



## Taklif and the Fulfillment of the Rights of Persons with Mental and Intellectual Disabilities: An Islamic Legal Perspective

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### Abstract

Recognizing that persons with disabilities are an integral part of our multicultural society is essential to advancing an inclusive and equitable legal framework. This study aims to develop a comprehensive understanding of taklif and legal competence (*ahliyyah*) for persons with disabilities, particularly in the context of fulfilling religious rights and obligations, such as congregational prayer, zakat, marriage, and financial transactions. The study employs a qualitative method using a normative legal approach. Data collection is based on literature sources, including hadiths, classical books of fiqh and usūl al-fiqh, legal regulations, reports from international institutions, and academic studies. The findings show that individuals with psychosocial and complex mental disorders are inherently not subject to taklif. Others, however, are considered *mukallaf* and are subject to taklif according to their capacities. About religious obligations, persons with mental and intellectual disabilities may still fulfill their zakat duties through their guardians. In financial matters, they are prohibited from independently managing their assets—whether the condition is permanent or temporary—and are therefore placed under a guardianship system. Regarding marriage, individuals whose mental and intellectual disabilities are classified as mild, and who possess both *ahliyyah al-wujūb* and *ahliyyah al-adā' al-kāmilah*, are considered to have a valid marital status. However, if the disability is classified as moderate or severe and there is a need for marriage, the marriage may be performed by a *walī mujbir*.

**Keywords:** Mental Disability, Intellectual Disability, Islamic Law, Fulfillment of Rights, Taklif

### Abstrak

Mengakui bahwa penyandang disabilitas merupakan bagian integral dari masyarakat multikultural kita sangat penting untuk mendorong kerangka hukum yang inklusif dan adil. Penelitian ini bertujuan untuk mengembangkan pemahaman yang komprehensif mengenai taklif dan kompetensi hukum (*ahliyyah*) bagi penyandang disabilitas, khususnya dalam konteks pemenuhan hak dan kewajiban keagamaan seperti salat berjamaah, zakat,



pernikahan, dan transaksi keuangan. Penelitian ini menggunakan metode kualitatif dengan pendekatan hukum normatif. Pengumpulan data dilakukan melalui studi pustaka, termasuk hadis, kitab-kitab fikih klasik dan *uṣūl al-fiqh*, peraturan perundang-undangan, laporan lembaga internasional, serta kajian-kajian akademik. Hasil penelitian menunjukkan bahwa individu dengan gangguan mental kompleks dan psikososial secara inheren tidak dikenai taklif. Namun, individu lainnya dianggap sebagai mukallaf dan dikenai kewajiban taklif sesuai dengan kapasitas masing-masing. Dalam hal kewajiban keagamaan, penyandang disabilitas mental dan intelektual tetap dapat menunaikan kewajiban zakat melalui wali atau pendampingnya. Dalam urusan keuangan, mereka dilarang untuk mengelola harta secara mandiri baik kondisi disabilitasnya bersifat sementara maupun permanen dan oleh karena itu berada di bawah sistem perwalian. Terkait pernikahan, individu yang disabilitas mental dan intelektualnya diklasifikasikan sebagai ringan, serta memiliki *ahliyyah al-wujūb* dan *ahliyyah al-adā' al-kāmilah*, dianggap memiliki status pernikahan yang sah. Sebaliknya, jika disabilitas diklasifikasikan sebagai sedang atau berat, dan terdapat kebutuhan untuk menikah, maka pernikahan dapat dilakukan oleh seorang *walī mujbir*.

**Kata Kunci:** Keterbatasan Mental, Keterbatasan Intelektual, Hukum Islam, Penyelenggaraan Hak, Taklif

## Introduction

People with disabilities constitute the greatest minority, according to a United Nations report. With 650 million people, it accounts for nearly 10% of the world's population. This figure is rising due to population increase, medical breakthroughs, and the aging process, according to the World Health Organization (WHO). In countries with a life expectancy of more than 70 years, the average person lives with a disability for roughly 8 years, or 11.5% of their life. According to the United Nations Development Program (UNDP), 80% of individuals with disabilities live in developing nations. According to a UN special study from 2000, "the consequences of being disabled interfere in the lives of people with disabilities to a completely acceptable extent in all countries, in all types of living conditions."<sup>1</sup>

The facts shown above have drawn considerable attention to the efforts to ensure accessibility for people with disabilities. Accessibility is the ease with which people with disabilities can achieve equal chances in all aspects of life and work. Efforts to provide legal protection based on the Constitutions for disabled people's positions, rights, obligations, and roles have also been carried out through various statutory regulations, including those governing employment issues, national education, health, social welfare, road traffic and transport, railways, shipping, aviation, and customs. These regulations provide equal chances for people with disabilities in the domains covered by them, and in order to offer these guarantees, people with disabilities are supplied with facilities (accessibility).<sup>2</sup>

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<sup>1</sup> Mary Robinson, *Human Rights and Disabled Person Dalam Rachel Hurst, Are Disabled People Included? Disability Awareness in Action* (UK: Freeways Print, 1998), 1.

<sup>2</sup> Muladi, *Hak Asasi Manusia: Hakekat, Konsep Dan Implikasinya Dalam Perspektif Hukum Dan Masyarakat* (PT. Refika Aditama, 2009). Various Constitutions and regulations regulate the rights and accessibility of persons with disabilities, including Constitution Number 8 of 2016 concerning Persons with Disabilities, Constitution Number 39 of 1999 concerning Human Rights, Law Number 25 of 2009 Regarding Public Services, Constitution No. 28 of 2002 concerning Buildings, Government Regulation No. 43 of 1998 concerning Efforts to Improve Social Welfare for Persons

Despite the fact that various laws and regulations protect the rights and accessibility of people with disabilities, the research discovered that it is difficult for people with disabilities to obtain the right to public facilities, political roles, employment, legal protection, education, information and communication, and health services. According to the Social Welfare Data and Information Center of the Ministry of Social Affairs, there were 1,250,780 people with disabilities in Indonesia in 2012. They include the physically challenged, the blind, the deaf, and those with mental problems. Contrary to popular belief, not all people with disabilities can find work. Employment opportunities for people with disabilities are extremely limited. According to data from the Directorate General of Workforce Placement Development (Binapenta), 1.5 million people with disabilities were unemployed in 2014.<sup>3</sup>

The identical findings were published in 2016 by LPEM FEB University of Indonesia research, which discovered that the number of individuals with impairments in Indonesia was 12.15 %. 10.29 percent are classified as medium, and 1.87 percent are classified as major. In Indonesia, the provincial disability prevalence rate ranges from 6.41 percent to 18.75 percent, with West Sumatra, East Nusa Tenggara, and South Sulawesi having the highest rates. Contrary to the figure of 12.15 percentage of persons with disabilities, 45.74 percent of people with disabilities have never or have not graduated from elementary school. Contrary to the figure of 12.15 percent of people with disabilities, 45.74 percent of people with disabilities have never or have not graduated from elementary school, compared to 87.31 percent of non-disabled people who have an elementary school education or higher.<sup>4</sup>

Attention to fulfilling accessibility for people with impairments has inadvertently found a normative grounding in the framework of religion. The rationale for the revelation of Surah an-Naba verses 1-2 is one of these. "This verse was revealed regarding Ibn Ummi Maktûm, a friend who was blind," Imam at-Tirmidzî and al-Hâkim recounted from 'Aisyah. Ibn Ummi Maktûm came to Rasulullah SAW one day and requested, "O Rasulullah, give me advice." At the time, the Prophet of Allah was speaking with a Musyrik authority. Rasulullah then ignored his friend's suggestion and continued speaking with the musyrik official. He asked the musyrik officials, among other things, "Is there anything wrong with my call?" No,

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with Disabilities, and Constitution No. 20 of 2003 concerning the National Education System. This Constitution states the obligation to provide special and equal education for people with disabilities. Government Regulation No. 10 of 2010 added that every level of education must accept students without discrimination, including discrimination based on physical and mental conditions.

<sup>3</sup> Meanwhile, the results of data collection carried out by the Ministry of Social Affairs' Data and Information Center (Pusdatin) in 2008 recorded that 74.4% of people with disabilities were unemployed, or not working, and 25.6% of people with disabilities had jobs. The types of work that are often undertaken are farmers, laborers and services. In fact, article 53 paragraph (1) of the Constitution on Persons with Disabilities states that the government, regional governments, state-owned enterprises are obliged to employ at least 2 percent of persons with disabilities from the total number of employees. Furthermore, paragraph (2) states that it is mandatory for private companies to employ at least one percent of people with disabilities from the total number of workers.. Bambang Widodo, *Upaya Memenuhi Hak Penyandang Disabilitas* (<https://ham.go.id/2020/03/06/upaya-memenuhi-hak-penyandang-disabilitas/>).

<sup>4</sup> Desy Susilawati, *Indonesia Miliki 12 Persen Penyandang Disabilitas* (<https://www.republika.co.id/berita/nasional/umum/16/12'16/019,47384-indonesia-miliki-12-persen-penyandang-disabilitas.>).

said the individual. Soon after, the verse was revealed: He (Muhammad) had a frown on his face and turned aside because a blind man (Abdullah bin Ummi Maktûm) had approached him.<sup>5</sup>

The mention of a blind man in this verse is a notification of his weakness, which must be tolerated in the event that he interrupted the Prophet SAW's conversation when he was busy with his meetings with many people. It could be that this blindness was the 'illat that caused the Prophet to become angry and turn away from him. It is as if this verse says that because you are blind, you (Muhammad) should be more merciful and gentler towards people.<sup>6</sup> When the Prophet SAW ignored people with disabilities, Allah SWT immediately gave a warning through this surah. Thus, this verse indicates that people with disabilities should also receive the same and equal treatment. Likewise, they actually have the right to access education and teaching that must be fulfilled. In the hadith of muslim history it is also mentioned that "A blind man came to Rasulullah SAW and said: "O Rasulullah, there is no one to lead me to the mosque. Do I have a rukhshah to pray at home?" Then he asked, "Did you hear the call to prayer? He answered, 'Yes', he said again, 'Then fulfill it'. (HR. Muslim)<sup>7</sup>

The above hadith is about Abdullah bin Ummi Maktum, who initially requested permission from the Prophet SAW to pray at home because he was blind and had no one to guide him. Legally, the constraints that people with impairments have fulfill the basis for not attending congregational prayers<sup>8</sup>, however the Prophet SAW held a different opinion so that he may still attend congregational prayers. According to the author, this implies that people with disabilities should have access to the benefits of congregational prayer, in addition to the fact that their presence at congregational prayers serves to accelerate their integration process with the community around them.

However, there are still many obstacles to the implementation of religious obligations by people with disabilities. Barriers to disabled people exercising their religious rights have received almost no attention from either the government or religious leaders. Places of worship, for example, mosques, are minimally accessible for people with disabilities. Obstacles for disabled groups in the religious sector are not limited to aspects of worship but also other aspects, for example, financial transactions, marriage, and other activities that are in direct contact with the rights of disabled people.<sup>9</sup>

The emergence of obstacles to efforts to fulfill accessibility for people with disabilities is caused by many reasons. Among them is the fact that the perspective on people with disabilities is still dominated by a derogatory perspective. An example of this is the mystical perspective, which considers that disability is a disgrace or even a curse. Covey found that society generally views people with disabilities in the following ways: as punishment from God for sin, the result of witchcraft, parental misunderstanding during pregnancy, the result of evil spirits, astrological influences as inferior or animal-like, ugly, wicked, dependent on

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<sup>5</sup> Jalâluddin as-Suyuthî, *Lubâb An-Nuqûl* (Beirut: Dâr al-Kutub al-'Ilmiyyah, n.d.), 209.

<sup>6</sup> Ahmad Musthafâ Al-Marâgî, *Tafsîr Al-Marâgî*, juz 30 (Kairo: Musthafa Babi al Halabî, 2017), 39.

<sup>7</sup> Abu Husain Muslim ibn al-Hajjaj, *Shahih Muslim* (Beirut: Dar Ihya al-Turats al-'Arabi, n.d.), 452.

<sup>8</sup> Muhyidin Yahyâ bin Syaraf an-Nawâwî, *Al-Minhâj Syarh Shahih Muslim Bin al-Hajjâj*, Juz 5 (Beirut: Dâr Ihya at-Turats al-Arabi, 2013), 155.

<sup>9</sup> LBM PBNU, *Fiqh Penguatan Penyandang Disabilitas* (Jakarta: LBM PBNU, 2018), x.

pitiful, sexually hyperactive, damaged, socially unacceptable, and socially deviant. This kind of perspective ultimately results in society viewing them as a burden.<sup>10</sup>

Others believe that impairment is a destiny from God. God determines whether or not a person has limitations. Humans have no choice but to accept it. People with this viewpoint will ask disabled groups to be patient and pray that they may be given strength despite their varied limitations. Meanwhile, they requested the community to assist them because they were perceived to have limits. It is a virtue to support disability groups.<sup>11</sup>

According to the author, the last point of view above is related to the subject of individuals with disabilities' human existence and how they exercise and achieve their rights related to religious obligations. Based on this issue, the author emphasizes the importance of reconstructing<sup>12</sup> the meaning of *taklîf* individuals with impairments. This is to determine the situation of people with disabilities, as well as their legal eligibility or competence (*ahliyyah*) to take *taklîf*, in order to get acceptable attitudes and treatment for people with impairments. This paradigm is a progression of *Taklîf*'s initial structure, which positions and treats persons with disabilities in a more medical context, where they are considered as parties who obtain relief (*rukhsah*) in their life, including religious requirements. Ideally, in their capacity as *Ahliyyah al-wujûb*, people with disabilities still have the right to receive obligations and rights, so what is needed is the availability of facilities and access that enable them to carry out their obligations and receive these rights.

This study employs a qualitative method based on literary literature data, with main data coming from the tafsir books, books, articles, and other sources. In order to acquire a thorough picture of the status of persons with disabilities in terms of the burden of religious responsibilities, the author will first describe the position of *taklîf* for individuals with mental disabilities and intellectual disabilities in the discussion. In addition, to learn how mental and intellectual disorders affect competence (legal skills), Finally, we will describe how religious access for persons with disabilities is fulfilled by focusing on three issues: *zakat* responsibilities, the legality of financial transactions, and the legitimacy of marriages for people with disabilities.

This study uses a qualitative method with two main approaches, namely normative-theological and sociological-legal. The first approach is used to analyze the main sources of Islamic teachings such as *hadith*, book of *ushul fiqh*, and classical *fiqh* literature related to the concept of *taklîf* and *ahliyyah*, especially in the context of people with disabilities. The

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<sup>10</sup> H.C. Covey, *Social Perceptions of People with Disabilities in History* (Springfield: Charles C Thomas Pub, 1998), 6-8.

<sup>11</sup> LBM PBNU, *Fiqih Penguatan Penyandang Disabilitas*.

<sup>12</sup> Construction comes from the word *construction*, which means the model or layout of a building. In relation to *taklîf*, which is the subject of Islamic law, the main instrument used is *ushûl fiqh*. The object of discussion of *ushûl al-fiqh* has four elements, namely: 1) Sharia law (*al-hukm al-syar'i*) in terms of its essence, criteria, and various types; 2) a lawmaker (*al-hâkîm*) in terms of his propositions and orders; 3) the person who is burdened by the law (*al-mahkûm 'alaih*); and 4) how to perform *ijtihad*. These four elements are constructed to give rise to a paradigm of what legal obligations are, who has the obligation to implement the law, how *mukallaf* implements the law, and so on. In relation to the discussion of persons with disabilities, what the author means by *taklîf* construction here is the location or position of the legal burden on persons with disabilities, what their skills are in implementing the law, and how they should carry out their legal obligations. see: Abû Hâmid Muhammad al-Gazâlî, *Al-Mustashfâ* (Beirut: Dâr al-Kutub al-'Ilmiyah, 1993), 126.

second approach is used to understand the social and legal realities of people with disabilities in religious life. Data collection techniques are carried out through literature studies by examining relevant documents, books, and regulations. Researchers also analyze empirical reports on the conditions of people with disabilities in Indonesia. Data are analyzed using the content analysis method of religious texts. The analysis is carried out descriptively and critically to reveal the substantive meaning of the concept of *taklif* in the context of disability and its relevance to current social conditions.

### ***Taklif and Ahliyyah Discourse in Islamic Law***

*Taklif* derives its etymology from *mashdar*, which is the infinitive verb form of *fi'il mâdhî kallafa, ditasydid 'ain fi'il*, meaning burdening. With reference to the books of *ushûl fiqh*, *taklif*, or law, is God's directive and entails an obligation to act or refrain from acting, either in the form of options (*takhyîr*) or demands (commands and prohibitions).<sup>13</sup> *Al-Haramain in al-Burhân* states that *taklif* is: *إِلْزَامٌ مَا فِيهِ كُفْلَةٌ* (requires a burdensome action). The definition of *al-Haramain* (w. 478 H) in this will later be followed by *Ushuliyyin* afterwards, for example *Ibn Qudamah* (w. 620 H) in *Raudhat an-Nazîr*, *as-Subkî* (d. 771 H) in *Raf' al- Hâjib* and *az-Zarkasyî* (w. 794 AH) in *Bahr al-Mukhîth*.<sup>14</sup>

In contrast to *al-Haramain*, *al-Ghazâlî* (w. 505 H) does not agree with this teacher's opinion. *Al-Ghazâlî* prefers to follow the definition offered by *al-Baqillânî* (w. 403 H) that *Taklif* is *طَلَبٌ مَا فِيهِ كُفْلَةٌ* (demands to carry out burdensome acts). *Al-Bâqillânî's* opinion chosen by *al-Ghazâlî* was then followed by many *Ushûl Fiqh* scholars, including; *'Alauddin ad-Dimasyqî* (w. 885 H) in *at-Tahbîr Syarh at-Tahrîr*, *Syamsuddin al-Ashfihânî* (w. 749 H) in *Bayân al-Mukhtashar, as-Syâthibî* (w. 790 H) in *al-Muwâfaqât, al-Jarâ'î* (w. 883 H) in *Syarh Mukhtashar* and many other scholars.<sup>15</sup> Inevitably, there is a difference between the meaning of *ilzam*, which means to oblige, and the meaning of *thalab*, which means demand. For those who define *taklif* as *ilzam*, the consequence is that only strict laws, namely obligatory and haram, are included in the *taklif* category, while if *taklif* is defined as *thalab*, then it also includes makruh laws and sunnah.

The definition of *taklif*, which the author claims reflects its legal content, is *ilzamu muqtadha khithab* (imposition of the demands of sharia decrees), among the various definitions found in the *Ushul Fiqh* volumes. *Al-Ba'li* (w. 1189 H) in *ad-Dzawl al-Harîr*, *Ibnu Najjar* (w. 972 H) in *Syarh al-Kaukab al-Munîr*, *al Mardâwî* (w. 885 H) in *Tahrîr al-Manqûl*, and *Ibn Badrân* (w. 1346 H) in *al-Madkhal* all use this interpretation.<sup>16</sup> This meaning is also followed by the average *Ushûliyyin Hanabilah*. By interpreting *taklif* as an imposition of the demands of sharia decrees, all the five laws of *taklif* are; obligatory, sunnah, makruh, haram and permissible are included in this definition. This definition also implies a discussion of the legal subject, namely the *mukallaf*, by using the diction of demands for *tithab* because the target of the demands for sharia decrees is the *mukallaf*.

<sup>13</sup> Muhammad bin 'Alî asy Syawkanî, *Irsyâd al Fuhûl Ila Tahqîq al Haq Min 'Ilm al Ushûl*, Cet. 1 (Beirut: Dâr al Kitab al 'Arabi, 1999), 6.

<sup>14</sup> Abd al-Malik bin Abdullâh al-Juwaynî *Al-Haramain, Al-Burhan Fî Ushûl al-Fiqh*, Juz 1 (Beirut: Dâr al-Kutub al-Ilmiyah, 1997), 14.

<sup>15</sup> Abû Hâmid Muhammad al-Gazâlî, *Al-Mustashfâ*.

<sup>16</sup> Al-Mardâwî, *Tahrîr Al-Manqûl* (Qatar: Wizarat al-Awqâf, 2013), 125.

Moreover, it is impossible to separate the idea of *Ahliyyah* (legal proficiency) from the discourse on *taklif*. Mukallaf is subject to *taklif*, a religious "command." Since worshipping by abiding by all religious rules is the essence of human creation. Since people were made to worship Allah SWT, they are considered *mukallaf* and are hence inextricably linked to the *taklif* sharia commandments (az-Zâriyât/51: 56). Nevertheless, this verse emphasizes the nature of human creation, but Islam as a religion does not burden its adherents. Because in Islam itself, there is a concept of *rukhsah* (lightness) in the implementation of every obligation. One of the hadiths that states relief in religion and is *takhshish* from the generality of Surah az-Zâriyât verse 56 is:

عَنْ عَائِشَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنْ الصَّغِيرِ حَتَّى يَكْبُرَ وَعَنْ الْمَجْنُونِ حَتَّى يَعْقِلَ أَوْ يُفِيقَ<sup>17</sup>

From 'Aisyah r.ah from the Prophet Muhammad SAW that: "Three people are free from the law: The person who sleeps until he wakes up, the child until he reaches maturity (Baligh), and the crazy person until he recovers." (H.R. an-Nasai)

From the two *naqli* arguments above, it can be understood that not all humans are obliged to worship, but there is something that makes them worthy of carrying out this obligation. Ushul fiqh scholars know this quality of appropriateness with the term *Ahliyyah*. Etymologically, *Ahliyyah* means *ash-shalahiyah*; appropriateness. If someone has abilities in one area then he is considered an expert. In terms of terminology, *Ahliyyah* is a characteristic possessed by a person which is used as a measurement by the Shari'a to determine whether a person is competent to be subject to the demands of the Shari'a.<sup>18</sup>

For a legal rule to be implemented properly, it requires the ability and suitability of the person who will implement it. Based on this, ushul fiqh scholars formulate that a person's eligibility to carry out sharia rules boils down to two conditions, namely: *first*, a person's knowledge of the sharia rules that are imposed on him to implement. Therefore, someone who is unable to access knowledge, for example, because he has lost his mind (insane), is not categorized as a mukallaf. *Second*, a person has the ability (*ahliyyah*) to carry out the sharia rules imposed on him.

The *ushuliyyun* classify a person's ability to carry out sharia obligations into two categories, namely: *Ahliyyah al-wujûb* and *Ahliyyah al-ada'*.<sup>19</sup> What is meant by *Ahliyyah al-Wujûb* is a person's ability to carry out rights and obligations. This ability is inherent in every person from the moment the soul is breathed into the body and is valid until he is born alive.<sup>20</sup> The concept of *Ahliyyah* is actually what differentiates humans and animals. The *fuqaha* call it *zimmah*, which is a human instinct to accept the rights of others and carry

<sup>17</sup> Ahmad bin Syu'aib bin Ali al-Nasâ'î, *Sunan Nasai*, juz 5 (Beirut: ar-Risâlah, 2001), 265.

<sup>18</sup> Jayusman, "Permasalahan Menarche Dini (Tinjauan Hukum Islam Terhadap Konsep Mukallaf)," *Journal of Physical Therapy and Science* 3, no. 1 (2014): 1-124, <http://dx.doi.org/10.21043/yudisia.v5i1.695>.

<sup>19</sup> Ala'uddin Abd al-Azîz bin Ahmad al Bukhâri, *Kasyf al Asrâr 'an Ushûl al Bazdâwî*, Juz 4 (Beirut: Dâr al Kutub al Ilmiyyah, 1997), 237.

<sup>20</sup> Ma'shum Zein, *Menguasai Ilmu Ushul Fiqh: Apa Dan Bagaimana Hukum Islam Disarikan Dâri Sumber-Sumbernya* (Yogyakarta: Pustaka Pesantren, 2016), 235.

out their obligations to others.<sup>21</sup> *Ahliyyah al-wujûb* is owned by everyone regardless of gender, age, intelligence or not, health or illness.<sup>22</sup>

Meanwhile, what is meant by *Ahliyyah al-Ada'* is the ability that a person has to carry out the obligations of the Shari'a that are deemed good or bad by the Shari'a. An example is *mukallaf*, who performs prayers so that his practice is counted as fulfilling the commands of the Shari' and gets a reward. The basis for knowing the status of *Ahliyyah al-Ada'* is a person's intellectual abilities. Therefore, someone who does not have the perfection of reason, such as a child who has not yet *mumayyiz* or a crazy person, is considered not to have *Ahliyyah al-ada'*.<sup>23</sup>

Furthermore, when related to the state of development of human life, this *Ahliyyah al-ada'* can be grouped into three categories, namely: *First*, do not have *Ahliyyah al-ada'* at all, such as children who have not reached adulthood or crazy people. In circumstances and conditions like this, words and actions are not considered before the law. However, if both of them commit a crime, the punishment will be imposed on their property, not their physical condition. For example, if both of them commit the crime of murder, then the punishment is *diyat* (fine), not *qishas*. *Second*: not having perfect *Ahliyyah al-ada'*, like a child who is *tamyiz* (teenager and not yet mature) or someone who is weak of mind. In situations and conditions like these, what is considered valid is what they consider to be beneficial to them, such as receiving gifts and alms. *Third*: having perfect *Ahliyyah al-ada'*, namely someone who has reached the age of puberty or adulthood. Given the circumstances and conditions of maturity and maturity of mind, he is considered worthy and able to carry out the obligations of the Sharia.<sup>24</sup>

*Ahliyyah al-Wujub* is considered permanent in human beings as long as they retain their essential human qualities. This form of *ahliyyah* does not disappear during a person's lifetime. In contrast, *Ahliyyah al-Ada'* is not constant; it develops over time and may fluctuate. A person is regarded as possessing full *ahliyyah* when they reach maturity (*bulugh*) and are deemed intellectually sound and responsible ('*aqil*). However, *Ahliyyah al-Ada'* is subject to various limitations. It refers to the capacity to make distinctions and judgments based on reason. The primary indicator of this capacity is the presence of maturity in both character and intellect. Therefore, a mature and sensible individual is

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<sup>21</sup> Ibn Hajar al-Asqalânî, *Fathul Bârî: Syarh Shahih al-Bukhârî*, Juz 1 (Beirut: Dâr al Kutub al Ilmiyyah, 2012), 96.

<sup>22</sup> *Ahliyyah wujub* is divided into two parts: 1) *Ahliyyah al-wujûb an-nâqishah*, namely the skills possessed by a person that make him deemed worthy of obtaining rights but not worthy of carrying out obligations, or vice versa. The first example is a fetus in its mother's womb, which is entitled to inheritance, wills, and endowments but is not worthy of being burdened with obligations towards other people, such as providing support, grants, and so on. The second example is a corpse that leaves behind debts; 2) *Ahliyyah al-wujûb al-kâmilah*, namely the perfection of a person's skills, which makes him deemed worthy of rights and burdened with obligations. This ability is permanent for everyone from birth, childhood, and adulthood, and under any circumstances. Ibn Amîr al Hajj, *At-Taqrir Wa at-Tahbir*, Juz 2 (t.tp: Dâr al Kutub al Ilmiyyah, 1983), 168.

<sup>23</sup> Ma'shum Zein, *Menguasai Ilmu Ushul Fiqh: Apa Dan Bagaimana Hukum Islam Disarikan Dâri Sumber-Sumbernya*.

<sup>24</sup> Abdul Wahâb Khallâf, *Ilmu Ushul al Fiqih* (Mesir: Maktabah ad Da'wah al Islamiyyah, n.d.), 137-138.



considered to possess ideal *Ahliyyah al-Ada'*. Nonetheless, certain conditions or new circumstances—such as mental illness or traumatic experiences—can impair a person's reasoning. When such events compromise rational capacity, they become legal impediments that reduce or eliminate the individual's legal competence. As a result, the person may be considered partially or wholly non-competent under Islamic legal standards.<sup>25</sup>

### **Construction of Taklif of People with Mental Disabilities and Intellectual Disabilities**

The term *disability* has conventionally been understood as a condition in which an individual experiences impairments in body structure or function, resulting in limitations in carrying out daily activities. However, this understanding has evolved along with a paradigm shift from the medical model to the social model and, more recently, to the human rights-based model. Indonesia's Law No. 8 of 2016 on Persons with Disabilities reflects this progressive approach by defining persons with disabilities as those who experience long-term physical, intellectual, mental, and/or sensory limitations which, when interacting with their environment, may face barriers to full and effective participation in society on an equal basis with others.<sup>26</sup>

A notable feature of this legislation is its recognition of various types of disabilities, including mental disabilities. Nonetheless, in public discourse and everyday social interactions, individuals with mental disabilities are still frequently subjected to stigmatizing and derogatory labels such as "crazy" or "insane." These terms are not only inaccurate from both medical and legal standpoints but also diminish the dignity of the individuals concerned.<sup>21</sup> Mental disability is not synonymous with severe mental illness. It refers to disturbances in cognitive, emotional, and behavioral functions that affect an individual's ability to perform everyday tasks.<sup>3</sup> Persons with mental disabilities are entitled to access healthcare, rehabilitation, and legal protection as stipulated in Articles 37 to 72 of Law No. 8 of 2016.<sup>27</sup>

Mental disabilities consist of two groups, namely psycho-social disabilities and developmental disabilities. Psycho-social disabilities are individuals who experience disturbances in thoughts, behavior, and feelings that manifest in the form of a set of symptoms or changes in behavior. Psycho-social disabilities have several varieties, for example, people with mental problems (ODMK) or people with mental disorders (ODGJ), schizophrenia, depression, and bipolar. Individuals with developmental disabilities, on the other hand, suffer from developmental disorders that impair their ability to interact socially. Examples of developmental disabilities are autism and ASD. Autism spectrum disorder and ADHD (*attention deficit hyperactivity disorder*).<sup>28</sup>

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<sup>25</sup> Jayusman, "Permasalahan Menarche Dini (Tinjauan Hukum Islam Terhadap Konsep Mukallaf)."

<sup>26</sup> Endra Agus Setiawan et al., "Konsep Dan Kriteria Kecakapan Bertindak Bagi Penyandang Disabilitas Autisme Menurut Persepektif Hukum Perdata Indonesia," *Jurnal Selat* 5, no. 2 (2018): 161–176, <https://doi.org/10.31629/selat.v5i2.554>.

<sup>27</sup> Purba Bagus Sunarya dkk, "Kajian Penanganan Terhadap Anak Berkebutuhan Khusus," *ABADIMAS ADI BUANA* 02, no. 1 (2018): 11–19, <https://doi.org/DOI:10.36456/abadimas.v2.i1.a1617>.

<sup>28</sup> Dini Widinarsih, "Penyandang Disabilitas Di Indonesia: Perkembangan Istilah Dan Definisi," *Jurnal Ilmu Kesejahteraan Sosial* 20, no. 2 (2019): 127–142, <https://doi.org/10.7454/jurnalkessos.v20i2.239>.

Furthermore, intellectual disability is a disability characterized by significant limitations both in intellectual function (general mental capacity, such as learning, reasoning, dressing, eating, communicating, and solving problems) and adaptive behavior, which includes many daily social and practical skills, and occurs before the age of 18 years.<sup>29</sup> According to the International Statistical Classification of Diseases and Related Health Problems (ICD-10), intellectual disability is a condition of halted or incomplete mental development, which is mainly characterized by limited skills during development, so that it affects all levels of intelligence (cognitive, language, motor, and social).<sup>30</sup> Intellectual disability can occur with or without other mental or physical disorders.

It is important to observe the use of the terms 'intellectual disability' and 'mental disability' in this context. The Constitution of Persons with disability, Number 8 of 2016, distinguishes between intellectual and mental disability. However, there is still medical discourse regarding disability that implies intellectual disability is a type of mental condition.<sup>31</sup>

Mental disability is a term used in the Guidelines for the Classification of Diseases and Diagnosis of Mental Disorders (PPDGJ), where the PPDGJ does not recognize the term mental illness but the term used is mental disorder.<sup>32</sup> The Ministry of Health of the Republic of Indonesia defines mental disorders as conditions where an individual's ability to function normally in society and fulfill their obligations as a human being in that society is disrupted.<sup>33</sup>

The distinction between the terms 'intellectual disability' and 'mental disability' is due to developments in psychiatric medicine that have found significant differences between mental disorders and intellectual disorders based on the symptoms found and visible. These differences are depicted in table form to make it easier to differentiate between the two disabilities, which in everyday life almost look the same.

Table 1: Difference between Mental Disorders and Intellectual Disorders

Mental Disorders	Intellectual Disorders
1. Anxiety disorders (phobias)	1. Idiot (down syndrome)
2. Personality disorders (antisocial, paranoid)	2. Inhibition of hormones in the thyroid gland (hypothyroidism)
3. Mood disorders (bipolar)	3. Inflammation of the protective layer of the brain and spinal
4. Disorders of not being able to	

<sup>29</sup> Ira Eko Retnosari and Rahayu Pujiastuti, "Maksim Kuantitas Dan Maksim Kualitas Dalam Tuturan Bahasa Indonesia Pada Anak Disabilitas Intelektual," *Ranah: Jurnal Kajian Bahasa* 10, no. 2 (2021): 270, <https://doi.org/10.26499/rnh.v10i2.4053>.

<sup>30</sup> Ayu Mira Yunita et al., "Implementasi Metode Weight Product Dalam Penentuan Klasifikasi Kelas Tunagrahita," *JSiI (Jurnal Sistem Informasi)* 7, no. 2 (2020): 78–82, <https://doi.org/10.30656/jsii.v7i2.2408>.

<sup>31</sup> DSM-5 Task Force. American Psychiatric Association, "Diagnostic and Statistical Manual of Mental Disorders," *American Psychiatric Publishing, Inc.* 21, no. 21 (2013): xiii, <https://doi.org/10.1176/appi.books.9780890425596>.

<sup>32</sup> Rusdi Maslim, *Buku Saku Diagnosis Gangguan Jiwa* (Jakarta: Penerbit Bagian Ilmu Kedokteran Jiwa FK-Unika Atmajaya, 2013), 7.

<sup>33</sup> RI Depkes, *Pedoman Penggolongan Dan Diagnosa Gangguan Jiwa di Indonesia III (PPDGJ III)* (Jakarta: Depkes RI, 2013), h. 10.

control desires (kleptomania, addiction to alcohol, nicotine and illegal drugs)	4. Pregnancy disorders (preclamansia)
5. Psychotic disorders (hallucinations, schizophrenia)	5. Disturbances in giving birth (premature)
6. Eating disorders (anoxeria nervosa)	
7. Obsessive-compulsive disorder (repetitive rituals)	
8. Post-traumatic disorders	
9. Stress response syndrome	
10. Dissociative disorders (split personality)	
11. Sexuality and gender disorders	
12. Somatoform disorders (pain even without medical problems)	

In Islamic law, reason is the main foundation in the construction of *taklîf* (the imposition of sharia law) on a person. Among the requirements of a *mukallaf* (a person who is burdened with sharia law) are being rational in addition to being mature and understanding the *khithâb* (Allah's command). Therefore, people who are not rational are not subject to the burden of *taklîf*. He was not *taklîf* because he did not understand the *khithâb* that came from Shari (lawmaker/ Allah). They also don't understand what is being charged to them, and they don't know how to uphold the actions they are charged with, and there is no intention on their part.<sup>34</sup>

*Taklîf* can be understood as someone's burden. Those affected by *taklîf* are those who have been assigned the burden or are legally able to take action. A person can only be charged with the law if he is rational and understands the *Taklîf* directed at him. This is defined by an individual's ability to protect themselves, their minds, and their property.<sup>35</sup> According to Constitution in Mental Health No. 18 of 2014, ODMK are people who have physical, mental, social, growth, and development problems and/or quality of life problems, so they are at risk of experiencing mental disorders. Meanwhile, ODGJ is a person who experiences disturbances in thoughts, behavior, and feelings that manifest in the form of a set of symptoms and/or changes in behavior that are meaningful and can cause suffering and obstacles in carrying out the person's functions as a human being.<sup>36</sup>

Looking at the definitions and distinctions above, it can be concluded that people with psycho-social mental disabilities in the form of People with Mental Problems (ODMK) are people who are not yet sick. They have just experienced problems that have the potential to cause mental disorders. In this category they are still *mukallaf* and have perfect legal skills (*ahliyyyah*). Meanwhile, people with mental disorders (ODGJ) are a group of people who

<sup>34</sup> Abd al-Karim bin 'Ali bin Muhammad al-Namlah, *Al-Jâmi' Li Masâ'il Ushûl al-Fiqh Wa Tathbîqihâ 'alâ al-Madzhab al-Râjih*, ed. Cet. 1 (Riyadh: Maktabah al-Rusyd, 2000), 52-53.

<sup>35</sup> M.N. Harisudin, *Ilmu Ushul Fiqh* (Malang: Intrans Publishing, 2020), 20.

<sup>36</sup> Endang Caturini Sulistyowati and Insiyah, "Peningkatan Kualitas Hidup Orang Dengan Gangguan Jiwa Melalui Self Help Group," *Jurnal Terpadu Ilmu Kesehatan* 9, no. 2 (2020): 117-268, <https://doi.org/10.37341/interest.v9i2.264>.

have been diagnosed with a mental disorder, such as bipolar disorder,<sup>37</sup> skizofrenia,<sup>38</sup> anxietas,<sup>39</sup> depression,<sup>40</sup> and etc.

To embrace *taklif*, one must be intelligent (intellectually capable), grasp the requirements of worship, and be able to understand and practice the terms and conditions. *Junun* (crazy), *sakran* (drunk), *ighma'* (epilepsy), and *ahmaq* (extremely stupid) are classic *fiqh* definitions of mental and intellectual disorders. ODGJ is comparable to cases in classical jurisprudence literature, including *Majnun* (mad). Wahbah az-Zuhaylî explains the term *al-ma'tûh* in current references:

الْمَعْتُوهُ: هُوَ مَنْ كَانَ قَلِيلُ الْفَهْمِ، مُخْتَلِطُ الْكَلَامِ، فَاسِدُ التَّدْبِيرِ لِاضْطِرَابِ عَقْلِهِ، سَوَاءٌ مِنْ أَصْلِ الْخَلْقَةِ أَوْ لِمَرَضٍ طَارِئٍ<sup>41</sup>

Meaning: *Al-Ma'tûh* is people who have little comprehension ability, whose speech is chaotic, and who have difficulty organizing themselves because of their mental disorders. Whether it's from birth or because of an illness that comes.

The concept of *al-ma'tûh* includes the recognition that some mental and intellectual disabilities are the result of disease, whether organic or not, and that others are genetic, such as *Down syndrome* and other forms of mental retardation.

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<sup>37</sup> Bipolar disorder is a psychological condition that is characterized by significant mood fluctuations in the form of manic (happiness) and depression (sadness). The sufferer's mood might shift abruptly between two opposing poles (bipolar), notably excessive mania and depression, with no discernible pattern or time frame, or it can be a combination of mania and depression at the same moment. Meilanny Budiarti Santoso et al., "Pekerjaan Sosial: Bekerja Bersama Orang Dengan Gangguan Bipolar," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 5, no. 1 (2018): 14, <https://doi.org/10.24198/jppm.v5i1.16019>.

<sup>38</sup> Schizophrenia is a mental disorder characterized by impaired thought processes and weak emotional responses. This condition generally manifests itself in the form of auditory hallucinations, paranoia, bizarre delusions, or disorganized speech and thinking and is accompanied by significant social and occupational dysfunction. A person diagnosed with schizophrenia can experience hallucinations, delusions, and impaired thinking and speech; withdraw from social environments; lose motivation and judgment; and so on. Elizabeth Martin, *Schizophrenia* (Oxford: Oxford University Press, 2010), p. 1933. Rieska D. Ambarsari and Endah Puspita Sari, "Penyesuaian Diri Caregiver Orang Dengan Skizofrenia (ODS)," *Psikologika: Jurnal Pemikiran Dan Penelitian Psikologi* 17, no. 2 (2012): 77–85, <https://doi.org/10.20885/psikologika.vol17.iss2.art9>.

<sup>39</sup> Anxiety disorders are states of excessive or inappropriate tension characterized by feelings of worry, uncertainty, or fear. Anxiety symptoms consist of two components, namely: 1) psychological symptoms in the form of anxiety or anxiety itself; 2) the physical component is a manifestation of excessive alertness, such as heart palpitations, increasingly rapid breathing, dry mouth, stomach complaints, cold hands and feet, muscle tension, and others. Hyperventilation is often not realized by anxiety sufferers. Willy F. Maramis, *Ilmu Kedokteran Jiwa* (Surabaya: Airlangga University Press, 2009), 56.

<sup>40</sup> Depression is a mood disorder characterized by feelings of deep sadness and a loss of interest in things you like. The psychological characteristics are excessive anxiety and worry, unstable emotions, and feelings of hopelessness or frustration. Meanwhile, the physical characteristics are always feeling tired, dizzy, and achy for no apparent reason, as well as decreased appetite. Depression that continues and does not receive treatment can cause a decrease in work productivity, disruption of social relationships, and even suicidal thoughts. Eric J Nestler Vaishnav Krishnan, "Animal Models of Depresi: Molecular Perspectives," *Molecular and Functional Models in Neuropsychiatry* 7, no. 1 (2011): 121–47, [https://doi.org/DOI: 10.1007/7854\\_2010\\_108](https://doi.org/DOI: 10.1007/7854_2010_108).

<sup>41</sup> Wahbah az-Zuhaylî, *Al-Fiqhul Islâmi Wa Adillatuh*, Juz 1 (Damaskus: Dâr al-FikrDâr al-Fikr, n.d.), 304.

According to classical and contemporary fiqh books, if you understand ODGJ as *majnun* or *al-ma' tuh*, you are not required to perform *taḳlīf* such as prayer, whereas ODGJ and people with intellectual disabilities who are not yet in the *tamyiz* category and have not been exposed to *taḳlīf* are those who have difficulty carrying out treatment personal basics such as eating, drinking, bathing, dressing, or other simple activities. This group does not bear the weight of required worship, hence their *taḳlīf* is limited to their ability to understand and carry out the responsibility to pray.

However, for ODGJ and people with intellectual disabilities, this needs to be detailed. A person diagnosed with a certain mental disorder may not necessarily be unable to understand the obligations of worship. For example, people with psychosis or schizophrenia, with delusions or hallucinations that have been controlled under drug treatment, have the ability to communicate with other people. Likewise, with intellectual disabilities, it is necessary to first review the extent of their ability to understand the obligations of prayer.

The ODGJ in Constitution 18, 2014, defines a disorder as "a person who experiences disorders in thoughts, behavior, and feelings that are manifested in the form of a set of symptoms and/or significant changes in behavior and can cause suffering and obstacles in carrying out the person's functions as a human being." So, if a person has "significant symptoms and/or changes in behavior" and "is hampered in carrying out their functions as a human being," they are considered to have a mental disease.<sup>42</sup>

To assess such symptoms and meaningful changes in behavior requires a diagnosis from professional mental health personnel, either a doctor or psychologist. It should be noted that the psychiatric diagnosis guideline that is widely used in Indonesia is PPDGJ III or DSM IV, and there are various types of mental disorders, including: due to substance use, due to physical disorders, addiction, emotional disorders, behavioral disorders, and even mental retardation. This shows that what is called "crazy" by the general public is not one cause and one dimension.

One of the serious challenges for people with mental disabilities is how to recognize the level of awareness of their actions when taking legal action. It may be easy for people with depression and bipolar disorder to identify and assess responsibility, but it will definitely be very difficult to assess the legal actions of people with schizophrenia. It requires the involvement of experts to assess whether a schizophrenic's actions are in a state of relapse (relapse) and/or in a conscious state. Because, according to experts, schizophrenia is a mental disorder that occurs in the long term. The disorder causes sufferers to experience hallucinations (hearing voices or seeing things that other people don't), delusions (beliefs that other people think are unfounded), confused thinking, and changes in behavior. When in a state of relapse, schizophrenic sufferers generally find it difficult to differentiate between reality and other thoughts that surround them.

Meanwhile, intellectual disorders must be classified as mild, moderate, or severe, which is not the same as what society labels "crazy." As a result, in terms of *taḳlīf* for people with mental and intellectual disability, the following must be done: Determine their ability to understand and carry out the *taḳlīf* of their worship. *First*, A health professional's diagnosis, as well as the essential therapeutic steps, may be required in this case. *Second*, according to their ability, provide worship help. Family and caregivers guide ODGJ and people with

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<sup>42</sup> Arif Munandar, *Ilmu Keperawatan Jiwa* (Bandung: Media Sains Indonesia, 2022), 114.

intellectual disabilities based on their capacity. *Third*, provide ODGJ and individuals with intellectual disabilities the opportunity to participate in religious activities that are appropriate for their ability. Those who are regarded incapable to do prayers in complete circumstances and harmony, for example, do not have the obligation to qadha' prayer.

According to the description above, the impact of disability on the legal skills of people with mental disorders and intellectual disabilities after being identified by health workers can be classed as follows, based on the level of knowledge and reason:

**Table 2: Mental and Intellectual Disability Scale**

Scale	Various Disabilities	Analogy	Legal Skills	Hindrances
Mild	Autisme High Functioning <sup>43</sup> (IQ high), ADHD, <sup>44</sup> Syndrome Asperger, <sup>45</sup> Learning Disorder <sup>46</sup>	Perfect sense	Ahliyyah wujub & Ahliyyah ada' al-kamilah	None
Middle	Autisme and Mental retardation	Mumayyiz	Ahliyah wujub & Ahliyah ada' naqisha	Imperfect sense
Severe	Schizophrenia and other disorders such as Bipolar and any mental disorder that diminishes consciousness according to experts	Crazy	Ahliyah wujub	No sense

The main requirements in *Taklif* are reason and free will in carrying out actions. Persons with mental disabilities and persons with intellectual disabilities are considered to

<sup>43</sup> People with high-functioning autism are those who demonstrate high intelligence, are able to use language and speech effectively, and demonstrate the ability to follow common routine.. Sulthon, *Pendidikan Anak Berkebutuhan Khusus* (Jakarta: PT. Raja Grafindo Persada, 2021), 162.

<sup>44</sup> ADHD, or attention deficit hyperactivity disorder, is a mental disorder that causes children to have difficulty concentrating and have impulsive and hyperactive behavior. Juke R. Siregar, *Teori Penelitian Dan Praktik ADHD Pada Anak* (t.tp: Penerbit Alumni, 2022), xiii.

<sup>45</sup> Asperger's syndrome is a mental and neurological development disorder that is included in the autism spectrum disorders. Children with Asperger's syndrome experience impaired communication and social interaction skills, but still have good intelligence and language skills. Rafael Lisinus, *Pembinaan Anak Berkebutuhan Khusus (Sebuah Perspektif Bimbingan Dan Konseling)* (t.tp: Yayasan Kita Menulis, 2020), 175.

<sup>46</sup> Learning disorder is a brain dysfunction disorder that affects the ability to receive, process, analyze, or store information. Children with learning disorders may have the same or even a higher level of intelligence than their peers, but they require more effort to learn in order to achieve the same results as those around them. Westwood P., *Learning Disorders: A Response-to-Intervention Perspective* (Britania Raya: Taylor & Francis, 2017), 2.

be people who experience disturbances in thoughts, behavior, and feelings that are manifested in the form of a set of symptoms and/or significant changes in behavior and can cause suffering and obstacles in carrying out people's functions as human beings.

People with mental disabilities and intellectual disabilities in relation to *taklif* are subject to expert status or legal eligibility. There are people with mental disabilities who fall into the category of being unreasonable; that is, the group of people with psychosocial disabilities are automatically not subject to physical *taklif*, even though they are still subject to financial and existing *taklif*. People with developmental mental impairments and intellectual disabilities who are still considered intelligent face physical and financial assault.

### **Implementation of Taklif Zakat Obligations for Persons with Mental and Intellectual Disabilities**

Zakat is one of the Islamic religious responsibilities, and academics are divided on the subject. Some argue that there is no requirement to pay zakat on assets possessed by children who have not yet reached adulthood and who are crazy. This is owing to the fact that they are exempt from sharia responsibilities (*taklif*). Because they are not *mukallaf*, there is no zakat duty on the assets they jointly own. Other scholars argue that zakat is still required of them. Because zakat is a requirement related to property ownership, consider whether the property owner is *amukallaf* or not. This is based on at-Taubah (9: 103) and messages of the Prophet to Mu'adz bin Jabal:

عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: بَعَثَ مُعَاذًا إِلَى الْيَمَنِ، فَقَالَ: ادْعُهُمْ إِلَى: شَهَادَةِ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّي رَسُولُ اللَّهِ، فَإِنْ هُمْ أَطَاعُوا لِذَلِكَ، فَأَعْلِمُهُمْ أَنَّ اللَّهَ قَدْ افْتَرَضَ عَلَيْهِمْ خَمْسَ صَلَوَاتٍ فِي كُلِّ يَوْمٍ وَلَيْلَةٍ، فَإِنْ هُمْ أَطَاعُوا لِذَلِكَ، فَأَعْلِمُهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً فِي أَمْوَالِهِمْ، تُؤْخَذُ مِنْ أَغْنِيَائِهِمْ وَتُرَدُّ عَلَى فُقَرَائِهِمْ.<sup>47</sup>

*Meaning: From Ibn Abbâs ra, in fact, the Prophet Muhammad SAW, when sending Mu'adz bin Jabal ra to Yemen, the Prophet said: "Invite them to testify that there is no god but Allah and indeed I am the messenger of Allah. (And if they have obeyed), then tell them that Allah has made obligatory upon them alms (zakat) from their wealth taken from their rich people and given to their poor people." (HR. Bukhârî)*

According to this argument, there is an obligation to pay zakat on properties possessed by minors and the insane. And his guardian is the person who looks after his zakat. When interpreting this verse, Ar Râzy cites this difference by stating that the apparent meaning of the verse shows that zakat is only obligatory as purification from sins, so zakat does not become obligatory unless it becomes purification from sins, and sin can only occur in the actions of intelligent adults, as Abû Hanifah believes. Al-Syâfi'î opposed this viewpoint, stating that purifying and cleansing assets is merely one cause of the responsibility of zakat; the loss of a specific cause does not necessarily imply the loss of an absolute law.<sup>48</sup>

Ibn Hazm stated in al-Muhalla that zakat is obligatory on men and women, free and slaves, both male and female slaves, adults and small children, intelligent people, and crazy people from among the Muslims. When interpreting verse 103 of Surah At-Taubah, Ibn

<sup>47</sup> Muhammad bin Ismâil al-Bukhârî, *Shahîh Bukhârî*, Juz 7 (Dâr Tuq an-Najat, 1422). 130

<sup>48</sup> Fakhrudin ar-Râzî, *Mafatîh Al-Ghaib*, Juz 16 (Beirut: Dâr Ihya at-Turats al-Arabî, n.d.), 135.

Hazm states that this is common to everyone, young and old, sane and crazy, free and slave. They all need purification and cleansing from God, and they are all believers.<sup>49</sup>

Jumhur scholars are of the opinion that zakat is obligatory on the assets of small children and the insane. These are the Mâlik, Syâfi'î, and Ahmad schools. They based their opinion on the arguments of Surah at-Taubah (9:103) and the hadith of Rasulullah SAW to Mu'âdz ibn Jabal when he sent him to Yemen above. Meanwhile, Hanafiyyah Fuqoha believes that zakat is not obligatory on the assets of small children and the insane, just as other acts of worship are not obligatory on them, such as prayer and fasting. However, both of them are still required to pay agricultural zakat and zakat fitrah from their assets.<sup>50</sup>

Jumhur scholars refute this opinion. According to them, prayer and fasting are not obligatory for small children because both are physical acts of worship, and small children are physically unable to carry them out. Zakat is a pure material right, and this material right can be imposed on a child. Just as if a small child loses someone else's property, he must replace the item with the property he owns. Like the obligation to support relatives, a minor child can be required to support his relatives if certain conditions are met. Just like they also argued against Abû Hanîfah, if small children and crazy people are obliged to pay agricultural zakat and fitrah zakat, then of course they are both obliged to pay zakat for their wealth.

Zakat payments will be given for little children or insane individuals by their guardians or caregivers. Zakat is deducted from his money when he turns one year old, and he does not have to wait until the child reaches puberty. "If it has been determined that zakat is obligatory on the assets of small children and the insane, then a guardian or caregiver must pay it from their assets," Ibn Qudâmah declared in *al-Mugnî*. Because zakat is mandatory, it must be paid from one's assets, exactly like zakat for someone who has acquired maturity and wisdom. A guardian represents him in carrying out his responsibilities. Because zakat is a required right for little children and insane individuals, their guardians must fulfill this right as their representatives. The need to provide for one's kin is the same.<sup>51</sup>

### **Implementation of Financial Transaction Rights for Persons with Mental and Intellectual Disabilities**

Most assets earned by people are free to be managed independently under Islam; nevertheless, certain groups are prohibited from managing their own assets. The prohibition is known as *hajr*. Linguistically, *al-hajr* translates to *al-man'u*, which means to prevent or hinder. Sharia defines *al-hajr* as: *التَّصْرِيفُ فِي الْمَالِ مَنَعٌ* (Prevent the use of property).

The concept of *al-hajr* is a form of restriction for someone to manage their wealth because they are still small or their intellect is not perfect.<sup>52</sup> Allah SWT forbids giving wealth to people who are unable to manage their wealth well. This form of prohibition is to protect these people so that they do not use their assets wastefully. If the assets are given to them,

<sup>49</sup> Ibn Hazm Abû Muhammad Ali bin Ahmad, *Al-Muhallâ Bil Âtsâr*, ed. Juz 4 (Beirut: Dâr al-Fikr, n.d.), 4.

<sup>50</sup> Ibn Âbidîn, *Hasyiyah Ibn Âbidîn*, Juz 2 (Beirut: Dâr al-Fikr, 2016), 258.

<sup>51</sup> Ibn Qudâmah al-Maqdisî, *Al-Mugnî*, Juz 2 (Riyadh: Dâr A'lam al-Kutub, n.d.), 47.

<sup>52</sup> Muhammad as-Syarbîni al-Khatîb, *Al-Iqnâ' Fi Hall Alfâdz Abî Syujâ'* (Jakarta: Dâr Ihya al-Kutub al-'Arabiyah, n.d.), 26.



there is a fear that they will be used up without any benefit. So, the existence of *al-hajr* in Islam is solely to protect the personal benefit of the person concerned, so that all activities related to mu'amalah that they carry out do not come to harm.

*Al-hajr* is divided into two parts: first, barriers to safeguarding other people's rights, such as barriers to prohibiting people from using their assets to protect the rights of people who owe money; second, prohibition in aim to protect the soul, such as prohibition to small children (underage), *safah* (stupid), and people who have weak minds for their own benefit.<sup>53</sup> Persons with mental and intellectual disabilities are prohibited from using their assets based on the *nash* and *ijma'*, whether their mental or intellectual disorders are permanent (not cured) or temporary and only recur at certain times. Therefore, their legal actions are justified when they are in a healthy condition when using their assets, whereas if we do not know for sure whether when they use their assets they are in a state of madness or health, then their actions are invalid. Because common sense is one of the pillars of the validity of mu'amalah.

Therefore, they need an absolution system. The term absolution comes from the Dutch word *curatele*, which in English is called *custody* or *interdiction* (French). The institution of pardon has been known since Roman times. In the law of that era, people who were mentally ill and also the extravagant who misused their ability to act, whose actions could endanger their wealth, then, for their own interests, someone else had to regulate them, so that they had to be under the protection of absolution.<sup>54</sup>

In positive law, pardon is known as *curatele*, which is a situation where a person, because of their personal characteristics, is considered incompetent or not clever enough to act in legal traffic. People who are placed under guardianship are considered incompetent to act independently in legal matters because of their personal characteristics. On that basis, the law allows someone to be made the guardian of the person under guardianship.

In legal terms, people under guardianship are considered immature, in the sense that they cannot act independently before the law. Regarding the reasons for absolution, in Article 433 of the Civil Code, it is explained that *every adult who is always in a state of stupidity, brain disease, or dark eyes must be placed under absolution. An adult may also be placed under guardianship because of his extravagance.*<sup>55</sup>

The sound of the phrase above indicates that the position of an adult who is attached to a condition in the form of a state of stupidity, brain disease, or dark eyes, even if he becomes normal (not in a state of stupidity, brain disease, or dark eyes) and is able to speak, If he uses his mind to carry out an act that has a legal basis, then he must still be placed under guardianship (*curatele*). He has a condition that, while it occasionally returns to normal, renders him incapable of carrying out legal acts, thus he must be aided by another person whose implementation must be supervised by the appropriate authorities for that reason.<sup>56</sup>

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<sup>53</sup> Sayyid Sabiq, *Fiqh Sunnah*, Juz 3 (Beirut: Dâr al-Kitab al-Arabi, 1977), 566.

<sup>54</sup> Titik Triwulan Tutik, *Hukum Perdata Dalam Sistem Hukum Nasional* (Jakarta: Kencana, 2010), 92.

<sup>55</sup> Soedharyo Soimin, *Hukum Orang Dan Keluarga* (Jakarta: Sinar Grafika, 2010), 51-52.

<sup>56</sup> Agus Digo Nugroho, *Quo Vadis Pencari Keadilan Penyandang Disabilitas Di Pengadilan* (t.tp: Cipta Media Nusantara, n.d.), 41.

Furthermore, Article 32 of the Law on Persons with Disabilities stipulates that persons with disabilities can be declared incompetent based on a district court decision. The explanation of the article also states that persons with disabilities who can be declared incompetent are those who are not yet adults and/or under guardianship. If these provisions are linked to the provisions in Article 433 of the Civil Code, then persons with disabilities who can be placed under guardianship are persons with intellectual disabilities such as an intelligence level below average; mental disabilities and Down syndrome; and people with mental disabilities due to impaired thinking, emotional, and behavioral functions due to schizophrenia, bipolar, depression, anxiety, and personality disorders; and autistic and hyperactive.<sup>57</sup>

### Implementation of the Marriage Rights of Persons with Mental and Intellectual Disabilities

A crazy person is one whose activities, whether in the form of worship or *muamalah* (interactions with other people), are not evaluated. A Marriage to insane people, on the other hand, is still permissible as long as it benefits both parties. There is no mention of *akil* (sense) as a criterion for the legitimacy of a marriage in the Marriage Law or the Compilation of Islamic Law (KHI). However, the presence of a minimum age limit for the prospective bride and groom is an implicit response to the significance of *akil* as a need for the prospective bride and husband.<sup>58</sup>

In the Constitution of the Republic of Indonesia Number 8 of 2016 concerning Persons with Disabilities in the fourth part concerning the Right to Privacy in Article 8, among the privacy rights for Persons with Disabilities are the right to form a family and continue their offspring through a legal marriage; and the right to respect for home and family.

If people with mental and intellectual disabilities are on the mild scale and have *Ahliyyah al-wujub* and *Ahliyyah al-ada' al-kamilah*, then their marriage status is valid, while if they are on the moderate and severe scale and really need to get married, then the marriage can be carried out by a *mujbir* guardian, namely the father and grandfather of the disabled person. If there are neither of these, then it can be done by the person who holds authority in the jurisdiction of the disabled person, not by other close relatives.

According to al-Mahallî, the following is the explanation of the scholars on whom this conclusion is based.:

لَا يُزَوِّجُ مَجْنُونٌ صَغِيرٌ لِأَنَّهُ لَا يَحْتَاجُ إِلَيْهِ فِي الْحَالِ وَبَعْدَ الْبُلُوغِ لَا يَدْرِي كَيْفَ يَكُونُ الْأَمْرُ بِخِلَافِ الصَّغِيرِ الْعَاقِلِ، فَإِنَّ الظَّاهِرَ حَاجَتُهُ إِلَيْهِ بَعْدَ الْبُلُوغِ، (وَكَذَا) أَيُّ لَا يُزَوِّجُ مَجْنُونٌ (كَبِيرٌ إِلَّا لِحَاجَةٍ) كَأَنَّهُ تَظَهَّرَ رَغْبَتُهُ فِي النِّسَاءِ بِدَوْرَانِهِ حَوْهَنَّ وَتَعَلَّقَ بِهِ يَهْنُ وَنَحْوِ ذَلِكَ أَوْ

<sup>57</sup> Puspaningtyas Panglipurjati, "Sebuah Telaah Atas Regulasi Dan Penetapan Pengampunan Bagi Penyandang Disabilitas Di Indonesia Dalam Paradigma Supported Decision Making," *Jurnal Paradigma Hukum Pembangunan* 6, no. 2 (2021): 79-109, <https://doi.org/DOI:10.25170/paradigma.v6i02.2586>.

<sup>58</sup> Yayuk Afiyanah, "Hukum Perkawinan Bagi Penyandang Disabilitas Mental Menurut Undang-Undang No. 1 Tahun 1974 Dan Undang-Undang No. 8 Tahun 2016," *Jurnal Syntax Admiration* 1, no. 7 (2020): 991-1003, <https://doi.org/DOI:10.46799/jsa.v1i7.132>.

يَتَوَقَّعُ الشِّفَاءَ بِهِ يَقُولُ عَدْلَيْنِ مِنَ الْأَطِبَّاءِ، (فَوَاحِدَةً) لِإِنْدِفَاعِ الْحَاجَةِ بِهَا، وَيُزَوِّجُهُ الْأَبُ ثُمَّ الْجَدُّ ثُمَّ السُّلْطَانُ دُونَ سَائِرِ الْعَصَبَاتِ كَوَلَايَةِ الْمَالِ، وَقَدْ تَقَدَّمَ أَنَّهُ يَلْزَمُ الْمُجْبِرَ تَزْوِيجَ مَجْنُونٍ ظَهَرَتْ حَاجَتُهُ.<sup>59</sup>

Meaning: Don't marry a little crazy man, because there is no need for marriage at that time, whereas after puberty, it is not known what the situation will be like. This is different from small children who are sensible, so they need to get married after they reach puberty. Likewise, adult crazy people don't marry unless there is a need, such as when Dzahir likes women by circling around them, having sex with them, and so on. Or it is hoped that he will recover due to marriage, based on the opinion of two fair doctors. If there is a need for marriage, then only one is permitted because the need for one wife is already met. This crazy person was married off by the father, then the grandfather, then the person in authority, not by other 'ashabahs as well as those with authority over property matters. There has been a previous explanation that it is obligatory for mujbir guardians to marry crazy people whose dzahir requires marriage.

Al-Haitamî when commenting on this case stated:

(وَيَلْزَمُ الْمُجْبِرَ) أَيُّ الْأَبِ وَالْجَدِّ وَإِنْ لَمْ يَكُنْ هُمَا الْإِجْبَارُ فِي بَعْضِ الصُّوَرِ... (تَزْوِيجُ مَجْنُونَةٍ) أَطْبَقَ جُنُونُهَا (بِالْعَةِ) وَلَوْ تَبَيَّنَتْ مُحْتَاجَةً لِلْوَطْءِ.<sup>60</sup>

Meaning: A mujbir guardian, namely father and grandfather, must marry a crazy woman who reaches puberty... if she appears to want to marry.

Permanent mental illnesses do not invalidate a marriage, but they are a humiliation that allows a partner to divorce a partner who has this disease. According to Al-Jaziri, this viewpoint is as follows:

أَمَّا الْمَجْنُونُ فَإِنَّهُ يَجْعَلُ لِكُلِّ مِنْهُمَا الْخِيَارَ فِي الْفَسْخِ سَوَاءً حَدَثَ بَعْدَ الْعَقْدِ وَالْدُّخُولِ أَوْ كَانَ مُوجُودًا قَبْلَ الْعَقْدِ فَلَا فَرْقَ بَيْنَ الرَّجُلِ وَالْمَرْأَةِ.<sup>61</sup>

Meaning: Whether the insanity arises after the contract, after intimate connections, or before the marriage contract, both parties (husband and wife) have the option to fasakh (dissolve the marriage). There are no distinctions between males and women.

Based on the above description, it seems that the main problem does not lie in the disability status, but rather in the individual's ability to understand and give consent to the marriage contract. Therefore, the approach in determining the validity of the marriage of people with disabilities must avoid generalizations, encourage professional assessment (psychologists/psychiatrists) to assess the level of capacity, and provide legal and social protection mechanisms, either through family support, guardians, or religious courts. Therefore, marriages for people with mental or intellectual problems, according to the author, must still consider the benefits for both husband and wife. This means that even if a person with a disability in the medium or severe category is deemed to require a marriage bond and is declared a valid marriage under the guardianship of his or her guardian, it should not be continued if a psychiatrist's diagnosis indicates that it has the potential to endanger his or her partner.

<sup>59</sup> Jalâluddîn al-Mahallî, *Kanz Ar-Râgibîn*, Juz 3 (Beirut: Dâr al-Fikr, 1995), 238.

<sup>60</sup> Ibn Hajar al-Haitamî, *Tuhfat Al-Muhtâj*, Juz 7 (Beirut: Dâr Ihya at-Turats al-Arabi, 1983), 266.

<sup>61</sup> Al-Jaziri, *Al-Fiqh Ala al-Mazahib al-Arba'ah*, Juz 4 (Beirut: Dâr al-Kutub al-Ilmiyah, 2003), 172.

## Conclusion

This study shows that the construction of taklif for persons with disabilities does not only use the provisions of *rukhsah* as the only solution in addressing their limitations in exercising religious rights, but can use the inclusive instrument of the *ahliyyah* concept. With this, all persons with disabilities are seen as having *ahliyah wujub*, namely human capacity to receive their rights based on their human nature. In the implementation of these religious rights, it is adjusted to the conditions and abilities of persons with disabilities, so that some are subject to taklif and some are not subject to taklif. People with psycho-social mental disabilities in the form ODMK are not viewed as sick people, but only experience problems that have the potential to cause mental disorders, so they are still *mukallaf* and have perfect legal capacity (*ahliyah*). Meanwhile, ODGJ and people with intellectual disabilities who have not yet *tamyiz*, do not receive the burden of worship obligations. *Taklîf* for them is only limited to being able to understand the obligation of prayer and carry it out.

Fulfillment of religious rights and obligations for people with mental and intellectual disabilities is given according to the level of *ahliyah* they have. People who suffer from mental or intellectual disorders, whether permanent or temporary, are prohibited from using their property because there is a barrier in the form of imperfect reason. For this reason, they are given accessibility in the form of guardianship rights. The same thing in terms of marriage, people with mental and intellectual disabilities who are classified as mild and have *ahliyah wujub* and *ahliyah ada' kamilah* are given accessibility to marry. Meanwhile, if they are classified as moderate and severe, if they really need to get married, then the marriage can be carried out by a *wali mujbir*.

Previous discussions on the concept of *taklîf* have primarily focused on its application within the framework of Islamic law, often centering on legal obligations. However, equally important dimensions warrant attention – particularly *taklîf* related to fundamental religious beliefs (*al-taklîf bi al-uṣūl*), such as the obligation to believe in and know God. This category of *taklîf* can serve as the foundation for broader legal responsibilities, and its implications may vary depending on the limitation individuals experience. Beyond providing a theological basis for affirming Islamic principles, this perspective also offers guidance for persons with disabilities to participate in religious life according to their specific conditions and capacities

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