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**WITNESSES OF DIFFABLE IN COURT
BASED ON THE CONCEPT OF AHLIYAH IN ISLAM**

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Abstract

This paper discusses the position of disabilities as witnesses in court. Where the requirements for a person to become a legal subject have legal competence and are considered mature. The concept of proficiency in Islam states that disability can be positioned as a barrier to proficiency, but it is different from Indonesian law which states that disability is a legal subject. This research is a qualitative research which is literature study. The results showed that the disability condition does not result in a loss of position as a legal subject as long as it does not involve limitations in testifying in court. Disability witnesses can be accepted if it meets the requirements as a legal subject. Disability witnesses also needs to be adjusted according to their abilities. However, if a doctor or psychiatrist considers matters regarding the weak ability of a person with a disability, the district court has the right to determine a person with a legal disability.

Keywords: Disability Position, Legally Competent, Disability Witnesses

Abstrak

Tulisan ini membahas mengenai kedudukan disabilitas sebagai saksi di pengadilan. Dimana syarat seseorang menjadi subjek hukum telah cakap hukum dan dianggap dewasa. Konsep kecakapan dalam Islam menyebutkan bahwa disabilitas bisa diposisikan sebagai salah satu penghalang kecakapan, namun berbeda lagi dengan hukum Indonesia yang menyebutkan disabilitas merupakan subjek hukum. Penelitian ini merupakan penelitian kualitatif yang bersifat studi

pustaka. Hasil penelitian menunjukkan bahwa kondisi disabilitas tidak mengakibatkan hilang kedudukannya sebagai subjek hukum selama tidak menyangkut keterbatasannya dalam bersaksi di pengadilan. Kesaksian disabilitas bisa diterima apabila telah memenuhi syarat sebagai subjek hukum. Kesaksian disabilitas juga perlu disesuaikan dengan kemampuannya. Namun apabila ditemukan hal-hal yang dipertimbangkan dari dokter atau psikiater mengenai lemahnya kecakapan dari disabilitas, maka pengadilan negeri berhak menetapkan sebagai orang tidak cakap hukum.

Kata Kunci: Kedudukan Disabilitas, Cakap Hukum, Kesaksian Disabilitas

A. Introduction

Islamic law regulates various aspects of life for someone who has been considered a *mulatto*. *Mukallaf* or someone who is deemed capable of acting legally in Islam has 2 conditions in it, namely being mature and capable. Adult in Islam means mature and wise. Meanwhile, proficient in Islam is divided into 2, namely the competence of a person to accept the law and to act according to the law. But on the other hand, a *mulatto* can be hindered from his obligation to act legally, because of some of the *taklifi* laws he has received. So that a person's skill level cannot be measured from just one aspect, considering that a person's level of maturity is different. Apart from that, there are several things that prevent a person from becoming a legal subject, including someone who has limited abilities.

Diffable or people with disabilities is a term that is intended for someone with limited abilities, both physically, mentally, intellectually and sensory. With their limitations, persons with disabilities have very complex problems, namely related to their position as legal subjects, both in theory and practice. In addition, the classical *mujtahids* did not mention much about disability issues. Persons with disabilities need to find solutions to various problems related to their position as legal subjects.

One of the cases that needs to be studied contextually regarding disability is the testimony in court. The previous *mujtahids* had specified the requirements for being a witness. Meanwhile, in the concept of legal proficiency in Islam, disability still reaps pros and cons as one of the barriers

to proficiency itself. Therefore, a study of the position of disability as a legal subject in the context of testimony is urgently needed.

As for some previous research with the same theme as Diana Fatmawati's work entitled "*Pemeriksaan Saksi Penyandang Disabilitas dalam Tindak Pidana Pencabulan (Studi Polres Kota Blitar)*" which discusses examining witnesses with disabilities and inhibiting factors in examining witnesses with disabilities in criminal acts of sexual abuse in Blitar City.¹ There is also an article by Nindayani Ainan Nirmaya Bkti and I Gede Artha entitled "*Perlindungan Hukum Terhadap Penyandang Disabilitas Sebagai Saksi dan Korban Tindak Pidana dalam Proses Peradilan*" which focuses more on fulfilling the rights of persons with disabilities in the judicial process by fulfilling procedural accessibility to proceedings, conducting profile assessments of persons with disabilities. Disabilities and formulate more specific laws and regulations regarding material construction and criminal procedural law for persons with disabilities who are in conflict with the law.²

There is another article entitled "*Perlindungan Hak Penyandang Disabilitas Tuna Grahita Sebagai Saksi Korban dalam Proses Peradilan Pidana di Indonesia*" in which this paper describes the form of protection for persons with disabilities with a descriptive analysis study of Law Number 8 of 2016 concerning Persons with Disabilities to guarantee the rights of persons with disabilities, with disabilities as a witness in court.³ Some of the articles above are studies that have similarities in theme, but as far as the researcher's review goes, none have specifically dissected the problem of testimony of persons with disabilities in court based on the concept of competence in Islam. The theory used is the Theory of Proficiency in Islamic Law. So the question arises how is the testimony of persons with disabilities

¹ Diana Fatmawati, "Pemeriksaan Saksi Penyandang Disabilitas dalam Tindak Pidana Pencabulan (Studi Polres Kota Blitar)" (Skripsi, Malang, Universitas Brawijaya, 2019).

² Nindayani Ainan Nirmaya Bkti dan I Gede Artha, "Perlindungan Hukum Terhadap Penyandang Disabilitas Sebagai Saksi dan Korban Tindak Pidana dalam Proses Peradilan," *Kertha Wicara : Journal Ilmu Hukum* 8, no. 5 (2019): 1–17.

³ Aah Laelatul Barkah, "Perlindungan Hak Penyandang Disabilitas Tuna Grahita Sebagai Saksi Korban dalam Proses Peradilan Pidana di Indonesia," *Adliya* 12, no. 2 (2018): 123–40.

in court when viewed from an Islamic perspective using the *Ahliyah* theory (proficiency in Islamic law)?

This paper explores data and research methods using normative qualitative methods, so as to collect data with literature studies originating from scientific findings, qoul ulama (opinion of classical Islamic jurists), scientific articles, recent (contemporary) books and reference books on classical Islamic law as literature. Adequate for the analysis process so that a conclusion can be drawn as an answer to the research question.

B. Result and Discussion

1. The Concept of Proficiency in Islam

Islam recognizes skills with the term *expertyah* (الاهلية). In terms of *expertyah*, namely "the ability of a person to support the rights determined by *syara'* for him and support the rights imposed on him and to carry out actions according to the ways determined by *syara'*. *Ahliyah* is a sign or achievement that someone is declared competent in carrying out legal actions in Islam, both physically and intellectually, so that all activities that have legal consequences can be accounted for. If someone is an expert, then that person is considered legal to take a legal action, such as carrying out a criminal law action with the sanctions he receives or carrying out transactions in banking which means there is a transfer of property rights between two different parties.

Through the definition above, it can be concluded that expert is an indicator or index for someone who has exceeded the legal proficiency period which is considered perfect to carry out a legal action, so that all of these actions have legal consequences that they bear. A person's legal prowess is definitely closely related to the legal consequences imposed on him, because there is a phase or period for everyone to go through to the stage of being considered legally competent. However, the scholars do not only see aspects of being competent in acting law, but also being competent in accepting the

law. In connection with that, Islamic jurists provide a categorization, namely Ahliyah al-ada' (أهلية الاداء) and Ahliyah al-wujub (أهلية الوجوب).

Ahliyah al-wujub, is the ability of a person to have rights and be subject to obligations for them and the ability to perform tasharruf. Having the right to a material object, for example, a person can have rights from the time he is in the womb to certain rights, namely inheritance rights. This right will always exist as long as the person is still alive.

Ahliyah al-ada', is the ability to act legally or bear the burden of taklif. With such skills a person is called amukallaf, meaning that all his actions are taken into account by Islamic law, and he is warned to carry out all orders and stay away from prohibitions. Ability to do law or ahliyah al-ada' consists of three levels. Each of these levels is associated with a human lifespan. The three levels are: First 'adim al-ahliyah. The meaning of 'adim al-ahliyah is: who have absolutely no capacity to act legally. They are humans from newborn to about 7 years old. Second, ahliyah al-ada' naqishah. The meaning of ahliyah al-ada' naqishah is, those who have immature intelligence, which is between the ages of 7 years and up to adulthood. Third, ahliyah al-ada' kamilah. The meaning of ahliyah al-ada' kamilah is someone who already has a perfect mind, that is, who has reached the age of maturity, so that he is seen as being a good person, as previously stated.

The age of adulthood in fiqh books is determined by physical signs, namely for women who have started menstruating and for men with wet dreams. This physical restriction is based on the guidance of the Koran, namely until the age of marriage is reached or the age at which it is possible to get married. A sign of maturity, namely menstruation for women and wet dreams for men, is a sign that someone is already able to get married.

In cases where there is no physical sign or it is difficult to know, the age standard is taken in this limitation where there are differences of opinion between fiqh scholars. According to the jumhur ulama, the adult age is 15 years for men and women, according to Abu Hanifah, the adult age is 18

years, while for women it is 17 years. If a person does not reach that age, the legal burden does not yet apply to him.

2. Requirements to Become Legally Competent

According to Alaidin Koto in his book *Ilmu Fiqh and Ushul Fiqh*, the requirement to become a mukallaf is first being able to understand the arguments of taklif by yourself, or with the mediation of other people. Second, the person is "expert" (capable) for what is assigned to him, "expert" here means worthy of a person's self-worth. For example, someone is said to be an expert in managing *wakaf*, meaning that he deserves to be entrusted with the responsibility of managing *wakaf* assets.⁴

According to Gemala Dewi etc in the book *Hukum Perikatan Islam di Indonesia*, the conditions that must be met by a mukallaf are as follows:⁵ First baligh. The measure of someone's puberty is having wet dreams (*ihtilam*) for men and having menstruated for women. Baligh can also be measured from a person's age, as stated in the hadith of Ibn Umar, which is 15 years. Second, common sense. A person who engages in engagement must have common sense. With a common sense, he will understand all legal actions that are carried out and the legal consequences for himself and others. The Prophet Muhammad SAW said, "the burden of law is lifted from three (kinds of) people: a sleeping person until he wakes up, a small child until he reaches puberty, and a madman until he recovers" (HR al Bukhari, Abu Dawud, at Tirmizi, an Nasa'i, Ibn Majah and ad Daruqutni from Aisha bint Abu Bakr and Ali bin Abi Talib).⁶

3. The Concept of Legal Proficiency Barriers in Islam

'*Awaridh* (barriers) are things that affect the ability to act law. Scholars agree that based on biological laws, one's mind can change, become less, or even disappear. As a result, they are considered incapable of acting legally. Based on this, the ushul fiqh scholars stated that a person's ability to

⁴ Alaidin Koto, *Ilmu Fiqh dan Ushul Fiqh* (Jakarta: Raja Grafindo, 2011), 157.

⁵ Dewi dkk, *Hukum Perikatan Islam di Indonesia*, 56.

⁶ Abdul Aziz Dahlan, *Ensikopledi Hukum Islam* (Jakarta: PT Ikhtiar Baru Van Hoeve, 1996), 1219.

act legally could change due to the following things: First, *'awaridh samawiyah* (obstacles from the sky). That is, someone's obstacle to acting is a law that comes not from humans and not from their will.⁷

'Awaridh samawiyah consists of ODGJ (orang dengan gangguan jiwa) or 'utah, namely damage in the mind that prevents actions and words from taking place according to their path and it conflicts with the requirements of worship, namely intention. So it is not valid from it and it is not obligatory on it according to the details. Second is *al-it-hu* (lack of sense), that is, weakness in reason so that he babbles his words, sometimes like the talk of a healthy person, sometimes like the talk of a madman and so do other matters. The law for a person who is *ma'tuh* (lack of sense) is the same as a child during the *tamyiz* period in all his affairs.

Third, forgetfulness (*an-nis-yan*), that is not able to display something in memory when needed. This inability causes them to not remember the legal burden they bear. The four sleeps, namely *taklif* obstacles are obstacles that prevent *khitob* obstacles, then he obliges *khitob* to fulfill obligations, but this does not conflict with the origin of the obligation because the provisions of its implementation will be responsible. Therefore must *qodlon* and obliges the cancellation of all his words.

The fifth is fainting, that is, an obstacle that prevents the understanding of *khitab* more than prevents sleep from happening to it, so what applies to it in a state of sleep because it is more numerous than it, makes ablution invalidated even during prayer. Sixth, a disease that does not conflict with legal experts and worship, because there is no deficiency in responsibility, reason and speech. Because it contains weaknesses, it is prescribed to worship according to the level of ability. The seven menstruation and childbirth, this does not abort the obligation or fulfilling it. But it is stipulated that purification is a condition for the validity of prayer and fasting, so it is impossible to perform both. Prayer *qodlo* does not apply,

⁷ Muhammad Al-Khudhori Biek, *Terjemah Ushul Fiqih, terjemah oleh Zaid H. Al-Hamid* (Pekalongan: Raja Murah, 1982), 120.

because it contains narrowness, it is different from fasting and because there is a prohibition on fasting during menstruation and childbirth.

The eight deaths, about the laws of the taklif world such as zakat, fasting and hajj and so on, and only the obligatory sins are left that are wasted. If prior to death there is an obligation in the form of the rights of another person concerned in the form of material things, then those rights remain valid as long as the material is still there. Such as entrusted, entrusted, confiscated goods, and goods purchased have not been paid for.

The second group of obstacles is *'awaridh muktasabah* (self-made obstacles). That is an obstacle that befalls a person who faces a legal burden that arises due to human actions.⁸ Included in this form of hindrance is the first to be drunk. Namely loss of reason because of alcohol or anything like it, until the speech is confused and delirious. The cause of drunkenness is divided into two, namely drunkenness caused by business where the culprit is declared innocent, such as drunkenness caused by intoxication under compulsion, drunkenness due to eating or taking drugs that he does not know the effects of. And the second is drunkenness caused by forbidden business, such as deliberately drinking liquor which he knows is intoxicating and also knows that the act is prohibited.

Second *safih* (Idiot). That is a weakness that exists in a person that causes him to do in his wealth to violate what is desired by common sense. Third *jahil* (ignorance about the existence of law) is divided into two forms, namely (1) General knowledge that it is impossible for someone to say he does not know. (2) Knowledge in particular, namely concerning furu' worship or knowledge that cannot be attained except by people who specifically study it or scholars.⁹ Forth Traveling (*safar*), travel does not violate the law, but As-Syar'i makes it a cause of relief. Then it is prescribed to pray two cycles of prayer and it is permissible for him to leave fasting.

⁸ Syarifuddin, *Ushul Fiqh Jilid 1*, 371.

⁹ Syarifuddin, 375.

Fifth false (*khatha'*), namely deliberately doing an act in a place where a crime is intended. Errors are divided into three, namely errors in action; like a person doing an action, it turns out to be the result of another action that arises as a result of his mistake in doing it. Like hitting someone with a tool, it causes the other person to die. Second, the error in purpose; in the sense that someone does something that is not a crime, but because he is wrong, his actions result in a crime. Third, there is an error in the calculation as it applies to some doctors in relation to their duty to treat their patients. For example, a doctor diagnoses a disease, then prescribes medicine for that disease; it turns out that the real medicine is not what it stipulates, until the drug causes the death of the patient.

Sixth forced (*ikroh*), That is, wanting someone to do something against their will. Or ordering other people to do something they don't like, either in word or deed, so that if they were allowed to do something, they would definitely not do it. Imam Syafi'i divides *ikroh* into two parts, namely *ikroh* with rights, which is not disconnected from the action of the perpetrator, so it is legal to sell debtors who are able to pay off their debts for their assets for repayment. *Ikroh* without rights, there are two kinds, namely coercion to perform acts that are permitted by the Shari'a and coercion over actions that are not permissible by the Shari'a.¹⁰

4. Disabilities Concept

The term disabled is used with the argument that they are not disabled as a translation of disability, but have different abilities. This is exemplified, among others, by the case that maybe by not having legs or legs that are withered/paralyzed the individual becomes unable to carry out mobility from one place to another by walking using both legs (normally) but the individual is still capable of such mobility by walking. The difference is using a wheelchair.¹¹ This diffable replaces the term "handicap" that preceded it..

¹⁰ Biek, *Terjemah Ushul Fiqih, terjemah oleh Zaid H. Al-Hamid*, 132.

¹¹ Arif Maftuhin, "Mengikat Makna Diskriminasi: Penyandang Cacat, Difabel, dan Penyandang Disabilitas," *Inklusi: Journal of Disability Studies* 3, no. 2 (2016).

The use of the last two terms has been abandoned because they are not in accordance with the development of thinking related to disabilities.¹² The term disability comes from the English word "disability". Several writers who research about disability often use the term "disability". The word comes from the words "dis" and "ability" which are translated as inability. In more detail, disability or "disability" means physical and/or mental and/or intellectual disabilities so that they are unable to carry out activities as "capable" or "normal" people.¹³ Disabilities are not only caused by physical/mental/intellectual disabilities or limitations, but also by an environment that does not accommodate them..¹⁴

The term used now is “Penyandang Disabilitas”. According to Law Number 8 of 2016 concerning Persons with Disabilities which states that Persons with Disabilities are any person who experiences physical, intellectual, mental and/or sensory limitations for a long time in interacting with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights. In Article 1 of Law no. 8 of 2016 concerning Persons with Disabilities explained that “Penyandang Disabilitas adalah setiap orang yang mengalami keterbatasan fisik, intelektual, mental dan atau sensorik dalam jangka waktu lama yang dalam berinteraksi dengan lingkungan dapat mengalami hambatan dan kesulitan untuk berpartisipasi secara penuh dan efektif dengan warga negara lainnya berdasarkan kesamaan hak.” Persons with Disabilities are any person who experiences physical, intellectual, mental and/or sensory limitations for a long period of time who, in interacting with the environment, may experience

¹² Choky Risda Ramadhan, Fransiscus Manurung, dan Adery Ardhan Saputro, *Difabel dalam Peradilan Pidana: Analisis Konsistensi Putusan-putusan Difabel* (Jakarta: Fakultas Hukum Universitas Indonesia, 2016).

¹³ Moh. Fuad Hasan, “Difabel: Mereka yang Terlupakan,” *Pledoi: PUSHAM UII*, Juli 2012, 11–13.

¹⁴ Muhammad Syafi’i, Purwanti, dan Mahrus Ali, *Potret Difabel Berhadapan dengan Hukum Negara* (Yogyakarta: Sigab, 2014), 4.

obstacles and difficulties to participate fully and effectively with other citizens based on equal rights.¹⁵

According to Law no. 8 of 2016 in article 4 mentions the variety of persons with disabilities, among others:¹⁶ (a) People with Physical Disabilities, impaired movement functions, including amputation, paralysis or stiffness, paraplegia, cerebral palsy (CP), due to stroke, due to leprosy and small people. (b) People with Intellectual Disabilities, impaired thinking due to below average level of intelligence, including slow learning, mental disabilities and down syndrome. (c) Persons with Mental Disabilities, impaired thinking, emotional and behavioral functions. (d) Persons with Sensory Disabilities, impaired one of the functions of the five senses, including blind, deaf, and/or speech disabilities.

5. The Concept of Witnesses in Islam

The word witness in Arabic is شاهد or الشاهد, that is, a person who knows who explains what he knows, the plural words are اشهاد and شهود. The word شهود jama' is شهداء, the masdhar is الشهادة which means certain news.¹⁷ The witnesses according to language are:

الذى يخبره بما شهدته الملك اللسان¹⁸

“People who tell about what they have witnessed who have language skills.

As for the conditions that must be owned by witnesses in the proof in Islamic Criminal Law, firstly they must be Muslim. The general principle that has been agreed upon by all Islamic jurists is that the witness must be a Muslim. This principle is based on the word of Allah SWT:

واستشهدوا شهيدين من رجالكم فان لم يكونا رجلين فرجل وامرأتان ممن ترضون من اشهاداء

¹⁵ Republik Indonesia, “Undang-undang No. 8 Tahun 2016 Tentang Penyandang Disabilitas.” (2016), Pasal 1.

¹⁶ Indonesia, Pasal 4.

¹⁷ Al- Anshari, *Lisan al- ‘Arab* (Kairo: Dār al-Mishri, t.t.), 222.

¹⁸ Louis Ma’luf, *al-Munjid* (Beirut: Maktabah asy-Syarqiyyah, 1960), 406.

"And testify with two witnesses from the men (among you). If there are not two men, then one man and two women from the witnesses you like."¹⁹

Scholars differ on the testimony of infidels on a number of issues, namely: first the testimony of infidels against Muslims regarding wills in travelers Imam Abu Hanifah and Imam Ahmad allow receiving the testimony of infidels against wills made by Muslims at the time of the traveler due to the absence of Muslims to witness. They hold on to the word of Allah SWT. Surah al-Maidah verse 106. Imam Malik and Imam Shafi'i cannot accept the testimony of infidels against Muslims absolutely. They hold on to the nature of witnesses confirmed by Allah SWT. In the letter al-Baqarah verse 2 that is fair and belongs to the Islamic group that is approved. Meanwhile, infidels are not among the just people, they are not Muslims and infidels are the most wicked human beings and belie Allah, especially towards humans, of course they are more untrustworthy.²⁰

Second, proving disbelief against Muslims during an emergency Based on verse 106 of the letter al-Maidah above, Ibn Taimiyyah and Imam Ahmad testified to prove them in all emergencies that occur.²¹ Third, the testimony of non-believers to each other. In this case the Hanafi school allows it, because the Prophet Muhammad SAW once carried out the stoning sentence against a Jew who committed adultery, based on the testimony of other Jews. The opinion of the Hanafi school of thought in this matter is supported by Muhammad Salam Madzkur with his opinion: *The testimony can be accepted as long as the truth and trust in the witness can be upheld, in which case this can be manifested in infidels who are in power and under protection (kafir zimmi). So it is appropriate to accept testimony among themselves, both those of different religions and different nations as well as those of the same religion and nationality, as permissible for their testimony*

¹⁹ Departemen Agama, *al-Qur'an dan Tafsirnya* (Jakarta: Lentera Abadi, 2010).

²⁰ al Syarbaini, *Mughni al-Muhtāj* (Mesir: Maktabah at-Tijariyah, 1955), 402.

²¹ Ali asy-Syaisy, *Tafsir Ayat al-Ahkām* (Mesir: Muhammad Ali Shubaih, 1953), 226.

*against Muslims in events that are not determined by the texts of syara' regarding the conditions of their Witnesses..*²²

Meanwhile, for other schools of thought, they still cannot accept the proof of an infidel even against fellow infidels. In relation to the requirement that a witness must be Muslim, the fuqaha' have different opinions regarding the testimony of a slave. The Syafi'i school is of the opinion that the witness must be an independent person.²³

The next condition after becoming a Muslim is entering the baligh period. Baligh is a condition for receiving one's testimony, because maturity is a measure of the ability to think and act consciously and well. The next condition is reasonable. A madman cannot bear witness, much less accept his testimony. Besides that, even common sense cannot accept their testimony, and they are clearly not among the people who are favored to be witnesses. The following terms are fair. The Muslims have agreed to make justice a condition in accepting witnesses.

The next requirement is to witness firsthand. There are many different opinions of the 'ulama regarding witnesses who witnessed the incident directly, but the essence of testimony that is not based on seeing with your own eyes raises doubts, this is a strong opinion among ash-Shafi'i.²⁴

While the last condition can speak, both memory and thoroughness. A witness should be someone who can speak to be able to convey and explain to the judge what he has witnessed. Therefore, being able to speak is very important and a must. However, scholars differ on the testimony of a mute person, although it is preferred that someone whose signs can be understood and who is good at writing.

6. Witnesses of Persons with Disabilities in Court from an Islamic View

Broadly speaking, the condition of disability does not result in the loss of its position as a legal subject. In Al Baqarah verse 185, Allah says:

²² Muhammad Salam Madzkur, *al-Qadhā' fī al-Islām* (Kairo: Dār an-Nahḍah al-'Arābiyah, 1964), 87.

²³ Muhammad Idris Asy-Syafi'i, *Al-Umm* (Beirut: Darul Kutub Ilmiyah, 1993), 60.

²⁴ Imam Asy-Syamsudin Ar-Ramli, *Nihayah al-Muhtaj Ila Syarh al-Minhaj* (Kairo: Dar al Hadist, t.t.), 251.

"Allah wants ease for you and does not want hardship for you."²⁵

In the verse above it is clear that Allah will not burden His servants to carry out an action according to their abilities. In terms of carrying out legal actions, the conditions for a kamullaf which include being mature and capable are requirements that must be met, both from the point of view of maturity, intelligence, the ability to accept rights attached to obligations (*ahliyyah al wujub*) and the ability to act legally (*ahliyyah ada*'). However, disability conditions cannot fulfill all of these requirements.

The age of puberty for persons with disabilities cannot be equated equally, persons with physical and sensory disabilities will enter puberty normally, because they do not have problems with the working system of the brain, but only problems with their physical appearance. In contrast to people with mental and intellectual disabilities who do have problems with the working system of the brain. Therefore, the determination of legal capacity for persons with mental and intellectual disabilities must be adjusted to their mental (psychological) maturity age, not their calendar age. Because in the concept of *'awaridh jasayah*, the *al-it-hu* group (lack of sense) is one of the obstacles for someone to be said to be competent in law. As for persons with physical and sensory disabilities, their age of maturity still refers to calendar age (age).

Scholars have various opinions regarding the position of persons with disabilities as witnesses according to Islam. Imam Abu Hanifah did not accept the testimony of a blind person at all, whether it was before he was blind or after he was blind.²⁶ Likewise the Syafi'iyah scholars do not accept the testimony of a blind person except in five places, namely lineage, death, absolute property, life history and about what he witnessed before he was blind.²⁷

²⁵ Agama, *al-Qur'an dan Tafsirnya*.

²⁶ Ibn Hazm, *al-Muhallā bi al-Astar* (Beirut: Dar al Kutub Ilmiyah, 1988), 533.

²⁷ Sayid Sabiq, *Fiqh Sunnah* (Beirut: Dar al Fikr, 1992), 68.

Ibn Hazm is of the opinion that the testimony of a blind person can be accepted, as was his testimony:

وشهادة الاعمى مقبولة كما الصحيح²⁸

"The testimony of a blind person can be accepted as the testimony of a person who sees (not blind)."

Imam Malik and Ahmad are of the opinion that the testimony of a blind person is permissible in terms of the way his testimony is heard, if he recognizes a voice, therefore the testimony of a blind person is accepted in terms of marriage, divorce, buying and selling, lending and borrowing, lineage, absolute property endowments, and vows, whether he was blind when he testified or saw then became blind.²⁹ As for the testimony of witnesses who are deaf, scholars differ in opinion, the Malik school accepts deaf witnesses in cases of an action nature, because the witness knows the act through sight, while the hanafiyah does not accept the testimony of a deaf witness absolutely.³⁰

Scholars differ on the testimony of mute people whose signs can be understood and who are good at writing. The Hanbali School: they cannot accept the testimony of a mute person even if they understand the signs, except if he is able to write and his testimony should be written with his own hand. The Maliki School: they can accept the testimony of mute people whose signals can be understood. Shafi'i school: in this school there are several opinions regarding the acceptance of the testimony of the mute. Among them are of the opinion that they can accept it because the gesture can be likened to someone who can speak; in matters of marriage and divorce. There are also those who argue that they cannot accept it, therefore the gesture of a mute person can only be accepted in an emergency.³¹ The Hanafi

²⁸ Hazm, *al-Muhallā bi al-Astar*, 532.

²⁹ Sabiq, *Fiqh Sunnah*, 69.

³⁰ Ibn 'Abidin, *Radd al-Mukhtār* (Mesir: Mustafa al-Babiy al-Halabi, 1966), 462.

³¹ Syekh Abdul Qodir Audah, *Kitab At Tasyri Al Jina'i Al Islami Darul Hadist* (Kairo: Dat al Hadits, 1968), 398.

school: cannot accept the testimony of mute people, whether they understand their signs or are good at writing.³²

From several descriptions of the opinions of the 'ulama regarding testimony in Islam, it is true that persons with disabilities cannot fully accept their testimony. However, in essence, persons with disabilities can become witnesses according to their ability to testify. This is in accordance with Law no. 8 of 2016 concerning Persons with Disabilities. Article 28 reads, "The Government and Regional Governments are obliged to guarantee and protect the rights of Persons with Disabilities as legal subjects to take the same legal actions as others."³³ In terms of testimony, a judge must have confidence that witnesses with disabilities testify correctly and fairly. This is in line with God's command in the letter Thaha verse 2:

واقيموا الشهادة الله

"And you should uphold the witnesses because of Allah"³⁴

The verse clearly states that Allah commands a person to testify truthfully. If the truth is known to persons with disabilities, then the disabled still have a position as legal subjects and have the right to describe their testimony in accordance with the conditions of their disabilities. Judges must also be progressive in accepting evidence from disability testimony, capturing data with reason and heart so that the feeling of doubt disappears in making a decision. In fiqh rules are also mentioned:

اليقين لا يزول بالشك³⁵

"Faith cannot remove doubt"

Testimony of persons with sensory disabilities, for example a blind person, he can testify as long as it does not involve matters relating to sight, as well as the deaf as far as it does not involve matters relating to hearing and

³² Ahmad ibn Muhammad ad-Dardirīy, *asy-Syarh as-Saghīr 'ala Mukhtasar Aqrāb al-Masālik* (Mesir: Mustafa al-Babiy al-Halabi, 1952), 350.

³³ Indonesia, Undang-undang No. 8 Tahun 2016 Tentang Penyandang Disabilitas., Pasal 28.

³⁴ Agama, *al-Qur'an dan Tafsirnya*.

³⁵ Abbas Arfan, *99 Kaidah Fiqh Muamalah Kulliyah*, (Malang: UIN Maliki Press, 2013), 137.

speech impairment as long as it does not involve matters relating to speech. In the Ahliyah concept, sensory disabilities who are mature are included in the *ahliyah al ada' al kamilah*, even though in the concept of '*awaridh ahliyah*' it is a weak legal subject. This is in accordance with the rules of fiqh which reads:

الكتاب كالحطاب³⁶

“Writing is like speech ”

الاشارات المعهودة للاخرس كالبيان بالسان³⁷

"The gesture that comes out of someone who is mute is like an oral explanation."

Persons with physical disabilities, if they have reached perfection in maturity and skills, their testimony can be accepted. But concept '*awaridh ahliyah*' classify physical disability as a weak legal subject because it has limitations but does not invalidate its position. In contrast to people with mental and intellectual disabilities. His testimony can be accepted if he is mentally mature (psychological), reasonable and capable. Indirectly deemed to have met the requirements as a legal subject because it includes *ahliyah al ada' al kamilah*. However, if you are still in a state of *al-it-hu* (lack of sense) or even '*utah*' (crazy), in the concept of '*awaridh ahliyah*', that person is still prevented from acting legally. And automatically not accepted witnesses.

Persons with disabilities can still be said to be legal subjects according to their disability conditions, because each person with a disability has their specialty and does not eliminate their position as a legal subject. This is in line with Law no. 8 of 2016 concerning Persons with Disabilities, in Article 9 paragraph (2) reads, "persons with disabilities are recognized as legal subjects"

³⁶ Arfan, 65.

³⁷ Arfan, 65.

Persons with disabilities have the right to justice and legal protection regulated in Law no. 8 of 2016 concerning Persons with Disabilities. In article 9 paragraph (1) it is explained that "persons with disabilities have equal rights before the law". Departing from this article, it can be concluded that the testimony of persons with disabilities can be accepted in court. However, the acceptance of witnesses for persons with disabilities, especially mental ones, also needs to consider other provisions stipulated in Article 30 paragraph (1). The article reads "Law enforcers before examining Persons with Disabilities must ask for consideration or advice from (a) doctors or other health workers, (b) psychologists or psychiatrists regarding mental conditions, (c) social workers regarding psychosocial conditions."³⁸

The considerations contained in the regulations above also need to be considered. If things are found that might interfere with the disability to be examined as a witness, a postponement will be made until a certain time.³⁹ Furthermore, if there are things that do not meet the requirements of a person with disabilities to become a witness, then the person with disabilities can be declared incompetent based on the decision of the district court.⁴⁰

According to Islam, the testimony of persons with disabilities has pros and cons. The concept of 'awaridh AKH has also classified several categories that prevent a person from having legal skills. However, in essence, the testimony of persons with disabilities can be accepted if they meet the requirements as legal subjects and their testimony does not concern their limitations but is adapted to their abilities.

C. Conclusion

Broadly speaking, the condition of persons with disabilities does not result in the loss of their position as legal subjects. Because each person has a different type of disability, the size of adults with disabilities cannot be generalized. Especially the maturity of people with mental and intellectual

³⁸ Indonesia, Undang-undang No. 8 Tahun 2016 Tentang Penyandang Disabilitas., Pasal 30 ayat 1.

³⁹ Indonesia, Pasal 30 ayat 2.

⁴⁰ Indonesia, Pasal 32.

disabilities who must be adjusted to their mental (psychological) not from their calendar age (age), because they have problems with the working system of the brain. Meanwhile, persons with physical and sensory disabilities can be measured by their calendar (age).

According to Islam, the testimony of persons with disabilities has pros and cons. The concept of 'awaridh jasayah has also classified several categories that prevent a person from having legal skills, one of which is al it hu (lack of reason). Witnesses with disabilities can be accepted if they meet the requirements as legal subjects and their testimony does not concern their limitations but is adapted to their abilities. Basically every person with disabilities has the right as a legal subject to take the same legal action as others. Unless there are several things that cause the district court to determine that someone is legally incompetent. In terms of testimony, a judge must have confidence that witnesses with disabilities testify truthfully and fairly.

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