

CHAPTER 1

INTRODUCTION

1.1 Introduction

In this contemporary age, Persons with Disabilities (PWDs) research is rarely discussed by current researchers, especially when it comes to Shariah law legislation. Furthermore, based on preliminary study, the current Malaysian Shariah legal system does not provide a clear procedure for Civil or Mal cases involving PWDs. Existing Shariah law in Malaysia do not clearly highlight the provisions relating to PWDs, and there are no standard guidelines that legal practitioners can use in handling the legal procedure for Civil cases, specifically in registering, handling, and managing cases involving PWDs in Syariah Court. Both people with and without impairments follow the same procedure without considering their individual needs. Therefore, this study will 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 propose certain empowerments that the Syariah Court can implement to improve existing practices. As a start, this chapter will explain topics or themes such as the study's background, problem statement, research objective, literature review, and others to provide an initial overview of the study.

1.2 Background of Study

Islam is a perfect religion that addresses every aspect of human life, including ‘*ibadat*, *mu‘amalat*, *jinayat*, and *munakahat*. This is part of Shariah’s legal and judicial aspects too. The current practice of Islamic law in Malaysia differs according to the provisions of the Enactment, Act or Ordinance in each state, and the jurisdiction is only over that state. Marriage, divorce, inheritance division, zakat and other Shariah legal and judicial powers pertaining to Muslims are subject to List 2, Ninth Schedule of the Federal Constitution (Che Pa, Hisyam Nor Muhammad & Mustar, 2016). In regard to the cases relating to Civil (*Mal*) cases in Syariah Court, in general, it has jurisdiction that applies only to Muslims and is not subject to non-Muslims, in accordance with the provisions of each state.

Next, it is undeniable that the current Civil procedure in Malaysia’s Syariah Courts has outlined a clear procedure for handling and managing cases involving Muslims for example as stated under the Syariah Court Civil Procedure (Federal Territories) Act 1998 [Act 585], Syariah Court Civil Procedure (State of Selangor) Enactment 2003 [Enactment 4] and others. However, procedures for handling and legalizing Civil cases involving Persons with Disabilities (PWDs) (Malay: *Orang Kurang Upaya* (OKU)) in the Syariah Court, such as registration, case handling, and management of Civil cases, are yet to be ascertained or not given specific and clear emphasis in existing provisions such as in the Syariah Courts Civil Procedure, Administration of Islamic Law and Islamic Family Law in Malaysia.

Shamrahayu A. Aziz (2011) views that, in terms of trial procedure involving PWDs in the Syariah Court, it should be expanded on its discussion so that it always complies with the principles of Syariah and justice, as well as the current reality of

Muslims in this country. In reality, there are still gaps in the Syariah Court's Civil case procedure that need to be studied by researchers now so that improvements can be made. As a result, understanding the general concept and position of PWDs from Syarak and Shariah legal perspectives is essential. This effort will make it clear to everyone whether there is a specific provision provided by Malaysian Shariah legal system pertaining to PWDs in Malaysia and the existing practice of Syariah Court in legal procedures for Civil cases concerning PWDs, particularly in registering, handling and managing such cases.

Moreover, it is necessary to investigate the current practice of Syariah Courts in dealing with Civil cases involving PWDs in order to determine whether the Court provides a specific procedure or guideline to manage such cases as well as suitable services to PWDs' clients. PWDs have special disabilities that necessitate specialized services, particularly those with visual, hearing, or speech impairments. This was done to ensure that their rights were protected and that due justice was given. Laldin (2006) also stated that Justice is a key element of Sharia law. Justice or '*Adl*' can be defined as placing things in a correct or adequate position with the primary goal of creating a balance between rights and obligations in order to avoid harm or injustice. The term '*adl*' is also one of the manifestations of *maslahah*, which is highly synonymous with the term *maqasid al-shari'ah* (Laldin, 2011; Mohd Rapini & Md. Noor, 2017).

Thus, the important principles of justice include fulfilling the Shariah's objectives (*maqasid al-shari'ah*), namely realizing the benefits (*Maslahah*) and avoiding the harms and difficulties (*Mafsadah* and *Mashaqqah*) are the central topics or pillars of Islamic law, particularly when it comes to the interests or rights of others. The principles of justice also can be characterised as a principle that promotes balance

through the fulfilment of rights and obligations, as well as the justification of laws on PWDs and elimination of difference in all aspects of life.

Furthermore, an analysis of the current practice of the Syariah Court in dealing with Civil matters involving PWDs will aid in identifying the issues and obstacles that arise in dealing with such cases. The views of legal practitioners and the PWD community both directly and indirectly contribute in the discovery of issues. Knowing the issues and challenges that arise also will bring comprehensive suggestions and empowerment to the current issue in hand. Deris & Ali Tajuddin (2015) said that Malaysian laws must be constantly improved by revisions to current acts or enactments, as well as clarifications and interpretations of specific provisions. To assist law enforcers in carrying out their respective duties, Practice Directions, guidelines, codes of ethics, and so on are developed to clarify existing rules or provisions. Therefore, the empowerment that will be carried out should satisfy and address the current needs of PWDs while also serving as a reference for legal practitioners to manage the case well in the future.

Besides that, the government through Department of Islamic Development Malaysia (JAKIM), in collaboration with the Islamic Religious Departments of the states, has also developed The Islamic Social Action Plan 2019-2025 (*Pelan Tindakan Sosial Islam* (PTSI) 2019-2025) which was agreed upon at the 66th Meeting of the Malaysian National Council for Islamic Religious Affairs (MKI) on June 13, 2019 (Malaysia Dateline, 2019). Thrust 4 of PTSI 2019-2025 describes the empowerment of Shariah-related laws in Malaysia through the improvement of existing legislation, such as Islamic family law and Islamic criminal law.

The government has drafted a Shariah Law Empowerment Plan for a 5-year period from 2020 to 2025 in order to strengthen Shariah law, particularly in the Federal Territories. YB Ustaz Datuk Ahmad Marzuk Shaary (2021) also stated that the government has proposed in this Empowerment Plan to enact 11 major Shariah laws, including new laws and amendments to existing laws, as well as 8 subsidiary Shariah laws. Thus, the government should broaden the scope of Shariah law enforcement by paying special attention to the people among PWDs, such as by providing special guidelines for the procedure of Civil cases involving the PWDs in the Malaysian Syariah Court.

Lastly, the Government through Persons with Disabilities Policy 2007 and Malaysian Plan of Action for People with Disabilities 2016-2022 (PWDs Action Plan 2016-2022) also sets targets for efforts to increase access or rights that should be given to the PWDs, including in advocacy and legislation. Persons with Disabilities Policy 2007 recognizes the disabled as community members and acknowledges the importance of a rights-based approach, as well as ensuring the disabled's interests and well-being. Meanwhile, the PWDs Action Plan 2016-2022 was developed in accordance with the country's international commitment, which was made in 2012 with the adoption of the Incheon Strategy to Make the Real Right for Persons with Disabilities in Asia and the Pacific (ESCAP), which aims to guarantee, fulfill and improve the quality of life and rights of the disabled.

Therefore, increasing research on PWDs also helps communities and certain authorities to understand these minorities and their needs better. This aligns with Strategic Thrust 8 (PWDs Action Plan 2016-2022), for example, which is "Research and Development," to increase the number of PWD-related studies in all research areas.

The researcher used this policy as a springboard and initiative to conduct research related to PWDs and the Syariah Court.

1.3 Problem Statement

According to United Nations (UN) statistics, Persons with Disabilities (PWDs) contribute for 10% of the global population. According to the World Report on Disability (2011) published by the World Health Organization (WHO), 15% of a country's total population is comprised of PWDs (Bathmavathi, 2013). This means that if Malaysia has population of around 30 million people, the number of PWDs is estimated to be 4.5 million. The WHO has set 15% of PWDs being registered in a country.

Meanwhile, according to the statistics released by the Department of Social Welfare Malaysia (JKM), as of October 2020, only 581 265 Persons with Disabilities have registered with JKM (Kementerian Pembangunan Wanita, 2021). That statistic is still far short of the WHO's target. In fact, based on the data provided by the Ministry of Women, Family and Community Development (KPWKM), as of December 2018, there are a total of 9,965 Malays among PWDs who have registered with the JKM, where 7,146 of them are men and 2,819 are women (Kementerian Pembangunan Wanita, 2018). Even if PWDs have disabilities, they have the right to marry if the marital conditions (*Syurut*) are sufficient according to Syarak. As a result, if certain issues emerge between PWDs Muslims in their marriage, they will not be exempt from receiving any services from Malaysian government bodies or institutions, including the Syariah Court, to resolve the conflicts.

As one of Malaysia's judicial institutions, the Syariah Court handles numerous Civil or *Mal* cases involving Muslims. According to the official website of the Department of Syariah Judiciary Malaysia (JKSM), the Civil case procedure in the Syariah Court is divided into three stages: registration of Civil cases, handling of Civil cases and management of Civil cases (Jabatan Kehakiman Syariah (JKSM), 2011). However, issues concerning Civil cases involving PWDs in the Syariah Court continue to receive less attention and this matter should be discussed among scholars now in order to find the best solution to the problems that arise. Through the preliminary study conducted by the researcher, the findings indicated that yet until now, there is no specific or clear legal procedure to deal with Civil cases involving PWDs, such as the procedure for registration, handling cases and managing Civil cases in the Syariah Court (Ruzita Ramli, 2021). As a judicial institution that emphasises efficiency and justice in Malaysia's Syariah judicial administration system, this issue should be highlighted, even if the PWDs are a minority community in Malaysia.

The findings from an interview with one of the officers of the Deputy Registrar, High Courts of Shah Alam also further revealed that the Malaysian Civil Court has no appropriate procedure for dealing with Civil disputes involving PWDs. The Rules of Court 2012 (ROC 2012), which aims to simplify and standardize Civil procedures in the Court as well as improve the delivery quality of Malaysia's justice system (Ibrahim, 2012), also does not specify a specific procedure or action that the Court should take when receiving PWDs cases.

Furthermore, even though the researcher observed the Act, Enactments, Ordinances and Practice Directions (*Arahan Amalan*) issued by JKSM, there are no special procedures or guidelines for Civil cases involving PWDs in the Syariah Court.

Muhammad Ariffin et al. (2021) also mentioned that the current Federal Acts and State Enactments on Syariah Criminal Procedure also do not provide specific information about trial procedures for PWDs. Other details about the meaning of a person of unsound mind and other types of disabilities, the presence of the PWDs in the Syariah Court, the management of interpreters, facilities, and also facilities to assist the PWDs in going through trials are still unknown.

The "Persons under Disabilities" provision in Section 24 of the Syariah Court Civil Procedure (Federal Territories) Act 1998 (Act 585), for example, does not detail a clear definition or procedure on PWDs. Even Section 3 of the same Act interpret that, "Person under Disability" only includes an infant, a person of unsound mind and a person prohibited from administering his property. Thus, there is a need to provide a clear definition of PWDs under Syariah legal system and to strengthen existing laws, such as the provisions under Syariah Court Civil Procedure and Practice Directions (*Arahan Amalan*) by outlining special procedures or guidelines involving the registration, handling and management of Civil cases involving the PWDs in the Syariah Courts of Malaysia.

Apart from that, an interview through preliminary study conducted with Puan Anira, a Hearing and Speech Disabilities, revealed that she had attended Civil cases in the Seremban Syariah Subordinate Court as a Defendant for the case of Registration of Divorce Outside the Court with her husband (Case No.: 05005-054-0190-2020). Respondent stated that there were issues with the way the Court handled her case. In addition to the respondent's inability to hear normally and clearly, the respondent lacked understanding of the language delivered by the Court. Moreover, there was also no sign language or language interpreter provided during the course of the case to help the

respondents understand the meaning conveyed by the Judge (Siti Nor Anira, 2021). Thus, this constraint is one of the difficulties respondents face. As can be seen, the issue of the procedure of handling legal procedure for Civil cases involving the PWDs should also be addressed, particularly in both legal practitioners and PWDs perspectives.

In facts, Malaysian laws, both Civil and Shariah, do not specify the legal procedures for Civil cases involving PWDs, except for people with intellectual disabilities or a person of unsound mind (Abdul Aziz Husin, 2018; Naziah Mohd Alias, 2015). It can be seen through cases for example, *Muhd Haslam bin Abdullah v Public Prosecutor* [2020] 5 MLJ 91, *Pendakwa Raya lwn Muhammad Faizal Bin Ahmad Sahri* [2018] 1 LNS 1845 and *Shahmirul Salleh v Public Prosecutor* [2011] MLRH 128. The handling of Shariah Civil cases for the PWDs should be governed by the Shariah law Civil procedures of the states in Malaysia.

This detailed procedure is essential to achieve the goal or objective of proper justice. The registration system for Civil cases at the Syaria Court for example, should also be strengthened by synchronizing or classifying the cases according to physical characteristics such as impairments or disabilities. Thus, by categorizing registered Civil cases, the existing system of Civil case management and registration can be improved. Case files involving PWDs, for example, can be specially recorded and easily accessible for future reference.

Other than that, there are numerous factors that contribute to the challenges that PWDs face in court. Schwartz & Elder (2018) stated that the difficulties encountered by the PWDs in court can be classified according to theme, which are resemblances in the type of obstacle. Physical obstacles, organizational barriers, procedural barriers, attitude barriers, and awareness are among them. Whereas, Olsen & Kermit (2015)

stated that the relationship between cultural and social barriers in the context of a court trial for the PWDs is related to communication, legal understanding and procedures, adjusting the legal language, definitions and interpretations of the law's provisions. All of these issues should be prioritized in order to ensure the smooth handling of cases involving the PWDs in court. Thus, these things require effort and action, much like the establishment of special procedures to handle cases involving the PWDs in court, if they are to effect change for the better.

In conclusion, disabled people's issues in Court procedures are seen to be less emphasized in the community. The current practices on the legal procedures for Civil cases involving PWDs were not highlighted clearly in terms on how the Syariah Court handled such cases. If this Civil case procedure is reviewed, there will be far too many issues to discuss, especially when these vulnerable groups are involved. PWDs also often have low self-esteem and are reluctant to go to court when they have a problem in their marriage. This is due to the fact that the PWDs are a minority group in Malaysia, and only few people understand their needs while dealing at the counter.

However, PWDs and their related matters in Syariah Court was important issues to investigate because it can give and provide more rights on PWDs and contribute to the academic literature, particularly in relation to Shariah legal system in Malaysia. It was also important to ensure that the Malaysian PWD community had sufficient rights and achieved the goals stated by the government under the Disabled Person Policy 2007, which are: 1) To recognize and accept the principle that people with disabilities have the same rights and opportunities for full participation in society as everyone else. 2) To ensure that people with disabilities have equal rights, opportunities, and access under

the law of the country. 3) To eliminate disability-based discrimination; and 4) To educate and raise public awareness about the rights of disabled people.

Therefore, it is clear that the study or scrutiny of the empowering the legal procedures of Civil cases involving the PWDs in the Syariah Courts of Malaysia should be discussed to resolve issues and challenges that arise and as a reference in the future. Legal procedures for Civil cases involving PWDs in Malaysian Syariah Courts should be strengthened in order to have a clear approach to dealing with such cases in the future. This empowerment aims to strengthen Syariah legislation in Malaysia as a foundation and an institution that upholds the country's judicial and legal system.

1.4 Research Questions

Several research questions are listed below to draw the objectives of the research. The questions are as below: -

- i. What is the definition of PWDs and their position according to Syarak and Malaysian Legal System?
- ii. How is the current practice in Syariah Courts regarding legal procedures for Civil cases involving PWDs in Malaysia?
- iii. What are the issues and challenges that arise in the legal procedures of Civil cases involving PWDs in the Syariah Court of Malaysia?
- iv. How to empower the legal procedures of Civil cases involving PWDs in the Syariah Court of Malaysia?

1.5 Research Objectives

To achieve the research finding, articulating the study's objectives is essential to drive the research to go smooth and attain a reasonable outcome. Below are the objectives of the study given: -

- i. To identify the definition of PWDs and their position according to Syarak and Malaysian legal system.
- ii. To analyse the current practice in Syariah Courts regarding legal procedures for Civil cases involving PWDs in Malaysia.
- iii. To investigate the issues and challenges that arise in the legal procedures of Civil cases involving PWDs in the Syariah Court of Malaysia.
- iv. To propose the comprehensive suggestions for empowering the legal procedures of Civil cases involving PWDs in the Syariah Court of Malaysia.

1.6 Research Methodology

Research methodology is a process of how the research is conducted. The researcher used a proper method to achieve all of the research objectives. Overall, this research employs a qualitative research design, which collects and analyses data.

1.6.1 Research Design

According to Creswell & Creswell (2018), research design is a type of inquiry within qualitative, quantitative and mixed methods approach that provides specific direction for procedures in a research study. This research used a qualitative research design to obtain the research findings. In qualitative research design, the researcher

adopted qualitative research as the qualitative inquiry process to understand a social or human problem from multiple perspectives (Denzin & Lincoln, 2005). It also develops concepts, insights and understandings from patterns in the data (Eboh, 1997). Moreover, qualitative methods also allow researchers to investigate the perspectives of homogeneous and diverse groups of people aid in unravelling these disparities within a community (Choy, 2014). Thus, this qualitative research design helps the researcher collect and analyse the data on the study conducted.

In general, among the purpose of this research is to investigate the issues and challenges that arise in the legal procedures of Civil cases involving PWDs in Malaysian Syariah Court and to make empowerment suggestions to improve current practices through the analysis of data obtained from interviews and observation. The researcher discovered several issues and challenges through the data gathered from interviews with several selected vital respondents or informants such as legal practitioners i.e. judges, Syariah officers and lawyers, and several PWDs community members who have directly and indirectly dealt with Civil cases at Syariah Court. The observation was also applied by looking at a simulation of Syariah Court's present practice in handling Civil matters related to PWDs cases. As a result, employing the qualitative method is an excellent strategy to thoroughly elaborate the discussion.

Table 1.1: An Overview of Research Methodology

	OBJECTIVE 1	OBJECTIVE 2	OBJECTIVE 3	OBJECTIVE 4
RESEARCH METHODOLOGY	Qualitative Research Design			
DATA SOURCES	Primary and secondary sources			
DATA COLLECTION	Library Research (Collection of the data from the al- Qur'an, hadith, books, articles, journals, legal provisions, case laws)	Interview Observation (Collection of the data through semi- structured interview and participant observer)	Interview (Collected from the opinions of legal practitioners and the PWDs community)	Library Research Observation Interview (Collection data based on phase 1,2 and 3)
DATA ANALYSIS APPROACHES AND RESULTS	Approach: Descriptive content analysis, Inductive Results: Discussion of the definition of PWDs and their position under Syarak and the Malaysian legal system.	Approach: Descriptive, Inductive and deductive Results: Examination on the current practice in Malaysian Syariah Courts regarding legal procedures for Civil cases involving PWDs.	Approach: Descriptive, Inductive and deductive Results: Explanations on issues and challenges that arise in the legal procedures of Civil cases involving PWDs in the Malaysian Syariah Court.	Approach: Descriptive, Deductive Results: Elaboration on the suggestions for empowerment in legal procedures of Civil cases involving PWDs in Malaysian Syariah Court.

Source: Adapted from Baharuddin (2017)

1.6.2 Data Collection Method and Its Sources

Data collection methods are significant because the methodology and analytical approach used by the researcher influence how the data used and what explanations it can generate (Paradis et al., 2016). The data were also collected from various sources to gain important information and fulfil the research finding. In this research, there are three data collection methods: library research, interview and observation.

1.6.2.1 Library Research

Library research involves the step-by-step process used to gather information. It is commonly necessary to back up, revise and add additional material (Given, 2012), and the method is almost the same as the documentation method. Bowen (2009) stated that it is among the appropriate method and the most viable sources in library research when the researcher wanted to examine and analyse certain phenomena through textual documents. This technique was used to collect as much information about the issue as possible from primary and secondary sources. According to Bowen (2009), the textual document, or what he calls as document analysis, can either be primary or secondary depending on its nature and sources.

Primary sources are al-Quran, al-Hadith, Fatwas of authority, Statutes, Act, Enactment or Ordinance such as Islamic Family Law, Syariah Civil Procedure of Syariah Court, Persons with Disabilities Act 2008 (Act 685), and *Arahan Amalan*, where it comes from the original sources. Meanwhile, secondary sources describe, discuss, and analyse the primary sources. It comes from books, articles, journals, newspapers, magazines and other related scientific studies.

To obtain the material, the researcher visited several libraries to access the data physically and online due to the pandemic COVID-19 phase. Among the libraries explored by researchers to search the data and factual references are:

- i. Library of Universiti Sains Islam Malaysia (USIM)
- ii. Tun Sri Lanang of National University of Malaysia (UKM)
- iii. Central Library of University of Malaya (UM)
- iv. Dar al-Hikmah Library of International Islamic University Malaysia (IIUM)

1.6.2.2 Interview

An interview is a face-to-face conversation between two individuals with the sole purpose of collecting relevant information to satisfy a research purpose (Quentin, 2020). It is also one of the methods of data collection done by questioning either directly (face to face) or indirectly (via email or telephone) with the respondent. The interview is imperative because it provides information through the view of interviewees. In this study, not all information can be obtained through library research. Therefore, the researcher needs to conduct an interview to answer the research objectives for example in examining the current practices of Syariah Court in dealing with legal procedures of Civil cases involving PWDs.

This interview was conducted using semi-structured interviews, in which the questions to be presented to the respondents are pre-planned or arranged and determined, but the respondents are given flexibility in providing answers, which can be developed at the discretion of the interviewer and the respondent (Othman Lebar, 2017). Because of the pandemic COVID-19, the interview will be performed by written

interview, physical interview, or online interview. For example, in some conditions, where the interview cannot be conducted through face-to-face interview, the interview will be conducted through an online platform such as Zoom Application, Google Meet and other reasonable online platform or the respondents must pass back the list of structured questions created by the researcher.

The interview was conducted with 17 respondents chosen through purposive sampling from among legal practitioners such as Syariah Court Judges, Syariah officers, and Lawyers, as well as respondents from PWDs category. All of these respondents have direct or indirect experience with legal procedures for Civil cases involving people with disabilities, and it is critical to obtain their insightful opinion and information. The researcher collected the data until all of the information needed to complete the research objectives have been gathered and successfully achieved.

Overall, the list of respondents participated in this interview phase was shown in Table 1.1 and Table 1.2 below. They were assigned a special code that will be used to address their points of view during the subsequent discussion. The interviews are divided into two categories: those who are experts and legal practitioners, and those who are members of the PWD community.

Table 1.2: 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.	SO1	Y.Bhg. Tuan Abu Suffian Bin Abu Yaziz	Director of Registration, Secretariat, and Records Division of JKSM
7.	SO2	Puan Norazita Mohd Ali	Chief Sulh of the Melaka State Syariah Court
8.	SO3	Y.Bhg. Tuan Mamat Haizan Salleh	Director of Policy and Research Division of JKSM
9.	SO4	Y.Bhg. Tuan Hafiz Moksin	Jabatan Bantuan Guaman Satate of Selangor
10.	CL1	Anonymous	Deputy Registrar, High Courts of Shah Alam
11.	SL1	Y.Bhg. Puan Noor Afiqah Che Mustapa	Syarie Lawyer and Sign Language Interpreter
12.	SL2	Y.Bhg. Tuan Abdul Muim	Syarie Lawyer at Nur, Muim Farhana and Associates, Nilai, Negeri Sembilan

Table 1.3: 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 Jayawirawan 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

The information gathered during the interviews will be analyzed using the following approach:

- i. The recorded interview data will be transferred into the interview report, which is typed or written with a summary of the findings to ease in the analysis process.
- ii. The data were then manually evaluated, which included data categorization and data coding according to specific themes and sub-themes developed by the researcher.
- iii. Finally, a complete analysis along with the findings of the study will be presented in a descriptive analysis.

1.6.2.3 Observation

Simultaneously, the researchers used the observation method to observe the current practice of legal procedures for Civil cases involving PWDs. This observation method is an alternative to collecting information and managing the process. Observation method is also important to understand a situation or condition, obtain direct data and see physical evidence or findings that can be measured or observed by

sight. This method of observation is intended to obtain data about a problem until an understanding is obtained or as a means of proof of previously obtained information and evidence.

In this study, observations will be made on how the courts handle cases involving people with disabilities. This method is carried out by the researcher's participation as a participant observer in one of JKSM's programs, named MUHAKAT (Sulh Simulation) or Online Sulh Settle Series 2, in collaboration with the Melaka State Syariah Court and *Persatuan Orang Pekak Negeri Melaka*. This simulation of the Sulh case is based on the experience of Puan Norazita Mohd Ali, Chief Sulh of the Melaka State Syariah Court in handling the Sulh session with the people with hearing disabilities. The goal of this program is to cover various topics and is a reality-based program aimed at delivering lessons and knowledge to the community. The following are the program's details:

- Date: 23 August 2021 (Monday)
- Time: 2:30 pm - 4:30 pm
- Title: Namunku Punya Hati
- Panel: Puan Norazita binti Mohd Ali (Chief Sulh of Melaka State Syariah Court)
- Moderator: Tuan Abu Suffian bin Abu Yaziz (Director of Registration, Secretariat, and Records Division of JKSM)

Throughout the program, a sign language interpreter named Puan Noor Afiqah Che Mustapa, also known as a Syarie Lawyer, is provided. The program briefly discussed the panel's experiences in dealing with Sulh cases involving Persons with Hearing Disabilities by outlining the issues and challenges encountered while dealing

with such cases, as well as a simulation of a Sulh session on a Child Support case involving Persons with Hearing Disabilities (Plaintiff named Encik Hakim and Defendant named, Puan Fatimah) - pseudonym.

Throughout the Sulh simulation session, the researcher also documented the relevant information and observed how the current Syariah Court practice in handling Sulh cases involving PWDs, as Sulh cases are one of the methods adopted in Syariah courts to resolve Civil cases conflicts. All of the data collected during the observation phase was manually examined using descriptive analysis. Observations will also be made systematically and continuously throughout the study, whether it is conducted directly or indirectly.

1.6.3 Data Analysis

Data gathered through library research methods, interviews, and observations will be analyzed after being thoroughly examined. Determining the proper instrument of analysis would provide the researcher with valuable outcomes in achieving the research objectives and answering the research questions. In this research, the descriptive method will be used to analyze all of the facts (assessing quality and validity). This method's application can be classified into two categories:

1.6.3.1 Inductive Approach

The primary goal of inductive analysis is to dig deeply into the data, understand the themes existing in the data, and provide conclusions to answer the researcher's research questions. The researcher gathered general data in order to achieve a specific

conclusion. In other words, this strategy according to Mohamed Yusof and Romli (2019) is used to summarize general data and draw specific conclusions. The researcher employed this technique in this study to answer the first objective of the study, which was to gain an understanding of the definitions of PWDs according to Syarak and the Malaysian legal system, as well as its position. It has also been used to examine the existing PWD provisions in Malaysia's Civil Court and Syariah Court.

The data was gathered from existing literature, articles, journals, acts, enactments, and any other relevant sources that could answer the research question. Concurrently, the researchers employed an inductive approach to support the data obtained from observations and interviews, which will be discussed in chapters 3 and 4. In general, this strategy will be utilized to address the first, second, and third research objectives of the study.

1.6.3.2 Deductive Approach

Deductive practices can also help researchers to apply theory or conceptual frameworks. Different from inductive, the deductive approach summarizes specific data and draw general conclusions (Mohamed Yusof & Romli, 2019). The researcher in this study employed the deductive strategy to answer the study's second, third, and fourth research objectives. This approach usually occurs after the researcher conducts some inductive analysis of the data acquired in order to discover the theme. This will aid in keeping the study's objectives in mind. Deductive approach helps the researcher to examine on how Malaysian Syariah courts deal with Civil matters involving people with disabilities through the observation's method.

It also assists the researcher in describing the issues that exist based on the interview data, and the researcher will eventually recommend an empowerment. The suggestion will be based on the data from the study's first, second, and third research objectives in general. It consists of empowerment in resolving the issue and having a better legal procedure for Civil cases involving PWDs in Malaysian Syariah Courts.

1.7 Literature Review

Disability is a human rights issue because Persons with Disabilities face inequalities, such as being denied equal access to health care, employment, education, or political participation as a result of their disability. Increasing the number of studies in the field of PWDs can give society and related bodies a huge exposure and impact on the importance of preserving their human rights and welfare. Thus, the study is carried out by reviewing some readings from various sources such as articles, journals and other related sources to find any recent study related to the challenges of Syariah Court institutions in handling cases involving PWDs in or outside of Malaysia and other related matters such as procedural and empowerments.

In al-Qur'an, Surah Al-Hujurat [49:13] mentioned that: -

﴿يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۚ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ ۚ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ﴾

Translation: "O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you

in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted"

(A-Qur'an. Al-Hujurat 49:13)

According to Tafsir Ibn Kathir: (abridged) (2003), the verse indicated that Islam makes no distinctions between human positions based on gender, nationality, tribes, or skin colour. Every human being is the same as the next. The only difference between them is their religion, which is based on their obedience to Allah the Exalted and their devotion to His Messenger. The benefits or advantages from one individual to another can only be seen on the value of the most noble and righteous among them. It is not for humans to determine a person's strengths and weaknesses. Discrimination also will not be tolerated in any action under Islamic law. Instead, all Muslims, including leaders and judges, must uphold justice when any law or judgement is issued, as stated in Surah An-Nisa [4:58]:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۚ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۚ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا﴾

Translation: "Indeed, Allah command you to render trusts to whom they are due and when you judged between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing."

(A-Qur'an. An-Nisa 4:58)

First and foremost, numerous studies have defined the definition of Persons with Disabilities from various perspectives and fields. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) recognises that "disability is an

evolving concept". The term "Persons with Disabilities" refers to all persons with disabilities, including those who have long-term physical, mental, intellectual, or sensory impairments that, when combined with various behavioural and environmental barriers, prevent them from participating fully and effectively in society on an equal basis with others (UNCPRD, 2006). Persons with Disabilities are defined by the Persons with Disabilities Act (2008) as those who have long-term physical, mental, intellectual, or sensory impairments that, when combined with other barriers, prevent them from fully and effectively participating in society (Relate Malaysia, 2017).

Meanwhile, Persons with Disabilities, according to Rosmawati (2008), are those who struggle with limitations in mobilisation (movement), whether physical (body), mental (light, medium, or heavy), sight, or hearing. PWDs are defined by Wan Sabri et al. (2013) as a person with different neurological, sensory, communication, behaviour and emotional and physical characteristic differences. Thus, it is clear that the term "Persons with Disabilities" in a broader sense refers to people who have disabilities that impair their ability to perform a job, thereby affecting their social interactions. Even though Persons with Disabilities have disabilities, they deserve a good life, and their welfare should be protected, particularly in legal and Syariah aspects.

The study in the Islamic perspective found that the existence of this entity within society becomes a signal for the communities to play their role towards the survival of this unique group or entity based on three main elements, which are *al-Ta'aruf*, *al-Ta'mul*, and *al-Ta'awun*. The aspect of *al-Ta'aruf* refers to knowing each other in understanding and accepting their differences and disorders. The element of *al-Ta'amul* means be friendly and communicate with them by respecting their lifestyle and way of life. Then, the aspect of *al-Ta'awun* completes the signals or symbolic of their

existence, which is to help them fulfil their needs and create opportunities and equality in all aspects of life (Azman Ab. Rahman et al., 2014).

Passed studies have also discussed some *munakahat* issues involving PWDs. Based on the opinion of the jurists related to the issues such as Wali from people with visually disabilities, witnesses among the PWDs, and so on, it is discussed and transformed through the opinions and arguments of the jurists in resolving the issue that we can find in the books of *fiqh*. On the issue of Wali among people with visual disabilities, for example, there are two schools of thought that allow and do not allow people with visual disabilities to be Wali. Despite differences of opinions on the issue, people with visual disabilities are allowed to be a Wali based on the grounds presented. It is according to the majority of scholars of the Hanafi, Maliki, Syafi'i and Hanbali schools (Ibn 'Abidin, 2000; Ibn Rusd; 1983; al-Haithami, 1938; al-Ansari, 1418H; al-Nawawi, 1997; Ibn Qudamah, 1405H). Thus, it can be seen that such issues have been widely discussed. It is not, however, described or transformed into a procedural form, especially when it comes to contemporary issues between the PWDs and the Syariah Court.

A lot of researchers nowadays also focused solely on issues concerning PWDs from the perspective of *Fiqh*. Azman Ab Rahman (2021), for example, made a significant contribution to the book "*Ensiklopedia Fiqh Orang Kelainan Upaya (OKU)*." The author discusses the issue of '*Ibadat, Munakahat, Muamalat and Jinayat* related to PWDs in the context of *Fiqh* and its legal debates. Besides, Azman Ab Rahman et al. (2014) also discuss the book titled "*Fiqh Jenayah Orang Kelainan Upaya (OKU)*" as it relates to Islam. In the context of the execution method of the punishment

against the disabled, the author touches on the crimes of the disabled that involve hudud punishment in crimes such as apostasy, theft, drinking alcohol, and so on.

In the book "*Fiqh Munakahat Orang Kelainan Upaya (OKU)*", the author describes marriage and divorce in the context of PWDs. Among the issues that have arisen are those concerning the marriage contract, divorce, *zihar*, *li'an*, and *ila'* (Azman Ab Rahman et al., 2016). Thus, from those studies, it can be observed that the discussion on the issues relating to PWDs only coming from *Fiqh* perspectives. On the other hand, the writing on issues concerning the PWDs and the Syariah Court related to its procedure and empowerment is less debated.

Furthermore, many passed studies on the issues and challenges of Syariah Court in Malaysia only focused on areas such as the position of Syariah Court under the Malaysian legal system, conflict of jurisdiction between Civil and Syariah Courts in Malaysia, the jurisdiction of Syariah Court in Malaysia, unstandardized enactment and practices of Syarie lawyers, and so on. For example, consider Lawyer Syarie's unstandardized practices in all Malaysian states, as Abdul Monir Yaacob (2015) wrote in his book titled "*Kehakiman Islam dan Mahkamah Syariah*." The researcher found that the author proposed a single law and authorized body be formed to administer Syarie Lawyer in Malaysia in order to standardize its practices across fourteen states.

It is also supported by Musa Awang's findings in his article titled "*Peguan Syarie Di Malaysia: Realiti Semasa dan Prospek Ke Arah Penggubalan Akta Profesion Guaman Syarie*" (Musa Awang, 2017). The author examined the differences in the statutes relating to the administration of Syarie Lawyer in each state of Malaysia and proposed enacting the act (*Akta Profesion Peguan Syarie*) to give authority to the authorized body, and standardize the administration of Syarie Lawyer at the federal

level, similar to civil lawyers. However, the researcher is of the view that the study on issues concerning procedures involving the PWDs in the Syariah Court and its related issues such as provisions, implementation and procedure of conducting cases should also be highlighted.

Other than that, Mohd Nadzri bin Haji Abdul Rahman Ibrahim (2015) also discussed the role and duty of a Syarie Lawyer in handling cases in Syariah Court. He also went into detail about *Mal*'s trial process as a reference for the legal Shariah practitioner. The significance of that research is to provide input or information on how far theory and substantive law are currently practised. Furthermore, writing about current practices can provide practical results that are not available in the literature or library studies. Having said that, this article however does not address how Syarie Lawyer handles cases involving PWDs. So, it is critical to understand current issues and situations regarding how practitioners or court officers handle Mal Cases involving PWDs in the Malaysian Syariah Court.

Furthermore, to understand the significance of laws pertaining to PWDs in Malaysia, Zulazhar Tahir et al. (2020) discussed a study about laws related to PWDs, in which the researcher discussed the development of legislation of PWDs in Malaysia. This is because the law is an important component of realising the desire to see PWDs treated equally with other non-disabled people. This study also discussed the issues regarding the position of PWDs under the law, as some loopholes or gaps should be highlighted to preserve their rights and welfare, such as those mentioned in the Persons with Disabilities Act 2008. However, this article does not highlight the issues or gaps in Syariah Court Civil Procedure in conducting cases involving PWDs, such as the

registration case procedure, the trial procedure, and the management of Civil cases involving PWDs.

Nevertheless, recent studies have discussed the need for a procedure for handling cases involving the PWDs in Syariah Courts. Surdi Roslan, Muhammad Ariffin, Hashim, Hasnizam, Baharuddin, Ahmad Syukran & Ab Rahman (2021) discussed on the literature analysis on Syariah criminal trial procedures for PWDs in Syariah Court. The researcher found that many aspects must be investigated in order to strengthen Malaysian law regarding criminal procedures involving the PWDs. Things like this are critical in comprehending the policy issues that arise between the PWDs and the Syariah Court. The researcher also found that, there are currently no clear and specific guidelines or standard operating procedures involving Syariah Criminal trial procedures for the PWDs. However, this article only focuses on the gaps in the Syariah Criminal Procedure relating to PWDs and does not discuss the Civil cases involving PWDs in Syariah Court. Thus, the discussion should broaden to include other aspects of both Criminal and Civil Cases involving issues in handling the cases related to PWDs at the Malaysian Syariah Court.

The researcher has continued to expand the reading on the issue to include studies from other countries and the practices of Syariah courts in other jurisdictions. For example, in the country of Brunei Darussalam, the researcher found that Dy. Zainab (2009) in her study titled "*Perkembangan pentadbiran mahkamah syariah di negara Brunei Darussalam*", had found several findings. This study discovered some findings in the area of management, such as the jurisdiction of court registrars and marriages being mixed, and that there's no synchronisation on the registration of cases in the Court. While in terms of process in the Court, procedures and criminal law are lacking.

There are some gaps in the law's provisions that cause the Court to encounter various issues in administering or implementing the law. This study suggests several improvements based on the findings in order to elevate the Syariah Court to the level of the Civil Court in Brunei Darussalam. However, overall, this study does not mention any court issues concerning PWDs in the aspects mentioned by the author.

Meanwhile, Pengiran Haji Badaruddin (2014) in his thesis found that the application of *maqāsid al-Sharīah* in judgements before the Syariah Courts in Brunei is very minimal. The author has examined some Civil cases, analysing the *Perintah Acara Mal Mahkamah-Mahkamah Syariah (Pindaan) 2005* and how far the judge applies the *maqāsid al-Sharīah* during the judgement. However, the researcher discovered that the author did not mention any issues involving PWDs in Syariah Court and its relationship with *maqāsid al-Sharīah*. Despite the researcher's analysis of the Act, the procedure of Civil cases involving PWDs in Brunei's Syariah Court is not highlighted. The section under "*Orang Yang Tidak Berkeupayaan*" also only discussed a limited discussion on it. Thus, more research should be conducted to investigate how the Brunei Syariah Court currently handles cases involving PWDs. It can also be used as a reference for case handling and management of civil cases involving PWDs in the Malaysian legal system.

In Indonesia, the government has acknowledged the difficulties that people with disabilities face. According to the author of the report written by Irwanto et al. (2014) under chapter 3, which is legal frameworks for PWDs in Indonesia, the Government of Indonesia has been highly committed to improving the well-being of PWDs, as seen in Law No. 4 of 1997 concerning the 'handicapped.' This law asserts that PWDs have equal rights and opportunities in all aspects of life, including the right to an education, employment, a decent standard of living, equal treatment in national development,

accessibility, and rehabilitation, including and especially children with disabilities. This was followed by ratification of the UNCRPD on March 30, 2007, which was reinforced by the passage of Law No. 19 of 2011 on Ratification of the UNCRPD. This new law reaffirmed Indonesia's commitment to respecting, protecting, and fulfilling the rights of PWDs. Nonetheless, despite the Government of Indonesia's strong efforts and commitments, the researcher discovered that the authors do not discuss empowerment or improvement in terms of court procedures involving PWDs in the Indonesian legal system, specifically in Syariah Court of Indonesia.

Meanwhile, some researchers argue that children also fall into the "vulnerable" category due to their inability to manage any case or matter involving the court, such as incapacity of children to understand the language or legal terms used by the court. Oliveira et al. (2014) stated that several studies in the field have found that children are unable to understand many of the legal terms that are currently used in courts. The vast majority of these studies are concerned with the Anglo-Saxon legal system, which is based on the Common Law tradition and the English language. The current study examines children's understanding of legal terms used in Portuguese courts. The study discovered the use of legal terms that appear to be very complex to children, such as "provisional suspension of proceedings," "prosecutor," "panel judges," and "judicial inquiries secrecy." The researcher, on the other hand, believes that it is not only children who struggle to understand the legal terms used by the court. Even ordinary people are sometimes unable to understand the language used by the court. As a result, language barriers must be considered (during the trial process), particularly in cases involving PWDs in Malaysia's legal system, for example, for those who are people with hearing disabilities. The Syariah Court of Malaysia should consider a more inclusive approach for managing and handling cases involving PWDs.

The study from Beqiraj et al. (2012) also found that some group of PWDs have a poor understanding of legislation. The failure to provide materials containing legal information in braille or in sign language is the cause of the class. People with disabilities continue to be misunderstood by the law and feel isolated when dealing with the justice system or legal and court system. One study also discovered that PWDs face a variety of challenges during a court trial. Physical barriers, organisational barriers, procedure barriers, attitudes and awareness barriers are among the issues (Olsen & Kermit, 2015). Examples of barriers include communication problem, an inappropriate provision on trial procedure, a lack of understanding of law principle among PWDs, and a lack of facility preparation.

Moreover, according to studies, physical barriers also are one of the challenges that PWDs face when facing a court trial. This includes the issue of communication assistance for those who are currently deaf or dumb while the trial process is in progress (Schwartz & Elder, 2018; Pravda, 2011). Schwartz & Elder (2018) stated that lawyers frequently charge people with disabilities exorbitant fees for interpreter services. This is significant because courts in countries such as Northern Ireland only finance the cost of such services to those who qualify for financial assistance and are otherwise borne by the lawyer. Unfortunately, all of these studies are only found in Western countries and are rarely discussed in the context of Syariah legislation, particularly the procedure of Syariah Court in handling cases related to PWDs and its challenges. The researcher viewed that current researchers should take this issue more seriously and investigate it further.

Furthermore, researchers discovered that external studies, such as those conducted in Qatar also, pay attention to and elevate the position of the PWDs by

ensuring the appropriate rights obtained by them, such as knowledge acquisition or information literacy. Hence, in collaboration with the Arab Organization for Sign Language Interpreters, the Ministry of Awqaf and Islamic Affairs (Qatar) (2011) published the "Islamic Dictionary of Gestures for the Deaf," also known as *al-Qamus al-Isyāriy al-Islamiy*. It is a dictionary related to Islamic teaching, specifically for the hearing impaired in relation to worship (*‘ibadat*). Through the dictionary, topics such as *taharah*, ablution, and prayer have been written or revealed through Sign Language. Thus, if seen, this can be used as a guide or an example in developing a guideline related to legal procedures for cases involving the disabled or as a medium for disseminating legal knowledge to Malaysia's PWDs through the use of material or sources about law from sign language-based-material, braille and others. So, the PWDs can gain access to the information by using a more inclusive approach and being not left behind in getting a knowledge.

Meanwhile in Pakistan, a recent Supreme Court decision directs Pakistan's federal and provincial governments to take steps to fully realise equal participation of people with disabilities (Saroop Ijaz, 2020). The article stated that the court decision came in response to a petition from a disabled person who had been denied a job as an elementary school teacher in the city of Multan. The court decided that the 2% employment figure must be implemented at every tier of an establishment. The decision upheld the principle of reasonable accommodation recognised in the Disability Rights Convention, holding that simply providing employment is insufficient. Pakistani authorities are also obligated to make necessary and appropriate adjustments, such as accessible infrastructure, assistive technology, modifications to the work environment, and other forms of support, so that people with disabilities can effectively perform their job once appointed. So, it can be seen that the court's decision has the potential to

improve the lives of millions of people across the country, particularly PWDs. Pakistan's federal and provincial governments must not only implement this decision, but also reform laws and policies regarding the empowerment of PWDs, including providing an appropriate legal procedure to handle cases involving PWDs in court.

Even in the case of punishing the guilty person, the court and the law have stated the conditions for inflicting punishment on the guilty person. For example, K.B. Marysiuk (2020) discussed on the imposition of punishment while keeping the identity of the guilty person in mind. Consideration of a guilty person's identity during punishment imposition is one of the main conditions for carrying out the principle of individualization of punishment and a guarantee of imposition of a fair punishment. The characteristics of the person who committed a crime should always be considered by the court when imposing punishment because they can have a significant, and sometimes decisive, influence on the type and measure of punishment imposed. One of the necessary rules that must be comply during imposition of punishment is to take into account the features which characterize the identity of the guilty person from various side (physical features such as sex, age, health condition taking into account physical defects, disabilities, pregnancy of a woman at the moment of commission of the crime). Hence, in handling Civil cases involving PWDs in Malaysia's Syariah Court, the court should consider the physical characteristics of the applicants to ensure an appropriate procedure that suits and fulfils the current needs of PWDs. Thus, Civil procedure in Syariah Court, such as case registration, case handling, and case management, should be empowered.

Furthermore, in order to strengthen the Malaysian legal system, the Court should ensure that all of its procedures and management practises are compliant with Shariah

principles. Outlining the Civil Procedure concerning PWDs in Syariah Court is considered as upholding the justice of PWDs, for example, by providing them with services that are appropriate for their disability condition. Lerpiniere & Stalker (2010) in their research titled "Taking Service Providers to Court: People with Learning Disabilities and Part III of the Disability Discrimination Act 1995" found that many people with learning disabilities experience unfair treatment when they go to shops, banks or elsewhere. But very few people take legal action or go to court about the unfair treatment they experience. This is due to the legislative barriers, which is the effectiveness of legislative use of Part III (Goods, Facilities and Services) of the Disability Discrimination Act 1995 (DDA 1995) in promoting equality for people with learning disabilities. That effectiveness was evaluated by analysing the legal process followed by two people with learning disabilities who filed claims against service providers under Part III (Case Study: The Sports Venue and The Tattoo Incident).

On the other hand, the DDA 1995 should enforce and promote rights model of disability within society as a whole and Part III places a requirement on service providers to provide accessible services for disabled people. Same goes to the court services in the Malaysian legal system. The court should consider providing an appropriate service, for example, as specified in Section 26 of the Persons with Disabilities Act 2008 (Act 685), which is access to public facilities, amenities, and services, as well as buildings. The related provisions involving PWDs under civil law, such as those mentioned in the Rules of Court 2012 - Order 41 - Affidavits (O. 41, r. 3), Section 119 (1)(2) of the Evidence Act 1950 (Act 56) - Dumb Witnesses, and Section 342 (1)(2) of the Criminal Procedure Code (Act 593) - Procedure Where Accused is Suspected to Be of Unsound Mind, must also be transformed into written procedural or guidelines.

This is because even the current Malaysian Civil Courts lack a comprehensive procedure for dealing with cases involving PWDs. There are no guidelines or Standard Operating Procedures (SOP) that outline the actions that should be followed by legal practitioners or PWDs while dealing with civil court proceedings. Despite the government's efforts to uphold and preserve the rights of PWDs through the implementation of various policies and laws, Abdul Wahab, Ayub, and Arshad (2016) stated in their opinions that a number of literatures have commented on the legislation as doing nothing much to solve the PWD issue. Several concerns, such as employment, require additional improvement, particularly in terms of the application of laws and policies, as well as employer understanding and cooperation to solve the issues. Therefore, the researcher views that the policies and Act's application should be broadened by providing appropriate amenities and services to PWDs when dealing with any cases at the court, such as providing a specific manual or services (sign language interpreter, for example) during the court trial for people with hearing disabilities.

In conclusion, the researcher discovered that due to the academic or knowledge gap, less research has been conducted to highlight the issues of Syariah Court in handling cases involving PWDs, especially in Malaysian legal system. The researcher also could not find any specific procedure in handling the Civil cases involving PWDs after observing and analysing the provisions such as Syariah Court Civil Procedure and *Arahan Amalan*. Therefore, further research into it should be conducted, and comprehensive guidelines on how to manage cases involving PWDs in Malaysian Syariah Courts should be developed to empower the Syariah legal system in Malaysia. As a result, there is an urgent need to empower the Syariah legal system in terms of Islamic law pertaining to PWDs and investigate its current issues in handling PWD-related cases at the Malaysian Syariah Court. With this research and investigation, all

problems will be overcome, and suggestions for improvement to Syariah Court institutions in Malaysia will be made, particularly on the registration procedure, case handling, and management of Civil cases involving PWDs at Malaysia's Syariah Court.

1.8 Significance of The Research

This research has several significances: -

- i. This research is significant to the government policies and country. It corresponds with an Action Plan for Person with Disabilities (PWD) Malaysia 2016-2022, Strategic Thrust 8 that focused on "encouraging the research and development related to PWD and spread the study's finding for improvement actions".
- ii. This research will also benefit other authority organisations, such as the Department of Syariah Judiciary Malaysia (JKSM) and Syariah Court of Malaysia, when handling PWDs at Syariah Court, thus upholding the national legal system and Islamic Law in Malaysia.
- iii. This research will contribute to Syariah studies by providing new information to strengthen and empowering Islamic Law for matters related to PWDs in Syariah Court.
- iv. This research also indicates the issues related to PWDs at Syariah Court that the current legal practitioner has rarely discussed.
- v. This research can also solve several problems aroused among PWDs and Syariah Court during conducting the case among them and increase the country's high level of Islamic judicial system in dealing with PWDs cases.

- vi. Ultimately, this research can help Malaysia become one of the Islamic countries that is ahead of other Islamic countries in discussing PWD-related subjects, particularly marriage, as well as legal knowledge empowerment for PWDs in Malaysia.

Overall, the research will improve our Syariah legal system in Malaysia, focusing on its matters related to PWDs in Syariah Court.

1.9 Scope and Limitation

The fundamental goal of this study is to accomplish the research objectives. Nonetheless, there are some limitations and areas of attention that need be addressed in this study. Realizing the time constraints and difficulties in gathering the necessary data, the researcher will only discuss issues and challenges related to cases that fall under Civil or Mal cases at Syariah Court of Malaysia, focussing on legal procedures of Civil cases in Malaysian Syariah Court. That means the researcher will not touch any issues related to Syariah Criminal cases involving PWDs in Syariah Court. The researcher will also go over general PWD concepts according to *Syarak* and the Malaysian legal system. The study will determine whether our current Syariah Court legislation has clear definitions, provisions, and procedures for PWDs in the Malaysian Syariah judicial system. This will be accomplished by analyzing and observing legal documents such as the Syariah Court Civil Procedure Act or Enactments, as well as any *Arahan Amalan* issued by JKSM that outlines the procedure for Civil matters involving PWDs in Syariah courts.

The researcher will also look into the current practice of Malaysian Syariah courts in dealing with Civil cases involving people with disabilities. The researcher will

conduct interviews with numerous legal practitioners as well as observe existing legal practitioners conducting such cases. As a result, the researcher will identify the issues and challenges that arise and propose complete empowerment that can be implemented to assist the Syariah Court in dealing with such cases in the future.

Aside from that, the researcher will not go into detail about the limitations on the categories of PWDs in Malaysia. This is due to the scarcity of data on PWDs and its relationship with Syariah Court in Malaysia. So, the researcher will discuss the study in general without categorizing the PWDs. The issues and suggestions of empowerment on the procedure of Civil Cases involving PWDs in Syariah court will be emphasized in general. Thus, the researcher can devote the full attention to the discussion very well.

Lastly, in terms of respondent selection, this study will conduct interviews with several experts or individuals who have direct and indirect experience with Syariah legal affairs related to court institutions, such as Syariah Court Judges, lawyers, and JKSM officers to obtain detailed and clear information. The researcher also will look for any PWDs who directly or indirectly had any experience with court procedures in Civil cases to get their perspective on the issues and challenges of having a case at Syariah Court of Malaysia. The researcher does not limit the respondents who only had experience with court procedures in order to broaden the opinion from many angles and points of view. Because of the pandemic COVID-19 phase, the interview will be done in textual, physical, and online formats dependent on the conditions and choices of the respondents. The findings obtained from respondents will supplement and reinforce the findings of the researcher's study, allowing this study to achieve its objectives thoroughly.

1.10 Conclusion

Chapter 1 summarizes how this study will progress by outlining the study's background, problem statements, research objectives, a literature evaluation and so on. In summary, the research is all about empowering the legal procedure of Civil cases involving PWDs in Syariah Courts of Malaysia. The objective of the research is to identify the definition of PWDs and their position according to Syarak and Malaysian legal system. Then, the study will analyse the current practice in Syariah Courts regarding legal procedures for Civil cases involving PWDs in Malaysia. Other than that, thus, the research will investigate the issues and challenges that arise in the legal procedures of Civil cases involving PWDs in the Syariah Court of Malaysia and propose the methods for empowering the legal procedures of Civil cases involving PWDs in the Syariah Court of Malaysia.