

## HOW INCLUSIVE IS AN INCLUSIVE COURT? The Practice of an Islamic Court in Malang, Indonesia

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### ABSTRACT

Ensuring the rights of individuals with disabilities continues to be a major challenge across various sectors in Indonesia. A key concern is safeguarding these rights within the judicial system, which is crucial for access to justice. Previous research has highlighted a range of paradigmatic, policy, and practical obstacles that often prevent individuals with disabilities from achieving fair access to the judiciary. This study investigates these challenges within the context of an Islamic court in Malang Regency, Indonesia. Through observations and interviews with court personnel and individuals with disabilities, it is evident that the Malang Regency Religious Court has made strides toward inclusivity. Efforts have been focused primarily on physical accessibility improvements, such as installing guiding blocks for the visually impaired, designating drop zones and parking spaces for disabled persons, providing ramps to access courtrooms, offering assistive devices, and issuing priority service cards. However, non-physical barriers still impede the development of a fully inclusive Islamic court. These include prevailing disability paradigms, cultural issues, and mental obstacles.

[Pemenuhan hak-hak penyandang disabilitas masih menjadi tantangan besar di berbagai sektor di Indonesia. Salah satu isu krusial adalah perlindungan hak-hak tersebut dalam sistem peradilan, mengingat pentingnya akses terhadap keadilan. Penelitian-penelitian sebelumnya menunjukkan adanya berbagai hambatan paradigmatis, kebijakan, dan praktik yang kerap menghalangi penyandang disabilitas untuk memperoleh akses yang adil terhadap lembaga peradilan. Studi ini mengkaji tantangan tersebut dalam konteks pengadilan agama di Kabupaten Malang, Indonesia. Berdasarkan hasil observasi dan wawancara dengan aparaturnya pengadilan serta penyandang disabilitas, ditemukan bahwa Pengadilan Agama Kabupaten Malang telah melakukan sejumlah upaya menuju inklusivitas. Upaya tersebut terutama difokuskan pada peningkatan aksesibilitas fisik, seperti pemasangan guiding block bagi penyandang disabilitas netra, penyediaan drop zone dan area parkir khusus bagi penyandang disabilitas, penyediaan ramp untuk akses menuju ruang sidang, pemberian alat bantu, serta penerbitan kartu layanan prioritas. Namun demikian, hambatan nonfisik masih menghalangi terwujudnya pengadilan agama yang sepenuhnya inklusif. Hambatan tersebut meliputi paradigma disabilitas yang masih berkembang, faktor budaya, serta hambatan mental atau sikap aparaturnya dan lingkungan peradilan.]

### KEYWORDS

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## Introduction

In 2020, the Indonesian Supreme Court (*Mahkamah Agung*) initiated pilot projects to implement inclusive judicial practices in several courts. Five courts were chosen within the religious (Islamic) court system: Malang Regency Religious Court, Semarang Religious Court, Bandung Religious Court, Makassar Religious Court, and Medan Religious Court. The pilot project policy is part of the Supreme Court's ongoing efforts to enhance access to justice for vulnerable groups, including people with disabilities in Indonesia. In 2017, the Supreme Court issued Regulation Number 3, which provides guidelines for adjudicating cases involving women in conflict with the law. Additionally, concerning the rights of people with disabilities, Decree Number 1692/DJU/SK/PS.00/12/2020 was issued, outlining guidelines for providing services to people with disabilities in High Courts and District Courts, requiring courts to offer reasonable accommodations for individuals with disabilities.

Access to justice is a fundamental human right and essential to ensuring equality and fairness within any legal system. Access to justice involves the ability of individuals to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards. This issue has garnered increased attention following the adoption of the U.N. Convention on the Rights of Persons with Disabilities (CRPD), which emphasizes the elimination of barriers preventing equal participation in the justice system. While there is extensive research on the barriers within secular courts, there is a significant gap concerning access to justice for persons with disabilities within religious or Islamic court settings.

The literature frequently discusses physical and technological barriers that impede access to justice for persons with disabilities. Edwards (2013) explores the geographical and physical barriers that render courthouses inaccessible to disabled individuals, particularly crime victims. This study suggests integrating geographical insights into legal reforms can address these socio-spatial barriers.<sup>1</sup>

<sup>1</sup> Claire Edwards, "Spacing Access to Justice: Geographical Perspectives on Disabled People's Interactions with the Criminal Justice System as Victims of Crime," *Area* 45, no. 3 (2013): 307–13.

Research by Wood (1990) and White et al. (2021) explore the physical and communicative barriers within court systems. Wood (1990) emphasizes the importance of barrier-free courthouses to accommodate individuals with physical disabilities, citing the Americans with Disabilities Act (ADA) as a crucial legislative measure.<sup>2</sup> Holness and Rule (2014) examine the barriers to advocacy and litigation, identifying physical and social obstacles that prevent disabled individuals from accessing legal services. The study stresses the importance of raising legal awareness among persons with disabilities to improve their access to justice.<sup>3</sup>

Inclusive legal reforms and the use of technology are proposed as solutions to improve access to justice for persons with disabilities. Blanck et al. (2004) emphasize the importance of accessible courtroom technology, including assistive listening devices and real-time transcription services, to facilitate participation by individuals with disabilities. These technological solutions are vital for ensuring compliance with the Americans with Disabilities Act (ADA).<sup>4</sup> White et al. (2021) discuss the necessity of court accommodations for individuals with severe communication disabilities, advocating for transformative equality and specific support to facilitate their participation in legal processes.<sup>5</sup> Cress et al. (2006) explore the concept of mental health courts as a specialized judicial approach to accommodate individuals with mental disabilities. These courts aim to provide a more supportive and accessible environment, aligning with the ADA's objectives.<sup>6</sup>

Scholars have proposed various recommendations to improve access to justice for persons with disabilities within non-religious courts. McNamara (2013) suggests using the CRPD as a blueprint for criminal justice reform in Ireland, emphasizing the removal of societal obstacles to ensure equal participation of persons with disabilities.<sup>7</sup> Similarly, Ortoleva (2010) underscores the significance of Article 13 of the CRPD, which outlines the right to access justice and the need for legal reforms and professional training to eliminate barriers.<sup>8</sup> Roomaney (2017) further illustrates the international legal frameworks that safeguard the rights of persons with disabilities. She discusses the explicit references to access to justice in various international conventions, particularly the Universal Declaration of

<sup>2</sup> Erica F. Wood, "Toward a Barrier-Free Courthouse: Equal Access to Justice for Persons with Physical Disabilities," *Clearinghouse Review* 24 (1991 1990): 557.

<sup>3</sup> W. Holness and S. Rule, "Barriers to Advocacy and Litigation in the Equality Courts for Persons with Disabilities," *Potchefstroom Electronic Law Journal* 17, no. 5 (2014): 1907-63.

<sup>4</sup> Peter Blanck et al., "Disability Civil Rights Law and Policy: Accessible Courtroom Technology," *William & Mary Bill of Rights Journal* 12, no. 3 (2004): 825.

<sup>5</sup> Robyn White et al., "Court Accommodations for Persons with Severe Communication Disabilities: A Legal Scoping Review," *Psychology, Public Policy, and Law* (US) 27, no. 3 (2021): 399-420.

<sup>6</sup> Ronda Cress et al., "Mental Health Courts and Title II of the ADA: Accessibility to State Court Systems for Individuals with Mental Disabilities and the Need for Diversion," *Saint Louis University Public Law Review* 25, no. 2 (2006), <https://scholarship.law.slu.edu/plr/vol25/iss2/6>.

<sup>7</sup> Donna McNamara, "Access to Justice for Persons with Disabilities as Suspects of Crime," in *Vulnerability, the Accused, and the Criminal Justice System*, 1st ed., by Roxanna Dehaghani et al. (Routledge, 2023).

<sup>8</sup> Stephanie Ortoleva, "Inaccessible Justice: Human Rights, Persons With Disabilities And The Legal System," *ILSA Journal of International & Comparative Law* 17, no. 2 (2010): 281-320.

Human Rights (UDHR) and The International Covenant on Civil and Political Rights (ICCPR).<sup>9</sup> Fitzsimons (2016) highlights the need for adapting the criminal justice system to accommodate individuals with disabilities, drawing on international perspectives from Canada, Australia, and the U.K.<sup>10</sup> Nkhata examines the progress and challenges in Malawi, emphasizing the importance of reasonable accommodations within the criminal justice system.<sup>11</sup> The necessity of advocacy and legal capacity for persons with disabilities is another prominent theme. Flynn (2015) provides an extensive analysis of the roles occupied by disabled individuals within the justice system, from witnesses and defendants to legal professionals. The study highlights their subtle and overt barriers and calls for more inclusive legal practices and better educational resources.<sup>12</sup>

Comparative studies provide valuable insights into how different jurisdictions address accessibility challenges in their justice systems. The Irish context, explored by Edwards et al., reveals the barriers that people with disabilities face as victims of crime and the lack of legislative tools to protect their rights.<sup>13</sup> Panggabean's study on Indonesia's general court system highlights significant gaps in implementing disability rights due to financial constraints and the lack of specific guidelines for adjudicating disability-related cases.<sup>14</sup> Riungu (2019) and Fitzsimons (2016) offer perspectives from Kenya and the United States, respectively. Riungu contextualizes access to human rights and justice for people with disabilities in Nairobi, emphasizing the broad concept of justice accessibility and the role of government in ensuring human rights.<sup>15</sup> Fitzsimons discusses the systemic barriers within the U.S. criminal justice system despite the protections of the Americans with Disabilities Act (ADA), highlighting the need for systemic change to ensure fair treatment.<sup>16</sup> There is also research by Nkhata (2020) that examines the progress and challenges in Malawi, emphasizing the importance of

<sup>9</sup> Ayesha Roomaney, *Assessing the Right to Physical Access to Justice, for Persons with Disabilities*, University of the Western Cape, 2017, <https://etd.uwc.ac.za:443/xmlui/handle/11394/5981>.

<sup>10</sup> Nancy M. Fitzsimons, *Justice for Crime Victims with Disabilities in the Criminal Justice System: An Examination of Barriers and Impetus for Change*, 2016.

<sup>11</sup> Mwiza Jo Nkhata, "Access to Justice for Persons with Disabilities in Malawi: Exploring Challenges and Possibilities in the Criminal Justice System," *African Disability Rights Yearbook* 8 (2020).

<sup>12</sup> Eilionóir Flynn, "Making Human Rights Meaningful for People with Disabilities: Advocacy, Access to Justice and Equality before the Law," *The International Journal of Human Rights* 17, no. 4 (2013): 491–510.

<sup>13</sup> Claire Edwards et al., *Access to Justice for People with Disabilities as Victims of Crime in Ireland* (School of Applied Social Studies and Centre for Criminal Justice and Human Rights, Faculty of Law University College Cork, 2012), 197, <https://www.ucc.ie/en/media/academic/law/ccjhr/publicationsseptember2018/AccessToJusticeforPeopleWithDisabilitiesasVictimsofCrimeinIreland2012.pdf>.

<sup>14</sup> Siska Naomi Panggabean, "Access of People with Disabilities to Justice in Indonesia General Court System," *Indonesian Journal of Disability Studies* 6, no. 1 (2019): 1.

<sup>15</sup> Joseph G. Riungu, "Factors Affecting Access to Justice and Human Rights for Persons Living with Disabilities in Kenya" (Thesis, University of Nairobi, 2019), <http://erepository.uonbi.ac.ke/handle/11295/109461>.

<sup>16</sup> Fitzsimons, *Justice for Crime Victims with Disabilities in the Criminal Justice System: An Examination of Barriers and Impetus for Change*.

reasonable accommodations within the criminal justice system.<sup>17</sup> In Australia, the Australian Human Rights Commission (2014) reports on the widespread issues within the Australian criminal justice system -- where disabled individuals often do not receive necessary support and accommodations. The study also emphasizes the systemic nature of these barriers, affecting various participants in the justice system.<sup>18</sup>

While the existing literature provides extensive insights into access to justice for persons with disabilities, it predominantly focuses on common-law countries and secular legal systems. This leaves a significant gap in understanding how Islamic courts, particularly in Muslim-majority countries like Indonesia, address these issues. The unique legal and cultural context of Islamic courts necessitates a focused examination to identify specific barriers and opportunities for enhancing access to justice for persons with disabilities. Indonesia, the world's largest Muslim-majority country, offers a unique context for examining access to justice within Islamic courts. The dual legal system, encompassing both general and Islamic courts, presents distinct challenges and opportunities. Islamic courts in Indonesia handle various personal and family law matters, which are vital for many individuals, including those with disabilities. The integration of disability rights within these courts remains unexplored mainly, raising questions about the adequacy of legal protections and accommodations for persons with disabilities.

Research specifically addressing the situation within Islamic courts in Indonesia is scarce. A notable exception is a thesis by Faradia, who conducted the study at the Malang Regency Religious Court. She assessed the adequacy of the provided accommodations.<sup>19</sup> However, this thesis has apparent limitations. It focuses mainly on policy and procedural evaluations, neglecting the underlying paradigmatic issues that often lead to discrimination against individuals with disabilities. Second, it did not include data from crucial sources: judges and individuals with disabilities. Like Faradia's, however, the case selected for this study is also the Malang Regency Religious Court. As mentioned earlier, this court is one of the pilot projects for creating inclusive courts within Indonesia's religious court system. In 2021, the Malang Regency Religious Court was independently assessed by a team from Universitas Brawijaya Malang, which confirmed that the court had successfully become a model in providing inclusive judicial services for people with disabilities.<sup>20</sup> The assessment highlighted that the court's policies, infrastructure, and processes effectively ensure equal access to justice, especially

<sup>17</sup> Nkhata, "Access to Justice for Persons with Disabilities in Malawi."

<sup>18</sup> Australian Human Rights Commission, *Equal Before the Law: Towards Disability Justice Strategies* (Australia, 2014), <https://humanrights.gov.au/our-work/disability-rights/publications/equal-law>.

<sup>19</sup> Dianah Faradia, "Penyediaan Akomodasi Yang Layak Bagi Penyandang Disabilitas: Studi Implementasi PP. No. 39 Tahun 2020 Di Pengadilan Agama Kabupaten Malang" (UIN Maulana Malik Ibrahim, 2023).

<sup>20</sup> Prasetya Online, "Dosen Berkarya Ulas Layanan Inklusif Di Pengadilan Agama Kabupaten Malang," *Prasetya UB*, November 12, 2021, <https://prasetya.ub.ac.id/dosen-berkarya-ulas-layanan-inklusif-di-pengadilan-agama-kabupaten-malang/>.

for individuals with disabilities. Given these findings, it would be precious to observe firsthand how inclusive this court truly is for those with disabilities.

### ***Badilag and Inclusive Religious Courts***

Before proceeding further, it is crucial to clarify that the term *Pengadilan Agama* (Religious Court) in Indonesia primarily refers to "Islamic" Courts.<sup>21</sup> This is because the Religious Court has limited jurisdiction, covering only civil law issues of Muslims (such as marriage, zakat, *infaq*, and *sadaqah*) and economic matters classified under Sharia law.<sup>22</sup> Nevertheless, this article will retain the literal translation of "religious court" to anticipate potential future changes where the jurisdiction of *Pengadilan Agama* may expand beyond its current Islamic legal scope. The administration of Religious Courts in Indonesia is under the Directorate General of Religious Courts (*Badilag*) of the Indonesian Supreme Court.

The establishment of inclusive religious courts is a primary focus of the *Badilag* in its endeavor to provide equitable legal services for all members of society, including individuals with disabilities. *Badilag's* commitment is evidenced by implementing various policies and regulations to ensure that individuals with disabilities receive equal access to services within the religious court system. A significant policy in this regard is the Decree of the Director-General of Religious Courts of the Supreme Court of the Republic of Indonesia, Number 206/DJA/SK/I/2021. This policy is a fundamental guideline for religious courts in delivering inclusive services for individuals with disabilities.<sup>23</sup>

During the COVID-19 pandemic, the Supreme Court of Indonesia maintained communication and institutional cooperation with various partners, including AIPJ, LPDP, DSN-MUI, the Vice President's Secretariat, and academic institutions. In conjunction with the launch of the Online Integrated Service (*Pelayanan Terpadu Satu Pintu*), the Judicial Information Service Video was introduced, accessible to individuals with disabilities through animated videos and sign language interpretation. Additionally, books and brochures on legal procedures in Braille were launched to assist individuals with visual impairments.<sup>24</sup> These initiatives demonstrate the commitment of the Religious Courts to creating an inclusive and disability-friendly judicial environment. These resources have been distributed to the Religious Court of Malang Regency and the Religious Court of Makassar, and the informational video was published on the *Badilag* website on November 24, 2020.

<sup>21</sup> Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (University of California Press, 1972).

<sup>22</sup> Undang-Undang Nomor 3 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama, No. 3 (2006).

<sup>23</sup> PA Kab Malang, "Peresmian Layanan Disabilitas Oleh Dirjen Badilag MA RI," Mahkamah Agung Republik Indonesia Pengadilan Agama Kabupaten Malang, accessed June 4, 2024, <https://www.pa-malangkab.go.id/Peresmian-Layanan-Disabilitas-oleh-Dirjen-Badilag-MA-RI>.

<sup>24</sup> PA Kab Malang, "Launching Inovasi Layanan Disabilitas PA Kab Malang Oleh Dirjen Badilag," Mahkamah Agung Republik Indonesia Pengadilan Agama Kabupaten Malang, accessed June 4, 2024, <https://pa-malangkab.go.id/Launching-Inovasi-Layanan-Disabilitas-PA-Kab-Malang-oleh-Dirjen-Badilag>.

Moreover, *Badilag* has inaugurated Disability Services in various Religious Courts across Indonesia. For instance, in 2021, these services were launched at the Religious Court of Malang Regency. This initiative is anticipated to provide significant benefits to individuals with disabilities and other vulnerable groups, enabling them to access justice on an equal footing. Following the Director-General of Religious Courts' Decree Number 206/DJA/SK/I/2021, which sets service standards for individuals with disabilities, the Religious Court of Praya has provided various specialized facilities, including dedicated pathways, wheelchairs, hearing aids, specialized guidebooks, and accessible restrooms. In addition to these facilities, the Religious Court of Praya offers priority services to individuals with disabilities during the pre-trial process, such as assisting in fitting hearing aids. These measures not only enhance accessibility but also improve the overall experience for individuals with disabilities during legal proceedings.

Furthermore, *Badilag* organizes Technical Guidance sessions (*bimtek*) in various regions, such as at the High Religious Court (PTA) of Semarang,<sup>25</sup> Palembang,<sup>26</sup> and Makassar.<sup>27</sup> These sessions involve representatives from several regional religious courts, including judges, clerks, Integrated Service Center (PTSP) officers, and security personnel. These events exemplify *Badilag*'s commitment to creating a responsive judiciary that delivers justice and legal protection for individuals with disabilities, ensures equal rights and treatment before the law, and provides protection from coercion, violence, abuse, and discrimination.

In its efforts to create an inclusive judiciary, *Badilag* also monitors the facilities and infrastructure of the courts to ensure that they are adequate and effectively usable by individuals with disabilities. For instance, at the Malang City Religious Court, an evaluation was conducted on the height of ramps to ensure optimal accessibility for wheelchair users.<sup>28</sup> Additionally, efforts to enhance court

<sup>25</sup> Ridwan Anwar, "Wujudkan Percepatan Pengadilan Inklusif, Direktorat Pembinaan Administrasi Selenggarakan Bimbingan Teknis Pelayanan Penyandang Disabilitas Se-Wilayah PTA Semarang - Direktorat Jenderal Badan Peradilan Agama," Mahkamah Agung Republik Indonesia Direktorat Jenderal Badan Peradilan Agama, December 11, 2021, <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/wujudkan-percepatan-pengadilan-inklusif-direktorat-pembinaan-administrasi-selenggarakan-bimbingan-teknis-pelayanan-penyandang-disabilitas-se-wilayah-pta-semarang>.

<sup>26</sup> Admin Badilag, "Direktorat Pembinaan Administrasi Peradilan Agama Melaksanakan Bimtek Layanan Bagi Penyandang Disabilitas Sewilayah PTA Palembang - Direktorat Jenderal Badan Peradilan Agama," Mahkamah Agung Republik Indonesia Direktorat Jenderal Badan Peradilan Agama, May 22, 2024, <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/direktorat-pembinaan-administrasi-peradilan-agama-melaksanakan-bimtek-layanan-bagi-penyandang-disabilitas-sewilayah-pta-palembang>.

<sup>27</sup> "Ciptakan Pengadilan Inklusif, Direktorat Jenderal Badan Peradilan Agama Gelar Bimbingan Teknis Layanan Bagi Penyandang Disabilitas," Pengadilan Agama Sungguminasa, September 10, 2022, [https://pa-sungguminasa.go.id/index.php?option=com\\_content&view=article&id=464:ciptakan-pengadilan-inklusif-direktorat-jenderal-badan-peradilan-agama-gelar-bimbingan-teknis-layanan-bagi-penyandang-disabilitas&catid=115&Itemid=545](https://pa-sungguminasa.go.id/index.php?option=com_content&view=article&id=464:ciptakan-pengadilan-inklusif-direktorat-jenderal-badan-peradilan-agama-gelar-bimbingan-teknis-layanan-bagi-penyandang-disabilitas&catid=115&Itemid=545).

<sup>28</sup> Ridwan Anwar, "Dorong Peradilan Inklusif, Ditjen Badilag Finalisasi Rancangan Standar Layanan Disabilitas Di Pengadilan Agama - Direktorat Jenderal Badan Peradilan Agama," August 3, 2022,

inclusivity are pursued through international cooperation. In 2019, *Badilag* visited the Family Court of Australia, renowned for its implementation of inclusive court concepts, influential judicial execution system, and well-established electronic court system. This visit aimed to learn from and adopt the best practices of courts that have successfully implemented inclusive systems and apply these practices within the Indonesian context.<sup>29</sup>

### Obstacles and challenges

Despite the Directorate General of Religious Courts (*Badilag*) taking significant steps towards fostering an inclusive judiciary for individuals with disabilities, numerous substantial challenges and obstacles persist. Moreover, these initiatives remain in the preliminary stages, with the current efforts being limited to the "pilot project" phase. From *Badilag*'s perspective, the following challenges and obstacles must be recognized and addressed to establish an inclusive religious court genuinely:

#### 1. Physical Infrastructure and Accessibility

While certain courts, such as the Praya Religious Court, the Malang Regency Religious Court, and some others, have established specialized facilities for individuals with disabilities, numerous other courts remain deficient in this regard. This disparity highlights the difficulties in uniformly providing inclusive facilities across all religious courts in Indonesia. These challenges may stem from budgetary limitations, varying priorities, or insufficient awareness of the importance of such facilities. Additionally, existing facilities frequently suffer from maintenance issues. Without adequate maintenance, resources such as wheelchair ramps, accessible toilets, and hearing aids can become ineffective. Addressing this issue necessitates a sustained commitment from the courts to ensure that facilities are consistently in good condition and ready for use.

#### 2. Human Resources

Although *Badilag* has implemented technical guidance to enhance services for individuals with disabilities, this training has not yet reached all court officers across various regions. Consequently, not all officers have been able to participate in this training, resulting in disparities in skills and awareness. This can adversely affect the quality of services provided to individuals with disabilities. In addition to technical training, it is crucial to increase awareness and sensitivity regarding the needs of individuals with disabilities among court staff. Without a profound

<https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/dorong-peradilan-inklusif-ditjen-badilag-finalisasi-rancangan-standar-layanan-disabilitas-di-pengadilan-agama>.

<sup>29</sup> Abdul Rahman, "Jajaki Kerjasama Tentang Pengadilan Inklusif (Disabilitas), Perlindungan Hak Perempuan Dan Anak Dan Pengadilan Elektronik, Ditjen Badilag Kunjungi Family Court of Australia - Direktorat Jenderal Badan Peradilan Agama," December 10, 2019, <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/jajaki-kerjasama-tentang-pengadilan-inklusif-disabilitas-perlindungan-hak-perempuan-dan-anak-dan-pengadilan-elektronik-ditjen-badilag-kunjungi-family-court-of-australia>.



understanding, efforts to provide inclusive services may be impeded by a lack of empathy or errors in handling cases involving individuals with disabilities.

Moreover, the limited availability of human resources poses a challenge. Courts require trained staff and an adequate number of officers to serve individuals with disabilities effectively. A shortage of staff or officers with specialized skills in managing cases involving individuals with disabilities can obstruct efforts to establish an inclusive judiciary.<sup>30</sup>

### *3. Coordination and Cooperation Between Institutions*

Achieving an inclusive judiciary necessitates effective coordination between Badilag and other institutions, including government agencies addressing disability issues, non-governmental organizations (NGOs), and disability communities. Ineffective coordination can hinder collaborative efforts to provide integrated and comprehensive services for individuals with disabilities. Although Badilag has collaborated with the Family Court of Australia to learn best practices, implementing this cooperation in Indonesia may encounter adaptation challenges. The differing legal systems and cultural contexts between the two countries require careful adjustments for these best practices to be effectively adopted in Indonesia.

### *4. Budget*

One of the primary obstacles to building inclusive religious courts in Indonesia is the limited and inflexible budget allocation. Religious courts receive their operational funds through a centralized system controlled by the Supreme Court and the Ministry of Finance. These funds are often not earmarked for disability-related initiatives, and court administrators have little discretion to use them for accessibility upgrades or staff training unless such programs are already included in national priorities, such as pilot projects. As a result, only a few selected courts—such as the Malang and Praya Religious Courts—have been able to implement meaningful inclusion measures, often through temporary programs or local innovations. In contrast, many other courts lack the resources to install even basic facilities like ramps or accessible toilets.

Even when facilities are provided, the absence of maintenance budgets often leads to their deterioration. Hearing aids, Braille materials, or accessibility signage may quickly become unusable if not regularly maintained. In short, budget constraints are not only about the amount of funding, but also about structural rigidity and the absence of disability inclusion in core planning. Without long-term, dedicated funding streams, inclusive reforms will remain symbolic and limited in scope.

<sup>30</sup> Interviews with judges and clerks at the Malang Regency District Court, June 12-14, 2024.

## The Religious Court of Malang as an Inclusive Court

The *Pengadilan Agama Kabupaten Malang* (Malang-Regency Religious Court) was established based on the Decree of the President of the Republic of Indonesia Number 85 of 1996 and was inaugurated on June 28, 1997. The courthouse was located at Jl. Panji 202 Kepanjen-Malang, with its jurisdiction covering Malang Regency and Batu City. Initially, this court was classified as Class II, but it was upgraded to Class 1B on September 17, 2008. In 2009, the court received a budget allocation for relocating its new office building on Jalan Raya Mojokari. The new building was completed on November 7, 2014, and began to be occupied on August 18, 2015. In November 2015, the court won First Place and Favorite Champion in the 2015 Judicial Public Service Innovation Competition. In 2017, its status was upgraded to Class IA based on the Decree of the Supreme Court of the Republic of Indonesia. The Malang Regency Religious Court also achieved an A (Excellent) rating in the Quality Assurance Accreditation Certification on November 23, 2017.<sup>31</sup>

Given its class status and track record, the Malang Regency Religious Court has been rightfully chosen as one of the pilot projects for implementing inclusive court. The Disability Services of the District Court of Malang were inaugurated on September 29, 2021. The virtual inauguration ceremony coincided with a National Webinar on the Socialization of Independent Lawsuits and E-Court. The Director General of Badilag officially launched this innovation by presenting a video showcasing the disability facilities and infrastructure available at the Malang Regency Religious Court, such as guiding blocks, disability-friendly stops, counters, and specialized restrooms, as well as equipment like hearing aids and wheelchairs. Malang Regency Religious Court also introduced an independent reading room for the visually impaired in Braille, a Drive-Thru Service for court document retrieval, sound sensors, and an ATR (audio-to-text recording) application to facilitate court proceedings.<sup>32</sup>

### 1. Physical Accessibility

The most immediately observable characteristic of an "inclusive court" is its physical accessibility. Upon entering the premises of Malang Regency Religious Court, visitors are greeted by an expansive courtyard paved with green blocks, prominently featuring a circular inscription over 6 meters in diameter that states: *Pengadilan Inklusif, Ramah Difabel* (Inclusive Court, Disability-Friendly). A yellow guiding block bisects the green courtyard, leading directly to the court's entrance. Additionally, a sign in the garden adjacent to the entrance of the court building

<sup>31</sup> PA Kab Malang, "Sejarah Pengadilan Agama Kabupaten Malang," Mahkamah Agung Republik Indonesia Pengadilan Agama Kabupaten Malang, August 20, 2017, <https://www.pa-malangkab.go.id/pages/sejarah>.

<sup>32</sup> PA Kab Malang, "Peresmian Layanan Disabilitas Oleh Dirjen Badilag MA RI."

proclaims: *Pengadilan Inklusif, Sejuta Inovasi, Bertabur Prestasi* (Inclusive Court, A Million Innovations, Abounding in Achievements.)

There are several accessibility indexes and standards designed to evaluate whether a public building is friendly to persons with disabilities, ensuring that buildings are accessible, usable, and inclusive for everyone. Notable examples include the Americans with Disabilities Act (ADA) Standards for Accessible Design in the United States, which covers a wide range of aspects and uses the ADA Checklist for Existing Facilities as an evaluation tool;<sup>33</sup> Barrier-Free Accessibility (BFA) Standards, such as Canada's Barrier-Free Design and the U.K.'s Building Regulations Part M, addressing ramps, door widths, and accessible restrooms; and Universal Design (U.D.) principles, which advocate for design usable by all without adaptation. Each of these standards or indexes may have specific checklists, guidelines, or evaluation tools that can be used to assess the accessibility of a public building. They typically cover aspects such as:

- Parking: Designated accessible parking spaces.
- Entrances and Exits: Accessible routes, ramps, automatic doors.
- Internal Circulation: Wide corridors, elevators, and handrails.
- Facilities: Accessible restrooms, signage, tactile, and Braille features.
- Emergency Exits: Evacuation routes and procedures for people with disabilities.

Before being officially designated as an inclusive court in September 2021, the Malang Regency Religious Court engaged in extensive preparations to enhance the accessibility of its building. These preparations involved addressing various aspects to ensure that the court meets those international accessibility standards, thereby creating a more inclusive environment for all visitors.<sup>34</sup> Some of the notable improvements made include the provision of an accessible stop specifically designed to accommodate individuals with disabilities. Dedicated parking spaces have also been allocated to people with disabilities, making accessing the court easier.

To further assist the visually impaired, guiding blocks have been installed throughout the premises, allowing for safer and more independent navigation. The court has also constructed ramps at all entrances and exits, ensuring that individuals using wheelchairs or those with mobility challenges can quickly enter and exit the building. Directional signs and Braille information boards have also been provided to assist the visually impaired who require services at the religious court. A self-service area equipped with an accessible computer is available for those who need it. Accessible restrooms have been provided and equipped with the necessary facilities to ensure comfort and usability for individuals with disabilities.

<sup>33</sup> "ADA Checklists for Existing Facilities," accessed September 9, 2024, <https://www.adachecklist.org/>.

<sup>34</sup> Badawi Asyari, "Accessibility Development at the Malang Regency District Court," June 16, 2024.

Finally, inside the court, waiting areas have been redesigned to be more accommodating and comfortable for people with disabilities, providing ample space and appropriate seating.<sup>35</sup>

Based on the data presented, it can be concluded that the Malang Regency Religious Court has effectively established a disability-friendly environment through its physical infrastructure. These comprehensive enhancements have significantly improved the court's accessibility, promoting inclusivity and equal access for all individuals. Various physical barriers in the court, identified by previous studies in other countries, have generally been well addressed at the Malang Regency Religious Court. Wood (1990) emphasized the need for barrier-free courthouses to accommodate individuals with physical disabilities, which has been successfully implemented at the Malang Regency Religious Court.

## *2. Services for Persons with Disabilities*

As underscored by prior research, including the works of McNamara (2013) and Ortoleva (2010), it is imperative to consider not only the physical accessibility of a facility but also the professionalism and social attitudes of its staff towards individuals with disabilities. In many cases, a facility may be physically accessible, yet the service procedures, available amenities, and attitudes of the personnel may fall short of being supportive or welcoming to those with disabilities. In recognition, the Malang Regency Religious Court has implemented comprehensive measures to address these non-physical dimensions of accessibility, thereby fostering a more inclusive and supportive environment for all users.

First, the court has established a set of Standard Operating Procedures (SOPs) tailored to assist staff in delivering appropriate and respectful services to individuals with disabilities seeking justice. These SOPs provide detailed instructions and protocols to ensure that the unique needs of persons with disabilities are addressed effectively and with dignity. In line with these procedures, the Malang Regency District Court has introduced an "early detection" form for identifying individuals with disabilities.<sup>36</sup> This form allows the court to promptly recognize and respond to the needs of these individuals, ensuring they receive the necessary accommodations and support from the outset following the established SOPs.

The Malang Regency Religious Court has also introduced "*Layanan Prima*" (excellent services)<sup>37</sup> specifically for persons with disabilities, as well as

<sup>35</sup> Field observation at Malang Regency Religious Court, 14-16 June 2024

<sup>36</sup> Admin PA Kabupaten Malang, "Deteksi Dini Penyandang Disabilitas Pengadilan Agama Kabupaten Malang," Mahkamah Agung Republik Indonesia Pengadilan Agama Kabupaten Malang, September 28, 2022, <https://www.pa-malangkab.go.id/Deteksi-Dini-Penyandang-Disabilitas-Pengadilan-Agama-Kabupaten-Malang>.

<sup>37</sup> Admin PA Kabupaten Malang, "Pelayanan Prima Bagi Penyandang Disabilitas," Mahkamah Agung Republik Indonesia Pengadilan Agama Kabupaten Malang, July 14, 2021, <https://www.pa-malangkab.go.id/Pelayanan-Prima-Bagi-Penyandang-Disabilitas>.

"*Pelayanan Prioritas*" (priority services) for vulnerable groups.<sup>38</sup> These priority services allow four vulnerable groups—elderly individuals, people with disabilities, pregnant women, and nursing mothers—to bypass the queue. Visitors arriving at the Malang Regency Religious Court are identified to determine if they belong to any of these groups and are eligible for priority service. Once identified, they receive a special badge and are directed to a dedicated counter. At this special counter, they do not need to wait in line or visit other counters; they can stay at the priority counter to be served.

In addition, the court has focused on cultivating a disability-friendly culture among its staff. It involves providing specialized training programs to sensitize and educate employees about the challenges faced by persons with disabilities. Through these training sessions, staff members learn how to interact courteously and effectively with individuals who have various disabilities, ensuring that their conduct is always supportive and inclusive. The goal is to prepare employees to comply with legal standards and be genuinely empathetic and helpful in their interactions.<sup>39</sup>

To further enhance accessibility, the court has also invested in necessary mobility and accessibility aids. This includes the provision of wheelchairs, crutches, and Canadian walkers to assist individuals with mobility impairments in navigating the court premises and participating in legal proceedings. Additionally, the Malang Regency Religious Court has ensured that hearing aids are available for those who require auditory assistance. By making these tools readily available, the court ensures that individuals with disabilities can engage with the judicial process as independently and comfortably as possible.<sup>40</sup>

One of the rooms at the Malang Regency Religious Court has been equipped with various assistive and communication technologies to make court proceedings more accessible. For instance, the main courtroom is outfitted with assistive technologies that aid individuals with disabilities. Upon entering the room, a sensor audibly welcomes visitors, allowing those who are visually impaired to know where they are immediately. Additionally, the room features an ATR (audio-to-text recorder) to assist hard-of-hearing individuals in following the proceedings. The room can also host hybrid hearings, accommodating parties out of town who cannot attend in person.<sup>41</sup>

<sup>38</sup> Admin, "Label Dan Kartu Pelayanan Prioritas Bagi Kelompok Rentan Di Pengadilan Agama Kabupaten Malang," October 21, 2022, <https://pa-malangkab.go.id/Label-dan-Kartu-Pelayanan-Prioritas-Bagi-Kelompok-Rentan-Di-Pengadilan-Agama-Kabupaten-Malang>.

<sup>39</sup> Khairun Nasta'in, *Bimbingan Teknis Tim PSLD UB Untuk Meningkatkan Layanan Bagi Penyandang Disabilitas Di Pengadilan Agama (PA) Kabupaten Malang - PLD UB*, November 30, 2021, <https://pld.ub.ac.id/en/bimbingan-teknis-tim-psld-ub-bagi-layanan-bagi-penyandang-disabilitas-di-pengadilan-agama-pa-kabupaten-malang/>.

<sup>40</sup> Field observation at Malang Regency Religious Court, 14-16 June 2024

<sup>41</sup> Field observation at Malang Regency Religious Court, 14-16 June 2024

### *3. Rulings Related to Persons with Disabilities in Malang Regency Religious Court*

While the Malang Regency Religious Court has demonstrated visible efforts and concrete steps toward becoming an inclusive and disability-friendly institution, pursuing inclusive justice for people with disabilities necessitates more than these visible improvements. It requires a deeper commitment and a comprehensive understanding of the unique physical and social challenges<sup>42</sup> disabled individuals face within the judicial system. My previous research, which involved an extensive examination of court decision documents from religious courts across Indonesia, identified several critical issues concerning the treatment of people with disabilities. It was uncovered at least four areas that influence how these individuals are perceived and treated within the context of legal proceedings in religious courts:

1. **Unauthorized Definition:** Legally, a person's disability must be determined by an expert, such as a doctor or psychologist. However, in practice, documents from various religious courts show that disability assessments are often conducted by unauthorized individuals, such as village leaders or school principals, rather than medical professionals.
2. **Disabilities as Inabilities:** In disability-related cases within religious courts, disabilities are frequently viewed as incapacities, a perspective rooted in historical and medical model frameworks. This view links physical impairments to an inability to perform "normal" tasks by societal standards.
3. **Marriage and Divorce:** In Indonesia, marriage is intended to create joyful and enduring families. However, disabilities complicate this ideal. Guardians sometimes refuse to approve marriages if the groom has a disability. Additionally, disabilities often lead to marital breakdowns, with spouses struggling to accept disabled partners or family members.
4. **Gaps Between Legal Theory and Practice:** Despite ongoing efforts since 2020 to enforce the rights of individuals with disabilities in Indonesia, a significant gap remains between legal theory and practice. Although Law No. 8 of 2016 guarantees equal access to justice for people with disabilities, it is seldom referenced in court cases. Many courts lack proper accommodations for disabled individuals, often relying on family members or volunteers for assistance.<sup>43</sup>

<sup>42</sup> Holness and Rule, "Barriers to Advocacy and Litigation in the Equality Courts for Persons with Disabilities."

<sup>43</sup> Arif Maftuhin and Mark Cammack, "Navigating Disability: Perspectives and Practices in Indonesian Religious Courts," *Ulumuna* 29, no. 2 (2025): 603–33.

Based on the same source, six court rulings involving people with disabilities were identified in the Malang Regency Religious Court (see Table 1). These rulings reveal issues similar to those found in rulings from religious courts across Indonesia in the previous study. For instance, in ruling Number 2239/Pdt.P/2021/PA.Kab.Mlg, concerning a marriage dispensation for an underage child, the petitioner's mother was unable to attend the court hearing due to a disability. To verify her condition, the petitioner submitted a letter from the Head of Wonoagung Village, numbered 470/867/35.07.30.2011/2021, which confirmed that Endang Sri Wahyuni (the petitioner's mother) "has a disability."

In a similar case, ruling Number 229/Pdt.P/2024/PA.Kab.Mlg, concerning a petition for inheritance guardianship for someone identified as having a "mental disability," the petitioner's daughter, Muhibatul Aziza Binti Anwar Fat, is legally an adult at 28 years old. However, due to her "*termasuk dalam keadaan cacat mental (disabilitas), baik itu secara fisik maupun psikologis sehingga tidak cakap untuk melakukan perbuatan hukum...*" (mental disability, both physically and psychologically, making her incapable of legal actions...). Her disability status was established without professional evidence, relying only on the testimony of two individuals: the petitioner's brother-in-law and a neighbor.

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The case of Endang Sri Wahyuni in Ruling Number 2239/Pdt.P/2021/PA reveals a significant issue with how disability is often perceived in legal contexts, particularly the problematic equation of disability with inability. The court justified her absence from the hearing by citing her disability but relied on a vague letter from the village head that did not specify the nature of her impairment. This oversimplification assumes that any disability inherently prevents participation, neglecting the possibility that specific accommodations—such as accessible facilities or alternative ways to participate—could have enabled her attendance.

**Table 1.** Ruling and Judges

No	Rulings	Judges
1	Nomor 6202/Pdt.G/2016/PA.Kab.Mlg. <sup>44</sup> Keyword used: <i>Keterbatasan fisik, difabel</i> Case: <i>Talak</i> (divorce by repudiation)	Drs. Asfa'at Bisri Dr. Mardi Candra, S.Ag, M.Ag., M.H. Hermin Sriwulan, S.HI., S.H., M.HI.
2	Nomor 1511/Pdt.G/2018/PA.Kab.Mlg. <sup>45</sup> Keyword: <i>disabilitas</i>	Drs. Ahmad Syaukani, S.H., M.H. Drs. Hasim, M.H.

<sup>44</sup> PA Kab Malang, "Putusan PA KAB MALANG Nomor 6202/Pdt.G/2016/PA.KAB.MLG," 2016, <https://putusan3.mahkamahagung.go.id/direktori/putusan/5947eef7810483c8964528d3ccf894df.html>

<sup>45</sup> PA Kab Malang, "Putusan PA KAB MALANG Nomor 1511/Pdt.G/2018/PA.Kab.Mlg," Mahkamah Agung R.I, 2018, <https://putusan3.mahkamahagung.go.id/direktori/putusan/203937bec81c4b734ea6cc6320929a73.html>.

	Case: <i>Talak</i> (divorce by repudiation)	Miftahorrahman, S.H., M.H.
3	Nomor 0385/Pdt.G/2019/PA.Kab.Mlg. <sup>46</sup> Keyword used: <i>penyandang disabilitas, tunawicara</i> Case: <i>Talak</i> (divorce by repudiation)	M. Nur Syafiuddin, S. Ag., M.H. Drs. Muhammad Hilmy, M.H.E.S. Hermin Sriwulan, S.HI., S.H., M.HI.
4	Nomor 1341/Pdt.G/2021/PA.Kab.Mlg. <sup>47</sup> Keyword used: <i>Gangguan mental</i> Case: <i>talak</i> (divorce by repudiation)	Dra. Hj. Enik Faridaturrohman, M.H. Drs. H. Warnita Anwar, M.H.E.S. Sutaji, S.H., M.H.
5	Nomor 2239/Pdt.P/2021/PA.Kab.Mlg. <sup>48</sup> Keyword used: <i>disabilitas</i> Case: dispensation for marriage	Sutaji, S.H., M.H.
6	Nomor 229/Pdt.P/2024/PA.Kab.Mlg. <sup>49</sup> Keyword used: <i>cacat mental (disabilitas)</i> Case: inheritance guardianship	Dra. Hj. Masrifah, M.H. Drs. H. Fahrurrazi, M.H.I Drs. H. Muhammad Khairul, M.Hum

This approach highlights a broader systemic issue where disability is often viewed as simply incapacity rather than recognizing a range of needs that could be addressed through appropriate adjustments. By not considering reasonable accommodations and assuming that disability inherently means an inability to participate, the court misses the chance to facilitate full involvement and uphold principles of justice and equality. Such oversimplification may also explain why accessibility features and assistive technologies at the Malang Regency Religious Court are seldom utilized. The prevailing perception of disability as incapacity has likely deterred the effective use of these resources, preventing those in need from benefiting from the available support.

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The use of disability issues as grounds for divorce is also evident in the rulings of the Malang Regency Religious Court. It can be observed in case Number 0385/Pdt.G/2019/PA.Kab.Mlg., Number 6202/Pdt.G/2016/PA.Kab.Mlg, Number 1341/Pdt.G/2021/PA.Kab.Mlg, and Number 1511/Pdt.G/2018/PA.Kab.Mlg. In rulings number 0385 and 6202, the husbands had disabilities, which led to disrespect or mistreatment by their wives, causing prolonged disputes. In ruling 1341, the petitioner's wife was identified as having a "mental" disability, which was cited as the reason for her committing domestic violence. In ruling 1511, the

<sup>46</sup> PA Kab Malang, "Putusan PA KAB MALANG Nomor 385/Pdt.G/2019/PA.Kab.Mlg," Mahkamah Agung R.I, 2019,

<https://putusan3.mahkamahagung.go.id/direktori/putusan/8a1f5a1ac2e0f9f125e28162b311df57.html>.

<sup>47</sup> PA Kab Malang, "Putusan PA KAB MALANG Nomor 1341/Pdt.G/2021/PA.Kab.Mlg," Mahkamah Agung R.I, 2021,

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeb9087b9f32e9282c9313931303137.html>.

<sup>48</sup> PA Kab Malang, "Putusan PA KAB MALANG Nomor 2239/Pdt.P/2021/PA.Kab.Mlg," Mahkamah Agung R.I, 2021,

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec6c9269ec0134acd8313934313033.html>.

<sup>49</sup> PA Kab Malang, "Putusan PA KAB MALANG Nomor 229/Pdt.P/2024/PA.Kab.Mlg," Mahkamah Agung R.I, 2024,

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeed622507c54b489ba313731353336.html>.



divorce was initiated because the husband believed his wife did not care for their disabled child.

Beyond the lack of verification of "disability" seen in other cases, the judges went further by seemingly disregarding the disability in the context of marital disputes. The judges did not mention the disability in their divorce considerations. Instead, they focused on matters that, according to jurisprudence (Supreme Court of the Republic of Indonesia Circular Letter Number: 379/K/AG/1995 dated March 26, 1997), are considered valid reasons for divorce, regardless of whether the disability of the husband, wife, or child played a role in the dispute (as seen in decisions 1341 and 6202).

According to the judges, couples who proceed with divorce have typically experienced prolonged discord and disharmony. Moreover, the legally required reconciliation efforts have already been attempted and failed. It suggests that the reasons presented to the judge are often more of a pretext than a genuine argument for divorce. For the judges, it is more important not to complicate the divorce of a marriage that both parties no longer desire. They prioritize the essence of marriage as a physical and emotional bond. When the emotional bond is gone, regardless of the reason, the marriage can no longer be sustained (see Rulings 1341, p. 9; 1511, p. 9). In conclusion, the judges frequently focus on traditional grounds for divorce rather than considering how disabilities might influence marital disputes. This approach not only fails to account for the complexities introduced by disabilities but also disregards the broader implications for individuals and families affected by such conditions.

## **Inclusive Justice in Practice: More than Meets the Eye**

As discussed earlier, it can be generally concluded that the Malang Regency Religious Court has made commendable efforts to become an inclusive institution. Nevertheless, when examining rulings related to disability cases, there appears to be little distinction between the Malang Regency Religious Court and other religious courts across Indonesia. Therefore, this section aims to delve deeper into the observations made during fieldwork by interviewing judges and staff at the Religious Court. Additionally, the findings from these interviews will be critically analyzed in conversation with several disability rights activists who have long advocated for inclusive courts in Indonesia.

### ***1. The Paradigmatic Barriers***

Although the state and modern legal frameworks might dictate that disability should be defined according to laws such as the Convention on the Rights of Persons with Disabilities (CRPD), the Americans with Disabilities Act (ADA), or Indonesia's Law No. 8/2016, the reality within the judicial practice often deviates from these frameworks. Judges may not continuously operate within the bounds of modern legal rationality; instead, they encounter local and practical reasoning that seems more immediately relevant and effective in achieving justice. For instance,

Judge Sutaji explains that the village head's testimony is accepted as evidence of disability, not because it substitutes for a formal medical or psychological certificate. Judge Sutaji and other judges recognize that "The village head does not have the legal authority to declare someone disabled."<sup>50</sup> However, the village head's testimony is considered valid and credible based on three key factors:

Firstly, the village head's testimony is regarded as necessary evidence that adds weight and credibility to the other evidence presented by the parties involved in the case. It is not intended to stand alone as the primary proof but rather to serve as additional support that helps to confirm and strengthen the overall case. In this context, the village head's testimony functions as corroborative evidence, working in conjunction with other evidence rather than acting as the primary source of validation.

Second, the village head's testimony can be equivalent to a "witness." According to Article 1866 of the Civil Code and Article 164 of the Indonesian Code of Civil Procedure (HIR), recognized evidence in civil cases includes written documents, witness testimonies, presumptions, confessions, and oaths. Written evidence is given the highest priority in the hierarchy. Although the village head may not be an "expert," his written testimony accounts for a witness who has personally observed the life of the petitioner and their family. In this capacity, the village head becomes a "witness" to the condition of the petitioner's mother, who is claimed to have a disability.

Third, and perhaps most importantly, judges are vested with the discretion to determine what they consider to be the most practical and fair solution for the parties involved. In cases where obtaining a medical or psychological certificate may be challenging—whether due to geographic isolation or economic constraints—judges may rely on more accessible forms of evidence. For instance, requiring a medical examination might be impractical or prohibitively expensive for families living in rural areas. In such cases, the village head's testimony, corroborated by family members, can provide sufficient grounds for the court to proceed with the case. Judge Sutaji explains that, in this context, discretion is applied to ensure that legal processes are not unnecessarily burdensome for the parties involved, thus allowing the case to be resolved more efficiently and equitably.

The reasoning provided by the judges reveals several socio-anthropological insights: First, the enduring influence of local authority is evident. Although the village head is now formally the lowest-ranking official within the modern state system, his role still carries the charisma and authority of traditional village leadership.<sup>51</sup> In rural communities, the village head often holds significant social and political authority beyond his formal legal powers. This authority encompasses

<sup>50</sup> Sutaji, June 12, 2024.

<sup>51</sup> Hans Antlöv, "Village Leaders and the New Order," in *Leadership on Java* (Routledge, 1994).

moral and communal leadership, which explains why the village head's certificate is accepted as credible evidence. Judge Sutaji's assertion that the village head can be trusted because he is familiar with the daily lives of his villagers highlights how deeply local authority influences the judges' perspectives on legal matters.

Second, the recognition of the village head's certificate, alongside the judges' discretionary power, reflects the application of the "subsidiarity principle." This principle involves delegating authority to the lowest possible level of governance.<sup>52</sup> In rural settings, where access to formal institutions and services may be limited, local leaders are often the first point of contact for administrative and governance matters. By relying on the village head's testimony to certify disabilities, judges take a pragmatic approach to governance that values local knowledge and authority in the judicial process.

Third, this case also illustrates the operation of local understandings of disability. In many rural cultures, disability is often interpreted through a social and communal lens rather than strictly medical or legal definitions.<sup>53</sup> The village head's certificate may reflect these broader, culturally specific interpretations of disability, which differ from modern institutional definitions. In this instance, the judges seem to allow for a more flexible understanding of disability that aligns with the local community's perceptions, from the family to the village head.

Fourth and finally, this case reveals the challenges that arise from the gap between the expectations of urban legislators who draft disability laws and the realities faced by rural populations. This gap is not only theoretical but also practical. The explanations provided by the judges at the Malang Religious Court underscore the economic and logistical difficulties that rural populations often encounter in accessing healthcare and legal services. Requiring medical or psychological certification for disability might be both prohibitively expensive and logistically unfeasible for many families.<sup>54</sup> By accepting the village head's certificate as valid evidence, the court attempts to bridge this gap and ensure that legal processes remain accessible to all, regardless of economic or geographic circumstances.

## *2. The Stigma of Disability*

While previous discussions have primarily centered on the broader societal views of disability, it is equally important to consider the internalized barriers that people with disabilities often face. One significant issue is what can be termed "self-stigmatization."<sup>55</sup> It occurs when individuals absorb and accept the negative

<sup>52</sup> Carlo Panara, "The Principle of Subsidiarity," in *The Sub-National Dimension of the EU: A Legal Study of Multilevel Governance*, ed. Carlo Panara (Springer International Publishing, 2015).

<sup>53</sup> Brigitte Holzer et al., eds., *Disability in Different Cultures: Reflections on Local Concepts* (transcript, 1999).

<sup>54</sup> Sutaji, interview; Khoirul Hadi, June 14, 2024.

<sup>55</sup> Amy C. Watson et al., "Self-Stigma in People With Mental Illness," *Schizophrenia Bulletin* 33, no. 6 (2007): 1312–18.

stereotypes, biases, and discriminatory attitudes prevalent in society, leading to feelings of shame, inferiority, and a diminished sense of self-worth.<sup>56</sup>

A clear example of this phenomenon is the removal of the "priority service" sticker from Counter 1 at the Malang Regency Religious Court. To provide better service to vulnerable groups, the court had designated a special counter specifically for these individuals, marked by a sticker indicating "priority service." However, some people with disabilities were reluctant to use this designated counter. According to a staff member at the court, these individuals felt a sense of embarrassment and preferred to go through the regular service procedures at the adjacent counter. In response to their discomfort, the court staff took the initiative to remove the priority service sticker from that counter.<sup>57</sup>

This reluctance is also reflected in the underutilization of the particular restroom for individuals with disabilities, which is located in the waiting area. During my visit, I noticed that the restroom appeared almost unused, as though it had been newly constructed despite having been in place for several years. Its location is particularly prominent; upon entering the service area, the restroom door is more visible than any service counters.

Self-stigma typically originates from external or societal stigma, where individuals with disabilities encounter prejudiced attitudes or discrimination from others.<sup>58</sup> When these external views are consistently reinforced, individuals may begin to internalize these negative perceptions, leading to several detrimental effects: (i) Internalized Shame: Individuals may develop a deep sense of shame about their disability, believing they are less capable or deserving than others; (ii) Lowered Self-Esteem: They might come to see themselves as inferior, unworthy of success, love, or recognition, which can severely impact their confidence and self-respect; (iii) Reduced Aspirations: Self-stigma may cause individuals to lower their expectations for themselves, avoiding opportunities for personal and professional growth, social engagement, or employment because they feel inadequate or incapable.

Burdened by these internalized feelings, individuals with disabilities may react to the offer of priority service not with gratitude but with a heightened sense of exclusion and incapability. Instead of viewing the service as a helpful accommodation, they may interpret it as further evidence of their perceived inability to follow the same procedures as others, thus requiring special assistance. The strategic placement of the restroom for individuals with disabilities in a central, highly visible location can also exacerbate these feelings, as they may fear drawing unwanted attention when exiting the facility.

<sup>56</sup> Rory Sheehan and Afia Ali, "Self-Stigma in People with Intellectual Disabilities," in *Intellectual Disability and Stigma: Stepping Out from the Margins*, ed. Katrina Scior and Shirli Werner (Palgrave Macmillan UK, 2016).

<sup>57</sup> Diki Fadliansah, June 12, 2024.

<sup>58</sup> Sheehan and Ali, "Self-Stigma in People with Intellectual Disabilities," 92–101.

Unfortunately, the issue of self-stigma is often overlooked by disability rights activists, who tend to focus on addressing physical barriers and procedural challenges. These activists may assume that people with disabilities share the same level of confidence, independence in mobility, and self-acceptance that they possess, which is often higher than that of the average individual with a disability. This oversight underscores the need to balance activism with a deeper understanding of self-stigma, demonstrating that true inclusion requires more than just physical accommodations and a welcoming attitude from others—it also involves addressing the internal struggles that people with disabilities face.

### *3. Physical and Symbolic Accessibility*

As discussed earlier, the Malang Regency Religious Court has made significant strides in fostering physical inclusion for individuals with disabilities. However, an important question arises: how frequently are these facilities being utilized by those intended to serve? According to the data collected from the priority service registry over nine months (October 2022 to June 2023), 52 individuals with disabilities visited the Malang Regency Religious Court. This number represents half of the total visitors eligible for priority services (refer to Table 2). Of the 52 individuals with disabilities, 73% (38 individuals) had physical disabilities. Unfortunately, the data does not always provide detailed classifications regarding the specific types of physical disabilities present. According to Indonesia's Law No. 8 of 2016, the category of physical disabilities includes a wide range of conditions that impair movement, such as amputations, paralysis (both flaccid and spastic), paraplegia, cerebral palsy, stroke-related impairments, leprosy, and dwarfism. The only specific mentions in the data relate to disabilities caused by strokes and post-surgery conditions, while sensory disabilities recorded include cases of speech and visual impairments.

**Table 2.** Visitor statistics

Month	Senior Citizens	Physical Disabilities	Sensory Disabilities	Pregnant or Breastfeeding Women	Total
October	2	7	0	7	16
November	1	3	0	10	14
December	4	4	0	2	10
January	3	5	3	0	11
February	7	3	4	0	13
March	4	2	1	0	7
April	3	3	0	0	6
May	5	9	1	0	15
June	6	2	5	0	13
<b>Total</b>	<b>35</b>	<b>38</b>	<b>14</b>	<b>19</b>	<b>106</b>

*Source: Priority Service Registration Book, 2022-2023*

During my field observations at the Malang Regency Religious Court, it became evident that the accessibility facilities provided for individuals with disabilities

were, in practice, seldom utilized. Despite a notable number of visitors with physical disabilities, the assistive devices available at the accessible "shelter," such as crutches and wheelchairs, were rarely, if ever, used. Similarly, it was uncommon to observe visually impaired individuals arriving alone and utilizing the guiding blocks installed throughout the court premises. It is generally rare for anyone—whether disabled or not—to visit the religious court unaccompanied. Consequently, the accessibility facilities and assistive technologies, which required considerable financial investment, were utilized only sporadically.

Given this lack of utilization, one might question whether the provision of physical accessibility is ultimately a futile exercise. However, this conclusion would be premature. According to Badawi Asyhari, a senior clerk responsible for procuring physical accessibility features, these facilities play a crucial educational role for everyone who works at or visits the Malang Regency Religious Court. They serve as a constant reminder that "we have fellow human beings who are less fortunate, such as those with disabilities. Their presence gives us a valuable lesson in gratitude for our circumstances." Thus, the visible accessibility features at the Malang Regency Religious Court fulfill a practical and symbolic function. "There is undeniable value in having these facilities! It would be entirely different if they were absent," emphasized Badawi.<sup>59</sup> A judge previously serving at another court added, "The atmosphere of disability-friendly facilities is distinctly felt here."<sup>60</sup>

For disability rights advocates, implementing physical accessibility measures is often a necessary precursor to addressing other aspects of inclusion. "Changing a culture that is not disability-friendly, for instance, requires considerable time. Therefore, as an initial step in awareness campaigns and education, physical modifications are essential," explained Purwanta,<sup>61</sup> a disability movement activist currently focusing on cultural advocacy. In Indonesia, awareness of accessibility is often so minimal that facilities such as guiding blocks on sidewalks are frequently dismissed as mere decorative features. As a result, these accessibility aids are usually obstructed by street vendors or infringed upon by public amenities like lamp posts and decorative plants installed by city sanitation services. The presence of physical accessibility facilities within the court serves as a critical reminder that individuals with disabilities require equal access to justice.

#### *4. Islamic Law and Disability in Religious Courts*

Previous analyses have explored the issue of disability from multiple perspectives, including paradigmatic views, the psychological and mental aspects of individuals with disabilities, and the physical and symbolic dimensions of accessibility. A critical question arises when considering the role of an Islamic court: To what extent do Islamic teachings and legal principles influence efforts to create a more

<sup>59</sup> Badawi Asyari, "Accessibility Development at the Malang Regency District Court."

<sup>60</sup> Misbah, June 13, 2024.

<sup>61</sup> Setia Adi Purwanta, August 12, 2024.

inclusive judicial environment? This question is particularly relevant when examining the rulings of the Malang Regency Religious Court. An analysis of these rulings indicates that, despite the involvement of individuals with disabilities, the judgments rendered by the court exhibit little to no distinction from other cases handled by the Religious Court. These rulings follow a standardized format based on established legal principles, with language often adhering to a predetermined "template" tailored to specific case types. For instance, distinct templates are used for divorce, inheritance, and guardianship cases. Any variations that do exist between these rulings tend to be minor and do not reflect a significant consideration of the unique circumstances related to disability.

The uniformity in the wording of rulings can be observed in cases such as 1511/Pdt.G/2018/PA.Kab.Mlg and 1341/Pdt.G/2021/PA.Kab.Mlg. Although different panels of judges adjudicated these cases, and despite a three-year gap between them, the judges in both cases relied on identical legal reasoning. This reasoning drew upon Law No. 1/1974 and the Qur'an, specifically Surah Ar-Rum, verse 31, which addresses the unattainability of the goals of marriage, and Surah Al-Baqarah, verse 227, which is often cited as a basis for divorce. As noted earlier, the specific facts concerning the petitioner's disability did not significantly influence the outcomes of these divorce cases. This observation suggests that while Islamic teachings and scholarship on disability generally advocate inclusivity and compassion, these values are not sufficiently integrated into the practical decision-making processes of the Religious Court.

Furthermore, initiatives by Islamic legal scholars and disability advocates outside the religious courts to address the specific needs and rights of individuals with disabilities have yet to make a substantial impact within the judicial system. For instance, the fatwas issued by Nahdlatul Ulama in the *Fiqih Penguatan Penyandang Disabilitas* (Fiqh of Disability Empowerment)<sup>62</sup> and by Muhammadiyah in the *Fikih Difabel* (Fiqh of Disability)<sup>63</sup> reflect progressive interpretations of Islamic law<sup>64</sup> aimed at protecting and promoting the rights of disabled individuals.<sup>65</sup> However, these scholarly developments and the broader discourse on Islam and disability<sup>66</sup> have not yet permeated the practices of Islamic courts in Indonesia. Therefore, the endeavor to create an inclusive religious court system remains primarily disconnected from these essential intellectual and advocacy efforts.

<sup>62</sup> LBM PBNU, *Fiqih Penguatan Penyandang Disabilitas* (Lembaga Bahtsul Masail PBNU, 2018).

<sup>63</sup> Arif Maftuhin and Abidah Muflihati, "The Fikih Difabel of Muhammadiyah: Context, Content, and Aspiration to an Inclusive Islam," *Indonesian Journal of Islam and Muslim Societies* 12, no. 2 (2022): 2.

<sup>64</sup> Arif Maftuhin, "Islamic Law, Disability, and Women in Indonesia: The Cases of Nahdlatul Ulama and Muhammadiyah," *Journal of Disability & Religion* 28, no. 1 (2024): 13–27.

<sup>65</sup> Arif Maftuhin, "Mosques for All: Nahdlatul Ulama and the Promotion of the Rights of People with Disabilities," *Journal of Indonesian Islam* 15, no. 2 (2021): 247.

<sup>66</sup> Arif Maftuhin et al., *Islam Dan Disabilitas: Dari Teks Ke Konteks* (Gading, 2020).

This disconnect may be attributed to several factors, including the entrenched nature of legal templates and the rigid adherence to established judicial procedures. The standardized approach to case resolution in the Religious Court system may inadvertently sideline the specific needs and challenges faced by individuals with disabilities. Consequently, while the legal framework and Islamic teachings theoretically support inclusivity, the practical application within the courts does not yet reflect this ideal. This gap underscores the need for a more nuanced and individualized approach in the judicial treatment of cases involving disabled individuals, one that transcends mere procedural formalities and truly embodies the inclusive spirit of Islamic teachings.

In conclusion, while Islamic law and teachings provide a foundation for inclusivity, these principles must be more actively integrated into the judicial practices of the Religious Court. Such integration would align the court's operations with the broader goals of Islamic jurisprudence and ensure that the rights and dignity of individuals with disabilities are adequately recognized and protected within the legal system. The ongoing efforts to enhance physical accessibility within the courts must be complemented by parallel efforts to address inclusivity's legal and procedural dimensions, ensuring that the courts genuinely serve all community members, including those with disabilities.

## **Conclusion**

The Malang Regency Religious Court has made significant progress in promoting inclusivity, particularly in physical accessibility for individuals with disabilities. The court demonstrates a solid commitment to accommodating those with mobility, auditory, and visual impairments with ramps, guiding blocks, and assistive devices. These efforts align with international frameworks and Indonesia's Law No. 8 of 2016, reinforcing its role in creating an inclusive environment. However, non-physical barriers, such as cultural perceptions and limited awareness of disability rights among court staff, continue to hinder the creation of a fully inclusive court. The reliance on traditional authorities to define disability reflects a broader issue in Indonesia's judicial system, where disability is often viewed as incapacity rather than a condition that requires specific accommodations. It highlights the need for a cultural shift in understanding disability within the legal framework.

Furthermore, the underutilization of the court's physical accessibility features suggests that there are more profound psychological and societal barriers at play, including self-stigma among individuals with disabilities. These internalized barriers highlight the limitations of current efforts. To fully embody the principles of inclusivity, the Malang Regency Religious Court must address not only the physical and procedural aspects of accessibility but also the underlying cultural and psychological challenges. This includes integrating Islamic teachings



on compassion and inclusivity more deeply into judicial practices and fostering a more nuanced understanding of disability among judges and court staff.

This study has certain limitations that should be acknowledged. First, while field observations and interviews provide valuable insights, the scope of the research is limited to the Malang Regency Religious Court, which may not be fully representative of other religious courts in Indonesia. Additionally, the study focused primarily on physical accessibility, legal proceedings, and cultural barriers, leaving room for further exploration of other critical aspects, such as the role of technology in enhancing access to justice for persons with disabilities in Islamic courts. Future research should include a broader range of Islamic courts across Indonesia to assess the consistency of inclusive practices. Additionally, investigating the long-term impact of these initiatives on the actual experiences of individuals with disabilities within the judicial system is essential. Research should also focus on how Islamic legal principles can be better integrated into disability-inclusive practices within the court, ensuring that religious teachings align with legal procedures to promote a more holistic approach to justice for disabled individuals.

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