

Reconstruction of the Concepts of *Nusyûz* in the Feminist Perspectives

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Abstract: *Reconstruction of the Concepts of Nusyûz in the Feminist Perspectives.*

The classical fiqh clerics, when defining the word “*al-rijâl qawwâm...*” in surah al-Nisa’ verses 34-35, interpreted it as “a husband who becomes a family leader”. From this interpretation, a wife is obliged to obey her husband and the *nusyûz* act applies only for the wives. In contrast, according to feminist fiqh views, such as Muḥammad Syahrûr and Musdah Mulia, *Nusyûz* is an act of defiance of God’s commands. Therefore hurting the heart of a wife or husband, both through speech and deed, is *nusyûz* (disobedient). This article compares the views of classical scholars with modern thinkers about the problem of *nusyûz* in the family. This study concludes that modern thinking is more in line with the principles of equality and justice taught in the Qur’an. Thus, *nusyûz* can not only happen to the wife but also can be applied to the husband.

Keywords: Islamic marriage law, Islamic justice, *nusyûz*, feminist, Musdah Mulia

Abstrak: *Rekonstruksi Konsep Nusyûz dalam Perspektif Feminis.* Ulama fikih klasik ketika menafsirkan kata “*al-rijâl qawwâm...*” pada surah al-Nisa’ ayat 34-35 memberi arti sebagai “suami yang menjadi pemimpin keluarga”, sehingga fungsi istri hanya wajib taat kepada suami. Konsekwensi dari penafsiran ini perbuatan *nusyûz* hanya ada untuk kalangan isteri. Sebaliknya, menurut pandangan fikih feminis, seperti Muḥammad Syahrûr dan Musdah Mulia, *nusyûz* adalah perbuatan pembangkangan terhadap perintah Tuhan. Oleh karena itu menyakiti hati isteri atau suami, baik melalui ucapan maupun perbuatan adalah *nusyûz*. Artikel ini membandingkan pandangan para ulama klasik dengan pemikir modern tentang masalah *nusyûz* (pembangkangan) dalam keluarga. Studi ini menyimpulkan bahwa pemikiran modern lebih sejalan dengan prinsip kesetaraan dan keadilan yang diajarkan dalam Alquran. Sehingga *nusyûz* bukan hanya dapat terjadi pada isteri tetapi juga dapat dilakukan oleh pihak suami.

Kata Kunci: hukum perkawinan Islam, keadilan Islam, *nusyûz*, feminis, Musdah Mulia

Introduction

The main purpose of marriage in Islamic teachings is to build a family that is *sakinah*, *mawaddah*, *warahmah*, i.e a family decorated with peace, love, compassion,¹ and good relationship.² Based on these interests, the Marriage Law No. 1 of 1974 formulates the marriage goals as set out in Article 1: "Marriage is a bond of birth and heart between a man and a woman as a husband and wife with the aim of forming a happy family (household) and eternal based on the One God."³

The compilation of Islamic Law Article 3 also confirms the same thing that "Marriage aims to realize the *sakinah*, *mawaddah* and *rahmah* domestic life".⁴ So a new family can be considered successful if it has reached and fulfills the intended purpose.

But in the course of life, there are often conflicts in the household originating from the wife or husband or others. There are husbands who are not good at treating their wives by harming, persecuting, beating and hurting and acting arbitrarily against their wives or not caring about their wives. Similarly, there are also wives who are high-hearted, refuses to obey, oppose, irritate and disobey her husband.

Classical fiqh scholars generally set *nusyūz* actions always done by the wife because they often act without the husband's permission. In addition to being based on the verses above, it also relies on the hadith of the Prophet which mentions that "It is not lawful for women to fast and their husbands to exist except with their permission, and do not

¹ Q.s. al-Rum [30]: 21.

² Q.s. al-Nisa' [4]: 19.

³ Pemerintah Republik Indonesia, 'Undang-Undang RI Nomor 1 Tahun 1974 Tentang Perkawinan', In Muhammad Suma Amin, *Himpunan Undang-Undang Perdata Islam & Peraturan Pelaksanaan Lainnya di Negara Hukum Indonesia*, Cet. I, 1974. Siti Musdah Mulia, 'Counter Legal Draft Kompilasi Hukum Islam: Upaya Implementasi CEDAW dalam Perkawinan', *Jurnal Perempuan* 45, (2006). Rudi Nuruddin Ambary, 'Perkawinan Poligami yang Berkeadilan', *Al-'Adalah*, 11, no. 1 (2014). Marmiati Mawardi, 'Problematisa Perkawinan di Bawah Umur', *Jurnal Analisa*, 19, no. 02 (2007).

⁴ Pemerintah Republik Indonesia, 'Undang-Undang RI Nomor 1 Tahun 1974 Tentang Perkawinan'. Also see Eka Prasetyawati, "Penafsiran Ayat-Ayat Keluarga *Sakinah*, *Mawaddah*, *Wa Rahmah* dalam Tafsir al-Misbah dan Ibnu Katsir." *Nizham Journal of Islamic Studies* 5, no. 2 (2017): p. 138-166.

allow anyone to enter his house except with his permission.”⁵

With such understandings, *nusyûz* actions are always more often accused of women. On that basis, women who are perpetrators of *nusyûz* must be punished with sanctions ranging from verbal reprimand (advice), then separated from the bed (separated from the bed) until the punishment is struck. On the other hand, if the husband commits an offense or a mistake, there is almost no jurisprudence that states it as an act of *nusyûz*, and therefore there is also almost no statement of the cleric who establishes the form of punishment for the *nusyûz* husband.⁶

In the feminist perspective, the concept of *nusyûz* above clearly undermines the dignity of women and encourages domestic violence. The victims of this violence are women and children. Therefore the *nusyûz* concept needs to be reviewed to be harmonized with the values of justice and equality.

This article compares the views of classical fiqh and feminist fiqh about *nusyûz* and their implications for the renewal of marital law in Indonesia. The aim is to find out the similarities and differences of views towards *nusyûz* between classical fiqh and feminist fiqh. This research is expected to be able to provide benefits for the development of knowledge about marital law, especially in uncovering the concept of *nusyûz* and its implications in the view of classical and contemporary fiqh.

⁵ Abû Abdillâh Muhammad bin Ismail al-Bukhârî, *Matan Masygûl al-Bukhârî*, Juz III, (Semarang: Usaha Keluarga, t.t.), p. 260.

⁶ Norzulaili Mohd Ghazali and Wan Abdul Fattah Wan Ismail, *Nusyuz, Shiqaq dan Hakam Menurut Alquran, Sunnah dan Undang-Undang Keluarga Islam* (Penerbit Kolej Universiti Islam Malaysia, 2006). Mursyidah Thahir, ‘Kekerasan Rumah Tangga dan Konsep Nusyuz’, In *Jurnal Pemikiran Islam Tentang Pemberdayaan Perempuan*. (Jakarta: Logos, 2000). Nur Hasan Qarut, ‘*Mauqif Islam Min al-Nusyuz al-Zaujain Aw Ahadihima Wa Ma Yattabi’u Dzalik Min Ahkam*’, (Makkah: Jami’ah Ummul Qura, 1995). Nurasiah, ‘Hak Nafkah, Mut’ah dan Nusyuz Istri Studi Komparatif Undang-Undang Hukum Keluarga di Berbagai Negara Muslim’, *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 4, no.1, (2016), p. 75–116. Abdul Ghofur Anshor Yulkarnain Harahab, ‘Interpretasi Konsep Nusyuz dalam Perkara Perkawinan Pada Pengadilan Agama’, *Mimbar Hukum* 2, (2004). Haswir, ‘Penyelesaian Kasus Nusyuz Menurut Perspektif Ulama Tafsir’, *Al-Fikra*, 11, no. 2, (2017), p. 247–261. Ummi Mar’atus Sholihah, ‘Kritik Hukum Islam Terhadap Pendapat Imam al-Syâfi’i dan Ibnu Hazm Tentang Nafkah Bagi Istri Nusyuz’, *Jurnal Asy-Syari’ah*, 16, no. 1, (2014).

This research is a descriptive qualitative normative literature. Primary data, namely; al-Qur'an al-Hadith, works of classical fiqh figures. The work of feminist fiqh figures. Secondary data, namely what sources support the writing of this Tesis such as; contemporary fiqh books, female Fiqh books, feminist fiqh books, and expert and jurist opinions. Data Analysis with Content Analysis, Gender Analysis, and Hermeneutics (as the main theory).

Classical Fiqh Views About *Nusyûz*

Nusyûz according to Fuqoha 'Hanafiah, is: "a wife who is outside the house without her husband's permission and closes herself from her husband even though he has no such rights. Whereas *nusyûz*'s husband is rude to his wife."⁷ The Malikiyah jurists have given the limits of "*nusyûz*" that is the discharge of a person from the obligatory lines which is obligatory, such as a wife who refuses her husband to have fun with her or a wife who comes out without her husband's permission somewhere she knows that her husband will not permit the place or the wife who leaves her obligations to Allah Swt such as taking a bath or praying and also the wife who locks the door for her husband.⁸

The Shafi'i school of thought establishes *nusyûz* as "the discharge of the wife from obedience to her husband".⁹ As for the opinion of Hambali Fuqoha, *nusyûz* "that is the immorality of the wife against what Allah has obliged her from obeying her husband, taken from the word *nusyûz* which means high, then as if the wife feels high and powerful over everything that Allah has obliged her and obeys her husband".¹⁰ If a wife is nosy to her husband, while he is still pregnant, then the

⁷ Ibn Najm Zainuddin, *al-Bahrur Raiq*. Juz V, (Mesir: Dar al-Kitab al-'Arabiyyah al-Kubro, t.t), p. 76.

⁸ Muhammad bin Ahmad al-Dusuki, *Hasyiyah al-Dusuki* (Egypt: Maktabah Muhammad 'Ali Sabih, 1934), p. 353.

⁹ Ibnu Ruslan 'Jubaedah Mughini. *Analisis Pengaruh EVA, EPS, dan BEP Terhadap Harga Saham Pada Perusahaan Yang Terdaftar di BEI. Sustainable Competitive Advantage (SCA)*, 2013, p. 119.

¹⁰ Ibnu Ruslan 'Jubaedah Mughini. *Analisis Pengaruh EVA, EPS, dan BEP Terhadap Harga Saham Pada Perusahaan Yang Terdaftar di BEI. Sustainable Competitive Advantage (SCA)*, p. 19.

husband is not entitled to provide a living for his wife, but the husband is obliged to provide for his children.¹¹

***Nusyûz* in Law No.1 of 1974 and Compilation of Islamic Law in Indonesia**

According to the Marriage Act No. I of 1974 *nusyûz* was prohibited, in the sense that this *nusyûz* act must not be carried out by a wife or a husband. If one of the husband or wife commits such an impringement, each party may submit a claim to the Court. This is as stated in article 34 paragraph 3 of Marriage Law No. 1 Year 1974: "If a husband or wife neglects their obligations, each party can file a lawsuit against the Court."¹²

In the Compilation of Islamic Law (KHI), *nusyûz* is only attached to the wife who committed insubordination to her husband. Even though Al-Qur'an states that *nusyûz* can be done by husband and wife (Q.s. al-Nisa' [4]: 34 and 128). These special words to a wife can be seen in KHI article 84 paragraph (1) that says "The wife can be considered *nusyûz* if she does not want to carry out the obligations referred to in article 83 paragraph (1) except for valid reasons, Article 83 paragraph (1) reads "the main obligation for a wife is to be physically and spiritually devoted to the husband within the boundaries justified by Islamic law". And article (2) reads "The wife organizes and manages daily household needs as well as possible".¹³

The solution offered in the Compilation of Islamic Law (KHI) is only the solution to the wife who is pointed out, namely if there is *nusyuz* then the husband's obligation will fall as stipulated in article 80 paragraph 7 which reads "Obligation of the husband as referred to in paragraph (5) if the wife of *nusyûz*. Subsequently, paragraph (5) states "The obligation of a husband to his wife as referred to in paragraph (4)

¹¹ Ibnu Ruslan 'Jubaedah Mughini. *Analisis Pengaruh EVA, EPS, dan BEP Terhadap Harga Saham Pada Perusahaan Yang Terdaftar di BEI. Sustainable Competitive Advantage (SCA)*, p. 119.

¹² Siti Musdah Mulia, 'Counter Legal Draft Kompilasi Hukum Islam: Upaya Implementasi CEDAW dalam Perkawinan'.

¹³ Pemerintah Republik Indonesia, 'Undang-Undang RI Nomor 1 Tahun 1974 Tentang Perkawinan', p. 83.

letters a and b shall come into force after there is perfect protection from his wife. Paragraph (4) reads “In accordance with his income the husband bears; a. livelihood, *kiswah*, and residence for wives; b household costs, care costs and maintenance costs and medical expenses for the wife and child. In this condition, the wife can file a lawsuit with the Religious Court (see article 77 paragraph (5) KHI).

Feminist Jurists Views on *Nusyûz*

Feminist jurist views that the *fiqh* developed so far is the *fiqh* domesticating women. So the idea disseminated is that the wife must be at home without being accompanied by an appeal that the husband is also responsible for the household. In other words, a wife or woman is considered a “second creature”, so that the parties who are obliged to bear domestic work and their superior position are husbands. Dii is where injustice to women occurs and invites the attention of many feminist *fiqh* leaders who call for reforms such as Muḥammad Syahrûr, Musda Mulia, etc.¹⁴

According to Muḥammad Syahrûr, in verse 34 Surat al-Nisa' Allah associates al-*qiwamah* (leadership) with different qualities, and makes *al-qiwamah* character for men and women.¹⁵ Such interpretations invalidate physical traits as a measure and establish advantages based on abilities in management, wisdom, and level of human culture. Among men, there are some men who have advantages over some women. Vice versa, among women there are people who have advantages over some men. Therefore, leadership in the family can happen to a husband or wife, male

¹⁴ Abdul Moqsit Ghazali, dkk. *Tubuh, Seksualitas dan Kedaulatan Perempuan* (Yogyakarta: Rahima, 2002). Asghar Ali Engineer, *Pembebasan Perempuan* (Yogyakarta: PT LKiS Pelangi Aksara, 2003). KH Husein Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama dan Gender* (Yogyakarta: LKiS Pelangi Aksara, 2001). Mansour Fakih, *Analisis Gender dan Transformasi Sosial* (Insist Press, 2008). Nurjannah Ismail, *Perempuan dalam Pasungan: Bias Laki-Laki dalam Penafsiran* (Yogyakarta: LKiS Pelangi Aksara, 2003). Annemarie Schimmel and Rahmani Astuti, *Jiwaku Adalah Wanita: Aspek Feminin dalam Spiritualitas Islam* (Jakarta: Penerbit Mizan, 1999).

¹⁵ Ahwan Fanani, 'Ushûl al-Fiqh versus Hermeneutika Tentang Pengembangan Pemikiran Hukum Islam Kontemporer', *Islamica: Jurnal Studi Keislaman*, 4 (2010), p. 194–209. Muhammad Syahrur, 'Metodologi Fiqih Islam Kontemporer, trans, Sohiron Samsudin dan Bahrudin, (Jogjakarta: El-SAQ, 2004).

or female, and the goodness of a family will be achieved if leadership is in the hands of people who have advantages, whether male or female.¹⁶

Furthermore, verse 34 of Surat an-Nisa 'explains what steps should be taken when *nusyûz* arises, deviating behavior from the characteristics of leadership: ... *faidzûhunna wahjurûhunna fi al-madâji'i wadribûhunna...* (...then advise separate beds (separate beds) and (beat them). For Shahrur, *Nusyûz* in the verse above does not mean getting out of obedience to the husband and disobeying it. The reason is, first, because the theme of the verse in question is not related to the problem.

Thus *nusyûz* in that verse means to get out of the line of leadership and compassion, to be authoritarian and arbitrary. The opposite of the word *nusyûz* is *qunûât* which means humility, patience, and gracefulness. A mother may not have leadership rights because of acting authoritarian, arbitrary, impatient, high-hearted and not generous, including towards her children. In such a situation the solution is by means of noble advice and words, separate beds, "*idribûhunna*" in the sense of blocking his power by withdrawing leadership rights from him. The steps of the settlement will remain logical and normal with the leadership in the hands of women, but all of them have not the slightest meaning, if the leadership of both physical, intellectual, religious and power, only belongs to men.¹⁷

Male leadership and the mention of *al-ba'l* in it leads to the conclusion that if a wife is worried about her husband's *nusyûz* there will be two traits: (1) *al-Nusyûz*, that is, if a husband acts arrogantly and authoritatively; (2) *al-Îrâd*, i.e if a husband ignores the affairs of his home and children, then there is no other choice for women except one of the following two things: (1) Accepting what happened (2) Refusing what happened. The verse provides guidelines for peace between the two.¹⁸ But if peace does not materialize, divorce is inevitable. This is the meaning of Q.s. al-Nisa '[4]: 130.

¹⁶ Muhammad Syahrur, 'Metodologi Fiqih Islam Kontemporer', p. 352.

¹⁷ Muhammad Syahrur, 'Metodologi Fiqih Islam Kontemporer', p. 454.

¹⁸ Muhammad Syahrur, 'Metodologi Fiqih Islam Kontemporer', p. 456.

Musdah Mulia believes that *nusyûz* is defiance or non-submission. In the relationship of husband and wife, most people understand *nusyûz* as a wife's non-submission to her husband. This is confirmed by the rules in the compilation of Islamic law (KHI). Even though the Qur'an states that *nusyûz* can be done by husband and wife. (Surah al-Nisa '[4]: 34 and 128).¹⁹

In understanding the concept of *nusyûz* he argued that in terms of *nusyûz* it is defiant or not submissive to God. In Islam, there is no submission except to God. But today's understanding of society is wrong. *Nusyûz* is always understood to be a wife's defiance of a husband. More fatal, the term *nusyûz* is often associated with sexual affairs. *Nusyûz* should have originated from the root of the word *al-Nasyaz* lughawi in defiance of God's commands, so it was not against the husband. Among the commands of God is the necessity not to hurt the hearts of fellow humans, let alone hurt the heart of a partner who in principle is a soul mate. Because it hurts the wife or husband, both through speech and deed is *nusyûz*.²⁰

Nusyûz is often interpreted as a woman who runs or leaves the house, without her husband's permission, or in Javanese culture known as the '*purik*' wife. Whether the '*purik*' wife can be called *nusyûz* or not, depends very much on the motives of why the wife ran away. If he runs away without cause, while his husband also applies him with full responsibility, his rights as a wife are well fulfilled, then he may be called *nusyûz*. However, if he runs away because of being mistreated by a husband or other family member at home, then he is experiencing domestic violence. In this context, it was precisely the husband who abandoned him called *nusyûz*.

A growing understanding in the community regarding the al-Nisa' verse 128 verse about *nusyûz* imposed on women. Already experiencing

¹⁹ Sri Wahyuni, 'Konsep Nusyuz dan Kekerasan Terhadap Isteri: Perbandingan Hukum Positif dan Fiqh', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 1, no. 1, (2016), p. 17–30. Also see Siti Musdah Mulia, "Bukan Terhadap Perintah Suami," *Majalah Tantri (Warta Istri Putri dan Santri)* (Jakarta Selatan: Yayasan Puan Amal Hayati, 2009).

²⁰ Mursyidah Thahir, 'Kekerasan Rumah Tangga dan Konsep Nusyuz', In *Jurnal Pemikiran Islam Tentang Pemberdayaan Perempuan* (Jakarta: Logos, 2000).

distortion and violating what is in the verse. If you return to the letter al-Nisa' verse 128, *nusyûz* in that verse it is actually applied to men. That men must fear God.²¹

Furthermore, according to Musda, the resolution of *nusyûz* had a detrimental effect on women. Because people's understanding is built with a subordinate and marginalizing paradigm of women. Then there must be a change in the marriage law in Indonesia. Musdah Mulia is of the view that what is raised in the Qur'an is a recording that is *khabarriyah* and not *amriyah* (command). It was a sociological record of Arab society at that time. The *khabarriyah* verses do not need to be applied in daily life, because the verse *khabarriyah* is not an order. Even though there is an order in verse 34 of the letter al-Nisa': *wadhribûhunna* from the word *dharaba* which is interpreted hit but in the semantic analysis the word *dharaba* is not always meaningful to hit. The word has many meanings, including: "giving an example", "educating" can even mean "intercourse". The choice of hitting was chosen because it contained a bias of interest in the era carried out by the interpreters.²²

The Relevances with Family Law Renewal in Indonesia

a. The Impact of *Nusyûz*'s Law

The ulama have agreed that the actions of *nusyûz* law is unlawful both *nusyûz* which is carried out by the wife and from the husband, such as a husband or wife does not fulfill his obligations to his spouse but always demands his rights or treats his partner incompatible with *syara'*.

The majority of Jurists view that if *nusyûz* is done by the wife, the wife can be punished in a physical or psychological manner. But if *nusyûz* comes from the male side and his wife is unhappy with *nusyûz*'s actions from her husband, his wife must accept it as it is by making peace. But if she does not want to make peace, her husband must divorce her. Furthermore, if *nusyûz* comes together from both parties, husband and wife, then the path that must be taken is to conduct *ishlâh* (peace)

²¹ Mursyidah Thahir, 'Kekerasan Rumah Tangga dan Konsep Nusyuz'.

²² Mursyidah Thahir, 'Kekerasan Rumah Tangga dan Konsep Nusyuz'.

by sending each of his family or siblings not allowing the husband to divorce her immediately without a clarity or reason.

In the view of feminist scholars, the 'jurist' attitude is clearly unfair and very detrimental to women. According to feminists, if the husband does *nusyûz*, the wife can blockade his power by withdrawing leadership rights from him. The steps of the settlement will remain logical and normal with the leadership in the hands of women, but all of them have not the slightest meaning, if in the case of leadership both physically, intellectually, religiously and powerfully only belong to men.²³

The Relevance of Feminist Fiqh Views With Marital Law in Indonesia

The provisions of marriage law in Indonesia, both Law number 1 of 1974 and KHI, are almost not much different from the attitude of classical jurisprudence, which is more in favor of the interests of men so that many disadvantage women.

Regarding to the *nusyûz* law, both the Imam of the schools of thought and the Marriage Law No. 1 of 1974 explicitly and clearly gave a prohibited or unlawful law. In short, *nusyûz* by a wife is forbidden by the *ijma* 'ulama and aborting her right to earn her living costs.²⁴ According to the Marriage Law No.1 of 1974 *nusyûz* is prohibited, in the sense that this act should not be carried out by the wife or by the husband. If the husband or wife performs an impringement, each party may file a lawsuit to the Court. This is as stated in article 34 paragraph 3 of the Marriage Law No. 1 Know 1974: "If a husband or wife neglects their respective obligations, they can file a lawsuit with the Court."²⁵

So there is a legal relevance between *nusyûz* according to classical fiqh scholars, Law No.1 of 1974 concerning marriage and the KHI. Concerning the law of *nusyûz*, the Imam of the Madhab or the Marriage Law No. 1 of 1974 explicitly and clearly gave the legal status forbidden, and if the wife who did *nusyûz* could result in the death of the wife's

²³ Mursyidah Thahir, 'Kekerasan Rumah Tangga dan Konsep Nusyuz', p. 454.

²⁴ Muhammad bin Abdul Rahman Syafi'i, *Rohmatul Ummah Fi Ikhtalai Aimmah* (al-hidmen), p. 36.

²⁵ Mursyidah Thahir, 'Kekerasan Rumah Tangga dan Konsep Nusyuz'.

right to get a living and necessity for her husband. The compilation of Islamic Law (KHI) outlines the *nusyûz* only attached to the wife who defies her husband.

Unequal legal provisions as above, in the view of feminist fiqh, must be changed and rectified. Because the Qur'an states that *nusyûz* can be done by husband and wife (Q.s. al-Nisa' [4]: 34 and 128). The provisions of KHI article 84 paragraph (1) which stipulates that *nusyûz* as the wife's deed must be equipped with a revised den, by adding that *nusyûz* can also be done by the husband and can be subject to sanctions.

Three sanctions for women who are *nusyûz* must also be interpreted or reinterpreted in accordance with the current developments that prioritize human rights and human values. The third punishment in the form of "punch" is not interpreted as a physical blow but can be a psychological blow in expect to restore to initial awareness.

This means that the interpretation of Islamic scholars must be reconstructed based on the following principles: First, pluralism, (*al-ta'addudiyah*). It is undeniable that Indonesia is a very plural country. This plurality occurs not only in ethnicity, culture and language but also in religious perspective. Second, nationalist principles (*al-muwathanah*). It has been understood that Indonesia was built not only by one religious community. Indonesia recruits its members rather than being made aware of religious criteria, but on nationality. Third, the principle of democracy which bases itself on the principle of freedom, equality and human sovereignty. Fourth, the principle of benefit. Indeed, the Shari'a has no other purpose except to realize the universal humanitarian benefit (*jalb al-mashâlih*) and reject all forms of disobedience (*dar al-mafâsid*). Fifth, the principle of gender equality.²⁶

²⁶ Siti Musdah Mulia, *Islam Menggugat Poligami* (Jakarta: PT.Gramedia Pustaka Utama, 2004). Ali Imron, 'Menimbang Poligami dalam Hukum Perkawinan', *Qistie Jurnal Ilmu Hukum*, 6, no.1, (2012). Azni, 'Izin Poligami di Pengadilan Agama (Suatu Tinjauan Filosofis)', *Jurnal Risalah*, 26, no. 2, (2015), p. 55–68.

Conclusion

After conducting a study of feminist jurisprudence on the concept of *nusyûz* it can be concluded that *nusyûz*, is basically an attitude of disobeying God. Therefore, all action hurting the wife or husband, both through speech and deed, is considered *nusyûz*. According to the feminist jurists, *nusyûz* is not related at all to piety, in the sense of establishing prayer and fasting, as well as with ethical violations and iniquities which require education and hand blows. The word means out of line with love and affection, namely authoritarian and arbitrary.

The criteria of *nusyûz* in the view of feminist is to get out of the line of leadership through authoritarian and arbitrary, impatient, arrogant, and unyielding either against husband, wife, and their children. When a husband commits in *nusyûz* his right to leadership moves to his wife, so it is very possible that the wife demands leadership rights or demands divorce.

As the reality of injustice for women still occurs, there are two things should be carried out: First, reinterpretation of the text of the *nusyûz* verse interpreted by classical fiqh scholars, followed by revising the Marriage Law No. 1 of 1974 about Marriage and Compilation of Islamic Law (KHI) which up to now contains patriarchy and subordinate to women. Second, socialize gender justice, or gender mainstreaming.

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