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## Reinterpreting the Concept of Nusyuz of Husbands and Wives in the Perspective of Indonesian Positive Law<sup>1</sup>

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### Abstract:

This study examines the reinterpretation of the concept of nusyuz within the framework of Indonesian Islamic family law by analyzing both normative legal provisions and judicial practices. The issue arises from the prevailing tendency to interpret nusyuz solely as a wife's disobedience, which often leads to unequal legal consequences and reinforces structural gender bias in the application of family law. This research aims to reassess the legal position and operational meaning of nusyuz in light of contemporary principles of justice, equality, and *maqāṣid al-sharī'ah*. The study employs a normative juridical method supported by statutory, conceptual, and case approaches. Primary legal materials include Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), and relevant religious court decisions, while secondary materials consist of scholarly literature concerning Islamic family law, gender justice, and *maqāṣid al-sharī'ah*. The findings reveal that nusyuz should not be understood as a concept exclusively attributed to wives but rather as a reciprocal condition that may arise from either spouse's failure to fulfill marital obligations. The study further demonstrates that unilateral claims of nusyuz without sufficient and objective evidence are inconsistent with the principles of equality before the law and the objectives of Islamic law, which emphasize justice, human dignity, and family welfare. Therefore, a reinterpretation of nusyuz is necessary to prevent discriminatory legal outcomes and to promote a more balanced and equitable implementation of Islamic family law in Indonesia, ensuring equal legal protection for both husbands and wives within marital relationships.

Keywords: Islamic family law; legal equality; marital rights; *maqāṣid al-sharī'ah*; nusyuz.

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## A. INTRODUCTION

Marriage occupies a central position in both Islamic law and Indonesian positive law as a legal and religious institution intended to establish a harmonious family based on mutual rights and obligations. Law Number 1 of 1974 on Marriage defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the purpose of forming a happy and enduring family based on belief in Almighty God. Similarly, the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) characterizes marriage as a *mitsaqan ghalidzan* (solemn covenant) intended to fulfill religious obligations and realize a family life characterized by *sakinah*, *mawaddah*, and *rahmah* (Ja'far, 2021). Therefore, achieving marital harmony requires both spouses to fulfill their respective rights and obligations in a balanced and responsible manner.

In practice, however, marital relationships are often challenged by conflicts arising from either spouse's failure to fulfill marital duties. One of the most debated concepts in Islamic family law concerning marital disputes is *nusyuz*. Linguistically, *nusyuz* refers to disobedience, rebellion, or deviation from expected conduct, while legally it denotes a spouse's failure to fulfill marital obligations prescribed by Islamic law. Classical Islamic jurisprudence generally associates *nusyuz* with a wife's refusal to comply with her marital duties, particularly toward her husband. Nevertheless, the Qur'an recognizes that *nusyuz* can be committed by both wives and husbands, as reflected in Qur'an 4:34 and Qur'an 4:128. Despite this reciprocal understanding, the application of *nusyuz* within contemporary legal practice often remains centered on the conduct of wives, thereby creating potential inequalities in the protection of marital rights.

Within the Indonesian legal system, the concept of *nusyuz* is primarily regulated by Article 84 of the Compilation of Islamic Law, which stipulates that a wife declared *nusyuz* loses her right to maintenance from her husband. Although this provision is intended to preserve the balance of rights and obligations within marriage, its practical implementation has generated considerable debate. In a number of Religious Court decisions, allegations of *nusyuz* are frequently accepted based on unilateral claims without a comprehensive examination of the underlying causes of marital conflict. Such interpretations may lead to discriminatory legal consequences, particularly when the conduct categorized as *nusyuz* is closely related to psychological pressure, domestic violence, emotional neglect, or the husband's failure to fulfill his own legal obligations. Consequently, the application of *nusyuz* raises important questions concerning legal equality, gender justice, and the protection of individual rights within marriage.

Recent developments in Islamic legal scholarship have encouraged a more contextual and justice-oriented interpretation of family law. Contemporary scholars argue that Islamic legal norms should be interpreted in accordance with the objectives of *maqāṣid al-sharī'ah*, which emphasize justice, human dignity, welfare, and the protection of fundamental rights (Auda, 2008). From this perspective, marital obligations are reciprocal, and responsibility for marital disharmony should not be attributed exclusively to one spouse. Furthermore, modern legal principles require that both husbands and wives be recognized as equal legal subjects entitled to equal protection

before the law. Therefore, the interpretation of nusyuz should be reassessed to ensure that its application remains consistent with contemporary notions of justice and equality.

Several previous studies have discussed nusyuz from different perspectives. Nurlia et al. (2018) examined the concept of husbandly nusyuz and concluded that husbands may also violate marital obligations by neglecting their responsibilities toward their wives and children. Putra and Sumbulah (2020) criticized Article 84 of the Compilation of Islamic Law for focusing exclusively on wives' nusyuz and proposed a reinterpretation based on gender equality and *maqāṣid al-sharī'ah*. Other studies have highlighted the importance of reconstructing Islamic family law to accommodate contemporary demands for justice and legal protection within marital relationships (Azizah, 2023; Fauzi, 2024). While these studies have significantly contributed to the discourse on marital justice, most of them focus on doctrinal criticism and gender perspectives without specifically examining the operational ambiguity of nusyuz in judicial practice and its implications within the framework of Indonesian positive law.

Accordingly, this study seeks to fill that gap by examining the legal construction of nusyuz through statutory provisions, Islamic legal principles, and judicial interpretation. Particular attention is given to Religious Court Decision Number 146/Pdt.G/2021/PA.Pdlg as a case study for evaluating how allegations of nusyuz are assessed and applied in practice. The novelty of this research lies in its attempt to reconstruct nusyuz as a reciprocal legal concept applicable to both husbands and wives rather than as a legal category exclusively attached to women. Such an approach is expected to contribute to the development of a more balanced and equitable understanding of Islamic family law in Indonesia.

Against this background, this article examines the concept of nusyuz from the perspectives of Islamic law and Indonesian positive law and evaluates its contemporary application in judicial practice. Particular attention is given to the legal position of spouses accused of nusyuz and the implications of such a determination for marital rights and obligations. This study contends that the conventional interpretation of nusyuz as a concept primarily attributed to wives is no longer adequate to address contemporary demands for justice and equality. Therefore, a reinterpretation of nusyuz based on the principles of legal equality and *maqāṣid al-sharī'ah* is necessary to establish a more equitable framework for the application of Islamic family law in Indonesia.

## **B. METHODE**

This study employed a normative juridical research method to examine the reinterpretation of the concept of nusyuz within the framework of Islamic family law and Indonesian positive law. Normative legal research focuses on the examination of legal norms, principles, doctrines, and statutes as the primary objects of analysis rather than on empirical social phenomena (Soekanto & Mamudji, 2019). This method was selected because the research seeks to analyze the legal construction of nusyuz, its position within the Compilation of Islamic Law, and its implications for spouses' rights and obligations in marital relationships.

To achieve the research objectives, this study adopted three complementary approaches: statutory, conceptual, and case. The statutory approach was applied to examine legal provisions governing marital rights and obligations, particularly Law

Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and Law Number 48 of 2009 concerning Judicial Power. The conceptual approach was used to analyze legal doctrines, scholarly opinions, and theoretical perspectives on nusyuz, legal equality, and *maqāṣid al-sharī'ah*. Meanwhile, the case approach was employed to examine Religious Court Decision Number 146/Pdt.G/2021/PA.Pdlg is the principal case analyzed in this study. According to Marzuki (2021), these approaches enable a comprehensive assessment of legal issues by integrating statutory regulations, legal concepts, and judicial reasoning.

The legal materials used in this research consisted of primary, secondary, and tertiary legal materials. Primary legal materials included legislation and judicial decisions relevant to the research topic, namely Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, Law Number 48 of 2009 concerning Judicial Power, and Religious Court Decision Number 146/Pdt.G/2021/PA.Pdlg. Secondary legal materials comprised books, journal articles, previous studies, and scholarly publications discussing nusyuz, Islamic family law, gender justice, and *maqāṣid al-sharī'ah*. Tertiary legal materials included legal dictionaries, encyclopedias, and other reference sources used to clarify legal terminology and concepts.

Data collection was conducted through library research by systematically identifying, reviewing, and analyzing legal documents, legislation, court decisions, and relevant academic literature. This technique is widely employed in normative legal studies because it facilitates a comprehensive examination of legal norms and doctrinal developments relevant to a particular legal issue (Soekanto & Mamudji, 2019).

The collected legal materials were analyzed using a qualitative juridical approach. The analytical process involved data reduction, classification, interpretation, and synthesis in order to identify legal principles, normative patterns, and doctrinal developments related to the concept of nusyuz. Qualitative analysis was employed to generate a comprehensive understanding of the legal issues under examination and to formulate conclusions based on the relationships between legal norms, judicial practice, and contemporary legal developments (Sugiyono, 2019). The findings were subsequently interpreted through the perspectives of legal equality and *maqāṣid al-sharī'ah* to evaluate the adequacy of the existing legal framework and to formulate a more balanced understanding of nusyuz within contemporary Indonesian Islamic family law.

This study employs a *maqāṣid al-sharī'ah* approach combined with the principle of *mubādalah* (reciprocity) as the primary framework for reinterpretation. The *maqāṣid* approach is used to evaluate whether legal norms promote justice, welfare, and equality, while the *mubādalah* approach is employed to examine marital rights and obligations as reciprocal rather than unilateral. The reinterpretative process consists of textual analysis of Qur'anic verses and classical *fiqh* literature, examination of statutory regulations and judicial decisions, and reconstruction of legal concepts in accordance with contemporary principles of justice and legal equality.

## C. RESULTS AND DISCUSSION

### 1. The Concept of Nusyuz in Islamic Legal Sources

The concept of nusyuz occupies an important position in Islamic family law because it is closely related to the fulfillment of reciprocal rights and obligations between spouses. Linguistically, the term derives from the Arabic word *nashaza*, which means elevation, resistance, rebellion, or deviation from an established condition. In Islamic legal terminology, nusyuz generally refers to conduct that disrupts marital harmony through the unjustified neglect or violation of obligations arising from the marital relationship.

The primary legal basis concerning nusyuz is found in the Qur'an. While Qur'an 4:34 addresses circumstances involving a wife's nusyuz, Qur'an 4:128 explicitly recognizes the possibility of nusyuz committed by a husband:

وَإِنْ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ①

"And if a woman fears nusyuz or neglect from her husband, there is no blame upon them if they seek reconciliation between themselves, and reconciliation is best" (Qur'an 4:128).

This verse constitutes the principal textual basis for the recognition of husbandly nusyuz in Islamic law. Classical exegetes such as Al-Tabari interpreted nusyuz in this verse as a husband's tendency to neglect his wife's rights, distance himself emotionally, or withdraw support and companionship. Al-Qurthubi similarly explained that husbandly nusyuz may manifest through indifference, emotional abandonment, or unfair treatment that deprives a wife of her lawful rights. Ibn Kathir further emphasized that the verse acknowledges marital discord stemming from the husband's conduct and encourages reconciliation as the preferred means of resolving disputes. Contemporary commentators such as Quraish Shihab and Wahbah al-Zuhaili likewise argue that Qur'an 4:128 demonstrates the reciprocal nature of marital obligations, indicating that marital misconduct is not exclusively attributable to wives.

Furthermore, the concept of nusyuz should be understood within the broader framework of *mu'āsharah bi al-ma'rūf* as prescribed in Qur'an 4:19. This principle requires both spouses to interact with kindness, justice, mutual respect, and responsibility. Accordingly, nusyuz may be understood as conduct that violates the principle of *mu'āsharah bi al-ma'rūf*, regardless of whether it is committed by the husband or the wife. Such an interpretation strengthens the argument that nusyuz is fundamentally a reciprocal legal concept rather than a legal category exclusively attached to women.

The concept was further elaborated by classical Islamic jurists. Although the Hanafi, Maliki, Shafi'i, and Hanbali schools differ regarding specific indicators and legal consequences, they generally recognize that both husbands and wives may violate marital obligations. Husbandly nusyuz may include the failure to provide maintenance, emotional abandonment, neglect of companionship, unjust treatment, or conduct that

causes harm to the wife. These variations primarily concern the available legal remedies rather than the recognition of husbandly misconduct itself.

The normative construction of nusyuz in Islamic legal sources is summarized in Table 1.

Table 1. Normative Construction of Nusyuz in Islamic Legal Sources

| Legal Source   | Subject of Nusyuz | Indicators                             | Legal Response                           |
|----------------|-------------------|----------------------------------------|------------------------------------------|
| Qur'an 4:34    | Wife              | Refusal to fulfill marital obligations | Admonition, separation, reconciliation   |
| Qur'an 4:128   | Husband           | Neglect of marital responsibilities    | Negotiation and peaceful settlement      |
| Hanafi School  | Husband and Wife  | Violation of reciprocal obligations    | Restoration of marital harmony           |
| Maliki School  | Husband and Wife  | Conduct causing marital discord        | Reconciliation and judicial intervention |
| Shafi'i School | Husband and wife  | Persistent neglect of obligations      | Corrective and reconciliatory measures   |
| Hanbali School | Husband and wife  | Actions disrupting family stability    | Restoration of marital relations         |

Source: Authors' elaboration based on Qur'an 4:34, Qur'an 4:128, and classical Islamic jurisprudence.

As presented in Table 1, Islamic legal sources consistently associate nusyuz with the fulfillment of reciprocal obligations within marriage. Both Qur'anic provisions and classical juristic opinions acknowledge that marital misconduct may originate from either spouse. Therefore, the concept of nusyuz should be understood as a reciprocal condition arising from the unjustified failure of either husband or wife to fulfill marital obligations, thereby disrupting family harmony and undermining the objectives of marriage in Islamic law.

## 2. The Regulation of Nusyuz under Indonesian Positive Law

The examination of Indonesian positive law reveals that the regulation of nusyuz is primarily linked to provisions governing the rights and obligations of spouses. Although Law Number 1 of 1974 on Marriage does not explicitly use the term nusyuz, Articles 30 to 34 establish reciprocal responsibilities between husbands and wives, including obligations regarding family welfare, mutual respect, and household harmony.

More specific provisions are contained in the Compilation of Islamic Law (Kompilasi Hukum Islam). Article 80 regulates the husband's obligations to provide maintenance, protection, and financial support. Article 83 outlines the wife's responsibilities in preserving family welfare and maintaining harmonious domestic relations. Furthermore, Article 84 stipulates that a wife who is declared nusyuz is not entitled to maintenance during the period in which the conduct occurs.

In addition, Article 34 of Law Number 1 of 1974 concerning Marriage establishes reciprocal rights and obligations between husbands and wives. Paragraph (1) stipulates that a husband is obliged to protect his wife and provide all necessities of household life according to his ability, while paragraph (2) requires the wife to manage household affairs properly. Although the provision does not explicitly employ the term *nusyuz*, it provides a legal basis for assessing whether either spouse has failed to fulfill marital responsibilities. From a contextual perspective, Article 34 may serve as a normative foundation for recognizing husbandly *nusyuz* in Indonesian positive law because the provision imposes legal duties on both spouses rather than exclusively on wives. Consequently, violations of these obligations should be evaluated through the same principles of reciprocity and legal responsibility that underlie the concept of *\*nusyuz\** in Islamic legal sources.

The findings demonstrate that Indonesian positive law formally recognizes *nusyuz* through the Compilation of Islamic Law and associates it with the legal consequences arising from marital obligations. However, the legislation does not provide comprehensive statutory criteria for determining when conduct may be classified as *nusyuz*. Consequently, the assessment of *nusyuz* largely depends on judicial interpretation and the evaluation of the facts presented in each case. To further illustrate the differences between Islamic legal sources and Indonesian positive law, the findings are summarized in Table 2.

Table 2. Comparison of the Concept of *Nusyuz* in Islamic Legal Sources and Indonesian Positive Law

| Subject of <i>nusyuz</i> | Islamic Legal Sources          | Islamic Legal Sources                        |
|--------------------------|--------------------------------|----------------------------------------------|
| Subject of <i>nusyuz</i> | Husband and wife               | Primarily wife<br>Husband                    |
| Legal basis              | Qur'an 4:34 and Qur'an 4:128   | Article 84 KHI                               |
| Orientation              | Reciprocal obligations         | Consequences of wife's <i>nusyuz</i>         |
| Objective                | Preservation of family harmony | Regulation of marital rights and obligations |
| Legal consequences       | Reconciliation and settlement  | Suspension of maintenance rights             |

Source: Authors' elaboration based on Qur'an 4:34, Qur'an 4:128, Law Number 1 of 1974, and the Compilation of Islamic Law.

Table 2 indicates that while Islamic legal sources recognize *nusyuz* as a reciprocal concept applicable to both spouses, Indonesian positive law primarily regulates the legal consequences of a wife's *nusyuz*. This distinction constitutes one of the principal findings of the present study.

### 3. Judicial Findings in Religious Court Decision Number 146/Pdt.G/2021/PA.Pdlg

The examination of Religious Court Decision Number 146/Pdt.G/2021/PA.Pdlg provides insight into the practical application of *nusyuz* in judicial proceedings. The

court assessed witness testimony, documentary evidence, and factual circumstances surrounding the marital dispute. Particular attention was paid to evaluating whether the conduct attributed to the parties met the legal elements necessary to establish nusyuz.

The findings indicate that the determination of nusyuz involved both normative and evidentiary considerations. In addition to referring to statutory provisions, the court examined the parties' behavior, the chronology of the marital conflict, and the extent to which the parties had fulfilled their marital obligations. The judicial assessment, therefore, extended beyond the formal wording of legal provisions and incorporated the factual circumstances surrounding the dispute.

A summary of the court's findings is presented in Table 3.

Table 3. Judicial Findings in Decision Number 146/Pdt.G/2021/PA.Pdlg

| Evidence examined      | Findings                                                                    |
|------------------------|-----------------------------------------------------------------------------|
| Nature of dispute      | Marital conflict involving allegations of nusyuz                            |
| Evidence examined      | Witness testimony and documentary evidence                                  |
| Legal basis applied    | Compilation of Islamic Law and procedural law                               |
| Judicial consideration | Evaluation of marital obligations and conduct of the parties                |
| Determination          | Assessment of whether the alleged conduct constituted <i>nusyuz</i>         |
| Legal significance     | Demonstrates the role of judicial interpretation in applying Article 84 KHI |

Source: Authors' elaboration based on Religious Court Decision Number 146/Pdt.G/2021/PA.Pdlg.

The findings reveal that judicial interpretation plays a significant role in determining the existence and legal consequences of nusyuz. The court's assessment was influenced not only by statutory provisions but also by the broader factual context of the marital relationship.

#### 4. Summary of Findings

The examination of Islamic legal sources, Indonesian positive law, and judicial practice reveals three principal findings. First, Islamic legal sources recognize nusyuz as a reciprocal concept that may be attributed to either spouse.

Second, Indonesian positive law primarily regulates the legal consequences of a wife's nusyuz through Article 84 of the Compilation of Islamic Law. Third, judicial determination of nusyuz depends not only on statutory provisions but also on the court's interpretation of factual circumstances and evidentiary findings.

Taken together, these findings demonstrate differences between the broader conception of nusyuz found in Islamic legal sources and its formulation within Indonesian positive law. They further show that judicial practice occupies an important



position in determining the practical application of nusyuz within the Indonesian Islamic family law system.

## DISCUSSION

### 1. The Limitations of the Existing Legal Construction of Nusyuz

The findings reveal a significant discrepancy between the broader conception of nusyuz found in Islamic legal sources and its formulation within Indonesian positive law. While the Qur'an recognizes the possibility of nusyuz being committed by both spouses, Article 84 of the Compilation of Islamic Law primarily regulates the legal consequences of a wife's nusyuz. This discrepancy suggests that the contemporary legal framework does not fully reflect the reciprocal character of marital obligations recognized in Islamic legal doctrine.

The asymmetrical formulation of Article 84 has important implications for the administration of justice in family law disputes. By explicitly regulating the legal consequences of a wife's nusyuz while remaining largely silent regarding comparable conduct by husbands, the provision creates an imbalance in the legal treatment of marital misconduct.

Such an approach may inadvertently reinforce the perception that responsibility for maintaining family harmony rests predominantly upon wives, despite the reciprocal obligations imposed upon both spouses under Islamic teachings and Indonesian marriage law.

This finding is consistent with previous studies that have questioned the gendered orientation of nusyuz regulation in the Compilation of Islamic Law. Nurlia et al. (2018) argued that husbands may also engage in conduct constituting nusyuz, particularly through neglect of financial, emotional, and moral responsibilities. Similarly, Putra and Sumbulah (2020) observed that the existing formulation of Article 84 inadequately accommodates the reciprocal nature of marital obligations and may therefore produce unequal legal consequences.

The absence of detailed statutory criteria further contributes to legal uncertainty. As demonstrated in Religious Court Decision Number 146/Pdt.G/2021/PA.In Pdlg, judicial determination of nusyuz frequently depends on the interpretation of factual circumstances rather than on clear legislative guidance. While judicial discretion is necessary in resolving family disputes, excessive reliance on subjective interpretation may result in inconsistent application of the law across different cases. Consequently, the existing legal framework requires a more comprehensive understanding of nusyuz that reflects both doctrinal developments and contemporary legal principles.

### 2. Legal Equality and the Reciprocal Nature of Marital Obligations

The findings also highlight the relevance of legal equality in evaluating the contemporary application of nusyuz. Equality before the law constitutes a fundamental principle of the Indonesian legal system and is reflected in constitutional guarantees as well as Law Number 48 of 2009 concerning Judicial Power. In family law, this principle

requires that husbands and wives be treated as equal legal subjects with equivalent rights and responsibilities.

From this perspective, the determination of nusyuz should not be confined to the conduct of wives alone. Marriage establishes a reciprocal legal relationship in which both spouses are required to fulfill obligations aimed at preserving family welfare and domestic harmony. Consequently, conduct that undermines these objectives may originate from either spouse and should therefore be assessed according to equivalent legal standards.

Contemporary scholarship increasingly supports this understanding. Gender-sensitive interpretations of Islamic family law emphasize that legal norms should be applied in ways that promote fairness and prevent discrimination (Mufidah, 2019; Hosen, 2022). Such interpretations do not seek to eliminate the institution of nusyuz but rather to ensure that its application reflects the reciprocal nature of marital rights and obligations.

The judicial findings examined in this study further support this argument. The court's assessment was not limited to formal allegations but involved an evaluation of the broader circumstances surrounding the dispute. This approach suggests that judicial practice has already begun to move beyond rigid interpretations of nusyuz and toward a more contextual examination of marital conduct. Nevertheless, the absence of explicit statutory recognition of husbandly nusyuz continues to create doctrinal ambiguity and to limit the realization of substantive equality in family law adjudication.

Accordingly, the principle of legal equality requires a broader interpretation of nusyuz that focuses on the fulfillment of marital obligations rather than the gender of the party accused of misconduct. Such an approach would provide a more balanced framework for resolving family disputes and strengthen legal protection for both husbands and wives.

### **3. Reconstructing Nusyuz through Maqāṣid al-Sharī'ah**

The reinterpretation of nusyuz may be further justified through the perspective of maqāṣid al-sharī'ah. Contemporary Islamic legal thought increasingly emphasizes that legal norms should be understood in light of the objectives of Islamic law rather than solely through literal interpretations of individual provisions (Auda, 2008). These objectives include the protection of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-'aql), lineage (hifz al-nasl), property (hifz al-mal), and, according to many contemporary scholars, human dignity and justice.

Within this framework, the purpose of regulating nusyuz is not merely to impose sanctions upon a spouse who fails to fulfill marital obligations. Rather, the concept functions as a legal mechanism intended to preserve family stability, protect the rights of both spouses, and facilitate the restoration of harmonious marital relations. Therefore, interpretations that focus exclusively on the punishment of wives risk obscuring the broader objectives underlying Islamic family law.

The findings of this study indicate that the reciprocal character of nusyuz recognized in Qur'anic sources is more consistent with the objectives of maqāṣid al-sharī'ah than the narrower formulation reflected in Article 84 of the Compilation of

Islamic Law. A contextual interpretation of Qur'an 4:34 and Qur'an 4:128 demonstrates that both provisions seek to address marital discord and preserve family harmony rather than impose a permanent legal disadvantage on one spouse.

Based on this perspective, this article proposes that nusyuz be reconstructed as a reciprocal legal condition arising from the unjustified failure of either spouse to fulfill marital obligations. Such reconstruction does not alter the fundamental principles of Islamic family law; rather, it seeks to align its contemporary application with the values of justice, equality, and human dignity that constitute the core objectives of Islamic law.

Accordingly, a more balanced interpretation of nusyuz would contribute to greater legal certainty, stronger protection of marital rights, and a more equitable framework for resolving family disputes within the Indonesian Islamic legal system.

#### **4. Accommodating Husbandly Nusyuz within Indonesian Positive Law**

The findings indicate that Indonesian positive law has not yet explicitly regulated husbandly nusyuz despite its recognition within Islamic legal sources. Therefore, future reform of the Compilation of Islamic Law should consider introducing provisions that define husbandly nusyuz, establish its legal indicators, and regulate corresponding legal consequences. Such provisions may include the wife's right to seek judicial divorce, the right to claim maintenance despite marital conflict caused by the husband, and judicial remedies compelling the fulfillment of marital obligations. These reforms would strengthen legal certainty while maintaining consistency with Islamic legal principles and constitutional guarantees of equality before the law.

### **CONCLUSIONS**

This study concludes that the concept of nusyuz in Islamic legal sources is inherently reciprocal, as it may arise from either spouse's failure to fulfill marital obligations. Qur'an 4:34 and Qur'an 4:128 collectively demonstrate that marital misconduct is not exclusively attributable to wives but may also originate from husbands through neglect, indifference, unfair treatment, or failure to fulfill marital responsibilities. Classical and contemporary interpretations further confirm that nusyuz should be understood within the broader framework of *mu'āsharah bi al-ma'rūf*, which requires both spouses to maintain marital relationships based on justice, mutual respect, and responsibility.

The study further finds that Indonesian positive law, particularly the Compilation of Islamic Law (KHI), primarily regulates the legal consequences of a wife's nusyuz through Article 84, while providing no explicit and equivalent regulation concerning husbandly nusyuz. Although Article 34 of Law Number 1 of 1974 concerning Marriage establishes reciprocal rights and obligations between spouses, the absence of specific provisions governing husbandly nusyuz has created normative asymmetry and legal uncertainty in the protection of marital rights. Consequently, judicial interpretation continues to play a significant role in determining whether a husband's conduct constitutes a violation of marital obligations.

Based on the perspectives of legal equality and *maqāṣid al-sharī'ah*, this article argues that nusyuz should be reinterpreted as a reciprocal legal concept applicable to both husbands and wives. Such reinterpretation is consistent with the objectives of

Islamic law, which emphasize justice, human dignity, family welfare, and the protection of individual rights within marriage. Recognizing husbandly nusyuz does not contradict the principles of Islamic family law; rather, it strengthens accountability and reinforces the reciprocal nature of marital obligations.

Accordingly, this study recommends reforming the Compilation of Islamic Law by introducing explicit provisions on husbandly nusyuz, including clear legal criteria, evidentiary mechanisms, and corresponding legal consequences. Such consequences may include the wife's right to seek judicial divorce (*cerai gugat*), continued entitlement to maintenance where the husband has neglected his obligations, and judicial remedies compelling the fulfillment of marital responsibilities. These reforms would contribute to greater legal certainty, substantive equality, and a more balanced application of Islamic family law in Indonesia.

Future studies are encouraged to examine a broader range of Religious Court decisions in order to assess the consistency of judicial interpretations concerning husbandly nusyuz and to explore their implications for the ongoing development of Islamic family law and gender justice in Indonesia

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