



UUM JOURNAL OF LEGAL STUDIES

<https://e-journal.uum.edu.my/index.php/uumjls>

How to cite this article:

Adibah Bahori, Mas Nooraini Mohiddin, Nabilah Huda Zaim, Siti Nur Husna Abd Rahman & Norasiah Awang Amai. (2026). An analysis of alternative sentencing for young offenders under syariah criminal law in Malaysia and Brunei. *UUM Journal of Legal Studies*, 17(2), 18-31. <https://doi.org/10.32890/uumjls2026.17.2.2>

AN ANALYSIS OF ALTERNATIVE SENTENCING FOR YOUNG OFFENDERS UNDER SYARIAH CRIMINAL LAW IN MALAYSIA AND BRUNEI

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Received: 18/6/2025

Revised: 20/4/2026

Accepted: 21/4/2026

Published: 31/7/2026

ABSTRACT

Alternative sentencing has emerged as an important approach in addressing young offenders within the Syariah criminal justice system, particularly through mechanisms that emphasise rehabilitation and moral development. In both Malaysia and Brunei, the application of such sentencing is grounded in the principle of *ta'zir*, which allows judicial discretion in determining appropriate punishments. Accordingly, this study aims to analyse the legal frameworks and practices relating to alternative sentencing for young offenders under Syariah criminal law in Malaysia and Brunei. The study adopts a qualitative legal research approach, employing doctrinal and documentary analysis. It focuses on primary legal sources, including the Syariah Criminal Procedure (Federal Territories) Act 1997, the Syariah Courts (Criminal Jurisdiction) Act 1965, and relevant state enactments in Malaysia, as well as the Syariah Penal Code Order 2013 and the Syariah Courts Criminal Procedure Order 2018 in Brunei. Secondary sources, such as academic literature and institutional reports, are also examined to support the analysis. The findings suggest that both jurisdictions provide legal mechanisms for the application of alternative sentencing for young offenders, including admonition, good behaviour bonds, and supervisory measures. However, the structure and implementation of these measures differ due to variations in legal frameworks, jurisdictional scope, and institutional arrangements. In Malaysia, the application of alternative sentencing operates within a federal structure where Syariah laws vary across states, whereas in Brunei, the legal framework is more centralised under national legislation. This study contributes to the existing literature by providing a clearer understanding of the statutory provisions and institutional contexts that shape the application of alternative sentencing within different Syariah legal systems.

Keywords: Alternative sentencing, young offenders, Syariah criminal law, *ta'zir*, legal framework, Malaysia, Brunei.

INTRODUCTION

Alternative sentencing within the Syariah criminal justice system has increasingly gained attention as a mechanism that emphasises rehabilitation alongside punishment, particularly in dealing with young offenders (Hashim et al., 2024; Salleh & Ismail, 2023). Within Islamic legal principles, punishment is not solely retributive in nature but also aims to achieve moral reform (*islah*) and societal well-being in line with the objectives of *maqasid al-shariah* (Ismail, 2024; Yusof & Mohamed, 2023). Contemporary studies have highlighted that alternative sentencing, particularly those grounded in the concept of *ta'zir*, allows judicial discretion to impose suitable punishments that correspond to the circumstances of the offender and the nature of the offence (Nael, 2025).

In Malaysia, the administration of Syariah criminal justice is governed by a dual legal structure, in which the jurisdiction of Syariah courts is constitutionally limited (Azahari & Dimon, 2022; Hashim et al., 2024). The Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355] prescribes the maximum sentencing powers of the Syariah courts, namely imprisonment not exceeding three years, a fine not exceeding RM5,000, and whipping not exceeding six strokes (Quraishi, 2020). These statutory limits form the primary framework within which alternative sentencing is applied in Malaysia. Recent studies have observed that the implementation of alternative sentencing within this framework is still evolving and often operates within the constraints of existing legal provisions and institutional capacity (Hashim et al., 2025; Salleh & Ismail, 2024).

Furthermore, the application of Syariah criminal law in Malaysia is characterised by a federal structure in which each state enacts its own Syariah criminal legislation. As a result, there are variations in legal provisions and practices relating to young offenders and alternative sentencing across different jurisdictions (Azahari & Dimon, 2022; Hashim et al., 2023). In this context, diversity reflects the decentralised nature of Islamic law administration in Malaysia and has implications for the consistency of implementation in practice (Wahidah, 2024).

In Brunei Darussalam, the Syariah criminal justice system operates within a more centralised legal framework through the enforcement of the Syariah Penal Code Order 2013 and the Syariah Courts Criminal Procedure Order 2018 (Nur et al., 2025). These legal instruments provide the statutory basis for the application of punishments, including those derived from the principle of *ta'zir*, which enables the court to exercise discretion in determining appropriate sentences for offenders, including young offenders (Nael, 2025). The codification of Syariah criminal law at the national level reflects a structured legal approach that is considered appropriate in regulating criminal offences and sentencing within the Syariah system (Nur et al., 2025).

Despite differences in legal structure and administration, both Malaysia and Brunei recognise the role of alternative sentencing within their respective Syariah legal frameworks, particularly in addressing offences involving young offenders (Hashim et al., 2025). Alternative measures such as admonition, good behaviour bonds, counselling, and supervision are provided within statutory provisions and judicial practice as part of the broader objective of rehabilitation (Salleh & Ismail, 2024). These approaches are consistent with contemporary developments in Islamic criminal justice, which emphasise restorative elements alongside punitive measures (Hashim et al., 2025; Ismail, 2024).

Accordingly, this study seeks to analyse the legal frameworks and practices relating to alternative sentencing for young offenders under Syariah criminal law in Malaysia and Brunei. The focus of the study is on examining relevant statutory provisions, institutional structures, and selected practices in

both jurisdictions. By doing so, the study aims to provide a clearer understanding of how alternative sentencing is positioned and applied within different Syariah legal contexts, without seeking to determine the superiority of one system over the other.

METHODOLOGY

The present study adopts a qualitative legal research approach, primarily employing a doctrinal method to analyse the legal frameworks governing alternative sentencing for young offenders under Syariah criminal law in Malaysia and Brunei. Doctrinal legal research is appropriate in this study as it focuses on the systematic examination of legal rules, statutory provisions, and judicial principles derived from authoritative legal sources, particularly legislation and case law (Akmal et al., 2025).

The doctrinal approach is considered appropriate for the study to examine the scope, structure, and application of alternative sentencing within the Syariah legal systems of both jurisdictions by referring directly to primary legal sources. In the Malaysian context, the analysis focuses on statutory provisions such as the Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355], the Syariah Criminal Procedure (Federal Territories) Act 1997 [Act 560], and selected state Syariah criminal procedure enactments. In Brunei, the study examines the Syariah Penal Code Order 2013 and the Syariah Courts Criminal Procedure Order 2018, which form the principal legislative framework governing criminal offences and sentencing.

Data collection for this study is based on library-based research and document analysis, involving both primary and secondary sources. Primary sources include statutory provisions, official legal documents, and reported Syariah against court decisions. In contrast, secondary sources consist of recent academic writings, journal articles, and institutional reports on Syariah criminal law and alternative sentencing. Accordingly, the approach provides a basis that is consistent with contemporary legal research practices, which emphasise the integration of statutory interpretation with supporting scholarly analysis to ensure a comprehensive understanding of legal issues (Hashim et al., 2025).

In analysing the data, this study applies content analysis to identify key legal themes and provisions relating to alternative sentencing, particularly those concerning young offenders. Accordingly, it includes examining specific statutory sections that provide for non-custodial measures such as admonition, good behaviour bonds, and supervisory orders. The analysis also considers how judicial discretion under the principle of *ta'zir* is reflected in the relevant legal provisions and practices within each jurisdiction.

Additionally, this study adopts a comparative analytical approach that is considered appropriate in a limited and descriptive manner. The purpose of this approach is not to evaluate or determine the superiority of one legal system over another, but rather to identify and describe differences in legal structures, statutory provisions, and institutional practices between Malaysia and Brunei. This is particularly relevant given that Malaysia operates within a federal legal structure with state-level Syariah enactments, whereas Brunei adopts a more centralised legislative framework. The use of a descriptive-comparative method is therefore justified in understanding how different legal contexts shape the implementation of alternative sentencing (Nur et al., 2025).

Furthermore, the study recognises that the application of Syariah criminal law in Malaysia varies across states due to the constitutional division of powers. As such, the analysis does not attempt to generalise

uniform practices across all jurisdictions but instead highlights selected statutory provisions and practices as illustrative examples. In this context, this approach may ensure that the analysis remains context-specific and avoids overgeneralisation, in line with established legal research methodology.

Overall, the combination of doctrinal analysis, document review, and limited comparative examination enables this study to provide a structured and legally grounded understanding of alternative sentencing for young offenders within the Syariah criminal justice systems of Malaysia and Brunei.

LITERATURE REVIEW

Alternative Sentencing in Islamic Criminal Law

The concept of alternative sentencing in Islamic criminal law is closely associated with the principle of *ta'zir*, which grants judges discretionary authority to impose punishments that are not fixed under the Qur'an and Sunnah. Contemporary scholarship highlights that *ta'zir*-based punishments provide flexibility in addressing offences based on the circumstances of the offender, particularly in cases involving young offenders (Hashim et al., 2024).

Recent studies emphasise that alternative sentencing within the Islamic legal framework is aligned with the objectives of *maqasid al-shariah*, particularly in preserving human dignity, intellect, and social order. In this regard, rehabilitative approaches such as counselling, community service, and moral guidance are increasingly recognised as appropriate mechanisms for addressing juvenile delinquency (Ismail, 2024).

Scholars have also noted that punitive measures alone may not effectively address the root causes of youth offences, thus necessitating the incorporation of restorative and rehabilitative elements within sentencing practices (Hashim et al., 2025). These developments reflect a broader shift in Islamic criminal justice towards balancing punishment with reformatory objectives, particularly for offenders who have the potential for rehabilitation.

Studies on Alternative Sentencing in Malaysia

In Malaysia, research on alternative sentencing within the Syariah legal system has primarily focused on the legal limitations and institutional challenges affecting its implementation. Several studies highlight that the jurisdictional constraints imposed by the Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355] can significantly influence the scope of sentencing available to Syariah courts (Azahari & Dimon, 2022).

Recent literature also points to variation in state-level enactments, resulting in differences in the application of alternative sentencing across jurisdictions. This reflects the federal structure of Islamic law administration in Malaysia, where each state has the authority to enact its own Syariah criminal laws (Hashim et al., 2024).

Empirical and doctrinal studies further indicate that although provisions such as admonition, good behaviour bonds, and parental supervision exist under Syariah criminal procedure laws, their application remains limited in practice due to factors such as lack of infrastructure, absence of monitoring mechanisms, and societal perceptions favouring punitive measures (Zawawi, 2025).

In addition, recent discussions have explored the potential integration of rehabilitative elements from the civil legal framework, such as those found in the Child Act 2001, into the Syariah legal system. These studies suggest that a more structured and institutionalised approach may enhance the effectiveness of alternative sentencing for young offenders (Ismail, 2024).

Studies on Alternative Sentencing in Brunei Darussalam

In Brunei Darussalam, scholarly discussions on alternative sentencing have largely centred on the codification of Syariah criminal law and its implications for judicial discretion and sentencing practices. The introduction of the Syariah Penal Code Order 2013 has been identified as a significant development in establishing a structured legal framework for criminal offences, including provisions related to discretionary punishments (*ta'zir*) (Othman, 2026). Recent studies have examined how the Syariah Courts Criminal Procedure Order 2018 provides mechanisms for non-custodial measures such as admonition, supervision, and good behaviour bonds, particularly for young offenders. These provisions demonstrate the incorporation of rehabilitative elements within the formal legal structure (Yusoff, 2025).

Scholars have also explored the broader institutional context of Brunei's Syariah legal system, noting that its centralised framework allows for more uniform application of legal provisions. At the same time, discussions in recent literature highlight ongoing considerations relating to implementation practices, including the need for supportive institutional mechanisms and alignment with contemporary legal standards (Nur et al., 2025). In addition, studies on juvenile offenders in Brunei indicate that the application of alternative sentencing is closely linked to the classification of offenders based on legal and religious criteria, such as the concept of *mumayyiz*. This context reflects the integration of classical Islamic legal principles within modern statutory frameworks (Jumat, 2019).

Despite the growing body of literature on alternative sentencing within Islamic criminal law, existing studies tend to focus on specific jurisdictions or thematic issues, such as legal limitations, rehabilitation programmes, or doctrinal principles (Nafid et al., 2024). Limited attention has been given to a structured legal analysis of statutory provisions governing alternative sentencing for young offenders across different Syariah legal systems. Furthermore, although previous research has discussed the implementation of alternative sentencing in Malaysia and Brunei separately, there remains a need for a clearer examination of how legal frameworks and institutional structures shape its application within each jurisdiction.

Accordingly, this study seeks to address this gap by analysing the statutory provisions and legal practices relating to alternative sentencing for young offenders under Syariah criminal law in Malaysia and Brunei, with particular emphasis on understanding the legal and institutional contexts in which these measures operate.

LEGAL AND JURISPRUDENTIAL BASIS OF ALTERNATIVE SENTENCING FOR YOUNG OFFENDERS UNDER SYARIAH LAW

The application of alternative sentencing within the Syariah legal framework is fundamentally rooted in the principle of *ta'zir*, which grants judges discretionary authority to determine appropriate punishments for offences that do not fall under fixed categories such as *hudud* and *qisas*. In this context, discretionary power enables the court to impose sanctions that are proportionate to the nature of the offence and the offender's personal circumstances, including age and maturity level (Mutiar, 2025).

In the context of young offenders, the application of *ta'zir* is particularly significant as Islamic law recognises differences in legal responsibility based on the offender's developmental stage. Classical jurists distinguish between children who have not attained discernment (*ghayr mumayyiz*) and those who can understand their actions (*mumayyiz*), with the latter potentially subject to disciplinary measures aimed at correction rather than punishment (Wardi, 2021). This distinction forms the basis for the application of alternative sentencing measures that emphasise moral guidance, supervision, and behavioural reform.

Contemporary scholarship further highlights that the exercise of *ta'zir* in cases involving young offenders is closely aligned with the objectives of *maqasid al-shariah*, particularly the protection of intellect (*hifz al- 'aql*) and lineage (*hifz al-nasl*), as well as the broader aim of ensuring social welfare (Hashim et al., 2024). In this regard, alternative sentencing measures such as admonition, counselling, and supervision are considered appropriate mechanisms to facilitate rehabilitation while avoiding the potential adverse effects of custodial punishment on young individuals.

Islamic legal principles also emphasise that punishments imposed on young offenders should be proportionate and educational. The objective is not merely to penalise but to instil moral awareness and prevent future misconduct. As noted in contemporary studies, excessive reliance on punitive measures may undermine the rehabilitative potential of young offenders, thereby necessitating the adoption of alternative approaches grounded in guidance and correction (Hashim et al., 2025).

In addition, the discretionary nature of *ta'zir* allows the court to consider various contextual factors, including the offender's background, level of understanding, and surrounding social environment. This flexibility is particularly relevant in modern Syariah legal systems, where courts are required to balance traditional legal principles with contemporary societal needs. Accordingly, alternative sentencing for young offenders under Syariah law reflects an adaptive legal approach that appears to be effective, integrating classical jurisprudence with contemporary considerations of justice and rehabilitation.

Overall, the principles of *ta'zir* and *maqasid al-shariah* provide a strong jurisprudential foundation for the application of alternative sentencing in cases involving young offenders. These principles support the use of non-custodial and rehabilitative measures as part of a broader effort to ensure that the administration of justice remains both effective and compassionate within the Syariah legal framework.

LEGAL FRAMEWORK OF ALTERNATIVE SENTENCING FOR YOUNG OFFENDERS UNDER SYARIAH LAW

Legal Framework in Malaysia

The legal framework governing alternative sentencing for young offenders under Syariah criminal law in Malaysia is primarily derived from statutory provisions at both the federal and state levels (Abas & Hussin, 2017). The jurisdiction of the Syariah courts in criminal matters is regulated by the Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355], which prescribes the maximum limits of punishment that may be imposed, namely imprisonment not exceeding three years, a fine not exceeding RM5,000, and whipping not exceeding six strokes. Notably, the statutory framework defines the overall scope within which Syariah courts may exercise their sentencing powers, including the use of alternative measures.

In procedural law, provisions specifically relating to young offenders can be found in the Syariah Criminal Procedure (Federal Territories) Act 1997 [Act 560], particularly under Section 128, which provides for non-custodial measures. The provision allows the court, upon conviction of a young offender, to impose alternative orders instead of imprisonment, including:

- (a) discharge after due admonition; and
- (b) placement under the supervision of a parent, guardian, or other suitable person, subject to a good behaviour bond.

In addition, Section 130 of Act 560 enables the court to impose conditions relating to supervision, conduct, and compliance, thereby supporting rehabilitative objectives through structured monitoring. These provisions demonstrate that the Malaysian statutory framework recognises alternative sentencing mechanisms, particularly in relation to young offenders.

At the state level, Syariah criminal procedure enactments contain provisions that are generally similar in structure, although there may be variations in wording and scope. For example, the Syariah Criminal Procedure Enactment (Terengganu) 2001 and the Syariah Criminal Procedure Enactment (Kedah) 2014 include provisions relating to the treatment of young offenders and the use of non-custodial measures. This context reflects the federal nature of Islamic law administration in Malaysia, where each state possesses legislative authority over Syariah matters.

Furthermore, certain states' enactments have introduced additional mechanisms that may be associated with alternative sentencing. For instance, Section 65 of the Syariah Criminal Code (II) (Kelantan) Enactment 2019 provides for the implementation of community service orders, subject to prescribed conditions. Such provisions indicate ongoing developments in state-level legislation that incorporate rehabilitative elements into sentencing practices.

In addition to Syariah legislation, the Child Act 2001 [Act 611], although part of the civil legal system, contains provisions relating to the treatment of children and young persons, including non-custodial measures such as supervision, community service, and placement in rehabilitation institutions. While not directly applicable within the Syariah court system, the Act provides a broader legal context for understanding rehabilitative approaches in dealing with young offenders in Malaysia.

Overall, the legal framework in Malaysia suggests the existence of statutory provisions that enable the application of alternative sentencing for young offenders. However, these provisions operate within a structured legal system characterised by jurisdictional limits and state-level variations.

Legal Framework in Brunei Darussalam

In Brunei Darussalam, the legal framework governing alternative sentencing under Syariah criminal law is primarily codified at the national level through the Syariah Penal Code Order 2013 and the Syariah Courts Criminal Procedure Order 2018. These legal instruments provide the statutory basis for criminal liability, sentencing, and procedural matters within the Syariah legal system.

The Syariah Penal Code Order 2013 categorises offences into *hudud*, *qisas*, and *ta'zir*, with the latter allowing for judicial discretion in determining appropriate punishments. In relation to young offenders, Section 13 of the Order provides that no *hudud* or *qisas* punishment shall be imposed on a discerning

child who has not attained puberty, and that alternative punishments may be applied. Accordingly, the provision reflects the recognition of developmental differences in determining criminal responsibility.

Further provisions relating to alternative sentencing can be found in the Syariah Courts Criminal Procedure Order 2018, particularly under Section 198, which allows the court to impose non-custodial measures instead of imprisonment, fine, or whipping. These include:

- (a) discharge after appropriate admonition; and
- (b) placement of the offender under the supervision of a parent, guardian, or other suitable person, subject to a good behaviour bond.

In addition, Section 200 of the same Order provides conditions that may be attached to such supervision, including requirements relating to behaviour, residence, and compliance with specified instructions. These provisions facilitate structured monitoring of offenders undergoing alternative sentencing.

The legal framework is further complemented by the Children and Young Persons Act (Chapter 219), which contains provisions governing the treatment of children and young persons, including restrictions on imprisonment and the use of alternative measures such as placement in approved institutions.

The statutory provisions in Brunei collectively establish a framework that recognises the application of alternative sentencing for young offenders, grounded in judicial discretion and procedural safeguards. The codified nature of these laws provides a structured basis for implementing such measures within the Syariah legal system.

Analytical Observations on Legal Frameworks

Based on the statutory provisions examined, both jurisdictions provide legal mechanisms that enable the application of alternative sentencing for young offenders under Syariah law. These mechanisms are primarily reflected in provisions relating to admonition, supervision, and good behaviour bonds, which are consistent with the principles of *ta'zir* (Zawawi et al., 2025).

At the same time, the structure and organisation of the legal frameworks differ in terms of legislative arrangement and administration. In Malaysia, the existence of both federal and state-level legislation results in variations in statutory provisions across jurisdictions. In contrast, the legal framework in Brunei is codified at the national level through centralised legislation (Haji Puteh & Kurniawan, 2025).

These structural differences highlight the importance of considering the legal and institutional context in analysing the implementation of alternative sentencing. The statutory provisions in both jurisdictions demonstrate that alternative sentencing is recognised within the Syariah legal system, particularly in addressing cases involving young offenders. Table 1 summarises the relevant statutory provisions based on the author's doctrinal interpretation of the legislation.

Table 1

Summary of Legal Provisions on Alternative Sentencing for Young Offenders in Malaysia and Brunei

Jurisdiction	Legal Instrument	Relevant Section	Type of Alternative Sentencing	Description
Malaysia	Syariah Criminal Procedure (FT) Act 1997	Section 128	Admonition/ Discharge	The court may discharge the offender after due admonition
Malaysia	Syariah Criminal Procedure (FT) Act 1997	Section 128	Supervision Order	Placement under a parent/guardian with a good behaviour bond
Malaysia	Syariah Criminal Procedure (FT) Act 1997	Section 130	Conditions of Bond	The court may impose conditions relating to supervision and conduct
Malaysia	Syariah Criminal Code (II) (Kelantan) Enactment 2019	Section 65	Community-based Measures	The court may impose community-based punishment subject to conditions
Brunei	Syariah Penal Code Order 2013	Section 13	Criminal Liability of Minors	Limitation on hudud/qisas; ta'zir applicable to minors
Brunei	Syariah Courts Criminal Procedure Order 2018	Section 198	Admonition / Discharge	The court may release the offender with a warning
Brunei	Syariah Courts Criminal Procedure Order 2018	Section 198	Supervision Order	Placement under a guardian with a bond
Brunei	Syariah Courts Criminal Procedure Order 2018	Section 200	Conditions of Supervision	The court may impose behavioural conditions

Source. Author's own compilation based on statutes.

CHALLENGES IN THE IMPLEMENTATION OF ALTERNATIVE SENTENCING UNDER SYARIAH LAW

The implementation of alternative sentencing for young offenders under Syariah law is shaped by a range of legal, institutional, and societal factors (Fauzan, 2022). Although statutory provisions in both Malaysia and Brunei provide for non-custodial measures such as admonition, supervision, and good behaviour bonds, their practical application presents several challenges that warrant further examination.

One of the primary challenges in the Malaysian context concerns the jurisdictional limitations of the Syariah courts, as prescribed under the Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355]. The statutory limits of punishment, namely imprisonment not exceeding three years, a fine not exceeding RM5,000.00, and whipping not exceeding six strokes, define the scope within which sentencing decisions are made. While these limits do not preclude the use of alternative sentencing, they influence the broader structure of sentencing practices and may affect the extent to which rehabilitative measures are developed and applied within the Syariah legal system (Azahari & Dimon, 2022).

In addition, the federal structure of Syariah law in Malaysia contributes to variations in the implementation of alternative sentencing across different states (Saifuddin et al., 2025). Each state has the authority to enact its own Syariah criminal laws and procedures, leading to differences in statutory provisions, institutional arrangements, and sentencing practices. In this context, diversity reflects the constitutional framework governing Islamic law in Malaysia and has implications for the consistency of application in cases involving young offenders (Hashim et al., 2024).

Another important challenge concerns institutional capacity and infrastructure, particularly regarding rehabilitation and supervision mechanisms. The effective implementation of alternative sentencing often requires the availability of structured support systems, including rehabilitation centres, counselling services, and monitoring mechanisms. Existing studies indicate that such institutional support may vary across jurisdictions, thereby affecting the courts' ability to consistently and systematically implement non-custodial measures (Hashim et al., 2025).

From a practical perspective, the application of alternative sentencing provisions within Syariah courts also depends on judicial practice and administrative support. Although statutory provisions such as Section 128 of the Syariah Criminal Procedure (Federal Territories) Act 1997 provide for non-custodial measures, their utilisation in practice may be influenced by factors such as case circumstances, availability of supervisory arrangements, and procedural considerations. This reflects the broader interaction between legal provisions and institutional realities in the administration of justice.

In Brunei Darussalam, while the legal framework is codified at the national level through instruments such as the Syariah Penal Code Order 2013 and the Syariah Courts Criminal Procedure Order 2018, challenges may arise in implementing and operationalising alternative sentencing mechanisms. The effectiveness of such measures is closely linked to the availability of institutional support, including supervision, counselling, and rehabilitation programmes tailored to young offenders (Nur et al., 2025).

Furthermore, the implementation of alternative sentencing under Syariah law in both jurisdictions is also influenced by broader societal perceptions of punishment and justice. Studies have indicated that public attitudes may continue to associate punishment with deterrence through custodial or corporal measures, thereby indirectly shaping expectations regarding sentencing practices. This highlights the importance of understanding the social context in which legal provisions are applied.

Overall, these challenges demonstrate that while the legal frameworks in Malaysia and Brunei recognise the role of alternative sentencing for young offenders, their implementation can be influenced by a combination of legal structures, institutional capacity, and social factors. The interaction of these elements underscores the complexity of applying rehabilitative sentencing approaches within contemporary Syariah legal systems.

FINDINGS

The findings of this study are derived from the analysis of statutory provisions and selected practices relating to alternative sentencing for young offenders under Syariah criminal law in Malaysia and Brunei, which may provide insights into the application of such measures in both jurisdictions.

Firstly, the analysis suggests that both jurisdictions recognise the application of alternative sentencing within their respective Syariah legal frameworks. This is reflected in statutory provisions that allow non-custodial measures such as admonition, good-behaviour bonds, and supervision orders. In

Malaysia, such measures are provided under provisions including Section 128 of the Syariah Criminal Procedure (Federal Territories) Act 1997, while in Brunei, similar mechanisms are found under Section 198 of the Syariah Courts Criminal Procedure Order 2018. These provisions appear to demonstrate that alternative sentencing is embedded within the legal structure.

Secondly, the findings show that the application of alternative sentencing is closely linked to the principle of *ta'zir*, which allows the judiciary to exercise discretion in determining appropriate punishments. This principle provides the legal basis for the use of rehabilitative and non-custodial measures, particularly in cases involving young offenders whose level of responsibility and maturity may differ from that of adult offenders (Hashim et al., 2024).

Thirdly, the study finds that the legal system's structure can influence the implementation of alternative sentencing across jurisdictions. In Malaysia, the administration of Syariah law within a federal framework results in variations in statutory provisions and practices across different states. In contrast, Brunei operates under a more centralised legislative structure, where Syariah criminal law is codified at the national level. These structural differences may shape how legal provisions relating to alternative sentencing are organised and applied.

In addition, the findings highlight that the practical application of alternative sentencing is not determined solely by statutory provisions but is also influenced by institutional and administrative factors. These include the availability of supervision mechanisms, rehabilitation support, and procedural implementation within the court system (Widyawati, 2025).

Overall, the findings indicate that while both jurisdictions provide a legal basis for alternative sentencing for young offenders under Syariah law, their application operates within distinct legal and institutional contexts that can influence how such measures are implemented in practice. This suggests that the availability of statutory provisions alone does not necessarily guarantee uniform implementation, as institutional and administrative conditions influence practical application.

CONCLUSION

This study has examined the legal frameworks and selected practices relating to alternative sentencing for young offenders under Syariah criminal law in Malaysia and Brunei. The analysis suggests that both jurisdictions recognise the role of alternative sentencing within their respective legal systems, particularly through provisions that allow for non-custodial and rehabilitative measures grounded in the principle of *ta'zir*.

The findings further indicate that the implementation of such measures is shaped by the legal and institutional structures within each jurisdiction. In Malaysia, the federal nature of Syariah law results in variations across states. In contrast, in Brunei, the codified and centralised legal framework provides a more uniform basis for the application of sentencing provisions. These differences highlight the importance of understanding the broader legal and institutional contexts in analysing the operation of alternative sentencing under Syariah law.

At the same time, the study suggests that the effectiveness of alternative sentencing may depend not only on statutory provisions but also on practical considerations such as institutional capacity, supervision mechanisms, and administrative implementation. This reflects the interaction between legal frameworks and operational realities in shaping sentencing practices.

This study contributes to the existing literature by offering a doctrinal analysis of statutory provisions governing alternative sentencing across two distinct Syariah legal systems. It also highlights the need for further empirical and practice-based research to better understand how such measures are implemented within different legal and institutional contexts.

ACKNOWLEDGMENT

The author would like to express sincere appreciation to all individuals and institutions involved, particularly the academics from the Faculty of Shariah, Universiti Islam Sultan Sharif Ali (UNISSA), Brunei Darussalam, and Universiti Teknologi MARA (UiTM) Negeri Sembilan Branch, for their valuable contributions and support in this study. This research received no specific grants from any funding agency in the public, commercial, or not-for-profit sectors.

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