

## Enforcement of Child Maintenance Arrears in Malaysian Syariah Courts: An Analysis of Judgment Debtor Summons

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DOI Link: <http://dx.doi.org/10.6007/IJARBS/v16-i1/27507>

**Published Date:** 25 January 2026

### Abstract

Child maintenance is a fundamental right of children guaranteed under Islamic law and the Islamic family law framework in Malaysia. Despite the authority of the Syariah Courts to issue child maintenance orders, persistent non-compliance continues to result in the accumulation of maintenance arrears, adversely affecting children's welfare. The core issue lies not in the absence of legal provisions, but in weaknesses in the enforcement of existing maintenance orders. Accordingly, this study examines the effectiveness of the Judgment Debtor Summons (JDS) as an enforcement mechanism for child maintenance arrears in the Malaysian Syariah Courts. This study adopts a qualitative approach through library-based research, document analysis, field observations, and content analysis of statutory provisions, judicial decisions, and enforcement practices. The analysis focuses on four key aspects: first, the concept and legal standing of the JDS in child maintenance enforcement, the requirement of a maintenance arrears order as a prerequisite for filing a JDS, issues relating to the service of summons, and the role of the JDS as a coercive enforcement mechanism. The findings reveal that the JDS is the fastest and most practical enforcement mechanism compared to initiating fresh claims for maintenance arrears, and that requiring a maintenance arrears order in all circumstances is unnecessary. The study also finds that flexibility in service methods enhances enforcement effectiveness, while negotiations through the Family Support Division serve as a complementary mechanism to formal enforcement. Overall, the study highlights the significance of the JDS in ensuring compliance with child maintenance orders, subject to procedural clarity, consistency in judicial practice and effective institutional support.

**Keywords:** Judgment Debtor Summons, Child Maintenance, Enforcement of Court Orders, Syariah Courts, Family Support Division.

**Introduction**

Child maintenance is among the fundamental rights of children that are clearly recognised under Islamic law and the Islamic family law system in Malaysia. The obligation to provide maintenance extends beyond basic necessities such as food, clothing, and shelter, as well as education, healthcare, and overall welfare, which collectively form the foundation for the balanced growth and development of children (Al-Shirbini, 2001). Within the framework of Islamic law, the duty to maintain children is placed directly upon the father as the head of the family and remains unaffected by the dissolution of marriage through divorce. This principle affirms that divorce between spouses does not sever the continuing responsibility of a father towards his children.

Nevertheless, post-divorce practice in Malaysia demonstrates that failure to pay child maintenance remains a persistent issue within the Muslim community. In many instances, children's rights to maintenance only become seriously contested after divorce, particularly when custody is awarded to the mother. This situation frequently compels mothers or guardians to shoulder the financial burden independently, despite the existence of a maintenance order issued by the Syariah Court (Nik Nuraini Nik Badli Shah, 1992). Such circumstances not only undermine the welfare of children but also reflect a disparity between existing legal provisions and their practical implementation.

The core problem in the context of child maintenance does not lie in the absence of legal provisions or the authority of the Syariah Courts to issue maintenance orders. The Islamic family law system in Malaysia provides clear provisions on the obligation of child maintenance, including the court's power to order periodic payments and to recover maintenance arrears in cases of default. However, the principal challenge arises from weaknesses in the enforcement of maintenance orders once they have been issued. Prolonged non-compliance by the liable party often results in the accumulation of maintenance arrears, directly affecting the livelihood and well-being of children (Ismail, 2024a).

The increasing incidence of child maintenance arrears despite the issuance of court orders indicates that the existence of an order alone is insufficient to ensure compliance. In many cases, obligors adopt evasive or dilatory conduct by citing various reasons, including financial incapacity, changes of residence, or unstable employment. These challenges are further exacerbated when the liable party resides in a different state from where the maintenance order was issued, giving rise to administrative and jurisdictional difficulties in the enforcement process (Berita Harian, 2020).

The consequences of non-payment of child maintenance should not be viewed solely as a legal issue. Rather, they carry serious social and economic implications for children and their caregivers, particularly single mothers who are compelled to meet their children's needs without adequate financial support. Insufficient financial resources may restrict children's access to quality education, healthcare, balanced nutrition, and a conducive living environment (Ismail, 2024b). In the long term, such conditions may contribute to broader social problems, including intergenerational poverty and social development inequalities within society.

In addressing this reality, the enforcement of maintenance orders constitutes a critical element in ensuring the effectiveness of the Islamic family justice system. The role of the Syariah Courts extends beyond the issuance of maintenance orders to include the responsibility of ensuring that such orders are complied with and effectively implemented. Accordingly, existing enforcement mechanisms must be evaluated in terms of their efficiency, effectiveness, and suitability within the contemporary social context. Enforcement mechanisms that are overly complex, time-consuming, or that rely solely on the initiative of the claimant risk undermining the fundamental objectives of maintenance orders themselves.

The need for enforcement mechanisms that are swift, effective, and practical has become increasingly urgent in light of the rising incidence of child maintenance arrears. Such mechanisms must not only be capable of compelling compliance with maintenance orders, but must also prioritise the best interests of the child as the party most adversely affected by non-payment (Jazilah Mohd Saad @ Mat Saud et al., 2013). In this regard, effective enforcement should not be viewed merely as a punitive measure, but rather as a means of ensuring the continuous and consistent fulfilment of maintenance obligations for the welfare of children.

Accordingly, attention must be directed towards the enforcement instruments provided under the procedural law of the Syariah Courts, particularly mechanisms relating to monetary payment orders and maintenance arrears. The effectiveness of these mechanisms should be assessed not only from the perspective of statutory provisions, but also in terms of practical implementation, administrative procedures, and their impact on compliance rates with maintenance orders. An examination of these aspects is essential to ensure that the child maintenance enforcement system genuinely functions as a protective mechanism for children's rights, rather than merely as a legal formality.

In view of this, the objective of this study is to examine the extent to which existing enforcement mechanisms, particularly those relating to the execution of monetary payment orders, are capable of effectively addressing the issue of child maintenance arrears. To achieve this aim, the study is guided by the following research objectives.

### *Research Objectives*

The objectives of this study are:

- A) To analyse the concept and legal position of the Judgment Debtor Summons in the enforcement of child maintenance arrears in the Syariah Courts of Malaysia;
- B) To examine the requirement of a maintenance arrears order as a prerequisite for filing a Judgment Debtor Summons;
- C) To evaluate issues relating to the service of summons and their implications for enforcement effectiveness; and
- D) To assess the effectiveness of the Judgment Debtor Summons as a mechanism for ensuring compliance with child maintenance orders.

### **Literature Review**

The literature review refers to a systematic examination of previous studies relevant to the subject matter of this research. Its primary purpose is to identify research gaps that exist within the existing body of literature. Based on an analysis of prior studies, this research

identifies four main themes that reflect gaps in the literature (Ahmad Sunawari Long, 2009), namely issues relating to child maintenance arrears and weaknesses in enforcement, the implementation of the Judgment Debtor Summons in the enforcement of child maintenance, issues concerning the service of summons and enforcement effectiveness, and alternative resolution mechanisms through the Family Support Division (BSK).

#### *Child Maintenance Arrears and Weaknesses in Enforcement*

The issue of child maintenance arrears constitutes one of the major challenges in the administration of Islamic family cases within the Malaysian Syariah Courts. Although the obligation to provide child maintenance is clearly provided for under Islamic family law, persistent non-payment continues to occur, giving rise to serious implications for children's welfare. Previous studies have identified several key factors contributing to the accumulation of maintenance arrears, including delays in court proceedings, procedural complexity, and bureaucratic constraints in the enforcement of maintenance orders (Abdullah, R., 2009; Zin, 2007).

Delays in proceedings frequently arise when claims for child maintenance are initiated only after divorce proceedings have been fully concluded, resulting in a prolonged waiting period before maintenance orders are issued and enforced. In such circumstances, maintenance arrears may accumulate from the very first month of default in the absence of any immediate remedial mechanism. This situation not only undermines the best interests of the child but also places a significant financial burden on caregivers, who are compelled to meet their children's needs without adequate financial support (Ismail & Sulong, 2020).

In addition, bureaucratic obstacles have been identified as a factor that weakens the effectiveness of maintenance enforcement. Filing procedures involving multiple forms, affidavit requirements, and strict procedural compliance often pose difficulties for claimants, particularly single mothers who face constraints in terms of time and financial resources. As a result, some claimants may choose not to pursue enforcement proceedings despite the denial of their children's right to maintenance (Zin, 2007).

Interstate issues further constitute a major challenge in the enforcement of child maintenance orders. As Islamic family law falls under state jurisdiction, variations in administrative practices and procedural requirements between states may delay enforcement when the liable party resides in a different state from where the maintenance order was issued. These differences create coordination and implementation constraints, which in turn contribute to the persistence of unresolved maintenance arrears over extended periods (Ismail & Sulong, 2020).

#### *Judgment Debtor Summons in the Enforcement of Child Maintenance*

The Judgment Debtor Summons (JDS) is one of the enforcement mechanisms provided under the Syariah Court Civil Procedure Acts/Enactments for the execution of monetary payment orders, including child maintenance. This mechanism enables the court to summon a defaulting party to be examined regarding his ability to satisfy a judgment debt and, where appropriate, to take corresponding enforcement measures.

However, existing studies indicate that there are differences in judicial practice in the application of the Judgment Debtor Summons in cases involving child maintenance, particularly with regard to whether a maintenance arrears order must first be obtained before a JDS application may be filed. Ismail and Sulong (2021) identify two approaches adopted by the Syariah Courts: one approach requires the existence of a specific maintenance arrears order, while the other permits a JDS to be filed based on an existing maintenance order once a default in payment has occurred.

These divergent approaches give rise to inconsistency in enforcement practices and have the potential to undermine access to justice for claimants seeking child maintenance. Requiring a prior maintenance arrears order may result in additional delays and impose further procedural burdens on judgment creditors, despite the primary objective of enforcement being the prompt recovery of maintenance. Ismail and Sulong (2021) argue that the assessment of maintenance arrears can be undertaken administratively by the Court Registrar without the need for a fresh hearing, in line with the principles of efficiency and procedural justice.

This analysis demonstrates that while the Judgment Debtor Summons has significant potential as an effective enforcement mechanism, its practical application remains dependent on judicial interpretation and non-uniform procedural practices. Consequently, there is a need for a more comprehensive examination of the legal standing and implementation of the Judgment Debtor Summons within the specific context of child maintenance enforcement.

#### *Issues of Service of Summons and Enforcement Effectiveness*

The effectiveness of the Judgment Debtor Summons (JDS) is closely linked to the proper and lawful service of summons. Service of summons constitutes a fundamental element in ensuring the attendance of the respondent before the court and in safeguarding procedural fairness in enforcement proceedings. Failure to effect service in accordance with legal requirements may result in the adjournment or dismissal of proceedings, thereby undermining the overall enforcement process.

Ismail (2023) finds that the Syariah Courts in Malaysia have adopted service of summons by registered post in certain circumstances, in accordance with the Circulars issued by the Chief Syariah Judge. Nevertheless, the use of registered post raises issues relating to proof of service, particularly with respect to the requirement of an affidavit of service, which is typically to be executed by the Court Process Server. Ambiguity in the implementation of this method of service has the potential to give rise to procedural disputes and to weaken the effectiveness of enforcement through the Judgment Debtor Summons.

The importance of proper service of summons extends beyond mere procedural compliance, as it has direct implications for the rate of compliance with maintenance orders. Ineffective or defective service may provide opportunities for the liable party to evade court attendance and delay enforcement proceedings, thereby allowing maintenance arrears to persist over prolonged periods (Ismail, 2023).

### *Alternative Resolution through the Family Support Division (BSK)*

In addition to formal enforcement mechanisms through the Judgment Debtor Summons (JDS), the Family Support Division (BSK) plays an important role as an early resolution mechanism in cases involving child maintenance arrears. Through negotiation and mediation, the BSK seeks to facilitate agreements between judgment creditors and judgment debtors regarding methods of settling maintenance arrears, whether through monthly instalments, lump-sum payments, or other arrangements consistent with the financial capacity of the liable party.

A study by Ismail, Tajul Urus, and Rashid (2025) demonstrates that negotiations conducted through the BSK have the potential to resolve a substantial proportion of child maintenance arrears cases without resorting to punitive enforcement proceedings. Nevertheless, the study also finds that negotiations are not always successful, particularly where the liable party refuses to cooperate or fails to comply with the agreed terms. In such circumstances, formal enforcement mechanisms such as the Judgment Debtor Summons remain necessary as a follow-up measure.

The relationship between negotiation through the BSK and enforcement through the JDS indicates that these mechanisms are complementary rather than conflicting. Negotiation functions as an initial, conciliatory mechanism aimed at amicable settlement, while the JDS serves as a coercive mechanism when negotiations fail to achieve the desired outcome (Ismail et al., 2025).

The literature review further reveals that previous studies have examined child maintenance issues from various perspectives, including weaknesses in procedural claims, conflicts in judicial decisions, and the role of negotiation through the Family Support Division. However, there remains a lack of comprehensive studies that analyse the Judgment Debtor Summons specifically as a mechanism for enforcing child maintenance arrears.

Accordingly, the studies reviewed collectively indicate the existence of a research gap that warrants further examination. Most prior research has addressed issues relating to child maintenance and its enforcement in a fragmented manner, without integrating legal analysis with the practical realities of implementation within the Syariah Courts. In particular, there is a paucity of studies that evaluate the implementation of the Judgment Debtor Summons in a layered manner, encompassing the procedures for application, service of summons, and execution of enforcement (*procedure–service–execution*). This gap necessitates a study that integrates legal analysis with practical application in order to assess the actual effectiveness of the Judgment Debtor Summons in ensuring compliance with child maintenance orders.

### **Problem Statement**

Although the Syariah Courts in Malaysia are equipped with clear legal provisions governing the obligation of child maintenance and possess the authority to issue maintenance orders, child maintenance arrears continue to persist and recur in many post-divorce cases. This situation demonstrates that the mere existence of a court order does not guarantee compliance with maintenance obligations by the liable party. This reality is consistent with findings from previous studies indicating that the primary issue in child maintenance cases

does not lie in the determination of rights, but rather in the effectiveness of enforcing orders that have already been issued (Ismail & Sulong, 2020).

In the context of enforcement, the Judgment Debtor Summons (JDS) constitutes one of the principal mechanisms provided under the Syariah Court Civil Procedure Acts/Enactments for the execution of monetary payment orders, including child maintenance arrears. Nevertheless, the implementation of the JDS in child maintenance cases reveals inconsistencies in judicial practice, particularly concerning whether a maintenance arrears order must first be obtained before a JDS application may be filed. Certain judicial approaches require the existence of a specific maintenance arrears order, while others permit the filing of a JDS based on an existing maintenance order upon the occurrence of payment default (Ismail & Sulong, 2021).

Such inconsistencies in judicial interpretation have serious implications for access to justice and the efficiency of child maintenance enforcement processes. Requiring a prior maintenance arrears order may result in additional delays, necessitate fresh proceedings, and increase costs and procedural burdens on claimants. This approach runs counter to the principle of protecting the best interests of the child, which demands that maintenance recovery be carried out promptly and effectively. Consequently, a critical question arises as to whether the requirement of a maintenance arrears order as a prerequisite for the Judgment Debtor Summons is genuinely aligned with the objectives of child maintenance enforcement.

In addition to issues of judicial interpretation, the effectiveness of implementing the Judgment Debtor Summons (JDS) is also influenced by issues relating to the service of summons. Defective or non-compliant service of summons may undermine the entire enforcement process, including resulting in the absence of the respondent and the adjournment of proceedings. Although the Syariah Courts permit the use of alternative methods of service, such as registered post in certain circumstances, the implementation of such methods raises concerns regarding proof of service and the requirement of a valid affidavit of service (Ismail, 2023). Weaknesses in the service of summons provide opportunities for liable parties to evade or delay enforcement proceedings, thereby allowing maintenance arrears to persist.

These issues reflect a significant gap between legal provisions and the practical implementation of the Judgment Debtor Summons as a mechanism for enforcing child maintenance arrears. While the JDS theoretically functions as an effective coercive instrument, its practical application continues to face procedural constraints, inconsistencies in judicial practice, and administrative challenges. This gap raises the question of whether existing enforcement mechanisms genuinely operate to protect children's rights to maintenance or merely function as legal formalities without delivering timely remedial outcomes.

Accordingly, this study is grounded in the need to critically examine the legal standing and implementation of the Judgment Debtor Summons in the enforcement of child maintenance arrears, with particular emphasis on inconsistencies in the requirement of a maintenance arrears order, the effectiveness of service of summons, and their implications for compliance

with maintenance orders. Such an examination is essential to determine whether the Judgment Debtor Summons truly functions as a swift, effective, and practical enforcement mechanism, consistent with the objective of safeguarding children's welfare within the Islamic family justice system.

### **Research Methodology**

This study adopts a qualitative research design (Siti Uzairiah, 2017) based on document analysis and field observation. This approach is appropriate for examining the enforcement mechanism of the Judgment Debtor Summons (JDS), as it enables the researcher to analyse not only the legal provisions governing the enforcement of child maintenance, but also the manner in which such provisions are applied in actual proceedings before the Syariah Courts. The study does not seek to measure data quantitatively; rather, it evaluates the effectiveness, consistency, and suitability of the implementation of the JDS from both legal and practical perspectives.

Data collection in this study involves three main methods, namely library-based research (Mohd Shafie Abu Bakar, 1991), field observation, and case document analysis. First, library-based research is employed to obtain secondary data relating to child maintenance and its enforcement. The sources include statutory provisions such as the Islamic Family Law Acts and Enactments, the Syariah Court Civil Procedure Acts/Enactments, Practice Directions and judicial circulars, relevant court decisions concerning the enforcement of child maintenance through the JDS, as well as journal articles and previous academic writings. This method is essential for constructing the theoretical and legal framework that underpins the analysis of the study.

Second, field observation (Patton, 2015) is utilised as a supplementary method to understand the actual implementation of JDS enforcement in practice. Such observations are informed by practical experience relating to the management and enforcement of child maintenance cases in the Syariah Courts, including the role played by the Family Support Division (BSK). Field observation assists the researcher in identifying practical challenges, procedural constraints, and unwritten practices that influence the effectiveness of JDS implementation.

Third, case document analysis (Muhammad Fadlan Othman, 2012) is conducted by examining documents relevant to JDS enforcement proceedings, including applications for the JDS, supporting affidavits, court orders, records of service of summons, and judicial decisions. Analysis of these case documents enables the researcher to assess how legal provisions are applied in practice and to identify recurring issues in the implementation of the JDS, particularly with regard to the requirement of a maintenance arrears order and the service of summons.

The data obtained in this study were analysed using the content analysis method. Content analysis was conducted by identifying themes, concepts, and patterns relating to the enforcement of the Judgment Debtor Summons (JDS) in child maintenance cases, based on statutory provisions, judicial decisions, and enforcement practices. This method allows qualitative data to be analysed systematically (Sidek Mohd. Noah, 2000) and in an organised manner, thereby producing findings that are consistent with the objectives of the study.

This study also employs a combined deductive (Imam Barnadib, 1982) and inductive (Mohd Michael Abdullah, 1995) approach. The deductive approach is utilised to analyse the implementation of the JDS based on general legal principles and existing statutory provisions. In contrast, the inductive approach is applied to derive general conclusions from observations of judicial practices and the practical implementation of the JDS in child maintenance cases. The integration of both approaches enables the study to assess the gap between legal theory and the realities of enforcement practice. The scope of this study is limited to child maintenance and does not extend to issues relating to spousal maintenance or maintenance during the *iddah* period. This focus is intended to ensure a more in-depth analysis centred on the protection of children's rights, as children are the parties most adversely affected by failures in maintenance payments.

In terms of jurisdiction, this study examines the practices of the Syariah Courts in Malaysia in general, taking into account statutory provisions and judicial practices at the state level. While practical examples from particular states are referred to for illustrative purposes, the analysis seeks to reflect issues relating to the enforcement of the Judgment Debtor Summons in child maintenance cases within the overall framework of the Malaysian Syariah Court system.

### Analysis and Discussion

Prior to the analytical discussion encompassing four main themes, namely the concept of the Judgment Debtor Summons in child maintenance, the requirement of a maintenance arrears order, issues relating to the service of summons, and the Judgment Debtor Summons as a coercive mechanism, it is appropriate to first present the extent of Judgment Debtor Summons case registrations across all states in Malaysia. These registration statistics indicate that the use of the Judgment Debtor Summons as an enforcement mechanism is significant. Accordingly, the following section presents the statistics on the registration of Judgment Debtor Summons cases for the year 2025 across all states in Malaysia, as obtained from the Family Support Division (BSK), Department of Syariah Judiciary Malaysia.

#### Table

*Registration of Judgment Debtor Summons (JDS) Cases*

State	Number of Registrations
Perlis	9
Kedah	4
Penang	49
Perak	82
Kelantan	51
Terengganu	66
Pahang	44
Selangor	201
Federal Territories	47
N. Sembilan	73
Melaka	43
Johor	38
Sarawak	43
Sabah	67
Total	817

Based on the case registration data for the year 2025, a total of 817 Judgment Debtor Summons (JDS) cases were recorded across the Syariah Courts nationwide. This figure indicates that the JDS is an actively utilised and relevant enforcement mechanism in addressing non-compliance with court orders, including child maintenance orders.

In terms of state distribution, Selangor recorded the highest number of registrations, with 201 cases, accounting for almost one quarter of the total JDS cases in Malaysia. This trend may be attributed to factors such as high population density, a larger number of divorce cases, and an increase in maintenance claims within the state. These statistics suggest that pressure on the child maintenance enforcement system is more pronounced in highly urbanised and densely populated states.

Other states that also recorded relatively high numbers of JDS registrations include Perak (82 cases), Negeri Sembilan (73 cases), Sabah (67 cases), and Terengganu (66 cases). The substantial number of cases in these states indicates that non-compliance with maintenance payments and the corresponding need for enforcement through the JDS are not isolated phenomena, but rather widespread issues affecting various geographical regions, including both Peninsular Malaysia and East Malaysia.

By contrast, states such as Kedah (4 cases) and Perlis (9 cases) recorded significantly lower numbers of registrations. These marked differences may be influenced by several factors, including variations in population size, the number of maintenance cases filed, levels of public awareness regarding the JDS mechanism, as well as differences in administrative and judicial practices at the state level. Notably, lower registration figures do not necessarily indicate the absence of non-compliance issues, but may instead reflect a greater reliance on alternative dispute resolution mechanisms or barriers in accessing formal enforcement processes.

For other states such as Penang (49 cases), Kelantan (51 cases), Pahang (44 cases), Melaka (43 cases), Sarawak (43 cases), the Federal Territories (47 cases), and Johor (38 cases), the number of registrations falls within a moderate range. This pattern suggests that the utilisation of the JDS as an enforcement mechanism is relatively consistent across most states, albeit with variations in the volume of cases.

Overall, the pattern of Judgment Debtor Summons (JDS) case registrations for the year 2025 indicates that this mechanism is widely and consistently utilised across the country, thereby reflecting a still significant level of non-compliance with court orders, including in cases involving child maintenance. Variations in registration numbers between states further suggest that, while enforcement issues are national in nature, their implementation is influenced by administrative, judicial, and socio-demographic factors at the state level. These statistics reinforce the need to examine the Judgment Debtor Summons not merely as an enforcement procedure, but as a legal mechanism with direct implications for the effectiveness of protecting children's rights to maintenance (Ismail, 2025). Accordingly, the following discussion focuses on a conceptual and practical analysis of the implementation of the Judgment Debtor Summons through four main themes, beginning with an examination of the concept of the Judgment Debtor Summons in the context of child maintenance.

*The Concept of the Judgment Debtor Summons in Child Maintenance*

The Judgment Debtor Summons (JDS) is an enforcement mechanism provided under the Syariah Court Civil Procedure Acts/Enactments for the execution of monetary payment orders issued by the court. In the context of child maintenance, the JDS functions as an instrument to summon a defaulting party to appear before the court to be examined regarding his ability and unwillingness to pay accrued maintenance arrears. This mechanism reflects the principle that court orders should not be left unenforced, particularly where they involve the welfare rights of children (Ismail & Sulong, 2020).

In terms of its definition and function, the JDS does not constitute a criminal action, but rather a civil enforcement proceeding. Its purpose is to ensure that the liable party fulfils the financial obligations determined by the court, either voluntarily or through coercive measures permitted by law. In child maintenance cases, failure to pay maintenance is not merely regarded as non-compliance with a court order, but also as a neglect of a fundamental responsibility towards children who are under the care of another party.

With regard to the requirements for filing, a JDS may only be initiated where there exists a judgment or court order involving the payment of money. In child maintenance cases, a maintenance order issued by the Syariah Court forms the basis for a JDS application upon the occurrence of payment default. A recurring issue in practice concerns whether maintenance arrears must first be confirmed through a specific court order before a JDS may be filed, or whether default under an existing maintenance order is sufficient to justify enforcement through the JDS (Ismail & Sulong, 2021).

The status of maintenance arrears as a judgment debt constitutes a crucial element in understanding the justification for the use of the JDS. Once the court issues a maintenance order and the liable party fails to comply, the resulting arrears are not merely ordinary debts, but debts supported by judicial authority. Accordingly, enforcement through the JDS is consistent with the legal principle that every court judgment must be respected and enforced, particularly when it involves the interests of vulnerable parties such as children (Ismail & Sulong, 2020).

*The Requirement of a Maintenance Arrears Order*

One of the most significant issues in the implementation of the Judgment Debtor Summons (JDS) in child maintenance cases concerns whether a maintenance arrears order is required as a prerequisite for filing a JDS application. An analysis of judicial practice reveals the existence of two divergent lines of decisions. The first approach requires claimants to obtain a specific maintenance arrears order before a JDS may be filed. This approach is grounded in the need to conclusively determine the amount of arrears through a court order (Ismail & Sulong, 2021).

In contrast, the second approach permits the filing of a JDS based on an existing maintenance order upon the occurrence of payment default, without requiring a separate maintenance arrears order. This approach recognises that the amount of arrears may be administratively assessed by the Court Registrar based on payment records, without the need for a fresh and time-consuming trial process (Ismail & Sulong, 2021).

From the perspective of justice for maintenance creditors, particularly children, the requirement to first obtain a maintenance arrears order may undermine the principle of prompt and effective recovery of maintenance. This additional procedural step has the potential to delay enforcement, increase costs, and impose further burdens on caregivers who are already shouldering the financial needs of children without adequate support. Accordingly, a more flexible and child welfare oriented approach is better aligned with the objectives of maintenance enforcement within the Islamic family justice system.

#### *Issues Relating to the Service of Summons*

The effectiveness of the Judgment Debtor Summons (JDS) also depends on the proper and valid service of summons. Service of summons constitutes a fundamental element in ensuring that the respondent is formally notified of enforcement proceedings and is afforded an opportunity to appear before the court and provide an explanation. In practice, personal service remains the primary method that ensures certainty of receipt by the liable party.

Nevertheless, the Syariah Courts also permit service of summons by registered post in certain circumstances, particularly where personal service cannot be effected. Ismail (2023) observes that the acceptance of service by registered post is supported by judicial circulars; however, its implementation continues to raise concerns regarding proof of service and the requirement of a valid affidavit of service.

Defective service of summons may undermine the entire JDS proceeding, including resulting in the non-attendance of the respondent and the adjournment of hearings. Such circumstances not only delay the enforcement process, but also provide opportunities for the liable party to evade maintenance obligations. Accordingly, a system of service that is flexible yet structured, and that complies with legal requirements, is essential to ensure that the Judgment Debtor Summons functions as an effective enforcement mechanism (Ismail, 2023).

#### *The Judgment Debtor Summons as a Coercive Mechanism*

As an enforcement mechanism, the Judgment Debtor Summons (JDS) possesses coercive characteristics aimed at compelling compliance with court orders. Through JDS proceedings, the court is empowered to examine the financial capacity of the liable party in order to determine whether the failure to pay maintenance arises from genuine inability or deliberate refusal. Such examination is essential to ensure that enforcement measures imposed are fair, proportionate, and justified.

One of the most significant coercive elements of the JDS is the threat of imprisonment against a defaulting party who fails to comply without reasonable justification. Although imprisonment is not the primary objective of maintenance enforcement, this threat functions as an effective legal pressure to induce compliance with maintenance orders. Previous studies indicate that the existence of imprisonment as a potential consequence often increases compliance rates and encourages the settlement of maintenance arrears, either through lump-sum payments or instalment arrangements (Ismail & Sulong, 2020).

Evidence of post-enforcement compliance following the implementation of the JDS suggests that this mechanism has considerable potential as an effective enforcement tool when applied consistently and systematically. Nevertheless, its effectiveness remains

contingent upon procedural clarity, uniformity in judicial practice, and the effectiveness of service of summons. In the absence of these elements, the coercive function of the Judgment Debtor Summons risks being weakened and may fail to achieve its intended objective of protecting children's rights to maintenance.

### **Research Findings**

Based on the analysis of statutory provisions, judicial practices, and the practical implementation of the Judgment Debtor Summons (JDS) in cases involving child maintenance arrears, this study identifies several key findings that are significant to the enforcement of maintenance orders in the Malaysian Syariah Courts.

#### *The Judgment Debtor Summons as the Fastest Enforcement Mechanism*

The findings of this study indicate that the Judgment Debtor Summons (JDS) constitutes the fastest and most practical enforcement mechanism when compared to the filing of a fresh claim for maintenance arrears. The use of the JDS enables claimants to take immediate action upon the occurrence of default under an existing maintenance order, without having to undergo lengthy substantive trial processes. This facilitates the prompt recovery of maintenance and reduces prolonged accumulation of arrears, particularly in child maintenance cases where continuous financial support is essential (Ismail & Sulong, 2020).

The efficiency of the JDS as an enforcement mechanism is further reinforced by its nature as a civil enforcement proceeding that focuses on the execution of an existing judgment rather than the determination of new rights. Accordingly, the JDS is more appropriately utilised in situations where the right to maintenance has already been established but has not been complied with by the liable party.

#### *The Requirement of a Maintenance Arrears Order Should Not Be Mandatory in All Circumstances*

This study finds that it is not appropriate to impose the requirement of a maintenance arrears order as an absolute prerequisite for filing a Judgment Debtor Summons (JDS) in all circumstances. While a maintenance arrears order may provide certainty as to the amount owed, such a requirement has the potential to delay enforcement proceedings and undermine the best interests of the child.

This finding is consistent with the view that the amount of maintenance arrears may be administratively assessed by the Court Registrar based on payment records and the existing maintenance order, without the need for a fresh trial (Ismail & Sulong, 2021). Such an approach is more efficient and aligns with the objective of child maintenance enforcement, which prioritises prompt recovery over protracted procedural requirements.

#### *Flexible Service of Summons Enhances Enforcement Effectiveness*

The findings of this study further indicate that flexibility in the methods of service of summons plays a significant role in enhancing the effectiveness of enforcement through the Judgment Debtor Summons (JDS). While personal service remains the primary method, the acceptance of alternative methods of service, such as registered post in appropriate circumstances, helps to address recurring problems of unsuccessful service that often delay enforcement proceedings.

Nevertheless, such flexibility must be accompanied by strict compliance with legal requirements, particularly in relation to proof of service and the preparation of valid affidavits of service. Without clear procedural safeguards, flexibility in service may give rise to technical defects that undermine the entire JDS proceeding (Ismail, 2023). Accordingly, a balance between procedural flexibility and legal compliance is essential to ensure that the enforcement of child maintenance operates effectively.

#### *Negotiation through the Family Support Division and the Judgment Debtor Summons as Complementary Mechanisms*

This study further finds that negotiation through the Family Support Division (BSK) and enforcement through the Judgment Debtor Summons (JDS) are not conflicting mechanisms, but rather operate in a complementary manner. Negotiation functions as an initial, conciliatory mechanism that emphasises amicable settlement and takes into account the financial capacity of the liable party, while the JDS serves as a coercive mechanism when negotiations fail or when agreed arrangements are not complied with.

These findings indicate that the effectiveness of child maintenance enforcement can be enhanced through a layered approach, whereby negotiation is prioritised at the initial stage, followed by formal enforcement when necessary. Such an approach not only improves compliance rates but also reduces excessive reliance on coercive measures, in line with the principles of justice and welfare underpinning the Islamic family justice system (Ismail et al., 2025).

Overall, the findings of this study underscore that the Judgment Debtor Summons constitutes a significant enforcement instrument in ensuring compliance with child maintenance orders. However, its effectiveness remains dependent on procedural clarity, consistency in judicial practice, and the support of complementary mechanisms such as negotiation through the Family Support Division.

#### **Conclusion**

This study affirms that the Judgment Debtor Summons (JDS) constitutes a significant enforcement instrument in ensuring compliance with child maintenance orders within the Malaysian Syariah Courts. The findings demonstrate that the principal problem in child maintenance cases does not lie in the absence of court orders, but rather in weaknesses relating to the implementation and enforcement of orders that have already been issued. In this context, the JDS functions as a mechanism capable of bridging the gap between judicial determination and effective execution, particularly in cases involving prolonged non-payment of maintenance.

The study further reveals that the effectiveness of the JDS is dependent on several key factors, including consistency in judicial practice, procedural clarity regarding the requirement of a maintenance arrears order, and the effectiveness of service of summons. Child maintenance enforcement should not be viewed merely as a technical legal matter; instead, it must be understood as an issue of social justice and the protection of children's welfare, consistent with the principles of *maqāṣid al-sharī'ah*. Accordingly, enforcement approaches that are swift, effective, and oriented towards the best interests of the child are

essential to ensure that the right to maintenance does not remain confined to the level of judicial orders alone.

Based on the findings, several implications and brief recommendations may be advanced. From a legal perspective, the standardisation of JDS practices across states and the development of clear guidelines on the requirement of maintenance arrears orders are necessary to reduce inconsistencies and delays in enforcement. From an institutional perspective, the role of the Family Support Division (BSK) should be strengthened as a pre-enforcement mechanism, alongside the provision of specialised training for judges and registrars on the implementation of the JDS. Collectively, these measures have the potential to enhance the protection of children's rights more effectively and to ensure that the child maintenance enforcement system operates in accordance with the objectives of justice and welfare within Islamic family law.

### **Theoretical and Contextual Contributions of the Study**

This study contributes theoretically to the existing body of knowledge on child maintenance enforcement by providing a structured socio-legal analysis of the Judgment Debtor Summons (JDS) as an enforcement mechanism within the Syariah court system. Unlike previous studies that focus primarily on procedural aspects or judicial conflicts in isolation, this research advances understanding by analysing the JDS through a layered framework encompassing procedural requirements, service of summons, and enforcement execution (*procedure–service–execution*). This integrated approach enriches the theoretical discourse on enforcement effectiveness and procedural justice in Islamic family law.

From a contextual perspective, this study offers significant practical insights into the enforcement of child maintenance orders in the Malaysian Syariah Courts. By examining judicial practices, administrative implementation, and institutional mechanisms such as the Family Support Division, the study bridges the gap between legal provisions and enforcement realities. The findings provide empirically grounded guidance for judicial officers, court administrators, and policymakers in improving enforcement consistency, enhancing compliance rates, and strengthening the protection of children's welfare. In this regard, the study plays an important role in contextualising enforcement mechanisms within the socio-legal and institutional realities of the Malaysian Syariah justice system.

### **Acknowledgement**

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

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