

DISABILITY FIQH FOR HUMAN SUSTAINABILITY AS MANIFESTING OF MADANI SOCIETY DEVELOPMENT

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Article History:

Received : 19 March 2025

Accepted : 10 April 2025

Published : 26 June 2025

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To cite this article:

Fatmawati, I., Ma'arif, D. & Dewi, A. P. (2025). Disability Fiqh for Human Sustainability as Manifesting of Madani Society Development. *Jurnal 'Ulwan*, 10(1), 186-196.

ABSTRACT

Regulations created in Indonesia often only favor people with disabilities and very few favor people with disabilities. This is due to the dominance of people with disabilities who are more in quantity than people with disabilities. However, the state must not neglect in providing guarantees of convenience to people with disabilities, especially in providing access to worship. This access is not only in the form of disability-friendly infrastructure, but also in the form of access to knowledge related to worship, such as the creation of disability-friendly fiqh rules that are religious rights. So far, there has been no fiqh that discusses disability, even the existing study of fiqh on disability is still in the form of an adhoc fatwa. The purpose of this study is to analyze how disability fiqh is a necessity for human sustainability, seen from the perspective of human rights and sharia maqashid as an effort to build a civil society. This research is a type of qualitative research (library research) using a conceptual approach. The data will be analyzed descriptively with the concept of KBB as part of human rights which is also in line with sharia maqashid. From this research, a common thread can be drawn that disability fiqh is very

urgent to ensure the religious rights of people with disabilities as well as human rights guarantees and the purpose of sharia maqasid

Keywords: *disability fiqh, Indonesia, the religious right*

1.0 INTRODUCTION

The Constitution of Indonesia regulates the rights of every citizen to practice his religion freely. These rights are inherent in each absolute individual. The constitution guarantees the right to choose or worship by the religious beliefs and teachings it adheres to. Although there is a constitution that regulates religious rights, the state is still considered ignorant of the rights of people with disabilities, especially in terms of religion. The state often neglects to pay attention to the rights of people with disabilities who also have the same degree and position as human beings.

The regulations that are created are often only in favor of the disabled, and very few are in favor of the disabled. This is true because, in terms of quantity, people with disabilities are more dominant than people with disabilities. However, the state must not neglect to provide guarantees of convenience to people with disabilities, especially in providing access to worship. This access is not only in the form of disability-friendly infrastructure but also in the form of access to knowledge related to worship for people with disabilities, such as creating disability-friendly fiqh rules that are religious rights.

Indonesia has ratified the Convention on the Rights of Persons with Disabilities through Law Number 19 of 2011. The government has also issued seven Government Regulations (PP) as mandates from Law Number 8 of 2016 concerning Persons with Disabilities (Pemerintah Penuhi Hak Penyandang Disabilitas Di Indonesia | Kementerian Koordinator Bidang Pembangunan Manusia Dan Kebudayaan, n.d.). Although there is already a law regulating disability in Indonesia, the regulation only regulates state guarantees regarding the access of people with disabilities to public facilities and their status as citizens, so there are no rules or guidelines that can be used by people with disabilities to worship, especially for people with disabilities who are Muslims.

Rules in worship, such as disability fiqh, have recently become a discourse in various circles. The new paradigm built through understanding the terminology of disability, disability, and disability also does not escape typical attention to create a friendly legal meaning and rule. This is very necessary and interesting to discuss, considering that flexible fiqh can be created based on the reality and needs of society. In various Muslim countries, scholars also modify fiqh to cover the needs of people with disabilities who are often marginalized. The same is true in Indonesia. Indonesia has a population of 279,924,794 people as of Monday, July 22, 2024 (Indonesia Population (2024) - Worldometer, n.d.) and inhabits various islands; of course, they have their uniqueness in each place, so often, fiqh has different patterns. This difference in fiqh patterns is fascinating to study so that later, it can solve various societal problems, not only for Muslims in Indonesia but also for Muslims abroad.

Fiqh becomes very interesting when it comes into contact with the problem of access for people with disabilities. In Indonesia, studies related to worship procedures for people with disabilities are only found in books published by two major religious organizations in Indonesia. First, the fiqh on strengthening people with disabilities issued by the PBNU Bahtsul Masail Institute (LBM) and related institutions. Second, fiqh for the disabled issued by the Muhammadiyah Tarjih Institute and related institutions. The difference in the use of the words "disability" and "disability" in the title of each organization's book shows that there is no unanimous agreement regarding the term used to refer to the fiqh that regulates the worship procedures of people with disabilities. In contrast to the fiqh of *muamalah*, *siyasah*, *jinayah* and *munakahat* which have a unanimous agreement in their designation, it shows that the fiqh of disability has not yet gained an established place in society. This means that the fiqh for disability and fiqh for the disabled is still in progress.

The process of accepting fiqh for people with disabilities or fiqh for people with disabilities who still have to fight to get a place in this society, then researchers feel it is essential to conduct research. The research in question is none other than to answer the question of how urgent the existence of this disability is to be disseminated to the community. With the perspective of Freedom of Religion and Belief (KBB), which is part of Human Rights (HAM) and Sharia maqasid, the question of the urgency of disability fiqh in this society will be answered.

Research related to disability has been discussed a lot. For comparison, the researcher lists the previous research that is closest to the research that the researcher conducted, namely the research of Norakyairee Mohd Raus, et al, with the title "Sustainability of Islamic Education for Persons with Disabilities Based on Maqasid Shariah in The Context of Preserving Religion and Intellectuality" which discusses the correlation between the principle of Maqasid Shariah (preservation of religion and intellectuality) as the primary mechanism in the effort to preserve Islamic Education for persons with disabilities. The research both discuss Islamic sustainability, but in the article, Norakyairee only discusses the sustainability of Islamic education with the perspective of maqasid shariah for people with disabilities (Effendi Hashim & Mohd Raus, 2023), while in the research conducted by the researcher discusses the sustainability of fiqh for disabilities needed by people with disabilities from the perspective of maqasid shariah and freedom of religion and belief (KBB) which is part of human rights as manifesting of Madani society development. So, no one has discussed the fiqh of disability for Human Sustainability as Manifesting of Madani Society Development as the researcher will do. From this presentation, it can be said that the research that the researcher conducts is novel or new.

This research is a type of qualitative research (library research). Primary data is taken from literature sources, both online and offline, while secondary data is taken from reading materials that have a relation to the topic that the researcher wrote. The data was further analyzed using a conceptual approach using the concepts of Freedom of Religion and Belief (KBB) and Sharia maqasid. Data analysis is carried out deductively by departing from general data to draw specific conclusions.

2.0 THE URGENCY OF FIQH FOR DISABILITY IN INDONESIA

The National Economic Survey (Susenas) noted 28.05 million people with disabilities in 2020. This number is equivalent to 10.38 percent of the population in Indonesia. Thus, it can be concluded that 1 in 10 Indonesian residents are disabled or disabled. UNESCAP data shows that Indonesia has the highest prevalence of disability in Southeast Asia (7 Fakta Aksesibilitas 28 Juta Penyandang Disabilitas Di Indonesia - LINKSOS, n.d.) From the large number of people with disabilities in Indonesia, it is certainly a challenge for the state to guarantee their rights to be equal to people with disabilities. There are still many challenges that surround the accessibility of people with disabilities, and ultimately become a common concern, especially for Muslim scholars.

Fiqh gives the view that people with disabilities are still obliged to carry out sharia (taklif) as long as their intellect is still able to work correctly. The implementation of this obligation is, of course, by still considering the condition of people with disabilities. Persons with disabilities can carry out their duties according to the limits of their abilities without reducing the value of the virtues of worship itself. More specifically, the Quran, Hadith, and the opinions of scholars expressly convey the defense of people with disabilities (Pandangan Fiqih Terhadap Ibadah Penyandang Disabilitas, NU Online Banten, n.d.)

Issues related to disability and their rights have aroused interest in the study of the position of religion as part of the needs that must also be met for persons with disabilities. The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, which is a UN document, also focuses its study on the existence of equality of opportunities for persons with disabilities in the religious dimension. Previously, Bhatti et al. searched the history of the conception of Islamic law related to the disabled, which is characterized by open-mindedness, progress, and humanity that exists along with the presence of Islam. However, in reality, there is a paradox in Muslim countries that generally do not adhere to these religious standards. For example, many Muslims in various countries still have a negative view of people with disabilities as a reflection of God's punishment for sin. Another example is the negative social perception in many Muslim countries that disability is caused by "the mother who is pregnant is at fault" or also because of the 'heredity' factor (Menuju Pemahaman et al., n.d.)

One of the contemporary humanitarian problems that needs to be faced today is the lack of protection and fulfillment of rights for people with disabilities. People with disabilities still face many problems in life. The problem of limitations in many ways, primarily related to themselves, is the problem of rights as human beings and how to treat able-bodied people. Discrimination against people with disabilities is still widely found. The public, in general, still does not fully appreciate the existence of people with disabilities. This discrimination then causes a troubling effect, namely alienating individuals with disabilities as disabled people, and becoming a burden in social interactions (Landasan Paradigmatik Fikih Disabilitas - PLD UB, n.d.) Thus, the fiqh of disability must appear amid society to address these problems.

The existence of fiqh actually functions as a guide and decomposer of practical life problems, both individual and social. The existence of Fiqh not only regulates and guides in establishing a vertical relationship (human beings with God),

but Fiqh also overcomes complex social problems that are the primary concern of Islamic sharia. Fiqh is also a solution to social and humanitarian issues as an effort to fulfill the responsibility of Muslims for the obligation to realize justice, equality, and welfare or the general good (al-maslahah al-'ammah).

3.0 THE URGENCY OF FIQH FOR DISABILITY FROM THE PERSPECTIVE OF FREEDOM OF RELIGION AND BELIEF (KBB)

Freedom of religion or belief (KBB) is part of human rights, as stated in the Universal Declaration of Human Rights (DUHAM and the Covenant on Civil and Political Rights). These rights of freedom have been recognized nationally and internationally as rights that cannot be reduced and restricted under any circumstances (non-derogable rights). Even in a state of general emergency and war, the state should not intervene, especially force a person's freedom of religion at the level of the international forum, as stipulated in Article 28 (paragraph 1), Article 4 (paragraph 2) of the Covenant on Civil and Political Rights and articles 74 and 74 of the Human Rights Law. On the other hand, the state may restrict a person's freedom of religion at the level of an external forum in the form of manifesting his religion through laws (View of Politik Hukum Hak Asasi Manusia Tentang Kebebasan Beragama Pasca Orde Baru, n.d.)

The state must ensure that all people can embrace and practice their religion in peace. One of the obligations in the religious field that the state must carry out is to meet the needs and provide the necessary facilities so that the people can fully embrace and practice their religious teachings. This protection and authority is intended so religious people can embrace and worship peacefully and peacefully. Jazim Hamidi and M. Husnu Abadi argue that the state intervention that the people most need in the spiritual field is to meet their needs and facilitate the community to be able to embrace and practice the religious teachings they adhere to fully (Terhadap et al., n.d.)

The fulfillment of religious rights for persons with disabilities has also been codified in Law No. 8 of 2016 concerning Persons with Disabilities, which aligns with the concept of KBB. Article 14 of the Law explains five (5) points related to religious rights for people with disabilities. These religious rights globally explain the fundamental rights that must be fulfilled by the state for every religious community towards people with disabilities, including 1) the right to adhere to religion and belief and perform worship according to their religion and belief, 2) the right to have equal opportunities in using places of worship, 3) to get ease of access to religious literacy (holy books and other religious books, 4) the right to receive worship services according to their religion and beliefs, and 5) the right to participate in religious organizations (Law No. 8 of 2016).

The right to access worship is an important thing that the state must pay attention to. The state must ensure easy access for people with disabilities. Places of worship are one of the religious symbols for every religion, and this is because places of worship cannot be separated from the religious life of every person. Houses of worship are holy places to carry out mandatory religious activities such as services or Christmas for Christians and prayers for Muslims. In addition, places of worship also carry out other spiritual and social activities such as educational

activities or taklim. Thus, the state must ensure that every religious person gets the same opportunity to access the facilities of their houses of worship regardless of the status or physical status of a person, including people with disabilities, to make the best use of the facilities of houses of worship.

The state must also provide services in other religious fields that are considered essential and must be fulfilled to increase spiritual understanding and insight for every religious community. One of them is ease of access to literature or religious literacy. The guarantee of freedom in practicing religion must also be supported by the ease of access to learning religion, one of which is the existence of fiqh that can be used as a guide for people with disabilities to worship. Religious community organizations (CSOs) such as Muhammadiyah, NU, or others need to voice the importance of giving attention and concern to people with disabilities so that awareness grows in society. The availability of literature in fatwas, guidebooks, or anything similar also needs to be realized (Urgensi Fikih Difabel, Program Studi Ilmu Hadis - Universitas Ahmad Dahlan, n.d.)

Religious literacy is very important for everyone with disabilities and disabilities. The availability and ease of access to religious literacy can increase a person's understanding of their religion. This must also be encouraged with equal access for people with disabilities so they can easily access and obtain scriptures and other religious literacy. These things are expected to create more environmental conditions and contribute to fulfilling the religious rights of people with disabilities (Hanafi, 2021). So, access to literacy and religious literature is very important for the state to pay attention to.

Furthermore, the right to equal worship services. Worship services in the form of activities carried out by religious people as a form of worship or devotion to God as a manifestation of the salvation of life bestowed on them must also be obtained proportionally for people with disabilities. This is intended so that every religious believer, including people with disabilities, gets their right to worship services. Likewise, access to be involved in an organization where everyone has the same right to contribute to the development of religion through religious organizations (Pemenuhan Hak-Hak Keagamaan Bagi Penyandang Disabilitas Di Kota Makassar, Mimikri, n.d.)

Quoting Bielefeldt's writing, in the KBB prinsip, the state has an important role in realize guarantees for the community in terms of religion, especially for people with disabilities. Human rights in the KBB encourage freedom of thought, conscience, religion, opinion, and expression with the principle of non-discrimination, which must be the spirit of the state to encourage the birth and acceptance of religious guidelines such as fiqh for disability in Indonesia. The principle of non-discrimination is also stated in Articles 2, 26, and 27 of the Covenant on Civil and Political Rights, which mandates that the state must prohibit all forms of discrimination by providing equal and effective protection guarantees to all people regardless of gender, race, skin color, religion, language, political opinion, national origin, and social status, property, birth or other status must also answer the urgency of the fiqh of disability (Politik Kesetaraan : Dimensi-Dimensi Kebebasan Beragama Atau Keyakinan, Penulis, Heiner Bielefeldt; Penerjemah, Trisno Sutanto; Penyunting, Ahmad Baiquni, Dinas Perpustakaan Dan Arsip Daerah DIY, n.d.)

State guarantees through international law that have been ratified into the Law on Persons with Disabilities against the existence of fiqh on disabilities in Indonesia are very important and even mandatory from the perspective of KBB. This obligation aims to realize human rights by maintaining human honor and dignity. The availability of fiqh for people with disabilities or disabilities that encourage easy access to worship for people with disabilities is also a manifestation of human sustainability in this contemporary era.

4.0 THE URGENCY OF FIQH FOR DISABILITY IN THE MAQASHID SYARI'AH PERSPECTIVE

The term disability in the Qur'an and Hadith can be matched with the terms *al-a'ma* (blind), *scaral* (paralysis), *al-a'raj* (deaf), *al-aqtha* (deaf), *abkam* (speechless), *asah* (deaf) and *safih* (tuna grahita). The term disability is not explicitly mentioned. The term disability then appeared with the publication of contemporary fiqh books that refer to disability as *I'aqah* (form of Masdar) or *mu'awwaq* (form of ism maf'ul).

Although legal protection for people with disabilities in Indonesia continues to be worked on, the reality is that they have not been able to live a stable and comfortable life. For Muslim people with disabilities, disability-friendly public facilities and services are still minimal to be found in places of worship and even Islamic boarding schools; besides that, the issue of worship procedures according to Islamic law has also not accommodated the needs of Muslim people with disabilities. In fact, in fiqhiyah, people with disabilities are still burdened with responsibilities according to shari'a by considering their conditions.

The obstacles in worship are caused by the lack of religious readings such as the Qur'an, Hadith, etc. for people with disabilities in addition to the limited ustadz or da'i from people with disabilities. The presence of da'i or ustadz from people with disabilities is necessary, considering that not many ustadz or da'i currently have a disability-friendly perspective. Existing studies or ta'lim councils are sometimes not accessible to people with disabilities.

The problem of disability ultimately encourages the creation of a new fiqh formulation by utilizing the study of maqashid shari'ah. The existing disability fiqh should not only be a legal document but must be able to be a solution to the problems experienced by people with disabilities. Realizing a solutive disability fiqh certainly requires hard ijtihad and re-reading of the verses of the Qur'an and Hadith that intersect with it.

In the perspective of Maqashid Shari'ah, people with disabilities get the same rights as normal society in general. Likewise in the obligation to worship and muamalah. In the literature, it is stated that attention to the disabled itself has existed since ancient times; for example, in the 2nd century AH, Muhammad Bin Idris As-Shafi'i (767-819 AD / 150-204 AH) formulated a law that is pro-disabled. As-Shafi'i, in his book *al-Umm*, explains in great detail the management of tayamum for people with disabilities. (Shafi'i, 1961). This aligns with Imam al-Nawawi (1233-1277 AD / 631-676 AH), who formulated the same law for the disabled in his book *ar-Raudah*. (an-Nawawi, 2002). Even more detailed than that, Imam al-Suyuti described several special treatments for the blind, namely: not obliged to fight, no need to perform ijtihad to determine the direction of qibla during prayer, not allowed

to be an imam of prayer, not allowed to buy and sell, not allowed to be punished in his eyes, not allowed to be a witness, not obliged to perform Friday prayers and not obliged to perform the hajj. (Suyuti, 1983). Abu Yahya Zakariya al-Anshari, a fiqh scholar with madzhab Shafi'i, in his book *Tahrir Tanqih al-Lubab*, specifically wrote a chapter on *ahkam al-a'ma* (laws related to people with visual disabilities).

In line with them, Zainudin Ibn Nujaim, a scholar of the Hanafi madzhab, stated that the sale and purchase contract carried out by people with disabilities is classified as valid as well as other contracts. (Zainudin, tt). Imam Ibn al-Shalah also opened opportunities for people with visual and speech disabilities who meet the academic-intellectual requirements to be able to become a mufti; according to him, people with speech disabilities can make fatwas with sign language that can be understood, while people with visual disabilities can make fatwas through writing. (Shalah, 1986)

In the Qur'an, Allah SWT clearly prohibits humans from reproaching each other because it may be that those who are reproached have a higher position in the eyes of Allah than those who reproach. This means that the Islamic religion puts human beings in a very high position that have the right to *karomah* and *fadhilah*; this is in line with the slogan *rahmatan lil alamin*, which means welfare for all human beings without exception. The embodiment of the mission of *rahmatan lil alamin* was then known as *maqashid shari'ah*. In the terminology of Fiqh law and Islamic law, *maqashid shari'ah* is the end of the entire series of law-making, attracting benefits and preventing damage, so that it can be interpreted that the law of Allah SWT is not born except for the context of welfare and benefit.

The study of *maqashid shari'ah* for people with disabilities can be manifested in protection in the fulfillment of 3 human benefits, namely primary, secondary and tertiary. First; The primary benefit in Islam from the perspective of *maqashid shari'ah* is known as the fifth rule or *maqashid syari'ah al-khomsah*, which includes *hifz al-din*, *hifz al-nafs*, *hifz al- 'aql*, *hifz al-nasl wa hifz al-mal*. (Khoirul, 20016). If one of these rules is not fulfilled, it will destroy a series of other Islamic shari'a, including creed, ibadah, muamalah and morals. Based on this, the rights for people with disabilities can be classified as follows:

- i. *Hifz al-Din*: People with disabilities still get guarantees to maintain their religion and beliefs. Getting access to worship infrastructure without discrimination.
- ii. *Hifz al-Nafs*: Persons with disabilities are still guaranteed the right to grow and develop properly, get justice in meeting their basic needs.
- iii. *Hifz al- 'aql*: People with disabilities continue to receive guarantees of freedom of expression, freedom to express aspirations and other scientific activities.
- iv. *Hifz al-Nasl*: People with disabilities continue to receive guarantees of privacy and better quality of offspring.
- v. *Hifz al-Maal*: Persons with disabilities continue to receive guarantees for property ownership, property, and others.

Second; Secondary benefits are benefits that must exist and be fulfilled for the needs of life, such as muamalah activities which include buying and selling, weddings and so on. All laws related to secondary benefits cannot be separated from

primary benefits. Third; tertiary benefits, namely benefits that return to customs, manners and morals. These three benefits must be guaranteed to be fulfilled for people with disabilities.

The issue of the treatment of people with disabilities from the perspective of maqashid sharia is a necessity, as the purpose of maqashid itself is an effort to realize benefits and avoid evils that may have an impact on people with disabilities. This is in line with respect for the progress of science and technology. To build social awareness, sufficient knowledge is needed so that people act and behave according to what they know about equality of rights between human beings, inseparable from people with disabilities.

Following the spirit of maqashid shari'ah that to achieve the benefits of life, the struggle for legal protection against people with disabilities will be honest, if it begins with increasing the dignity and dignity of a disability-friendly social life as the basic concept.

Suppose the concept of maqashid shari'ah in the old era was focused on protection and empowerment (guarding/preservation). In that case, the concept of maqashid shari'ah in the contemporary era must focus on development and rights. (Marsaid, 2015). Sharia maqashid, which emphasizes protection and preservation, will lead to sharia maqashid, which refers to the development and glorification of human rights. So human resource development, including the protection and fulfillment of the rights of persons with disabilities, is the primary goal of Maqashid sharia, which is realized through Islamic Law.

The contemporary theory of maqashid syarī'ah is in the form of more concern for the protection of family institutions, multiplying the mindset and scientific research, maintaining and protecting human dignity and human rights, in addition to maintaining and respecting freedom of religion and belief and prioritizing social concerns, paying attention to economic development and human welfare. (Luthfi, 2016).

By using various ijtihad methods and the development of Maqashid Syariah theory, various contemporary problems related to the lives of people with disabilities can be solved. Because the development of human resources, including the protection and fulfillment of the rights of people with disabilities, is a safeguard for realizing the benefits of humanity in the world.

5.0 CONCLUSION

The existence of disability fiqh or disability fiqh is very urgent to be implemented in Indonesia, considering that the state is obliged to maintain and protect human dignity and human rights and ensure religious freedom by providing easy access for every citizen as stated in Law No. 8 of 2016 concerning Persons with Disabilities and international law that has been ratified as stated in Article 28 (paragraph 1), Article 4 (paragraph 2) of the Covenant on Civil and Political Rights and articles 74 and 74 of the Human Rights Law. In addition to several existing national and international legal rules, the urgency of the existence of fiqh for people with disabilities or disabilities in the perspective of maqashid shari'ah is a necessity, as well as the purpose of maqashid itself, namely as an effort to realize benefits and avoid evils that may have an impact on people with disabilities. The availability of

fiqh for people with disabilities or disabilities that encourages easy access to worship for people with disabilities is a solution in terms of human resource development and a safeguard for the realization of the benefits of humanity in the world which is also a manifestation of human sustainability in the contemporary era to become a civil society.

Author Contribution

The authors confirm their contribution to the paper as follows: Universiti Tun Hussein On Malaysia and IAI Riyadlotul Mujahidin for funding this research and All authors reviewed the results and approved the final version of the manuscript.

Conflict of Interest

This manuscript has not been published elsewhere, and all authors have agreed to its submission and declare no conflict of interest regarding the manuscript.

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