

Legal Determination of Husband's and Wife's Disobedience in Shia Law and the Islamic Law Compilation: A Comparative Study

Amirul Bakhri
UIN Walisongo Semarang, Indonesia
amirulbakhri86@gmail.com

Imam Taufiq
UIN Walisongo Semarang, Indonesia

Abstract

Disobedience between husband and wife (*nusyuz*) in marriage remains a problem in contemporary Muslim society today. The theoretical argument developed so far is that there are different provisions regarding norms of disobedience between husband and wife in marriage in Islamic society. This research analyzes the problem of disobedience between husband and wife called *nusyuz* by comparing two different laws, namely the Islamic Law Compilation and the Shia Tafsir book by Nashir Makarim al-Syirazi, as the basis for Shia Law in Iran. The selection of these two laws is based on the argument that they have differences regarding the concept of *nusyuz*. The research method takes normative Islamic law. The approach uses a legal synchronization, conceptual, comparative, and historical approach. The research results show that the compilation of Islamic law only regulates the *nusyuz* of wives towards husbands, including punishment for wives, and not vice versa. Meanwhile, Shia law regulates the *nusyuz* carried out by both husband and wife, including punishment for each husband and wife who



commits *nusyuz*. The basis of legal philosophy used in determining Shia law is equality of justice between humans in the law (*murā'āt al-'adālah wa 'adamu tafrīq baina al-nās*), as in the Shia Tafsir book by Nashir Makarim al-Syirazi. Therefore, it is necessary to reinterpret the *nusyuz* law to update Islamic law in the contemporary era.

KEYWORDS *Family Law; Husband and Wife; Legal Findings; Nusyuz*

Abstrak

Ketidaktaatan suami dan istri (*nusyuz*) dalam perkawinan masih menjadi problem masyarakat muslim kontemporer saat ini. Argumentasi teoritis yang selama ini dikembangkan, ada perbedaan ketentuan pada masyarakat muslim tentang norma ketidaktaatan suami dan istri dalam perkawinan. Tulisan ini menganalisis permasalahan ketidaktaatan suami atau istri atau disebut dengan istilah *nusyuz* dengan membandingkan dua hukum yang berbeda yaitu Kompilasi Hukum Islam dan kitab Tafsir Syiah karya Nashir Makarim al-Syirazi, sebagai landasan dari Hukum Syiah di Iran . Pemilihan kedua hukum tersebut dengan argumentasi bahwa, keduanya memiliki perbedaan mengenai konsep *nusyuz*. Metode penelitian menggunakan hukum Islam normatif. Pendekatan menggunakan sinkronisasi hukum, pendekatan konseptual, komparatif dan historis. Hasil penelitian menunjukkan bahwa Kompilasi Hukum Islam hanya mengatur *nusyuz* istri terhadap suami, termasuk hukumannya bagi istri dan tidak sebaliknya. Sedangkan dalam hukum Syiah, mengatur *nusyuz* yang dilakukan baik oleh suami atau istri, termasuk hukuman bagi masing-masing suami dan istri yang melakukan *nusyuz*. Landasan falsafah hukum yang digunakan dalam penentuan hukum Syiah adalah persamaan keadilan antar manusia dalam hukum (*murā'āt al-'adālah wa 'adamu tafrīq baina al-nās*), dalam kitab Tafsir Syiah karya Nashir Makarim al-Syirazi. Oleh karena itu, penafsiran ulang terhadap hukum *nusyuz* seharusnya dilakukan untuk pembaharuan hukum Islam di era kontemporer saat ini.

KATA KUNCI *Hukum Keluarga; Nusyuz; Penemuan Hukum; Suami dan Istri*

Introduction

Historically, when the Prophet Muhammad was still alive, there were no problems regarding the Islamic law establishment.¹ However, when the Prophet Muhammad died and in subsequent developments, if legal issues were not found in the text or were still vague or unclear in the Al-Qur'an and hadith, differences in the legal determination arose.² According to Al-Zuhaili, the difference in legal determination or findings among ulama is regarding the source of law (*maṣḍar al-ḥukm*) used as the basis for legal findings (*istinbāṭ al-ḥukm*). Sources of law agreed upon by the majority of ulama (*muttafaq 'alaihā*), namely: (a) Al-Qur'an (al-kitāb), (b) hadith (*al-Sunnah*), (c) *ijma* ulama (*al-Ijmā'*), and (d) logical theory (*qiyās*).³ There are also sources of law where disagreements still occur, namely: *al-istihsān*, *maṣālih al-mursalah* or *al-istiṣlāḥ*, *al-istiṣhāb*, *al-'urf*, *maẓhab ṣaḥābī*, *syar'u man qablanā*, *al-ẓarā'i'*.⁴ It is distinct from the opinion expressed by Yur and Al-Syirazi, which states that the source of law in legal findings includes *al-Qurān*, *al-Sunnah*, *al- Ijma'*, and *al-'Aql* (mind's ratio).⁵ A different view was stated by Abdullah Saeed, who says that the most suitable in modern times is the *maqāṣid al-syarī'ah* method, which is called a panacea of problems.⁶

Developments from time to time always occur with problems of legal findings, starting from differences in the source of law (*maṣḍar al-ḥukm*) used. There are also differences in the interpretation of legal discovery towards a verse of the *Qurān* carried out by interpreters, making the study

¹ Hunt Janin, and André Kahlmeyer. *Islamic Law: The Sharia From Muhammad's Time To The Present*, (North Carolina: McFarland and Company Inc, Publishers 2015), pp 24-27.

² Noel James Coulson, *A History of Islamic Law* (London: Aldine Transaction, 2011).

³ Wahbah Al-Zuhaili, *Usul Fiqh Al-Islami*, 1st ed. (Damaskus: Dar al-Fikr, 1986).

⁴ Ali jum'ah, *Tarikh Usul Al-Fiqh*, 1st ed. (Cairo: Dar al-Maqtam, 2015).

⁵ Nasir Makarim Shirazi, *Anwar Al-Usul* (Qom Iran: Madrasa al-Imam Ali ibn Abi Talib, 2006).

⁶ Abdullah Saeed, *Interpreting the Quran* (Routledge Taylor And Francis Group, 2005).

of legal discovery interesting to examine in research.⁷ It is because making legal discovery is a profound effort, namely exploring and finding the hidden meaning of a legal issue. Although the study of law discovery (*istinbāt*) and interpretation (*al-tafsīr*) has a very close relationship, this relationship is seen in the more specific meaning of *istinbāt*, namely exploring the hidden and obscure meanings of a problem, rather than the more general meaning of *al-tafsīr*.⁸

Problems with legal provisions also arise in marriage matters. For example, divorce is due to *nusyuz*, or husband and wife disobeying each other. Mies Grijns revealed that around 50% of marriages in Indonesia end in divorce after one to two years of marriage, which is due to *nusyuz*.^{9,10} Several reasons for divorce and the numbers in Indonesia can be seen in the following Table 1:

Table 1. Data on the Causes of Various Types of Divorce in Indonesia

Cause of Divorce	Number of Cases	
	2021	2022
Spousal Abandonment	42.387	39.359
Domestic violence	4.779	4.972
Constant Arguing	279.205	284.169
Financial Problems	113.343	110.939
Adultery	449	690
Alcohol Abuse	1.779	1.781
Drug Abuse	349	383
Gambling	993	1.191
Incarceration	1.392	1.447
Polygamy	893	874

⁷ Abd Ilah Al-Hauri, "Asbab Al-Ikhtilaf Al-Mufassirin Fi Tafsir Ayat Al-Ahkam" (Cairo university, 2001).

⁸ Al-Hauri.

⁹ Mies Grijns, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns" 5, no. March (2018): 453–66, <https://doi.org/10.1017/als.2018.9>.

¹⁰ Lawal Mohammed Bani and Hamza A Pate, "The Role of Spouses under Islamic Family Law," *International Affairs and Global Strategy* 37 (2015): 104–11.

Apostate	1.447	1.635
Forced Marriage	365	377
Disability	360	309
Others	2	0
Total	447.743	448.126

Source: Republic of Indonesia Central Statistics Bureau, 2023

Based on this data, the highest causes of divorce are spousal abandonment, financial problems, and constant arguing. These causes are several types of *nusyuz* behavior in the domestic relationship between husband and wife. This *nusyuz* behavior occurs due to a lack of understanding between the rights and obligations of husband and wife and always prioritizing one's ego in household matters.¹¹

In Indonesia, *nusyuz* is regulated in the Compilation of Islamic Law known as the Indonesian school of Islamic jurisprudence.¹² According to Article 80 and Article 84 of the Compilation of Islamic Law, if a wife does *nusyuz*, the punishment she receives is not receiving living costs from her husband. A husband's obligations towards his wife will re-apply after the wife does not carry out *nusyuz*. Meanwhile, *nusyuz* behavior carried out by husbands towards wives is not regulated in the Compilation of Islamic Law and other regulations. It means that the punishment of *nusyuz* only applies to wives and does not apply to husbands. It is contrary to Article 79, which states that the rights and position of the wife are balanced with the rights and position of the husband in domestic life and social life together in society. Equality between husband and wife has also been recognized by the *Qurān* as the primary reference source in Islamic law.¹³

According to Al-Syirazi, unlike the Compilation of Islamic Law, the concept of *nusyuz*, when *nusyuz* occurs within the family, it is not only the

¹¹ Bani and Pate.

¹² Mahkamah Agung RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, Perpustakaan Nasional RI : Data Katalog Dalam Terbitan, vol. 1, 2011.

¹³ Ahmad Syafii Maarif, *ISLAM, HUMANITY AND THE INDONESIAN IDENTITY: Reflections on History*, 2018.

wife who commits *nusyuz*, who has the potential to receive punishment, but the husband also receives punishment for his *nusyuz* actions.¹⁴ The punishment can be imposed on perpetrators of *nusyuz* husband and wife because, in the Iranian legal system, there are religious judges who serve in revolutionary courts.¹⁵ The difference between the concept of *nusyuz* in the Compilation of Islamic Law and Al-Syirazi is an interesting subject for discussion as a comparison to reinterpret *nusyuz* norms in the Compilation of Islamic Law.

Several studies have been carried out previously regarding the thoughts of Nashir Makarim al-Syirazi, for example, research by Uqail Abbas Raikan¹⁶, Fadhil Abd al-Abbas al-Naimi¹⁷, and Haidar Ali Husein¹⁸. However, previous research is different from current research, which focuses more on Al-Syirazi's thoughts regarding the *nusyuz* concept. On the other hand, no previous research regarding the comparison of the *nusyuz* concept between the Compilation of Islamic Law and Al-Syirazi's *nusyuz* concept has been discovered. However, there are numerous researches on criticism of the *nusyuz* concept in the Compilation of Islamic Law. For example, researches were conducted by Alamsyah, Putra, Ramadhan, Sundari and many more.^{21, 22, 23, 24}

This research analyzes the problem of *nusyuz* in the Compilation of Islamic Law compared to the Shia Tafsir book from Nashir Makarim al-Syirazi. The discussion starts with the book of Syi'ah, the legal determination concept of *nusyuz* by Al-Syirazi, Al-Shirazi's legal findings regarding the concept of husband-wife disobedience, and the comparison of

¹⁴ Nasir Makarim Shirazi, *Al-Amsal Fi Tafsir Kitabillah Al-Munzal Ma'a Tahdzib Jadid*, 1st ed. (Beirut, Lebanon: Muassah Alaami Library, 2013).

¹⁵ Reza Banakar and Keyvan Ziaee, "The Life of the Law in the Islamic Republic of Iran," *Iranian Studies* 51, no. 5 (2018): 717–46, <https://doi.org/10.1080/00210862.2018.1467266>.

¹⁶ Uqail Abbas Raikan, "المعاد في القرآن الكريم تفسير الامثل انموذجا," *Journal of the College of Basic Education* 22, no. 94 (2016): 141–67.

¹⁷ Fadhil Abd al-Abbas Al-Na'imi, "القيم الحضارية السياسية في تفسير الامثل," *Journal University of Babilon* 25, no. 1 (2017): 78–100.

¹⁸ Haidar Ali Husein, "الجوانب النفسية في تفسير الامثل للشيخ الشيرازي," *Arab Science Heritage Journal* 19, no. 4 (2022): 97–140, <https://doi.org/10.54721/jrashc.19.4.853>.

legal determination about *Nusyuz* in Shia Law and the Compilation of Islamic Law to get a comprehensive answer to the focus of the problem.

Methods

This normative Islamic juridical research uses a conceptual, comparative, and historical approach to discover *nusyuz* law contained in the Compilation of Islamic Law (Kompilasi Hukum Islam-KHI) and Shia law. In addition, this research uses a legal synchronization approach, which is used to examine legal principles and reconstruct the law contained in *nusyuz* cases. The analysis technique uses literal reading analysis as well as interpretive and reflexive reading analysis.¹⁹ The literal reading analysis is conducted by describing based on the data as it is (what exists). In this case, the legal rules in the Compilation of Islamic Law and legal interpretations from the Shia Book will be explained. Then, an interpretive and reflexive reading analysis will be carried out to interpret and compare the similarities and differences in *Nusyuz* law between the Compilation of Islamic Law and the Book of Shia *Tafsir*.

Discussion

The Book of Shia Tafsir

One of the contemporary tafsir books, published in 2013, which has an *al-'adab al-ijtimā'ī* (social community) style and contains new laws that answer current problems and complexities among Shia is the book of tafsir *al-Amṣal fī Tafsīr Kitābillāh al-Munazzal Ma'a Tahḍīb Jadid*.²⁰ This book is the work of Nashir Makarim al-Syirazi, who is an interpreter and expert

¹⁹ Edward J Eberle, "The Methodology of Comparative Law," *Roger Williams University Law Review* 16, no. 1 (2011): 1–23.

²⁰ Muhammad Hadi Ma'rifat, *Al-Tafsir Wa Al-Mufasssirun Fi Tsaubihi Al-Qasyib*, 2nd ed. (Qom, Iran: al-Jamiah al-Radhawiyah al-Ulum al-Islamiyyah, 1425).

on Islamic law as well as *marja' al-aḥkām wa al-syarī'ah* (the Shari'a law source) in the city of Qom and was born on 22 Sha'ban 1345 Hijri in the city of Shiraz, southern Iran.²¹

The commentary book of *al-Amsal* is different from other commentary books. The purpose of writing (*ahdāf*) this book is to provide a nutritious intake that is useful for the present time (*jail al-'āsir*), equipped with new laws that are urgently needed as answers to today's problems and complexities.²² In the opening of the commentary book of *al-Amsal*, Nashir Makarim states the purpose of writing this book of commentaries as follows:²³

“Obviously, in the future of this era, there will be various problems that require a great deal of understanding. The first step in solving this problem is to return to past scientific discourse and past Islamic thought by explaining it in contemporary language and prioritizing its solution using contemporary linguistic conditions. Another step is to make legal findings for solutions to problems of this era from sources of Islamic law as a whole. With this aim, the writing of *al-Amsal* was written.”

Legal Determination Concept of *Nusyuz* by Nashir Makarim al-Syirazi

Law determination (*istinbāt*) in Arabic is linguistically the *maṣḍar* of the *istifāl* form, which comes from the word *al-nabāt* (to expel).²⁴ Meanwhile, in terminology, *istinbāt* is an attempt to extract the hidden meaning of the propositions to obtain wisdom and benefit.²⁵ The term *istinbāt* is almost similar to the term *ijtihād*, as explained by Abdul Rahman

²¹ Muhammed Ali Iyazi, *Al-Tafsir Wa Al-Mufasssirun Hayatuhum Wa Manhajuhum*, 1st ed. (Teheran, Iran: Wuzarat al-Tsaqafah wa al-Irsyad al-Islamiyyah, 1386).

²² Ma'rifat, *Al-Tafsir Wa Al-Mufasssirun Fi Tsaubih Al-Qasyib*.

²³ Nasir Makarim Shirazi, *Al-Amsal Fi Tafsir Kitabillah Al-Munzal Ma'a Tahdzib Jadid*.

²⁴ Louwis Ma'luf, 29, *المنجد في اللغة و الأعلام الجزء الأول*, 3rd ed. (Beirut, Lebanon: Dar al-Masyraq, 2008).

²⁵ Nasir Makarim Shirazi, *Al-Amsal Fi Tafsir Kitabillah Al-Munzal Ma'a Tahdzib Jadid*.

elBelahi, which defines that the meaning of *ijtihād* is the exertion of serious efforts to discover legal principles and rules regarding legal sources that are confidential (in the secret texts of the source) or that are prejudiced (*ẓanni*).²⁶ Although these two terms have the same side, namely an attempt to reveal the meaning of secret or still hidden propositions, the scope of *istinbāṭ* includes broad matters, namely propositions that are *qaṭ'i* and *ẓanni*, different in the scope of *ijtihād*, which is *ẓanni*.²⁷

If you look at history, the theory of law determination (*istinbāṭ al-ḥukm*) experienced a period of development with the emergence of the book *al-Risālah* by al-Imam al-Shafi'i (d. 204 H/ 820 AD).²⁸ Then, three methods were developed in the determination process production, namely *al-mutakallimūn*, *al-fuqahā'* or *al-ḥanafīyyah*, and *al-jam'u bainahuma* methods. This *al-mutakallimūn* method in establishing its law is based on the theoretical logic of the arguments without looking at the views of certain madams or their opinions on existing legal norms. Adherents of this method include *al-Mālikiyyah*, *al-Syāfi'iyyah*, *al-Zaidiyyah*, *al-Imāmiyyah*, and *al-Mu'tazilah*. At the same time, the *al-fuqahā'* method represents Islamic law rules or those produced by the *fuqahā'* priests in determining law enforcement. Then, these rules are used to establish laws for new problems that occur. There was also a period of subsequent development of the *al-jam'u bainahuma* method, which combined the *al-mutakallimūn* and the *al-fuqahā'* methods.²⁹

Of the three methods, the *fuqahā'* use a variety of legal bases in enacting their law. *Mazhāb* al-Ḥanafīyyah is based on *al-Kitāb*, *al-Sunnah*, *qaul al-ṣaḥābī*, *qiyās*, *istiḥsān*, and *'urf* in its legal determination. *Mazhāb*

²⁶ Abdulrahman M A Albelahi et al., "The Theory of Interpretation in Solving Contemporary Legal Issues : With A Focus on the Instrument of Ijtihad" 05056 (2018): 1–8.

²⁷ Musaid ibn Sulaiman Al-Thayyar, 2, *مفهوم التفسير والتأويل والاستنباط والتدبير والمفسر*, 2nd ed. (Riyad, Saudi Arabia: Dar Ibn al-Jauzi, 1427).

²⁸ David Smock, "Ijtihad: Reinterpreting Islamic Principles for the Twenty-First Century," *JSTOR* 1 (2004): 7.

²⁹ Wael B Hallaq, *A HISTORY OF ISLAMIC LEGAL THEORIES*, 1st ed. (Cambridge, United Kingdom: United Kingdom at the University Press, 1997).

al-Mālikiyyah is based on the *Qurān*, *al-sunnah*, *Ijmā*, *Ijmā ahl al-madīnah*, *qiyās*, *qaul al-ṣaḥābī*, *al-maṣlaḥah al-mursalāh*, *al-'urf*, *sadd al-ẓarā'i*, *al-istiṣḥāb*, and *al-istiḥsān*. *Mazhāb al-Syāfi'iyah* is based on *al-Kitāb*, *al-sunnah*, *Ijmā*, *qaul al-ṣaḥābī lā na'lam mukhālif minhum*, *al-qiyās*, *istiḥsān bi ghair al-hawā*, and *al-maṣāliḥ al-mursalāh*. *Mazhāb al-Ḥanābilah* is based on *al-Kitāb*, *al-sunnah*, *mā aftā al-ṣaḥābī lā na'lam mukhālif minhum*, *al-qiyās*, *al-maṣlaḥah al-mursalāh*, *sadd al-ẓarā'i*, and *al-istiṣḥāb*. *Mazhāb al-Zaidiyyah* is based on *al-Kitāb*, *al-sunnah*, *Ijmā*, *al-qiyās*, *al-maṣāliḥ al-mursalāh*, *al-istiṣḥāb*, *al-istiḥsān*, *syar'u man qablana*, and *al-'aql*. And *Mazhāb Syī'ah al-Imāmiyyah*³⁰ is based on the *Qurān*, *al-sunnah*, *Ijmā*, and *al-'aql* and does not consider *al-qiyās*.³¹

The subsequent development of the theory of establishing Islamic law in the 8th century coincided with the emergence of the *maqāṣid al-syarī'ah* legal theory produced by al-Syathibi with his work *al-Muwāfaqāt*.³² Then, until the modern era, the law-making theory of *dhawābiḥ al-maṣlaḥat* by Sa'id Ramadhan al-Buthi emerged, which gives a yellow light warning against the use of the *maqāṣid al-syarī'ah* method in determining law because it is considered possible without limitations.³³

As a *mufassir* and *fuqahā'* expert, Nashir Makarim al-Syirazi makes his legal determinations based on the *Qurān*, *al-Sunnah*, *al-ijmā'*, and *al-'Aql* as done by *Mazhāb Syī'ah al-Imāmiyyah*. Nashir Makarim explained that apart from the four Imams already mentioned, such as *al-istiḥsān*, *maṣāliḥ al-mursalāh* or *al-istiṣḥāb*, *al-istiṣḥāb*, *al-'urf* and the like, that is only part of *ḥujjah* or the legal basis for determination, which includes

³⁰ Majdi ibn Audh Al-Jarihi, 1, *نهج الشيعة الإمامية الاثني عشرية في تفسير القرآن الكريم*, 1st ed. (Qom, Iran, 2009).

³¹ Qahtan Abd al-Rahman Al-Duri, *Manahij Al-Fuqaha Fi Istinbat Al-Ahkam Wa Asbab Ikhtilafihim*, 1st ed. (Beirut, Lebanon: Books Publisher, 2015).

³² Abu Ishaq Al-Syathibi, *Kitab Al-Muwafaqat Li Abi Ishaq Al-Syathibi*, ed. al-Husain Ait Said, 1st ed. (Maghrib: Mansyurat al-Basyir Binathiyah, 2017).

³³ Ramadhan Al-Buthi, *Dhowabith Maslahah Fi Syariah Al-Islamiyah* (Muassasah al-Risalah, 2018).

reason (*al-'Aql*), then there is no need to use arguments other than the four sources of law.³⁴

Nashir Makarim al-Syirazi stated that even though the determination of Islamic law has experienced such a dynamic development from time to time, do not immediately take the arguments for the determination of the law that has been produced. It is because the jurists and priests have the ability to take with the independent principles of Islamic law (*uṣūl al-fiqh*) arguments in formulating *fiqh* issues.³⁵ The principles of *uṣūl al-fiqh* Nashir Makarim is contained in his book *al-Qawā'id al-Fiqhiyyah* such as *qā'idah lā ḍarara*, *qā'idah al-ṣiḥḥah*, *qā'idah lā ḥaraj*, *qā'idah al-farāgh wa al-tajāwuz*, *qā'idah al-yad*, *qā'idah al-qur'ah*, *qā'idah al-taqiyyah*, *qā'idah lā tu'ād*, *qā'idah al-maisūr*, *qā'idah al-tasalluṭ*, *qā'idah ḥujjiyyah al-bayyinah*, *qā'idah hujjiyyah khabar al-wāhid fī al-mauḍū'āt*, *qā'idah hujjiyyah qaul ḡ al-yad*, *qā'idah al-ḥiyāzah*, *qā'idah al-sabaq*, *qā'idah al-iltizām*, *qā'idah al-jubb*, *qā'idah al-ittilāf*, *qā'idah mā yaḍmanu wa mā lā yaḍmanu*, *qā'idah ḍimān al-yad*, *qā'idah 'adamu ḍimān al-amīn*, *qā'idah al-ghurūr*, *qā'idah al-kharāj bi al-ḍimān*, *qā'idah al-luzūm fī al-mu'āmalāt*, *qā'idah al-bayyinah wa al-yamīn*, *qā'idah talaf al-mabī' qabla qabḍihi*, *qā'idah tabī'at al-'uqūd li al-quṣūd*, *qā'idah al-talaf fī zamān al-khiyār*, *qā'idah al-iqrār wa man malaka*, *qā'idah al-tahārah*.⁴² These various methods were used by Nashir Makarim al-Syirazi to produce the Islamic law determination, including the disobedience problem.

The meaning of *nusyuz* in Arabic comes from the word *al-nasyuz*, which means *al-murtafi' min al-arḍ* (a high place from a land).³⁶ Meanwhile, in terms, Nashir Makarim al-Syirazi states that *nusyuz* is not doing obedience and not carrying out his obligations either to the husband

³⁴ Nasir Makarim Shirazi, *Anwar Al-Usul*.

³⁵ Nasir Makarim Shirazi, 2, *طريق الوصول إلى مهتمات علم الأصول (أصول الفقه بأسلوب حديث و آراء جديدة)*, ed. (Qom, Iran: al-Imam Ali ibn Abi Thalib, 1432).

³⁶ Nasir Makarim Shirazi, 1, 3, *انوار الفقاهة في أحكام العترة الطاهرة (كتاب النكاح -) الشيخ ناصر مكارم الشيرازي*, ed. (Qom, Iran: al-Imam Ali ibn Abi Thalib, 1432).

or to the wife.³⁷ This *nusyuz* behavior is contained in several verses of the Qurān, namely in *surah al-Nisā'* verse 34 explaining the wife's *nusyuz*, then in *al-Nisā'* verse 128 regarding the husband's *nusyuz*, and in *al-Nisā'* verse 35 regarding both *nusyuz* (husband and wife).³⁸

In making legal decisions regarding *nusyuz* issues, Nashir Makarim al-Syirazi stated that the first step when *nusyuz* is committed by a wife or husband is to put forward advice (*al-mau'izah*) and peace (*al-ṣulḥ*) for the good of husband and wife. When the advice and peace process failed, and the *nusyuz* continued to occur either by the husband or wife, Nashir Makarim also gave legal determination that either the husband or the wife could be punished for both. This legal determination of the *nusyuz* behavior of husband and wife is different from contemporary *mufassir* and *fuqahā'*, who view that only the wife must be punished when carrying out *nusyuz*.³⁹

Prioritizing advice and peace in punishing *nusyuz* behavior by either husband or wife is carried out by Nashir Makarim when understanding *surah al-Nisā'* verse 128 and verse 34. When *nusyuz* occurs between husband and wife, the wife should try to make peace with her husband to keep the husband-wife relationship from rifting. Because peace, according to Nashir Makarim, is the backbone of the first solution to every problem and conflict.⁴⁰ Likewise, when a wife's *nusyuz* occurs to her husband, the husband should prioritize *al-mau'izah* (advice). It is not permissible for the husband to choose who will take precedence in carrying out the penance of the wife's *nusyuz* behavior.⁴¹

When the advice (*al-mau'izah*) and peace (*al-ṣulḥ*) are not successful, then the second *al-hijr* (leaving the bed) and third *al-ḍarab* (beating) are

³⁷ Nasir Makarim Shirazi.

³⁸ Ibnu Izzah, "NUSYUZ AND ITS SOLUTIONS IN COMPILATION OF ISLAMIC LAW FROM THE PERSPECTIVE OF THE AL-QURAN" 4, no. 1 (n.d.): 31–48.

³⁹ Wahbah Al-Zuhaili, *Al-Tafsir Al-Munir Fi Al-Aqidah Wa Al-Syariah Wa Al-Manhaj* 3, 10th ed. (Damaskus, Suriah: Dar al-Fikr, 2009).

⁴⁰ Nasir Makarim Shirazi, *Al-Amsal Fi Tafsir Kitabillah Al-Munzal Ma'a Tahdzib Jadid*.

⁴¹ Nasir Makarim Shirazi, انوار الفقهة في أحكام العترة الطاهرة (كتاب النكاح) - الشيخ ناصر مكارم الشيرازي 3.

performed. Furthermore, Nashir Makarim states that this punished should be intended for improvement (*al-iṣlāḥ*). Not as an arena for revenge, or giving pain. However, when a peaceful punishment of *nusyuz*'s behavior and advice results in the return of the husband or wife in carrying out their obligations both as the editor of the verses of the *Qurān fa in atha'nakum fa lā tabghū 'alaihinna sabīlā*, then there is no reason for the husband or wife to do the second punishment is *al-hijr* and the third is *al-ḍarab*.⁴²

The basis for the law determination by Nashir Makarim in prioritizing the peace process and advice as the first solution to punishment for overcoming *nusyuz* problems is based on the editorial of *surah al-Nisā'* verse 128, namely the sentence, *al-ṣūlḥu khoir* which is for the *nusyuz* husband. As for the *nusyuz* wife, it is based on the editorial of *surah al-Nisā'* verse 34 namely *fa'idhūhunna wahjurūhunna fil-madlāji'i wadlribūhunna* by interpreting it as a phasing rule or sequentially with the first step namely *al-mau'izah*, not the rule of sorting and selecting the punishment process.⁴³

Nashir Makarim stated that the *nusyuz* husband's behavior towards his wife will also receive the same punishment as what happened to the *nusyuz* wife's towards her husband when the peace process and advice failed, or the *nusyuz* behavior still occurred. Nashir Makarim mentions this same punishment towards *nusyuz* husband's behavior by quoting a hadith about the story of Imam 'Ali, who gave warnings to husbands who are *nusyuz* in various ways so that husbands return to carrying out their household obligations, even to the point of being warned with his sword.⁴⁴

In carrying out the punishment for the husband's *nusyuz* behavior or wife's *nusyuz* behavior, Nashir Makarim distinguishes between the two *nusyuz* punishments. When *nusyuz* occurs from a wife to a husband, the one who has the obligation to punish the wife is the husband. It is different when there is *nusyuz* of a husband to his wife. Then it is the wife who has

⁴² Nasir Makarim Shirazi.

⁴³ Nasir Makarim Shirazi, 1, 10ج - صفحات القرآن - st ed. (Qom, Iran: al-Imam Ali ibn Abi Thalib, 1426).

⁴⁴ Nasir Makarim Shirazi.

the obligation to punish the husband for the *al-mau'izah* stage (giving advice), and the wife is not allowed to do the second (*al-hijru fī al-maḍajī'*) leaving the bed and third stages (*ḍarb*) beating. However, the court judge (*al-ḥākim al-syar'ī*) will carry out the punishment for the husband's *nusyuz* behavior. This difference can be used as justification for husbands to act arbitrarily on the grounds of punishing their wives, especially the third stage of punishment (*al-ḍarb*), which can harm the wife. It would be fairer, more beneficial, and not harmful, if the punishment of both husband and wife who is *nusyuz* is carried out by a sharia judge, especially concerning the third stage of *nusyuz*.⁴⁵

The steps taken by the wife when the husband was still practicing *nusyuz* after the peace efforts (*al-ṣulḥ*) failed to get the husband to return to carrying out household obligations, namely to complain about the problem to a sharia judge. Shari'a judges then look at the wife's reporting about the husband's *nusyuz* actions. Shari'a judges can also advise husbands to leave their *nusyuz* and return to their household obligations. When the husband refuses, the sharia judge will punish (*ta'zir*) the husband. The judge's punishment is to be advised, separated, or beaten according to the husband's punishment to the *nusyuz* wife in surah al-Nisā' verse 34.⁴⁶

The basis for the legal establishment of Nashir Makarim that the husband's *nusyuz* behavior receives the same punishment as the wife's *nusyuz* is based on the hadith about the story of Imam 'Ali. Then, law determination regarding the process of punishing *nusyuz* occurs after a failure of the remedial process by peaceful means or advice submitted to a sharia judge for *nusyuz* husband to wife based on *lā ḥaraj* rules.⁴⁷ Nashir Makarim gives the view that when the wife carries out the second (*al-hijru fī al-maḍajī'*) and third (*al-ḍarb*) punishments, the wife will experience difficulties if the difficulties are carried out by themselves. Moreover, it is

⁴⁵ Nasir Makarim Shirazi, *Al-Amsal Fi Tafsir Kitabillah Al-Munzal Ma'a Tahdzib Jadid*.

⁴⁶ Nasir Makarim Shirazi, *نفحات القرآن - ج 10*.

⁴⁷ Nasir Makarim Shirazi.

based on the legal philosophy of *murā'āt al-'adālah wa 'adamu tafriq baina al-nās* (paying attention to justice and without distinguishing one from another).⁴⁸

As for the wife's *nusyuz*, the husband can carry out the punishment for the second or third stages. Nevertheless, Nashir Makarim warns that punishment is not intended to hurt the wife as a means of revenge. If so, it will lead to hatred and end in disputes that occur between husband and wife (*syiqāq*), which should not have happened. According to Nashir Makarim, the purpose of punishing *nusyuz* behavior is so that the husband or wife can return to carrying out their obligations in the household. Furthermore, Nashir Makarim reveals that *surah al-Nisā'* verse 34 is a warning of fear and a threat so that married couples do not commit *nusyuz* acts because there are some consequences or punishments must be endured.⁴⁹

Legal Findings of Nashir Makarim Al-Syirazi Regarding the Concept of Husband-Wife Disobedience

Nashir Makarim stated that the *syiqāq* (husband and wife dispute) meaning is the abandoning household obligations (*ḥuqūq al-zaujiyyah*) act carried out by both parties, wife and husband.⁵⁰ Meanwhile, when the act of abandoning the obligations of *ḥuqūq al-zaujiyyah* is carried out by one of the husbands or wives, it is called *nusyuz*. Even though the two terms between *syiqāq* (dispute) and *nusyuz* (disobedience) carried out by husbands and wives appear different, the substance is the same, namely the act of abandoning household obligations (*ḥuqūq al-zaujiyyah*).

This *syiqāq* act can occur when a husband or wife commits an act of *nusyuz* and then one party does not accept what he/she received. There will be *syiqāq* (dispute) between husband and wife. In understanding *syiqāq* as

⁴⁸ Nasir Makarim Shirazi, *Al-Amsal Fi Tafsir Kitabillah Al-Munzal Ma'a Tahdzib Jadid*.

⁴⁹ Nasir Makarim Shirazi, *انوار الفقاهة في أحكام العترة الطاهرة (كتاب النكاح) - الشيخ ناصر مكارم الشيرازي 3*.

⁵⁰ Nasir Makarim Shirazi.

stated in *Surah al-Nisā'* verse 35, Nashir Makarim al-Syirazi revealed that when there is *nusyuz* from both parties (wife and husband) which causes *syiqāq* or even worries about causing separation between the two (divorce), then you should complain to a Sharia judge by appointing two judges, namely the wife's judge and the husband's judge.⁵¹

Nashir Makarim al-Syirazi stated that what is meant by judge in *Surah al-Nisā'* verse 35 is the judge of both (husband and wife). This Shari'a judge is to know and understand the problems that occur between the two in an effort to find improvements (*al-iṣlāḥ*) for both. However, when there is no judge on either side, it is permissible to look for another judge, who still aims to ensure that there is no failure in efforts to improve (*al-iṣlāḥ*) for both. Furthermore, Nashir Makarim emphasized that the judge in question is a court judge (*al-ḥākim al-syar'ī*) or a judge who understands the existing regulations.⁵² Reza Banakar expressed that there is a revolutionary court led by religious judges in Iran.⁵³

Nashir Makarim states that *Surah al-Nisā'* verse 35 is the basis for the argument for creating *maḥkamah al-ṣulḥ al-āilah* (family peace court). According to Nashir Makarim, this *maḥkamah* has advantages over other *maḥkamah* (court), for instance: 1) The family environment is an environment of gentleness. 2) In fact, in another court, an examinee and a reporter were questioned to investigate the secrets of both of them in front of many people. Meanwhile, in family matters, if a husband and wife are interview this way, it will cause hurt feelings between both parties. 3) In this *maḥkamah al-ṣulḥ al-āilah* two judges should be sent as parties who are relatives of the two. 4) In fact, the presence of this *maḥkamah* (court) will not cause problems or anything burdensome for other *maḥkamah*.⁵⁴

⁵¹ Nasir Makarim Shirazi.

⁵² Nasir Makarim Shirazi.

⁵³ Banakar and Ziaee, "The Life of the Law in the Islamic Republic of Iran."

⁵⁴ Nasir Makarim Shirazi, *Al-Amsal Fi Tafsir Kitabillah Al-Munzal Ma'a Tahdzib Jadid*.

The basis for determining the law of Nashir Makarim is based on the redaction of the holy *al-Qurān* verse in the sentence *فَابْعَثُوا حَكَمًا* which contains the 'amr (order) rule which states that the judge in this verse is a syariah judge (*al-ḥākim al-syar* ٧) of course just rationally being in a *maḥkamah*.⁵⁵ It is in accordance with the philosophical principle of Islamic law that *ḥuṣūl al-ma'lūl 'inda ḥuṣūl al-'illat wājib* (the occurrence of an effect due to the occurrence of a cause is an obligatory thing).⁵⁶ Therefore, the result (*al-ma'lūl*) of the establishment of the *maḥkamah al-ṣulḥ al-āilah* (family peace court) explained by Nashir Makarim is based on the cause (*al-'illat*) of the order to present *al-ḥākim al-syar* ٧ between husband and wife. involved in a dispute (*syiqāq*).

Regarding procedures when there is *nusyuz* (disobedience) between husband and wife (*syiqāq*), Nashir Makarim revealed that there are several steps that must be taken: both parties bring the problem to the Shari'a judge, then the second he pointed to two judge namely a Sharia judge on the part of the wife and husband or a Sharia judge who is not known to both of them (husband and wife). Nashir Makarim explains that reporting to the court judge (*al-ḥākim al-syar*'i) must be serious on the part of both judges to seek improvement (*al-iṣlāḥ*) of the problems of both (husband and wife).⁵⁷ It is because both of them (*al-ḥākim al-syar* ٧) were sent to carry out this task.

Nashir Makarim's legal determination regarding the assignment of sharia judges and the basis for creating the *maḥkamah al-ṣulḥ al-āilah* (family improvement court) is different from the opinions of other contemporary commentators (*mufassir*). Wahbah al-Zuhaili reveals that the judge in *Surah al-Nisā'* verse 35 can be interpreted as a judge who understands the law. So, representatives (*wakīlāni*) from both husband and

⁵⁵ Nasir Makarim Shirazi, انوار الفقاهة في أحكام العترة الطاهرة (كتاب النكاح) - الشيخ ناصر مكارم الشيرازي 3.

⁵⁶ Ghulam Husain al-Ibrahimi Al-Dinany, 1, ج 2, قواعد الفلسفة العامة. 2nd ed. (Beirut, Lebanon: Dar al-Hadi, 2007).

⁵⁷ Nasir Makarim Shirazi, انوار الفقاهة في أحكام العترة الطاهرة (كتاب النكاح) - الشيخ ناصر مكارم الشيرازي 3.

wife can be appointed as mediators to reconcile their problems. It can even be done by appointing one person as a mediator judge when two judges cannot find a point of reconciliation, as long as the husband and wife agree to accept it.⁵⁸

Legal Determinations of *Nusyuz*: Comparison of Shia Law With the Compilation of Islamic Law

Legal Determinations (*Istinbāt al-ḥukm*) produced by Nashir Makarim al-Syirazi regarding the resolution of the *nusyuz* problem in his book of al-Amṣal, apart from being different from the views of Islamic jurists and other contemporary interpreters, there are also differences with the laws and regulations in Indonesia. Based on the government regulations and the compilation of Islamic law (KHI), it is stated that reasons for divorce must be included. The reasons for divorce are various acts of *nusyuz* that can legitimize someone's request for divorce. It can cause husbands and wives who experience *nusyuz* in the household to immediately bring the divorce to court rather than looking for solutions to improve the household.

It is different from *istinbāt al-ḥukm* Nashir Makarim, where when *nusyuz* behavior occurs by the husband or wife, efforts are not immediately made to file a divorce suit before the court. However, efforts for advice (*al-mau'izah*) and peace (*al-ṣulh*) were made first. If you experience a deadlock or there is no change in the *nusyuz*'s attitude after the initial punishment, then you can complain about the *nusyuz* case before a Sharia judge to try to punish the perpetrator of the *nusyuz*. Then, the Sharia judge will give punishment in stages of advice, separation, and beatings (physical punishment).

From the initial procedures, efforts to punish *nusyuz* differ between the views of Nashir Makarim al-Syirazi and the laws and regulations in Indonesia, although there are similarities. The similarity is in the effort to

⁵⁸ Al-Zuhaili, *Al-Tafsir Al-Munir Fi Al-Aqidah Wa Al-Syariah Wa Al-Manhaj* 3.

improve both partners who are experiencing *nusyuz* problems in the family through mediation (reconciliation). Indonesian marriage law states that the court can decide on divorce after failing to reconcile the two parties. Even though there is diction in the law regarding efforts to reconcile (mediation), it is not yet clear which regulations form the basis of mediation and what mechanisms must be followed.

Moreover, the regulations regarding mediation in the Supreme Court regulations (PERMA) are outside the hierarchy of statutory regulations. There are contradictions in the mediation place, such as in and outside courts. There is PERMA Number 1 of 2016, which aims to optimize the success of mediation in courts, both general and religious,⁵⁹ but this PERMA also allows mediation outside of court based on Law Number 30 of 1999 concerning arbitration and alternative dispute resolution.⁶⁰ Carrying out mediation outside the court or through an intermediary judge who does not serve as a court judge, makes husband and wife couples who are in domestic conflict unwilling to attend mediation, so that the mediation that is carried out often results in failure to resolve the conflict between the two.⁶¹ The latest solution is presented by PERMA no. 3 of 2022 regarding online mediation.⁶² It is a form of adaptation after the COVID-19 pandemic disaster has passed. However, when mediation is carried out by mediators who are not court judges, in many cases, husbands and wives are reluctant to attend, as stated by Saifullah,⁶³ Salman,⁶⁴ and Umm Khaira⁶⁵. Therefore, the absence of the husband and wife, who will be mediated, fails. It is different from

⁵⁹ Mahkamah Agung RI, "Peraturan Mahkamah Agung RI," 2016.

⁶⁰ Setneg RI, "Undang Undang No. 30 Tahun 2016" (Jakarta, 1999).

⁶¹ Muhammad Saifullah, "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jawa Tengah," *AL-AHKAM* 25 (2015): 181–204.

⁶² Ketua Mahkamah and Agung Republik, "Peraturan Mahkamah Agung Nomor 3 Tahun 2022" (Jakarta, 2022).

⁶³ Saifullah, "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jawa Tengah."

⁶⁴ Salman, "Implementation of Mediation And Hakam In Divorce Case In Religious Court," *International Journal of Nusantara Islam Islam* 08, no. 02 (2020): 274–81, <https://doi.org/10.15575/ijni.v8i2.12407>.

⁶⁵ Ummu Khaira, "PELAKSANAAN UPAYA PERDAMAIAN DALAM PERKARA PERCERAIAN (Suatu Kajian Terhadap Putusan Verstek Pada Mahkamah Syar'iyah Bireuen)," *Jurnal Penelitian Hukum De Jure* 18, no. 740 (2018): 319–34.

Nashir Makarim, who states that punishment for *nusyuz* behavior in the family will be carried out by a sharia judge in a family peace court. Nashir Makarim emphasized that the judge who will carry out this sentence is a sharia judge, not a choice between a court judge or a mediator outside the court, as is the rule in Indonesia. The presence of a court judge can give the litigants the impression of authority, so that they can strongly request that the husband and wife who are in conflict be present at the hearing to resolve their problems, including the mediation hearing.

In understanding *Surah al-Nisā'* verses 34 and 128 regarding *nusyuz* of husband and wife, the legal discovery (*istinbāṭ al-ḥukm*) put forward by Nashir Makarim al-Syirazi is to submit the punishment or resolution to a court such as the Family Protection Court in Iran in the past. However, the legal findings state that only the husband's *nusyuz* needs to be submitted to the court to be resolved. Supposedly, when resolution of *nusyuz* for both husband and wife is not achieved through advice (*al-mau'izah*) and peace (*al-ṣulḥ*), then both need to be brought to court. In section 7 of the rules regarding divorce, the decision must go through a reconciliation process in front of a Sharia judge who must truly endeavor to reconcile it before the divorce. If peace cannot be achieved, then the husband and wife can file a lawsuit for divorce.⁶⁶ Thus, the legal philosophy expressed by Nashir Makarim regarding equal justice between humans in the law (*murā'āt al-'adālah wa 'adamu tafrīq baina al-nās*) will be really in harmony with the legal discoveries he produced regarding the issue of *nusyuz* in the family.

The findings of Nashir Makarim al-Syirazi's law regarding the establishment of a family peace court (*maḥkamah al-ṣulḥ al-'āilah*) in understanding *Surah al-Nisā'* verse 35 seems to be an attempt to revive the history of past justice in Iran. Mottasem Seddiq Abdullah stated that before the Iranian revolution, there was a court that dealt with family law matters in Iran, namely the Family Protection Court. After the revolution, the Family

⁶⁶ Banakar and Ziaee, "The Life of the Law in the Islamic Republic of Iran."

Protection Court was replaced by the Special Civil Court. In this Special Civil Court court, judge *Mujtahid Jam'a al-Syarī'at* (a religious judge who has competence at the same level as a *mujtahīd*) headed it.⁶⁷

The change in court during the Iranian revolution from the Family Protection Court to the Special Civil Court expanded the scope of problems resolved in court, such as family, military, children, and juvenile issues.⁶⁸ This Special Civil Court, just like the Religious Courts in Indonesia, adjudicates matters not only relating to family (marriage) but also several matters such as inheritance, wills, grants, endowments, and alms (*sadaqah*). Even though in Indonesia there are Religious Courts, the mechanism for punishing *nusyuz* in the legislation is unclear, and in many cases, mediation is said to be a failed reconciliation procedure for husband and wife.⁶⁹ Nashir Makarim al-Syirazi's discovery of the law regarding the formation of *maḥkamah al-ṣulḥ al-āilah* with *nusyuz* punishment procedures carried out only by sharia judges could be an effective solution for resolving *nusyuz* problems in the family. It is because the judges are tasked with seriously resolving family problems in the family peace court, as happened during the time of M. Reza Pahlevi in Iran (see *Table 2*).

Table 2. *Comparison of Settlement of Nusyuz Cases in the Compilation of Islamic Law and Shia Law*

Problem	Compilation of Islamic Law (KHI)		Syiah Law	
	Similarities	Differences	Similarities	Differences
Husband's disobedience (<i>nusyuz</i>)		Husband's <i>nusyuz</i> is not discussed in the KHI regulations.		A husband who commits <i>nusyuz</i> can be punished as much as his wife's <i>nusyuz</i> .
<i>Nusyuz</i> wife	Discussed how to solve it.	<i>Nusyuz</i> of the wife occurs: action is taken	Discussed how to solve it.	<i>Nusyuz</i> of the wife occurs: actions are taken to a) giving

⁶⁷ Motasem Seddiq Abdullah, "THE REVOLUTIONARY COURTS IN IRAN: LEGALITY AND POLITICAL MANIPULATION," *Journal for Iranian Studies*, no. 8 (2018).

⁶⁸ Abdullah.

⁶⁹ Saifullah, "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jawa Tengah."

		to deactivate the provision of maintenance, which can be a means of filing for divorce.		advice, b) separation of beds, and c) beating. Actions b) and c) are carried out through the court judge.
Mediation	Discussed how to solve it.	Mediation can be carried out in court, outside court, and via online media. The judge who carries out the mediation can be a court judge or a judge (mediator) outside the court.	Discussed how to solve it.	Mediation is carried out in court. The judge who mediates between husband and wife comes from the court judges.
Court	Discussed the location of the court.	The court is a religious court. Adjudicate and resolve various cases such as inheritance, wills, grants, endowments, and alms (sadaqah).	Discussed the location of the court.	The court is called Family Protection Court. After the revolution the name was changed to Special Civil Court. Adjudicate and resolve various cases such as family, military, children, and juvenile issues.

Source: Compilation of Islamic Law and *Shia Tafsir*

Various similarities and differences exist because there are similarities and differences in the basis for the legal discoveries made. Nasir Makarim al-Syirazi is based on the editorial text of the *Qurān* contained in verse 34 of *Surah al-Nisā'*. Meanwhile, the basis of *istinbāt al-ḥukm* in KHI is similar to that stated by Abū Sahal, who quoted the *ḥadīs* of the Prophet SAW regarding punishment when a husband performs *nusyuz*. Then, the wife is allowed to reduce the rights received level by her sincerity.⁷⁰ As for the religious courts as a solution to the problem of husband-wife *nusyuz*, it is based on the meaning in verse 34 of *Surah al-Nisā'*. The solution in the

⁷⁰ Abu Sahal Muhammad Al-Maghrawi, *Al-Tadabbur Wa Al-Bayan Fi Tafsir Al-Quran Bi Sahih Al-Sunan*, 1st ed. (Lebanon, 2014).

Compilation of Indonesian Islamic Law (KHI) is actually a better right than the Shia legal view. In KHI, the solution can be in or outside courts, whereas it is only in court in Shia law. However, what needs to be done is to resolve the husband and wife's *nusyuz* problem, even though it is outside of court. A more serious effort can be made to bring the two problematic partners together. The reason is that mediation with the presence of both parties can already be half the solution that will be produced.

References

- Abdullah, Motasem Seddiq. "THE REVOLUTIONARY COURTS IN IRAN: LEGALITY AND POLITICAL MANIPULATION." *Journal for Iranian Studies*, no. 8 (2018).
- Abdullah Saeed. *Interpreting the Quran*. Rautledge Taylor And Francis Group, 2005.
- Al-Buthi, Ramadhan. *Dhowabith Maslahah Fi Syariah Al-Islamiyah*. Muassasah al-Risalah, 2018.
- Al-Dinany, Ghulam Husain al-Ibrahimi. 1. *القواعد الفلسفية العامة*. ج 2. 1st ed. Beirut, Lebanon: Dar al-Hadi, 2007.
- Al-Duri, Qahthan Abd al-Rahman. *Manahij Al-Fuqaha Fi Istinbat Al-Ahkam Wa Asbab Ikhtilafihim*. 1st ed. Beirut, Lebanon: Books Publisher, 2015.
- Al-Hauri, Abd Ilah. "Asbab Al-Ikhtilaf Al-Mufassirin Fi Tafsir Ayat Al-Ahkam." Cairo university, 2001.
- Al-Jarihi, Majdi ibn Audh. 1. *منهج الشيعة الإمامية الاثني عشرية في تفسير القرآن الكريم*. 1st ed. Qom, Iran, 2009.
- Al-Maghrawi, Abu Sahal Muhammad. *Al-Tadabbur Wa Al-Bayan Fi Tafsir Al-Quran Bi Sahih Al-Sunan*. 1st ed. Lebanon, 2014.
- Al-Na'imi, Fadhil Abd al-Abbas. "القيم الحضارية السياسية في تفسير الأماثل." *Journal University of Babilon* 25, no. 1 (2017): 78–100.
- Al-Syathibi, Abu Ishaq. *Kitab Al-Muwafaqat Li Abi Ishaq Al-Syathibi*. Edited by al-Husain Ait Said. 1st ed. Maghrib: Mansyurat al-Basyir Binathiyyah, 2017.
- Al-Thayyar, Musaid ibn Sulaiman. 2. *مفهوم التفسير والتأويل والاستنباط والتدبر والمفسر*. 2nd ed. Riyad, Saudi Arabia: Dar Ibn al-Jauzi, 1427.
- Al-Zuhaili, Wahbah. *Al-Tafsir Al-Munir Fi Al-Aqidah Wa Al-Syariah Wa Al-Manhaj* 3. 10th ed. Damaskus, Suriah: Dar al-Fikr, 2009.
- . *Usul Fiqh Al-Islami*. 1st ed. Damaskus: Dar al-Fikr, 1986.
- Albelahi, Abdulrahman M A, A Ali, Faten Mohmed, and Metwally Ali. "The Theory of Interpretation in Solving Contemporary Legal Issues : With A Focus on the Instrument of Ijtihad" 05056 (2018): 1–8.
- Banakar, Reza, and Keyvan Ziaee. "The Life of the Law in the Islamic

- Republic of Iran.” *Iranian Studies* 51, no. 5 (2018): 717–46. <https://doi.org/10.1080/00210862.2018.1467266>.
- Bani, Lawal Mohammed, and Hamza A Pate. “The Role of Spouses under Islamic Family Law.” *International Affairs and Global Strategy* 37 (2015): 104–11.
- Coulson, Noel James. *A History of Islamic Law*. London: Aldine Transaction, 2011.
- Eberle, Edward J. “The Methodology of Comparative Law.” *Roger Williams University Law Review* 16, no. 1 (2011): 1–23.
- Grijns, Mies. “Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns” 5, no. March (2018): 453–66. <https://doi.org/10.1017/als.2018.9>.
- Hallaq, Wael B. *A HISTORY OF ISLAMIC LEGAL THEORIES*. 1st ed. Cambridge, United Kingdom: United Kingdom at the University Press, 1997.
- Husein, Haidar Ali. “الجوانب النفسية في تفسير الامثل للشيخ الشيرازي.” *Arab Science Heritage Journal* 19, no. 4 (2022): 97–140. <https://doi.org/10.54721/jrashc.19.4.853>.
- Iyazi, Muhammed Ali. *Al-Tafsir Wa Al-Mufasssirun Hayatuhum Wa Manhajuhum*. 1st ed. Teheran, Iran: Wuzarat al-Tsaqafah wa al-Irsyad al-Islamiyyah, 1386.
- Izzah, Ibnu. “NUSYUZ AND ITS SOLUTIONS IN COMPILATION OF ISLAMIC LAW FROM THE PERSPECTIVE OF THE AL-QURAN” 4, no. 1 (n.d.): 31–48.
- jum’ah, Ali. *Tarikh Usul Al-Fiqh*. 1st ed. Cairo: Dar al-Maqtam, 2015.
- Khaira, Ummu. “PELAKSANAAN UPAYA PERDAMAIAN DALAM PERKARA PERCERAIAN (Suatu Kajian Terhadap Putusan Verstek Pada Mahkamah Syar’iyah Bireuen).” *Jurnal Penelitian Hukum De Jure* 18, no. 740 (2018): 319–34.
- Ma’luf, Louwis. 29. *المعجم في اللغة و الأعلام الجزء الأول*. 1st ed. Beirut, Lebanon: Dar al-Masyraq, 2008.
- Ma’rifat, Muhammad Hadi. *Al-Tafsir Wa Al-Mufasssirun Fi Tsaubihi Al-Qasyib*. 2nd ed. Qom, Iran: al-Jamiah al-Radhawiyyah al-Ulum al-Islamiyyah, 1425.
- Maarif, Ahmad Syafii. *ISLAM , HUMANITY AND THE INDONESIAN IDENTITY: Reflections on History*, 2018.
- Mahkamah Agung RI. *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya. Perpustakaan Nasional RI : Data Katalog Dalam Terbitan*. Vol. 1, 2011.
- . “Peraturan Mahkamah Agung RI,” 2016.
- Mahkamah, Ketua, and Agung Republik. “Peraturan Mahkamah Agung Nomor 3 Tahun 2022.” Jakarta, 2022.
- Nasir Makarim Shirazi. *Al-Amsal Fi Tafsir Kitabillah Al-Munzal Ma’a Tahdzib Jadid*. 1st ed. Beirut, Lebanon: Muassah Alaami Library, 2013.
- . *Anwar Al-Usul*. Qom Iran: Madrasa al-Imam Ali ibn Abi Talib, 2006.

- . 1. 3. (-) الشيخ ناصر مكارم الشيرازي كتاب النكاح (نوار الفقاهة في أحكام العترة الطاهرة) st ed. Qom, Iran: al-Imam Ali ibn Abi Thalib, 1432.
- . 2. (أصول الفقه بأسلوب حديث و آراء جديدة) nd ed. Qom, Iran: al-Imam Ali ibn Abi Thalib, 1432.
- . 1. 10. (-) صفحات القرآن - ج 10 st ed. Qom, Iran: al-Imam Ali ibn Abi Thalib, 1426.
- Raikan, Uqail Abbas. “المعاد في القرآن الكريم تفسير الامثل انموذجا.” *Journal of the College of Basic Education* 22, no. 94 (2016): 141–67.
- Saifullah, Muhammad. “Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jawa Tengah.” *AL-AHKAM* 25 (2015): 181–204.
- Salman. “Implementation of Mediation And Hakam In Divorce Case In Religious Court.” *International Journal of Nusantara Islam* 08, no. 02 (2020): 274–81. <https://doi.org/10.15575/ijni.v8i2.12407>.
- Setneg RI. “Undang Undang No. 30 Tahun 2016.” Jakarta, 1999.
- Smock, David. “Ijtihad: Reinterpreting Islamic Principles for the Twenty-First Century.” *JSTOR* 1 (2004): 7.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None

ACKNOWLEDGMENT

The authors express their gratitude to the unidentified reviewer of this manuscript for their valuable comments and feedback.

HISTORY OF ARTICLE

Submitted : Juli 29, 2023

Revised : October 17, 2023

Accepted : December 1, 2023

Published : December 24, 2023