



# The Potential of E-Filing in Cases Involving Family Matters in Malaysian Courts

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**Abstract.** The e-filing system has revolutionised Malaysia's legal landscape, replacing traditional paper-based systems with electronic presentations that offer many benefits. These benefits include enhanced productivity, reduced paperwork, improved document tracking, and easier access to legal processes. However, there is a need for more scholarly literature in the context of e-filing in family law matters in Malaysia to expand the impact and feasibility of adopting e-filing in Malaysian family court cases. The research methodology involves library-based research involving secondary databases of textbooks, journal articles, government reports, and independent educational websites to investigate the historical aspects of e-filing systems in general and in Malaysian courts. The study found that the e-filing systems in Malaysia offer greater accessibility and availability to court services, benefiting individuals with mobility issues and remote areas. These systems allow parties to file documents and access case information remotely, providing equal access to justice and reducing geographical barriers. E-filing contributes to cost savings and environmental sustainability by reducing paper waste and energy consumption. Family matters require adopting methods and technologies to expedite court processes. In the broader context, it is imperative to highlight that technology has played a critical role in ensuring Malaysia's continued and uninterrupted operation of family courts.

**Keywords:** Electronic filing, E-Court system, E-Justice system, Family matters, Matrimonial matters.

## 1 Introduction

As technology advances and industries undergo digital transformation, the legal sector is also experiencing significant changes. One of these changes is the adoption of electronic filing (e-filing), which simplifies legal procedures and enhances access to justice. This piece explores e-filing specifically in regard to family law cases, shedding light on its potential implementation in Malaysian courts.

E-filing, which arose in reaction to the challenges faced by paper-based systems, has altered the way legal documents are handled and managed. E-filing, which leverages the power of digital platforms, replaces traditional paper forms with electronic presentations, allowing legal practitioners and litigants to submit, view, and manage case-related materials online [12]. There are numerous options accessible, including

enhanced productivity, less paperwork, improved document tracking, and easier access to legal processes [16].

Although the use of e-filing in numerous areas of law continues to expand, it requires special attention on how it is integrated into family law matters. Divorce, child custody, and spousal support are very delicate and emotional subjects in family law proceedings [17]. The implementation of e-filing in this area can speed up processes and reduce the emotional impact on those concerned. On the other hand, the inherent nature of personal information creates valid concerns about data security, privacy, and the preservation of the human touch [33].

Despite the widespread use of electronic filing in the legal system, there are gaps in the scholarly literature, particularly in the Malaysian legal setting. At this juncture, there is little teaching on using e-filing in family law proceedings in Malaysia. It is emphasised that there are distinct potential benefits and problems where cultural, institutional, and technological elements intersect. Empirical evidence and the lack of well-defined norms present chances to expand the impact and feasibility of adopting e-filing in Malaysian family court cases [27].

## **2 The objective of the Study**

Accordingly, the primary goal of this paper is to establish the potential of introducing e-filing in Malaysian court cases involving family problems. We want to investigate the benefits, problems, and implications of introducing e-filing in family court matters by addressing a shortage of academic research in this field. This essay provides insights into the feasibility, benefits, and potential risks of digitising family court cases in Malaysia through a complete legal environment, complicated policy, and technical readiness. Finally, we hope to add to the continuing discussion over electronic filing. It also opens the path for informed decision-making and potential improvements to Malaysia's family law system.

## **3 Research Methodology**

This conceptual paper adopted library-based research involving secondary databases of textbooks, journal articles, government reports and independent academic websites. The purpose of resorting to these databases is to investigate the historical aspects of the e-filing system in general and in Malaysian courts in particular. After that, the review of secondary databases also reveals the key concepts of the study, highlighting the potential of engaging in the e-filing system for family matters at the Malaysian courts. The result of this review and reporting of these references would be adequate for the purpose of this study.

## **4 Conceptualising E-Filing in Family Matters**

### **4.1 ICT Support for the Judiciary**

In the digital age we live in now, technology has changed how legal services are given. The use of information and communication technology (ICT) has changed the way the justice system works and made the legal process more quick, open, and easy to understand [29]. With the help of ICT, the legal system can now use a range of tools to speed up and make things easier.

One of the most important benefits of ICT support for the courts [21] is that it can help make a paperless system. This gets rid of the need for handwritten paperwork and physical files, which saves time and money. It also prevents files from being forgotten or lost and makes record-keeping more efficient and safe [9] [16]. This has made the jobs of court clerks and other office workers easier, so they can now focus on more important tasks.

Support for ICT also enables the judiciary to provide superior services to the general public. The development of online portals and mobile applications to facilitate access to judicial services [30]. People can now monitor their cases online, electronically submit claims, and even receive court orders via email [10]. These services are convenient and reduce the need for individuals to visit the court, sparing them time and money physically.

Another essential advantage of ICT support is its increased transparency and accountability within the judicial system [8]. Information is readily accessible to all parties involved in the case, including attorneys, litigants, and justices, due to the implementation of digital systems [19]. All parties have access to the same information, which promotes greater transparency and equality in the legal system. This, in turn, strengthens the public's confidence in the judiciary and the legal system.

In addition, ICT support has accelerated the resolution of cases [12]. With digital systems, judges can rapidly access case files, evidence, and other documents, allowing them to make timely decisions based on accurate information [6]. This expedites the legal procedure and the resolution of cases.

Evidently, the implementation of ICT support has revolutionised the delivery of judicial services in Malaysia. It has enabled the creation of a paperless system, increased accountability and transparency, and expedited the resolution of cases. These advantages have not only enhanced the operation of the judiciary but also made the legal process more efficient, transparent, and accessible to the public.

### **4.2 E-Filing System at the Malaysian Courts**

In accordance with the government of Malaysia's efforts to promote digitalization and automation, the Malaysian courts have implemented an e-filing system to expedite the case filing process [11]. The e-filing system enables solicitors and litigants to electronically submit and manage their cases, eliminating the need for physical filing and decreasing the time and cost associated with manual processing.

The e-filing system offers numerous advantages for both solicitors and litigants. First, it is a more expedient method of filing cases because parties can submit their documents and evidence from the comfort of their offices or homes without having to physically appear in court [15]. This eliminates the need for travel and saves time, which is particularly advantageous for attorneys who may be handling multiple cases in different locations.

Secondly, the e-filing system provides greater flexibility and convenience by allowing parties to access their cases at any time and from any location [14]. Parties can monitor the status of their cases online, including the issuance of court orders and judgments, without being physically present in court. This allows them to more efficiently plan and prepare for the next stages of the case.

Another significant advantage of the e-filing system is the reduction of paper usage. Traditional filing systems require a substantial quantity of paper, which can be expensive, time-consuming, and harmful to the environment [26]. E-filing eliminates the need for physical paper files, thereby reducing expenses and contributing to a more sustainable environment.

Additionally, the e-filing system expedites the processing of cases by reducing the time and resources required to process and manage paper files [31]. With the e-filing system, court officials can manage cases more efficiently, and cases can be processed more quickly, thereby enhancing the overall performance of the judicial system.

In addition to enhancing the security of legal documents and evidence, the e-filing system provides a secure online platform for document storage and retrieval [1]. The system employs a variety of security measures to safeguard confidential information and prevent unauthorised access. In addition, the e-filing system increases the legal process's transparency because all parties can access the same information online [32]. This aids in preventing disputes originating from case file discrepancies and promotes faith in the legal system.

Consequently, the implementation of the e-filing system in Malaysian courts has transformed the legal system, making it more efficient, transparent, and accessible. Numerous advantages are associated with the system, including convenience, adaptability, cost and time savings, environmental sustainability, enhanced security, and increased transparency. It is a positive step in the direction of attaining the objective of a more effective and efficient judiciary, and it is anticipated that it will improve the overall performance of the legal system in Malaysia.

### **4.3 Family Matters at the Malaysian Courts**

The courts of Malaysia play a crucial role in resolving family-related legal issues. The Law Reform (Marriage and Divorce) Act 1976, the Islamic Family Law (Federal Territories) Act 1984, the Domestic Violence Act 1992, the Adoption Act 1952, the Child Act 2001 are the main legislations that govern family-related matters in Malaysia. These statutes address a variety of family-related legal issues, including marriage, divorce, custody, adoption, child support, and domestic violence.

In family matters, one of the primary responsibilities of the Malaysian courts is to safeguard the best interests of the children [13]. When addressing legal matters involving children, the courts place the child's welfare above all other considerations [24]. When determining what is in the child's best interest, the courts will consider factors such as the child's age, education, and living situation.

In addition to dealing with child-related matters, Malaysian courts also handle divorce and separation cases. The courts are responsible for issuing divorce orders and making decisions regarding property division, alimony, and child custody [25] [17]. The objective of the courts is to ensure that these issues are resolved fairly and equitably, taking into account the requirements of both parties.

Domestic violence is another aspect of family law that the Malaysian courts address. The Domestic Violence Act 1992 affords legal protection to domestic violence victims and authorises courts to issue protection orders and restraining orders against offenders [7]. The courts play a crucial role in ensuring that domestic violence victims receive adequate legal protection and assistance [22].

The Malaysian courts also manage adoption and guardianship cases. The courts are responsible for ensuring that the adoption procedure is carried out in accordance with the Adoption Act, which includes the child's welfare, the adoptive parents' suitability, and the consent of the child's biological parents [5]. In addition, the Malaysian courts hear cases involving child support and maintenance [3]. The courts are responsible for determining the quantity of child support a parent must pay for their child's basic needs. The goal of the courts is to ensure that the child's requirements are met and that both parents contribute financially to the child's upbringing.

Henceforth, family law is an essential area of court jurisdiction in Malaysia. The courts play a crucial role in resolving family-related legal matters, such as child-related matters, divorce and separation, domestic violence, adoption, and child support. The courts strive to ensure that these issues are resolved fairly and equitably, taking into consideration the welfare of the involved children and the needs of all parties. To promote family harmony and safeguard the rights and interests of all family members, the role of the courts in family matters is essential.

#### **4.4 Family Matters and E-Filing**

Malaysian courts have instituted e-filing for family-related cases, including divorce, custody, and child support [2]. The e-filing system permits attorneys and litigants to submit legal documents and pleadings electronically, thereby reducing the time and cost associated with filing and managing paper documents. E-filing enables solicitors and litigants to submit legal documents and pleadings at any time of day from any location with an internet connection, which is one of its primary benefits [15]. This is especially helpful for those who reside a great distance from the courthouses.

E-filing is also advantageous because it facilitates the management of legal documents and pleadings. The e-filing system provides a centralised database containing all legal documents and pleadings associated with a specific case [12]. This reduces the time and effort required to manage paper documents, making it simpler for judges, attorneys, and litigants to access and manage these documents.

Order 63A of the 2012 Rules of Court details the requirements and procedures for e-filing in the civil courts. Unless otherwise directed by the court, all legal documents and pleadings must be filed electronically per this order. In addition to outlining the format and technical specifications for electronic documents, the order mandates that they be digitally signed with a secure electronic signature.

The widespread adoption of e-filing in Malaysian courts has been instrumental in enhancing the effectiveness of the legal system [26]. E-filing has decreased the time and effort required to file and manage legal documents and pleadings, making it simpler for both attorneys and litigants to access the court system [31]. In addition, the e-filing system has enabled the courts to manage a greater volume of cases, thereby reducing the backlog of cases and ensuring that justice is delivered promptly.

Accordingly, the e-filing system in Malaysian courts has been a significant improvement to the legal system of the country. The system has been successfully implemented in family law cases and has substantially increased the legal system's efficiency. E-filing has reduced the time and expense associated with filing and managing paper documents and has made it simpler for solicitors and litigants to access the justice system. Order 63A of the Rules of Court 2012 provides the necessary guidelines and requirements for e-filing in Malaysian courts and has been instrumental in promoting the country's adoption of e-filing.

## **5 E-Filing in Cases Involving Family Matters at the Civil and Syariah Courts**

Family law in Malaysia is governed under separate laws for Muslims and non-Muslims, hence there are two separate court systems to administer the laws, namely the civil court and the Syariah court. The e-filing system is also administered under the two separate systems. The subsequent discussion addresses e-filing in the civil courts followed by the discussion on e-Syariah which is applicable in the Syariah courts.

As a general overview, non-Muslim matters on marriage, divorce, maintenance, custody and division of matrimonial assets and the related matters are provided under the Law Reform (Marriage and Divorce) Act 1976 (the LRA) which governs the substantive law; whereas Divorce and Matrimonial Proceeding Rules 1980 governs the rules and procedures. These laws are only applicable to the non-Muslims in Malaysia, subject to certain exceptional circumstances.

According to Rule 3 of Divorce and Matrimonial Proceeding Rules 1980, the Subordinate Court Rules and the Rules of the High Court shall apply with necessary modifications to the commencement of matrimonial proceedings, and to the practice and procedure of matrimonial proceedings in the Sessions Court and the High Court. By virtue of this provision, it means, the use and requirements of e-filing are applicable in all civil courts, including the family courts.

The proceedings at the family court may begin by way of application or petition. A proceeding by way of application is made where the case is filed under section 50 of the LRA, i.e. the provision that restricts divorce within two years of marriage. The

applicant who wishes to file for divorce in less than two years of marriage must file an application to the court to allow the petition for divorce to be made within that specified period due to exceptional circumstances or hardship. According to Rule 4, this application must be supported with an affidavit stating, among others, the grounds of application; particulars of the exceptional circumstances or hardship alleged; whether any attempts at reconciliation have been made, etc.

Every cause other than an application under s. 50 of the LRA mentioned above shall be begun by petition, as stated under Rule 7 of Divorce and Matrimonial Proceeding Rules 1980. Therefore, proceedings for divorce on the ground of conversion to Islam under s.51 of the LRA; divorce by mutual consent under s. 52 of the LRA; and divorce due to irretrievable breakdown of marriage under ss. 53 and 54 of the LRA shall be made by way of petition. Similarly, proceedings for nullity of marriage under s. 68 of the LRA; and judicial separation under s. 64 of the same Act shall also be made by way of petition. The petition shall contain the information required by Form 2 of the 1980 Rules, and Form 3 in the case where it is a joint petition under s.52. The contents are, among others, particulars of the petitioner and the respondent; their place of domicile; particulars of children of marriage; whether attempts at reconciliation have been made; and the prayers by the petitioner.

Rule 9 of Divorce and Matrimonial Proceeding Rules 1980 requires every petition to be signed by the advocate and solicitor, or by the petitioner if he sues in person. If it is a joint petition, the solicitors of both parties shall sign, or the petitioners themselves if they act in person. According to Rule 10, the petition shall be presented by filing it together with any statement, report and affidavit as required by the court. A certificate of marriage to which the cause relates must also be filed together with the petition.

Subsequent to the filing of petition by the petitioner, Rule 16 stipulates that the respondent who wishes to defend or dispute any of the facts alleged shall file an answer to the petition within 21 days after the expiration of the time limit for giving notice of intention to defend. Subsequently, a petitioner may file a reply to an answer within 14 days after he has received a copy of the answer, as stated under Rule 17.

To relate the above procedures with e-filing, it can be concluded that the application, petition, affidavits, supporting documents, reports and certificates must be filed through the e-filing system. The answer to the petition and filing of reply to this answer also shall be made through e-filing. Another important aspect is that e-filing still requires the petition to be signed, which means it allows the use of digital signatures.

The Syariah courts, on the other hand, are the courts that hear and determine family matters of the Muslims in Malaysia. As opposed to the civil courts, Syariah courts are state courts except the Syariah courts at the Federal Territories of Kuala Lumpur, Putrajaya and Labuan. Therefore, the laws that govern Muslim family matters are enacted by the state legislative body based on *hukum syarak* or Islamic law. The substantive and procedural laws on Muslim family matters are contained in the numerous state enactments/act. For instance, the Islamic Family Law (Federal Territories) Act 1984 is applicable in Kuala Lumpur, Putrajaya and Labuan; the Islamic Family Law (State of Selangor) Enactment 2003 is applicable in Selangor; and the Islamic Family Law (Kedah Darul Aman) 2008 is applicable in Kedah. To govern procedural matters and court proceedings, each state has its own enactment/act, for instance in the Federal

Territories, it is governed under the Syariah Court Civil Procedure (Federal Territories) Act 1998. In Selangor, it is provided under the Syariah Court Civil Procedure (State of Selangor) 2003, whereas in Kedah, the same can be found in the Syariah Court Civil Procedure (Kedah Darul Aman) Enactment 2014.

At the Syariah courts level, the process of e-filing is known as e-Syariah, which is the case management system for family cases filed at the Syariah courts. The e-Syariah system was established in 2002 [23] and hosted by the Jabatan Kehakiman Syariah Malaysia (JKSM) with the main objective of improving the quality of the Syariah courts delivery system and to manage the administration of courts and Syariah cases in a more sophisticated way by maximising the use of ICT [18]. According to Ahmad and Othman [4], through the e-Syariah system, the Syariah judges are able to get access to past cases and have all the information they need for a particular case quicker than before. At present, the Syariah Court Case Management System (SPKMS) is fully implemented in all fourteen states where it covers 110 Syariah courts. This web application-based system provides a number of facilities including case registration, proceeding scheduling, and receipt collection and production. It also allows the court and lawyers to check whether there is any overlapping of cases between states.

The Chief Syariah Judge of the Syariah Judiciary Department of Malaysia (JKSM), through a Practice Direction No.7 of 2018, has issued a Practice Direction on Digital/Electronic Management in the Shariah courts. This Practice Direction is applicable to all Syariah courts in Malaysia. Pertaining to the validity of electronic messages, it is clearly stated in this Practice Direction that any information in the digital or electronic form whether in whole or in part is valid and has a legal effect. The use of a digital signature is also allowed, provided that it fulfills certain criteria laid down in the Practice Direction. A digitally signed copy of the message is as valid and effective as the original one. This has made the e-filing of documents, the electronic records, the delivery and submission of electronic court documents valid and effective.

According to section 7 of the Syariah Court Civil Procedure (Federal Territories) Act 1998, every civil proceeding in a Syariah Court shall be begun by summons, except proceedings in respect of any of the matters specified in the Second Schedule of the Act, which shall be begun by application. Therefore, matters relating to pronouncement of divorce, custody, and maintenance of wife and children are commenced by way of summon. Whereas, matters relating to consent for solemnization of the marriage of a minor, appointment of wali 'am, injunction restraining the taking of a child out of Malaysia, and confirmation of the acknowledgement of paternity by a woman in *'iddah* (waiting period) are commenced by way of application.

For matters that shall commence by way of summons, section 8 of the Syariah Court Civil Procedure (Federal Territories) Act 1998 provides that summons shall be in Form MS 2 and shall be accompanied by a statement of claim. Whereas, in matters that must be commenced by way of application, section 13 of the same Act provides that every application shall be made by notice in Form MS 3 and supported by a sworn affidavit. The e-filing system has made the process of filing easier, regardless of by way of summon or application, because this has been reflected in the system together with the types of cases. For example, in matters relating to the maintenance of wife which shall commence by way of summon, the applicant can fill in her details, and the details of the



respondent and other persons. Subsequently, the e-Syariah system will auto-generate the summon and the statement of claim. All other supporting documents can also be filed together.

## 6 Future Potential for E-Filing in Family Matters

In terms of accessibility and availability, e-filing systems can offer greater accessibility to court services, particularly for individuals with mobility issues or those residing in remote areas. It allows parties to file documents and access case information remotely, providing equal access to justice and reducing geographical barriers. Not only that this minimize difficulties for those living in remote areas, it is also more convenient for couples in cross-border marriages, or parents who are living abroad with custody issues in Malaysia.

In a more general sense, e-filing is cost-saving and environmentally friendly. E-filing reduces costs associated with paper, printing, and physical storage of documents. It also minimizes the need for postage, courier services, and physical delivery of filings. Moreover, transitioning to electronic processes contributes to environmental sustainability by reducing paper waste and energy consumption. For instance, if parties file for a custody dispute at the time when the child is 1 year-old, a custody order issued by a court is subject to variation until a child reaches the age of majority. Therefore, the court has to keep and maintain all the relevant documents until the child reaches 18 years-old. If this fact is to be calculated with the number of cases and documents, we can realize that it has consumed a massive amount of paper.

Family matters have their own characteristics which are different from other civil cases, particularly due to the relationship between parties. Parties involved in family disputes have a shared experience and most of the time, they still need to continue with future engagement even though the parties have separated, especially if children are involved. Due to this nature, the adoption of any methods and technologies that can help the parties to expedite their court process is crucial. A study conducted by Pise [20] shows that technology has played a critical role in ensuring the continued and uninterrupted operation of family courts.

E-filing in the family courts promotes faster document processing and reduces delay. E-filing eliminates the need for physical document handling, manual data entry, and paper-based processing, which can be time-consuming. By automating many administrative tasks, e-filing systems help expedite the processing of documents and reduce delays in court proceedings.

Communication is crucial in dealing with any family matters. E-filing will ensure streamlined communication between parties. E-filing platforms often incorporate features that facilitate communication between parties, attorneys, and the court. These systems allow for secure messaging, document sharing, and notifications about case updates, hearings, or deadlines. This streamlines the communication process, reduces delays, promotes better collaboration among stakeholders and is more convenient for the parties.

Nevertheless, it could not be denied that technologies are subject to certain flaws. In a study conducted by Ramli [23], it was found, among others, that there is a medium gap between the design process (the electronic system) with its reality. For example, there is a slight problem regarding online payments. For management and structures, there is a gap between design and reality due to federal-state's jurisdiction issues. However. This study also found that the technical infrastructure for the Malaysian e-Government, which includes the e-filing system, is lacking a quality technical infrastructure, slow speed connection, unstable connectivity, and lack of internet access in rural areas. In relation to human infrastructure, there are issues such as lack of human resources [1], officials and citizens slowed to adapt, public officials reluctant to change in the early phase of implementation, lack of skills and expertise and change of management training [23]. Nevertheless, these challenges can be addressed by continuous improvement and training provided for the court officers and lawyers. The availability of dedicated technician and ICT support unit are also helpful to minimize technical issues.

There is also a security risk associated with electronic court records. However, the Malaysian courts have taken steps to manage the risk, among others by adopting ICT Security Policy, such as JKSM ICT Security Policy with the objectives of coordinating JKSM work process and minimize any harmful risks associated with the adoption of ICT in the courts. Based on this policy, there are 4 components of ICT security, namely, to protect the government's confidential information from unauthorized access; to provide correct and accurate information; to ensure that all information is available when the users need it; and to make sure that the access is granted to valid users only from the valid information providers. A study has been conducted to introduce sustainable electronic court records risk management [28]. Therefore, even though there were certain shortcomings and risks that come together with electronic processes, these risks can be specifically addressed and overcome.

## 7 Conclusion

In conclusion, the e-filing system is a transformational force in Malaysia's legal scene, representative of the broader digital transition that is transforming industries. E-filing has ushered in a new era of efficiency and accessibility by replacing traditional paper-based methods with electronic platforms, typified by increased productivity, reduced paperwork, streamlined document tracking, and greater access to legal proceedings. While electronic filing is widely used in the legal field, the paucity of scholarly research on its application in family law proceedings in Malaysia highlights unrealized potential.

The major goal of this research was to uncover the possibilities inherent in implementing e-filing in family law matters in Malaysian courts. The study emphasizes the democratizing impact of e-filing systems, notably in providing improved accessibility and availability of court services to people with mobility issues and those living in distant areas. The capacity to submit documents and access case information remotely promotes equal access to justice while breaking down geographical obstacles. Furthermore, the switch to e-filing promises practical benefits in addition to simplicity. E-filing

reduces paper waste and energy usage, which helps with cost savings and environmental preservation, echoing a commitment to economic restraint and sustainability.

In a broader sense, the use of technology, particularly e-filing, has not only accelerated court operations but also ensured the smooth operation of Malaysian family courts. The ramifications of the study go beyond the immediate discussion of e-filing, echoing in the fields of e-court, e-justice, family law, and conflict settlement. As shared experiences and future interactions impact family matters, the proactive incorporation of novel methods and technologies becomes critical to sustaining efficient legal procedures.

In summary, the study emphasizes how technology, through the medium of e-filing, has not only updated court processes but also ensured the continuous operation of Malaysian family courts. The findings considerably contribute to the collective understanding of the consequences of e-filing for family law and conflict resolution, enhancing the body of knowledge in this dynamic legal context.

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