

Formulation of the Concept of Legal Capacity to Conduct Marriages for Persons with Autism Spectrum Disorder

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Abstract

This study explores the formulation of legal capacity for individuals with Autism Spectrum Disorder (ASD) to enter into marriage within the Indonesian legal system. Marriage, as both a civil act and a human right, requires the capacity to fulfill rights and obligations, yet current regulations provide limited guidance for individuals with developmental disabilities. Although the Marriage and the Disability Law recognize the right of persons with disabilities to marry, the absence of explicit provisions on ASD raises challenges in legal practice. The research adopts an empirical juridical and qualitative approach, utilizing interviews with judges, psychologists, parents, and individuals with autism, supported by statutory analysis. Findings indicate that individuals with mild autism or Asperger's syndrome may retain sufficient mental competence to exercise legal rights, although their capacity can vary. The study applies two theoretical frameworks: maqashid sharia which emphasizes the protection of religion, life, intellect, lineage, and property and the theory of legal certainty, highlighting justice, benefit, and consistency in legal rules. Together, these approaches advocate for an inclusive and rights-based interpretation of marriage law. The research underscores the need for a legal construction that accommodates ASD by integrating medical, psychological, and jurisprudential assessments. Judicial reasoning should move beyond rigid textual interpretations to purposive approaches that balance individual rights with public interest. Ultimately, the study proposes that ASD be recognized under the category of "developmental disabilities" within the Disability Law, ensuring a fair, clear, and implementable standard of legal competence for marriage. This framework aspires to advance inclusive family law that upholds dignity, equality, and social justice.

I. Introduction

Marriage is a sacred bond or relationship between a man and a woman with the aim of forming a prosperous and happy family forever. Marriage Law Number 1 of 1974 (hereinafter referred to as the Marriage Law) in Article 1 explains that marriage is a physical and spiritual bond between a man and a woman as husband and wife who have the aim of forming a happy and eternal family based on the One Almighty God. Maturity in marital relations is very important, meaning that the prospective husband / wife must be mature enough in age, physically and mentally and have the ability to earn a living. The purpose of this maturity is expected to provide understanding and awareness to the younger generation so that in planning to form a family, the prospective husband / wife must really pay attention to things that are closely related to household life and mental readiness, as well as socio-economic (mahmudin et.al.2027).

Furthermore, human nature has an instinct to always want to live together, interact with each other, and preserve offspring, which is why humans engage in marriage. In social life, interactions between humans will give rise to rights and obligations. These rights and obligations are inherent in everything called legal subjects. Legal subjects who support rights and obligations are individuals and legal entities. In the biological sense, individuals are beings with reason, feelings, and will, while legal entities are legal subjects in the juridical sense, namely, they are phenomena in social life as human-created bodies according to law that also have rights and obligations like individuals.

One of the legal subjects that will be discussed in this research is people with Autism Spectrum Disorder (hereinafter referred to as Autism). Autism in the diagnosis and Statistical Manual of Mental Disorders (hereinafter referred to as DSM 5) is a neurodevelopmental disorder or brain characterized by deficits in communication and social interaction as well as limited and repetitive behavior patterns. Meanwhile, DSM 5 is a guide for American Psychiatric Association professionals for Mental Health conditions. Every legal subject (individual human being) has the right to marry, including people with autism. This has been regulated in Article 8 of Law Number 8 of 2016 concerning persons with disabilities (hereinafter referred to as the Disability Law) which regulates that the privacy rights of people with disabilities: a) must be recognized as individuals who can demand and receive equal treatment and protection in accordance with human dignity before others, b) form a family and continue their lineage through legal marriage.

The Disability Law is a legal framework for fulfilling the rights of persons with disabilities, including providing equal opportunities and eliminating segregation, institutionalization, and exclusion, thereby eliminating forms of discrimination against them (unicef, 2018). Article 1329 of the Civil Code (hereinafter referred to as the Civil Code) states that every individual or person has the authority to enter into an agreement unless declared incompetent by law. This Disability Law aligns with Article 9 of the Convention on the Rights of Persons with Disabilities, which affirms the rights of persons with disabilities and their status as legal subjects with the same rights as other citizens. Article 4 of the Disability Law categorizes disabilities into four types: physical disabilities, intellectual disabilities, mental disabilities, and sensory disabilities.

People with autism typically face a number of challenges different from those of the general population. They sometimes have difficulty communicating and socializing, and experience delays in speech and language. However, this doesn't mean they don't hinder their social interactions. In fact, many autistic individuals can grow up to be successful. Michael Fitzgerald, a professor of psychiatry at Trinity College Dublin, explained that the characteristics associated with autism spectrum disorder share similarities with elements that support creativity. He further mentioned that Isaac Newton, Albert Einstein, Beethoven, Mozart, and Immanuel Kant are examples of famous, brilliant individuals who exhibited traits of autism spectrum disorder, which includes Asperger syndrome (Sanju, 2023).

One of the foundations of this research is gap research, which examines the discrepancy between reality and existing regulations, which becomes a research phenomenon (problem identification). Regarding the regulatory aspect, it does not mention all types of disabilities, even though psychologically, disabilities have diverse differences and symptoms. Autism Spectrum Disorder is a new concept that has not been explicitly regulated in law and cannot be generalized to other disabilities. The problem to be examined in the civil law aspect of autism spectrum disorder is competence to perform legal acts, particularly marriage. The focus on the legal aspect of disability is to map legal competence through the theory of *maqashid sharia* (family law aspects), supported by developmental psychology analysis integrated with the theory of legal certainty.

The urgency of legal construction, which will be incorporated into this new legal formulation (concept), is to serve as a benchmark for determining the competence of individuals with autism spectrum disorder. For example, the analogy construction method in Court Decision Number 378/Pdt.P/2023/PA.Mlg, which granted a request for competence to perform civil acts, can be applied to individuals with autism spectrum disorder. By strengthening this formal legal source, the analogy construction can also be applied to legal logic.

Based on the above description, this study uses the theory of legal certainty as the basis for analyzing the process of discovering new rules from the concept of legal capacity for individuals with autism spectrum disorder. Furthermore, the issue of legal capacity related to marriage is also closely related to the *maqashid sharia*, namely the objectives of *sharia* to protect five main aspects (religion, life, intellect, descendants, and property) (Jaser, 2028). In this regard, prohibiting or restricting the rights of individuals with autism to marry without a proportional basis may contradict the objectives of *sharia*, especially the protection of descendants and respect for human dignity. Therefore, it is crucial to view the potential of marriage from the perspective of benefits, not solely from the aspect of mental or social barriers. Therefore, this study aims to formulate a just and relevant concept of legal capacity for individuals with autism from two perspectives: the theory of legal certainty and *maqashid sharia*. It is hoped that these two approaches can make a constructive contribution to the development of inclusive and socially just family law. Furthermore, as an additional study, the researcher will also conduct a sociological analysis of marriage law regulations in Indonesia.

II. Research Method

This research uses the Empirical Juridical type (Mukhti et al,2010). The approach taken is qualitative. The research locus was conducted in several places related to the mapping of legal competence in people with autism, including the Malang City Religious Court, the Malang City District Court, and Psychological Consultants. The primary data sources of this research come from the results of structured interviews with Judges of the Malang City Religious Court, Psychologists, therapists specializing in autistic children, parents of people with autism, and people with autism who are ready to marry. While the secondary data sources are primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are binding legal materials including laws and regulations related to the topic of the problem discussed, namely: a) The 1945 Constitution of the Republic of Indonesia. b) The Civil Code. c) Law Number 39 of 1999 concerning Human Rights. d) Law Number 8 of 2016 concerning Persons with Disabilities. e) Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. f) Constitutional Court Decision Number 93/PUU-XX/2022. Secondary legal materials are non-binding legal materials and aim to provide explanations related to primary legal materials which are the result of processing the opinions of experts who study a particular field specifically which will provide direction to the author in the form of legal books, academic manuscripts of the draft Law on Persons with Disabilities, literature, scientific journals and writings on the internet.

III. Result and Discussion

1. The Concept of Legal Competence for Persons on The Autism Spectrum Disorder to Conduct Marriage

Disability, or what is currently known as "inclusion," represents a development that recognizes that everyone's circumstances are not equal, necessitating distributive justice. This right is not merely a general right, as in Human Rights, but also refers to human needs. When humans are able to uphold not only their rights but also their obligations, they are considered legal subjects. Because these rights can vary, as long as individuals are able to understand their rights and obligations, every individual and state is obligated to respect them. Initially, this inclusion status was granted to individuals who were truly disabled, but as international developments have emerged, this classification needs to be accorded proportionately. Indonesia's ratification of the Convention on the Rights of Persons with Disabilities (CRPD) through Law Number 19 of 2011, which was later strengthened by Law Number 8 of 2016, should be seen as a new foundation for the direction of legal development and legal research in the country. The government's efforts to demonstrate support for the disabled community should serve as a benchmark for decision-makers to develop a fairer and less exclusive legal framework. This way, various limitations in covering both subjects and objects of law can be gradually replaced. At this stage, the urgency of reaffirming the rights of persons with disabilities in the realm of marriage, particularly regarding the status of guardians and witnesses, is an important topic requiring more comprehensive research, both in terms of legal norms and social practices.

Legal disparities in Indonesia have led to numerous doubts and multiple interpretations in law enforcement. The heterogeneity of civil law requires careful

application of the *ius curia novit* authority. In principle, formal legal sources in Indonesia are still influenced by statutory regulations as the primary and primary source of law. However, when a legal vacuum occurs at the statutory level, jurisprudence can be utilized.

Marriage in Indonesia is regulated by statutory regulations, namely Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning Marriage. This law does not specifically stipulate how a person is "fit" or "competent" to enter into marriage. This is certainly not without basis, as marriage is not only viewed as a civil legal act but also as a human right. Two sides of the same sword, opposite sides of the same sword.

The view of marriage as a legal act is viewed solely as a contractual principle, the clauses of which refer primarily to Article 1320 of the Civil Code, namely:

- 1) Agreement;
- 2) Competence;
- 3) The existence of an object of agreement;
- 4) Permissible cause.

Meanwhile, from a human rights perspective, this is regulated in paragraph 10 of Law Number 39 of 1999 concerning Human Rights, which states, "Everyone has the right to form a family and continue their lineage through a legal marriage," regardless of whether the person is competent or not. This is where debates begin to arise, necessitating the role of judges in resolving these debates.

The judge's role as *ius curia novit* not only resolves civil disputes but also clarifies the status of who, why, and how a person can enter into marriage. One phenomenon that occurs is when a person is under the legal age to marry but, under certain circumstances (for example, pregnancy out of wedlock), the judge determines this situation as competent through a dispensation. This means that the conditions that should be in accordance with this law can actually be deviated from under certain conditions through a judicial ruling, which is of course based on the principle of public welfare (utilitarianism).

The Human Rights Law views marriage only as a universal human aspect, while the Marriage Law only considers humans as legal subjects in general, which means it remains exclusionary. The issue of inclusion, as reflected in numerous human rights debates, remains unregulated, resulting in the lack of detailed regulation of inclusion aspects in recent years.

People with disabilities are a social group that, historically and culturally, have consistently experienced marginalization and discrimination in various aspects of life. Differences related to physical, sensory, mental, and intellectual conditions are often perceived through negative cultural constructs. This not only positions them as different but also as deficient, defective, or abnormal. According to Berger and Luckmann (1966) in Dharma (2018), social reality is formed through a process of social construction, so that the stigma and stereotypes attached to people with disabilities are reflected in the structure and order of society. Thus, discrimination against people with disabilities is not merely an individual issue, but rather part of a social system that is both culturally and normatively legitimated. Cultural constructs are formed as a result of societal developments and changes, sometimes resulting in their normative legal form being left behind for a period.

Along with the development of new perspectives on disability that emphasize a rights-based approach and question injustice within social structures, various legal products, both those derived from Islamic jurisprudence and positive regulations, are considered rife with normality bias. This bias often places people with disabilities in an unequal position. In other words, law is fundamentally a social construct that still pays little attention to the needs and sense of justice for people with disabilities.

Issues regarding access to law and justice, the issue of guardianship (because people with disabilities are often considered to lack legal capacity or are unfit to be legal subjects), and the fulfillment of the right to worship are some of the important topics frequently voiced by activists and observers of disability issues. This situation presents a serious challenge for academics and legal practitioners to reconstruct their perspectives, interpretative methods, and legal implementation to better reflect the principles of justice, particularly for people with disabilities.

To address this aspect of inclusion, Law Number 8 of 2016 concerning Disabilities was adopted. This law aims to provide rights for people with disabilities, who were previously only generalized as disabled, and should not have been. The specifics of disability are outlined in Article 4 of this law, which divides disability into four categories:

- 1) Physical disability;
- 2) Intellectual disability;
- 3) Mental disability; and/or
- 4) Sensory disability.

In addition to defining disability categories, this law also guarantees the rights of people with disabilities in marriage, as stipulated in Article 8 letter b. This means that regardless of their capacity, the state at least grants them their rights under the law.

Based on the Marriage Law and the Disability Law, marriage is not as rigid as other civil matters such as inheritance, custody, or property. Marriage is a right that everyone has regardless of property or social status. Society creates this stigma.

In the implementation of marriage, the most detailed regulation regarding the capacity/disability of witnesses/marriage guardians is in the Minister of Religious Affairs Regulation (PMA) Number 20 of 2019. While the prospective husband/wife is not specifically required, Articles 12-14 stipulate that witnesses/marriage guardians must be "reasonable," which falls within the context of capacity. Furthermore, the requirements for witnesses in marriage, due to their relationship to the five senses, are almost entirely excluded, as the witness's function is primarily in the five senses.

Marriages involving people with disabilities are actually more common than cases of witnesses/marriage guardians with disabilities. However, the context of disability here remains general. This indicates that although the context of marriage falls under the form of a civil legal agreement/act, the classification of competence as stipulated in Article 1320 of the Civil Code cannot be generalized to other civil legal acts. This is because marriage is not merely a civil legal act, but a fundamental right that is strongly protected not only by law but also by the constitution. This right is truly a right that every person, even without the possibility of carrying out obligations, can still be asserted.

The limitations of the legal regulation on marriage for persons with disabilities, including ASD, are limited to the same clause as for legal subjects in general, namely

on preventing marriage. However, Article 14 paragraph (2) of Law Number 1 of 1974 does not clearly mention disability, but instead contains the phrase "...under guardianship," which means one of the prospective bride and groom is interpreted as incompetent. Therefore, this is the limitation of positive legal regulation in Indonesia. There is an opportunity to prove incompetence to enter into marriage only if there is someone preventing it, and this prevention is provided with the condition "*...causing misery to the other prospective bride and groom...*".

a. The concept of legal capacity for people with autism spectrum disorder to enter into marriage is reviewed from the perspective of maqashid sharia

The Quran uses several terms to describe physical disabilities, including as-shumm (deaf), al-bukm (mute), al-'umy (blind), and al-a'raj (lame). Etymologically, as-shumm refers to damage or reduced hearing, resulting in a person's inability to perceive sound. This term, with its various derivatives, appears 15 times in 14 verses spread across 13 suras in both the Makkiyah and Madaniyah versions.

The approach in this sub-chapter utilizes the maqasid of sharia, attempting to integrate the maqasid of sharia and the maqasid of the Quran to achieve welfare from various aspects. Interpretation within this framework is not limited to the meaning of the text, but rather emphasizes the analysis of maqasid as the core message contained within the Quranic verses.

Regarding the issue of persons with disabilities, there are several important values that deserve attention within the maqasid framework:

- i. The Maqasid is classified into three levels: al-Maqasid al-'Ammah (universal), al-Maqasid al-Khassah (specific), and al-Maqasid al-Juz'iyah (partial).
- ii. The scope of Maqasid has evolved, starting from the individual level, then expanding to society, the Muslim community, the nation, and finally to the global and universal realm of humanity.
- iii. The source of legitimacy for Maqasid rests directly on primary evidence, namely the Qur'an and the mutawatir hadith, not merely on ijihad or the views of scholars of various schools of thought.
- iv. The orientation of the goals of Maqasid, which were originally interpreted as safeguarding (al-'ishmah) and protection (al-hifz), is now more directed toward development (at-tanmiyah), which has implications for achieving human development, respect for human rights, and public welfare (maslahah al-'ammah).

Based on analysis and coherence with the Compilation of Islamic Law in Indonesia, the following maqasid sharia (Islamic principles) can be derived in the field of marriage:

- i. Hifdz ad-Din (Protecting the Religion). One of the fundamental principles of Islam is respect for others. Many verses emphasize the importance of mutual respect, both for individuals and for their beliefs. In the context of social interactions with people with disabilities, Surah 'Abasa verses 1-11 and Surah an-Nur verse 61 emphasize the religious commitment to the principle of respect regardless of physical limitations. Marriage is a human right, and each person has the right to continue their lineage by mutual agreement.
- ii. Hifdz an-Nafs wa al-'Irdh (Recognition of the Existence of People with Disabilities). The verses addressing ethics towards people with disabilities

demonstrate the social change initiated by the Quran, namely the elimination of discrimination previously inherent in Arab society. Surah an-Nur verse 61, both textually and contextually, emphasizes social recognition of those who are blind, lame, or sick. Thus, the Quran rejects the negative view that considers people with disabilities a despicable group. The primary purpose of these verses is to elevate their dignity in society. Disabilities are not to be isolated, but rather to be given space and introduced to the entire community for the purpose of getting to know one another. Even at the stage of marriage, there is no obstacle (no prohibition) as long as it remains within the boundaries of Sharia.

- iii. Hifdz al-'Aql (Building inclusive awareness). The series of verses regarding the treatment of people with disabilities also teach the importance of an open and inclusive attitude. The message conveyed is that they should be treated equally with people without disabilities, thus creating a social space of mutual respect and coexistence.

b. The concept of legal capacity for people with autism spectrum disorder to enter into marriage is reviewed from the theory of legal certainty
The theory of legal certainty, here, researchers use the principle of a unified legal objective, as proposed by Gustav Radburch. Legal certainty cannot be separated from other legal objectives, namely justice and expediency. This is because pursuing legal certainty alone will neglect justice and expediency.

As explained, "competence" from the perspective of marriage requires sufficient analysis. The definition of competence based on positive law has two requirements: age (if married, at least 19 years) and sound mind. To interpret these two requirements, another theory of legal certainty, proposed by Jan M. Otto, is needed:

- i. Legal certainty provides clear, consistent, and easily accessible legal rules. Legal rules must be issued by authorized state institutions. This indicator is contained in classical law, Article 1320 of the Civil Code, but the Lex Specialis, namely the Law on Disabilities, does not specifically regulate it. This requires a measurement instrument for ASD.
- ii. Some government institutions can implement legal rules consistently and are subject to and obey them. Government institutions directly involved in marriage here already maintain consistency, thanks to Standard Operating Procedures and mechanisms for dispensation when necessary. In this regard, the Office of Religious Affairs (KUA), Civil Registration Office (Pendaftaran Sipil), and Courts have been integrated into a standard system.
- iii. The majority of citizens in a country have a principled agreement with the content of regulations, so citizens' behavior will conform to government-issued regulations. This is certainly somewhat lacking in the majority, as not everyone has a disability. However, the majority needs to understand that people with disabilities have special needs that differ from those of the general public.
- iv. Judges are independent; they are impartial and consistently apply the rule of law when resolving legal issues. In this aspect, judges consistently apply the law when considering and determining a person's competence in the field of civil law, particularly in the area of marriage.
- v. Court decisions can be concretely implemented. In the aspect of marriage law, there is no doubt that court decisions can be immediately implemented. Based

on the two theories above, a preliminary assessment of ASD can be conducted not only based on age (of sufficient age) but also on clinical records that demonstrate competence. Every human being has mental weaknesses, but to a certain extent, so the definition of competence in ASD is also the same. ASD is considered competent by the ICD-10 variable, with few symptoms present.

A person with mild autism (Asperger's) has symptoms totaling a maximum of 6 points (based on the Autism Early Screening Checklist). According to psychologists, individuals with mild autism (Asperger's) are still considered aware of their rights and obligations, so from a legal perspective, autism at this level is still considered a legal subject.

Based on these analyses, the concept of legal capacity is derived, which consists of two requirements: age (at least 19 years for marriage) and mental health. It is clarified that the mental health variable in ASD is not limited to age, but also includes mild autism that does not impair a person's conscious and cognitive functions (reason).

This concept meets the legal certainty aspect, as outlined in the theory of the purpose of law itself, namely:

- i. Justice. Justice here refers to equal rights (inclusion), often referred to as distributive justice. This means not only fulfilling rights but also protecting the rights of others (other prospective brides and grooms);
- ii. Benefit: This aspect explains that marriage, in addition to fulfilling the purposes of procreation, also acknowledges the existence of disabilities (masalah al-'ammah) and upholds religious beliefs.
- iii. Legal certainty, which in this case fulfills the requirements not only by complying with the articles or provisions of the law but also by being directly implemented by authorized officials.

2. Legally Certain Competence Formulation For Persons With Autism Spectrum Disorders So That It Can Be Implemented By Judges And Authorized Officials

Judges require legal interpretation and reasoning to determine the law. Not only judges, but also officials authorized to enforce the law have the function of providing legal certainty. Before delving into the formulation of competence, it is necessary to first explain the factors that influence the legal logic of judges and officials who enforce the law.

Other legal practitioners, such as advocates and marriage registrars, also have authority in this area. However, their scope of interpretation is not as extensive or as robust as that of a judge. Therefore, marriage registrars, in the context of this research, can still be viewed as having the capacity to interpret the law, although not at the same level as judges.

The object of study is marriage, within two paradigms: competence and human rights. Through these two paradigms, we will analyze the reasons for differences in understanding and how to interpret them using interpretative methods.

There are several reasons why it's important to reexamine legal interpretation in legal research. Referring to Joseph Raz's view, there are at least several relevant points. First, interpretation affirms that law is inherently imperfect; legal propositions can be both true and false. Second, because of the incomplete nature of law, interpretation plays a role in filling this gap with the results of reasoning. It is

through this reasoning process that the accommodating and responsive side of a legal rule can be seen. Third, the claim that law is subjective is refuted because the activity of interpretation actually demonstrates a diversity of perspectives according to the viewpoint of each legal interpreter.

Reasoning is an intellectual activity that functions to understand the meaning of a term in a proposition, connect one proposition to another, and draw conclusions from these relationships. Simply put, reasoning can be understood as a form of thought process that encompasses understanding, concepts, and statements. Therefore, opinions, interpretations, or decisions delivered by judges or village heads also fall into the category of reasoning.

In the legal realm, legal reasoning refers to the use of logical principles to analyze legal rules, principles, data, facts, and propositions. In this context, logic is understood specifically as a discipline that studies how to draw valid conclusions from available legal information. Therefore, the term "legal reasoning" is not intended to denote any form of reasoning outside of logic, but rather the application of logical thinking methods in legal practice. Logic in law can also be viewed as a process of conveying truth, although it is possible that a logical argument may yield correct or incorrect conclusions.

Patterns of legal reasoning are strongly influenced by the perspective of the individual using it. Upon closer examination, the relationship between reasoning and perspective will produce a juridical orientation of thought that gives rise to a distinctive form or model of reasoning within the legal discipline. This serves as one of the foundations for the emergence of schools of legal philosophy, which serve as subjective frameworks for legal thinking.

In line with Shidarta's opinion, there are two main perspectives on legal reasoning. First, the perspective rooted in the parent legal system. Second, the perspectives of academics and legal practitioners, who can act as participants (*medespeler*) or observers (*teschouwer*). Both form the basis of influence that can be traced to the two main models of legal systems that have developed worldwide.

According to Shidarta, legal interpretation can generally be divided into two main groups: textualist interpretation and purposive interpretation. Within the realm of interpretive methods, the text-based approach is usually realized through the use of grammatical reasoning or authentic (subsumptive) interpretation. Both forms of interpretation emphasize the meaning of language and the explicit intent of written rules. In contrast, there is also the purpose-based approach, which encompasses a broader range of interpretations. This approach includes teleological (sociological) interpretation which emphasizes the social function of a rule, systematic (logical) which looks at the interconnectedness between norms, historical (subjective) which traces the background of the law makers, comparative which compares with other legal systems, futuristic (anticipatory) which looks at the possibility of future application, as well as restrictive and extensive forms which adjust the breadth of meaning of legal norms.

Based on the object, namely marriage law and the subject, namely disability, then from an interpretation it is found that Based on Table 4, if interpreted using the interpretative method (Hamidi, 2017), the following results will be obtained in the interpretation of the terms "marriage and/or guardianship rights":

1) Authentic Interpretation: This interpretative method demonstrates a close relationship with the positivist paradigm, which requires reference to written legal norms that have been systematically codified. Neither contextual nor sociological dimensions are used as a basis for the interpretative process. Therefore, this interpretative model represents the characteristics of textual interpretation, where the authenticity of the legal text is the primary element within the framework. The meaning of marriage as a legal act (agreement) is so unique that the element of competence is truly textually applied. In the Disability Law, the term "legal marriage" also refers to the same principle as the Marriage Law. The advantage of this interpretation is that it is subject to multiple interpretations and disparities, rife with legal certainty but lacking in usefulness (in solving real problems). It is clear that any symptom of disability has the potential to be categorized as incompetent, with a domino effect that can be harmful, such as divorce rates, property, and subsequent custody disputes. A husband may divorce his wife or request a dispensation from polygamy on the grounds that he cannot fulfill his obligations as a wife due to a disability.

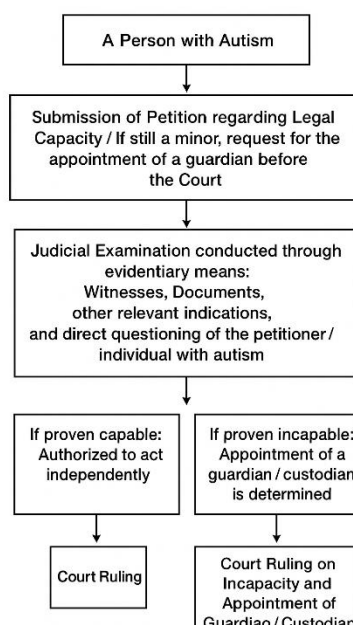
2) Grammatical Interpretation: This interpretation defines the term "competent" in performing legal acts. In civil cases, judges can expand the meaning of the stated article as legal innovators if there is ambiguity or a lack of it in an event. This competence is broadened beyond the burden of rights and obligations to encompass the entirety of life. Here, judges can draw on evidence such as psychological analysis, similar past decisions, and even explore the Compilation of Islamic Law (KHI). Even an unborn baby can be categorized as a legal subject (heir) when referring to the Civil Code. A person can be considered a legal subject from the moment they are still in the womb if there is a compelling interest. Status as a legal subject only ends upon death. This means that as long as a person is alive, there is no term for civil death, which would result in the loss of civil rights. The consequence of the concept of humans as legal subjects is that every individual is endowed with inherent rights and obligations from the outset. These rights and obligations are dynamic, adapting to evolving circumstances and individual needs. This is what is known as legal authority. However, in practice, not everyone has the full capacity to exercise their rights and obligations. The authority to act is only recognized if the individual meets the requirements stipulated by law. Therefore, legal capacity is inherent in an individual only if they fully meet the established criteria and do not violate applicable provisions. From the perspective of *usul fiqh* (Islamic jurisprudence), the term legal subject is known as *mahkum 'alaih*, namely, the individual who is subject to the application of Allah's law and is required to act in accordance with His provisions. A *mukallaf* must fulfill several requirements to be considered worthy of carrying out sharia obligations. The first is the ability to understand legal arguments (*an-nusus al-qanuniyyah*) derived from the Qur'an and Sunnah. This understanding can be obtained directly, through reasoning and personal intellectual capacity, or indirectly, through the explanation of others who are more competent. The second requirement is the presence of *ahliyyah*, namely the ability of a person to act in the sharia matters entrusted to him. By fulfilling these requirements, an individual is deemed legally valid and obligated to comply with religious and legal requirements. The meaning of "competent" will be reaffirmed by the judge in their decision, supported by evidence presented in court.

3) Systematic Interpretation: This interpretation connects several regulations governing the same subject: competence, marriage, and disability. Marriage is regulated by Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 and the Law on Disabilities. These two laws do not prohibit anyone from marrying, but if this interpretation leads to legal action as a requirement for the validity of the agreement, careful consideration is required. The requirement for competence in the agreement must be fully confirmed in the documents and/or forms of evidence, such as the use of dispensations in marriage.

4) Legal Construction (Analogy): In civil law, judges and law enforcers exercise their freedom in accordance with their respective proportions. One legal event that requires reconstruction is the Malang Court's ruling No. 378/Pdt.P/2023/PA.Mlg. In this ruling, an autistic person is declared incompetent, provided that medical records prove the case in court. This means that even if the medical records indicate competence, the outcome could be different, clarifying the legal status of individuals with autism.

Based on this interpretation, the legal construction and legal logic can be described as follows:

Chart 2. Logical flow of thinking of judges and authorized officials in determining competency



Source : Data Analysis

The key to proving competence lies in the judge's attitude and decision-making. During trials, judges sometimes deliberately engage in dialogue with the autistic person or child with autism to verify that medical documents and witnesses confirm that the individual is mentally normal.

Based on the interpretations of law enforcement officials above, there are paradigms that influence the logic of thinking in determining the competence of individuals with ASD to conduct marriage. Kenneth emphasized that a set of assumptions underlying understanding in the fields of philosophy, religion, science, education, politics, science, and other disciplines also influence perspectives on the law and patterns of reasoning (legal reasoning). Thus, these domains contribute to shaping the construction of legal thought. This means that there is a reasoning ideology that is ultimately born or formed from these interactions. In this analysis, the researcher divides these paradigms into three paradigms.

First, Normativistic. As implied by the term, the normativistic paradigm describes a perspective that relies heavily on Islamic jurisprudence (fiqh) as the primary source of thought. Fiqh is considered the central point and basis of argumentation in understanding the law (Rahmat, 2015). For groups adhering to this paradigm, disregarding fiqh is considered a deviation. Therefore, the normativistic orientation places greater emphasis on diverse Islamic legal texts, even though not all of them are established by the state as positive law. This situation also opens up broad scope for interpretation. There are at least several reasons why the normativistic paradigm persists in the legal reasoning of these law enforcers, one of which is because fiqh is seen as an absolute value that reflects God's will.

Second, positivist. The positivist paradigm places positive legal texts, particularly statutes, as the primary reference in viewing legal reality. While the normativistic paradigm relies on Islamic jurisprudence (fiqh), the positivist paradigm, in the context of this research, is based on the Compilation of Islamic Law (KHI) and statutory regulations. This paradigm's hallmark is its doctrinal-deductive reasoning, always starting from positive norms within the legal system. Consequently, judges and law enforcement officers are limited in their creativity, making it difficult to adapt to constantly changing social developments.

Within a positivistic framework, legal certainty is prioritized over the achievement of justice. This paradigm aims to safeguard individual freedom, but on the other hand, it often neglects the realization of justice for the wider community. In fact, this approach tends to oversimplify the law and isolate the moral aspects of the law, potentially giving rise to new problems.

Although the positivist paradigm promotes the idea of legal justice, its implementation often fails to provide a real sense of justice. This is because the concept of justice is dynamic and constantly changing according to public agreements over time. Thus, the interpretation of justice offered by this paradigm is often considered inadequate compared to the demands of justice that exist in society.

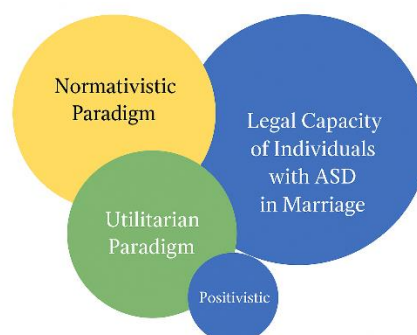
Third, the utilitarian paradigm. This paradigm emphasizes contextualizing the law by focusing on the search for values of public interest. In this approach, not only the public interest aspect is referenced but also enriched with modern scientific perspectives so that the law can be more accommodating and responsive to current developments.

This approach emphasizes the anthropocentric side, where legal participants are required to explore fundamental and essential values in building legal consensus. Social reality and public interest orientation are primary considerations in producing legal thinking. This emphasis on the anthropocentric dimension also serves as a critique of overly textual and ideological thinking, as the utilitarian paradigm

prioritizes humanitarian missions. Judges or officials who adhere to this paradigm typically strive to protect the community, so their decisions tend to be beneficial.

Based on the three paradigms above, it can be depicted in the following diagram:

Diagram 1. Dialectics of Legal Reasoning between Judges and Law Enforcement Officers



Source : Data Analisis

Based on Diagram 1, normativeism dominates the thinking patterns of judges and law enforcement. This strong paradigm is not without reason. The Dutch civil law system and civil regulations, which are also civil law in nature, strongly reinforce this culture and reinforce the belief that fiqh is God's will. This study found two patterns of paradigm relationships in viewing the issue of marriage for people with disabilities. First, there is a dialectic between the normativistic and utilitarian paradigms, which interact with each other. This means that marriage registrars who adhere to the normativistic paradigm often also adopt a utilitarian dimension by formulating a teleological legal view through fiqh. Conversely, those who use the utilitarian paradigm are unable to completely abandon references to fiqh texts.

Second, the positivistic paradigm is also related to utilitarianism, although the relationship is not as strong as the normativistic one. This is evident in the presence of marriage registrars who clearly employ a positivistic framework, while still incorporating utilitarian elements, albeit to a limited extent. The intersection pattern of the paradigm shows the level of involvement of each in the study, where the normativistic occupies the most dominant position, followed by the utilitarian, and finally the positivistic, especially in viewing the legitimacy and suitability of people with disabilities (ASD) to enter into marriage.

Autism is a condition resulting from a neurobiological disorder that impacts brain function. This disorder makes it difficult for children to communicate and interact effectively with their environment. One of the most obvious symptoms is a tendency for children to be unresponsive to others or situations around them. Children with autism are often reluctant to engage in conversation or play with peers, preferring to be alone and immersed in a world they have created for themselves.

In discussions regarding legal subjects, one of the requirements that must be met is the capacity to bear legal burdens. This capacity encompasses two aspects: the capacity to be subject to the law and the capacity to act according to the law. The capacity to be subject to the law, or *ahliyah al-wujub*, applies to every human being from conception, through birth, through adulthood, and ultimately, until death. This means that every human being is inherently capable of accepting the burden of the

law, so no factor can remove this capacity (taklif). However, legal capacity is divided into two levels: imperfect capacity and full capacity. Once a person has achieved full capacity, all their actions are recognized as legally valid.

The legal capacity, or *ahliyah al-ada'*, is not possessed by everyone. This capacity is limited by certain conditions, namely having reached puberty and being of sound mind. However, scholars agree that the state of mind can change, diminish, or even disappear altogether, rendering a person incapable of performing legal acts. In life, sometimes a person who meets the requirements for taklif experiences certain circumstances that prevent them from carrying out legal obligations, either due to internal or external factors. The factors that influence this capacity are known as *awaridh al-ahliyah* or obstacles to taklif, meaning conditions or circumstances that prevent a person from carrying out the law (Abdul Hayy Abdul 'Al, 2014).

These obstacles are generally divided into two main categories: internal impediments (*awaridh samawiyyah*) and external impediments (*awaridh muktasabah*). Internal impediments are conditions inherent within an individual that arise beyond human control, such as insanity (*junūn*), unconsciousness (*ighmā'*), intellectual disability, senility, or severe illness that impairs rational judgment. These conditions directly affect the stability of a person's mental faculties, thereby reducing or entirely suspending their legal capacity to act. Islamic jurists emphasize that when such internal factors arise, the individual cannot be held fully accountable (*mukalla'*), and the law must adjust to their diminished ability, either by exempting them from obligations or by modifying the legal consequences of their actions.

External impediments, on the other hand, are circumstances acquired from outside the individual, such as coercion (*ikrāh*), extreme fear, intoxication, or conditions of emergency and necessity (*ḍarūrah*) that restrict a person's freedom to choose and act. Although these factors do not eliminate reason itself, they can significantly compromise the voluntariness and intent (*qasd*) behind a legal act, which are central elements of liability and responsibility in Islamic law. As such, actions performed under compulsion or severe pressure may be considered invalid, suspended, or legally excusable, depending on the degree of influence exerted on the individual.

In both categories, the underlying principle is the preservation of justice by ensuring that legal obligations correspond with an individual's actual capacity. Islamic jurisprudence consistently upholds the maxim "*al-masyaqqah tajlib al-taysir*" (hardship necessitates facilitation), indicating that the law recognizes human limitations and adapts accordingly. Thus, understanding the nature and scope of *awaridh al-ahliyah* becomes crucial for determining the extent of legal responsibility, safeguarding individual rights, and ensuring that the implementation of the law remains aligned with the higher objectives of the Sharia (*maqāṣid al-sharī'ah*), particularly the protection of intellect, life, and dignity.

These obstacles can be something that eliminates *ahliyah al-wujub*, such as death; eliminates *ahliyah al-ada'*, such as sleep or epilepsy; or simply limits the application of the law, as in the case of travel. Therefore, all these obstacles are called *awaridh* because they function to prevent the full application of the law. In psychology, a person's mental maturity is measured using a specific scale. According to Mr. Agus Projo Harsono, S.Sos, NLP, RFP, CH, CHt, CI, CHPP, CHPT, individuals with mild autism and Asperger's have different levels of mental maturity than

typical children. For example, a 12-year-old autistic child may have a mental age lower than their chronological age. Although they may have a high IQ and good memory, their mental maturity is still not commensurate with their age. In terms of learning and worship, children with autism are able to carry out religious teachings, but they do not yet understand their meaning or values.

Regarding *awaridh al-ahliyah*, mild autism and Asperger's do not eliminate *ahliyah al-wujub* or *ahliyah al-ada'*, because these barriers stem from external factors beyond the individual's control. Although therapy can help, the autism condition remains inherent in the individual. These barriers can indeed reduce the ability to act legally, but do not eliminate it completely. Ontologically, they still have sufficient cognitive potential, so they cannot be assessed as individuals who are totally prevented from taking legal action.

In this study, three individuals with mild autism and Asperger's syndrome, aged 13-20 (child-adult range), served as subjects. Each individual exhibits varying levels of competence, making it difficult to assess their understanding of meaning (values). Therefore, to determine whether those who have reached puberty can be categorized as a legal person, more in-depth intervention is required. According to the researchers, individuals with mild autism and Asperger's syndrome can be categorized as "*ahliyah al-ada' an-naqishah*." This means they possess a functioning intellect capable of understanding, but their competence is not yet complete. In such a condition, "*ahliyah al-ada'*" is not completely lost, but rather limited. Therefore, legal actions that benefit them are considered valid, while those that harm them are declared null and void. In line with the analysis of psychologists, researchers stated that, in general, autistic individuals are actually competent, but in certain circumstances, the label "autism" tends to point towards Down syndrome or other cognitive disorders, which are not actually autism, according to psychology. Based on the language of legislation and psychology, if ASD is categorized as a disability, then Article 4 paragraph (1) of the Disabilities Law adds one additional letter, "e," which reads "Persons with Developmental Disabilities."

This is based on research showing that autistic children's development differs from that of children in general, resulting in their psychological maturity not yet reaching the same level as their peers at certain stages. It also cannot be equated with intellectual or mental disabilities because there are no cognitive impairments. Therefore, in the case of ASD, age cannot be used as the sole benchmark for determining competence.

IV. Conclusion

Current Indonesian legal provisions accommodate the needs of individuals with Autism Spectrum Disorder regarding legal capacity to marry, as regulated in the Marriage Law and the Disabilities Law. The civil right to marry is practically easier to achieve than the right to property. The concept of this capacity is explicitly contained in Article 14 paragraph (2) of the Marriage Law, which means under guardianship. Furthermore, a judge's determination of capacity can be made if necessary.

The concept of legal capacity for individuals with Autism Spectrum Disorder to marry is reviewed from the perspective of the *maqashid* of sharia and synergized with the principle of legal certainty, referring to the objectives of *Maqashid*, which

were originally interpreted as safeguarding (al-'ishmah) and protection (al-hifz), but are now more directed towards development (at-tanmiyah), which has implications for achieving human development, respect for human rights, and public welfare (maslahah al-'ammah). Legal certainty in Gustav's paradigm does not stand alone but is integrated with other legal objectives such as benefit and justice. Benefit explains that marriage, in addition to fulfilling the continuation of offspring, also includes recognition of the existence of disabilities (maslahah al-'ammah), and justice provides equality of rights for humans.

Formulation of legally certain competencies for Autism Spectrum Disorder so that it can be implemented by judges and authorized officials, based on the language of the legislation if ASD is categorized as a disability, it can be formulated in Article 4 paragraph (1) of the Disability Law, there is an additional 1 (one) letter, namely the letter "e", which reads "Persons with Developmental Disabilities".

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