



Challenging Patriarchal Readings of Nusyuz: A Maqāṣid al-Sharī'ah Approach to Strengthening Women's Legal Safeguards

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Abstrak: Penelitian ini mengkaji rekonstruksi konsep nusyuz melalui kerangka maqāṣid al-sharī'ah sebagai respons terhadap realitas kekerasan dalam rumah tangga yang dialami perempuan di Indonesia. Penelitian ini mengajukan tiga pertanyaan utama: bagaimana nusyuz didefinisikan dalam fikih klasik dan peraturan perundang-undangan keluarga Islam di Indonesia, prinsip-prinsip hukum Islam apa yang mendukung hak perempuan atas keselamatan dan resistensi terhadap bahaya, serta bagaimana maqāṣid al-sharī'ah dapat dioperasionalkan untuk menghasilkan penafsiran yang lebih adil. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan kualitatif berbasis studi pustaka. Bahan hukum primer, meliputi kitab-kitab fikih klasik, tafsir Al-Qur'an terkait QS 4:34, serta peraturan hukum keluarga Islam di Indonesia, khususnya Kompilasi Hukum Islam. Sedangkan bahan hukum sekunder berupa artikel jurnal ilmiah yang membahas isu kekerasan dalam rumah tangga, keadilan gender, dan reformasi hukum Islam kontemporer. Analisis dilakukan melalui tiga tahapan: analisis doktrinal untuk memetakan definisi nusyuz yang berkembang, analisis hermeneutis-kontekstual untuk mengaitkan doktrin tersebut dengan realitas sosial dan praktik peradilan di Indonesia, serta evaluasi berbasis maqāṣid al-sharī'ah dengan menggunakan prinsip *ḥifẓ al-nafs*, perlindungan martabat,

dan kaidah dar' al-mafāsīd sebagai tolok ukur analitis. Hasil penelitian menunjukkan bahwa konstruksi klasik dan normatif nusyuz kerap dipengaruhi oleh asumsi patriarkal dan belum mampu membedakan secara tegas antara pembangkangan dan tindakan perlindungan diri. Penelitian ini menyimpulkan bahwa tindakan istri untuk melindungi diri dari bahaya tidak dapat dikategorikan sebagai nusyuz, serta bahwa kewajiban dalam perkawinan harus dipahami secara resiprokal. Dengan mengoperasionalkan maqāṣid al-sharī'ah sebagai alat analisis, penelitian ini menawarkan kerangka yang kontekstual dan doktrinal untuk memperkuat perlindungan hukum bagi perempuan dalam hukum keluarga Islam.

Kata kunci: *Nusyuz; Hukum Keluarga Islam; Maqāṣid Al-Sharī'ah; Keadilan Gender.*

Abstract: This study examines the reconstruction of nusyuz through the framework of maqāṣid al-sharī'ah in response to domestic violence against women in Indonesia. The research addresses three questions: how nusyuz is defined in classical fiqh and Indonesian statutory law, which Islamic legal principles support women's right to safety and resistance to harm, and how maqāṣid al-sharī'ah can be operationalized to produce a more just interpretation. Employing a normative legal research method, the study is based on qualitative library research. Data were obtained from primary legal sources, including classical fiqh texts, Qur'anic exegesis of QS 4:34, and Indonesian family law regulations—particularly the Kompilasi Hukum Islam—as well as secondary sources such as peer-reviewed journal articles on domestic violence, gender justice, and Islamic legal reform. The analysis was conducted through three stages: doctrinal analysis to map prevailing definitions of nusyuz; contextual-hermeneutical analysis to relate these doctrines to Indonesian socio-legal realities and judicial practices; and maqāṣid-based evaluation using ḥifẓ al-nafs, protection of dignity, and the principle of dar' al-mafāsīd as analytical benchmarks. The findings show that classical and statutory constructions of nusyuz are often shaped by patriarchal assumptions and inadequately distinguish disobedience from self-protection. This study concludes that acts undertaken by wives to protect themselves from harm cannot be classified as nusyuz, and that marital obligations must be understood as reciprocal. By

operationalizing *maqāṣid al-sharīʿah* as an analytical tool, this research offers a context-sensitive and doctrinally grounded framework for strengthening women's legal safeguards in Islamic family law.

Keywords: *Nusyuz; Islamic Family Law; Maqāṣid Al-Sharīʿah; Gender Justice.*

INTRODUCTION

Contemporary debates in Islamic family law increasingly revolve around the tension between classical legal doctrines and evolving understandings of gender justice, human dignity, and protection from harm. One of the most contested concepts within this field is *nusyuz*, traditionally associated with marital disobedience and often applied asymmetrically to wives. Recent scholarship indicates a gradual shift toward more contextual and nuanced interpretations that move beyond rigid classical definitions. Studies demonstrate, for instance, that political or personal disagreements do not constitute *nusyuz*, and that obedience is limited to matters of religion rather than encompassing all aspects of marital life (Setiyawan et al., 2024). Similar developments in Malaysian Islamic jurisprudence show an increasing consideration of cultural and social contexts alongside textual sources when interpreting family law norms (Mustapha et al., 2024).

This doctrinal rethinking occurs against the backdrop of escalating domestic violence in Muslim-majority societies, particularly in Indonesia. Empirical data reveal a significant rise in reported domestic violence cases, encompassing physical, psychological, and economic abuse, driven by factors such as economic instability, social pressures, and unequal power relations within families (Hasanudin et al., 2023; Sharifnia et al., 2024). Socio-legal studies further highlight persistent enforcement challenges, especially in cases involving marital rape and polygamy, underscoring the vulnerability of women despite formal legal protections (Mahfud & Rizanizarli, 2021).

A central problem emerging from this context is the continued reliance on literalist interpretations of Qur'an 4:34, which have historically legitimized hierarchical marital authority. Contemporary scholars increasingly challenge these readings through ethical and contextual hermeneutics that emphasize equality and justice (Ismail et al., 2024; Saleem, 2024). Such reinterpretations

expose a widening gap between doctrinal formulations of Islamic family law and women's lived experiences of marital conflict and violence (Daharis, 2023; Septiani, 2025).

Existing literature proposes several general solutions, including reciprocal understandings of marital obligations and gender-egalitarian Qur'anic hermeneutics (Alamsyah, 2019; Kamalia, 2020). Scholars further argue for integrating *maqāṣid al-sharī'ah* to reconstruct gendered legal categories, positioning justice, dignity, and welfare as core evaluative standards (Anisa, 2025; Mufti, 2024). However, much of this scholarship remains normative, offering ethical critiques without fully operationalizing *maqāṣid* as an analytical tool capable of guiding concrete doctrinal outcomes.

This study addresses this gap by reconstructing *nusyuz* through *maqāṣid al-sharī'ah* as an operational analytical framework grounded in the Indonesian socio-legal context. It aims to demonstrate how purposive reasoning can be systematically applied to distinguish between disobedience and legitimate self-protection within marriage. Accordingly, this study examines the conceptualization of *nusyuz* in both classical *fiqh* and Indonesian statutory law, while also exploring the Islamic legal principles that affirm women's right to safety and their legitimate resistance to harm. Building on these foundations, the study further proposes a reconstruction of *nusyuz* through the framework of *maqāṣid al-sharī'ah* to achieve a doctrinally coherent and context-responsive understanding.

METHOD

This study employs a normative legal research design with an explicitly operational *maqāṣid al-sharī'ah* framework to examine and reconstruct the concept of *nusyuz* within Islamic family law. Rather than treating *maqāṣid* as a purely ethical reference, this research applies it as an analytical tool to evaluate whether specific legal interpretations align with the core objectives of justice, dignity, and harm prevention. The doctrinal foundation is drawn from classical *fiqh* and *uṣūl al-fiqh* to map authoritative definitions of *nusyuz* and their underlying legal logic. These doctrinal positions are then assessed through purposive reasoning, particularly the objectives of *ḥifẓ al-naḥs*, *ḥifẓ al-aql*, and the principle of *dar' al-mafāsid*, following contemporary *maqāṣid* scholarship (Anisa, 2025; Mufti, 2024).

To ensure contextual relevance, the study integrates hermeneutical analysis that situates Qur'anic and juristic texts within their socio-historical settings, allowing legal meanings to be examined beyond literal formulations. This approach is complemented by an interdisciplinary review of domestic violence literature, which provides empirical insight into the lived realities of Muslim women and functions as a benchmark for testing the adequacy of doctrinal interpretations. Indonesian statutory provisions and selected religious court decisions are analyzed to observe how *nusyuz* is operationalized in judicial practice.

Analytically, the study applies *maqāṣid*-based criteria to distinguish between acts constituting marital disobedience and acts of resistance or self-protection. Through this structured integration of doctrine, context, and purposive evaluation, the methodology enables a systematic recalibration of *nusyuz* that is both legally coherent and responsive to contemporary socio-legal realities.

RESULTS AND DISCUSSION

Classical and Statutory Conceptions of Nusyuz

Classical Islamic jurisprudence conceptualizes *nusyuz* primarily as a wife's refusal to fulfill her husband's legally recognized marital rights, particularly obedience and cohabitation. Classical *fiqh* manuals articulate this concept through a structured disciplinary framework derived from Qur'anic interpretation, especially QS 4:34. Jurists generally prescribe a sequential response consisting of verbal admonition, separation of beds, and, as a last resort, symbolic physical discipline (Hamdi & Ulumiddin, 2019; Jannah, 2023). Although this framework appears uniform, doctrinal variations exist. Imam Hanafi insists on a strict sequential order to prevent arbitrariness, whereas Imam Shafi'i allows flexibility in selecting the most appropriate corrective measure. Even within this traditional paradigm, classical scholars emphasized that any form of physical discipline must be minimal, non-injurious, and corrective rather than punitive (Jannah, 2023).

Interpretations of QS 4:34 have long been contested within classical exegesis. While the dominant reading permitted escalating disciplinary measures, including physical discipline, jurists simultaneously expressed moral unease regarding the legitimacy and consequences of such actions (Saleem, 2024). This ambivalence reflects an internal tension between textual authority and ethical restraint. Contemporary scholarship has intensified this critique by

exposing how patriarchal social norms shaped literalist interpretations of the verse (Jalajel, 2020). Alternative readings propose that the term *daraba* should be understood metaphorically, emphasizing separation or symbolic distancing rather than physical force (Tahir et al., 2021). These debates reveal an unresolved struggle to reconcile scriptural interpretation with principles of justice, dignity, and gender equality (Ghafournia, 2017). Importantly, this exegetical reassessment provides a critical doctrinal bridge for rethinking *nusyuz* beyond its classical formulation and opens space for legal recalibration within Islamic family law.

Modern gender-justice scholarship further challenges the classical construction of *nusyuz* as inherently one-sided. Studies demonstrate that classical fiqh overwhelmingly framed *nusyuz* as a female-specific violation, marginalizing women's agency and normalizing male authority (Alamsyah, 2019; Kamalia, 2020). Recent analyses argue that harmful marital behaviors are not gender-specific but reflect broader human tendencies that should be addressed through reciprocal legal standards (Harwis & Djalal, 2023; Kadarisman et al., 2025). This shift reframes *nusyuz* as a relational and ethical failure within marriage rather than a gendered breach of obedience, thereby challenging the doctrinal foundations of classical disciplinary models.

In the Indonesian context, statutory regulation through the Kompilasi Hukum Islam (KHI) partially departs from classical fiqh yet reproduces significant gender bias. The KHI narrows *nusyuz* exclusively to wives, a move widely criticized for institutionalizing discrimination and legitimizing unequal power relations (Fitri et al., 2021; Kompilasi Hukum Islam, 1991). Empirical studies highlight that this formulation risks justifying domestic violence and creates legal ambiguity that disadvantages women (Faizah, 2023). Consequently, scholars consistently recommend redefining *nusyuz* as a reciprocal concept applicable to both spouses, thereby restoring normative balance and aligning statutory law with constitutional commitments to equality (Nisa' et al., 2020).

Judicial practice in Indonesia, however, reveals a more nuanced evolution beyond the textual rigidity of the KHI. Religious courts increasingly interpret *nusyuz* contextually, prioritizing substantive justice over formalistic adherence. Decisions such as the Pamekasan Religious Court No. 117/Pdt.G/2013/PA.Pmk demonstrate judicial willingness to grant *iddah* maintenance to wives labeled *nusyuz*, while the Rembang Religious Court

Decision No. 456/Pdt.G/2023/PA.Rbg illustrates how allegations of misconduct are scrutinized rather than accepted at face value (Akhyar, 2025). The use of *ex officio* judicial authority has become a crucial mechanism for protecting women's rights in divorce proceedings. Supreme Court Jurisprudence No. 137 K/AG/2007 further signals a doctrinal shift toward a more balanced understanding of *nusyuz*, recognizing that marital breakdown may involve fault on both sides (Sanusi et al., 2023).

These findings indicate a growing disjunction between classical doctrine, statutory formulation, and judicial practice. While classical and statutory conceptions of *nusyuz* remain largely gendered and disciplinary, judicial interpretation increasingly reflects egalitarian and protective considerations. This divergence underscores the need for a more concrete normative reconstruction of *nusyuz* that integrates classical legal reasoning with contemporary principles of justice, reciprocity, and protection from harm, thereby ensuring doctrinal coherence within Islamic family law.

Islamic Principles Supporting Self-Defense and Harm Prevention

Islamic legal tradition contains well-established principles that affirm the legitimacy of self-defense and prioritize the prevention of harm within marital relationships. Central among these is the legal maxim *lā ḍarar wa lā dirār*, which prohibits both the infliction of harm and the reciprocation of harm, functioning not merely as an ethical injunction but as a flexible juridical tool for safeguarding human welfare (Anoun, 2025). Classical and contemporary scholarship demonstrates that this maxim operates as a foundational mechanism for evaluating interpersonal conduct, including domestic relations, by weighing potential harms against claimed rights (Shaham, 2021; Wahid et al., 2024). Mālikī jurists historically applied this principle through *ijtihād* to resolve marital disputes, indicating its long-standing doctrinal authority in contexts where explicit textual guidance is limited.

Building on this foundation, Islamic jurisprudence emphasizes the prevention of harm through complementary principles such as *dar' al-mafāsīd* (preventing harm) and *maṣlaḥah* (promoting welfare). Contemporary legal theorists consistently affirm that preventing harm takes precedence over securing potential benefits, a principle widely applied across legal fields and increasingly invoked in family law contexts (Muhammad Nirwan Idris & Kurnaemi Anita, 2020). When applied to marriage, this hierarchy requires that

any claim of marital authority be assessed against its tangible consequences for physical safety and psychological well-being. Such an approach aligns with broader *maqāṣid al-sharī'ah* objectives, particularly the protection of life and intellect (*ḥifẓ al-nafs* and *ḥifẓ al-'aql*), which function as substantive benchmarks for evaluating lawful conduct (Qadriah & Panjaitan, 2024). Empirical engagements with *maqāṣid* demonstrate that justice (*al-'adālah*) and responsibility (*al-mas'ūliyyah*) operate not as abstract ideals but as ethically grounded criteria through which marital obligations are renegotiated in response to concrete harm and lived realities (Fadhilah et al., 2025).

Prophetic traditions and Qur'anic ethics further reinforce this harm-preventive orientation. Contemporary reinterpretations of hadith literature emphasize that the Prophet Muhammad's practice categorically discouraged violence against wives, underscoring that coercion contradicts Islamic moral character (Al-Sharmani, 2023). Emerging scholarship also challenges readings that associate spousal discipline with general disobedience, arguing instead that contested verses address specific circumstances such as marital infidelity, not everyday marital conflict (Hussain, 2021). These interpretive shifts situate Islamic ethics as fundamentally preventative, prioritizing the protection of vulnerable parties within the family (Tahir et al., 2021).

Fiqh literature further articulates concrete protections through principles of mutual respect and *mu'āsharah bi al-ma'rūf*, mandating good and non-harmful treatment between spouses (Mulia et al., 2025). Legal scholars increasingly recognize that acts such as marital rape constitute serious violations of Islamic legal ethics, causing both physical and psychological harm (*ḍarār ma'nawī*) and undermining reciprocal marital rights (Furqoni & Thabrani, 2022). Qur'anic approaches emphasizing affection, friendship, and ethical conduct provide additional normative grounding for harm prevention within marriage (Amin al-Dowleh et al., 2025).

Interdisciplinary studies on domestic violence among Muslim women further illuminate the practical urgency of these principles. Empirical research highlights systemic barriers faced by survivors and underscores the need for legal interpretations that bridge Islamic jurisprudence with contemporary protective frameworks (Elhelw Wright, 2022; Nasyiah, 2024). Feminist and reformist scholars therefore argue that unless Islamic legal principles are operationalized to challenge entrenched patriarchal hierarchies, they risk perpetuating harm rather than preventing it (Bakhshizadeh, 2023; Hadi et al.,

2023; Zhussipbek et al., 2024). Collectively, these insights affirm that Islamic law, when applied through its own harm-preventive principles, provides a robust normative basis for legitimizing self-defense and safeguarding human dignity within marriage.

Reconstructing Nusyuz Through Maqāṣid al-Sharī'ah

Reconstructing *nusyuz* through *maqāṣid al-sharī'ah* requires repositioning Islamic family law from a compliance-based framework toward a purposive system centered on justice, dignity, and protection from harm. Within Islamic legal theory, *maqāṣid* functions to safeguard core human values, including religion, life, reason, lineage, and property, while simultaneously promoting social welfare and human dignity (Firdaus et al., 2024). In the context of marriage, these objectives necessitate evaluating marital obligations not merely through formal obedience but through their capacity to preserve physical safety, psychological integrity, and relational justice. However, existing applications of *maqāṣid* often fall short of this potential, as purposive reasoning has frequently been absorbed into patriarchal interpretive structures, thereby undermining its protective intent (Hadi et al., 2023).

A *maqāṣid*-based reconstruction of *nusyuz* begins by shifting the analytical focus from gendered obedience to the prevention of harm (*dar' al-mafāṣid*) and the realization of welfare (*jalb al-maṣāliḥ*). When assessed through the objectives of *ḥifẓ al-nafs* and *ḥifẓ al-'aql*, marital conduct must be evaluated according to its impact on bodily safety, mental well-being, and moral agency. Acts of resistance by wives in situations involving violence, coercion, or psychological abuse therefore align with the protective logic of *maqāṣid*, rather than constituting a breach of marital duty. This approach reframes *nusyuz* as a relational failure rooted in harm and injustice, not as a unilateral act of female disobedience.

Contemporary *maqāṣid*-oriented scholarship has advanced this reorientation by reconstructing gender-related doctrines from within Islamic legal epistemology. Transformative *maqāṣidi* exegesis emphasizes that justice and human dignity are not external ethical imports but intrinsic objectives of Islamic law itself (Affandi et al., 2025; Bakhshizadeh, 2023). By interrogating patriarchal interpretive traditions and re-centering equity, this approach enables doctrinal renewal without abandoning juristic authority (Zhussipbek et al., 2024). Yet, the challenge remains to translate these normative

commitments into concrete legal criteria capable of guiding adjudication and statutory reform.

The theoretical contributions of Ibn ‘Āshūr provide an important bridge between classical fiqh and contemporary human rights discourse. His integration of *al-ṣiṭrah*, *al-samāhah*, *al-musāwāh*, and *al-ḥurriyah* offers an epistemological foundation for understanding marital relations as spaces of mutual dignity and freedom rather than hierarchical control (Umami & Ghofur, 2022). When applied to *nusyuz*, this framework supports an interpretation in which marital authority is conditioned by tolerance, equality, and respect for personal autonomy. Reformist scholarship further demonstrates that such *maqāṣid*-based reasoning can challenge conservative patriarchal norms while remaining doctrinally grounded (Zhussipbek et al., 2024).

Islamic feminist and reformist perspectives reinforce this reconstruction by proposing relational models of marital obligations that emphasize reciprocity and shared responsibility. By re-reading Qur’anic texts through egalitarian and contextual lenses, these scholars argue that marital harmony (*sakinah*) cannot be achieved through coercion or asymmetrical power relations (Bakhshizadeh, 2023). Emerging studies on alternative family arrangements illustrate how reciprocal economic and domestic roles align with *maqāṣid* principles of welfare and justice (Firdaus et al., 2024). Such perspectives shift *nusyuz* from a disciplinary category into an evaluative concept grounded in relational ethics.

Across contemporary Muslim jurisdictions, *maqāṣid*-based reasoning is increasingly employed to reinterpret family law doctrines in light of human dignity and contextual realities. Principles such as *ḥifẓ al-nafs* and *ḥifẓ al-aql* have been invoked to prioritize safety and moral agency in marital disputes, signaling a gradual movement toward human-centered legal interpretation (Laksana et al., 2025). Although comprehensive statutory reform remains uneven, these developments indicate the practical viability of reconstructing *nusyuz* through *maqāṣid* as an analytical tool.

This analysis demonstrates that a *maqāṣid*-based reconstruction of *nusyuz* transforms the concept from a gendered instrument of discipline into a purposive standard for assessing harm, justice, and mutual responsibility within marriage. By operationalizing *maqāṣid* as a doctrinal evaluative

framework, Islamic family law can more coherently protect women's rights while remaining faithful to its normative foundations.

CONCLUSION

This study concludes that reconstructing *nusyuz* through *maqāṣid al-sharī'ah* offers a principled and context-responsive recalibration of Islamic family law that moves beyond gendered obedience toward substantive justice and protection from harm. The analysis demonstrates that classical and statutory conceptions of *nusyuz* remain largely disciplinary and asymmetrical, while contemporary judicial practice and scholarly discourse increasingly signal the need for reciprocal and protective interpretations. The central contribution of this study lies in clarifying how *maqāṣid* functions as an operational analytical framework rather than a merely ethical reference. Specifically, the framework works through three mechanisms: first, identifying concrete harms affecting life, dignity, and psychological integrity; second, evaluating marital conduct against core *maqāṣid* objectives—particularly *ḥifẓ al-nafs* and *ḥifẓ al-'aql*—rather than formal obedience; and third, reclassifying acts of resistance or self-protection as legally justified responses to harm, not as *nusyuz*. By applying these steps systematically to doctrinal analysis and the Indonesian socio-legal context, the study contributes a coherent model for normative reconstruction that remains grounded in Islamic legal epistemology. This approach enriches existing scholarship by demonstrating how *maqāṣid* can guide concrete doctrinal outcomes in family law. Future research may extend this model through comparative analysis across Muslim jurisdictions and empirical examination of its judicial implementation.

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