveness of the mediation process. The presence of both parties not only allows negotiations to be conducted fairly and equitably but also reflects their seriousness in seeking resolution. Conversely, non-attendance, particularly by maintenance debtors, undermines the process and negatively affects the effectiveness of BSK in carrying out its role. This situation also reflects that there are still individuals who take their maintenance obligations lightly, despite it being a clear duty under Islamic law and enforceable by court order (Mahamad Isa, 2024).

For instance, in the case of *Mazura v. Naim* (2020), filed at the BSK Section in Penang, a notice of attendance was issued to inform the debtor of the date, time, and venue of mediation. However, the debtor failed to appear at all, despite the total arrears—including *nafkah iddah* and child maintenance—amounting to RM4,050.

From a practical standpoint, mediation offers several significant advantages compared to full enforcement proceedings. Among them are time and cost efficiency. Mediation can be carried out within a shorter timeframe, as it does not require lengthy trial procedures, witness examinations, or complex evidentiary processes. The costs borne by the parties are also substantially lower compared to enforcement proceedings at the court level. This efficiency positions mediation as a more user-friendly mechanism and one that aligns with the principle of delivering *expeditious and affordable justice* (Sufi, 2024).

Although the data indicates that mediation increases the likelihood of settlement, the failure rate remains significant, at 43.47%. Nearly half of the cases did not reach an agreement, arising from several factors such as substantial conflicts of interest between the parties, uncooperative attitudes, and emotional influences that hindered rational negotiation (Mahamad Isa, 2024). For instance, in *Christine v. Freezailah* (2017), the debtor adamantly refused the claim without offering reasonable alternatives, while the recipient rejected proposed solutions on the basis that they did not adequately meet the children's essential needs. Such situations illustrate that mediation is not a guaranteed path to resolution; rather, it requires the full cooperation of both parties alongside the guidance of skilled facilitators.

Accordingly, the role of the *Bahagian Sokongan Keluarga* (BSK) must be strengthened to enhance the effectiveness of mediation. Suggested improvements include raising public awareness on the importance of attending mediation sessions, particularly among maintenance debtors. This could be achieved through community education campaigns, media dissemination, and collaboration with religious institutions. In addition, the facilitative role of mediators should be reinforced by equipping them with advanced communication skills, mediation techniques, and a deeper understanding of family psychology. Another possible measure is to introduce incentives or compliance mechanisms to encourage attendance, such as imposing penalties for non-attendance without valid reasons (Sufi, 2024).

Ultimately, the success of mediation as a non-litigious solution carries broader positive implications for the Syariah judicial system. When more cases are resolved through mediation, the number of arrears-related cases escalated to enforcement proceedings will decrease (Ismail, 2024a). This, in turn, reduces case backlogs in the Syariah Courts and alleviates the workload of judges and enforcement officers. In the long term, settlement through mediation not only benefits the parties involved but also strengthens the overall efficiency of Syariah judicial administration.

In conclusion, mediation under the purview of BSK plays a crucial role as an initial mechanism in addressing maintenance arrears. The data underscores its significant potential while also highlighting the need to improve public awareness, strengthen facilitation, and ensure compliance with attendance. With a more systematic implementation supported by multiple stakeholders, mediation can serve as an effective tool in delivering Syariah justice more efficiently, expeditiously, and fairly ultimately safeguarding the rights of maintenance recipients.

Conclusion

This study demonstrates that mediation conducted by the *Bahagian Sokongan Keluarga* (BSK) holds significant potential in resolving maintenance arrears more efficiently, harmoniously, and cost-effectively compared to litigation. The findings reveal that settlement success rates are considerably higher when both parties attend mediation sessions, underscoring attendance as a key determinant of effectiveness. Nevertheless, the persistently high rate of non-attendance remains a major challenge that prevents mediation from operating at its full capacity. This highlights the need for more effective strategies to ensure greater commitment from parties to participate in the process.

Accordingly, mediation functions not only as an alternative mechanism for early resolution but also as an instrument that reinforces the overall Syariah justice system. With enhanced public awareness, stronger facilitation, and greater compliance encouraged through incentives or penalties, mediation has the potential to evolve into a more sustainable solution. In the long term, it will not only safeguard the rights of children and former wives but also reduce the backlog of cases in the Syariah Courts, while simultaneously strengthening public confidence in the effectiveness of Islamic legal institutions in Malaysia.

Acknowledgement

The author declares that this research was conducted independently without any external funding or institutional grant.

References

- Abdullah bin Ali, A. A. M. (1317 H). *Al-Khurashiyy 'ala Mukhtasar Khalil* (Vol. 4, p. 18). Beirut: Dar al-Fikr.
- Long, A. S. (2009). *Pengenalan metodologi penyelidikan pengajian Islam [Introduction to Islamic studies research methodology]*. Bangi: Universiti Kebangsaan Malaysia (UKM).
- Al-Marghinani. (2001). *Al-Hidayah* (Vol. 3, p. 437). Karachi: al-Qur'an Mahal.
- Al-Sharqawi, Abdullah. (1309 H/1891 M). *Hashiyat al-Sarqawi 'ala Sharh al-Tahrir li Zakariya al-Ansari* (Vol. 2, p. 303). Cairo: Al-Husayniyyah.
- Brooks-Gunn, J., & Duncan, G. J. (1997). The effects of poverty on children. *The Future of Children*, 7(2), 55–71.
- Christine v. Freezailah. (2017). *Family Support Division, Federal Territory Syariah Court Kuala Lumpur* (Case No. Mal UKNP: 3/2017).
- Kariya, H. S. (2015). *Penguatkuasaan perintah pembayaran nafkah anak: Kajian mengenai peranan Bahagian Sokongan Keluarga, Jabatan Kehakiman Syariah Negeri Kedah [Enforcement of child support payment orders: A study on the role of the Family Support Division, Kedah State Syariah Judicial Department]* (Master's dissertation, Academy of Islamic Studies, Universiti Malaya).
- Khan, H. A. (2020). Mediation: Community disputes. In *Alternative dispute resolution law & practice* (p. 65). Ampang, Selangor: CLJ Publication.
- Howell, K. E. (2013). *Introduction to the philosophy of methodology*. London: Sage Publications.
- Ibn Abidin. (1996). *Hashiyah Radd al-Mukhtar* (Vol. 3, p. 573). Cairo: Syirkah Maktabah wa Mathba'ah Mustafa al-Bab al-Halaby wa Awladuh.
- Ibrahim, K. (2021). *Enforcement of nafkah orders in the Syariah Court of Malaysia: A proposal for the establishment of a family fund* (Doctoral dissertation, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia).
- Ismail, I. S. (2018, November 8). Sekat akaun bank bekas suami [Impeding ex-husband's bank account]. *Berita Harian*. Retrieved from <https://www.pressreader.com/malaysia/berita-harianmalaysia/20181108/281543701939968>
- Al-Buhuti, ibn Idris, M. Y. (1974). *Kashshaf al-Qina* (Vol. 5, p. 532). Makkah: Matba'at al-Hukumah.
- Kamaruz, M. (2016). *Family Support Division, Penang State Syariah Judicial Department* (Case No. Mal UKNP: 18/2016).
- Naim, M. (2020). *Family Support Division, Penang State Syariah Judicial Department* (Case No. Mal UKNP: 25/2020).
- Ismail, M. H., & Sulong, J. (2020). Enforcement of child-maintenance payment using judgment debtor summons and judicial notice: A Penang case study. *International Journal of Academic Research in Business and Social Sciences*, 10(7), 187–200.
- Ismail, M. H., & Sulong, J. (2021). Pemberian nafkah anak oleh waris: Pelaksanaan dan kekangan undang-undang [Child support payment by heirs: Implementation and legal constraints]. *Journal of Muwafaqat*, 4(2), 18–31.
- Ismail, M. H., & Sulong, J. (2022). Consultation as the alternative dispute resolution for maintenance arrears cases during Covid-19 pandemic in Penang Syariah Court [Penyelesaian pertikaian alternatif secara runding cara ke atas kes tunggakan nafkah di era pandemik Covid-19 di Mahkamah Syariah Pulau Pinang]. *Journal of Muwafaqat*, 5(1), 1–16.

- Ismail, M. H. (2024a). *Nafkah tertunggak: Pelaksanaan dan penguatkuasaan undang-undang di Mahkamah Syariah di Malaysia [Arrears of maintenance: Implementation and enforcement of law in Syariah Courts in Malaysia]* (Doctoral thesis, School of Humanities, Universiti Sains Malaysia).
- Ismail, M. H. (2024b). Punca pengabaian penghutang penghakiman dalam melaksanakan perintah nafkah [Causes of judgment debtor neglect in enforcing maintenance orders]. *Majallah Kulliyah Syariah wa al-Qanun*, Special Edition, 265–281.
- Abu Bakar, M. S. (1991). *Metodologi penyelidikan untuk ekonomi dan bidang-bidang berkaitan* (2nd ed.) [Research methodology for economics and related fields]. Bangi: Universiti Kebangsaan Malaysia (UKM).
- Nasir, N. F. M., Zainol, Z. A., & Suhor, S. (2018). Mediating family disputes involving violence in Malaysia. *International Journal of Asian Social Science*, 8(12), 1120–1129. <https://doi.org/10.18488/journal.1.2018.812.1120.1129>
- Abdul Hak, N. (2004). *Hak kanak-kanak dari aspek hadhanah dan nafkah di bawah undang-undang keluarga Islam di Malaysia [Children's rights from the aspects of hadhanah and maintenance under Islamic family law in Malaysia]*. International Islamic University Malaysia.
- Abu Bakar, N. A., Urus, N. S. T., & Ismail, M. H. (2025). Peranan sulh dan mediasi dalam konflik keluarga di Negeri Kedah Darul Aman: Implikasi undang-undang dan sosial [The role of sulh and mediation in family conflicts in the State of Kedah Darul Aman: Legal and social implications]. *Kanun: Jurnal Undang-Undang Malaysia*, 37(2), 211–236.
- Pelto, P. J. (2017). *Mixed methods in ethnographic research: Historical perspectives*. New York & London: Routledge.
- Yusoff, R. M., Eliyanah, E., & Nasih, A. M. (2024). An analysis towards patterns of violation of maintenance rights after divorce within Islamic marriage in Indonesia. *Malaysian Journal of Syariah and Law*, 12(3), 678–688. <https://doi.org/10.33102/mjssl.vol12no3.707>
- Interview with Salwani Sufi, Assistant Director of the Family Support Division, Malaysian Syariah Judicial Department, Penang State Section, at Penang Syariah Judicial Complex, on February 25, 2024, at 11.00 am.
- Shah, H. A. R., Halim, M. A., & Ali, N. M. (2024). Mediation and sulh as an alternative to litigation: A study of the Syariah and Civil Courts practices in Malaysia. *Darulfunun Ilahiyat*, 35, 99–122. <https://doi.org/10.26650/di.2024.35.1562636>
- Siti Uzairiah. (2017). *Kajian kualitatif dan analisis temu bual [Qualitative research and interview analysis]*. Kuala Lumpur: Aras Publisher.
- al-Zuhayli, W. (1997). *Al-Fiqh al-Islami wa adillatuh* (4th ed., Vol. 10, p. 829). Damascus: Dar al-Fikr.
- Walliman, N. (2011). *Research methods: The basics*. New York: Routledge.
- Willis, J. W. (2007). *Foundations of qualitative research: Interpretive and critical approaches*. <https://doi.org/10.4135/9781452230108>