

# REREADING THE CONCEPT OF NUSYŪZ IN ISLAMIC MARRIAGE LAW WITH QIRA'AH MUBĀDALAH

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## ABSTRACT

*Islam exists in order to uphold justice. Likewise with families, where there are often unfair relationships between husband and wife, there are so many obstacles which can threaten the harmony of marriage. So far the issue of nusyūz is often connected to the wife and the Compilation of Islamic Law (KHI) confirms this. How Islamic law regulates nusyūz and how the perspective of qira'ah mubādalah about this nusyūz is are the main questions of this study. This study uses normative legal research method with descriptive technique. Data collection was carried out by literary study and then they were analyzed qualitatively by the deductive method. The results of this study are as follow: Nusyūz according to Islamic law (KHI) is conceptualized as a wife's disobedience to her husband, such as reluctance to have intercourse, surly in front of her husband, leaving the house without the husband's permission and others which make the husband dislike. If nusyūz occurs then it is resolved by: giving advice, separating beds, and hitting. Mubādalah as a method of interpretation of texts which is reciprocal, in terms of family relations between husband and wife, defines nusyūz as disobedience to household commitments so it applies to husband and wife. Nusyūz settlement by beating is considered as an act of violence so it should not be done. Inviting reconciliation to return to commitment is the best way according to QS. An Nisa': 128.*

**Keywords:** Nusyūz, marriage, mubādalah, women, muslimah

## INTRODUCTION

*Nusyūz* and domestic violence (KDRT) are a form of serious threat twchich is often faced by families. *Nusyūz* that is not resolved properly by deliberation will result in an act of violence. Komnas Perempuan (National Comission on Violence Against Women) noted that the most dominant type of domestic violence against wife is psychological violence in the form of affair, threat, and verbal abuse (a number of women violence reported to the Komnas Perempuan in 2019).

The high number of domestic violence cases, especially violence against wives, is still a serious homework for activists and observers of gender inequality. Various preventive and curative actions are still being carried out in

order to reduce domestic violence cases. Based on the results of the 2016 National Women's Life Experience Survey conducted by the Ministry of Women's Empowerment and Child Protection, it is revealed that there are four factors causing physical and sexual violence against women by partners, namely individual factor, spouse factor, socio-cultural factor, and economic factor.

According to Mufidah, this domestic violence phenomenon does not just happen but has certain reasons which encourages men to commit violence against women. Mufidah, mentions several factors that encourages violence in the household, including the factor of husband's power over wife which comes from a patriarchal culture and a discriminatory interpretation of religious texts (Mufidah, et al. 2006).

*Qirā'ah Mubādalah* is a method of interpretation of texts which is reciprocal. The concept of reciprocity initiated by Faqihuddin Abdul Kodir (Lecturer at IAIN Syekh Nurjati Cirebon dan ISIF Cirebon) becomes a part of the search for meaning constructively for women's lives, which has often been neglected in the work of *ijtihad* and interpretation so far. This is important to do because in a social context *Qirā'ah Mubādalah* ensures that women also have to get the same kindness as men because the Qur'an talks both of them as *mukallaf*.

This paper discusses the revisiting of the concept of *nusyūz* in Islamic Marriage Law using the *qirā'ah mubādalah*. How Islamic Law governs *nusyūz*, what *qirā'ah mubādalah* is and how *mubādalah*'s perspective on this *nusyūz* is.

## LITERATURE REVIEW

Studies which discuss about *nusyūz* from various perspectives and objects of study in the Qur'an, hadith, and marriage law in Indonesia (UUPA and KHI) have been widely carried out. Several studies related to *nusyūz* are those conducted by Nor Salam (Salam 2015: 51), Alamsyah (Alamsyah 2018: 298), Mohamad Ikrom (Ikrom 2017), Aisyah Nurlia and her friend (Nurlia and Nargis 2018: 434), and Aprina Chintya (Chintya 2018: 202-213). All these studies regard different interpretations of the concept of *nusyūz* in the al-Qur'an by scholars and legal practitioners. From these studies, there is an opinion which says that *nusyūz* also applies to husbands because they do not carry out their obligations.

Sri Wahyuni in her research emphasized that actually the concept of *nusyūz* in the Qur'an, hadith, fiqh and positive law does not legalize violence but provides lessons to the husband or wife who committes *nusyūz* to return to their original commitment. If there is beating and wounding, it is categorized as *nusyūz* of husband towards wife. In addition, real restrictions are also needed so that the husband's abuse towards his wife does not occur, for example beatings

are carried out when the wife commits adultery (Wahyuni 2008: 27). In line with Sri Wahyuni, Saoki in his research also argues the urgency of a clear right parameter to avoid accusing each other of the one who has committed *nusyūz* (Saoki 2016: 257).

Other researcher concerning on the legal consequences for *nāsyiz*. Aisyah and Nargis, argue that although it is not mentioned in the Qur'an, if the husband commits *nusyūz* then his rights which should be obtained from the wife will also be lost (Aisyah Nurlia, Nilla Nargis 2018). In addition, there is writing about curative actions which must be taken by a husband or wife if their partner neglects their obligations by implementing conflict management as an effort to deal with husband and wife conflicts in maintaining family integrity (Djuaini n.d.).

Another crucial thing about *nusyūz* is the interpretation of *dharb* (beating) as the final solution if *nusyūz* occurs. This research was conducted by Mughniyatul Ilma who argues that there are differences in the interpretation of "*dharb*" between classical and contemporary scholars (Ilma 2019: 59). Among the opinions of contemporary scholars is to use a gender perspective which puts forward the principles of humanism. With this perspective, the word "*dharb*" can be interpreted as "moving" the *nusyūz* partner back to take care of themselves (Syahabudin 2019: 21).

From several previous literature studies, very few study use *qirā'ah mubādalah* as a perspective on reading the concept of *nusyūz* in Islamic Marriage Law. And this article discusses some ulama's opinions about *nusyuz* from classical, modern to contemporary perspective which the author has never discussed before.

## THEORETICAL FRAMEWORK

The theory used in this article is the theory of social relations, justice, and gender equality. Social relations between husband and wife in the family must be based on the value of justice. This research used John Rawls's theory of justice as an

approach in domestic relations between husband and wife in Indonesia. Rawls defined justice as a combination of freedom and equality. Justice is a basic principle of rational policy in realizing the welfare of all groups in society (Suteki and Taufani 2018: 98-102).

Gender is a difference which is not caused by biological differences and is not God's nature, but was created by both men and women through a long socio-cultural process. Differentiating the roles, functions and responsibilities of men and women in this social context is basically not a problem, but when being examined more deeply it can be a cause of the emergence of gender discrimination. Justice is the main philosophy of the essence of law because law is formed with the aim of realizing justice.

## RESEARCH METHOD

This research uses normative legal research method approach with descriptive technique. Data collection was carried out by literary study and then analyzed qualitatively by the deductive method. The relevant theory and conceptual framework which would be used for analyzing the data is gender analysis. Gender analysis is a tool which brings to the surface gender disparities of a core problem. The first step in a mainstreaming strategy is the assessment of how and why gender differences and inequalities are relevant to the subject under discussion. The primary sources is a book of Kompilasi Hukum Islam/Compilation of Islamic KHI and Faqihuddin Abdul Kodir's book *qira'ah mubādalāh* and the second is his other books.

## RESULT AND DISCUSSION

### **Nusyūz: Definition, Legal Consequences and Solutions**

#### *Definition and legal basis of nusyūz*

Etymologically, *nusyūz* means *al irtif'* which means to rise; get tall; stand out. This meaning is in accordance with the meaning of al Mujādilah

verse 11 "*waidzā qīlansyuzū fan syuzū*" (Hasyim 2001). In the *Lisan al 'Arab* dictionary, Abu Ishaq defines *nusyuz* as the nature of hatred on another and the bad relationship between the two (Mandzur 1119). Meanwhile, in terminology it is defined as the wife's disobedience to her husband by being reluctant to carry out the obligations which have been stipulated in *syara*; such as not behaving in a good and polite manner or hating her husband, not serving the husband's spiritual needs when asked, and leaving the husband's residence without permission (As-Syatiri n.d.).

According to *Ar Razi in Tafsir al Kabir*, *nusyūz* is interpreted as the emergence of the attitude of mutual hatred between husband and wife which causes disunity (Fakhrudin 1981). Shaykh Uwaidah argues that *nusyūz* is the behavior of one spouse by abandoning the obligations of husband and wife (Uwaidah 2013).

Saleh bin Ganim al-Saldani explained in detail about some criteria of the wife's actions which are included in the act of *nusyūz* according to the scholars of the *mazhab*, such as: first, according to Hanafi scholars, a wife is called *nusyūz* when she leaves her husband's house without his permission and doesn't serve her husband without right reason; Second, according to Maliki scholars, a wife is said to be *nusyūz* when she disobeys her husband and she refuses to be intimidated, and comes to a place where she knows it is not allowed by her husband, and she neglects her obligations to Allah SWT, such as not bathing in *janabah* and not fasting in the month of Ramadan; Third, according to Syafi'i scholars, a wife is said to be *nusyūz* if she does not obey her husband and does not carry out religious provisions related to her husband's rights and does not fulfill other religious obligations; Fourth, according to Hambali scholars, a wife is said to be *nusyūz* if the wife commits an act which does not give her husband rights which she must accept because of marriage (Saleh bin Ghanaim al Saldani translated by A. Syauqi Qadri 2004).

Meanwhile, Faqihuddin Abdul Kodir, with his concept of *mubādalāh*, defines *nusyūz* as

'on the contrary of obeying,' namely all negative actions in a couple's relationship that weaken the pair bond between husband and wife, so that it becomes far from *sakinah*, *mawaddah*, and *rahmah* conditions. Whether done by the wife to the husband, or vice versa (Kodir 2018)

From these definitions, it can be concluded that *nusyūz* is something which is undesirable in household life. There is mutual hatred, leaving rights and obligations, bad associations because they place themselves higher than their partners. The Qur'an writes about the existence of *nusyūz* in several verses of which are mentioned in the QS. An-Nisa': 34 and QS. An-Nisa': 128.

The historical context of QS. An-Nisa': 34 revelation is about *nusyūz*. According to a hadith narrated by Ibn Abi Hatim from Hasan, the verse was revealed when a woman came to the Prophet to complain about her problem, she was slapped by her husband. Then the Messenger of Allah said: "Your husband must get *qishāsh* (retaliation)." Then came verses 34 and 35 which explicitly provide for men to have the right to educate women who violate their obligations as wives. After hearing the explanation of this verse, this woman returned and did not demand *qishāsh* against her husband who had beaten her (A. Mudjab Mahali 2002).

Literally, QS. An-Nisa': 34 can be understood as wife's *nusyūz*, and 128 as husband's *nusyūz*. In other words, both wife and husband have the potential to commit *nusyūz*. In the book *Hasyiyah al Showi* by Shaykh Ahmad al Showi al Maliky, he interprets this verse with the wife's concern over the *nusyūz* of the husband who does not want to intimate with her and reduces his livelihood because he no longer loves her and turns to other women who are more beautiful than her (Syaikh Ahmad al Showi al Maliky, n.d.).

Ibn Qudamah who is a Hanabalian scholar in his book *al Kafī* also mentions that *nusyūz* can come from both husband and wife. Wife's *nusyūz* occurs when wives commit immoral towards their husbands by not carrying out their obligations in marriage. Meanwhile, husband's *nusyūz* occurs

when a husband turns away from his wife and does not love her because his wife is sick, gets older or because of other factors (Qudamah 1994).

In accordance with the opinion of Ibn Qudamah, Ibrahim al Baijuri al Syafi'i in his book *Al Baijuri* mentions that *nusyūz* can be applied to husband and wife. For the husband, *nusyūz* occurs if he does not perform his duties such as not giving alimony, dowry, rotating the wife if he has more than one wife and not intimating the wife well. As for the wife, she is disobedient to her husband, does not completely obey her husband, does not live in her husband's house and does not intimate with him well (Ibrahim al Baijuri n.d.).

Quraish Shihab in his exegesis book, *al Misbah*, explains that the contents of an Nisa': 128 give a *fatwa* (religious advice given by religious authorities) that a woman who worried that there is a sign that the husband performs *nusyūz* will look down on his wife and hinder her rights or additions even if only, either in conversation or with her husband, then both of them can make a reconciliation (Shihab 2005). According to him, this verse is closely related to the previous verse concerning the need to show equitably to married orphans. This *fatwa* orders it to be carried out properly and there is no mistreatment of women like what has been prescribed in the Qur'an.

Some opinions mentioned above have provided an understanding that husband and wife have the same potential to perform *nusyūz* by not carrying out their respective obligations, even though they still blame the wife as the cause of the husband's turning away, as Ibn Qudamah argued.

The assumption that *nusyūz* can only be done by wives is because of the patriarchal culture which still dominates people's mindset. This is confirmed by the legal products which still view men and women biased. This can be read from the rules of Islamic law in Indonesia, namely the Compilation of Islamic Law (KHI) which does not mention the husband's *nusyūz* as mentioned in Article 84:

A wife can be considered performing *nusyūz* if she does not want to carry out the obligations referred

to in Article 83 verse (1) except for valid reasons.

As long as the wife is in *nusyūz*, the obligations of the husband towards his wife as stated in Article 80 verse (4) letters a and b do not apply except for taking care of his children.

The obligations of the husband in verse (2) above take effect again after the wife stops performing *nusyūz*.

Provisions regarding the presence or absence of *nusyūz* from the wife must be based on valid evidence.

This is considered to be unfair for women, because when the husband cannot fulfill his obligations (*nusyūz*) there are no sanctions determined by either the UUP (Marriage Law) or KHI. Meanwhile, when the wife is considered to commit *nusyūz*, her right to earn a living from the husband disappears (Zuhaili 1989).

#### *Legal consequences of nusyūz and how to solve it*

Interpretation of the QS. An-Nisa': 34 provides an understanding that the income received by the wife is a reward for her obedience to the husband. Therefore, if she commits *nusyūz* to her husband, then she is not entitled to the support provided by him during the *nusyūz* period, and the obligation is carried out again after the *nusyūz* stops. The wife will lose the right to receive living allowance, clothing, and sharing of time (see Surah Al-Baqarah: 228). As conveyed by Imam Al-Syâfi'î in his book *al Umm*. Al Shafi'î said that:

*If the wife flees or reluctant to serve her husband's lust, or if the wife is a slave and the master of the wife forbids intercourse with her husband, then her husband is not obliged to provide sustenance for his wife (Al-Syâfi'î n.d.)*

The sequential technical completion of the wife's *nusyūz* is described by QS. An-Nisa': 34 as follows: 1. Advise her well, 2. Separate beds and 3. Hit. Wahbah Zuhaili in Munir's interpretation argues that if a husband finds out that his wife is going to *nusyūz*, then he should do the following actions: first, advising her and explaining to his

wife the consequences that will arise from her actions. Second, looking away in bed means not doing *jima'* (sexual intercourse), so that she will reflect and realize her mistakes. Third, hitting the wife with a punch which does not hurt. It can be a light blow to the shoulder of his wife three times or by using the root of the siwak or also with a soft rope, because the purpose of this beating is solely for *ishlah* (Wahbah Zuhaili 2005).

It has been narrated by Jabir bin Abdullah that the Prophet SAW has given a sermon in a valley in 'Arafah,

*"Fear you of Allah SWT in taking care of your wife, because in fact you married her in the mandate of Allah SWT. So with that, it is permissible for you to farj them (intercourse) with the words of Allah SWT. However, if your wife refuses to be invited to sleep together (jima'), then hit them with beatings that don't hurt, and remember that your duty to them is to provide a proper living and support."*

Regarding beating, although many scholars argue that the beating here means beating that is not painful, but whatever it is, *nusyūz* remains an arena of legitimacy which allows a husband to commit violence against his wife.

Another important thing is about the meaning of the sentences خَافَتْ dan تَخَافُونَ (worry). Abu Ja'far interpreted worrying about the appearance of certain signs which could be evidence of husband or wife *nusyuz*, not worry without cause and symptoms. This interpretation shows the caution of the *mufasssir* (Qur'anic interpreter) in giving the predicate *nusyuz* to husband and wife.

#### **Qira'ah Mubādalāh: Reading Method to Gender Equality Text**

The term *mubādalāh* was first introduced by Faqihuddin Abdul Kodir at the end of 2012. The term *mubādalāh* was firstly used in a writing in a column of Swara Rahima Number 40 December 2012. Previously, at the beginning of writing about this idea he termed *mafhum al-tabāduli* (understanding of reciprocal) in his book *Manba' al-Sa'ādah* published in early 2012 by Fahmina

Institut, Cirebon. He begins used the term *qirā'ah mubādalah* in conjunction with the launching of the book "Qirā'ah Mubādalah Progressive Tafsir for Gender Justice in Islam" published by IRCISoD Yogyakarta in early 2019.

This book explains the origin of the use of the term *mubādalah*, which is taken from an Arabic word which means exchange or reciprocity. The term *mubādalah* is taken from Arabic (مبادلة) which comes from the root syllable بدل (ba-da-la) which means to replace, change, and exchange. *Mubādalah* follows وزن مفاعلة which means cooperation between two parties (annoyance). Thus مبادلة means replacing, mutually changing or exchanging for each other. Classical and modern dictionaries also interpret the word *mubādalah* as a reciprocal exchange between two parties. Meanwhile in the Kamus Besar bahasa Indonesia (Indonesian Language Dictionary), the word "kesalingan" (translation of *mubādalah* and reciprocity) is used for things that show reciprocal meaning (Kodir 2019).

Faqihuddin Abdul Kodir took this idea from the opinion of Ibn al Qoyyim al Jauziyyah in the book *I'lamul Muwaqqi'in* in the *syahādah* chapter that if a law is pronounced with *mudzakkar shighat* and is not accompanied by *muannats* then the law is addressed to men and women (al Jauziyyah, n.d.). Apart from Ibn al Qayyim, Ibn 'Asyur also has the same opinion. Ibn 'Asyur, who is famous for his *maqashid* interpretation in the book of *tafsir al tafsir wa al tanwir*, argues that freedom is a human right that is given and bestowed directly from Allah SWT as a nature since human birth (Nikmah 2017). In this context, it deals with freedom of opinion, will, thought and freedom of life. Principles which are held and become the basis for thinking of Ibn 'Assyria are *maqashid al syari'ah* such as tolerance, equality, and freedom. In the section on *maqāsid al-musāwah* (*maqashid* equality), he states that if there is a text which is editorial only for one type, male or female, then the text also applies to other types as long as it does not violate nature and is contrary to *maslahat*.

Many figures who have promoted the principle of alienation, include Rifaah al-Tahtawi (Muslim intellectual figure from Egypt 1801-1873), are active in education. He argued that women should be given the opportunity to learn like men. Because, both of them will be able to work together well, if they both have the skills to think and behave. Rifaah al Tahtawi was one of the reformers of education in Egypt. According to him, improvement in education should be started from providing equal opportunities between men and women. In Indonesia, there are Kyai Husein Muhammad, Mrs. Sinta Nuriyah and many other gender activists who have used the principle of reciprocal in their framework of thinking.

From the meaning contained in the term *mubādalah*, it is then developed into a perspective or reading method. As a perspective, it necessitates reciprocal relations between men and women. As a method of reading texts, it ensures that both the text in the male form and the female form are fixed for both, as long as the values it contains are universal and cross gender. This is done so that justice, mercy and benefit which are the basic principles of Islam do not disappear just because of *ijtihad* and human interpretations which are bound by time and space (Kodir 2016) which can oppose all forms of tyrannical and discriminatory values and behavior (Kodir n.d.)

The way *mubādalah* works consists of three chronological steps. These steps are: first, finding universal principles of Islamic teachings, both *mabādi* '(beyond all themes) and *qawa'id* (certain themes). Second, finding the main idea in the text. This step will be *mubadalah*-ized later, if possible then the third step is necessary. Third, passing down the ideas found from the text to the gender that is not mentioned in the text (Kodir 2019)

Faqihuddin views the importance of revealing the main message of a text. Both in general form but bias or specific form without mentioning the other gender. Islam exists for men and women, so the texts must also target both. Therefore, the Islamic text is open to reinterpretation in order

to benefit both. So, if the textual interpretation is not in accordance with the objectives of the *shari'ah*, a contextual interpretation is needed on the grounds that the human relationship with the text continues to move to create civilization. The openness of the text must be maintained in order to balance and revive the text (Kodir 2019).

From the way *mubādalah* works above, if there is a text which explicitly shows the interests of men only, it must be removed from its meaning, and vice versa. If women are mentioned in the text, the implicit meaning for men must be removed from the text. So that the rules of *mubādalah fiqh* can be formulated in the following sentence: (Kodir 2019) This concept is based on QS. at-Taubah : 71.

While the *hadith* text used as the basis is the following narration (*riwayat*) :

عَنْ أَنَسٍ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يُؤْمِنُ أَحَدُكُمْ حَتَّى يُحِبَّ لِأَخِيهِ مَا يُحِبُّ لِنَفْسِهِ، وَفِي رِوَايَةِ مُسْلِمٍ زِيَادَةٌ: أَوْ قَالَ لِجَارِهِ مَا يُحِبُّ لِنَفْسِهِ، وَفِي رِوَايَةِ النَّسَائِيِّ زِيَادَةٌ: مَا يُحِبُّ لِنَفْسِهِ مِنَ الْخَيْرِ، وَأَمَّا رِوَايَةُ أَحْمَدَ: لَا يُؤْمِنُ أَحَدُكُمْ حَتَّى يُحِبَّ لِلنَّاسِ مَا يُحِبُّ لِنَفْسِهِ. (رواه البخاري، ومسلم، والترمذي، والنسائي، وابن ماجه، وأحمد).

There are so many religious texts which, if interpreted textually, appear to be biased in the positioning of men and women, for example the 14<sup>th</sup> verse of QS Ali Imron: When it is viewed from the text, the verse contains a message that women, children, property are a joy to live (a test) for humans. The main message is "to guard themselves" from lust, so that men must guard themselves from women who are not *halal*. The main message is blurred when we read the *hadith* narrated from Usama Bin Zaid that women are the most dangerous from other pleasures. This interpretation is taken from the *hadith* of the Prophet *sallallahu 'alaihi wasallam*. The prophet said,

مَا تَرَكْتُ بَعْدِي فِتْنَةً أَضَرَّ عَلَى الرَّجَالِ مِنَ النِّسَاءِ

"After me I have not left any trial more severe to men than women." (Bukhari n.d.)

If it is read with *qirā'ah mubādalah*, the interpretation of this verse is that women are

also decorated to love men. Therefore, men are jewelry for women. If men, as humans who have responsibilities, are asked to be vigilant, then women should also be asked to be vigilant. Temptation can come to men as well as to women.

Therefore, the recitation of the 14<sup>th</sup> verse of QS. Ali Imron above regarding *syahawāt* reciprocally or *mubādalah* becomes important, so that women are not always be considered as the cause of all problems, and more importantly so that women really fall into the category of "human", whom the Qur'an talks to, as stipulated in the *taghlib* rule.

Many things which are closely related to the rights and obligations of women in households are considered to be unfair, where one party is always the subject and the other is more often the object, the one party gets more obligations from the other party, and one is the cause of various household temptations which must always be disciplined.

To be well-behaved to the husband such as being friendly, serving, and all other pleasant actions if it is well done by the wife, then it is also good for the husband to do the same towards the wife. Likewise, with an action that is not pleasant if it is badly accepted by the husband, it is also not good for the wife to accept it.

This way of reading the reciprocity aims to maintain the universal values contained in the Qur'an so that it is not distorted by inappropriate meanings of partial verses. For example, the meaning of reciprocal in Surah An-Nisa' verse 34, regarding leadership. *Mubādalah* as a perspective in interpretation is narrowed down to a verse interpretation method which substantively states men and women as "equal" subjects. Men and women have the same opportunity to become leaders. In explicit, this verse shows the superiority of men. However, the superiority of men in it, is sociological and dynamic, so that its meaning develops as the culture of society changes (Kodir 2019:196–97). When the verse comes down, the social conditions that surround it are still upholding the patriarchal culture, so

that men deserve to be leaders. Women are still lowly civilized. On the other hand, nowadays, if there are many women who have proven their capability and integrity as leaders, then it is fair to say that women are equal to men.

Although the position of men and women is equal and has the same opportunities in household life, they both have rights and obligations. Although these rights and obligations are different due to their different functions. The husband's obligation is the right of the wife and the wife's obligation is the right of the husband. But the fact is that violence and suppression of rights and obligations towards wives in the household always occur. This is due to several factors, including: ideology and patriarchal culture which develops in society, factors of legal structure both written and unwritten in a country, and factors of religious interpretation. Many people, especially women are only constructed to fulfill their obligations in marriage, rather than to obtain the rights they should enjoy (Kodir 2013).

The perspective of *mubadalah* becomes a new direction for interpreting the verse on the relationship between men and women towards a tolerant, humanist, mutually happy and happy relationship. With reciprocity, no one feels inferior, nor superior to another. Men and women, which were initially superior and inferior, turned into just and equal cooperative relations.

## Husband and Wife Relations in Islamic Law

A family is formed from a marriage between a man and a woman. From this marriage, the relationship between husband and wife emerges which provides the basis and determines the color in a family relationship. Many families are broken because of the failure of husband and wife relationships. There are three indicators for the adjustment process of married couples, namely conflict, communication and sharing of household roles (Lestari 2016).

Allah has told about the husband and wife relationship in marriage as mentioned in QS.

Surat al *Zāriyāt*: 49:

وَمِنْ كُلِّ شَيْءٍ خَلَقْنَا زَوْجَيْنِ لَعَلَّكُمْ تَذَكَّرُونَ ٤٩

*And of all things We created two mates; perhaps you will remember.*

In this verse, the word "zawj" means partner. The wife is the husband's partner and the husband is the wife's partner. Allah created every living thing in pairs and needs each other. The principle of pairing is also expressed in the Qur'an in the QS. Al Baqarah verse 187 which explains that the husband is the clothes for the wife and the wife as well as clothes for men. The message of the text is that there is an effort to give each other warmth, nurture, cover, perfect and honor one another, so that family goals will be achieved. In the Quran surah An Nisa': 19, Allah SWT wants husband and wife to interact positively (*mu'asyarah bi al ma'ruf*) in their household. Every member of the family must get along well, respect and love each other in the framework of the creation of the *sakinah mawaddah wa rahmah* family. Apart from the Qur'an, there are also many hadith which suggest how the Prophet treated his family well.

Regarding the status and position of men and women in the household, this is the result of the Ulama' interpretation of QS. Al-Baqarah: 228 and An-Nisa': 34 which are often used as a basis for justifying male leadership, while QS. Al-Ahzab: 33 is used as a basis for women's obligations to stay at home. The superiority of men over women is explained by some classical scholars such as Abdullah bin Muhammad in the book *Lubāb al-Tafsīr min Ibni Kathīr*, that prophecy, the position of head of state and the position of the judiciary are only reserved for men, not women. This interpretation is accompanied by a *hadith* about the prohibition of women's leadership. Wahbah Zuhaili in *Tafsir Munir* wrote that the man (husband) became the protector of the woman (wife) because Allah had exaggerated it with knowledge, reason, power, etc. Abdul Halim Abu Syuqqoh also argues that men have the right to lead in the family so that they are

responsible for providing support for their wives and children. So, as a leader, men have the authority to give permission or not to their wives and daughters. However, men may not use this authority to prohibit women from carrying out activities which are beneficial to themselves and their communities (Abdul Halim Abu Syuqqah n.d.).

The position of men as leaders is also recognized by Quraish Shihab, he stated that men are designated as leaders by Allah SWT because the privileges they have are more supportive to leadership duties. While the privileges possessed by women are more in their duties as carriers of a sense of peace and calm so that the position of being a housewife is more right on the shoulders of the mother with several advantages of existing characteristic (Shihab 2005).

Meanwhile Husein Muhammad has a somewhat different opinion from the previous scholars. In the book *Women's Fiqh*, it was mentioned that men and women have the same responsibility in developing society, nation and world with things which are useful for the advancement of human life in all aspects. The example of female leaders mentioned in the Qur'an, namely the Queen Bilqis, must also be used as an example of successful female leaders. Her leadership is known to be brilliantly successful, the country's security is well guaranteed, and the economy is prosperous and the people are safe (Muhammad 2012).

Marriage Law in Indonesia and the Compilation of Islamic Law (KHI) record the position and rights of husband and wife obligations are still conceptualized the same as the thought of 'classical scholars', although in some cases there have been reformed by incorporating elements of local customs, state interests and new trends which have become Islamic discourse in Indonesia. According to the Marriage Law, the position of husband and wife is balanced in household life and in social life together in society. Husband and wife together must carry a noble obligation to uphold the household which

is the basic foundation of the structure of society, and both have the right to take legal actions as in article 30 and 31 UUP. Therefore it is obligatory to love each other, respect, be loyal and provide physical and mental assistance to one another as in article 33 UUP.

This article shows the equal position between husband and wife in the household and social life in society. But then this concept of equality is lost with details of the rights and obligations of husband and wife in the next article.

In article 80 verses 1-4, it is stated that the husband is obliged to protect his wife and provide all the necessities of household life according to his abilities. This is because the husband is the head of the family, while the wife is obliged to manage household affairs as good as possible (Article 31 paragraph 3) and to have physical and spiritual filial piety to her husband within the limits permitted by Islamic law. If the husband or wife neglects their respective obligations, they are considered to commit *nusyūz* (Article 84 paragraph 1), they can file a claim to the Court. From the Marriage Law and the Compilation of Islamic Law, there are still several discriminatory articles against women, namely the husband and wife relationship which places a man as the head of the family and the wife as a housewife, which implies unequal rights and obligations between the two (Muhammad 2014).

With the differentiation of social status and roles between husband and wife, there will be social stratification (Indianto Muin 2004). Social stratification or the so-called social class is an important social reality, not just a theoretical concept, but also classifies them into: wealth and income, employment, and education (Horton, Paul B. 1999). Binti Maunah in her research also stated that the salient or dominant size or criteria as the basis for the formation of social strata are as follows: First, the measure of wealth. Second, the measure of power and authority. Third, the measure of honor (Maunah 2015).

*Nusyūz* is one of the important problems due to the imbalance of husband and wife relations

discussed in the KHI. The concept of *nusyūz* is considered to be detrimental to women because it includes male domination over women. Some of the provisions of *nusyūz* in KHI only apply to wives because they are considered not carrying out their obligations as wives (article 84 KHI), while husbands do not.

### **Rereading the Concept of *Nusyūz* with *Qira'ah Mubādalah***

Islam is a religion of monotheism which only worships one God, meaning that the position of men and women is the same in the eyes of Allah SWT as '*abd* and *caliph* on earth. *Tauhid* has the logical consequence of treating humans proportionally as humans or humanizing human attitudes. The arrival of Islam brought the mission of equality and affection, out of all kinds of oppression which had been carried out by a number of strong people against weak (men, women and children) in the era of *jahiliyyah*. Islam highly upholds the value of justice and equality between men and women (QS. Al-Hujurat: 13)

According to *mubādalah*, *tauhid* brings a new perspective on the status, position and role of men and women. First, women were not created from men. Second, men and women have the same status as servants of Allah and carry out the mandate as *caliph*. Third, women do not devote themselves to the benefit of men but devote their lives to Allah for the benefit of His servants. Fourth, women do not absolutely submit to carry out men's orders. Fifth, the quality of men and women is not determined by gender but by the level of obedience to Allah SWT (Kodir 2019).

Meanwhile, obedience is often voiced by many parties by citing verses from the Qur'an such as QS. An Nisa': 34 and several *hadiths* which are specifically addressed to wives towards their husbands. There are many *hadiths* which explain obedience, for example about the *shalihah* wife as the most valuable asset for the husband (Hajjaj n.d.) the obligation to prostrate to the husband if there is an order from Allah, *sunnah*

fasting is not allowed except with the husband's permission (Bukhari n.d.), cursing angels on wives who do not want to sleep with their husbands (Hajjaj n.d.) and *hadiths* other traditions which are discriminatory. In the *hadith*, it is as if the wife's obedience is absolute. So that Islamic law in Indonesia (KHI) gives the same meaning by only limiting it with the sentence "in terms of what is prescribed." However, even this sentence is still unclear and needs interpretation.

*Mubādalah* views that obedience must be reciprocal, meaning that it applies not only to wives but also to husbands. This obedience is solely for the survival of the family and household, not absolute, let alone arbitrarily. With this spirit, the verse of women's obedience (QS. An-Nisa': 34) which is often the basis for the wife's obligation to take care of the household and serve the husband's sexual needs, if it is understood with *mubādalah*, will make it easier to create a happy family (Kodir 2019).

Regarding the wife's obligation to serve her husband wherever and under whatever circumstances the husband wants it, it also needs to be reviewed. This can open up opportunities for sexual violence if there is an element of coercion. If marriage is interpreted as a ownership contract, then this is the effect. The husband can do whatever he wants without considering the wife's needs. In contrast to marriage which is interpreted as an *ibahah* contract, husband and wife have the same right to enjoy sexuality which was previously forbidden (Kodir 2013).

Fiqh seems to only care about men's interests so that the position of women in this case is very weak. If a wife does things that are not liked by her husband, she must first listen to whether she intends to disobey her husband or it is just to take away her rights which cannot be given by her husband, for example she needs rest because she is sick or tired so that she cannot serve her husband or is there another reason husband must understand. From here, the *hadith* which tells about Allah's cursing against women who refuse the invitation of their husbands can be read with

*mubadalah*. Husbands will also experience the same thing if they are reluctant to be invited by their wives.

Islamic marriage law in Indonesia only regulates *nusyūz* for wives as stated in Article 84 KHI:

1. A wife can be considered as committing *nusyūz* if she does not want to do the obligations referred to in Article 83 verse (1) except with valid reasons.
2. As long as the wife is in *nusyūz*, the obligations of the husband towards his wife as stated in Article 80 verse (4) letters a and b do not apply except for those in the interests of their children.
3. The husband's obligations in verse (2) above take effect again after the wife is not *nusyūz*.
4. Provisions regarding the presence or absence of *nusyūz* from the wife must be based on valid evidence.

At first glance, what was conveyed by Ibn Qudamah seemed fair because it was not only women who did *nusyūz*. But when viewed from the cause of the emergence of the husband's *nusyūz*, it still relies on the wife's mistakes such as illness, old age, or her husband's disliking nature. So that even this distribution seems unfair for women or wives. It is necessary to do *qirāah mubādalah* on this *nusyūz* problem by adding the husband's *nusyūz* article in KHI with:

1. Husband or wife can be considered *nusyūz* if each of them does not want to carry out their obligations as mentioned in the previous article regarding the obligations of husband and wife except for valid reasons.
2. While in *nusyūz*, the obligations of a husband or wife towards their partner do not apply except for those in the interests of their children.
3. Provisions regarding the presence or absence of *nusyūz* must be based on valid evidence.

The basis of this *mubādalah* reading is that being kind to others is a necessity. Having a friendly in front of a partner should not only be

done by the wife but also by the husband to the wife. *Mubādalah* has the principle "if a person wants to have his needs met, he must think that other people also need this". Even though the method of fulfillment and the form of the need is not the same. This perspective will humanize men and women by creating the same relationship (Kodir 2019:397).

The *hadith* of the Prophet which tells about the wife's obligation to serve her husband even though she is on a camel's back, according to *mubādalah* it is more accurately interpreted as allegorical and reciprocal not textual. Namely serving, pleasing and making the partner happy in order to uphold the principle of *mu'asyarah bil ma'ruf* in the family in order to realize happy family.

What needs to be re-read about the concept of *nusyūz* is leaving the husband's residence without permission. This kind of situation is difficult for a wife who is active in public activities. Ahmad Rofiq argues that the husband's consent in the current context must be understood proportionally. Permitting directly for each activity would be very troublesome. Husbands are not always at home and it is necessary to see the kind of activities whether it is routine or not. As long as the activity is positive and does not cause slander, the wife can find out the alleged permission of the husband (Rofiq 2013).

*Mubādalah* interprets permission with notification because if there is permission it means that there are restrictions on the rights of the wife which depend on the husband. A more appropriate term is notification. This notification applies to both men and women when leaving the house. This is done so that communication between family members is maintained. Notification is made if it belongs to a type of activity which is not routine in nature.

The process of completing the wife's *nusyūz* as stated in QS. An-Nisa': 34, *mubādalah* views that this verse can also speak to women as subjects whose husbands commit *nusyūz*. If this happens, what can be done is to convey advice to

return to the original commitment to maintain the marriage. Then give the opportunity to reflect and think by separating the bed so that you can come back refreshed and return to commitments. This advice and separation of beds are the stages and processes for peace which are mentioned in another verse, namely QS. An-Nisa': 128. Meanwhile, beatings or any kind of violence are not recommended because they are not the core message of the verse.

A happy family does not mean a family where there are no quarrels, without any differences of opinion and conflict. However, it can minimize and resolve conflicts well so that family members feel comfortable. The Prophet's family was also not free from conflicts but the Prophet was able to resolve them well, and without violence even though the Prophet had power and authority. The Prophet let Ayesha express a different opinion even though with a shrill and noisy voice which made her father (Abu Bakr) furious and wanted to beat his daughter.

## CONCLUSION

The concept of *nusyūz* in Islamic marriage law has been understood by the Muslim community as a wife's defiance or disobedience to her husband so that the husband may impose sanctions on his wife such as hitting. The concept which originates from the interpretation of the Qur'an and hadith needs to be reviewed to suit the current socio-cultural conditions, so that the existing law protects all citizens, not only partially.

*Qirā'ah mubādalah* offers the concept of reciprocity in interpreting discriminatory religious texts. According to *mubādalah*, *nusyūz* applies to husband and wife because of the obedience which is referred in QS. An-Nisa': 34 is defined as obedience to household commitments, not obedience to husbands. So that the benefit is on both the husband and wife. The settlement of *nusyūz* by means of "*shulh*" or peace is better than beatings which cause violence against the wife.

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