

## Transformation of the Syariah Court in Malaysia: Towards the Implementation of Alternative Sentencing for Criminal Offences under Islamic Family Law

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**ABSTRAK** : Undang-undang Keluarga Islam di Malaysia memainkan peranan penting dalam mengawal selia institusi kekeluargaan Islam berlandaskan hukum syarak. Ketidakpatuhan terhadap peraturan atau undang-undang yang telah ditetapkan ini akan mengundang implikasi hukuman sebagaimana yang telah di tetapkan di dalam Akta Mahkamah Syariah (Bidang Kuasa Jenayah) 1965 (Akta 355) Pindaan 1988 (Akta 355). Walau bagaimanapun, pelaksanaan hukuman berdasarkan Akta 355 semata-mata sering kali menimbulkan persoalan serta perdebatan di kalangan banyak pihak tentang sejauhmana ia berupaya mencapai objektif sebenar hukuman dalam Islam. Artikel yang menggunakan pendekatan kualitatif ini akan membincangkan keperluan pelaksanaan serta pemerkasaan hukuman alternatif di samping hukuman sedia ada bagi kesalahan tertentu di bawah undang-undang keluarga Islam. Dengan meneliti peruntukan undang-undang keluarga Islam sedia ada merangkumi bentuk-bentuk kesalahan dan contoh kes yang relevan, penulisan ini mencadangkan langkah-langkah pelaksanaan hukuman alternatif yang dilihat selaras dengan prinsip syariah dalam hukuman serta relevan dengan suasana dan keperluan semasa. Dapatan kajian memperlihatkan bahawa hukuman alternatif sekiranya dilaksanakan dengan sistematik akan mampu memberikan impak positif yang lebih holistik dari aspek keadilan sosial termasuk mengurangkan implikasi negatif pemenjaraan, mencegah pengulangan kesalahan atau residivism serta bertindak sebagai elemen pencegahan kepada individu lain melakukan kesalahan yang sama.

**Kata kunci**: Pelaksanaan Hukuman Alternatif, Kesalahan di bawah Undang-Undang Keluarga Islam, Mahkamah Syariah, Malaysia

**ABSTRACT** : Islamic Family Law in Malaysia plays a vital role in regulating the institution of the Muslim family in accordance with Shariah principles. Non-compliance with the stipulated laws and regulations may result in legal penalties as provided under the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355), as amended in 1988. However, the enforcement of punishment solely based on Act 355 has often sparked debates and raised questions among various stakeholders regarding its effectiveness in achieving the true objectives of punishment in Islam. This article, applying a qualitative approach, explores the necessity of implementing and strengthening alternative punishments alongside existing penalties for specific offences under Islamic family law. By examining current legal provisions related to Islamic family law, including forms of offences and relevant case examples, this paper proposes strategic measures for the application of alternative punishments that align with the Shariah principles of sentencing and respond appropriately to contemporary societal needs. The findings indicate that, if systematically implemented, alternative punishments have the potential to offer a more holistic impact on social justice, including reducing the negative consequences of imprisonment, preventing recidivism, and serving as a deterrent to others from committing similar offences.

**Keywords**: Implementation of Alternative Sentencing, Offences under Islamic Family Law, Syariah Court, Malaysia

## 1. INTRODUCTION

Malaysia operates a dual legal system in which the civil legal framework and the Syariah legal framework coexist in parallel, yet do not intersect or support each other (Hasnizam Hashim & Jasri Jamal, 2014). As a result of these two distinct systems, the country also maintains separate framework for family law with one governing Muslims and the other governing non-Muslims. For Muslims, matters concerning personal and family law fall under the legislative jurisdiction of the individual states, as provided under Item 1, List II (State List), Ninth Schedule of the Federal Constitution of Malaysia. In contrast, family law for non-Muslims falls under the purview of the Federal Parliament, pursuant to Paragraph (e), List I (Federal List), Ninth Schedule of the Federal Constitution. The latter is enforced through the Law Reform (Marriage and Divorce) Act 1976 (Act 164).

Islamic Family Law in Malaysia remains one of the most significant legal instruments for preserving justice and the well-being of the Muslim family institution. The Federal Constitution mandates that Islamic personal and family law be administered at the state level. Consequently, each state enacts its own Islamic legal provisions, including those related to family matters. These discrepancies arise because the administration of Islamic affairs is under the jurisdiction of the state governments, resulting in each state possessing its own specific enactments. While various efforts have been made to harmonise these laws across the country, such variations persist due to differing local needs and administrative approaches (Hasnizam Hashim & Jasri Jamal, 2014).

Despite these differences, Islamic family law in Malaysia generally provides similar substantive provisions relating to marriage, divorce, maintenance (nafkah), child custody (hadanah), and other marital matters. Violations of these provisions are subject to penalties prescribed under the respective State Enactments or Ordinances, which typically include fines, whipping, or imprisonment, within the limits set by the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355). However, in practice, particularly in family-related cases, these conventional forms of punishment are arguably in need of review, reform, or supplementation with more appropriate and rehabilitative alternatives especially those better suited to the nature of the offence and the offender's circumstances. This proposition is aligned with the overarching objectives of punishment in Islam and is consistent with the concept of *ta'zīr* (discretionary punishment) itself (Hasnizam Hashim & Jasri Jamal, 2017).

Accordingly, this paper seeks to examine and advocate for the necessity of implementing alternative punishments either as a replacement for or a supplement to existing sentences for specific offences under Islamic family law in Malaysia. The introduction of such alternative sentencing is both timely and appropriate in the current context, and is viewed as consistent with the Shariah's underlying principles of justice and reform in criminal punishment.

## 2. LEGAL PROVISIONS RELATED TO ISLAMIC FAMILY LAW IN MALAYSIA

In Malaysia, matters relating to the marriage and divorce of Muslim couples fall under the jurisdiction of the respective states. Each state possesses its own legislation governing issues pertaining to marriage, divorce, and related matters in accordance with Islamic law as practised within that particular state.

The following is a list of Islamic Family Law statutes in Malaysia, organised by state:

	State	Act / Enactment / Ordinance
1	Wilayah Persekutuan	Islamic Family Law Act (Federal Territories) 1984 (Act 303)
2	Johor	Islamic Family Law Enactment 2003
3	Kedah	Islamic Family Law Enactment (Kedah Darul Aman) 2008

4	Kelantan	Islamic Family Law Enactment 2002
5	Melaka	Islamic Family Law Enactment (State of Melaka) 2002
6	Negeri Sembilan	Islamic Family Law Enactment (State of Negeri Sembilan) 2003
7	Pahang	Islamic Family Law Enactment (State of Pahang) 2005
8	Perak	Islamic Family Law Enactment (State of Perak) 2004
9	Perlis	Islamic Family Law Enactment 2006
10	Pulau Pinang	Islamic Family Law Enactment (State of Penang) 2004
11	Sabah	Islamic Family Law Enactment 2004
12	Sarawak	Islamic Family Law Ordinance (Sarawak) 2001
13	Selangor	Islamic Family Law Enactment (State of Selangor) 2003
14	Terengganu	Islamic Family Law Enactment (State of Terengganu) 2017

Source: Acts / Enactments / Ordinances on Islamic Family Law in Malaysia

### 3. KEY ASPECTS OF ISLAMIC FAMILY LAW LEGISLATION IN MALAYSIA

Islamic family law in Malaysia encompasses various provisions related to marriage, divorce, child custody, maintenance, and other aspects of Muslim family life. Each Act, Enactment, or Ordinance governing Islamic family law in Malaysia is divided into several parts for ease of reference and implementation.

Part I, or the Preliminary section, sets out the fundamental framework of the law. It provides definitions of key terms and outlines the scope of application of the respective state's legislation. In general, these laws apply to all Muslims residing or domiciled in the respective state. This section also affirms that matters relating to marriage, divorce, and associated issues must be in accordance with Islamic law (Shariah) and are enforceable through the Syariah Courts. It delineates the jurisdiction of the law and ensures alignment with Shariah principles (Islamic Family Law Acts/Enactments/Ordinances in Malaysia).

Part II specifically governs rules related to marriage, including the conditions for a valid marriage such as the authority to solemnise the marriage (*wali*), minimum age of marriage, *mahar* (dower), *hantaran* (gifts), registration procedures, and regulations regarding polygamy. The registration of marriages is mandatory to ensure legal recognition and protection. In cases of polygamy, prior approval from the Syariah Court is required, and the husband must prove his financial and emotional capacity to ensure justice between wives. Non-compliance with the conditions stipulated under this law may render the marriage invalid and subject to legal annulment. Therefore, Part II plays a fundamental role in ensuring that marriages conducted among Muslims in each state are consistent with both Shariah law and the statutory provisions in force (Islamic Family Law Acts/ Enactments/ Ordinances in Malaysia).

Part III outlines the procedures for marriage registration, ensuring that every solemnised marriage is formally recognised and properly recorded. It requires couples to obtain prior consent from the Registrar of Marriages before the solemnisation ceremony. Post-marriage registration is also mandatory to facilitate legal monitoring and safeguard the rights of both spouses and children. Registration is not merely a legal formality but serves to protect the rights of individuals in matters of maintenance, matrimonial property, and custody in the event of disputes or divorce. This section also prescribes penalties including fines and legal sanctions for failure to register a marriage, making it a crucial part of the enforcement mechanism (Islamic Family Law Acts/ Enactments/ Ordinances in Malaysia).

Part IV provides for penalties related to violations of marriage solemnisation and registration procedures. These provisions are intended to ensure strict compliance with the prescribed requirements and to prevent contraventions of Shariah law. Offences include solemnising a marriage without prior approval from the Registrar, failure to register the

marriage within the stipulated period, providing false or misleading information during the marriage application, and entering into polygamous marriages without court approval. Individuals found guilty of such offences may be subject to fines, imprisonment, or both, depending on the severity of the violation. These penalty provisions serve as a legal safeguard to uphold the integrity of Islamic marriage laws and to protect the rights of individuals within the institution of marriage (Islamic Family Law Acts/ Enactments/ Ordinances in Malaysia).

Part V deals with the dissolution of marriage, including the procedures and conditions for lawful termination. Forms of dissolution recognised under this section include *talaq* (repudiation), *fasakh* (annulment), *khulu'* (divorce initiated by the wife with compensation), and *li'an* (mutual cursing for accusation of adultery). It also outlines the rights of the wife and children following divorce, including claims for maintenance (*nafkah*), *mut'ah* (consolatory gift), and custody (*hadanah*). These provisions enable the orderly administration of divorce while ensuring justice to the affected parties (Islamic Family Law Acts/ Enactments/ Ordinances in Malaysia).

Part VI governs the rules related to maintenance for wives, children, and other dependents who are legally entitled to financial support. It also includes the rights of elderly parents or other individuals under one's care. If the responsible party fails to fulfil these obligations, the court has the authority to issue maintenance orders or take appropriate legal action. These provisions ensure the welfare of those entitled to maintenance is protected effectively and justly (Islamic Family Law Acts/ Enactments/ Ordinances in Malaysia).

Part VII of the legislation deals specifically with child custody (*hadanah*), while Part VIII encompasses miscellaneous provisions not covered under earlier sections. These include the powers of the Syariah Court to issue orders that protect the rights of disputing parties and regulations concerning official documentation related to marriage and divorce (Islamic Family Law Acts/ Enactments/ Ordinances in Malaysia).

The final section, Part IX, sets out penalties for offences related to marriage, divorce, registration, and familial responsibilities under Islamic family law. These penalties are intended to ensure compliance with established rules. Offences include failure to register a marriage, contracting a marriage without prior approval, submitting false information regarding marital or divorce proceedings, and non-compliance with court-ordered maintenance or custody arrangements. Offenders may be punished with fines, imprisonment, or both, depending on the gravity of the offence. This section also empowers the Syariah Court to enforce penalties and to take necessary action against defaulters. Overall, the penalty provisions serve to reinforce compliance and uphold justice and protection for all individuals affected by family disputes (Islamic Family Law Acts/ Enactments/ Ordinances in Malaysia).

#### **4. OBJECTIVES OF ISLAMIC FAMILY LAW IN MALAYSIA**

The primary objective of Islamic Family Law in Malaysia is to regulate and preserve the institution of the Muslim family in accordance with Shariah principles. This legislation functions to govern marriage and divorce, ensuring that every marriage fulfills the essential legal requirements and providing clear guidelines for the dissolution of marriage based on Islamic law. In addition, the law protects the rights of women and children by stipulating provisions related to maintenance (*nafkah*), consolatory gifts (*mut'ah*), division of matrimonial assets, and child custody, thereby safeguarding their well-being following divorce or the dissolution of marriage (Act/Enactment/Ordinance of Islamic Family Law in Malaysia).

Islamic Family Law also aims to preserve lineage (*hifz al-nasl*) by ensuring that marriages and divorces are conducted in an orderly and lawful manner, thus avoiding illegitimacy and uncertain lineage. Through the regulation of marriage and divorce, the law ensures the legitimacy of lineage, protects the rights of heirs, and prevents the abuse of the marital system which could otherwise undermine the harmony of the Muslim community in the country.

The primary purpose of imposing penalties or punishments for violations of Islamic Family Law is to ensure compliance with the Shariah and the prescribed legal framework. Punishments such as fines and imprisonment may be imposed on individuals who breach these legal provisions. Such punitive measures serve not only as a form of retribution but also as a deterrent to prevent the neglect of marital and familial responsibilities. The existence of these legal provisions helps uphold the rights of each family member and contributes to the continued harmony of the Muslim society in Malaysia.

## **5. TYPES OF OFFENCES AND PUNITIVE PROVISIONS UNDER ISLAMIC FAMILY LAW IN MALAYSIA**

Punishments prescribed under Islamic Family Law in Malaysia are subject to the *Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355)*, as amended in 1988. Pursuant to this federal statute, the Syariah Courts are empowered to impose a maximum sentence of three years' imprisonment, a fine not exceeding RM5,000, six strokes of whipping in accordance with Syariah procedures, or any combination of these punishments. This Act serves as the legal foundation for the enforcement of penalties in cases concerning Syariah criminal offences as well as violations of Islamic family law provisions in the country (Hasnizam Hashim & Jasri Jamal, 2014).

Under Act 355, the jurisdiction of the Syariah Courts in sentencing offenders for breaches of Islamic family law is limited when compared to the civil courts. Nevertheless, the punishments imposed by the Syariah Courts are intended to ensure compliance with Islamic legal principles, to educate Muslims, and to deter behaviours that could undermine the sanctity of the Muslim family institution.

For instance, the *Islamic Family Law (State of Selangor) Enactment 2003* outlines various offences related to marriage, divorce, child custody, maintenance, and non-compliance with court orders. Parts I through VIII of the Enactment list key offences, including contracting a marriage without the registrar's permission, entering into polygamous marriages without court approval, effecting divorce outside of the court, neglecting to provide maintenance to wives and children, and violating child custody rights. Other offences include failure to register a marriage or divorce and providing false information in marital documentation. Each of these offences carries prescribed penalties in the form of fines, imprisonment, or both, depending on the severity of the violation (Islamic Family Law (State of Selangor) Enactment 2003).

Part IX of the Enactment specifically details the penalties for various offences under Islamic family law in Selangor. Among the offences stipulated are failure to obtain prior approval before contracting a marriage, which may result in a fine or imprisonment. An individual who solemnizes a marriage without official authorization may be fined up to RM1,000 or sentenced to imprisonment for up to six months, or both. In addition, failure to register a marriage within the stipulated period may incur a fine of up to RM1,000. Entering into a polygamous marriage without the court's approval also constitutes an offence and may attract a fine of up to RM5,000 or imprisonment for a term not exceeding three years (Islamic Family Law (State of Selangor) Enactment 2003).

With regard to divorce-related offences, a person who divorces his wife without the court's permission may be fined up to RM1,000 or sentenced to imprisonment for a term not exceeding six months. Failure to provide maintenance for a wife or child is also deemed an offence, and the court may issue an order for payment of arrears as well as impose additional penalties for non-compliance. The court is also empowered to issue committal orders against individuals who fail to comply with maintenance orders. Moreover, those who breach lawful child custody orders or attempt to obstruct the enforcement of such rights may be subject to legal action under the Enactment (Islamic Family Law (State of Selangor) Enactment 2003).

## **6. EXAMPLES OF PENALTIES IMPOSED FOR OFFENCES UNDER ISLAMIC FAMILY LAW IN MALAYSIA**

The following are selected case examples where the Syariah Courts in Malaysia have imposed punishments for offences committed under Islamic Family Law:

### **Case of Polygamous Marriage without Court Permission in Kedah**

In 2016, a man in Kedah was found guilty of entering into a polygamous marriage without obtaining prior permission from the Syariah Court. He was fined RM1,800 by the Alor Setar Syariah Subordinate Court for breaching provisions under the *Islamic Family Law Enactment of Kedah*. Although no custodial sentence was imposed, the court issued a stern warning to the individual against repeating the offence (Zaini Nasohah, 2014).

### **Case of Unregistered Marriage in Southern Thailand**

A Malaysian couple contracted a marriage in Southern Thailand without securing approval from the Syariah Court and failed to register their marriage in Malaysia. The case occurred in Selangor, where the couple had disregarded the legal requirement to obtain permission for marriage. The Selangor Syariah Court imposed a fine of RM2,000 on each individual for solemnising and failing to register their marriage. The court also ordered them to register the marriage officially in accordance with Malaysian law (Nur Hidayah Abdul Karim & Siti Hajar Abdul Rauf, 2020).

### **Case of Marriage without Court Approval in Kelantan**

In Kelantan, a man entered into a marriage with a second wife without obtaining the required written permission from the Syariah Court for polygamy. The marriage was conducted secretly without the knowledge of his first wife. The Syariah Court in Kota Bharu fined the man RM1,000 and ordered him to provide additional maintenance to his second wife, in addition to submitting valid marriage documentation to the court (Norain Mohd Shah & Khairul Azhar Meerangani, 2021).

### **Case of Unregistered Marriage in Perak**

A married couple in Perak failed to register their marriage under the Islamic Family Law Act. Although the marriage was valid according to Islamic principles, the couple breached the law by not registering it with the Registrar. The Syariah Court in Ipoh fined each individual RM1,500 for the offence. The court further emphasized the importance of marriage registration in safeguarding the legal rights of both spouses and their children (Siti Aishah Borhanuddin, Mahamatayuding Samah & Mohd Norhusairi Mat Hussin, 2023).

These cases demonstrate that the Syariah Courts in Malaysia adopt a firm approach in addressing violations of Islamic Family Law, particularly in relation to unauthorised marriages. The punishments imposed typically include stern warnings, fines, and in certain cases, imprisonment or additional orders such as formal marriage registration or maintenance payments.

## 7. THE NEED FOR THE IMPLEMENTATION OF ALTERNATIVE SENTENCING FOR OFFENCES UNDER ISLAMIC FAMILY LAW IN MALAYSIA

### 7.1 Definition of Alternative Sentencing

Alternative sentencing refers to forms of punishment that differ from the conventional sanctions typically imposed by the Syariah Courts, such as imprisonment, fines, and whipping. It may also be interpreted as a complement to existing punishments in order to fulfil the broader objectives of punishment as prescribed in Islam (Hasnizam Hashim et al., 2024). In the context of Islamic family law, alternative sentencing aims to rehabilitate and reform offenders through educational approaches, counselling, community service, and other rehabilitative or *ta'dib*-based measures. This approach not only seeks to educate offenders but also to avoid the adverse consequences of incarceration, while providing them with opportunities for personal reform and reintegration (Hasnizam Hashim et al., 2024).

### 7.2 Types of Punishments under Act 355

As previously explained, the *Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355)*, as amended in 1988, prescribes the maximum punishments that may be imposed by the Syariah Courts for Syariah criminal offences, including offences related to Islamic family law. The statutory sentencing limits are as follows:

- (i) A fine not exceeding RM5,000;
- (ii) Imprisonment not exceeding three years;
- (iii) Whipping not exceeding six strokes;
- (iv) Or any combination of these punishments.

However, these statutory limits significantly restrict the capacity of the Syariah Courts in selecting and imposing appropriate punishments, particularly in cases involving breaches of Islamic family law. Therefore, the authors argue that there is a pressing need to introduce the implementation of more comprehensive alternative sentencing mechanisms alongside the existing punitive framework, with a greater emphasis on rehabilitative and educational (*ta'dib*) approaches (Hasnizam Hashim et al., 2021).

### 7.3 Existing Forms of Punishment for Family Law Cases in the Syariah Courts of Malaysia

Based on the findings of recent studies, aside from advisory reprimands and stern warnings, the punishments imposed for offences under Islamic family law in the Syariah Courts of Malaysia vary depending on the severity of the offence. Common offences include contracting marriage without official permission, polygamy without court approval, extrajudicial divorce, failure to provide maintenance, and violations of custodial rights. For such offences, the courts may impose punishments in the form of fines, imprisonment, and specific court orders.

Monetary fines are the most common form of punishment in family law cases in Malaysia. The amount of fines imposed differs by state and court, but typically ranges from RM1,000 to RM5,000. Fines are generally imposed for offences such as contracting marriage without the court's approval or failure to register a marriage. For more serious offences, such as polygamy without court approval or carrying out a divorce without following the proper legal procedure, imprisonment of up to three years may be imposed in accordance with Act 355. Although rarely applied in family-related cases, Syariah whipping (*sebatan*) may also be imposed for certain offences, particularly those involving blatant violations of Islamic law, such as *khalwat* (close proximity), as provided under the *Syariah Criminal Offences (Federal Territories) Act 1997*.

In addition to fines and imprisonment, the Syariah Courts also have the authority to issue orders aimed at protecting the rights of spouses and children. For instance, in cases involving neglect of maintenance, the court may issue an order for the offender to pay arrears in a specified amount. If the offender fails to comply with the court order, further punishment may be imposed, including detention orders or additional penalties. In custody-related cases, the court may issue restraining orders against either parent who violates custody arrangements granted to the lawful guardian.

While existing punishments aim to educate offenders and protect aggrieved parties, there are areas in the current sentencing system that could be improved. Fines, for instance, are often insufficient to deter offenders who have the means to pay the imposed amounts. Conversely, imprisonment, especially in family-related cases, can have detrimental effects on the family institution itself. An imprisoned offender may lose their source of income, leading to further hardship for dependents. Therefore, the authors argue that an alternative sentencing approach, with a stronger emphasis on rehabilitation and education, is needed to maintain family well-being and to achieve justice in a more holistic and sustainable manner (Hasnizam Hashim et al., 2024).

#### **7.4 Analysis on the Need for Alternative Sentencing**

One of the main shortcomings of the current sentencing framework under Islamic family law is its limitation to fines, imprisonment, and whipping, as provided under Act 355. It must be recognised that fines and imprisonment, particularly in family-related cases, may not effectively educate offenders or prevent recidivism. Imprisonment, for example, may lead to greater adverse consequences especially when it involves the head of a household who is responsible for supporting a spouse and children. If a husband is sentenced to prison for failing to provide maintenance, the punishment may result in even greater neglect of the family's welfare. Therefore, punishments that are more rehabilitative and educational in nature should be considered in place of purely punitive measures (Hasnizam Hashim et al., 2022).

Moreover, fines often fail to serve as an effective deterrent for offenders with sufficient financial means, while disproportionately burdening those who are less financially capable. Whipping, on the other hand, is rarely applied in family-related cases due to its nature, which is more relevant to serious criminal offences. Hence, punishments under Islamic family law either as alternatives or supplements to Act 355 should place greater emphasis on more effective forms of sentencing in addressing family issues, such as counselling, rehabilitation, and community service orders.

From another perspective, alternative sentencing is also consistent with the objectives of *Maqasid al-Shariah*, particularly in safeguarding the institution of family and lineage (*hifz al-nasl*). Islam places significant emphasis on justice and rehabilitation in the implementation of punishments. In family-related cases, restoring and strengthening the family institution is more crucial than imposing purely punitive sanctions.

#### **7.5 Proposed Forms of Alternative Sentencing**

The proposed alternative sentencing measures must align with the philosophy and concept of punishment (*'uqubah*) in Islam, with a strong emphasis on the principle of *ta'dib* (disciplinary education). Counselling for a specific period, as an alternative or supplement to the punishments under Act 355, may be imposed on offenders to create awareness, instil remorse, and serve as a preventive measure against the recurrence of similar offences. In addition, community service orders may also serve as educational and corrective punishments that raise the offender's awareness (Hasnizam Hashim et al., 2014).

Faith-based rehabilitation programmes may be made mandatory for offenders, focusing on Islamic values related to marriage and family responsibilities. Monitoring mechanisms could also be introduced as preventive tools, whereby offenders are supervised for a certain period to ensure they do not repeat the offence.

All of these alternative sentencing measures are designed with the objective of educating and reforming the offender while simultaneously serving as a deterrent to both the offender and others from committing similar breaches of the law.

## 8. CONCLUSION

The need to improve, implement, and strengthen the application of alternative sentencing for offences under Islamic family law in Malaysia is both urgent and consistent with the Islamic philosophy of punishment. Punitive measures alone may not be appropriate in family-related cases, which often require a more rehabilitative and educational approach. By incorporating alternative sentencing such as counselling, education, community service, and faith-based rehabilitation programmes, offenders can be guided toward becoming responsible individuals. At the same time, such measures help alleviate the burden on the legal system and promote the well-being of the family institution within the Muslim community and ensuring social justice. The implementation and empowerment of alternative sentencing not only prevent the imposition of 'double punishment' on offenders but also align with the principles of *Maqasid al-Shariah*, particularly the objective of preserving lineage (*hifz al-nasl*). Furthermore, it reflects the Islamic commitment to social justice (*al-'adalah al-ijtima'iyah*) by ensuring that punishments are proportionate, restorative, and sensitive to the familial context, taking into consideration the elements of *maslahah* and *mafsadah* in the determination of the punishment itself.

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