

**EMPOWERING THE LEGAL PROCEDURES FOR CIVIL
CASES INVOLVING PERSONS WITH DISABILITIES
(PWDS) IN THE MALAYSIAN SYARIAH COURT**

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UNIVERSITI SAINS ISLAM MALAYSIA

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CASES INVOLVING PERSONS WITH DISABILITIES (PWDS)
IN THE MALAYSIAN SYARIAH COURT**

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Thesis submitted in partial fulfilment for the degree of
MASTER OF SYARIAH

UNIVERSITI SAINS ISLAM MALAYSIA

April 2023

AUTHOR DECLARATION

I hereby declare that the work in in this thesis is my own except for quotations and summaries which have been duly acknowledged.

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ACKNOWLEDGEMENTS

Alhamdulillah, in the name of Allah SWT, the Most Compassionate and Merciful, and His Messenger Muhammad SAW, I am finally able to finish this thesis until the final journey. Despite all of the challenges and losses, I am grateful that Allah SAW guides and assists me in completing this happy and sad journey. I cannot undertake and complete it satisfactorily without Allah SWT's blessings.

First and foremost, I would like to thank my respected supervisors, Prof. Dr. Azman Ab Rahman (main supervisor) and Dr. Hasnizam (co-supervisor) Hashim, for their tireless efforts and guidance in assisting me to complete this writing. Thank you so much for your motivations, knowledge, and assistance with information, among other things during completing the research. I am unable to complete the thesis without the assistance of my supervisors. May Allah SWT grant them his blessings and forgiveness in this world and the next.

Second, I want to express my heartfelt gratitude to my family, who have been pillars of strength and support for me throughout this journey. I am truly thankful and appreciate to my mother, Puan Wasirah binti Waris, because without her prayers, I would not have had the strength to complete this journey. I also never expected to lose my beloved father, Encik Nozlan bin Sarip, during this journey. He passed away in the month of Ramadan 1443h (13 April 2022). Despite my sadness, I believe that everything that happens has a purpose. May Allah SWT forgive him and grant him the highest Jannah in the hereafter. The rest of my gratitude goes to my siblings (Syaidatul, Farhana, Najah, and Dina), to whom I have always expressed my joys and sorrows on this journey, and all my friends for their help and encouragement.

Lastly, not to be forgotten are the members of the Faculty of Syariah and Law, as well as Universiti Sains Islam Malaysia, who provided facilities and services throughout this journey. Their lecturers, staff, and facility made all of my thesis writing easier in terms of guidance, sources, technical issues, and so on. Hopefully, this research will have a significant impact on the university and the community.

ABSTRAK

Prosedur perundangan kes Sivil atau Mal yang terdiri daripada prosedur pendaftaran, pengendalian kes dan pengurusan kes Mal di Mahkamah Syariah Malaysia melibatkan Orang Kurang Upaya (OKU) dilihat kurang dibincangkan secara khusus dan jelas di dalam peruntukan mahupun Undang-undang Islam sedia ada. Perkara ini memberi kesan dan cabaran kepada OKU sewaktu mendapatkan keadilan dan hak yang sewajarnya di Mahkamah Syariah Malaysia. Maka, ini jelas menunjukkan bahawa sistem perundangan Syariah di Malaysia perlu diperkasakan serta ditambah baik dalam aspek prosedur perundangan kes Mal melibatkan OKU di Mahkamah Syariah. Justeru, objektif kajian ini adalah untuk mengenal pasti definisi OKU dan kedudukannya menurut Syarak dan sistem perundangan di Malaysia. Kajian juga akan mengkaji amalan semasa termasuk isu dan cabaran Mahkamah Syariah di Malaysia berhubung prosedur perundangan kes Mal melibatkan OKU serta mencadangkan bentuk pemerkasaan yang dapat dilakukan oleh Mahkamah Syariah bagi menambah baik amalan sedia ada. Kajian berbentuk kualitatif ini akan menggunakan metode kajian perpustakaan, temu bual dan pemerhatian bagi mencapai objektif kajian. Data-data yang diperolehi ini kemudiannya akan dianalisis secara analisis deskriptif, induktif dan deduktif untuk menghasilkan kesimpulan. Hasil kajian mendapati bahawa prosedur perundangan kes Mal melibatkan OKU di Mahkamah Syariah perlu diperkasakan disebabkan ketiadaan garis panduan khusus yang dapat dijadikan panduan bagi pengamal undang-undang dan OKU sendiri serta amalan semasa adalah berbeza-beza mengikut inisiatif atau kebijaksanaan pihak Mahkamah dalam mengurus dan mengendalikan kes tersebut. Ini telah menyebabkan beberapa isu dan cabaran telah timbul serta perlukan kepada pemerkasaan. Kajian juga mencadangkan antara pemerkasaan yang boleh dilaksanakan adalah dengan mewujudkan garis panduan khusus berkaitan prosedur perundangan kes Mal melibatkan OKU di Mahkamah Syariah Malaysia, meningkatkan kemahiran sedia ada pengamal undang-undang dalam pengendalian kes Mal dan memberi kesedaran dalam kalangan komuniti OKU tentang ilmu perundangan Syariah dan prosedurnya di Mahkamah Syariah. Diharapkan kajian ini dapat memartabatkan sistem perundangan Syariah di Malaysia dan menjadi rujukan kepada para agensi atau individu tertentu seperti institusi kehakiman dan pentadbiran Islam di Malaysia, para pengkaji, ahli akademik, komuniti OKU dan lain-lain di Malaysia.

ABSTRACT

The legal procedures for Civil cases involving Persons with Disabilities (PWDs) in the Malaysian Syariah Court, which include registration procedures, case handling, and Civil case management, are deemed to be less specifically and clearly stated or discussed in the provisions and current Islamic Law. This matter has an impact and challenges for PWDs seeking justice and appropriate rights in Malaysian Syariah Court. Thus, it was clear that Malaysian Syariah legal system needed to be empowered and improved in registering, managing and handling Civil cases involving PWDs in Malaysian Syariah Court. Therefore, the objective of this research is to identify the definition of PWDs and their position according to Syarak and Malaysian legal system. This research also attempts to examine current practices, including issues and challenges faced by the Malaysian Syariah Court regarding the legal procedures of Civil cases involving PWDs, as well as suggest a form of empowerment that the Syariah Court can implement to improve existing practices. This qualitative research design adopts library research, interview and observation to achieve the objectives of the study. The collected data will then be analyzed using descriptive analysis, inductive and deductive reasoning to produce conclusions. According to the study's findings, the legal procedures for Civil cases involving PWDs in Syariah Courts need to be strengthened or empowered due to the absence of specific guidelines that can be used as a guide or work manual for legal practitioners and PWDs themselves. The current practice also varies depending on the Court's initiative or wisdom in managing and handling the said cases. This has resulted in a number of issues and challenges, as well as the need for empowerment. The study also suggests that among the empowerments that can be implemented are the development of standard guidelines related to the legal procedures of Civil cases involving PWDs in the Malaysian Syariah Court, the improvement of legal practitioners' existing skills in the handling of Civil cases, and to raise awareness among the disabled community about Syariah jurisprudence and its procedures in Syariah Court. It is hoped that this study will elevate the Syariah legal system in Malaysia and serve as a resource for various agencies or individuals in Malaysia, including judicial institutions and Islamic administration, researchers, academics, the disabled community, and others.

الملخص

تعتبر الإجراءات القانونية للمسائل المدنية المتعلقة بالأشخاص ذوي الإعاقة (OKU) في المحكمة الشرعية الماليزية ، والتي تشمل إجراءات التسجيل والتعامل مع القضايا وإدارة القضايا المدنية ، أقل تحديدًا ووضوحًا أو مناقشتها في الأحكام والقانون الإسلامي الحالي. هذه المسألة لها تأثير وتحديات للأشخاص ذوي الإعاقة الذين يسعون للعدالة والحقوق المناسبة في المحكمة الشرعية الماليزية. وبالتالي، كان من الواضح أن النظام القانوني الماليزي بحاجة إلى التمكين والتحسين في إدارة ومعالجة القضايا المدنية المتعلقة بالأشخاص ذوي الإعاقة في المحكمة الشرعية الماليزية. لذلك، فإن الهدف من هذا البحث هو لتحديد تعريف الأشخاص ذوي الإعاقة وموقعهم وفقًا لنظام شرع والقانون الماليزي. يحاول هذا البحث أيضًا فحص الممارسات الحالية، بما في ذلك القضايا والتحديات التي تواجهها المحكمة الشرعية الماليزية فيما يتعلق بالإجراءات القانونية للقضايا المدنية التي تشمل الأشخاص ذوي الإعاقة، بالإضافة إلى اقتراح شكل من أشكال التمكين الذي يمكن للمحكمة الشرعية تنفيذه لتحسين الإجراءات الحالية. ستستخدم هذه الدراسة النوعية أساليب البحث في المكتبة والمقابلة والملاحظة لتحقيق أهداف البحث. سيتم بعد ذلك تحليل البيانات التي تم جمعها باستخدام تحليل المحتوى المنطوق الاستقرائي والاستنباطي للتوصل إلى استنتاجات. وفقًا لنتائج الدراسة ، يجب تعزيز الإجراءات القانونية للقضايا المدنية المتعلقة بالأشخاص ذوي الإعاقة في المحاكم الشرعية بسبب عدم وجود إرشادات محددة يمكن استخدامها كدليل أو دليل عمل للممارسين القانونيين والأشخاص ذوي الإعاقة أنفسهم. تختلف الممارسة الحالية أيضًا اعتمادًا على مبادرة المحكمة أو حكمتها في إدارة القضايا المذكورة ومعالجتها. وقد نتج عن ذلك عدد من القضايا والتحديات ، فضلاً عن الحاجة إلى التمكين. تقترح الدراسة أيضًا أنه من بين التمكينات التي يمكن تنفيذها إنشاء إرشادات تتعلق بالإجراءات القانونية للقضايا المدنية التي تشمل الأشخاص ذوي الإعاقة في المحكمة الشرعية الماليزية، تحسين مهارات الممارسين القانونيين الحالية في التعامل مع القضايا المدنية، وتوعية مجتمع المعاقين بالفقه الشرعي وإجراءاته في المحكمة الشرعية. ومن المؤمل أن هذه الدراسة سوف ترفع من مستوى النظام القانوني للشرعية في ماليزيا وتكون بمثابة مصدر للعديد من الوكالات أو الأفراد في ماليزيا، بما في ذلك المؤسسات القضائية والإدارة الإسلامية والباحثين والأكاديميين ومجتمع المعاقين وغيرهم.

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LIST OF TRANSLITERATIONS

a, a‘	ا/ء
b	ب
t	ت
th	ث
j	ج
h	ح
kh	خ
d	د
dh	ذ
r	ر
z	ز
s	س
sh	ش
s	ص
d	ض
t	ط
z	ظ
‘	ع
gh	غ
f	ف
q	ق
k	ك
l	ل
m	م
n	ن
w	و
h	ه
y	ي

LIST OF ABBREVIATIONS

CLJ	Current Law Journal
H	hijriyyah
et al.	and others
i.e.	that is
ICF	International Classification of Functioning, Disability and Health
ICIDH	International Classification of Impairments, Disabilities, and Handicaps
JKM	Jabatan Kebajikan Masyarakat
JKSM	Jabatan Kehakiman Syariah Malaysia
KPWKM	Kementerian Pembangunan dan ..
M	mīlādiyyah
MAIN	Majlis Agama Islam Negeri
MLJ	Malayan Law Journal
n.a.	no author
n.d.	no date/no year
n.pb.	no publisher
n.pl.	no place
OKU	Orang Kurang Upaya
p.	page
pp.	pages
PWDs	Persons with Disabilities
SAW	sallallahu alayhi wa sallam
SWT	subhanahu wa ta'ala
ShLR	Shariah Law Reports
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
Vol.	Volume
WHO	World Health Organization