

CHAPTER 5

SUGGESTIONS FOR EMPOWERING THE LEGAL PROCEDURE IN MALAYSIAN SYARIAH COURT FOR CIVIL CASES INVOLVING PERSONS WITH DISABILITIES (PWDs)

5.1 Introduction

The researcher discovered several improvements for Malaysian Syariah Court on matters concerning legal procedure for Civil cases involving PWDs based on the findings and discussion in the previous chapter regarding issues and challenges. As a result, the fourth research objective of the study will be addressed in this chapter. The data were gathered from the previous phase's information or sources (objective 1, objective 2, objective 3) and several outcomes were developed by the researcher in this chapter. The data was then analyzed inductively and deductively using descriptive analysis. Overall, there are four aspects of improvement and empowerment suggestions for Malaysian Syariah Court in overcoming Civil issues involving PWDs, which are the need for Malaysian Syariah law to have clear PWD-related provisions, the need for developing a standard guideline in legal procedures for Civil cases involving PWDs, early exposures to legal practitioners in dealing with such cases, and the importance of creating interagency collaboration in confronting issues involving PWDs.

5.2 Suggestions for Empowering Legal Procedures in Civil Cases Involving PWDs in Malaysian Syariah Courts

5.2.1 The Need for Malaysian Syariah Law to Have a Clear PWD-related Legal Provisions

As discussed in previous chapters, Malaysian Syariah law does not provide clear and specific regulations or provisions on PWD-related matters, such as Practice Directions or circular letters on methods to deal with Civil cases involving PWDs, and it also does not have an exact definition of PWDs under its legislation. As a result, there is a need for specific PWD-related provisions in Malaysian Syariah law in terms of a clear provisions on the methods to deal with such cases and an exact definition of PWDs under the Malaysian Syariah Court.

First of all, the action can be taken by releasing Practice Directions, for example, on the guidelines for dealing with civil cases involving PWDs in Malaysian Syariah Court, so that those Practice Directions can be used as a resource by legal practitioners and the PWDs community. The relevant authorities or organizations can discuss such a matter and how to draft and implement it through a series of meetings, seminars, or workshops. All connected provisions regarding PWDs under Syariah law also can be translated or transformed into a written procedure for Civil cases involving PWDs in Syariah Court, so that it can be followed by all Syariah courts in Malaysia. Appropriately, the JSKM can issue an opinion on the disabled under Syariah law, including their position and rights in achieving justice under the existing provisions and spread the information to the community, especially the PWDs community.

Next, the interpretations of Section 3 (Person Under Disability) of Act 585 have resulted in varied meanings and opinions among legal practitioners. This occurred when the study attempted to determine whether the interpretation of PWDs under Malaysian Civil and Syariah legislation was the same. The study discovered that the interpretation of PWDs differs between Malaysian civil law and Syariah law, as well as interpreted and practiced differently. PWDs under civil law were those who were mentioned in the category of PWDs registered under the JKM. Meanwhile, "person under disability" are referred to as disabled people by *Syarak*. Nonetheless, it still has a diverse understanding among practitioners due to differences in opinion on the description of "person under disability" category under Section 3 of the Act 585.

Moreover, the Syariah Court in Malaysia currently only uses the "person under disability" clause in situations involving *ad litem*. It is evident from prior cases heard by the Syariah Court. Malaysian Syariah law is mainly founded on *Syarak*, which is derived from the Qur'an and Hadith. Thus, the Malaysian Syariah law's interpretation of "person under disability" is based on *Syarak*. It is used to refer to persons who lack legal capacity (*ahliyyah at-tasarruf*) and are unable to bring their cases on their own due to their mental state. As a result, their cases should be handled by their *guardian ad litem*, as stated in Section 24 of Act 585, where the cases require the appointment of a guardian *ad litem* when involving person under disability according to Syariah law, which are an infant (child), a person of unsound mind, and who are prohibited from administering their property.

However, the Malaysian Syariah law and Malaysian Syariah Court must first clarify the PWD-related regulations or provisions and the definition of PWDs under Malaysian Syariah law or Shariah legislation. The authorities must clearly explain the

applicability of the "person under disability" clause, such as the type of party who falls under the clause and the extent to which it applies. This is because, as previously stated, cases involving "person under disability" fall under Part IV - Chapter 2 of Act 585, specifically the section on the need for *guardian ad litem* to file any Civil cases in Syariah Court. But, in the application of *ad litem* form, the necessity for attachment pertaining to the PWDs card from the party that wanted to be represented as an exhibit and the statement "*seorang orang yang kelainan upaya*" were included as reasons for applying the cases under the application of *ad litem*. Therefore, the Syariah law must clarify the scope or application of the phrases "*seorang orang yang kelainan upaya*," whether it is only for those with severe mental disabilities due to mental incapacity or also for the category of PWDs as highlighted by JKM.

DOKUMEN-DOKUMEN YANG DIPERLUKAN UNTUK PENDAFTARAN (MAL / PERMOHONAN AD-LITEM)			
BIL	DOKUMEN YANG DIPERLUKAN	SEMAKAN PELANGGAN	SEMAKAN MAHKAMAH
1.	Notis Permohonan (Borang MS 49), Afidavit dan Borang Maklumat Diri	1 Asal & 2 Salinan	
2.	Salinan Kad Pengenalan/ Pasport - Pemohon	3 Salinan	
3.	Salinan Kad Pengenalan/ Pasport/ Sijil Kelahiran/ Kad OKU – Orang Yang Hendak Dijaga	3 Salinan	
4.	Salinan Dokumen Yang Berkaitan	3 Salinan	
5.	Borang MS 27 – Pengenalpastian Ekshibit <i>Nota: Perlu dibuat salinan mengikut jumlah dokumen yang ditandakan sebagai ekshibit di dalam afidavit yang dilkrarkan.</i>		

PERHATIAN:

1. Sila sediakan dokumen-dokumen berikut sebelum pendaftaran.
2. Setiap borang permohonan hendaklah diisi dengan kemas, jelas dan mudah untuk dibaca.
3. Setiap salinan dokumen hendaklah disediakan dengan kertas bersaiz A4.
4. Setiap tuntutan hendaklah didaftarkan oleh **Plaintif** atau **Peguam Syarie** yang telah dilantik sahaja.
5. Salinan Saman/ Dokumen **PERLU** ditambah mengikut bilangan, sekiranya pihak-pihak melebihi daripada seorang. *(jika berkaitan sahaja)*.
6. Pendaftaran tidak akan diterima (ditolak) **JIKA GAGAL** mengemukakan dokumen tersebut dengan lengkap.
7. Dokumen-dokumen **ASAL** hendaklah dibawa bersama ketika mengikrarkan afidavit.
8. **Penggunaan cecair pemadam (liquid paper) adalah dilarang.**

Figure 5.1: Documents Required to File an *Ad Litem* Case

2.

Alasan-alasan permohonan ialah:

1. Orang yang tak berkeupayaan tersebut di atas tidak layak menjadi pihak atau dijadikan pihak kerana:

1.1 *masih di bawah umur/ telah berusia iaitu tahun; atau

1.2 tidak berkeupayaan untuk menjadi pihak atau dijadikan pihak kerana
; atau

1.3 seorang orang yang kelainan upaya.

2.

Permohonan ini disokong dengan affidavit yang dilampirkan.

Bertarikh padaharibulan....., 20....

Catatan No.....tahun 20....

Kerani
 (Meterai)
 Pendaftar

Notis ini dikeluarkan oleh Pemohon yang beralamat di

 (No. Telefon:)

Figure 5.2: Under the Reasons for Using an *ad litem* Case, The Term “*seorang orang yang kelainan upaya*” was Included in The Application Form

Even Olsen and Kermit (2015) mentioned that one of the cultural and sociological challenges in the context of a court trial for PWDs is the definitions and interpretations of the law’s provisions affecting PWDs. The researcher believes that the existing legal provisions are adequate, but that they should be improved by providing a

proper explanation of the meaning of the interpretation to practitioners of Syariah law or providing a specific definition on it. A clear definition on PWDs under the Syariah law, as well as uniform understanding of Section 3 of Act 585 under Syariah law is crucial because it will lead to the same practice among legal practitioners in Syariah Court. Thus, the current Syariah law provisions should provide a clear definition and interpretation of that matter so that its application can be used and understood clearly by legal practitioners and Syariah Courts in Malaysia. The issue was raised because the phrases used in Syariah law legislations seem almost identical to the terms used in Civil law legislation, at the end causing confusion.

In conclude, similarly to civil law, the researcher believes that a clear and detailed description of PWDs-related legal provisions under Syariah law is required. So, the misunderstanding will be alleviated by clarifying explicit definitions of PWDs under Syariah law. The related legal authorities also, such as JKSM, should draw attention to the issues by providing a clear explanation to the legal practitioners who practice Syariah law in Malaysian Syariah courts. The explanations can be made by sending a notification to all Malaysian Syariah courts about the aspect, such as the true definition and interpretations of "person under disability" under Syariah law and who they are. The JKSM can coordinate the interpretation and application of the provision so that all legal practitioners understand and use it.

5.2.2 The Requirement for Developing a Standard Guideline in Legal Procedure for Civil Cases Involving PWDs in Malaysian Syariah Courts

In Malaysia, Syariah or Islamic law does not give a precise guideline or procedure for legalizing Civil cases involving PWDs, except with reference to several PWD-related provisions that are highly generic. Each Malaysian Syariah Court also has no Standard Operating Procedure (SOP) for handling such issues, resulting in disparities in practice among the Syariah Court's legal practitioners. Even under the Malaysian Civil Court, there is no explicit guideline on the practice of conducting cases involving PWDs that can be used as a reference in handling and managing cases involving PWDs in Syariah Court. Both judicial institutions took the initiative and sought assistance from sources outside of the Court. Thereby, there is a crucial issue that should be empowered by developing a standard guideline for Civil cases involving PWDs in Syariah Court.

The first step that the legal authority can take is to develop a specific Practice Direction (*Arahan Amalan*) or circulars outlining the standard guideline or method to manage such cases and the treatment that should be given to parties that are disabled. By issuing a Practice Direction under Malaysian Islamic law, for example, the Court and legal practitioners can identify the rules or methods for the implementation and handling of Civil cases involving the PWDs in the Syariah Court, as well as serve as a reference for the disabled community in obtaining information in a general and clear overview. The importance of interpreting PWDs under Malaysian Syariah law and identifying PWD-related statutes or provisions that can be used as a source of reference in procedural form should also be emphasized.

This is critical so that the execution and understanding are consistent, and the interpretation of the provisions of the given law is not based on the level of knowledge

of the various legal practitioners, which causes disparities. The standard guidelines should also clarify in full the appropriate procedure (in the aspects of case registration, case handling and case management) used by each Syariah Court and legal practitioner in dealing with cases involving the disabled and resolving the challenges that arise. When the researcher asked for their thoughts on the problem, the majority of the study respondents believed that specific Practice Direction should be issued in this regard. **SJ1** stated that research should be conducted to examine the provisions of existing legislation in order to improve any hurdles (if any) that prevent parties with disabilities from seeking justice in the Syariah Court. The development of standard guidelines would strengthen Malaysia's current Shariah legislation in dealing with such cases in future.

Furthermore, the Court should examine and identify the needs of PWDs beginning with the registration stage while creating the guidelines. The court can improve their way of receiving Civil cases involving PWDs, by outlining a more comprehensive system of registering and treating PWDs' cases. For example, the registration form should mention that the cases are among PWDs so that special needs can be met from the beginning and always prioritize the parties among PWDs. A proper set of guidelines or procedure in the registration phase can also assist the Court in being prepared for specific requirements during the trial phase, and allowing the judge to manage the case effectively.

Other than that, the guidelines for handling Civil cases involving people with disabilities assist the process run smoothly and the PWD community has less difficulties and worries. The Court, for example, can provide sign language interpreters for parties with speech and hearing disabilities during trial. Civil case management can be

improved by categorizing cases into parties with and without disabilities, making it easier for the court and outsiders such as researchers to refer to cases involving the disabled. This is because the present system, such as e-syariah, is unable to search for more specific cases, such as cases involving the disabled, making it difficult to use as a reference. Only cases involving *ad litem* are provided. As a result, the standard guidelines can address the improvement of the current system and management or administration of Civil cases under the Malaysian Syariah Court by outlining how visitors to the e-syariah system can receive information about Civil cases involving PWDs.

Additionally, it was the legal authority's responsibility under that Shariah legislation to overcome the barriers and assist the parties among the PWDs in obtaining their rights and justice in Malaysian Syariah Court. The Court must properly try the parties in the PWD category, without considering their circumstances lightly. Because their rights and positions are not excluded under Syariah law, and their needs should be met correctly. This is also because even people with mental disabilities have the right to appear in both courts. Despite the fact that the Court's procedural system favours or suitable for normal people without disabilities, the Judge must issue appropriate judgements and handle cases fairly. For instance, it is clear from the statements made by the three judges of the Court of Appeal (Putrajaya) who presided over the case *Muhd Haslam bin Abdullah v Public Prosecutor* [2020] 5 MLJ 91, a criminal case involving the mentally disabled as follows:

"(7) In his judgment, the trial judge gave scant treatment to the medical report on the appellant and appeared to have taken a simplistic approach in that since the appellant was medically certified

*fit to stand trial and was not insane, he should be treated like any ordinary accused person. This was a non-direction amounting to a misdirection by the trial judge. Despite the certification of fitness to stand trial, the trial judge still had to continually assess and address throughout the trial whether the appellant was able to follow the court's procedure and the unfolding of the evidence and whether he was able to put forth his defence effectively. **It was incumbent upon the trial court to ensure that a mentally disabled person like the appellant was not disadvantaged in any way but was given a fair trial by a criminal justice system that was designed to primarily try 'normal persons'**"*

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Finally, the standard guidelines must ensure that all issues are addressed and that their rights and needs are met properly at each stage of the legal procedure. Developing standard guidelines in legal procedure for Civil cases involving PWDs in Malaysian Syariah Court also can assist Syariah judicial institutions in elevating their current practices and becoming more progressive in dealing with issues involving the disabled and the Syariah Court. Work manuals that provide precise explanations and step by step procedure in dealing with such cases also can help all parties understand and get a preliminary overview of the legal procedures in Civil cases involving the disabled, including legal practitioners and the community, particularly the PWDs community in Malaysia.

5.2.3 Early Exposure to Legal Practitioners in Handling Civil Cases Involving PWDs

The development of a standard guideline is essential as a prior disclosure to legal practitioners in order for them to adapt and practice the work manuals effectively. The court must ensure that all legal practitioners have the necessary skills to handle cases involving people with disabilities. In order to deal with such matters, they must be exposed to certain techniques and approaches. All legal practitioners can be given early exposure through a series of training or courses, as an added value. Given that the current practice of dealing with Civil cases involving PWDs is based on the Court's initiative and varies, the necessity to develop a guideline and provide early exposure to legal practitioners is essential. The outcome of this matter will improve Malaysian Syariah Court's current procedures in dealing with such cases in the future.

Nevertheless, the series of training or courses should be maintained by implementing courses on a regular basis and conducting advanced training on a continuous basis, and there is a need to establish a comprehensive module on methods to deal with cases or issues involving PWDs. Syariah law practitioners also can learn a variety of skills to help them better handle cases, including Neuro Linguistic Programming (NLP), sign language skills, physiological skills, and any other related skills deemed necessary. This method will assist legal practitioners in overcoming many difficulties, such as communication barriers when managing Civil cases involving PWDs. Equipping legal practitioners with adequate skills will enable them to conduct cases confidently, and PWDs parties will feel more amenable or open to resolving their disputes in court. This is because they are aware that the Malaysian Syariah Court is capable of dealing with matters involving PWDs and that their needs are fully met.

Aside from that, it is proposed that case simulation exercises or role plays be done discussing how to conduct PWDs cases based on the situation and issues. The simulation should be based on actual cases involving PWDs in Malaysian Syariah Court. Legal practitioners must also be directly involved and participate in the simulation in order to feel the real case experience as an early disclosure for them. It is recommended that at the end of the simulation or role play, the simulation process be evaluated and reviewed by emphasizing certain aspects such as skills, techniques, delivering, outcome, and so on. This can be accomplished by creating particular assessment or evaluation forms for the courses or training. It is believed that the case simulation, mock trial, or role play conducted in this course will strengthen and raise the efficiency and expertise of legal practitioners in dealing cases involving PWDs in the Syariah Court.

Therefore, legal practitioners must constantly improve their expertise in dealing with Civil disputes involving PWDs in Malaysian Syariah Courts. The appropriate legal authority or organization should assist legal practitioners in gaining early exposure to such matters so that it can be resolved collaboratively and certain requirements such as modules and courses can be developed together. This disclosure should be made from the start, such as through teaching and learning in legal courses at universities and advanced degrees in legal practice in Malaysia or during the induction training or program for the Syariah Officer. The Syariah Court will become more well-known as an inclusive Court, as a result of caring for the interests of the disabled community in the Syariah Court.

5.2.4 Creating Interagency Collaboration

To ensure that the empowerment suggestions are implemented efficiently, there is a need for collaboration with government and non-governmental organizations. The collaboration can be viewed from two perspectives. First, in terms of examining existing PWD provisions and developing standard guidelines. Second, in terms of increasing legal knowledge among the PWD community.

i. Examining Existing PWD Provisions and Developing Standard Guidelines in Legal Procedures for Civil Cases Involving PWDs

In determining the interpretations of PWDs under Islamic law, legal authorities such as JKSM should collaborate with legal experts and other associated agencies. A series of meetings and workshops can be organized between them to get a clear vision as well as understanding of the meaning of PWDs under the Malaysian Syariah Court. This is due to the lack of explicit interpretations on PWDs in Islamic law, with the exception of the interpretation of "person under disability" specified in Section 3 of Act 585 and several provisions provided under the Act 561. Collaboration is also vital in examining existing PWD-related provisions in Shariah legal systems, both directly and indirectly. This information is critical in assisting the legal authority to develop a Practice Direction, for instance, that includes standard guidelines in dealing with Civil cases involving PWDs, such as registration, case handling, and case management.

Collaboration with legal authorities such as Civil Court, JKSM, JKM, KPWK, Islamic Religious Council of the States, PWDs organizations, and related agencies is crucial due to the absence of reference in dealing with issues and procedures involving PWDs in both Civil and Syariah Court. This will ensure that the methods of developing

standard guidelines are comprehensive and inclusive. Collaboration also can take the form of doing research, seminars, round table discussions, and other activities aimed at identifying issues and figuring out the best solutions pertaining to PWDs for each category and Syariah Court. The laws and directives should be implemented collectively under the supervision of the judicial institutions, the State Islamic Religious Council and any other selected agencies. Support should be provided as needed, and the needs of the PWDs parties should be highlighted.

Finally, the government should collaborate with non-governmental organizations comprised of PWDs' organizations to gain a thorough understanding of the difficulties raised and to identify the necessities of PWDs required in terms of Court services or related matters. The efforts can also be fulfilled with the involvement of agencies that administer the well-being of PWD community in Malaysia. Collaboration with educational institutions is beneficial in increasing research, papers, and journals on PWDs within the Shariah legal system with a sum of allocation fund budget. This is because, according to Mohd Khalil, Shaberi, Izhar, Mat Rashid, and Mohd Rapini (2022), marriage issues among PWDs are rarely addressed by previous academics in the research. According to the study also, most studies involving the disabled only look at amenities and convenience for the impaired. Collaboration with specific agencies or individual experts greatly assists legal authorities in developing thorough and inclusive standard guidelines, as well as increased the research on such area.

ii. Increasing Legal Knowledge Among PWD Community

Collaboration between various agencies can be achieved and made through methods of spreading legal knowledge to the PWD community in an effort to expand

their legal knowledge. The proposed guidelines will assist PWDs in comprehending the procedures and information required by the PWDs in resolving their own issues in Syariah Courts. As a result, the Court should make the relevant information public so that the PWD community is aware of it. JKSM, for example, should engage with the PWDs' organizations and Malaysian Communications and Multimedia Commission (MCMC) to increase or spread legal understanding on PWDs and related matters under Syariah law. Each state's Department of Syariah Judiciary should play a role in improving their website or official portal by giving additional information and services that the Court has provided to PWDs parties. The website should also be more accessible to disabled visitors by integrating elements such as a talk back system or screen reader for visually impaired users, as well as video with law material explained in sign language form or with subtitles for hearing impaired users.

Collaboration can also be achieved by building a good support system for each PWD category in Malaysia in partnership with other connected authorities in distributing legal information. The need for building a support system for each category of PWDs aids the legal authority in disseminating information directly to the PWDs community via each representative of PWDs groups or organizations. PWD organizations can then assist in disseminating the legal knowledge or information provided to their members. As a result, the government and non-governmental organizations, such as PWDs organizations, should work together to educate the PWDs community regarding the procedure of Civil cases and the services offered to the PWD community in Syariah Court. This is also to guarantee that they raise their degree of legal literacy, change their perception, and bring themselves closer to the Syariah Court.

Aside from that, interagency collaboration is critical in providing law material or sources that are more accessible to people with disabilities. The authority can diversify information dissemination methods by hosting various programs with the participation and involvement of the disabled individuals, for example, and publishing legal reading materials with features such as braille and sign language forms. The importance of diversifying information dissemination methods is to ensure that no one is left behind and that all categories of PWDs gain the knowledge. As a result of the initiative or effort taken, the PWDs community in Malaysia is able to learn and understand legal knowledge or legal terms through programs done by judicial institutions or other associated authorities. As an initial exposure to the disabled community, a special module for couples among disabled persons in pre-marriage courses should be held and emphasized with components of legal knowledge. Thus, collaboration between agencies can be made by creating a pre-marriage special module for the disabled community.

Finally, publishing legal reading materials with elements of braille and sign language forms, for example, assists the PWDs community in finding and learning about the law and its procedural by themselves as if it is easily accessible. Countries such as Qatar, for example, had developed "The Islamic Dictionary of Gesture for the Deaf", a dictionary related to Islamic teaching, specifically for the hearing impaired in relation to worship. Thus, the Malaysian legal authorities can use the same method and make the same effort when disseminating and providing legal material to the hearing and visual impaired. In a single book, material or information can be converted into sign language and braille. Figure 5.3 depicts an overview of the dictionary's contents.



Figure 5.3: An Overview of The Contents of The Dictionary

5.3 Conclusion

In conclusion, this chapter has made various recommendations for enhancing the legal procedure for Civil cases involving PWDs in Malaysian Syariah Court. The empowerment was created to address the issues and challenges that the Court, legal practitioners, and people with disabilities confront while dealing with such situations. Ultimately, the researcher proposed four major empowerments that the Malaysian Syariah Court could pursue. It can be seen in four areas: the need for Malaysian Syariah law to have a clear PWD-related legal provision, the requirement for developing a standard guideline in legal procedure for Civil cases involving PWDs in Malaysian Syariah courts, early exposure to legal practitioners in handling Civil cases involving PWDs and the creation of interagency collaboration. These suggestions are intended to assist the Court and legal practitioners in improving current practices, as well as to assist

the PWD community in overcoming barriers when dealing with Civil cases and related procedures at Malaysian Syariah Court. Consequently, within the Shariah legal system, PWDs' rights also can be achieved properly.

