THE FIQH OF MAINSTREAMING OF DISABILITIES PEOPLE IN INDONESIA THE NEW PARADIGM CONSTRUCTION

Yusdani
Doctorate Program of Islamic Law, Faculty of Islamic Studies,
Islamic University of Indonesia, Yogyakarta, Indonesia.
Email: yusdani@uii.ac.id

Januariansyah Arfaizar
Doctorate Program of Islamic Law, Faculty of Islamic Studies,
Islamic University of Indonesia, Yogyakarta, Indonesia.
Email: januariansyah@uii.ac.id

Navirta Ayu
Doctorate Program of Islamic Law, Faculty of Islamic Studies,
Islamic University of Indonesia, Yogyakarta, Indonesia – Lecture at STAI Yogyakarta
Email: navirta.ayu@students.uii.ac.id

ABSTRACT

The following article describes alternative efforts for mainstreaming people with disabilities in Indonesia in the midst of the contestation of theoretical dominance of the meaning of both the medical model approach and the social model approach. The model of the study carried out in this paper is to criticize various policies such as laws, theories, religious views and various publications related to persons with disabilities in Indonesia. Then it is analyzed to change the perspective of people with disabilities towards inclusion and participation based on sharia maqasid as essential human values, then revealed to be practical guidelines for parties related to people with disabilities .The results of this discussion show that the arrangement of fiqh that is inclusive and responsive to the problems experienced by persons with disabilities is an alternative in the midst of the dryness of fiqh studies in the midst of people with disabilities who are at the point of social, economic, cultural, legal, and social marginalization. in practicing religion. The scientific construction of fiqh with disabilities offered is a building of the new paradigm construction in the scientific, structural, cultural and religious ethical realms.

Keywords: Indonesian disabled fiqh, the new paradigm construction, inclusion and participation.

PRELIMINARY

In the last two decades, the perspective of the international community towards people with disabilities has changed significantly. In the past, people with disabilities were considered as individual problems originating from a different person's physical or mental-intellectual condition. Now disabled groups are positioned more as issues of the social environment: the order and structure of society that does not provide space for people with disabilities (Oliver, 1999; Ro'fah, 2014).

This change in perspective has broad implications for policies for people with disabilities (efforts to correct) individuals with disabilities and is based on a charitable spirit (charity/charity) . In the new paradigm, the directions and principles of disability policy are aimed at realizing social participation and inclusion for persons with disabilities. This means that programs and services for people with disabilities must be oriented to encourage their participation in the spatial (physical), social, economic and political domains so that they can become part of the community.

Encouraging that the above directions and policies are aimed at realizing participation and social inclusion depart from the *human rights based* approach which is now dominant in policies towards persons with disabilities at all levels. Convention on the Rights of Persons with Disabilities, or better known as the CRPD (*Conv e ntion on the Rights of Person 's with Disabilities*) as an international agreement born in 2007 is the real picture of this change efforts at the world level. After Indonesia ratified this convention in 2011, five years later, Law no. 8 of 2016 concerning Persons with Disabilities replaces the old regulation, namely Law no. 4, 1997, Law no. 8 of 2016 was prepared by adopting the spirit of the CRPD and colored with a narrative and a rights approach in all aspects.

To realize the directions and policies mentioned above, there are still obstacles and obstacles, especially those related to the mindset, paradigm or approach used. The reality is that paradigms and approaches in fulfilling the rights of persons with disabilities are still dominated by the *medical model approach* and the *social model approach* . Both of these models was very strong influence the formation of a paradigm in viewing range in disabled .

DISABLED PEOPLE IN THE CONTEST OF MEANING

The *medical model* paradigm has implications for the formation of a paradigm that disabled is a physical, mental or intellectual abnormality, so it is necessary to carry out rehabilitation so that this abnormality can be eliminated. As a critique of this *medical model*, a new approach emerged, namely the *social model*. This movement adheres to the paradigm that the fulfillment of the rights of people with disabilities is a social problem rooted in the structure of society. For that, it needs to remove all the oppression and social exclusion against persons with difabel, and realize the assurance of full participation in the community with disabilities. However, this last approach has not been without criticism.

The explanation of the contestation of the meaning of disabled from various theoretical points of view as mentioned above, it has also been offered that it is necessary to involve other perspectives to contribute to the position of this disabled group, namely the religious point of view with its prophetic teachings, especially the Islamic view as an alternative. This is related to the existence of difdisableds in Islamic studies, especially in fiqh studies which are still very limited.

A number of serious problems will arise with regard to fiqh views to meet this need because fiqh which can be considered a representation of Muslim religious views is still in a position of normal bias as well. Granting relief (*rukhsah*) in the perspective of jurisprudence something that is very *reasonable.* However, in view of the critical, *rukhsah* and rules as well as other traditions in fiqh arguably bias of normalism in Islam . This implies that the disabled is the result of cultural construction and civilization of normalism, the face of religion cannot be separated from the understanding of the ideology of normalism, because religion is also a form of civilization's existence. In other words, that texts, doctrines and interpretations of texts in religion, including Islam are compiled and regulated within the scope of the ideology of normalism.

Fiqh which is the result of ijtihad with its rules, is still far from inclusive of people with disabilities. There fore, the construction scientific development of Jurisprudence friendly with disabilities also need to be undertaken by the mujtahid contemporary, so it's not enough anymore just basing outlook and understanding of classical fiqh. In this way, the development of socio-cultural and human civilization becomes a necessity and has implications for the demands of the dynamics and development of fiqh as a guide in responding to issues towards the inclusion and social participation of persons with disabilities.

In response and effort is an initiative of constructive development of jurisprudence based *maqasid shari'ah*, by incorporating elements of "inclusion" into *maqasid syari'ah* this. So that in the end the expected output is the creation of an inclusive fiqh product. An inclusive fiqh building, namely the science of syara' law which is extracted from authoritative sources oriented to the common interest, whether it occurs in certain groups such as the disability and non- disabled spaces which makes it possible for both of them to carry out all forms of rules for fulfilling the rights of people with disabilities in the field of education, public services, job opportunities as well as the availability of adequate and safe facilities in carrying out collegiate worship.

CONSTRAINTS AND BARRIERS TO PERSONS WITH DISABILITIES

The explanation of disability or persons with disabilities in Law Number 8 of 2016 concerning persons with disabilities chapter 1 article 1 stated: "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 can experience barriers and difficulties to participate fully and effectively with other citizens based on equal rights.

In Islam raised in disableds in their daily life are people who experience barriers to its own activities and interact with other people because of some limitations, namely:

1. Physical limitations (*qusur physical*) such as people with limping legs (*a'raj*), limbs or *limbs* (*aqta '*);
2. Sensory limitations (*qusur hissiyah*) such as *visual impairment* (*a'ma*), deafness (*akhras*), and speech disability (*acid*);
3. Mental limitations (qusur aqliyah) such as permanently or temporally mentally retarded people, idiots, are discussed in several idioms, namely *majnun, ma'tuh, safih* , *zul al-ahah* and *mubarsam* (Tim, 2018 : 43-45 and 186).

The implications of the various limitations persons with disabilities in society, they often get a bad reputation, have not been able to blend in with the social environment, low levels of participation in education, health, public services, training, employment, and more. Disabled groups are also often discriminated against in getting jobs that they actually have the ability (Yusuf, 2021).

Data *WHO World Report on Disability* in June 2011 showed 15 percent of people with disablitas of 7.7 billion inhabitants of the planet earth. In Indonesia, according to the 2018 *National Socio-Economic Survey* data , there are 14.2 percent or 30.38 million people with disabilities. Even though they are large in number, not all people with disabilities can enjoy a decent and dignified life. (Yusuf, 2021).

According to the *International Labor Organization*, around 82% of people with disabilities live in developing countries and generally live below the poverty line. In fact, 50% of them do not receive medical care. Apart from that, there are more than 100 million children with disabilities, who are four times more vulnerable to being victims of violence, whether physical, sexual, or mental (Yusuf, 2021).

So far, groups of people with disabilities are still a marginalized group and their rights as citizens have not been fulfilled (Yusuf, 2021). On that basis, people with disabilities need to be accompanied and empowered by their potential to achieve their independence. Availability of access to education, public services, to houses of worship and recreational areas, it is hoped that people with disabilities will grow into human beings who can live a more dignified life (Yusuf, 2021).

Indonesia has development which is good enough for the fulfillment of the rights of persons with disabilities. One is through policies that exist in Law - Law No. 8 2016 on Persons with Disabilities and the International Convention on the Rights of Persons with Disabilities things or *Convention on t h e Rights of Persons with Disabilities* (CRPD). However, the fulfillment of the rights of people with disabilities should be harmonized and go hand in hand with the rights of other communities. (Yusuf, 2021: 11). Even though Indonesia already have adequate various policies regarding disabilities, both at the local, national and international, but in the aspect of implementation is still far from what is expected. There are still many parties who view people with disabilities as parties who do not have any abilities. This negative stigma is also still attached to them.

Beyond the limitations of physical, mental and intellectual circles in disabled , the challenges they face in general there is five category:

First , the problem of perspective. In general, the perception of the disabled is dominated by mystical worldview and perspective naive. Mystical perspective is a perspective that assumes that disability is a destiny from God. God determines whether a person has limitations or not. Human can't anything except but surrender live. In addition, sost people still have the notion that in difabelitas is a disgrace, or even a curse.

Second, the attitude and the treatment of persons in the disabled . In didisableds it is often seen as a disgrace or even a curse. So that people tend to stay away from people with in the disabled, even treated them wrong.

Third, public service limitations friendly against persons in the disabled. UU no. 8 of 2016 has mandated the government that the fulfillment of the rights of people with disabilities is an obligation, not just compensation. Therefore, there is no reason whatsoever to ignore the rights of groups in didisableds . However, this law is a new law. The paradigm or perspective of the community and policy makers is still too strong with the old perspective as stated in Law no. 4 of 1997. This law was later revised by Law no. 8 of 2016.

Fourth , the limited employment opportunities for persons in the disabled . Discrimination against persons on the disabled in the world of work looks at the lack of attention of the government in an effort to assist persons in the disabled to get a job . Even state-owned enterprises do not really care about people with disabilities. Government offices are still not all of them accessible for disabled .

Fifth , obstacles to the implementation of religious obligations. Barriers in disabled community in exercising religious rights almost never get attention from both the government and clergy. Places of worship such as mosques, almost none of which are accessible to disabled (p. vx).

CHANGING PERSPECTIVE

For formulate Islamic view of the instructions related to attitude and what actions should be done to people with disabilities so that they can become conscious, to know and understand what their needs are and not least is appreciate and respect them as human dignity (Joseph , 2021: 12). It is in this context that the fiqh of people with disabilities is very urgent and needed. With this fiqh, it is hoped that it will be disabled to encourage and create a new spirit for people with disabilities to continue to be disabled to carry out positive activities, at least for themselves and also contribute to the wider community.

Islam actually gives a positive and constructive position to the disabled compared to the previous tradition. But in reality, the text and Muslim understanding are two different things. That is the positive spirit of the Qur'an in relation to persons with disabilities, the reality is still dominan his discrimination and marginalization of persons in the disabled . An example is how many mosques have rams or doors that are accessible for wheelchair users? How many mosques provide Sign Language translators for Friday sermons? Almost can certainly answer is no more than a matter of a finger, even zero.

Referring to the conditions mentioned above, Jurisprudence disabilities, positive spirit above is translated in the construction of runway related disability issues at three levels: basic value (*al-qiyam al-asasiyah*) consisting of monotheism, justice, and welfare of the general rule *(al- usul al-kuliyah)* namely human dignity, inclusiveness, and knowledge, as well as practical guidelines (*al-ahkam al-far'iyah*) which include: human rights and the right to live with dignity .

The three foundations above provide comprehensive guidelines from the area of values and principles that guide the perspective that must be built on difdisableds, to practical guidelines that touch the level of strategy and policy approaches. Even in the choice of the word disabled as an abbreviation of *differently abled* or different abilities of non- disabled persons as stated in Law no. 8 of 2016 is a reflection of a serious commitment to eliminating all negative views of people with disabilities.

In the view of Islam, basically all humans were created by Allah Swt *fi ahsan taqwim* (in perfect form). Even though people with disabilities have limitations, they have the right to be respected and appreciated. That is, as m a nusia other, they also have *Karamah insaniyah* - human dignity glorious. This is also stated in Law no. 8 years 2016 on Disability explained that every disabilities should be free from torture or cruel, inhuman, degrading human dignity, free from exploitation, violence and abuse arbitrary, and have the right to get respect on integrity mentally and physically based on similarities with others. This includes the right to receive social protection and services in the context of independence, as well as in an emergency.

As explained above that Islam teaches and places a very high human position (Surah Al-Isra: 70). This means that humans have *hak al-Karamah* and *rights of al-Fadilah*. Moreover, the mission of Prophet Muhammad Saw is *rahmatan lil Almin*, in which an welfare a bid for the whole of humankind and the universe. The elaboration and realization of this mission is referred to as *usul al-khams* - the five basic principles that include *hifz al-din, hifz al-nafs wa al-ird, hifz al-aql, hifz al-nasl* and *hifz al-mal.* In science and fiqh studies these five basic principles are known as maqasid sharia.

The reality of the perspective of people with disabilities or people with disabilities in Indonesia as stated above is still very vulnerable and not well facilitated, even getting discriminatory treatment, marginalization and considered troublesome in the public sphere, because the condition of disability is considered not to have the ability to participate in the public sphere. in the midst of society. Persons with disabilities in their activities experience problems, obstacles and barriers to accessing public services, education services, health, employment and other facilities.

The condition of persons with disabilities as described above should not be an obstacle, obstacle and problem for those with disabilities to obtain the right to life and the right to defend their life (Jamalu ddin, Rifqi Awati Zahara, 2020). In an effort to find answers to the challenges and obstacles faced by persons in disabled the need to do :

1. Changing the negative stigma, the negative paradigm into respect and responsiveness that is full of empathy, and from an empathetic perspective, developed into a view of empowerment and fulfillment of rights in disableds ;
2. Provide awareness to the community, social organizations and organization of a religious order not to treat persons in a fable in a discriminatory manner;
3. Encourage the provision of facilities and infrastructure that are environmentally friendly to persons in disableds both in the service of education, public facilities, and as well as places of worship are quite mema dai ;
4. Encouraging the state or government to facilitate access to information and employment opportunities for persons with disabilities in all lines of life, such as education, health and employment (Jamaluddin and Zahara, 2020).

FIQH IN THE CENTRAL CONTESTATION DEFINING DISABILITY

Universal values of Islam, as equality, equal rights / degrees, justice, freedom and the like, a benchmark, base, foundation and reinforcement in disabled in Islamic jurisprudence for the appreciation and protection of the rights of persons in disabled while emphasizing avoid attitudes and discrimination against persons in disabled . Islam considers that all human beings are equal, no exception for people with in disabled , they are entitled to humane treatment and the service adequate facilities, especially facilities to worship Allah swt. This statement explicitly affirms that the social equality between persons in disabled and they were not raised in the disabled . They must be treated equally and accepted sincerely, without discrimination, without negative stigma and without marginalization in their social life (Jamaluddin, Rifqi Awati Zahara, 2020).

As stated at the beginning of this paper, the discourse for the fulfillment of the right of opinion in disableds can not be separated from two perspective models that are often used, namely the *medical model* and the *social model*. Both of these models is the formation of a paradigm in viewing range in disabled . In historical chronology, the individual paradigm/ *medical model* occupies a very dominant position, so that the paradigm of normalism is formed, which is then often used in medical science with the terms healthy and unhealthy, normal and abnormal.

In the *medical model's* view , that disabled is a physical , mental or intellectual abnormality , so it is necessary to carry out rehabilitation so that the abnormality can be eliminated. This *medical model* perspective then gave birth to segregative policies. The institutionalization process is not only a *medicalization* effort (healing process), but also as a place of control. This is as stated by the existence of segregation of people with disabilities from external social interactions which is referred to as the ideology of *law and order* ; namely disabled is a disruptive group that threatens social stability so that they must be separated by means of institutionalization as a means of control. The establishment of rehabilitation centers and special schools is a form of policy from a *medical model* perspective , which is found in almost all nations.

Medical approach to persons in disabled can be seen from the social theory (*sick role* / function ill) carried by the flow of functionalism. In this view, sick people are a form of social violation and deviation from the social system (*social deviance*), because illness is a threat to the regularity of the social system. Those who are sick then leave their roles and functions in the social system. In its development, this theory was then applied to people with disabilities, so that people with disabilities were considered as sick people who needed to recover their condition so that they could return to their role and function in the social system in people's lives.

The *medical model's* perspective has received strong criticism from the disabled themselves. In the end, a new approach was born, namely the *social model* . This movement sued old orthodoxy that disability is a human being "deviant" or "not normal", and the dominant assumption that the limitations of persons with disabilities, purely medical affairs. The limitations of people with disabilities, according to this paradigm, are social problems rooted in the structure of society. The goal clearly is to delete all the oppression and social exclusion against persons with diffabel, and realize the assurance of full participation in the community with disabilities. Of course, this movement cannot be separated from the historical context, namely the presence of a *civil movement* that is being promoted by marginalized groups, such as people of color, ethnic minorities, women, and gay and lesbian groups who voice the claim of rights.

The fundamental idea voiced by the *social model* is that there is a difference between *impairment* and *disability. Impairment is* considered as something that is physical-biological in nature, while *disability* is social: restrictions experienced by those who have *impairments* to carry out their social activities and functions resulting from the way society is structured and organized.

Although the *social model* has been born as the antithesis of the *medical model,* the *social model* approach has also received criticism. However, at the end of the debate on the diffability perspective, a functional classification of diffability was born. The classification is called the *International Classi f ication of Functioning* (ICF). This ICF emphasizes on function (*functioning*) not on deficiencies or defects. This view also offers those activities, functions and participation are things that are influenced by various environmental factors, both material and social.

The explanation of the contestation of the meaning of disabled from various theoretical points of view in relation to the position of the disabled group above, in this regard, innovative and responsive formulations are needed from an Islamic point of view . It is more specifically related to the existence of disabilities in jurisprudence, which is still in a normal bias ism . One concrete example is present relief (*rukhsah*) in the perspective of jurisprudence something that is very *reasonable.* However, in view of the critical, *rukhsah* and rules as well as other traditions in fiqh can be said as a form of bias normalisme in religion. This implies that disability is the result of cultural construction and civilization of normalism, the face of religion cannot be separated from the understanding of the ideology of normalism, because religion is also a form of civilization's existence. In other words, that texts, doctrines and interpretations of texts in religion, including Islam are compiled and regulated within the scope of the ideology of normalism.

Jurisprudence which is the result of ijtihad cannot be separated from the subjective element. Likewise, the rules of fiqh are still far from inclusive of people with disabilities. Therefore, the construction of disabled-friendly fiqh can also be carried out by contemporary mujtahids, so that they are trapped in the understanding of classical fiqh which is a representation of religious normalism, which results in stagnation in religion. Socio-cultural development and human civilization, it becomes a necessity that fiqh must also develop.

In the context of building disability-friendly fiqh, there are important steps that need to be taken, namely:
1. Reviewing retraces back normalism in fiqh to 'unpack' the efforts of ijtihad, good se how methodological and practical;
2. Carrying out ijtihad efforts to attract fiqh can encourage the state as a legal subject (*mukallaf*) for accessibility development obligations which can lead to the fulfillment of the rights of people with disabilities in the fields of education, public services, job opportunities and also the availability of adequate and safe facilities in carrying out their duties. worship.
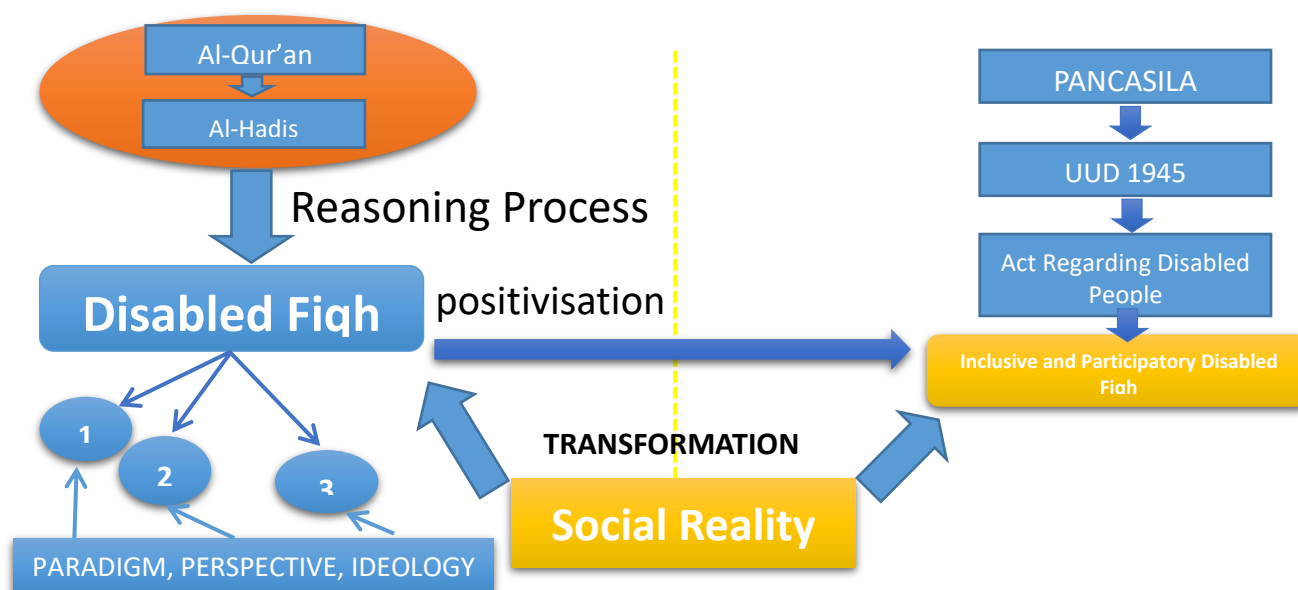
The two steps above are responses and efforts to constructively develop *maqasid shari'ah*, by incorporating the element of "inclusion" into *maqasid shari'ah*. So that in the end the expected output is the creation of an inclusive fiqh product. Definitively, inclusive fiqh consists of two words, namely fiqh and inclusion. As for terminology, fiqh is the science of

practical syara' laws extracted from detailed arguments. The definition of inclusion is an effort to integrate two different poles in one pole that are interconnected and compound with one another.

From the explanation above, it can be concluded that the notion of inclusive fiqh is syara' laws that are explored in detail for the common interest, whether it occurs in certain groups such as the disability and disability space, which makes it possible for both of them to carry out all forms of rules for fulfilling the rights of people with disabilities in the field of education, public services, job opportunities as well as the availability of adequate and safe facilities in carrying out collegiate worship.

Starting from the description of the inclusion fiqh, there are three very essential factors. *First*, fiqh is the most dynamic science, because it becomes a moral guide for the ever-changing and competitive social dynamics. *Second*, fiqh is very rational, because fiqh is a science of *iktisaabi* (science of study, analysis, and research). *Third*, fiqh is a science that emphasizes actualization or commonly referred to as *'amaliyah* which is practical in everyday life. Jurisprudence third through design this, inclusion can be made possible as a *counterpart* to expand the scope of jurisprudence that is responsive to the groups who are experiencing physical and psychological vulnerabilities. With this design, each party has a common guide to formulate rules for the implementation of worship that are not only covered by the logic of exceptions that are always intended for disabled groups.

Figure 1. Formulation Process Of articipatory And Inclusive Disabled Fiqh

Departing from this inclusion framework, restrictions on all types of rules need to be disbursed and put under the same conditions and not include disability groups in the logic of exclusion. That, in other procedures that make it less possible for the group in disableds to perform similar actions to the ability group, it does not mean that it is included in the category of relief (*rukhsah*) which is psychologically sufficient to inhibit the inner atmosphere of the group in disabled. However, this is used as a common obstacle that can happen to anyone. Just as the group in fable cannot perform some technical procedures in the implementation of worship, the ability group will also experience the same thing. Therefore, placing a logical exception on the basis of physical and psychological barriers experienced by the group in disableds is an unfair act.

To formulate this inclusive fiqh, two basic steps are needed, namely: *first*, deconstructing (*al - qati'ah al-ma'rafiyyah*) by critically reading the various provisions and rules behind the fiqh conception that exists in many texts. contributed by previous scholars. In the fiqh conception, there are many aspects of exceptions that have not placed groups in disableds as inclusive parties with ability groups. *Second,* carrying out reconstruction (*al-tawasul al-ma'rafy*) as an effort to contextualize the concept of fiqh that is responsive to humanitarian problems, especially those related to the fate experienced by groups in disableds. In this reconstruction, fiqh is not only placed in a frame of mind is absolute and formalistic-legalistic; it was used as the ethical foundation to give birth to a new way of thinking that is sensitive to the dynamics of the issue, such as a group in disabled .

Based on the framework or inclusion *approach*, by providing a very philosophical offer in the study of fiqh, namely by including inclusion as one of the *maqasid shari'ah*. It can be understood that maqasid shari'ah is a spirit rather than shari'ah itself. The inclusion of "inclusion" as part of the *maqasid shari'ah,* allows it to produce fiqh that is more responsive to disability groups in contemporary fiqh.

The presence of jurisprudence that is inclusive and responsiveness of against persons with disabilities can be used as an alternative in the middle keringya classical jurisprudence or fiqh contemporary about disability. People with disabilities are still at the point of marginalization, socially, economically, culturally, legally, and even religiously, which is the basis of life. Therefore, this fiqh is an answer to Islamic studies and diffability or more specifically, it is Diffabel Fiqh, in Indonesia it is still very rare or even non-existent, so this fiqh can be regarded as a gateway to enter into the study of diffability. In addition, it is natural to have an alignment with the issue of diffability, especially in the context of carrying out the scientific construction of Islamic law that is pro-diffability (*positive perspective*). Likewise, this fiqh shows the existence of the academic world, that as

academics must be brave and always carry out scientific reforms, so that Islamic sciences progress so that shari'ah (fiqh proposals) does not stagnate. In fact, fiqh with disabilities can be said to be building a new paradigm (*the new paradigm construction*), both in the *scientific,* structural, and cultural realms.

Fiqh with disabilities as stated above can be used as a guide for all elements of the nation and the people, so that an inclusive *civil society* can be realized based on inclusive fiqh. In the end, disabled people are no longer marginalized in the structure and culture (Fikri Abdullah, " F ikih R maid with Disabilities ", in *the first nklusi*, Vol. 2, No. 1 January-June 2015).

FIQH CONSTRUCTION FOR THE DISABLED IN INDONESIA

To develop a fiqh study on issues of disabled in Indonesia, a choice of strategies and study models can be proposed. These studies can be classified into three levels, namely (1) fundamental level, (2) state/government policy, and (3) praxis (Muchtar, 1991). Included in the category of fundamental level studies is the prescriptive fiqh study model at the norm level), while the study which is a fiqh review of the disability laws that have become regulations in Indonesia (Law of the Republic of Indonesia, 1997, 2001, 2004, 2007), is included at the study level. State/government policies in Indonesia related to disability issues and then developing them can represent a practical study (Jill, 2006).

The *prescriptive* study of fiqh aims to explore Islamic legal norms at the *das sollen* level, namely norms that are considered ideal to be able to regulate human behavior and organize a good social life. The proposal of al-fiqh is included in the field of prescriptive fiqh studies, which aims to find sharia norms to respond to various problems from a normative point of view (Syamsul, 2005), including to respond to various disability issues.

In the incorrect view of many Muslims, fiqh usually only means a collection of concrete rules in the form of *halal, haram, makruh*, permissible, or circumcised. When it is called Islamic law, they only imagine these categories. This definition is clearly not correct. Besides consisting of assessment categories such as *halal* or *haram*, fiqh also consists of relational categories. More importantly, fiqh actually consists of tiered norms (*tiered/layered*) (Syamsul, 2005 & Padmo 1996).

In the past, the coating consisted of two levels of norms: concrete regulations (*al-ahkam al-far'iyyah*), and general principles (*al-usul al-kuliyyah*). These general principles, in the view of classical Islamic jurists, cover a broad category that includes the basic values (*al-qiyam al-asasiyah)* of Islamic law. Therefore, in practice the norms are divided into three levels, namely (1) *concrete regulations*, (2) *general principles*, and (3) *basic values* (Syamsul, 2005 & Padmo, 1996) .

The basic values of fiqh (Islamic law) are also derived from the basic values of Islam. In the Qur'an, literally and implicitly, there are many basic Islamic values which are also the basic values of fiqh (Islamic law). For example*, monotheism, justice, equality, freedom, tasamuh, taawun,* and so on. From these basic values are derived general principles of Islamic law and from general principles concrete regulations are derived. In other words, it can be said that a concrete legal regulation is based on or under the umbrella of general principles and general principles are shaded by basic values. For example, from the basic value of equality, a general principle in political life can be derived that men and women have the same political rights. From this principle, concrete regulations were derived (*al-hukm al-far'i*) that it was permissible for a woman to become president. From the basic value of freedom, a legal principle is derived in the law of engagement, namely the principle of freedom of contract (*mabda hurriyah al-ta'aqud*) and from this principle, concrete regulations are derived, for example, commodity futures contracts are legally permissible (Syamsul, 2005 & Padmo, 1996).

In the study of fiqh, the use of usul al-fiqh, as has been widely used so far, has focused more on research on concrete legal regulations: what is the law of bank interest? What is the marriage law between couples of different religions? What are credit card laws? Is it legal for women to be heads of state? etc. The study of Islamic law should also be directed at exploring principles by considering a norm-level approach so that it is easier to respond to various community developments from the perspective of sharia law (Syamsul, 2005 & Padmo, 1996). including to answer the problems of fiqh with disabilities in Indonesia today. This prescriptive model of fiqh study can be used as a major premise to examine various environmental issues in various aspects. This prescriptive model of fiqh study is a study of concrete norms, basic norms and value norms simultaneously.

Jurisprudence studies descriptively observe fiqh as a social phenomenon that interacts with other social phenomena. In this regard, fiqh can be seen both as an independent variable (free) that affects society and as a dependent variable (bound) that is influenced by society (Syamsul, 2005). In the study of this model, various approaches developed in the social sciences and humanities (humanities) are usually used, such as the historical *(historical)* approach . This *historical approach* is widely used by scholars of Islamic law from the West (Harald, 2000). Sociological *approach* (Martha, 1988 & Atho', 1999). Political approach *(Political Approach)* (Daniel, 1972). Anthropological approach *(anthropological approach)* (Zibra, 1993 & Syamsul, 2002). In relation to the study of fiqh on the problem of disabled with this descriptive model, it indicates the need for a multidisciplinary approach or at least a multi-disciplinary approach. This inter- or multi-disciplinary approach can be used by fiqh to examine the factors that influence (internal and external) the implementation of fiqh with disabled people in the area of praxis. In this regard, the study of the culture or local wisdom of the community can be an important instrument in implementing the fiqh of people with disabilities in the lives of people in Indonesia.

INCLUSIVE AND PARTICIPATORY FIQH FOR DISABILITIES

Seeing the complexity of the problems experienced by people with disabilities in Indonesia, in addition to several methods as stated in the previous description, it is also necessary to study fiqh with a model that combines prescriptive and descriptive fiqh studies at the same time. Thus, in addition to philosophical and theological study also involves the study of social sciences and humanities that jurisprudence as it is comprehensive and multidisciplinary at least, is very good if you use a model of interdisciplinary, even transdiscipline (Abdullah, 2021).

In the formulation of jurisprudence friendly with disabilities to study models of multidisciplinary, interdisciplinary and transdisciplinary indicates strongly that first, Jurisprudence is the science of the most dynamic, because he became a moral guide for the ever-changing social dynamic and competitive. *Second*, fiqh is the result of study, analysis and research. *Third*, fiqh is a

science that emphasizes practical actualization in everyday life. With a fiqh scientific design like this, inclusion can be done as a *counterpart* to expand the scope of fiqh studies that are responsive to people who are physically and psychologically experiencing vulnerability. With this fiqh draft, each party has a common guideline to formulate rules on public services, access to education, the world of work and the implementation of worship that are not solely based on the logic of exceptions that are always reserved for groups in disableds.

Be starting point of a framework of thought inclusions mentioned above, barring any kind of rules need to be put in the same condition and not position the group in disabled in logic exception. In other procedures that are less likely for the disabled group to perform similar actions to the non-disabled group, it does not mean that it is included in the category of relief which is psychologically sufficient to inhibit the inner atmosphere of the group in disabled. However, this is used as a common obstacle that can be experienced by anyone. As a group in disabled not be disabled to perform some technical procedures in the implementation of worship, abilitas group will experience the same thing. Therefore, placing the logic of exception on the basis of the physical and psychological barriers experienced by the group in disabled can be considered an unfair action.

Furthermore, it is also stated that the above formulation of inclusive fiqh has carried out two basic steps, namely: *first*, deconstructing (*al - qati'ah al-ma'rafiyyah*) by doing a critical reading of various provisions and rules behind the fiqh conception in the text. which has been widely contributed by previous scholars. This conception of fiqh has many aspects of exceptions that have not placed groups in disableds as inclusive parties with ability groups. *Second,* carrying out reconstruction (*al-tawasul al-ma'raf i*) as an effort to contextualize the concept of fiqh that is responsive to humanitarian problems, especially those related to the fate experienced by groups in disableds. Step this reconstruction, fiqh is not only placed in a frame of mind is absolute and formalisti k -legalistik; it was used as the ethical foundation of religious who gave birth to a new way of thinking that is sensitive and Respo n shifts the dynamics of the issue, as raised in disabled.

The air base of the departure from the framework of thought inclusions (*inclution approach*) mentioned above, is a philosophical bid in the study of jurisprudence, namely by incorporating inclusion as one of the *maqasid Shari'ah*. Thus, maqasid shari'ah is the spirit or essence of shari'ah. Tercovernya "inclusion" into the part of the *maqasid sharia,* this can shortly make the science of jurisprudence that is more responsive to the group in disabled in the study of jurisprudence contemporary.
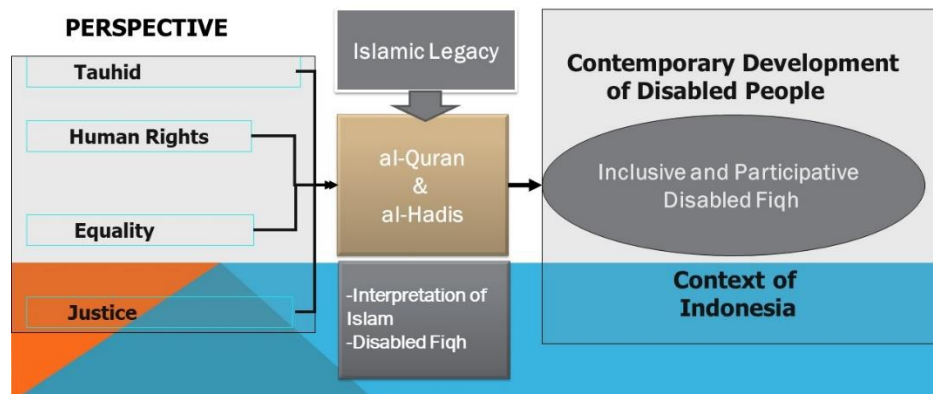
The establishment of an inclusive and responsive fiqh to the problems experienced by persons with disabilities is an alternative in the midst of the dryness of classical and contemporary fiqh studies regarding disableds as contemporary fiqh issues in the midst of the life of people with disabilities who are at the point of marginalization, both socially, economy, culture, law, and even religion that are the basis of life. Therefore, this fiqh can be said to be the answer to Islamic studies or the Fiqh of Difabel. Studies of Islam or fiqh with disabilities like this in Indonesia are still very rare or even non-existent, so this fiqh can be regarded as a gateway to enter into diffabel studies. In addition, naturally Islamic studies and more specifically of jurisprudence with disabilities have a bias towards issues diffabel, especially in order to conduct scientific construction of the pro-Islamic law disabled (*positive perspective*). The development of fiqh studies like this shows the existence of the academic world, always carrying out scientific reforms, so that Islamic sciences progress and do not experience a deadlock . The construction of fiqh science with disabilities that is offered is a building of *the new paradigm construction* in the *scientific,* structural, cultural and religious ethical realms.

CONCLUDING REMARKS

As a closing of the overall description, analysis and discussion described above, the following conclusions can be drawn:

1. That the framework of Islamic thought by using the *inclusion approach* is a philosophical proposition in the study of fiqh, including inclusion as one of the important aspects of *maqasid shari'ah* . With the inclusion of "inclusion" as part of the *maqasid shari'ah,* this can make fiqh scholarship more responsive to contemporary issues .

2. That the completion of Jurisprudence inclusive and responsive to the problems experienced by persons with disabilities is an alternative in the middle classical jurisprudence or fiqh contemporary about diffabel as a matter of jurisprudence Kontemporer in the middle - the middle of life with disabilities who in at point marginalization of social, economic, cultural, legal, and in performing worship religious.

3. That the construction and spell Jurisprudence disabilities in Indonesia is still very rarely do so Jurisprudence This can be said as a gateway to the mainstreaming of the raised diffabel because it has a bias against limitations with diffabel, especially in order to conduct scientific construction of the pro-Islamic law diffabel. The scientific construction of fiqh with disabilities offered is a building of *the new paradigm construction* in the *scientific,* structural, cultural and religious ethical realms.

Figure 2. The Suggestion Toward Formulating Participative
and Inclusive Indonesian Disbaled Fiqh

REFERENCES

Abdullah, Fikri. (2015). "Resensi Buku Fiqih Ramah Difabel", *Jurnal Inklusi,* Vol 2, No.1 Januari-juni (2015), p. 196.

Abdullah, M. Amin. (2021). *Multidisiplin, Interdisiplin dan Transdisiplin Metode Studi Agama & Studi Islam di Era Kontemporer,* Yogyakarta: IB Pustaka PT Litera Cahaya Bangsa.

Anwar, Syamsul. (2002). "Fatwa, Purification and Dynamization: A Study on Tarjih in Muhammadiyah," Islamic law and Society, Vol. 12 No. 1 (2002), p. 27-44.

Anwar, Syamsul. (2005). *Membangun Good Governance dalam Penyelenggaraan Birokrasi Publik di Indonesia: Tinjauan dari Perspektif Syariah dengan Pendekatan Ilmu Usul Fikih*, Pidato Pengukuhan Guru Besar Ilmu Usul Fikih pada Fakultas Syari'ah di Hadapan Rapat Senat Terbatas UIN Sunan Kalijaga Yogyakarta tanggal 26 September 2005 (Yogyakarta: UIN Sunan Kalijaga, 2005), p. 3.

Barnes, Colin, Mike 0liver and Len Barton. (2002). *Disability Studies Today*. Cambridge: Polity Press in association.

Bartlett, Peter, Oliver Lewis, and Oliver Thorold. (2007). *Mental Disability and the* Campbell, Jane and Mike Oliver. 2011. *Disability Politics Understanding Our Past, Changing Our Future*. London & New York: Routledge.

Chaim, Vardit Rispler. (2007). *Disability in Islamic Law*, The Netherlands: Springer. *European Convention on Human Rights* Leiden: Koninklijke Brill NV.

Forshee, Jill. (2006). *Culture and Customs of Indonesia*, Westport, Connecticut London: Greenwood Press.

Ghaly, Mohammed. (2010). *Islam and Disability Perspectives in Theology and Jurisprudence*. London & New York: Routledge.

Hamidi, Jazim. (2016). "Perlindungan Hukum Terhadap Disabilitas dalam Memenuhi Hak Mendapatkan Pendidikan dan Pekerjaan", Jurnal Hukum IUS QUIA IUSTUM NO. 4 VOL. 23 (2016): 652 – 671.

Handayana, Sri (2016). "Difabel Dalam Al-Qur'an," Journal of Disability 3, No. 2 (2016): 277,

Hosseini, Ziba Mir. (1993). *Marriage on Trail: A Study of Islamic Family Law, Iranand Morocco Compared.* London-New York: I.B. Tauris & Co. Ltd.

Ilyas, Hamim. (2018). *Fikih Akbar: Prinsip-Prinsip Teologis Islam Rahmatan Lil'alamin*, Jakarta: Pustaka Alvabet.

Jamal, Khairunnas (2017). "Eksistensi Kaum Difabel Dalam Perspektif Al-Qur'an," Jurnal Ushulluddin 25, No. 2 (2017): 229.

Jamaluddin, Rifqi Awati Zahara. (2020), "Penguatan Hak-Hak Dasar Manusia (Huququl Insani) Dalam Penyandang Disabilitas (Difabel) Persprktif Fikih Islam, dalam *Legitima* : Volume 2 No. 2 Juni 2020.

Maftuhin, Arif, (2014). "Aksesibilitas Ibadah Bagi Difabel: Studi Atas Empat Masjid di Yogyakarta", *Inklusi, Vol.1,* No 2 (2014): 266-267.

Motzki, Harald. (2000). *The Origin of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools.* Leiden-Boston-Koln: Brill.

Mudzhar, M. Atho. (1999). "Studi Hukum Islam dengan Pendekatan Sosiologis," pidato pengukuhan Guru Besar Madya pada IAIN Sunan Kalijaga Yogyakarta tanggal 15 September 1999.

Mundy, Martha. (1988). "The family, Inheritance and Islam; a Reexamination of Sociology of Fara'id Law,' dalam Aziz al-Azmeh (ed.), *Islamic Law Social and Historical Contexts.* London-New York:Routledge. p.1-123.

Ningsih, Ekawati Rahayu. (2014). "Mainstreaming Isu Disabilitas di Masyarakat Dalam Kegiatan Penelitian maupun Pengabdian pada Masyarakat di STAIN Kudus, dalam Jurnal Penelitian, Vol. 8, No. 1, Februari 2014.

Nursyamsi, Fajri dan Estu Diyah Arifanti, dkk. (2015). *Kerangka Hukum Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas*, Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia.

Oliver, M. (1990). *The Politics Of Disablement*, *A Sociological Approach*, New York: St. Martin's Press.

Oliver, Michael. (1996). *Understanding Disability From Theory to Practice.* New York: St. Martin's Press.

Pawestri, Aprillina. (2017). "Hak Penyandang Disabilitas Dalam Perspektif HAM Internasional Dan HAM Nasional," *Era Hukum* 2, No. 1 (2017): 177-179.

Priscyllia, Fanny. (2016). "Kajian Hukum Terhadap Fasilitas Pelayanan Publik Bagi Penyandang Disabilitas," *Lex Crimen 5,* No. 3 (2016): 1.

Redaksi. (2021). " Fikih Difabel Setiap Manusia Mempunyai Kemuliaan yang Sama", Sajian Utama dalam *Suara Muhammadiyah*, edisi 02, Th. Ke -106, 16-31 Januari 2021

Ro'fah, (2021). "Mainstreaming Difabel dalam Tubuh Persyarikatan", Wawasan dalam *Suara Muhammadiyah*, edisi 02, Th. Ke -106, 16-31 Januari 2021.

Ro'fah, Andayani, Muhrisun. (2010). "Membangun Kampus Inklusif", Yogyakarta: UIN Sunan Kalijaga.

Schumm, Darla and Michael Stoltzfus. (2011). *Disability in Judaism, Christianity, and Islam Sacred Texts, Historical Traditions,* and Social Analysis. New York: Palgrave Macmillan.

Soleh, Akhmad. (2016). *Aksesbilitas Penyandang Disabilitas Terhadap Perguruan Tinggi: Studi Kasus Empat Perguruan Tinggi Negeri di Yogyakarta,* Yogyakarta: LKiS.

Syafi'ie', M. (2014). "Pemenuhan Aksesibilitas Bagi Penyandang Disabilitas",*Inklusi, Vol.1,* No 2 (2014): 288-289.

Tim Penyusun. (2018). *Fiqih Penguatan Penyandang Disabilitas*, Jakarta: Lembaga Bahtsul Masail PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat dan Pusat Studi dan Layanan Disabilitas Universitas Brawijaya.

Wahjono, Padmo. (1996). " Budaya Hukum Islam dalam Perspektif Pembentukan Hukum di Masa Datang", dalam Amrullah Ahmad dkk, *Dimensi Hukum Islam dalam Sistem Hukum Nasional Mengenang 65 Th Prof. Dr. H. Busthanul Arifin, SH.* Jakarta: Gema Insani Press. p.172-176.

Windrawan, Puguh (ed.). (2015). Aksesibilitas Peradilan Bagi Penyandang Disabilitas, Yogyakarta: PUSHAM UII.

Yusuf, Ali. (2021). "Mengubah Cara Pandang Masyarakat terhadap Difabel", Dialog dalam *Suara Muhammadiyah*, edisi 02, Th. Ke -106, 16-31 Januari 2021.