



# Balancing Rights and Obligations in Wifely Obedience: A Syafi'i and Human Rights Perspective

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## Abstract

This study analyzes the tension between the concept of wife obedience in classical Shafi'i fiqh and the principle of gender equality in international human rights law. Employing a normative legal research method with a descriptive-analytical and comparative qualitative approach, this research examines classical Shafi'i fiqh literature, international human rights instruments, and Indonesian legislation. The findings reveal that the concept of wife obedience in classical Shafi'i fiqh is hierarchical and subordinative in nature, reflecting the patriarchal structure of medieval Arab society. This concept conflicts with the principle of gender equality enshrined in the UDHR and CEDAW, which emphasizes a partnership of equals in marriage. In Indonesia, legal ambivalence arises from the fact that the Compilation of Islamic Law (KHI) continues to uphold the hierarchical concept of wife obedience despite Indonesia's ratification of CEDAW. This study proposes a reconceptualization through a *maqashid al-shari'ah* approach with a constructive synthesis built upon three pillars: equal partnership, deliberation in decision-making, and *ta'awun-tarahum* as a relational ethic. The implementation of this synthesis requires the reformulation of the KHI, reorientation of Religious Court decisions, public education, and a more contextually grounded reformulation of *ijtihad* methodology. This



study contributes to the development of Islamic family law that is responsive to gender justice without compromising Islamic identity.

### Keyword

Wife Obedience, Shafi'i Fiqh, Human Rights, Maqashid Al-Shari'ah, Islamic Family Law

### Introduction

The issue of a wife's obedience to her husband in marital life is a classical theme that continues to constitute an important discourse in contemporary Islamic legal studies, particularly within the Shafi'i school of law, which holds a dominant influence in Indonesia and Southeast Asia. The Shafi'i school, founded by Imam Muhammad bin Idris al-Shafi'i (150–204 AH / 767–820 CE), has constructed a highly structured and detailed conceptualization of wife obedience within its classical fiqh literature.<sup>1</sup> Monumental works such as *al-Umm* by Imam al-Shafi'i himself, *al-Muhadhdab* by Abu Ishaq al-Shirazi, *al-Majmu' Sharh al-Muhadhdab* and *Minhaj al-Talibin* by Imam al-Nawawi, as well as various commentaries (*syarah*) such as *Tuhfat al-Muhtaj* and *Nihayat al-Muhtaj*, explicitly formulate the obligation of wife obedience as a fundamental principle in the husband-wife relationship.

In the view of Shafi'i fiqh, wife obedience is not merely a moral recommendation, but rather a juridical obligation (*kewajiban syar'i*) carrying legal consequences. A wife is obligated to obey her husband in matters deemed proper (*ma'ruf*), is prohibited from leaving the home without her husband's permission, must fulfill her husband's sexual needs whenever he desires except in cases of legitimate legal excuse (*uzur syar'i*), and in some scholarly opinions, a wife who refuses her husband's invitation to bed without a legally justified reason will be cursed by the angels until the morning.

The concept of *nusyuz* in the Shafi'i school is likewise defined specifically as a wife's defiance against the rights of her husband, which consequently results in the forfeiture of the wife's right to financial maintenance (*nafkah*) (Al-Syāfi'ī, 1983, p. 203). The construction of the concept of wife obedience in Shafi'i fiqh is grounded in a literal understanding of a number of Qur'anic verses and Hadith, as reflected in QS. al-Nisa' verse 34, which affirms that

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<sup>1</sup> Muhammad Syahrir, *Distribusi Keadilan Mengenai Ahli Waris Pengganti (Analisis terhadap Kompilasi Hukum Islam dan Imam Mazhab)*. Diss. IAIN Parepare, 2025, 2.

men are the leaders (qawwamun) over women (Khayati, 2023, p. 4). This verse is interpreted as denoting the absolute leadership of men over women within the household, carrying the legal implication that a wife must obey her husband as a consequence of such qawwamah. Classical Shafi'i scholars such as Imam al-Nawawi in al-Majmu' and al-Ramli in Nihayat al-Muhtaj elaborate in considerable detail the boundaries of wife obedience, yet consistently within a hierarchical framework that positions the husband as the party entitled to obedience and the wife as the party obligated to comply (Al-Nawawī, n.d., Vol. 16, p. 409; Al-Ramli, n.d., Vol. 6, p. 431)

Nevertheless, in the context of modern legal thought development and the growing awareness of human rights, this hierarchical and subordinative concept of wife obedience has begun to be critically questioned. The Universal Declaration of Human Rights (UDHR) of 1948, particularly Article 16 affirming equal rights of men and women in marriage, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979 demanding the elimination of all forms of gender-based discrimination, and the Beijing Platform for Action of 1995 emphasizing women's empowerment, all affirm the principles of gender equality, non-discrimination, and respect for human dignity regardless of sex. These human rights values emphasize that marriage must be founded upon the principle of a partnership of equals, wherein husband and wife possess equal rights and obligations, as well as the freedom to make decisions concerning themselves without the domination of the other party.

The concept of absolute and unilateral obedience is regarded as a form of subordination that conflicts with the principle of *dignitas humanae*. The tension between the classical Shafi'i fiqh understanding of wife obedience and the egalitarian values of human rights creates a complex epistemological and practical dilemma, particularly for Muslim communities in countries that adhere to the Shafi'i school while simultaneously ratifying international human rights conventions. In Indonesia, as the country with the world's largest Muslim majority adhering to the Shafi'i school, this conceptual conflict carries highly significant legal and social implications. The Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) of 1991, which serves as the primary reference for Religious Courts (Pengadilan Agama) in resolving family law disputes, is heavily influenced by classical Shafi'i fiqh opinions. Article 80 paragraph (2) of the KHI stipulates that a husband is obligated to protect his wife and

provide all necessary household needs in accordance with his capacity, while Article 80 paragraph (4) point (c) affirms the wife's obligation to obey her husband in matters deemed proper (*ma'ruf*). Article 83 paragraph (1) of the KHI further states that the primary obligation of a wife is to devote herself, both outwardly and inwardly, to her husband within the limits permitted by Islamic law.

These formulations, although having undergone modifications compared to the more rigid classical *fiqh* texts, nonetheless continue to reflect a paradigm of asymmetrical obedience. On the other hand, Indonesia has ratified CEDAW through Law Number 7 of 1984, Law Number 23 of 2004 on the Elimination of Domestic Violence (*Penghapusan Kekerasan Dalam Rumah Tangga/PKDRT*), and various other regulations guaranteeing gender equality. This condition creates a legal ambivalence with implications for the protection of women's rights within the household.<sup>2</sup>

Various efforts at reforming Islamic legal thought have been undertaken by progressive thinkers, both at the global and local levels, to bridge the tension between classical *fiqh* doctrine and human rights values. At the international level, figures such as Fazlur Rahman with his double movement theory, Muhammad Shahrur with his contemporary linguistic approach, Nasr Hamid Abu Zayd with his critical hermeneutics, Amina Wadud with feminist Qur'anic hermeneutics, and Asma Barlas with her egalitarian reading of the Qur'an, have offered new methodologies for understanding religious texts relating to gender relations. In Indonesia, figures such as KH. Husein Muhammad with his perspective on women's *fiqh*, Nasaruddin Umar with his argument for gender equality in Islam, Siti Musdah Mulia with her concept of empowerment-oriented *fiqh*, as well as organizations such as the Fahmina Institute and Alimat, have endeavored to deconstruct patriarchal *fiqh* understanding, including the concept of wife obedience. They argue that the concept of wife obedience in classical Shafi'i *fiqh* constitutes a product of *ijtihad* heavily shaped by the patriarchal socio-cultural context of medieval Arab society, in which a tribally structured social order positioned men as the dominant party.

Nevertheless, these progressive views continue to face considerable resistance from conservative quarters, particularly from traditional scholars of the Shafi'i school who regard

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<sup>2</sup> Ninik Rahayu, "Kesetaraan Gender dalam Aturan Hukum dan Implementasinya di Indonesia Gender Equality in the Rule of Law in Indonesian and Implementation." *Jurnal Legislasi Indonesia* 9.1 (2012): 15-32.

recontextualization efforts as a form of liberalization, Westernization, and even deviation from the manhaj salaf al-salih that threatens the authenticity of Islamic teachings.

The urgency of this research is further reinforced by empirical realities on the ground, wherein a rigid and literal understanding of the concept of wife obedience in classical Shafi'i fiqh has become one of the contributing factors to various forms of gender injustice within the household. Data from the National Commission on Violence Against Women (Komnas Perempuan) indicate that domestic violence remains the highest form of violence against women in Indonesia, and in many cases, perpetrators justify their actions through religious arguments, including the husband's right to "discipline" a wife deemed *nusyuz*. Religious edicts and texts that continue to employ the classical fiqh paradigm without adequate contextualization further perpetuate this problematic understanding.

This research therefore carries considerable academic and practical significance. Academically, it contributes to the development of contemporary *ijtihad* methodology within the Shafi'i school that integrates the authority of classical texts with the demands of universal justice. Practically, it is hoped to provide a conceptual foundation for the reformulation of Islamic family law in Indonesia that is more responsive to women's rights without forfeiting its Islamic identity.

## Method

This study employs a normative legal research method with a qualitative approach that is descriptive-analytical and comparative in nature. Primary data sources include classical Shafi'i fiqh works such as *al-Umm*, *al-Muhadhdab*, *al-Majmu' Sharh al-Muhadhdab*, *Minhaj al-Talibin*, *Tuhfat al-Muhtaj*, and *Nihayat al-Muhtaj*, human rights legal instruments such as the UDHR and CEDAW, as well as national legislation including the Compilation of Islamic Law (KHI) and the Law on the Elimination of Domestic Violence (UU PKDRT). Secondary data sources encompass books, academic journals, and works by contemporary Islamic legal thinkers. Data collection was conducted through library research employing a documentation method.

Data analysis utilized content analysis and comparative analysis methods with a legal hermeneutics and *maqashid al-shari'ah* approach. The stages of analysis commenced with the identification of the concept of wife obedience in Shafi'i fiqh, followed by an exploration of the principle of gender equality in human rights law, after which a comparative analysis was conducted to identify points of

conflict and potential common ground between the two paradigms. A historical-contextual approach was employed to understand the background underlying the emergence of the concept of wife obedience, while a sociological-juridical approach was applied to analyze its implementation in the practice of Islamic family law in Indonesia.

## Results and Discussion

### The Concept of Wife Obedience in Shafi'i Fiqh

The results of the analysis of classical Shafi'i fiqh literature reveal that the concept of wife obedience is systematically and structurally formulated as a binding legal obligation.<sup>3</sup> In *al-Umm*, Imam al-Shafi'i affirms that a wife is obligated to obey her husband in matters that do not violate the provisions of Islamic law, including the obligation not to leave the home without her husband's permission, to fulfill her husband's sexual needs, and to manage household affairs.<sup>4</sup> The *al-Muhadhdhab* by Abu Ishaq al-Shirazi states more explicitly that wife obedience constitutes a logical consequence of the obligation of financial maintenance (*nafkah*) incumbent upon the husband, such that a disobedient wife (*nusyuz*) forfeits her right to such maintenance.<sup>5</sup> *Al-Majmu' Sharh al-Muhadhdhab* by Imam al-Nawawi elaborates in considerable detail the boundaries of wife obedience, among them: first, a wife is obligated to respond to her husband's summons to bed except in cases of legitimate legal excuse (*uzur syar'i*) such as menstruation, postnatal bleeding, or illness; second, a wife may not travel without her husband's permission even for the purpose of recommended acts of worship such as *umrah*; and third, a wife is obligated to obey her husband's commands in matters that are permissible (*mubah*) and proper (*ma'ruf*).<sup>6</sup>

*Nihayat al-Muhtaj* by al-Ramli and *Tuhfat al-Muhtaj* by Ibn Hajar al-Haytami provide further elaboration on the legal implications of wife obedience. Both works explain that a wife who refuses her husband's invitation to bed without a legally justified reason will be

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<sup>3</sup> Moh Nasikin, *Analisis konsep hak dan kewajiban suami istri perspektif KH. Hashim Ash 'ari dalam kitab Dou'al-Miṣbah fi bayani aḥkam an-nikah*. Diss. Institut Agama Islam Tribakti, 2022.

<sup>4</sup> Abū 'Abd Allāh Muḥammad bin Idrīs al-Syāfi'ī, *al-Umm*, juz 5, 94, (Beirut: Dār al-Fikr, 1403 H/1983 M). juz 5, 94.

<sup>5</sup> al-Syirāzī, Abū Ishāq Ibrāhīm bin 'Alī bin Yūsuf, *al-Muhadhdhab fi Fiqh al-Imām al-Syāfi'ī*, (Beirut: Dār al-Kutub al-'Ilmiyyah, 2010). juz 2, 51.

<sup>6</sup> al-Nawawī, Yaḥyā bin Sharaf, *al-Majmū' Sharḥ al-Muhadhdhab*, (Beirut: Dār al-Fikr, 1407 H/1987 M). juz 16, 410.

cursed by the angels until morning, as mentioned in a hadith narrated by al-Bukhari and Muslim. Furthermore, both works also state that a husband is entitled to exercise ta'dib (disciplinary measures) against a disobedient wife, beginning with admonition, followed by separation of beds, and if she remains defiant, physical chastisement that causes no injury is permitted. Minhaj al-Talibin by Imam al-Nawawi summarizes these provisions in a more concise formulation while nonetheless continuing to emphasize the hierarchy of the husband-wife relationship, wherein the husband holds the authority of *qawwamah* (leadership) to which the wife must submit.<sup>7</sup>

Data drawn from these classical fiqh works reveal a consistent pattern in the construction of the concept of wife obedience, which is hierarchical and asymmetrical in character. This concept is built upon a literal understanding of QS. al-Nisa' verse 34, which states that men are *qawwamun* (leaders) over women, as well as a number of hadith emphasizing the virtue of a wife's obedience to her husband. From the perspective of legal derivation methodology (*istinbath*), classical Shafi'i scholars employed an approach whereby wife obedience forms part of the family structure regulated by Islamic law, in which the husband as head of the family holds the authority to govern and make decisions within the household, while the wife is obligated to comply and submit so long as the husband's commands do not contravene Islamic law.<sup>8</sup>

A critical examination of these findings reveals that the concept of wife obedience in Shafi'i fiqh is heavily shaped by the patriarchal socio-cultural context of medieval Arab society. Within that context, social structure was built upon a tribal system that positioned men as protectors and breadwinners, while women occupied the domestic sphere. As explained by Fazlur Rahman in his work *Islam and Modernity*, the products of classical Islamic legal *ijtihad* cannot be separated from the historical and sociological context in which such law was formulated. Rahman argues that in order to understand the true intent of Qur'anic teachings, a double movement approach is required – moving from the contemporary situation back to the period of revelation to understand the historical context, and then

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<sup>7</sup> al-Nawawī, Yaḥyā bin Sharaf, *Minhaj al-Talibin Sharḥ al-Minhaj*, (Beirut: Dār al-Fikr, 1407 H/1987 M). juz 2, 145.

<sup>8</sup> Syauqi, Mochamad Rafi Asy. "Relevansi Masalah Dalam Menimbang Kewajiban Nafkah Skincare Dan Kosmetik Bagi Istri: Perspektif Ulama Klasik Dan Kontemporer Dalam Rumah Tangga Modern." *Al-Hukmi: Jurnal Hukum Ekonomi Syariah Dan Keluarg Islam* 6.1 (2025): 116-136.

returning to the present day carrying the universal values embedded in the text.

The Islamic feminist perspective advanced by Amina Wadud in *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* offers an alternative reading of the verses cited as evidence for wife obedience. Wadud argues that QS. al-Nisa' verse 34 must be understood within its specific historical context and not as a universal principle applicable to all ages. The word *qawwamun*, according to Wadud, does not signify leadership in the sense of domination, but rather the responsibility to protect and provide for the family. This interpretation is consistent with the hermeneutical approach developed by Nasr Hamid Abu Zayd, which emphasizes the importance of distinguishing between the historical meaning of a text (*al-ma'na al-tarikhi*) and its contemporary significance (*al-maghza*). Within this framework, the concept of absolute and hierarchical wife obedience constitutes a product of interpretation bound to a particular historical context, rather than a universal message of the Qur'an.<sup>9</sup>

### **The Principle of Gender Equality in Human Rights Law Instruments**

An analysis of international human rights law instruments reveals a strong commitment to the principle of gender equality in all aspects of life, including within the institution of marriage. Article 16 paragraph (1) of the Universal Declaration of Human Rights (UDHR) of 1948 states that men and women of full age, without any limitation due to race, nationality, or religion, are entitled to marry and to found a family. Article 16 paragraph (1) further affirms that they are entitled to equal rights as to marriage, during marriage, and at its dissolution. Article 16 paragraph (2) states that marriage shall be entered into only with the free and full consent of the intending spouses, which indicates the principle of autonomy and equality in decision-making.<sup>10</sup>

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979 provides a more comprehensive normative framework on gender equality in marriage.

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<sup>9</sup> Nasr Hamid Abu Zaid, *Maḥmūm al-Nass: Dirasah fi 'Ulūm al-Qur'an* (Beirut: al-Markaz al-Thaqafi al-'Arabi, 1994), 24-27; Nasr Hamid Abu Zaid, *Rethinking the Qur'an: Towards a Humanistic Hermeneutics* (Amsterdam: Amsterdam University Press, 2004), 15-18.

<sup>10</sup> Habib Shulton Asnawi, "Tinjauan kritis terhadap hak-hak perempuan dalam UU. No. 1 Tahun 1974 Tentang Perkawinan: Upaya menegakkan keadilan dan perlindungan ham perspektif filsafat hukum Islam." *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* (2016): 29-62.

Article 16 paragraph (1) point (c) of CEDAW affirms the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children. Article 16 paragraph (1) point (d) establishes the same rights and responsibilities as spouses, including the right to choose a family name, a profession, and an occupation. Article 16 paragraph (1) point (g) affirms the same personal rights as husband and wife, including the right to choose a family name, a profession, and an occupation. These provisions explicitly reject all forms of hierarchy and subordination in the husband-wife relationship, and affirm the principle of a partnership of equals in marriage.<sup>11</sup>

The Beijing Platform for Action of 1995 reinforces the international commitment to gender equality by identifying twelve critical areas requiring special attention, including violence against women, inequality in power and decision-making, and harmful gender stereotypes. In the context of marital relations, the Beijing Platform emphasizes the importance of women's empowerment and the elimination of all forms of practices that place women in a subordinate position. The document further affirms that women's human rights are an integral part of universal human rights and cannot be set aside in the name of cultural or religious tradition.<sup>12</sup>

Data drawn from these three international human rights instruments reveal a paradigm that differs markedly from the concept of wife obedience in classical Shafi'i fiqh. Whereas classical Shafi'i fiqh constructs the husband-wife relationship within a hierarchical framework in which the husband as *qawwam* is entitled to obedience, international human rights instruments construct the marital relationship within a framework of partnership of equals, wherein husband and wife possess equal rights and responsibilities. This paradigmatic difference creates significant conceptual tension, particularly for Muslim-majority countries that have ratified international human rights conventions while continuing to maintain family law grounded in classical fiqh.

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<sup>11</sup>Konvensi tentang Penghapusan Segala Bentuk Diskriminasi terhadap Perempuan, New York, 18 Desember 1979 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

<sup>12</sup> Restoeningroem, Restoeningroem. "Dinamika Kedepan Pengarusutamaan Gender." *Seminar Nasional dan Diskusi Panel Multidisiplin Hasil Penelitian dan Pengabdian Kepada Masyarakat*, 2018.

A theoretical discussion of the principle of gender equality in human rights law can be elucidated through John Rawls' theory of justice, which emphasizes the principles of fairness and equal liberty. In *A Theory of Justice*, Rawls argues that just social institutions must be built upon the principle that every individual possesses an equal right to the most extensive system of basic liberties, insofar as such liberties are compatible with similar liberties for others. In the context of marriage, this principle requires that husband and wife possess equal freedom and autonomy in making decisions about their lives, without the subordination of one party to the other. The concept of absolute wife obedience clearly conflicts with this principle of equal liberty, as it places the wife in a position devoid of full autonomy over herself.<sup>13</sup>

Martha Nussbaum, in *Women and Human Development: The Capabilities Approach*, offers a capabilities approach framework for analyzing gender equality. Nussbaum argues that justice for women is not merely a matter of formal equality, but also concerns the actual capabilities of women to live lives of dignity. Among the ten central capabilities formulated by Nussbaum, several are particularly relevant to the critique of the concept of wife obedience, namely: bodily integrity (the ability to move freely from place to place and to be protected from assault), control over one's environment (the ability to participate in political choices and to hold the right to work), and practical reason (the ability to form a conception of the good and to engage in planning one's own life). The concept of wife obedience, which restricts a wife's mobility, decision-making autonomy, and freedom, clearly impedes the development of these capabilities.

### **Analysis of the Compilation of Islamic Law (KHI) as a Guide to Islamic Family Law in Indonesia**

An analysis of the Compilation of Islamic Law (KHI) as Indonesia's guiding framework for Islamic family law reveals the adoption of the concept of wifely obedience from classical Shafi'i jurisprudence, albeit with several modifications. Article 83(1) of the KHI states that the primary obligation of a wife is to serve her husband both outwardly and inwardly within the limits permitted by Islamic law. Article 80(4)(c) affirms that a wife is obligated to manage and administer the household on a daily basis to the best of her ability.

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<sup>13</sup> Faiz, Pan Mohamad. "Teori Keadilan John Rawls." *Jurnal Konstitusi* 6.1 (2009): 135-149.

Article 84(2) provides that a wife may be considered nusyuz (disobedient) if she fails to fulfill the obligations specified in Article 83(1) without a valid reason. The consequence of nusyuz status is the nullification of the husband's obligation to provide financial support, as stipulated in Article 80 (7).<sup>14</sup>

Data from the Religious Courts indicate that the concepts of wifely obedience and nusyuz continue to be taken into consideration in divorce and maintenance rulings. In several cases, Religious Court judges have ruled that a wife who works without her husband's permission, or who leaves the home without his consent, may be classified as nusyuz, thereby forfeiting her right to financial support.<sup>15</sup> A study conducted by Lies Marcoes (2002) examining Religious Court rulings in Jakarta found that in 65% of maintenance claims filed by wives, husbands invoked the nusyuz argument as a defense, and in 40% of those cases, the judges accepted the argument as grounds for dismissing the maintenance claim. This data indicates that interpretations of wifely obedience continue to significantly influence the practice of religious adjudication in Indonesia.<sup>16</sup>

The tension between the concept of wifely obedience in the KHI and Indonesia's commitment to gender equality is also evident in the country's ratification of CEDAW through Law No. 7 of 1984. Indonesia ratified CEDAW with a reservation to Article 29 (1) concerning arbitration in dispute resolution, but entered no reservation to Article 16 on equality in marriage. This means that Indonesia is legally bound to eliminate all forms of discrimination against women in marriage, including practices that place women in a subordinate position. In practice, however, the KHI – which remains in force to this day – continues to uphold a hierarchical concept of wifely obedience.<sup>17</sup>

Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT) provides legal protection for women who experience

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<sup>14</sup> Irawan, Dendi. *Status Nafkah Keluarga Ketika Suami Dalam Keadaan Sakit (Menurut Pendapat Imam Syafi'i Dan Kompilasi Hukum Islam)*. Diss. Universitas Islam Negeri Sultan Syarif Kasim Riau, 2021, 2.

<sup>15</sup> Kusmardani, Alex, Oyo Sunaryo Mukhlas, and Beni Ahmad Saebani. "Perspektif Sosiologi Dan Antropologi Hukum Keluarga Islam Terhadap Nusyuz Sebagai Alasan Perceraian Serta Penerapannya Dalam Putusan Pengadilan Agama Bandung." *J-CEKI: Jurnal Cendekia Ilmiah* 4.1 (2024): 259-272.

<sup>16</sup> Trigiyatno, Ali. "Nusyuz Dalam Wacana Fiqih Dan Gender." *Muwazah* 2.2 (2010): 18-27.

<sup>17</sup> Zulfikar, Achmad. "Alasan Pemerintah Indonesia Meratifikasi Konvensi Internasional Perlindungan Hak Pekerja Migran Tahun 2012." *Skripsi (Undergraduate Thesis)* (2013).

domestic violence, encompassing physical, psychological, sexual, and economic abuse. Article 5 of the PKDRT Law affirms that no person may commit domestic violence against any individual within the household. Article 9(1) defines sexual violence as any act involving the coercion of sexual relations against a person residing within the household. This provision implicitly conflicts with the classical jurisprudential understanding that obliges a wife to fulfill her husband's sexual needs whenever demanded, without the right to refuse except on grounds of a legitimate religious excuse (*uzur syar'i*).<sup>18</sup>

A critical examination of the implementation of Islamic family law in Indonesia reveals significant ambivalence and normative inconsistency. On one hand, as a state that has ratified various international human rights conventions, Indonesia is obligated to guarantee gender equality in all aspects of life, including marriage. On the other hand, the KHI – as the national legal product guiding the Religious Courts – continues to uphold a hierarchical conception of wifely obedience. This situation gives rise to what Lynn Welchman describes as "legal pluralism" within the Muslim family law system, wherein multiple – and sometimes conflicting – sources of law coexist simultaneously.<sup>19</sup>

### **Efforts to Reconceptualize Wifely Obedience through the Perspective of Maqashid al-Shari'ah**

The maqashid al-shari'ah approach offers a promising methodological framework for bridging the tension between the concept of wifely obedience in classical Shafi'i jurisprudence and the values of gender equality enshrined in human rights. Maqashid al-shari'ah, systematically formulated within the Shafi'i school of thought, identifies five foundational objectives of Islamic law (*al-maqashid al-khamsah*): *hifz al-din* (protection of religion), *hifz al-nafs* (protection of life), *hifz al-'aql* (protection of intellect), *hifz al-nasl* (protection of lineage), and *hifz al-mal* (protection of property). From the maqashid perspective, every legal ruling must be evaluated

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<sup>18</sup> Sayyid Abu Bakar bin Muhammad Syatha ad-Dimyathi al-Bakri, *I'anatut Thalibin 'ala Halli Alfazhi Fathil Mu'in*, (Beirut: Dar al-Kutub al-Ilmiyyah, 2013) Juz 4

<sup>19</sup> Hasan, Zainudin, et al. "Harmonisasi Sumber Hukum: Jurisprudensi Dan Konstitusi Tertulis Dalam Filsafat Dan Penerapan Hukum." *Innovative: Journal Of Social Science Research* 3.2 (2023): 7959-7964.

according to the extent to which it contributes to the realization of these foundational objectives.<sup>20</sup>

An analysis of the concept of wifely obedience within the maqashid al-shari'ah framework reveals that a literal and absolute understanding of this concept may actually contradict several of those very objectives. First, with respect to hifz al-nafs (protection of life), a concept of wifely obedience that sanctions a husband's physical ta'dib (disciplining) of a nusyuz wife stands in clear contradiction to the principle of protecting life and bodily integrity. Although classical scholars imposed conditions requiring that such physical discipline cause no harm, in practice this limitation is highly subjective and prone to abuse — as evidenced by the persistently high rates of domestic violence. Second, with respect to hifz al-'ird (protection of honor), a notion of obedience that curtails a wife's autonomy and freedom to make decisions about her own life may be understood as a violation of human dignity and honor, given that every human being is entrusted as God's vicegerent on earth.

The National Commission on Violence Against Women for the year 2020 indicates that of the 299,911 cases of violence against women reported, 79% constituted domestic violence. Of that number, physical violence accounted for 31%, psychological violence 23%, sexual violence 11%, and economic violence 35%. In interviews conducted with survivors by Rifka Annisa Women's Crisis Center, many stated that perpetrators justified their abusive behavior by invoking the argument that a wife must obey her husband, and that a wife's refusal to comply with her husband's wishes was regarded as nusyuz warranting disciplinary action. This data demonstrates that a rigid interpretation of the concept of wifely obedience has become a contributing factor to gender-based violence within the household.<sup>21</sup>

The maqashid al-shari'ah approach developed by contemporary thinkers such as Jasser Auda offers a framework oriented toward universal values of justice. In *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, Auda argues that maqashid must be understood as an open system capable of adapting to changing social contexts, rather than as a rigid and closed list. He emphasizes the importance of incorporating universal values such as justice ('adl),

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<sup>20</sup> Rizqi, Ikhsan Nur. "Maqashid Syari'ah Perspektif Imam Haramain al-Juwayni." *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 7.2 (2021): 111-123.

<sup>21</sup> Indrawati, Indrawati, and Sukma Paramastuti. "Intervensi Komunitas "Rifka Annisa" Yogyakarta pada Perempuan Korban Kekerasan dalam Rumah Tangga." *INTELEKSIA: Jurnal Pengembangan Ilmu Dakwah* 1.2 (2020): 187-211.

freedom (*hurriyyah*), and human dignity (*karamah insaniyyah*) as integral components of the *maqashid*. Within this framework, the concept of wifely obedience must be reinterpreted not as subordination and subjugation, but as cooperation and partnership in building a family grounded in *sakinah* (tranquility), *mawaddah* (affection), and *rahmah* (compassion).<sup>22</sup>

KH. Husein Muhammad, one of Indonesia's leading progressive Islamic thinkers, has proposed a reinterpretation of the concepts of *qawwamah* and wifely obedience through a contextual and gender-justice-oriented approach. In *Fiqh Perempuan: Refleksi Kiai atas Wacana Agama dan Gender* (Women's Fiqh: A Scholar's Reflections on Religious Discourse and Gender), Husein Muhammad argues that *qawwamah* in QS. An-Nisa' verse 34 must be understood within the historical context of seventh-century Arabia, where men possessed greater economic capacity than women. In the contemporary context, where women may hold equal or even greater economic capacity than men, *qawwamah* must be understood as a functional responsibility that can be exercised by whoever has the capacity to do so — not as an authority conferred on the basis of sex. Accordingly, wifely obedience is no longer an absolute and unilateral obligation, but rather an expression of mutual respect (*ta'arudh*) and mutual compassion (*tarahum*) in the marital relationship.<sup>23</sup>

Nasaruddin Umar, in *Argumen Kesetaraan Gender: Perspektif Al-Qur'an* (Arguments for Gender Equality: A Qur'anic Perspective), reinforces this argument by demonstrating that the Qur'an fundamentally teaches the principle of equality between men and women. Umar identifies a number of verses affirming ontological equality, equality in intellectual capacity, and equality in moral responsibility between men and women. In the context of marriage, Umar argues that QS. Ar-Rum verse 21 — which states that God created spouses from your own selves as a source of comfort, and instilled between you affection and mercy — indicates that the marital relationship must be built on the foundation of *mawaddah wa rahmah* (affection and mercy), rather than on domination and subordination.

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<sup>22</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London & Washington: The International Institute of Islamic Thought, 2008), 3-6.

<sup>23</sup> Husein Muhammad, "Kekerasan dan Ketidakadilan Terhadap Perempuan: Perspektif Agama dan Upaya Penafsiran Ulang," *Right: Jurnal Agama dan Hak Azasi Manusia*, Vol. 5, No. 1 (2015): 67-86.

An absolute concept of wifely obedience stands in clear contradiction to this principle of mawaddah wa rahmah.<sup>24</sup>

### **Constructive Synthesis: Toward a Gender-Just Concept of the Husband-Wife Relationship**

Drawing on the analysis of wifely obedience in classical Shafi'i jurisprudence, the principles of gender equality in human rights, the implementation of Islamic family law in Indonesia, and efforts at reconceptualization through maqashid al-shari'ah, this study proposes a constructive synthesis for formulating a gender-just conception of the husband-wife relationship without sacrificing Islamic identity. This synthesis rests on three foundational pillars: first, the principle of partnership of equals as the basic paradigm of the marital relationship; second, the principle of musyawarah (deliberation/shura) in family decision-making; and third, the principles of ta'awun (mutual assistance) and tarahum (mutual compassion) as the ethics of relational life.

The principle of equal partnership proceeds from the understanding that QS. Ar-Rum verse 21 – in declaring that spouses are created from the same self (min anfusikum) – affirms ontological and functional equality between husband and wife. The classical interpretation that reads "min anfusikum" as Eve being created from Adam's rib must be critically examined, as it has no basis in the Qur'an and more accurately reflects Judeo-Christian mythology than Islamic teaching. This principle of equal partnership requires that husband and wife hold equal rights and responsibilities in building their household, including the right to work, to voice opinions, and to make decisions about their own lives. Obedience in this context is not one-sided subordination, but a mutual respect and mutual obligation that is balanced and reciprocal.

The principle of deliberation in family decision-making is an application of the fundamental Islamic value of shura, as referenced in QS. Ash-Shura verse 38. Deliberation within the family means that important decisions affecting shared life must be made through a process of dialogue and mutual agreement between husband and wife, rather than through unilateral directives from the husband. This encompasses decisions about children's education, household financial management, place of residence, and various other aspects of

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<sup>24</sup> Nasaruddin Umar, *Argumen Kesetaraan Gender Perspektif Al-Qur'an* (Jakarta: Paramadina, 2001).

domestic life. Where differences of opinion cannot be resolved through deliberation, resolution must be pursued through fair and non-discriminatory mechanisms, rather than through the domination of one party over the other.

The principles of ta'awun and tarahum as relational ethics mean that husband and wife must mutually support one another in fulfilling family responsibilities and sustain one another with compassion in navigating life's challenges. The division of roles within the family should be functional and flexible, based on mutual agreement and individual capacity, rather than on rigid gender stereotypes. If the wife is employed outside the home and earns an income, the husband must also participate in managing household affairs and caring for children. Conversely, if the husband takes on the greater share of domestic responsibilities because the wife earns a higher income, this in no way diminishes his dignity – for what matters is that the family functions effectively as a social unit grounded in *sakinah*, *mawaddah*, and *rahmah*.

Implementing this constructive synthesis requires the reformulation of several articles within the KHI that continue to reflect a hierarchical paradigm. Article 83(1) – which stipulates the wife's obligation to serve her husband both outwardly and inwardly – needs to be revised to establish the mutual obligation of both husband and wife to serve and respect one another. Article 84 on *nusyuz* requires reformulation with a more balanced definition, one in which not only the wife may be considered *nusyuz*, but the husband as well, should he fail to fulfill his obligations or engage in conduct that is harmful to the wife. The legal consequences of *nusyuz* also require revision: the forfeiture of maintenance rights should not occur automatically merely because the wife is deemed *nusyuz*, but must instead be established through a fair evidentiary process before the court.

The reformulation of Islamic family law must be accompanied by a broad-based program of public socialization and education to transform societal understanding of the husband-wife relationship. Religious scholars, community leaders, and preachers bear a critical responsibility in disseminating a new understanding of gender-just marital relations. The content taught in religious study circles, Friday sermons, and various religious forums must be aligned with this new paradigm – one that emphasizes the values of justice, equality, and respect for human dignity regardless of sex.

Pre-marital education programs administered by the Office of Religious Affairs (KUA) also require revision to incorporate material

on equal and gender-just marital relations. Prospective spouses need to be equipped with the understanding that marriage is a partnership requiring communication, mutual respect, and an equitable sharing of responsibilities. They should also be informed of their rights in marriage under both national and international law, including the right to be protected from all forms of violence and discrimination.

The Religious Courts, as the institutional authority for resolving Islamic family disputes, must also undertake a reorientation in their rulings. Religious Court judges need to develop gender sensitivity and recognize that their legal decisions carry profound consequences for women's lives. In cases involving allegations of *nusyuz*, judges must adopt a critical posture and refrain from automatically accepting a husband's arguments without conducting a thorough examination of the facts. Judges must also take into account the PKDRT Law and related regulations on the protection of women when rendering decisions, so as to prevent the re-victimization of women who are themselves survivors of violence.

At a more fundamental level, there is a need to reformulate the methodology of *ijtihad* within the Shafi'i school in a manner that is more responsive to contemporary demands of justice. The *ijtihad* methodology that has thus far tended toward textualism and the uncritical adoption (*taqlid*) of classical scholarly opinion must be supplemented by a more contextual, historically critical, and *maqashid*-oriented approach. Contemporary scholars and *mujtahids* must have the intellectual courage to exercise new *ijtihad* that may depart from classical positions where those positions are no longer relevant or have come into conflict with universal principles of justice.

The experience of family law reform in several Muslim-majority countries offers valuable reference points for reform in Indonesia. Morocco, for instance, undertook a significantly progressive reform of its family law through the 2004 *Mudawwanah*, which abolished the concept of wifely obedience and replaced it with the principle of co-responsibility between husband and wife in managing family life. Tunisia went even further, abolishing polygamy as early as 1956 and granting equal rights to husband and wife in matters of divorce. While the socio-political context differs across countries, these examples demonstrate that reform of Islamic family law that is responsive to

gender equality is entirely achievable without sacrificing Islamic identity.<sup>25</sup>

It must be recognized, however, that reforming Islamic family law will not be effective if pursued solely at the legislative level without accompanying transformation of broader social structures. The deep-rooted culture of patriarchy, economic disparities between men and women, unequal access to education and employment, and various other forms of structural discrimination must be comprehensively addressed. Reform of Islamic family law must form part of a broader agenda of women's empowerment that encompasses economic, social, cultural, and political dimensions.

At the global level, dialogue between the Islamic legal tradition and universal human rights values must be continuously advanced. This dialogue need not be conceived as a confrontation between Islamic and Western values, but rather as a shared effort to articulate universal standards of humanity that are acceptable across diverse cultural and religious traditions. While the conception of human rights developed in the context of Western modernity does require contextualization within an Islamic value framework, foundational principles such as human dignity, justice, and equality are universal values that Islam itself upholds and teaches.

This study acknowledges that the reconceptualization of wifely obedience and the reform of Islamic family law constitute a complex agenda that will require considerable time to realize. Resistance from conservative quarters who regard such efforts as liberalization and Westernization will persist. Yet, given the urgency of the issue and its impact on the lives of millions of Muslim women, this reform agenda can no longer be deferred. What is required is a commitment from all stakeholders — government, religious scholars, academics, civil society organizations, and the public at large — to collaboratively formulate an Islamic family law that is more just and genuinely responsive to women's rights.

The constructive synthesis proposed in this study is not intended as the definitive or perfect solution, but as a contribution to the ever-evolving discourse on how Muslims can preserve their religious identity while upholding the values of justice and equality. This study argues that there is no inherent contradiction between Islam and gender equality; rather, the tension lies between a particular

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<sup>25</sup> Centre for Public Impact, "Reforming Moroccan Family Law: The Moudawana," 2 Mei 2016, diakses 21 Desember 2025, <https://centreforpublicimpact.org/public-impact-fundamentals/reforming-moroccan-family-law-the-moudawana/>

understanding of Islam — one heavily shaped by patriarchal historical and cultural context — and universal values of justice. By re-reading religious texts through the lens of *maqashid al-shari'ah* and gender sensitivity, Muslims can articulate a conception of the marital relationship that is simultaneously authentic in religious terms and just in human terms.

## Conclusion

This study concludes that the concept of wifely obedience in classical Shafi'i jurisprudence — hierarchical and subordinating in character — is a product of *ijtihad* that was profoundly shaped by the patriarchal socio-cultural context of medieval Arabia. This concept stands in contradiction to the principle of gender equality guaranteed in international human rights instruments such as the UDHR and CEDAW. The tension between these two paradigms produces a legal ambivalence in Indonesia, where the KHI continues to uphold a hierarchical concept of wifely obedience despite the country's ratification of numerous human rights conventions that guarantee gender equality.

The *maqashid al-shari'ah* approach offers a methodological framework for reconceptualizing wifely obedience by foregrounding the universal objectives of Islamic law — justice, the protection of life, and respect for human dignity. This study proposes a constructive synthesis built on three pillars: equal partnership, deliberation in decision-making, and *ta'awun-tarahum* as relational ethics. The implementation of this synthesis requires the reformulation of the KHI, a reorientation in Religious Court adjudication, expansive public education, and a reformulation of *ijtihad* methodology that is more contextual and responsive to contemporary justice. In this way, Muslims may articulate a concept of the husband-wife relationship that is simultaneously authentic in religious terms and just in human terms.

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