

CHAPTER 4

ISSUES AND CHALLENGES IN THE MALAYSIAN SYARIAH COURT'S LEGAL PROCEDURES IN CIVIL CASES INVOLVING PERSONS WITH DISABILITIES (PWDs)

4.1 Introduction

During the discussion on the previous chapters, the researcher found that there are few issues and challenges had aroused through the current practices of legal procedures of Civil cases involving PWDs in Malaysian Syariah Court. Thus, this chapter will discuss the third research objective of this study. The method used in this chapter are in-depth interviews. The information gathered from interviews includes responses from respondents with various backgrounds, including lawyers, judges, and shariah officers. Additionally, the PWDs who are directly and indirectly involved in Civil cases in Syariah Court will also provide the researcher with the data. The opinions and experiences of each of these respondents are crucial in order to understand the problems and difficulties that have been encountered. Each respondent (RP) was given an individual code, as shown in Table 4.1 and Table 4.2 below. Then, the data gathered through interview was analyzed using descriptive analysis inductive and deductively. This discussion will be addressed by the researcher in subtopic 4.2 of this chapter.

Table 4.1: List of Respondents Among Legal Practitioners in the Interview Session

NO.	CODE	NAME	POSITION
1.	SJ1	YAA Prof Adjung Dato' Setia Dr. Hj. Mohd Na'im Bin Hj. Mokhtar	Chief Director/Chief Syarie Judge of JKSM
2.	SJ2	Y.Bhg. YAA Datuk Mohd Nadzri Abdul Rahman	Chief Syarie Judge of Melaka State's Syariah Court
3.	SJ3	Y.Bhg. YAA Tuan Mohd Fahmi Bunaim	Chief Syarie Judge of Johor State's Syariah Court
4.	SJ4	Y.Bhg. Puan Ruzita Ramli	Syarie Judge of Syariah High Court Department of Syariah Judiciary Negeri Sembilan
5.	SJ5	Y.Bhg. Puan Siti Noraini Mohd Ali	Syarie Judge of Wilayah Persekutuan Kuala Lumpur State's Syariah Subordinate Court
6.	CL1	Anonymous	Deputy Registrar, High Courts of Shah Alam
7.	SO1	Y.Bhg. Tuan Abu Suffian Bin Abu Yaziz	Director of Registration, Secretariat, and Records Division of JKSM
8.	SO3	Y.Bhg. Tuan Mamat Haizan Salleh	Director of Policy and Research Division of JKSM
9.	SO4	Y.Bhg. Tuan Hafiz	Jabatan Bantuan Guaman Satate of Selangor
10.	SL1	Y.Bhg. Puan Noor Afiah Che Mustapa	Syarie Lawyer and Sign Language Interpreter
11.	SL2	Y.Bhg. Tuan Abdul Muim	Syarie Lawyer at Nur, Muim Farhana and Associates, Nilai, Negeri Sembilan

Table 4.2: List of Respondents Among PWDs in the Interview Session

NO.	CODE	NAME	ORGANIZATION
1.	PWD1	Y.Bhg. Tuan Aqlam Jafri	Persatuan Orang Pekak Islam Malaysia (PRISMA)/Institut Sosial Malaysia, KPWKM
2.	PWD2	Y.Bhg. Tuan Jayawiyaran M.Asraf	Persatuan Orang Pekak Islam Malaysia (PRISMA)
3.	PWD3	Y.Bhg. Tuan Ahmad bin Abd Wahab	Persatuan Orang Cacat Penglihatan Islam Malaysia (PERTIS)
4.	PWD4	Y.Bhg. Ustaz Mohd Kalam Mazad Abd Rahman	Senior Assistant Director, Division of Publications JAKIM/Person with Visual Disability
5.	PWD5	Y.Bhg. Puan Siti Nor Anira binti Awang (through Siti Azirah Sabran)	Person with Hearing Disability

4.2 Issues and Challenges in The Legal Procedure of Civil Cases Involving PWDs in Malaysian Syariah Courts

Most PWD-related issues are extensively discussed in the debate from a Sharia-based perspective or *fiqh* perspective. When it comes to matters of *‘ibadat*, *muamalat*, *jinayat*, and *munakahat*, issues involving people with hearing, visual, and speech disabilities, for example, are widely discussed (Azman Ab Rahman et al., 2014; Azman Ab Rahman et al., 2016 & Azman Ab Rahman, 2021). However, the actual problem or issue that PWDs face today is more than that. Researchers are debating and discussing fewer contemporary PWD-related issues, such as the difficulty PWDs have adhering to the procedures for application cases, dissolution of marriages, or other Civil cases in

the Malaysian Syariah Court. As a result, it is clear that PWD procedural issues in Shariah legislation were the least discussed.

It was vital to understand the true problem or issue confronting the Court, practitioners, and PWDs in order to provide a better solution or empowerment. In general, the researcher discovered through the data analysis that the Court, practitioners, and PWDs themselves faced issues and challenges in legal procedures for Civil cases involving PWDs in Syariah Court. This is due to a number of factors, including the ambiguity of PWD-related legal provisions in Malaysian Syariah Law, the absence of standard guidelines in Civil case legal procedures, a scarcity of legal practitioners skilled in handling PWD-related cases, and a low level of legal literacy among PWDs. All of this will be covered in the discussion that follows.

4.2.1 The Ambiguity of PWD-Related Legal Provisions in Malaysia's Syariah Law

The issue of ambiguity in PWD-related legal provisions in Malaysian Syariah law is seen in two aspects: the absence of related regulations or provisions regarding legal procedures for Civil cases involving PWDs in Malaysian Syariah Court and the absence of a clear definition of PWDs under Malaysian Syariah law.

According to RP **SJ1**, RP **SJ4**, RP **SJ5**, and RP **SL1**, the absence of related provisions relating to legal procedures involving PWDs for Civil cases in the Malaysian Syariah Court makes it difficult for legal practitioners and PWDs to handle the situation. There are no Practice Directions, notices, or circular letters under the Shariah legal system and Syariah law in Malaysia encompassing the guidelines or procedures for dealing with Civil cases involving PWDs. The existing law applies to all people, and

the current practice of the Syariah Court in handling the procedure of Civil cases involving the disabled varies according to the discretion and initiative taken by each Court or legal practitioners as long as it does not violate Syariah law and irregularities proceedings. As a result, the matter has led to certain challenges for legal practitioners in handling such cases, as well as difficulties for parties among PWDs whenever trying to settle any Civil cases in the Syariah Court.

Moreover, if re-examined, there is no specific clause involving PWDs and related procedures in any of Malaysia's existing Syariah or Islamic law provisions, with the exception of the procedure for giving testimony by Dumb Witnesses, which is clearly mentioned in Section 84(1) of Act 561 and other several provisions as stated in the previous chapter 2 (under subtopic 2.3.2.2). This is due to the fact that Syariah law prioritizes justice and equality of treatment without distinguishing the parties from the general population without disabilities or the disabled. However, PWDs parties have their own difficulties and cannot always go through the same procedures as non-disabled parties. They require certain services and assistance, which the Court must provide or take into account. Thus, the inclusion of PWD-related provisions or regulations such as Practice Directions, circular letters, guidelines and so on can help the legal practitioner handle such matters while also benefiting the PWDs parties.

In addition, there is a clause regarding interpretation of "person under disability," such as that mentioned in Syariah Court Civil Procedure (Federal Territories) (Act 585), and the researcher believes that this clause can be found in any Enactment or Ordinance in each state. However, the researcher discovered that different legal practitioners have different explanations and clarifications of the provision regarding "person under disability" under Section 3 - Interpretation of Act 585. This is

another factor due to the ambiguity of PWD-related legal provisions regarding to the absence of definition of PWDs under the Syariah law. Therefore, there has been a difference of opinion whether the definition of "person under disability" under Section 3 of Act 585 is the same as the definition of PWDs under Section 2 of Act 685. Section 3 - Act 585 Interpretation states that a "person under disability" is defined as:

Section 3 – Interpretation

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

Meanwhile, Act 685 defined PWDs as:

Section 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;

According to RP **SJ1**, the interpretation of Section 3 of Act 585 has to do with or related to people who are mentally incapacitated under *Hukum Syarak* or Sharia law, which is those who are not *ahliyyah al-tasarruf*. The three types or categories of "person under disability" specifically mentioned are an infant (child), a person of unsound mind, and a person prohibited from administering his property. So, according to **SJ1**, the interpretation provided by the provisions of Section 3 of Act 585 differs from the definition of PWDs provided by Section 2 of Act 685 (Persons with Disabilities Act 2008). Respondents **SJ4**, **SJ5**, **SO1** and **SO3** also agreed with this interpretation as well.

They claimed that the definition of "person under disability" (Section 3 of Act 585) differs from the definition of PWDs (Section 2 of Act 685).

Respondents **SJ2** on the other hand, expressed opposing viewpoints. **SJ2** stated that the provision (Section 3 of Act 585) is equivalent to and includes the interpretation that refers to the definition of PWDs under the Persons with Disabilities Act 2008 (Section 2 of Act 685). In fact, the application in the Syariah Court is even broader, encompassing children who have not yet reached puberty or maturity. This is because **SJ2** believes that in the context of the Syariah Court, a "person under disability" is an individual, male or female, who has a mental or physical deficiency (including people with limb and sensory disabilities) or a child who is unable to determine what is good or bad, preventing him from acting alone on his behalf whether prosecuting or being sued. This means that, in addition to persons with mental disabilities, persons with physical disabilities are included in the group of "persons under disability" mentioned in Section 3 of Act 585.

Then, RP **SJ3** stating that the interpretation of Section 3 of Act 585 is also the same, referring to PWDs who are included in the definition under Section 2 of Act 685. However, **SJ3** clarified that it is only for those with long-term mental and intellectual impairments. **SJ3** agreed with the interpretation, but only partially, by excluding those with long-term physical and sensory impairments from accepting it. That means, a person with long-term physical impairments and sensory impairments are not included under the interpretation of Section 3 of Act 585 on "person under disability." As a result, **SJ3** agrees that the two interpretations under the two provisions are the same, but only apply to people with mental and intellectual disabilities. Therefore, it falls under the

category of "person under disability," which leads to the application of provisions under Part IV - Chapter 2 of Act 585.

Thereby, **SJ3** explained that parties in the "person under disability" category can file or conduct their case proceedings through their guardian *ad litem* as provided under Section 24 of the Act 585.

Section 24 - Person under Disability

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

SJ3 did not, however, specify the level of person with mental disability may be subjected to the cases under Section 24 of Enactment 20. This is because there is a level of mental disability under the PWD category as underlined by JKM. The researcher assumed that **SJ3** referred to a person suffering from a serious mental condition such as Organic Mental Disorder (dementia in Alzheimer's disease, brain damage and dysfunction, and so on). As a result, under this category, the parties may appoint guardian *ad litem* to protect their interests and represent them. The case of *Re Mohd Zaki bin Ngah* [2014] 2 ShLR (the applicant; in the matter of application for *faraid* certificate to determine the beneficiaries and their entitlement) (Mal Case Application No. 11005-040-0360 of 2013) exemplifies this.

The researcher discovered from the facts or summary of the case that the applicant, while the deceased was still alive, had acted on behalf of the deceased *ad litem* by filing the application of *fasakh* against the deceased's husband, due to the deceased's brain cancer. As a result of the deceased's lack of legal capacity (due to mental incapacity and brain damage or dysfunction), the deceased was classified as a

"person under disability" under Syariah law and required the assistance of a guardian *ad litem*.

The researcher concluded from this aspect that each practitioner has their own understanding and explanations for the interpretation of the provision regarding the meaning of "person under disability" under Syariah law. It is a question of whether the definition of people with disabilities in both Civil and Syariah legislation is the same and carries the same meaning and application. The difference in understanding, as seen, is based on the interpretation that is understood explicitly and implicitly through the text of legal provisions, which ultimately leads to different explanations among legal practitioners. The issue of unclear clarification and explanation regarding the interpretation under the "person under disability" clause should not be taken lightly, and it is necessary to re-evaluate the meaning of the correct and uniform Syariah law interpretation in relation to it. This is done to ensure that every Syariah Court in Malaysia, and particularly legal practitioners, understand and apply the provision in accordance with the same practice in every state, and to avoid any confusion.

Ultimately, understanding the correct meaning and explanation of the text of legal provisions is crucial to ensuring that legal practitioners' acceptance and understanding of a particular provision is consistent and good, while also preserving the rights and justice of people with disabilities. According to Zulazhar Tahir et al. (2020), a law is an important component in realizing the desire to see PWDs treated equally with other non-disabled people. How can legal practitioners ensure that the welfare and needs of the disabled are protected and guaranteed if they do not understand the law. Differences in understanding of legal provisions among legal practitioners, particularly in Shariah judicial institutions, can also have a negative impact on the Shariah legal

system in Malaysia. As a result, it is critical to address the current issues confronting Malaysian Syariah Courts and Syariah law practitioners in general regarding the ambiguity of PWD-related legal provisions in Malaysian Syariah Law.

4.2.2 The Absence of Standard Guidelines in Legal Procedures for Civil Cases Involving PWDs in Malaysian Syariah Court

It is clear from the discussion in the preceding chapter that there are no guidelines on legal procedures in Civil cases involving people with disabilities. RP SJ1 stated that the Court handles such situations solely on its own initiative. For example, on behalf of Syarie Judges, they will conduct the trial in accordance with Practice Direction No.1 Year 2001 or *Adabul Qadi*. This Practice Direction establishes the required standards and ethics to ensure that Syarie Judges follow all of the regulations and treat all cases before them equitably.

Other than that, this issue also results in varying practices among legal practitioners and the Syariah Court, as they employ their own initiative and methods. According to RP SL2, the Courts have no specific Standard Operating Procedure (SOP) for managing and handling Civil cases involving PWDs. As a Syarie Lawyer, SL2 is occasionally involved in several cases involving PWDs such as people with vision and hearing disabilities. SL2 stated that when the cases were presented before the Court, each court registrar handled or assisted his case in a different manner or procedure. The registrars' differing perspectives and procedures make it difficult for him to manage his client's case. This is due to the lack of precise rules or SOPs that court officers and legal practitioners can use as a reference. A standard operating procedure is a series of written instructions that specifies the step-by-step process that must be followed to conduct a

routine activity correctly. It was critical to create a precise SOP or guideline so that the process could be harmonized and standardized in all Syariah courts and serve as a reference for legal practitioners dealing with such situations.

RP **SJ3** added that in a registration phase, there is no initial screening at the initial stage of registration. Then when the case reaches the trial stage, there are needs of the parties among the disabled that cannot be met by the judge or court. This is a weakness at the stage of case registration faced by the Syariah courts. For example, there is no specific column or section on the personal information form for the purpose of case registration where it can be stated that the parties are disabled. So, the judge did not know that the case he/she was going to handle was a case from among the disabled parties. Therefore, preliminary preparations could not be carried out by the Court, such as calling a sign language interpreter to assist hearing cases among the speech impaired. RP **SL2** also agreed that there is no specific form for the registration and management of Civil cases involving the disabled in the Syariah court. As a result, difficulties such as the case being postponed since the trial could not be held as planned have had an impact on the course or progress of the case.

MAHKAMAH SYARIAH WILAYAH PERSEKUTUAN			
BORANG PENDAFTARAN			
Tarikh Pendaftaran			
No. Kes			
Tarikh Sebutan			
Bayaran			
Nombor Resit			
MAKLUMAT PERIBADI	PLAINTIF / PEMOHON / PEMUTANG	DEFENDAN / RESPONDEN / PEMOHON(2) / PENGHUTANG / SIMATI	
* Nama			
* No. Kad Pengenalan			
No. K/P Polis / Tentera			
No. Passport			
* Alamat Rumah			
* Warganegara			
* Umur			
* Jantina			
* Pekerjaan			
* Pendapatan Bulanan			
* Alamat Majikan			
* Tarikh & Tempat Perkahwinan			
* Bilangan Anak			
* No. Telefon (R)/ (HP)			
* Tarikh Kematian (Faraid Sahaja)			
Alamat Peguam			
No. Telefon Peguam			
Emel			
1. Agihan Buka Fail	Tarikh :	3. Agihan Kepada PN	Tarikh :
2. Serahan Untuk Agih Saman	Tarikh :	4. Serahan Affidavit	Tarikh :

* Nota: Butiran maklumat yang bertanda (*) WAJIB diisi.

Figure 4.1: An Example of A Personal Information Form Provided By The Syariah Court For The Registration of A Civil Case

RP PWD5 also expressed her displeasure when she was subjected to a trial process that was not in her favor due to her hearing disability and use of a hearing aid.

PWD5 stated that, despite wearing a support device, she still need assistance from family members while dealing with the Court with her case - Registration of Divorce

Outside the Court (Case No.: 05005-054-0190-2020) filed by her husband. PWD5 was

disappointed when the court refused to allow a representative from one of her family members to join the courtroom and assist her in hearing and communicating what the judge said to her. As a result, she felt injustice throughout the trial. This is one of the consequences of the Court's lack of adequate preparation in handling cases concerning the disabled due to the absence of standard guidelines. RP **SJ3** further stated that there is no guidance to ensure that the applicant or plaintiff is a disabled person who wishes to have his or her case represented or who requires certain services. It is apparent that procedural barriers are one of the challenges confronting PWDs (Schwartz & Elder, 2018), as well as legal practitioners in Syariah Courts in Civil cases involving PWDs.

Moreover, even RP **CL1** stated that there is no specific procedure in Malaysian Civil Courts for handling cases involving PWDs, whether civil or criminal. The Court handles the case on their own initiative, and in most cases, the Court will seek assistance from JKM. Typically, when the Court receives a case involving a person with a disability, the Court will seek support from JKM to provide a sign language interpreter, such as for a person with a hearing disability, at the request of the parties. Thus, the Court will apply the services and provide the services for them. JKM's role in this situation is to act as a mediator or interpreter between the disabled parties and the judge in the Court. The language or terms used is also simple enough for the disabled to understand. Then, cases involving PWDs under the age of 18 will be handled through their guardian *ad litem*. As a result, it is clear that not only the Syariah Court, but also the Civil Court, confronts the same problem. The absence of SOPs or guidelines for the handling and management of cases involving PWDs has an impact on both PWDs and legal practitioners.

Furthermore, the absence of standard guidelines in legal procedures for Civil cases involving PWDs causes the procedure to become unsystematic from the start. According to **SJ3**, the court should deal with the issue at the registration stage, so that when it comes to the proceeding or trial phase, the judge is aware of the parties and the court can provide the early services required to handle the case. The case file for PWDs cases in Malaysian Syariah Court is also not synchronized and labeled, therefore the Court and Judge are unaware that the case involves PWDs. Civil matters connected to case files should be managed properly so that practitioners, particularly Syariah officers or Judges, can conduct the case effectively. RP **SL1** and RP **PWD3** also claimed that the lack of standard procedure makes the community of people with disabilities hesitant to approach the Court. They are worried that their rights will not be upheld and that no one will be able to assist them because not all court officers understand the needs of people with disabilities.

In conclude, the lack of standard guidelines in legal procedure for Civil cases involving PWDs in Malaysian Syariah Courts creates a barrier for the Court to handle the cases, as well as PWDs parties when dealing with Court's procedure. When there are no guidelines and the practice is dictated by the Court, it varies from officer to officer. This issue indirectly confuses legal practitioners, such as Syarie lawyer, who handle PWD-related cases, as well as PWDs themselves. The problem also has an impact on case progress, since some cases cannot proceed as anticipated because the Court is unable to prepare for or accommodate the immediate demands of PWDs during the hearing.

This is because the Court is unaware that the case that will be heard is one of PWDs parties. There is no initial screening stage, such as the lack of a current personal

information form with no column or section to inform the Court or Judge that the parties are people with disabilities. As a result, the case must be postponed to ensure that the needs or services are met at the next hearing, which may lengthen the time to settle the matter and contribute to the backlog of cases. Due to the lack of standard guidelines in dealing with PWDs cases in Malaysian Syariah Court, the legal procedure of Civil cases involving PWDs has also become unsystematic in some circumstances. It was the ideal time for the Syariah Court to address this issue, as the Malaysian Civil Court also currently lacks a comprehensive framework for handling matters involving PWDs that can serve as a model for Malaysian Syariah Court practice. Thus, it would be better if the Malaysian Court could devote greater attention to the arising issue.

4.2.3 A Scarcity of Legal Practitioners Skilled in Handling PWD-Related Cases

It cannot be denied that Civil cases involving the disabled in the Syariah Court are minority cases, and as a result, there are not many legal practitioners skilled and experienced in handling PWD cases. According to RP SO4, the Court's acceptance of parties from disabled community is still minimal. The Court lacks certain skills in handling cases involving the PWDs. There are also certain aspects of facilities such as the facilities in the Court which make it difficult for the disabled to move around, such as the unavailability of an elevator in the Court building. This may have an impact on the parties with physical disabilities. As a result, according to RP SO1, this issue has become one of the barriers for the PWD community to attend and deal with in Court. PWDs assume that their needs cannot be met properly and adequately. They ultimately opted not to appear in Court or engage with the Court. This will have a negative impact and effect, particularly in the Islamic family system.

Aside from that, RP **SJ5** believes that constraints occur when the court lacks expertise and skill in understanding the disabled community. This is because **SJ5** stated that specific talents, such as psychological skills, are required when evaluating or handling cases involving parties with disabilities. Especially while dealing with people who have mental disabilities registered under the JKM. Some of them are not insane and are qualified to handle the case on their own, but due to mental health issues such as depression and bipolar, for example, they are unable to complete the trial successfully because of their psychological issues or emotional stress. Thereby, the Court needs to understand their needs, understand their character and so on in order to handle the case. These are psychological abilities that not all legal practitioners possess.

Even according to a study conducted by Abdul Wahab, Md Abdul Salam, & Mohamad Dahalan (2022) and Harlida & Rozita (2022), there are specific abilities that court advisers must have when dealing with cases involving children. Communication skills with children, understanding child psychology, and basic counseling abilities are among them. In addition to situations involving disabled persons, which have their own unique characteristics, the researcher believes that specific abilities in handling cases involving disabled people are essential for making the proceedings run smoothly.

RP **SJ2** added that the Court faces challenges in understanding the wishes or wants and needs of PWDs at the counter and in the Court hall. This is due to the Syariah Court officers' lack of experience managing and handling cases involving the disabled, as well as a lack of training in this area. Because there are no unique modules or guidelines that may be utilized as a guide, the Court and legal practitioners in general have had difficulty handling cases involving PWDs. For matters involving the hearing impaired, for example, the Court lacks an officer trained in using sign language, and

some of the disabled parties do not understand formal sign language. This matter has caused communication barriers between the Court and the PWDs.

RP **SO3** agreed on this point, stating that there aren't enough Court officers who can communicate in sign language. **SO3** believes that the lack of a specialized sign language interpreter in the Syariah Court is due to the absence of specific roles or positions in the Syariah Court and a shortage of percentage in public employment for the PWD category in the legal aspect and department. Court employees are also not exposed to such skills, which contributes to the shortage of legal practitioners who can manage cases concerning people with disabilities.

In some circumstances, **SJ5** stated that the Court lacks financial resources or funding to call outside specialists such as sign interpreters to assist cases involving hearing and speech impaired in the trial. This is because the Court has made no financial allocation for the matter and, as a result, cannot impose specific requirements on the parties of PWDs. Therefore, the issue was arising and there aren't enough people who can handle situations like these.

Furthermore, the lack of legal training or simulation on how the Syariah Court should manage Civil cases involving PWDs has contributed to a scarcity of legal practitioners competent to handle such cases. **SJ2** stated something similar earlier. When legal practitioners, particularly court officers and staff, are not exposed to specific training or modules on these matters, they will have no idea how to solve or deal with such cases. According to **SO3**, this is due to a lack of research on PWD-related issues in Malaysian Syariah Court. As a result, legal practitioners are unaware of these problems. Mohd Khalil, Muhammad Shaberi, Mat Rashid, & Mohd Rapini (2022) also said that previous studies have rarely studied problems concerning the marriage of

disabled persons. As a result, this issue contributes to the community's lack of understanding of the issues they confront.

It is undeniable that there is a need to empower Malaysian Syariah Court's present approach on how legal practitioners should conduct such issues in the future. The inability or lack of skills to conduct Civil cases involving PWDs in Malaysian Syariah Court has a variety of consequences for the rights and justice that should be gained by the PWDs parties. The responsible authorities must take this matter seriously in order to make appropriate improvements.

4.3.4 A Low Level of Legal Literacy Among PWDs Community

According to RP **SO1**, RP **SL1** and RP **PWD4**, there are not many people with disabilities who are knowledgeable and skilled in legislative matters especially Shariah legal matters include Court processes and so on. This has indirectly contributed to the PWD community in Malaysia still having a poor degree of legal knowledge. In Malaysia, efforts have been made by each state's Department of Islamic Religion to realize marriage among Muslim society and the development of a strong Islamic family system by organizing pre-marriage and post-marriage courses in accordance with the Integrated Pre-Marriage Course Module, which has been drafted and coordinated by JAKIM (Mohd Rapini, Dimon, Bahari, Sholehuddin & Mohd Khalil, 2022). The aim of such courses is to equip Muslim persons with knowledge and information about marriage procedures and legal rights before, during, and after marriage.

However, the two types of courses are implemented differently, with the pre-marriage course being mandatory for all prospective husband and wife who intend to marry, except for those who have been married, have been 45 years or older for men

and 40 years or older for women, foreign nationals, and the disabled. Whereas, post-marriage courses are more optional and are organized at the request of individual parties. As can be observed, the PWDs community is excused from attending JAKIM's pre-marriage courses under the Department of Islamic Religion in each state. **RP PWD1** stated that only a few PWDs organization, had taken the initiative to organize the program (pre-marriage course) for their members in order to ensure that their members were not left behind. This is also another factor that many people of the disabled community are unaware of that knowledge when it comes to marriage or Islamic legal procedures.

This eventually has an effect on the lives of disabled persons when problems occur in their family relationships. As a result, when it comes to dealing with the Court, they don't know where to begin. **PWD5** also stated that they are unsure of what matters or claims can be brought or how they intend to make them in Syariah Court. **SL1** and **PWD4** both highlighted that a lack of support for the disability community also one of contributing cause. No one can take them to court because the PWD community's issues and needs are not being addressed or concerned by the typical community. Thus, they are hesitant to appear at the Court counter and face the trial or proceedings. Indirectly, the process of getting justice becomes more difficult, especially since the Syariah Court does not publicize the services available to the disabled community.

Additionally, a lack of information and references to PWD-friendly legal sources has left many PWD communities in Malaysia without legal understanding. In terms of reading materials, for example, **PWD2**, **PWD3**, and **PWD4** stated that information on the subject is extremely difficult to find, and the Syariah Court has not provided information about that subjects with more disability-friendly. The majority of

the programs and material offered or publicized also are very general, with no specific emphasis on the needs and procedures that the PWDs community can do. The website is also less PWD-friendly, making it difficult for the PWD community to access information.

The visually impaired, for example, are unable to read the existing or previously prepared printed references. In fact, there is no braille reference source available, and the state's justice department website does not provide a system that the disabled community may use. Only the Malacca State Syariah Justice Department has a website that is generally accessible to the disabled community by uploading videos that can be heard by the Visually Impaired community and viewed by the Hearing-Impaired community because the video is also provided through sign language. However, the information is very limited and is not updated or added on a regular basis

Besides that, the majority of PWD respondents agreed that legal language, particularly terms used in court proceedings, is overly complex. **PWD2** and **PWD5** stated that parties with hearing disabilities, for example, sometimes did not understand what the Court was trying to say. Some legal terms cannot be represented through sign language. The term also sometimes does not exist in sign language, making it difficult for the parties to explain their words or understand the Court's explanation. That is why, during **PWD5** case, she was so dissatisfied with the way the Court handled her case, despite the fact that none of her family members were allowed in to assist her. **SL1** also agreed that as a Syarie Lawyer and skilled sign language interpreter, she cannot deny that several legal terms do not exist in sign language form. PWDs may also struggle to understand legal terms at times or when the sign language interpreter is attempting to convey and explain the information.

Dimon et al. (2022) stated in their study that there are several pairs of groups, hearing impaired parties, who come to Department of Islamic Religion Perak for family counseling face a lack of understanding, which makes it difficult for them to discuss among themselves due to the medium of communication. They also difficult to understand terms such as *talaq*, *ruju'*, and so on. This is also due to a lack of exposure and knowledge about family matters, as well as a lack of understanding of Islamic law among them. They were not disclosed from the beginning, and very few parents or members of the community were aware of it. Thereby, it can be seen that the Syariah Court or related authority should develop a more PWD-friendly medium for conveying information and knowledge about Islamic law. Malaysian Syariah Courts must also publicize its services to the disabled community so that they are aware and do not feel embarrassed to appear in Court.

It is possible to assume that a variety of factors contributed to the low level of legal literacy within Malaysia's PWD community. Among the issues include a lack of PWDs community awareness in legislative affairs, a lack of sources that are more PWDs friendly, a lack of information offered by the Syariah Court, and a lack of concern for PWDs problems or needs. Finally, the PWD community is quite challenging and encounters numerous obstacles with the Court system. PWDs' legal awareness should be raised and addressed by spreading more PWD-friendly legal knowledge and information on legal procedures for Civil cases concerning PWDs in Syariah Court.

1) The Ambiguity of PWD-Related Legal Provisions in Malaysia's Syariah Law

- The absence of related regulations or provisions regarding legal procedures for Civil cases involving PWDs in Malaysian Syariah and;
- a clear definition of PWDs under Malaysian Syariah law.

2) The Absence of Standard Guidelines in Legal Procedures for Civil Cases Involving PWDs in Malaysian Syariah Court

- The Court handles such situations solely on its own initiative.
- Results in varying practices among legal practitioners and the Syariah Court.
- There is no single SOP, initial screening at the initial stage of registration or reference that can be used or referenced to
- Even Malaysian Civil Court has no specific procedure for handling cases involving PWDs, whether civil or criminal.

3) A Scarcity of Legal Practitioners Skilled in Handling PWD-Related Cases

- The Court's acceptance of parties from disabled community is still minimal.
- Lacks certain skills in handling cases involving the PWDs. (i.e.: psychological skills in understanding the disabled community; the needs of PWDs at the counter & Court hall)
- Lack of legal training - no unique modules or guidelines that may be utilized as a guide.
- The absence of specific roles or positions in the Syariah Court and a shortage of percentage in public employment for the PWD category in the legal aspect and department.

4) A Low Level of Legal Literacy Among PWDs Community

- Not many PWDs who are knowledgeable and skilled in legislative matters especially Shariah legal matters include Court processes and so on.
- Lack of information and references to PWD-friendly legal sources. (i.e.: reading material; no specific emphasis on the needs and procedures that the PWDs community can do)

Figure 4.2: Issues and Challenges in The Legal Procedure of Civil Cases Involving

PWDs in Malaysian Syariah Courts

4.3 Conclusion

Gradually, the findings show that there are a number of issues and challenges regarding legal procedures for Civil cases involving PWDs in Malaysian Syariah Court. The problems can be seen in four ways: the ambiguity of PWD-related legal provisions in Malaysian Syariah law, the absence of standard guidelines in legal procedures for Civil cases involving PWDs in Malaysian Syariah Court, a scarcity of legal practitioners skilled in handling PWD-related cases, and a low level of legal literacy among the PWDs community. All of these issues may have an impact on how cases are handled as well as the PWD community's ability to exercise proper rights when dealing with Syariah Court. All of these issues also must be prioritized in order to ensure the smooth handling of PWD cases. Therefore, the Syariah Court should ensure that every stage of the legal procedure for Civil cases involving PWDs, is carried out fairly and equitably and as fully as possible fulfils the rights of the parties comprising the disabled community. The needs of empowerment of current practice in legal procedures for Civil cases involving PWDs in Malaysian Syariah Courts is very significant by providing the written guidelines for example to be followed by the legal practitioners and as legal knowledge to the disabled community in Malaysia.