

## HARMONIZATION OF ISLAMIC LAW AND HUMAN RIGHTS IN HANDLING NUSYUZ AND ITS CONTEXT FOR HUMAN RIGHTS

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### Article History:

Submitted : February 23, 2026

Accepted : June 28, 2026

Published : June 29, 2026

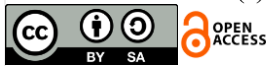
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EL-AHLI : JURNAL HUKUM KELUARGA ISLAM

Vol.7 No 1 June 2026



[10.56874/el-ahli.v7i1.3056](https://doi.org/10.56874/el-ahli.v7i1.3056)

### Keywords:

Nusyuz; Human Rights, Islamic Law, Maqasid al-Shari'ah, Marital Partnership.

### Kata kunci:

Nusyuz; Hak Asasi Manusia; Hukum Islam; Maqasid al-Shari'ah; Kemitraan Perkawinan.

**Abstract :** The concept of nusyuz originates from classical fiqh constructions and has evolved into a component of family law systems in several Muslim-majority countries. However, its classical formulation has frequently been criticized for potentially perpetuating unequal marital relations by legitimizing the husband's authority without systematically defined limitations. This situation raises concerns regarding the legal protection of wives from a human rights perspective. Specifically, Article 80 paragraph (7) of the Compilation of Islamic Law (KHI) suspends a husband's obligations when the wife is in a state of nusyuz, yet no clear ceiling is placed on the husband's corrective actions, leaving open the possibility of abuse. This study employs a doctrinal approach by examining legal principles, doctrines, and positive legal constructions concerning the limits of a husband's rights in addressing nusyuz. Analysis is conducted descriptively and critically through inductive and deductive reasoning to assess potential abuse of authority and its juridical implications. Primary legal materials include QS. an-Nisa' (4): 34, KHI Articles 80–84, Law No. 1/1974 on Marriage (Article 39(2)), and Law No. 23/2004 on the Elimination of Domestic Violence (UU PKDRT, Articles 5–6 and 44). The findings indicate that classical fiqh contains normative limitations on the husband's actions, including: (1) the principle of graduated measures (*tadarruj*), requiring sequential escalation of advice, bed-separation, and symbolic correction only; (2) the prohibition of harm (*la darar*), forbidding any blow that leaves

marks, damages the face, or breaks bones; and (3) the corrective goal (*ta'dib*) of sanctions, oriented toward reconciliation rather than punishment. Nevertheless, these limitations have not been systematically formulated within a framework of marital partnership and human dignity. In the Indonesian context, any action exceeding proportionality and non-violence may constitute a criminal offense under UU PKDRT. This study affirms that harmonization of Islamic law and human rights is achievable through reconstructing the limits of the husband's authority based on *maqasid al-shari'ah*, partnership principles, and the protection of women's life and dignity—specifically by integrating *maqasid* criteria into a proposed amendment to KHI Article 80 and by linking UU PKDRT enforcement to the Religious Court (“Pengadilan Agama”) jurisdiction.

**Abstrak :** Konsep nusyuz berakar pada konstruksi fiqh klasik dan telah menjadi bagian dari sistem hukum keluarga di berbagai negara Muslim. Namun, formulasi klasiknya kerap dikritisi karena berpotensi melanggengkan ketimpangan relasi suami-istri melalui legitimasi kewenangan suami yang tidak terbatas secara sistematis. Kondisi ini menimbulkan persoalan perlindungan hukum terhadap istri dalam perspektif hak asasi manusia. Secara khusus, Pasal 80 ayat (7) KHI menangguk kewajiban suami ketika istri dinyatakan nusyuz, namun tidak menetapkan batasan tegas atas tindakan suami, sehingga membuka peluang penyalahgunaan wewenang. Penelitian ini menggunakan pendekatan doktrinal dengan menelaah asas, doktrin, dan konstruksi hukum positif terkait batas-batas hak suami dalam menangani nusyuz. Analisis dilakukan secara deskriptif-kritis melalui penalaran induktif dan deduktif untuk menilai potensi penyalahgunaan kewenangan serta implikasi yuridisnya. Bahan hukum primer yang digunakan meliputi QS. an-Nisa' (4): 34, Pasal 80–84 KHI, Pasal 39 ayat (2) UU No. 1/1974 tentang Perkawinan, serta Pasal 5–6 dan 44 UU No. 23/2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga (UU PKDRT). Hasil penelitian menunjukkan bahwa fiqh klasik sesungguhnya mengandung pembatasan normatif terhadap tindakan suami, yakni: (1) prinsip bertahap (*tadarruj*) yang mengharuskan eskalasi berurutan dari nasihat, pisah ranjang, hingga tindakan koreksi simbolis; (2) larangan menyakiti (*la darar*) yang melarang segala pukulan yang meninggalkan bekas, mengenai wajah, atau mematahkan tulang; dan (3) tujuan korektif (*ta'db*) sanksi yang berorientasi pada rekonsiliasi, bukan hukuman. Namun, pembatasan tersebut belum dirumuskan secara sistematis dalam kerangka kemitraan perkawinan dan perlindungan martabat manusia. Dalam konteks Indonesia, tindakan yang melampaui prinsip proporsionalitas dan non-kekerasan dapat dikualifikasikan sebagai pelanggaran pidana berdasarkan UU PKDRT. Penelitian ini menegaskan bahwa harmonisasi hukum Islam dan HAM dimungkinkan melalui rekonstruksi batas hak suami berbasis *maqasid al-shari'ah*, prinsip kemitraan, dan perlindungan jiwa serta martabat perempuan—khususnya dengan mengintegrasikan kriteria *maqasid* ke dalam usulan revisi Pasal 80 KHI dan menghubungkan penegakan UU PKDRT dengan yurisdiksi Pengadilan Agama.

## INTRODUCTION

Nusyuz (broadly understood as disobedience or recalcitrance within a marital relationship) occupies a contested position at the intersection of classical

Islamic jurisprudence, modern family law, and human rights discourse. Despite its foundational status in *fiqh*, the concept has generated sustained scholarly debate because the classical formulation tends to concentrate corrective authority in the husband without establishing explicit, enforceable limits on how far that authority may extend. The result is a legal vacuum in which domestic violence may be justified by an appeal to religious obligation. This article addresses that vacuum directly: it investigates where the boundaries of a husband's rights actually lie when a wife is deemed *nusyuz*, and what happens (both under Islamic law and Indonesian positive law) when those boundaries are crossed.

Several features of the existing legal landscape make this question urgent. First, within classical *fiqh*, *nusyuz* is disproportionately ascribed to wives. As Waylani (2024) documents, the scholarly tradition has systematically treated *nusyuz* as a distinctly female legal status, resulting in a body of doctrine that legitimises the husband's authority without a parallel framework of spousal equality (Waylani, 2024). Second, the Indonesian Compilation of Islamic Law (KHI) perpetuates this asymmetry: Article 80 paragraph (7) suspends all of the husband's obligations toward the wife the moment she is classified as *nusyuz*, yet no article of the KHI defines an upper limit on the corrective measures the husband may employ. Third, existing scholarship on the subject (including Munib (2019), Saputro (2023), and Rafianti (2023)) tends either to describe classical doctrine or to catalogue cases of domestic violence, without systematically deriving enforceable normative limits from both Islamic and positive-law sources simultaneously (Munib, 2019). This study fills that gap.

The article proceeds as follows. After presenting the methodological approach, Part I examines the *maqasid al-shari'ah* framework and uses its objectives (*hifz al-nafs*, *hifz al-'ird*, and *hifz al-nasl*) to derive normative limits on the husband's authority. Part II analyses the legal substance of *nusyuz* and the legitimate purposes of any sanction. Part III maps those limits onto concrete prohibitions and identifies the conditions under which a husband's action becomes legally actionable. Part IV connects the analysis to the human rights framework, including CEDAW and UU PKDRT, and draws out implications for judicial practice in the Religious Court. The article concludes with a set of targeted

recommendations for reform of KHI Article 80.

## RESEARCH METHODS

This study is a piece of normative-doctrinal legal research (*penelitian hukum normatif*). Rather than collecting field data, it analyses primary legal materials — the text of QS. an-Nisa' (4): 34, KHI Articles 80–84, Law No. 1/1974 on Marriage (Article 39(2)), and Law No. 23/2004 on the Elimination of Domestic Violence (Articles 5–6 and 44) — alongside secondary sources drawn from the classical fiqh tradition (*kutub al-fiqh*) and contemporary Islamic and Indonesian legal scholarship. Secondary literature was retrieved from Google Scholar, DOAJ, and institutional repositories using the search terms “nusyuz,” “domestic violence Islamic law,” “maqasid al-shari‘ah husband’s rights,” and “KDRT hukum Islam Indonesia.” Sources were included if they addressed normative limits on spousal authority or the harmonisation of Islamic family law with human rights standards; purely descriptive case studies without normative analysis were excluded.

Analytically, the study combines two complementary methods. The descriptive-analytical method (*metode deskriptif-analitis*) is used to inventory and critically classify the relevant legal norms: distinguishing between positive legal norms, social norms, and non-legal norms, correcting identified norms against constitutional and international human rights standards, and arranging them into a coherent system (Sunggono, 2001). The normative-juridical method is then applied to translate the abstract norms identified through descriptive analysis into concrete assessments of specific fact patterns in particular, to determine when a husband’s exercise of corrective authority in a nusyuz situation crosses the line into an unlawful or criminal act.

The study focuses primarily on the Shafi’i and Hanbali schools, which dominate Indonesian Islamic legal practice, while noting significant divergences from the Hanafi and Maliki schools where they bear on the normative questions at issue. The author acknowledges the risk of interpretive bias when reading classical texts through a contemporary human rights lens, and addresses it by consistently distinguishing between what the classical sources say and what the

author argues they should be understood to mean in the Indonesian constitutional context.

## **DISCUSSION/RESULTS AND DISCUSSION**

### **A. Maqasid al-Shari'ah and Normative Parameters for the Limits of the Husband's Rights**

The maqasid al-shari'ah approach reads Islamic law not as a collection of isolated textual commands but as a purposive system aimed at realising benefit and preventing harm (*jalb al-masalih wa dar' al-mafasid*). Every legal construction, including that governing a husband's authority when a wife is deemed *nusyuz*, must therefore be read in light of the law's foundational objectives. Building on Auda's (2020, pp. 3–5) systems-theoretic reconstruction of maqasid, this section applies three of the classical objectives to derive concrete normative limits (Auda, 2007).

First, *hifz al-nafs* (protection of life) affirms that shara'ah aims to safeguard physical and psychological integrity. Read against QS. an-Nisa' (4): 34, this principle rules out any corrective action that risks bodily injury. Classical fuqaha' who permit physical correction specifically condition it on the blow being *ghaira mubarrih* (causing no real pain) and exclude blows that leave marks, break bones, damage the face, or are delivered with a hard implement (al-Razi, n.d.). The *hifz al-nafs* principle, properly applied, reduces permissible correction to the symbolic: a folded handkerchief or a single light tap, whose communicative function is reform, not injury. It does not, as Ayesha Chaudhry's (n.d.) analysis of the classical tradition makes clear, provide cover even for a slap or a blow with a stick, because such acts have a non-trivial probability of causing genuine pain (Chaudhry, n.d.). The question of whether even symbolic physical correction can survive a rigorous *hifz al-nafs* analysis is contested; the present study follows the majority position that it can, but only within the strict conditions just described.

Second, *hifz al-'ird* (protection of honour and dignity) bars actions that humiliate, degrade, or publicly stigmatise the wife. Any correction that involves verbal abuse, social isolation intended to shame, or exposure of private matters violates this objective. The husband's authority is therefore bounded by an obligation to treat the wife as a *mukallaf* (a full moral and legal subject) not as an

object of punitive discipline.

Third, *hifz al-nasl* (protection of family and posterity) requires that all conflict-resolution mechanisms within marriage be directed toward family stability. This objective specifically supports Mohammad Fadel's (n.d., pp. 12–14) argument that the default mode of resolving marital conflict should be dialogue and mediation (*mu'asyarah bil ma'ruf*), not coercive discipline (Fadel, n.d.). Repressive measures damage not only the marital bond but also the developmental environment of any children.

Taken together, these three objectives generate a normative framework with four operative constraints on the husband's authority: (a) non-violence as a presumptive default, rebutted only in highly constrained circumstances; (b) strict proportionality, requiring that the severity of any response be calibrated to the gravity of the wife's conduct; (c) inviolability of dignity, prohibiting any demeaning or humiliating treatment; and (d) reform-orientation, meaning all corrective action must be genuinely aimed at reconciliation. A husband's action that violates any one of these constraints falls outside the scope of the authority QS. an-Nisa' (4): 34 confers.

## **B. The Legal Substance of Nusyuz and the Purpose of Sanctions**

To know whether a particular act of disobedience constitutes nusyuz, classical scholars examine whether three elements are present: (1) a formal element. the existence of a recognised legal basis establishing the obligation in question ; (2) a material element. an actual, not merely presumed, breach of that obligation; and (3) a moral element. the wife's legal capacity to be held responsible (Adibah, 2018). The significance of the material element is underscored by the exegetical debate over the word *takhafuna* in QS. an-Nisa' (4): 34: while some commentators read it as licensing preventive action on the basis of well-founded suspicion (*shayn*), others insist on actual knowledge (*al-'ilm*) of nusyuz before any corrective step may be taken (al-Razi, n.d.). The practical implication is significant: a husband who acts on groundless suspicion — and who later cannot establish that nusyuz occurred, may himself be liable for the harm he caused.

Four categories of wifely conduct are classically recognised as nusyuz:

unjustified refusal to move to the shared residence; leaving the shared residence without the husband's permission; refusal to fulfil marital relations without legitimate reason; and persistent refusal to live with the husband (Musa, 1956). Conduct falling outside these categories (disagreement, argument, or a wife's assertion of her own interests) does not constitute nusyuz.

The purpose for which a sanction may be imposed operates as an independent constraint on the husband's conduct. Historical purposes of sanctions include deterrence, rehabilitation, expiation, protection, and retribution (Hamzah & Simanglipu, 1985). In the nusyuz context, only deterrence and rehabilitation are compatible with the maqasid framework : the husband's corrective action is licensed to prevent continued breach and to restore the marital relationship, not to inflict pain as revenge or expiation. Sa'id Hawa's characterisation of the husband's authority as merely a form of "*treatment*" for the wife is only coherent if the treatment in question could plausibly lead to reconciliation; physical correction that produces fear, pain, or resentment is more likely to deepen the marital rupture than to heal it, and therefore cannot serve the rehabilitative purpose. Whether "treatment" in the form of even symbolic physical correction can be justified on medical or psychological grounds is a further question the article cannot fully resolve, but which future empirical research should address.

A further question that the classical literature leaves largely unaddressed concerns wrongful attribution of nusyuz. If a husband incorrectly classifies his wife as nusyuz and applies corrective measures, the wife suffers harm without legal cause. Under QS. an-Nisa' (4): 128, which addresses the husband's nusyuz and idrāḍ, and under UU PKDRT Article 5, such harm would constitute domestic violence regardless of the husband's belief in the legality of his action. The wife's right to seek judicial relief in such circumstances must be explicitly recognised.

### **C. Concrete Limits on the Husband's Rights in Treating a Nusyuz Wife**

The classical triple-step sequence in QS. an-Nisa' (4): 34 — advice (*maw'izah*), bed-separation, and physical correction (*darb*) is the textual foundation for the husband's corrective authority. Jumhur scholars, including the Hanbali school, require sequential escalation adjusted to the severity of the nusyuz. The Shafi'i school, including Imam Nawawi, permits non-sequential deployment, but

maintains that physical correction should be avoided where it is unlikely to bring benefit (*maslahah*). Both positions converge on the point that physical correction is a measure of last resort, not a first response.

The advice stage requires the husband to remind the wife of her obligations under shari'ah, the gravity of the marital bond (*misaqan ghalizan*), and the consequences of continued non-compliance. Al-Jassas and Abu Bakr al-Razi specify that this includes invoking the threat of divine sanction, but explicitly excludes verbal abuse, public shaming, or threats of physical harm. Bed-separation functions as a communicative gesture a withdrawal of intimacy rather than punitive deprivation, and must not be extended indefinitely or used to deny the wife shelter or maintenance.

Regarding physical correction, the classical conditions identified across the major schools are: (i) it must not be intended as an insult or degradation; (ii) it must not injure, leave marks, break bones, or damage the face; (iii) it must not be delivered with a hard implement; (iv) it must not be motivated by revenge; and (v) it must genuinely be believed capable of producing reconciliation. The KHI does not explicitly address the permissibility of physical correction by a husband toward a nusyuz wife, creating a legislative gap that courts have struggled to fill consistently. This gap should be closed: a proposed amendment to KHI Article 80 should codify the conditions listed above, making explicit that any physical action exceeding them is unlawful under both Islamic law and Indonesian positive law.

The feminist interpretation advanced by Asghar Ali Engineer (1994, p. 57) (reading *daraba* in QS. an-Nisā' (4): 34 metaphorically as "sexual intercourse" on the authority of Ahmed Ali's *Ragib al-Mufradat*) represents a minority scholarly position. While it reflects a genuine commitment to reading the Qur'an in a way that precludes spousal violence, it is not supported by the mainstream exegetical tradition. The more defensible route to the same normative destination (severely constraining or effectively abolishing physical correction) runs through the maqasid analysis above and through the hadith evidence: the Prophet's statement after QS. an-Nisa' (4): 34 was revealed ("We wanted one thing; Allah wanted another; what Allah wants is better") functions, at minimum, as a strong indication that physical correction is strongly disfavoured and should be treated as

*mubah* only under the conditions described, not as a general right.

#### **D. Human Rights, Violence Against Wives, and the Legal Consequences of Exceeding Limits**

For the purposes of this article, domestic violence is defined by reference to UU PKDRT Article 1(1) as any act against a person, especially a woman, that results in physical, sexual, psychological, or domestic neglect misery or suffering within the scope of the household. This definition supersedes older sociological formulations and is directly applicable to conduct that exceeds the limits of the husband's corrective authority identified in Part 3 above.

Indonesia's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (Afandi, 2014) obliges the state to eliminate discrimination against women in all matters relating to marriage and family relations, including the elimination of any cultural or religious practice that perpetuates violence against women. The classical *nusyuz* doctrine, applied without the normative limits derived above, is difficult to reconcile with CEDAW's requirements. Indonesian courts (including the Religious Courts) are therefore bound to interpret the KHI's provisions on *nusyuz* in a manner consistent with CEDAW and with the constitutional guarantees of dignity and non-discrimination.

Under UU PKDRT Article 44, physical violence within the household attracts a maximum sentence of five years' imprisonment or a fine of Rp 15,000,000. If the victim becomes ill or is seriously injured, the maximum is ten years or Rp 30,000,000; if the victim dies, fifteen years or Rp 45,000,000. Where the violence does not result in illness or inability to work, the maximum is four months' imprisonment or Rp 5,000,000. Critically, a husband's invocation of the *nusyuz* doctrine does not provide a defence under Indonesian criminal law: the lawfulness of a husband's corrective action is assessed by the objective standard of Article 44, not by his subjective belief that his wife is disobedient.

A structural gap in the current legal framework is the uncertain relationship between UU PKDRT, which is enforced by the general criminal courts, and the KHI, which is administered by the Religious Courts. Imam Malik's position as relayed by Nurjannah Ismail that a judge may advise, sanction, and ultimately

separate a nusyuz husband, establishes a parallel judicial mechanism for policing a husband's authority. The Religious Court's judges should be explicitly empowered to apply the proportionality and non-violence standards derived from maqāzid analysis when adjudicating disputes arising from nusyuz. Greater coordination between the Religious Court and the criminal justice system including formal protocols for referring cases involving suspected UU PKDRT violations would significantly improve the legal protection available to victims.

It must be acknowledged, however, that the effectiveness of UU PKDRT in cases involving nusyuz-related violence is constrained by cultural factors: the ideology of the public private dichotomy, social pressure not to report domestic incidents, and the stigma attaching to wives who initiate legal proceedings against their husbands. Reform of the legal framework is necessary but not sufficient; it must be accompanied by sustained investment in public legal literacy, victim support services, and judicial training.

## **CONCLUSIONS**

This study confirms that nusyuz cannot be understood solely as a form of wifely disobedience that legitimises the husband's absolute authority. It is a family-law concept that must be situated within a framework of justice, proportionality, and human dignity. Classical fiqh does provide graduated steps for resolving nusyuz as set out in QS. an-Nisa' (4): 34, but a rigorous reading reveals that these steps are constrained by the principles of non-violence, reform-orientation, and the prohibition of harm (*ghaira mubarrih*). Applying the maqasid al-shari'ah framework (specifically hifz al-nafs, hifz al-'ird, and hifz al-nasl) the husband's corrective authority must be understood as a trust aimed at protecting life, honour, and family integrity, not as an instrument of domination.

In the Indonesian positive-law context, any action exceeding proportionality and non-violence may constitute a criminal offence under UU PKDRT No. 23/2004. Harmonisation of Islamic law and human rights is accordingly achievable through the following concrete reforms: (1) amendment of KHI Article 80 to codify the conditions under which corrective action is permissible and to make explicit that actions exceeding those conditions constitute domestic violence; (2) formal recognition by the Religious Court of its authority to apply

maqāzid-based proportionality standards when adjudicating nusyuz disputes; and (3) establishment of formal coordination protocols between the Religious Court and the criminal courts for cases involving suspected UU PKDRT violations.

The present study is limited by its doctrinal approach: it draws on normative sources and cannot, by itself, assess the empirical impact of current practices or proposed reforms. Future research should examine reported cases of nusyuz-related domestic violence in the Religious Court and criminal court systems to assess the extent to which the normative limits identified here are currently applied in practice, and to identify barriers to their enforcement.

## LITERATURE

- Adibah, I. Z. (2018). Nusyuz dan Disharmoni Rumah Tangga. *Jurnal Inspirasi*, 2(2). <https://ejournal.undaris.ac.id/index.php/inspirasi/article/view/16>
- Afandi, M. (2014). Hukum Perceraian Di Indonesia: Studi Komparatif antara Fikih Konvensional, UU Kontemporer di Indonesia dan Negaranegara Muslim Perspektif HAM Dan CEDAW. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 7(2), 191–201.
- al-Razi, F. al-D. (n.d.). *Tafsir al-Kabir al-Musamma bi Mafatih al-Gaib*. Dar al-Fikr.
- Auda, J. (2007). *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. International Institute of Islamic Thought. <https://iiit.org/en/book/maqasid-al-shariah-as-philosophy-of-islamic-law-a-systems-approach/>
- Chaudhry, A. S. (n.d.). Domestic Violence and the Islamic Tradition. *Journal of Islamic Ethics*. <https://brill.com/view/journals/jie/>
- Fadel, M. (n.d.). Public Reason as a Strategy for Principled Reconciliation: The Case of Islamic Law and Human Rights. *Chicago Journal of International Law*. <https://cjl.uchicago.edu/>
- Hamzah, A., & Simanglipu, A. (1985). *Pidana Mati di Indonesia di Masa Lalu, Kini dan di Masa Depan*. Ghalia Indonesia.
- Munib, A. (2019). Batas-Batas Hak Suami dalam Memperlakukan Istri yang Nusyuz dan Kemungkinan Sanksi Pidana. *Voicer Justicia*, 3(2), 35. <https://journal.uim.ac.id>

- Musa, M. Y. (1956). *Ahkam al-Ahwal ash-Shakhsiyyah fi Fiqh al-Islami*. Dar al-Kitab al-Arabi.
- Sunggono, B. (2001). *Metodologi Penelitian Hukum*. PT Raja Grafindo Persada.
- Waylani. (2024). *Upaya Penyelesaian Nusyuz Suami terhadap Istri dalam Perspektif Hukum Islam (Studi Kasus di Desa Air Duku, Kecamatan Selupu Rejang)*. Institut Agama Islam Negeri Curup.