



**THE MECHANISMS OF ENFORCEMENT AND
EXECUTION OF MAINTENANCE ORDER IN THE
SYARIAH COURT IN MALAYSIA**

BY

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ABSTRACT

This study had examined and identified the mechanism used for the enforcement and execution of maintenance orders in Syariah Court. Hence, files pertaining to the claim for cases of enforcement by the court process were analysed quantitatively and qualitatively to identify the mechanisms that had been employed. Other than that, general observation was made to look into the process undertaken by court players; such as lawyers, judges, and the Family Support Division, as well as the others, to determine the importance of and the relationships between the parties. Furthermore, this study adopted the quantitative and qualitative approaches to comprehensively examine the mechanism used. In the quantitative approach, data were gathered from selected filed cases from five states and they were further analysed quantitatively. Nevertheless, only 355 cases had been found suitable for analysis and relevant to the research. The quantitative method employed the Statistical tool (SPSS) to collect and analyse the data. On the other hand, a combination of research methods from legal analysis; historical to comparative methods, was undertaken for the qualitative approach. As a result, the findings of the research suggested that the enforcement and execution of court orders had been based on administrative actions, as well as court action. However, the administrative action was not legally bound, and thus, any action initiated by the administrative action should end up with a legal action. It was also found that most of the maintenance orders issued by the Syariah Court did not state the channel and method of execution, especially those that involve the payment of money orders. The study also revealed that even if the order was obtained through mutual agreement, it was not a guarantee that the order was adhered to by all parties. In addition, the significant findings indicated that an effective mechanism for the enforcement and execution of maintenance order did not only depend on the legal process alone, but also must possess a strong assimilation between legislative and administrative actions. Therefore, the court players had effectively performed their own roles during the process of enforcement. On top of that, Islam envisages that the enforcement and execution of court orders require the court itself to carry out the duty. However, in the event of the disablement of a court to carry out the duty, it might appoint any person to carry out the task. For that reason, the court must essentially ensure that the order given is indeed enforceable. Finally, regardless of the mechanism of the enforcement, cooperation from all parties, especially judgment debtors, had been discovered vital to ascertain the success of enforcement mechanism.

خلاصة البحث

تسعى هذه الرسالة إلى دراسة الآلية المستخدمة في المحكمة الشرعية في تنفيذ أمر القضاء بالنفقة. وبغية الكشف عن الآلية المعتمدة اعتمدت الدراسة على التحليل الكمي والكيفي لملفات الدعاوى، كما التجأت إلى الملاحظة العامة للإجراءات التي يباشرها كل أطراف القضاء من محامي، وقضاة، وقسم دعم الأسرة (FSD)، وغيرهم للكشف عن الأهمية والعلاقة القائمة بين كل الأطراف. وقد تم الاستعانة بالمنهج الكمي والكيفي للوصول إلى مبتغى الدراسة. أما المنهج الكمي فقد تم توظيفه في استعراض الدعاوى البيانات من ملفات باجمع المختارة ليتم تحليلها بعد ذلك بأداة إحصائية وهي SPSS. وأما المنهج الكيفي فقد تم فيه الجمع بين المنهج التحليلي القانوني، والمنهج التاريخي، ومنهج المقارن. وقد أستنتج الدراسة بأن الأداء الإداري والأداء القضائي لهما تأثير بارز على كيفية تنفيذ أمر القضاء بالنفقة في المحكمة، ولأن الأداء الإداري لم يكن ملزماً قانونياً فالأولى أن يتعقب بالأداء القضائي. كما توصلت الدراسة إلى ان امر القضاء النفقة الذي تصدره المحكمة الشرعية عادة لا يصاحبه بيان طريقة التنفيذ أو وسيلته لا سيما إذا اقتضى الأمر الدفع المالي، وأن الأمر وإن كان مصدره الاتفاق المتبادل بين الأطراف إلا أنه لا يضمن التزام كل الأطراف بما اتفقوا عليه. هذه النتيجة تؤكد بأن الآلية الأجدى لتنفيذ أمر القضاء بالنفقة هي التي لم تكتفى بالأداء القضائي وحده بل تستند إلى الائتلاف والتعاون المحكمين بين جهتي القضاء والإدارة. وعليه فكل أطراف القضاء لها دورها في تنفيذ الأمر نظراً لأن الدين الإسلامي يحث بأن تتولى جهة القضاء تنفيذ الأمر القضائي بنفسها أو تُوكلي من ينوب عنها إذا عجزت عن القيام به، مع التحقيق من الأمر الصادر منها ممكن التنفيذ. وأخيراً، بغض النظر عن الآلية المستخدمة في التنفيذ، فإنه لا بد أن يتعاون ويتعاقد كل الأطراف لا سيما الطرف المحكوم عليه لتسريع تنفيذ الحكم.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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TABLE OF CONTENTS

Abstract	ii
Abstract in Arabic	iii
Approval Page	iv
Declaration	v
Copyright Page	vi
Acknowledgements	vii
Table of Contents	viii
List of Figure	xii
List of Chart	xiii
List of Table	xiv
List of Cases	xv
List of Statutes	xxxiv
List of Practice Directions of JKSM	xxxv
List of Abbreviations	xxxvi
Trasliteration	xxxvii
CHAPTER ONE: INTRODUCTION	1
1.1 Background of the study	1
1.2 Statement of the problem	5
1.3 Objectives of the study	6
1.4 Research questions	7
1.5 Hypotheses	8
1.6 Methodology	9
1.6.1 Qualitative approach	9
1.6.2 Quantitative approach	11
1.6.2.1 Research design	11
1.6.2.2 Population and Sampling	12
1.6.2.3 Research instrument	13
1.6.2.4 Location of the study	14
1.6.2.5 Accessibility to conduct research in the selected Syariah court	14
1.6.2.6 Data collection	16
1.6.2.7 Preliminary study	16
1.6.2.8 Pilot study	17
1.6.2.9 The real study	17
1.6.2.10 Validity and reliability	17
1.6.2.11 Data Analysis	18
1.7 Scope and limitation of the study	19
1.8 Outline of chapters	20
1.9 Literature review	21
CHAPTER TWO: THE <i>SHAR CAH</i> AND ITS VIEW ON ENFORCEMENT AND EXECUTION OF THE COURT ORDER	32
2.1 Introduction	32
2.2 Principles of Islamic Judiciary	33

2.3	The position of courts and judges under the Islamic Judicial System.....	36
2.3.1	Types of courts.....	37
2.3.1.1	Court of <i>Maz lim</i>	38
2.3.1.2	Qadhi Court.....	39
2.3.1.3	<i>Al-Hisbah</i> Court.....	40
2.3.2	Roles of the judges.....	41
2.4	Orders and judgment under Islamic Law.....	41
2.4.1	An obligation to comply with the court order.....	42
2.4.2	Orders or judgments should be executed.....	43
2.5	Basic principles of enforcement and execution of order and judgment.....	44
2.5.1	Manners and procedures of execution.....	45
2.5.2	Types of execution.....	46
2.6	Methods of enforcement and execution of the order and judgment.....	49
2.6.1	Travel Barriers.....	49
2.6.2	Imprisonment.....	51
2.6.3	Prohibited from operating and managing property.....	52
2.6.4	Sale and seizure.....	53
2.6.5	Garnishment (<i>hiw lah</i>).....	54
2.7	Chapter summary.....	54

CHAPTER THREE: LAW PERTAINING TO THE ENFORCEMENT AND EXECUTION OF COURT ORDERS IN SYARIAH COURT.....56

3.1	Introduction.....	56
3.2	Background of Islamic Law in Malaysia.....	57
3.3	The jurisdiction and the structure of the Syariah Courts.....	59
3.3.1	Jurisdiction of the Syariah Court pursuant to the enactment of the State administration.....	61
	i. The jurisdiction of the Syariah Subordinate Court.....	62
	ii. The jurisdiction of the Syariah High Court.....	62
	iii. The jurisdiction of the Syariah Appeal Court.....	64
3.4	Syariah Court Civil Procedure Act (SCCPA).....	65
3.5	Judgment or court order.....	66
3.5.1	Types of judgments or court orders:.....	67
3.5.2	The role of the judge over judgment.....	68
3.5.3	Obligation to comply with the court order.....	69
3.6	The organization of enforcement and execution of court orders.....	70
3.6.1	Enforcement of judgment for payment of money.....	70
3.6.2	Enforcement of judgment for possession of immovable property.....	71
3.6.3	Enforcement of judgment for delivery of movable property.....	71
3.6.4	Enforcement of judgment to do or abstain from doing an act.....	72
3.6.5	Power of court to make an attachment of earnings order.....	72
3.7	Implementation procedures for each type of execution action.....	73
3.7.1	An execution by seizure and sale.....	73
3.7.2	An execution by <i>hiw lah</i> proceeding.....	77
3.7.3	Judgment Debtor Summon.....	80
3.7.4	A Judgment notice.....	83
3.7.5	Execution by the order for possession.....	85
3.7.6	Execution by the order for delivery.....	86
3.7.7	Order for seizure and deliver.....	87

3.7.8	Committal proceeding	88
3.7.9	Enforcement and execution for the Interim Order	90
3.7.10	Other types of execution	91
3.8	The implementation of enforcement and execution of court orders in Civil Court	93
3.8.1	Laws and regulations governing enforcement of civil case judgments in Civil Court	94
3.8.2	Modes of execution	96
3.8.3	Procedure for execution	97
3.9	Chapter summary	108

CHAPTER FOUR: NON-COMPLIANCE OF MAINTENANCE ORDER AND ITS MECHANISM FOR ENFORCEMENT AND EXECUTION..... **109**

4.1	Introduction	109
4.2	Maintenance obligation	110
4.2.1	Rate of maintenance	111
4.2.2	Maintenance order	113
4.2.3	Non-compliance of maintenance order	114
4.2.4	Reason for non-compliance with maintenance order	116
4.2.5	Factors that influence compliance	118
4.2.6	Effect of non-compliance with maintenance order for the receiver	119
4.3	Mechanisms for enforcement and execution of maintenance order	120
4.3.1	Deterrence-based approach	121
4.3.2	Compliance-based approach	121
4.3.3	Consensus-based approach	122
4.3.4	Mechanism of enforcement and execution of maintenance order in several countries	123
4.3.4.1	Australia	123
4.3.4.2	Singapore	124
4.3.4.3	Egypt	127
4.3.5	Enforcement mechanism in Syariah Court in Malaysia	130
4.3.5.1	Court enforcement mechanism	130
4.3.5.2	Related agencies and players in the enforcement and execution of the court orders' proceedings	138
4.3.5.3	Administrative enforcement mechanism	140
4.3.6	<i>ulh</i> as part of enforcement mechanism	152
4.4	Chapter summary	155

CHAPTER FIVE: AN ANALYSIS ON THE MECHANISM OF ENFORCEMENT AND EXECUTION OF MAINTENANCE ORDER..... **157**

5.1	Introduction	157
5.2.	Application and procedure to register for enforcement and execution court order	159
5.3	Profiles of judgment debtor and judgment creditor to apply for enforcement and execution of maintenance order	159
5.3.1	Judgment creditor and judgment debtor by age	161
5.3.2	Judgment creditor and judgment debtor by occupational status	161
5.3.3	Judgment creditor and judgment debtor by monthly income	162
5.3.4	Judgment creditors and judgment debtors by dependant	164

5.3.5	Judgment creditors and judgment debtors by marital status	164
5.4	Distribution of the cases of enforcement and execution of maintenance order between selected states.....	165
5.4.1	Cases by court.....	165
5.4.2	Cases by year.....	166
5.4.3	Cases by type of application.....	167
5.4.4	Cases by method of applications.....	169
5.5	Classification of maintenance order.....	170
5.5.1	Type of maintenance order for child and wife.....	170
5.5.2	Nature of the court order.....	171
5.6	Classification of payment.....	172
5.6.1	Type of payment.....	174
5.6.2	Most recent amount of payment.....	174
5.6.3	Channel of payment.....	176
5.6.4	Method of payment.....	176
5.7	Application of enforcement and execution of the court order.....	177
5.7.1	Reason for application.....	177
5.7.2	Duration of application.....	178
5.8	Court proceeding to enforce and execute the court order.....	180
5.8.1	Summon.....	181
5.8.2	Notice of appearance.....	181
5.8.3	<i>ulh</i>	182
5.8.4	Judgment debtor mean test.....	183
5.8.5	Warrant of arrest.....	183
5.9	Involvement of lawyers.....	184
5.10	Judicial decision in enforcement and execution of maintenance order cases.....	185
5.10.1	Type of judgment.....	186
5.10.2	Duration of case settlement.....	187
5.10.3	Authorities referred in enforcement and execution of maintenance order judgment.....	187
5.11	Chapter summary.....	188
CHAPTER SIX: CONCLUSION.....		190
6.1	Introduction.....	190
6.2	Discussion on the analysis.....	190
6.2.1	Court mechanism.....	194
6.2.2	Administrative mechanism.....	203
6.2.3	<i>ulh</i>	205
6.3	Implication of the study to enforcement mechanism.....	207
6.4	Some suggestions to improve the enforcement and execution of maintenance orders.....	208
6.5	Recommendations for future research.....	211
6.6	Chapter summary.....	212
REFERENCES.....		214
APPENDIX A: Field work time table.....		223
APPENDIX B: Checklist.....		224
APPENDIX C: Master coding.....		230
APPENDIX D: Recommendation letter for fieldwork.....		236

LIST OF FIGURE

<u>Figure No</u>	<u>Page No</u>
Figure 1: Summary of action under seizure and sale	76
Figure 2: Summary of action under <i>hiw lah</i> proceeding.....	78
Figure 3: Summary of action process under judgment debtor summon	84
Figure 4: Summary of action process under execution of order for possession.....	85
Figure 5: Summary of action process under execution of order for delivery	86
Figure 6: Summary of action process under execution of seizure and deliver	87

LIST OF CHART

<u>Chart No</u>	<u>Page No</u>
Chart 1: Statistical distribution of funds and repayment of the applicant Under section 10 for the year 2011.....	150

LIST OF TABLE

<u>Table No</u>	<u>Page No</u>
Table 1 Location of the study	14
Table 2 Distribution of file cases by state.....	19
Table 3 Demographic charecteristic of judgment creditor/judgment debtor	160
Table 4 Enforcement and execution of maintenance order by court characteristic ...	165
Table 5 Enforcement and execution of maintenance order by year.....	166
Table 6 Enforcement and execution of maintenance order by type of application ...	167
Table 7 Enforcement and execution of maintenance order by method of application	169
Table 8 Classification of maintenance order	170
Table 9 Classification of payment	173
Table 10 Reason of application of enforcement and execution of maintenance order	178
Table 11 Duration to register for enorcement and execution	179
Table 12 Enforcement and execution legal process.....	181
Table 13 Judgment creditor and judgment debtor lawyers.....	184
Table 14 Judicial Decision in enforcement and execution of maintenance order cases	185

LIST OF CASES

1. 13001-037-0918-2007 *Dayang Harmona Bt Abang Sulaiman v. Ihsan Bin Haji Saufie*
2. 13001-037-0492-2007 *Faridah Bt Ibrahim v. Nafri Bin Mohamad*
3. 13001-037-0927-2007 *Dayangku Suaidiah Bt Awang Hashim v. Azharudin Bin Bawi*
4. 13001-037-0953-2007 *Fatimah Bt Yassin v. Mohd Saupi Bin Salleh*
5. 13001-037-1087-2006 *Salehah Bt Ismail v. Sham Bin Sulaiman*
6. 13001-037-0007-2006 *NorHazzah Bt Sabang v. Zakaria Bin Arifin*
7. 13001-037-0275-2006 *Jamilah Bt Usop v. Mohd Esa Bin Bujang*
8. 13001-037-0274-2006 *Muriah Bt Hamdan v. As @ Asman Bin Silly*
9. 13001-037-0383-2006 *Normah Bt Kadri v. Bujang Bin Abang Chi*
10. 13001-033-0090-2010 *Alyssa So Suez Park Abdullah v. Sofian Bin Mohd*
11. 13001-099-0461-2010 *Zawawi Bin Tan Sri Hamdan v. Marlinda Bin Mohidin*
12. 13001-037-0474-2008 *Gus @Dewi bt Haili v. Alwi Bin Mustapha*
13. 13001-037-0043-2008 *Rosenah Bt Tinggal v. Sapawi bin Morni*
14. 13001-037-0200-2008 *Normah Kadri@ Lily Kadri v. Bujang Bin Abang Chi*
15. 13001-037-0294-2008 *Nuratyqah Yasmine Abdullah v. Mohamed Haider Bin Wan Chik*
16. 13001-037-0383-2008 *Hajiah Bt Bujang v. Masli Bin Bojeng*
17. 13001-037-0631-2008 *Marina Bt Bujang v. Mohamad Daniel @ Bujang Bin Abong*
18. 13001-037-0708-2008 *Zaiton Bt Haji Johari v. Wan Mohamed Bin Wan Othman*

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21. 13001-033-0521-2009 *Nura Isyah Faizah Bt Abdullah v. Wajdi Mokhtar*
22. 13100-034-0300-2010 *Siti Hajar Bt Shuhaimi v. Radhi Bin Roshidi*
23. 13100-037-0299-2010 *Siti Hajar Bt Shuhaimi v. Radhi Bin Roshidi*
24. 13100-037-0147-2010 *Zainab Bt Benapi v. Maznazaliman bin Sebli*
25. 13100-037-0136-2010 *Chaya Bt Ramli v. Kamil Bin Daud*
26. 13100-037-0097-2010 *Azpawani Bt Mohd Azami v. Khusairi Bin Mujir*
27. 13100-037-0096-2010 *Nurhidayati Bt Ismail v. Nazri Nicholas Abdullah*
28. 07200-033-0145-2009 *Zaiti Farah Bt Ismail v. Rosli Bin Mohamed Salleh @ Ibrahim*
29. 07200-037-0233-2007 *Sharifah Khadijah Bt Syed Zubir v. Haris Bin Abdullah*
30. 07200-037-0333-2007 *Rusnani Bt Mahmud v. Ku Mahdzir Bin Ku Mahmud*
31. 07200-037-0036-2007 *Rusnani Bt Mahmud v. Ku Mahdzir Bin Ku Mahmud*
32. 14002-037-0034-2009 *Noorul Hidayu Abdullah v. Mohamad Rezainuddin Bin Mahmud*
33. 14700-037-0339-2009 *Noraishah Bt Ibrahim v. Rasid Bin Yahaya*
34. 14002-037-0014-2009 *Mazlina Bt Darul Ehsan v. Wan Mazlan Asnae*
35. 14002-037-0579-2009 *Latifah Abdul Halim v. Hj Nordin Bin Hj Taib*
36. 14600-037-0239-2009 *Maswati Bt Muhamad v. Dzulkifli Bin Alias*
37. 14002-037-0023-2009 *Satipah Yahya v. Md Isa Bin Maarof*
38. 14100-037-0262-2009 *Liza Marina Md Isa v. Syed Mohamad Shahaniz*
39. 14002-037-0381-2006 *Norazian Omar v. Suhaimi Ishak*
40. 14003-037-0635-2006 *Noor Ruqaiyah Bt Abdullah v. Abdul Rahim Abd Malik*

41. 14600-037-0160-2006 *Aderah Idris v. Abdul Karim b. Zakaria*
42. 14005-037-0889-2006 *Haironi Abdul Malek v. Abdul Rashid Mohamad*
43. 14003-037-0200-2006 *Ismahana Ismail v. Sharudin Abdullah*
44. 14002-037-0454-2006 *Hazizaton Naroslinda Nas v. Abu Bakar Kamarozaman*
45. 14003-037-0665-2006 *Che Minah Che Lah v. Ab Aziz B Mohamad*
46. 14002-037-0041-2006 *Damna Husin v. Osman Mohamad*
47. 14100-034-0214-2006 *Suriah Daud v. Wan Abdullah Haji Wan Hamat*
48. 14003-033-0303-2006 *Azura Bt Abdul Rahman v. Ahmad Bin Abd Hamid*
49. 14005-034-0506-2006 *Zaiti Akhtar Hamzati v. Azhar Samat*
50. 14500-037-0008-2006 *Mohd Rashid Baharuddin v. Kamariah Abdul Salam*
51. 14005-037-0067-2006 *Mazley Nordin v. Jeffrey Mohamad*
52. 14200-037-0072-2006 *Maymon Abdul Latif v. Syed Nequid Syed Meer*
53. 14005-037-0883-2006 *Jamaiyah Mohd Husin v. Mohd Jufri Misbah*
54. 14002-037-0077-2006 *Aizah Arshad v. Rosfarizam Md Jamal*
55. 14003-037-0987-2006 *Ismahana Ismail v. Shahrudin Abdullah*
56. 14001-037-0459-2006 *Khaliza khalil v. Azman Musa*
57. 14600-037-0189-2006 *Masmawati Muhammad v. Dzulkifli Bin Alias*
58. 14001-037-0209-2006 *Fauziah Mohd Yusof v. Anuar Ahmad*
59. 14600-037-0216-2006 *Muhammad Ikmal Hisham Abd Rahim v. Norsiah
Kamaruddin*
60. 07001-037-0082-2006 *Siti Hajar Bt Ismail v. Azli Bin Kamaludin*
61. 07001-037-0145-2006 *Fatimah Bt Pitchy v. Ab Rahman Bin Jan*
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63. 07001-037-0172-2007 *Khadijah Bee Bt Ibrahim v. Haji Ghazali Bin Hj Roslan*
64. 07001-037-0617-2007 *Rahima Bee Abdul Karim v. Jamal Bin Ibrahim*

65. 07001-037-0665-2008 *Fatimah Bt As Mohd v. Shaikh Akbar A/L Din Maydeen*
66. 07001-037-0634-2008 *Roswati Bt Abdul Wahab v. Abd Akla Bin Wan Ismail*
67. 07001--037-0512-2008 *Katmi Bt Kasnan v. Hamidon bin Khalib*
68. 07001-037-0519-2008 *Norsalbiah Bt Zainul Abdul Malik v. Mohd Zaki Bin Zainal*
69. 07001-037-0049-2010 *Rohani Yaakub v. Ideris Bin Noon*
70. 07001-037-0517-2008 *Juriah bt Mohd Ariff v. Senusi Bin Osman*
71. 07200-037-0221-2007 *Mazlina Bt Mohd Merican v. Norisom Bin Ghazali*
72. 07200-037-0158-2007 *Norhanizah Bt Shaik v. Mohamad Zamri Bin Zainal Abidin*
73. 07100-037-0470-2007 *Normashita Bt Noordin v. Ismadee Bin Ibrahim*
74. 07200-037-0073-2007 *Zaiton Bt Abd Rashid v. Mohd Noor Bin Bakar*
75. 07200-037-0107-2007 *Zaiton Bt Abd Rashid v. Mohd Noor Bin Bakar*
76. 07200-037-0036-2007 *Rusnani Bt Mahmud v. Ku Mahazir Bin Ku Mahmud*
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