



## Nusyuz and Domestic Violence in Indonesia: Reinterpreting Punishment Using the Ma'nâ al-Haml Method

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### Abstract

Tafsir and classical jurisprudence provide three stages of solutions for a nusyûz wife. Stages of advising, separating beds, and hitting. This interpretation of nusyûz and the solution to hitting is not appropriate to the current context, so it is necessary to expand the meaning with a ma'nâ al-haml approach. Ma'nâ al-haml is used by bringing the meaning of a pronunciation to a more relevant meaning in terms of conditions, time, and space. This research uses a qualitative approach in analyzing, explaining, describing, and revealing research results. Research conducted in libraries is the method utilized to gather data. This study looks at how nusyûz solutions are interpreted in traditional tafsir and fiqh literature. It then reinterprets them using the ma'nâ al-haml approach by considering the views of modern ulama. These interpretations are then analyzed for their relevance to the laws in force in Indonesia as conditions, space, and time for understanding the pronunciation of the text using the ma'nâ al-haml approach. This research concludes that nusyûz is not caused by the wife's disobedience but rather by her bad morals or the bad morals of her partner. Nusyuz can not only occur from the wife's side but can also occur from the husband's side. Therefore, with the ma'nâ al-haml approach, you need to introspect yourself when dealing with nusyûz issues before giving signals to your partner. The solution to a nusyûz partner is not by hitting them but by discussing and negotiating to find the best solution.

**Keywords:** Classical jurisprudence, Nusyûz, Ma'nâ al-haml, Domestic violence

### Abstrak

Tafsir dan fikih klasik memberikan tiga tahapan penyelesaian bagi istri nusyûz. Tahapan menasihati, memisahkan tempat tidur, dan memukul. Penafsiran nusyûz dan solusi memukul ini kurang sesuai dengan konteks saat ini, sehingga perlu diperluas maknanya dengan pendekatan ma'nâ al-haml. Ma'nâ al-haml digunakan dengan membawa makna suatu pengucapan kepada makna yang lebih relevan ditinjau dari kondisi, waktu, dan ruang. Penelitian ini menggunakan pendekatan kualitatif dalam menganalisis, menjelaskan, mendeskripsikan, dan mengungkapkan hasil penelitian. Penelitian yang dilakukan di perpustakaan merupakan metode yang digunakan untuk mengumpulkan data. Kajian ini



melihat bagaimana solusi nusyûz dimaknai dalam literatur tafsir dan fiqh tradisional. Kemudian ditafsirkan kembali dengan menggunakan pendekatan ma'nâ al-haml dengan mempertimbangkan pandangan-pandangan ulama modern. Tafsir-tafsir tersebut kemudian dianalisis relevansinya dengan peraturan perundang-undangan yang berlaku di Indonesia dengan melihat kondisi, ruang, dan waktu untuk memahami makna teks tersebut. menggunakan pendekatan ma'nâ al-haml. Penelitian ini menyimpulkan bahwa nusyûz bukan disebabkan oleh ketidaktaatan istri melainkan karena buruknya akhlaknya atau buruknya akhlak pasangannya. Nusyuz tidak hanya bisa terjadi dari pihak istri saja, namun bisa juga terjadi dari pihak suami. Oleh karena itu, dengan pendekatan ma'nâ al-haml, Anda perlu melakukan introspeksi diri saat menghadapi permasalahan nusyûz sebelum memberikan isyarat kepada pasangan. Solusi terhadap pasangan nusyûz bukan dengan memukulnya tetapi dengan berdiskusi dan bernegosiasi untuk mencari solusi terbaik.

**Kata Kunci:** Fiqh klasik, *Nusyûz*, *Ma'nâ al-Haml*, KDRT

### **Introduction**

According to the Ministry of Women's Empowerment and Child Protection (KemenPPPA), as of October 2022, there were 18,261 cases of Domestic Violence (KDRT) throughout Indonesia, of which 79.5% or 16,745 of the victims were women. In addition to these data, it can be confirmed from the KemenPPPA data that domestic violence also affected 2,948 men. Therefore, men and women should not be ignored, because everyone is at risk of becoming a victim of domestic violence. Meanwhile, in March 2021, Komnas Perempuan recorded 8,234 cases of violence against women from National Commission of Women's partner service offices. The most prominent violence is in the household or personal sector, not less than 79% or 6,480 cases. In 2020, of the 8,243 cases processed by National Commission of Women, the most significant cases involve the personal sphere or are categorized as Domestic Violence Cases.<sup>1</sup>

The triggers for the occurrence of domestic violence in Indonesia are varied, ranging from economic problems, jealousy, and even other problems such as the wife's late return home,<sup>2</sup> as happened in Bitung, North Sulawesi. A husband with the initials PR brutally abused his wife because he was late coming home from a birthday event held at his neighbor's house. After the incident, his wife immediately reported her husband to the police. The victim suffered a number of injuries to his face, and even had to receive medical treatment from the Regional General Hospital (RSUD), Manembo-nembo Bitung.<sup>3</sup>

According to National Commission of Women's report, reporting of cases of domestic violence is increasing every year. Not long ago, the Indonesian people were shocked by reports from a public figure with the initials LK against her husband RB who committed

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<sup>1</sup> Reza Syahpahlevi, "Upaya Penanganan Kasus KDRT Di Indonesia," 2022, <https://kumparan.com/reza-syahpahlevi/upaya-penanganan-kasus-kdrt-di-indonesia-1zLlJrgpyZs/full>.

<sup>2</sup> Anastasia Kourti et al., "Domestic Violence During the COVID-19 Pandemic: A Systematic Review," *Trauma, Violence, & Abuse* 24, no. 2 (April 1, 2023): 719-45, <https://doi.org/10.1177/15248380211038690>.

<sup>3</sup> Trisno Mais, "Sadisnya Suami Di Bitung Aniaya Istri Gegara Telat Pulang Dari Ultah Tetangga," 2022.

domestic violence (KDRT) both physically and psychologically.<sup>4</sup> In response, the National Commission on Violence against Women understands the complexities of women victims of violence in getting out of the cycle of violence that has occurred. Even though it has been supported by various groups, the report was revoked by the FI with the consideration of the impact on children and the hope that the condition of the household could be improved.<sup>5</sup> The latest case that has shocked the Indonesian people is the case of a household public figure with the initials VM who reported her husband FI to the police on suspicion of being a victim of domestic violence on Tuesday 10 January 2023.<sup>6</sup>

Indonesia in 2018 even ranks 109th in the world's most common domestic violence with female victims.<sup>7</sup> Supposedly, Indonesia with the largest Muslim population in the world can be an example in the world with religious teachings that spread grace to all nature. In addition, specifically in Qs. al-Rum/30: 21 it has been explained that the purpose of marriage is to foster a harmonious household with the terminology of *sakinah, mawaddah wa rahmah* (a peaceful household full of love and affection).

The household as a social institution is expected to be a place for warm and intensive interaction between its members, a place to instill social values. As a legal institution, the household is expected to be a safe and comfortable place for all its members, protect each other, respect each other, love each other so that eternal happiness grows. However, on the contrary, the household becomes an arena for acts of violence.<sup>8</sup>

In fact, the noble purpose of marriage is sometimes even damaged by acts of violence committed by one partner, maybe even by both. The reasons are varied. Internal causes and external causes. Internal causes involve the emotional personality or character of the offender which makes it easy for him to commit acts of violence when there are problems that trigger emotions. External causes are caused by triggers from outside the perpetrator's personal, such as economic difficulties, interference from other family members or third parties in the household. This research will focus on the internal causes of domestic violence. According to criminologists from the bio-sociological school or convergence school, one of the causes is the ideological factor.<sup>9</sup> One that forms ideology is the understanding of religious texts.

Field research conducted by Alaniansyah and Nurzakiah concluded that most of the interviewees stated that the concept of *nusyûz* is closely related to domestic violence. Because people's perceptions are influenced by verse al-QS. al-Nisa/4: 34 concerning the settlement

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<sup>4</sup> Hasanudin Hasanudin et al., "Phenomena of Domestic Violence Against Women and Divorce in 2020-2022 in Indonesia: An Islamic Perspective," *Al-Manahij: Jurnal Kajian Hukum Islam*, August 23, 2023, 137-52, <https://doi.org/10.24090/mnh.v17i2.7686>.

<sup>5</sup> Ferinda K Fachri, "Kasus KDRT Meningkatkan Setiap Tahunnya," 2022.

<sup>6</sup> Dida Tenola, "Fakta-Fakta Venna Melinda Laporkan KDRT Ferry Irawan Ke Polisi," 2022.

<sup>7</sup> Hafit Yudi Suprobo, "Indonesia Tempati Peringkat Ke-109 KDRT Di Dunia," April 2018.

<sup>8</sup> Abdul Aziz, "Islam Dan Kekerasan Dalam Rumah Tangga," *Koordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 16, no. 1 (2017): 159-76, <https://doi.org/10.15408/kordinat.v16i1.6460>.

<sup>9</sup> A. Malthuf Siroj, "Kekerasan Dalam Rumah Tangga (KDRT) Perspektif Undang-Undang Nomor 23 Tahun 2004 Dan Hukum Islam," *HAKAM: Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam* 4, no. 2 (2020): 1-39, <https://doi.org/10.33650/jhi.v4i2.1638>.

of a wife by hitting. This perception then seems to give legitimacy that the husband may beat his wife who is considered *nusyûz* or disobedient. It is difficult to separate the Islamic doctrines that have long developed with this from the life of Muslim society today.<sup>10</sup> There are several international studies related to this research. However, existing research is still carried out separately between the concept of *nusyûz* and the *ma'nâ al-haml* approach. Among them is research conducted in Malaysia by Nor Syamimi Mat Nurdin and Nor Firdous Mohamed also concluded that misunderstanding of the concept of *nusyûz* can be a cause of domestic violence.<sup>11</sup> Research conducted by Nurul Nadia Abdul 'Aziz and her friends concluded that on average wives succumb to pressure and even violence by their husbands based on their understanding that wives must submit to their husbands.<sup>12</sup> Mahboba Mina also expressed the same opinion in her research with her friends.<sup>13</sup> The research conducted by Mustafa Kalam Rokan and Friends also concluded that in light of today's advanced technological developments, the concept of *nusyûz* should be viewed more broadly. *Nusyûz* cannot simply be defined as a wife leaving the house without the husband's consent. Therefore, it is imperative to expand the scope of *nusyûz* by considering modern technological advancements.<sup>14</sup> However, this research did not establish a connection between the new meaning of the concept of *nusyûz* by *ma'nâ al-haml* approach.

International research conducted by Nabeela Falak also concluded that one of the causes of domestic violence is a misunderstanding of religious doctrine. She concluded that domestic violence is not an appropriate subject for assessment, intervention, or policy reform in Pakistan because it usually occurs within families. According to surveys, between 35% and 70% of intimate relationship violence occurs in Pakistan. The main factors contributing to domestic violence in Pakistan include low levels of education and empowerment of women, misunderstanding of Islamic beliefs, customs, poverty, the dowry system, having daughters, infertility, and drug and alcohol use. Therefore, women become victims of

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<sup>10</sup> Analiansyah & Nurzakia, "Konstruksi Makna Nusyuz Dalam Masyarakat Aceh Dan Dampaknya Terhadap Perilaku Kekerasan Dalam Rumah Tangga (Studi Kasus Di Kecamatan Ingin Jaya)," *Gender Equality: International Jurnal of Child and Gender Studies* 5, no. 2 (2015): 141-60.

<sup>11</sup> Nor Syamimi Mat Nurdin and Nor Firdous Mohamed, "Exploring the Long-Term Psychological Impact of Childhood Abuse on Intimate Partner Violence Victims in Malaysia," *International Journal of Academic Research in Business and Social Sciences* 13, no. 5 (2023), <https://doi.org/10.6007/ijarbss/v13-i5/17156>.

<sup>12</sup> Nurul Nadia Abd Aziz et al., "Reasons Behind Women Tolerance of Abusive Relationships," *9th Putrajaya International Conference on Children, Women, Elderly and People with Disabilities (PICCWED 9)*, no. April 2020 (2019): 3.

<sup>13</sup> Mahboba Mina, Thaer Muhammad Hussein Shukr, and Luay ABED Kareem, "Disobedience Of The Wife: Its Provisions And Effects According To The Law And Islamic Law, A Comparative Study," *World Bulletin of Management and Law* 6, no. 6 (2022): 62-67.

<sup>14</sup> Mustafa Kamal Rokan, Imam Yazid, and Ahmad Makky, "Reconstruction of the Concept of Nushuz of the Wife in the Digital Era," *Samarah* 4, no. 2 (July 1, 2020): 568-85, <https://doi.org/10.22373/sjhk.v4i2.7259>.

domestic violence. physically, verbally and emotionally, psychologically, sexually abused. Slapping, hitting, kicking women causes physical problems.<sup>15</sup>

Research connecting the understanding of the concept of *nusyûz* with domestic violence also was carried out by Fitri Rafianti and her friends. His research concluded three things. firstly, regulations regarding *nusyûz* in Islamic Law exist in legal sources, but there are errors in the interpretation of related verses. Second, there is a correlation between *nusyûz* and domestic violence and there is a need for awareness of violence against women in the household environment. Thirdly, *nusyûz* is often associated with domestic violence, and husbands have rights that can exploit their wives physically, mentally, and sexually. The solution is to understand the duties and responsibilities within the household and not interpret verses as a justification for domestic violence. One solution is to always communicate with one's wife, speak kindly, and not harm or hit one's wife in the face.<sup>16</sup> It's just that this research has not been looked at from the perspective of *ma'nâ al-haml* approach.

It means misunderstanding of religious teachings can also be a trigger for domestic violence. In understanding the wife's *nusyûz*, it is sometimes interpreted as justification for the husband to commit violence as education to improve the wife's attitude. The background that causes the wife's rebellious attitude tends to be ignored until the goal of educating is not achieved and the potential for conflict or violence persists. This indeed cannot be separated from the influence of patriarchal culture which has been deeply rooted so that interpretations of Islamic teachings tend to favor men.<sup>17</sup>

Therefore, it is necessary to have an in-depth study of religious texts to avoid misinterpretation of religious texts, especially with regard to solutions that can be taken when things happen that are considered inappropriate by one of the spouses. Religious texts are not passed down in an empty space without culture and social structure. Therefore, the interpretation of religious texts needs to be contextualized according to the space and time it is translated. This includes religious texts related to the concept of *nusyûz* and its solutions. This study will review the concept of *nusyûz* and its solutions using the *ma'nâ al-haml* approach.

This article uses a qualitative approach in analyzing, explaining, describing and disclosing research results. The data collection technique used is literature study. This study explores the interpretation of the concept of *nusyûz* and its solutions in fiqh literature and classical interpretation, then reinterprets it using the *ma'nâ al-haml* approach through the opinions of contemporary scholars. These interpretations are then analyzed for their relevance to the laws that apply in Indonesia as space and time which become the meaning of pronunciation with the *ma'nâ al-haml* approach. The reinterpretation approach with a linguistic approach using *ma'nâ al-haml* has an important urgency in various contexts,

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<sup>15</sup> Nabeela Falak, "Causes and Effect of Domestic Violence against Women in Pakistan: An Analytical Study," *Sustainable Business and Society in Emerging Economies* 4, no. 2 (2022): 619–26, <https://doi.org/10.26710/sbsee.v4i2.2465>.

<sup>16</sup> Fitri Rafianti and M. Hary Angga Pratama Sinaga, "Nusyuz as the Cause of Domestic Violence: A Comparative Study of Islamic Law and Criminal Law," *International Journal of Law, Environment, and Natural Resources* 3, no. 1 (2023): 11–20, <https://doi.org/10.51749/injurlens.v3i1.45>.

<sup>17</sup> Nur Faizah, "Nusyuz: Antara Kekerasan Fisik Dan Seksual," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 6, no. 2 (2013): 113–28.

especially in the fields of linguistics, literature and text understanding. Here are some reasons why this approach is so important: digging for deeper meaning; resolving ambiguity. *Ma'nâ al-haml* approach helps in identifying context, key words, or other linguistic elements that can help in determining the most appropriate meaning. Furthermore, understanding culture and context. This is important for appreciating beauty and appeal in literary works as well as effectiveness in rhetoric. *Ma'nâ al-haml* also should help in legal problem solving because linguistic approach helps in analyzing legal clauses, contracts or regulations carefully to avoid wrong interpretations.

### The Overview of *Ma'nâ al-Haml*

One method that can be used in legal reasoning is a linguistic approach (approach to the meaning of language). Syihabudin al-Qarafi, introduced a method of legal reasoning known as *ma'nâ al-haml*. The method of interpreting language according to him can be reached in three ways: *ma'na' al-wad'u*; *ma'nâ al-isti'mâl* and *ma'nâ al-haml*.<sup>18</sup>

*Ma'nâ al-wad'u* is the original meaning desired by the subject who places the language symbol (*wâdi' u al-lugah*). For example, when a person is named Zaid by his father, his wish is that the child be known and called Zaid. The naming of Zaid's name is in accordance with what the name giver wants and what is understood by the people around him who use it.<sup>19</sup>

*Ma'nâ al-isti'mâl* (practical meaning) is the meaning of a word that can mean majaz (figuratively) and can also mean *haqîqî* (true meaning). *Ma'nâ al-isti'mâl* requires the knowledge of the person who pronounces it and the person who listens to it (the user) in order to be able to consistently use the symbols of the language used. For example, using the word *asad* (lion), the word can be used to describe wild animals and can also mean something other than wild animals and that is the real meaning. When there is a barrier to using it in its true meaning, it must be used in a figurative sense. Cota when he said: "the lion was reading the Koran". The word "is reading the Qur'an" is a hindrance (*mâni'*) to using it in its true meaning.<sup>20</sup>

*Ma'nâ al-haml* is an expansion of meaning by bringing the meaning of *wad'u* to *ma'nâ al-isti'mâl* by adapting it to the context of when and where the language is used. According to al-Yasa' Abubakar, the use of *ma'nâ al-haml* is a necessity which opens opportunities to reinterpret and reformulate some of the pronunciations in nas (religious texts).<sup>21</sup>

*Ma'nâ al-haml* as a theory of the meaning of pronunciation which is a symbol for an object and in the end becomes a definitive designation that is *jâmi'* and *mâni'* is a theory of meaning with great care in carrying out a deeper expansion of meaning. flexible without ignoring the truth of other meanings that make it possible to the intentions and purposes of

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<sup>18</sup> Imam Syihabuddin Abu al-'Abbas Ahmad Ibnu Idris Al-Qarafi, *Syarh Tanqih Al-Fusul Fi Ikhtisar al-Mahsul Fi al-Usul* (Bairut: Dar al-Fikr, 2004). 24.

<sup>19</sup> Imam Syihabuddin Abu al-'Abbas Ahmad Ibnu Idris Al-Qarafi, *Syarh Tanqih Al-Fusul Fi Ikhtisar Al-Mahsul Fi Al-Usul* (Beirut: Dar al-Fikr, 2004). 15

<sup>20</sup> Al-Qarafi. 25

<sup>21</sup> Abubakar Al-Yasa', *Metode Istislahiah: Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh* (Jakarta: Prenada Media Group, 2016).48.

Allah SWT.<sup>22</sup> *Ma'nâ al-haml* is used in a way to bring the meaning of a pronunciation to a meaning that is more relevant both in terms of conditions, beauty of language, and for other reasons.<sup>23</sup>

Observing this *ma'nâ al-haml*, it can be concluded that time, place and circumstances can be the cause of determining the meaning of a single pronunciation. The word 'train' in Aceh for example means a motorbike, while 'train' in other areas means a train. The word 'honda' in parts of the island of Java means motorbike, while in other places it is only one of the motorcycle brands. Nas al-Qur'an for example uses the word '*zînah*' whose meaning depends on the time, place and circumstances when it is translated. The Almighty Allah said in QS. al-A'raf/7 : 31:

﴿يَبْنَىِٔ ءَادَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ

O children of Adam, take your adornment at every masjid, and eat and drink, but be not excessive. Indeed, He likes not those who commit excess (QS. al-A'raf/7: 31).

The word '*zînah*' (beautiful clothing) in this verse can be translated according to time, place and circumstances. When translated in winter or in a cold climate, the word '*zînah*' is a beautiful thick garment, when translated in the summer or in a hot climate the word '*zînah*' is a beautiful thin garment. That is, the word '*zînah*' is translated according to the existing space and time. Therefore, culture can have implications for understanding one pronunciation meaning.

### Reinterpretation of *Nusyûz* Meaning by the *Ma'nâ al-Haml* Approach

Religious texts related to *nusyûz* and their solutions should also be understood using the *ma'nâ al-haml* approach without ignoring the general principles and objectives of the shari'ah through comprehensive and universal understandings of the texts.

Etymologically, the word *nusyûz* means 'high' (*al-taraffu*) and 'resurrection' (*al-nuhûd*). Therefore, the highlands of the earth are called '*nasyâzu al-ardi*'. Its meaning in language ranges between 'shaking' (*al-idtirâb*) and 'far apart' (*al-tabâ'ud*).<sup>24</sup> *Nusyûz* in English is often translated as 'disobedience'; disobedience (flagrant deviation); bad behavior and (ill-conducted or misbehavior).<sup>25</sup>

As for the terminology, the definition of *nusyûz* which is commonly understood so far is the disobedience of the wife to her husband regarding her husband's rights and obligations as a wife.<sup>26</sup> According to Ibn Kathir, a wife can be said to be *nusyûz* if she does

<sup>22</sup> Abdur Rakib, "Pergaulan Dalam Pertunangan Dan Khalwat Fi Ma ' Na Al -Haml :," *At-Turâs: Jurnal Studi Keislaman* 6, no. 1 (2019): 35–55, <https://doi.org/10.33650/at-turas.v6i1.547>.

<sup>23</sup> Ahmad Badawi, "Lafaz Ditinjau Dari Segi Hakikat Dan Majaz (Wacana Pengantar Studi)," *Al-Fikru: Jurnal Ilmiah* 13, no. 1 (2019): 50–60, <https://doi.org/10.51672/alfikru.v13i1.27>.

<sup>24</sup> Muhammad Tahir Ibnu Asyur, *Maqasid Al-Syariah al-Islamiyyah*, Cet. II (al-Qahirah: Dar al-Nafais, 2001). 41.

<sup>25</sup> Kamal-deen Olawale Sulaiman, "Insight into the Qur'an, 4: 34 Ruling as Regard Wife Beating in Islam" 14 (2015).

<sup>26</sup> Lajnah min Asatizah Qismi al-Fiqh bi Kulliyah al-Sayariah wal Qanun Jami'ah al-Azhar al-Syarif Asatiz, *Muhadarat Fi Al-Ahkam al-Muta'alliqah Bi Fiqhi al-Ushrah 'ala Mazhab Imam al-Syafi'i* (al-Qahirah, 2007). 145

not carry out her husband's orders.<sup>27</sup> Mustafa al-Adawi said that a *nusyûz* wife is a wife who feels superior to her husband, likes to oppose and disobey her husband.<sup>28</sup> Wahbah al-Zuhaili even considers that a wife can be said to be *nusyûz* when she leaves her house without her husband's permission.<sup>29</sup>

According to the Hanafi school of thought, a wife who is *nusyûz* is a wife who leaves her house in an improper manner.<sup>30</sup> According to the Maliki School, a wife who is *nusyûz* is a wife who disobeys her husband by: forbidding her husband to have fun with her; leave the house without permission; closed her husband's door and forbade him to enter the house.<sup>31</sup> According to the Syafi'i school, a wife who is *nusyûz* is a wife who disobeys her husband.<sup>32</sup>

As far as the search goes, the definitions of *nusyûz* that are found still seem to be biased in patriarchal culture which places men as superior and women as inferior. When this definition is read when the culture that develops is a patriarchal culture that still positions women's duties in domestic affairs, the concept of *nusyûz* like this is still acceptable. When the concept of *nusyûz* is brought into a culture that has provided space for women in the public sphere, the concept of *nusyûz* requires reinterpretation to seek meaning that is relevant to the *ma'nâ al-haml* approach.

Abdul Munib in his article said that the conception of *nusyûz* is a classic conception which is considered by critics as a concept that is detrimental to women. This is because this conception perpetuates male domination and overrides women's interests. This is reflected in the husband's right to take action against a nuisance wife without clear boundaries. Meanwhile, the wife has almost no space to defend her rights before the law in a balanced manner.<sup>33</sup>

According to Ibn 'Asyur, *nusyûz* wife is the wife's hatred of her husband which can be caused by the wife's bad morals. It may also be caused by the husband's bad morals, or because the wife wants to marry another man.<sup>34</sup>

Muhammad Syahrur defines '*nusyûz*' as the wife leaving the *qiwâmah* lines based on compassion and love (*al-khurûju 'an khatti al-qiwâmah bi al -mawaddati wa al-rahmah*). According to Shahrur, '*nusyûz*' is the opposite of '*qunût*'. Syahrur also criticized the opinion of the ulama who considered *nusyûz* as a form of disobedience and disobedience of a wife towards her husband. The criticism is built on two factors. First, because this verse does not

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<sup>27</sup> Imaduddin Abu al-Fida Ibnu Katsir al-Dimasyqi Ismail, *Tafsir Al-Qur'an Adzim*, Vol. I (al-Qahirah: Dar al-Da'wah al-Islamiyyah, 2004). 595

<sup>28</sup> Mustafa Al-Adawi, *Jami' Ahkam al-Nisa*, Vol. III (Saudi Arabia: Dar al-Sunnah li al-Nasyr wa al-Tauzi, 1995). 414

<sup>29</sup> Wahbah al-Zuhaili, *Fiqh Al-Islami Wa Adillatuhu*, Vol. IX (Dimasyq, n.d.). 338.

<sup>30</sup> Abdul Karim Zaidan, *Al-Mufassal Fi al-Ahkam al-Marah Wa al-Bait al Muslim* (Bairut: Muassasah al-Risalah li al-Nasyr wa al-Tauzih, 1993). 162

<sup>31</sup> al-Habib Ibnu Tahir, *Al-Fiqh al-Maliki Wa Adillatuhu*, Cet. III (Lubnan: Muassasah al-Ma'arif, 2005). 333

<sup>32</sup> 'Ali Muhammad Ali Qasim, *Nusyuz Al-Zaujah, Asbabuhu Wa 'Ilajuhu Fi al-Fiqhi al-Islami* (Misr: Dal al-Jami'ah al-Jadidah li al-Nasyr, 2004). 11

<sup>33</sup> Abdul Munib, "Batasan Hak Suami Dalam Mempertahankan Isteri Pada Saat Nusyuz Dan Kemungkinan Sanksi Pidana," *Voice Justicia: Jurnal Hukum Dan Keadilan* III (2019): 1-23.

<sup>34</sup> Asyur, *Maqasid Al-Syariah al-Islamiyyah*. 41

speak in the context of a wife's obedience to her husband. Second, because in Arabic the word 'al-nusyûz' means 'to go out' and 'to scatter' in general (*al-khurûj wa al-tafarruq 'umûman*).<sup>35</sup>

The definition of *nusyûz* mentioned by Ibnu 'Asyur and Muhammad Syahrur is more in line with the current context. This conformity can be seen from the definition of the two that do not marginalize the wife's role, do not position the wife as a subordinate who must obey her husband. This definition of Ibn 'Asyur considers that *nusyûz* is not caused by a wife's disobedience to her husband, but because of her bad morals or her husband's morals. Maybe also because she has other desires that cause her to hate her husband. Syahrur's definition is also the same, because his definition views that the wife has the same position as her husband in matters of *qiwamah*, so that both the wife and husband have the possibility to get out of the limits of *qawwamah* and that is what is called *nusyûz*.

In addition, *nusyûz* cannot be understood as an attitude that can only arise from a wife. Husbands also allow *nusyûz* as explained by Allah SWT in QS. Al-Nisa>/4:128:

وَإِنْ أَمْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ  
وَأَحْضَرْتَ الْأَنْفُسَ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

Meaning: And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them - and settlement is best. And present in [human] souls is stinginess. But if you do good and fear Allah - then indeed Allah is ever, with what you do, Acquainted. (QS. al-Nisa/4: 128).

The meaning of *nusyûz* by focusing on the wife is a discriminatory meaning against women. Meaning that is still biased with patriarchal culture. A culture that places men as superior. Placing the wife as if subordinate to her husband. Therefore, it is necessary to reinterpret the concept of *nusyûz* with the *ma'nâ al-haml* approach. Therefore, departing from the opinions of earlier contemporary scholars regarding the concept of *nusyûz*, it can be said that *nusyûz* is the hatred or aversion of one partner towards the other which is expressed by going outside the proper boundaries (*qunût and qiwamah*). *Nusyûz* is not caused by the wife's disobedience, but is caused by her bad morals or the bad morals of her partner.

This hatred is expressed in various bad behaviors. In the modern era and the digital era, for example, a wife's *nusyûz* is not only limited to leaving the house. A wife or husband can be categorized as *nusyûz* when they do things that go beyond the boundaries of religion and decency in cyberspace, even though they are still at home.<sup>36</sup> According to Kamal-deen Olawale, *nusyûz*'s attitude is not a matter of disobedience of the wife, but rather an obscene act that leads to adultery (*fâhisyah mubîna*).<sup>37</sup>

<sup>35</sup> Muhammad Syahrur, *Nahwa Usulin Jadidah Li Al-Fiqhi al-Islami: Fiqhu al-Marah, al-Wasiyyah, al-Irts, al-Qawamah al-Ta'addudiyah, al-Libas*, Cet. I (Dimasyq: al-Ahali li al-Tiba'ah wa al-Nasyr wa al-Tauzi', 2000).323

<sup>36</sup> Rokan, Yazid, and Makky, "Reconstruction of the Concept of Nushuz of the Wife in the Digital Era."

<sup>37</sup> Kamal-deen Olawale Sulaiman, "Insight into the Qur'an, 4: 34 Ruling as Regard Wife Beating in Islam."

### Reinterpretation of *Nusyûz* Solution by the *Ma'nâ al-Haml* Approach

Classical interpretation and fiqh tend to provide three stages of solutions for wives who are *nusyûz*. Stages of advising; separate bed and beat. This stage is understood from QS. al-Nisa/4: 34:

وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Meaning: But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand. (QS. al-Nisa/4: 34).

This verse is often justified as a verse that allows hitting one's wife. According to al-Qurtubi, the blow referred to in this verse is an educational blow, a blow that does not injure, that is, one that does not break bones and does not leave marks such as bruises, swelling and the like.<sup>38</sup> The same opinion was expressed by Ibn Kasir.<sup>39</sup> Al-Zamakhshari added that it is not permissible to hit in the face.<sup>40</sup> Muhammad 'Abduh gave an example of hitting something that doesn't hurt, which is like hitting with a siwak or other small object that doesn't hurt.<sup>41</sup>

In conclusion, they still tend to interpret the pronunciation of '*daraba*' in this verse with the meaning of 'to hit'. The implication is that the developed understanding of fiqh allows a husband to beat his wife on the condition that the beating is educational and does not injure.

It's just that, the word *daraba* as long as it is interpreted as hitting when it is brought into the context of a family that is not healthy, the blow will still hurt even though it is a small blow. Even a small blow can be a big problem. Household 'e few things mean a lot', things that are considered trivial can become big and lasting problems. Especially if the blow that is considered small is accompanied by emotion. It is difficult for people to beat them with love and affection, especially when the household is not in harmony.

Therefore, it is necessary to interpret according to the context and place (according to reality) by taking into account the general principles in building a household. According to Quraish Shihab, the command '*idribûhunna*' in this verse can be interpreted as hitting when the husband is the leader and the wife is a subordinate. When times have changed where the wife is no longer placed as a subordinate, the concept of '*daraba*' is no longer carried out by

<sup>38</sup> Abu 'Abdullah Muhammad Ibnu 'Abdullah Ibnu Abu Bakr al-Qurtubi Ahmad, *Al-Jami'u Li Ahkam al-Qur'an*, Cet. I (Bairut: Muassasah al-Risalah, 2006). 285

<sup>39</sup> Ismail, *Tafsir Al-Qur'an Adzim*. 24

<sup>40</sup> Abu al-Qasim Mahmud Ibnu 'Umar Al-Zamakhshari, *Al-Kassiyaf 'an Haqaiq Gawamid al-Tanzil Wa Uyun al-Aqawil Fi Wujuh al-Ta'wil*, Cet. I Vol (Riyad: Maktabah al-Abikan, 1998). 70

<sup>41</sup> Syekh Muhammad 'Abduh, *Tafsir Al-Manar*, Cet. II, V (al-Qahirah: Dar al-Manar, 1947).47

hitting physically, but simply by giving a sign. According to Quraish Shihab, in today's context, especially among the educated, beating is no longer the right way.<sup>42</sup>

According to Ibnu Asyur, culture, customs, the condition of the wife can be the reason why it is not permissible to beat a wife even though the wife is *nusyûz*. Apart from that, Ibn 'Asyur also cites 'Atha's interpretation of the meaning of '*daraba*'. According to 'Atha ta'wil '*idribûhunna*' in this verse is 'angry at them'. Therefore, husbands may not beat their wives, but may only be angry with them.<sup>43</sup>

Syahrur disputed the opinion of the ulema who interpreted the word '*daraba*' as hitting. According to Syahrur, 'to hit' is only one of the meanings of the word '*daraba*'. Another meaning is 'to set an example' (*darbu al-amtsâl*); 'walking on the earth' (*al-darbu fi al-ardi*) and 'counting money' (*al-darbu al-nuqûd*). According to Syahrur, this verse must be understood by looking at the Hadiths which prohibit beating one's wife.<sup>44</sup>

It should be noted that the Qur'an was revealed to an ignorant society that did not humanize women. Women before the arrival of Islam, let alone being beaten, were allowed to be killed. They were even made into an inheritance. They are equated with inherited property or pets that are passed on to others. When a man dies and he leaves a wife, according to their custom, the wife left behind becomes the right of the heir. In addition, men can choose women and marry them as they please without any restrictions.<sup>45</sup> Women in the view of some of the Jahiliyyah Arab tribe were weak figures who were unable to work and were unproductive, so that their existence was considered a disgrace in the family. Some of them also consider girls as the bad luck of poverty. They also think that girls are seducers of lust, so they must be closed tightly.<sup>46</sup>

Therefore, the use of '*daraba*' with the meaning of hitting as the last solution for women who were *nusyûz* at that time was still a form of violence which was still considered very light when compared to the behavior of the ignorant society. If this is the case, it is necessary to expand the meaning (*ma'nâ al-haml*) of the word '*daraba*' by taking into account the current cultural context and social structure. In this way, the Qur'an will not only be a guide for people who existed during the Jahiliyyah period, but will be a guide until the end of time.

Apart from that, this verse about *nusyûz* solutions must be understood using a general principles approach in building a household. General principles of building a household. Based on a study of the Qur'an and Hadith, there are at least 5 principles in building husband and wife relationships, namely: First: the principle of deliberation. Second: The principle of creating a sense of security, comfort and peace. Third: the principle of non-violence. Fourth: the principle that the husband-wife relationship is a partner. Fifth: the

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<sup>42</sup> M. Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan Dan Keserasian al-Qur'an*, Vol. II (Jakarta: Lentera Hati, 2002). 434

<sup>43</sup> Muhammad Tahir Ibnu Asyur, *Tafsir Al-Tahrir Wa al-Tanwir* (Tunis: Dar al-Tunisiyah li al-Nasyr, 1984). 43

<sup>44</sup> Muhammad Syahrur, *Nahwa Usulin Jadidah Li Al-Fiqhi al-Islami: Fiqhu al-Marah, al-Wasiyyah, al-Irts, al-Qawamah al-Ta'addudiyah, al-Libas*. 323

<sup>45</sup> Basimah Kayyal, *Tatawûr Al-Marah 'Abra al-Tarikh* (Bairut: Muassasah 'Izzu al-Din, 1981). 55

<sup>46</sup> Mustafa Al-Sibai, *Mar'atu Baina al-Fiqhi Wa al-Qanun*, Cet. VII (Riyad: Dar al-Warraaq, 1999). 20

principle of justice.<sup>47</sup>This fifth principle is sometimes more specific to justice which maintains a balance between the rights and obligations of husband and wife.

The relationship between husband and wife is not really a relationship between superiors and subordinates. The husband-wife relationship is a partnership relationship. If in a country there is a president and vice president, in a household there are husband and wife. If on campus there is a chancellor and vice-chancellor, in the household there are husband and wife. If in a company there are directors and deputy directors, in the household there are husbands and wives.<sup>48</sup>

This reinterpretation of the concept of *nusyûz* and its solution is a pre-emptive effort as the first step before preventive efforts. Pre-active efforts are efforts to instill good values or norms through internalization within a person so that they do not have the intention to commit acts of violence even though there is a trigger or opportunity to commit violence.<sup>49</sup>

### **The Solution of *Nusyûz* and Its Relevance to Legislation in Indonesia**

Law No. 23 of 2004 concerning the Elimination of Domestic Violence considers that domestic violence is a criminal offense against complaints in accordance with articles 51-56. According to Article 1 of Law Number 23 of 2004 it is stated that what is meant by domestic violence is any action against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion or unlawful deprivation of liberty within the household sphere.

Articles 6-9 explain the definitions of the categories of violence in question. Physical violence is an act that results in pain, falling ill, or serious injury. Psychological violence is an act that results in fear, loss of self-confidence, loss of the ability to act, a feeling of helplessness, and/or severe psychological suffering to someone. Sexual violence includes: coercion of sexual intercourse perpetrated against people who live within the scope of the household; and coercion of sexual relations with someone within the scope of the household with another person for commercial purposes and/or certain purposes. Neglect violence applies to anyone who results in economic dependence by limiting and/or prohibiting proper work inside or outside the home so that the victim is under the control of that person.

Observing this law, it can be concluded that even hitting with the intention of educating can be complained by the wife if it causes the wife to be afraid, lose self-confidence, lose the ability to act or feel confident. Therefore, if the meaning of *daraba'* which in fiqh or classical interpretation still tends to be interpreted as 'to hit' as explained earlier, there will be a chance of a violation of this Law. Thus, it would be wiser if the meaning of *daraba'* contained in this verse is brought to another meaning using the *ma'nâ al-haml* approach.

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<sup>47</sup> Munib, "Batasan Hak Suami Dalam Mempertahankan Isteri Pada Saat Nusyuz Dan Kemungkinan Sanksi Pidana." 34

<sup>48</sup> Harwis Alimuddin, "Asas Berimbang Hak & Kewajiban Suami Istri & Penyesuaiannya Dengan Budaya Lokal Menurut Hukum Islam," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 4, no. 1 (June 26, 2022): 90-106, <https://doi.org/10.19105/al-manhaj.v4i1.6263>.

<sup>49</sup> Siroj, "Kekerasan Dalam Rumah Tangga (KDRT) Perspektif Undang-Undang Nomor 23 Tahun 2004 Dan Hukum Islam." 24

The meaning of *daraba'* with the meaning of hitting can no longer be maintained in the context of *nusyûz*. Apart from the fact that these meanings are common to patriarchal culture, these meanings are no longer relevant to space, time and conditions. Through the *ma'nâ al-haml* approach, the existence of a law can become a *mâ'ni* (barrier). The word *d}araba* is defined as hitting, so that the meaning of *d}araba* must be brought to another relevant meaning. One of them, with the meaning of giving a sign that can be reached by negotiating.

In the Compilation of Islamic Law, the issue of *nusyûz* is also regulated. It's just that there is no article that specifically explains the definition of *nusyûz* and the steps for solving it. Apart from that, there is no article in the KHI that discusses husband's *nusyûz*. Even though *Nusyûz* can not only occur from the wife's side but also from the husband's side as stipulated by Allah swt. in Qs. Al-Nisa/4: 29. KHI article 84 still seems discriminatory against wives, if the wife does not carry out her obligations, the wife becomes *nusyûz*, but the opposite does not apply to the husband. Therefore, it is necessary to update the KHI by adding an article regarding husband's *nusyûz*.

Some articles only emphasize the rights and obligations of husband and wife. Article 80 1) The husband is the guide for his wife and household, but the husband and wife decide on important household matters. 2) The husband is obliged to protect his wife and provide all the necessities of life for the household according to his ability. 3) The husband is obliged to provide religious education to his wife and provide opportunities to learn knowledge that is useful and beneficial to religion, homeland and nation. 4) In accordance with his income, the husband bears: a. Livelihood, clothes and wife's residence; b. Household expenses, maintenance costs and medical expenses for wife and children; c. Education costs for children.

The husband's obligations to his wife as referred to in paragraph (4) letters a and b above come into effect after there is perfect *tamkîn* from his wife. The wife can free her husband from the obligations towards himself as referred to in paragraph (4) letters a and b. The husband's obligations as referred to paragraph (5) is aborted if the wife is *nusyûz*.

Article 84 paragraph (1) A wife can be considered *nusyûz* if she does not carry out the obligations referred to in Article 83 paragraph (1) except for a valid reason. 2) As long as the wife is in *nusyûz*, the husband's obligations towards his wife as stated in article 80 paragraph (4) letters a and b do not apply except for matters in the interests of their children. 3) The husband's obligation referred to in paragraph (2) above applies again after the wife is not *nusyûz*. 4) Provisions regarding the presence or absence of *nusyûz* from the wife must be based on valid evidence.

KHI is the result of an Islamic law legislation project through jurisprudence implemented by the Supreme Court of the Republic of Indonesia and the Ministry of Religion of the Republic of Indonesia. And finally, it can become a reference for the judges of the Religious Courts through Presidential Decree No. 1 of 1991. Before the KHI was codified, there was a disparity in judicial decisions, due to the absence of unique and positive legal

references. In the end, there was a struggle and debate between the existing fiqh books. So that in the end the codification of KHI was initiated.<sup>50</sup>

Observing the *nusyûz* articles in the KHI, it can be concluded that the KHI provides an opportunity for husbands to commit acts of arbitrariness, because there is already a legal justification that strengthens it and it seems that it has become his absolute right. This is also one of the triggers for domestic violence. Therefore, in the Counter Legal Draft Compilation of Islamic Law (CLD-KHI), husband's *nusyûz* is also regulated (article 53 paragraph 1). However, the offer to reform the KHI is still being responded to by the pros and cons of Muslim figures in Indonesia. Even so, conceptually CLD-KHI has succeeded in integrating Islamic law with the reality of democracy, pluralism, human rights and gender justice, both at the methodological level and the formulation of provisions of Islamic law.<sup>51</sup> Therefore, the KHI which seems to be in favor of the husband in the *nusyûz* context cannot be defended. KHI needs to be renewed with family jurisprudence that upholds the principle of balancing the rights and obligations of husband and wife. Family jurisprudence that does not marginalize women. Family jurisprudence that is free from the bias of patriarchal culture.

### **Conclusion**

Time, place and circumstances can be the cause of determining the meaning of one pronunciation. *Ma'nâ al-haml* is the expansion of meaning by bringing *ma'nâ al-wad'u* to *ma'nâ al-isti'mâl* by adapting it to the context of when and where the language is used. *Nusyûz* with an attachment to *ma'nâ al-haml* is irrelevant if it is interpreted as the wife's disobedience caused by her disobedience. This definition is still biased with patriarchal culture which places men as superior and women as inferior. Therefore, with the *ma'nâ al-haml* approach, *nusyûz* is the hatred or aversion of one partner towards the other which is expressed by going outside the proper boundaries (*qunût* and *qiwâmah*). *Nusyûz* can not only occur from the wife's side, but also from the husband's side. *Nusyûz* is not caused by the wife's disobedience, but is caused by her bad morals or the bad morals of her partner. Furthermore, to handle *nusyûz* by the *ma'nâ al-haml* approach is reflecting to the self-behavior firstly before giving a sign to the partner. The solution to a nuisance partner is not by hitting her but by giving a sign such as being indifferent to her which will take both sitting down closely together to discuss and find out the best solution. Therefore, the concept of *nusyûz* in KHI needs to be reconstructed, because the concept of *nusyûz* in KHI still seems to be biased towards patriarchal culture.

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<sup>50</sup> Harwis Alimuddin and Tahani Asri Maulidah, "Implication of Local Wisdom in Islamic Law Compilation Legislation," *MAZAHIBUNA: Jurnal Perbandingan Mazhab* 3, no. 2 (2021), <https://doi.org/10.24252/mh.v3i2.24982>.

<sup>51</sup> Faizah, "Nusyuz : Antara Kekerasan Fisik Dan Seksual." 119.

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