

Research Article

Establishing an Inclusive Legal Framework for People with Disabilities in Islamic Higher Education Institutions in Indonesia

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Abstract.

People with disabilities often have unequal access to education. Most higher education institutions and universities in Indonesia still have discriminatory practices. The main factors that affect people with disabilities are the lack of infrastructure and limited budget allocation. In Indonesian Islamic higher education institutions, many policies related to the development of education have not considered persons with disabilities. This study used a normative research method which examined legal policies for people with disabilities in Islamic universities in Indonesia. This study is essential to understand the legal policies in Islamic universities for people with disabilities. In addition, this study also provided an analysis of the compatibility between Fiqh related to equality for people with disabilities and legal policies in Islamic universities in Indonesia. This study concluded that most Islamic universities in Indonesia do not have legal policies that support people with disabilities and ensure their equal treatment at the university. For this reason, this study recommended that the ministry, which has the duty and authority in the field of education, establish guidelines and ensure that all universities in Indonesia provide accessibility to persons with disabilities.

Keywords: Equality, Person with Disabilities, Islamic Higher Education

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1. Introduction

Islamic universities in Indonesia have grown and developed since the beginning of the independence of the Republic of Indonesia, with the aim of participating in development. Initially, before Indonesian independence, Universitas Islam Indonesia was founded with a great mission to produce *Ulil Albab* generation [1, p. 4], who directly become the agent of state development.

The level of trust of the Indonesian people to send their children to Islamic universities is increasing. This is driven by the reputation and quality of education in Islamic universities that are not inferior to public universities. [2, pp. 396–397] The existence of

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Islamic universities has mushroomed and is almost easy to find in various regions in Indonesia.

In fact, even though Islamic universities have a good reputation and accreditation[3], they are not paying attention with guarantees for the fulfillment of human rights, especially for persons with disabilities. Universitas Islam Indonesia, for example, even though there is a university regulation related to the fulfillment of the rights of persons with disabilities (Rector Regulation No. 24 of 2001 on Fulfilment of the Rights of People with Disabilities in Universitas Islam Indonesia) but in practice they still get treatment as normal people in general. Moreover, this university regulation is lack in procedural because it was formed without involving the senate and with the aim of fulfilling international accreditation. This practice also occurs in other Islamic universities.

This study discusses 2 (two) main issues: first, how is the reality of legal policies towards equality for persons with disabilities in Islamic universities. Here, we will examine the typology of legal arrangements regarding equality for persons with disabilities in Islamic universities in Indonesia. Second, whether the guarantee of equality for persons with disabilities as regulated in *fiqh* is very appropriate if it is applied as a value base that must be applied in Islamic universities. This second issue is also important to study as a legal basis for Islamic universities that are obliged to pay attention to equality for persons with disabilities.

2. Methods

This research uses normative legal research methods with 2 (two) approaches: conceptual and legislation. A conceptual approach is used to examine the concept of disability in *fiqh*. [5, p. 20] The statutory approach is used to explore the typology of settings in Islamic higher education in Indonesia related to the treatment for people with disabilities.

This study uses secondary data as a source and basic research material, which includes primary, secondary, and tertiary legal materials. All these materials are processed and presented in a qualitative descriptive legal analysis.

3. Results and Discussion

3.1. Typology of Regulations Regarding Equality for Persons with Disabilities in Islamic universities in Indonesia

Every Islamic university in Indonesia has characteristics that generally emphasize the strengthening of Islamic values, both in terms of education, research, and community service. This Islamic college thrives and proliferates in various parts of Indonesia, due to the fact that the majority of the people are Muslim. Nevertheless, this Islamic college has begun to reach out to accept non-Muslim students while still upholding the principles of non-discrimination and freedom of religion. According to data from the Ministry of Religion of the Republic of Indonesia, there are 58 state-funded Islamic universities in Indonesia and 857 private Islamic Universities in Indonesia. In total, there are 915 Islamic higher education institutions in Indonesia.[6] With this large number, Indonesia is possible to become the center of Islamic universities in the world. Given its very rapid development, this number is very significant as a driver of change and development in Indonesia.[7]

Based on the results of observations made by researchers, almost most Islamic universities in Indonesia do not yet have a legal policy that guarantees equality for persons with disabilities. There are at least 2 (two) regulatory typologies related to equality in Islamic universities in Indonesia which can be explained as follows:

1. The first typology: Islamic universities that do not yet have legally binding rules regarding the equality of persons with disabilities.

In this typology, Islamic universities have absolutely no rules with the main reason being impartiality towards persons with disabilities. The mindset built by the institution is to equate people with disabilities with normal students in general.[8, p. 153] As a result, there is no consideration of infrastructure facilities that support the spirit of learning for persons with disabilities. In the planning aspect alone, it does not provide adequate budget to support accessibility for persons with disabilities.

1. The second typology: Islamic universities that have legal rules that guarantee the equality of persons with disabilities, but these rules are only used as a formality.

In this typology, Islamic universities formally have legally binding rules, but in practice they are not implemented or do not get support from every unit in the university and faculty level. The existence of this rule is only intended to fulfill the terms and conditions of accreditation. For example, in the asterisk 3.2.4 FIBAA criteria which require equal

opportunities for persons with disabilities and gender equality.[9, p. 17] Universities with this typology do have infrastructure for people with disabilities, but their educational services cannot reach all types of disabilities. Generally, in terms of facilities, only physical facilities are built that only support the type of disability, such as the blind and physically disabled.

The two typologies illustrate the absurd of reality on the equality of persons with disabilities in Islamic universities. In fact, as a university that upholds Islam, the pattern of its education service must be wide open to include persons with disabilities.

3.2. People Disability in Fiqh Perspective

In essence, fiqh has a purpose as a coach or mentor which provides solutions to problems in practical life, both from an individual and social perspective.[10, pp. 5–7] Fiqh not only provides direction and guidance on how to relate between humans and their God, but fiqh can also solve problems that exist in human life.[11, pp. 5–6]

Solving problem that exist in human life in the context of achieving justice is the responsibility of moslem on behalf of benefiting *ummah* or public interest (*al-maslahatul 'ammah*).[12, p. 13] Recently, various contemporary issues and discussions among moslem scholar concerning justice and the public interest (*al-maslahatul 'ammah*) have concluded the the lack of protection and fulfillment of the rights of persons with disabilities.[11, p. 8]

The reality is that people with disabilities often receive discriminatory treatment, even in general, people consider people with disabilities to be *Wujuduhu Ka'adamihi* (its existence does not exist). Whereas in fiqh, it is possible to have the basic principle of *al-masyaqqat tajlib al-taisir* that essentially to provide convenience in every obstacle faced by persons with disabilities.[5] However, this fiqh rule has not helped much and found sufficient to provide solutions because persons with disabilities are only given facilitations. This actually makes the position of persons with disabilities become helpless and do not have the same opportunities in their rights as human beings. On the other hand, as a whole, fiqh does not regulate matters regarding the government's obligation to meet the needs and protection of persons with disabilities.[13, p. 15]

It should be noted that fiqh has a rule that reads *tashooruf al-imam manuuthun bi al-maslahah*, meaning that the leader's policy on his people must be based on public benefit. However, this rule does not guarantee to encourage leaders to always fulfill

and protect people with disabilities under the internal policies of higher education institutions. Additionally, there is also another formulation of the rules of fiqh “*tashooruf al-imam ’ala al-l’aaqah manuthun bi al-tamkiin wa al-taqwiyah*” that means the policies owned by leaders for persons with disabilities must be based on the principles of empowerment and strengthening.[14]

The formulation of the fiqh rules of *tashooruf al-imam ’ala al-l’aaqah manuthun bi al-tamkiin wa al-taqwiyah* could basically be carried out with the *Qauli Fiqh* approach which is based on books from the mazhab of Shafi’i. With this approach, persons with disabilities cannot be perceived as a form of relief only but can be positioned as subjects who receive empowerment and reinforcement. Dengan Fiqih Qauli maka tidak perlu menggunakan madzhab-madzhab lainnya karena sudah cukup dengan madzhab awal. [15, p. 12] The use of the former concept of fiqh rule will only positioned person with disabilities as the subject of relief and mercy. This will create a stigma that people with disabilities are helpless. However, the later fiqh rule positioned them as the subject of empowerment. Most of higher educations, unfortunately, only deemed people with disabilities as *al-masyaqqat tajlib al-taisir*. [16, pp. 40–45]

Additionally, fiqh Manhaj Syafi’i (the way in belief of Syafi’i)[17] provides different treatment for people with disabilities with empowerment and strengthening actions, which are aimed at: first, creating a stigma from people with disabilities themselves that they are not considered different from other humans and feel that they have the trust of others to be able to act. The second is to stigmatize various higher education institutions on people with disabilities if they can also have rights like other human rights.[5]

It must be also noted that equality for persons with disabilities is in line with the Qur’an Chapter 24 of An-Nur verse 61 which stated that: “There is not upon the blind [any] constraint nor upon the lame constraint nor upon the ill constraint nor upon yourselves when you eat from your [own] houses or the houses of your fathers or the houses of your mothers or the houses of your brothers or the houses of your sisters or the houses of your father’s brothers or the houses of your father’s sisters or the houses of your mother’s brothers or the houses of your mother’s sisters or [from houses] whose keys you possess or [from the house] of your friend. There is no blame upon you whether you eat together or separately. But when you enter houses, give greetings of peace upon each other – a greeting from Allah, blessed and good. Thus does Allah make clear to you the verses [of ordinance] that you may understand.”[18] This quranic basis is in

line with the fiqh rule of *tashooruf al-imam 'ala al-l'aaqah manuthun bi al-tamkiin wa al-taqwiyah*. With this basis, Islam prohibits discrimination, especially in the context of persons with disabilities to avoid being arrogant and feeling that they are far more than anyone else.[16] Moreover, it is important to uphold justice for person with disabilities. Facilities and infrastructure must be developed based on justice and the public interest (*al-mashalahatul ummah*).

The veritable fiqh rule should be embedded in every rule and policy regarding persons with disabilities in Islamic universities. In addition, the formation of these rules and policies must consider the principle of equality and justice for persons with disabilities. Of course, this also aims as a means of motivation for the government as a regulator in making its rules and policies more fair and instilling self-confidence for persons with disabilities themselves.

3.3. Directions and Strategies for Development of Laws Based on Equality of Disabilities in Islamic Universities

The right to education is guaranteed as regulated under Indonesian constitution. For this reason, people with disabilities have the same right to get accessibility in the field of education, especially in Islamic universities, whether private or public. This is also further regulated in article 12 of Law No. 39 of 1999 on Human Rights which is stated that “everyone has the right to protection of his self-development, to obtain an education, to educate himself, and to improve the quality of his life to become responsible, content, and prosperous people, in accordance with his human rights”.

Legal policy tools alone are not sufficient to achieve equal education. The implementation of these policies and building an inclusive and equal learning process for persons with disabilities is urgently needed. The infrastructure that is built and developed must be inclusive to enable persons with disabilities in accessing education services without being discriminated. Moreover, in the Constitution, it is guaranteed that “the state prioritizes the education budget at least twenty percent of the state revenue and expenditure budget as well as from the regional revenue and expenditure budget to meet the need for national education.”[19]. This means that those allocation also must cover the actualization of equal environment for person with disabilities.

The ministry which has duties and authorities related to the administration of higher education in Indonesia is deemed necessary to encourage all universities in Indonesia,

including Islamic universities, to fulfill the guaranteed right to education for persons with disabilities. At least the Ministry has a duty as a regulator and facilitator. As a regulator, the Ministry must develop a legal framework for national education that is inclusive, while as a facilitator, the Ministry plays an important role in being a promoter and supporter of inclusive education policies in universities, not only in state universities but also in private universities.

In Indonesia, Islamic universities are partly under the supervision of the Ministry of Education, and partly under the supervision of the Ministry of Religion. Thus, there needs to be a synergy between the two ministries. This will result the guarantee of equality for persons with disabilities that embodied into the education system in every university.

Parameters of national accreditation have not shown how much attention universities pay to guaranteeing equality of human rights. This needs to be one of indicators of national accreditation rankings. The national accreditation system as regulated in the laws and regulations in Indonesia must begin to build ranking indicators that are not only based on the activities of the *tridharma* (the three pillars) of higher education (research, education, and community services) but also must pay attention to the aspects of indicators of achievement of the implementation of human rights values, especially the guarantee of equality for persons with disabilities.

4. Conclusions

Indonesia has the largest number of Islamic universities in the world. This very large amount is the basic capital in advancing the level of education, especially in Indonesia. From the aspect of guaranteeing the protection of human rights, Islamic universities in Indonesia have not paid much attention to legal aspects related to equality for persons with disabilities. Although there are some universities that already have a legal framework, in general it is still not implemented properly. Their legal policy is positioned as an administrative document to obtain international accreditation. For this reason, it is very important to standardize the indicators of guaranteeing equality for persons with disabilities within the framework of the national education system, especially in terms of technical achievement of national accreditation. In addition, *fiqh* related person with disabilities needs to be used as a reference source in developing inclusive education policies for every manager of Islamic tertiary institutions.

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