

Child Maintenance in Malaysia: Are the Amounts Sufficient?

Rokiah Kadir, Safiek Mokhlis, Junaidah Abd Karim, Fauziah Abu Hasan

Faculty of Business, Economics and Social Development,
Universiti Malaysia Terengganu, 21030 Kuala Nerus, Terengganu.

Correspondence: Safiek Mokhlis (email: safiek@umt.edu.my)

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Abstract

Typical child maintenance issues following divorces included custodial mothers not having maintenance orders, fathers not paying the amounts ordered, or the amounts ordered far too low to maintain the children at subsistent level despite the fathers affording to pay more. Insufficient amount of maintenance can affect children's protection and upbringing. The determination of whether the amounts of maintenance ordered by courts were sufficient to maintain the children at subsistent level has not been extensively explored so far. This study aimed at answering this question by analysing, with specific focus on age categories of children, how much has been claimed in child maintenance and how much has been granted by the Syariah courts. The study also analysed maintenance orders in comparison with the typically most important factor in child maintenance cases, i.e., fathers' incomes. Whilst existing research cases been more focused on only selected decisions, and largely reported only on the amounts granted in court orders, this study analysed all child maintenance cases, and adopted a descriptive, non-conventional method by profiling quantitative details of decisions, which is necessary since child maintenance amounts are decided on case-by-case basis, with judges exercising broad discretion. The findings showed that, over the 50-year period, amounts claimed by mothers and amounts ordered by the courts kept increasing, but, despite the increase, the amounts ordered so far were still small and insufficient based on the current cost of living. The finding may be of assistance to family law practitioners, judges, and parents seeking more thorough information on the assessment issue of child maintenance. The findings should also provide awareness to child poverty economic analysis in future, particularly for policy responses and implications.

Keywords: Child maintenance, child support, fathers' salaries, maintenance assessment, minimum amount, sufficient amount

Introduction

The rate of Muslim divorces in Malaysia has kept increasing year to year. The rate in 2019 increased 13 percent from 2018, with the number of divorces reaching 45,502 (Department of Statistics Malaysia, 2020). As a direct result of the increased rate, the number of children being raised in single parent households has risen. With this rise, another related issue is also expected to increase, that of child maintenance. Typical child maintenance issues following divorces include custodial mothers not having maintenance orders, fathers not paying the amounts ordered, or the

amounts ordered far too low to maintain the children at subsistent level despite the fathers affording to pay more (Elrod, 1990). Insufficient amount of maintenance can affect children's protection and upbringing. Research suggests that child maintenance is positively associated with a number of children's well-being indicators, such as educational attainment and cognitive outcomes (Nepomnyaschy & Garfinkel, 2010). The maintenance payment can be used towards creating a positive environment for them, to ensure that their intellectual, moral, and physical development are more effective.

In the course of a divorce proceeding, custody and maintenance arrangement can be agreed on between the parents. If the mother is to get the custody, they can decide on the amount and ways child maintenance will be paid to the custodial mother. Any agreement between the parents will be recorded as an order of the court without having to go through a trial. If the couple have disagreements on who gets the custody of the children, they may decide to litigate, and if the mother is awarded custody, which is more likely to be the case, she may apply for maintenance order for the children from the father (Kadir, Mokhlis & Kahar, 2020; Kadir, Abdullah & Mokhlis, 2021). The application will be assessed by the court, and it will decide the amount to be awarded. One of the important considerations in the application for maintenance is how much to claim, and an even more important question is how much will be determined. Determining how much amount to be ordered is the job of the court, which has been given power by the law. It requires maintenance to be assessed according to the means and needs of the parties involved (Section 61, Islamic Family Law (Federal Territories) Act 1984 (Act 303).

Until recently, there were no guidelines to help courts determine the amount, forcing judges to determine the order using their own discretion. Profiling quantitative details of decisions would be necessary since child maintenance amounts are decided on case-by-case basis, with judges exercising broad discretion. Existing research has examined assessment issue of child maintenance mostly through in-depth qualitative case analysis. In addition, it has been more focused on only selected decisions, and largely reported only on the amounts granted in court orders. This study therefore quantitatively investigated how child maintenance cases have been decided by the Syariah courts in relation to the amounts ordered and at what percentages of the claimed amounts and fathers' salaries the amounts have been ordered. The investigation involved an analysis of 93 cases decided between 1969 and 2020. It is hoped that the study would contribute to a clearer understanding of assessment issue of child maintenance from quantitative perspectives. The finding may be of assistance to family law practitioners, judges, and parents seeking a more thorough information on the assessment issue of child maintenance.

Child maintenance under the Islamic law of Malaysia

The duty to maintain children is provided under the Islamic Family Law (Federal Territories) Act 1984. Section 72(1) under the Act provides that, "except where an agreement or order of Court otherwise provides, it shall be the duty of a man to maintain his children, whether they are in his custody or the custody of any other person, either by providing them with such accommodation, clothing, food, medical attention, and education as are reasonable having regard to his means and station in life or by paying the cost thereof". The man referred to under section 72(1) is none other than the father (Mohd Zin et al., 2021). Under Hukum Syara', the court is also empowered to order a person liable to pay or contribute towards the maintenance of a child where it is satisfied that having regard to his means it is reasonable so to order (section 72 (2). The Court may at any time

“order a man to pay maintenance for the benefit of his child (a) if he has refused or neglected to provide reasonably for his child; (b) if he has deserted his wife and the child is in her charge; (c) during the pendency of any matrimonial proceedings; or (d) when making or subsequent to the making of an order placing the child in the custody of any other person” (section 73(1)).

Child maintenance is meant to cover the basic cost of children’s upbringing. In these days, the cost of raising children can run quite high. Child maintenance may be used to purchase groceries and appropriate clothing. Part of child maintenance also covers payments for children’s related housing costs as well as educational expenses. Even if the children are attending government schools, educational expenses are still incurred, in the forms of fees, payment for school uniforms, transportation costs, payment for books, and lunch money. In past cases, court-ordered maintenance covered the following costs:

- Food (*Rokiah v. Abdul Aziz* [1988] 4 (1) JH 156-164, *Hasanah bt Abdullah v. Ali b. Muda* [1999] 13 (2) JH 159-184.
- Clothings (*Hasanah bt Abdullah v. Ali b. Muda* [1999] 13 (2) JH 159-184, *Sanisah bt Saad v. Zulkifli b. Abd Ghani* [2002] 15 (2) JH 197-207, *Mohd Hassan b. M. Ghazali v. Siti Sharidza bt. Mohd. Sidque* [2004] 18 (2) JH 269-277.
- Education (*Wan Tam v. Ismail* [1991] 8 (1) JH 55-57, *Rohana bt. Zakaria v. Mokhtar b. Abdul Talib* [2009] 27 (2) JH 279-301, *Mohd Hassan b. M. Ghazali v. Siti Sharidza bt. Mohd. Sidque* [2004] 18 (2) JH 269-277, *Faridah Hanim bt Omar v. Abd. Latif Ashaari* [2006] 22 (1) JH 27-45.
- Medical expenses (*Hafizah Indra bt. Abdullah v. Jamaluddin bin Eusoff* [2006] 22 (1) JH 54, *Azura bt Adna v. Mohd. Zulkefli b. Salleh* [2001] 14 (2) JH 179-224, *Azizan b. Marzuki v. Maharum bt Abdullah* [2005] 1 CLJ (Sya).
- Festive expenses (Hari Raya) (*Sri Utama Dewi Kasman v. Abu Bakar b. Abdullah* [2010] 30 1 JH 111-129, *Rohana bt. Zakaria v. Mokhtar b. Abdul Talib* [2009] 27 (2) JH 279-301, *Faridah Hanim bt Omar v. Abd. Latif Ashaari* [2006] 22 (1) JH 27-45, *Roslaili bt Abd Ghani dan seorang yang lain v. Ahmad Azman b. Yaacob* [2006] 1 SHLR 135.

Conditions relating to child maintenance eligibility are not laid down under the Islamic Family Law (Federal Territories) Act 1984. The criteria, however, are provided by the case law. Under this law, children are entitled to maintenance when they have no property and are unable to earn an income, are poor, and are unable to support themselves. Individuals deemed unable to support themselves include children under the age of puberty, unmarried daughters, and children who are pursuing education (*Faridah Hanim v. Abd. Latiff* [2006] 1 SHLR 135). The criteria were applied in *Jinah v. Aziz* (1989) 6 JH(II) 344, where the plaintiff’s claim for maintenance of five children was approved for only three children, as the other two children were already able to become independent and were no longer pursuing education. Children are entitled to maintenance until they attain the age of eighteen. If they are still in education, they must be maintained until they complete the undergraduate level (Ibrahim & Mohd, 2013).

As provided under Section 72(1), fathers’ responsibility to pay maintenance remains in effect whether the children are in their custody or the custody of any other person. The ongoing obligation will not change in cases of divorce. The provision was applied in *Mansor v. Che Ah* (1975) 2 JH 261, where the court decided that the father was responsible for the maintenance of his three children whose custodial rights were given to the mother. The provision was also applied in *Darus v. Salma* (1969) 3 JH 117, where the court decided that the father’s responsibility to provide maintenance did not cease despite the mother’s agreement that she would not make any

claim against the husband after the divorce. Thus, it is clear that the father's responsibility to provide for his child is obligatory. This responsibility will continue as long as the father has an excess of property and is able to work. This responsibility will not cease unless the father falls into poverty or is unable to earn a living due to physical and mental disability. In this situation, the responsibility to provide child maintenance will be transferred to others (*Samsiah binti Yaacob v. Mohd Farid bin Yusoff* [2017] 3 LNS 44).

As provided by the Islamic Family Law (Federal Territories) Act 1984, child maintenance should be assessed according to the means and needs of the parties involved (Section 61). However, the elements of means and needs are not detailed under the Act (*Samsiah binti Yaacob v. Mohd Farid bin Yusoff* [2017] 3 LNS 44). What constitutes a sufficient amount is not discussed and decided by the jurists clearly. The adequacy of the maintenance is highly dependent on the practice of the society (Ahmad, 2015). In determining the maintenance of children, the court would take into consideration many factors before exercising its discretions (*Samsiah binti Yaacob v. Mohd Farid bin Yusoff* (2017) 3 LNS 44). These factors include the needs of children, fathers' incomes, and their ability to pay. How much maintenance can be ordered against the fathers? Based on past part decisions, the amount given should be able to cover the basic needs of a person to continue his life, such as the need for food, clothing, shelter, medical and education (*Azizan Marzuki v. Maharum Abdullah* [2005] 1 CLJ (Sya)). The amount of maintenance of the children has to be reasonable and sufficient taking into consideration their interest and welfare and the capability of the defendants to pay maintenance to all of their children (*Azrina bt Omar v. Ghazali bin Sharudin* [2011] 2 SHLR 61). In deciding the appropriate amount, factors such as child's age, current expenses, and lifestyle may well be relevant (*Siti Norzatulshima bt Abdullah v. Abdul Aziz bin Mat Hassan* [2015] 42 (1) JH).

As per the foregoing, the amount of child maintenance is determined primarily based on fathers' incomes while taking into account the children's expenses as well as fathers' liabilities. Fathers' incomes from all sources will be reviewed by the courts. They may subtract from the income certain expenses and obligatory deductions, such as payment for fathers' costs of living and income taxes. Which expenses will be taken into consideration will depend on what the expenses relate to and whether the expenses claimed can successfully be proven. For example, in case No: 04100-022-0125-2008, an expense claim by the father was rejected by the court. The father brought two witnesses to verify his claim, but when asked, they knew nothing about the expense. They only asserted that the father was not able to pay for the maintenance of his two children. The plaintiff father did not produce any receipts, documents, or an original marriage certificate to support his claim relating to his new marriage. In the case of *Nora bt Ahmad v Zabarni bin Chik* (2009) 1 SHLR 178, a claim of the father's liability was reasonably scrutinised by the court. The court concurred with plaintiff's counsel that deduction for housing loan for PT1940 starting from April should not be taken into consideration. This was because the defendant's father already had a house in which he was living, as well as another house. The court viewed that the deduction of the housing loan for an amount of RM1,168.25 was not necessary and was deliberately made to avoid paying maintenance to his children. In case No: 04100-022-0125-2008, an expense claim in the form of Astro monthly subscription of RM74.90 (RM898.80 annually) made by the plaintiff father was rejected by the court. The court viewed that the subscription was not necessary, and that the plaintiff should have prioritised the basic needs of children's upbringing first instead of the subscription, whose amount was quite excessive.

Method

In this study, the amount of child maintenance in relevant cases was examined through a quantitative method. Child maintenance cases used in the analysis were those decided under the Islamic Family Law (Federal Territories) Act 1984 (Act 303) and the equivalent provisions under state enactments. Reported cases published in the Current Law Journal, Lexis Nexis and *Jurnal Hukum* databases were retrieved using appropriate search terms, such as *nafkah anak*, *nafqah*, and child maintenance. Prior to analysis, the cases generated by the search were reviewed, where cases with no mention of maintenance amount in court orders and duplications were screened out. The final number of cases obtained after the screening process was 93. These cases were analysed through an instrument, which was developed to profile and process various information extracted from the cases.

Children's ages in the questionnaire were categorised into pre-school, primary school, secondary school, and tertiary level of education. The monthly amount of maintenance based on children's age categories was obtained through recalculation of all amounts stated in the orders, including annual payments for *Hari Raya*, school registration, uniform, and annual expenses. Information on children's age was extracted directly when the case reports mentioned children's year of birth, or indirectly when reports only mentioned children's education stage. The data were analysed using IBM SPSS Statistics version 26 to calculate frequencies, percentage, mean and median.

Results

The 93 cases involved a total of 232 children. More than two-third of the cases (76 cases) involved one to three children (Table 1). Most of the cases involved two children (33 cases). More than two-third of the cases involved maintenance order applications made by mothers (74 cases). Majority of the reported cases were decided in Selangor and Terengganu courts (22 and 15 cases respectively). Most of the cases were heard in the Subordinate Courts (Table 2).

Table 1. Number of children, type and state

Characteristic	Category	Frequency	Percent
Number of children	1	19	20.4
	2	33	35.5
	3	24	25.8
	4	10	10.8
	5	7	7.5
Type of case	Maintenance order	52	55.9
	Appeal	13	13.9
	Committal order	11	11.8
	Variation order	15	16.1
	Others	2	2.1
State	Kedah	2	2.2
	Perlis	1	1.1
	Pulau Pinang	8	8.6
	Perak	7	7.5

Selangor	22	23.7
Negeri Sembilan	9	9.7
Melaka	7	7.5
Johor	2	2.2
Terengganu	15	16.1
Kelantan	7	7.5
Pahang	1	1.1
Sarawak	2	2.2
Kuala Lumpur	10	10.8

Table 2. Type of court and number of cases per year category

Court	< 1979	1980-89	1990-99	2000-09	> 2010	Total
Syariah Subordinate Court	4	12	1	14	14	45
Syariah High Court	3	8	5	17	6	39
Syariah Appeal Court	4	2	2	1	0	9
Total	11	22	8	32	20	93

Range and average of amounts ordered

Shown in Table 3 is an overview of the range of child maintenance amounts that have been ordered by courts throughout the 40 over year period. First, for children aged 3 and below, the amount granted stood within the range of RM10 to RM316 a month, with the mean values between RM27 and RM219. Next, the range of amounts for the 4–6 year old category was RM12 to RM921, with the mean figures between RM24 and RM398. For 7–12 year old category, the amounts ordered were between RM15 and RM956, with the mean values between RM38 and RM552. Children aged 13–17 received the maintenance amounts between RM15 and RM956, with the mean figures between RM77 and RM488. Finally, the 18 year old and above category saw the amounts between RM40 and RM537 per child, with the mean figures between RM271 and RM224. Zero value meant the application for maintenance was rejected or application for variation or cancellation was accepted.

Table 3. Monthly amount of child maintenance ordered by courts for each age category and year category

Age category	Statistics	< 1979	1980–89	1990–99	2000–09	> 2010
< 3	Min-max	10.00 - 40.00	32.50 - 100.00	50.00 - 200.00	166.67 - 316.67	-
	Mean	27.00	50.36	116.67	219.45	-
	Median	30.00	45.00	100.00	175.00	-
4–6	Min-max	12.00 - 40.00	32.50 - 800.00	100.00 - 250.00	90.00 - 600.00	200.00 - 921.67
	Mean	24.25	157.34	187.50	202.83	398.93
	Median	22.50	50.00	200.00	183.50	387.34
7–12	Min-max	15.00 - 110.00	25.00 - 100.00	70.00 - 200.00	100.00 - 600.00	233.30 - 956.94
	Mean	38.20	50.07	117.50	245.30	552.92
	Median	20.00	36.25	100.00	200.00	441.00
13–17	Min-max	15.00	35.00 - 125.00	100.00	100.00 - 412.00	0 - 956.94
	Mean	-	77.87	-	238.95	488.14
	Median	-	86.11	-	250.00	600.00
> 18	Min-max	-	40.00	-	0 - 610.00	0 - 537.50
	Mean	-	-	-	271.50	224.50
	Median	-	-	-	300.00	136.00

Range, average and percentage relating to amounts claimed

Shown in Table 4 is information on the total amounts claimed by the mothers for eligible children in the family and the total amounts awarded by the courts. Zero figures under the amount claimed meant that the information was missing in the cases consulted, and zero figures under the amount granted indicated that the mothers lost the cases and obtained nothing from the maintenance order applications. Generally, both the amounts claimed and awarded kept increasing over the years to reflect the increasing cost of living. For example, the amount claimed by mothers for 2 children before 1979 was RM20, but the amount increased 20 years later to RM1330.

Table 4. Monthly amount claimed by mothers and amount ordered by courts

< 1979		
No. of children	Amount claimed (RM)	Amount ordered (RM)
1	–	25.00
2	20.00 – 100.00 (60.00)	20.00 – 60.00 (40.00)
3	100.00 – 250.00 (175.00)	28.00 – 120.00 (74.00)
4	70.00	60.00
5	–	–
1980 – 1989		
No. of children	Amount claimed (RM)	Amount ordered (RM)
1	100.00 – 850.00 (325.00)	45.00 – 800.00 (298.75)
2	40.00 – 300.00 (143.13)	0 – 250.00 (87.50)
3	120.00 – 350.00 (230.00)	93.00 – 300.00 (190.75)
4	160.00 – 300.00 (230.00)	130.00 – 135.00 (132.50)
5	500.00	266.67
1990 – 1999		
No. of children	Amount claimed (RM)	Amount ordered (RM)
1	70.00 – 400.00 (235.00)	70.00 – 250.00 (160.00)
2	300.00 – 400.00 (346.58)	0 – 300.00 (166.67)
3	500.00 – 600.00 (550.00)	150.00 – 600.00 (375.00)
4	800.00	400.00
5	–	–
2000 – 2009		
No. of children	Amount claimed (RM)	Amount ordered (RM)
1	200.00–600.00 (438.33)	158.33–600.00 (325.00)
2	200.00–1300.00 (667.68)	200.00–1200.00 (515.50)
3	300.00–1433.33 (713.22)	300.00–900.00 (516.67)
4	2000.00–2800.00 (2400.00)	800.00–1310.00 (1055.00)
5	1800.00–2000.00 (1900.00)	1800.00–2000.00 (1900.00)
> 2010		
No. of children	Amount claimed (RM)	Amount ordered (RM)
1	300.00–500.00 (366.67)	80.00–391.67 (257.22)
2	1550.00–6510.00 (4030.00)	0–1200.00 (533.33)
3	1200.00–8250.00 (3738.67)	410.00–2870.83 (1609.16)
4	0–5516.67	1600.00–2166.67 (1883.34)
5	1833.33–7166.67 (3986.56)	1166.67–2887.50 (1941.11)

Note: The mean is shown in parenthesis

Shown in Table 5 is the different percentages of the claimed amounts decided as the award amounts and the corresponding number of cases according to year category. The claimed amounts, as argued by mothers, represented the maintenance level needed to raise the children. As shown in Table 5, the percentage figures varied widely. Zero percentage of the amounts claimed meant that the claims were rejected, possibly because the children were no longer eligible to be maintained. Higher percentages of the amounts claimed indicated that courts made lesser adjustments to the claimed figures. In the case of lower percentages, courts probably considered it was unreasonable to require the fathers to pay the full amounts as claimed by the mothers on the ground that the expenses related to the children were excessive. Lower percentages for the ordered amounts may also be attributable to fathers' limited or reduced ability to pay. As shown in the table, a higher percentage, in the range between 76–100% of the claim figures, was awarded in most cases decided in 1980–1989 and 2000–2009. This reflected that the claimed amounts represented more appropriate levels of child maintenance. In instances where the ordered amounts represented 100% of the amounts claimed, the cases involved were cases with arrangement of prior agreements, consent orders, or absent defendants. In one case, the amount ordered was adjusted upward to more than 100% (109%) of the claimed amount because the claimed amount was only an approximate figure, and the court decided that the actual cost of food, education, etc., which was to be based on necessity and not luxury, could be a little higher (Case no. 04002-024-0330-2009). The amounts claimed were not mentioned in 10 case reports and hence were excluded from analysis.

Table 5. Percentage of amount claimed as amount ordered and corresponding number of cases for each year category

Percentage of amount claimed as amount ordered	Number of cases				
	< 1979	1980 – 89	1990 – 99	2000 – 09	> 2010
0 - 25%	0	1	0	1	2
26 - 50%	2	3	2	3	4
51 - 75%	1	3	3	4	5
76 - 100%	2	12	2	13	1
> 101%	0	0	0	1	0

Range and average of amount ordered as percentage of fathers' salaries

Previously, calculation of child maintenance was not based on a clear guideline. The amount of maintenance was usually determined by the court based on the facts of each case. With the issuance of the Practice Direction No.5 in 2019, the amount of child maintenance a father needs to pay will depend on his earning as well as the number of children he is obliged to pay maintenance to. For one child, a father is required to pay 23%, for two children, 33%, for three children, 40%, and for four or more children, 53% of his salaries (Table 6).

Table 6. Rate for child maintenance based on fathers' salaries

No. of children	Rate (%)	RM 1000	RM 1500	RM 2000	RM 2500	RM 3000	RM 3500	RM 4000	RM 4500	RM 5000
1	23	230	345	460	575	690	805	920	1035	1150
2	33	330	495	660	825	990	1155	1320	1485	1650
3	40	400	600	800	1000	1200	1400	1600	1800	2000
> 4	53	530	795	1060	1325	1590	1855	2120	2385	2650

Source: Practice Direction No. 5, 2019

The amount of child maintenance awarded in past cases in terms of the percentage of fathers' earnings is as shown in Table 7 and Table 8. In Table 7, maintenance amounts ordered as percentage of fathers' salaries were categorised by year of the cases. For 1 child, the amounts granted were within the range of 6.29% and 33.33% of father's salaries. For 2 children, the lowest amount was 5.04% and the highest amount was 50%. For 3 children, the lowest amount ordered was 10.25%, and the highest 39.10%. For 4 children, the range of amounts stood between 21.75% and 35.30% of fathers' earnings. For 5 children, the range of amounts stood between 11.90% and 54.26%. Comparing the range of the award amounts with Practice Direction guideline, it can be seen that only several of the award amounts, which were for 1, 2, and 4 or more children, met the guideline's minimum percentages (Table 7). These award amounts could be found in 5 of the 47 cases (Table 8).

Table 7. Awarded maintenance amount as percentage of fathers' salaries for each year category

Number of children	< 1979 (%)	1980 – 89 (%)	1990 – 99 (%)	2000 – 09 (%)	> 2010 (%)
1	12.5	6.29–26.67 (13.62)	12.00	7.92–33.33 (17.00)	13.06
2	9.03 - 27.91 (16.98)	8.33–23.19 (15.76)	22.39	13.33–50.0 (26.18)	5.04–22.0 (13.52)
3	–	14.44–22.32 (18.38)	25.00–34.88 (29.94)	12.50–39.10 (22.64)	10.25–31.91 (23.37)
4	28.57	29.21–35.30 (32.26)	–	21.71–27.19 (24.45)	27.08
5	–	–	–	–	11.90–54.26 (31.95)

Note: The mean is shown in parenthesis

As shown in Table 8, the amounts awarded that exceeded the suggested percentage in the guideline were present in only 5 cases. Only 2 out of 10 cases involving 1 child were given maintenance amounts more than 23% of fathers' salaries, with the highest percentage being 33.33%. Only 2 out of 14 cases involving 2 children were awarded more than 33%, and only 1 out of 9 cases involving 4 or more children was given higher than the 53% requirement (54.26%). This analysis would have provided a better picture if the other 28 case reports included information relating to fathers' salaries. From the limited data, it can be seen that most of the cases (42 out of 47) were largely awarded the percentage lower than what the Practice Direction has recommended (Table 8).

It can also be seen from the cases studied that the average percentage of fathers' salaries calculated for the awards throughout the 50-year period was lower than the rates in the Practice Direction guideline. None of the percentages' mean values met the guideline's minimum rates of 23%, 33%, 40% and 53% for 1, 2, 3, and 4 or more children, respectively.

Table 8. Number of cases with rates lower and higher than rates in practice direction

Number of children	Rate based on Practice Direction (%)	No. of cases with rates lower than Practice Direction's rate	No. of cases with rates higher than Practice Direction's rate	Total case
1	23	8	2	10
2	33	12	2	14
3	40	14	0	14
4 or more	53	8	1	9
		42 cases	5 cases	47 cases

Note: Missing value = 28 cases

The issuance of Practice Direction No. 5 as guideline is considered to have helped solve several issues relating to child maintenance amounts. Previously, in setting the amount of maintenance, the law gave judges a great deal of discretion. To use judicial discretion to their advantage, parties relied on the ability of their lawyers to present most favourably the circumstances of their cases. With the guideline, judges' discretion in determining the maintenance awards was replaced with specified rates calculated on the basis of fathers' earnings and the number of children. This standard formula is believed can better protect the interest of children by ensuring sufficient awards and fathers by ensuring consistent orders by the courts.

The advantage of using numerical guideline for the determination of child maintenance amounts is that the objectivity of the process increases. It may encourage child maintenance disputes to be settled out of court. With the guideline, parents can be spared the distress of having to deal with evidentiary burdens as well as court appearances, money spent for the costs of litigation can instead be used to cover the cost of raising the children, and the amounts of the awards are increased, which can help female-headed households move out of poverty.

However, the guideline does not detail everything. It does not specify what constitute fathers' earnings, whether they are restricted to employment salaries or also include income derived from dividends, rent, or earnings from side businesses. It also does not mention whether earnings refer to gross or net earnings, and if net earnings are used in the formula what deductions are allowable. The guideline only uses the phrase 'total earnings as determined by the court', which possibly indicates that all earnings are to be counted in the assessment of the amount. As it stands, decisions regarding this matter are left to courts' discretion.

Discussion

This paper examined how much has been claimed in child maintenance and how much has been granted. The study also analysed maintenance orders in comparison with the typically most important factor in child maintenance cases, i.e., fathers' incomes. The foregoing analysis provided a summary description of the maintenance amount that has been granted by courts during the 50-year period. The study found that the amount of claims by mothers and the amount of orders by the courts kept increasing over the years, but the amounts of maintenance orders so far were still small and insufficient based on current cost of living. The average amounts ordered by the courts barely met the recommended minimum amounts for the poverty level and were way too low in light of the actual cost of living. The study also found that the average percentage of fathers' salaries that made up the ordered amounts stood nowhere near the minimum rate of 23% stated in Practice Direction No. 5 issued in 2019.

From the preceding analysis, it can be seen that the average awards saw an upward trend over the years, which reflected that the determination of the ordered amounts took into account the increased cost of living. However, the amounts were still relatively small if compared to the cost of living (Table 9) (Waiz, 2019). The statistic for average award for the most recent years (>2010) showed that children aged 4–6 received only 40% of the actual cost, children aged 7–12 only 72%, children aged 13–17 only 54%, and children aged 18 and above only 17%. The highest average amount was the one given to children aged of 7–12, at 72% of the actual cost. In addition, the amounts did not fare very well when compared to the minimum actual cost of raising children calculated by Ahmad (2015), who analysed average spending of children in families at different income levels (Table 10). Using Ahmad's Table as comparison, the average amounts barely met

the recommended minimum amounts for the poverty level. For middle income level, the maintenance orders were generally inadequate to cover the actual costs of raising children. Maintenance amount of children aged 18 and above was indicative of this inadequacy; the average amount of RM224 was only 13% of the expenditures for children studying in public universities based on Waiz’s Table and about 37% based on Ahmad’s Table. Clearly, as comparisons to Waiz’s Table and Ahmad’s Table have shown, the average amounts granted by the courts were way too low in light of the actual cost of living.

Table 9. Monthly cost of raising a child for each age category

Age	School / tertiary education	Amount (RM)
< 2		756
3 - 6		988
7 - 12	Government primary school	765
	Private primary school	1282
13 - 17	Government secondary school	899
	Private secondary school	1524
18 - 19	Matriculation / foundation in public universities	1300
	Foundation in private universities	3633
20 - 23	Public universities	1700
	Private universities	4133

Source: Adapted from Waiz, 2019

Table 10. Monthly minimum maintenance for each age category and income category

Age	Minimum maintenance (RM) based on income category		
	B40	M40	T20
< 4	498	498	498
4 – 6	340	405	526
7 - 12	429	592	781
13 - 17	460	635	824
> 18	600	600	600

Source: Ahmad, 2015

Conclusion

It is hoped that the study would contribute to a clearer understanding of assessment issue of child maintenance from quantitative perspectives. The finding may be of assistance in future litigations to family law practitioners, judges, and parents seeking a more thorough information on the assessment issue of child maintenance. The findings should also provide awareness to child poverty economic analysis in future, particularly for policy responses and implications. One of the factors that can contribute to the adverse economic consequences of divorce is insufficiency of the award amounts. Insufficient maintenance amount can result in inferior care and living conditions for the children. Unrealistically low child maintenance orders combined with the custodial mothers’ reduced earning capacity due to increased childcare responsibilities may result in more women and children receiving government’s financial assistance. One of the ways that may help resolve this problem is by increasing the amount of child maintenance owed by the fathers.

The summary description in this study can provide an overview of how child maintenance was assessed in the past. However, taking into consideration missing information in case reports, this study is considered preliminary, and the findings should not be viewed as conclusive. Nevertheless, from the study emerged some ideas and evidence warranting further research. Future studies can analyse larger database of unreported cases and ascertain the issue of maintenance assessment through other statistical methods. Future studies may also examine the implementation of the guideline under the Practice Direction. The implementation is expected to provide an opportunity to achieve the goal of maintenance amount adequacy. It may also improve the predictability of the awards and therefore may encourage settlement agreements without the trial process. To discover the answers, such future studies may investigate settlement and adequacy issues in decisions after the issuance of the guideline.

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