

## THE DISTINCTION BETWEEN *NUSYŪZ* AND DOMESTIC VIOLENCE

### The Relevance of Muhammad Sa'id Ramadhan Al-Buthi Thought in Contemporary Context

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#### Abstract

Domestic violence is often justified as being legitimized in *fiqh*. It culminates in a discussion about *nusyūz* when a husband can beat his wife in response to her resistance. Al-Buthi is a scholar who discusses *nusyūz* and domestic violence with great vigor. In the context of defending the compatibility of Islamic law in the contemporary era, he argues that *nusyūz* and domestic violence are not the same. This paper explains Al-Buthi's thoughts on the distinction between *nusyūz* and domestic violence. Data were gathered by investigating the works of Al-Buthi and other scholars' works related to his thought on the discussed topic and then analyzed qualitatively. This study argues that Al-Buthi emphasizes that *nusyūz* in Islam is different from domestic violence. In the case of *nusyūz*, even though the husband is allowed to beat his wife, it is not permissible to beat her seriously. If there are defects caused, then the husband must be responsible. By just refining the meaning of beating, Al-Buthi provides an understanding that the *nusyūz* rules in Islamic law are still relevant to the current context, particularly to women's rights. Apart from his argument on the stance on women's rights, his thoughts tend to the side of Islamic legal conservatism.

[Kekerasan dalam rumah tangga seringkali dijustifikasi sebagai praktek yang dilegitimasi dalam fikih. Puncaknya dalam diskusi tentang *nusyūz*, ketika seorang suami dapat memukul istrinya sebagai respon atas pembangkangannya. Al-Buthi adalah seorang ulama yang cukup

intens membahas nusyūz dan kekerasan dalam rumah tangga. Dalam konteks mempertahankan kompatibilitas hukum Islam di era kontemporer, ia berpendapat bahwa nusyūz dan KDRT tidaklah sama. Tulisan ini menjelaskan pemikiran Al-Buthi tentang distingsi antara nusyūz dan kekerasan dalam rumah tangga. Data dikumpulkan dengan menelaah karya-karya Al-Buthi dan artikel jurnal yang terkait dengan pemikirannya dan kemudian dianalisis secara kualitatif. Penelitian ini menemukan bahwa Al-Buthi hanya menegaskan nusyūz dalam Islam berbeda dengan kekerasan dalam rumah tangga. Dalam kasus nusyūz, meskipun suami diperbolehkan memukul istrinya, tidak boleh memukulnya dengan serius. Jika ada cacat yang ditimbulkan, maka suamilah yang harus bertanggung jawab. Dengan hanya memperhalus makna dan konsekuensi memukul, Al-Buthi berargumentasi bahwa aturan nusyūz dalam hukum Islam masih relevan dengan konteks saat ini, khususnya menyangkut hak-hak perempuan. Terlepas dari argumennya membela hak perempuan, pemikirannya cukup lebih lebih menonjolkan konservatisme hukum Islam]

### Keywords

Al-Buthi thought, domestic violence, *nusyūz*

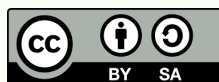
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### Introduction

At the beginning of 2022, one of the popular preachers became the subject of discussion for many people because her sermon was considered controversial. The sermon was considered to justify domestic violence in Islam, and later became the top of Indonesia's

trending topics.<sup>1</sup> Several major state institutions participated in responding to the heated sermon. Among them is Isfah Abidal Aziz, a special staff of the Ministry of Religious Affairs, who showed a firm stance that domestic violence was not justified under any pretext.<sup>2</sup> This phenomenon shows that there is a relatively vague public understanding of domestic violence in the Islamic world, particularly when it intersects with the issue of *nusyūz*.

This paper comes to discuss the thoughts of Muhammad Sa'id Ramadhan Al-Buthi who has been actively refuting women's issues including *nusyūz*. Al-Buthi is a contemporary Islamic scholar who vocally speaks up about the modern side of Islamic law. He considerably follows Islamic law issues from a vast perspective. He has also written several scientific works specifically on family law issues. Al-Buthi's expertise in matters of Islamic law and state legislation has prompted several lawyers in Syria to frequently seek his consideration in several matters relating to legislation. Al-Buthi is widely recognized among other contemporary scholars.<sup>3</sup> He is not only mastered the Islamic classical textbook but also has a fairly extensive reading of Western philosophy and reads various kinds of research and the latest scientific works that have been published. Daily, he regularly pours his thoughts on the social media channel, YouTube.

*Nusyūz* and domestic violence are not new topics. Wahyuni explains that the concept of *nusyūz* does not represent domestic violence.<sup>4</sup> The act of beating in the term of *nusyūz* must be understood in the context of providing a lesson, not hurting or acting violently. If the husband beats his wife hard then it causes injury, it is categorized as the husband's *nusyūz*.<sup>5</sup> Jasmani compares the domestic violence version of Islamic law and the positive

<sup>1</sup> Josina, 'Ceramah Oki Setiana Dewi Viral, KDRT Masih Puncaki Medsos', *detikInet* (4 Feb 2022), <https://inet.detik.com/cyberlife/d-5927695/ceramah-oki-setiana-dewi-viral-kdrt-masih-puncaki-medsos>, accessed 7 Feb 2022.

<sup>2</sup> Widya Michella, 'Viral Ceramah Oki Setiana Dewi, Kemenag : KDRT Tak Bisa Dibenarkan dengan Dalih Apa pun', *iNews.id* (5 Feb 2022), <https://www.inews.id/news/nasional/viral-ceramah-oki-setiana-dewi-kemenag-kdrt-tak-bisa-dibenarkan-dengan-dalih-apa-pun>, accessed 8 Feb 2022.

<sup>3</sup> Tabrani Tajuddin and Neny Muthiatul Awwaliyyah, "Understanding the Equality Of Heirs in Tafsir Al-Mar'Āh Bayn Al-ṬugyĀn Al-NiḍĀm By Muḥammad Sa'īd Ramāḍan Al-Būṭi: Analysis of QS. 4: 11," *Jurnal At-Tibyan: Jurnal Ilmu Alqur'an Dan Tafsir* 6, no. 1 (2021): 165–81, <https://doi.org/10.32505/at-tibyan.v6i1.2484>.

<sup>4</sup> Sri Wahyuni, "Konsep Nusyūz Dan Kekerasan Terhadap Isteri: Perbandingan Hukum Positif Dan Fiqh," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 1, no. 1 (2008): 17–30.

<sup>5</sup> Wahyuni.

law.<sup>6</sup> He emphasized that in Islamic law domestic violence is not categorized as a crime (*jarīmah*). On the other hand, Indonesian law number 23 of 2004 states that domestic violence is a crime that must be subject to criminal sanctions.<sup>7</sup> Not far from those above, Faizah explained that the trigger of misunderstanding domestic violence and *nusyūz* is rooted in an error in understanding Islamic teachings. Husbands sometimes legalize violence against their wives as education to improve their wives' attitudes. Violence continues while the wife's reasons for doing *nusyūz* are often ignored.<sup>8</sup> According to those researchers, the conjunct point of *nusyūz* and domestic violence is in the attitude toward women's rights.

Regarding women's rights, the closer discussion of Al-Buthi's thoughts on women's issues and family law was written by Mufid.<sup>9</sup> According to Mufid, Family Planning Program (KB) initiated and governed by the state is not in line with the marriage principle in Islam.<sup>10</sup> In reverse, if the Family Planning Program is adopted by couples voluntarily without state enforcement, it will be acceptable. The state intervention in this fully private sector violates civil freedom.<sup>11</sup> Another discussion of Al-Buthi's thoughts on familial issues was brought up by 'Ashry and Firdausiyah.<sup>12</sup> They illustrated that in many cases Al-Buthi seems to counter the western justification of Islamic tradition. Hijab does not associate with modern civilization. The civilized is not measured by the way of wearing.<sup>13</sup> The same notion is in the case of women's leadership. Being the family head is not the proper indicator of exclusivity or superiority, but the distribution of the daily burden. By adopting the majority

<sup>6</sup> Jasmani Jasmani, "Islam Dan Kekerasan Dalam Rumah Tangga Menurut Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan KDRT," *Jurnal Ar-Risalah* 2, no. 2 (2022): 124–39, <https://doi.org/10.30863/al-risalah.v2i2.400>.

<sup>7</sup> Jasmani.

<sup>8</sup> Nur Faizah, "Nusyuz : Antara Kekerasan Fisik Dan Seksual," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 6, no. 2 (2013): 114–15.

<sup>9</sup> Moh Mufid, "Kontribusi Muhammad Sa'īd Ramadhan Al-Buthi Dalam Pemikiran Hukum Publik Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 4, no. 1 (2018): 24–46, <https://doi.org/10.15642/aj.2018.4.1.24-46>.

<sup>10</sup> Mufid.

<sup>11</sup> Mufid.

<sup>12</sup> M Noor' Ashry and Umi Wasilatul Firdausiyah, "Pemikiran Sa'īd Ramadhān Al-Būthī Terhadap Isu-Isu Feminisme (Kajian Atas Penafsiran Sa'īd Ramadhān Al-Būthī Terhadap Ayat-Ayat Hijab, Kepemimpinan Perempuan, Hak Waris, Dan Poligami)," *Jurnal Studi Al-Qur'an* 18, no. 1 (2022): 111–33, <https://doi.org/10.21009/JSQ.018.1.06>.

<sup>13</sup> Noor' Ashry and Firdausiyah.

argument of ulama in the case of hijab, and denying leadership as superior, Al-Buthi wittingly defends the norms of Islam and neutralized what he called western influences.<sup>14</sup>

Continuing the two studies above, this research is under the quest of Al-Buthi explanation of the gap between *nusyūz* and domestic violence, and not apart from how he puts women's interest amidst this point. This paper is qualitative research. The primary data were taken from the reading of Al-Buthi's works such as the book *al-Mar'ab Bain Ṭuḡyān al-Niẓām al-Gorbī Wa Laṭāif al-Tasyrī' al-Islāmī*, book *Ḥuqūq al-Mar'ab wa Aqd al-Tanāqud Bainaha wa Baina al-Syarī'ah al-Islāmiyyah*, book *Lā Ya'tibi al-Bātil*, and journal articles related to the topic of discussion.

### ***Nusyūz* and Domestic Violence According to Islamic Law and Positive Law**

In the understanding of a few people, domestic violence<sup>15</sup> is often associated with the concept of *nusyūz* in Islam.<sup>16</sup> Mulia considers that the permission to beat a wife who is doing *nusyūz* will lead to domestic violence.<sup>17</sup> Meanwhile, according to Muhammad, the prevention of *nusyūz* offered by the Qur'an by beating his wife is no longer effective at this time, because today's women have advanced and have received public recognition in the

<sup>14</sup> Noor'Ashry and Firdausiyah.

<sup>15</sup> Domestic violence is defined as a form of discrimination that tarnishes a person's dignity and violates human rights. The most common cause of domestic violence is economic hardship and socio-cultural factors. See Rizqa Febry Ayu and Rizki Pangestu, "Modernitas Nusyuz; Antara Hak Dan Kewajiban," *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 12, no. 1 (2021): 73–92, <https://doi.org/10.21043/yudisia.v12i1.8711>; Erna Erawati et al., "The Domestic Violence Screening Through The Empowerment of Mental Health Cadres," *KOMUNITAS: International Journal of Indonesian Society and Culture* 10, no. 2 (2019): 220–24, <https://doi.org/10.15294/komunitas.v10i2.12542>; Fransina Tubalawony, Novy H C Daulima, and Herni Susanti, "Women's Experience of Domestic Violence in Maluku," *Enfermeria Clínica* 29 (2019): 243–46, <https://doi.org/10.1016/j.enfcli.2019.04.029>, and Melanie Pita Lestari, Zulkifli Ismail, and Fransiska Novita Eleanora, "Domestic Violence in The Perspective of Law and Human Rights," *KRTHA BHAYANGKARA* 16, no. 1 (2022): 23–30, <https://doi.org/10.31599/krtha.v16i1.959>.

<sup>16</sup> Analiansyah Analiansyah and Nurzakia Nurzakia, "Konstruksi Makna Nusyuz Dalam Masyarakat Aceh Dan Dampaknya Terhadap Perilaku Kekerasan Dalam Rumah Tangga (Studi Kasus Di Kecamatan Ingin Jaya)," *Gender Equality: International Journal of Child and Gender Studies* 5, no. 2 (2019): 141–60, <https://doi.org/10.22373/equality.v5i2.5602>. See also Agustin Hanapi and Yenny Sri Wahyuni, "Persepsi Masyarakat Aceh Terhadap Nusyuz," *Gender Equality: International Journal of Child and Gender Studies* 7, no. 1 (2021): 125–34, <https://doi.org/10.22373/equality.v7i1.8692>.

<sup>17</sup> Siti Musdah Mulia, *Menuju Hukum Perkahwinan Yang Adil: Memberdayakan Perempuan Indonesia, Perempuan Dan Hukum: Menuju Hukum Yang Berperspektif Kesetaraan Dan Keadilan* (Jakarta: Yayasan Pustaka Obor Indonesia, 2008).

public sphere on an equal footing with men.<sup>18</sup> Therefore, beating women is no longer appropriate.<sup>19</sup> The root of the misunderstanding of *nusyūz* is an inaccurate comprehension of the letter An-Nisā verse-34,<sup>20</sup> which reads: “As for women of whom you fear rebellion, admonish them, and remain apart from them in beds, and beat them. Then if they obey you, do not seek ways to harm them. Allah is Exalted, Great”.

Mulia explained that what appears in the Qur'an is *kebabariyyah* (information) and not *amriyyah* (command).<sup>21</sup> It was a sociological record of Arab society at that time. The verse *kebabariyyah* does not need to be applied in everyday life, because the verse *kebabariyyah* is not a command. Although in verse 34 of An-Nisā, there is an editorial *wadribūhunna* from the word *daraba* which means to beat, but in the semantic analysis the word *daraba* does not always mean to beat. The word has many meanings, including to set an example, and to educate, and it can even mean having sex. The meaning of beating contains a bias of interests at the time carried out by the interpreters.<sup>22</sup> This opinion contradicts the hadith which explains that the meaning of *daraba* in the context of the verse is beating nothing else, as the hadith narrated by Imam Muslim who uses the editorial *darban gairu mubarriḥ* (a lightly beat) which explicitly interprets the meaning of *wadribūhunna* as beating not anything else.<sup>23</sup>

*Nusyūz* in Arabic comes from the word *nasyaʿa* which means high. *Imra'atun nāsyizāh 'alā ẓanjihā* means a wife who rebels against her husband, who is high up against him, makes him angry, and disobeys him.<sup>24</sup> In the treasures of Islamic jurisprudence, the wife is

<sup>18</sup> Sayed Sikandar Shah Haneef and Mohammed Farid Ali Al-Fijawi, “Muslim Feminists’reading of the Quran: A Juristic Analysis on Family Law Issues,” *Mazāhib Jurnal Pemikiran Hukum Islam* 17, no. 0 (2018): 1, <https://doi.org/10.21093/mj.v17i1.1056>.

<sup>19</sup> Abd Muqsiṭh, “Pemahaman Ulama Kontemporer Indonesia Tentang Nusyūz Dan Penyelesaiannya Dalam Surah Al-Nisā’: 34” (Fakultas Ushuluddin dan Filsafat, n.d.).

<sup>20</sup> Syarial Dedi, “Pemimpin Rumah Tangga Dalam Tafsir (Kaji Ulang Pendapat Feminis Dengan Metode Ta’wīl),” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 2 (2020): 103–15, <https://doi.org/10.14421/ahwal.2018.11201>.

<sup>21</sup> Mulia, *Menuju Hukum Perkahwinan Yang Adil: Memberdayakan Perempuan Indonesia*; Musdah Mulia, *Ensiklopedia Muslimah Reformis: Pokok-Pokok Pemikiran Untuk Reinterpretasi Dan Aksi*, ed. Penerbit BACA (Tangerang Selatan, 2020).

<sup>22</sup> Alamsyah Alamsyah, “Reconstruction of the Concepts of Nusyūz in the Feminist Perspectives,” *Al-’Adalah* 15, no. 2 (2018): 293–306, <https://doi.org/10.24042/adalah.v15i2.3481>.

<sup>23</sup> Abū al-Ḥusain Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim* (Beirut: Dār Ihyā’ al-Turāṣ al-‘Arabi), p. 891.

<sup>24</sup> Al-Murtaḍā Al-Zabīdī, *Tāj al-’Arūs min Jawābir al-Qāmūs* (Kuwait: Maṭba’ah Ḥukūmah al-Kuwait, 1975), p. 354.

said to have done *nusyūz* when she does not perform what is her obligation or leaves the house without the permission of the husband and without a legitimate excuse (*uzur syar'i*).<sup>25</sup> The legitimate excuse referred to is like going out to the court to report to the judge to ask for his rights, going to work when his husband is unable to meet his needs, or asking the ulama for a fatwa about a specific law if his husband cannot answer a specific law because he does not know much about fiqh.<sup>26</sup>

If there are signs that a wife will do *nusyūz*, such as a wife speaking harshly in front of her husband even though she always spoke softly, then the first step that the husband must be taken is to admonish by reminding his wife of her obligations, and informing that the impact of *nusyūz* is the loss of *nafaqah* (alimony) and *qismah* (a division of time). If the wife really does *nusyūz*, then the step her husband must be taken is to admonish and remain apart from her in bed. If the wife is still repeating her *nusyūz*, then the husband has the right to beat his wife with a light beat and avoid the face and vital parts that are dangerous. Beating the wife is required if the husband believes that the beating will prevent the wife from repeating her *nusyūz*. But if beating will not change anything, then the husband is better off not beating the wife.<sup>27</sup> As long as the wife is *nusyūz*, the husband is not obliged to fulfill his wife's alimony and share the night.<sup>28</sup>

Al-Zuhaili added that the beating could be done by hand or with a small stick if the husband saw it better. But it is better not to do the beating because the Prophet never beats his wife or maid. The Prophet never beats with his hands except in the way of Allah or the prohibition of Allah was violated, so the Prophet took action for Allah's sake.<sup>29</sup> The husband is given the right to beat his wife who does *nusyūz* in the hope of resolving the problem without going to the Religious Court. However, if beating does not solve the problem and each of the husband and wife accuse their partner of being wrong without a witness, then the husband has the right to report to the religious court so that the judge can mediate and give a decision that may end in divorce. Sometimes some women are desperate to do *nusyūz* because their husbands do not pay attention to them, and abandon

<sup>25</sup> Wahbah Al-Zuhaili, *Al-Fiqh Al-Islāmi Wa Adillatuh* (Damascus: Dār al-Fikr, 1985), p. 338.

<sup>26</sup> Ibrāhīm Al-Bājūrī, *Ḥasyiyah Al-Bājūrī 'alā Ibn Al-Qāsim* (Beirut: Dār al-Minhāj, 2016), p. 456.

<sup>27</sup> Syamsu al-Dīn Al-Syirbīnī, *Mugnī Al-Muḥtāj Ilā Ma'rifah Ma'āni Alfāḥi Al-Minhāj* (Beirut: Dār al-Ma'rifah, 1997), pp. 342–3.

<sup>28</sup> Al-Bājūrī, *Ḥasyiyah Al-Bājūrī 'alā Ibn Al-Qāsim*, p. 462.

<sup>29</sup> Al-Zuhaili, *Al-Fiqh Al-Islāmi Wa Adillatuh*, p. 340.



## The Distinction Between *Nusyūz* and Domestic Violence

their rights—both material rights, such as not giving them *nafaqah* (alimony), and mental rights such as not having sex with them properly. So to express their intentions, some women choose to do *nusyūz* by disobeying their husbands. Solving *nusyūz* without looking for the root cause of the *nusyūz* will have an impact on results that are not as desired, even the opposite.<sup>30</sup>

Article 84 of the Compilation of Indonesian Islamic Law explains that the wife can be considered *nusyūz* if she does not want to carry out the obligations as referred to in article 83 paragraph (1) except for valid reasons.<sup>31</sup> Basically, the concept of *nusyūz* in the Compilation of Islamic Law is the same as the concept of *nusyūz* explained by scholars of *fiqh* who emphasize that *nusyūz* occurs because the wife does not carry out her obligations to her husband in accordance with what is justified in Islamic law.<sup>32</sup> Domestic violence is absolutely not allowed in Islam. Beating a wife who does *nusyūz* must be done with a light beating, not with a hard beating. If the husband beats his wife until her skin is damaged, then the husband must be responsible because the fulfillment of the right to beat requires the safety of others.<sup>33</sup> If any of the wife's limbs are injured due to beatings, then the husband must be punished with *qisās* (retaliation in kind), pay *dīyāt* (financial compensation paid to the victim or heirs of a victim in the cases of murder, bodily harm or property damage by mistake), or pay *arḥ* (compensation) or other punishments.<sup>34</sup> Domestic violence is a social problem that describes an unhealthy husband-wife relationship. It happens regardless of gender. However, many cases mention women as the main victims of violence due to religious dogma and the patriarchal culture of women's subordination.<sup>35</sup>

Domestic violence is considered a very serious crime that must be taken seriously. This can give the impression that the existing law is considered to have not really provided

<sup>30</sup> Boucif Mokhtaria, 'Al-Ta'ṣīl al-Islāmī Limusykilāt al-Azwāj – Nusyūz al-Zaujain – Anmūzan', *Maghreb Journal of Historical and Sosial Studies*, vol. 13, no. 1 (2021), p. 253.

<sup>31</sup> *Kompilasi Hukum Islam di Indonesia* (Jakarta: Direktorat Bina KUA dan Keluarga Sakinah, Kementerian Agama RI, 2018), p. 45.

<sup>32</sup> Muhammad Habib Adi Putra and Umi Sumbulah, "Memaknai Kembali Konsep Nusyuz Dalam Kompilasi Hukum Islam Perspektif Gender & Maqashid Syariah Jasser Auda," *EGALITA* 15, no. 1 (2020): 42–60, <https://doi.org/10.18860/egalita.v15i1.10179>.

<sup>33</sup> Al-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuh*, p. 340.

<sup>34</sup> Al-Bājūrī, *Ḥasyiyah Al-Bājūrī 'alā Ibn Al-Qāsim*, p. 462.

<sup>35</sup> Siti Mas'udah, Lutfi Apreliana Megasari, and Muhammad Saud, "Women's Resistance to Domestic Violence during COVID-19 Pandemic: A Study from Indonesia," *Sosiologi Dialektika* 16, no. 2 (2021): 163–74, <https://doi.org/10.20473/jsd.v16i2.2021.163-174>



adequate protection for victims, or it can even be said that law enforcement has failed to guarantee certainty, and maintain a sense of justice for the people who expect fair enforcement. Increased violence against women in the household can provide an overview of the legal conditions that apply in a country because the applicable regulations are missing in their implementation and have various weaknesses causing perpetrators to easily avoid punishment. As a result, the expected justice is not achieved. Many countries in the world have made and enforced laws related to violence against women which were triggered by increasing cases of violence, the absence of any form of protection for victims of violence, and the thought of punishing perpetrators through laws.<sup>36</sup>

Violence against women in the household has been declared a state problem. The Indonesian government introduced Law No. 23 of 2004 on the Elimination of Domestic Violence as a response to the government through a criminal law approach to dealing with domestic violence.<sup>37</sup> The law has fulfilled the need for a special law that regulates violence against women in the household.<sup>38</sup> Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) consists of 10 chapters and 56 articles. This law is intended to provide comprehensive legal protection against all types of domestic violence. According to the PKDRT Law, domestic violence is any act against anyone, especially women, that results in physical, sexual, or psychological misery or suffering, and/or neglect of the household, including threats to carry out an action, coercion, or deprivation of liberty against domestic law.<sup>39</sup> Article 44 of Law Number 23 of 2004 explains that people who commit physical violence in the household will be given maximum imprisonment of 5 years or a maximum fine of 15 million rupiahs. This law has stated that violence that occurs in the family sphere is no longer seen as mere violence, but has been categorized as a crime.

<sup>36</sup> Hanafi Arief, "Women and Domestic Violence: Legal Protection Perspective," *Pagaruyuang Law Journal* 2, no. 1 (2018): 64–79, <https://doi.org/10.31869/plj.v2i1.910>.

<sup>37</sup> Estu Rakhmi Fanani, "Undang-Undang Nomor 23 Tahun 2004 Tentang Kekerasan Dalam Rumah Tangga, Antara Terobosan Hukum Dan Fakta Pelaksanaannya," *Jurnal Legislasi Indonesia* 5, no. 3 (2018): 1–8.

<sup>38</sup> Mahfud Mahfud and Rizanizarli Rizanizarli, "Domestic Violence against Women in Indonesia: The Recent Domestic Violence Elimination Law Analysis," *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 4 (2021): 385–98, <https://doi.org/10.25041/fiatjustisia.v15no4.2276>.

<sup>39</sup> Alfitri Alfitri, "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia," *Studia Islamika* 27, no. 2 (2020): 273–307, <https://doi.org/10.36712/sdi.v27i2.9408>.

It's just that the criminal sanctions imposed are not the same as general crimes.<sup>40</sup> The Law on the Elimination of Domestic Violence is implemented based on the principles of respect for human rights, justice and gender equality, non-discrimination, and victim protection as well as the paradigm of domestic violence.<sup>41</sup>

On May 9, 2022, the President of Indonesia passed Law No. 12 of 2022 concerning the Crime of Sexual Violence. The law contains 12 chapters and 93 articles. The purpose of this Act is to prevent all forms of sexual violence; treat, protect, and recover victims; carry out law enforcement and rehabilitate perpetrators; create an environment without sexual violence, and ensure the non-recurrence of sexual violence.<sup>42</sup> Article 4 paragraph 2 explains the various forms of criminal acts of sexual violence, including non-physical sexual harassment; physical sexual harassment; forced contraception; forced sterilization; forced marriage; sexual abuse; sexual exploitation; sexual slavery; and electronic-based sexual violence. The Indonesian government opposes all forms of domestic violence, be it physical violence or sexual violence. All perpetrators of violence will be punished according to the applicable law. Thus it can be seen that domestic violence is not justified by religion or the state.

### **Al-Buthi's Short Biography**

Muhammad Sa'id Ramadhan Al-Buthi was born in 1929 (1347 H)<sup>43</sup> in Jeilka, a village located on the banks of the Tigris River, at the meeting point of the borders of Syria, Iraq, and Turkey. Jeilka Village is located on Boutan Island (Cizre) in Turkey.<sup>44</sup> His father, Mulla Ramadhan Al-Buthi, was a prominent scholar. Al-Buthi explained that one of the reasons his father moved to Syria was the inconvenience due to Ataturk's mistreatment of Islam, such as forbidding the *aḥzan* in Arabic, but not Latin letters, forbidding reading the Qur'an,

<sup>40</sup> Jasmani, "Islam Dan Kekerasan Dalam Rumah Tangga Menurut Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan KDRT."

<sup>41</sup> Dewi Setyowati and Emmilia Rusdiana, "Relevance of Criminal Law Formulation in the Law of Domestic Violence Elimination in Indonesia," *Journal of Indonesian Legal Studies* 5, no. 1 (2020): 95, <https://doi.org/10.15294/jils.v5i1.35362>.

<sup>42</sup> *Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual*.

<sup>43</sup> Muhammad Andrie Bagia, "The Concept of Tamadhub (Following Madhhab Fiqh) According to Sa'id Ramadhan Al-Buthi," *Ijtihad: Jurnal Hukum Dan Ekonomi Islam* 8, no. 1 (2014): 68–86, <http://doi.org/10.21111/ijtihad.v8i1.2588>

<sup>44</sup> Naseemalsham, *al-Sīrah al-Zāṭiyyah – al-'Allāmah al-Syahīd Muḥammad Sa'īd Ramaḍān al-Būṭī*, [https://naseemalsham.com/persons/muhammad\\_said\\_ramadan\\_al\\_bouti](https://naseemalsham.com/persons/muhammad_said_ramadan_al_bouti). Accessed 10 Feb 2022.

forcing men to wear Western hats, and forcing women to take off the veil. This caused Mulla Ramadhan to decide to move to Syria.<sup>45</sup> Al-Buthi received his primary school education in the Sarouja area. After graduating from elementary school, he enrolled at the Manjak Mosque as a student of Sheikh Hasan Habannaka Al-Maydani. In 1953 he completed his secondary studies at Ma'had al-Taujih al-Islami. He went to Cairo in 1954 to study at the University of Al-Azhar and graduated as a scholar from the Faculty of Sharia at Al-Azhar in 1955. Then he obtained an education diploma from the Faculty of Arabic Language at Al-Azhar in 1956. Then in 1965, he earned a Doctorate in Jurisprudence and *Uṣul Fiqh* with the dissertation title *Ḍawābiṭ al-Maṣlaḥah*.<sup>46</sup>

It is undeniable that Al-Buthi is a Muslim scholar who is accepted by many groups. His religious studies were attended by hundreds of people. Even non-Muslims claim to have attended one or several studies to find out what distinguishes Al-Buthi from other scholars.<sup>47</sup> Al-Buthi was a very prolific writer. He has written more than 60 books. In addition to being recognized as an expert in the science of sharia and language, Al-Buthi is also an expert in the science of faith, philosophy, *ulūmul qur'ān*, *ulūmul ḥadis*, and other fields of science. Therefore Al-Buthi is known as a multidisciplinary scholar.<sup>48</sup> Almost all of Al-Buthi's time was spent studying, teaching, and writing. Until March 13, 2012, coinciding with *Jumādā al-Ūla*, 9, 1424, Al-Buthi breathed his last while completing a commentary study at the al-Iman Mosque in Damascus due to a suicide bombing carried out by an extremist group.<sup>49</sup>

<sup>45</sup> Muḥammad Sa'īd Ramaḍān al-Būṭī, *Hāẓimā Wālidī* (Beirut: Dār al-Fikr al-Mu'āshirah, 1995), p. 29.

<sup>46</sup> Naseemalsham, *al-Sīrah al-Zāṭiyyah – al-'Allāmah al-Syabīd Muḥammad Sa'īd Ramaḍān al-Būṭī*.

<sup>47</sup> Andreas Christmann, "Islamic Scholar and Religious Leader: A Portrait of Shaykh Muhammad Sa'īd Ramadan Al-Būṭī," *Islam and Christian-Muslim Relations* 9, no. 2 (1998): 149–69, <https://doi.org/10.1080/09596419808721146>.

<sup>48</sup> Muhammad Wahdini, "Politik Moderat: Studi Pemikiran Muhammad Sa'īd Ramadhan Al-Buthi," *Jurnal Sosiologi Agama* 14, no. 1 (2020): 51–66, <https://doi.org/10.14421/jsa.2020.141-04>; Muhammad Asif, "Studi Analisis Pemikiran Muhammad Sa'īd Ramadhan Al-Buthi Tentang Maslahat Dan Aplikasinya Dalam Penetapan Hukum Islam" (Fakultas Hukum UNISSULA, 2017).

<sup>49</sup> Noor'Ashry and Firdausiyah, "Pemikiran Sa'īd Ramadhān Al-Būṭhī Terhadap Isu-Isu Feminisme (Kajian Atas Penafsiran Sa'īd Ramadhān Al-Būṭhī Terhadap Ayat-Ayat Hijab, Kepemimpinan Perempuan, Hak Waris, Dan Poligami)."

## Al-Buthi's Response to *Nusyūz* and Domestic Violence Issues

The discussion about women's rights is one of the features of the deep differences between the views of Islamic law and Western thought. Al-Buthi doubts that these differences will be agreed upon one day as long as one side is Islamic law and the other is Western thought. Because each Islamic law and Western thought has its own basis for determining women's rights.<sup>50</sup> Al-Buthi emphasized that Islam does not differentiate between men and women. They have the same basic rights as human beings, namely: the right to life, the right to freedom, and the right to socialize. On the other hand, men and women also have the same obligations in terms of improving themselves, their families, and society with their respective duties.

There are several Islamic laws that claim to discredit and discriminate against women. Among them are the problems of women's inheritance, polygamy, women's leadership, *hijab*, *nusyūz*, and other problems. Issues and untrue claims about Islamic law were denied and clarified by Al-Buthi both in writings and in seminars. Al-Buthi revealed that there are some people who spread the issue that the Qur'an gives the husband the right to beat his wife when doing *nusyūz*, but the Qur'an does not give the wife the same right to beat her husband when doing *nusyūz*. This illustrates the low position of women in the eyes of Arabs, especially in the Arabian Peninsula. Al-Qur'an is only a reflection of these social conditions.<sup>51</sup> Musdah Mulia also considered that what appeared in the Qur'an about *nusyūz* was a sociological record of Arab society at that time that did not need to be applied in everyday life.<sup>52</sup> The Qur'anic command to beat the wife gives the impression that Islam views men as superior to women. If women are seen as equal to men, why should they be beaten?<sup>53</sup> To answer these issues, Al-Buthi emphasized that just as the wife has the potential to do *nusyūz*, the husband also has the potential to do *nusyūz* if he interacts with his wife outside the limits permitted by sharia. It's just that the actions taken to prevent the husband's *nusyūz* are different from the actions taken to prevent the wife's *nusyūz*. The

<sup>50</sup> Muḥammad Sa'īd Ramaḍān al-Būṭī, *Ḥuqūq al-Mar'ah wa 'Uqūb al-Tanāqud bainahā wa bainā al-Syarī'ah al-Islāmiyyah* (Kuwait: Idārah al-Buḥūs wa al-Dirāsāt fī al-Lajnah al-Istisyāriyyah al-'Ulyā, 1995), p. 13, [https://library.ecssr.ae/cgi-bin/koha/opac-detail.pl?biblionumber=126792&shelfbrowse\\_itemnumber=172472](https://library.ecssr.ae/cgi-bin/koha/opac-detail.pl?biblionumber=126792&shelfbrowse_itemnumber=172472).

<sup>51</sup> Muḥammad Sa'īd Ramaḍān al-Būṭī, *Lā Ya'tibi al-Bātil* (Damascus: D, 2007), p. 154.

<sup>52</sup> Alamsyah, "Reconstruction of the Concepts of *Nusyūz* in the Feminist Perspectives."

<sup>53</sup> Faizah, "Nusyuz : Antara Kekerasan Fisik Dan Seksual."

difference in the actions taken to prevent *nusyūz* is to maintain each other's honor,<sup>54</sup> not to humiliate women's position as it is misunderstood.

A more complete view of al-Buthi on *nusyūz* can be found in some of his works such as *Al-Mar'ab Bain Ṭugyān al-Nizām al-Gorbī Wa Laṭā'if al-Tasyrī' al-Islāmī* about the potential for husbands/men to act *nusyūz* and *nusyūz* as a preventive measure to protect the honor of a partner, *Huqūq al-Mar'ab wa Aqd al-Tanāqud Bainaha wa Baina al-Syarī'ah al-Islāmiyyah* about the equality of men and women in Islam *Lā Ya'tibi al-Bātil* about patriarchal bias in Islam stemming from Arab traditions. In addition to works in book form as mentioned above, al-Buthi's thoughts can also be found in several of his videos compiled on [naseemalsham.com](http://naseemalsham.com). One of them can be seen in a video uploaded in 1997 entitled '*al-Mar'ab fī al-Islām: al-Nusyūz*'.<sup>55</sup> In the video, Al-Buthi explains that if the husband does *nusyūz*, the wife may take precautions against her husband's *nusyūz* by advising him. The wife can also choose to remain apart from him in bed if the husband does *nusyūz* that invites the mercy of Allah SWT, such as when the husband asks to have sex when the wife is menstruating. It's just that Islamic law does not allow the wife to beat her husband if the admonishment and separation of beds do not work. This is not because of discrimination, but rather because of maintaining her honor and protecting herself from something that will hurt her.<sup>56</sup> Al-Buthi tried to ask back, what will happen if the wife is also given the same rights as her husband in terms of taking action to prevent *nusyūz*? what will happen if the wife is given the right to beat her husband who does *nusyūz*? what will happen if the wife really beats her husband when admonishing and separating beds are not useful?<sup>57</sup>

Everyone knows that women are feminine and men are manly. If a woman beats a husband who does *nusyūz*, then the manly nature that exists in men will turn into a savage that cannot be controlled by common sense. A light beat by the wife will be repaid by the husband with oppression that can threaten the safety of the wife. Therefore, it is not

<sup>54</sup> Muḥammad Sa'īd Ramaḍān al-Būṭī, *al-Mar'ab Bain al-Ṭugyān al-Nizām al-Gorbī wa Laṭā'if al-Tasyrī' al-Islāmī* (Damascus: Dār al-Fikr), pp. 114–5.

<sup>55</sup> Muḥammad Sa'īd Ramaḍān al-Būṭī, 'al-Mar'ah fī al-Islām: al-Nusyūz', *Naseemalsham* (1997), [https://naseemalsham.com/persons/muhammad\\_said\\_ramadan\\_al\\_bouti/lessons/view/6515](https://naseemalsham.com/persons/muhammad_said_ramadan_al_bouti/lessons/view/6515). Accessed 17 Feb 2022.

<sup>56</sup> Muḥammad Sa'īd Ramaḍān al-Būṭī, 'al-Mar'ah fī al-Islām: al-Nusyūz', *Naseemalsham* (1997), [https://naseemalsham.com/persons/muhammad\\_said\\_ramadan\\_al\\_bouti/lessons/view/6515](https://naseemalsham.com/persons/muhammad_said_ramadan_al_bouti/lessons/view/6515). Accessed 17 Feb 2022.

<sup>57</sup> Al-Būṭī, *al-Mar'ab Bain al-Ṭugyān al-Nizām al-Gorbī wa Laṭā'if al-Tasyrī' al-Islāmī*, p. 115.

equality that must be pursued and strived for, but honor that must be maintained and maintained.<sup>58</sup> It is not only the wife who has the right to be beaten if she does *nusyūz*, but the husband also has the right to be beaten if he does *nusyūz*. It's just that if the husband does *nusyūz*, the one who acts to beat or give another punishment is the court judge. This is in order to maintain the honor of the wife and protect herself from the harsh treatment of her husband. Thus, Islamic law deprives women of the right to beat in order to protect them from anything that might threaten their life.<sup>59</sup>

Al-Buthi explained that the husband can also take the court route and avoid beating his wife who does *nusyūz* after giving admonishment and separating the beds. If it is proven that the wife has done *nusyūz*, the judge will decide the appropriate punishment for the wife. However, solving family problems at home is better and covers the family's disgrace more than having to be resolved through court.<sup>60</sup> If beating a wife who does *nusyūz* with a light beat is considered to injure a woman's honor, it will further injure her honor if she is actually proven guilty by the court judge and the witnesses, and then punished by the judge for her actions. Therefore, according to Al-Buthi, Islam has provided a very good procedure for resolving *nusyūz*. Starting with gently and repeatedly admonishing, then by separating from bed but still talking as usual, then by beating if needed with the aim of scaring not hurting.<sup>61</sup>

In more detail, Al-Buthi explained that a husband should not beat a wife who does *nusyūz* before carrying out the steps of prevention of *nusyūz* described in the Qur'an. What the husband must do first is to admonish her gently, to talk from heart to heart, and he should be patient in giving admonishment which may take several days until the husband gives up giving admonishment because it is considered useless. The next step is to remain apart from her in bed, but still talk as usual. During the day he interacted with her wife as usual, but at night they both separated from the bed. During the day is used to talk for the sake of considering peace. While at night think about each in separate beds. Separation of beds is also done until he feels hopeless because his wife does not stop doing *nusyūz*. The first two steps are trying to talk nicely, knocking on the door of a woman's heart and

<sup>58</sup> *Ibid.*

<sup>59</sup> Al-Būṭī, 'al-Mar'ah fi al-Islām: al-Nusyūz'.

<sup>60</sup> Al-Būṭī, *Lā Ya'tibi al-Bātil*, pp. 158–9.

<sup>61</sup> *Ibid.*, p. 158.

feelings. If the wife does not change even though the husband has taken the steps above, this means that the wife is suffering from moral damage. It is clear that this kind of wife is different from other women in general. The attitude of a wife who does not change like this hurts her husband and injures his rights as a husband. Such a wife should be punished either by her husband directly with a light beating or by a punishment determined by the judge which may be heavier than the punishment given by the husband.<sup>62</sup>

The husband must be punished if he does not fulfill his obligations to his wife. The wife also must be punished if she does not fulfill her obligations to her husband. On the other hand, the wife neglects her obligations as well as hinders her husband's rights. This kind of behavior deserves to be punished. In the case of *nusyūz*, the husband is told to be patient in taking precautions by giving admonishments, separating beds, and beating when deemed necessary. However, if the issue of *nusyūz* is immediately brought to court and the wife is proven to have neglected her obligations, then the court does not have to order the husband to be patient to obtain his rights.<sup>63</sup>

The court referred to by Al-Buthi is a religious court that applies Islamic law as the basis for its decisions because Islamic law is an inseparable unit. Because the *nusyūz* problem that we are discussing is a product of Islamic law, the court that handles it must also use Islamic law in order to decide a fair outcome according to Islamic law.<sup>64</sup> If the method used to solve the problem of *nusyūz* is not fully practicing Islamic law, then there is only violence which is then based on Islamic law. Al-Buthi emphasizes that he is discussing the correct concept of *nusyūz* in accordance with the understanding of the Qur'an and Hadith with very moral provisions that are in accordance with the limits set by Allah SWT. Al-Buthi is not talking about people who cross the line so that they do what is forbidden such as violence.<sup>65</sup>

It is very unfortunate for those who claim to be Muslims but do not know the true Islamic law. They only denounce and criticize Islamic law, but on the other hand, they uphold Western thought. Is it true that Islam discriminates against women and that

<sup>62</sup> Al-Būṭī, 'al-Mar'ah fi al-Islām: al-Nusyūz'.

<sup>63</sup> Al-Būṭī, *Lā Ya'tibi al-Bātil*, p. 157.

<sup>64</sup> Al-Būṭī, 'al-Mar'ah fi al-Islām: al-Nusyūz'.

<sup>65</sup> Al-Būṭī, *Lā Ya'tibi al-Bātil*, p. 159.



## The Distinction Between *Nusyūz* and Domestic Violence

Westerners glorify women?<sup>66</sup> According to Al-Buthi's observations, there are many special shelters in America to protect women who have managed to escape from a series of beatings by their husbands or friends. These shelters are surrounded by decorations for camouflage so that husbands or friends who beat their women don't know the places where these distressed women have taken refuge. Thus the husbands or friends can no longer pursue them and repeat the beatings and hurting of their women.<sup>67</sup> Al-Buthi's statement is corroborated by an article written by Richard F Jones. He states that every 12 seconds a woman is beaten to death or crushed by a friend or her husband. Every day he sees the results and effects of this beating in the office, in the emergency room, and in the clinic.<sup>68</sup> If the wife makes a mistake and does *nusyūz*, then the *nusyūz* will not continue after being admonished by her husband. She will not wait for her husband to separate from her bed to return to a normal relationship with her husband. Likewise, a Muslim husband who lives with a Muslim wife will not beat his wife or verbally criticize her, even though her wife makes mistakes and does *nusyūz*.<sup>69</sup>

### Conclusion

Al-Buthi distinguishes between *nusyūz* in Islam and domestic violence. Al-Buthi emphasized that the lightly beat with the aim of scaring not hurting. The husband also must be punished if he does *nusyūz*. However, for the sake of her safety, the punishment should be the judge of the religious court who represents her. This argumentation is similar to the traditional interpretation, which acknowledges the act of beating with an evocative interpretation (educative act). Al-Buthi provides an understanding that the *nusyūz* rules in Islamic law are not different from the traditional interpretation. Equating the meaning of *nusyūz* and domestic violence shows a raw understanding of Islamic law. According to Al-Buthi, if a woman remains *nusyūz* after being treated according to the Islamic guide

<sup>66</sup> Al-Būṭī, 'al-Mar'ah fi al-Islām: al-Nusyūz'.

<sup>67</sup> Muḥammad Sa'īd Ramaḍān al-Būṭī, 'al-Mar'ah fi Mizān al-Syarī'ah al-Islāmiyyah Murūran bi Wāqī'ihā fi al-Mujtama' al-Gorbī', *Naseemalsham* (2016), [https://naseemalsham.com/persons/muhammad\\_said\\_ramadan\\_al\\_bouti/subjects/view/54593](https://naseemalsham.com/persons/muhammad_said_ramadan_al_bouti/subjects/view/54593). Accessed 11 Feb 2022.

<sup>68</sup> Richard F Jones III, "Domestic Violence: Let Our Voices Be Heard," *Obstetrics & Gynecology* 81, no. 1 (1993): 1–4, [https://journals.lww.com/greenjournal/Citation/1993/01000/Domestic\\_Violence\\_\\_Let\\_Our\\_Voices\\_Be\\_Heard.1.aspx](https://journals.lww.com/greenjournal/Citation/1993/01000/Domestic_Violence__Let_Our_Voices_Be_Heard.1.aspx).

(admonished from the heart to heart, separated in bed by giving her time to think) she suffers from moral damage that will injure the husband's rights. It is clear that the wife is different from other women in general. A wife who does not change her attitude and continues to hurt her husband with her *nusyūz* should be punished by her husband or by a court judge. This argument flips Al-Buthi's stance on women's rights. It demonstrates that, despite his arguments, Al-Buthi manages to maintain a conservative viewpoint, instead of the compatibility of Islamic law in a contemporary context.

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<sup>69</sup> Al-Būti, *al-Mar'ah Bain al-Ṭugyān al-Nizām al-Gorbī wa Laṭā'if al-Tasyrī' al-Islāmī*, p. 119.

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The Distinction Between *Nusyūz* and Domestic Violence