



Empowering the Rights of Persons with Disabilities in Accessing Justice in the Shariah Courts of Malaysia

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Abstract: Persons with disabilities (PWD) face significant barriers in accessing justice in the Shariah Courts of Malaysia. Despite the existing legal frameworks designed to protect the rights of PWD, the implementation of these rights remains challenging. This study seeks (1) to analyse the status of PWD from the Islamic perspective, (2) to examine the Malaysian legal framework on the rights of PWD, (3) to explore the challenges encountered by the Shariah Courts in addressing legal proceedings involving PWD and (4) to propose recommendations for empowering the rights of PWD in accessing justice in the Shariah Courts of Malaysia. This research employs a qualitative study through library research and focus group discussion with five (5) Shariah Court officers from four (4) districts in Malaysia and examines four (4) court files. The data were analyzed using thematic analysis to identify challenges encountered by the Shariah Courts in dealing with legal proceedings involving PWD as litigants and to propose recommendations based on the challenges identified. The study reveals that the absence of a specific law addressing PWD's rights within the Shariah Courts hinders the full effectiveness of these protections, leading to challenges in implementation. It highlights the need for improvements including the establishment of specialized Standard Operating Procedures to assist the Shariah Courts in accommodating PWDs and enhancing coordination between the Shariah Courts and PWD-related agencies to ensure the effective realization of PWDs' rights to access justice in the Shariah Courts of Malaysia.

Keywords: Implementation, empower, rights, persons with disabilities, access to justice, shariah courts of Malaysia

Abstrak: Penyandang disabilitas (Orang Kurang Upaya/OKU) menghadapi hambatan yang signifikan dalam mengakses keadilan di Pengadilan Syariah Malaysia. Meskipun ada kerangka hukum yang dirancang untuk melindungi hak-hak PWD, implementasi hak-hak ini masih menantang. Studi ini bertujuan untuk (1) menganalisis status OKU dari perspektif Islam, (2) mengkaji kerangka hukum Malaysia tentang hak-hak OKU, (3) mengeksplorasi tantangan yang dihadapi oleh Pengadilan Syariah dalam menangani proses hukum yang melibatkan OKU dan (4) mengusulkan rekomendasi untuk memberdayakan hak-hak OKU dalam mengakses keadilan di Pengadilan Syariah Malaysia. Penelitian ini menggunakan studi kualitatif melalui penelitian kepustakaan dan diskusi kelompok terfokus (FGD) dengan lima (5) petugas Pengadilan Syariah dari empat (4) distrik di Malaysia dan mengkaji empat (4) berkas pengadilan. Data dianalisis menggunakan analisis tematik untuk mengidentifikasi tantangan yang dihadapi oleh Pengadilan Syariah dalam menangani proses hukum yang melibatkan OKU sebagai pihak yang berperkara dan mengusulkan rekomendasi berdasarkan tantangan yang diidentifikasi. Studi ini mengungkapkan bahwa tidak adanya undang-undang khusus yang mengatur hak-hak OKU di Pengadilan Syariah menghambat efektivitas penuh perlindungan ini, yang menyebabkan tantangan dalam implementasinya. Studi ini menyoroti perlunya perbaikan termasuk pembentukan Prosedur Operasional Standar khusus untuk membantu Pengadilan Syariah dalam mengakomodasi PWD dan meningkatkan koordinasi antara Pengadilan Syariah dan lembaga terkait PWD untuk memastikan realisasi efektif hak PWD untuk mengakses keadilan di Pengadilan Syariah Malaysia.

Kata Kunci: Implementasi, pemberdayaan, hak, penyandang disabilitas, akses kepada keadilan, Mahkamah Syariah Malaysia

Introduction

Persons with disabilities (PWD) remain among the most marginalized groups in all societies. Despite significant advancements in the global human rights framework, the benefits of these changes have not been equally realized by PWDs. Regardless of a nation's economic standing or human rights commitments, individuals with disabilities are often the last to see their fundamental rights fully respected. Deprived of opportunities that would allow them to achieve self-sufficiency, many PWDs are left to depend on the goodwill and charity of others.¹

As the world's population grows, so does the number of PWDs. In 2023, it has been reported that approximately 1.3 billion people globally experience some form of disability, representing approximately 16% of the world's

¹ United Nations, "Realizing the Rights of Persons with Disabilities: The Compelling Reasons," *Social Desa United Nations Organization*, accessed September 13, 2024, <https://social.desa.un.org/issues/disability/resources/handbook-for-parliamentarians/chapter-one/chapter-one-overview>.

population.² In recent years, there has been a growing awareness throughout the world that continuing to deny disabled individuals their human rights is no longer acceptable.³

The Convention on the Rights of Persons with Disabilities (CRPD) represents the international community's response to the longstanding history of discrimination, exclusion, and dehumanization faced by PWDs. The Convention ensures that the world's largest minority (PWD) are granted the same rights and opportunities as others. CRPD reflects a significant shift in attitudes towards disability and represents a major step toward changing societal perceptions. It emphasizes that all individuals, regardless of ability, must have the opportunity to realize their full potential, including the right to access justice.⁴

The United Nations established 17 Sustainable Development Goals (SDG) as part of the 2030 Agenda. All goals within the 2030 Agenda apply to PWDs based on the guiding principle of *Agenda 2030: Leave no one behind*. While the entire 2030 Agenda is inclusive of PWD, specific goals explicitly reference their specific needs.⁵ These Disability-Inclusive SDGs focus on reducing inequalities and fostering the full integration of PWD into all aspects of society, aligning with the spirit of CRPD.⁶

Malaysia's commitment to this global agenda is reflected in its legal frameworks designed to safeguard the rights of PWDs. As a signatory to the CRPD, Malaysia is obligated to implement measures through its legislation and policies⁷ to guarantee that PWDs receive full and equal access to opportunities including equal treatment in the legal system.⁸ In line with these obligations, the Malaysian government has introduced the Persons with Disabilities Act 2008, the National Policy for Persons with Disabilities 2007, and the National Plan of

² World Health Organization, "Disability," *World Health Organization*, March 7, 2023, <https://www.who.int/news-room/fact-sheets/detail/disability-and-health>, accessed September 13, 2024.

³ United Nations, "Handbook for Parliamentarians," *Social Desa United Nations Organization*, accessed September 13, 2024, <https://social.desa.un.org/issues/disability/resources/handbook-for-parliamentarians/foreword>.

⁴ United Nations, "Why A Convention Was Needed," *Social Desa United Nations Organization*, accessed September 13, 2024, <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-one-overview-3.html>.

⁵ Goal 4: Quality Education; Goal 8: Decent Work and Economic Growth; Goal 10: Reduced Inequalities; Goal 11: Sustainable Cities and Communities; Goal 17: Partnerships for the Goals.

⁶ Bathmavathi Krishnan, *Disability Inclusive SDGs: Strategies to Leave No One Behind*, paper presented at the Malaysia SDG Summit 2019, November 6, 2019.

⁷ Article 4 CRPD

⁸ Article 13 CRPD.

Action for Persons with Disabilities 2016-2022, which collectively aim to promote advocacy, accessibility, and support services for PWD.⁹

As of 31 January 2023, the Department of Social Welfare Malaysia reported 637,537 registered PWDs, accounting for 1.87% of the country's population.¹⁰ However, since registration is not mandatory, this figure likely underrepresents the true prevalence of disabilities, due to challenges in the registration process and social stigma. The low registration rate raises concerns that existing frameworks and support systems may not fully address the needs of all PWDs, highlighting the ineffectiveness of current measures and the urgent need for more inclusive and accurate data collection methods.

In the same report, approximately 61.1% (389,396) of the registered PWD nationwide were identified as Muslims. Under the Ninth Schedule of the Malaysian Federal Constitution 1957, specifically the State List, this automatically places them under the jurisdiction of the Shariah Courts without exception. Consequently, it is imperative that the Shariah Courts are equipped with the necessary resources and frameworks to effectively handle cases involving PWD, ensuring equitable access to justice for this marginalized group.¹¹

Therefore, this research aims to examine the Malaysian legal framework on the rights of PWD in relation to their rights to access justice, explore the challenges encountered by the Shariah Courts in handling cases involving PWD and propose recommendations to empower PWD in accessing justice within the Shariah Courts in Malaysia.

This study adopts a qualitative approach employing library research, focus group discussion (FGD) and court file analysis. Library research was carried out to review existing literature and legal frameworks related to the rights of PWDs according to the Islamic perspective and Shariah legal system, providing a foundational understanding and context for the research analysis and recommendations. The FGD was conducted on 26 September 2023 involving semi-structured discussions with five (5) selected Shariah Court officers to explore questions in areas that could provide new dimensions of issues not pre-conceived.¹² The focus groups comprised of five (5) informants, including Chief Shariah Judge, Shariah Judges, and Court Registrars from four (4) districts in

⁹ Z. Tahir, S. et.al., "Undang-undang Berkenaan Orang Kurang Upaya: Satu Analisis Perkembangan Perundangan di Malaysia," *The Malaysian Journal of Social Administration* 14, no. 1 (2020), p. 96-114

¹⁰ "Malaysian Disability Data," *OKU Rights Matter*, accessed on April 7, 2024, <https://okurightsmatter.com/malaysian-disability-data/>.

¹¹ M. A. S. Roslan, et.al., "Analisis Literatur Tentang Tatacara Perbicaraan Jenayah Syariah Bagi Orang Kurang Upaya di Mahkamah Syariah (Literature Analysis on Syariah Criminal Trial Procedures for Persons with Disabilities in Syariah Court)," *UUM Journal of Legal Studies* 12, no. 1 (2021), p. 247-271.

¹² William G. Axinn and Lisa D. Pearce, *Mixed Method Data Collection Strategies* (Cambridge: Cambridge University Press, 2006).

Malacca, namely Melaka, Melaka Tengah, Jasin, and Sungai Rambai, each with over 15 years of relevant experience. The data gathered were analyzed using thematic analysis to identify challenges encountered by PWD in legal proceedings within the Shariah Courts. Additionally, four (4) court files and documents were analysed to compare various sets of evidence across different cases. The data collected provide valuable insights into the need for improvement in empowering the rights of PWD in accessing justice in the Shariah Courts of Malaysia.

Definition of Persons with Disabilities

The meaning of ‘person with disabilities’ (PWD) can be found in various conventions and legislations. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) defines persons with disabilities as ‘those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’¹³

Malaysia on the other hand, adopted the above definition whilst omitting the phrase ‘on an equal basis with others’. The Persons with Disabilities Act 2008 states ‘persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society.’¹⁴ The same Act further mentioned the meaning of ‘a person with severe disabilities’ as ‘a person suffering from one or more disabilities who is dependent on others for basic daily living activities.’¹⁵

The definition of disability is not conclusive and rather vague. Hence, the ambiguity opens doors to broader interpretation by relevant experts in this area.¹⁶ The ambiguity extends to the interpretation of various types of disabilities, whether physical, mental, intellectual, or sensory.

The term disability was challenged in the case of *Karunairajah a/l Rasiah v Punithambigai a/p Poniah*,¹⁷ where Abdul Hamid Mohamad FCJ decided that “*Even without looking at a dictionary, the word 'disability' is always used in relation to 'physical' or 'mental.'*” His Lordship quoted the definition of disability from the Concise Oxford Dictionary as referring to a physical or mental condition that limits a person's movements, senses, or activities, disadvantage or handicap especially one imposed or recognized by the law. He then defines the terms physical and mental and comes to the conclusion that these two words are used to describe the two opposing or complementary elements of a human being; the

¹³ Article 1, CRPD.

¹⁴ Section 2, Persons with Disabilities Act 2008.

¹⁵ Section 39, Persons with Disabilities Act 2008.

¹⁶ United Nations Children's Fund (UNICEF), *Children With Disabilities in Malaysia* (Kuala Lumpur: UNICEF Malaysia, May 2014).

¹⁷ [2004] 2 MLJ 401.

physical and the mental elements. Physical is defined as relating to the body as opposed to the mind, and mental is a disorder or illness of the mind. The challenge is not merely about providing a precise definition, but what the government and community can offer to encourage full participation of the PWD in society.

Disability According to the Islamic Perspective

In Islam, Allah SWT is recognized as the ultimate source of health, illness, and healing. Illness is perceived not as a form of divine retribution but as an integral aspect of the human experience, often regarded as a test of faith or an opportunity for spiritual refinement. Consequently, those who suffer from illness are not seen as impure or morally compromised, nor are they subject to isolation or stigmatization.¹⁸ Instead, they are integrated within the community, reflecting Islam's emphasis on compassion, inclusivity, and recognising illness as part of life's natural continuum. In one hadith, Prophet Muhammad PBUH stated: "No fatigue, no disease, nor sorrow, nor sadness, nor hurt, nor distress befalls Muslim, even if it were a prick he receives from a thorn, but that Allah expiates some of his sins for that." (Hadith Al-Bukhari, 7: 75: 5641). In another hadith, the Prophet recounted that Allah SWT said: "If I deprive my slave of his two beloved things (i.e., his eyes) and he remains patient, I will let him enter Paradise in compensation for them." (Hadith Al-Bukhari, 7:75:5653).

Disability is a natural and morally neutral part of the human condition. Unlike historical views that often regard disability as an abnormality or sign of evil, Islam sees it as a normal variation within human well-being, much like health or illness.¹⁹ This perspective removes negative connotations, framing disability as part of human diversity. The Quran reinforces that differences among people are normal. "O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other)..." (Surah Al-Hujurat:13).

This verse emphasizes that all humans share a common origin, created from a single male and female, with differences intended to encourage understanding, not disdain. In Islam, true honour lies in righteousness, rather than physical or mental attributes. Thus, Islam values spiritual integrity over physical attributes, affirming inclusivity and equality for all, including those with disabilities. Difference and diversity are fundamental aspects of human existence. In Islam, however, accountability is based on each individual's abilities, as highlighted in the Quran: "On no soul doth [God] place a burden greater than it can bear." (Surah Al-Baqarah: 286).

This principle underscores that one's obligations are tailored to their capacity. This is evident in practices such as zakat,²⁰ where contributions are

¹⁸ Surah An-Nur: 61; Surah Abasa: 1–10

¹⁹ Vardit Rispler-Chaim. *Disability in Islamic law*. (Dordrecht: Springer, 2007)

²⁰ Surah At-Talaq:7

proportional to one's wealth, and alternatives for fasting during Ramadan for those unable to fast.²¹ This understanding supports the notion that differences among individuals are inherently natural in Islamic thought.

The Quran generally does not address physical disabilities as a form of deficiency, dishonour, or deviance.²² Instead, terms such as deaf, mute, and blind serve as metaphors for those who reject or refuse the call to believe in Allah. The Quran uses these terms as analogies for spiritual deficiency demonstrating that disdain is directed solely towards those with inner shortcomings (unbelief). Hence, in Islam, internal piety is of utmost importance in evaluating individuals. This concept is highlighted in the verse: "...Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you." (Surah Al-Hujurat:13).

Similarly, a hadith from the Prophet Muhammad states, "God does not judge you according to your bodies and appearances, but He looks into your hearts and observes your deeds."²³ These teachings stress that spiritual excellence is the true standard by which humans are assessed, rather than their physical or mental attributes. Islam not only grants legal rights and opportunities to individuals with disabilities but also mandates that communities have obligations (*fard kifayah*) toward these individuals.²⁴ In Islamic law, three primary themes emerge related to this responsibility: equity in treatment, social welfare, and disability as a human rights issue.²⁵

1. Equity in Treatment

Islamic teachings emphasize ethical treatment and respect toward PWDs. In the Quran and Sunnah, it is clear that people with disabilities should not be dismissed or denigrated because of their disabilities as narrated in the Quran: "He frowned and turned his attention away, simply because the blind man came to him interrupting. You never know, O Prophet, perhaps he may be purified, or he may be mindful, benefitting from the reminder. As for the one who was indifferent, you gave him your undivided attention, even though you are not to blame if he

²¹ Surah Al-Baqarah: 184

²² Nur Fadliana Che Di, *Interaksi Rasulullah S.A.W bersama Orang Kelainan Upaya (OKU): Kajian Layanan Terhadap Mahasiswa Kelainan Upaya di Universiti Malaya*. (Kuala Lumpur: Akademi Pengajian Islam, Universiti Malaya, 2014).

²³ M. Bazna and T. Hatab, "Disability in the Qur'an: The Islamic Alternative to Defining, Viewing and Relating to Disability," *Journal of Religion, Disability and Health* 9, no. 1 (2005), p. 5-27

²⁴ Izzatul Najiha Baharudin and Farhah Zaidar Mohamed Ramli. "Orang Kurang Upaya (OKU) Menurut Perspektif Al-Quran Dan Hadis" in *e-Proceeding of The 2nd International Conference On Contemporary Issues In Al-Quran And Hadith 2020* (THIQAH 2020), p. 35.

²⁵ Isra Bhatti, Asad Ali Moten, Mobin Tawakkul, and Mona Amer, "Disability in Islam: Insights into Theology, Law, History, and Practice," in *Disabilities: Insights from Across Fields and Around the World* 1 (2009), p. 157-176.

would not be purified. But as for the one who came to you, eager to learn, being in awe of Allah, you were inattentive to him.” (Surah Abasa: 1-10).

These verses serve as a reprimand from Allah SWT to Prophet Muhammad regarding his interaction with Abdullah Ibn Ummy Maktum (a blind companion). While the Prophet was engaged with influential figures of Quraysh, he overlooked Abdullah's approach, prompting the revelation of these verses. This story serves as a lesson emphasizing the obligation to treat everyone with fairness, justice, and equality, including those with disabilities.²⁶

2. Social Welfare

The Quran also emphasizes the community's duty to support PWDs. The zakat system in Islam is a primary economic welfare mechanism within Islamic law. It obligates Muslims to assist the economically disadvantaged, including those with disabilities. Islamic scholars agree that zakat funds should support PWDs who cannot earn a living, and these funds can also be used to establish professional training and employment opportunities. Historically, Muslim governments have upheld this responsibility by providing financial aid and creating institutions such as hospitals and housing facilities dedicated to the care and support of individuals with disabilities.²⁷

3. Disability as a Human Rights Issue

Islam upholds that all individuals deserve equality and dignity due to their shared humanity. This perspective reinforces that every person, regardless of physical or mental ability, should be treated with respect and supported by the community to meet their essential needs. This foundational commitment to human rights aligns with contemporary values, promoting comprehensive welfare and ethical treatment for individuals with disabilities within Muslim societies.²⁸

Islam upholds the rights of individuals with disabilities and establishes community responsibilities to support them. The Islamic perspective on disability is characterized by its humane and equitable nature, aligning closely with contemporary principles of human rights.

Malaysian Legal Framework for Persons With Disabilities

Prior to the ratification of the Convention on the Rights of Persons with Disabilities (CRPD), Malaysia had already demonstrated its commitment to improving the rights of PWD by signing the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and Pacific

²⁶ Izzatul Najiha Baharudin and Farhah Zaidar Mohamed Ramli. “Orang Kurang Upaya (OKU) Menurut Perspektif Al-Quran Dan Hadis”, p. 38-39.

²⁷ Risper-Chaim, *Disability in Islamic Law*, p. 133.

²⁸ Risper-Chaim, *Disability in Islamic Law*, p. 125.

Region on 16 May 1994.²⁹ Malaysia further reinforced its efforts by signing the CRPD on 7 April 2008 and ratifying it on 19 July 2010. This marked a positive development, given that Malaysia has ratified only three out of ten core human rights treaties.³⁰ The ratification process, authorised by the Federal Constitution,³¹ ensures that treaties become part of domestic law only after parliamentary approval and such ratification does not automatically allow international treaties to override national laws. This paper will examine the legal framework within the purview of rights to access justice for PWD, especially in Shariah Courts.

Convention on the Rights of Persons With Disabilities

The CRPD emphasises principles of non-discrimination and equality of opportunity, ensuring that PWDs are treated equally and enjoy full access to human rights and fundamental freedoms. In response to the ratification of CRPD, Malaysia enacted the Persons with Disabilities Act 2008, which aims to provide for the registration, protection, rehabilitation, and well-being of PWDs, alongside establishing the National Council for Persons with Disabilities. As discussed earlier, the Act falls short of the CRPD's broader definition of equality, as the Malaysian Act omits the emphasis on participation 'on an equal basis with others' in Article 1 of CRPD.

While the ratification of the CRPD was a significant step forward, Malaysia opted not to sign the CRPD Optional Protocol, which would allow individuals or groups to submit complaints to the CRPD Committee regarding violations of PWD rights.³² Additionally, Malaysia has made reservations to Article 15, which guarantees freedom from torture or inhuman treatment, and Article 18, concerning liberty of movement and nationality, citing potential conflicts with national laws.³³ Despite criticism and recommendations from organisations like the Malaysian Commission of Human Rights (SUHAKAM) and the Coalition of Malaysian Non-Government Organizations (NGO) in the UPR Process (COMANGO), these reservations remain in place, leaving gaps in the protection and redress available to PWDs.³⁴

²⁹ Nadia Norazlan, Azman Rahman, and Hasnizam Hashim, "Penerapan Prinsip Matlamat Pembangunan Mampan (SDGs) Dalam Memenuhi Hak-Hak Orang Kurang Upaya (OKU) Menurut Perundangan Malaysia," *Prosiding SAIS* (2021), p. 118-129.

³⁰ Ikmal Hisham Md. Tah and Khairil Azmin Mokhtar, "Malaysia's Ratification of the UN Convention on the Rights of Persons with Disabilities (UN CRPD)," *International Journal of Business, Economics and Law* 11, no. 4 (2016), p. 83-87.

³¹ Articles 74 and 76, 9th Schedule of the Federal Constitution.

³² "Treaty Collection: Malaysia," *Treaties United Nations*, accessed April 7, 2024, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en.

³³ Tah and Mokhtar, "Malaysia's Ratification of the UN CRPD," p. 83-87.

³⁴ M. Rezaul Islam, "Rights of the People with Disabilities and Social Exclusion in Malaysia," *International Journal of Social Science and Humanity* 5, no. 3 (2015), p. 299.

This incomplete implementation of the CRPD presents a barrier to ensuring PWDs' full access to justice. Although Malaysia has ratified the Convention and enacted domestic legislation, the absence of clear avenues for redress when rights are violated, and the omission of critical equality provisions, weakens the framework for PWDs seeking justice. To address these gaps, supplementary regulations or amendments to national law could enhance the effectiveness of the legal protections available to PWDs, ensuring their rights are fully upheld in line with the CRPD's principles.

Federal Constitution 1957

Despite Malaysia's reservations on the CRPD, it is important to acknowledge that the rights of PWD were already embedded within the framework of the Federal Constitution, which guarantees basic human rights. A key provision relevant to PWD rights is Article 8, which promotes equality before the law. Article 8(2) prohibits discrimination on the grounds of religion, race, descent, place of birth, or gender. However, this clause has been criticized for not expressly including 'disability' as a protected category, despite previous revisions to include 'gender.' This omission suggests a gap in legal protection for PWD, particularly in their ability to access justice and participate equally in legal proceedings.

Furthermore, Article 6, which prohibits slavery, indirectly supports equal rights in employment, aligning with the CRPD's provisions on non-discrimination in employment.³⁵ While these articles emphasize equality, they do not fully address the unique barriers faced by PWD in accessing justice, such as the need for reasonable accommodations and procedural adjustments in court. Other constitutional provisions, such as Article 11 (right to profess and practice religion) and Article 13 (right to property), apply to all citizens, including PWD. However, specific references to PWD in these provisions are absent, creating ambiguity in their application to ensure full participation of PWD in legal processes.

The Malaysian government's broader commitment to inclusion, as seen in policies such as the OKU Inclusion Development Plan (2020-2025), provides a framework for addressing barriers in education and employment. However, these policies do not sufficiently cover the challenges PWD face in accessing justice, particularly in the Shariah Courts. Addressing these gaps requires more explicit legal protections and practical measures to ensure that PWD can fully exercise their rights in the justice system.

³⁵ Ikmal Hisham Md Tah and Khairil Azmin Mokhtar, "Konsep Hak Asasi Manusia Orang Kurang Upaya di Malaysia: Suatu Analisis," *Kanun: Jurnal Undang-undang Malaysia* 30, no. 1 (2018), p. 71-99.

Persons with Disabilities Act 2008

The Persons with Disabilities Act 2008 offers important provisions to support the well-being and quality of life for PWD, but it falls short in addressing the right to access justice. Despite setting out various rights, the Act has been criticised for its lack of specific provisions to prevent discrimination in legal proceedings and for not offering judicial remedies or penalties for violations of PWD rights. Unlike other jurisdictions such as the UK and Australia, where violations of disability rights can result in compensation or imprisonment, Malaysia's PWD Act does not impose fines or legal consequences for breaches.³⁶

This gap in enforcement diminishes the effectiveness of the Act in safeguarding the rights of PWD, particularly in accessing justice. The absence of provisions that allow PWD to seek legal redress or hold parties accountable undermines the goal of equality before the law. Legal experts and advocates, including the Malaysian Bar, have called for the revision of the Act to include stronger protections and judicial remedies, ensuring that PWDs have full access to justice and legal recourse in cases of discrimination or rights violations.³⁷ The discussion below will emphasize laws related to PWD within the context of Shariah Courts in Malaysia.

Syariah Court Civil Procedure (Federal Territories) Act 1998

The Syariah Court Civil Procedure (Federal Territories) Act 1998, under Section 2, defines a person under disability as 'an infant, a person of unsound mind, or someone prohibited from managing their property.' This definition is limited and does not fully encompass all types of disabilities. Chapter 2 outlines provisions related to PWD, emphasising that such individuals must be represented by a court-approved guardian *ad litem*.³⁸ With court approval, any consent or waiver given by this guardian is binding.³⁹ Additionally, settlements or compromises involving a PWD require court sanction, and any recovered money or property must be deposited in court.⁴⁰ If legal proceedings involving a PWD do not follow proper procedures or laws, they can be dismissed or the decisions overturned.⁴¹ While the procedural requirements are intended to protect persons

³⁶ Hirwan Jasbir Jaafar, et.al., "Undang-Undang di Malaysia dan Jaminan Hak Orang Kurang Upaya untuk Bekerja," *Jurnal Pembangunan Sosial* 19 (2016). p. 57-68. Nurhidayah Abdullah, et.al., "The Rights of Persons with Disabilities in Malaysia: The Underlying Reasons for Ineffectiveness of Persons with Disabilities Act 2008," *International Journal for Studies on Children, Women, Elderly and Disabled* 1, no. 1 (2017), p. 127-134.

³⁷ "Persons with Disabilities Act Needs Review," *The Star*. September 20, 2019, <https://www.thestar.com.my/opinion/letters/2019-09-20/persons-with-disabilities-act-needs-review>, accessed on April 28, 2024.

³⁸ Section 24, Syariah Court Civil Procedure (Federal Territories) Act 1998

³⁹ Section 25, Syariah Court Civil Procedure (Federal Territories) Act 1998

⁴⁰ Section 26, Syariah Court Civil Procedure (Federal Territories) Act 1998.

⁴¹ Section 27, Syariah Court Civil Procedure (Federal Territories) Act 1998.

with disabilities, the bureaucratic nature of these procedures might delay or obstruct their access to justice.

Islamic Family Law (Federal Territories) Act 1984

The Islamic Family Law (Federal Territories) Act 1984 includes several specific provisions addressing the needs of PWD. The Act allows for the dissolution of marriage through *fasakh*⁴² due to the disability of one party. This provision acknowledges that disability can significantly affect marital relationships and lead to an irreconcilable marriage. Moreover, the Act also recognises the financial responsibilities of disabled fathers⁴³ and the need for the court to assess diligently in determining the responsibility of maintenance for the children. The Act extends maintenance rights for children with disabilities beyond the age of 18 years old.⁴⁴

Syariah Court Evidence (Federal Territories) Act 1997

The Syariah Court Evidence (Federal Territories) Act 1997 addresses the admissibility of evidence in Shariah Courts, including provisions for PWD. The Act allows a PWD to make an *iqrar* (admission) through gestures,⁴⁵ provided they are of sound mind.⁴⁶ However, this admission requires corroboration from a third party, known as *qarinah*,⁴⁷ to validate the evidence.⁴⁸ Mentally disabled individuals are deemed incompetent to testify as witnesses.⁴⁹ However, a witness who cannot speak (dumb) may provide evidence in a manner understandable to the court, such as through writing or signs.⁵⁰

The Act highlights the distinction between mental disabilities and physical disabilities, where the latter are allowed to tender evidence in court in an understandable manner and require an expert opinion to corroborate.

Syariah Criminal Offences (Federal Territories) Act 1997

Under Section 52 of the Syariah Criminal Offences (Federal Territories) Act 1997, a person of unsound mind is exempted from criminal liability. However, this does not extend to civil cases. Practice Directions are guidelines issued by the Department of Shariah Judiciary Malaysia (JKSM), which is

⁴² Section 52, Islamic Family Law (Federal Territories) Act 1984.

⁴³ Section 73(2), Islamic Family Law (Federal Territories) Act 1984.

⁴⁴ Section 79(c)(ii), Islamic Family Law (Federal Territories) Act 1984.

⁴⁵ Section 17, Syariah Court Evidence (Federal Territories) Act 1997.

⁴⁶ Section 18, Syariah Court Evidence (Federal Territories) Act 1997.

⁴⁷ Shadli Sabarudin, et.al., "Analisis Pembuktian Prima Facie Berdasarkan Sabitan Qarinah dalam Kesalahan Matrimoni di Mahkamah Syariah Selangor," *Journal of Contemporary Islamic Studies* 8, no. 2 (2022), p. 79-92.

⁴⁸ Section 33, Syariah Court Evidence (Federal Territories) Act 1997.

⁴⁹ Section 83, Syariah Court Evidence (Federal Territories) Act 1997.

⁵⁰ Section 84, Syariah Court Evidence (Federal Territories) Act 1997.

responsible for drafting policies and strategies to enhance the performance of Shariah Courts throughout Malaysia.⁵¹ These directions provide uniform procedures for Shariah officers, including judges, lawyers, and registrars, to ensure smooth and consistent judicial administration.⁵² While Practice Directions are not legally binding,⁵³ they play a crucial role in clarifying legal provisions, standardizing processes, and improving the efficiency of court operations.⁵⁴ Despite the benefits, their non-binding nature means they can lack the force needed to address compliance failures effectively

According to Sheikh Ghazali Abdul Rahman, a former Chief Judge of Malaysia (1998-2010), although it may not have a binding effect, once it is endorsed for application, have becomes an authoritative source alongside statutes or state enactments.⁵⁵ The establishment of these Practice Directions yields positive outcomes as it expedites case resolution, standardize the administration of the Shariah Courts, and facilitates judicial reference for judges.⁵⁶

In 2023, JKSM has taken proactive measures by issuing a few specific Practice Directions concerning PWDs. The application of these Practice Directions has been established at the state level, where they have been endorsed for use in the respective State Shariah Courts. The Practice Directions are as follows:

Table 1: Practice Directions Related to The Needs of PWDs

No	Item	Practice Direction
1	Guidelines for Appointing Guardians <i>Ad Litem</i> for Persons with Disabilities, Incapable Persons and Children in Shariah Court Proceedings	Practice Direction No. 6 of 2023

⁵¹ Ramizah Wan Muhammad, *Position and Jurisdictions of Syariah Court in the Administration of Islamic Justice in Malaysia*, paper presented at the 2019 Law and Development Conference, December 2019.

⁵² Zubaidi Sulaiman dan Ahmad Hidayat Buang, "Keabsahan dan Pemakaian Arahan Amalan Dalam Pentadbiran Kehakiman Dari Perspektif Undang-Undang Syariah dan Sivil: Satu Perbandingan," *Kanun: Jurnal Undang-undang Malaysia* 33 no.1 (2021), p. 29-50.

⁵³ Zubaidi Sulaiman dan Ahmad Hidayat Buang, "Keabsahan dan Pemakaian Arahan Amalan," p. 46.

⁵⁴ Awang Suhaili Ledi, "Perutusan YAA Ketua Hakim Syarie Sarawak," in *Arahan Amalan Ketua Hakim Syarie Sarawak Tahun 2000-2017* (Sarawak: Jabatan Kehakiman Syariah Sarawak, 2018).

⁵⁵ Mazni Abdul Wahab, "Arahan Amalan Jabatan Kehakiman Syariah Malaysia di Mahkamah Syariah: Suatu Sorotan Literatur," *Journal of Shariah Law Research* 1, no. 2 (2016), p. 175-186.

⁵⁶ Mazni Abdul Wahab, "Arahan Amalan Jabatan Kehakiman Syariah Malaysia, p. 176.

2	Special Requirements in Determining Child Support Rates for Disabled Children	Practice Direction No. 7 of 2023
3	Guidelines for the Use of Certified Sign Language Interpreters in Criminal and Civil Proceedings for Persons with Disabilities who are Deaf and Mute, and Certified Translators for Individuals Unable to Speak in the National Language	Practice Direction No. 8 of 2023

Data Sources: Jabatan Kehakiman Syariah Malaysia (JKSM)

These Practice Directions specifically serve as guidelines concerning the special requirements for PWD. Practice Direction No. 7 of 2023 highlights the guidelines for appointing guardian *ad litem*s and their responsibilities to represent the best interest of PWD in Shariah Courts. Practice Direction No. 7 of 2023 provides guidelines for determining the maintenance rate for disabled children, considering several criteria: the category of disability, special maintenance or medical care, medical discipline, the cost of public medical care including government hospitals, rehabilitation centers, specialist paediatric clinics, private medical care expenses and other special requirements. This Practice Direction also establishes the categories of disability and medical maintenance to be considered when assessing these maintenance rates.

Table 2: Category of Disability and Medical Maintenance

Category of Disability (To Rule Out/ Multiple)	Medical/Special Maintenance /Medical Discipline
Autistic Syndrome Disorder (ASD)	Behaviour Therapy Speech Therapy Occupational Therapy
Speech Delay Syndrome Disorder (SDSD)	Speech Therapy
Global Delay Disorder (GDD)	Behaviour Therapy Speech Therapy Occupational Therapy
Prader Willi Syndrome (PSD)	Food Therapy
Syndrome Down	Behaviour Therapy
Celebral Palsy Syndrome (CPS)	Motor Therapy Balance Therapy Occupational Therapy

Data Sources: JKSM Practice Direction of 2023

Practice Direction No. 8 of 2023 details the guidelines for obtaining permission from the court to use certified interpreters in legal proceedings, both

civil and criminal, involving PWD. This applies to all relevant Shariah Civil or Criminal Procedure Acts/Enactments/Ordinances of each state.

However, despite the legal frameworks designed for PWDs in Malaysia, there has been criticism for its inadequate implementation⁵⁷ which led to gaps in protecting the rights of PWDs.⁵⁸

Challenges of the Current Practice in the Shariah Courts

Amidst the pursuit of justice and inclusivity, the Shariah Courts encounter challenges arising from the diverse needs and circumstances of PWD litigants. These challenges highlight the complexity of ensuring equitable legal proceedings for all individuals, regardless of their physical or mental disabilities.

1. Barriers to Accessibility

Barriers to accessibility refer to impediments that hinder PWDs from fully engaging with and benefiting from various services and environments. In the context of the legal system, these barriers manifest in several ways such as physical, communication, procedural and attitudinal barriers.

The inadequate facilities in the Shariah Courts, such as the lack of ramps, elevators, or accessible courtrooms, create significant physical barriers for individuals with mobility impairments.⁵⁹ This stems from insufficient government funding to provide essential infrastructure for PWD. Consequently, courts rely on external sources, such as NGOs and other agencies, for support like wheelchairs or accessibility aids. However, the quality and availability of these resources are often inconsistent, further hindering PWD's access to justice.⁶⁰

Communication barriers persist for PWD in the Shariah Courts leading to difficulties in exchanging information. Despite receiving assistance from certified interpreters from Persatuan Melaka OKU, the educational limitation of PWDs in understanding formal sign languages poses them with frequent misunderstandings.⁶¹ Additionally, PWDs with cognitive impairments face greater challenges in navigating the court system. Some require external assistance such as from the Department of Social Welfare.⁶²

Procedural barriers arise from rigid court procedures that fail to account for the specific needs of individuals with disabilities, whereas attitudinal barriers

⁵⁷ "Akta OKU Perlukan Taring," *Astro Awani*. July 14, 2018, <http://www.astroawani.com/berita-malaysia/akta-oku-perlukan-taring-rasadiba180468>, accessed September 13, 2024.

⁵⁸ "Persons with Disabilities...", September 20, 2019.

⁵⁹ Abu Suffian Abu Yaziz and Norazita Mohd Ali, "Muhakat Sulh Online Facebook Jabatan Kehakiman Syariah Malaysia," *Facebook Jabatan Kehakiman Syariah Malaysia*. August 23, 2021, <https://www.facebook.com/watch/live/>, accessed September 13, 2024.

⁶⁰ Informant 1.

⁶¹ Informant 5.

⁶² Informant 4.

involve prejudice or biases that occur due to a lack of awareness of the rights of PWDs. However, these barriers were less visible in the Shariah Courts of Malacca as they were more flexible in accommodating the welfare of PWD.⁶³

2. Inconsistent Procedural Accommodation

Inconsistent procedural accommodation refers to the irregular and non-standardized adjustments made to support the participation of PWD in court proceedings. This lack of uniformity in adopting standards or protocols to address the diverse needs of PWD can result in unequal access to justice.

The flexibility of courts in accommodating specific needs, including extending legal processes for external assistance and conducting proceedings in chambers for better communication and comfort,⁶⁴ can lead to unnecessary delays and unequal treatment without a consistent and systemic approach. The reluctance of PWD to disclose their disabilities due to stigma or lack of awareness further complicates the issue. Without early identification, courts may fail to provide appropriate accommodations, leaving PWDs at a disadvantage.⁶⁵ The absence of proactive procedures for disability disclosure and accommodation results in an unpredictable legal experience for PWDs, where the level of support they receive depends largely on the discretion and initiative of individual judges and court staff.⁶⁶

3. Inadequate Knowledge and Training

The reluctance of many PWD litigants to disclose their disabilities leads to the court's inability to identify them and address their specific needs promptly.⁶⁷ This gap is particularly concerning for PWDs with non-visible disabilities, such as cognitive impairments. The current reliance on judges' assumptions and inquisitorial skills to recognize disabilities during trials is insufficient.⁶⁸ Without proper knowledge and training, court officials may struggle to fully identify and understand the unique challenges faced by PWD, leading to procedural delays, miscommunication, or even discriminatory practices, ultimately hindering equal access to justice.

⁶³ Aishah Mohd Nor, et.al., "Rights To Access Justice for Persons with Disabilities in Malaysian Shariah Courts: A Case Study in The Shariah Courts of Malacca," *International Journal of Religion* 5, no. 10 (2024), p. 1000-1008.

⁶⁴ Informants 4 and 5.

⁶⁵ Informant 2.

⁶⁶ Informant 2.

⁶⁷ Informants 1, 3, 4.

⁶⁸ Informants 4 and 5.

4. Legal Ambiguity

While general provisions for PWD exist within various frameworks, there are still reports on the lack of clear and specific guidelines⁶⁹ regulating the entire legal process in the Shariah Courts, from case registration and management to the issuance of orders and overall handling. This ambiguity creates inconsistencies in how PWDs are accommodated, leaving much discretion to individual judges and court officials.

For instance, the Syariah Court Evidence (Federal Territories) Act 1997 allows certain flexibilities, such as the admission of *iqrar* (confession) by gesture for PWD,⁷⁰ but it requires the corroboration of evidence through third-party opinion.⁷¹ However, there are no guidelines that outline how other disabilities, particularly cognitive impairments, should be handled during trials. This lack of clarity often results in ad-hoc approaches, where courts may extend flexibility on a case-by-case basis but fail to provide uniformity in addressing the needs of PWD litigants.

Furthermore, while the Shariah Courts are generally more accommodating, especially with the use of chambers for private hearings and procedural adjustments, there remains a gap in codified laws that mandate such accommodations across all states. The absence of specific statutory provisions or binding guidelines in relation to the procedural rights of PWD within the Shariah legal system contributes to an unpredictable legal experience for PWD litigants. This unpredictability is compounded by a lack of detailed policies on accessibility, such as the consistent use of certified sign language interpreters or the provision of documents in Braille for visually impaired individuals.

This legal ambiguity not only undermines the efficiency of the court system but also jeopardizes the rights of PWD to fair participation in legal proceedings. Without explicit legal provisions to safeguard their rights, PWDs are at risk of experiencing inequality and marginalization within the Shariah Courts. The lack of clarity in legal texts further perpetuates procedural inconsistencies, leaving PWD vulnerable to unequal treatment based on the varying interpretations and capacities of different court officials.

5. Underreporting and Discrepancies of Cases in the Shariah Courts

The unwillingness of PWDs to disclose their disabilities creates gaps in data collection. Consequently, the lack of reliable statistics perpetuates the perception that disability-related issues are not a priority, leading to insufficient resource allocation and policy attention from the government.⁷² These challenges are further exacerbated by discrepancies between the number of registered PWDs

⁶⁹ UNICEF, “*Children With Disabilities in Malaysia*”

⁷⁰ Section 17, Syariah Court Evidence (Federal Territories) Act 1997

⁷¹ Section 33, Syariah Court Evidence (Federal Territories) Act 1997

⁷² Informant 1

and the actual population of PWDs. The significant gap between the two highlights the substantial under-registration with the Department of Social Welfare.⁷³

This underreporting poses significant obstacles to developing comprehensive strategies and guidelines, resulting in inconsistent accommodations and unequal treatment of PWDs within the legal system. Addressing these discrepancies requires proactive measures for accurate identification and reporting, as well as policy reforms to ensure that all PWDs are properly recognized and supported throughout the judicial process.

Recommendations for Empowering the Rights of Persons with Disabilities in Accessing Justice in Shariah Courts

In light of the critical need for equitable access to justice for everyone, this study proposes targeted recommendations to address the current deficiencies in managing cases involving PWDs in the Malaysian Shariah Courts.

1. Developing a Standard Operating Procedure for Legal Proceedings Involving PWDs in Shariah Courts

The need to develop a specific Standard Operating Procedure (SOP) for case management involving PWD in Shariah Courts arises from the current gaps in the legal system. While existing domestic and international laws provide a framework, an SOP is necessary to operationalize these legal obligations and ensure compliance with domestic and international standards.

To ensure an effective SOP, the courts need to identify the specific needs of PWDs, which may vary based on conditions such as mental and physical impairments. These SOPs need to be clear, specific and oriented towards the unique needs of PWDs.⁷⁴

Developing detailed and comprehensive SOPs to address the diverse needs of PWDs will require collaboration among experts from various fields, including healthcare professionals, disability advocates, and legal practitioners. A multidisciplinary approach is essential to crafting effective SOPs. Thorough research is necessary to formulate efficient and practical guidelines that ensure all individuals, regardless of physical or mental disabilities, receive appropriate justice in the Shariah Courts.⁷⁵ Additionally, a robust monitoring and evaluation framework must be established to ensure the SOP meets its objectives. This framework should assess compliance with the SOP, and its impact on the accessibility of justice for PWDs and identify areas for improvement. Feedback

⁷³“Malaysian Disability Data.”

⁷⁴ Informant 1.

⁷⁵ Informant 2.

from PWDs interacting with the Shariah Courts should be central to this evaluation process.⁷⁶

For the SOP to be truly effective, it must have binding authority, ensuring that compliance is mandatory rather than optional. This can only be achieved by codifying the SOP into law and embedding it within the statutory framework of the legal system. By doing so, the SOP will not only guide court practices but also impose legal obligations on judges and court officials, thereby guaranteeing consistent and equitable treatment of PWDs across all Shariah Courts.

2. Appointing a Special Officer for PWD in the Shariah Courts

The appointment of a Special Officer for PWDs in the Shariah Court represents a significant step towards improving access to justice for PWDs. This officer would be specifically appointed to address the unique needs of PWDs during legal proceedings, ensuring they receive proper attention with empathy and professionalism. The Special Officer would act as a liaison between the court, the PWD, their family or caregivers, and relevant support agencies, ensuring that the court is fully informed of the PWD's specific requirements.⁷⁷ By facilitating communication and providing necessary accommodations, the officer helps bridge the gap that often prevents PWDs from fully accessing justice.

Unlike a guardian *ad litem*, who is appointed to represent the legal interests and welfare of the PWD in court, a Special Officer acts as a facilitator, ensuring that court proceedings are accessible and accommodating to the specific needs of the PWD. This officer's primary responsibility is to identify and address the logistical, emotional, and physical needs of PWDs, ensuring that the legal process takes into account their disabilities. The Special Officer supports the PWD in actively participating in the proceedings by providing specialized equipment, communication aids, or other accommodations.⁷⁸

The role of the Special Officer is largely administrative and procedural, without influence over legal outcomes. While the guardian *ad litem* is responsible for safeguarding the best interests of the PWD in legal matters, the Special Officer's focus is on ensuring procedural fairness and accessibility throughout the legal process. To effectively carry out these duties, the Special Officer would be formally stationed in the court through a specific placement warrant and trained to address legal, social, and psychological issues related to PWDs. This specialized training would enable the officer to perform their role with competence, ensuring that PWDs are fully supported throughout their legal journey.

⁷⁶ Informants 4 and 5.

⁷⁷ Informant 3.

⁷⁸ Informants 1 and 3.

3. Providing Special Support and Facilities for PWD in the Shariah Courts

The government, through various ministries and agencies, bears the responsibility of ensuring that Shariah Courts are equipped with specialized support and facilities for PWDs. This duty is essential to making the courts accessible and inclusive for all.⁷⁹ A thorough review of existing court facilities is required, addressing deficiencies and ensuring that accessibility standards are strictly adhered to through regular inspections and effective oversight.

One critical infrastructure element requiring urgent attention is the provision of adequate physical facilities. This includes the installation of ramps, PWD-friendly lifts, and accessible toilets, all of which are fundamental for ensuring physical access. It is equally important that these facilities are consistently maintained and regularly audited to ensure compliance with accessibility standards. Additionally, seating arrangements should be designed to offer comfort for individuals with varying mobility challenges.⁸⁰

Moreover, assistive technology and services are equally important. This includes providing sign language interpreters, Braille materials, hearing aids, large text screens, and communication applications, all of which are vital for facilitating full participation by PWDs in court proceedings.⁸¹ These services must be seamlessly integrated into court procedures, ensuring the timely availability of interpreters and assistive devices to avoid delays and ensure that PWDs can engage fully in the legal process.

The effective planning and implementation of support facilities for PWDs in Shariah Courts depend on their active involvement. It is imperative that this participatory approach be institutionalized through meaningful consultations and dialogue with PWD organizations and experts. Such engagement must go beyond tokenism, being structured and substantive to genuinely reflect the practical needs and preferences of PWDs. By incorporating the real-world experiences of disability advocates and PWDs into the design of court facilities, the relevance and efficacy of these support structures are significantly enhanced. This collaborative approach not only improves the functionality of the facilities but also fosters a sense of ownership and inclusivity among PWDs.⁸²

Effective implementation of these support facilities necessitates a robust financial and policy framework, underscoring the need for government support and commitment. Adequate funding must be allocated for the development and maintenance of accessible facilities across all Shariah Courts. This requires clear budgetary provisions and stringent financial oversight to prevent mismanagement or underfunding. Additionally, actionable policies must be developed to guide the implementation of accessibility measures. These policies should be

⁷⁹ Informants 1, 3 and 5.

⁸⁰ Informants 4 and 5.

⁸¹ Informant 2.

⁸² Informant 1.

complemented by effective action plans and supported by relevant government ministries, including the Social Welfare Department and the Department of Shariah Judiciary Malaysia (JKSM). Regular reviews and updates of these policies are essential to adapt to evolving needs and standards.⁸³

Providing specialized support and facilities for PWDs transcends mere compliance, representing a fundamental aspect of ensuring equal access to justice. This commitment not only upholds the integrity of the justice system but also aligns with the principles of fairness enshrined in both Islamic and national legal frameworks. By addressing the needs of PWDs comprehensively, Shariah Courts can better uphold their rights and reinforce the principles of justice and equality, thereby enhancing the overall accessibility and inclusiveness of the legal system.

4. Identifying PWDs Status at the Case Registration Stage in the Shariah Court

The early identification of PWD during the case registration process is crucial for the Shariah Court to address the specific needs of individuals throughout legal proceedings. Early identification enables the court to take necessary measures in providing tailored support and accommodations, ensuring that the judicial process is both fair and efficient for all parties involved. To achieve this, a structured and clear guideline for identifying PWD status during case registration is urgently needed, one that involves a multi-stakeholder approach with input from court personnel, registration officers, lawyers, and relevant agencies, as discussed above.⁸⁴

Standardized registration forms should be updated to include questions regarding PWD status, including the type of disability, specific needs related to legal proceedings, and the necessary assistance or facilities required during the hearing. This will allow the court to promptly identify PWDs and plan for appropriate accommodations. Registration officers must be empowered to request supporting documents such as a PWD identification card or medical reports, ensuring the accuracy of the information provided. Proper verification of PWD status is essential to avoid discrepancies that could hinder the court's ability to provide necessary accommodations.⁸⁵

Once a PWD is identified, the case should be referred to a Special Officer who will be responsible for handling PWD-related matters. This Special Officer would act as a liaison between the court and external agencies, ensuring that support services such as interpreters, assistive technology, or specialized legal representatives are arranged without delay. The efficient referral and coordination

⁸³ Informant 1.

⁸⁴ Informants 2, 3 and 4.

⁸⁵ Informant 2.

system would help prevent unnecessary delays and improve the overall effectiveness of court proceedings.⁸⁶

However, the success of this approach relies heavily on the institutional capacity of the Shariah Courts. Many courts, particularly those in rural areas, may not have the infrastructure or expertise to implement such a system effectively. This underscores the need for dedicated resources, staff training, and collaboration with agencies such as the Social Welfare Department and organizations specializing in PWD support. An evaluation of the existing institutional framework is necessary to identify gaps, and where required, policy or legislative interventions must be introduced to address these shortcomings.

By institutionalizing a structured approach to identifying PWD status at the registration stage, Shariah Courts can significantly enhance access to justice for PWDs, ensuring their rights are upheld in accordance with both national and international legal frameworks.

5. Conducting Special Training for Shariah Court Officers

To ensure inclusive access to justice for PWDs, it is essential that Shariah Court officers receive special training focused on managing cases involving PWDs. The complexities surrounding such cases necessitate a deeper awareness among court officers of the unique challenges faced by PWDs, along with the necessary legal, procedural, and technical knowledge to handle these matters in a manner that upholds justice and equality. Without this training, court officers may inadvertently perpetuate discriminatory practices or fail to provide proper accommodations, thereby undermining the principle of equal access to justice.⁸⁷

The special training programs should focus on raising awareness and understanding of the various issues PWDs encounter. Officers should be introduced to the usage of assistive facilities and technologies designed for PWDs, such as sign language interpreters, Braille systems, and other necessary devices.⁸⁸ This knowledge will enable court officers to accommodate PWDs effectively, ensuring that no undue obstacles impede their access to justice. Empathy, sensitivity, and respect for the rights of PWDs will be key themes throughout the training, which aims to instill confidence in PWDs that their rights will be respected in the legal process.

This training should be conducted regularly, in collaboration with government agencies, PWD-related NGOs, and experts in legal and human rights fields. Additionally, the training can be organized in the form of workshops, seminars, or flexible online training modules, ensuring widespread participation by all court officers. Conducting special training is a critical step towards ensuring that Shariah Court officers are well-prepared to offer fair, inclusive, and

⁸⁶ Informants 1, 3 and 5.

⁸⁷ Informants 1 and 2.

⁸⁸ Informants 1 and 2.

professional services to PWD, thereby upholding the principles of justice and quality within the legal system.

6. Expanding and Strengthening Collaboration Networks and Coordination with PWD Agencies

To ensure the protection of the rights and needs of PWDs within the legal system, the Shariah Court must expand and strengthen collaboration networks with various PWD-related agencies. This includes government agencies, NGOs, and community organizations dedicated to advocating for PWD rights and welfare.⁸⁹ The concept of 'Friends of the Court' through smart partnership embodies a strategic collaboration where the Shariah Court and PWD agencies work together, complementing each other to ensure that PWD needs are fully addressed in the legal process.⁹⁰ By forming such partnerships, external parties can bring their expertise and resources to create a more inclusive and effective legal environment.

'Friends of the Court' refers to organizations or individuals appointed by the Shariah Court to serve as partners in protecting PWD rights and providing necessary support. These partners can act as advisors or advocates in cases involving PWDs, offering guidance on how to accommodate their needs throughout the legal process. Effective coordination between the Shariah Court and PWD agencies ensures that PWD needs are met swiftly and efficiently. Practical steps include holding regular meetings and dialogues to discuss ongoing challenges, establishing joint protocols that outline each party's responsibilities in handling PWD cases, and ensuring alignment and coordination in every action taken.

Expanding and strengthening collaboration networks with PWD agencies is essential for the Shariah Court to provide comprehensive services to PWDs and enhance their access to justice. This initiative fosters closer relationships between the legal and PWD communities, contributing to a more equitable and just society.

7. Utilizing the Tax Exemption Concept to Facilitate Fund Generation for PWD-Related Initiatives

To empower access to justice for PWDs. The Shariah Courts can utilise the concept of tax exemptions as a mechanism to generate funds for PWD-related initiatives. This approach encourages contributions in the form of donations and volunteer efforts by offering tax incentives to companies, individuals, and organizations. By providing tax exemptions, the Shariah Court can promote Corporate Social Responsibility (CSR) and motivate the private sector and individuals to take an active role in supporting PWD-related initiatives. Such

⁸⁹Kafa Abdallah Kafaa, "Special Health Insurance as an Inclusive Social Protection Program for People with Disabilities," *Jurnal Ilmiah Peuradeun* 9, No. 1 (2021).

⁹⁰ Informant 1.

contributions can significantly improve access to justice for PWDs by providing the necessary financial resources to support facilities, training, and services tailored to their needs.

Tax exemptions for monetary donations and volunteer efforts can be facilitated under the Income Tax Act 1967 which grants the Minister discretionary powers to approve tax exemptions.⁹¹ Once approved, these exemptions can be formalized through a gazetted tax order. Additionally, the Minister may set specific conditions for tax exemptions,⁹² with criteria outlined for donations made to recognized organizations that meet legal requirements.⁹³

To ensure proper fund management and compliance with regulations, any donations or volunteer work must be approved by the relevant authorities such as the Social Welfare Department and the Department of Shariah Judiciary Malaysia (JKSM). This ensures that contributions are effectively managed and directed towards initiatives that improve PWD access to justice.

By offering tax incentives, the Shariah Court can foster greater collaboration between the private sector, PWD agencies, and other stakeholders. This collaboration not only strengthens the funding base for PWD initiatives but also builds stronger relationships between the parties involved, contributing to the creation of a more inclusive and just society. Expanding such efforts, supported by legal frameworks and tax incentives, can make significant strides in ensuring equal access to justice for PWDs and promoting a more equitable legal system.

Conclusion

In conclusion, Islam acknowledges the rights of Persons with Disabilities (PWDs) and outlines community responsibilities to support them. The Malaysian legal system, particularly through the Shariah Court and various legal provisions, has created a framework to effectively address the needs of PWDs. However, significant challenges remain in ensuring meaningful and equitable access to justice for PWDs. While existing laws provide general protections, the absence of specific Standard Operating Procedure (SOP) directly addressing the rights of PWDs in the Shariah Courts limits the effectiveness of these protections. Current practices are hindered by barriers to accessibility, inconsistent procedural accommodations, insufficient knowledge and training among court personnel, legal ambiguity, and underreporting of cases involving PWD. To overcome these obstacles and empower PWDs in accessing justice, Malaysia must adopt a more holistic and proactive approach. This should include the introduction of specialised SOPs or laws explicitly addressing the rights and needs of PWDs, enhancing coordination between the Shariah Courts and PWD-related agencies, and ensuring that court personnel receive specialized training. Expanding tax

⁹¹ Section 127(3), Income Tax Act 1967

⁹² Section 127(3A), Income Tax Act 1967

⁹³ Section 44(6), Income Tax Act 1967

incentives for corporations and individuals to support PWD-related initiatives could also contribute to building necessary support infrastructure while fostering stronger collaboration with NGOs and disability advocacy groups is essential for fostering a more inclusive legal environment. By addressing these systemic gaps and promoting a participatory approach that directly involves PWDs in the legal process, Malaysia can advance towards a more just and equitable legal system that truly upholds the rights of all individuals.

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Focus Group Discussion

Mohd Nadzri Abdul Rahman, Chief Judge, Shariah Court of Malacca, Malaysia, on 26 September 2023

Ruhmawati Khuzaiman, Chief Registrar, Shariah Court of Malacca, Malaysia, on 26 September 2023.

Mohd Saifuddin Othman, Senior Researcher cum former Judge, Shariah Court of Malacca, Malaysia, on 26 September 2023.

Jamiah Husin, Judge, Shariah Court of Melaka Tengah, Malaysia, on 26 September 2023.

Aisah Saleh, Judge, Shariah Courts of Jasin & Sungai Rambai, Malaysia, on 26 September 2023.

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