

**DOES LEGAL REPRESENTATION INFLUENCE THE AMOUNT OF AWARDS IN
CHILD MAINTENANCE? A QUANTITATIVE ANALYSIS OF SELECTED CASES
IN MALAYSIAN SYARIAH COURTS**

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ABSTRACT

Background and Purpose: Cases of child maintenance application in courts could have at least one party without counsel representation. Self-representation may lead to litigants' inability to obtain fair outcomes. The impact of legal representation and self-representation on case outcomes has not been extensively studied. This study sought to examine whether self-represented mothers or mothers represented by lawyers were the ones who obtained more promising outcomes in terms of the amounts of awards.

Methodology: This quantitative study involved 82 first-instance and appeal cases decided in Syariah courts from 1969 to 2020. Relevant data on litigants and case decisions were extracted from these case reports and then statistically analysed using IBM SPSS Statistics version 26. Case reports were retrieved from the Current Law Journal, Lexis Nexis, and *Jurnal Hukum* databases by conducting case searches using a list of search terms, including *nafkah anak*, *nafqah*, and child maintenance.

Findings: The finding indicated that representation for mothers did not significantly influence the total amounts of awards. Self-represented mothers were also shown to have won higher amounts in proportion to fathers' incomes. Evidence relating to fathers' incomes and children's expenses significantly influenced the award amounts. The amounts were higher when these details were

presented, as proven by their inclusion in case reports. Self-represented mothers fared better than mothers with lawyers when these determinants were presented.

Contributions: Through this study's findings, parties and counsels will be better informed of past trends involving full, semi, and non-representation in cases involving child maintenance orders.

Keywords: Child maintenance, Act 303, legal representation, self-representation, child support.

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1.0 INTRODUCTION

Family law litigants may not have been able to obtain legal representation or may have opted for self-representation instead. The phenomenon has led to concerns that unrepresented parties may not achieve proper case outcomes. Despite the availability of information on the internet, concern still exists regarding whether individuals can effectively represent themselves in court proceedings without assistance from a trained counsel and with experience in the law. It is feared that self-representation may lead to litigants' inability to obtain fair outcomes in their cases (Greacen, 2014). A study conducted in Canada showed that litigants generally believed they would have better outcomes if they had legal representation. Lawyers and judges believe that self-represented litigants have worse outcomes than those who have lawyers, whether a case is settled by negotiation or resolved in court proceedings (Birnbaum, Bala, & Bertrand, 2012).

Self-representation has also been prevalent in cases of application for child maintenance orders. Because mothers are the custodial parents in most cases (Kadir, Mokhlis, & Kahar, 2020; Kadir, Abdullah, & Mokhlis, 2021), mothers almost always apply for child maintenance. In so doing, they have to face the challenges that arise from being the plaintiffs in a civil action while at the same time having to struggle to earn a living and provide for their children's basic needs. To initiate the application, mothers may decide to engage a lawyer, but hiring counsel representation requires financial resources, particularly if they are not eligible to receive assistance from government lawyers. Mothers who want to avoid litigation expenses may decide to handle the case themselves. Self-representation, however, is not without risk, as the legal rules of both substance and procedure must be the same for litigants with and without

lawyers. Self-represented mothers will have to try to navigate the justice process and court system independently. They may be disadvantaged by their inability to negotiate with the other parties and to understand and comply with court processes (Hunter et al., 2002). In cases of semi-representation, smart lawyers may try to postpone the hearing date to pressure the financially struggling mothers to accept an immediate but relatively lesser maintenance offer (Hunter, 1983).

To date, how legal representation or the lack of representation has affected case outcomes in child maintenance applications is not well known, as it has not been extensively studied. Therefore, the present study aimed to fill the research gap. It sought to examine whether self-represented mothers or mothers represented by lawyers were the ones who obtained more favourable outcomes in terms of the award amounts. It is hoped that the findings will provide some insights into the role of legal representation in monetary outcomes in cases concerning child maintenance assessment. Parents and counsels will be better informed of past trends involving full, semi, and non-representation and their effects on outcomes in child maintenance awards.

2.0 LITERATURE REVIEW

2.1 The Role of Lawyers

Generally, the role of lawyers in child maintenance cases, as with other cases of judicial proceedings, is to act as legal representatives for parties in dispute, with the main goal of obtaining the best award amount for their clients. Their role is important to the clients, as clients, being laymen, cannot reasonably be expected to understand court procedures and strategies to win the cases. On the other hand, lawyers have substantive legal knowledge, understanding, and knowledge of procedures, as well as experience in contentions and strategies that are likely to succeed in litigation. The lawyer's function is still needed even in cases where the clients may have legal knowledge to handle the case. Lawyers can make better judgements, uninfluenced by feelings, than the parties who handle the cases directly due to the lawyer's personal distance from the issues being litigated. A lawyer can provide reasons for the outcomes and give greater assurance that the courts hear the client's story and arguments (Poppe & Rachlinski, 2016).

The role of legal representation can be better understood with reference to the legal modes and procedures used in case adjudication. The adjudicative process worldwide is governed by two types of legal traditions: adversarial and inquisitorial legal systems. The goal of both the adversarial and inquisitorial systems is to ascertain the truth. Common law countries

use the adversarial system to ascertain facts in the adjudication process, where the judges take a more passive role by listening to arguments from both parties. The judges serve as referees, who will not investigate the facts directly but will have to rely on the plaintiffs' and the defendants' arguments to determine the facts. They rarely intervene to ask questions and interact with the witnesses during an adversarial setting. The lawyers representing the plaintiffs and the defendants take a more active role, gathering evidence and presenting the evidence and arguments for applying the law to the judges. The adversarial system is essentially the contest between the lawyers, who are mainly involved in the competitive process to accurately determine the facts and application of the law. Meanwhile, the inquisitorial system is associated with civil law legal systems. The judges are primarily responsible for controlling the collection of the evidence necessary to resolve the cases. As such, they take a more active role by asking questions to the parties and witnesses. Due to the increased role of the judges, legal representation plays a minor part in court proceedings (Spencer, 2016).

The influence of legal representation on the trial process is more apparent in adversarial systems. In this system, the legal argument is prepared and presented by lawyers who argue for their clients with the sole aim of helping them win. This arrangement is due to the passivity of the judges, who leave control over significant parts of the process in the hands of the lawyers. In addition to being in charge of litigations during the trials, the lawyers are also responsible for the entire legal preparation process (Agmon, 2021).

In Malaysia, the system applicable to the Syariah court is likely to combine adversarial and inquisitorial systems. The court may call any party to adduce evidence and inspect any place or thing at any stage or proceeding (Mohamed Adil, 1997). The main role of the lawyers as representatives for the litigants in trial proceedings is to argue for the rights of the clients while also acting as assistants to the Court in terms of the proceedings and fact-finding of the cases so that justice can be upheld truthfully (Dahalan et al., 2019). Syariah judges generally practice the adversarial method in case trials, with inquisitorial elements applied in case investigations (Muhammad Saifullah & Abdullah, 2021).

The issuance of Practice Direction No. 7 in 2019 by the Department of Syariah Judiciary facilitates applying an inquisitorial approach to civil cases. The practice direction provides guidelines on how the inquisitorial method may be implemented. The guideline may be applied in civil cases, including those without legal representation (3(3), and the judge may ask any question in any form to any party or witness at any time for fact-finding (3(2). When a case is brought to the court, and the judge deems it necessary to conduct the trial through an inquisitorial manner, the judge may decide which party will begin and the order of speech in

the trial (4(1)(a). The judge may ask questions to anyone at any time deemed appropriate without following any order (4(1)(b). He may call or question any person present as a witness or re-examine a witness who has been questioned at any stage of the trial or proceeding (4(1)(c). He may order parties to present additional affidavits or other documents, and allow an oral hearing for interlocutory applications during the proceeding (4(1)(d). After the completion of evidence gathering, the judge may make a decision, order or judgement even without the parties' written submission (4(3).

For Syariah courts, the inquisitorial system is advantageous, as it has the potential to encourage mediation and reduce the backlog of cases (Muhammad Saifullah & Abdullah, 2021). The inquisitorial method benefits parties without legal representation. Under the guideline, proceedings will be conducted in an inquisitorial manner, which allows greater participation of the judges and more relaxed procedural rules in trials. The judges will take a more proactive role and this should better accommodate the needs of litigants appearing in persons. Compared to the adversarial system, the judge-led inquisitorial system of trial process is better at ensuring that parties without legal representation are not denied the rights to fair trials.

2.2 Determination of the Maintenance Amounts

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 law establishes that the award amounts be assessed according to the means and needs of the parties involved (Section 61, Islamic Family Law (Federal Territories) Act 1984). Under this principle, the emphasis is on the child's needs and the fathers' ability to pay. Child maintenance covered food (*Rokiah v. Abdul Aziz* [1988] 4 (1) JH 156, *Hasanah bt Abdullah v. Ali b. Muda* [1999] 13 (2) JH 159), clothings (*Hasanah bt Abdullah v. Ali b. Muda* [1999] 13 (2) JH 159, *Sanisah bt Saad v. Zulkifli b. Abd Ghani* [2002] 15(2) JH 197, *Mohd Hassan b. M. Ghazali v. Siti Sharidza bt. Mohd. Sidque* [2004] 18 (2) JH 269), education (*Wan Tam v. Ismail* [1991] 8 (1) JH 55, *Rohana bt. Zakaria v. Mokhtar b. Abdul Talib* [2009] 27 (2) JH 279, *Mohd Hassan b. M. Ghazali v. Siti Sharidza bt. Mohd. Sidque* [2004] 18 (2) JH 269, *Faridah Hanim bt Omar v. Abd. Latif Ashaari* [2006] 22 (1) JH 27), 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), and festive expenses (hari raya) (*Sri Utama Dewi Kasman v. Abu Bakar b. Abdullah* [2010] 30 1 JH 111, *Rohana bt. Zakaria v. Mokhtar b. Abdul Talib* [2009] 27 (2) JH 279, *Faridah Hanim bt Omar v. Abd. Latif Ashaari* [2006] 22 (1) JH 27, *Roslaili bt Abd Ghani dan seorang yang lain v. Ahmad Azman b. Yaacob* [2006] 1 SHLR 135) (Nasohah, 2018).

Analysis of case reports indicates that the issuance of maintenance orders often considers the information supplied by the parties relating to salaries and children's expenses. Courts may begin assessing how much the amount is due by calculating the costs of raising the children. The cost of rearing the children provided by applicants may be accepted with or without adjustment. After establishing the appropriate cost, the judge will decide how much will be awarded as a maintenance order. However, a guideline has been issued under Practice Direction No. 5 of 2019 (Table 1), which sets the amount of maintenance according to fathers' incomes. If the guideline is adopted, the actual cost needed to raise the children is no longer considered. The mothers do not have to come up with a cost figure, and this can be advantageous to the mothers as they no longer have to spend time and resource to identify related expenses.

Table 1: Fathers' incomes and the rate for child maintenance

Number 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 or more	53	530	795	1060	1325	1590	1855	2120	2385	2650

Source: Practice Direction No. 5 of 2019

When mothers have obtained maintenance orders, the fathers are usually required to send the money as payment regularly. The payment is normally ordered on a monthly basis to ensure continuity of financial support (Mohd Zin et al., 2016). Mothers are responsible for keeping track of the payments. If the fathers fail to make the payments, mothers may make requests for the payments either personally or by means of a more formal demand, i.e., through a lawyer. It would be up to the mothers to start enforcement proceedings if failure to pay continues despite the requests or letters of demand. Mothers may decide that it may not be helpful to sue unless the amount owed exceeds the fee she will probably have to pay a lawyer and other litigation costs.

With the establishment of family support division in 2008, mothers may claim arrears of maintenance through the division. The division performs the task of a lawyer in executing the maintenance order. The advisory function also facilitates parties to obtain legal advice regarding claims that can be made after divorce, particularly claim for child maintenance, including the procedures for enforcement of the maintenance order. Eligible mothers may also apply for immediate financial assistance in the form of advance payment (Abdul Salam & Mohd Khatib, 2020).

Studies that examined why self-represented litigants did not obtain a lawyer have found that the lack of representation was due to their inability to afford a lawyer. Other reasons were due to litigants' unwillingness to pay the required amount to the lawyer, as well as their view that their case was simple enough to be handled on their own (Greacen, 2014).

In cases involving applications for child maintenance orders, custodial mothers who can afford private lawyers proceed with the case through counsel representation. Mothers who cannot afford a lawyer and do not qualify for free or reduced cost of legal services may proceed with the case through self-representation. In certain cases, mothers may be able to pay the lawyers, but given their perceptions of the representation's limited value, or the simplicity of their cases, they may choose to handle the case on their own. They may think that they will not have worse outcomes without a lawyer, or they could possibly achieve similar outcomes by appearing in person and pursuing the case through self-representation. Despite the perception, in terms of the process, represented parties may obtain a significant advantage over unrepresented ones. Possibly, claimants with lawyers will examine witnesses more frequently, present arguments at the hearing and submit written evidence (Birnbaum et al., 2012). For mothers who find self-representation as an inevitable or a reasonable alternative, they need to ascertain what outcomes they would probably achieve and how the outcomes differed from counsel-represented litigants in past cases. By doing so, mothers will be better informed of past trend involving full, semi, and non-representation in cases involving child maintenance orders.

3.0 METHODOLOGY

The current study sought to determine the number of cases with and without legal representation, ascertain the differences in case outcomes between the two groups, and examine the effect of legal representation on the amount of child maintenance awarded. This study involved 82 first-instance and appeal cases as decided in Malaysian Syariah courts. The first part of the study dealt with designing and developing the instrument, and the coding process of the data from cases consulted. Relevant data on litigants and case decisions were extracted

from case reports and filled in the coding instrument. Case reports were retrieved from the Current Law Journal, Lexis Nexis, and *Jurnal Hukum* databases by conducting case searches using a list of search terms, including *nafkah anak*, *nafqah*, and child maintenance. The search generated cases from 1969 to 2020. Case reports generated by the searches were assessed, and cases with no mention of maintenance amount in court orders or committal orders and that were duplicated were screened out prior to analysis. The next part of the study involved the quantitative analysis of the coded data using IBM SPSS Statistics version 26. Descriptive statistics were performed on all study variables. Categorical variables were summarized as frequency distributions and percentages. Continuous variables were summarized as means, medians, ranges and standard deviation. Independent sample t-tests were used to compare the means between two unrelated groups (e.g., mother's representation) on the same continuous, dependent variable (i.e., total of child maintenance ordered).

4.0 ANALYSIS AND DISCUSSION

Of the 82 cases, most were applications related to maintenance orders made by mothers (64 cases). Most cases were decided in Selangor and Terengganu, with 16 and 13 cases (Table 2). As shown in Table 3, most cases involved at least one party without a lawyer (51 cases), with mothers more likely to obtain legal representation than fathers. The cases represented by both parties were 31, and the cases represented by only mothers were 30. There were 20 cases where parties were self-represented, and 1 case with only a father represented (Table 3). Many case reports did not mention whether the party was or was not represented. These case reports with missing values existed more frequently in earlier years (Table 4). For this study, the missing information in the case reports was assumed to suggest the absence rather than the presence of legal representatives. On a logical basis, the reports would have mentioned the availability of a lawyer had the party been represented, as was the fact with most of the case reports.

Table 2: Number of children in, types of, and states of reported cases

	Frequency	Percent
Number of children		
1	16	19.5
2	32	39.0
3	19	23.2
4	10	12.2
5	5	6.1
Type of case		
Maintenance order	52	63.4
Appeal	13	15.9
Variation order	15	18.3
Others	2	2.4
State		
Kedah	2	2.4
Perlis	1	1.2
Pulau Pinang	8	9.8
Perak	7	8.5
Selangor	16	19.5
Negeri Sembilan	8	9.8
Melaka	7	8.5
Johor	2	2.4
Terengganu	13	15.9
Kelantan	6	7.3
Pahang	1	1.2
Sarawak	2	2.4
Kuala Lumpur	9	11.0

Table 3: Legal representation of parties

		Fathers represented		Total
		Yes	No	
Mothers represented	Yes	31	30	61
	No	1	20	21
	Total	32	50	82

Table 4: Cases with no mention of legal representation

Extent of no mention	< 1979	1980 – 1989	1990 – 1999	2000 – 2009	> 2010	Total
Mother’s representation not mentioned	1	0	0	0	0	1
Father’s representation not mentioned	1	7	0	0	0	8
Both parties’ representations not mentioned	5	4	2	3	1	15

4.1 Application by Mothers

This section presents the analysis that determined whether legal representation has benefitted mothers in terms of case outcomes. The analysis examined the amounts ordered, the amounts claimed, as well as the percentage of amounts ordered in relation to fathers’ salaries. This three-pronged approach of outcome analysis provided the answer to the research question more accurately.

In cases where mothers initiated applications, most of these cases involved represented mothers against unrepresented fathers (27 cases). Cases where both parties were represented by lawyers and were self-represented were 22 and 14, respectively. Cases where only mothers were represented were highest during 1980-1989, whilst cases with both parties represented were highest between 2000-2009. Cases involving self-representation were constant throughout the years, ranging from 2 to 4 (Table 5).

Table 5: Legal representation by year

Extent of legal representation	< 1979	1980 – 1989	1990 – 1999	2000 – 2009	> 2010	Total
Both parties represented	0	3	5	8	6	22
Neither party represented	3	3	2	4	2	14
Only mother represented	2	12	1	8	4	27
Only father represented	1	0	0	0	0	1

4.1.1 Amounts Ordered

The ranges of total amounts ordered as maintenance awards in cases where mothers were with and without representation are shown in Table 6. For all year categories except the year 1979 and below, cases where mothers were legally represented had higher maximum total amounts

ordered as well as higher average total amounts awarded. A similar pattern can be observed in relation to the amount of maintenance per child (Table 7). For most categories of the year, cases with mothers receiving legal representation showed a higher average award per child.

Table 6: Total amounts ordered (RM) by mother’s representation and year

		Statistic	< 1979	1980 – 1989	1990 – 1999	2000 – 2009	> 2010
Mothers not represented	Min.		25.00	45.00	70.00	200.00	1199.99
	Max.		120.00	250.00	150.00	600.00	1600.00
	Mean		58.25	141.67	110.00	437.50	1400.00
Mothers represented	Min.		20.00	0	200.00	158.33	80.00
	Max.		60.00	800.00	600.00	1374.00	2887.50
	Mean		40.00	172.48	350.00	548.74	1569.75

Table 7: Average amounts ordered per child (RM) by mother’s representation and year

		Statistic	< 1979	1980 – 1989	1990 – 1999	2000 – 2009	> 2010
Mothers not represented	Min.		14.00	32.50	60.00	100.00	400.00
	Max.		40.00	125.00	200.00	350.00	400.00
	Mean		23.50	67.50	60.00	237.50	400.00
Mothers represented	Min.		10.00	0	100.00	100.00	80.00
	Max.		30.00	800.00	250.00	600.00	956.94
	Mean		20.00	100.14	160.00	236.72	485.66

Further evidence suggesting that the availability of legal representation affects the amounts ordered per child is shown in Table 8. Cases where both parties obtained representation, had the highest average amount per child (mean RM344.58), and cases where only mothers received representation, had the lowest (mean RM147.95). As also indicated in Table 8, cases of self-representation by both parties showed an in-between mean of RM152.96. These results showed that represented mothers in semi-represented cases received lower amounts (mean RM147.95). Logically, represented mothers who fought against unrepresented defendants may have been thought to have the edge; however, that was not true. Self-represented mothers were shown to have fared better than represented mothers in semi-represented cases. It may appear that the availability of representation is not a significant factor (Table 9), but the real factors that determined the amount were the presentations of child expenses and fathers’ salaries to substantiate the amounts applied (Tables 14 and 15 below).

Table 8: Average amounts as ordered per child (RM) and legal representation in application by mothers

Statistics	Both parties	Neither party	Only mother
	represented (22 valid cases)	represented (14 valid cases)	represented (27 valid cases)
Minimum	0	14.00	10.00
Maximum	956.94	400.00	577.50
Mean	344.58	152.96	147.95
Median	216.67	85.00	100.00

Independent sample t-test was conducted to determine the effect of representation for mothers on the total amount of child maintenance ordered. As can be seen in Table 9, the mean of total amounts awarded was higher when mothers received legal representation (M = 590.25, SD = 750.81) as compared to when mothers received no legal representation (M = 361.87, SD = 466.48). However, based on the results of the independent sample t-test, the difference between the means of the two groups of cases was not significant (t-value = 1.111, df = 62, p = 0.271). The present study thus confirmed that representation for mothers did not significantly influence the total amount of awards.

Table 9: Total of child maintenance ordered and mother's representation

	Mother's representation		t-test	Sig.
	No	Yes		
Total of child maintenance ordered (RM)	361.87 (466.48)	590.25 (750.81)	1.111 (df = 62)	0.271

Note. The standard deviation is shown in parathesis.

4.1.2 Amounts Ordered based on Amounts Claimed

The range and average amounts claimed as well as the range and average amount ordered per child is as shown in Table 10. Generally, mothers claimed a higher amount when the other party was also represented (year category 1980-1989, 1990-1999, and 2010). The average amounts awarded across the years stood within the range of 35% to 80% of the average amount claimed. Specifically, the percentage of the average amounts ordered based on the amounts claimed were within the range of 35% to 80% for mothers with lawyers in fully represented cases, 52% to 80% for mothers with no legal representation, and 52% to 78% for mothers with lawyers in semi represented cases.

Table 10: Range and mean of average amounts claimed and ordered per child by legal representation and year

Legal representation	< 1979		1980 – 1989	
	Amount claimed (RM)	Amount ordered (RM)	Amount claimed (RM)	Amount ordered (RM)
Both parties represented	–	–	150.00 – 850.00 (500.00)	0 – 800.00 (400.00)
Neither party represented	17.50 – 83.33 (44.72)	14.00 – 40.00 (23.00)	40.00 – 125.00 (88.33)	32.50 – 125.00 (67.50)
Only mother represented	10.00 – 50.00 (30.00)	10.00 – 30.00 (20.00)	20.00 – 116.67 (64.93)	15.00 – 100.00 (50.17)
Legal representation	1990 – 1999		2000 – 2009	
	Amount claimed (RM)	Amount ordered (RM)	Amount claimed (RM)	Amount ordered (RM)
Both parties represented	150.00 – 400.00 (237.50)	100.00 – 250.00 (175.00)	200.00 – 650.00 (387.95)	100.00 – 600.00 (250.00)
Neither party represented	70.00 – 166.67 (118.34)	50.00 – 70.00 (60.00)	100.00 – 500.00 (295.50)	100.00 – 350.00 (237.50)
Only mother represented	–	–	175.00 – 700.00 (401.78)	166.67 – 327.50 (232.80)
Legal representation	> 2010			
	Amount claimed (RM)	Amount ordered (RM)		
Both parties represented	300.00 – 3255.00 (1558.47)	80.00 – 956.94 (555.60)		
Neither party represented	–	–		
Only mother represented	500.00 – 1433.33 (841.75)	353.83 – 577.50 (441.00)		

Note. The mean is shown in parathesis.

4.1.3 Amount Ordered based on Fathers' Salaries

The results in Table 11 indicated that self-represented mothers were awarded the highest percentage of maintenance amount based on fathers' salaries (27.13%). Mothers with lawyers in fully represented cases received an average of 21.43%, whilst mothers with lawyers in semi-represented cases were awarded an average figure of 20.74% from fathers' earnings.

Table 11: Percentage of amounts awarded based on fathers' salaries and legal representation in application by mothers

Number of children	Legal representation		
	Both parties represented (17 valid cases)	Neither party represented (7 valid cases)	Only mother represented (17 valid cases)
1	12.00 – 33.33	6.29	7.92 – 13.06
2	5.04 – 22.39	9.03 – 50.0	8.33 – 34.72
3	17.71 – 39.10	31.91 – 34.88	14.44 – 22.32
4	27.08	28.57 – 29.21	21.71 – 35.30
5	54.26	–	11.90 – 29.70
Mean	21.43	27.13	20.74
Std. dev.	12.53	15.13	8.70

4.2 Application by Fathers

Fathers can apply to vary, cancel, or appeal the amounts ordered in earlier decisions. The maintenance awards are modifiable based on a showing of evidence to prove a change of circumstances. For example, a father might not be able to maintain the current payment due to the loss of his job or a change of living arrangement. Similarly, a mother may apply for an increased amount when the child is ready for tertiary education, which require more expenses. The applicable section is Section 75, which provides that “the Court may, on the application of any interested person, at any time and from time to time vary, or at any time rescind, any order for the custody or maintenance of a child, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances”.

Based on the case reports used in this study, fathers had initiated applications in about 17 cases. The results of fathers' applications in comparison to mothers' claims are shown in Figure 1. The results indicated that, in applications made by fathers, fathers were ordered to pay the lowest average amount per child (average RM51.73) when both parties were self-represented. In cases where fathers received legal representation, they were required to pay higher average amounts per child than those who were self-represented. In applications made by mothers, mothers obtained the highest average amount in cases where both mothers and fathers were represented. In semi-represented cases where mothers were represented by lawyers, mothers obtained a lower average amount than those who were self-represented.

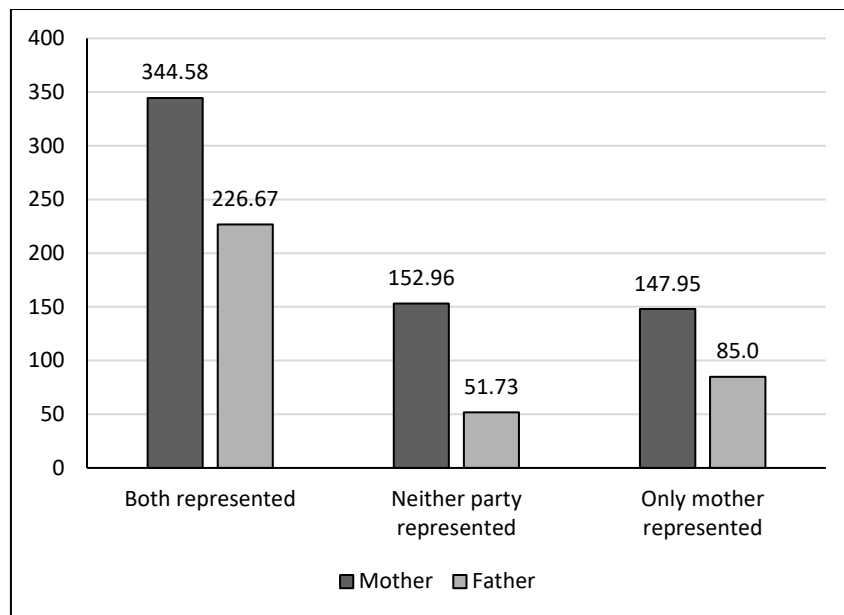


Figure 1: Average amounts as ordered per child and legal representation in application by mothers and father

The findings revealed that, in the cases examined, self-representation was common; in nearly two-thirds of the cases, self-representation was chosen by one or both litigants. The prevalence of self-representation may be attributable to several reasons, including the rise of the “do it yourself” social attitude and the perception that obtaining a lawyer will not bring about considerably better results (Birnbaum et al., 2012). Self-represented litigants may have been influenced by the availability of information on the internet and believe that they can and should handle their own cases (Greacen, 2014). Self-representation may reflect the empowerment of laypeople; they have become more confident in their ability to represent themselves. As the findings of this study revealed, the lack of legal representation did not necessarily result in lower awards. In fact, self-represented mothers were shown to have outperformed mothers with lawyers in terms of the amounts awarded as well as the percentage or amounts ordered based on fathers’ salaries.

With the adoption of the inquisitorial guideline by the Syariah court, judges will not only listen to lawyers and decide on the respective arguments put forward. They will generally be more proactive, investigatory, and more inquisitorial before they make the decision. It is believed that the inquisitorial practices in trial process would better assist parties without representation. Self-represented parties might not be able to put forward their cases coherently and properly, and they might be against the other parents who obtained legal representative. With judge’s inquisitorial role, their position will hopefully not be unfavourably prejudiced.

4.3 Relevance of Fathers' Incomes and Spending as well as Child Expenses on Amounts Ordered

In determining the amount of child maintenance, the relevant factors are fathers' incomes and child expenses. In this study, the presence of information on fathers' incomes and child's expenses in case reports was examined in relation to the availability of legal representation. Also examined was whether the presence of this information in case reports affected the case outcomes.

Based on the results, it was found that, generally, the absence of information relating to fathers' incomes and liabilities, as well as child expenses, was found in cases across all the year categories (Table 12). However, in later years, as the court's approaches to determining the amount of child maintenance have been more transparent, fathers' salaries and children's expenses have been reported in more cases and presumably used as a basis for determining the appropriate amount.

Table 12: Cross-tabulation between year of cases and details of report

Year	Details of child expenses				Details of fathers' income				Details of fathers' liabilities			
	Not reported		Reported		Not reported		Reported		Not reported		Reported	
	n	%	n	%	n	%	n	%	n	%	n	%
< 1979	6	9.4	0	0	1	1.6	5	7.8	3	4.7	3	4.7
1980 – 1989	16	25.0	2	3.1	10	15.6	8	12.5	12	18.8	6	9.4
1990 – 1999	7	10.9	1	1.6	4	6.3	4	6.3	6	9.4	2	3.1
2000 – 2009	13	20.3	7	10.9	6	9.4	14	21.9	11	17.2	9	14.1
> 2010	5	7.8	7	10.9	2	3.1	10	15.6	5	7.8	7	10.9
Total	47	73.4	17	26.6	23	35.9	41	64.1	37	57.8	27	42.2

The absence of information on fathers' income and liabilities, as well as child expenses, can probably be expected in self-represented cases. Unrepresented parties not only lack knowledge of substantive rules and procedures, but they also lack the experience to know what kinds of evidence or how much evidence needs to be presented to the court. Following a similar line of argument, the presence of the information can be expected in most, if not all, cases involving representation, especially in contested cases. However, the findings indicate inconsistent results. Table 13 showed that the absence of information on child expenses, as well as fathers' income and liabilities, also involved cases with representation. For fully represented cases, there were fewer cases which reported details of child expenses (9 cases) compared to cases which did not report the information (13 cases). A similar observation was found in cases of

semi-representation. In this type of representation, there was a lower number of cases which reported details of child expenses as well as fathers' liabilities. Understandably, the information might not be raised when cases are not contested, such as in cases of consent orders. In highly contested maintenance cases, it is assumed that cases assisted by legal counsels would have addressed issues of child expenses and fathers' incomes in their arguments or submissions for maintenance orders. Nevertheless, the results showed that the information was often omitted, for unknown reasons.

Table 13: Cross-tabulation between legal representation and details of report

Legal representation	Details of child expenses				Details of fathers' income				Details of fathers' liabilities			
	Not reported		Reported		Not reported		Reported		Not reported		Reported	
	n	%	n	%	n	%	n	%	n	%	n	%
Both parties represented	13	20.3	9	14.1	6	9.4	16	25.0	11	17.2	11	17.2
Only mother represented	20	31.3	7	10.9	10	15.6	17	26.6	16	25	11	17.2
No representation	13	20.3	1	1.6	7	10.9	7	10.9	9	14.1	5	7.8
Only father represented	1	1.6	0	0	0	0	1	1.6	1	1.6	0	0
Total	47	73.4	17	26.6	23	35.9	41	64.1	37	57.8	27	42.2

An Independent sample t-test was carried out to find out whether the presence of details of the father's income influenced the total child maintenance ordered. The test result, as shown in Table 14, revealed that the difference between the means of the two groups of cases was significant, with a t-value equal to -3.088, 58.08 degrees of freedom, and a p-value of less than 0.01. That means the total of child maintenance ordered was significantly higher when details of fathers' incomes were reported ($M = 694.47$, $SD = 798.54$), compared to when such details were not reported ($M = 255.51$, $SD = 327.39$). The presence of information in the case reports most likely meant that the counsel had brought the information to the court's attention. The information was the key to setting the amount. As such, if necessary, lawyers would attempt to find all sources of income and possibly challenge the income statements if the amounts appear doubtful.

Table 14: Total of child maintenance ordered and details of fathers' income in application by mothers

	Details of fathers' income		t-test	Sig.
	Not reported	Reported		
Total of child maintenance ordered (RM)	255.51 (327.39)	694.47 (798.54)	-3.088 (df = 58.08)	0.003

Note. The standard deviation is shown in parathesis.

A similar pattern was observed after an independent sample t-test was conducted to find out whether the presence of details of child expenses played any significant role in determining the total amount of child maintenance ordered. The results of the test as shown in Table 15, revealed that the difference between the means of the two groups of cases was significant with a t-value equal to 3.494, 18.25 degrees of freedom, and a p-value of less than 0.01. The amounts awarded were significantly higher when case reports mentioned details of the child's expenses (M = 1144.99, SD = 945.32), compared to when case reports did not mention the details (M = 316.71, SD = 412.86). Thus, it can be suggested that the total award amount was significantly influenced by the presence of information on the child's expenses.

Table 15: Total of child maintenance ordered and details of child expenses in application by mothers

	Details of child expenses		t-test	Sig.
	Not reported	Reported		
Total of child maintenance ordered (RM)	316.71 (412.86)	1144.99 (945.32)	3.494 (df = 18.25)	0.003

Note. The standard deviation is shown in parathesis.

5.0 CONCLUSION

The present study attempted to determine whether child maintenance cases, as decided in Malaysian Syariah courts with representation and without, would lead to disparate outcomes. Understandably, litigants with lawyers generally expect better outcomes with regard to amounts of award. This is because the main role of the lawyers is to act as representatives for the litigants in trial proceedings. They will argue for the client's rights and help them in terms of the proceedings and fact-finding of the cases. The initial results of the study indicated that clients with legal representation had won higher total average amounts and higher average amounts per child than mothers without legal representation. However, the result of the

independent sample t-test indicated that legal representation for mothers did not have a significant influence on the total amount of awards. Further, the results showed that self-represented mothers have won higher amounts in terms of their proportion to fathers' incomes, and counsel representation did not result in mothers obtaining a higher percentage of awards in comparison to self-represented parties. The findings did not support the notion that there are benefits arising from legal representation in the form of monetary outcomes.

The most striking results came from analysis of factors relating to substantive determinants of child maintenance. The amounts of awards for child maintenance were shown to be significantly influenced by evidence relating to fathers' incomes and children's expenses. The amounts were higher when these details were presented, as proven by their inclusion in case reports. Self-represented mothers fared better than mothers with lawyers when these determinants were presented before the courts.

Despite the findings, legal representation is still desirable as it entails other benefits to litigants. For example, an applicant might feel more confident when he or she is represented, even if representation does not bring about the expected outcomes. In addition, a lawyer can explain the legal principles and procedures, provide reasons for the outcomes, and gives greater assurance that the court hears the client's story. The availability of the information on the internet cannot replace the detailed advice given by a lawyer.

The findings of this study should be seen in light of some limitations. The focus was only on decided cases, and not the broader role of lawyers. The study also used limited data based on Malaysian Syariah court decisions, which may have impacted its findings and conclusions. Future studies may employ larger data and include other variables, including the judicial process. They may also analyse unreported court records to further verify the results of the present study.

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