

## NUSHŪZ IN ISLAMIC FAMILY LAW: A Critical Study of Hadith Exegesis and Religious Court Verdicts

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### ABSTRACT

*The ongoing family conflicts cannot be separated from the neglect of the position of the husband and wife in Islamic family law, known as nusūz. The purpose of this study is to understand Mufasssireen's interpretation of nusyūz. This study is a qualitative research, a literature survey with an interdisciplinary approach - philosophical, Historical, psychological, sociological, and Islamic law approach - and a descriptive analysis from various sources such as tafsir, hadith, Islamic Jurisprudence, legal maxim and legislation. The meaning of nusyūz in al-Nisa 4:34 according to Mufasssireen is similar. The difference between classical mufasssirs and contemporary mufasssirs is that classics allow and contemporary ones reject wife beating. There is also an interpretation of verse al-Nisa 128, where commentators argue that the husband's nusūz means relinquishing rights and obligations due to polygamy and unequal living, and the form of resolving the husband's nusūz is through advice and mediation. The judge's decision in resolving husband and wife nusyus problems was the judge's reference to al-Baqarah paragraph 241, School Al-Dzahiriyyah Article 39 paragraph 2 of Law Number 1 of 1974 concerning Marriage, Articles 149 and 241 Compilation of Islamic Law of 1991 as the implementation of takhsis al- qada is based on benefit which refers to the Islamic legal maxim Hukm al-Hakim Yarfa al-Khillaf, Tassaruf al-Imam Ra'iyah Ala Manut bi al-Maslahah.*

**Keywords:** Nusuz, Tafsir, Hadith, Islamic Family Law, Judge's Decision.

### ABSTRAK

Konflik Keluarga yang terus terjadi tidak lepas dari pengabaian kedudukan suami istri dalam Hukum Keluarga Islam yang dikenal dengan nusyūz. Tujuan penelitian ini ialah untuk memahami Interpretasi Mufasssireen terhadap nusyūz. Penelitian ini merupakan penelitian kualitatif, dengan pendekatan interdisipliner yaitu pendekatan Filosofis, Historis, Psikologis, Sosiologis, Dan Yuridis dengan tipe analisis deskriptif dari berbagai sumber seperti Tafsir, Hadis, Usul Fiqh, Kaidah Hukum Islam, Perundang-Undangan Hasil Menunjukkan bahwa makna nusyuz dalam surat al-Nisa ayat 34 menurut Mufasssirin memiliki kesamaan adapun perbedaan antara klasik dan

kontemporer terkait pemukulan terhadap istri. Ada pula interpretasi pada ayat al-Nisa 128, nusūz suami kelalaian hak dan kewajiban akibat poligami dan pemberian nafkah yang tidak setara, dan bentuk penyelesaian nusyūz suami ialah melalui nasehat dan mediasi. Keputusan hakim dalam menyelesaikan permasalahan nusyuz suami istri ialah rujukan hakim pada al-Baqarah ayat 241, Madzhab Al-Dzahiriyah Pasal 39 ayat 2 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 149 dan 241 KHI Tahun 1991 sebagai pelaksanaan taksir al-qada berdasarkan kemaslahatan yang mengacu pada asas *hukm al-Hakim Yarfa al-Khillaf, Tassaruf al-Imam Ra'iyah Manut bi al-Maslahah*.

**Kata Kunci:** Nusyūz, Tafsir, Hadis, Hukum Keluarga Islam, Keputusan Hakim.

## INTRODUCTION

*The Qur'an* is a *kalamullah* which is revealed against the Prophet Muhammad PBUH in *Arabic lafdz*,<sup>1</sup> which are *miracles* and revelations. The Quran has timeless content that can help solve problems faced by humans. Hadith is the second most important source after *the Qur'an* and serves as an interpretation of the *Qur'an*.<sup>2</sup> Husband and wife receive each other's guidance and advice (*mauidzah hasanah*) in life to maintain family relationships by working hand in hand to build a harmonious and happy family. The family is an important social institution in Islam.<sup>3</sup>

But often tensions arise between husband and wife because they do not carry out the obligations laid down by *the Qur'an* and *Hadith*. Thus causing *nusyuz behavior* that has a bad impact on the family. Therefore, it is necessary to clearly understand the rights and obligations of both in order to establish a harmonious relationship.

The factors that cause *nusyuz* for husband and wife are conflict, economy, education, family and social intervention, politics, law, religion and unpreparedness in marriage, polygamy by means of sirri marriage, infidelity, polyandry of loveless marriage, dissatisfaction in marriage (*kafaah*) Allah says:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالْصَّالِحَاتُ قَنِينَتٌ حَفِظَتْ  
لِلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا  
تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٣١﴾

<sup>1</sup> Muhammad Ibrāhim Abd' Al-Bāits, *Kitāb Al-Furqāni Baina Nisbati Al-Qawli Wa Al-Kalām Fi Al-Qur'ān* (Kairo: Maktabah al-Majallad al-Araby, 2016).53

<sup>2</sup> Hasaballāh Ali, *Uṣūl At-Tasyri' Al-Islāmi*, 5th ed. (Kairo: Dār al-Fikr al-'Arabi, 1976).45

<sup>3</sup> Achmad Mubarak, *Psikologi Keluarga* (Malang: Madani, 2016).10

*"Men are protectors over women because Allah favors some (men) over others women and some (men) spend some of their property, therefore, a chaste woman is a woman who obeys Allah and protects herself when her husband is not there Also for the woman you fear is a traitor, until he rebukes him to pull her out of bed, and ignore him, God recognizes what you do." (QS Al-Nisa 4:34).*

In understanding the content of *Qur'anic verses* that are understood textually and legally formally, it often brings extreme attitudes and overreaches the limits.<sup>4</sup> Like the understanding of *nushūz* in the *Qur'an*, Sura Al-Nisa 4:34 which is overunderstood (*guluw*) which results in husbands committing acts of abuse against wives, as some cases in the world mentioned in the table as follows:<sup>5</sup>

**Table 1**

Country	Persentase	Cases of Violence Against Wives
United States	69 %	Physical Violence
Prancis	92 %	Physical Violence
Germany	1000 %	Physical and psychological abuse
Inggris	70 %	Physical Violence
Canada	150 %	Physical Violence
Timur Tengah <sup>6</sup>	50 %	Physical Violence
Indonesia <sup>7</sup>	792 %	Physical, sexual, and economic violence

The data above shows that the lack of understanding of husbands in understanding QS Al-Nisa 4:34 is still very weak even though in principle *nusyuz* is applied to husband and wife as stated in QS Al-Nisa 4:128:<sup>8</sup>

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<sup>4</sup> *Said Aqil Siroj*, Tasawuf Sebagai Kritik Sosial, (Bandung: Mizan, 2006).32

<sup>5</sup> Mu'tasham Abdurahaman Muhammad Mansur, "Provisions of Wives Mushuz In Islamic Sharia" (Najah al-Wathaniyyah University, 2007).299

<sup>6</sup> Lynn Welchman, Zahia Jouirou, and Marwa Sharafeldin, "Muslim Family Laws : Trajectories of Reform," *SOAS University of London Working Paper Series — School of Law , Gender and Media*, 2023.25

<sup>7</sup> Fauzan Fauzan, "Progressive Law Paradigm in Islamic Family Law Renewal in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 2 (2020): 187,.

<sup>8</sup> Jayusman Jayusman et al., "Maslahah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia," *Muqaranah* 6, no. 1 (2022): 69–84,

وَإِنْ أَمْرَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ  
وَأُحْضِرَتِ الْأَنْفُسَ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ﴿١٢٨﴾

*"And if a woman is afraid of her husband's indifference or indifference, even though her husband is stingy, it is normal for the two to be reconciled, and this peace will be better according to him and if you protect your wife and protect yourself (from lethargy and indifference), until in fact Allah knows all that you do." (QS Al-Nisa 128).*

The concept of *nusyūz* among the *mufasssirin* is divided into two periods: classical (*mutaqaddimin*) in the 8th century hijriyah and contemporary in the 9th century (*mutaakhirin*). In the classical era, such as al-Qurtubi, Al-Thabari, Al-Mawardi, Al-Fakhrudin Razi, while the contemporary era Al-Biqai, Abu Al-Suad, Muhammad Abduh, Muhammad Rashid Ridha, Thahir Ibn Ashur, Muhammad Mutawalli Al-Sya'rawi, Muhammad Madhi Abu Al-Aza'im, Muhammad Shahrur, Fazlur Rahman, Nasr Abu Zayd, Hasan Hanafi, Abdul Karim Amrullah, Muhammad Quraysh Shihab, Wahbah Juhayli, Muhammad Said Thantawi.

Contemporary commentators face different challenges from the classics as they pertain to Islam and human rights. So they reconstructed some interpretations of the *Qur'an* to answer the social changes (*al-Taghayyur al-Ijtima'i*) that occurred in society.<sup>9</sup> Several methods of interpretation such as the method of *al-Ma'tsur, bi al Ra'yi, bi al-Isyari*, have been used by scholars to study the historical aspects of the *Qur'an*. The *Qur'anic interpretation of nusyūz* is interesting to examine considering the changing times that continue to develop by paying attention to relevance to current conditions. Like the role of the wife who becomes a career woman who doubles as the backbone of the family because the husband is unable to carry out his obligations in the economy. The legal consequences of *the wife's nusyuz* are, the loss of *the husband's* income to the wife while *the husband's nusyuz* is divorce as in some cases that occur in the Religious Court as follows:

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<sup>9</sup> Kabuye Uthman Sulaiman, "The Role of Qur'an in the Transformation of Human Society," *Revelation and Science* 04, no. 01 (2014): 1–13,

**Table 2**

No	High Court of Religion	Verdict Number	Case	Year
1	Bengkulu	9/pdt.G/2017/PT.Bn	Perselingkuhan	2017
2	Palembang	21/Pdt, G/2018/PTA.Plg	KDRT	2018

The two rulings mentioned show that husband and wife *nusyuz* can be the cause of divorce. According to the majority of Ulama (*Ijma' al Ilm*) Hanafi, Maliki, Hanbali Shafi'i, Sharif, al-Sha'bi, Hasan, and Abi Sauli, and the Compilation of Islamic Law it is stated that if the wife commits *nushūz* then her loss of income is very different from the Judge's Decision in deciding the case of *nusyuz* the husband's wife is required to provide *iddah* for the wife who is *nushūz* Therefore, based on the above problems, the author is interested in linking this research with *nusyuz* in family law: a critical study of hadith interpretation and court decisions

## RESEARCH METHODS

This research is a qualitative research involving descriptive analysis, focusing on interpretive, historical, sociological, philosophical, psychological, juridical approaches. interpretive methods are used to interpret the texts of *the Quran and Hadith*, while philosophical approaches are based on the rules of Islamic law, psychology deals with problems, and Juridical is the legal approach. The data used in this study include primary, secondary, and tertiary sources, with comparative analysis techniques used to complement this study.

## RESULTS AND DISCUSSION

*Nusyūz* is a term used in many languages, including Indonesian meaning insubordination,<sup>10</sup> In Arabic Grammar *Nushuz*, taken and rooted from the word *Nasaza-yansuzu-nusyuzan* read fatah nun sin has the meaning *al-Irtifa'* iniquity. Etymologically, the word *nusyuz* put forward by linguists connotes iniquity committed by wives against husbands. While *the husband nushūz* is a husband who exalts himself and neglects sexual relations.<sup>11</sup> Meanwhile, according to experts from among Tafsir and Islamic jurists have a terminological definition as the table below:

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<sup>10</sup> Syafii, "Interpretasi Makna Sulhu Dalam Penyelsaian Kasus Nusyuz Suami Perspektif Tafsir" (Pascasarjana UIN Sultan Syarif Kasim, 2023).1

<sup>11</sup> Muhamad Ibrāhīm al-Hafnāwi, *Mu'zam Gharīb Al-Fīqh Wa Al-Ushūl Wa Ma'āhu I'rab Al-Kalimāt Al-Gharībah* (Kairo: Dār al-Hadith, 2009).623

**Tabel 3**

No	Nusyuz In Mufassirin Perspective	Nusyuz in the Perspective of Islamic Law Members
1	Al-Qurtubi "the woman of lawlessness" ( <i>al-Mar'ah al-Nasyiz</i> ) i.e. who hates her husband by carrying out evil deeds. <sup>12</sup>	The Hanafiyah Madhhab says <i>nusyuz</i> is the exit of the wife from the house without her husband's permission and closing herself to her husband, while actually not having the right to do so.
2	Ibn Kathir defines "Ungodly Woman" as belief in one's own beliefs, which aims to prevent or overcome one's own beliefs. Over her husband. <sup>13</sup>	Maliki madhhab defines a person as someone who commits sexual acts, without relationship with others, without seeking relationships, or acknowledging the Rights of Allah Almighty. <sup>14</sup>
3	Al-Tabahari defines "Righteousness" as exalting wives to their husbands, and defying them from their imitation. <sup>15</sup>	The Madhhab of Al-Shafi'iyah defines with <i>al-Mar'ah al-Nasyiz</i> the woman who commits iniquity to her husband. <sup>16</sup>
	Mahmud Al-Alusi defines it as the defiance of a wife who obeys her husband who does not obey his orders.	The Hanablah Madhhab defines a husband's obedience to what is commanded by Allah that a husband must obey all the commandments of Allah. <sup>17</sup>
	Muhammad Mutawalli Al-Sha'rawi by quoting from Al-Thabari Is <i>Al-Irtifa' Wa Al-Isti'la</i> , exalted the treatment in family interactions at home, consisting of nysuz itself. <sup>18</sup>	Madhhab al-Dhahiriyyah defines "it is obligatory for women or slaves and free women not to prevent their master and husband from having

<sup>12</sup> Abū Abdillāh Muḥammad bin Aḥmad Bin Abi Bakar Al-Qurthūby, *Al-Jāmi' Li Ahkām Al-Qur'ān* (Beirut: Muassah al-Risalah, 2006). Jilid 5,112

<sup>13</sup> Abū al-Fiḍā' 'Imād ad-Dīn Ismā'īl ibn 'Umar ibn Kathīr al-Qurashī al-Damishqī, *Tafsīr Al-Qur'ān Al-'Aẓīm* (Kairo: Dar al-Hadist, n.d.). Jilid 1,654

<sup>14</sup> Abi al-Barakat Ahmad bin Muhammad al-Dardiri, *Al-Syarh Al-Shagir Ala Aqrab Ila Al-Masalik Ila Madzhab Malik*, n.d. 5/343

<sup>15</sup> Muḥammad Ibn Jarir al-Thabari, *Jami' Al-Bayan Fi Ta'wil Al-Thabari* ((Kairo: Dar al-Hadist, 2010).Jilid 5,228

<sup>16</sup> Syam al-Din Muhammad bin Abi Al-Abbas Ahmad bin Hamjah Syihāb al-Din Ramli Nihayah al-Muhtāz ila Syarh Al-Minhāj, *Nihayah Al-Muhtāz Ila Syarh Al-Minhāj* (Beirut: Dār al-Fikr, 1984). Jilid 6, 380

<sup>17</sup> Abū Muhammad Maufiq al-Din Abdullah Bin Ahmad al-Maqdisi, *Al-Mugni Li Ibn Al-Qudāmah* (Kairo: Dār al-Hadith, 1990). Jilid 3,92

<sup>18</sup> Muhammad Mutawalli Sya'rawi, *Tafsir Al-Sya'rawi* (Akhbar al-Yaum, n.d.).Jilid 4,192

		sexual relations whenever he invites them. <sup>19</sup>
	Abdul Karim Amrullah, <i>nushūz</i> is a wife's disobedience to what Allah teaches her husband. <sup>20</sup>	Abu Hamid al-Ghazali, What is meant by <i>nushūz</i> : Does not empower and enable a husband and disobeys him in a way that is beyond the limits of the Law.
	Muhammad Quraish Shihab <i>Nushūz</i> is pride, with the way the wife views her husband, which aims to fulfill the betrayal of the family. <sup>21</sup>	Wahbah Zuhayli Contemporary Islamic Lawmaker from the University of Damascus submitted <i>nusyūz</i> is the disobedience of the wife ( <i>Ma'siyah al-Mar'ah</i> ) to the husband in ordering him, which is obligatory in the marriage vow. <sup>22</sup>

From all the definitions expressed by scholars, there is a common understanding between the Tafsir (*Mufasirin*) and the Islamic Jurisprudence (*Fuqaha*) which connotes the iniquity of the wife<sup>23</sup> The author defines *nushūz* as the iniquity of the sins of husband and wife from neglect to carry out the rights and obligations mandated by Allah, resulting in the collapse of the family with various causes, disproportionality (*kafaah*) in terms of nasab, economic, social, educational, religious understanding, the absence of love of the couple when married so that there is defiance between the two. From the definition that the author defines it is inseparable from the dynamics of family institution life which is often faced with conflict (*syiqaq*) so that the essence of family life is to achieve *mardhatillah* on Allah's trust to the couple. The *nusyūz* in the Perspective of Laws and Regulations in the Islamic State is as follows:

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<sup>19</sup> Alī ibn Aḥmad ibn Saʿīd Ḥazm Ibn, *Al-Muhalla Bi Al-Atsar* (Dar al-Kutub al-Ilmiyah, n.d.). Jilid 9,251

<sup>20</sup> Abdul Malik Abdul Karim Amrullah, *Tafsir Al-Azhar* (Singapura: Pustaka Nasional PTE LTD, n.d.). Jilid 2,1197

<sup>21</sup> Muhammad Quraish Shihab, *Tafsir Al-Misbah Pesan Dan Keresasian Al-Qur'an* (Jakarta: Lentera Hati, 2002).Jilid 2,402

<sup>22</sup> Wahbah al-Zuhayli, *Mausū'ah al-Fiqh al-Islāmī wa al-Qhadāyā al-Muāshirah* (Damaskus: Dar al-Fikr, 2012).Jilid 8,736-737.

<sup>23</sup> Ban Essam Mohammed Haidar Hussein al-Shammari, "Hudud Tha'ah Al-Jauziyah Li Jaujiha Baina Syari'ah Wa Al-Qanun," *The Journal of Duhok University Humanities And Social Sience* 26 No 1 (2023): 294–301, <https://doi.org/https://doi.org/10.26682/chjuod.2023.26.1.21>.

**Tabel 4**

Country	Legal Basis	Information
Al-Jaza'ir	Undang-Undang Hukum Keluarga al-Jazair Pasal 55-56 Tahun 2007	When a married couple <i>nusyuz</i> , then it is the judge who decides the divorce with compensation to the aggrieved party.
Republik Arab Mesir	Undang-Undang Hukum Keluarga Mesir Tahun 1920, Tahun 1929, Tahun 1985 tahun 2000	A wife who has <i>nusyuz</i> against her husband, then a wife does not have the right to provide and shelter. <sup>24</sup>
Yordania	Undang-Undang Hukum Keluarga Yordania Pasal 69 Tahun 2005	A wife who leaves her husband's legitimate home, where a wife has left her husband whom the husband may have the right to divorce.
Suria	Undang-Undang Hukum Keluarga Suria Pasal 145	Al-Nasyiz is a person who enlarges or moves his body to a certain place before trying to impose other conditions.
Indonesia	Kompilasi Hukum Islam Pasal 84	A wife is considered <i>nusyuz</i> if she does not carry out the obligations as article 83 paragraph 1 except, the husband's obligations to his wife article 80 paragraph 4 letters a and b do not apply to matters for the benefit of their children.

Among the laws in the Islamic State only provide an explanation of the provisions *nusyuz* only applied to wives. Similarly, the Compilation of Islamic Law in Article 83 applies *nusyuz* only to wives<sup>25</sup>, Researchers consider that the definition of *nusyūz* written in the Laws and Regulations should have provisions for husband *nusyūz* written in law in Muslim countries because all regulations contained in the law are

<sup>24</sup> Ta'lulat Salwa, "Étude De Nusyuz Sur La Comparaison Entre Le Fiqh Et Le Droit De La Famille Al-Jaza'ir Et La Loi Islamique Arabe" (Université de Béjaïa, 2015).7

<sup>25</sup> Fitriyani, "Pertimbangan Hakim Dalam Putusan Perkara Nusyuz Perspektif Keadilan Gender (Putusan Pengadilan Tinggi Agama Tahun 2011-2019)" (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2022).67



patriarchal in nature that have no relevance to the development of the times that are changing every time. Abdurahman Wahid argues that the principle is that men and women have equal rights while the difference between the two is only biological, so equal rights between men are part of Islamic values.<sup>26</sup> As stated in Ali Imran 3:195, Al-Nahl 16:97, Al-Nur 24:30-31, al-Ahzab 33:35, which places men and women placed egalitarianly.

#### NUSYUZ AND MUFASSIRIN INTERETATION IN THE QUR'AN

The term *nushūz* contains four verses in *the Qur'an* can be seen in QS Al-Baqarah 2:237 QS Al-Mujadallah 58: 11, then QS Al-Nisa, 4:34 and 4:128 which are specific related to *nusyuz* in detail.

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالْصَّالِحَاتُ قَنِبَتْنَ حَفِظْنَ لِغَيْبِ بِمَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٣٤﴾

*"Men are protectors over women because Allah favors some (men) over others women and some (men) spend some of their property, therefore, a chaste woman is a woman who obeys Allah and protects herself when her husband is not around. and ignore him, God recognizes what you do." (QS al-Nisa 34).*

Because of the Descent of this Verse (*Asbab al-Nuzul*) Qurtubi, Ibn Kasir, Wahbah Juhayli Muhammad Sayyid Thantawi, Muhammad Ali Sayyis based on the case of Habibah Saad bin Rabi' who had committed *nusyuz* for refusing sexual relations<sup>27</sup> to her husband Saad bin Rabi' who then Saad slapped him then Habibah Bintu Jayyid bin Kharijah bin Abi Zahir bin Abu Hurairah reported the incident to his father then his father reported to the Prophet Muhammad SAW saying his Father Habibah to the Prophet Muhammad then Come back because Jibril will come to me to take down this verse.<sup>28</sup> The Prophet also said with his words: "We want a commandment and Allah wants a

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<sup>26</sup> Al Fitri et al., "Reconstruction of Nusyūz Concept in Compilation of Islamic Law in Indonesia (Gender Equality Perspective Analysis)," *SMART: Journal of Sharia, Tradition, and Modernity* 1, no. 2 (2021): 143–60.

<sup>27</sup> Judah Abd al-Ghani Basuni, *Dirasat Fi Ahwal Al-Syakhsiyyah Mualliqan Alayha Bi Qanun Al-Ahwal Al-Syaksiyyah Jadid* (Kairo: Dar Thaba'ah Muhammadiyyah, 2013).389

<sup>28</sup> Muḥammad Said Al-Thantāwī, "Tafsir Al-Wasith Li Al-Qur'ān Al-Adzim" (Kairo: Dār al-Saa'dah, 2006).136

commandment, and what Allah wants his *command is better*" and from this the abolition of *the punishment of qisas* for Saad.<sup>29</sup>

From the description above, it can be understood that the reason for the descent of this verse is based on a case of domestic violence that has been experienced by Saad Bin Rabi' against Habibah Bint Jayyid bin Kharijah bin Abu Hurairah when Habibah at that time refused to have sexual relations with her husband, after that her husband slapped his wife, not only that, this verse became one of the foundations of the argument that hygistically gave know her husband's behavior to her father and they faced to: The Prophet at that time served as a Judge (*Qhadi*) and prescribed *the punishment of Qisas* for Saad for physical violence, but the punishment of *Qisas* for Saad was canceled with the descent of QS al-Nisa 4:34. And one of the foundations for the cancellation of this provision of *qisas* is based on the Qur'an Surat Thaha:114.

Interpretation of commentators such as Imam Shafi' Ibn Kathir, al-Thabari, Qurtubi, Ali Sayyis, Wahbah Juhali, Muhammad Mutawali Sha'rawi' Sayyid Thantawi In this verse Allah Almighty has given glory to men and made them protectors for women because Allah has commanded humans to have responsibility for guardianship (*wilaya*) which is dominated by men because they have been given the excess of body and soul to fight and have advantages over dowry and income for the wife in meeting the needs of the wife. Ibn Arabi, Al-Jasas, al-Razi, al-Zamakhshari suggest that a man (*rijal*) is a protector (*ria'yah*) and leader with the first three privileges (*fada'il*), perfection of mind (*kamal al-aql*). The second is perfection in religion (*kamal al-Din*) in performing *jihad* as an implementation of *amr bi al-Ma'ruf wa Nahyu an al-Munkar*. The third husband has advantages over dowry and the income that Allah has promised.<sup>30</sup>

Fazlur Rahman, views al-Nisa 4:34 must be understood first from the side of the reason for the descent of the Verse which is then adjusted to the context in cases that occur in the contemporary era so that it is understood as a whole so that there is no multiinterpretation and have accuracy in the use of the verse.<sup>31</sup> Asgar Ali Engineer interprets Al-Nisa

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<sup>29</sup> Wahbah Al-Zuhayli, "Al-Tafsir Al-Munir Fi Al-Aqidah Wa Al-Syari'ah" (Damaskus: Dar al-Fikr, 2009).3/57.

<sup>30</sup> Abū 'Abd Allāh Muḥammad ibn al-'Arabī al-Ṭā'ī al-Ḥātimī, *Aḥkām Al-Qur'an* (Dar al-Kutub Ilmiyyah, n.d.).16

<sup>31</sup> Fazlur Rahman, *Islam & Modernity: Transformation of an Intellectual Tradition* (United States of America: The University of Chicago Press, 1982). 130-164

4:34 to be viewed contextually and not only theologically considering the *Qur'an's* highly contextual teachings<sup>32</sup>

Barbara Freyer Stowasser argues that Ali Engineer changed a new paradigm in determining the interpretation of the *Qur'an*. Amina Wadud reveals that Annisa 4:34 does not oblige women to obey their husbands but a good wife is a wife who obeys her husband Amina Wadud gives her interpretation that a wife's obedience only applies to a truly harmonious family where there is no interference from anyone by referring to the femenical theory and it is the young who take care of each other emotionally, economically, intellectual as well as spiritual.<sup>33</sup>

From the above interpretation, it can be seen from the aspect of interpretation of the exegetes that a wife has an obligation to serve her husband with the argument that Allah is the one who makes protectors for his wife and grandchildren. While the perspective of Amina Wadud and Ali Engineer Fazlurahman has a view of progressive thinking that is different from the Tafsir and the method used, meaning that Amina Wadud and Ali Engineer revealed that a wife is not obliged to obey her husband because obedience is only applied to couples who have harmony in the family, but in the understanding understood by Ali Engineer and Amina Wadud that men and women have equality in rights and obligations.

The psychological and historical perspectives of the author see from the aspect of the cause of the descent of this verse as the basis of reproductive function only, but the intervention of parents carried out by Habibah's parents who did not accept because their children were slapped by their daughter-in-law. While the sosological aspect of this verse as a foundation in the elimination of the Practice of Physical Violence committed by husbands against their wives which has become the custom of the Arabs in the pre-Islamic era in the Arabian Peninsula 15 centuries ago.

The author considers that QS Al-Nisa 4:34 in terms of interpretation that a husband is a protector (*qawamah*), educator (*murabbi*) for women has an obligation in food clothing, for his wife and children so that a husband has a very large role and responsibility in protecting women but the role of *qiwam* for husbands over wives is not *absolute* which has no limitations, but in its implementation of this verse

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<sup>32</sup> Asghar Ali Enggineer, "The Qur'an Women and Modern Society," 2007.45

<sup>33</sup> Amina Wadud, *Al-Qur'an And Woman Rereading The Sacred Text From a Woman's Perspective* (New York Oxford: Oxford University Press, 1999).62

in this contemporary era, husband and wife can work together in sharing roles between one another, such as women are allowed to carry out activities as seekers of economic needs in order to help their husbands to meet the needs of family life. Although social and psychological reality does not run smoothly because couples will get trials and obstacles that trigger conflict, thus influencing both to commit iniquity.

*Nusyūz* wife as a manifestation of the wife's inability to lead family life in conforming to the rights and obligations set by Allah. The negligence of a wife in carrying out duties of obligation is inseparable from social associations outside the home that trigger conflicts of married couples such as *nusyūz* wife refuses to live in the same house with her husband, leaves her husband without permission, insults her husband and family, refuses sexual relations without *udzur sar'i*, often asks for divorce if husband and wife are involved in conflicts, intimacy with men other than her husband digitally on social media, Judes face with the husband, allowing parents and in-laws to intervene in the household. killing the husband, loving people's husbands, otherwise *nushūz* Husbands i.e. not providing for the wife's economic needs, abandoning obligations to Allah, cyber and real affairs with other women, marrying serially without the wife's permission, beating the wife, insulting the wife and her family, exposing the wife's disgrace to others allowing parents and in-laws to intervene in the household. Love other people's wives. *Nusyuz* husband is stated and mentioned in QS Al-Nisa 4:128 which reads:<sup>34</sup>

وَإِنْ أَمْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ  
وَأَحْضَرْتُ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ﴿١٢٨﴾

*"And if a wife fears iniquity or indifference from her husband, then it is sufficient for both to bring about true peace, and that peace is better (for them), though men are miserly in nature. Furthermore, if you behave well and take care of yourself (by not overeating and drinking), Allah will undoubtedly understand what you do at work (QS Al-Nisa 4:128).*

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<sup>34</sup> Ibnu Izzah, "Nusyuz and Its Solutions in Compilation of Islamic Law From the Perspective of the Al-Quran," *Jurnal Al-Dustur* 4, no. 1 (2021): 31–48,

The Tafsir (*Mufasssirin*) mentions several reasons for the descent of the verse as follows: The First narrated by Saeed bin Jubayr narrated from Ibn Abbas revealed this verse Ibn Abi Al-Sa'bi who had a wife and children from him, when he was old he intended to break off his wife, then his wife said "do not divorce me. Let me take care of my children, and I'm ready to share the night in every night. Then Saad Bin Jubayr told his wife if so it was better for me. And divide a few nights each month. Her husband said: If so, then it's better for me.

The second reason for the descent of this verse in the story of Sawda Bint Zam'a, who was about to be divorced by the Prophet Muhammad, And Sawdah prevented this intention by persuading the Prophet that the rights and duties of Saudah be transferred to Aisha<sup>35</sup> The third: It is narrated from Aisha about a woman who was with a man who wanted to change partners with another, so she said: wait, I married someone else, and you are free from keeping vows.

Al-Tabari quotes Abu Ja'far in his commentary on male *nushūz* as follows: a woman who fears her husband doing *nushūz* (*ma'siyat*) will consider herself superior to his own wife. A husband who hates his wife is an arrogance that respects others more than his wife so that the husband will turn away in his own way so by making peace it is not sinful for the wife if a husband will turn away from her.<sup>36</sup>

Al-Qurtubi understood this verse as a response to those ignorant (*juhala*) who had the view of a man taking by marrying the young and then abandoning the old. Ibn Kathir states that if a husband commits iniquity, a wife has the right to relinquish the rights and obligations of her husband such as bread, shelter or something that is due to her husband. Muhammad Madhi Abu Al-Aza'im interprets this verse, "If a wife is worried about her husband committing disobedience, abandonment, then there is nothing wrong for them to make peace (*al-Sulh*) between them, even if one of the two gives up his marital rights in favor of divorce and separation, because what is true in many things is good and remains secret. If the wife is not suitable for men because of her old age, illness, or there are obstacles that prevent her from carrying out her duties.<sup>37</sup>

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<sup>35</sup> Abū Dāwud Sulaiman ibn al-Asy'as as-Sajastāni al-Azdi, *Sunan Abi Dāwud* (Kairo: Dar al-Hadis, 1999). Jilid 2,915

<sup>36</sup> Muḥammad Ibn Jarir al-Thabari, *Jami' Al-Bayan Fi Ta'wil Al-Thabari*. Jilid 9,268

<sup>37</sup> Muhammad Madi Abu al-Aza'im, *Asrar Al-Qur'an* (Kairo: Dar al-Kutub al-Shufiyyah, n.d.). Jilid 5,1452

Wahbah Juhayli interprets this verse as a decree of Allah for an old woman, whose husband has remarried into a polygamous marriage so that the wife does not accept her husband's marriage, but the wife has the right to stay with her husband in order to protect the sacred bond of marriage that she has gone through for many years as a deterrent from divorce which is a matter that God hates so that the husband enact justice in the provision of his two wives.

From the Interpretations of Commentators such as al-Tabari, al-Qurtubi, Ibn Kathir Muhammad Madhi Abu al-Azaim, Wahbah Juhali in An-Nisa 4:128 is the problem of polygamy carried out by Ibn Abi Al-Sa'bi, Saad bin Rabi with a younger and more beautiful girl. and from this marriage resulted in prolonged conflict. Historically, the case of polygamy contained in Annisa 4:128 is not based on justice such as justice in reproduction (*al-wat'u*), economics (*nafaqa*) which is the obligation of the husband to his wife who makes losses unilaterally.

Al-Shafii and Abu Al-Aza'im stated that in principle, a husband cannot do justice to his wife, especially matters of the heart, which means that this is a matter that is very impossible for a husband who practices polygamy to do. Besides polygamy was the divorce that the Prophet was going to do with Sawda Bint Zam'a at that time but Sawdah did not want the Prophet to divorce her. So the method of resolving the polygamous conflict carried out at that time was to mediate on the basis of pleasure between the two if both were pleased then the polygamous marriage would be the intercession of the afterlife world as happened to the Prophet Muhammad, Ibn Al-Sabi and the couple Khaulah Bintu Muhammad Bin Salamah and Saad bin Rabi. However, if mediation is unsuccessful, then a wife is allowed to file for divorce. As in court decision 2240/pdt.g/2021/PA. Kab.Mlg with successful mediation and several cases of salabritis ustadz who failed in undergoing polygamous marriages.

In principle, the *Qur'an* commands a wife to respect her nature as a woman. Because in the Qur'an Allah has warned to always keep the marriage intact because in marriage there is a holy covenant *mitsaqan ghalizan*, this is so as not to occur divorce which results in the loss of the family, especially children who need complete parental love. This means that two verses in Annisa 4:128 and 34 explain that husband and wife should be aware of *the nusyuz* behavior between the two. The commitment and covenant of marriage for married couples must be held

tightly because of the empirical fact that marriage will undergo several phases, namely the phase in the first five years of marriage in which the married couple experiences economic difficulties and continuous conflicts for various reasons can be due to excessive jealousy of the wife towards the spouse and vice versa, Likewise, the disadvantages and advantages of property owned by the family, then the phase of each couple enters the second puberty era, one of which feels bored in carrying out routines in raising a family. Whereas in other verses referring to *the purpose of the Qur'an* is the protection of family harominas as the table below:<sup>38</sup>

**Table 5**

No	Qur'anic Basics	The Duties of Husband and Wife in the Qur'an
1	An-Nisa 4: 19	Connectivity in intercourse sexual <i>fulfillment</i> .
2	Al-Baqarah 2:147	Interplay in the Protection of Family Honor.
3	Al-Thalaq 65: 6	Interplay in Protection from Violence.
4	Al- Tahrīm 66:6	Interplay in Mutual Property Protection with Spouse.
5	Al-Nisa 4:32	Attachment in the Voluntary foundation in sexual relations in a good way.

From the table shows that the Qur'an gives news that for every couple must watch out for the *nushūz* behavior carried out for both husband and wife as an effort to prevent calamity and reinforcements of divorce. Because in Al-Nisa 4:34 is a *khabarīyah* verse which is historically the responsibility of husband and wife in the marriage bond while Anisa 4: 128 as the principle of fidelity in the household is monogamy and if the husband practices polygamy then it is prescribed to mediate.

#### **NUSYUZ IN FAMILY LAW HADITH**

Among several *hadiths* related to Nusyuz is more about the rights of husband and wife who have functions as well as family functions, namely reproductive functions, economics, among several *hadiths* as follows.

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<sup>38</sup> Desi Asmaret, Alaidin Koto, and Afrizal M, "Transformasi Hukum Keluarga Islam Di Indonesia: Telaah Pemikiran Rifyal Ka'bah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 2 (2020): 145, <https://doi.org/10.14421/ahwal.2019.12203>.

حدثنا محمد بن بشار حدثنا ابن أبي عدي عن شعبة عن سليمان عن أبي حازم عن أبي هريرة قال: إذا دعا الرجل امرأة إلى فراشه فأبت أن تجيء لعنتها الملائكة حتى تصبح رواه البخاري

*Muhammad ibn Bashar narrated to us from Ibn Abi Uday of Shu'ah, Solomon, Abu Hazem and Abu Hurayrah that he said: When a man calls his wife to bed for sexual intercourse she refuses, the angels keep cursing her until she falls (morning). (HR Al-Bukhari)<sup>39</sup>*

Ibn Hajar al-Asqalani, in *Fath al-Bari*, says that the word *Firas* in the expression *Idza Da'a al-Rajulu Imra'atuhu* is a kind of satire (kinayah) of the word *Jima'*, or copulation. (*Sexual Intercourse*), and the word *ma'na* (*al-Malaikah Laanatuha Hatta Tusbiha*) Ibn Jamrah explains that anathema here is the rejection of nighttime intercourse and also daytime copulation. *Hatta Tusbiha*. Copulation is usually carried out at night, in other words, the wife's refusal during the day is also considered *nusyuz*.<sup>40</sup>

Al-Nawawi said this hadith shows that the prohibition of a wife to refuse a man's desire to have biological relations without reason (*udzur al-Shar'i*) and a wife who is menstruating (menstruation) is not an excuse because it can still be done by a husband to his wife covered with clothes. The meaning of the hadith is that the curse will continue to fall on him until the end of his wife's refusal only in the morning, and the wife will be freed from the curse, by her repentance and return to serve her husband.<sup>41</sup> The hadith mentioned the command from the Prophet to the wife to obey her husband under any circumstances and no matter how busy, even when the wife is busy, a task is very difficult to leave shows that it is obligatory unless it is done. There is a presumption which

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<sup>39</sup> Al-Bukhārī's Abū Abdullah Muhammad ibn Ismā'il ibn Ibrāhīm ibn al-Mugīrah ibn Bardazabah, "Ṣāhih Al-Bukhārī," 3rd ed. (Beirut: Dar Ibn Kathir, 1887).1324

<sup>40</sup> Shihābud-Dīn Abul-Faḍl Aḥmad ibn Nūrud-Dīn 'Alī ibn Muḥammad ibn Ḥajar al-'Asqalānī, *Al-Bukhārī, Fath Al-Bārī Fī Sharḥ Ṣāḥīḥ* (Kairo: Dar al-Taufiqiyyah, 2015.).245-247

<sup>41</sup> Abū Zakariyyā Yaḥyā ibn Sharaf al-Nawawī, *Al Minhāj Sharḥ Ṣāḥīḥ Muslim* (Libanon: Dar al-Kutub al-Ilmiyah, n.d.).73



indicates that in that state it is transferable to another, and there is no presumption here, but that presumption affirms her obligation, and therefore abandoning her obedience to her husband is obedience to her.<sup>42</sup>

The author views the attitude of a wife who refuses the sexual relationship desired by the husband then included in the category of *nusyuz* wife towards the husband is very logical between the two having a *mutualism symbiosis* relationship that is opposite to *symbiotic parathym* because Islam, Medicine, Psychology, Anthropology, and Sociology emphasize the importance of sexual relations in marriage as a basic human need that provides peace of life psychologically, physically, and socially.<sup>43</sup> Medical experts (*al-Tiba*) identify two types of hunger, abdominal and sexual. Abdominal hunger is done as a means of maintaining a healthy lifestyle, while sexual hunger can only be done as a means of endurance by establishing sexual relations with the aim of achieving offspring.

Couple marriage is very dependent on the intimacy of conjugal sexual relations, so if there is no disobedience of a wife regarding sexual *intercourse desired* by the husband triggers the husband to commit adultery with another woman which is done secretly<sup>44</sup> The impact on couples' marital satisfaction becomes low, closed partner communication, husbands become pornography addicts, and glance more at other women on social media who are more beautiful than their partners.<sup>45</sup>

Such phenomena often occur in the socio-psychological reality in society. Given the legality of family ties bound by marriage with the main purpose of good marriage between husband and wife to unite hearts between the two as stated in QS al-Nisa 4:31.<sup>46</sup> *The khitab* contained in this verse and hadith is violated, so in the social and psychological

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<sup>42</sup> Mu'tasham Abdurahaman Muhammad Mansur, "Provisions of Wives Mushuz In Islamic Sharia."61

<sup>43</sup> Endy Muhammad Astiwaru, *Fikih Kedokteran Kontemporer* (Jakarta: Pustaka al-Kautsar, 2018).146-147

<sup>44</sup> A. Octamaya Tenri Awaru, *Sosiologi Keluarga, Media Sains Indonesia*, vol. 1, 2021, 125

<sup>45</sup> Muhammad Husni Abdulah Pakarti. 2024. "PERLINDUNGAN HAK ANAK DALAM PERCERAIAN MENURUT HUKUM KELUARGA ISLAM". *Mawaddah: Jurnal Hukum Keluarga Islam* 1 (1):1-20. <https://doi.org/10.52496/mjhki.v1i1.1>.

<sup>46</sup> Muhammad Ali Sayis Mahmud Syaltut, *Muqaranah Al-Madzahib Fi Al-Fiqh* (Dar al-Ma'arif, 1986).71

aspects a married couple will look for cheating friends for each of them.<sup>47</sup> In Islamic Family Law, the denial of sexual relations by a wife against a husband, or a husband against a wife is a violation of the law that Allah has established. Whereas in Islamic Sufism Al-Ghazali a wife who obeys her piety will prevent anger that triggers family conflicts.<sup>48</sup>

Kamal Sayyid Salim said that a wife's obedience to her husband is not absolute but has conditions with something that does not contain sin in Allah, so that the husband's commands are not required to be obeyed, such as taking off the hijab, or stopping praying, or telling the wife to become a prostitute, or a husband fucking his wife during menstruation, during the obligatory fasting month of Ramadan.<sup>49</sup> "*La Ma'shiyah al-Makhluk Fi Ma'siyah al-Khaliq*" There is no obedience of a creature to disobedience to the creator Ali Jum'ah stating that a wife may disobey her husband in trouble.<sup>50</sup> Sociological, psychological and juridical perspectives of the behavior of a husband who forces his wife to have sexual relations as a form of Sexual Violence based on research results have shown that many among women do not get and feel sexual pleasure with their handlers and this happens a lot in urban and rural areas.<sup>51</sup> Law Number 1 of 1974 regulates the obligations of husband and wife as a result of marriage, realizing a harmonious family<sup>52</sup> Law Number 8 of 2022 concerning Sexual Violence, men who commit sexual intercourse with the intention of humiliating their wives are threatened with a nine-month prison sentence.

The author views from various aspects of hadith, sociology, psychology, juridical, medical a man who wants to marry should be carefully prepared from various aspects, especially from economic aspek which is the most important handle, then religious, social,

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<sup>47</sup> Muhammad Iqbal, *Psikologi Pernikahan Menyelami Rahasia Pernikahan* (Depok: Gema Insani, 2018).109

<sup>48</sup> Nurzakia, "Pemahaman Masyarakat Terhadap Nusyuz Dan Dampaknya Terhadap KDRT Dalam Rumah Tangga," *Taddabur Jurnal Peradaban* 2 (2020): 45–66.

<sup>49</sup> Kamal Sayyid Salim, *Shahih Al-Kitab Wa Al-Sunnaah Wa Adillah Wa Taudih Madzahib Al-Aimah* (Kairo: Maktabah Taufiqiyah, n.d.).3/193

<sup>50</sup> Ali Muhammad Jum'ah, *Al-Kalim Al-Thayyib Fatawa Ashriyyah*, I (Kairo: Dar al-Salam, 2006).355

<sup>51</sup> Ulfiah, *Psikologi Keluarga Pemahaman Hakikat Keluarga Dan Penanganan Problematika Rumah Tangga* (Bogor: Ghalia Indonesia, 2002).110

<sup>52</sup> Rizki Pangestu Rizqa Febry Ayu, "Modernitas Nusyuz; Antara Hak Dan Kewajiban," *Yudisia : Jurnal Pemikiran Hukum Dan Hukum Islam* 12, no. 1 (2021): 73,

educational because men have obligations that are not light as well as women who will marry must prepare mentally, especially in having sexual relations because for married couples sexual relations become a staple food for husbands and wives who have legality towards an inner birth bond that will strengthen family institutions that generate economic power and prevent physical and digital infidelity that is increasingly rife in today's social culture, marriage agreements and commitments are still held by seleain, men are entrusted by God as breadwinners who should not be wasted because of the husband's negligence in providing *for* will only trigger a wife to look at a more economically established man the negligence of men in economic livelihood other than the share of *Nusyuz* for men and will not be styled by the wife and even then it is permissible according to Ali Jum'ah, Judah Kamal Sayyid if the husband *is nusyuz* like the Hindun Bint Utbah hadith on Abu Sufyan.

حدثنا محمد بن المثنى حدثنا يحيى عن هشام قال أخبرني أبي عن عائشة أن هن بنت عتبة قالت يا رسول الله إن أبا سفيان رجل شحيح وليس يعطيني ما يكفيني وولدي إلا ما أخذت منه وهو لا يعلم فقال خذي ما يكفيك وولدك بالمعروف

*Muhammad ibn al-Muthanna gave us know Yahya gave us about Hisham He said My father told me about Aisha that they were Utbah girls He said the Messenger of Allah, that Abu Sufyan was a very shakhih man did not provide for me and my son except what I took from him that he did not know So he said take what is enough for you and your son in a good way. (HR Bukhari) <sup>53</sup>*

The hadith in explaining Abu Sufyan who committed *nusyuz* because of his negligence in providing for his wife and children who then conveyed the laws that applied to the Prophet so that the Prophet allowed Hindun to take the money owned by Abu Sufyan. In principle, a husband providing for his wife is an obligation, both outwardly and mentally, if the husband cannot provide for the living, then including from the husband's *nusyuz*. According to the author, looking at the historical aspect between the hadiths above, actually *nusyuz* here applies to both because first, Hindun took the husband's property without permission, while Abu Sufyan disobeyed Allah for his wife's rights because he forgot

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<sup>53</sup> Muhammad bin Ismā'il al-Kahlāni As-Ṣan'āni, *Subūl As-Salām Sarh Bulug Al-Maram Min Jami' Adillah Al-Ahkām* (Kairo: Dar Al-Hadith, 2007).294

not to provide birth support. According to Judah Abdul Ghani, a husband who is negligent in providing *for* his wife then the wife has two choices, namely divorce and bread.

**SETTLEMENT OF NUSYUZ HUSBAND AND WIFE IN THE QUR'AN AND HADIST**

Scholars of Islamic Exegesis and Law have agreed that the completion of the wife's nusyuz by three methods namely advice, separation of beds and beating while the husband is advice and mediation. From this method is a very substantial principle as an offer of a humanistic solution to the family prolem of couples who often experience conflicts in order to avoid divorce<sup>54</sup> Wadribuhunna QS Annisa 4:34 The Scribes (*mufasssir**in*) and Islamic Jurists (*fuqaha*) have different interpretations, as the author compiles in this table.

**Table 6**

No	Ahl-e-Tafsir	Ahl-e-Islam
1	al-Zamakhsari thinks the beating is forbidden to the face and that is also an exception. <sup>55</sup>	Imam Shafii views related to the word Dharb (beating) in his view there is a prohibition from the Prophet Muhammad related to beating women. <sup>56</sup>
2	Fakhruddin Al-Raji argued that it was appropriate to beat it with a handkerchief and not allowed with a whip and stick.	Ibn Qudamah is that hitting will avoid face and sensitive and frightening places, because the purpose of beating is education to damage.
3	Al-Qhurtubi is an educational force that does not hurt which means it does not hurt and embarrass men, but which is a truth that no other.	Shihabuddin Ramli also causes bleeding wounds, which are clearly forbidden, because customs and pain also help pain also helps haram. <sup>57</sup>

<sup>54</sup> Prabanita Sundari, “Psikologi Keluarga Dalam Konteks Orang Tua Tunggal (Single Parent),” *Khazanah Multidisiplin* 4, no. 1 (2023): 109–28,

<sup>55</sup> Abu al-Qasim Mahmud ibn Umar Al-Zamakhshari, *Al-Kasyaf An Haqa’iq Ghawa’mid Al-Tanzil Wa Uyun Al-Aqa’wil Fi Wujuh Al-Ta’wil* (Beirut: Dar al-Kutub al-Arabi, 1407). Jilid 1,507

<sup>56</sup> Abi ‘Abd Allah Muhammad bin Idris Asy-Syāfi’i, *Ahkam Al-Qur’an*, n.d.598

<sup>57</sup> Ar-Ramli, “Nihāyah Al-Muhtāj Ilā Syarh Al-Minhāj” (Beirut: Dār al-Fikr, n.d.).Jilid 6/587

	Muhammad Rashid that legality against women who <i>are nusyuz</i> is a mandatory commandment, consisting of custom and morality is broken, but forbidden in case of damage. <sup>58</sup>	Abdul Karim Zaidan suggested that abandoning beatings is preferable if it can be done by means of peace to wives without beatings.
	Muhammad Quraish Shihab disagreed with beatings in either family or education.	Huzaimah T Yanggo in the Qur'an beating is permissible by not grieving by educating but in the Law beating is forbidden.

Although some scholars allow the beating of wives, as expressed by the Mufasssirin Muqaddimin al-Thabari, al-Zamakhsari, al-Raji', al-Alusi, Ibn Kathir the author agrees more with Shafii, Abdul Karim Zaidan, Shihabddin Ramli, Rashid Ridha, Muhammad Quraish Shihab, who forbade the beating of *nusyuz wives*.<sup>59</sup> Because there is no relevance to beating in any form, the beating done by the husband is not solving the problem but adding to bigger and bigger problems such as the wife becomes traumatized, the mentality of the wife and children will be disrupted, the communication of the husband and wife is cut off, the wife is increasingly disobedient to the husband and in-laws, loses passion, becomes forgetful, and loses confidence.<sup>60</sup>

In Law No. 23 of 2004 on domestic violence in Article 1, it is stated that every act against a person, especially a woman, which results in physical, psychological, sexual suffering, domestic abuse, then including unlawful acts In the Perspective of Criminal Law, contained in Article 351 of the Criminal Code, it is stated that something that causes serious injury, the victim can file a civil lawsuit to seek compensation for losses caused by domestic violence.

حدثنا محمد بن يوسف: حدثنا سفيان عن هشام عن أبيه عن عبد الله ابن زمعة عن النبي صلى الله عليه وسلم قال: لا يجلد أحدكم امرأته جلد العبد ثم يجامعا في آخر اليوم رواه البخاري

<sup>58</sup> Muhammad Rashīd Riḍā, *Tafsir Al-Qur'an Al-Hakim Al-Manār*, 1990. Jilid 5, 62

<sup>59</sup> Rosma Alimi and Nunung Nurwati, "Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan," *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)* 2, no. 2 (2021): 211

<sup>60</sup> Nurzakia, "Pemahaman Masyarakat Terhadap Nusyuz Dan Dampaknya Terhadap KDRT Dalam Rumah Tangga." 47-56

*Muhammad ibn Yusuf has told us Sufyan of Hisham from his father from 'Abdullah ibn Zam'ah of the Prophet said: None of you should whip his wife and then have sexual intercourse at the end of the day (HR Bukhari).*<sup>61</sup>

The word *la yajlid* redactionally has *shigat al-Nahyi*, which means the prohibition of hitting the word *al-dharb*, understood by Ibn Hajar al-Asqalani, a *gesture* that is not absolutely permissible, but as *makruh tanzihan* or *makruh tahriman*. Based on the Hadith above, beating in *ma'nai* is absolutely haram while the most victims in this case are women, and one solution in solving this case is mediation carried out in a non-litigation family manner if it cannot be resolved by non-litigation, then the wife is allowed to file a lawsuit (*khulu*) in the religious court.<sup>62</sup> Although legally permissible, a wife who has the heart and cannot maintain her family, including a wife who does not have readiness to live the ark of the household. According to the author, the husband who beat his wife was a weak man because he could not control himself and belonged to *Nusyuz*. While the wife who incites her husband to beat him belongs to the category of *nusyuz* women and *kufr ni'mat* given by Allah; Despite the global socioeconomic crisis sweeping the world, God will give them the opportunity to live a family life.

## THE NUSYUZ LAW OF HUSBAND AND WIFE AND THE CONSEQUENCES OF NUSYUZ ATTITUDE

*Nushūz* is *ma'siyat* wife to husband and husband to wife as Allah has commanded an obedience as Allah the Exalted has revealed the Verse about the obedience of a wife to husband *nushūz* by consensus (*Ijma*) The Ulema is Haram either in word (*qauli*) or deed (*fi'li*) or both simultaneously whether it is wife against husband or husband against wife simultaneously, al-Dhabi argues that *nushūz* as one of the great sins, *nushūz* wife against husband is therefore two virtues and it becomes a violation of a wife's obedience to her husband and this is based on *nusus al-Shari'* besides that it is based on the *Proposal of Fiqh and the Rules of Fiqhiyyah: al-Asl fi al-Nahyi li al-Tahrim*, philosophically the law of disobedience to the husband is haram. Including a husband who commits

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<sup>61</sup> Shihābud-Dīn Abul-Faḍl Aḥmad ibn Nūrud-Dīn 'Alī ibn Muḥammad ibn Ḥajar al-'Asqalānī, *Fath Al-Bārī Fī Sharḥ Ṣaḥīḥ Al-Bukhārī*.257.

<sup>62</sup> Diana Farid et al., "Harmonizing the Iddah Period for Women Divorced Outside the Court According to KHI and Fiqh Law" 10, no. 1 (2024): 55–67.

iniquity to Allah by neglecting obligations to his wife is absolutely haram.

*Al-Dhararu Yuzalu*<sup>63</sup>, a dangerous thing must be eliminated *al-Dharar la Yuazalu bi al-Dharar*,<sup>64</sup> One thing that creates danger cannot be eliminated by another matter of danger, "*ma adaa ila al-Haram fahua haram*". What has been determined to be haram is forbidden. *Al-Asl Baqā'un Mākana alā Mākana*, While the wife's obedience to an inviolable obligation as well as the husband's obedience to Allah and the Messenger and the teachings of Islam is an obligation "*Ma la Yatim al-Wajib illa bihi fahuwa obligatory*",<sup>65</sup> a matter that is compulsory cannot attain perfection unless it is lived with the obligation of *al-Wajib la yutraku illa biwajib*.<sup>66</sup>

Obligatory matters are not abandoned except with obligations. Then *al-Taquit La Yaud Kama anna al-Ma'dum la yaud*. The result of *wife nushūz* is the loss of nafqa, but there are some differences between Ulama: according to the majority of Hanafi, Maliki, Hanbali Shafi'i, Sharif, al-Sha'bi, Hasan, and Abi Sauli (*Ijma' al Ilm*) scholars, wives who perform *nushūz* do not earn a living and no place to live, no right to subsistence and shelter. Whereas according to al-Hakim ibn Uthayba, Abu Muhammad Ali ibn Hazim al-Zahiri, and Ibn Abu Qasim (*Maliki school*), wives who perform *nushūz* are entitled to *livelihood* and shelter, and according to Sayyid Sabeek and Judah Abdul Ghani The consequences for husbands who perform *Nushūz* It is the wife's step to file for divorce to the religious court. Broadly speaking, when viewed from two perspectives between Islamic and criminal law between *nusyūz* and family violence that both have something in common, namely that the act is prohibited The provisions of Islamic Law against *nusyūz* are, paying fines, atoning for sins and mediation with the victim, while in Criminal Law are KUHP Articles 351-358 that perpetrators of violence are subject to imprisonment or fines depending on the level of violence. Therefore, from the behavior of *nusyuz* it can be concluded from various

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<sup>63</sup> Alawi bin Ahmad bin Abdurrahman al-Syaqaf, *Fawa'id Al-Makiyyah Fima Yahtajuhu Thalabah Al-Syafiyyah Min Masail Wa Dhawabit Wa Al-Qawa'id Al-Kulliyah*, ed. 3 (Misr: Dar al-Farouk, 2015).44-45

<sup>64</sup> Jalal al-Din Abd al-Rahman Al-Suyuti, *Al-Asbah Wa Al-Nadza'ir*, 2nd ed. (Beirut: Dar al-Kutub al-Ilmiyah, 2012).135

<sup>65</sup> Rachmat Syafe'i, *Ilmu Ushul Fiqh* (Bandung: Pustaka Setia, 2007).251

<sup>66</sup> Muhammad Abū Zayyid al-Amir, *Adwā' Ala Qawā'id Al-Fiqh Al-Kulliyāh*, V (Kairo, 2018).40

legal perspectives that it is haram absolutely, which indicates that family defense is very weak.

### **NUSYUZ SETTLEMENT IN JUDGE'S DECREE**

In contrast to the views of mufassirin and fuqaha in the settlement of nusyuz in Indonesia, the completion of *nusyuz* is carried out in the Pengadilan Agama which performs the function of analyzing, and solving cases of several cases that are proven with authentic evidence and the basis of sharia so as to produce legal provisions despite the fact between the basis of decisions based on written regulations (*law in book*) and empirical facts (*law in action*) is very different as in the *Verdict of Nusyuz* husband and wife in the Religious Court.

**Table 7**

No	High Court of Religion	Verdict Number	Case	Year
1	Bengkulu	9/pdt.G/2017/PT.Bn	Infidelity	2017
2	Palembang	21/Pdt, G/2018/PTA.Plg	KDRT	2018

Of the two cases in the two verdicts, the case of *nusyuz* women for having an affair, while the case of *nusyuz* husband in Palembang beating the husband on his wife. Both cases were taken to the Religious Court for trial. Because the married couple in the two cases committed *nusyuz*, the judge decided to separate them by divorce.<sup>67</sup> Philosophical, jurisprudence, and social considerations became the basis for the judge's decision, namely the philosophical aspects of Al-Baqarah 2:41, juridical aspects, laws and regulations, in Article 39 paragraph (2) of Law no. 1 of 1974, Article 70 paragraph (1) of Law no. 7 of 1989, Government Regulation no. 9 of 1975 and Article of the Compilation of Islamic Law became a reference for the High Religious Courts of Bengkulu and Palembang in their decisions on talak raj'i. Decision of the Supreme Court of the Republic of Indonesia Number 276K / AG / 2010, Number 379 K / Ag / 1995; Number 137 K / AG / 2007, Number 276 K / AG / 2010, Number 296 K / Ag / 2017, Number 657 K / Ag / 2017. And Sociological Divorce of wives is not considered nusyuz because of domestic violence and physical and psychological suffering so as to require hospital treatment.

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<sup>67</sup> Alex Kusmardani, Siah Khosyi'ah, "Putusan Hakim Dalam Penyelesaian Sengketa Hak Asuh Anak Kepada Ayah," *Jurnal Syntax Admiration* 3 No. 7 Ju (2022): 881–95.



Based on the description above, the judge decides *the nusyuz* case with divorce and the ex-husband is required to provide iddah and mut'ah to the ex-wife, therefore the judge does not use the legal basis of QS Al-Nisa 4:34 and 4:128 but al-Baqarah 2:41, Legal Maxim *Tassaruf al-Imam ala Raiyah manut bi al-Maslahah*, *Hukum Al-Hakim Yarfa' al-Khilaf*, *Dar'u al-Mafasid Muqaddamun ala Jalb al-Mashalih* and Mazhab Al-Hakim Bin Utaibah, Abu Muhammad Ali Bin Hajm al-Dzahiri, Article 39 paragraph (2) of Law no. 1 of 1974, Compilation of Islamic Law Article 149, in the event of a break due to talaq, the ex-husband is obliged to give mut'ah, pay dowry, and hadhanah fees before the child turns 21 years old.<sup>68</sup>

In the judge's decision number 21/Pdt, G/2018/PTA. PLG is in accordance with Islamic Law while in the judgment 9/pdt. G/2017/PT.Bn is very controversial and not in accordance with Article 84 of the Compilation of Islamic Law, so the ex-husband must comply with the provisions of Article 149 of the Compilation of Islamic Law which is actually a burden for the ex-husband to fulfill the provisions decided by the judge. And the judge used the talfiq method by using Madzhab al-Dzhahiri, Takhsis al-Qadha as well as superstition<sup>69</sup> which is translated in article 10 paragraph 1 of Law Number 48 of 2009 so that for wives who perform *nusyuz* and are resolved in religious courts, the husband is required to pay iddah, mut'ah and child maintenance costs. And this is based on the *rules of fiqh Hukm al-Hakim Yarfa' al-Khilaf, al-Tabiu Tabiun, Tagayyur al-Ahkam bi tahayyur al-Azman wa al-Amkan wa al-Awa'id* so that the judge decides for the benefit.

## CONCLUSION

*Nusyuz* in Islam is the Obedience of Husband and Wife in Exercising Rights and Obligations in the Qur'an Al-Nisa 4:34 is the basis of *Nusyuz* carried out by wives for *Nushuz*, and tafsir al-Nisa surah al-Nisa verse 128 explains that this is related to the husband's negligence in fulfilling his obligations towards his wife. Al-Nisa's commentary on 3:128 gives an explanation of the husband's *nusyuz*, revealing that the

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<sup>68</sup> Alex Kusmardani et al., "Faktor-Faktor Penyebab Perceraian Dalam Perspektif Hukum Keluarga Antar Madzhab Islam Dan Realita Sosial," *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial Dan Pendidikan* 3, no. 3 (2022): 176, <https://doi.org/10.36418/syntax-imperatif.v3i3.168>.

<sup>69</sup> Alex Kusmardani, Siah Khosyi'ah, Oyo Sunaryo Mukhlis, Nurrohman, Usep Saepullah, "The Development of Ideas on The Reform and Transformation of Islamic Family Law Into Legislation in Islamic Countries," *JSIM: Jurnal Ilmu Sosial Dan Pendidikan Syntax Imperatif* 4, no. 5 (2023): 664–662.

verse relates to the husband's tyranny in conducting polygamous marriages that are not fair regarding bread. While in the Hadith it is more about the obligations of married couples in sexual relations. Legally *Nusyuz* husband and wife are haram, The settlement of *Nusyuz* husband and wife in Indonesia is settled in religious courts and if there is no peace then the judge decides the case with a divorce case between the two on the basis of QS Al-Baqarah 2:241, Madzhab al-Dzahiri, UUP Article 149, KHI Article 142 as the basis for the implementation of *takhsis al-qadha* and the rules of *Hukm al-Hakim Yarfa'u al-Khilaf*, Tassaruf al-Imam Raiyah Manut bi al-Maslahah namely for the benefit.

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