

## REFORMATION OF ISLAMIC FAMILY LAW IN INDONESIA : THE NUSYUZ RESOLVATION PROCESS

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### Abstract

Family law has an important position in Islam. Updates were made to respond to the usual conditions. As an ireform religion, Islam changes the order of life. The family system is an issue that is being updated. Two important points were discussed, namely the concept of Islamix law and the renewal of Islamic family law in Indonesia towards the nusyuz settlement process. The purpose of this study is to find out how to reform Islamic family law in Indonesia and the concept of nusyuz that fits the current situation. The research method used is a literature review, collecting data from the literature so that t is related to the theme under study, and collecting data using descriptive qualitative techniques. The modernity of nusyuz, according to the author, for the current context, it is clear that women should not be treated like women during the jahiliyyah period. That today's women can be seen not only play a role in the domestic sphere (housewives), but also have a role in the public sphere starting from educational needs, even professional demans that require wives to enter and leave the house freely. So the meaning of nusyuz at the present time must be understood more deeply whether the wife or even the husband has actually committed real disobedience, because the conditions of the present must be different from the past.

**Keywords:** Renewal, Family law, Nusyuz

### Abstrak

*Hukum keluarga mempunyai posisi yang penting dalam Islam. Pembaruan dilakukan untuk menjawab kondisi zaman. Sebagai agama pembaruan, Islam mengubah tatanan kehidupan. Sistem kekeluargaan adalah salah satu hal yang diperbarui. Dua poin penting yang dibahas yaitu konsep hukum Islam dan pembaruan hukum keluarga Islam di Indonesia terhadap proses penyelesaian nusyuz. Tujuan penelitian ini untuk mengetahui bagaimana pembaruan hukum keluarga Islam di Indonesia serta konsep nusyuz yang cocok dengan keadaan sekarang. Metode penelitian yang digunakan adalah kajian pustaka, mengumpulkan data-data yang bersumber dari literatur sehingga berkaitan dengan tema yang diteliti, dan pengumpulan data menggunakan teknik kualitatif deksriptif. Modernitas nusyuz menurut penulis untuk konteks saat ini jelas bahwa perempuan seharusnya tidak diperlakukan layaknya perempuan pada masa jahiliyyah. Bahwa perempuan masa kini dapat dilihat tidak hanya berperan dalam ranah domestik (ibu rumah tangga) saja, namun juga memiliki peran dalam ruang publik mulai dari kebutuhan pendidikan, bahkan tuntutan profesi yang mengharuskan istri keluar masuk rumah secara bebas. Maka pemakaian nusyuz pada masa sekarang harus dipahami lebih mendalam apakah istri atau bahkan suami benar-benar telah melakukan pembangkangan yang nyata, sebab kondisi masa kini pasti berbeda dengan masa lalu.*

**Kata Kunci:** Pembaruan, Hukum Keluarga, Nusyuz

## INTRODUCTION

Islamic law is an order from Allah that governs all aspects of every Muslim's life, especially religious matters. Islam itself regulates just and egalitarian relations

between humans, both individually and socially. At the beginning of the development of Islam by the Prophet Muhammad SAW, many conflicts arose, because it was contrary to the laws prevailing in the jahiliyyah society at that

time, so it was rejected by the leaders who adhered to the legal system of the jahiliyya society.<sup>1</sup> After receiving the first revelation from Allah SWT on the 17th of Ramadhan, since then the Prophet Muhammad received a mandate from Allah SWT to bring the teachings of Islam to mankind, which is a teaching that overhauls the entire social system, especially the legal system that exists in the Jahiliyyah community. The perfect shari'ah (legal system) was brought into the midst of the Jahiliyyah society at that time whose aim was to be able to regulate the equality of every human degree in society. The arrival of the Prophet Muhammad SAW aims to change social teachings, namely to change the ignorance that occurs in society, especially to the legal system, with revelation and guidance from Allah.

Before Islam, Arab society had a jahiliyyah culture, just like the Quraysh who at that time competed to make idols and then worshiped them. However, when the Prophet Muhammad was born and Islam descended, Prophet Muhammad gradually began to preach Islam and from that time slowly began to provide enlightenment and change the habits of the Arab people not to worship idols and give birth only to worship Allah SWT. Based on the revelations and sunnah of the Prophet Muhammad, the teachings of Islam and its legal system that became a habit in society began to be replaced and improved with the teachings of good Islamic law.

The position of Islamic law overhauls the social and legal changes of the ignorant society. The birth of Islam in the midst of an ignorant society brought changes that were contrary to the existing law. Islam is a religion that teaches equality

in principles and laws as well as the behavior of the Prophet Muhammad and his followers who expect an equal life and are related to religious and social aspects of society, especially in the field of kinship.

Islam is a noble religion, where everything is regulated in the Qur'an and hadith, as well as nusyuz. Islam regulates the boundaries of nusyuz, both wife and husband nusyuz. This problem is clearly stated in QS. An-Nisa verse 34. When speaking in the context of Islamic law (fiqh), the concept of nusyuz should be reviewed because along with changes in the social conditions of today's society, it is very different from the condition of society during the jahiliyyah period.

This background also causes disobedience, so that the purpose of educating is not successful and conflicts persist. However, this matter cannot be separated from the influence of patriarchal culture that has bound it so that the interpretation of Islamic teachings tends to favor men.<sup>2</sup>

Therefore, this study seeks to analyze the Islamic renewal in the family sector and its relevance to the process of completing the nusyuz. Then this research becomes an attempt to understand how the concept of nusyuz fits the current situation. In this article, the author focuses on two important points, namely:

1. What is the concept of reforming Islamic law in Indonesia?
2. How is the renewal of Islamic family law in Indonesia towards the nusyuz settlement process.

This research refers to literature review. Therefore, this research is a literature study, namely the data obtained from literature that is related to the theme

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<sup>1</sup>Abd. Rahim Amin, "Hukum Islam Dan Transformasi Sosial Masyarakat Jahiliyyah (Studi Historis Tentang Karakter Egaliter Hukum Islam," *Hukum Diktum* 1, no. 1 (2012), 1.

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<sup>2</sup>Faizah, Nur, "Nusyuz: Antara Kekerasan Fisik Dan Seksual," *Al-Ahwal* 6, no. 2 (2013), 120.

under study such as books, articles, documents, journals and other scientific works.

Data collection techniques in this study used descriptive qualitative techniques, namely research based on explanations of the problems to the object studied by analysis and others. In this case, the author describes how the reform of Islamic family law in Indonesia towards the nusyuz settlement process. This research was conducted by describing, explaining, explaining, and describing the events under study. As for this method, it can be seen how the views, situations, relationships, influences and abnormalities and tendencies of an event or object are studied.

## DISCUSSION

### *The Concept Of Reformation Of Islamic Law*

#### *Pre-Islamic Arabic*

Arabs have had civilization long before Islam appeared there. Some experts reveal that aspects of Arab civilization include religion, politics, economics and cultural arts. Pre-Islamic Arab civilization is often also known as the Era of Jahiliyyah (ignorance). This naming is not solely because of their ignorance in various aspects and uncivilized, but because of their lack of knowledge about religion, social order, politics, and knowledge of the Oneness of Allah.<sup>3</sup>

From a physical point of view, Arabs are considered to be more perfect than Europeans in their organs, as well as in terms of agriculture and an advanced economy. Besides these theological factors, they have some special characteristics that further strengthen the impression of

ignorance (stupid) on them. Among the bad precedents inherent in pre-Islamic Arabia is the condition and position of women who are underestimated. According to Arab society, women are like merchandise in the market and have no value. Women have no right to inherit and cannot be heirs to their husbands or parents. Men are also free to marry any number of women, while women are not. A wife whose husband dies can also be inherited by the eldest child or one of her husband's relatives.

Families of pre-Islamic Arab society can be divided into five forms, namely: nomadic tribes, sub-kabilahs, tribes, large families and small families.<sup>4</sup> The lineage of Arab society is clearly the most decisive is male. Regarding family matters, a male slave class cannot marry a noble woman, because it will reduce the degree of descent. Meanwhile, noble men may marry more than one woman. Before the arrival of Islam, marrying women was not limited in number, and after Islam was limited to only four and must meet the conditions. They are also famous for the tradition of burying children alive. This tradition is carried out because most of the girls are the cause of poverty. If they lost the war, their wives and daughters would be taken by the enemy. Therefore, they thought it would be better to kill first before being captured by the enemy.

The condition of women during the jahiliyyah period is contained in the word of Allah in Surah an-Nahl verses 58-59 which explains the attitude of the ignorant society towards the birth of girls which is considered very embarrassing for them. The birth of a girl is considered a disgrace to parents and family, so it is not uncommon

<sup>3</sup>Yuangga Kurnia Yahya, "Pengaruh Penyebaran Islam Di Timur Tengah Dan Afrika Utara: Studi Geobudaya Dan Geopolitik," *Peradaban Islam* 16, no. 1 (2019). 46.

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<sup>4</sup>Edi Darmawijaya, "Stratifikasi Sosial, Sistem Kekerabatan Dan Relasi Gender Masyarakat Arab Pra Islam," *Studi Gender Dan Islam Serta Perlindungan Anak* 6, no. 2 (2017), 138.

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for them to kill the girl and some even bury her alive when she was a baby. Discriminatory treatment of women has become commonplace in pre-Islamic Arab society. This unfair treatment and labeling of women as symbols of humiliation are characters that are strongly attached to the ignorant society. During the Jahiliyah period (before Islam), Arab society viewed women as creatures of a very low position. When his heart is filled with sadness, his facial expression will turn sour. They will pass from before the crowd because they feel very ashamed, because his wife gave birth to a daughter which he also considered a disgrace.

The ignorant Arabs accepted the presence of women in two different ways. The fate of wives in the Arab era of ignorance is like property, which can also be inherited. Regarding gender in Arab society, men are more dominant in various fields. This male domination can be seen in the family system. Men as the head of the family as guardians have the right to choose a mate for their children, have the right to polygamy, and are heirs of the inheritance. At the time of the Prophet Muhammad, women had become heirs even though their share was not as much as that received by men. These women include his wife, daughter, sister and granddaughter. A husband has the right to marry any woman without any restrictions and attachments, while the woman is prevented and prohibited from marrying, if the husband has died or she is divorced, so she will never remarry forever.

From the theological point of view, the Arabs have also known various religions such as paganism, Christianity, Judaism, Magian and Tawhid. The concept of monotheism was also felt in Arab culture at that time with the mention of Allah as God and the cult of the Ka'bah as the temple of

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Allah and the annual pilgrimage ritual. However, the culture of paganism was felt more strongly in the pre-Islamic Arabs with many statues worshiped and placed around the Ka'bah as a manifestation of their worshiped gods. There are at least 360 statues around the Ka'bah representing each particular tribe and tribe.<sup>5</sup>

The era of ignorance is like a black dot. From some of the descriptions above, which describe how the position of women before the advent of Islam in several parts of the world seemed almost the same, where women at that time were looked down upon, despised and mean nothing by men. Women are considered as creatures who have no rights, they are only made to satisfy lust, entertainers and slaves for men..<sup>6</sup>

#### *Arabic at the Birth of Islam*

Islam was revealed by Allah through a servant and apostle, namely Muhammad bin Abdullah who was born on 12 Rabiul Awal the year of the elephant coincides with August 29, 571 AD in Mecca. He came from the tribe of Quraysh which was a respectable tribe among the Arabs. He received his first revelation at the age of 40 years and became the starting point for the birth of the teachings of the perfect religion of monotheism from the Prophet Abraham, namely Islam. The path of da'wah that he went through was quite steep and received pressure and rejection from various parties. But without knowing despair, he continued his holy mission of conveying God's revelations to humans. Overall, he spent about 23 years preaching to call on Islam, with details of the first 13 years being held

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<sup>5</sup>M. Abdul Karim, *Sejarah Pemikiran Dan Peradaban Islam* (Yogyakarta: Bagaskara, 2015), 59.

<sup>6</sup>R Magdalena, "Kedudukan Perempuan Dalam Perjalanan Sejarah (Studi Tentang Kedudukan Perempuan Dalam Masyarakat Islam)," *Studi Gender Dan Anak* 2, no. 1 (2017), 20-22.

in Mecca and the next 10 years in the city of Medina.<sup>7</sup>

The purpose of the Prophet's preaching for 13 years in Mecca was to inculcate the basics of faith and everything related to aqidah. This can be observed in the matters discussed in the Makkiyah suras which are thick with aqidah and faith issues. In contrast to the next period, in Medina the Prophet began to apply Islamic law, laws and economic development, as the basis of state and community life. Various foundations of Islamic society were laid by the Prophet in order to build a miniature state in accordance with the concept of Islam. First, the establishment of a mosque as a place for gathering and deliberation in addition to its main function as a place of worship. Second, brotherhood between immigrant Muslims (Muhajirin) and the original inhabitants of Medina (Ansar) even though they have no kinship by descent. Third, make an agreement to cooperate and help each other between Muslims and non-Muslims.<sup>8</sup>

Islam comes with the Qur'an and the Prophet Muhammad as the two main factors. Islam came as an enlightener and brought renewal to the condition of the ignorant society in the form of the principles of justice and social equality. In the Qur'an, it is emphasized the rejection and condemnation of the behavior of ignorance, as stated in the word of God in the letter al-Maidah verse 50 which explains the affirmation of the power of God which is better than the law of ignorance in force at that time and Islam as a reform that changes the existing jahiliyah legal system. In the Qur'an the meaning of the word

jahiliyah can be associated with the meaning of zhan (suspect), hukm (law), tabarruj (decorated/behaved), and hamiyyah (arrogance). Islamic social principles were introduced to replace the various Jahiliyyah traditions which were less (even inhumane). The Prophet who also traded taught the concept of buying and selling which was different from the previous Arab tradition, there was no longer a monopoly on trade or a capitalist economic system. The status of women who used to be worthless was raised in such a way that they had an equal degree with men. The political basis upheld by the Prophet was justice. The principle of justice must be applied to all residents indiscriminately and recognizes the equality of all human beings before God. This principle is quite difficult to practice considering the Arab tradition which recognizes the superiority of one lineage or one particular tribe over another. Another principle is the principle of deliberation to solve all problems in order to achieve the common good

In Islamic marriage law, it is also applied by limiting a man to 4 women and through a valid contract. A woman also gets a share of the inheritance left by her husband or parents. Islam also forbids various despicable acts that have become Arab traditions such as betting, gambling, drinking khamr and other despicable acts.<sup>9</sup> Islam shows the importance of welfare for women so that they are entitled to inherit. This was a fundamental change in the pre-Islamic period, because at that time women were not entitled to inherit, and only men were entitled, as stated in the Qur'an in Surah An-Nisa Verse 12.

Some other social changes are the increasing status of humans, especially

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<sup>7</sup>Syauqi, Abrari. Ahmad Kastalani, Ansari Dhaha, *Sejarah Peradaban Islam* (Yogyakarta: Aswaja Pressindo, 2016), 1.

<sup>8</sup>M.A Karim, *Sejarah Pemikiran Dan Peradaban Islam* (Yogyakarta: Bagaskara, 2015), 69-70.

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<sup>9</sup>Syauqi, Abrari. Ahmad Kastalani, Ansari Dhaha, *Sejarah Peradaban Islam*, 2.

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slaves. Slow but sure, The Prophet tried to reduce the practice of the slave trade and give them rights like other human beings. One of them is that many punishments for sins in Islam require the release of slaves as punishment. This was intended to reduce the number of slaves being traded at that time. Islam restores human rights, the Prophet seeks to reduce wars and conflicts that end in bloodshed as was the tradition of earlier Arab tribes. The Prophet emphasized the nature of forgiveness and mercy. The history of the war that took place in the time of the Prophet was none other than because it was first attacked so that it demanded a war. Whenever possible, the Prophet preferred the methods of diplomacy and negotiation over waging war.<sup>10</sup>

The Prophet set up guardians who were responsible for his administration, as was the case with the pre-Islamic Arab system. Responsible in various fields such as economy, law, justice, defense, and religion. This shows that Islam does not reject all pre-Islamic Arab traditions, but accommodates various systems and customs that are considered good and do not conflict with Islamic law, such as the concept of marriage, trade and so on.

From the above understanding that Islam as a religion of renewal changes aspects of the life of the ignorant people. If grouped, some of the reforms brought by Islam include: (1) the family system, from a society that prioritizes men (patriarchal) to a society that provides equal (equal) opportunities between men and women, (2) a belief system, from polytheists who recognize many gods are renewed to monotheists, recognizing only one god, (3) social system, from hierarchical-structured to egalitarian (parallel), (4) economic system,

<sup>10</sup>Karim, *Sejarah Pemikiran Dan Peradaban Islam*, 2015, 73-74.

from bourgeois-capitalist reform to a just economic system, (5) system of responsibility, from collective responsibility (ethnic/syuhubiyah) is renewed to become an individual responsibility, and (6) the basis of the relationship between individuals, from social status and groups to religious bonds (faith).<sup>11</sup>

Islamic law reform starts on something that already exists, then undergoes a qualitative change as a product of interaction in people's lives. It can be said that the process of reforming Islamic law is something that is autonomous, but these changes still interact with the community, so that the changes also follow the socio-historical conditions of a society.<sup>12</sup> Legal reform is carried out in order to respond to demands for changes that occur in the midst of society. It is said so, because one form of the universality of a law can be seen from the adaptability and flexibility of the law itself. That means that the law is not constant in one era, place and situation, but is always changing dynamically along with changing times, precisely and the circumstances in which the law is located.<sup>13</sup>

#### *Understanding Renewal in Islam*

Renewal is often defined in terms of terminology as all efforts, in the form of thoughts or movements, which aim to renew or change understandings, customs, institutions and so on that have been deemed left behind, to be adapted to the new atmosphere and spirit generated by

<sup>11</sup>Khoiruddin Nasution, "Islam Membangun Masyarakat Bilateral Dan Implikasinya Terhadap Hukum Keluarga Islam Indonesia," *Al-Mawarid*, no. XVII (2007): 85-86.

<sup>12</sup>Moh Zakaria, "Pembaruan Islam Bidang Keluarga Dan Relevansinya Dengan Tuntutan Egaliter Laki-Laki Dan Perempuan," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 2, no. 3 (2021): 644.

<sup>13</sup>Fitriani, "Aspek-Aspek Pembaruan Hukum Islam Dalam Hukum Keluarga Di Indonesia," *Tasamuh: Jurnal Studi Islam* 11, no. 2 (2019), 249.

advances in science and technology.<sup>14</sup> Reform efforts include aspects of understanding Islamic teachings, Islamic diversity, Islamic culture and socio-religious interactions in accordance with modern developments. The meaning of reform in the field of thought is an effort to reinterpret religious texts with new interpretations without changing or leaving the text.

The term renewal is often also paired with the terms reform, modernization, and *tajdid* with varied resonance fields of meaning. The term reformation is usually used in the fields of theology and politics. If in the field of theology, reform is interpreted as an effort to understand the old concepts of divinity, then in politics, reform is interpreted as an effort to reform the system and political culture of government.<sup>15</sup> Renewal in Islam is not solely intended to revise or change Islamic values and principles because they are in accordance with the needs of the times, but rather for the interpretation of basic teachings to suit the tastes of the times. Therefore, it can be understood that Islamic renewal is the actualization of these teachings in social development.

The main objectives of Islamic reform are:

1. Purification of Islamic teachings, which is to restore all forms of religious life in the early days of Islam as practiced at the time of the Prophet Muhammad.
2. Responding to the challenges of the times. This renewal aims to implement Islamic teachings in

accordance with the challenges of the development of human life.<sup>16</sup>

Reform in Islam is essentially an effort to optimize the understanding and practice of the ummah towards the teachings of revelation (Qur'an and Sunnah) so that they can be contextualized rationally, objectively, effectively, and transformatively in order to answer the challenges of the times, freeing the Muslim community from backwardness, ignorance, and the mentality of *taqlid*.

Family law has an important position in Islam. Family law is considered the core of sharia. This is related to the assumption of Muslims who view family law as a gateway to enter further into Islam. Basically something will not be formed because of the absence of something that underlies it, just as Islamic family law will never exist without something behind it. Islamic family law is considered very important in its presence in the midst of Muslim society because problems regarding the family regarding marriage, inheritance and so on cannot be equated with non-Muslims, so they want Islamic family law that applies specifically, especially with the development of an increasingly modern era. also developed so that methods for legal reform are needed.<sup>17</sup>

The purpose of the reform of family law is not only to respond to the "present and here" situation and conditions, as well as to implement the desires and interests of the community based on the values they believe in, as well as to create a legal unification for the whole society regardless of religion. The reform of Islamic law in

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<sup>14</sup>Harun Nasution, *Pembaharuan Dalam Islam: Sejarah Pemikiran Dan Gerakan* (Jakarta: Bulan Bintang, 1975), 11.

<sup>15</sup>Ichwansyah Tampubolon, "Orientasi Dan Corak Pembaruan Dalam Islam (Kajian Terhadap Respons Masyarakat Islam)," *Madania XVIII*, no. 1 (2014), 14.

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<sup>16</sup>Fauzi, "Pembaharuan Islam," *Studi Islam Dan Budaya* 2, no. 1 (2004), 8.

<sup>17</sup>Eko Setiawan, "Dinamika Pembaharuan Hukum Keluarga Islam Di Indonesia," *De Jure: Jurnal Hukum Dan Syaria* 6, no. 2 (2014), 138.

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various aspects has occurred for a long time, proceeding with the conditions and situations of the times. This is because the laws contained in the classical books are no longer able to accommodate the new problems that are developing.<sup>18</sup>

### **Reformation of Islamic Family Law In Indonesia: The Nusyuz Resolution Process**

#### *Definition of Nusyuz*

The meaning of the word nusyuz is to rebel. It means that a wife commits an act that challenges her husband without a reason that is acceptable to the syara'. She disobeys her husband or refuses to be invited to his bed. In the book of Fath Al-Mu'in it is stated that it is a nusyuz act, if the wife is reluctant and even does not want to fulfill her husband's invitation, even though he is busy doing something.<sup>19</sup>

The legal basis of nusyuz is haram.<sup>20</sup> In the end, Nusyuz often leads to conflicts in the household. The punishment for women who are nusyuz against their husbands is clearly contained in the Qur'an Surah an-Nisa verse 34 which explains that men are leaders, namely those who control women, teach and protect them. Men are the leaders of women. Allah has prioritized the position of men with the excuse of providing for women with their own wealth. Thus, women must also obey their husbands. Then Allah explains how a husband should deal with his wife who is afraid of disobeying or disobeying her husband's orders. The first step to take is to advise his wife. If this method does not work, then the husband applies the second

step, namely by separating the bed. If the wife persists in committing the offense then the husband may beat her, because she has disobeyed her husband. But when there is a change in his nature, then the husband is not allowed to hurt him anymore and continues to provide for him, because he has obeyed his husband.

Speaking in the context of Islamic law (fiqh), in the Qur'an there is an ayat that contains the command to beat a wife who commits nusyuz, this is as contained in the Qur'an letter an-Nisa verse 34. Meanwhile, beating is an act domestic violence, when in completing the wife's nusyuz act by carrying out the stages that have been arranged sometimes a husband forgets that the first stage in the wife's nusyuz resolution is advising, so the way to deal with a wife who does nusyuz is by hitting which sometimes beating it can hurt the wife. Beating is an act of domestic violence, which is considered a crime in Indonesian positive law. The concept of nusyuz in Islamic law actually does not legalize all forms of violence against wives. The beating of the wife in Surah an-Nisa 'verse 34 should be interpreted as an act to teach a lesson, not to hurt or even commit violence. Moreover, the beating referred to in the verse must not injure the wife's body parts. The act of a husband hitting his wife until she is injured can be declared as a husband's nusyuz towards his wife.<sup>21</sup>

The hadith related to nusyuz is as follows, the hadith narrated by Ibn Abbas:

*"When a friend of the Prophet, one of Naqib's teachers, taught religion to the Ansar, named Sa'ad bin iRabi'i bin Amr, he had an argument with his*

<sup>18</sup>Hilal Mallarangan, "Pembaruan Hukum Islam Dalam Hukum Keluarga Di Indonesia," *Hunafa: Jurnal Studi Keislaman* 5, no. 1 (2008), 40.

<sup>19</sup>Tihami dan Sohari Sahrani, *Fikih Munakahat* (Jakarta: Rajawali Press, 2013), 185.

<sup>20</sup>Sayyid Sabiq, *Fikih Sunnah* 7 (Bandung: Al-Ma'arif, 1999), 129.



wife named Habibah bint Zaid bin Abi Zubair. Once Habibah denied Nusyuz against her husband, then Sa'ad slapped his wife's face. So Habibah came before the Messenger of Allah accompanied by his own father, complaining about this. His father said: He laid down my daughter and then slapped her. Immediately the Messenger of Allah replied: let him repay (*qisbush*). This means that the Messenger of Allah allowed the woman to hit back as a punishment, but when the father and daughter had stepped away the Messenger of Allah said: Our will is different, God's will is different, then God's will is good.<sup>22</sup>

In the hadith above, it tells about the interpretation of Ibn Abbas that although Q.S An Nisa: 34 allows beating of the wife, it should not hurt or make her suffer. Nusyuz is understood as a wife's disobedience or disobedience to her husband. The concept of nusyuz should be reviewed, because it is not in accordance with the social changes of today's society. For example, if a wife leaves the house, it is considered nusyuz, in reality today's women are more independent, go to work outside the home, and some even become leaders. So the concept of nusyuz now and then is no longer appropriate. Regarding the beating of a wife who is nusyuz, it is also in accordance with the beating that is justified in Islam, this beating should not be violent, because the purpose of the beating is to teach lessons, not hurt.

In terms of terminology, the Imams of the four schools of thought define nusyuz in several senses, including:

1. The Hanafi school defines nusyuz with the meaning of displeasure that occurs between husband and wife where one of them commits an act that is not liked by both the husband and wife.

2. The Maliki school defines nusyuz with the meaning of persecuting each other between husband and wife.
3. The Shafi'i school of thought means nusyuz is a dispute that occurs between husband and wife.
4. The Hambali school defines nusyuz as a form of displeasure on the part of the husband or wife accompanied by disharmony between the two.

In the Compilation of Islamic Law, the Compilation of Islamic Law (KHI) it is explained that nusyuz is an attitude of a wife who does not want to carry out her obligations, namely the main obligation to be physically and mentally devoted to her husband and other obligations such as carrying out and managing daily household needs as well as possible. This is explained in article 84 of the Compilation of Islamic Law:

- 1) The wife can be considered nusyuz if she does not want to carry out the obligations as referred to in Article 83 paragraph (1) except for valid reasons.
- 2) As long as the wife is in nusyuz, the husband's obligations to his wife as stated in Article 80 paragraph (4) letters a and b do not apply except for matters for the benefit of their children.
- 3) The husband's obligation in paragraph (2) above applies again after the wife is not nusyuz.
- 4) Provisions regarding the presence or absence of nusyuz from the wife must be based on valid evidence.<sup>23</sup>

The forms of wife's actions that can be categorized as nusyuz include: the wife

<sup>22</sup>Hamka, *Tafsir Al-Azhar Juzuk 5* (Jakarta: Gema Insani, 2017), 63.

<sup>23</sup>Mardani, *Hukum Keluarga Islam Di Indonesia* (Jakarta: Kencana, 2016).

disobeys her husband, disobeys his invitation or order, refuses to have marital relations without a clear and valid reason, or the wife leaves the house without the husband's approval or permission, or at least allegedly not approved.<sup>24</sup> In the current context, husband's permission needs to be understood proportionally. Because direct permission for every action of the wife, of course the husband can not always be carried out. For example, because the husband is not always at home. For this reason, it is necessary to look at the type of action. As long as the activity is positive and does not invite the possibility of slander, then the alleged permission of the husband to allow it, can be known by the wife.<sup>25</sup>

A husband who changes his attitude towards his wife, according to Quraish Shihab, is also called nusyuz. Indeed, in the text there are differences between nusyuz carried out by husbands and wives in terms of solutions, even the Marriage Law and the Compilation of Islamic Law do not mention in detail the law regarding a husband's nusyuz. This has given the impression of gender inequality and injustice in the nusyuz problem. On the one hand, when the nusyuz problem arises from the wife's side, it is always responded to as a serious problem and must be dealt with immediately. Meanwhile, if it arises from the husband's side, it is considered a natural thing and does not need to be exaggerated, and the wife should be patient and try to make peace.<sup>26</sup>

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<sup>24</sup>Sayyid Sabiq, *Fikih Sunnah Jilid 3* (Jakarta: Pena Pundi Aksara, 2006).

<sup>25</sup>Muslim, "Pencegahan Kekerasan Dalam Rumah Tangga (KDRT) Melalui Konsep Hak Dan Kewajiban Suami Istri Daalam Islam," *Jurnal Gender Equality: International Journal of Child and Gender Studies* 5, no. 1 (2019), 124.

<sup>26</sup>Munib, "Batasan Hak Suami Istri Dalam Memperlakukan Istri Pada Saat Nusyuz Dan Kemungkinan Sanksi Pidana," *Jurnal Voice Justicia* 3, no. 2 (2019), 45.

The dominance of men at that time was so dominant that the Prophet was worried that there would be chaos in the midst of the people of Medina. Then this verse came down as a solution that actually intended to control male violence against women and a recommendation to adjust to a society dominated by men. This verse seems to justify the permissibility of hitting a wife, but that beating when viewed in context only occurs in the people of Medina. This means that this verse does not encourage wife-beating but rather prevents it and gradually eliminates it, therefore the permission for beatings is placed at the last stage, not the first.<sup>27</sup>

In relation to the nusyuz case by the wife, it is very important to know the boundaries so that the wife must be punished by hitting her husband. Based on the explanation above, can the act of a wife who is caught in adultery be said to be nusyuz. So far, Nusyuz's actions are known to be due to the wife's disobedience to her husband. The understanding related to nusyuz for today's conditions needs to be reviewed where the times have advanced so that people's behavior has also developed. In the current era, there are cultural changes in women, such as women being able to be independent and work outside the home. Therefore, the wife's act of having to work outside the house is still considered nusyuz. Although commemorating the wife by hitting her is permissible in Islam, but the real purpose is that the act of hitting is nothing but teaching the wife a lesson.<sup>28</sup>

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<sup>27</sup>Mughniatul Ilma, "Kontekstualisasi Konsep Nusyuz Di Indonesia," *Jurnal Institut Agama Islam Negeri Ponorogo* 30, no. 1 (2019), 5.

<sup>28</sup>Wahyuni, Sri, "Konsep Nusyuz Dan Kekerasan Terhadap Istri Perbandingan Hukum Positif Dan Fiqh.," *Al-Abmal* 1, no. 1 (2008), 27.

### ***Family Law Reform and Its Relevance to the Nusyuz . Settlement Process***

Family law has an important position in Islam. Family law is considered the core of sharia. This is related to the assumption that Muslims view family law as a gateway to deeper entry into Islam. Basically something will not be formed because of the absence of something that underlies it, just as Islamic family law will never exist without something behind it. Islamic family law is very important in its presence in the midst of Muslim society because problems regarding family and so on cannot be equated with non-Muslims, so people want Islamic family law that applies specifically, especially with the development of the times that are increasingly developing so it is needed methods for legal reform.

As a religion of renewal, Islam changes the order of life. The family system is one of the things that is renewed. The reform model brought by Islam is to completely overhaul, renew, and continue what is already there. Issues related to family law include those that must be revised, but these changes occur gradually, so that there are still texts that seem patriarchal, such as the husband as the head of the household, the husband as the breadwinner, and also guiding the wife. Now is the time to complete the deconstruction of Islam in the field of family law which was started by the Prophet Muhammad.<sup>29</sup>

The rights and obligations of husband and wife arise because there is a marital relationship between them and are regulated in Articles 30 to 34 of Law Number 1 of 1974 concerning Marriage.<sup>30</sup>

Based on the relationship caused by marriage, husband and wife have mutual rights and obligations. Both must help each other and complement each other in order to establish a happy and lasting household.

Although the issues related to Islamic law are still bilateral, the patriarchal and discriminatory concepts are first put forward. The following is an example of an illustration of the concept of Islamic family law that is still patriarchal, such as the concept of a marriage contract (*ijab and qabul*), the concept of a marriage guardian, marriage witnesses, the concept of dowry (as if a husband buys a wife), polygamy (not in line with the principle of monogamous marriage, and the practice of polygamy hurts women), the position (status) of husband and wife, husband's obligations (as mentor, as protector, as educator, and as provider of maintenance), *nusyuz* (only applies to women/ wife), *talak* (*talak* is the absolute right of the husband, although there is a wife's *khuluk* right but for the occurrence of *khuluk* it still depends on the husband's approval), *ruju'*, *'iddah* (only applies to ex-wife), and *hadanah* (priority to women/wives).<sup>31</sup>

From the explanation above, it is clear that men are prioritized and discriminate against women (wives), so this is still patriarchal. One of them is the issue of *nusyuz*, *nusyuz* seems to have been attached to the wife, assuming that *nusyuz* is the wife's disobedience to her husband, while in fact *nusyuz* can also come from the husband this is because the husband does not fulfill his obligations as the head of the family in the household. There are many household problems that lead to

<sup>29</sup>Nasution, "Islam Membangun Masyarakat Bilateral Dan Implikasinya Terhadap Hukum Keluarga Islam Indonesia, 86.

<sup>30</sup>Mamahit, Laurensius, "Hak Dan Kewajiban Suami Istri Akibat Perkawinan Campuran Ditinjau

*Rizqa Febry Ayu*

Dari Hukum Positif Indonesia.," *Lex Privatum* 1, no. 1 (2013), 24.

<sup>31</sup>Nasution, "Islam Membangun Masyarakat Bilateral Dan Implikasinya Terhadap Hukum Keluarga Islam Indonesia, 95-96"

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disharmony in the husband and wife relationship because of small and trivial problems. On the other hand, nusyuz can also be a trigger for cases of domestic violence even ending in divorce.

Hitting the wife is allowed as long as it brings benefits and does not cause harm. How can the beatings leave scars and traumatize the wife, both physically and mentally, especially when seen directly by her children, it can get even worse. Therefore, beatings should be avoided. In Arab culture, when wives perform nusyuz, their husbands beat them immediately. Islam justifies a more appropriate solution for the good of both, that is, the husband does not have to immediately act violently on his wife but warns her beforehand.<sup>32</sup>

Nusyuz is a discussion concerning the relationship between husband and wife where one of them does iniquity. Disability or Nusyuz can occur from the husband and wife of the wife, but the second settlement has a difference. The character of women who are considered different from men is the cause of the existence of ways or options for settlement or healing from Nusyuz that occur. A husband is expected to be able to know the cause of the change or defiance of the wife so that the husband can resolve or at least able to know the cause of the inclusion that occurs.

The treatment of wives regarding the completion of nusyuz is a reform brought or explained by Islam, because if we look at the condition of Arab society which at that time was very demeaning to women, it was clear that there was a significant difference in the treatment of wives. or a woman who commits nusyuz against her husband. The character of pre-

Islamic Arab society which tends to be patriarchal makes the position of men superior to women and arbitrary treatment of women. Islam as a reformer came to bring changes in both the social and other fields.

Similarly, the formulation of Nusyuz's completion seems to be now requiring modification according to the social settings that occur today. Seeing the current social reality of women, especially in Indonesia that has accommodated and protects human rights and has adhered to women's emancipation. Women have had the opportunity to work or have a career outside the home and have an equal position with men in general, the term career woman which is so widely used in people's lives is a social status that positions a woman not only as a wife who only takes care of household matters (kitchen, kitchen, etc.) mattresses, and preening) but she also takes part and plays a big role in helping her husband in meeting household living expenses. So at this time, it is not uncommon to find in a company office or the teaching profession and civil servants in an area that is dominated by women.

Speaking of beatings, in Q.S An-Nisa verse 34 there is a recommendation for husbands to do it as a final step to prevent wives from behaving nusyuz and make the relationship between the two improve again. Some views in Islam allow hitting a wife until someone considers it advisable. However, what is more appropriate under human law is that hitting a wife is only a blow that does not injure her. This is also done if it is deemed appropriate, but if it is sufficient to advise and separate the bed then there is no need to beat him.

The form of the nusyuz settlement which was formulated by Indonesian scholars which was then compiled in a *Reformation of Islamic...*

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<sup>32</sup>Rizqa Febry Ayu dan Rizki Pangestu, "Modernitas Nusyuz: Antara Hak Dan KDRT," *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 12, no. 1 (2021), 86.

compilation of Islamic jurisprudence (found in articles 80, 84 and 152) and similarly what was stated by the majority of Islamic scholars about the abolition of a living for a nusyuz wife, could be a beneficial benefit. the most appropriate solution at that time, and did not rule out the possibility, as time went on and the dynamics of domestic conflict problems required new breakthroughs in order to resolve the nusyuz case.<sup>33</sup> The solution that has been given by the Qur'an to deal with nusyuz stri in three stages, namely by advice, separating beds, and beatings is so systematic and when implemented in accordance with the hierarchy, it is likely that the family will be whole again and more harmonious. This can be actualized and become an alternative solution to the wife's nusyuz, if we reflect on the conditions and problems that are so dynamic in today's household conflicts. Because verily, what Allah and His Messenger has decreed regarding the needs of human life is the best.

Is the process of completing the nusyuz in KHI final or not and or is it still relevant to be applied by looking at the development of current social conditions? Otherwise, the stages of completion that have been formulated in the Qur'an can be a relevant and representative solution to be put forward. It could also possible to elaborate with new ijthahs regarding the completion of the wife's nusyuz, because if you look at the role of women (wives) in the professional world today in order to earn a living and help finance household life, they are so large and so active that they have their own income. sometimes even more established than her husband from an economic point of view, therefore, if only

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<sup>33</sup>Ibnu Izzah, "Penyelesaian Kasus Nusyuz Menurut Kompilasi Hukum Islam Ditinjau Dari Perspektif Al-Qur'an," *Skripsi Fakultas Syari'ah Dan Hukum UIN Alauddin Makassar*, 2015, 84.

termination of income has become the solution of choice in KHI, it is actually less relevant, less useful, which is one of the legal objectives and is no longer effective for re-harmonizing household organizations that had been estranged. because of the act of nusyuz.

Based on the explanation above, according to the author, modernity of nusyuz for the current context is clear that women should not be treated like women during the jahiliyyah period. That today's women can be seen not only play a role in the domestic sphere (housewives), but also have a role in the public sphere ranging from educational needs, even professional demands that require wives to enter and leave the house freely. So the meaning of nusyuz at this time must be understood more deeply whether the wife or even the husband has actually committed real disobedience, because the conditions of the present must be different from the past.

## CONCLUSION

Based on the discussion above, it can be concluded that the renewal was carried out to answer the conditions of the times. As a religion of renewal, Islam changes the order of life. The family system is one of the things that is renewed. Legal issues in total, but gradually. Problems related to Family Law are not yet equal and bilateral/parental. The wife's nusyuz towards her husband as a wife's disobedience to her husband which includes leaving the house without permission needs to be reviewed and the formulation of the nusyuz settlement seems for the present to require modifications according to the current social setting. The solution that has been given by the Qur'an to deal with wife's nusyuz in three stages, namely by advice, separating beds, and beatings. The stages of completion that have been formulated in the

Qur'an can be a relevant and representative solution to be put forward, or it is also possible to elaborate with new ijtihads regarding the completion of the wife's nusyuz, because if we look at the role of women (wives) in the professional world today, this.

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