

CHAPTER 2

GENERAL CONCEPTS OF PERSONS WITH DISABILITIES (PWDs) AND THEIR POSITION ACCORDING TO SYARAK AND MALAYSIAN LEGAL SYSTEM

2.1 Introduction

This chapter will identify briefly the concept of PWDs and their positions according to Syarak and Malaysian legal system. The researcher adopts a qualitative approach where it used the method of library research to answer the study objective. The data obtained by the library research through primary and secondary sources was analyzed using descriptive content analysis inductively. Various textual documents such as Qur'anic verses, hadiths, articles and journals, including government official website and legal provisions will be analyzed in line with the study's objective. Early exposure to the general concepts of PWDs provides readers with necessary information and gives brief explanation to what PWDs are, what laws govern the rights or interests of the disabled in Malaysia, and how Islam and Malaysian laws fulfil the rights of this PWDs group. Besides that, understanding the concept and legal status on disability may contribute to significant development of the necessity, rights and protections for PWDs in their life. All of this explanation will be highlighted in the study's subsections 2.2 and 2.3 discussion.

2.2 General Concepts of PWDs

Studies on PWDs are gaining popularity and more attention in certain aspect. PWDs is one of the vulnerable groups that requires additional attention due to the disability experienced by them. However, there is still a need to raise awareness about getting to know the disabled, and the community should be aware of their presence especially under the legal system. Understanding general concepts related to PWDs, such as definition, type of disability, and so on, is essential and can help the government, organization and community truly or better understand this group of PWDs. This section will begin with a discussion of PWDs in general and the Malaysian perspective.

2.2.1 Definition of PWDs According to Syarak, Western and Malaysian Perspectives

2.2.1.1 Syarak Perspective

From a linguistic standpoint, the definition of PWDs can be linked to the word *al-I'aqah*, which means hindered or confined (Ibn Manzur, 1988). They were known as *al-muq'adin* (the weak/lame) in the early history of the interpretation of the definition of the disabled, then *dhu al-'ahat* (the sick), and *al-'ajizin* (the disabled) (the weak). These various interpretations eventually agreed that they are no longer known as *al-'ajizin* because society cannot meet their needs, accept them, or benefit from them.

This gap is exacerbated by the lack of a specific approach for identifying their abilities and strengths, which can be developed and trained in order for them to overcome the perfect person (normal person without disabilities). As a result, the responsible parties defined them as *al-mu'aqun*, or people who are unable to adapt to

their society. It therefore includes people who are unable to adapt psychologically and socially, as well as those who are unable to work and be independent. Negative definitions include *al-makfufun* (blind), *al-sam* (mute), *al-mashlulun* (disabled), *al-mutlafun fi admighatihim* (mentally deranged), *al-mukhtalifun 'aqliyyan* (mentally challenged), and others, will have a negative impact on the child's life because it will affect his/her relationship with the community when he/she grows up.

However, a more positive definition, such as *dhu al-ihiyajat al-khasah* (people who require special assistance) or *dhu al-su'ubat* (people who are difficult), will improve the disabled's relationship with the community. Islam has encouraged the use of beautiful and appropriate titles and *kunyah* (nicknames). It is emphasized in Islamic doctrine that Muslims should never call someone an inappropriate name and should always be kind to others. The most accurate and appropriate definition is *dhu al-ihiyajat al-khasah*, which means a person who requires special assistance.

In terms of terminology perspective, the Saudi Arabian Disabled Persons' Welfare Agency is defined disability as:

"Visual, hearing, physical and movement disabilities, learning difficulties, speech and language impairments, behavioural disorders and reclusiveness, and any disability that requires special care."

(*Nizam al-Shu'un al-Ijtima'iyyah*, 2000)

The PWDs are those who are less than perfect due to heredity or environment, whether it is a lack of learning or other abilities that ordinary people of the same age, education, and economic status can perform (Farrag, 2001). As a result, PWDs are the group that always requires the assistance of those around them, and their place in society is the

same as everyone else's. According to Sa'di (1982), it is also a single event that reduces one's ability to perform tasks that are considered routine in daily life.

A disabled person is also someone who has lost the ability to work because of a physical or mental deficiency, whether caused by an accident, disease, or birth (Nur, 1978). The circumstances make it difficult for a person to do things that other people his age can normally do (Al-Haiti, 2002).

In general, various definitions was provided by scholars in the definition of the PWDs based on Syarak (Language and Terminology Perspectives). It is possible to conclude and understand that PWDs are people who have certain challenges in the areas of vision, hearing, movement, learning, speech, and mental health, and their mobility is limited unless they receive assistance. PWDs or disabled people also are people who have been tested by Allah SWT by losing some ability or sense. This makes it difficult for them to move, work, and interact normally. These people require additional assistance and care. Physical disability, illness, or accident were among the misfortunes that caused them to become such.

2.2.1.2 Western Perspective

PWDs or disability, as mentioned by the World Health Organization (WHO), is a natural element of being human. Almost everyone will be disabled at some point in their lives, either temporarily or permanently. Over one billion people - almost 15% of the world's population - live with some form of disability, and the number is rising. Individuals with health conditions such as cerebral palsy, down syndrome, and depression combine with personal and environmental factors such as unfavorable attitudes, inaccessible transportation and public buildings, and a lack of social support

to create disability (WHO, 2021). Some of their activities may be impeded by the difficulties they are experiencing such as difficulty in seeing, walking, hearing or problem solving. However, their presence in society should be acknowledged as a single community.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) asserted that disability is an evolving concept. The term "persons with disabilities" is applies to all persons with disabilities, including those who have long-term physical, mental, intellectual, or sensory impairments which, in interaction with various attitudinal and environmental barriers, hinders their full and effective participation in society on an equal basis with others (Article 1) (UNCRPD, 2006).

Other than that, disability is also part of the human condition. Everyone is likely to experience it, permanently or temporarily, at some point in their life as mentioned by WHO (WHO & The World Bank, 2011). Christoffel (2015) views that PWDs are diverse and not defined by their disability. Disabilities may be visible or invisible, and onset can be at birth, during childhood, working-age years, or old age. Thus, it was clear that the meaning of people with disabilities in a broader context is people who have disabilities and harm their ability to do a job that affects their social interactions and participation restrictions.

2.2.1.3 Malaysian Perspective

Meanwhile in Malaysia, The Persons with Disabilities Act 2008 (Act 685) interpreted PWDs as a 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 (Section 2 of Act 685 – Interpretation) (Laws of

Malaysia, 2021). Sulaiman (2008) added that PWDs encompass a person who has problems with mobilization limitations, either physical, mental, sight and hearing. A study from Wan Sabri et al. (2013) described the PWDs as a person with differences in neurological characteristics, sensory capacity, communication ability, behaviour, emotion and physical characteristics. All of these factors represented how PWDs dealt with their own disabilities, and they required special consideration to ensure that their rights were safeguarded as well as that they were granted the same rights as any other person in the world. In a broader context, PWDs are classified into two different community groups.

Other than that, there is some disagreement about whether PWDs should be called '*Orang Kurang Upaya*' or '*Orang Kelainan Upaya*' in Malay. This matter was highlighted by the former Vice-Chancellor of Universiti Sains Malaysia (USM), Professor Tan Sri Datuk Dzulkifli Abdul Razak, where according to his opinion in Utusan Malaysia, he said that this PWDs communities must be seen in a right way because the difference is not physically but ability due to a natural cause or unwanted incident in their life (Abdullah, 2012). Their ability should be evaluated based on different capabilities with those who are considered perfect without any disabilities. Thus, in this context, the definition of PWDs in Malay should be referred to '*Orang Kelainan Upaya*' as this term sounds more positive.

Whereas, the term used for the disabled person that is '*Orang Kurang Upaya*' sounds negative and causes discomfort feeling for them. This term represents something negative as sometimes PWDs have special abilities that the normal people cannot do. Ab. Aziz Mohd Zin et al. (2009) also commented on this issue where he suggested that the term '*Kurang Upaya*' should be replaced with a more suitable term which is

'*Kelainan Upaya*'. According to Kamus Dewan (2010), the term '*Kurang*' means lack or not enough, not really (good, advanced, healthy etc.) and not perfect. While the term '*cacat*' or disabled means deficiency or imperfection (complete, good) in the body (things, morals, deeds, inner selves etc.). So, the term '*Kelainan Upaya*' sounds much more suitable, proper, and positive to be addressed for OKU or people with disabilities. However, the researcher believes that the term PWDs in Malay should be followed by the term used in the Act 685, which is *Orang Kurang Upaya* in Malay context as it demonstrates a formality in Malaysian law.

2.2.2 Types and Categories of PWDs

Disability is a multifaceted, dynamic, and contentious concept. PWDs in our world, in reality, have their own set of challenges. It varied depending on the nature of the impairments they were dealing with and how they were diagnosed by a medical expert. There may be effects on organs or body parts, as well as on a person's participation in various aspects of life. Various physical and mental impairments that can impede or reduce a person's ability to carry out daily activities are classified as disability types (Disability World, 2021). Their conditions have always made the PWDs group appear less capable of doing and participating in any activities than other people who do not face any disabilities problems in their lives.

The classification also acknowledges the impact of physical and social environmental factors on disability outcomes. Disabilities can affect people in a variety of ways, even when they are the same type of disability. Some disabilities, referred to as invisible disabilities, may be concealed. Disability World (2021) also said that there are many types of disabilities. Those that affect a person's vision, hearing, thinking,

learning, movement, mental health, remembering, communicating and social relationships are classified as a type of disabilities. These types of disabilities required them a special treatment, services and rehabilitations to make their live much easier and better.

2.2.2.1 Western Perspective

Moreover, WHO had established the International Classification of Functioning, Disability and Health (ICF) as a classification system for health-related aspects of functioning and disability in 2001. It was previously known as the International Classification of Impairments, Disabilities, and Handicaps (ICIDH). The fundamental distinction between the ICF and the previous ICIDH classification is that the ICF stresses environmental variables in the development of disability (WHO & The World Bank, 2011). ICF was created after a lengthy process that included academics, doctors, and, most importantly, people with disabilities in specifying the types and categories occurred on PWDs.

The ICF divides human functioning difficulties into three categories: impairments, activity limitations, and participation constraints. First, impairments are difficulties with body function or structural changes, such as paralysis or blindness. Second, activity constraints are difficulty in carrying out actions such as walking or eating, and third, participation restrictions are issues with involvement in any aspect of life, such as discrimination in the workplace or transportation. As a result, disability is defined as difficulties in one or more of the three areas of functioning as mentioned earlier. However, in more detailed explanations, disability types are defined as a range of physical and mental impairments that might impede or limit a person's capacity to

carry out daily tasks. These limitations can be described as a person's inability to carry out day-to-day activities. Mobility/Physical disability, Spinal Cord (SCI) disability, Head Injuries (TBI) disability, Vision, Hearing disability, Cognitive/Learning disability, Psychological disability, and Invisible disability are the eight primary types of disability described by ICF.

Table 2.1: Categories of Disability Types by International Classification of Functioning, Disability and Health (ICF)

NO.	CATEGORY	DESCRIPTION
1	Mobility and Physical Impairments	This category of disability includes people with a variety of physical disabilities, such as upper limb(s) disability, lower limb(s) disability, manual dexterity, and disability in coordination with various organs of the body. Mobility impairment can be inherited or acquired as a result of ageing. It could also be a symptom of a disease. People who have a broken bone are also classified into this category of disability.
2	Spinal Cord Disability	Spinal cord injury (SCI) can sometimes result in permanent disabilities. This type of injury is most commonly caused by severe accidents. The injury can be either total or partial. The messages conveyed by the spinal cord are not completely lost in an incomplete injury. A complete injury, on the other hand, results in total sensory organ dysfunction. Spinal cord disability can be a birth defect in some cases.
3	Head Injuries – Brain Disability	A brain injury causes a disability in the brain. The severity of the brain injury can range from mild to severe. Acquired Brain Injury (ABI) and Traumatic Brain Injury (TBI) are the two types of brain injuries. ABI is a degeneration that occurs after birth rather than a hereditary type defect. The causes of such cases of injury are numerous, and are primarily due to external forces applied to body parts. TBI causes emotional dysfunction and behavioural disruption.
4	Vision Disability	Hundreds of thousands of people suffer from minor to severe vision disabilities or impairments. These injuries can also lead to serious issues or diseases, such as blindness and ocular trauma, to name a few. Scratched cornea, sclera scratches, diabetes-related eye conditions,

		dry eyes, and corneal graft are all examples of common vision impairment.
5	Hearing Disability	People with hearing problems might be fully or partially deaf. Hearing aids are frequently used to help people who are partially deaf. Deafness can be present at birth or develop later in life as a result of a variety of biologic factors, such as meningitis, which can damage the auditory nerve or cochlea.
6	Cognitive or Learning Disabilities	Cognitive disabilities, which include speech abnormalities, are a type of impairment seen in people with dyslexia and other learning challenges.
7	Psychological Disorders	Affective Disorders: Short-term or long-term mood or feeling state disorders. The phrase "mental health impairment" is used to characterise those who have had psychiatric issues or illnesses such as personality disorders and schizophrenia.
8	Invisible Disabilities	Disabilities that are not readily obvious to others.

Source: Disabled World (2021, August 8)

All of the aforementioned categorization types demonstrate the diversity of disabilities identified by ICF. As can be seen, PWDs' disability criteria are not far from what ICF has mentioned on the division of human functioning difficulties, which are impairments, activity limitations, and participation constraints. For example, vision disability might be defined as an impairment because the person suffered from blindness, Ocular Trauma, Scratched Cornea, or other types of vision disability. Meanwhile, mobility and physical impairments can lead to activity limitations, such as when a person with a broken bone finds it difficult to walk. Other than that, basically, all of these PWDs who have their own disabilities are tend to experience a participation constraint. Their right sometimes is being denied by not providing them a proper services and chances equally with their necessity such as in employment, education and other services. This may happen at all PWDs all over the world. Their shortcomings

should be acknowledged and proper facilities or services should be provided for all PWDs.

2.2.2.2 Malaysian Perspective

However, the situation is different in Malaysia in determining the categories and types of disabilities among PWDs. The researcher discovered that the Malaysian government only authorised seven types of PWDs. Furthermore, the Department of Social Welfare Malaysia (JKM) also (JKM, 2016) stated that there are seven categories of PWDs registered with their agency, which are visual disability, hearing disability, speech disability, physical disability, learning disability, mental disability and multiple disability. This is based on the definition provided by the Act 685 as mentioned on the previous discussion earlier. The following is a description of the seven PWDs categories as characterised by JKM.

Table 2.2: Categories of Persons with Disabilities (PWDs)

NO.	CATEGORY	DESCRIPTION
1	Hearing Disability	Unable to hear clearly in both ears with or without using a hearing aid.
2	Visually Disability	Blind in both eyes or blind in one eye or limited vision in both eyes or any other permanent visual impairment.
3	Speech Disability	Inability to speak impairs proper communication and cannot be understood by those who interact with them. This condition is permanent and incurable. It must be based on an assessment at five years of age or older for children.
4	Physical Disability	It is a permanent inability of the body parts, whether caused by loss or absence or the inability of any part of the body that can affect their functions in fully carrying out necessary activities, including self-care, movement, and changing the body's position.

5	Learning Disabilities	Intellectual capabilities that do not conform with biological age. Those that fall within this category are Late Global Development, Down Syndrome, and intellectual disabilities. This category also includes conditions that affect the learning ability of an individual, such as Autism (Autistic Spectrum Disorder), Attention Deficit Hyperactivity Disorder (ADHD), and specific learning difficulties such as (dyslexia, dyscalculia, and dysgraphia).
6	Mental Disability	Conditions of severe mental illness that cause an inability to function in persons related to him/herself or his/her relationship within the community. Among mental illness types are severe and chronic Organic Mental Disorder, Schizophrenia, Paranoia, Mood Disorder (depression, bipolar).
7	Multiple Disabilities	Means having more than one type of disability and, in general, cannot be classified in category 1 to 6.

Source: Department of Social Welfare (JKM) (2016)

In general, the categories and types of disabilities described by western (WHO-ICF) and even JKM in Malaysia are quite similar. All are based on the characteristics and disabilities that occurred to PWDs, which distinguished them from other people who did not have disabilities. There is also no significant difference in determining the type and category of disability, with the exception of the number and classification of disabilities, which is entirely reliant on the disable that occurred. Their categorization was based on the definition and their understanding of people with disabilities. As a result, it had contributed to the disparities in the types and categories of PWDs. For instance, the ICF classified a person with a psychiatric problem, such as schizophrenia or personality disorders, as having a Psychological Disorder, which meant that they had a mental health impairment. Meanwhile, JKM defined that kind of category of disability as a Mental Disability, which represents severe mental illness conditions. However, the

descriptions of that type of disability remain the same, which is to address a person who has a mental health problem.

In fact, both organizations use the same criteria to classify PWDs, which are vision and hearing impairments. A person with visual and hearing disabilities was defined by both organizations as someone who had an issue with their eyes or ears that affected their vision or hearing. Basically, a person with visual and hearing impairments cannot see or hear normally. Overall, the ICF classified disability categories and types based on human functioning difficulties, which can be divided into three major categories: impairments, activity limitations, and participation constraints. Meanwhile, JKM added a more general definition of PWDs to its classification, referring to the definition of PWDs as defined by the Persons with Disabilities Act 2008 (Act 685), which are those who have long-term physical, mental, intellectual, or sensory impairments.

2.2.3 PWDs in Malaysia

There is a need to understand the evolution or development of PWDs, the history of empowerment, and the types of ministries that govern PWD affairs. Hazlin Falina et al. (2017) stated that a lack of knowledge about disabled people has led to difficulty in identifying the process of understanding, assessment and the formation of behaviour among society towards PWDs. If the community or the authorities do not understand the PWDs, their rights will not be properly granted and they will not be treated well.

2.2.3.1 Early Development of PWDs in Malaysia

Essentially, the early development of PWDs in Malaysia was primarily focused on the field of education. Special Education Program is a type of education that caters to students with disabilities in Malaysia. Many early histories of PWDs in Malaysia also mentioned their right to education. The establishment of Special Education Schools in Malaysia has started before independence with School with Visually Impaired and School for the Deaf in 1990 through volunteer involvement. Cabinet Committee Report stated that studies on Education Policy through *Perakuan 169* helped improve Special Education in Malaysia.

In line with that, the participation of government in students who have special educational needs started with the establishment of *Sekolah Rendah Pendidikan Khas Princess Elizabeth* at Johor Bahru, Johor under JKM in 1948, and Federation School for the Deaf, Tanjong Bungah at Pulau Pinang (primary and secondary) on 1954 for students with hearing disabilities. In 1960, the combination of education for children with hearing and visual disabilities had established at primary school and secondary school (Tahir et al., 2020).

As time passed, Special Education in Malaysia started to improve its implementation and learning. The Ministry of Education (MOE) is in charge of providing quality education that contributes to the holistic development of the individual and the well-being of the nation, as well as maintaining a quality education system and developing the individual's potential to fulfil the nation's aspirations. The education sector not only provides teaching and learning for typical students, but also for students with disabilities too. The MOE increased educational access and equity for students with special educational needs through Special Education Schools, Integrated

Special Education Programs, and Inclusive Education Programs (Kementerian Pendidikan Malaysia, 2021). This is to ensure that no one is left behind and that everyone in Malaysia receives a proper and high-quality education.

According to Tahir et al. (2020), history also shows that during the British rule in Malaya, they emphasized social responsibility to the local population. In this regard, the British established the Malayan Social Welfare Department (JKMM) in 1946. Then, to meet the needs of the disabled at the time, this department provided various types of assistance and rights. JKMM has evolved over the years, and it is now known as the JKM under KPWK. JKM was very dedicated to fulfilling the rights and needs of all PWDs in Malaysia, as PWDs are also members of society who should be given more attention. As a result, the JKM established the Disabled Persons Policy in 2007, which grants PWDs the same rights and opportunities as any other member of society. This is because to protect the interests and welfare of the disabled, a rights-based approach should be used.

Therefore, all of these matters were established on the early developments of PWDs in Malaysia, where the government and society declared PWDs' rights and needs. All PWDs were not left behind and were given equal access to education, health care, advocacy and other aspects of human life. Their rights must be protected and recognized in order to promote social development in Malaysia and around the world.

2.2.3.2 History of Empowerment on The Rights of PWDs in Malaysia

In facts, it was undeniable that various legal discussions have taken place in response to negative perceptions and discrimination experienced by women's groups and children, but somewhat less so for the disabled. Even the United Nations (UN) only

recognized the UNCRPD and its Optional Protocol in 2006. This convention is the first international human rights treaty of the twenty-first century, and it has received a positive response from UN members (Azmi & Mat Basir, 2020). So that every country, it can be seen, has a policy and law that fights for the rights and needs of people with disabilities to be valued equally with other typical groups. Malaysia is included in this category.

The history of empowerment on the right of PWDs in Malaysia started from the effort of Malaysia in signing the Convention on the Rights of Persons with Disabilities (CRPD) on 2008 and ratified it on 19 July 2010 at a certain Article which is Article 15 and Article 18. Malaysia, on the other hand, has yet to sign the Optional Protocol to this Convention (Tahir et al., 2020). However, ratifying the CRPD is a proactive and positive step to demonstrate Malaysia's readiness to implement its human rights contained in the CRPD in order to empower the PWDs community in Malaysia. These efforts have also elevated Malaysia to the ranks of countries concerned with the rights that should be granted and protected to PWDs, serving as a springboard for the development of a special Act for PWDs in Malaysia, namely the Persons with Disabilities Act 2008 (Act 685).

As previously mentioned in the early development of PWDs in Malaysia, JKM established the Disabled Persons Policy in 2007 (*Dasar Orang Kurang Upaya 2007*) to empower the rights of PWDs. This policy is based on the idea of equal rights and opportunities for PWD to fully participate in society. This policy also emphasizes human rights values like integrity, honor, and independence, which will allow them to live independently (JKM, 2016). The areas that will receive greater attention under this policy is divided into 15 areas, which are as follows: -

- | | |
|--|--------------------------------|
| 1) Advocacy | 2) Accessibility |
| 3) Health | 4) Rehabilitation |
| 5) Education | 6) Employment |
| 7) Personal safety and Social Protection | 8) Support services |
| 9) Social | 10) Human Resource Development |
| 11) Community Involvement | 12) Research and Development |
| 13) Housing | 14) PWD Children |
| 15) Woman PWD | |

As time passed, the Malaysian government continued to uphold and establish other policies, such as the Action Plan for the Disabled (2016-2022), issued by the KPWK in 2016, and enacted the law regarding PWDs in Malaysia, which is the Persons with Disabilities Act 2008 (Act 685). All of these are additional ways to ensure the well-being of Malaysia's disabled (Nozlan et al., 2021). This proves that the Malaysian government is always striving to empower the disabled, regardless of category, in order to achieve equality and community harmony in a developing country.

Now, the government and the social community in Malaysia are increasingly emphasising the needs and welfare of the disabled. The number of PWDs registered in Malaysia is also growing, though there are still some PWDs who have not registered with the responsible party. In Malaysia, there are 580,633 PWDs registered with JKM. This information was obtained from the KPWK on PWDs' registration statistics as of Jun 2021 (Kementerian Pembangunan Wanita, 2021). Figures 2.1 and 2.2 show the registration statistics of PWDs based on their categories and age as of June 2021.

Figure 2.1: Statistics on PWDs Registration by State and Category Until 30 June 2021

Bil	Negeri	Penglihatan	Pendengaran	Pertuturan	Fizikal	Pembelajaran	Mental	Peibagai	Jumlah
1	JOHOR	5,425	4,419	370	24,230	23,694	6,465	3,201	67,804
2	KEDAH	5,334	3,385	325	19,363	15,487	4,225	2,378	50,497
3	KELANTAN	3,716	2,621	275	11,713	16,056	4,564	2,097	41,042
4	MELAKA	1,961	2,342	123	10,277	9,151	2,027	859	26,740
5	NEGERI SEMBILAN	2,023	1,883	93	10,228	8,704	2,161	1,272	26,364
6	PAHANG	3,081	2,015	207	12,319	12,647	2,208	1,661	34,138
7	PERAK	4,426	3,391	195	17,967	17,189	5,222	2,351	50,741
8	PERLIS	776	393	75	2,502	2,535	864	278	7,423
9	PULAU PINANG	3,341	2,618	114	13,632	10,351	2,131	1,236	33,423
10	SABAH	3,208	2,749	329	10,014	16,308	2,894	2,257	37,759
11	SARAWAK	4,462	2,658	232	10,717	14,620	4,474	1,583	38,746
12	SELANGOR	6,986	6,282	391	36,580	32,811	6,349	4,872	94,271
13	TERENGGANU	2,584	2,338	151	8,501	12,068	2,125	1,366	29,133
14	W.P. KUALA LUMPUR	3,893	3,151	136	15,584	13,813	2,797	1,388	40,762
15	W.P. LABUAN	128	88	25	449	931	92	77	1,790
	Jumlah	61,344	40,333	3,041	204,076	206,365	48,598	26,876	580,633

Source: The Ministry of Women, Family, and Community Development (KPWKM)

Figure 2.2: Statistics on PWDs Registration by State and Category Until 30 June 2021

Bil	Peringkat Umur	Penglihatan	Pendengaran	Pertuturan	Fizikal	Pembelajaran	Mental	Peibagai	Jumlah
1	Kurang Dari 6 Tahun	271	549	16	1,842	6,104	2	1,212	9,996
2	6 - 12 Tahun	1,557	2,219	496	6,513	49,107	11	4,752	64,655
3	13 - 18 Tahun	2,150	2,402	556	6,635	50,358	92	3,617	65,810
	Jumlah Kanak-kanak	3,978	5,170	1,068	14,990	105,569	105	9,581	140,461
4	19 - 21 Tahun	1,395	1,807	121	4,320	21,891	294	1,326	31,154
5	22 - 35 Tahun	7,749	8,016	468	28,878	52,681	8,159	5,302	111,253
6	36 - 45 Tahun	6,777	6,345	368	28,840	13,798	13,672	3,155	72,955
7	46 - 59 Tahun	13,027	8,471	574	56,591	9,570	17,657	3,863	109,753
8	60 Tahun Ke Atas	18,418	10,524	442	70,457	2,856	8,711	3,649	115,057
	Jumlah Dewasa	47,366	35,163	1,973	189,086	100,796	48,493	17,295	440,172
	Jumlah	61,344	40,333	3,041	204,076	206,365	48,598	26,876	580,633

Source: The Ministry of Women, Family, and Community Development (KPWKM)

The state with the highest registration of PWDs is Selangor, which has 94,271 people, with persons with physical disabilities (36,580 people) being the most common category of PWDs registered under JKM. Meanwhile, the category of children with

disabilities aged 13 to 18 years (65,180) has recorded the highest number of registrations, while the category of learning disabilities has recorded the highest number of registrations (50,358 children). In the adult category, people aged 60 and up (115,057) have the highest number of registrations, while the category of physical disability has the highest number of registrations of disabled people (70,457). Overall, 140,461 children have been registered as PWDs, and 440,172 adult category people have been registered as PWDs in Malaysia. Thus, as of June 2021, there are 580,633 PWDs registered in Malaysia.

In conclusion, the government is concerned about people with disabilities, and the development of these policy demonstrates the government's commitment to ensuring that people with disabilities have equal rights and opportunities to participate fully in society. The implementation of the PWD Policy as mentioned above, on the other hand, necessitates the collaborative cooperation of all parties, as well as the participation of various ministries, departments, and agencies, as well as non-governmental organisations, academics, physicians, social workers, volunteers, and the general public.

2.2.3.3 The Ministry in Charge of Managing PWDs's Affairs

Basically, KPWKM is the ministry in charge of managing the affairs of the disabled. Nevertheless, several organizations under KPWKM in Malaysia are helping KPWKM in managing, supervising, and administering PWD-related issues or matters. Those under the KPWKM and agencies under them, such as JKM and Social Institute of Malaysia (ISM), are among the ministries and agencies providing services to assist PWDs. The Ministry of Human Resources (MOHR) also offers PWD registration, job

coaching, Disability Equality Training (DET), registration and status of PWD registration, and PWD placement (Public Service Delivery and Local Government, 2021). Every organization has its own roles and actions in supervising and administering all matters pertaining to PWDs in Malaysia. JKM, for example, was established on 1946 and the objectives of JKM are (JKM, 2017): -

- i. To increase competency, performance, productivity and innovation capability of welfare sector workforce;
- ii. To revitalize the organization's capacity;
- iii. To increase the efficiency and effectiveness of the welfare services' delivery;
- iv. To expand networking and strategic collaboration (multiple-helix) local and international; and
- v. To enculture patriotism, shared values, ethos and integrity.

According to JKM's official portal, JKM has evolved in fulfilling its role in the country's development over a 76-year period. JKM's role and function has expanded to prevention and rehabilitation services in social issues and community development, beginning with involvement in dealing with various problems that arose as a result of the Second World War. It has been placed under several ministries as one of the government agencies that play an important role in social development. The following table depicts the evolution of JKM (Masyarakat, 2021): -

Table 2.3: The Evolution of Department of Social Welfare Malaysia (JKM)

Year	JKM's Evolution
1946-1951	The establishment of the Malayan Social Welfare Department (JKMM)
1952-1955	Department of Industry and Social Relations

1956-1957	Department of Health and Social Welfare
1957-1958	Ministry of Health and Social Welfare
1958-1959	Ministry of Labor and Social Welfare
1960-1962	Ministry of Health and Social Welfare
1963-1964	Ministry of Labor and Social Welfare
1964-1982	Ministry of General Welfare
1982-1990	Ministry of Social Welfare Malaysia
1990-2004	Ministry of National Unity and Community
2004-Now	Ministry of Women, Family and Community Development

Source: Official Portal of Department of Social Welfare Malaysia (JKM)

Until now, the existence of PWDs has been appreciated and acknowledged by society as a part of the community by providing inclusiveness in their lives. Even though people with disabilities have their weaknesses, their rights should be more protected and well preserved. The efforts made by the Malaysian government in establishing different agencies or organizations to manage the PWDs community should be recognized. The rights, facilities, and requirements of people with disabilities are successfully preserved and maintained as a result of this establishment.

2.3 The Position of PWDs According to Syarak and Malaysian Legal System

Disability is not the reason for the creation of gaps and dividing walls between the fortunate and the less fortunate. Even, PWDs have the same right to live as any other normal or typical person. This group should not be excluded because they also have roles and responsibilities as well as contribute to the advancement of religion, race, and country. Thus, this section will generally discuss the position of PWDs under Syarak and the Malaysian legal system.

2.3.1 The Position of PWDs According to Syarak

In Islam, PWDs refers to a very broad, holistic concept that encompasses multidimensionality and perspective. Multidimensional by considering the disabled from the standpoint of Allah SWT's power and greatness. The glory of PWDs as human beings are the best of creatures created to worship for Him as other normal human beings and also bear the trust of Allah SWT as the caliph in this world. This is due to Allah SWT's creation which is not in vain. Syahirah Abdul Shukor et al. (2020) also stated that Islam placed a strong emphasis on the dignity of every person, regardless of their age, status, or level of income. The Cairo Declaration on Human Rights in Islam of 1990 also affirmed the Islamic principle of non-discrimination and equality. The responsibility to guarantee that society's members are treated equally, even if they are PWDs, falls on every individual, society, and the government.

Even the al-Quran and hadith has emphasized and stresses the role of the individual and the society in taking care of the people with special needs. There are several Quranic verses and hadiths that discuss the position of the disabled and should be understood by researchers and society today, which are as bellows.

2.3.1.1 In Al-Quran

In Surah 'Abasa verses 1-10, disabled people are given a special position after Allah SWT reprimanded the Messenger of Allah SWT, Rasulullah SAW, for his treatment of 'Abdullah Ibn Ummi Maktum, who is blind (Baharudin & Mohamed Ramli, 2020). 'Abdullah Ibnu Ummi Maktum approached the Prophet SAW but was turned down because Rasulullah SAW did not have time and was too busy preaching to the dignitaries of the Quraish tribes of Mecca. Prophet Muhammad SAW stepped back

and faced the dignitaries of the Quraish tribes. Because he was blind, he did not see the Prophet SAW's actions. Then Allah SWT rebuked Rasulullah SAW in Allah SWT's verse, which means:

Translation: 1. He (The Prophet) frowned and turned 'his attention' away, 2. 'simply' because the blind man came to him 'interrupting'. 3. You never know 'O Prophet', perhaps he may be purified, 4. or he may be mindful, benefitting from the reminder. 5. As for the one who was indifferent, 6. You gave him your 'undivided' attention, 7. even though you are not to blame if he would not be purified. 8. But as for the one who came to you, eager 'to learn', 9. being in awe 'of Allah', 10. you were inattentive to him.

(Al-Quran. 'Abasa 80:1-10)

The verses mentioned about the Prophet being reprimanded because he frowned at a weak man (Ismā'īl ibn 'Umar Ibn Kathīr, 2003). Allah SWT explained to the Prophet and his people through this verse that a disabled and blind Muslim is better than the dignitaries of the Quraish tribes of Mecca in Allah SWT's eyes. Due to the incident, whenever Prophet Rasulullah SAW saw 'Abdullah Ibnu Ummi Maktum, he would say, "Please, O person who is the reason I was reprimanded by my Lord..." Although 'Abdullah Ibnu Ummi Maktum was poorer than the unbelievers of Makkah (infidels of Mecca), he had a better degree or rank in God's eyes (Ab Rahman, Mohd Raus, Abdullah Thaidi, & Hamdan, 2018).

Baharudin & Mohamed Ramli (2020) also added that the description of Surah 'Abasa verses 1–10 demonstrates the importance of a preacher understanding the psychology of disabled people in order to deliver effective preaching. The Quran's guidance should be used as a guide for Muslims when interacting with the disabled, particularly for preaching purposes. The revelation indicated this has given rise to

awareness and repentance; and since then, Rasulullah SAW has taken the attitude of giving the same attention and service, regardless of a person's status, whether poor or rich, low or noble, servant or independent; and Ibnu Umri Maktum has begun to be respected and served best by Rasulullah SAW.

Other than that, there are also verses that talk about the disabled, which is about the legitimate excuses for staying away from Jihad for people who are unable or prevented from fighting. It can be seen in Surah at-Taubah verse 91 and Surah al-Fath verse 17 of the Qur'an, which are as follows:

﴿لَيْسَ عَلَى الضَّعْفَاءِ وَلَا عَلَى الْمَرْضَى وَلَا عَلَى الَّذِينَ لَا يَجِدُونَ مَا يُنْفِقُونَ حَرَجٌ إِذَا نَصَحُوا لِلَّهِ وَرَسُولِهِ

مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ ۗ وَاللَّهُ غَفُورٌ رَحِيمٌ﴾

Translation: "There is no blame on the weak, the sick, or those lacking the means 'if they stay behind', as long as they are true to Allah and His Messenger. There is no blame on the good-doers. And Allah is All-Forgiving, Most Merciful."

(Al-Quran. Al-Taubah 9:91)

Allah SWT states here the legitimate reasons for refraining from fighting. Allah SWT first mentions the excuses that remain with a person, the physical weaknesses that prevent one from participating in Jihad, such as blindness, limping, and so on. Allah SWT then addresses temporary excuses, such as illness that prohibits one from fighting in Allah's cause or poverty that hinders one from preparing for Jihad. There is no sin in these instances if they remain behind, provided that they do not promote animosity or try to discourage Muslims from fighting while remaining in this position and practicing

good behaviour (Ismā‘īl ibn ‘Umar Ibn Kathīr, 2003). The same idea is repeated in other verses. Allah SWT has said:

﴿لَيْسَ عَلَى الْأَعْمَى حَرْجٌ وَلَا عَلَى الْأَعْرَجِ حَرْجٌ وَلَا عَلَى الْمَرِيضِ حَرْجٌ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ

جَنَّاتٍ تَجْرَى مِنْ تَحْتِهَا الْأَنْهَارُ وَمَنْ يَتَوَلَّ يُعَذِّبْهُ عَذَابًا أَلِيمًا﴾

Translation: “There is no blame on the blind, or the disabled, or the sick ‘for staying behind’. And whoever obeys Allah and His Messenger will be admitted by Him into Gardens under which rivers flow. But whoever turns away will be subjected by Him to a painful punishment”.

(Al-Quran. Al-Fath 48:17)

'There is no obstacle' in Surah at-Taubah verse 91 demonstrates that it is forgiven if they are not involved in the war. In this verse, Allah SWT also exempts three groups from participating in war: the blind, the disabled, and the sick. This is due to a visible and obvious flaw, and they are not guilty if they did not participate in the war. However, Allah SWT has indeed promised that whoever strives in the way of Allah SWT will be granted the glorious one, which is heaven beneath which rivers flow (Ismā‘īl ibn ‘Umar Ibn Kathīr, 2003).

Overall, the Quranic verses above show that even if a person has a specific disability, we should serve him like anyone else, especially if they approach us for the purpose of learning more deeply about religion. The society and government also need to understand their limitations due to the disabilities faced by them. Therefore, as members of the community who will always deal with PWDs, we must adopt certain attitudes to ensure that their welfare and rights are protected. This issue should also be

addressed in our current Islamic legislations in Malaysia, where their needs should be provided whenever the PWDs community deals with the Malaysian Syariah Court institutions, for example or other government's institution.

2.3.1.2 In Hadiths

According to Syarak, there are many hadith that mention the position of PWDs in addition to Quranic verses. Several hadiths discuss the Prophet SAW's interaction with PWDs during His lifetime, as well as the use of the term disabled people in prophetic hadith. Among the phrases used in this era in accordance with the meaning of disabled through the Prophet SAW's hadith regarding the disabled are as follows (Mohamed Nor, 2022): -

Table 2.4: PWDs's Term in Prophet SAW's Hadith

General Terms	Specific Terms
مريض/مرض، ضعيف/ضعفاء/ضعفة، أهل البلاء، عذر/أصحاب الأعذار، بلاء في جسده، مبتلى، أولى الضعفة.	كبير/هرم/عجوز، أعمى، ضخم، ثقيلة، ثبطة، مقعد، أحنف، مجنون، معتوه، أصم، أبكم، أحمق، ضرير البصر/ضرير، أعرج، لوثة، عقده، ضعف، المغلوب على عقله، مجذع الأطراف، الرديء البصر، في عقلها شيء، أخرق، عوراء، أرتم

All of the words or terms mentioned in the table above defined the meaning of PWDs or the terms used in hadith Rasulullah SAW about PWDs. Other than that, there are many hadiths of the Prophet SAW that illustrate the position of groups with different abilities; in fact, it becomes an image of a race's glory and is glorified by Allah SWT.

Moreover, there are many exhortations, teachings, and encouragements delivered by the Prophet SAW in the hadith to treat not only the disabled but the entire human race that lack, imperfection, or abnormality is not something in vain. Several hadiths of the Prophet SAW clearly show how much he honoured, encouraged, and met the needs of the disabled. Among the hadiths are the following:

i. Increase the Spirit and Motivation of The Disabled to Persevere in Facing the Trials and Destiny of Allah SWT

The most important aspect of approaching and treating people with disabilities is to remove their low self-esteem, despair, and feeling left out as a result of their lack, imperfection, or disabilities that have been determined for them. Next, encourage them to persevere in life and even to participate in the community around them. They must be taught the wisdom behind Allah SWT's provisions and destiny for them. They should also be taught that Allah SWT's grace is too vast to encompass their lives. Furthermore, those who successfully pass this difficult test will be rewarded greatly, whether they are disabled themselves, caregivers, guiders, leaders, or even all members of the community who contribute to the welfare and interests of this group. Among the most well-known authentic hadiths in this regard are the following words of the Prophet SAW:

حَدَّثَنَا أَبُو نُعَيْمٍ، حَدَّثَنَا سُفْيَانُ، عَنْ مُعَبَّدِ بْنِ خَالِدٍ، قَالَ سَمِعْتُ حَارِثَةَ بْنَ وَهْبٍ الْخَزَاعِيَّ، قَالَ سَمِعْتُ

النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ " أَلَا أُخْبِرُكُمْ بِأَهْلِ الْجَنَّةِ كُلِّ ضَعِيفٍ مُتَضَعِّفٍ لَوْ أَقْسَمَ عَلَى اللَّهِ لَا يَزِيدُهُ،

أَلَا أُخْبِرُكُمْ بِأَهْلِ النَّارِ كُلِّ عُتُلٍّ جَوَاطٍ مُسْتَكْبِرٍ "

Translation: "Narrated Haritha bin Wahb Al-Khuza'i: I heard the Prophet (ﷺ) saying, "May I tell you of the people of Paradise? Every weak and poor obscure person whom the people look down upon but his oath is fulfilled by Allah when he takes an oath to do something. And may I inform you of the people of the Hell-Fire? They are all those violent, arrogant and stubborn people."

[Sahih al-Bukhari]

ii. Encouragement and Recognition for Doing Good for The Weak Person

Moreover, one concept of helping each other is that those who have the ability should assist other groups who are weak or less able. Thus, those who have been gifted by Allah SWT should assist and contribute to those who are less fortunate or less capable. According to Imam al-Ghazali also, a Muslim's right over another Muslim is to help his relatives who have wishes and needs based on their ability (Baharudin & Mohamed Ramli, 2020). This is demonstrated by the Hadith recorded by Imam Ahmad bin Hanbal in his musnad: -

عَنْ أَبِي ذَرٍّ، قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ، ذَهَبَ الْأَعْيَاءُ بِالْأَجْرِ، يُصَلُّونَ وَيَصُومُونَ وَيَحْجُونَ قَالَ: "وَأَنْتُمْ تُصَلُّونَ وَتَصُومُونَ وَتَحْجُونَ " قُلْتُ: يَتَصَدَّقُونَ وَلَا نَتَصَدَّقُ قَالَ: "وَأَنْتَ فِيكَ صَدَقَةٌ: رَفَعَكَ الْعَظَمَ عَنِ الطَّرِيقِ صَدَقَةٌ، وَهَدَايَتَكَ الطَّرِيقَ صَدَقَةٌ، وَعَوْنَكَ الضَّعِيفَ بِفَضْلِ قُوَّتِكَ صَدَقَةٌ، وَبَيَانُكَ عَنِ الْأَرْضِ صَدَقَةٌ، وَتُبَاذَعَتُكَ أَمْرًا تَكُ صَدَقَةٌ"

Translation: "Abu Dharr al-Ghifāri (may Allah be pleased with him) reported: Some of the Companions said to the Prophet (may Allah's peace and blessings be upon him): "O Messenger of Allah, the wealthy people have taken all the rewards. They pray as we pray and fast as we fast, but they give charity from their excess wealth." He said: "Has Allah not given you something to give as charity? Every utterance of 'glory be to Allah' is charity; every utterance of 'Allah is the Greatest' is charity; every utterance of 'praise be to Allah' is charity; every utterance of 'there is no god but Allah' is charity; commanding the right is charity; forbidding the wrong is charity; and there is charity in sexual intercourse."

[Musnad Ahmad]

According to this hadith, a perfect person (a person without disabilities) is required to help the weak and disabled, and is forbidden from mocking or looking down on the less fortunate. Furthermore, the help or assistance given to this group is not always in the form of money or property. But it is sufficient to fulfill their needs, rights, and so on. Therefore, those who have been blessed by Allah swt should aid and contribute to those who are less fortunate or less able. According to Imam al-Ghazali, a Muslim's right over another Muslim is to help his relatives who have requests and needs based on their abilities. For PWDs, it is sufficient to do good with their own abilities, such as always smiling to others, directing others, and being compassionate.

iii. Encouragement to Interact with Disabled People

Another hadith also mentioned how Islam encouraged authorities or societies to have good communication with PWDs, encouraging good manners and strengthening kinship ties, and as well as includes them among the community.

Prophet SAW's Hadith:

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ مُنِيرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا زَكَرِيَّا، عَنْ الشَّعْبِيِّ، عَنِ الثُّعْمَانِ بْنِ بَشِيرٍ، قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " مَثَلُ الْمُؤْمِنِينَ فِي تَوَادُّهِمْ وَتَرَاحُمِهِمْ وَتَعَاطُفِهِمْ مَثَلُ الْجَسَدِ إِذَا اشْتَكَى مِنْهُ عُضْوٌ تَدَاعَى لَهُ سَائِرُ الْجَسَدِ بِالسَّهَرِ وَالْحُمَّى "

Translation: Nu'man b. Bashir reported Allah's Messenger (ﷺ) as saying: The similitude of believers in regard to mutual love, affection, fellow-feeling is that of one body; when any limb of it aches, the whole body aches, because of sleeplessness and fever.

[Sahih Muslim]

The preceding hadith demonstrates that Islam requires society to always be kind to one another and to include people with disabilities in social activities. They have the right to live a normal life alongside the rest of society, and the Prophet SAW has set the best example of how to interact with the disabled. Living with love and mutual respect for one another is highly valued in Syarak, and it is the advice and encouragement given by Rasulullah SAW. This matter is also demonstrated by the hadith of Rasulullah SAW, which states:

وعن أبي موسى رضي الله عنه قال: قال رسول الله صلى الله عليه وسلم " المؤمن للمؤمن كالبنيان يشد

بعضه بعضاً " وشبك بين أصابعه . ((متفق عليه))

Translation: Abu Musa (May Allah bepleased with him) reported: Messenger of Allah (ﷺ) said, "The relationship of the believer with another believer is like (the bricks of) a building, each strengthens the other." He (ﷺ) illustrated this by interlacing the fingers of both his hands.

[Al-Bukhari and Muslim]

To summarise, all of the quranic verses and hadith mentioned above show how Islam values the position of PWDs in Syarak and how this value should be strengthened and expanded to the area of our Islamic Jurisprudence in Malaysia. PWDs' needs in Syariah Court should be met, and they should be well-assisted at all stages of the court's procedures. As a result, this matter will coincide with Syarak's demands, which are to always glorify the disabled, treat them well, and fulfil their due rights under Islam and the law.

2.3.2 The Position of PWDs According to Malaysian Legal System

Other than the position of PWDs in Syarak's perspectives, the position of PWDs in Malaysian legal systems should be explained so that differences between the two perspectives can be seen through discussion. Malaysian law is divided into two parts: civil law and Syariah law. So, in this subtopic, the researcher will explain the position of PWDs in Malaysian Civil and Syariah law by referring to the provisions relating within it.

2.3.2.1 Under Civil Law Legislation

As previously stated in the history of PWD empowerment in Malaysia, Malaysia took a proactive stance by signing the CRPD in 2008 and ratifying it on July 19, 2010. Malaysia has thus become a signatory to the CRPD. Despite having ratified the Convention, Malaysia also has made reservations under Article 15 of the Convention (Freedom from torture or cruel, inhuman, or degrading treatment or punishment) and Article 18 of the Convention (Liberty of movement and nationality) (Syahirah Abdul Shukor et. al, 2020). From that point forward, PWD-related human rights issues were prominently featured in the media, and the attention given to this issue is a positive sign that the masses have realized the importance of upholding human rights. This issue raised by stakeholders is relevant not only to the rights granted under Malaysia's Federal Constitution, but also to the advancement of Malaysia's obligations under international treaties and norms.

Tahir et al. (2020) stated that the Persons with Disabilities Act 2008 (Act 685) is a turning point moment in Malaysian welfare and assistance to the disabled. The Act 685 was enacted to provide disabled people with equal rights and treatment. The equality concept used in the Act 685 is consistent with the equality concept stated in Article 8 of the Federal Constitution and primarily concerned with general principles or protection. According to Article 8(1) of the Federal Constitution:

8. Equality.

(1) All persons are equal before the law and entitled to the equal protection of the law.

This is the concept or basis for the drafting of the Act 685, which states that the disabled also deserve equal treatment and legal rights. It can be discovered through the introduction of the Act 685, which stated that Persons with Disabilities Act 2008 is an Act to provide for the registration, protection, rehabilitation, development and wellbeing of PWDs, the establishment of the National Council for PWDs, and for matters connected therewith. The Malaysian government was able to establish the National Council for PWDs through this Act and the functions of the Council have been stated under the Section 9 - Functions of the Council of this Act.

Furthermore, this Act promotes the development of PWDs' quality of life and well-being in Malaysia. It can be seen from Chapter 1 to Chapter 5 of Part IV of the Act 685. The table 4 below summarizes the rights that can be obtained by PWDs under the Act 685 (Attorney General's Chambers of Malaysia, 2021).

Table 2.5: Part IV - Promotion and Development of The Quality of Life and Wellbeing of PWDs Under the Act 685

ITEMS	SECTIONS
Chapter 1 <i>Accessibility</i>	26. Access to public facilities, amenities and services and buildings 27. Access to public transport facilities 28. Access to education 29. Access to employment 30. Access to information, communication and technology 31. Access to cultural life 32. Access to recreation, leisure and sport
Chapter 2 <i>Habilitation and rehabilitation</i>	33. Habilitation and rehabilitation 34. In-home, residential and other community support services
Chapter 3	35. Access to health

<i>Health</i>	36. <i>Prevention of further occurrence of disabilities</i> 37. <i>Availability of health personnel</i>
Chapter 4 <i>Protection of persons with severe disabilities</i>	38. <i>Lifelong protection and social system</i> 39. <i>Meaning of “persons with severe disabilities”</i>
Chapter 5 <i>Situations of risk and humanitarian emergencies</i>	40. <i>Access to assistance</i>

Source: Persons with Disabilities Act 2008 (Act 685)

Aside from that, other provisions or laws under civil law proved that even people with visual disabilities have the authority to administer an oath for the endorsement of an affidavit, as stated in the Rules of Court 2012 - Affidavit by illiterate or blind person. The clause specifies the conditions or actions to be taken in order to ensure the acceptability of an illiterate or blind person swearing in an affidavit. It demonstrates that the law always does its best to meet the requirements or needs of people with disabilities throughout the Court's procedures.

Affidavit by illiterate or blind person (O. 41, r. 3)

3. Where it appears to the person administering the oath that the deponent is illiterate or blind, he shall certify in the jurat that—

(a) the affidavit was read in his presence to the deponent;

(b) the deponent seemed perfectly to understand it; and

(c) the deponent made his signature or mark in his presence,

and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

Even legal practitioners, such as the Commissioner for Oaths, have an obligation or responsibility to assist the visually impaired individual during the procedure of taking an oath before him. This is because a blind person is never denied and excluded the right to administer an oath, and the Commissioner for Oaths must assist in providing adequate or proper assistance, such as ensuring the deponent understands the statement read and explaining its contents (Pesuruhjaya Sumpah Malaysia, 2020).

In terms of witnesses, the Civil Court recognized witnesses who were mute or had speech difficulties. According to the Evidence Act of 1950 (Act 56), everyone has the right to testify in court as long as the court allows it, unless it is determined that a person cannot understand or make a rational answer owing to specified conditions such as being too young or old, or having an illness that affects the brain. It was mentioned in Section 118 of Evidence Act of 1950.

Who may testify.

118. All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation—A mentally disordered person or a lunatic is not incompetent to testify unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them.

Thus, a person who is deaf or has a speech impairment is not exempt from testifying in court since they are allowed to be witnesses and can provide their evidence in any way that they and the Court can understand, such as by using signs or writing. The matter has been stated in Section 119 (1)(2) of Act 56 as follows:

Dumb witnesses 119.

(1) A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as, for example, by writing or by signs; but the writing must be written and the signs made in open court.

(2) Evidence so given shall be deemed to be oral evidence.

Furthermore, the Court has the authority to seek assistance from outside the Court, for as by calling witnesses from an expert organization. According to Azizan (2019), an expert witness is one of the functions or roles of a witness called to court to testify about a certain knowledge or skills that they possess. As a result, in Criminal cases for example, if a judge or magistrate in a trial considers that the accused is mentally unsound, the judge can accept evidence in the form of a written certificate from any Medical Officer to affirm that the accused is mentally unsound. This will ensure that the Court takes the necessary action and fulfills the accused's justice before imposing any sentence. It was mentioned in Section 342 (1)(2) of Criminal Procedure Code (Act 593).

Procedure where accused is suspected to be of unsound mind.

342. (1) When a Judge or a Magistrate holding a trial has reason to suspect that the accused person is of unsound mind and consequently incapable of making his defence, he shall in the first instance investigate the fact of such unsoundness.

(2) At the investigation it shall not be necessary for the accused person to be present and the Judge or Magistrate may receive as evidence a certificate in writing signed by a Medical Officer to the effect that the accused person is in his opinion of unsound mind or is a proper person to be detained for observation in a psychiatric hospital, or the Judge or Magistrate may, if he sees fit take oral evidence from a Medical Officer on the state of mind of the accused person.

In fact, under the Mental Health Act of 2001 (Act 615), the Court has the authority to order an investigation to determine if a person is mentally incapable to manage himself and his affairs owing to insanity or mental disorder. This is demonstrated by Section 52(1) of Act 615, as shown below.

Section 52.

Court may order inquiry.

(1) The Court may, on an application made before it, make an order directing an inquiry to determine whether a person subject to the jurisdiction of the Court and alleged to be mentally disordered is incapable of managing himself and his affairs due to such mental disorder.

This is also due to ROC 2012 allocating disability provisions under Order 76 and to refer to the Mental Health Act 2001 for the meaning of "person under disability." This matter demonstrates Malaysian civil legislation's efforts to ensure that people with mental disabilities are not left out of legal debates and the legislation provides appropriate procedures when cases involve mentally disordered people, as mentioned in Act 615's Part X - Proceeding in Inquiries into Mental Disorder.

Interpretation (O. 76, r. 1)

1. In this Order—

“the Act” means the Mental Health Act 2001 [Act 615];

“person under disability” means a person who is a minor or a patient;

“patient” means a mentally disturbed person within the meaning of the Act.

In general, it can be seen that Malaysia is very committed under civil law to upholding and preserving the rights that should be granted to PWDs. PWDs in Malaysia have many rights as mentioned under the Act 685, for example, as shown in the Table 2.5 above and other aforementioned provisions. It cannot be denied that meeting basic needs and implementing laws and policies are critical to fulfilling all PWDs’ rights. The government plays an important role in developing legislation to protect Malaysia’s most vulnerable citizens, including women, children, and PWDs. In the case of PWDs, for example, the basic needs of disabled people must be met, either in civil or political rights, to ensure that they are treated equally with non-disabled people despite their limitations. As a result, no one will be left behind, and equal protections can be provided to all members of society without discrimination.

2.3.2.2 Under Syariah Law Legislation

Islam requires believers to help and protect the vulnerable, and it provides some mechanisms for their care and support. The Islamic model of rights and mutual responsibilities has enormous potential for personal and social reform. As Malaysia among the country who signed the CRPD, other Muslims country such as United Arab Emirates (UAE) also involved with the ratification. According to Mokhtar & Md Tah (2017), on December 13, 2006, the CRPD was opened for signature, and also involving the ratification made by Muslims nations. Algeria, Egypt, Iran, Lebanon, Syria, and the UAE are among the Muslim countries that have signed and ratified the CRPD as of October 2013. Iran and Egypt, unlike other Muslim countries, entered reservations to

the Convention. Throughout the negotiations, the majority of the conflicts between Islamic Law and the human rights framework of the Convention were discussed.

On the other hand, Islamic law also has the potential to be a dynamic force in the interpretation and application of human rights. Many of the same principles that motivate the CRPD are found in Islamic law, such as non-discrimination, the right to life, assisting the needy, and empowering the weak. Compliance with the CRPD is widely based on non-discrimination provisions, which require Islamic states to treat people with disabilities in the same way that they treat everyone else.

Therefore, Malaysia should be more concerned with delivering and promoting the rights of PWDs under Syariah Law, as the Malaysian Syariah legal system is based on equality and justice. This discussion will look at whether Syariah law in Malaysia has specific definitions for people with disabilities in its legislation and how far the Syariah Court prioritizes and concerns the needs and rights of people with disabilities.

i- Whether Malaysian Syariah Law Includes a Clear Definition of PWDs in its Provisions

First, as stated in interpretation of Section 2 of Act 685, there is a specific definition of PWDs in Malaysian civil law legislation. Meanwhile, there is no clear provision in addressing the definition of PWDs in Malaysian Syariah law. However, the researcher discovered the provision and term "person under disability" (Malay: *Orang Tak Berkeupayaan*) in the Syariah Court Civil Procedure (Federal Territories) Act 1998 (Act 585). Essentially, Part IV - Chapter 2 of Act 585 outlined the Act 585's Persons under Disability provisions. The term "person under disability" is defined in Section 3 (Interpretation) of the Act 585 as follows:

3. Interpretation.

"person under disability" includes an infant, a person of unsound mind and a person prohibited from administering his property.

Translation:

3. Tafsiran

"orang tak berkeupayaan" termasuklah seseorang budak, seseorang yang tak sempurna akal dan seseorang yang ditegah menguruskan hartanya.

According to SJ1 (2022), the definition of "person under disability" in Section 3 (Interpretation) of the Act 585 is not the same as the definition of PWDs in Section 2 of the Act 685. The definition of "person under disability" in Section 3 of the Act 585 is related to what is defined in the Syarak. Meanwhile, the Act 685 defined PWDs based on laws made by humans and Common Law. Section 2 of the Act 685 interpreted PWDs as:

2. Interpretation

"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.

To return to the interpretation of Section 3 of Act 585, an infant, a person of unsound mind and a person prohibited from administering his property are the three types of person under disability specifically mentioned in the provisions under

Malaysian Syariah law. This interpretation directly relates to those who, according to Syarak, are person under disability, i.e., those who are not *ahliyyah al-tasarruf*. According to Syariah law, a person who can deal or have a legal capacity (*ahliyyah al-tasarruf*) is a mukallaf who is mentally perfect. In Syarak, there is also a term called *al-mahjur bi safah*, which means that a person who lacks intellect or mental capacity is not permitted to manage property.

Besides that, in this provision, "an infant" or "*seseorang budak*" (child) is defined as a child who has not yet reached the age of majority and is unable to manage personal affairs and property due to mental incapacity. However, in this country, a child is defined as someone under the age of 18. It is clear mentioned under Section 2(1) (Interpretation) of the Child Act No. 611, 2001 (Child Act 2001) and Section 2 (Age of Majority) of the Act of Majority Act 1971 [Act 21]:

- Child Act 2001

2. Interpretation.

"child" -

(a) means a person under the age of eighteen years; and

(b) in relation to criminal proceedings, means a person who has attained the age of criminal responsibility as prescribed in section 82 of the Penal Code [Act 574];

- Act of Majority Act 1971

Age of majority

2. Subject to section 4, the minority of all males and females shall cease and determine within Malaysia at the age of eighteen years and every such male and female attaining that age shall be of the age of majority.

It was crystal clear and understandable that the meaning of a child in Section 3 (Interpretation) of the Act 585 is referring to a child under the age of 18. Thus, under Malaysian Syariah law procedure and legislation, children have no locus or legal capacity to bring or initiate any action or case to be brought before a court. They require the appointment of a guardian *ad litem*, as specified in Section 24 of the Act 585:

24. Person under disability

Any person under disability may sue or be sued by his guardian *ad litem* duly approved by the Court.

All children must be represented by their appointed guardian *ad litem*, such as parents or siblings, under this section, and a consent or waiver given on behalf of a person under disability by his guardian *ad litem* with the Court's approval shall be binding on the person under disability, as stated in Section 25 of the Act 585.

25. Consent on behalf of person under disability

A consent or waiver which is given on behalf of a person under disability by his guardian *ad litem* with the approval of the Court shall be binding on the person under disability.

Next, the term "a person prohibited from administering his property" in Section 3 (Interpretation) of the Act 585 does not refer to a person who is bankrupt under the Bankruptcy Act 1967. It refers to a person who is unable to manage property because his mental state is imperfect or has not yet matured according to Syarak. The Syariah Court also is not bound by the restrictions imposed by Section 38(1) of the Bankruptcy Act 1967 [Act 360]. As stated in the relevant section:

38. Consequences of refusal of discharge.

(1) Where a bankrupt has not obtained his discharge—

(a) the bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the Director General of Insolvency.

Therefore, in the Syarak perspective, these three categories are seen to have similarities, namely those who are unable to manage themselves due to a less-than-perfect mental state or have no legal capacity. When they want to deal with the Syariah Court, they need someone to act as guardian *ad litem*. This has also been mentioned by Allah SWT in the following verses:

﴿فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُبْلِّغَ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ﴾

Translation: If the debtor is incompetent, weak, or unable to dictate, let their guardian dictate for them with justice.

(Al-Qur'an. Al-Baqarah 2:282)

Syarbini al-Khatib in Mughni al-Muhtaj (Constituents 3 (*Juzuk 3*)/ p. 130) mentioned that:

فَسَّرَ الشَّافِعِيُّ - رَضِيَ اللَّهُ عَنْهُ - السَّفِيهَ بِالْمُبَدَّرِ وَالضَّعِيفَ بِالصَّبِيِّ، وَالْكَبِيرَ بِالْمُحْتَلِّ، وَالَّذِي لَا يَسْتَطِيعُ أَنْ يُمِلَّ بِالْمَغْلُوبِ عَلَى عَقْلِهِ، فَأَخْبَرَ اللَّهُ تَعَالَى أَنَّ هَؤُلَاءِ يَنْوَبُ عَنْهُمْ أَوْلِيَائُهُمْ، فَدَلَّ عَلَى ثُبُوتِ الْحُجْرِ عَلَيْهِمْ

Translation: "Imam al-Syafie defined 'stupid people' as those who waste, 'weak people' as children (not yet mumayyiz), adults as the elderly and those who have lost their sanity." Allah stated that their guardians would be in charge of all relevant tasks. As a result, this demonstrates that their property must be constrained."

In conclusion, the definition of "person under disability" stated in Section 3 of the Act 585 is clearly based on Syarak. It is also not the same interpretation as that stated in Section 2 of Act 685 regarding the definition of PWDs under civil law legislation. Malaysian civil law includes persons with physical and sensory impairments as a category of PWDs as a whole, and this is also what JKM has been referring to when referring to the category of PWDs in Malaysia. Meanwhile, the category of PWDs or impairments intended by Syarak and Section 3 of the Act 585 do not include physical disabilities (such as limb defects) or senses (such as deafness, dumbness, and blindness).

However, if a person with a physical disability also has a mental disability, they are classified as a "person under disability" under Syariah law. This is due to his mental disability factor. The term "person under disability" in the said Act, according to that provision, also refers to the inability to file a claim or cause of action in the Syariah

Court. It is due to mental incapacity and requires the appointment of a representative (guardian *ad litem*). All of the provisions in Part IV - Chapter 2 of the Act 585 are associated with the clause in Syariah law legislation regarding "person under disability." Therefore, the Syariah law still lacks clear definitions of PWDs in its legislative framework, as given by civil law. The interpretations of Section 3 of Act 585 differ from the interpretations of Section 2 of Act 685.

Table 2.6: Syariah Legislation's Legal Provisions Regarding "Person Under Disability" in Act 585

NO.	SECTIONS	PROVISIONS
1.	3	Interpretation - "person under disability"
2.	24	Person under disability
3.	25	Consent on behalf of person under disability
4.	26	General provisions as to disability
5.	27	Irregular Proceedings
6.	28	Removal of guardian <i>ad litem</i>
7.	29	Minor plaintiff attaining majority
8.	30	Minor defendant attaining majority

ii- Whether Malaysian Syariah Law Provides Adequate Rights to PWDs In Its Legislation.

In general, the existing Syariah law does not include many provisions regarding PWDs, despite the fact that the existing set of laws applies to everyone. Even Surdi Roslan, Hashim, Baharuddin, & Ab Rahman (2021) stated that Malaysian laws, including Syariah laws in force, do not specify the procedure for Syariah criminal cases involving the disabled. Similarly, to Civil law, there is no special provision in the Syariah Court for the legal procedure of Civil or Mal cases involving the disabled.

The researcher discovered some provisions that are relevant to this study by examining the text of existing Syariah law that are either explicitly or implicitly related to the disabled. There are several provisions under the Islamic law in Malaysian legislation that touch on the rights that have been received by PWDs, such as what is provided in each state's Syariah Court Evidence Act. First, Section 84(1) of the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561) stated that persons with hearing disabilities have the right to act as witnesses and testify in the Syariah Court. It is clear from the explanation of the provision below:

Section 84. Dumb witnesses.

(1) A witness who is unable to speak may give his *bayyinah* in any manner in which he can make it intelligible such as by writing or by signs.

According to this section, people with speech disabilities can testify in the Syariah Court. Their testimonies are classified as *bayyinah*, rather than as *Shahadah* and can be given in any medium of communication understood in front of the judge, such as writing or gestures (sign language). This is because hearing, vision, and speech disabled people's behavior is legal in Malaysia under Syarak and Syariah law (Azman Ab Rahman, Norakyairee Mohd Raus, Hussein 'Azeemi Abdullah Thaidi, & Mohammad Naqib Hamdan, 2015). They are also fully responsible for every act, according to the principle of *ahliyyah* in the science of *Usul Fiqh*, and they deserve to be arrested and prosecuted, then tried in the Syariah Court according to the procedures that have been provided by the law.

Second, Section 83(4) and 83(5) of the same Act also mentioned about who may testify as witnesses.

Section 83. Who may testify as witnesses.

(4) A person who is not *baligh* or a person who is of unsound mind is competent to give *bayyinah* but not competent to give *syahadah*.

(5) A person who has a weak memory or is forgetful or suffers from lapses of memory is competent to give *bayyinah* but not competent to give *syahadah*.

This provision clarifies that even people with mental disabilities and a low mental state of mind can be witnesses and testify in court. Surdi Roslan et al. (2021) stated that if the judge discovers that the accused does not understand the charge or suspects that the accused lacks common sense or is not sane, the judge must first investigate such unsoundness. The steps that must be taken to confirm the situation are described in Sections 180(1)(2) of the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560).

Section 180. Procedure where accused is suspected to be of unsound mind.

(1) When a Judge holding an inquiry or a trial has reason to suspect that the accused person is of unsound mind and consequently incapable of making his defence, he shall in the first instance investigate the fact of such unsoundness.

(2) At such investigation it shall not be necessary for the accused person to be present and the Judge may receive as evidence a certificate in writing signed by a Government Medical Officer to the effect that such accused person is in his opinion of unsound mind or

is a proper person to be detained for observation in a mental hospital, or if he sees fit such Judge may take oral evidence from a Government Medical Officer on the state of mind of such accused person.

Third, the Court has the authority to call any relevant party, such as doctors, counselors, psychologists, or others, as necessary in Civil proceedings for the sake of justice. For example, if a person has been diagnosed with bipolar disorder or depression (Mental Disability) and is unable to testify, the Court may call the doctors or psychologists who treat him to give evidence and justify his condition. It was mentioned in Act 585, Section 127:

127. Power of Court.

In the interest of justice, the Court may, at any stage of the proceedings, call any party to adduce evidence and may inspect any place or thing.

Forth, Section 115(1) of the Act 560 states that it is the Court's obligation or responsibility to provide necessary services to the parties or accused if the evidence is given in a language or gesture that they do not understand. Thus, if they require a professional sign language interpreter, the Court may seek a certified sign language interpreter to assist with the proceedings or trials. This provision was clearly stated as follows:

115. Interpretation of evidence to accused

(1) Whenever any evidence is given in a language or gesture not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language which he understands.

Fifth, a person may make an *iqrar* in the Courts and in front of the Judge by writing, orally, or by gesture. That is, if a person with a hearing or speech impairment is unable to give their *iqrar* orally, they can use a sign language interpreter or write it down. This has been mentioned by virtue of Section 17 of Act 561.

17. *Iqrar* defined

(1) An *iqrar* is an admission made by a person, in writing or orally or by gesture, stating that he is under an obligation or liability to another person in respect of some right.

In conclusion, Malaysian Syariah law legislation recognizes that PWDs also have their own rights. It was clear from the provisions mentioned above that PWDs have their own position under Syariah law. The laws above also demonstrate that Syariah law does not preclude PWDs from seeking their rights and justice in Malaysian Syariah courts. Although there aren't many particular laws regarding PWDs in the legal system of Civil proceedings, it can be found in other provisions involving evidence, such as those in Act 561. This is due to Section 100 of Act 585, which states that any facts necessary to be shown at the trial of any proceeding by the evidence of the parties or witnesses must be oral in open Court and subject to Act 585 and Act 561. Thereby, certain parts of Act 585 should be interpreted and applied in conjunction with Act 561.

100. Evidence to be taken orally.

Subject to this Act and the Syariah Court Evidence (Federal Territories) Act 1997, any fact required to be proved at the trial of any proceedings by the evidence of parties or witnesses shall be proved by the examination of the parties or witnesses shall be proved by the examination of the parties or witnesses orally in open Court.

Thus, the rights of PWDs, for examples, people with visual, hearing, speech, and mental disabilities can be guaranteed and upheld by the law with these provisions. It emphasized that the Islamic law principles of the Syariah Court promote justice and equality. Yet, the Court's approach for handling Civil matters involving PWDs remains unclear. There are no provisions in Syariah law that give such procedures or guidelines. All of these issues can serve as the foundation for empowerment under the legal procedures of Civil cases involving PWDs in Syariah Court such as provide an appropriate facility or needs towards persons with mental disability throughout the court process by providing appropriate procedures for them. As a result, Syariah law in Malaysia will be viewed as a law that pays special attention to the disabled community as a whole.

2.4 Conclusion

This chapter has briefly discussed the general concepts of PWDs and their legal status under Syarak and the Malaysian legal system. Overall, Islam regards the human individual's position as very noble, with no need for distinctions based on physical and beauty, or superiority of rank and position, property, or descent. In Islamic point of view, the Holy Quran and Sunnah mentioned disability and its rights in numerous verses

and hadith. Besides that, the law that protects individuals' human rights in this world has provided several safeguards for those in vulnerable groups, including PWDs. Each country has its own laws and regulations in place to protect the rights of PWDs. Malaysian government has clearly provided proper rights for all PWDs community in Malaysia through the implementation of Act 685 and other policies. Even though Islamic law in Malaysia does not include particular provisions for PWDs, there are several sections that explicitly reference this, such as those mentioned in Sections 83 (4)(5) and 84 of Act 561. So, they have the same rights to appear in court as everyone else who does not have a disability.