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Qualification Status for Close Family Members to Act As an Intermediary for Hearing Impaired Individual's Case in Syariah Court

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Abstract

Syariah Courts lack personnel who can understand or use sign language to handle cases involving hearing impaired individuals. Pertaining to the cases involving hearing impaired clients, this article seeks to investigate the eligibility status of closest family members as intermediaries in the Syariah Court. In this qualitative research, appropriate and related data was obtained using the interview and documentary method. Interviews were performed with six Syariah officers and hearing impaired respondents who had conducted or experienced court proceedings in the Syariah Court. Meanwhile, additional data from the related primary and secondary documents were collected from documentary studies. Next, the collected data were analysed using thematic and qualitative content analysis methods. The research outcomes are separated into four elements. First, a hearing impairment individual's case is referred to sign language interpreter who acted as the main intermediary between the court and the parties involved. Islam encourages humans to seek help from the field's experts to be fair and just, which in this case is the sign language interpreter, as they are more knowledgeable and experienced with the deaf community. Second, in a situation where the case was filed through the application process by hearing impairment individuals, the intermediary can be appointed from the applicant's own family members. The intermediary's role is to assist and explain what was requested by the deaf applicant, but of course with supervision by an authorised interpreter. However, it is different in cases filed through claim proceedings. The appointment of a family member as an intermediary in a claim proceeding case is irrelevant. This is due to the nature of the claim case itself which only involve two disputing parties. Thus, the case shall be overseen and handled by a qualified sign language interpreter to avoid confusion. Third, hearing impairment individual or deaf community has their own culture and lifestyle. They tend to confide in and put their trust in fellow deaf rather than unimpaired friends and family. The camaraderie and shared disability bond the deaf community tighter. Fourth, the aspect of intermediary selection must be scrutinised to ensure no manipulation and deceit in translating sign linguistic to spoken language. All of these elements will establish excellent two-way communication between the court and the parties involved in a case. The implication of research discovers that the sign language interpreter whose expert in legislation is very much needed to assist in hearing impairment individual

case. The continuation of research can be carried out in the framework to identify other necessities beneficial to hearing impairment individuals at the Syariah Court.

Keywords: Intermediary, Qualification, Syariah Court, Hearing Impairment Individual

Introduction

A Person with Disabilities (PWD) is defined by the World Health Organization (WHO) as a person who is unable to completely or partially satisfy the demands of their social life as a normal human due to a physical or mental condition. Meanwhile, Section 2 of the Persons with Disabilities Act of 2008 defines PWD as a person who has had long-term physical, mental, intellectual, or sensory difficulties that have limited this group's participation in society. In Malaysia, PWDs are grouped into seven categories, one of which is hearing impaired. The hearing impaired group employs sign language to communicate (Awang et al., 2010). Sign language is divided into several branches, including Malaysian Sign Language (BIM) and Malaysian Sign Language Hand Code (KTBM). Nevertheless, BIM is the official language of the hearing impaired as stipulated in Section 2 of the PWD Act 2008.

In the framework of Malaysian legislation, any individual with a disability will be classified as a vulnerable person or a vulnerable group (Ghafar, 2014). This includes persons with impairments, such as the hearing impaired, who confront a variety of hurdles when dealing with court proceedings and have the right to request help throughout judicial processes and procedures in court as contesting parties, victims, or witnesses (Roslan et al., 2021).

The purpose of this article is to investigate the ability of close family members to serve as intermediaries in the Melaka State Syariah Court for hearing impaired clients. An intermediary is someone who acts as a consultant or guide in a scenario, whether it is at work, at home, at school, or in a public location. An intermediary must be sensitive to the surroundings as well as confident in their ability to do the job (Majid, et al., 2001). In this study, the intermediary should be someone who has close interaction with the applicant or plaintiff. For example, family members or close friends may appear before the Syariah Court as helpers to interpret the hearing impaired client's requests to the Court.

This research also highlights the qualifications of an intermediary in assisting the court in managing cases involving hearing impaired individuals, whether in the early phases of case registration, case mention, or case trial. This is critical to ensuring that the information communicated by the intermediary corresponds with the hearing impaired person's preferences. The information presented by the court, on the other hand, is correct and its meaning is easily understood by the hearing impaired client (Ghafar, 2014).

Working in this field, the writer experienced first-hand in handling hearing impaired cases. The writer felt compelled to compose this article in order to tackle these issues as well as filling gaps and loopholes in cases involving hearing impaired individuals. Meanwhile, the writer hopes to contribute more to deaf community and encourage hearing impaired individuals to seek help whenever encountered Syariah-related dispute, rather than left it unresolved. The aforementioned matter commonly occurred within community however this is solely based on writer's observation.

Methodology

This qualitative research was carried out in the area of Melaka. The interview approach was used to acquire relevant and pertinent study data from six respondents. Three of the interviewees were Syariah Officers from the Syariah Court of Melaka, while the other three

were hearing impaired individuals who had gone through the trial procedure at the Syariah Court of Melaka. Semi-structured interviews were done to gain information from respondents regarding family members as intermediaries for the hearing impaired in the Melaka Syariah Court. Furthermore, documentary research methods were employed as a supplementary mode of data collection in this study. This strategy is used for documents, texts, and notes pertaining to the problem under consideration (Neely & Ponshunmugam, 2019; Prior, 2008). The primary goal of this method is to scientifically examine written documents, whether public or private (Payne & Payne, 2004; Walsh, 2014). The researchers assessed both sorts of documents for this study. The key documents in this research include Quranic verses, hadiths, and Malaysian legal statutes. While the secondary materials for this study include books and journal articles about intermediaries, hearing impaired individuals, and Syariah Court proceedings.

The data acquired for this study was then analysed using thematic analysis methodologies and qualitative content analysis. Thematic analysis was carried out in accordance with the six phases proposed by Braun and Clarke (2006), beginning with familiarising oneself with the data and ending with the production of a report. This strategy is utilised to comprehend the experiences or ideas of persons who have worked with intermediaries in Syariah Court proceedings involving hearing impaired individuals. Then, qualitative content analysis approaches are employed in order to comprehend and obtain significant and usable information (Julien, 2008). Because this is a qualitative study, both forms of analysis were used in this study inductively (Julien, 2008). This process was performed repeatedly (recursive) and involves the collecting and analysis of data connected to the application of definitions, rules, or procedures for continuous results. (Hayes et al., 2019; Leavy, 2017; Liew et al., 2018).

Findings

The study's findings are divided into four sections: first, the service of interpreters as intermediaries in court from the Islamic perspective; second, intermediaries in Syariah Courts; third, the culture of hearing impaired individuals; and fourth, the benefits and drawbacks of intermediaries among close family members. All research findings will be discussed in accordance with the parts that have been established.

Interpreters' Service as Intermediaries in Court According to Islamic Perspective

Each judge is required to render a just and equitable decision to the conflicting parties. This matter is affirmed by Him in Surah an-Nisa':

"...Dan apabila kamu menjalankan hukum di antara manusia, (Allah menyuruh) kamu menghukum dengan adil..." (Surah an-Nisa' (4): 58)

Hearing all of the arguments and facts from both parties is one approach of punishing equitably. As recounted by Ali R.A., the Prophet S.A.W. ordered this:

Dari Ali (r.a.) bahawa Rasulullah (s.a.w.) bersabda: "Apabila ada dua orang meminta keputusan hukum kepadamu, maka janganlah engkau memutuskan untuk orang yang pertama sebelum engkau mendengar keterangan orang kedua agar engkau mengetahui bagaimana harus memutuskan hukum." Ali berkata: "Setelah itu aku selalu menjadi hakim yang baik." [HR: Ahmad (hadis bil. 690), Abu Daud (hadis bil. 3582), dan al-Tirmizi (hadis bil. 1331)]. Hadis ini dinilai *hasan* oleh al-Tirmizi, dikuatkan oleh Ibnu al-Madini, dan dinilai sahih oleh Ibnu Hibban.

As a result, before rendering a judgment, the judge is required to hear all arguments and evidence from all sides. However, the difficulty arises in circumstances involving parties or one of them who communicates a foreign language, such as the hearing impaired, that judges cannot understand. How can a court make a decision if they cannot comprehend all of the arguments and facts presented in the different language? These are some of the social and cultural barriers that are encountered during the trial of hearing impaired individuals' cases (Roslan et al., 2021). This question can be addressed with the assistance of an intermediary who serves as an interpreter in court (Sulong, 2007; Zaydn, 2011). If the judge is unable to understand the foreign language spoken by the disputing parties, or one of them, or a witness, *fuqaha* require them to seek the assistance of an interpreter (al-Mawardi, 1999; al-Sarkhasi, 1993; 'Alisy, 1989; Ibnu Qudamah, 1968). This is based on some *sharie* evidence from the Qur'an, *sunnah*, and Companions R.A.'s conducts. The Qur'an states that it is required for anybody to refer to someone who is informed or competent in a subject if they do not know the subject. This is based on His remarks in Surah al-Nahl, verse 43::
"Oleh itu bertanyalah kamu kepada orang-orang yang berpengetahuan jika kamu tidak mengetahui" (Surah al-Nahl (16): 43)

The above verse clearly demonstrates the need to refer any uncertain issue to a more informed or experienced individual (al-Shawkani, 2000; Fakhruddin al-Razi, 1999). This also covers foreign language issues that the judge is unfamiliar with or understands (Shaniyur, 2005). As a result, the judge should seek the assistance of an intermediary who is fluent in sign language.

Furthermore, an authentic hadith indicates that Rasulullah S.A.W. once sought the assistance of a person who was informed or competent in a foreign tongue (the language of the Jews) since he did not know or comprehend it (Shaniyur, 2005). Kharijah bin Zaid narrated this in Sahih al-Bukhari:

Kharijah bin Zaid bin Thabit mengatakan bahawa Zaid bin Thabit berkata, "Nabi (s.a.w.) memerintahkan aku mempelajari tulisan orang Yahudi. Aku bahkan menulis surat untuk Nabi (s.a.w.) (kepada orang Yahudi) dan juga membaca surat mereka ketika mereka menulis kepadanya." Dan Umar berkata di hadapan Ali, Abdul Rahman dan Uthman, "Apa yang dikatakan wanita ini?" (wanita itu bukan Arab) Abdul Rahman bin Hatib berkata: "Dia memberitahumu tentang temannya yang telah melakukan hubungan seksual haram dengannya." Abu Jamrah berkata, "Aku adalah penterjemah antara Ibnu Abbas dengan orang ramai." Beberapa orang berkata, "Seorang penguasa harus mempunyai dua orang penterjemah."
[HR: al-Bukhari (hadis bil. 7195)]

The above hadith also demonstrates several practices of the Companions R.A. who utilised the services of two translators in a variety of circumstances, particularly official matters (Shaniyur, 2005). This demonstrates that using a translator to facilitate a matter is a practice prescribed by Islam. This service is essential in court sessions when interpreting foreign languages, such as sign language, when the judge does not comprehend or familiar with the foreign language. As a result, the judge is required to seek professional assistance from interpreters in order for the verdict to be rendered just and equitable. Furthermore, according to Shaniyur (2005), *fuqaha* assert judges to refer to interpreters encompasses all kinds of foreign language translation, whether oral or sign language.

In regards to that, a study by Shaniyur (2005) concluded that the *fuqaha* have established several conditions, eight of which are: (1) Muslim; (2) fair; (3) trusted; (4) *mukallaf* (accountable); (5) understand or master two concerning languages which are the translated language and the language in translation; (6) diverse; (7) comprising from men, and (8) perceiving. Nonetheless, these eight conditions encompass the conditions that are both agreed and disagreed by the *fuqaha* of the main *fiqh* school. The first five conditions are agreed upon; however, the remaining two conditions are not. Although the *fuqaha* have established several standards that the interpreter must meet in order to be called to court, they do not specify whether the interpreter must be from among the close family members or vice versa. This implies that precedence is given to any interpreter who meets all of the requirements without regard to the interpreter's history, such as being an immediate family member.

Table 1: List of respondents who have been interviewed

Respondents	Positions
Respondent (R1)	1 Assistant Registrar of the Syariah Court of the State of Melaka
Respondent (R2)	2 Judge of the Syariah Subordinate Court of the State of Melaka
Respondent (R3)	3 Senior Judge of the Syariah High Court of the State of Melaka
Respondent (R4)	4 Hearing Impaired Clients in the Syariah Court of the State of Melaka
Respondent (R5)	5 Hearing Impaired Clients in the Syariah Court of the State of Melaka
Respondent (R6)	6 Hearing Impaired Clients in the Syariah Court of the State of Melaka

Intermediaries in Syariah Courts

Syariah officers are among the most key officials in guaranteeing that hearing impaired individuals are given their due rights. According to R1, starting with the case registration procedure at the counter, the officer assigned to the counter is responsible for verifying that the case code registered corresponds to the problem presented by the hearing impaired. Subsequently, at the case registration stage, the function of an intermediary from the hearing impaired individual's close family members is particularly beneficial in serving as a mediator between the hearing impaired and the court officials who serve at the counter.

Meanwhile, R2 affirms that the inclusion of an intermediary among close family members is desirable since close family members understand the innermost of the hearing impaired better. This is due to the fact that family members engage with the hearing impaired more frequently. This matter is supported by R1 since the presence of an intermediary, to some extent, is able to assist the court to manage cases involving the hearing impaired. However, from the perspective of justice to every party, the intermediary among family members is not advised to accompany the plaintiff to the Syariah Court for claim cases. This is due to the fact that the claim case involves the claims of the parties in dispute. Syariah courts should provide expert sign language interpreters to aid in the smooth handling of the case (Sulong, 2007).

Furthermore, R2, who has experience handling cases involving PWD, stated that intermediaries can assist the court in managing and communicating vital information to the hearing impaired. For example, the intermediary can describe the documents that must be presented during the case's mention and trial. This is critical in ensuring that applicants from this group are aware that court processes need the submission of formal documentation in order to proceed with an application or claim. After the lawsuit is registered, the parties will go through the case mention procedure before proceeding to the trial stage. In this instance, the court needs a sign language interpreter to translate legislative matters. In situations where any parties require the assistance of a lawyer to assist in the resolution of the case, R3 prefers to assign the responsibility to the sign language interpreter to act as a mediator between the lawyer and the client in order to gain an understanding of the chronology as well as management of the case proceedings.

The Culture of Hearing Impaired Individuals

People with hearing impairment have their own culture (Yusoff, 2014). Typically, this group consists of exceptionally loyal friends. These people are more at ease and trust people who are of a similar case with them. However, this group does not rule out the possibility that anybody in the normal circle might like to assist, particularly in becoming a sign language interpreter. However, according to R4, this group feels more comfortable expressing their concerns and thoughts to persons who understand their culture and can communicate well in sign language.

Parents who have a child with a hearing impairment will usually send their child to a school with a special stream to guarantee that their child receives a suitable education. As young as seven years old, these children are placed in boarding schools. After finishing elementary school, children will continue their education at the secondary level, which is also a boarding school. Some hearing impairment students continue their education in vocational colleges, which provide skill courses tailored to their interests. According to R5, it is apparent that these hearing-impaired youngsters spend more time with their friends in boarding schools than with family members.

Family is a venue for the typical group to share problems. Family is also the foundation behind the success of a person in any field they endeavour. In the meantime, parents must guarantee that their children obtain the finest education possible. As a result, if parents and siblings recognise each other's feelings, the family institution will be more harmonious. R5 believes that a friend who is the same fortune is the most vital for the hearing impaired since this group is more empathetic and can share their challenges together. This group will convey marriage issues to people who are as fortunate as him. This is due to the fact that they communicate using sign language. This is completely supported by R6 and R4, both of which have prior experience with this issue. R5 also has an experience where this group is not comfortable telling family members about their concerns because they are used to growing up with peers.

The majority of hearing impaired individuals have normal family members who do not learn sign language. They communicate using self-created sign language or through written methods. This makes it difficult for the hearing impaired to explain their difficulties to family members, resulting in a gap in family connections. However, not all ordinary family members act in this manner. Others, on the other hand, are highly aware and attentive about the existence of special individuals in the family, and they take the initiative to learn sign language to enable two-way communication.

Some hearing impaired individuals who have case management in Syariah Court would bring their close family members to help explain the real situation they are facing. R1 and R2 both agreed on this circumstance. Because it is difficult to engage with the hearing impaired, family members do not have in-depth knowledge of their loved one's concerns. Typically, close family members employ the practice of writing on paper to inquire about the hearing impaired individual's requests. According to R6, this deprives the hearing impaired of their freedom and prevents them from properly expressing their thoughts. As a result, this group feels more at ease being supported and attended by sign language interpreters who can converse two-way and understand their interests.

Furthermore, R4 contends that the criteria for selecting a sign language interpreter are critical and should be scrutinised. If the language employed by a sign language interpreter does not correspond to the level of comprehension of the hearing impaired, the meaning conveyed will be incorrect. As a result, the Malaysian Association of the Deaf states that every sign language interpreter must be skilled and knowledgeable in communicating in line with the hearing impaired individual's level of understanding. This will indirectly convince their faith in interpreters.

The role of the intermediary, to some extent, facilitate the hearing impaired in resolving their case promptly in the Syariah Court. An intermediary's credentials must also include family members or persons close to the hearing impaired to assist this group in communicating their needs. An intermediary must also be honest and truthful, as well as have a thorough understanding of the challenges that the hearing impaired encounter.

The Benefits and Drawbacks of Intermediaries among Close Family Members

For cases involving the hearing impaired, assistance from the intermediary is useful at the beginning phase, which is at the counter for the case registration process. Cases involving petitions before the Syariah Court, on the other hand, can be aided by an intermediary but must be monitored by a sign language interpreter. To guarantee that the information provided by the intermediary is reliable and there is no element of fraud, the sign language interpreter must not be a close family member of the hearing impaired.

This is opposed to the claim case. Because the claim case involves arguments and conflicts between the internal parties, the presence of an intermediary among the close family members is mostly immaterial. It is thought that if an intermediary is allowed to join as an aid in conveying testimony from the hearing impaired, the evidence would be fraudulent and biased in favour of the side they represent. In this instance, the participation of a legal sign language interpreter is critical to the proper operation of the proceedings. This is due to the fact that a sign language interpreter does not represent either side; rather, it must be fair and serve merely as a bridge for both parties to deliver and respond to the evidence in the Syariah Court (Ibrahim-Gonzalez & Noordin, 2017).

The aspect of interpreter employment and selection is critical for a judicial institution to ensure that the rights of the hearing impaired are upheld. Furthermore, a sign language interpreter can go into detail regarding the ethics and how the Syariah Court conducts a case. As soon as a matter is decided by the court, the sign language interpreter is responsible for conveying it to the hearing impaired. This is also done to guarantee that this group receive proper input and services from the court as soon as they practise justice, which is stressed in a Syariah Judicial Institution in Malaysia. The Syariah Court must also guarantee that the additional requirements from the hearing impaired during court proceedings are constantly improved.

Conclusion

Signal interpreters serve as a bridge of interaction between the hearing impaired and the typical group. The syariah officer's information must be conveyed to the hearing impaired client in sign language or in a manner appropriate for the hearing impaired individual's understanding. Similarly, if the hearing impaired wishes to provide information or evidence to the court, the sign language interpreter must do it via voice over, or in its simple term, using regular speech. Simultaneously, this can also result in two-way communication that is free of misconceptions between the parties involved.

Subsequently, the function of an interpreter in imparting comprehension to the hearing impaired is essential, as stated in the guidelines for professional practice of sign language interpreters. Sign language interpreters must guarantee that correct information is transmitted to the hearing impaired in any manner possible, whether by drawing, acting, or other means. Sign language interpreters must think outside the box when dealing with cases of the hearing impaired, as well as draw on their prior experience in assisting them.

A sign language interpreter's body language style, as well as the emphasis of particular mimics or facial emotions, also aids the hearing impaired in better understanding what is being conveyed. This is due to the fact that the majority of the hearing impaired are visual in nature. Therefore, if the hearing impaired client has difficulties understanding what the court is saying or if the hearing impaired is not fluent in sign language, the sign language interpreter's responsibility is to identify other relevant alternatives to provide the Hearing Impaired comprehension.

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