



## NAVIGATING DISABILITY: Perspectives and Practices in Indonesian Religious Courts

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**Abstract:** This study explores how disability is defined and addressed in Indonesia's Islamic religious courts, drawing on court decisions from the *Direktori Putusan Mahkamah Agung Republik Indonesia* (Directory of Supreme Court Decisions of the Republic of Indonesia) spanning 2005 to 2023. The central research question is: how are persons with disabilities perceived and treated within the context of Islamic legal proceedings in Indonesia? Despite national laws promoting inclusive justice, this study reveals a sustained misalignment between statutory commitments, judicial practice, and the lived accessibility of justice for people with disabilities. Through analysis of over 200 relevant cases, the research identifies four key patterns: (1) the inconsistent and often outdated definitions of disability used by judges; (2) the continued equation of disability with legal incapacity; (3) the unique challenges faced by disabled individuals in marriage and divorce proceedings; and (4) the inadequate provision of reasonable accommodations in courtroom settings. These findings underscore the enduring influence of traditional paradigms and call for a more integrated approach to disability within Islamic legal practice in Indonesia. The paper contributes to broader discussions on disability rights, Islamic law, and the transformation of religious legal systems toward greater inclusivity.

**Keywords:** Indonesian Religious Courts, Access to Justice, Inclusive Legal System, Societal Biases, Disability Rights, Indonesia.

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### Introduction

WHAT CONSTITUTES “disability”? This ostensibly straightforward question often becomes complex in practice. The answer necessitates more than just a definition or terminology; it also depends on the paradigm employed. In legal contexts, disability presents a multifaceted and intricate challenge across various legal

systems, including Islamic Law. Indonesia, in our case, has undergone notable evolution in its terminology and understanding of disability. During Indonesia's early independence and possibly even during the Dutch colonial era,<sup>1</sup> the term was *penderita tjatjat* (a person who suffers from a defect).<sup>2</sup> This term persisted until the 1980s<sup>3</sup> when it changed to *penyandang cacat* (person with a defect) in the 1990s. This shift in terminology was specifically marked by the enactment of Law No. 4 of 1997 concerning "*Penyandang Cacat*." Subsequently, a paradigm shift in the perception of disability prompted the revision of the term *penyandang cacat* to *penyandang disabilitas* (persons with disability) in Law No. 19 of 2011. Additionally, disability activists in Indonesia have introduced and embraced the term *difabel* (differently abled), extending the discourse beyond legal language.<sup>4</sup>

Given the variation in terminology, defining disability becomes a matter of interpretation. The concept of disability is inherently diverse and context-dependent, relying on social, cultural, and legal norms to determine who qualifies as "disabled" and the appropriate level of support they should receive. Therefore, it is essential to investigate how "disability" is defined and addressed within Indonesia's Islamic (religious) court framework. Although the Indonesian government has established legal definitions of disability through various laws and regulations, the compatibility of these definitions with the Islamic court system has not been explored. Examining the alignment and discrepancies between national and Islamic courts is crucial to

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<sup>1</sup> In a law book published in the colonial time, the term used was *tjatjat toeboehnja*. See J.L. Van der Toorn, *Oendang-Oendang-Hoekoem: Tarsalin Kadalam Bahasa Malajoe* (Partjitakkannja Kandjang Goebnemen, 1894), 52.

<sup>2</sup> The term appeared in *Research Di Indonesia, 1945-1965: Bidang Kesehatan* (Departemen Urusan Research Nasional, 1965), 678.

<sup>3</sup> Departemen Sosial Indonesia, *Himpunan Keputusan Menteri Sosial R.I. Tentang Susunan Organisasi dan Tata Kerja Departemen Sosial R.I.* (Biro Perencana, Departemen Sosial Republik Indonesia, 1983), 64.

<sup>4</sup> Arif Maftuhin, "Mengikat Makna Diskriminasi: Penyandang Cacat, Difabel, dan Penyandang Disabilitas," *INKLUSI* 3, no. 2 (December 3, 2016): 139–62, doi:10.14421/ijds.030201.

ensuring that individuals with disabilities receive equitable treatment and protection under both legal systems.

While the institutional development of religious courts in Indonesia has been well-documented in works by Daniel S. Lev,<sup>5</sup> Mark Cammack,<sup>6</sup> and Muhammad Fajrul Falaakh,<sup>7</sup> these studies have primarily focused on legal pluralism, institutional politics, and the integration of Islamic law within the national legal system. More recent scholarship has examined the modernization of religious courts, the use of e-court systems,<sup>8</sup> and judicial reasoning in domains such as Islamic inheritance<sup>9</sup> and economic disputes.<sup>10</sup> Other studies highlight the role of the Islamic Law Compilation,<sup>11</sup>

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<sup>5</sup> Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (University of California Press, 1972).

<sup>6</sup> Mark E. Cammack and R. Michael Feener, "The Islamic Legal System in Indonesia," *Pacific Rim Law & Policy Journal* 21 (2012): 13; Mark Cammack, "Islamic Law in Indonesia's New Order," *International & Comparative Law Quarterly* 38, no. 1 (January 1989): 53–73, doi:10.1093/iclqaj/38.1.53.

<sup>7</sup> Muhammad Fajrul Falaakh, "Peradilan Agama Dan Perubahan Tata Hukum Indonesia," in *Peradilan Agama Dan Kompilasi Hukum Islam Dalam Tata Hukum Indonesia* (Yogyakarta: Penerbit UII Press, 1993).

<sup>8</sup> Syariful Alam, Nu'man Aunuh, and Muhammad Luthfi, "E-Court Effectiveness of Religious Courts in Indonesia" (2nd International Conference on Law Reform (INCLAR 2021), Atlantis Press, 2021), 92–97, doi:10.2991/assehr.k.211102.174; Dian Latifiani et al., "The Revitalizing Indonesia's Religious Courts System: The Modernization Impacts and Potentials of E-Court," *Jurnal Hukum* 40, no. 1 (June 4, 2024): 1–13, doi:10.26532/jh.v40i1.32279.

<sup>9</sup> Muhammad Hasan, "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 9, 2023): 650–68, doi:10.22373/sjhk.v7i2.8852.

<sup>10</sup> Hasanudin, Kamsi, and Ahmad Yani Anshori, "The Contestation of Legal Foundations in the Resolution of Islamic Economic Disputes in Religious Courts," *Al-Manahij: Jurnal Kajian Hukum Islam*, September 19, 2024, 271–88, doi:10.24090/mnh.v18i2.11934; Nur Hidayah et al., "Sharia Banking Disputes Settlement: Analysis of Religious Court Decisions in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (June 27, 2023): 75–92, doi:10.30631/alrisalah.v23i1.1347.

<sup>11</sup> Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah: Jurnal Hukum*

and the institutional efforts to promote gender equality.<sup>12</sup> These contributions collectively reveal a vibrant discourse on the functioning and reform of religious courts in Indonesia.

Despite this richness, one area remains significantly underexplored: how religious courts interpret and adjudicate cases involving persons with disabilities. Existing discussions rarely address how judges operationalize concepts such as legal capacity, impairment, or reasonable accommodation within the religious court framework. This is particularly significant given the Islamic court's jurisdiction over deeply personal matters—such as marriage, divorce, and guardianship—where disability can have far-reaching legal consequences.

While disability studies often analyse how Islamic jurisprudence conceptualises human capacity through doctrines such as *ahliyyah*, *hajr*, or *kifā'ah*, the institutional reality of Indonesia's religious courts reveals a notable epistemic discontinuity. Contemporary judges are trained primarily in statutory law and judicial procedure rather than in classical fiqh, and many have no formal grounding in the doctrinal architecture of Islamic jurisprudence. Even the more recent attempts by NU<sup>13</sup> and Muhammadiyah<sup>14</sup> to formulate a "fiqh of disability" has not entered judicial circulation and remains largely unknown to judges. As a result, the model of disability that appears in judicial

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*Keluarga Dan Hukum Islam* 6, no. 2 (October 3, 2022): 514–36, doi:10.22373/sjkh.v6i2.12441; Arip Purkon, Ahmad Hidayat Buang, and Mohd Hafiz Jamaludin, "The Strengthening of Islamic Law Compilation as Material Law in Indonesian Religious Court," *Al-Afkar, Journal For Islamic Studies*, August 20, 2022, 144–56, doi:10.31943/afkarjournal.v5i3.339.

<sup>12</sup> Raid Hasan Mohammed Bani Issa, Upi Komariah, and Cucu Susilawati, "Improving Accessibility and Justice: Reforming Indonesia's Religious Courts to Uphold Human Rights and Gender Equality," *International Journal of Intersectionality: Law and Gender* 1, no. 1 (June 6, 2024): 1–15.

<sup>13</sup> Arif Maftuhin, "Mosques for All: Nahdlatul Ulama and the Promotion of the Rights of People with Disabilities," *Journal of Indonesian Islam* 15, no. 2 (December 1, 2021): 247, doi:10.15642/JIIS.2021.15.2.247-270.

<sup>14</sup> Arif Maftuhin and Abidah Muflihati, "The Fikih Difabel of Muhammadiyah: Context, Content, and Aspiration to an Inclusive Islam," *Indonesian Journal of Islam and Muslim Societies* 12, no. 2 (December 17, 2022): 341–67, doi:10.18326/ijims.v12i2.341-367.

reasoning is not derived from Islamic jurisprudence—classical or contemporary—but from administrative norms, social assumptions, and particularly the procedural demands of national disability legislation. Recognizing this institutional and epistemic gap is essential for understanding why disability is adjudicated in ways that diverge from both modern disability rights frameworks and the evolving fiqh-based discourse on disability.

A handful of undergraduate theses have made preliminary efforts to document cases involving persons with disabilities in religious courts,<sup>15</sup> but these often suffer from limited data and lack theoretical grounding in either disability studies or Islamic legal scholarship. Thus, a significant gap remains regarding how disability is understood, interpreted, and operationalized in the everyday functioning of religious courts across Indonesia. This paper addresses that gap by asking: **How are persons with disabilities perceived, defined, and treated within Indonesia's Islamic religious courts?** Drawing on over 200 case records from the *Directory of Supreme Court Decisions of the Republic of Indonesia* (2005–2023), the study identifies recurring patterns in legal reasoning and institutional practice related to disability. These include inconsistent definitions, conflation of disability with legal

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<sup>15</sup> Muhammad Adam, “Perceraian Pasangan Suami Istri Penyandang Disabilitas Netra (kajian Hukum Putusan Pengadilan Agama Bantul No. 414/Pdt.g/2011/Pa.btl Dan Pengadilan Tinggi Agama Yogyakarta No. 46/Pdt.g/2011/Pta.yk)” (skripsi, UIN Sunan Kalijaga Yogyakarta, 2021), <https://digilib.uin-suka.ac.id/id/eprint/44922/>; Nur Robi Wahidah, “Konsep Pengadilan Agama Ramah Difabel (Studi Pengadilan Agama Jember)” (undergraduate, Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2018), <http://digilib.uinkhas.ac.id/18421/>; Dini Nur Wulan Sari, “Implementasi SK Dirjen Badilag Nomor: 206/Dja/Sk/I/2021 Terhadap Pelayanan Penyandang Disabilitas Di Pengadilan Agama Kuningan.” (bachelorThesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2023), <https://repository.uinjkt.ac.id/dspace/handle/123456789/68574>; Dianah Faradia, “Penyediaan akomodasi yang Layak Bagi Disabilitas: Studi Implementasi PP No. 39 Tahun 2023 di Pengadilan Agama Kabupaten Maalang” (undergraduate, Universitas Islam Negeri Maulana Malik Ibrahim, 2023), <http://etheses.uin-malang.ac.id/49641/>.

incapacity, marginalization in family law cases, and uneven application of inclusive court policies.

By examining how disability is navigated in areas such as divorce, guardianship, and access to legal representation, this study contributes to broader conversations on Islamic law, access to justice, and the lived realities of legal pluralism. It argues that religious court judges often operate with outdated paradigms of disability, leading to procedural inconsistencies and systemic barriers to justice.

The remainder of this article is structured as follows: Section B provides a brief overview of the Indonesian religious court system, especially for international readers unfamiliar with its distinct hybrid structure. Section C outlines key developments in disability legislation and judicial guidelines. Sections D and E analyse the research findings across four major themes. The article concludes with a discussion of the implications for inclusive Islamic legal practice in Indonesia and the broader Muslim world.

## **Religious Court System in Indonesia**

To understand how disability is perceived and addressed in Indonesia's religious courts, it is important first to examine the institutional framework within which they operate. Religious courts in Indonesia have a distinctive history and function, shaped by the country's hybrid legal system that blends Islamic law, national legislation, and bureaucratic governance. While some readers may be familiar with the role of these courts, a brief overview is necessary here to provide context—especially for those outside Indonesia—on how religious courts have evolved and their position within the national legal landscape.

Although Indonesia is not an Islamic state, it is essential to emphasize that Indonesia is not a secular state either. Article 29 of the Indonesian constitution declares, "The state is based on the belief in the One and Only God." It also states, "The state guarantees the freedom of every resident to embrace their respective religions and to worship according to their religion and beliefs." Based on these articles, constitutionally, the state and religion are not separated as they are in a typical secular state. Therefore, Indonesia is more accurately described as a "religious

state." The state officially recognizes the legal rights of six religions (Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism). Within the government structure, there is also a Ministry of Religious Affairs that oversees various aspects of the social lives of religious communities, including religious education, places of worship, Islamic philanthropy, and the organization of the Hajj pilgrimage.

Religious courts in Indonesia are intricately linked to the country's constitutional framework. Indonesia's identity as a "religious state" is also mirrored in its legal system. As stipulated in Article 4 of Law No. 4 of 2004 on the Judicial Authority, all judicial entities in Indonesia are tasked with upholding "justice rooted in faith in the One and Only God." Consequently, whether it pertains to general courts, military courts, administrative courts, or religious courts, their primary mission is to administer a form of justice defined in Indonesia as "God-centered justice," rather than any notion of "secular justice," if such a term can even be applied.

In addition, religious courts were a fundamental component of the pre-Indonesian state's governance system. An example is the Yogyakarta Sultanate, which featured a religious court called the *Pengadilan Serambi*, or Veranda Court.<sup>16</sup> However, how such institutions worked in the past has not been extensively explored. Nonetheless, Indonesia's contemporary Islamic tribunal system can be traced back to a Dutch Royal Decree issued in 1882 that permitted the establishment of Islamic tribunals for Java and Madura. The Dutch referred to these courts as *priesterraden* (priests' councils), but they were commonly known as *raad agama* (religious courts), a label that inaccurately encompassed all religions. Nevertheless, the term *pengadilan agama* eventually became the official title for Islamic courts in Indonesia, except in Aceh.<sup>17</sup>

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<sup>16</sup> A. Mukti Arto, *Peradilan Agama dalam Sistem Ketatanegaraan Indonesia: Kajian Historis, Filosofis, Ideologis, Politis, Yuridis, Futuristik, Pragmatis*, Cet. 1 (Yogyakarta: Pustaka Pelajar, 2012), 77–84.

<sup>17</sup> Cammack and Feener, "The Islamic Legal System in Indonesia," 14–15.

In its early stages, recognition of religious courts was primarily administrative and procedural, as they did not receive financial support from the Dutch government. However, for the Muslim community, at least, these courts acknowledged their right to uphold religious law. In later developments, *Staatblad* 128 of 1909 and *Staatblad* 232 of 1926 brought about slight improvements in administrative and financial aspects. Nevertheless, the jurisdiction of the Religious Courts remained limited, as their decisions still required approval from the *Landraad* (district court) for execution.<sup>18</sup> From a political perspective, the formal establishment of Islamic courts was not intended to promote Islamic law; instead, the Dutch colonial government sought to curb the influence of Islamic law in Indonesia. Adhering to the principle of non-interference in religious matters, the colonial government did little to ensure the competence of Islamic judges and exercised limited oversight over the fairness of the judicial process.<sup>19</sup>

The jurisdiction of the religious courts continued to evolve, expanding or contracting, alongside political changes from Dutch colonial rule to Japanese occupation and eventual independence. While the Dutch acknowledged the existence of religious courts to curb the influence of Islamic law, establishing such courts within the new nation-state became controversial amid competing political aspirations. Religious courts became part of the dynamic search for Indonesia's national identity, with different groups advocating either a secular nation or the preservation of space for religion and its practices within Indonesia's legal framework. For instance, the plan to enact the Religious Courts Law (UUPA) in the 1980s to solidify the position of Religious Courts in the national legal system faced opposition from those who viewed it as an expression of extremism and fundamentalism.<sup>20</sup> After a lengthy process of political maneuvering and the final enactment of the

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<sup>18</sup> Muhammad Fajrul Falaakh, "Peradilan Agama Dan Perubahan Tata Hukum Indonesia," 25.

<sup>19</sup> Cammack, "Islamic Law in Indonesia's New Order," 56.

<sup>20</sup> Amrullah Ahmad, *Dimensi Hukum Islam dalam Sistem Hukum Nasional: Mengenang 65 Tahun Prof. Dr. Busthanul Arifin, SH.* (Gema Insani, 1996), 9.



Religious Courts Law (UUPA) of 1989, the religious courts eventually attained equal standing with the four other types of courts in Indonesia (general, military, administrative, and constitutional courts).

Currently, within the legal framework of Indonesia, as delineated by both the 1989 Religious Court Law and the more recent 2006 Law that amended the provisions of the 1989 legislation, the jurisdiction of the religious (Islamic) Court is both comprehensive and multifaceted. These courts play a pivotal role in administering justice in matters rooted in Islamic law and tradition, including *nikah* (marriage and divorce), *waris* (inheritance), *wasiat* (wills), *hibah* (gifts), *wakaf* (religious endowments), *zakat* (almsgiving), *infaq* (personal religious donation), *sadaqah* (religious charity), and matters concerning Islamic economics.<sup>21</sup>

Compared to other Muslim-majority countries, the Indonesian model presents a unique hybridization. In Egypt, for example, religious courts were abolished in favor of national family courts applying codified personal status law;<sup>22</sup> while in Malaysia, Islamic courts operate at the state level with more limited jurisdiction.<sup>23</sup> Indonesia's religious courts, however, are integrated into the national judiciary and apply a combination of state-enacted procedural rules and substantive Islamic principles. This hybrid identity—as both Islamic and bureaucratic institutions—makes them a vital site for exploring how Islamic values, legal obligations, and administrative structures intersect, particularly when adjudicating cases involving persons with disabilities.

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<sup>21</sup> Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama.

<sup>22</sup> Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press, 2006).

<sup>23</sup> Tamir Moustafa, "Judging in God's Name: State Power, Secularism, and the Politics of Islamic Law in Malaysia," *Oxford Journal of Law and Religion* 3, no. 1 (February 1, 2014): 152–67, doi:10.1093/ojlr/rwt035.

## Disability Rights in the Judiciary System

In 2011, Indonesia ratified the Convention on the Rights of Persons with Disabilities (CRPD), which was marked by the enactment of Law No. 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities.<sup>24</sup> By ratifying the CRPD, Indonesia became bound to uphold its principles and safeguard the rights of individuals with disabilities enshrined in the CRPD. This ratification was subsequently followed by the issuance of Law No. 8 of 2016 concerning Persons with Disabilities.<sup>25</sup> The emergence of this legislation signified a significant paradigm shift in the perception of disabilities, transitioning from the “medical model” to the “social model” of disability,<sup>26</sup> and has brought about several key changes.

First, it has altered how disability is defined. The medical model views disability as an individual’s problem, deficiency, or impairment. The older Law No. 4 of 1997 describes a *penyandang cacat* (disabled person) as an individual with physical, mental, or both impairments that hinder them from performing tasks in a “normal” way.<sup>27</sup> In essence, their “impairment” becomes the cause of their non-functionality. Conversely, the social model embraced by CRPD and Law No. 8 of 2016 perceives disability as a limitation inherent in individuals who experience physical, intellectual, mental, and sensory constraints, often leading to their social exclusion and denial of rights. These legal developments signify a pivotal advancement towards a more inclusive and equitable society, aligning Indonesia with the principles and obligations outlined in the CRPD. The shift from the medical to the social

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<sup>24</sup> “Undang-Undang Nomor 19 Tahun 2011 Tentang Pengesahan Convention on the Rights of Persons with Disabilities (Konvensi Mengenai Hak-Hak Penyandang Disabilitas),” Pub. L. No. 19 (2011), [https://www.dpr.go.id/dokjdi/document/uu/UU\\_2011\\_19.pdf](https://www.dpr.go.id/dokjdi/document/uu/UU_2011_19.pdf).

<sup>25</sup> “Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas,” Pub. L. No. 8 (2016), <https://jdih.mahkamahagung.go.id/legal-product/uu-nomor-8-tahun-2016/detail>.

<sup>26</sup> On these models, see A. Llewellyn and K. Hogan, “The Use and Abuse of Models of Disability,” *Disability & Society*, July 1, 2010, doi:10.1080/09687590025829.

<sup>27</sup> Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama.

model of disability underscores the nation's commitment to recognizing and addressing the broader societal factors that contribute to the experiences of individuals with disabilities.

Secondly, the medical model, which historically viewed people with disabilities through a deficit lens, positioned them as "abnormal" and necessitated interventions to restore their impairments to conform to a predefined notion of "normalcy." It led to the birth of rehabilitation models<sup>28</sup> and centers to correct perceived deficiencies. In contrast, the social model takes a more inclusive perspective. It recognizes that disability is not solely an intrinsic medical condition but is profoundly influenced by external factors such as societal attitudes, physical environments, and systemic barriers. Rather than attempting to mold them into a predefined mold of "normalcy," the emphasis is on fostering an environment that nurtures their unique skills, talents, and perspectives. This shift challenges the notion that being "disabled" equates to being incapable or incomplete. Instead, it encourages a view that values everyone for their inherent worth, irrespective of their abilities or differences.

Thirdly, there is a heightened emphasis on enhancing the accessibility of public spaces. With the social model underscoring the role of social and environmental barriers in shaping disabilities, an increased awareness of physical barriers has emerged. Government buildings, once inaccessible to wheelchairs, are now being renovated and equipped with ramps. Sidewalks that were previously unfriendly to the visually impaired are being renovated and fitted with guiding blocks. Public places such as train stations and airports are increasingly providing priority restrooms for individuals with disabilities. In many cities in Indonesia, we are increasingly encountering physical changes aimed at enhancing accessibility for people with disabilities.

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<sup>28</sup> Erin E. Andrews, "Disability Models," in *Practical Psychology in Medical Rehabilitation*, ed. Maggi A. Budd et al. (Cham: Springer International Publishing, 2017), 78, doi:10.1007/978-3-319-34034-0\_9.

The implementation of disability-related laws spurred a multifaceted movement across sectors in Indonesia, spanning education, politics, and religion. One institution that responded proactively to the needs of individuals with disabilities is the Religious Court. Despite the absence of specific regulatory frameworks governing its operation, the Religious Courts undertook preparatory measures by engaging in collaborative learning with the Family Court of Australia to establish inclusive courts, thereby providing services to individuals with disabilities involved in legal matters.

In July 2020, the Indonesian government issued *Peraturan Pemerintah* (Government Regulation) No. 39/2020, titled *Akomodasi yang Layak untuk Penyandang Disabilitas dalam Proses Peradilan* (Reasonable Accommodations for Persons with Disabilities in the Judicial Process).<sup>29</sup> This regulation mandated that law enforcement agencies and the Supreme Court appropriately accommodate individuals with disabilities engaged in legal proceedings. These accommodations encompassed modifications aimed at ensuring the full enjoyment of all human rights and fundamental freedoms for individuals with disabilities, grounded in the principles of equality. Reasonable accommodations contain services, facilities, and infrastructure. Concerning facilities and infrastructure, this regulation addresses their financial aspects and outlines details for providing assistive devices tailored to the specific disabilities of individuals involved in legal matters. In terms of "services," seven key aspects are highlighted:

1. Ensuring fair and unbiased treatment.
2. Guaranteeing a sense of safety and comfort.
3. Facilitating effective communication.
4. Supplying information about the rights of people with disabilities and updates on legal proceedings.
5. Providing remote audio-visual communication facilities.
6. Establishing standardized procedures for examining individuals with disabilities and delivering legal services.
7. Offering Disability Assistants and Interpreters.

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<sup>29</sup> "PP No. 39 Tahun 2020," *Database Peraturan | JDIH BPK*, 39, accessed October 21, 2023, <http://peraturan.bpk.go.id/Details/142170/pp-no-39-tahun-2020>.

Within the context of the Religious Court, tangible strides were made, with *Direktur Jenderal Badan Peradilan Agama Mahkamah Agung RI* (the Directorate General of Religious Courts of the Supreme Court of the Republic of Indonesia) issuing a decree on January 19, 2021. This decree delineated service standards for individuals with disabilities within the Religious Court system, outlining clear definitions of disabilities, prescribing specific measures for court officials to guarantee physical and non-physical accessibility, and providing guidance on essential facilities, including accessible places of worship (*musallas*). Numerous Religious Courts responded to this directive by taking diverse actions. Praya Religious Court, for instance, aimed to provide outstanding services to people with disabilities by offering specific amenities such as guiding blocks, wheelchairs, hearing aids, Braille guidebooks, and accessible restrooms.<sup>30</sup> The Malang Religious Court implemented comparable measures. They initiated efforts to serve as a leading example of inclusive religious courts for individuals with disabilities. Furthermore, a limited number of judges underwent training in handling cases involving people with disabilities.

In summary, issues related to disability rights and the adoption of inclusive judicial practices have garnered recognition among administrators and judges in Religious Courts in recent years. However, the extent to which these considerations manifest in courtroom procedures and the discourse on disability-related matters within judicial settings warrants further scholarly investigation.

## Disability in Religious Courts

The data for this study originate from case records available on the *Direktori Putusan Mahkamah Agung Republik Indonesia*

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<sup>30</sup> "Optimalkan Peradilan Inklusif, Penyandang Disabilitas Mendapatkan Layanan Prioritas Pada Proses Pra Persidangan Pengadilan Agama Praya," accessed October 21, 2023, <https://pa-praya.go.id/berita/berita-terkini/689-optimalkan-peradilan-inklusif-penyandang-disabilitas-mendapatkan-layanan-prioritas-pada-proses-pra-persidangan-pengadilan-agama-praya>.

(Directory of Supreme Court Decisions of the Republic of Indonesia), an online website. This directory contains case information from all types of courts in Indonesia from 2005 to the time of this investigation (October 2023). According to the data in this directory, there was a noticeable increase in data uploads beginning in 2007. Notably, only one case file was uploaded from 2005 to 2006. From an extensive archive containing more than eight million case records, I went through a rigorous multi-stage selection procedure:

1. Applying disability-related keywords (see Table 1);
2. Filtering for first-tier court decisions to ensure jurisdictional variety;
3. Selecting only cases under the perdata agama (religious civil) category;
4. Reviewing whether keywords appeared organically—used meaningfully in the text, not as names or irrelevant references.

In the initial phase, I utilized fifteen disability-related keywords to examine how the directory system presented the relevant data. It allowed us to gain an understanding of disabilities in the religious court, as displayed in Table 1. Once identified, I applied two available filters within the system. The first filter, for first-tier courts, was used to ensure that the dataset I would examine represented a range of jurisdictions across Indonesia. The second filter, "religious civil," was used to ensure that the cases under observation occurred in religious courts, the primary focus of this study, rather than in other types of courts.

Table 1 Terms Related to Disabilities

Terms	Number of Cases
<b>Cacat Badan (Cacad)</b>	3481 (+54)
<b>Autis</b>	520
<b>Tunarungu</b>	452
<b>Tunanetra</b>	266
<b>Penyandang disabilitas</b>	252
<b>Penyandang cacat</b>	249
<b>Difabel</b>	123

<b>Anak berkebutuhan khusus</b>	104
<b>Tunagrahita</b>	79
<b>Penderita cacat</b>	25
<b>Tunalaras</b>	8
<b>Penderita disabilitas</b>	7
<b>Penyandang difabel</b>	4
<b>Tunadaksa</b>	3
<b>Penderita difabel</b>	1

As a result, more than 3,500 cases containing the keyword “*cacat/d badan*” were identified. Before conducting further analysis, these 3500+ data points were subjected to a fourth restriction: that the keywords appeared and were used in a contextually relevant and natural manner within the documents. In this context, “organically” signifies distinguishing between words used in a manner that made sense within a document and those that only appeared because they were cited as names of individuals, organizations, or direct quotations not authored by the writer of the case files. For example, the term *tunanetra* (blind) was mentioned in a document as a workplace but was not directly relevant to disability issues. For instance, if the plaintiff worked as a teacher at the “*Tunanetra Special School*”, it was not contextually relevant. Such case files would not be subject to further examination.

The term *cacat/d badan* appears frequently in the directory and primarily originates from references to *cacat badan* mentioned in Article 116 of Book 1 of the Compilation of Islamic Law (*Kompilasi Hukum Islam*), which outlines the grounds for divorce. Due to the large number of occurrences and the need to sift through the relevant material, case files containing the term *cacat/t badan* were not extensively examined in this study. Similarly, instances such as *Tuli*, which turned out to be a person's name rather than a reference to deafness, and the phrase *berkebutuhan khusus* (special needs), which is often used in documents to identify someone's disability or special requirements, were excluded from the analysis.

As a result, the study focused on case files containing the terms *penyandang/penderita cacat* (people with disabilities), *penyandang disabilitas* (people with disabilities), and *difabel* (differently abled), totaling more than 200 files, as the final sample. These files were examined to understand how those involved, including judges and courtroom attendees, perceive and use these terms. I will delve into these aspects through three main themes: definitions, perceptions, marriage, and legal proceedings in the Religious Court.

### 1. Unauthorized Definition

As previously mentioned, the Indonesian language offers a plethora of terms to describe “individuals with disabilities,” influenced by factors such as the disability model employed or the surrounding socio-cultural context. Despite the view within disability studies that the term *penderita cacat* is derogatory and no longer appropriate, it remains prevalent in many court documents. Judges' sensitivity to terminology in the specialized field of disabilities does not consistently align with the evolving knowledge in that domain. More than 200 case records contain the terms ' *penyandang cacat* ' and ' *penderita cacat* '. The term *difabel*, which means “the differently abled,” is used in the phrase *penyandang difabel*. While disability activists attach great importance to this term, judges do not share the same perspective.

Analysis of the surveyed case files reveals that judicial usage of disability terminology does not consistently reflect contemporary developments in disability scholarship or shifts in national legal standards. Even though Law No. 8 of 2016 on Persons with Disabilities exists, judges rarely refer to it. For example, in a case involving the guardianship of a non-speaking child (the Decision of Surabaya Religious Court Number 11/Pdt.P/2022/PA.Sby), the judge chose to equate it with the term *anak berkebutuhan khusus* (children with special needs), relying on the definition provided in the official Indonesian dictionary, which describes it as “children with special characteristics that differ from typical children, not necessarily indicating mental, emotional, or physical disabilities.” Nevertheless, Article 30 of Law No. 8 of 2016 stipulates that law enforcement officials must,



before examining Persons with Disabilities, seek counsel or advice from (a) medical professionals or other healthcare experts regarding their health condition; (b) psychologists or psychiatrists regarding their psychological state; and/or (c) social workers regarding their psychosocial well-being.

The case files also demonstrate that the appropriate authorities do not consistently conduct disability assessments. While some disability cases are substantiated by certificates issued by hospitals or rehabilitation centers, there are instances in which village leaders issue these certificates. For instance, in the Decision of Temanggung Religious Court Number 277/Pdt.P/2020/PA.Tmg, it is mentioned that the Head of Gondang Village, Watumalang Sub-District, issued the disability certificate. In another case, the Decision of PA Jakarta Utara Number 269/Pdt.P/2020/PA.JU, the certificate was issued by the school principal. Despite these individuals residing within the “jurisdiction” of people with disabilities, they lack the understanding and legal authority to assess someone’s disability.

Non-compliance with such legal provisions naturally carries the risk of inaccurately identifying the legal implications of disabilities. For example, the Decision of Pemalang Religious Court Number 3060/Pdt.G/2020/PA.Pml documents a divorce case involving a husband and wife with disabilities. The husband appears to accuse his wife of having a “mental illness.” However, the wife’s defense, represented by her sister, asserts that she is physically and mentally sound. Her destructive behavior is attributed to her condition as a person with hearing and speech impairments, not a mental disorder. Regardless of the truth in this case, it is evident that the judge requires expert opinions to provide a valid assessment.

The judge's error in handling disability cases is documented in the Decision of the Tangerang Religious Court, Number 10/Pdt.P/2019/PA.Tng. In this ruling, Cerebral Palsy is considered a disability that renders an individual legally incapacitated.

*Menyatakan secara hukum bahwa Umar Fadhil bin Fadhil menderita Cerebral Palsy yang memiliki kebutuhan khusus (difabel) sehingga*

*dinyatakan tidak cakap bertindak secara hukum; Menetapkan Pemohon (Ema Fatma Fadhil binti Fadhil) sebagai wali pengampu dari Umar Fadhil bin Fadil dan diberi kewenangan baginya mewakili kepentingan hukum di luar dan di dalam Pengadilan sepanjang untuk keperluan dan kepentingan...*

*(It declares legally that Umar Fadhil bin Fadhil suffers from Cerebral Palsy, which classifies him as having special needs (disabled), thereby declaring him legally incapacitated. It also designates the Petitioner (Ema Fatma Fadhil binti Fadhil) as the legal guardian of Umar Fadhil bin Fadil, granting her the authority to represent legal interests both outside and within the court for the purpose and interest.)*

This document does not specify Umar Fadhil's age, but he was deemed legally incapacitated due to cerebral palsy. Cerebral palsy is a group of conditions affecting movement and body posture caused by damage in the developing brain, most commonly before birth. Therefore, CP is more accurately described as a motor disability rather than a mental disability.

According to Isna Wahyudi, the Chief Judge of the Banyumas Religious Court, a person's disability is first identified when they file their case in court. However, this identification is solely based on their or their representative's admission. The court does not require any documents to substantiate these claims, nor does it take the initiative to bring in doctors, psychologists, or social workers to verify these admissions. Despite legal obligations, the Religious Court lacks the budget to implement such practices.

Wahyudi himself, in 2014, handled a case involving an expert when dealing with a respondent who had a mental disability (bipolar disorder). It was a divorce case involving a couple with an infant, and the decision had to determine who would be granted custody. Legally, the child should have been under the mother's care. However, the husband sought custody, arguing that his wife would not be capable of caring for the child properly due to her bipolar disorder. An expert was brought to court to substantiate his claim. Based on the expert's testimony, the judge eventually awarded custody to the husband. However, it is worth noting that the petitioner funded the effort to bring in an expert witness, not as free accommodation from the court, which is yet to be budgeted for within the judicial process in the Religious Court.

## 2. Perception: Disabilities as Inabilities

In disability-related cases within Religious Courts, a standard narrative persists, framing "disability" as synonymous with "incapacity." This viewpoint has historical roots and continues to exist in contemporary society, notably within the medical model framework. As discussed earlier, the medical model directly links an individual's physical impairment to their perceived inability to perform tasks considered "normal" by societal standards. This perspective is evident in various divorce cases where the husband's lack of financial support is attributed to his disability, rendering him unable to secure employment. For instance, in the judgment of the Ngamprah [Bandung, West Java] Religious Court, Number 2172/Pdt.G/2020/PA.Nph, it is mentioned:

*The conflict between the plaintiff and the Defendant arises partly because the Defendant fails to provide basic financial support. This is due to the Defendant's disability, which means he does not have a job.*

In another divorce case outlined in the ruling of the Banda Aceh Syariah Court Number 81/Pdt.G/2020/MS.Bna, the disabled husband, explains his unemployment:

*As a human being, I have emotions and can easily be hurt. I have been patient for a long time and have consistently sought alternative jobs, but luck has not been on my side. Many places/offices or companies I approached or sent applications to rejected me due to my disability.*

A similar situation is depicted in the judgment of Boyolali Religious Court Number 138/Pdt.G/2014/PA.Bi, where disability is linked to the inability to cover legal expenses. Here, the petitioner, a person with a disability (paralyzed legs due to an accident resulting in a fractured spine), requests pro bono legal proceedings due to limited income from a small business selling used TVs, barely sufficient for daily expenses.

Apart from challenges related to employment and legal fees, disability is also associated with other incapacities, such as the inability to provide proper education for children. Indonesian law allows individuals to marry upon reaching adulthood, defined as 19 years old by Law No. 16 of 2019, for both males and females.

Those below this age must obtain a legal dispensation for underage marriage. Interestingly, in the judgment of Rantau Prapat [Labuhanbatu, North Sumatra] Religious Court Number 221/Pdt.P/2021/PA.RAP, parental disability is cited as a reason for seeking dispensation.

The judge assessed that the harm resulting from the delayed marriage of the Applicants' child and XXX (the prospective husband) outweighs the harm caused by marrying the child below the legal age... considering the condition of the Applicants, who are persons with disabilities... it is estimated [that they will] struggle to supervise their child's relationships closely..."

In this context, the potential risks associated with underage marriage are considered smaller than the challenges arising from the disabled guardians' inability to oversee their children's relationships, which are not religiously prohibited.

### *3. Disability, Marriage, and Divorce.*

In Indonesia, marriage is legally defined as the sacred union of a man and a woman, intended to form a joyful and enduring family under God's guidance.<sup>31</sup> In comparison, the Compilation of Islamic Law specifies that marriage aims to create a household characterized by tranquility, affection, and compassion<sup>32</sup>. However, achieving these goals is a complex endeavor, influenced by individual factors and broader societal and political elements. Surprisingly, the intersection of disability and marriage has received limited attention in prior research concerning marriage and divorce in Indonesia. Insights from legal case records, known as "judicial directories," provide valuable information on the relationship between disability and marital matters. Three key observations shed light on how disability is integrated into legal disputes.

Firstly, disability can act as a "hurdle to marriage." Indonesian law requires a valid marriage to include a marriage guardian (*wali*

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<sup>31</sup> "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," Pub. L. No. 1 (1974), art. 1.

<sup>32</sup> *Kompilasi Hukum Islam Di Indonesia* (Kementerian Agama RI Dirjen Bimas Islam, 2018), 5.

nikah) representing the bride. Article 20 of the Compilation of Islamic Law delineates two types of marriage guardians: the guardian by lineage (*wali nasab*) and the guardian appointed by the government (*wali hakim*). The *wali hakim* is a guardian designated by the government who steps in when there is no guardian by lineage or when the existing guardian declines to fulfill this role. The judicial directories reveal numerous instances of *wali adhal* concerning disability, where the prospective groom's disability becomes the reason for the *wali nasab* to decline his responsibilities as the guardian and refuse the marriage proposal. For instance, in the case of Semarang Religious Court's Decision Number 106/Pdt.P/2020/PA.Smg, it is recorded:

*Bahwa selama ini orang tua/pihak keluarga calon suami Pemohon telah melakukan pendekatan/peminangan terhadap wali Pemohon, namun ditolak dengan alasan: Karena calon suami Pemohon penyandang disabilitas; Bahwa dengan demikian berpendapat penolakan wali nikah Pemohon tersebut tidak berorientasi pada kebahagiaan Pemohon...*

The parents and family of the petitioner's prospective groom have made efforts to propose to the petitioner's guardian. Still, their request was declined, citing the petitioner's prospective groom's disability. Consequently, it is argued that the rejection of the petitioner's marriage guardian is not primarily motivated by the petitioner's well-being...

The second aspect to consider, which is quite the opposite of the first, is that disabilities can also be seen as a mutual advantage for marriage. Islamic jurisprudence teaches us that one of the cornerstones of a successful marriage is equality (known as *al-kafa'ah*) between spouses. Islamic scholars have different views on what constitutes this "equality," including lineage, ethnicity, and social status. However, the fundamental idea is that equality is crucial for establishing a harmonious marital relationship. In cases where requests for underage marriage are considered, some judges grant permission due to their evaluation that both prospective spouses are deaf and hard of hearing. It suggests that the judge perceives disability as a form of *kafa'ah*. In the Decision

of Sawahlunto Religious Court Number 15/Pdt.P/2020/PA.SWL, the judge noted:

*Menimbang, bahwa dari aspek sosiologis dinilai bahwa antara anak para Pemohon dan calon suaminya adalah penyandang disabilitas (tuna wicara). Bahwa hal ini dapat dijadikan sebagai modal awal bagi keduanya untuk menyatukan visi berumah tangga...*

*(From a sociological perspective, it is considered that both applicants' child and her prospective husband are individuals with disabilities [specifically, deaf-mute]. This could be seen as an initial asset for them to share a vision for their married life.)*

Thirdly, disabilities are often used as a reason for marital breakdown. In several cases, it has been documented that the presence of a disabled individual within a marriage can lead to divorce. Typically, either the husband or the wife struggles to accept the reality of living with a person with a disability. There are instances where husbands refuse to share a home with their disabled in-laws, and some cannot come to terms with having a stepchild with disabilities. There are even situations where husbands find it challenging to cope with the possibility of having children with disabilities.

*Termohon sering terjadi pertengkaran dengan anak Pemohon, dimana anak pemohon memiliki kebutuhan khusus (penyandang disabilitas), dan Termohon juga pernah meminta kepada Pemohon untuk di bersihkan (diceritakan) ... (Disputes frequently arise between the respondent and the petitioner's child, especially when the petitioner's child has special needs [such as being a person with disabilities]. In these cases, the respondent often requests a separation [divorce]... [Decision of Kebumen Religious Court Number 1993/Pdt.G/2021/PA.Kbm])*

*Tergugat tidak dapat menerima kenyataan bahwa anaknya merupakan seorang difabel (tuna rungu), sejak saat itu Tergugat sudah tidak pernah kembali ke rumah bersama dan Tergugat sudah tidak ada kabar dan tidak diketahui keberadaannya hingga saat ini...*

*[The respondent finds it difficult to accept that his child is a person with disabilities (deafness and muteness). Since that realization, the respondent has not returned home, and his whereabouts have remained unknown to this day... (Decision of Tangerang Religious Court Number 1370/Pdt.G/2020/PA.Tng)]*

The intersection of disability and marriage in Indonesia illuminates the multifaceted nature of human relationships. It underscores the necessity for inclusive legal frameworks that protect the rights of individuals with disabilities, ensuring their unfettered access to the institution of marriage. It reveals a society grappling with deeply ingrained biases while striving for inclusivity and recognition of shared experiences. As we navigate the intricate pathways of marriage, individuals with disabilities continue to face significant challenges in pursuing their happiness. Addressing these issues requires an evolution in societal attitudes, a commitment to breaking down barriers, and a recognition of the value of inclusivity within the institution of marriage.

#### *4. Legal Proceedings Involving Disabilities*

As evident from the recent findings discussed, individuals with disabilities continue to confront the potential for injustice stemming from deeply ingrained societal and legal biases. Despite ongoing efforts since 2020 to enforce the rights of individuals with disabilities to access justice, there remains a gap between the theoretical framework and practical application. In theory, enacting Law No. 8 of 2016, guaranteeing equal access rights for people with disabilities who encounter legal issues, alongside government regulations, should have provided more robust assurances within the judicial system for individuals with disabilities.

However, intriguingly, only two cases were found where judges explicitly referred to Law No. 8 of 2016. Decision of Tanjung Religious Court Number 134/Pdt.G/2019/PA.Tjg cited this law when addressing a child custody case involving a person with disabilities. On the other hand, the Decision of Wonogiri Religious Court Number 899/Pdt.G/2017/PA.Wng documented a plaintiff with disabilities seeking access to justice based on the Law on Disabilities.

The sole instance where Government Regulation No. 39/2020 was explicitly mentioned occurred in the Decision of Dabo Singkep Religious Court Number 22/Pdt.P/2021/PA.Dbs. In this

case, the court acknowledged its limitations in providing suitable accommodations and stated that the witness did not object to testifying without a disability assistant:

*... dan sebelum memberikan keterangan ia menyatakan tidak keberatan menyampaikan keterangan tanpa didampingi pendamping disabilitas sebagaimana Pasal 2 ayat(1) dan Pasal 4 ayat (1) Peraturan Pemerintah Nomor 39 Tahun 2020 tentang Akomodasi yang Layak untuk Penyandang Disabilitas dalam Proses Peradilan*

(... and before testifying, he expressed willingness to testify without a disability companion, following the regulations stated in Article 2, paragraph (1), and Article 4, paragraph (1) of Government Regulation Number 39 of 2020 concerning Proper Accommodations for People with Disabilities in the Judicial Process.)

The scarcity of references to national laws or government regulations regarding appropriate accommodation rights may explain why, in numerous cases involving deaf and hard-of-hearing individuals, courts fail to uphold these rights. Compared to other disability categories, the deaf and hard of hearing are frequently noted as individuals requiring a "companion" to navigate the legal process. Deaf and hard-of-hearing individuals often encounter communication barriers, so the court should ideally provide sign language interpreters. However, in practice, they are typically assisted informally by family members or, in the best-case scenario, by volunteers from NGOs advocating for the rights of individuals with disabilities. At least seven rulings address access rights for the deaf and hard of hearing and how they are assisted "independently."

Once again, the challenge of providing professional sign language interpreters in the Religious Courts arises due to limited budget resources. Government Regulation Number 39 of 2020 (*Peraturan Pemerintah Nomor 39 Tahun 2020*), addressing suitable accommodations for People with Disabilities in the Judicial Process, seems to acknowledge this issue in Article 19, Paragraph 3:



(1) *Penyediaan sarana dan prasarana sebagaimana dimaksud pada ayat (2) dilaksanakan sesuai dengan kemampuan keuangan negara dan sesuai dengan ketentuan peraturan perundang-undangan.*

([1] The provision of necessary facilities and infrastructure mentioned in paragraph [2] will be in line with the financial capacity of the state and in accordance with the existing laws and regulations.)

The phrase "in line with the financial capacity of the state" is a protective measure to guard against allegations of negligence in fulfilling the responsibility to provide suitable accommodations. Article 22 further anticipates budget constraints by enabling community involvement in providing proper accommodation. This involvement can encompass:

- (a) Assisting individuals with disabilities during legal proceedings.
- (b) Overseeing the legal processes involving individuals with disabilities.
- (c) Conducting research and educational activities related to suitable accommodations for individuals with disabilities in legal proceedings and ...
- (d) Promoting awareness of the rights of individuals with disabilities and the regulations about suitable accommodations in legal proceedings.

In the following two cases, for instance, support from the SAPDA Foundation and another unspecified assistant is noted:

*Bahwa Pemohon adalah seorang difabel yang dalam kondisi tuna rungu dan tuna wicara, sehingga didampingi Yayasan Sapda (Sentra Advokasi Perempuan, Difabel dan Anak)*

(The petitioner, who is a person with disabilities and is deaf and mute, was accompanied by the Sapda Foundation (Center for Advocacy of Women, Disabled Individuals, and Children) [Decision of PA Yogyakarta Number 273/Pdt.G/2020/PA.YK])

*Bahwa Penggugat adalah seorang penyandang disabilitas (tuna rungudan tuna wicara) yang dalam persidangan didampingi seorang penterjemah*

(The plaintiff, a person with disabilities who is deaf and mute, was provided with an interpreter during the trial [Decision of Sleman Religious Court Number 1504/Pdt.G/2021/PA.Smn]).

Consequently, there may be a need to acknowledge the goodwill demonstrated by the Indonesian judicial institutions in their efforts to fulfill the rights to appropriate accommodations for Persons with Disabilities involved in legal matters. However, it underscores the importance of the government's commitment to providing these accommodations in good faith. The absence of proper accommodations would significantly challenge the attainment of justice for Persons with Disabilities.

These findings (sections 1-4) provide a window into how disability is understood and practiced within Indonesia's Islamic religious courts. While they show some responsiveness to disability-related concerns, they also reveal significant gaps between legal obligations, judicial perceptions, and inclusive practice. The following section reflects on the implications of these findings and how they contribute to broader debates in Islamic law, justice, and disability rights.

## Conclusion

This study has examined how persons with disabilities are defined, perceived, and treated within Indonesia's Islamic religious court system. Drawing from an analysis of more than 200 case records from 2005 to 2023, it reveals a significant disconnect between national legal frameworks—such as Law No. 8 of 2016 and Government Regulation No. 39 of 2020—and the practical implementation of inclusive justice. Despite formal commitments and administrative efforts by BADILAG, the judicial application of disability rights remains inconsistent and is often shaped by outdated assumptions, limited resources, and institutional inertia.

The findings underscore how disability continues to be misinterpreted through informal definitions, equated with legal or economic incapacity, and viewed as an impediment to marital stability. This misalignment between legal obligations and courtroom realities obstructs the promise of equal access to justice and perpetuates systemic exclusion. The persistence of these patterns reflects not only a legal gap but a wider socio-cultural lag

in recognizing the full dignity and rights of people with disabilities.

To move forward, this study calls for sustained financial investment and capacity-building within the judiciary. Judges and court officials must receive targeted training on disability law, inclusive procedural standards, and the ethical imperatives of Islamic justice. Religious courts must be equipped with the infrastructure and human resources—such as interpreters, accessible facilities, and disability officers—needed to comply meaningfully with existing regulations.

Beyond technical reform, this research contributes to the growing scholarly discourse on Islamic law and disability by offering grounded evidence of how Islamic courts engage (or fail to engage) with inclusive legal norms. It raises important questions for future inquiry: How might fiqh evolve to accommodate disability justice? What models of procedural fairness could be developed to align Islamic legal principles with contemporary human rights standards?

In closing, this study invites further research and policy reflection. If Indonesia is to uphold its constitutional promise of justice for all, its religious courts must serve not only as venues of legal resolution but as institutions of ethical inclusion. Ensuring that people with disabilities are recognized, respected, and accommodated in the courtroom is not merely a technical adjustment—it is a test of the nation's legal and moral commitment to equity.

### References

- Adam, Muhammad. "Perceraian Pasangan Suami Istri Penyandang Disabilitas Netra (kajian Hukum Putusan Pengadilan Agama Bantul No. 414/Pdt.g/2011/Pa.btl Dan Pengadilan Tinggi Agama Yogyakarta No. 46/Pdt.g/2011/Pta.yk)." Skripsi, UIN Sunan Kalijaga Yogyakarta, 2021. <https://digilib.uin-suka.ac.id/id/eprint/44922/>.

- Alam, Syariful, Nu'man Aunuh, and Muhammad Luthfi. "E-Court Effectiveness of Religious Courts in Indonesia," 92–97. Atlantis Press, 2021. doi:10.2991/assehr.k.211102.174.
- Amrullah Ahmad. *Dimensi Hukum Islam dalam Sistem Hukum Nasional: Mengenang 65 Tahun Prof. Dr. Busthanul Arifin, SH*. Gema Insani, 1996.
- Andrews, Erin E. "Disability Models." In *Practical Psychology in Medical Rehabilitation*, edited by Maggi A. Budd, Sigmund Hough, Stephen T. Wegener, and William Stiers, 77–83. Cham: Springer International Publishing, 2017. doi:10.1007/978-3-319-34034-0\_9.
- Arto, A. Mukti. *Peradilan Agama dalam Sistem Ketatanegaraan Indonesia: Kajian Historis, Filosofis, Ideologis, Politis, Yuridis, Futuristis, Pragmatis*. Cet. 1. Yogyakarta: Pustaka Pelajar, 2012.
- Bilalu, Naskur, Ridwan Jamal, Nurlaila Harun, and Syahrul Mubarak Subeitan. "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (October 3, 2022): 514–36. doi:10.22373/sjkh.v6i2.12441.
- Brown, Nathan J. *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*. Cambridge University Press, 2006.
- Cammack, Mark. "Islamic Law in Indonesia's New Order." *International & Comparative Law Quarterly* 38, no. 1 (January 1989): 53–73. doi:10.1093/iclqaj/38.1.53.
- Cammack, Mark E., and R. Michael Feener. "The Islamic Legal System in Indonesia." *Pacific Rim Law & Policy Journal* 21 (2012): 13.
- Departemen Sosial Indonesia. *Himpunan Keputusan Menteri Sosial R.I. Tentang Susunan Organisasi dan Tata Kerja Departemen Sosial R.I. Biro Perencana*, Departemen Sosial Republik Indonesia, 1983.
- Faradia, Dianah. "Penyediaan akomodasi yang Layak Bagi Disabilitas: Studi Implementasi PP No. 39 Tahun 2023 di Pengadilan Agama Kabupaten Maalang." Undergraduate, Universitas Islam Negeri Maulana Malik Ibrahim, 2023. <http://etheses.uin-malang.ac.id/49641/>.
- Hasan, Muhammad. "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan." *Samarah: Jurnal Hukum Keluarga*

- Dan Hukum Islam* 7, no. 2 (May 9, 2023): 650–68. doi:10.22373/sjhc.v7i2.8852.
- Hasanudin, Kamsi, and Ahmad Yani Anshori. "The Contestation of Legal Foundations in the Resolution of Islamic Economic Disputes in Religious Courts." *Al-Manahij: Jurnal Kajian Hukum Islam*, September 19, 2024, 271–88. doi:10.24090/mnh.v18i2.11934.
- Hidayah, Nur, Abdul Azis, Tira Mutiara, and Diah Larasati. "Sharia Banking Disputes Settlement: Analysis of Religious Court Decisions in Indonesia." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (June 27, 2023): 75–92. doi:10.30631/alrisalah.v23i1.1347.
- Issa, Raid Hasan Mohammed Bani, Upi Komariah, and Cucu Susilawati. "Improving Accessibility and Justice: Reforming Indonesia's Religious Courts to Uphold Human Rights and Gender Equality." *International Journal of Intersectionality: Law and Gender* 1, no. 1 (June 6, 2024): 1–15.
- J.L. Van der Toorn. *Oendang-Oendang-Hoekoem: Tarsalin Kadalam Bahasa Malajoe*. Partjitakkannja Kandjang Goebnememen, 1894. *Kompilasi Hukum Islam Di Indonesia*. Kementerian Agama RI Dirjen Bimas Islam, 2018.
- Latifiani, Dian, Nur Arif Nugraha, Anis Widyawati, Akhmad Khalimy, Muhammad Iqbal Baiquni, Asmarani Ramli, and Pratama Herry Herlambang. "The Revitalizing Indonesia's Religious Courts System: The Modernization Impacts and Potentials of E-Court." *Jurnal Hukum* 40, no. 1 (June 4, 2024): 1–13. doi:10.26532/jh.v40i1.32279.
- Lev, Daniel S. *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*. University of California Press, 1972.
- Llewellyn, A., and K. Hogan. "The Use and Abuse of Models of Disability." *Disability & Society*, July 1, 2010. doi:10.1080/09687590025829.
- Maftuhin, Arif. "Mengikat Makna Diskriminasi: Penyandang Cacat, Difabel, dan Penyandang Disabilitas." *INKLUSI* 3, no. 2 (December 3, 2016): 139–62. doi:10.14421/ijds.030201.
- . "Mosques for All: Nahdlatul Ulama and the Promotion of the Rights of People with Disabilities." *Journal of Indonesian*

- Islam* 15, no. 2 (December 1, 2021): 247. doi:10.15642/JIIS.2021.15.2.247-270.
- Maftuhin, Arif, and Abidah Muflihati. "The Fikih Difabel of Muhammadiyah: Context, Content, and Aspiration to an Inclusive Islam." *Indonesian Journal of Islam and Muslim Societies* 12, no. 2 (December 17, 2022): 341–67. doi:10.18326/ijims.v12i2.341-367.
- Moustafa, Tamir. "Judging in God's Name: State Power, Secularism, and the Politics of Islamic Law in Malaysia." *Oxford Journal of Law and Religion* 3, no. 1 (February 1, 2014): 152–67. doi:10.1093/ojlr/rwt035.
- Muhammad Fajrul Falaakh. "Peradilan Agama Dan Perubahan Tata Hukum Indonesia." In *Peradilan Agama Dan Kompilasi Hukum Islam Dalam Tata Hukum Indonesia*. Yogyakarta: Penerbit UII Press, 1993.
- "Optimalkan Peradilan Inklusif, Penyandang Disabilitas Mendapatkan Layanan Prioritas Pada Proses Pra Persidangan Pengadilan Agama Praya." Accessed October 21, 2023. <https://pa-praya.go.id/berita/berita-terkini/689-optimalkan-peradilan-inklusif-penyandang-disabilitas-mendapatkan-layanan-prioritas-pada-proses-pra-persidangan-pengadilan-agama-praya>.
- Database Peraturan | JDIH BPK. "PP No. 39 Tahun 2020." Accessed October 21, 2023. <http://peraturan.bpk.go.id/Details/142170/pp-no-39-tahun-2020>.
- Purkon, Arip, Ahmad Hidayat Buang, and Mohd Hafiz Jamaludin. "The Strengthening of Islamic Law Compilation as Material Law in Indonesian Religious Court." *Al-Afkar, Journal For Islamic Studies*, August 20, 2022, 144–56. doi:10.31943/afkarjournal.v5i3.339.
- Research Di Indonesia, 1945-1965: Bidang Kesehatan*. Departemen Urusan Research Nasional, 1965.
- Sari, Dini Nur Wulan. "Implementasi SK Dirjen Badilag Nomor: 206/Dja/Sk/I/2021 Terhadap Pelayanan Penyandang Disabilitas Di Pengadilan Agama Kuningan." bachelorThesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2023. <https://repository.uinjkt.ac.id/dspace/handle/123456789/68574>.

- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pub. L. No. 1 (1974).
- Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama, Pub. L. No. 3 (2006).
- Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas, Pub. L. No. 8 (2016).  
<https://jdih.mahkamahagung.go.id/legal-product/uu-nomor-8-tahun-2016/detail>.
- Undang-Undang Nomor 19 Tahun 2011 tentang Pengesahan Convention on the Rights of Persons with Disabilities (Konvensi Mengenai Hak-Hak Penyandang Disabilitas), Pub. L. No. 19 (2011).  
[https://www.dpr.go.id/dokjdih/document/uu/UU\\_2011\\_19.pdf](https://www.dpr.go.id/dokjdih/document/uu/UU_2011_19.pdf).
- Wahidah, Nur Robi. "Konsep Pengadilan Agama Ramah Difabel (Studi Pengadilan Agama Jember)." Undergraduate, Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2018. <http://digilib.uinkhas.ac.id/18421/>.