

RECONSTRUCTION OF *NUSYÚZ* CONCEPT IN COMPILATION OF ISLAMIC LAW IN INDONESIA (Gender Equality Perspective Analysis)

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ABSTRACT

Nusyúz is a classical conception codified as a standard law written in Qs. an-Nisáa' verses 34 and 128. The conventional *fiqh* perspective of *nusyúz* connotes the wife's disobedience to her husband, because it is influenced by the patriarchy of pre-Islamic Arab culture. Presidential Instruction Number I of 1991 concerning the Compilation of Islamic Law in Indonesia mentions *nusyúz* in Articles 80, 84 and 125, only regulates the wife's *nusyúz* and its legal sanctions, while the husband's *nusyúz* is not mentioned. There is ambivalence, ambiguity and legal injustice for the wife. The focus of this research is the concept of *nusyúz* in KHI from a gender perspective and its correlation with the development of family law in Indonesia. This type of research is library research with a gender equality analysis approach. The results of this study indicate that it is necessary to rearrange the concept of *nusyúz* in the KHI, including the modern era understanding of *nusyúz* and adding the husband's concept of *nusyúz* and its legal sanctions in KHI.

Keywords: *Nusyúz Modern Era, Gender Perspective, Justice.*

A. INTRODUCTION

Nusyúz is one of the topics of discussion in the field of family law, its concept was not completely discussed in the early days of Islam. The term of *nusyúz* which has been absorbed into the Indonesian legal language is the language of the Qur'an with its various derivations. The *fiqh* understanding of *Nusyúz* intersects with the socio-cultural context of Arab society as a special cause for the revelation of Qs. an-Nisáa' verse 34. The agrarian geographical condition of Arab land places men as the sole authority to earn a living for the family and in the battlefield. These two facts give rise to a patriarchal cultural setting that gives birth to collective assumptions; men are stronger than women. Even in the legal system and legislation, especially in family law in various countries, it is still full of contents (materials) that do not protect and provide fair rights for women (Wahid, 2014).

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Likewise, the Compilation of Islamic Law (KHI) in Indonesia which was born through Presidential Instruction Number I of 1991 (Aris & Sabir, 2020; Helmi, 2016), the object of discussion of several formulations of the article contains discrimination against women. From a methodological point of view, KHI still seems to be a replica of the thoughts of previous scholars. The legal construction of KHI has not been fully framed in the context and perspective of the Indonesian Islamic community (Wahid, 2014). As positive law in Indonesia, its material content is the legitimacy of *fiqh*, which places women in a special angle. Although it does not provide a clear definition of *nusyuz*, the concepts and legal implications presented by KHI are actually considered harsher when compared to conventional *fiqh*. Article 83 Paragraph (I) and Article 84 Paragraph (I) focus on deviations from the wife's obligations which are used as indicators of the wife's *nusyuz*. Even though the husband is also worried about being able to do *nusyuz*, as explained in Qs. an-Nisaa 'verse 128.

It is natural that criticism of KHI in the Atho 'Mudzhar language is a symptom of modern social and culture (Mudzhar, 1999). KHI is unique as a product in the modern era it still takes classical *fiqh* products as a reference, so there is a possibility of gender bias in standardizing the text (Umar, 1999). The emergence of KHI in the Indonesian legal order is a construction of modern Islamic law, including regulating the position of women in the family. According to Abdurrahman (1992), KHI is not final or closed, but open because it still requires refinement, criticism and renewal of its ideas, a necessity. Because its formulation is inseparable from *fiqh*, it has a great influence on a person's behavior, personally and collectively.

By only basing on KHI as the sole reference to determine *nusyuz* and all its legal consequences, KHI is not in suitable with the mandate; Law Number I of 1974 concerning Marriage (amended by Law Number 16 of 2019), Law Number 39 of 1999 concerning Human Rights and Law Number 23 of 2004 concerning the Elimination of Domestic Violence. In the Indonesian context, the existence of the Law on the Elimination of Domestic Violence is a manifestation of the smallest part of the effort to actualize the concept of *nusyuz* in the Qur'an even though this regulation is not framed in a *qanún* like KHI. Then in Article I point I of the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women in Conflict with the Law, which defines women in conflict with the law as women in conflict with the law, women as victims, women as witnesses or women as parties, must guarantee women's right to equal access to legal justice.

Based on the description above, today's social situation is seen as having created legal injustice for women. This is because women in the family institution can no longer be seen as subordinated to men on the grounds that the role and position of women in today's social reality is very different from the condition of women in the past. Women in the current context are relatively evenly distributed and have generally been proven to have the ability to act, choose intelligence and be independent in many transactional matters. This step when drawn with the current social context requires re-examining the moral ideas of KHI which are no longer relevant from a gender perspective. The results of these interpretations can be used as material for reconceptualization of *nusyuz* in KHI and are a point of interest in the discussion of rearranging the concept of *nusyuz* which is gender-equal and equitable.

The academic problem to be discussed in this article is the reconstruction of the concept of *nusyúz* in the Compilation of Islamic Law in Indonesia, a study of the implementation of the principle of gender equality in terms of the meaning, form and understanding of *nusyúz* as well as its legal sanctions. This study is quite interesting, with the assumption that from the classical era (*fiqh*) to the contemporary era (KHI), the understanding of *nusyúz* tends to lead to one direction, namely disobedience, disobedience and disobedience of the wife to her husband's orders and ambiguous sanctions. Even though *nusyúz* both from the wife and husband both have norms in the Qur'an. Although *fiqh* also discusses the husband's *nusyúz* and its form, it is not popular because it is not included with the legal sanctions, while KHI as modern *fiqh* does not at all mention the husband's *nusyúz* let alone the legal sanctions.

B. METHOD

This research is a type of normative juridical research (Faisal et al., 2021), secondary data are Articles 80, 84 and 125 of the KHI, and laws and regulations relating to the concept of *nusyúz*. Therefore, this study focuses more on sources of information originating from laws and regulations and other regulations that are included in the category of legal sources, court decisions, law books, articles, journals, newspapers, magazines and all relevant literature and in sync with the object. The research approach is an analytical tool used to interpret the data that has been selected and processed necessary for the realization of a predetermined research orientation. Approach is the whole element that is understood to approach a field of science and understand knowledge that is organized, round, looking for targets studied by the science. (Gie, 1982; Sihotang, 2018). Given the importance of the progressive law-based problem of *nusyúz*, in order to realize the established research orientation, this research needs to use an interdisciplinary approach (Nasution, 2010). These include approaches to gender justice, feminism, *qir'ah mubádalah*, and contemporary *fiqh*.

C. DISCUSSION

I. Normalization of *Nusyúz* in Various Perspectives

a. *Nusyúz* in *Fiqh* Perspective

The understanding of *an-nusyúz* (النشوز) in language is form of *isím masdár* (*infinitive*) from word *نَشَرَ, يَنْشُرُ* has some understanding (Ilma, 2019; Salam, 2015). Based on Abu Malik Kamal *النشوز* taken from word *النشز* which means "high place" (Kamal, 2009). Ahmad Warson Al-Munawwir (2002) defines "high place, elevated, prominent, disobedient, defiant, or violent". If the context is related to the husband and wife relationship, then it means disobedience, the wife's opposition to her husband. Abu Ubaid said *nusyúz* (النشوز) or *nasyázi* (النشز) is something thick and hard. The word *nusyúz*, if taken into account, means *irtífa'* (excellence). It means a wife who violates or gets out of her rights and obligations as a wife over her husband. She has outperformed her character as a wife and what is natural in everyday life (Ridha, 1993).

According to *syara` nusyûz*, namely the disobedience of a wife to her husband and her disobedience to something is required of her by Allah in the form of obeying her husband (Al-Saldani, 2004; Erman, 2010; Nurasiah, 2016) . Sayyid Sabiq (1990) defines the wife's insubordination and disobedience to her husband including leaving the house without her husband's permission and refusing her husband's request to be invited to bed. While Hamka (1983) means not fearing and disobeying both God and husband. So the definition of *nusyûz* given by experts varies because it is understood differently. Some *fuqáha* explain *nusyûz* with the meaning of the term only being found in the wife, not vice versa there is no term *nusyûz* for the husband. Meanwhile, other jurists explain that *nusyûz* can happen to the wife and also to the husband, but it is not as well known that the term *nusyûz* is attached to the husband.

Nusyûz husband means the husband's disobedience to Allah SWT because the husband leaves his obligations to his wife (Syarifuddin, 2006). The husband's *nusyûz* criterion occurs when he does not carry out his obligations to his wife, either leaving material or subsistence obligations, or leaving non-material obligations (Bakhruddin, 2020; Darajat, 2017) including *mu'asyárah bi al-ma'rúf* or having good sex with his wife.

b. *Nusyûz* in al-Qu'ran

The phrase *nusyûz* found in the Qur'an has been absorbed into Indonesian taken from the root word in its various derivations, this sentence is found repeated five times, in four letters, namely Qs. al-Baqarah verse 259, Qs. an-Nisáa' verse 34, Qs. an-Nisáa' verse 128 and Qs. al-Mujádalah verse 11. The fiqh understanding of *nusyûz* intersects with the context of Arab society as a special cause for the revelation of Qs. an-Nisáa' verse 34. This terminology of *nusyûz* in the perspective of the Qur'an can be seen in two different definitions based on the subject of the *nusyûz*.

Qs. an-Nisáa' verse 34 portrays wife's *nusyûz*. *Nusyûz* in this verse means disobedience or disobey; its interpretation is in line with the interpretation of Shaykh Sa'id Hawwa, namely the disobedience of a wife and their self-exaltation by ignoring obedience to their husbands (Hawwa, tt.). Imam Abi Muhammad al-Husain bin Mas'ud interprets the word *nusyûzahúnna* only with the disobedience of the wives (Mas'ud, tt.). Shaykh Muhammad bin Umar Nawawi interprets with the understanding that wives hate their husbands and exalt themselves by being arrogant (Nawawi, tt.). In Ibn Kathir's interpretation quoted by Siti Musda Mulia, it says the wife against, rebelling and leaving the house without permission. Meanwhile, at-Tabari, defines it as the wife's resistance to her husband, rejecting sexual intercourse which is considered an expression of disobedience, hatred and opposition (Mulia, 2005).

This verse is the key to the Koran in providing solutions when problems arise in a family. Unfortunately this verse is also often misinterpreted by a group of men who are religious or have certain interests. By relying on this verse they consider themselves as master and wife as slaves. Just as a slave must obey his master, so his wife must obey his orders. A husband who acts arbitrarily makes this verse as a justification for all his actions against his wife. Assuming his command is the same as Allah's command, if his wife opposes, then he has the right to give the most severe punishment.

One form of punishment is beatings; one face of physical violence is legalized to be carried out by the husband as the final stage of efforts to restore household stability. Many Islamic literatures state that it is permissible to beat one's wife, some even argue that hitting one's wife is a way recommended by the Qur'an to teach a *nusyúz* wife. This view arises when you only see what is written in the *zahir* verse only. The question that needs to be asked is whether beatings are indeed a recommendation from the Qur'an or a small emergency exit that should not be carried out.

This question is important to ask considering that the Qur'an was revealed to a society that does not humanize women. Let alone being beaten, pre-Islamic women even had the right to be killed, made objects of inheritance and so on without defending themselves. In other words, beating *nusyúz's* wife at that time was a form of violence that was mild compared to the behavior that was usually carried out by pre-Islamic society. If this is the case, the statement of the Qur'an that uses beatings as the last alternative for husbands whose wives are *nusyúz* should not be understood as a recommendation to commit violence against women. Because in the same verse, a method that is more important and effective than the beating itself is stated, namely *máuízáh* and bed-separation.

Máuízáh (giving good advice) and bed-separation (not separated from the house and not silenced each other) are really new methods introduced by the Koran to minimize acts of violence in the form of beatings. In a socio-cultural context that is so permissive to violence, the two methods presented in this verse really offer something that goes against the flow and at the same time accommodates the interests of women (Fayumi, 2002). Sayyid Qutb (2001) even states this verse as one of the many verses of the Qur'an which informs the existence of a struggle between the traditions of society versus the teachings of Islam where Islam is in a position to reform tradition.

As for the permissibility of beatings in the verse, it can be understood based on the special events that led to the revelation of the verse (*asbáb an-nuzúl mikro*). Al-Jassas relates this verse to the wife's obligation to her husband. The discussion begins with an explanation of *nusyuz* where this verse relates to the narrations which state that the *nusyúz* verse came down because of certain events. Namely, there was a man who injured his wife. Then the wife's brother came to the Messenger of Allah and he said that the man should be *qísas*. There was a man who slapped his wife, so the Messenger of Allah ordered *qísás*, and then the verse came down (Al-Jassas, tt.).

According to another version, *asbáb al-núzul* Qs. an-Nisaa' verse 34 (Al-Shabuni, tt.) is the incident experienced by Habibah binti Zaid bin Abi Zuhair with her husband Sa'ad bin Rabi 'bin 'Amr. Sa'ad was one of the leaders of the Ansar group. One day, Habibah was slapped by her husband for being disobedient. Then Habibah invited her father to complain to Rasulullah and said which means: "*Let her qishas her husband*". Then Habibah and his father went to recite Sa'ad. Then the Rasulullah called them back and informed them that Jibril (as) has brought the revelation of Qs. an-Nisaa' verse 34, then said which means: "*We have a will about a thing, Allah also has a will about a thing. While Allah's will is better*".

In the end, the *qísas* order was revoked; however, the beating in this case should be interpreted to teach a lesson, not to hurt the wife. The husband's *nusyúz* expression in Qs. an-Nisaa' verse 128. This verse literally talks about the husband's *nusyúz* to the wife, which can be

interpreted as turning away, reluctant, or no longer paying attention to the wife. The reason could be because he is no longer interested in his wife, or has started an interest in other women. The completion of this verse invites them both to make peace, to return to their original commitment as a couple who love and care for each other.

Husband and wife must be kind to their partner and must fulfill their partner's rights happily and not show hatred (Ja'far et al., 2021). The wife must obey her husband, stay at home and the husband has the right to forbid her from leaving the house. The husband is obliged to pay the dowry and provide a living, according to the consensus of the scholars (Armansyah, 2018; Hidayat, 2018; Maki, 2021). Given the importance of harmony and legal order in the family environment, *nusyúz* behavior, whether carried out by husbands or wives is an act that is prohibited by Islamic teachings.

c. *Nusyúz* in the Compilation of Islamic Law

KHI does not specifically regulate in a separate section related to *nusyúz*, although it is mentioned six times in three different articles, the meaning of *nusyúz* and the steps for its completion are not found. In addition, the husband's *nusyúz* is also not regulated, but only regulates the wife's *nusyúz* and its legal consequences.

The norm of *nusyúz* is contained in article: The legal consequences of the *nusyuz* wife are regulated in Article 80 Paragraph (7): "The husband's obligations as referred to in Paragraph (5) fall if the wife *nusyuz*". Her obligations are regulated in Article 83 Paragraph (1): "The main obligation for a wife is to be physically and mentally devoted to her husband in what is justified by Islamic law". The wife is considered *nusyúz* in Article 84 Paragraph (1): "The wife can be considered *nusyúz* if she does not want to carry out the obligations as referred to in Article 83 Paragraph (1) except for valid reasons". As long as the wife is in *nusyúz*, the child's support continues to apply as stipulated in Article 84 Paragraph (2): "As long as the wife is in *nusyúz*, the husband's obligations to his wife as stated in Article 80 Paragraph (4) letters a and b do not apply except for matters for the benefit of the child.". The husband's obligations again apply if the wife is no longer *nusyúz*, regulated in Article 84 Paragraph (3): "The husband's obligations in Paragraph (2) above apply again after the wife is not *nusyúz*. The legal consequences of *nusyúz* due to divorce are regulated in Article 152 of the KHI: "The ex-wife has the right to receive *iddáh* support from her ex-husband unless she is *nusyúz*".

The norm of *nusyuz* in the KHI is narrowed to only the wife with legal consequences, while the husband's *nusyúz* has not been mentioned. Article 84 Paragraph (1) if the editorial examines the contents of the provisions of this article regarding *nusyúz* states that the wife is considered *nusyúz* if she does not want to carry out the obligations as stipulated in Article 83 Paragraph (1) except for valid reasons, thus this provision does not apply for *nusyúz* who came from the husband. Meanwhile, the provisions of Article 152 of the KHI due to the wife's *nusyúz* void the ex-husband's obligation to provide a living during the *iddah* period to his ex-wife. Whereas the husband as the head of the household can also perform *nusyúz*, as the norm is stated in Qs. an-Nisáa' verse 128.

d. *Nusyúz* in the Perspective of Progressive Theory

Gender Justice

According to the perspective of gender equality in Indonesia regarding women, there are legal inequalities that are felt by women (Fibrianto, 2018; Kania, 2016), one of the perceived legal inequalities relates to *nusyúz*. Siti Musdah Mulia and the team in collaboration with the Gender Mainstreaming Working Group (PUG) of the Ministry of Religion conducted a review on KHI. One of the problems raised was the *nusyúz* problem, they assumed that *nusyúz* did not only occur by the wife, but the husband could also do it, therefore in the KHI legal certainty was needed if the husband committed *nusyúz*. From the study they did, a Counter Legal Draft (CLD) emerged. The principles used are benefit, justice, gender equality, upholding human rights, pluralism, nationality and democracy (Mulia, 2005).

In the CLD mentions: (1). A husband or wife can be considered *nusyúz*, if they do not carry out their obligations or violate their rights. (2). the settlement of *nusyúz* is carried out peacefully with family deliberation. (3). If an amicable settlement is not reached, the aggrieved party may submit a request or a lawsuit for settlement to the Court. (4). If violence or persecution occurs as a result of *nusyúz*, then the injured party can report it to the police as a crime (Luhulima et al., 2006; Mulia, 2005).

Zaitunah Subhan agrees with Siti Musdah Mulia, she is of the opinion that although the KHI has regulated the issue of *nusyúz*, and as wisely as possible regulates the pattern of husband and wife relations in the family, in reality it still cannot guarantee the rights of each partner. In addition, in the KHI, the rules governing *nusyúz* are still considered gender biased, because the *nusyúz* regulation only applies to wives, while husbands who do not carry out their obligations are not regulated in it. In other words, the article does not position husband and wife equally (Asni, 2012).

Muslim Feminist

The family system in Islam does not show patriarchal values. So far, there has been an assumption that the institution of family and marriage is clear evidence of the strong patriarchy in *fiqh*. This view arises because of an error in seeing the text and context of the Qur'an. It is seen that there are several verses in the Qur'an that have been used as evidence for male supremacy, namely the verse about women's leadership and wife beating (Barlas, 2005). Someone who looks at the Qur'an will conclude that Allah does not discriminate between men and women. The equality between the two are evident in many verses and occasions. The simultaneous mention of the words *al-mukminn* with *al-mkminat* and *al-muslimun* with *al-múslimat* in the Koran further strengthens the equality of rights between men and women.

Interpretation of Qs. an-Nisáa' verse 34, Asghar Ali Engineer suggests that people should not take a purely theological view in this case. One must elevate socio-theological views, because apart from being normative, the Qur'an also consists of contextual teachings. There will be no effective scripture if it ignores the context completely (Ghazala, 1997). The next line can be predicted when conditions change, the treatment of women must also change. This Asghar model approach is considered by Barbara Freyer to have created a new paradigm in interpreting

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the verses of the Qur'an. In addition to reinterpreting, they also offer a new approach, even to the text of the Qur'an itself (Stowasser, 1994).

As stated by Amina Wadud, the Qur'an never commands women to obey their husbands. The Qur'an never states that obedience to the husband is the best characteristic of women. According to him, although the interpreters translate *nusyúz* as unfaithfulness and bad behavior on the part of the wife, in the Qur'an the word refers to the general condition of household chaos (Barlas, 2005).

It is this interpretation of hegemony that will be reconstructed by Amina Wadud with a typical feminist interpretation approach. So that it will give birth to a model of religious understanding that is just and egalitarian. With his methodological approach, he provides a more fair interpretation by exploring three key words from Qs. an-Nisáa verse 34 which according to him is the main issue in relation to the *nusyúz* issue. According to Amina, the meaning of the concept of obedience is to place a truly harmonious pattern of household relations away from pressure. Neither party feels being oppressed and oppresses but based on the relationship pattern that men are women's partners to improve each other's emotions, intellectually, economically and spiritually.

The interpretation model proposed by Amina Wadud is not separated from the spirit of feminism that runs in her blood. Of course it is influenced by the environment in which she lives and socializes, so that it affects the mindset and sensitivity to the phenomena that occur around her. Through a different perspective, Amina Wadud comprehensively views that *nusyúz* is not actually disobedience. According to her, it is only a disturbance of harmony in the household, which must be resolved in a good way. She does not agree with the classical scholars who view *nusyúz* as disobedience or disloyalty to their husbands and reject violence as a way to solve the problem of *nusyúz*.

Fatima Mernissi explained that the concept of *nusyúz* was defined more broadly as a form of awareness of women's equality. That is, women have the right to have different desires, views and opinions. Why is that, because the concept of obedience does not belong to a woman but belongs to a servant to his Lord. According to Amina Wadud, explaining that the concept of obedience (*qánítat*) which is described as a pious woman is often associated with obedience to her husband. In fact, this word is used to refer to the characteristics or personalities of people who believe in Allah (Umar, 2014). Gus Dur once stated that he wanted to straighten out his views on the position of women so that men's rights and women's rights became more balanced. He cites the word of God in the Qur'an, "*Indeed I created you as male and female*", while the difference between the two is only biological. Therefore, according to Gus Dur, equality of rights between men and women is an Islamic value (Ibad, 2011).

Nusyúz occurs because of the neglect of the rights and obligations of one of the parties, but the understanding of *nusyúz* that has developed so far is still limited to a violation of the fulfillment of rights and obligations by the wife, so that understanding the concept of *nusyúz* really needs to be straightened out from the point of view of Muslim feminists. The majority of *fiqh* scholars have adopted the theme of gender inequality and the privilege of husbands from

the teachings of the Qur'an usually using Qs. an-Nisáa' verse 34 as a basis, which they read incorrectly. They concluded that men were the protectors of women and gave them a higher degree than women. However, such readings have included several meanings that cannot be contextually justified into the Qur'an but also contradict the Qur'anic teachings on human equality. Such an interpretation ignores the fact that the Qur'an makes men and women as *aulyá*, or protectors for each other. In addition, the interpretation includes claims about gender inequality and the privilege of men into the verse above, based on the misinterpretation of the three vocabularies contained in the verse, namely *qawwámúna* which is translated as regulator, *qánitát* which is translated as obedient wife, and *nusyúz* which translates as wife's disobedience to her husband.

Qiráah Mubádalah

Mubádalah in the al-Ma'ani dictionary means to replace, exchange or barter, whether physical such as trade or non-physical such as tolerance. The word *Mubádalah* itself is used more for the resistance movement of all forms of hegemonic and tyrannical values. The basic principle of *Mubádalah* is twofold; *first*, men and women are both servants of Allah. *Second*, men and women are both caliphs on earth. *Mubádalah* is a perspective and understanding in a certain relationship between two parties, which contains the values and spirit of partnership, cooperation, mutuality, bilateral and the principle of reciprocity. In this concept, it is more focused on the relationship between men and women in the domestic and public spaces (Kadir, 2019).

Why is *mubádalah* important. Since this life is intended not only for men but women as well and the benefits must be felt by both. The verses that seem to show their meaning to men actually apply to women while what is happening now is that more texts are seen by men as subjects and women as objects, even though texts must be read properly to get the good from both.

If the concept of *nusyúz* is studied according to the *mubádalah* theory, in fact in the Qur'an itself, *nusyúz* is discussed from two directions. There is a wife's *nusyúz* to her husband (Qs. an-Nisáa' verse 34) and there is also a husband's *nusyúz* to his wife (Qs. an-Nisáa' verse 128). In the concept of *mubádalah*, *nusyúz* is the opposite of obedience. Both *nusyúz* and obedient are reciprocal, as husband and wife are required to have a joint commitment to bring all goodness into the household (*jalbú al-mashálih*) and avoid evil from it (*dar'ú al-mafásid*). This commitment can be called obedience from a religious perspective (Kadir, 2019).

If accepting the concept of obedience is a manifestation of *jalbú al-mashálih*, rejecting *nusyúz* is a manifestation of *dar'ú al-mafásid*. Obedience, in the context of a married couple's relationship, as already explained is all the actions of a person for his partner that can improve the relationship for the better and stronger in realizing *sakinah*, *mawáddah* and *rahmáh*. It is done by the wife to the husband, and the husband to the wife. *Nusyúz* is the opposite of obedient; namely, all negative actions in a married couple's relationship that weaken the pair bond between husband and wife, so that it becomes far from the conditions of *sakinah*, *mawáddah* and *rahmáh* that whether it is done by the wife to the husband, or by the husband to the wife (Kadir, 2019).

This verse literally talks about the husband's *nusyúz* to the wife. Here it can be interpreted to turn away, be reluctant, or no longer pay attention to the wife. It could be caused that he is no longer interested, or has started an interest in other women. If you use the *mubádalāh* method, then the substance is about concerns in a married couple's relationship. There are parties who are starting to feel uncomfortable, reluctant, want to turn to others. Both husband and wife can do this. Therefore, this verse invites both of them to make peace and return to their original commitment as a couple who loves and cares for each other (Kadir, 2019). Thus in the perspective of *mubádalāh*, *nusyúz* applies to both parties, it can be from anyone. Therefore if this happens, husband and wife must return to their mutual commitment as a couple who loves and strengthens each other. Reciprocally *nusyúz* in Qs. an-Nisáa' verse 34 if it happens then convey to those who do the advice to return to the original commitment to protect and maintain the marriage bond.

In the concept of *mubádalāh*, beating or any kind of violence is not recommended at all. So, when the wife is *nusyúz*, the husband is not necessarily allowed to hit her as the essence of managing *nusyúz* in the Qur'an is how to return to the original relationship that loves and cares each other. Hitting is far from the substance of the relationship that the Qur'an recommends. Because of this, many commentators think that hitting a wife is *makruh*, or at least a blunder of *al-awlá* (contrary to noble character). So, in the relationship between husband and wife, what must be strengthened is the commitment and obedience to all things that are good for the family, and away from *nusyúz*. If *nusyúz* occurs, it is hoped that each will go to *shúlh*, *ihsán*, and *taqwá* in order to return to a state of obedience and submission for the good of the family.

Contemporary *Fiqh*

Muhammad Shahrur has a new understanding of the concept of *nusyúz* in Qs. an-Nisáa' verse 34. This understanding contradicts the opinion of the scholars who agree that *nusyúz* in the verse is the wife's exit from obedience to her husband, the wife's exit from affection in leading the family (Sharur, 2004). *Nusyúz* here has nothing to do with piety in the sense of doing prayer and fasting nor with ethical violations and disobedience which requires him to be given education and beatings, but leaving the leadership line with love and compassion, namely authoritarian and arbitrary opinion (Sharur, 2004).

In addition, according to him, the last way to resolve *nusyúz* is to withdraw his leadership power. In interpreting the verses of the Qur'an about *nusyúz*, Shahrur tends to pay attention to the social changes that occur and does not use *asbáb an-nuzúl* and the *Sunnah* of the Prophet as sources. Shahrur then also analyzes the word *nusyúz*, by relating it to the underlying message. According to him, literally, the verse does teach men how to punish their wives, as well as how to understand the psychology of women and the reasons for their disobedience.

The definition of Syahrur is very different from what has been given by the *múfassir*, that *qânitát* is a form of absolute obedience to the husband (Khansan, 2009). Shahrur also rejects the misogynistic opinion that *nusyúz* is an act of disobedience (disobedience) by the wife

towards her husband which is then threatened with three stages of punishment, namely being advised, separated from sleep and beaten; an understanding that always comes to the fore and dominates in classical *fiqh* books. In such circumstances the solution is with noble guidance, advice and words. As for when the first method of settlement is by advice and the second method is by separating the bed (especially for the wife) does not work at all, then the third method is "*idribúhunna*" used. It is in the sense of blocking his power by withdrawing the right of leadership from him (Sharur, 2004). The solution is still logical and normal with leadership in the hands of women, but everything becomes meaningless if leadership, whether physical, intellectual, religious and power belongs only to men.

Thing above relates to *nusyúz* and the difference when leadership is in the hands of women, then what if the right to leadership is in the hands of men, then he acts arbitrarily, despotic and *nusyúz*. Then the verse of Qs. an-Nisáa' verse 128 provides an explanation of it and determines how to solve it. *Nusyúz*, namely when a husband acts arrogantly, superiorly and authoritarianly which limits all power to only his hands, so that his wife does not have any rights in everything, both small and large matters, unless it is preceded by express permission (Sharur, 2004).

2. Reconstruction of *Nusyúz's* Conception in the Compilation of Islamic Law in Indonesia and Its Implications for Family Law Reform

a. Implications of Understanding *Nusyúz* in the Modern Era

Various Arabic dictionaries, interpretations and *fiqh* hav clearly conceived *nusyúz* as disobeying the wife to her husband. It even influences marriage law in Indonesia. Although it is not regulated in the Marriage Law Number I of 1974 as amended by Law Number 16 of 2019, it is regulated in Presidential Instruction Number I of 1991 concerning the Compilation of Islamic Law in Indonesia. The *nusyuz* provisions are stated in three different articles, namely Articles 80, 84, and 152. Although it does not mention the meaning of *nusyúz*, it can be concluded that KHI does not explain in detail, only regulates the wife's *nusyuz* both the criteria and legal consequences of the wife's *nusyúz* behavior. Thus, KHI as a material legal reference in the field of marriage does not find *nusyúz* norms and the legal consequences for husbands.

In this context, *nusyúz* becomes a kind of justification for the husband's arbitrary attitude towards his wife. Therefore, it is necessary to introduce contemporary *fiqh* (*qanún*) about *nusyúz*, women's *fiqh* which is expected in the present era by providing proportionally equal opportunities for women and men to obtain equal rights and obligations (egalitarian) in their lives. There is no gender that has to occupy the first and second positions, because all of them are equal in degree and dignity in front of Allah SWT.

The condition of KHI, which only talks in one direction, cannot be maintained continuously in the realm of family law. Therefore a more egalitarian conception should be present in the marriage law in Indonesia. The simple definition of egalitarian *nusyúz* is disharmony or mental crime that occurs in the family. *Nusyúz* which spoke one way was clearly seen as a disturbance to the stability of family relations in the family law order, which if left unchecked could damage the integrity of the household. The more prominent meaning of progressive *nusyúz* in the contemporary family law paradigm is to position the Qur'an as a

book of guidance, hermeneutical, contextual and oriented to the spirit of the Qur'an, scientific, critical, and non-sectarian. So that the essence of *nusyúz* is the occurrence of disharmony or rift in the household, where *nusyúz* can occur and be carried out by both husband and wife. Thus the impression so far that *nusyúz* is a monopoly of women can be vanished or eliminated in the articles of origin of KHI.

The modern understanding of *nusyúz* is reflected in Muhammad Shahrur's thoughts, namely the wife's exit from obedience to her husband, the wife's exit from affection in leading the family. Meanwhile, the husband's *nusyúz* acts arrogantly, superiorly and authoritarily which limits all power to only his hands, so that his wife does not have any rights in everything, both small and large matters, unless it is preceded by express permission. Thus, the use of the term *nusyúz* for husband and wife in the Qur'an shows that *nusyúz* is an act of leaving the obligation of husband and wife in leadership in the household.

b. Implications of Implementing Gender Justice

Gender inequality is a system and structure in which both men and women are victims of the system. Many factors cause women to experience a gender bias (inequality) so that they are not equal, including the patriarchal culture that has dominated society for so long and the interpretation of religious texts that is gender biased. Imbalance and gender inequality have created a new theory as an instrument for dissecting gender inequality and imbalance, especially in Indonesia. The spirit of the Qur'an basically carries the mission and principles of justice, equality, democracy and good relations. There is a balance in viewing the rights and obligations between women and men in a professional manner, in accordance with the nature of the origin of the events of the two types of human beings who were created equal and balanced by Allah SWT. Along with the emergence of gender issues that are increasingly being echoed by women activists, both on a local, national and international scale, the reconstruction of the *nusyúz* interpretation method becomes something that is necessary, in order to produce interpretations that are more gender sensitive and able to capture social problems of humanity.

In understanding gender, Qs. an-Nisáa verse 34 emphasizes the historical approach (*asbab al-núzul*). The word *qawwám* in this verse is not understood apart from the social context at the time the verse was revealed. The social structure at the time of the Prophet Muhammad did not recognize the existence of equal partners between men and women. Therefore, the superiority of men is not the superiority of sex, but the functional superiority because it is men who make a living, spend their wealth and fight on the battlefield. The concept of *nusyúz* above includes two things: *first*, men are almost always actors and role models in religious institutions. Many religious interpretations are conveyed from the point of view of men and through speech, as well as male power. *Second*, women are alienated from the realm of public space, so that many of their rights are deprived.

In response to this fact, it is important to make efforts to bring up a reinterpretation of *nusyúz* based on multidimensional features by looking at *nusyúz* with various related dimensions, namely by expanding the scope of rank and level on *nusyúz*, the concept of *nusyúz* which was originally included in the religious rank was expanded in scope by adding a social dimension, while at the level domain, its scope is expanded to become universal. Therefore, the

concept of *nusyúz* in the KHI which still includes only the wife's *nusyúz*, the husband's concept of *nusyúz* can be added in it, by explaining the related arguments and in accordance with the civilization and *úrf* of Muslims today.

As a product of family law that was born in the modern era, it turns out that KHI places women as inferior, subordinate and marginal beings through the concept of *nusyúz*. Seen from juridical angle, its material is a presentation of Islamic Sharia in the field of marriage law which is justified by the State. As a legal product, especially as part of a political decision, KHI is certainly not free of power, free of values and interests. The presence of KHI represented various interests, values and power, especially from its patriarchal forming apparatus at that time. So that women tend to be faced with walls of injustice, subordination, masculine superiority and imbalance (*dis-equilibrium*).

A critical reading of the articles containing *nusyúz* in the KHI aims to make the order of Family Law in Indonesia bring a new paradigm that aims to elevate the position, dignity and worth of women. Besides it closes to a minimum the gap between masculine and feminine societies, both in the legal, social, cultural, political, and economic fields. Therefore, from various perspectives it is important to use it in studying injustice problems, through the phrase *nusyúz* in the level of positive law. It can automatically be assumed that the law does not marginalize and dehumanize women in family law as the law in Islam carries a very firm, straight forward and broad mission with the slogan everyone is the same as teeth on a comb. No one has the right to say that a man is nobler than a woman.

KHI absolutely adheres to the principle of equality, for equality is a core unit in social justice relations. Without equality it is impossible for social justice to be created. Arranging the articles of KHI is not enough just to re-interpret misogynistic teachings, but must go through a process of reconstruction (dismantling) of the ideological bonds that have wrapped around them for centuries. As a classical legal concept, *nusyúz* in the modern era uses modern approaches and theories, such as the '*double movement*' approach which was initiated by Fazlur Rahman as a form of methodological offer in *ijtihád* on contemporary issues related to universal values such as aspects of humanity, justice, equality and freedom while still based on the universal values of the sacred messages of the Sharia without denying the historical, social and cultural aspects of a modern society in this information technology era, namely by understanding the content of the text and understanding the background behind (the context) when this text was born, then bring it in the current understanding (context).

If we look at the development of the characteristics of the Indonesian people, a norm is needed that can answer the problems developing, especially in the problem of *nusyúz*. So that the existing concept is not only used as a discourse, but a legal effort is needed so that the concept can be used as a norm in Family Law in Indonesia. If we refer to these provisions, regarding the issue of *nusyúz*, it requires legal certainty that can regulate the problem. So legal certainty does not only lead to the wife but also to the husband. Reconstruction of the classic model of *nusyúz* text which has rusted by itself will not be a single understanding of *nusyúz* because it is no longer relevant. If you look at the history of the arrival of Islam, Islam is present in the midst of Arab society which is full of discriminatory practices and cultures and marginalizes women. The tradition of society at that time, women were seen as second class

human beings (*second sex*), humans with low dignity, worthless who did not have the right to their lives. Therefore, women's rights are completely in the hands of men's authority.

Mistakes in understanding the concept of *nusyúz* will occur more often if you do not use disciplinary theories and approaches (interdisciplinary and even multidisciplinary). Therefore, thoroughness, mastery of knowledge and understanding that is objective and universally just is very much needed in organizing the concept of *nusyúz*. It is this error that ultimately causes women to be in a vulnerable position and under the power of men which in the end, overrides the real mission of the message of *nusyúz* in the Qur'an. The Qur'an as a way of life voices the concept of justice. Justice according to state and religious law is generally justice based on texts, namely statutory texts and religious texts. The text of the legislation is interpreted by law enforcement officials, while religious texts are interpreted by religious figures. When women are not part of the interpretation of the two texts, then the justice version of state and religious law tends to ignore the specific conditions of women, especially women victims of violence (Uzm, tt.).

Based on the interpretation of the concept of *nusyúz* above, the concept of *nusyúz* in the KHI which only applies to wives in Article 84 was reformulated to obtain a new concept. Therefore, the norm can be added to the concept of husband's *nusyúz*, so that it reads: *The husband can be considered nusyúz if he does not carry out the obligations as referred to in Article 80 Paragraphs (2), (3) and (4) except for valid reasons, while the wife can be considered nusyúz if she does not want to carry out the obligations as referred to in paragraph (1) referred to in Article 83 Paragraph (1) except for valid reasons; As long as the husband or wife is in a state of nusyúz, the obligations of one party to the other do not apply except for matters for the benefit of their child.; The obligation of one party to another party applies again after one of them is not nusyúz; Provisions regarding the presence or absence of nusyúz from the husband or wife must be based on valid evidence based on the Court's decision.*

Furthermore, the addition of the husband's *nusyúz* concept to KHI has special features, namely; *first*, the philosophical aspect, this concept contains the basic principles of Islam such as equality (*al-músawwah*) and justice (*al-adállah*) and is in line with the value of equality contained in Pancasila and the 1945 Constitution. *Second*, the juridical aspect, this concept is in accordance with the rules and regulations - the laws that apply in Indonesia, especially regarding the elimination of discrimination and the protection of human rights as well as the rules in international law on human rights. In line with the legality principle of Article 58 Paragraph (1) of Law Number 7 of 1989 which was amended by Law Number 3 of 2006 jo. Law Number 50 of 2009, as well as the implementation of Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases with the Law. *Third*, the sociological aspect, this concept has accommodated gender justice in *nusyúz*. This concept is relevant to the current cultural context of Indonesian society, where the roles of husband and wife are balanced, complementary or partnership relationships.

c. Implications for *Nusyúz's* Husband's Legal Sanctions

As previously explained, some *fiqh* scholars are of the opinion that the term *nusyúz* is not attached to the husband but only to the wife. Likewise in the KHI it is not mentioned at all

and let alone explicitly stated about the term *nusyúz* husband. Arranged so that the concept of *nusyúz* in the KHI will have implications for legal sanctions for the husband of *nusyúz*, namely:

First: Confirmation of the reasons for the violation of *taklúk talák*. *Taklúk talák* is a unilateral statement of will from the husband which is pronounced after the marriage contract takes place and is stated in the marriage certificate, this *taklúk talák* is carried out to improve and protect the rights of the wife which is upheld by Islam; *Second:* Resulting in the dissolution of the marriage by *talak khulu'*(compensation for divorce) so that it is used as an excuse for a wife to sue for divorce from her husband or commonly in practice is called a divorce lawsuit to the Religious Court to break the marriage bond. Compensation or payment of compensation is an agreement between husband and wife, it must not exceed the dowry, then the husband can divorce her; *Third:* Bringing the husband's *nusyúz* case to the judge for advice from his husband, the judge can force the husband to provide a living for his wife by means of advice or confine him in detention, and may even sell the husband's assets for the wife's benefit; *Fourth:* The right to care for the child is revoked in the best interest of the child, while the maintenance expenses until the child is an adult or independent and the educational needs are borne by the father by including the father's property as a guarantee so that the father's obligations to his child are fulfilled.

D. CONCLUSION

The phrase *nusyúz* is not specifically regulated in Law Number 1 of 1974 concerning Marriage jo. Law Number 16 of 2019. However, the norms are contained in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia, but the concept is not explained as in the Qur'an and *fiqh*. The concept of *nusyúz* KHI is more influenced by conventional *fiqh*, even it is not completely plagiarized or the result of filtering from *fiqh*. Although the essence is equally cornering the rights of women compared to men, the nuances of KHI are harsher than KHI in discussing *nusyúz*.

The concept of *nusyúz* which is in accordance with the cultural style of modern Indonesian society generally applies to both husband and wife with the criteria of leaving the leadership of love and affection, authoritarian and arrogant behavior. The husband can be considered *nusyúz* if he does not carry out his obligations except for valid reasons, and the wife can be considered *nusyúz* if she does not want to carry out her obligations except for valid reasons. Provisions regarding the presence or absence of *nusyúz* from the husband or wife must be based on valid evidence based on the Court's decision so that they receive the same legal sanctions.

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In Indonesia (Gender Equality Perspective Analysis)**

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