

# Reconsidering the Concept of *Mastautin* in Malaysia: A *Siyāsah syar'iiyyah*-Based Framework for Islamic Family Law Standardisation

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**Abstract:** This article examines the concept of *mastautin* (residence) as the jurisdictional foundation of Malaysia's Syariah courts, highlighting how decentralization yields varied legal, administrative, and doctrinal interpretations across states. Using a scoping study methodology, the research maps statutory definitions, fatwas, and administrative directives in all 13 Malaysian states and 3 Federal Territories, identifying inconsistencies and gaps in implementation. Findings reveal significant variation on residency thresholds (ranging from five days to four months), despite procedural uniformity under administrative directives (*Arahan Amalan*) No. 8/2019, which standardises documentary requirements such as utility bills and Imam confirmation letters. While shorter thresholds may enhance accessibility, longer ones ensure certainty, creating risk of forum shopping, unequal access, and a loss of public trust. To address these issues, the article utilises the framework of *siyāsah syar'iiyyah*, which permits rulers to legislate public benefit (*maslahah*) while adhering to *maqāsid al-shari'ah*. It states that harmonisation must progress from procedural directions towards model national norms, coordinated fatwa reviews, judicial training, and monitoring mechanisms. This study analyses Malaysia's experience within wider discussions on federalism, legal pluralism, and *maqāsid*-based reform. This study demonstrates that *siyāsah syar'iiyyah* provides a viable pathway to harmonize state autonomy with national unity, thereby maintaining consistency, fairness, and social responsiveness. This study contributes to the academic discourse by reinterpreting the concept of *mastautin* within Malaysia's Islamic Family Law through a *Siyāsah syar'iiyyah*-based framework. It offers a new perspective on how classical jurisprudential principles can be integrated with contemporary legal governance to achieve consistency and justice in family law administration. By proposing a model that aligns legal standardisation with the objectives of *maqāsid al-shari'ah*, this research strengthens the theoretical foundation for harmonising diverse *fiqh* interpretations under modern state policy.

**Keywords:** *Mastautin*, Syariah court jurisdiction, *siyāsah syar'iiyyah*, legal harmonisation, Islamic family law, administrative directives, State fatwas

**Abstrak:** Artikel ini meneliti konsep *mastautin* (kediaman) sebagai asas bidang kuasa Mahkamah Syariah di Malaysia, dengan menyoroti bagaimana sistem persekutuan telah menghasilkan kepelbagaian doktrinal dan pentadbiran antara negeri. Menggunakan metodologi kajian pemetaan (*scoping study*), kajian ini meneliti takrifan perundangan, fatwa, dan arahan pentadbiran di 13 negeri serta 3 Wilayah Persekutuan, bagi mengenal pasti jurang dan ketidakselarasan dalam pelaksanaannya. Dapatan menunjukkan terdapat perbezaan ketara dalam tempoh *mastautin*—daripada lima hari di Perlis hingga empat bulan di Pulau Pinang—walaupun prosedur pengesahan dokumen telah diseragamkan melalui *Arahan Amalan* No. 8/2019, seperti bil utiliti dan surat pengesahan imam kariah. Walaupun tempoh yang singkat meningkatkan aksesibiliti, tempoh yang panjang memberikan kepastian, namun mewujudkan risiko *forum shopping*, ketidaksamaan akses dan penghakisan kepercayaan awam. Bagi menangani cabaran ini, artikel ini menggunakan kerangka *siyāsah syar'iiyyah* yang memberi kuasa kepada pemerintah untuk menggubal undang-undang berasaskan *maslahah* selagi tidak bercanggah dengan *maqāsid al-shari'ah*. Kajian mencadangkan langkah ke arah keseragaman substantif, termasuk garis panduan kebangsaan, semakan fatwa antara negeri, latihan kehakiman, dan sistem pemantauan. Dengan mengaitkan pengalaman Malaysia dalam perbincangan tentang federalisme, pluralisme undang-undang, dan reformasi berasaskan *maqāsid*, kajian ini menunjukkan bahawa *siyāsah syar'iiyyah* menyediakan kerangka praktikal untuk menyeimbangkan autonomi negeri dengan koheren nasional, sekali gus memastikan undang-undang keluarga Islam kekal konsisten, adil dan responsif kepada keperluan semasa. Penelitian ini memberikan kontribusi terhadap wacana akademik dengan menafsirkan kembali konsep *mastautin* dalam Hukum Keluarga Islam di Malaysia melalui kerangka *Siyāsah syar'iiyyah*. Studi ini menawarkan perspektif baru tentang bagaimana prinsip-prinsip yurisprudensi klasik dapat diintegrasikan dengan tata kelola hukum kontemporer untuk mencapai konsistensi dan keadilan dalam administrasi hukum keluarga. Dengan mengusulkan model yang menyelaraskan standardisasi hukum dengan tujuan *maqāsid al-shari'ah*, penelitian ini memperkuat landasan teoretis bagi upaya harmonisasi berbagai interpretasi *fiqh* di bawah kebijakan negara modern.

**Kata kunci:** *Mastautin*, bidang kuasa Mahkamah Syariah, *siyāsah syar'iiyyah*, harmonisasi undang-undang, Undang-undang Keluarga Islam, Arahan Amalan, Fatwa negeri.

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## Introduction

Malaysia's federal system has a legal framework that integrates both civil and Sharia law, legitimised under the Federal Constitution. Within this framework, Islamic Family Law is placed under the jurisdiction of the states, as provided in List II of the Ninth Schedule, Article 74(2).<sup>1</sup> Consequently, every state has enacted its own Administration of Islamic Law Enactment, covering the establishment of State Islamic Religious Councils, the appointment of Muftis and Fatwa Committees, Islamic family law provisions regarding marriage and divorce, maintenance, child custody, and related Syariah procedures.<sup>2</sup> This decentralised structure reflects the principle of *siyāsah syar'iyah*, allowing state authorities to legislate according to local *maslahah*. Thus, it is not easy to standardise the legislation, and tremendous efforts must be made to improve the Islamic institutions in the country.<sup>3</sup>

However, this autonomy has led to considerable variation in the interpretation and application of core legal concepts. One of them is the core legal principle in determining the jurisdiction of the Syariah Court, which is the concept of *mastautin* (resident or domicile).<sup>4</sup> This concept is crucial, especially in the context of Islamic family Law, as it determines which state's Syariah Court has the authority to hear and adjudicate a case. For example, if the

applicant resides in Kedah, then cases such as divorce or polygamy must also be applied in the Syariah Courts in Kedah. While all states incorporate the definition of *mastautin* in their Islamic Family Law Enactments in Section 2(1)<sup>5</sup> and Section 4,<sup>6</sup> the residency thresholds vary significantly (from as short as five days in Perlis to up to four months in Pulau Pinang). The lack of uniformity has two primary consequences. First, it produces administrative inconsistencies in court registration and the implementation or interpretation of fatwas. Secondly, it creates opportunities for forum shopping, where litigants can strategically choose jurisdictions that they believe would provide more favorable rulings. Technically, this framework is permissible under Malaysia's federal system; however, the lack of standardisation may raise concerns over the fairness, consistency, and integrity of Malaysia's Islamic legal system.

While the principle of *siyāsah syar'iyah* (which gives the authority for the ruler to determine the manner in which the Syariah should be administered)<sup>7</sup> has been established in numerous Islamic-based departments and agencies throughout the country and reinforced in the foundation of government structure covering the areas of jurisdiction, finance, and administration<sup>8</sup>, the risk of uncontrolled variation undermines the higher

<sup>1</sup> Federal Constitution of Malaysia, Article 74(2).

<sup>2</sup> Abdul Monir Yaacob, "Perlaksanaan Perundangan Islam di Malaysia: Satu Penilaian," *Jurnal Fiqh* No. 6 (2009): 1-20.

<sup>3</sup> Na'im and Hanifah, "The Islamic Legal System in Malaysia: Challenges and Strategies," 30.

<sup>4</sup> "Bermastautin," *Translate.com Dictionary*, accessed June 29, 2025, <https://www.translate.com/dictionary/malay-english/bermastautin-8975484>.

<sup>5</sup> Islamic Family Law (Federal Territories) Act 1984, Act 303, § 2 (Laws of Malaysia); Islamic Family Law (State of

Selangor) Enactment 2003, Enactment No. 2 of 2003, § 2 (Selangor).

<sup>6</sup> Ibid; §4

<sup>7</sup> Mohammad Hashim Kamali, "Siyasah Shar'iyah or the Policies of Islamic Government," *American Journal of Islam and Society* 6, no. 1 (1989): 59-80, <https://doi.org/10.35632/ajis.v6i1.2833>.

<sup>8</sup> Irwan Mohd Subri, Hanan Amran, and Nisar Mohammad Ahmad, "Siyasah Shar'iyah and Its Implementation in Malaysia," *Australian Journal of Basic and Applied Sciences* 8, no. 13 (2014): 416-423.

objectives of Sharia (*maqāṣid syariah*), particularly in justice ('adl) and legal certainty.

Thus, this article investigates the conceptual, legal, and administrative aspects of the implementation of 'mastautin' within Malaysia's syariah system, specifically in Islamic Family Law. It aims to : (1) analyse the legal definition and function of *mastautin* across the Malaysian states, (2) evaluate the application of *siyāṣah syar'īyyah* in interpreting and implementing *mastautin*, and (3) propose systematic improvements that enhance coherence, transparency, and institutional integrity.

This study not only provides descriptive mapping but also addresses a significant research gap: prior works have highlighted decentralisation and inconsistency, but few have explored *mastautin* as a jurisdictional variable from the perspective of *siyāṣah syar'īyyah*. This article contextualises Malaysia's situation within broader discussions on *maqāṣid*-oriented reforms, comparative governance, and legal harmonisation in plural jurisdictions, thereby enhancing contemporary Islamic legal scholarship and offering insights pertinent to Malaysia and other Muslim-majority nations encountering analogous challenges.

## Method

This research adopts a scoping study methodology based on the six-stage framework established by Arksey and O'Malley (2005). This approach is crucial when examining complex and understudied legal and administrative frameworks, such as the interpretation and application of shari'ah within Malaysia's Syariah legal system. The

method is employed due to the decentralised nature of Islamic law in Malaysia, as statutory definitions, fatwas, and administrative court procedures vary between states. This approach aims to carefully examine the primary legal (doctrine), textual, and pragmatic aspects of *mastautin*, identify points of divergence or conflict, and assess the workability of *siyāṣah syar'īyyah* as a mechanism for coordination and harmonization. The scoping study highlights gaps in current practice and generates ideas for achieving greater legal and administrative certainty in Islamic family law.

According to Arksey and O'Malley's six-stage framework, the research process consists of<sup>9</sup>:

Firstly, by identifying research questions centred on the legal and administrative understanding of *mastautin* throughout Malaysian states, the consistency or disparity of fatwas, enactments, and administrative directives (such as *Arahan Amalan*), as well as the extent to which *siyāṣah syar'īyyah* can facilitate harmonisation while respecting state autonomy. The guiding questions are:

- What is *mastautin*, and how is it enforced in Malaysia?
- How do the different fatwas, acts, and mandates contradict?
- How could *siyāṣah syar'īyyah* produce a category of harmonisation and yet preserve state independence?

Secondly, identifying relevant studies and sources that include data collection that contains key legal sources, including Islamic Family Law Enactments (especially Sections

<sup>9</sup> H. Arksey and L. O'Malley, "Scoping Studies: A Methodological Framework," *International Journal of*

*Social Research Methodology* 8, no. 1 (2005): 19–32

2(1) and 4), state-issued fatwas, administrative circulars, and procedural directions from JKSM and state religious agencies. Secondary sources, including scholarly articles, legal analyses, and conference papers, enhance the examination. *Siyāsah syar'iyah* was used as a conceptual framework to measure whether these sources already had the exact nature, being consistent, just, and in the public benefit.

Third, the study selection focuses on materials ranging from 2000 to 2024 that clearly describe or interpret *mastautin*. Sources were collected from all 13 states and three federal territories to make sure they were all comparable and covered the whole country.

Fourth, charting the data. A comparative matrix was created to capture residency durations (e.g., 5 days in Perlis versus 4 months in Pulau Pinang), the types of procedural mechanisms used (such as the issuance of fatwa or Arahan Amalan), and the types of documentary evidence accepted (such as utility bills and confirmation letters from the local mosque authorities). This process enabled the analysis of both doctrinal viewpoints and administrative practices under the framework of *siyāsah syar'iyah*.

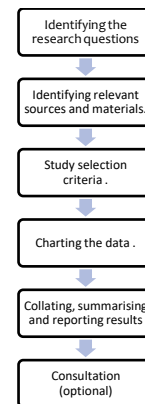
Fifth, collating, summarizing, and reporting the results. Findings are organised into three thematic dimensions: (i) legal (definition and statutory jurisdiction), (ii) administrative (step for registering a case and residence verification), and (iii) doctrinal (fatwa-based interpretation and legal *ijtihad*). This thematic grouping facilitates the identification of both divergence and convergence of practices among states. The analysis utilised *siyāsah syar'iyah* to determine if the state policies were consistent to ensure justice (*'adl*), welfare (*maslahah*), and legal

clarity.

Lastly, a consultation exercise. Although formal interviews were not conducted, informal consultations with academic advisors and peers knowledgeable in Syariah law were undertaken. This interaction served to corroborate the conceptual framework and administrative observations, particularly regarding the importance of *siyāsah syar'iyah* in state-level policymaking. Given the legal and documentary focus of this research, consultation was limited; future studies may incorporate perspectives from judges, practitioners, or litigants.

A visual flowchart describing the six stages of this technique is presented to explain the analytical framework utilised in this study.

Diagram 1: Six stages of Scoping Study Methodology



Source: Writer

A comparative legal analysis was employed to examine the differences between laws and fatwas, supported by a doctrinal study of key legal principles. *Siyāsah syar'iyah* was utilised as an analytical framework to assess whether state-level variations uphold or undermine *maqasid syariah*, such as justice, legal certainty, or protection of lineage.

This study is subject to several limitations.

First, the reliance on documentary sources and informal consultations limits the depth of empirical validation. Second, the variety in state-level transparency and publication of fatwas or directives may affect comprehensiveness. Finally, the study does not include the perspective of litigants, which could provide further insight into the lived implications of *mastautin* rules.

### The Historical Context Of Legal Diversity In Malaysia

The historical and constitutional structure in Malaysia is one of the primary reasons for the diversity in the implementation of Islamic law, as it is rooted in its federal and monarchical structure. Malaysia is composed of multiple states; each of the 13 states and 3 Federal Territories has its own jurisdiction over religious matters. The Sultan acts as the Head of Religion in nine states, and the Yang di-Pertuan Agong holds this role in the remaining states and territories.<sup>10</sup> This unique constitutional arrangement was affirmed under Article 3 and Article 74(2)<sup>11</sup>, which grants authority and power to the Sultan over Islamic matters within their respective territories. Therefore, every state has its own Islamic Religious Council, Mufti, Syariah Courts, and Islamic religious administrative bodies, thereby embedding decentralization into the legal framework.

Historically, muftis were renowned as independent scholars in the Islamic world, and any individual could consult them for matters of religious law. Over time, the role of muftis has become more institutional, especially during the Ottoman Empire, and this has given effect to statutory appointments in Malaysia. During the Middle Ages of British colonialism in Malaysia, the Mufti was known as the religious advisor to the Sultan regarding Islamic matters. Now, Mufti has an official position in the states, as established by statute created in law, appointed either by the Sultan or the Yang di-Pertuan Agong.<sup>12</sup> Upon appointment, a state Mufti or the State Fatwa Committee has the authority to issue interpretations of Islamic law. Once these interpretations are published in the official gazette, they will become legally binding on Muslims and enforceable by the respective state's Syariah courts.<sup>13</sup> This statute has given the Muftis a decisive role, as it not only grants them the authority to interpret religious law but also empowers their opinions of *ijtihad* with legal force. Once their fatwas have been gazetted, they carry the weight of law and directly influence the administration of Islamic justice within the state.<sup>14</sup> Occasionally, the Mufti Office may release a fatwa; however, if the public response and perception suggest that the issuance was unnecessary, then the fatwa will be viewed merely as a religious opinion without carrying any binding religious or legal consequences.<sup>15</sup>

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<sup>10</sup> Farid S. Shuaib, "The Islamic Legal System in Malaysia," *Washington International Law Journal* 21, no. 1 (2012): 85–113.

<sup>11</sup> *Federal Constitution of Malaysia*, Article 3 and 74(2).

<sup>12</sup> The Administration of Islamic Law (Federal Territories) Act 1993., Act 505 of 1993, § 32; The Administration of the Religion of Islam (State of Selangor) Enactment (2003), § 44

<sup>13</sup> Administration of Islamic Law (Federal Territories) Act 1993, Act 505 of 1993, § 34;

Administration of the Religion of Islam (State of Selangor) Enactment 2003, *supra* note 54, § 48.

<sup>14</sup> Farid S. Shuaib, "The Islamic Legal System in Malaysia," : 109

<sup>15</sup> Ismail, Norbani. "The Mufti and the State Administration of Islam: Some Selected Fatwas in Contemporary Perlis, Malaysia (Mufti Dan Pentadbiran Islam Negeri: Beberapa Fatwa Terpilih Di Perlis, Malaysia)." *Journal of Islam in Asia* (E-ISSN 2289-8077) 16 (12/30 2019): 344-73.



This decentralised system produces both opportunities and challenges. On one hand, it allows states to tailor religious governance to local needs, consistent with the principle of *siyāsah syar'iyah*, which grants rulers discretion to legislate for the welfare (*maslahah*) of their communities. For instance, Perlis has issued a fatwa recognising residency (*mastautin*) after residing for five days or more, reflecting a pragmatic effort to simplify jurisdictional thresholds. On the other hand, other states, such as Pulau Pinang, require up to four months of residence. These inconsistencies directly impact family law by determining where marriages are registered, divorces are initiated, or custody disputes are heard.

The consequences are significant. Variation in residency rules creates jurisdictional conflicts, enables forum shopping (where litigants choose states perceived as more favorable), and undermines legal certainty. The inconsistent enforcement of fatwas also risks eroding public trust in Syariah courts. This has also been discussed in Shuaib et al. (2017) who illustrate how different definitions of "resident" or "mastautin" across states, such as the Federal Territories, Kedah, and Perlis, have led to overlapping jurisdictions and opportunities for forum shopping, for example, in the case of Aishah bt Abd Rauf v. Wan Mohd. Yusof bin Wan Othman, a litigant, moved to a different state after an unfavourable decision to get a better outcome.

Admittedly, such variations are permissible in principle, as every state has legislative competence and a constitutional

right to regulate Islamic law. However, a concern emerges when differences in interpretation arise, such as those concerning *mastautin*, which could cause difficulties in sensitive areas, including inheritance and the determination of guardianship in marriage. Such inconsistencies may lead to conflicts of jurisdiction and legal uncertainty in the long run. Indeed, there is potential for harmonisation. Some of the disparity could be addressed through interstate cooperation and model guidelines, while still valuing the states' rights. If some major fatwas were codified, and more correlation and cooperation between the National Fatwa Council were achieved, a much-needed consistency would be established. Education of the public about the diversity of fatwas and their rationale behind would also prepare the ground for more compliance and decrease confusion. *Siyāsah syar'iyah*-wise, 'harmonisation' should not necessarily be perceived as an attempt to abrogate pluralism but rather to fulfill the broader purposes of the *Syariah* (*maqāṣid al-sharī'ah*) and in particular, justice, consistency, and public interest.

### Legal Definitions: *Mastautin* in Malaysia

The term *mastautin* is derived from the Arabic verb *istautana*, meaning "establish a residence in; settle down in".<sup>16</sup> The Dewan Bahasa dan Pustaka Dictionary (4<sup>th</sup> ed.) defines the term '*mastautin*' as someone who resides in a place as their place of origin. Classical Islamic jurisprudence similarly defines a *mastautin* as an individual who resides permanently in a location without the intention of migrating elsewhere, except in cases of necessity.<sup>17</sup> The interpretation of *mastautin* can vary based on

<https://dx.doi.org/10.31436/jia.v16i3.806>.

<sup>16</sup> "Bermastautin," *Almaany Arabic-English Dictionary*, accessed June 30, 2025, <https://www.almaany.com/en/dict/ar->

[en/%D8%A8%D8%B1%D9%85%D8%B3%D8%AA%D9%88%D8%B7%D9%86/](https://www.almaany.com/en/dict/ar-en/%D8%A8%D8%B1%D9%85%D8%B3%D8%AA%D9%88%D8%B7%D9%86/).

<sup>17</sup> Ibn Hajar al-Haytami, *Tuhfah al-Muhtaj bi Syarh al-Minhaj* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1938).

traditional and state-specific definitions. Islamic legal scholars (*fuqaha'*) also describe a *mastautin* as someone who resides in a place year-round, with no intention of relocating, regardless of seasonal changes, unless for essential travel purposes.<sup>18</sup>

Within the context of Islamic family law in Malaysia, the principle of *mastautin* serves as the foundational basis for Syariah court jurisdiction, particularly in cases involving marriage, divorce, and family-related matters. Before registering a case, an individual must be considered *mastautin* in the jurisdiction where the case is to be filed. This definition is uniformly adopted across all states under Section 2(1) of the respective Islamic Family Law Act/Enactment/Ordinance:

'Bermastautin' means permanently residing or habitually living in a specified area."

Section 4 of the same legislation further specifies that Islamic family law applies to all Muslims who reside in the state, as well as those who are *masta'inn* in the state but living temporarily outside it. In essence, the term *mastautin* in Malaysia's Islamic family law represents more than a simple residency label. It is one of the bases of Syariah court jurisdiction that determines where cases can be filed.

Although the statutory definitions remain consistent across the states, the practical application diverges based on the local interpretations, 'urf, and administrative discretion. For example, some states require documentary evidence of residence based on

the possession of utility or identity cards, while others consider family connections, employment, or duration of stay, even in the absence of formal documentation. Case law further integrates the element of intention (*niat untuk menetap*), although not codified, as a decisive factor. As Majid (2017)<sup>19</sup> notes, *mastautin* means physical presence and intention to remain beyond a temporary stay. Therefore, the courts engage in fact-specific inquiries, evaluating the voluntariness of the relocation, job, family links, and personal statements. This dependence on interpretation leads to inconsistency. There is no Syariah appellate court with an apex, therefore 14 states use *mastautin* on their own, which leads to different standards.<sup>20</sup> A collection of facts adequate in Selangor may be regarded as insufficient in Kedah or Terengganu. This creates a conflict between the official definition of the law and its actual application in different places.

A sharper perspective emerges when *mastautin* is compared with the common law concept of domicile. Both govern jurisdiction, but their logic diverges. *Mastautin* is fact-based and may allow dual residency, whereas domicile is intention-driven, single, and challenging to prove. The main difference between domicile and *mastautin* in Malaysia is their scope. Domicile, a federal civil law concept (Law Reform (Marriage and Divorce) Act 1976), establishes the jurisdiction of the Civil Courts over non-Muslims, applying to all non-Muslims according to their permanent residence at the national level, regardless of

<sup>18</sup> Maktabah al-Bakri, "Soal Jawab Agama, Solat Qasar dan Jamak, #6521: Perbezaan Mukim dan Mastautin," July 29, 2024, <https://maktabahalbakri.com/6521-perbezaan-mukim-dan-mastautin/>.

<sup>19</sup> Mimi Kamariah Abdul Majid, "Domisil dan Mastautin

dalam Undang-Undang Keluarga di Malaysia," *Jurnal Undang-Undang* (1990). Accessed September 1, 2025. <https://ptsldigital.ukm.my/jspui/handle/123456789/456970>.

<sup>20</sup> Shuaib et al., "Towards an Apex Sharia Court," 311.

state boundaries. *Mastautin* is a state-specific concept defined within each Islamic Family Law Enactment, establishing the jurisdictional foundation for Syariah Courts based on permanent residence within state boundaries. This explains the reasons for its geographically limited application and the variations observed across different states. Notably, while the term *mastautin* is occasionally translated as "ordinary residence" in civil statutes in English, its interpretation in civil law aligns with the concept of domicile rather than Syariah law. Therefore, it is essential to distinguish between the two systems: in Syariah courts, *mastautin* serves as the basis for jurisdiction in Muslim family law, while domicile under civil law provides the foundation for jurisdiction in non-Muslim family law.<sup>21</sup>

The comparative experience from Indonesia highlights potential avenues for reform because it has a similar syariah basis with Malaysia, but varies in application due to different influences in the legal system, culture, and state policies.<sup>22</sup> Hence, the Indonesia Syariah courts adhere to the principle of *actor sequitor forum rei*,<sup>23</sup> which dictates that the defendant's domicile determines jurisdiction. Indonesia extends its provisions by allowing vulnerable groups, including women, children, and workers, to file cases within their own residences. Furthermore, the e-Court innovations established by Supreme Court Regulation No. 3/2018 facilitate online filing,

payment, and summons, thereby improving access and consistency.

*Mastautin* functions as a flexible, context-sensitive instrument that facilitates access to justice within Malaysia's plural legal framework. The statutory uniformity conceals empirical diversity, resulting in inconsistency and creating opportunities for forum shopping. Contrasting *mastautin* with domicile and analysing Indonesia's reforms highlights its unique significance: it balances state autonomy with remedial flexibility while necessitating harmonisation through interstate cooperation, codification of core principles, and public legal education. In the context of *siyāsah syar'īyyah*, this harmonisation should be understood not as the elimination of pluralism, but as the realisation of *maqāṣid al-sharī'ah*—namely, justice, welfare, and legal certainty.

### Administrative Practices and Fatwa Implementation

According to Zaleha (2010),<sup>24</sup> in the legal context, the researcher has argued that the determination of Syariah court jurisdiction in Islamic family law matters must be based on the concept of *mastautin* as provided under Section 45 of the Islamic Family Act<sup>25</sup>, and not on the domicile of the parties involved. As discussed above, each state's enactment regulates the jurisdiction of its Syariah courts by considering permanent residence, habitual residence, and local affiliation as the basis for

<sup>21</sup> Abdul Majid, "Domisil dan Mastautin," 13.

<sup>22</sup> Ade Khoirunnisa, Retno Dewi, Fatya Siahaan, Siti Samra, and Aulil Amri, "Comparison of Islamic Family Law in Malaysia and Indonesia," *An-Nisa: Journal of Islamic Family Law* 2, no. 2 (February 6, 2025): 109–20, <https://dx.doi.org/10.63142/an-nisa.v2i2.226>.

<sup>23</sup> Afifah Kusumadara, "Jurisdiction of Courts Chosen in the Parties' Choice of Court Agreements: An Unsettled Issue in Indonesian Private International Law and the Way-Out," *Journal of Private International Law* 18, no. 3

(2022): 424–49, <https://doi.org/10.1080/17441048.2022.2148905>.

<sup>24</sup> Zaleha Kamaruddin, Mohd Naim Haji Mokhtar, and Siti Zalikah Md. Nor, "Assessing the Working Draft of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance: Malaysian Sharia'ah Perspective," *Malaysian Journal of Syariah and Law* 2 (2010): 95–118.

<sup>25</sup> *Islamic Family Law (Federal Territories) Act 1984*, Act 303 (Laws of Malaysia), §45.



legal authority. Thus, the determination of *mastautin* involves not just the physical presence but also the legal implications that bind an individual to a particular jurisdiction.

'Arahan Amalan' were issued by the Chief Director of JKSM or the Chief Syariah, serving as a pivotal mechanism for achieving administrative harmonisation, as they contain procedural authority and aim to ensure consistency in case management in Syariah courts.<sup>26</sup> For example, in *Arahan Amalan No. 7 and No. 8, Year 2016* outlines the work process for case management that requires necessary documents for any case registration, such as notice of application, supporting affidavit, identification documents that include proof of residence (*mastautin*) if required by the registrar, *wakalah* (if represented by Syariah lawyer), and other related certificates.<sup>27</sup> Although these directives require endorsement by the state's Chief Syariah Judge to be valid,<sup>28</sup> they play a pivotal role in promoting consistency.

In practice, as mandated in *Arahan Amalan* (AA) No. 8/2019 proof of *mastautin* is usually

demonstrated through the National Identity Card (My Kad), address update card issued by the National Registration Department (JPN), confirmation letter from the local mosque Imam (*Imam Kariah*) or village head,<sup>29</sup> utility bills such as electricity, water, or telephone and local tax payment receipts.<sup>30</sup> This procedure is consistent across most states and reflects the administrative application of *mastautin* in legal verification, but is still open to challenge during proceedings.

Most states in Malaysia accept that AA No. 8/2019 is the standard for verifying *mastautin*. However, some states add more rules through their Chief Syariah Judge, administrative circulars,<sup>31</sup> or local laws. Most of the time, you need to provide proof of residency, such as an identity card, a letter from your employer, or a mosque certificate. However, the residency requirement changes. Perak<sup>32</sup> and Pahang<sup>33</sup> set the minimum at three months, while Selangor<sup>34</sup> and Pulau Pinang<sup>35</sup> set it at four months. Perlis,<sup>36</sup> on the other hand, sets it at five days, which is far shorter. Some states, such as Johor and Negeri Sembilan, follow AA No. 8/2019 exactly, while others, like Perlis, develop their

<sup>26</sup> Mazni Abdul Wahab, "Pemeriksaan Mahkamah Syariah Melalui Pemakaian Arahan Amalan Jabatan Kehakiman Syariah Malaysia" (PhD diss., Jabatan Syariah dan Undang-Undang, Akademi Pengajian Islam, Universiti Malaya, Kuala Lumpur, 2014).

<sup>27</sup> *Arahan Amalan No. 7 Tahun 2016 dan Arahan Amalan No. 8 Tahun 2016*, Jabatan Kehakiman Syariah Malaysia.

<sup>28</sup> Zubaidi Sulaiman and Ahmad Hidayat Buang, "Pemakaian Arahan Amalan di Mahkamah Syariah Menurut Perspektif Hukum Syarak: Satu Analisis," *Ulumuna: Jurnal Studi Keislaman* 7, no. 1 (2021): 1–19.

<sup>29</sup> *Arahan Amalan No. 8 Tahun 2019*, Jabatan Kehakiman Syariah Malaysia.

<sup>30</sup> Jabatan Kehakiman Syariah Negeri Kedah, "Portal Rasmi Jabatan Kehakiman Syariah Negeri Kedah," diakses 24 Jun 2025, <https://syariah.kedah.gov.my/ms/Page?type=zByNQuf9FYw=&pid=TIgfF7AJB8M=>.

<sup>31</sup> Department of Syariah Judiciary Malaysia, "Official Websites of the State Syariah Judiciary Departments in

Malaysia," accessed June 24, 2025, <https://www.jksm.gov.my>.

<sup>32</sup> AA No. 3/2014 defines *mastautin* as a stay of at least 3 months or 90 days with certification from employer or mosque authority.

<sup>33</sup> Circulars (*Pekeliling*) in 2020 and 2023 refine the duration of *mastautin* to 3 months, extend document validity to 6 months, and require use of specific application forms and utility bill attachments.

<sup>34</sup> Kerajaan Negeri Selangor, *Kaedah-Kaedah Undang-Undang Keluarga Islam (Perkahwinan dan Rujuk)* (Negeri Selangor), 2003. *Kaedah-Kaedah Perkahwinan, Cerai dan Rujuk (Borang dan Fi)* 2009.

<sup>35</sup> Jabatan Mufti Negeri Pulau Pinang, *e-Fatwa Negeri Pulau Pinang*, akses 30 Jun 2025, <http://efatwa.penang.gov.my/index2.php#>.

<sup>36</sup> Jabatan Mufti Negeri Perlis, *Maksud Perkataan Bermastautin*, akses 30 Jun 2025, <https://muftiperlis.gov.my/index.php/en/himpunan-fatwa-negeri/403-maksud-perkataan-bermustautin#>.

own forms or fatwa-based definitions. Fatwa adds to the variety of interpretations: Kedah stresses the purpose of staying permanently, Perak cites traditional fiqh sources, and Selangor makes a distinction between *mastautin* (permanent) and *muqim* (temporary).

Collectively, these variations highlight the absence of a uniform definition. On the one hand, shorter thresholds, such as those in Perlis, enhance accessibility, particularly for vulnerable groups; on the other hand, longer thresholds promote certainty but risk excluding deserving litigants. The outcome is a decentralised Syariah system that enhances state sovereignty while also presenting issues related to consistency, potential forum shopping, and uneven alignment with the overarching aims of Syariah (*maqāsid al-sharī'ah*).

While documentary evidence practices (AA No. 8/2019) are mostly the same, different thresholds may create several challenges :

- **Legal Uncertainty and Forum Shopping:** Litigants can choose jurisdictions with shorter requirements, such as Perlis, which makes things less consistent and erodes public trust in Syariah courts.
- **Unequal Access:** Short thresholds enhance accessibility for interstate couples and vulnerable groups, while longer thresholds provide greater legal certainty. However, having both extremes at the same time makes things confusing and creates uneven access depending on geography.
- **Inconsistent Fatwa Enforcement:** State-level fatwas interpret the concept of *mastautin* differently. For example, in Kedah, they define *mastautin* based on intention, while in Perlis, Pulau Pinang, and Selangor, they use temporal thresholds.

This promotes decentralisation and gives parties the chance to choose jurisdictions based on fatwa interpretations that are more advantageous and favourable.

From the perspective of *maqasid al-shari'ah*, these differences illustrate the challenge of balancing state autonomy with the higher objectives of justice (*'adl*), welfare (*maslahah*), and certainty (*yaqin*). The principle of *siyāsah syar'iyah* gives state rulers some freedom, but that freedom should not make family justice uneven in important ways. So, future changes could include : (i) establishing a minimum national norm for *mastautin* (e.g., three months) while allowing states some flexibility to meet local needs; (ii) including *maqasid al-shari'ah* ideas in fatwa discussions to make sure that justice, accessibility, and certainty are all respected.

In conclusion, the Malaysian Syariah legal framework embodies a paradox. AA No. 8/2019 broadly harmonises documentary processes for proving *mastautin* on the one hand. On the other hand, states have quite different substantive definitions and thresholds, which makes the law unclear and creates opportunities for forum shopping. Seeing *maqasid al-shari'ah* not just as a technical standard but also as a measure of fairness and certainty allows its reform to be understood as part of the broader mission of *maqasid al-shari'ah* and *siyāsah syar'iyah* to strengthen Islamic family law.

### ***Siyāsah syar'iyah* As a Framework for Legal Coordination**

Modern reforms in Islamic family law show that jurists no longer depend solely on classical

fiqh. Bunyamin's (2021)<sup>37</sup> study identifies four key methodologies: *talfiq* (synthesis of opinions), *takhayyur* (discriminative adoption), *siyāsah syar'iyah* (public interest-based governance), and the reinterpretation of texts to align with contemporary requirements. Hence, *siyāsah syar'iyah* is particularly significant since it gives authority to the rulers (*ulu al-amr*) to formulate and enforce laws that control public life in accordance with Syariah.<sup>38</sup>

Ibn Manzur describes *siyāsah* as a process for managing matters that leads to public benefit, whereas Abdul Wahab Khallaf defines it as legislation intended to maintain order and public welfare (*maslahah ammah*).<sup>39</sup> Similarly, 'Abd Rahman Taj views *siyāsah* as a set of policy and legal measures addressing various social issues in areas such as governance, the judiciary, executive and administrative affairs, and international relations.<sup>40</sup>

Within this framework, *siyāsah syar'iyah* refers to the management of public affairs within Islamic governance, focused on achieving benefit and preventing harm (*mafsadah*), as long as the measures taken do not contradict the boundaries and core principles of syariah, even if they differ from the views of a classical *imam mujtahid*.<sup>41</sup> This definition emphasizes the ruler's authority not only to enforce the law but also to create new regulations to address emerging issues that are

not covered explicitly in the Syariah texts. Consequently, the principles of *siyāsah syar'iyah* can accommodate differences in interpretation across the administrative, legislative, and judicial areas.

The primary foundation of *siyāsah syar'iyah* is based on the main Islamic sources, which are the Al-Quran, al-sunnah, and *ijma'*.<sup>42</sup> These are not only authoritative legal references but also act as a framework that guides Islamic governance. The application of *siyāsah syar'iyah* is further shaped by two Islamic legal maxims, which are:

"(The government's) actions towards the people are subject to public benefit."<sup>43</sup>

"It is undeniable that rulings (fatwas) change with the change of times (or place, individuals, customs, and traditions).

These maxims enable lawmakers and policymakers to be flexible through *ijtihad*, provided the results fulfill *maqāṣid al-sharī'ah* (the higher objectives of Islamic law), which include justice (*'adl*), protecting lineage (*ḥifẓ al-nasl*), and the well-being of society. Ibn Qayyim al-Jawziyyah's theory of legal change is particularly relevant, as he maintained that Islamic law can and should evolve in response to changes in place, time, conditions, motives, and customs. His theory ensures that Islamic law stays flexible and responsive to social

<sup>37</sup> M. Bunyamin, "The Implementation of the Concept of Maslahat (Benefits) in Determining the Minimum Age of Marriage in Islamic Family Law in Indonesia and Jordan," *Al-'Adalah* 18, no. 2 (2021): 303–22, <https://dx.doi.org/10.24042/adalah.v18i2.8645>.

<sup>38</sup> Maimun & Dani Amran Hakim, *Siyasah syar'iyah and Its Application to Constitutional Issues in Indonesia*, *As-Siyasi: Journal of Constitutional Law*. Vol. 3 No. 1 (2023): 111–130

<sup>39</sup> Abd al-Wahhāb Khallāf, *al-Siyāsah al-Syar'iyah aw Niẓām al-Daulah al-Islāmiyyah fi Syu'ūn al-Dustūriyyah wa al-Khārijīyyah wa al-Māliyyah*

(Mesir: Dār al-Anṣār, 1977), 4–5.

<sup>40</sup> Abd al-Rahman Taj, *al-Siyāsah al-Syar'iyah wa al-Fiqh al-Islāmi*, I (Mesir: Dār al-Ta'lif, 1953), 7–8.

<sup>41</sup> Khallāf. 1977. *al-Siyāsah al-Syar'iyah aw Niẓām al-Daulah al-Islāmiyyah fi Syu'ūn al-Dustūriyyah wa al-Khārijīyyah wa al-Māliyyah*, 18.

<sup>42</sup> Maimun & Dani Amran Hakim, "Siyasah syar'iyah and its application to constitutional issues in Indonesia,". 117

<sup>43</sup> Abd al-Karīm Zaidān, *al-Wajiz fi Syarh al-Qawā'id al-Fiqhiyyah* (Beirūt: Muassasah al-Risālah, 2004)

transformation. Ibn Qayyim's method strengthens *siyāsah syar'iyah* as a governance instrument that strikes a balance between continuity and adaptability by contextualising court decisions to reflect contemporary circumstances without shifting from Islamic legal principles.<sup>44</sup>

Based on these ideas, Abd al-Rahman Taj (1995) notes two conditions: firstly, it must be aligned with *maqasid syariah*; and secondly, it must not contradict any clear, definitive (*qat'i*) Islamic legal texts.<sup>45</sup> Mohd Hapiz (2017) also notes that any policy must preserve the essential, complementary, and embellishing needs (*al-daruriyyah*, *al-hajjiyyah*, *al-tahsiniyyah*) of society.<sup>46</sup> Consequently, although the state possesses the power to enact legislation on issues not explicitly addressed by classical jurisprudence, its decision-making is constrained by the principles and ethics inherent in Islamic law.

Similarly, Abdul al-'Al Ahmad' Atwah (1993)<sup>47</sup> outlines several important requirements that must be met in order for rulings based on *siyāsah syar'iyah* to achieve the goals of *maslahah* (public welfare). Scholars have also divided the application of *siyāsah syar'iyah* into three main groups: *tafrit*, *ifrat*, and *tawassut*.

(i) *Tafrit* (careless or too cautious) approach only allows the usage of *siyāsah* to come from clear textual sources, ignoring the requirements of society as they change or in

the context in which they are used.

(ii) *Ifrat* (excessive or overly liberal) approach, which uses *maslahah* without enough support from scripture or legal tradition, which could lead to straying from *Syariah*.

(iii) *Tawassut* (moderate) means finding a balance between *ijtihad* and *maqasid al-shari'ah* while respecting the authority of al-Qur'an, *sunnah*, and *Ijma'* (*nas*).

The *tawassut* method is the most applicable to Malaysia, as it facilitates flexibility while averting arbitrariness.

### Application of Islamic Family Law in Malaysia

Islamic family law falls under the authority of the state in Malaysia's federal framework. Here, *siyāsah syar'iyah* shows why states adopt different thresholds for *mastautin* (residency). Each interpretation is based on local *ijtihad* and *maslahah*, which may include urban movements, administrative convenience, or safeguarding family stability. This plurality is doctrinally valid but poses concerns of legal contradiction and forum shopping.

To mitigate this, Malaysia uses two complementary mechanisms:

(i) *Fatwa* interpretation: State Muftis and *Fatwa Committees* issue a binding interpretation of *mastautin* by using classical texts or local factors such as the public interests and *maslahah*.

<sup>44</sup> Ayu Sari Ningsih, Nawa Angkasa, Nency Dela Oktora, Sakirman, Nyimas Lidya Putri Pertiwi, and Ananto Triwibowo, "Reforming Islamic Family Law: The Relevance of Ibn Qayyim al-Jawziyyah's Concept of Legal Change," *Jurnal Ilmiah Mizani* 12, no. 2 (October 2025): 392–405.

<sup>45</sup> Abdurrahman Taj, *al-Siyasah al-Syar'iyah wa al-Fiqh al-Islami*, (Mesir: Mathba'ah Dar al-Ta'lif, 1993)

<sup>46</sup> Mohd Hapiz Mahaiyadin, "Hubungan Maqasid Syariah dan Siasah Syar'iyah dalam Urus Tadbir Negara," *ESTEEM Journal of Social Sciences and Humanities* 1 (2017): 23–38.

<sup>47</sup> 'Abd al-'Al Ahmad 'Atwah, *al-Madkhal ilā al-Siyāsah al-Shar'iyah* (Riyadh: Idārat al-Thaqāfah wa al-Nashr, Jāmi'at al-Imām Muḥammad ibn Su'ūd al-Islāmiyyah. (1993): 71–108



(ii) Administrative directives: Such as *Arahan Amalan* (AA) No. 8/2019 that standardise the steps needed to prove residency (e.g., MyKad, utility bills, mosque verification). Thus, while the substantive definitions of *mastautin* differ, procedural practices are becoming more standardised, and it strikes a balance between state autonomy and national coherence.

From the perspective of *maqasid al-shar'iah*, these variations underscore the challenge of striking a balance between justice, welfare, and certainty. Shorter thresholds make it easier for people to access justice (for example, for women or couples living in different states), whereas longer thresholds make the law more definitive. The tension highlights how *siyāsah shar‘iyyah* can facilitate a balance between accessibility and uniformity. The flexibility reflects a wider demand within Islamic jurisprudence for a transition towards a more contextually informed legal framework based on *maqasid al-shari'ah*, *guaranteeing that Islamic law remains relevant and effective in addressing contemporary issues*.<sup>48</sup>

Indonesia and other Muslim countries may offer valuable parallels. Indonesian family law, guided by *maslahah*, permits plaintiffs to file at their residence instead of solely the defendant's domicile, hence reducing obstacles for vulnerable groups. Furthermore, changes such as the e-Court system (Supreme Court Regulation No. 3/2018) illustrate *siyāsah shar‘iyyah* in action by aligning procedures with local contexts.<sup>49</sup> These instances illustrate how governance based on *Shari‘ah* can

modernise court administration while maintaining Islamic ideals.

### Towards Hasmonisation

In Malaysia, the moderate (*tawassuṭ*) approach to *siyāsah shar‘iyyah* is the most promising, as it aligns with the thoughts of Abdul al-‘Al Ahmad Atwah (1993). It recognises the differences between states while making sure that decentralisation does not make things unfair. Possible changes could include setting a national standard for *mastautin*, such as three months, while allowing states to make changes as needed. Next, incorporating *maqāṣid al-sharī‘ah* directly into fatwa discussions to make sure that accessibility, fairness, and certainty are all in line with each other, and lastly, strengthening coordination between JKSM and the National Fatwa Council to close gaps in jurisdiction.

*Siyāsah shar‘iyyah* thus offers both the justification and the framework for the unification of Malaysia's Islamic family law. It balances decentralisation with national coherence by connecting variable fatwa interpretations with enforceable administrative instructions. In this way, it transforms *mastautin* from a technical standard into a test case for how Islamic administration can protect justice, welfare, and legal clarity in a system with numerous laws.

### Findings And Discussion

Based on the context, it can be concluded that the implementation and jurisdictional significance of *mastautin* within Malaysia's

<sup>48</sup> Wildani Hefni, Imam Mustofa, and Rizqa Ahmadi, "Looking for Moderate Fiqh: The Thought of Mohammad Hashim Kamali on the Reformation of Rigidity and Inflexibility in Islamic Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (April 25, 2025): 30–57, accessed September 1, 2025,

<https://journal.iaincurup.ac.id/index.php/alistinbath/article/view/10694>.

<sup>49</sup> M. A. Zakiruddin and A. Bahiej, "Siyasah Syar‘iyah Paradigm of Hajj Financial Management Regulation in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531–52, <https://dx.doi.org/10.29240/jhi.v7i2.5310>.



syariah legal framework illustrate a complex connection among historical traditions, federal institutions, and the shifting application of Islamic governance principles, particularly *siyāsah syar'iyah*. This section integrates the key findings obtained from doctrinal and comparative studies. The findings of this study show that decentralisation, although constitutionally embedded in Malaysia's federal monarchical framework, has produced significant inconsistencies in the interpretation and implementation of *mastautin* under Islamic family law. *Mastautin* serves as the jurisdictional anchor for the Syariah court in all states, but its operation varies.

The administrative directives (AA No. 8/2019) have made things more uniform by establishing standards for specific documents, including *Imam* confirmation, utility bills, and official verification letters. However, this uniformity is mainly formal. In practice, states have different substantive thresholds:

- Perlis allows residency recognition after five days. The State Fatwa Committee agreed that five days is the minimum requirement, following the Syariah Court's request for clearer administrative direction. While this facilitates access, it also increases the risks of forum shopping.
- Kedah emphasizes *niyyah* (the intention to live there permanently) rather than duration, and requires proof of residency.
- Selangor and Pulau Pinang impose stricter temporal conditions (Four months)
- Johor and Negeri Sembilan mainly implement AA No. 8/2019 without introducing additional fatwa-based rules.

Table 1: Summary of the Interpretation of *Mastautin*.

State	Residency Requirement	Legal Basis	Verification Method	Remarks
Perlis	≥ 5 days	Fatwa (Gazetted & MAIPs Form)	Imam Kariah / MAIPs Special Verification Form	Shortest duration; dual pathway (fatwa or form-based); potential forum shopping
Pulau Pinang	4 months	Fatwa (Jawatankuasa Fatwa)	Utility bills / Imam Letter	Applies broadly
Kedah	Permanent intent	Fatwa (Irsyad Hukmi)	Imam's confirmation letter	Emphasizes <b>intention</b> , not just duration
Selangor	4 months	Kaedah + Arahan Amalan	Utility bill / ID / Local Authority Letter	Differentiates <b>mustautin</b> vs <b>muqim</b>
Perak	≥ 3 months (90 days)	Arahan Amalan No. 3/2014	Imam / Penghulu / Employer Letter	Document validity: 6 months (2023 circular)
Pahang	≥ 3 months	Pekeliling KHS 2023 + AA 8/2019	Utility bill + Imam/Penghulu letter	Updated forms & more precise procedural outline
Johor	Not fixed	Arahan Amalan 2/2021	Imam / Ketua Kampung / Pegawai Masjid	Complies with AA 8/2019
Negeri Sembilan	Implied via practice	Arahan Amalan (Adopted AA 2019)	Imam Letter / Village Confirmation	Practice aligns with JKSM AA 8/2019
Wilayah Persekutuan	Based on intent	Fatwa + Classical Definition	Residency evidence (Imam Letter, etc.)	Clear examples used in fatwa guidance
Other States	Varies or not codified	Administrative Practice / AA	Follows JKSM AA 8/2019	Gradually aligning with national documentation standards

Source: Writer

These variations may carry these significant consequences. First, access to justice is geographically dependent: a petition accepted in Perlis may be rejected in Selangor under identical circumstances, such as in matters of lineage confirmation (*nasab*), which have different fatwas regarding this matter in both countries. Secondly, forum shopping may persist, as litigants will actively seek jurisdictions with more lenient thresholds, thereby weakening procedural integrity. Third, public trust erodes as similar cases yield inconsistent results across jurisdictions, raising concerns about justice and predictability.

These can be seen in some cases, as in *Aishah bt Abd Rauf v. Wan Mohd Yusof*, where a polygamy application was denied in Selangor but was later accepted in Terengganu, illustrating how litigants take advantage of differences in jurisdiction.<sup>50</sup> In *Marina Jatoi v. Nuruddin Jatoi* (Pakistani Supreme Court)<sup>51</sup>, comparable difficulties are illustrated on an international scale, where the discord between Islamic *talaq* and Christian marriage law created uncertainty in recognizing divorce and maintenance orders. Both cases demonstrate how inconsistent regulations, whether within Malaysian states or in many international jurisdictions, can create conflicting results and facilitate manipulation.

From the perspective of *siyāsah syar'iyah*, this diversity is doctrinally acceptable, as rulers (*ulu al-amr*) are authorised to legislate according to *maslahah* and local circumstances. However, in the absence of coordinated methods, decentralisation may jeopardise the aims of *maqasid al-shari'ah*, such as fairness

(*'adl*), protection of lineage (*hifz al-nasl*), and legal certainty (*yaqīn*).

To reconcile pluralism with integrity, harmonisation must go beyond mere procedural uniformity. Some possible strategies that might be used include setting a baseline with the Model National Guidelines under JKSM (e.g., three months), while allowing state flexibility for local *maslahah*. Next, the National Fatwa Council has an Inter-state review mechanism that examines different fatwas periodically and encourages them to come together. Then, creates judicial training modules to make sure that all courts use the same *mastautin* verification criteria and every court has an SOP for before accepting verification. Lastly, establish a national monitoring database to track patterns of forum shopping and conflicts over cross-border recognition.

These ideas do not eliminate state autonomy; instead, they conform to *siyāsah syar'iyah* by legitimizing harmonization as a governance instrument in the pursuit of *maqasid al-shari'ah*. This way, Islamic family law in Malaysia can be both fair and accessible in a system with numerous laws.

## Conclusion

This study confirms that although *mastautin* acts as the jurisdictional foundation of Malaysia's Syariah courts, their interpretation remains inconsistent across the states. The differences, such as Perlis with shorter thresholds and tighter or longer thresholds in Selangor or Pulau Pinang, may create unequal access to justice or cause

<sup>50</sup> Shuaib et al., "Towards an Apex Sharia Court," 314

<sup>51</sup> PLD 1967 SC 580 cited in Sunbal Islam Chaudhary, Usman Hameed, and Kashif Imran Zadi, "Legal

Forum Shopping (Takhyyur and Talfiq) in Islamic Family Law," *Al-Qamar* 4, no. 3 (2021): 179–92.

jurisdictional confusion and open opportunities for forum shopping, as shown in the case of *Aishah bt Abd Rauf v. Wan Mohd Yusof*. These contradictions not only undermine public trust but also risk weakening the integrity of Islamic family law.

JKSM's administrative directives (AA No. 8/2019) and the guiding principle of *siyāsah syar'iyah* indicate that efforts are being made to harmonize things, although these measures remain largely procedural and have yet to address substantive variations in residency requirements. The challenge is finding a way to move beyond formal documentation standards towards mechanisms that balance state autonomy with legal uniformity.

This study also suggests creating a model national norm, having the National Fatwa Council assess fatwas on a regular basis, training to standardize verification practices to prevent document manipulation, and a monitoring system to track forum shopping. Implementing these reforms within the *maqasid al-shari'ah* framework can guarantee the preservation of diversity while improving consistency, equity, and public trust.

At the same time, this study remains primarily normative and based on textual evidence, thereby leaving scope for further inquiry. Empirical studies involving judges, lawyers, and litigants would provide valuable insights into the practical experiences of the most common disputes. Comparative analyses from jurisdictions such as Indonesia and Brunei may present alternative governance frameworks. Furthermore, assessing state compliance, judicial training, and digital integration via platforms such as e-Syariah would elucidate the genuine efficacy of harmonisation. Addressing these areas will

make Malaysia's Syariah legal system more consistent, open, and responsive to modern problems.

### Credit Authorship Contribution

Humairaa' Abdul Rahim independently conceptualised the research idea, designed the overall framework, conducted the literature review, and carried out the analysis. The author also drafted, revised, and finalised the manuscript for publication.

### Declaration of Competing Interest

The author declares that there are no known financial, institutional, or personal conflicts of interest that could have influenced the results or interpretations of this research.

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