



Capacity of Persons with Disabilities as Legal Subjects in Islamic Law

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Abstract

Abstract: The study of disability is one of the most important studies in Islam. In the study of Islamic law, the problem of disability is seen as one of the conditions that can cause the perpetrators to get various conveniences and tolerances in carrying out religious rules. However, this perspective is seen as still not enough to be a solution to the problem of disability. This is because this perspective still positions people with disabilities in a powerless position and still does not have the same opportunity to receive their legal rights as legal subjects. This study aims to examine in depth the position and capacity of persons with disabilities as legal subjects in Islamic law. The conclusion of this study is that persons with disabilities are legal subject with full rights as the normal people. They have the right and are capable of receiving and acting legally. In terms of receiving rights, persons with disabilities are full legal subjects. As in the field of *ibadah*, persons with disabilities have the capacity as full legal subjects but with tolerance according to their abilities. Meanwhile in the field of *muamalah*, persons with disabilities are subject to certain limitations in their capacity as legal subjects.

Keywords: disabilities; human rights; Islamic law; legal subject

1. Introduction

One of the contemporary humanitarian problems is that the protection and fulfillment of the legal rights of persons with disabilities (persons with special needs) has yet to be realized. In addition to the problems of physical, mental, sensory, and intellectual limitations, persons with disabilities also face various challenges. These challenges are related to the perspective of society in general, attitudes and treatment of the community, limitations of public services, limited job opportunities, and obstacles to the implementation of religious obligations.¹

In the laws and regulations in Indonesia, the issue of disability rights has undergone a significant shift, from initially positioning it as a legal object to becoming a legal subject. In c, disability is defined as follows: “every person who has physical and/or mental disorders, which can interfere or become obstacles and obstacles for him to perform properly, consisting of people with mental disabilities and people with physical and mental disabilities”.² The view of this law is that people with disabilities are more compassionate and the fulfillment of the rights of people with disabilities is still considered a social problem whose policies for fulfilling their rights are still social security, social rehabilitation and social welfare improvement.³

In subsequent developments, there was a change in the legislation that places persons with disabilities as part of human rights. This is stated in Law Number 39 of 1999 concerning Human Rights and Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities). The existence of these new regulations requires that the previous regulations related to persons with disabilities must be harmonized with the latest provisions which in principle regulate all rights inherent in humans and also apply to persons with disabilities.

Furthermore, as a commitment to respect, protect and fulfill the rights of persons with disabilities, Law Number 8 of 2016 concerning Persons with Disabilities was passed. This change can be seen from the definition of persons with disabilities in Law Number 8 of 2016 concerning Persons with Disabilities, namely everyone who experiences physical, intellectual, mental and or sensory limitations in the long term who in interacting with the environment can experience obstacles and difficulties in participating fully and effectively with other

¹ Jamaludin dan Rifqi Awati Zahara, “Penguatan Hak-hak Dasar Manusia (Huququl Insan) dalam Penyandang Disabilitas (Difabel) Perspektif Fiqh Islam,” *Legitima* Vol. 2 No. 2, Juni 2020; 245-247.

² Law Number 4 of 1997 concerning Persons with Disabilities

³ Law Number 4 of 1997 concerning Persons with Disabilities

citizens based on equal rights. The law also stipulates the perspective of human rights as stated in article 3, which essentially states that the implementation and fulfillment of the rights of persons with disabilities is aimed at realizing the full and equal respect, promotion, protection and fulfillment of human rights and basic freedoms for persons with disabilities. The rights of persons with disabilities are guaranteed and fully protected.⁴

In Islamic courses, the issue of disability is also discussed, among others, in the study of Islamic law or *fiqh*. Classical *fiqh* often relies on the basic principle of “difficulty attracts convenience” in formulating rules governing disability. In the sense that the condition of disability is seen as a difficulty that can cause the perpetrator to get various conveniences and tolerances in carrying out religious rules. However, this perspective is seen as still not enough to be a solution to the problem of disability. This is because this perspective still positions people with disabilities in a powerless position and still does not have the same opportunity to receive their legal rights as legal subjects. Based on this background, this study aims to examine in depth the position and capacity of persons with disabilities as legal subjects in Islamic law.

2. Method

This study is a literature study that explores data from Islamic literature. It seeks to explore answers to the problem of disability as legal subject in Islamic law. To explain the problems raised, the author uses a qualitative descriptive approach. Sources of data obtained from various relevant literature, expert opinions and various other supporting information, thus giving birth to a more in-depth elaboration of ideas. Data from these sources were collected and then analyzed to produce conclusions in accordance with the objectives of this study.

3. Result and Discussion

Terms of Disability in Islam

In an Islamic perspective, persons with disabilities are synonymous with the term *zawwi al-'ahat* (people who have limitations), *zawwi al-ihdiyaj al-khassah* (people with special needs) or *zawwi al-a'zar* (people who have disabilities).⁵ People with disabilities are actually human beings who have the same rights to socialize

⁴ Law Number 8 of 2016 concerning Persons with Disabilities

⁵ Tim LBM PBNU, *Fiqh Penguatan Penyandang Disabilitas*, (Jakarta: LBM NU, 2018), 53.

and get along with everyone. Therefore, there is no theological or normative basis in Islam to allow discriminatory actions against anyone, including persons with disabilities.

Basically, Islam regards persons with disabilities as entities that must be considered for several strong reasons justified by *shar'i*. The most basic reason is in the name of humanity. On the other hand, the fact that cannot be ignored is that they are both creatures of Allah who must be respected as guided by the *shar'i*, which is described in the Qur'an in Surah al-Israa verse 70. This verse as well as Q.S. at-Tin: 4 confirms that humans are perfect creatures compared to other creations of Allah. Logically, something perfect will definitely have an effect on good treatment of it. In terms of brotherhood among human beings (*ukhuwwah insaniyyah*), in essence people with disabilities are brothers from one lineage, Adam. This brotherhood will have more significance if it is strengthened by mutual help and mutual respect for one another. Especially when the embodiment of respect and help is in something good. Therefore, paying attention to persons with disabilities in all matters is categorized as a form of good deed. This is confirmed, among other things, in the Qur'an Surah an-Nahl: 90.

In the language of the Qur'an, the status of a person's glory is seen from his piety, regardless of social status, physical perfection, skin color, race and nationality of a person. This gives legitimacy to the principle of equality taught by Islam to distance itself from the class system or other social strata. Thus, socially disabled groups are recognized by Islam as part of the *ummah* in general, and they have the same rights and obligations as fellow Muslims.⁶ This can be used as a basis for rejecting the opinion of some people that people with disabilities are a curse, bringers of disgrace and abnormalities caused by irrational things. On the other hand, disability is a part of a person's destiny that no one can escape from.

The terms disabled written in the verses of the Qur'an are mostly used in a context that is not good and not in physical form, but criticism and threats and retribution for those who associate partners with Allah, deny His verses, deny the tracts of the Apostles. The use of these terms is stated as the behavior of people who do not believe, do not obey, and do not follow religious teachings. On the other hand, it is also used as a self-image of someone who has no benefits due to not being used to study and accept the truth. Thus, the negative connotations of

⁶ Khairunnas Jamal, Nasrullah Fatah dan Wilaela, "Eksistensi Kaum Difabel dalam Perspektif Al-Qur'an," *Jurnal Ushuluddin* Vol. 25 No. 2, July-December 2017; 232.

the terms disabled in the Qur'an generally do not refer to physical disabilities, but rather to mental disabilities in the form of a person's heart and theological defects.

The physical defects stated by the Qur'an to describe the negative side of the individual who does not believe, can be categorized as representing the Arab civilization at that time. This is because to illustrate the Arab culture at that time, mute, deaf, and blind, representing individuals or groups who were socially excluded and marginalized.⁷ With the habits of the pre-Islamic Arabs who were always at war, physical perfection became an absolute thing. This has an impact on their benchmarks in judging someone, where a person with a perfect, sturdy, and strong body is a great person. On the other hand, people with physical disabilities such as blind, deaf, mute, and lame are classified as low and despised. People with disabilities are underestimated and have no position in society.⁸

In addition, there are several verses of the Qur'an that contain terms with disabilities to express a neutral connotation, in the sense that these terms do show the true meaning of physical disability. It is found in 5 (five) places, namely 'Abasa [80]: 2, Ali 'Imran [3]: 49, an-Nur [24]: 61, al-Fath [48]: 17 and al-Maidah [5]: 110. Thus, the use of the terms disabled in the Qur'an which indicates the meaning of physical disability is only about 13.15% of the total 38 verses or about 0.08% of the total verses of the Qur'an. . This number is relatively small when compared to the number of verses with the connotation of theological defects, namely 33 verses or about 86.84% of the total 38 verses and about 1.01% of the total verses of the Qur'an.⁹

The category of disability in these verses of the Qur'an, explicitly shows that in general the Qur'an recognizes the existence of these groups, both physical and non-physical. The existence of people with physical disabilities in the verses of the Qur'an which are relatively few in number is nothing but because Islam views it as neutral towards people with physical disabilities, with the meaning of fully equating people with disabilities as other human beings. Islam itself emphasizes character development and good deeds, rather than looking at a person's physical problems. In other words, physical perfection is not a priority in terms of devotion to God, but cleanliness of heart and strength of faith.

⁷ Ahmad Syalabi, *Sejarah Kebudayaan Islam*, (Jakarta: al-Husna Zikra, 1997), 34.

⁸ Muhammad Mustafa al-A'zhami, *The History of The Qur'anic Text From Revelation to Compilation*, terj. Sohirin Solihin dkk. (Jakarta: Gema Insani, 2005), 19.

⁹ Muhammad bin Muhammad *Abu Shubbah, Al-Wasit fi 'Ulum wa. Mustalah al-Hadis*, (Kairo, Maktabah al-Sunnah, 2006), 231.

Vardit Rispler-Chaim in his book *Disability in Islamic Law* states that in general, there is no difference for every Muslim, both disabled and non-disabled, to carry out the obligation to worship God. According to him, disability is a normal aspect of human life, both according to the Koran and Islamic law. Therefore, they have the same position in terms of religious rights and obligations to carry out religious teachings.¹⁰

Provisions on Legal Subjects in Islam

In the term of *usul al-fiqh*, there are two terms that are usually used to indicate the meaning of legal subjects, namely *mukallaf* which means people who are burdened with law and the second is *mahkum 'alaih* which means people to whom the law is enforced.¹¹ Another term that also describes the meaning of legal subjects is *shakhsiyah*. In discussions of legal subjects, *shakhsiyah* is originally a *syakhsiyah tab'iyyah* that appears in every human being. This is because the *khitab* (target) addressed in the commands and prohibitions of Allah as the maker of the law (*ash-shari*) is human. From this concept then the theory of humans as legal subjects applies to many fields of Islamic law.¹²

To be called a *mukallaf*, there are at least two things that must be fulfilled in a human being, namely first he understands or knows the commandment of Allah which states that he is subject to lawsuits. The ability to understand and know God's rules is closely related to physical maturity, especially reason. Human reason in normal condition develops according to his physical growth and when his mind is perfect then the legal burden falls on him.¹³

The second element that must be fulfilled in order to be called a *mukallaf* is that a person has been able to accept the burden of *taklif* or the legal burden which in terms of Islamic law is called *abl li at-taklif* (the ability to accept the legal burden). This skill includes two kinds, namely the ability to be subject to legal burdens (*ahliyyah al-wujub*) and the ability to carry out the law (*ahliyyah al-ada*).¹⁴

The ability to accept the law (*ahliyyah al-wujub*) is a person's eligibility to accept rights and assume obligations. The basis of this skill is human life itself so that these skills exist in humans throughout their lives from being in the womb

¹⁰ Vardit Rispler-Chaim, *Disability in Islamic Law*, (Dordrecht, The Netherlands : Springer, 2007).

¹¹ Amir Syarifuddin, *Ushul Fiqh Jilid I* (Jakarta: Logos, 2005), 389.

¹² [www.dar-alifta.org/Ash-Shakhsiyah al-Tibariyyah](http://www.dar-alifta.org/Ash-Shakhsiyah%20al-Tibariyyah)

¹³ Syarifuddin, *Ushul Fiqh*, 390.

¹⁴ Syarifuddin, *Ushul Fiqh*, 390.

until they are born into the world until they die. It's just that, while still in the womb, these skills are not perfect. Humans who are still in the womb are only capable of receiving some limited rights and completely incapable of accepting obligations. This kind of skill is called the ability to accept imperfect laws (*ahliyyah al-wujub an-naqisah*). After humans are born, their abilities increase to the ability to accept the law perfectly, where they are able to accept rights and obligations that last until death. However, this skill when in the childhood period is limited, then increases in the *tamyiz* period and increases again in the adult period.¹⁵ The ability to act legally (*ahliyyah al-ada'*) is a person's eligibility for his words and actions to be considered legally valid. In other words, namely the ability of a person to give birth to legal consequences through a statement of his will and be responsible for his actions.¹⁶

The two elements above are interrelated to determine the extent of a person's ability to accept and carry out a legal act. In general, the standard used as a measure that a person has obtained full capacity as a legal subject is at the stage when he has reached adulthood (*balig*) and is free from things that affect his skills. In some other conditions, there are special provisions that differ from the general provisions. In addition, in certain areas of law, scholars have the opinion that there are certain different criteria related to the review of skills possessed by a person in certain legal areas. For example, in the field of *muamalah* (civil law) related to material transactions, scholars add the *rusyd* criteria above *balig* which signifies a person's ability to carry out property transactions. It's just that scholars have different opinions regarding the age provisions for someone who is said to have reached the *rusyd* criteria.¹⁷

Capacity of Persons with Disabilities as Legal Subjects in Islamic Law

In principle, Islam do not discriminate between normal people and people with disabilities. Humans with various body conditions are creatures who carry rights and obligations. Therefore, persons with disabilities are also seen as legal subjects just like other normal human beings. Of course, his capacity as a legal subject gets adjustments. The following is a formulation of the implementation of persons with disabilities as legal subjects in Islam.

¹⁵ Syamsul Anwar, *Hukum Perjanjian Syariah, Studi tentang Teori Akad dalam Fiqh Muamalah*, (Jakarta: Rajawali Press, Cet. II, 2010), 110.

¹⁶ Syamsul Anwar, *Hukum Perjanjian Syariah*, 112-116.

¹⁷ Huzaemah, *Figih Anak: Metode Islam dalam Mengasuh dan Mendidik serta Hukum-hukum yang Berkaitan dengan Aktifitas Anak* (Jakarta: PT Al-Mawardi, 2004), 7.

1. Capacity of Persons with Disabilities as Legal Subjects in *Ibadah* Field

From the point of view of Islamic law, people with disabilities are still burdened with the obligation to carry out sharia obligations (*taklif*) as long as their minds are still able to work well. Of course, the implementation of these obligations takes into account the conditions. Persons with disabilities are allowed to carry out their obligations according to their abilities without reducing the value of the virtue of worship in the slightest. The Qur'an in Surah al-Fath verse 17 expressly conveys the defense of persons with disabilities if they cannot join the war.

In Islamic law, there is a stipulation that when a person is not able to sit perfectly he can sit as well as he can, not even physically forcing himself to do any movement that causes pain. Some of the arguments above can be used as the basis that people with disabilities can take convenience in worship by doing movements according to their abilities.

Another example is related to the difficulty of persons with disabilities to purify themselves from *hadass* perfectly. It is explained that he can have *wudu* by asking for help from his halal partner (husband or wife). But if there is no such person, then by any means possible. Even if it is not perfect because there is no partner, then he may continue to pray according to the opinion of the Hanafi and Maliki schools. In the Hanafi school, if a person is unable to remove the *najis* from his body and prays in that way, then his prayer is valid and there is no need to repeat it even though there are other people who can help him. As for the Maliki school of thought, eliminating *najis* is a *sunnah*, not an obligation, so it doesn't matter even if the prayer brings *najis*, but it is advisable to repeat the prayer again when it is possible to purify oneself completely.¹⁸

In matters of *taharah* (purification), whether bathing or ablution, the procedure is actually the same. However, there are some guidelines for people with visual impairments, considering that they cannot know for sure about the uncleanness of water that can be used for purification. Among others are; If a person with visual impairment is going to use water and someone informs him that the water is unclean, then he must accept the notification on condition that there is an explanation of the reason for his uncleanness and he does not perform his own *ijtihad*. This is the opinion of the majority of scholars. If there are two vessels (water containers), one

¹⁸ Ibnu Abidin, *Hashiyah Radd al-Mukhtar 'ala ad-Durr al-Mukhtar*, (Bairut: Dar al-Fikr, 2000), 341.

of which is unclean and the other is pure, then the person with a visual impairment is confused about which one is unclean, even though he is going to pray. If so, then he is allowed to practice *ijtihad* and purification based on his strong suspicion (*galabah al-zan*) by maximizing the other senses that are still functioning. This is the opinion that is stronger than the three opinions of the scholars. This opinion is the opinion of the Hanafiyah and Shafi'i schools. If a person with a blind disability is confused in choosing the clothes he will wear between the holy and the unclean, then he makes *ijtihad* and tries his best to choose and prays in what he considers holy. This is the opinion of the majority of scholars. This can be done because he has done according to his ability.¹⁹

People with disabilities themselves in view of Islamic law are more understandable or forgiven about the uncleanness they get on the road than non-disabled people.²⁰ Meanwhile, not all worship can be done easily by persons with disabilities due to their limitations. For example, the obligation to wash hands and feet when performing ablution for people with physical disabilities, knowing the movements of the priest for those with hearing disabilities who are also blind and so on. This often makes them confused in worship. In such circumstances, they are given the tolerance to do so according to their abilities.²¹

One of the difficulties for people with visual impairments is determining prayer times. Under normal conditions when in a crowded place, this is less of a problem because he can ask people around him about prayer times. But when he is alone in a place far from the settlements, it is very difficult for him to know. Because of this, the question arises: How can a person with a visual impairment know when to pray when no one else is around? And can blind people performs prayers based on the time he only estimates? Regarding the determination of prayer times for blind people, he is obliged to do *ijtihad* to detect it by himself through signs or events around him, such as the crowing of a rooster and the heat of the sun. Because this *ijtihad* is an obligation, so if a person with a visual impairment does not do it but immediately prays, then his prayer is considered void even though the timing is right. However, when his *ijtihad* is proven wrong according to a person who knows the time, then he must repeat his prayer again. When the blind person is required to

¹⁹ Muhammad Syatha ad-Dimyati, *I'nanah at-Talibin*, (Bairut: Dar al-Fikr, tt), 107.

²⁰ Nawawi al-Bantani, *Nibayah az-Zain*, (Bairut: Dar al-Kutub al-Ilmiyyah, 1971 M), 45.

²¹ Muhyiddin Syarf an-Nawawi, *Raudah at-Talibin*, (Bairut: al-Maktab al-Islami, tt), 53.

perform *ijtihad* and then he prays without *ijtihad* first, then he is obliged to repeat his prayer even though the timing is right because he was negligent and left the obligatory *ijtihad*.²²

Similar issues have been discussed in the discussion regarding *tayammum*. If a blind person thinks it is time for prayer and then he prays with that assumption without any obvious signs for him and it turns out that the time is coincidental, then his prayer is invalid because he neglected to leave *ijtihad* and ignore the signs around him. If he does not get any of the signs (to be used to determine the time of prayer), or there are signs but he cannot guess which one is correct, then he must wait until he can guess hard that the time for prayer has really entered. As a precaution, he may delay his prayer until he is sure or strongly suspects that if it is postponed again, the prayer time will end. This is a firm statement of Imam Shafi'i and was agreed upon by his students.²³

In Islamic law, the legal nature of disability is the same as that of a child but who can already distinguish between good and bad (*mumayyiz*). It is permissible as long as it fulfills the conditions for carrying out worship which includes knowledge of the conditions, pillars and things that invalidate prayer, as well as understanding the law related to congregational prayer. For mental disabilities, if he does not have awareness and or does not meet the requirements, then his prayer is invalid. not even subject to the obligation of prayer and not obliged to make up (replace) the prayer he left when he was unconscious.²⁴

According to Abdul Wahhab Khallaf, there are four human conditions in terms of eligibility to worship, namely first, people who do not have the qualifications to worship at all, namely small children at their young age and people with mental disorders at any age. Both of them do not have eligibility because they do not have awareness so that their actions are legally considered null and void. The third is people who lack skills, namely small children at the age of *mumayyiz* (the age that is able to distinguish good and bad) and people who are mentally retarded. Fourth are people who have the

²² Sulaiman al-Bujairimi, *Tuhfah al-Habib 'ala Sharh al-Khatib*, (Bairut: Dar al-Kutub al-'Ilmiyyah, cet ke-1, 1996 M), 46.

²³ Muhyiddin Syarf an-Nawawi, *al-Majmu' Sharh al-Mubazzab*, (Jeddah: Maktabah al-Irsyad, tt), 78.

²⁴ An-Nawawi, *al-Majmu'*, 85.

skills to carry out worship, namely non-disabled adults. People with mental disabilities fall into the second category.²⁵

Meanwhile, the scholars differed on the law of Friday prayers for people with visual impairments in two opinions. The first opinion says that the law is not obligatory for the visually impaired even though someone guides them, either voluntarily or paid. This is the opinion of Abu Hanifah. He reasoned that people with visual impairments were unable to walk to attend it alone. Another reason is that the law for people with visual impairments is the same as for sick people who both experience difficulties and difficulties in going to Friday prayers. The second opinion says that Friday prayers are obligatory for the visually impaired if someone guides them, either voluntarily or paid for. This is the opinion of the majority of scholars on the grounds that blind people with disabilities are able to walk on their own.²⁶

Next, in relation to a non-Muslim who wants to convert to Islam, he must read the two sentences of the creed as proof that he converted to Islam. So far, there have been no significant problems. However, obstacles will arise when people who want to convert to Islam have limitations in speaking such as people with speech disabilities so that they cannot immediately pronounce the two sentences of the creed that can be understood by other parties. Because of this limitation, what he did was read the two sentences of the creed in sign language. From this, the question arises, is the creed of a mute person considered valid as proof that he converted to Islam? The scholars have agreed that Allah SWT will not give the burden of *taklif* to His servants beyond the limits of their ability. This is a general principle in Islamic law and is a form of God's grace and mercy. In this matter, Imam Shafi'i said that the Islam status of mute people through sign language that could be understood was considered valid. But in another opinion it is said that a person's Islam is not recognized unless after saying the *shahadah* in sign language then he prays.²⁷

2. Capacity of Persons with Disabilities as Legal Subjects in *Muamalah* Field
Islam is very concerned about the security aspects of transactions for persons with disabilities. The limitations possessed by persons with disabilities are often exploited by people with bad intentions so that it results in losses

²⁵ Abdul Wahab Khallaf, *Ilm Uşul al-Fiqh*, (Bairut: Dar al-Fikr, tt), 137.

²⁶ An-Nawawi, *al-Majmu' Sharh al-Mubazzab*, (Jeddah: Maktabah al-Irsyad, tt), juz, IV, 352.

²⁷ An-Nawawi, *Raudah at-Talibin wa 'Umdah al-Muftin*, 282.

for persons with disabilities because in fact the goods do not meet their expectations. In Islamic jurisprudence, there are at least three concepts that can be applied to persons with disabilities in carrying out *muamalah* transactions. All three contain restrictions that aim not to make it difficult, but to protect their assets from risk.

Three things as mentioned above are: first, the concept of *wakalah* (representation). With this *wakalah* model, persons with disabilities are not allowed to transact on their own but must represent non-disabled persons who are trusted to transact on their behalf. It is stated: "Excluded from the previous provisions are buying and selling carried out by blind people. This was ratified with a representative model, although it would not be legal if it was carried out directly by the visually impaired because there was an element of emergency."²⁸

The second concept is *bai' mausufi al-zimmah* (transaction of ordering goods whose nature has been clearly determined). With this capital, people with disabilities who have limitations to know firsthand the goods to be purchased can still get the goods as expected. In Islamic law, it is stated that buying and selling carried out by the visually impaired is not allowed except in an order contract and he represents a person who can see for the handover.²⁹

The third concept is *al-bijr* (prohibition of transactions). Certain types of disability, such as schizophrenia and the like, are seen as a vulnerable factor for making transactions so that those who have these limitations are prohibited from making transactions until their disability disappears. This is not meant to curb but to protect their assets to keep them safe. If the transaction continues, it is considered invalid so that the ownership status does not change. This means that goods/money previously lost from persons with disabilities can be withdrawn before the law. Imam Shafi'i stated that when Allah required the surrender of property to an orphan with the condition of puberty and the growth of skills, we knew that before puberty he was deprived of his wealth and was not given permission to use it.³⁰

²⁸ An-Nawawi, *Raudah at-Talibin*, 297.

²⁹ Al-Mawardi, *al-Iqna'*, (Bairut: Dar al-Fikr, tt), 98.

³⁰ Al-'Imrani, *al-Bayan fi Fiqh ash-Shafi'i*, (Jeddah: Dar al-Minhaj, tt.), juz, VI, 207

3. Capacity of Persons with Disabilities as Legal Subjects in Accepting Rights
 The most urgent implementation of disability related policies in Islamic law is related to facilities, whether religious, social, or so on. The mosque, for example, is a center of worship for all moslems without exception. There are many religious texts that explain the virtues of the mosque and are common knowledge. However, people with special needs are often constrained by the shape of the building and the availability of facilities that are designed without considering the needs of people with disabilities.

Although the provision of disability-friendly facilities in public places is mandatory, there are not a few mosques or prayer rooms that are not yet accessible. For this reason, many people with disabilities choose to pray plural because they have difficulty purifying themselves in the space provided. The question is, is it permissible to postpone prayer from the specified time when traveling on the grounds that public facilities or the destination (individual's house) is not yet disability-friendly? In various *fiqh* literatures, it turns out that it is permissible to have multiple prayers in one time (combining *dhuhur* with 'asr or *magrib* with *isha* at one time) for the reasons mentioned above according to some scholars and this opinion can be followed as long as it is not carried out continuously, in the sense when it is really needed. . The opinion of the *Shafi'i* school, Abu Hanifah, Malik and Ahmad schools and the majority of scholars regarding this matter is that it does not allow it. But it was narrated from Ibn Mundhir and some scholars that combining prayers is permissible without cause. He said that Ibn Sirin allowed it if there was a need or as long as it was not made a habit.³¹

The next implementation is related to work. Work is an obligation for everyone who can afford it, including people with disabilities. With all the physical limitations that he is destined to carry, a person with a disability is still required to support himself, even his family. However, they often find it difficult to get a decent job due to the assumption that they definitely can't, even before trying. Even getting a job does not guarantee that they are free from discrimination in the workplace. Based on the description of the problem above, the following questions are related to the placement and determination of work wages for persons with disabilities: How is it legal for companies or agencies to provide special quotas for work for persons with disabilities? According to Islam, the government is the party that is

³¹ An-Nawawi, *al-Majmu'*, 264.

obliged to provide regulations related to the quota as a form of government attention to people with disabilities. In Indonesia, with the issuance of Law Number 8 of 2016 concerning Persons with Disabilities which regulates this matter, the government's task has been carried out. Then, all elements of the people, both individuals and legal entities, are obliged to comply with these government regulations by considering the priority scale in choosing them. In the view of Islam, the original law of a problem can change if there is an order from the *imam*.

4. Conclusion

From the description that has been explained previously, the author concludes that at first people with disabilities are positioned as objects of law, so that they get a position that is not equal to the others. Therefore, the idea is to change the legal paradigm for persons with disabilities. Persons with disabilities are legal subjects, namely someone who according to law has the right or authority to take legal actions or who has the right and is capable of acting under the law. Therefore, it is necessary for persons with disabilities to emphasize their capacity as legal subjects with some adjustments considering that their conditions are not the same as other normal human beings. In terms of receiving rights, persons with disabilities are perfect legal subjects. As for worship, persons with disabilities have the capacity as full legal subjects but with tolerance according to abilities. Meanwhile in the field of *muamalah*, persons with disabilities are subject to certain limitations in their capacity as legal subjects.

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