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RECONSTRUCTION OF DISABILITY-FRIENDLY NATIONAL FIQH: A PARADIGM TRANSFORMATION FROM RUKHSHAH TO ÁZIMAH

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ABSTRACT

This article examines the reconstruction of disability-friendly *fiqh kebangsaan* (national Islamic jurisprudence) through a paradigmatic shift from the *rukhsah* (legal concession) approach to *'azīmah* (normative obligation) within the context of the Indonesian nation-state. Prevailing discourses on disability in classical Islamic jurisprudence predominantly frame persons with disabilities as recipients of individual dispensations, resulting in a charity-based approach that inadequately addresses systemic discrimination embedded in public policy, employment, and social institutions. Employing a normative-critical analysis of classical fiqh texts, legal maxims, national regulations, and international human rights instruments—particularly the *Convention on the Rights of Persons with Disabilities* (CRPD)—this study argues that the *rukhsah* paradigm must be transformed into an *'azīmah*-oriented framework that positions the state as an active duty-bearer in guaranteeing disability rights. The findings reveal three major insights: first, legal maxims such as *al-mashaqqah tajlib al-taysīr* and *al-ḍarar yuzāl* should not be narrowly interpreted as individual exemptions but rather as normative mandates for inclusive public policies; second, classical Islamic political jurisprudence has implicitly articulated state responsibility toward vulnerable groups, although this dimension has not been systematically developed in contemporary fiqh discourse; and third, the integration of *fiqh kebangsaan* with principles of social justice and international human rights law produces a jurisprudential model oriented toward empowerment rather than benevolence. This article concludes that the *'azīmah* approach is more contextually relevant to Indonesia and aligns with both *maqāṣid al-shari'ah* and substantive justice. Policy recommendations include strengthening derivative legislation of the Disability Law, allocating inclusive public budgets, and enhancing the institutional authority of the National Disability Commission.
Keywords: *fiqh kebangsaan*, disability, *rukhsah*, *'azīmah*, social justice, disability rights.

ABSTRAK

Artikel ini menganalisis rekonstruksi fikih kebangsaan ramah difabel melalui transformasi paradigma dari pendekatan *rukhsah* (keringanan) menuju *'azimah* (kewajiban normatif) dalam konteks negara-bangsa Indonesia. Selama ini, fikih disabilitas dalam tradisi klasik cenderung menempatkan penyandang disabilitas sebagai subjek penerima dispensasi individual, sehingga bersifat karitatif dan kurang menyentuh akar diskriminasi struktural yang dialami difabel dalam ruang publik, dunia kerja, dan kebijakan negara. Dengan menggunakan pendekatan normatif-kritis terhadap teks fikih klasik, kaidah fikih, serta regulasi nasional dan instrumen hak asasi manusia internasional, khususnya *Convention on the Rights of Persons with Disabilities* (CRPD), artikel ini menunjukkan bahwa paradigma *rukhsah* perlu ditransformasikan menjadi *'azimah* yang mewajibkan negara hadir secara aktif sebagai penjamin hak difabel. Hasil kajian mengungkapkan tiga temuan utama: pertama, kaidah fikih seperti *al-masyaqqah tajlib al-taysīr* dan *al-ḍarar yuzāl* tidak semestinya dipahami sebatas dispensasi individual, melainkan sebagai mandat kebijakan publik yang inklusif; kedua, fikih politik klasik sebenarnya telah meletakkan dasar kewajiban negara dalam melindungi kelompok rentan, namun belum terartikulasikan secara sistematis dalam kerangka hukum kontemporer; ketiga, integrasi fikih kebangsaan dengan prinsip keadilan sosial dan HAM menghasilkan model fikih yang berorientasi pada pemberdayaan, bukan belas kasihan. Artikel ini menegaskan bahwa pendekatan *'azimah* lebih relevan dengan konteks Indonesia serta sejalan dengan maqāṣid al-syarī'ah dan keadilan substantif. Studi ini merekomendasikan penguatan legislasi turunan UU Disabilitas, alokasi anggaran inklusif, dan optimalisasi peran Komisi Nasional Disabilitas sebagai implikasi kebijakan dari rekonstruksi fikih kebangsaan ramah difabel.
Kata kunci: fikih kebangsaan, disabilitas, *rukhsah*, *'azimah*, keadilan sosial, hak penyandang disabilitas.

INTRODUCTION

In contemporary social discourse, the issue of concern for people with disabilities is increasingly emerging, marked by a change in terminology from the initial term "disability" to "disability" (*Different Ability*) (Karlina, 2023). This change is not just a linguistic euphemism, but rather a deconstructive attempt to counter the stigmatization and discrimination inherent in the group. However, language refinement alone is not enough as an indicator of substantive partisanship. More than that, this euphemism is expected to be a catalyst for the collective realization that physical differences are Divine decrees—not a hierarchy of human perfection, but a diversity that must be accepted with full respect (Ritonga, 2024). In this context, Islam offers an inclusive theological perspective, affirming that plurality is sunnatullah that must be managed with the principle of ta'aruf (knowing each other).

Islam expressly rejects the reduction of human values based on physical perfection, as stated in Q.S. al-Hujurat (49:13) and various hadiths of the Prophet which emphasize that a person's glory lies in piety and righteous deeds.(Muslim, 1955) By denying physical standards as a parameter of individual qualities, Islam implicitly provides protection for the rights of people with disabilities, prohibiting any form of humiliation or marginalization of them. This principle is in line with the spirit of equality that is the foundation of modern human rights, while strengthening the argument that religion and human rights can synergize in building inclusivity (Prasetyo, 2024).

The synergy between religious values and global commitment to the rights of people with disabilities needs to be strengthened by the state's role as an actor in ensuring justice. Internationally, the issue of disability has gained legitimacy through a series of UN documents (Farhan & Suherman, 2024), ranging from *the Declaration on the Rights of Mentally Retarded Persons* (1971), the Declaration on the Rights of Disabled Persons (1975), to the Convention on the Rights of Persons with Disabilities (CRPD) in 2006 (Maftuhin, 2020b). The ratification of these instruments is evidence of the world's commitment to mainstreaming the rights of persons with disabilities, but their implementation requires state intervention through affirmative policies. This article will analyze how Islam and the state can collaborate in realizing holistic protection for people with disabilities, integrating spiritual values with structural responsibilities

In Indonesia, the issue of protecting the rights of people with disabilities is still inferior to the issue of human rights protection. As a result, the state's attention to the rights

of people with disabilities is not as much as its attention to the issue of other human rights enforcement. This fact does not stand alone (Umam & Arifin, 2019). One of the factors that causes the state to pay more attention to other human rights issues compared to the issue of the rights of people with disabilities is due to the lack of pressure from powerful countries and the United Nations on the issue of rights of people with disabilities in Indonesia. They do not consider the neglect of the rights of persons with disabilities as a gross human rights violation (Maftuhin, 2020b).

Another factor that also affects is the cultural and social conditions in Indonesia that do not encourage independence for people with disabilities. The values of collectivism and the feudal system that are still thick in society result in people with disabilities being less visible in the public sphere. As a result, the state's attention to the rights of persons with disabilities has become less than its attention to other human rights enforcement issues (Khasri, 2020).

The Government of Indonesia has made a number of efforts to strengthen the protection of the rights of persons with disabilities. However, its implementation in the field still faces various challenges, especially related to limited resources and inadequate infrastructure (Jayanti & Marlina, 2018). This condition shows that the government's commitment has not been fully realized in effective policies. Therefore, stronger encouragement is needed, both from civil society and international pressure, to ensure that governments are more serious in upholding the rights of persons with disabilities in accordance with global standards.

On the other hand, fiqh as a product of Islamic thought that is a reference for Indonesian Muslims has not had a significant impact on the empowerment of people with disabilities. The discourse contained in the fiqh still places them as weak people who deserve mercy through rukhshah solutions, and ignores their need to be treated equally with human beings in general(Syauqi & Prasetiawan, 2024).

This study will analyze critically and integratively the Islamic values contained in fiqh and the role of the state in providing protection for the rights of persons with disabilities. In particular, this article is expected to encourage a disability-friendly, more inclusive and equitable reconstruction of national fiqh by transforming the paradigm from the rukhshah approach as obtained in the majority of fiqh works to the azimah approach.

RESEARCH METHOD

This study employs **normative legal** research with a conceptual and philosophical approach, situating disability discourse within Islamic jurisprudence and the framework of the modern nation-state (Ariawan, 2013). Normative legal research is chosen because the central issue examined in this article concerns the reconstruction of legal norms, principles, and doctrines rather than the measurement of empirical behavior. Accordingly, the research focuses on analyzing legal concepts, jurisprudential paradigms, and regulatory frameworks that shape the protection of the rights of persons with disabilities.

The primary sources of this research consist of classical Islamic legal texts (*kutub al-turāth*), particularly works on usul al-fiqh, fiqh al-'ibādāt, and fiqh siyāsah, which articulate the doctrines of *rukhsah*, '*azīmah*, and state responsibility toward vulnerable groups. These sources are examined to identify the dominant paradigm governing disability within traditional fiqh discourse. In addition, statutory regulations related to disability rights in Indonesia—most notably Law No. 8 of 2016 on Persons with Disabilities—are analyzed alongside relevant international legal instruments, especially the Convention on the Rights of Persons with Disabilities (CRPD), as comparative normative references.

This research applies three interrelated analytical approaches. *First*, a conceptual approach is employed to clarify and critically reassess key legal concepts such as *rukhsah*, '*azīmah*, *maqasid al-shari'ah*, social justice (*al-'adālah al-ijtimā'iyyah*), and state obligation (*mas'ūliyyah dawliyyah*). This approach enables the identification of conceptual inconsistencies in the prevailing charity-based paradigm of disability within fiqh discourse. *Second*, a philosophical approach is utilized to examine the ethical and teleological foundations of Islamic law, particularly how *maqasid al-shari'ah* provides normative justification for transforming individual legal concessions into structural state obligations. *Third*, a statute and comparative approach is adopted to assess the compatibility and convergence between Islamic legal principles and contemporary human rights norms governing disability inclusion.

The data analysis is conducted through qualitative normative interpretation, using methods of legal reasoning (*istinbat*) and systematic interpretation (Marzuki, 2016). Classical legal doctrines are critically read not merely as historical artifacts but as normative resources capable of being reconstructed to address contemporary structural injustice. Legal maxims such as *al-mashaqqah tajlib al-taysīr* and *al-darar yuzāl* are reinterpreted from an individual-exemption framework into a policy-oriented mandate for inclusive governance. Through this

method, the study formulates a reconstructed model of fiqh kebangsaan that shifts the locus of obligation from persons with disabilities to the state as the primary duty-bearer.

Finally, the validity of the analysis is ensured through doctrinal consistency and normative coherence, by systematically aligning Islamic legal principles, constitutional values, and international human rights standards. This methodological design allows the study not only to critique the limitations of the *rukhsah* paradigm but also to propose a legally and theologically grounded '*azimah*-based framework for disability-inclusive public policy.

FINDINGS AND DISCUSSION

The State and the Protection of the Rights of Persons with Disabilities

The issue of protecting the rights of people with disabilities in Indonesia is not as loud as other human rights issues, such as freedom of opinion or women's rights, but it does not mean that the state completely ignores their rights (Farhan & Suherman, 2024). Normatively, the principles of the rights of persons with disabilities as citizens have been recognized in various legal instruments, one of which is Law Number 39 of 1999 concerning Human Rights (HAM). Although the law does not explicitly mention the rights of persons with disabilities, its articles affirm the principle of universality of human rights that applies to all citizens, including persons with disabilities. For example, Article 29 Paragraphs (1) and (2) of this Law states that "(1) Everyone has the right to the protection of his or her personal self, family, honor, dignity, and property rights. (2) Everyone has the right to recognition before the law as a private person wherever he is" (*Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia*, n.d.). This statement is the legal basis that people with disabilities, as part of citizens, have the right to equal protection.

Of course, normative recognition alone is not enough if it is not followed by concrete implementation. Although a legal framework in the form of a law already exists, more detailed regulations are needed to ensure that the rights of persons with disabilities are effectively fulfilled. The 1999 Human Rights Law in general does guarantee the rights of persons with disabilities, but does not provide specific guarantees for the protection of rights and the fulfillment of special needs for persons with disabilities (Riyadi, 2018).

A positive development occurred when for the first time explicitly and specifically the rights of persons with disabilities were mentioned and regulated in Law Number 8 of 2016 concerning Persons with Disabilities (Tiwi, 2020). In this law, everything related to disability is regulated. Article 5 states 22 rights of persons with disabilities, 4 special rights of

women with disabilities, and 7 special rights of children with disabilities who receive protection from the state. The protection is intended to strengthen, foster the climate, and develop the potential of people with disabilities so that they form strong and independent individuals with disabilities (*Undang-Undang Republik Indonesia Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas*, n.d.).

Broadly speaking, all laws and government regulations that have been passed mandate that the state be present to provide protection of the rights of persons with disabilities in three categories: the protection of their rights in the domestic area, the guarantee of their role in the public world, and the protection of rights in the world of work (Sholihah, 2016).

The protection of the rights of persons with disabilities in the domestic area is regulated by Law Number 23 of 2004 concerning the Elimination of Domestic Violence. In this Law, there is no specific mention and there is no special article about the disabled, but the scope of the household as mentioned by article 2 in this Law guarantees all members of the household, including the disabled, to get their rights (Zulfahmi, 2024). The household as a domestic area that is closed from the outside world has the potential for violations of the rights of the weak such as women, children and the disabled.

The state also provides security guarantees and services for people with disabilities in public spaces. As a vulnerable group, people with disabilities often receive treatment that is not in accordance with their limitations. Buildings and other public facilities are mostly not built and designed for their benefit. This condition results in a loss of sense of security and comfort for people with disabilities (Ridlwan, 2013). The government through Government Regulation of the Republic of Indonesia Number 39 of 2020 provides a guarantee of the provision of decent accommodation for persons with disabilities when undergoing judicial proceedings (*Peraturan Pemerintah Republik Indonesia Nomor 39 Tahun 2020 Tentang Akomodasi Yang Layak Untuk Penyandang Disabilitas Dalam Proses Peradilan*, n.d.). In this regulation, from the provision of facilities to companions, translators, and others that make it easier for people with disabilities to process in court must be fulfilled.

In the world of work, the protection of the rights of people with disabilities is contained in Law Number 13 of 2003 concerning Manpower. This law specifically regulates the protection of the rights of workers with disabilities, starting from the period of job training to termination of employment. Article 67 of this Law states the obligation of employers who employ workers with disabilities to provide protection to them in accordance

with the conditions they experience (Rochmawati & Sonhaji, 2016). In the explanation of this article, it is stated that the form of protection that must be provided by entrepreneurs is the provision of accessibility, work tools, and personal protective equipment that suits their needs (*Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 Tentang Ketenagakerjaan (PDF, JDIH Kemenaker)*, n.d.). Conceptually, this law has provided comfort and security for people with disabilities at work.

On June 9, 2020, the government showed its seriousness in protecting the rights of people with disabilities by establishing the National Commission on Disability (KND) through Presidential Regulation Number 68 of 2020. This independent and non-structural commission is under and accountable to the President directly (Rosdianti, 2021). This institution is given the task of preparing activity plans, monitoring and evaluation, and advocating for the implementation of respect, protection, and fulfillment of the rights of persons with disabilities, as well as carrying out cooperation in handling persons with disabilities with related parties (*Peraturan Presiden Republik Indonesia Nomor 68 Tahun 2020*, n.d.).

Normatively, the existence of special regulations and institutions aimed at protecting the rights of persons with disabilities—such as Law Number 8 of 2016 concerning Persons with Disabilities and the establishment of the National Commission on Disabilities (KND)—should be a transformative instrument in eliminating the structural inequalities faced by these vulnerable groups. The regulation explicitly mandates the principles of equality, non-discrimination, and universal accessibility (Sholihah, 2016). However, from the perspective of the policy implementation gap, there is a significant disparity between the ideal goal of regulation and the empirical reality on the ground. Recent studies have revealed that the existence of this regulation has not substantively improved the quality of life of people with disabilities, indicating failures in the aspects *of enforcement* and *compliance* (Nisa & Dharmawan, 2025).

A critical study conducted by Annisa Amelia Putri (2024) from the Faculty of Law, Krisnadwipayana University confirmed the existence of *structural negligence* in the implementation of disability protection policies. The findings of the study reveal that corporate and governmental compliance with accessibility standards—such as the provision of *wheelchair access*, inclusive toilets, and *braille* facilities—is still partial and sporadic. Furthermore, the low absorption rate of disabled workers in the formal sector reflects systemic exclusion that is contrary to the spirit of *affirmative* action mandated by law. This

phenomenon not only indicates a violation of the law, but also reflects the cultural ableism that is still rooted in labor recruitment practices (Putri, 2024).

This reality is further confirmed through the latest empirical data released by the Central Statistics Agency (BPS) at the end of May 2025. In a job fair in Grogol Petamburan, West Jakarta, 41 companies were recorded offering 3,504 job vacancies, but zero vacancies explicitly accommodated people with disabilities ("Keluh Penyandang Disabilitas Tak Temukan Loker Di Job Fair Jakbar," n.d.). This data not only confirms labor market discrimination, but also indicates a failure of monitoring and evaluation by the relevant authorities. In fact, within the framework of *the Convention on the Rights of Persons with Disabilities* (CRPD) that Indonesia has ratified, the state has a legal obligation to ensure equal employment opportunities. Thus, these findings show that regulatory commitments have not been balanced with adequate accountability mechanisms, so inclusive policies are only symbolic with no real impact.

This phenomenon indicates that although the legal framework already exists, its implementation on the ground is still very weak. Factors such as lack of supervision, low public awareness, and lack of sanctions for violators also contribute to the failure. As a result, many people with disabilities remain marginalized, both in terms of employment opportunities, education, and social participation. This condition shows that existing policies have not been able to create real change, so a more holistic approach is needed—not only relying on legal instruments, but also involving the social and religious values that live in society (Ramadhani, 2025).

As a country with a majority Muslim population, efforts to increase government alignment and public awareness in implementing disability-friendly policies in the world of work and public spaces need to involve a religious doctrinal approach. This is because religion, in this case Islam, has a strong influence in shaping people's perceptions and behaviors. The integration between state policies and religious values can be an effective strategy to create an inclusive environment for people with disabilities. This approach is relevant considering that the Qur'an and Al-Sunnah as authoritative sources of Islam prioritize the principle of equality and condemn discrimination against people with disabilities (Huda, 2019).

In this context, the presence of a national fiqh that is responsive to people with disabilities can accommodate their rights as an implementation of the principles of al-'ádalah (justice) and al-takaful al-ijtimai (social concern) in Islam. National jurisprudence not only

serves as a normative basis for inclusive policies, but also strengthens the moral commitment of the community to support groups with disabilities. Thus, more serious efforts are needed from all stakeholders—including the government, religious leaders, and the community—to ensure that the existing policies are not only symbolized, but actually felt by people with disabilities in Indonesia.

Rukhshah Paradigm in Disability Fiqh

The transformation of the concept of national jurisprudence in classical literature that is responsive to people with disabilities into the framework of rukhshah in ushul fiqh is seen as a strategic approach to strengthen the legitimacy of shari'i as well as legal flexibility in fulfilling the rights of people with disabilities. If national jurisprudence functions as a normative foundation that integrates the principles of justice (*al-'adalah*) and social concern (*al-takaful al-ijtimai*), then in the classical fiqh view, the application of the rukhshah paradigm can provide a deeper theological justification for the adjustment of Islamic law in the context of disability. This is because rukhshah is not just a leniency, but a shari'a recognition that certain conditions—such as physical or mental limitations—require an adaptive legal response without sacrificing the principle of justice (Hikam, 2023).

In the theory of Ushul Fiqh, *rukhshah* is defined as a new law that is established based on a postulate that is different from the previous legal postulate because of a reason that is justified by shari'i (Zuhair, n.d.). This definition emphasizes the change from the original law (*'azimah*) that was previously in force to a new law (*rukhshah*). The change in the law is not just a change from one legal provision to another, but must meet two main conditions, namely: (1) the existence of the sharia postulates that underlie the change, and (2) the existence of a justifying reason (*'udzur syar'i*) that legitimizes the new law (Zuhair, n.d.).

The existence of *rukhshah* is not a form of neglect of the provisions of sharia, but a manifestation of Islam's flexibility in balancing legal demands with the reality of the human condition. Rukhshah actually emphasizes that Islamic sharia is built on the principles of compassion (*rahmah*)(al-Jauziyyah, 2005), ease (*taysīr*), and avoidance of difficulties (*raf' al-haraj*) (al-Zuhaili, 2006). Therefore, as Abu Ishaq al-Shatibi emphasized, the absence of *rukhshah* in the shari'a would be contrary to *maqasid al-shari'ah* (the main purpose of the shari'a), which is the protection of five main things: religion (dīn), soul (nafs), intellect ('aql), offspring (nasl), and property (māl) (al-Shatibi, 2003). Thus, *rukhshah* is not just a legal relief,

but an integral part of the justice and wisdom of Islamic sharia in responding to various life situations.

Based on these principles, the existence of rukhshah in fiqh literature is an inevitability based on philosophical and practical considerations. Within the framework of Islamic law, rukhshah is not merely a complement, but a concrete manifestation of the flexibility of the shari'a in responding to dynamic social realities. The study of fiqh shows that the absence of discussion of rukhshah in a legal discourse will result in incompleteness of analysis, because rukhshah functions as a balancing mechanism for basic provisions (*'azimah*). This phenomenon becomes even more evident when it highlights laws relating to vulnerable groups, such as the disabled, where jurisprudence consistently provides legal dispensations that suit their specific needs (Adib, 2025).

Moreover, the systematization of the discussion of rukhshah in the books of jurisprudence—both classical and contemporary—reflects the depth of scholarly thought in integrating the principles *of taysīr* (ease) and *raf' al-haraj* (removal of difficulties) into the legal structure. The thematic presentation of rukhshah in each chapter of fiqh is not only technical, but also philosophical, because it is proof of the consistency of the sharia in realizing maqasid al-shari'ah, especially the protection of human welfare (hifz al-nafs) and the maintenance of the rights of marginalized groups. Thus, *rukhshah* is not just an exception to the law, but an instrument of justice that guarantees the relevance of sharia in all times and conditions (Afridawati, 2015).

As a concrete implementation of the principle *of rukhshah* in jurisprudence, the book al-Umm—the monumental work of Imam Shafi'i that is the main reference of the Shafi'i madhhab—expressly provides practical solutions for people with disabilities in performing prayer. One of the provisions reads:

الأعمى والمريض الذي لا يقدر على القيام يصلي قاعداً فإن لم يستطع فعلى جنبه (al-Shafi'i, 2007)

"People with blind disabilities and sick people who are unable to stand can pray by sitting. If you are unable to sit, you can pray lying down."

This provision is not just a leniency, but a profound reflection of the principles *of taysīr* (ease) and *raf' al-haraj* (removal of difficulties) in Islamic law. Imam Shafi'i not only sees physical limitations as a reason to abort obligations, but instead offers an alternative implementation that still maintains the essence of worship. Thus, rukhshah in this context

functions as an inclusivity mechanism that ensures that blind people can still perform prayers according to their ability, without reducing their spiritual value (Imran, 2022).

More than that, this approach also shows how classical jurisprudence has considered aspects of social justice (*al-'adālah al-ijtimā'iyyah*) and the rights of people with disabilities long before the modern concept of inclusion developed. This strengthens the argument that Islamic law is dynamic and responsive to human needs, while at the same time emphasizing that rukhshah is not a form of degrading "relaxation", but rather a respect for the shari'a for the real conditions of the ummah (Azhar, 2020).

Classical jurisprudence even developed a broader and differentiated waiver scheme for various disability conditions. As stated in the consensus of the scholars (ijma') quoted by Ibn Qattan, there is a special recognition for certain groups of people with disabilities to obtain dispensation in the implementation of compulsory worship:

أجمع العلماء على أن الأعمى والمقعد ومن به عاهة دائمة لهم الرخصة في ترك الجمعة والجماعة–al) Qattan, 2004)

"Scholars have agreed that the blind, the paralyzed, and those with permanent disabilities are granted relief from participating in Friday prayers and congregational prayers."

This consensus not only demonstrates the flexibility of Islamic law, but more importantly, affirms the principle that the burden of sharia should be tailored to the capabilities of each individual.

The application *of rukhshah* in such cases emphasizes the characteristics of fiqh that always considers the real condition of human beings (*fiqh al-waqi'*). In the construction of Islamic law, this principle is not just a complement, but an integral part of the methodology of legal istinbath that is always in dialogue with social reality. The rukhshah mechanism shows how classical jurisprudence is able to respond to the diversity of human conditions without being trapped in rigid legal formalism. This is reflected in the various sharia dispensations given to people with disabilities, where anthropological considerations are the basis for granting the relief.

On the other hand, the application of *rukhshah* also maintains the basic principles of sharia so as not to burden beyond the ability (*la taklif illa bi al-wus'*). This principle is not only theologically meaningful, but contains a deep ethical dimension about the relationship between God and man (Afridawati, 2015). In the context of the disabled, rukhshah is a tangible manifestation of the principle of taysir (convenience) which is the spirit of Islamic law. Thus, this mechanism should not be understood as a form of "privilege" or "restriction",

but as a legal recognition of the different capacities possessed by each individual, as well as proof of the elasticity of the sharia in embracing all levels of society.

The principle *of la taklif illa bi al-wus'* is not only a normative theory, but has been operationalized in the fatwas of classical scholars. For example, Al-Marghinani from Madzhab Hanafi in Al-Hidayah emphasizes that people with visual disabilities or people with paralysis are not required to attend congregational prayers in mosques if they face difficulties in access. According to him, they only need to carry out prayers independently at home, as long as the condition meets the criteria of 'uzur shar'i (obstacles recognized by sharia) (al-Marghinani, 2000). This opinion not only reflects Islamic justice, but is also relevant to the issue of modern inclusivity, where public facilities are often not friendly to people with disabilities. This also emphasizes that fiqh flexibility is not a form of reducing obligations, but an adjustment that maintains human dignity and benefit.

The flexibility of fiqh in providing *rukhshah* (relief) is not only limited to prayer for people with disabilities, but also includes various other forms of worship, such as zakat and hajj. This shows that the principle of convenience (*taysīr*) in Islamic sharia is comprehensive, while still taking into account the difficulties faced by vulnerable groups. For example, Al-Kasani, an expert in Islamic law from the Hanafi school, explained that people with disabilities who do not have the ability to work are exempt from the obligation of zakat fitri. More than that, according to him, the responsibility for zakat shifts to other people—either family or community—who are obliged to issue zakat fitri on their behalf (al-Kasani, 1986). This view reinforces the concept of social solidarity in Islam, where leniency is not just liberation, but also involves the collective role of the ummah.

Similar facilities also apply in the implementation of the Hajj. For people with disabilities who experience physical or accessibility difficulties—such as the lack of transportation or friendly facilities—they are allowed to delegate Hajj to others. This opinion is supported by al-Sarakhsi in the book al-Mabsut, which states:

المقعد والأعمى إذا لم يجدا محملاً يجزئهما أن ينيبا من يحج عنهما (al–Sarakhsi, 1993)

"A paralyzed and blind person, if he does not get a vehicle or supporting facilities to perform Hajj, it is enough for him to send others to perform Hajj on their behalf."

Thus, rukhshah in the Hajj is not a form of abandonment of obligations, but a sharia solution that ensures the spiritual rights of every Muslim are fulfilled according to their ability. This approach is in line with *maqasid al-shari'ah* (the goal of sharia) in safeguarding the

welfare of humans, especially people with disabilities, without sacrificing the principles of justice and equality.

Although *the rukhshah* principle reflects the sensitivity of the shari'a to human limitations, its implementation in the context of disability is often stuck in a reductive approach. This paradigm has been applied in various discussions of classical to contemporary fiqh. Vardit Rispler-Chaim in his research, *Disability in Islamic Law*, maps that the giving of rukhshah covers various aspects of life, ranging from worship, marriage, to jihad (Rispler-Chaim, 2007). These findings show that fiqh tends to offer solutions to the limitations of people with disabilities through a rukhshah approach rather than '*azimah* (original law). At first glance, this approach is seen as a form of convenience for people with disabilities in carrying out their obligations. However, if examined more deeply, *rukhshah* is actually only a short-term solution that has not touched the root of the problem.

The provision of *rukhshah* is often only in the form of a reduction in obligations (such as dispensation in worship or the elimination of zakat obligations) or adjustments to the way it is implemented. Although it seems to be alleviating (*taqlil al-taklīf*), this approach ignores the fundamental problem faced by people with disabilities, namely *differential treatment* in society. In other words, *rukhshah* does not change the social structure that marginalizes people with disabilities, but rather simply allows them to carry out their obligations on a limited basis—without an inclusion effort that allows them to participate on an equal footing with non-disabled people.

The fundamental weakness of the fiqh approach to disability issues is that it focuses too narrowly on the fulfillment of individual obligations, while disability rights as part of social justice receive less attention. In addition, classical jurisprudence tends to view the subject of law as an individual, not an institution. As a result, fiqh fails to encourage the role of the state and social institutions in creating an inclusive system. In fact, without institutional involvement (such as state policies, public facilities, and employment opportunities), efforts to address the rights of persons with disabilities will only stagnate at the individual level—an inadequate approach in addressing the systemic challenges of discrimination (Maftuhin, 2020a).

Disability-Friendly National Fiqh : from Rukhshah to Ázimah

The classical fiqh paradigm that dwells on the fulfillment of individual obligations (*al-taklīf al-fardi*) and ignores the role of institutions (*al-taklīf al-jamā'i*) is considered to have

failed to fulfill the rights of persons with disabilities holistically. The rukhshah approach, while intended to ease the burden, actually reinforces marginalization because it does not touch structural aspects such as accessibility, employment, and political representation. Therefore, a paradigmatic reconstruction is needed towards a national fiqh that transforms the concept of rukhshah into '*azimah*—not just providing relief, but requiring the state to create an inclusive system.

The shift from a rukhshah approach to '*azimah* in the context of disability is not just a change in terminology, but a paradigm shift from passive accommodation to active guarantee. If rukhsah focuses on the adaptation of individuals with disabilities to an exclusive environment, 'azimah demands the transformation of the environment itself through state intervention. Thus, 'azimah is no longer interpreted as an original obligation that burdens people with disabilities, but as an obligation of the state to create conditions that allow people with disabilities to exercise their rights and obligations equally. This approach transforms the narrative of disability from an object of mercy to a sovereign subject of law, while also answering criticism of rukhsah's failure to address systemic inequality.

The idea of national fiqh in the Indonesian context can be realized through the integration of fiqh values with the principles of social justice (*al-'adālah al-ijtimā'iyyah*) enshrined in the constitution, such as the strengthening of Law Number 8 of 2016 concerning Persons with Disabilities. National jurisprudence no longer focuses on the provision of charitable rukhsah, but on the enforcement of 'azimah in the form of the state's obligation to ensure equal access to education, health, and employment.

The discussion of classical and contemporary jurisprudence does not completely ignore the role of the state in fulfilling the rights of the vulnerable such as the disabled. In fiqh, there are several fiqh narratives that implicitly and explicitly affirm the responsibility of the state (*al-dawlah*) or public authority (*al-sultah*) in guaranteeing the basic rights of people with disabilities, especially within the framework *of the concepts of huqūq Allāh* (the public rights of Allah) and *huqūq al-'ibād* (individual rights). For example, in al-Māwardī's book al-ahkām al-Sultaniyyah (d. 450 H), it is explained that the state is responsible for providing means of living (*al-rizq*) for vulnerable groups, including the disabled, through the *mechanism of bayt al-māl* (state treasury):

وَأَمَّا الْأَرْزَاقُ الْمَوْضُوعَةُ لِهَذِهِ الْأَصْنَافِ فَإِنَّهَا تُؤْخَذُ مِنْ بَيْتِ الْمَالِ، وَإِنْ عَدِمَ بَيْتُ الْمَالِ فَالْإِمَامُ مُخَيَّرٌ بَيْنَ أَنْ يَحْمِلَ النَّاسَ عَلَى إِنْفَاقِهِمْ أَوْ يُقْرِضَهُمْ مِنْ بَيْتِ الْمَالِ إِذَا وُجِدَ وَهَذَا الْقِسْمُ يَشْتَمِلُ عَلَى

الضُّعَفَاءِ وَالزَّمْنَى وَالْعَاجِزِينَ وَالْمَجْذُومِينَ وَالْأُولَى بِهِمْ، فَإِنَّهُمْ لَا كَسْبَ لَهُمْ وَلَا حِرْفَةَ يُعِيلُونَهَا-(al-Mawardi, 2006) .

"As for the means of living (al-arzāq) that are set for these groups (the weak and disabled), they are taken from the baitul mal (state treasury). If the state treasury is empty, the imam (ruler) can choose between obliging the community to provide for them or lending property from the baitul mal if available. This group includes the weak, the chronically ill, the underprivileged, the lepers, and people like them, because they have neither income nor work to sustain them."

This text of al-Māwardī proves that the responsibility of the state towards the disabled is not just a modern discourse, but a principle that has been embedded in the tradition of classical Islamic law. However, the realization of this concept is often hampered by two fundamental problems: *First*, although al-Māwardī affirms the obligation of the state, the mechanism *of bayt al-māl* in contemporary systems is often not optimized for disability issues. The state treasury is allocated more for physical infrastructure projects than for inclusive social security, so that people with disabilities remain marginalized. In fact, if referring to the classification of al-Māwardī, the disabled are a group that "has neither income nor employment (*lā kasb lahum wa lā hirfah yu'ilūnahā*) conditions that should automatically trigger state intervention. *Second*, the responsibility of the state in the book al-ahkām al-Sultaniyyah is in line with the '*azimah* paradigm proposed earlier. Al-Māwardī does not speak of relief (*rukhsah*) for the disabled, but rather the guarantee of rights through structural instruments (*bayt al-māl*). This reinforces the argument that Islam actually has a legal framework for a more progressive approach, but is limited by an overly individual-focused interpretation of fiqh.

This fragment of al-Māwardī is historical evidence that classical Islamic political jurisprudence has actually designed an inclusive social protection system. The problem is not in the absence of a concept, but in the failure of Muslim countries to seriously actualize it. Therefore, the reconstruction of the '*azimah* paradigm is not a radical renewal, but a restoration of neglected Islamic principles—in which the state must be present as a guarantor of rights, not just a dispensationer.

Similarly, Ibn Qayyim al-Jawziyyah (d. 751 AH) in I'lām al-Muwaqqi'īn affirms that the ruling authority is obliged to guarantee the basic needs of society, including accessibility for the disabled, as part of social justice:

وَالْوَلِيُّ الْأَمْرِ مُلْزَمٌ بِإِقَامَةِ الْعَدْلِ وَإِنْصَافِ الْمَظْلُومِ وَرَفْعِ الضَّيْرِ عَنِ الْمُضْطَرِّ وَالضَّعِيفِ، وَمِنْ ذَلِكَ أَهْلُ الْحَاجَاتِ وَالْعَاهَاتِ الَّذِينَ لَا يَقْدِرُونَ عَلَى سَدِّ حَاجَتِهِمْ، فَإِنَّ مِنْ أَعْظَمِ الْعَدْلِ أَنْ يُؤْمِنَ لَهُمْ سَبِيلَ الْعَيْشِ وَالْقُدْرَةِ عَلَى حَوَائِجِهِمْ. (al–Jawziyyah, 2003)

"The government is obliged to uphold justice, defend the oppressed, and eliminate the difficulties of the distressed and the weak. This includes people with special needs (*ahl al-hājāt*) and people with disabilities (*al-'ahāt*) who are unable to meet their own needs. Indeed, the most important part of justice (*al-'adl*) is to guarantee their way of life and facilitate the fulfilment of their needs."

This statement affirms that the responsibility of rulers is not only limited to maintaining political stability or security, but also includes ensuring inclusive social justice. The concept of justice (*al-'adl*) that he teaches is holistic, including the protection of vulnerable groups, including people with disabilities (*ahl al-hājāt wa al-'ahāt*). In this perspective, the state should not be passive, but must actively ensure accessibility and fulfillment of their basic needs, such as clothing, food, and health and education facilities. Thus, Ibn Qayyim's statement is not only relevant in the context of his time, but also an ethical foundation for inclusive policies in the modern era, where social justice must reach all levels of society without discrimination.

These two narratives from al-Mawardi and Ibn Qayyim clearly establish social justice as a state obligation in Islam. Al-Māwardī emphasizes the concrete responsibility of the state through bayt al-māl to meet the needs of vulnerable groups, while Ibn Qayyim expands on this concept by emphasizing accessibility and the rights of persons with disabilities as part of the justice that must be realized. Both show that in the Islamic system of government, the protection of weak groups is not just charity, but a structural obligation that comes from the principles of sharia and maqāṣid al-shari'ah. This view forms a clear framework: the state must actively create a fair and inclusive system, not just provide momentary relief.

Several other narratives in classical fiqh emphasize the state's obligation to fulfill the rights of persons with disabilities, not just as a form of generosity, but as an imperative responsibility. Ibn Taymiyah, for example, explicitly stated that the state is obliged to provide accessibility for people with disabilities as well as provide financial assistance from the state treasury. In Majmoo' al-Fatawa, he wrote:

وَيَجِبُ عَلَى الوَلِيِّ الأَمْرِ أَنْ يُيَسِّرَ طُرُقَاتِ المَدِينَةِ لِلْعُمْيَانِ وَالمُقْعَدِينَ، وَأَنْ يُعْطِيَهُمْ مِنَ الفُضُولِ فِي بَيْتِ المَالِ (Ibn Taymiyyah, 2001)

"The government is obliged to facilitate the city roads for the blind and paralyzed, and to provide them with excess wealth in the state treasury.".

A similar argument is reinforced by Ibn Qayyim in al-Turuq al-Hukmiyyah, who emphasizes that the provision of facilities for the disabled is not a secondary policy, but part of the wisdom of the shari'a. He explained:

وَمِنْ حِكْمَةِ الشَّرِيعَةِ أَنْ أَمَرَ الوُلَاةَ بِإِقَامَةِ الحَوَائِطِ لِلْعُمْيَانِ فِي الطُّرُقَاتِ، وَتَخْصِيصِ مَوَاضِعَ لِذَوِي العَاهَاتِ فِي المَسَاجِدِ (al-Jawziyyah, 2007)

"Including the wisdom of the Shari'ah is to order the ruler to make a roadblock for the blind, and to provide a special place for the disabled in mosques."

Furthermore, Ibn al-Humam in Fath al-Qadir not only discusses accessibility, but also obliges the state to provide special and companion housing for the disabled:

يَجِبُ عَلَى الوَالِي أَنْ يَبْنِيَ لِلْمَعَاقِينَ مَنَازِلَ مُخْتَصَّةً قَرِيبَةً مِنَ المَسَاجِدِ، وَأَنْ يُوَظِّفَ لَهُمْ مَنْ يَخْدُمُهُمْ (Ibn al-Humam, 1995)

"The government is obliged to build special houses for people with disabilities near mosques, and assign people to serve them."

From these three views, it can be seen that the consistency of classical scholars in placing the state as the main actor responsible for the fulfillment of the rights of persons with disabilities, both in infrastructure and social support.

Although a number of classical fiqh books expressly state the state's obligation to fulfill the rights of persons with disabilities, this kind of narrative does not develop into a systematic legal framework. In conventional jurisprudence discourse, this issue is actually drowned out by the dominance of the discussion of *rukhsah* (individual dispensation), which is more caustic than structural. At least, there are three factors that explain why this happens: *First*, the hegemony of the individualistic paradigm in classical fiqh. As stated by Mohammad Hashim Kamali, traditional jurisprudence emphasizes vertical relations (individual-God-worship) and horizontal relations (rights between individuals) rather than structural relations between citizens and states. As a result, state responsibilities are often not formulated concretely (Kamali, 2008). *Second*, the socio-historical context that formed the frame of thought of past scholars. Fazlur Rahman noted that classical fiqh was born from a pre-modern society that did not know the concept *of a welfare state*. Without this institutional framework, state obligations tend to be understood in a minimalist way—limited to giving alms, not as a right that must be guaranteed through public policy (Rahman, 1982). *Third*, the limitations of critical hermeneutics in the interpretation of religious texts. As criticized by

Khaled Abou El Fadl, classical jurists often get caught up in a literal reading of the nash, without exploring its socio-political implications (Abou El Fadl, 2001). In fact, principles such as maslahah (public interest) and 'adl (justice) should be the basis for strengthening the rights of people with disabilities in state policies.

Thus, although the normative basis for disability rights actually exists in the fiqh tradition, the neglect of the structural dimension causes this discourse not to develop into a progressive legal concept. As a result, contemporary fiqh discourse on disability dwells more on the question "What is the leniency for the disabled?" than "What is the state's obligation for the disabled?" In fact, from the perspective of maqāṣid al-sharī'ah, especially the protection of the right to life, the right to justice, and the right to dignity, the responsibility of the state should be the main focus (Auda, 2007). This paradigm transformation is urgent so that fiqh is not only a tool for legitimizing rukhsah, but also a driver of inclusive policies.

The paradigm transformation in understanding the rules of fiqh on disability requires a new, more progressive approach. Over the years, the rules of fiqh such as "*al-masyaqqah tajlib at-taysīr*" (al-Suyuti, 2004) (difficulty brings convenience) and "*adh-dhararu yuzāl*" (al-Suyuti, 2004) (harm must be eliminated) are often understood narrowly as granting individual relief (*rukhsah*) for people with disabilities. In fact, these two rules should be understood as a mandate for the state to create an inclusive system.

First, the rule of "*al-masyaqqah tajlib at-taysīr*" should not only be interpreted as an individual dispensation, but as an obligation of the state to provide adequate accessibility and facilities. When people with disabilities face difficulties (masyaqqah) in accessing public facilities, the state is obliged to provide facilities (taysīr) in the form of inclusive infrastructure, not just exempt them from obligations.

Second, the rule of "*adh-dhararu yuzāl*" is often misinterpreted as providing leniency for worship as a solution to physical limitations. For example, it is not allowed to pray Friday prayers due to access difficulties. The new paradigm demands a more substantive understanding: the state must eliminate the source of harm (*dharar*) itself by providing facilities that allow persons with disabilities to carry out their obligations independently. Thus, this transformation of understanding shifts the responsibility from the individual to the state in realizing an inclusive society.

With this approach, fiqh rules are no longer a tool to provide dispensation, but rather a legal basis to realize social justice for people with disabilities through pro-accessibility state policies.

This paradigm transformation in the state's approach to persons with disabilities has a strong epistemological foundation in the construction of Islamic law, especially through three fundamental fiqh rules that are imperative:

First, the rule **تَصَرُّفُ الإِمَامِ عَلَى الرَّعِيَّةِ مَنُوطٌ بِالمَصْلَحَةِ** (al-Suyuti, 2004) (Leaders' policies towards the people must be based on benefits) . This rule is not only normative but also has strict juridical consequences. In the perspective of maqāṣidī, the benefits (maṣlaḥah) in question must be comprehensively understood including: (1) the material dimension in the form of providing accessible infrastructure, (2) the social dimension in the form of the elimination of discrimination, and (3) the participatory dimension in the form of the active involvement of persons with disabilities in policy formulation. Its implementation requires the formulation of affirmative policies that are structural, not just caricative policies.

Second, the rule **الْوَلِيُّ أَحَقُّ بِالضُّعَفَاءِ** (al-Qarafi, 2007) (The government has more right to take care of the weak). This rule contains the concept of *state responsibility* which is special (*khassah*) to vulnerable groups. The government's position as *wālī al-amr* entails the following obligations: (1) protective through anti-discrimination regulations, (2) facilitative through the provision of universal accessibility, and (3) emancipatory through sustainable empowerment programs. In the context of disability, this rule shifts the paradigm from a charity-based approach to a rights-based approach.

Third, the rule **إِعَانَةُ ذَوِي الْحَاجَاتِ مِنْ فُرُوضِ الْكِفَايَاتِ** (al-Nadwi, 1998) (Helping people in need, including *fardhu kifayah*). This rule places the state as the *primary duty bearer* in ensuring the fulfillment of the basic rights of persons with disabilities. The failure of the state to fulfill this obligation falls under the category *of tadyi' al-farā'id* (neglect of shari'i obligations) which has theological and juridical consequences. Its implementation demands: (1) special budget allocation, (2) the establishment of special institutions, and (3) independent oversight mechanisms.

An analysis of these three principles brings to the conclusion that the state's negligence in fulfilling the rights of persons with disabilities is not only a *human rights violation*, but also falls into the following categories: (1) *ta'attul 'an al huqūq* (neglect of rights), (2) *ida'at al-masalih* (neglect of benefits), and (3) *khilaf al-maqasid al-sar'iyyah* (distortion of the purpose of the Shari'a). Therefore, the state is obliged to transform its policies through three pillars

of action: (1) binding legislation, (2) implementation with a comprehensive approach, and (3) continuous evaluation.

CONCLUSION

In conclusion, this study has stated how the principles of fiqh provide theological legitimacy and at the same time offer an operational framework for the state in fulfilling the rights of persons with disabilities. The transformation of the approach from compassion to the recognition of rights requires a policy rearrangement based on three principles: (1) substantive justice (*al-adl*), (2) public benefit (*al-maslahah al-'ammah*), and (3) state responsibility (*al-mas'ūliyyah al-dawliyyah*). The biggest challenge lies in how to transform this *normative* concept into an implementable technical policy, through strengthening regulations, improving bureaucratic capabilities, and supervising based on community participation. The next research is suggested to develop a measurement indicator that combines international human rights standards with maqasid al-shari'ah standards in the evaluation of disability policies.

Based on this analysis, the following policy recommendations are urgent to be implemented immediately, namely: *First*, prioritize the acceleration of the preparation of derivative regulations of Law Number 8 of 2016 concerning Persons with Disabilities to provide strict sanctions to those who do not provide accessibility and work quotas for people with disabilities. *Second*, allocating a special budget in the State Budget/Regional Budget for matters related to disability empowerment such as inclusive infrastructure development, training for disabled workers, and research based on local needs. *Third*, strengthening the institution of the National Commission on Disabilities (KND) which is authorized to carry out broader supervision of government and private agencies. This recommendation can answer the failure of the charitable rukhsah approach and optimize the 'azimah paradigm through structural steps, in accordance with the principles of maqāṣid al-sharī'ah and the standards of the Convention on the Rights of Persons with Disabilities (CRPD). For maximum results, the collaboration of all parties: the government, scholars, and disability organizations is needed to ensure the effective implementation of these recommendations.

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