

MODERNIZATION, ECLECTICISM, AND SAUDI ARABIA VISION 2030 ON FAMILY LAW

Positivization of Talaq Divorce in *Nizām Al-Aḥwāl 1443 H*

Mohammad Fauzan Ni'ami*

Maulana Malik Ibrahim State Islamic University Malang, Indonesia

Email: niamifauzan01@gmail.com, *Corresponding author

Dio Alif Bawazier

Maulana Malik Ibrahim State Islamic University Malang, Indonesia

Email: alifbawazierdio@gmail.com

Sukron Ma'mun

Western Sydney University, Australia

Email: s.mamun@westernsydney.edu.au

Abstract

Not bereft of the vision of 2030, Saudi Arabia reformed its Islamic family law, which resulted in the issuance of *Nizām al-Aḥwāl al-Syakhṣiyyah 1443 H*. However, this modernization attempt is shadowed by the long-term preference for the established madhab. By focusing on the talaq issue, this article aims to investigate to what extent this *Nizām* articulated with Hanbali madhab in managing divorce. As a normative study, data were collected by examining the primary resource, *Nizām al-Aḥwāl 1443*. The result indicates that the positivization of divorce is primarily attributable to the Hanbali's source of law. This (intra-doctrinal) positivization is intended to ensure legal certainty for the sake of this nation's modernization efforts. It affirms that the attempt in the private sector is in fact a manifestation of the 2030 political vision.

[Tidak lepas dari visi 2030, Arab Saudi mereformasi hukum keluarga Islamnya, yang berujung pada keluarnya *Nizām al-Aḥwāl al-Syakhṣiyyah* tahun 1443 H. Namun, upaya modernisasi ini terbayangi oleh preferensi jangka panjang terhadap madzhab yang telah

mapan. Dengan berfokus pada masalah talak, artikel ini bertujuan untuk menyelidiki sejauh mana Nizam ini berkaitan dengan madzhab Hanbali dalam mengatur perceraian. Sebagai kajian normatif, data dikumpulkan dengan mengkaji sumber primer, *Nizam al-Aḥwāl 1443*. Hasilnya menunjukkan bahwa positivisasi talak terutama disebabkan oleh sumber hukum Hanbali. Positivisasi (intradoktrinal) ini dimaksudkan untuk menjamin kepastian hukum demi upaya modernisasi bangsa ini. Ditegaskan bahwa upaya di sektor swasta sebenarnya merupakan perwujudan dari visi politik 2030.]

Keywords

Nizam al-Aḥwāl al-Syakḥiyyah 1443 H, positivization of *ṭālaq*, Hambali *madzhab*

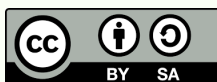
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Introduction

Family law reform has been carried out by several Muslim-majority countries in the world. Turkey initiated the reformation¹ and followed by Egypt,² Jordan,³ Syria,⁴ Tunisia,⁵

¹ The emergence of the Al-Majallah legal codification in 1869 became a book of civil law and is considered the first civil code in the Islamic world. Al-Majallah was worked on by Cevdet Pasha which contains 16 books, 52 chapters, and 1851 chapters. Muhammad Lutfi Hakim, "Reformasi Hukum Keluarga Islam Di Turki: Dari Tradisional Ke Modern," *Berasan: Journal of Islamic Civil Law* 1, no. 1 (2022): 35.

² Starting with the emergence of Law No. 25 of 1920 and No. 20 in 1929 which is a product of the influence of al-magazine in Turkey during the tanzimat political period. See Ahmad Zayyadi, "Reformasi Hukum Di Turki Dan Mesir (Tinjauan Historis-Sosiologis)," *Al-Maḥabib: Jurnal Pemikiran Hukum* 2, no. 1 (2014): 164. See Ahmad Bunyan Wahib, "Reformasi Hukum Keluarga Di Dunia Muslim," *Ijtihad: Jurnal*

Pakistan,⁶ and Indonesia.⁷ Family law reform is a field that deals immediately with social existence. Even family law has a coherent connection with religious observance, as stated by Hamat.⁸ Khusen added that family law as the forefront of fostering a Muslim

Wacana Hukum Islam Dan Kemanusiaan 14, no. 1 (2014): 13, <https://doi.org/10.18326/ijtihad.v14i1.1-19>. See Karim El Chazli, "Recent Developments in Egyptian Family and Inheritance Law," *Brill; Yearbook of Islamic and Middle Eastern Law Online* 21, no. 1 (2022): 166–122, <https://doi.org/https://doi.org/10.1163/22112987-12340009>.

- ³ Jordan began reforming family law in 1951 with the emergence of Law no. 92 of 1951 which contains 16 chapters, 132 articles. See Lynn Welchman, "The Development of Islamic Family Law in the Legal System of Jordan," *International and Comparative Law Quarterly* 37, no. 4 (1988): 871, <https://doi.org/doi:10.1093/iclqaj/37.4.868>. Then it was updated with the presence of Qanun al-Ahwal al-Syakhsyiyah No. 61 of 1976. See Mahmudin Bunyamin, "Pembaruan Undang-Undang Perkawinan Yordania Dan Relevansinya Terhadap Pengembangan Hukum Perkawinan Islam Modern," *Asas* 11, no. 2 (2019): 55, <https://doi.org/10.24042/asas.v11i2.5597>. In 2010 Jordan reformed Islamic family law by giving birth to the Jordanian Family Law Act No. 36 of 2010. See Mahmudin Bunyamin, "The Implementation of the Concept of Maslahat (Benefits) in Determining the Minimum Age of Marriage in Islamic Family Law in Indonesia and Jordan," *Al-'Adalah* 18, no. 2 (2021): 315, <https://doi.org/10.24042/al-'adalah.v18i2.8645>.
- ⁴ After independence, Jordan issued Qanun al-Ahwal al-Syakhsyiyah in 1953 which was considered comprehensive among laws that had existed before, such as Turkey and Egypt. See Yuni Roslaili and Safira Mustaqila, "Mut'ah In Modern Muslim Family Law (Study of Legislation in Syria, Egypt and Indonesia)," *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial* 12, no. 2 (2022): 154–68, <https://doi.org/10.22373/dusturiyah.v12i2.12347>. See Rania Maktabi, "Gender, Family Law and Citizenship in Syria," *Citizenship Studies* 14, no. 5 (2010): 558, <https://doi.org/10.1080/13621025.2010.506714>; Jordan's Qanun al-Ahwal al-Syakhsyiyah was later amended in 1975, 2003 and 2010. See Esther Van Eijk, *Family Law in Syria: Patriarchy, Pluralism, and Personal Status Laws* (London: I.B.Tauris, 2016), <https://doi.org/10.5040/9781350986350>.
- ⁵ Tunisia started a family law reform in 1957 which was later amended in 1958 through Law number 70, number 41 of 1962, number 1 of 1964, number 77 of 1969, and number 1 of 1981. See Ismail Marzuki and Lathifah Munawaroh, "Politik Hukum Keluarga Islam Di Tunisia," *Jurnal Al-'Adl* 12, no. 1 (2019): 78, <http://dx.doi.org/10.31332/aladl.v12i1.1384>; Muhammad Muhajir, "Reformasi Hukum Keluarga Islam Tunisia Pasca Arab Spring: Antara Liberalisme Dan Konservatisme," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 26, <https://doi.org/10.14421/ahwal.2021.14103>.
- ⁶ Pakistan's family law reforms began with the birth of the Muslim Family Laws Ordinance in 1961. See Sabarudin Ahmad, "Menelusik Ketegasan Hukum Keluarga Islam Di Pakistan," *Al-Maslahah* 15, no. 1 (2019): 91, <https://doi.org/10.24260/al-maslahah.v15i1.1386>. Pakistan also has family law regulations that specifically address the issue of dowry which is contained in the dowry and bridal gifts (restriction) Act 1976. See Fauzan Ni'ami, "Studi Peraturan Mahar Di Pakistan: Telaah Argumentasi Dan Tujuan Pembentukan," *Mahkamah: Jurnal Kajian Hukum Islam* 6, no. 2 (2021): 264, <https://doi.org/10.24235/mahkamah.v6i2.8735>.
- ⁷ The journey of family law in Indonesia has experienced exclusive dynamics, starting with the issuance of Law no. 22 of 1946 then Law no. 1 of 1974, PP no. 9 of 1975, PP No. 28 of 1977, Presidential Instruction No. 1 of 1991 (Compilation of Islamic Law), and Law no. 16 of 2019. See Nurul Ma'rifah, "Positivisasi Hukum Keluarga Islam Sebagai Langkah Pembaharuan Hukum Islam Di Indonesia: Kajian Sejarah Politik Hukum Islam," *Al-Manābij: Jurnal Kajian Hukum Islam* XIII, no. 2 (2019): 244, <https://doi.org/10.24090/mnh.v13i2.2692>; See also Fitra Mulyawan, Kiki Yulinda, and Dora Tiara, "Politik Hukum Dalam Bidang Hukum Keluarga Islam Di Indonesia," *Ensiklopedia Sosial Review* 3, no. 2 (2021): 118, <https://doi.org/10.33559/esr.v3i2.764>.
- ⁸ Hamat argued that family law has a very central and strategic role. The legal arrangement in the family room is related to religious awareness and strictness. See Anung Al Hamat, "Representasi Keluarga Dalam Konteks Hukum Islam," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 8, no. 1 (2018): 140, <http://dx.doi.org/10.21043/yudisia.v8i1.3232>.

community toward a prosperous family, and it contributes to the progress of society.⁹ Some issues of family law reform in the Muslim world include strengthening some terms related to family law, marriage registry, polygamy permission, marriage age restriction, divorce before the court, inheritance, and the consequences of marriage.¹⁰ These matters over time will have the adaptability to amendments to the regulations of each country.

Islamic family law reform, especially talaq divorce (repudiation), has received special attention in some Muslim-majority countries, such as Egypt in Law No. 25 of 1929 which contains the issue of divorce and was amended in 1985.¹¹ Likewise with Pakistan through the law ordinance of 1961 articles 7 and 8.¹² Indonesia is also a country that carries out comprehensive divorce reforms, as stipulated in articles 38-41 of the Law No. 1 of 1974¹³ which was specified in the Compilation of Islamic Law (KHI) in the chapter on marriage decisions articles 113-148 and the consequences of marriage breakdown in articles 149-162.¹⁴ The positivization of talaq divorce law is a way and an effort to maintain or guarantee the dignity of women to obtain proper and appropriate rights, as the purpose of the unification of Islamic family law is to improve the status of women.¹⁵

Saudi Arabia as a country with a modern royal system (monarchy),¹⁶ carries out family law reforms very late and falls behind other Muslim countries. The presence of

⁹ Moh. Khusen, *Pembaharuan Hukum Keluarga Di Negara Muslim* (Salatiga: STAIN Salatiga Press, 2013), 3.

¹⁰ Khusen.

¹¹ Article 5A No. 100 of 1985 contains that a husband who divorces his wife will get a divorce certificate within 30 days of being decided before the court. See Moh. Mujibur Rohman and Moh. Zarkasi, "Reformasi Hukum Keluarga Di Dunia Islam (Studi Normatif Perbandingan Hukum Perceraian Mesir-Indonesia)," *Al-Syakhsbiyyah: Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 3, no. 2 (2019): 67, <http://doi.org/10.35673/as-hki.v3i1.1433>

¹² Article 7-8 contain divorce procedures, such as husbands who do not register their divorce will get a 1-year sentence and a fine of 5,000 rupees. See Syaifuddin Zuhdi, "Reformulasi Hukum Perceraian Di Pakistan," *Jurnal Law and Justice* 1, no. 1 (2016): 47, <https://doi.org/10.23917/laj.v1i1.2704>.

¹³ Chapter 38 explains the reasons for the marriage decision. Article 39 explains that divorce must be carried out before the court. Article 40 concerns on the procedure for divorce claims that must be submitted to the Religious Court. Article 41 concerns on the consequences of breaking up a marriage. See Law Number 1 of 1974 Concerning Marriage.

¹⁴ Inpres No. 1 Tahun 1991 Tentang Kompilasi Hukum Islam.

¹⁵ Mohammad Fauzan Ni'ami, "Relevansi Alasan Penolakan Umat Atas Risalah Kenabian Dengan Alasan Penolakan Masyarakat Atas Reformasi Hukum Keluarga Islam," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 2 (2021): 106. See also Khoiruddin Nasution, *Pengantar Dan Pemikiran Hukum Keluarga (Perdata) Islam Indonesia* (Yogyakarta: Academia+Tazzafa, 2010), <https://doi.org/10.19105/al-manhaj.v3i2.4807>.

¹⁶ Saudi Arabia's modern system is outlined in the constitution approved by King Abdul Aziz in 1926, namely At-Ta'limat Al-Asasiyyah, consisting of 9 chapters and 79 articles. The constitution contains the system of government, administrative responsibilities, the affairs of the Kingdom of the Hejaz, the Inspector General, the Royal Civil Service, the Town Hall General, and the Administration. In 1932 a

family law reforms is to create a modern Arabic (Saudi Arabia Vision 2030) pioneered by Muhammad bin Salman.¹⁷ Saudi Arabia carried out family law reforms with the birth of *Niẓām al-Aḥwāl al-Syakḥṣīyyah al-Raḡm: Mim/73 al-Tārīkh: 6/8/1443 H* (hereinafter referred to *Niẓām al-Aḥwāl 1443 H*), the first statutory regulation of the Kingdom of Saudi Arabia which completely regulates family law. *Niẓām al-Aḥwāl 1443 H* was stipulated by *Majlis al-Wuẓarā'* on March 8, 2022.¹⁸ Before *Niẓām*, Saudi Arabia decided that family law cases only referred to jurisprudence books of schools of thought that were adopted by the state, in terms of uncodified law.

According to *Wali al-'Abd* Muhammad bin Salman, the renewal of family law regulations reflects the commitment of the authorities to carry out developments and improvements such as taking the perspective of the latest legislation and modern international judicial practices, as well as making some changes in certain aspects that have a major effect to maintain and defend individual rights, family status and strengthening women and strengthening rights.¹⁹ This case can be reviewed by the positivization of divorce contained in chapters 77 to 94.²⁰ It is suspected that *Niẓām al-Aḥwāl 1443 H* regulation is one of Muhammad bin Salman's reforms that he formulated in the legal disclosure and regulations relaxation for women amid a country whose community's culture is very conservative and fundamentalist, both in terms of social, cultural, and religious.²¹ This is certainly very interesting to study in-depth, especially in the field of

Shura Assembly was formed which formed the Majlis Al-Wukala'. In 1958 King Faisal ibn Abdul Aziz changed the council of ministers into legislative, executive and administrative bodies. In 1992 King Fahd ibn Abdul Aziz reformed the constitution by issuing Al-Marsum Al-Malaki No. A/90 regarding the basic law of government See Acep Zoni Saeful Mubarak, "Reformasi Konstitusi Dan Yudisial Dalam Bingkai Konstitusionalisme Di Arab Saudi," *Journal of Islamic Studies and Humanities* 2, no. 1 (2017): 1–29, <https://doi.org/10.21580/jish.21.2514>.

¹⁷ Panji Haryadi, "The Role of Muhammad Bin Salman in the Changes of Saudi Arabia's Pillar of State," *Jurnal ICMES* 2, no. 1 (2018): 25–47, <https://doi.org/10.35748/jurnalicmes.v2i1.16>.

¹⁸ Walā' Ḥaddād, "Ḥuqūq Al-Zawjayn Fī Niẓām Al-Aḥwāl Al-Syakḥṣīyyah Al-Jadīd," sayidaty, 2022.

¹⁹ BBC NEWS ARABIA, "Niẓām Al-Aḥwāl Al-Syakḥṣīyyah: Qānūn Jadīd Lī Tanẓīmīhi Fī Al-Su'ūdiyyah, Fa Mā Tafāṣīluhu," BBC NEWS ARABI, 2022.

²⁰ *Maddah 79-94 min Niẓām al-Aḥwāl al-Syakḥṣīyyah al-Raḡm : Mim/73 al-Tārīkh : 6/8/1443 H*

²¹ Anna Zakiah Derajat and Toni Kurniawan, "Saudi Vision 2030 Dan Kebijakan Reformasi Pada Kerajaan Arab Saudi," *Global and Policy Journal of International Relations* 9, no. 1 (2021): 1–29, <https://doi.org/10.33005/jgp.v9i1.2465>.

Islamic family law which is related to the strengthening of individual, family, and women's rights, namely talaq divorce law.²²

There are several relevant previous studies that discussed the law in Saudi Arabia. First, research related to the constitution of Saudi Arabia was conducted by Mubarak,²³ Rohim,²⁴ Vogel,²⁵ Namay,²⁶ and al-Tawneh.²⁷ Second, research related to Family Law in Saudi Arabia was conducted by Kamila,²⁸ Nurhayati,²⁹ al-Hakami,³⁰ and al-Qurtuby.³¹ While this article examines Islamic family law in Saudi Arabia, which was previously involved in uncodified law, *Niẓām al-Aḥwāl 1443 H māddah* [article] 77-94 discusses talaq divorce and examines how the upheaval history of *Niẓām al-Aḥwāl 1443 H* of Saudi Arabia. We try to synthesize the reasons for the politicization of family law in Saudi Arabia and the constellation of Saudi Arabia's Vision 2030. Discussing *Niẓām al-Aḥwāl 1443 H māddah* 77-94 becomes a distinction from previous studies because talaq divorce in this *Niẓām* is related to the latest individual rights protection that guarantees and develops women's rights, including the rights of a wife. Previously, there was uncertainty about the talaq divorce law in Saudi Arabia because of the uncodified law.

This is normative research because it examines *Niẓām al-Aḥwāl 1443 H*. It begins with an exploration of the history (legal politics) of *Niẓām al-Aḥwāl 1443 H* in Saudi Arabia. Then examines the regulation of talaq divorce in *Niẓām al-Aḥwāl 1443 H* and the meaning of positivization of talaq divorce law in *Niẓām al-Aḥwāl 1443 H*. This research uses the legal

²² Annelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," in *Social History of Women and Gender in the Modern Middle East* (Routledge, 2018), 141–75, <https://doi.org/10.4324/9780429502606-5>.

²³ Mubarak, "Reformasi Konstitusi Dan Yudisial Dalam Bingkai Konstitusionalisme Di Arab Saudi."

²⁴ Nur Rohim, "Tahkim," n.d., 95–111.

²⁵ Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden, Boston, Koln: Brill, 2000).

²⁶ Rashed Aba-Namay, "The Recent Constitutional Reforms in Saudi Arabia," *International and Comparative Law Quarterly* 42, no. 2 (1993): 295–331, <https://doi.org/10.1093/iclqaj/42.2.295>.

²⁷ Muhammad Al-Atawneh, "Is Saudi Arabia a Theocracy? Religion and Governance in Contemporary Saudi Arabia," *Middle Eastern Studies* 45, no. 5 (2019): 721–37, <https://doi.org/10.1080/00263200802586105>.

²⁸ Maulida Zahra Kamila, "Hukum Keluarga Di Saudi Arabia," *Al-Aḥwāl Al-Syakhṣiyyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 2, no. 2 (2021): 11–25, <https://doi.org/10.15575/as.v2i2.14328>.

²⁹ Agustina Nurhayati, "Politik Hukum (Legislasi) Hukum Keluarga Di Saudi Arabia," *Ijtima'iyya* 7, no. 1 (2014): 61–81, <http://doi.org/10.24042/ijpmi.v7i1.918>.

³⁰ Husain Al-Hakami and Kenneth McLaughlin, "Debatable Marriages: Marriage and Child Marriage in Saudi Arabia," *Marriage and Family Review* 52, no. 7 (2016): 654–64, <https://doi.org/10.1080/01494929.2016.1157119>.

³¹ Sumanto Al Qurtuby, *Between Polygyny And Monogamy: Marriage in Saudi Arabia and Beyond1*, *Al-Jami'ah*, vol. 60, 2022, <https://doi.org/10.14421/ajis.2022.601.29-62>.

eclecticism approach offered by Azizi.³² This is intended to know the meaning of positivization of divorce law in Saudi Arabia as stated in *Nizām al-Aḥwāl 1443 H*.

The Legislation of *Nizām al-Aḥwāl 1443 H*

The history of family law in Saudi Arabia is closely related to the history of the judicial system because people can observe its existence and the development of family law. This legal history lastly did not have special justice to handle some issues. Therefore the term family law in *Nizām al-Qadā' al-Su'udi* is considered new.³³ At the same time, no family law can be used as a legal basis for the practice of judicial mechanisms in the Kingdom of Saudi Arabia so that legal decisions in these matters are obtained from judges' efforts in making *ijtihād fiqh* and the Qur'an and Sunnah based on their school, namely al-Imam Ahmad bin Hanbal.³⁴

After the unification of the Saudi Arabia Kingdom held by the founder, King Abdul Aziz al-Sa'ud, some successive developments happened since the initial appearance of the establishment of the Shari'ah courts, so that the process of justice development can be noticed by the existence of the first *Marsum* called *Nizām Tasykilat al-Mabākim al-Syar'iyyah* on 4/2/1346 H consisting of 24 *māddah* which explains the establishment of two courts in Makkah, Medina, and Jeddah, The Supreme Court and the two *Musta'jalat* Courts, aside from the Judicial Commission's authority, other courts were also established in Taif, Yenbo and so on.³⁵ The *Marsum* classifies Sharia courts as follows:³⁶ (1) *Musta'jalat* Courts (Partial Courts), (2) Supreme Courts or the *Mulhaqah* Court, which are well-known general courts, and (3) Judicial Commission Authority. In 1395 H, *Nizām al-Qadā'* was promulgated by *Marsum Malaki* number (mim/64) dated 14/7/1395 H, which determined that Sharia courts

³² A. Qodry Azizi uses the word eclecticism by referring to Webster's dictionary which gives the meaning of eclectic, namely "choosing, selecting from various systems, doctrines, or sources". Meanwhile, eclecticism is "the method or system of an eclectic". He also emphasized that the purpose of positivization using an eclectic approach is to reorient the development of national law by using scientific reasoning adapted to the circumstances and conditions of the nation. A. Qodry Azizi, *Hukum Nasional: Eklektisisme Hukum Islam & Hukum Umum* (Jakarta: Teraju, 2004).

³³ Māzin bin 'Abdillaṭif bin 'Abdillāh Al-Bukhārī, "Taḥqīq Maqṣad Al-'Adl Fī Masyrū' Nizām Al-Aḥwāl Al-Syakhṣiyyah Bi Al-Mamlakah Al-'Arabiyyah Al-Su'udiyah Wafq Ru'yah 2030," *Majallah Kulliyat Al-Dirāsāt Al-Islāmiyyah Wa Al-'Arabiyyah Li Al-Banāt Bi Al-Iskandariyyah* 37, no. 3 (2022): 301.

³⁴ Al-Bukhārī.

³⁵ Al-Bukhārī.

³⁶ Al-Bukhārī.

consisted of³⁷ (1) *Majlis al-Qada' al-A'la*, (2) Al-Tamyiz Court, (3) Public courts (Supreme), and (4) Juz'iyah Court (*Musta'jalab*). Each of these courts has specific powers over matters brought to it under the *nizam*.³⁸

The history of family law courts began with the unification of the Saudi Arabia Kingdom held by the founder, King Abdul Aziz Alu Sa'ud, then was completed afterward with the new *Nizam al-Qada'* which was updated on 9/19/1438 H/2008. The new *Nizam* was urgently enforced because most of the laws can only be realized by a modern justice system, notwithstanding the financial and administrative difficulties.³⁹ After that, family law courts appeared and had special authority relating to family disputes and this authority was no longer delegated to other courts.⁴⁰ Even though it has been exclusively established, no codification of laws to balance this matter.

Prince Muhammad bin Salman stated that the absence of this law creates inconsistencies and unclear rules to handle several cases and practices. This causes judicial processes that are not based on legal texts, it becomes ambiguous and spends more time. In addition, the legal framework for individuals and the business sector to build their commitments is not made. He added that this causes detriment to individuals and families, especially for women, and provides a possibility for some people to avoid their responsibilities, it will not happen if the regulation is approved based on legal procedures.⁴¹ In this context, the draft of *Nizam al-Ahwāl al-Syakhsīyyah* (Family Law Bill) is presented. There is no doubt that this draft of the law will improve the status of the family in Saudi Arabia because it regulates the provisions in detail, guarantees the rights of spouses and children, and provides laws related to wills, inheritance, and any matter which include the goals of justice in family law.⁴² Not long after this statement, on March 8, 2022, the draft was approved as *Nizam* by *Majlis al-Wuzara'* and on March 9, it was promulgated by *Marsum Malaki* number *Mim/73* date: 6/8/1443 H.⁴³

³⁷ Al-Bukhārī.

³⁸ Al-Bukhārī.

³⁹ Al-Bukhārī.

⁴⁰ Al-Bukhārī.

⁴¹ Al-Bukhārī.

⁴² Al-Bukhārī.

⁴³ Ḥaddād, “Ḥuqūq Al-Zawjayn Fī Nizam Al-Ahwāl Al-Syakhsīyyah Al-Jadīd.” See *Wakālat al-Anbā' al-Su'ūdiyyah*, “Walī al-'Ahd : al-Nizam Istamadda Min Ahkām al-Syarī'ah al-Islāmiyah Wa Maqāsidihā” (Umm al-Qurā, 11 Maret, 2022), 1.

During *Majlis al-Wuzarā'*'s agreement toward *nizām*, Prince Muhammad bin Salman emphasized once again the background to the invitation of *Nizām al-Aḥwāl al-Syakḥsiyyah*, it aims to maintain family unity and resilience as a basic component of society and encourage an increase in the status of families and children, as well as controlling the discretionary power of judges which restrict the differences of decisions in family disputes.⁴⁴ The *Nizām* has been approved by *Majlis al-Wuzarā'* and was promulgated to become the first *Nizām* of the Kingdom of Saudi Arabia which completely regulates family matters one day later, on the 6th of Sha'ban in 1443 H which coincides with 09 March 2022 AD and will become effective 90 days after publication in the royal gazette.⁴⁵ The *Nizām* consists of 8 (eight) Chapters which are divided into 252 (two hundred and fifty-two) *māddah* (matter). The chapters are (I) *al-Zawāj*, (II) *Asar Aqd al-Zawaj*, (III) *al-Furqah Bayn al-Zanjayn*, (IV) *Asar al-Furqah Bayn al-Zanjayn*, (V) *al-Wisayah wa al-Wilāyah*, (VI) *al-Wasiyyah*, (VII) *al-Tirkah wa al-Irs*, (VIII) *Abkām Khitamīyah*.

Talaq Divorce Regulations in *Nizām al-Aḥwāl 1443 H*: Legal Norm

The discussion of talaq divorce in *Nizām al-Aḥwāl 1443 H* is mentioned in *māddah* 77 to *māddah* 94. According to *māddah* 77 *Nizām al-Aḥwāl 1443 H*, ṭalaq divorce means a dissolution of marriage based on the will of the husband by the pronouncement of certain words.⁴⁶ In connection with the talaq divorce, *māddah* 78 explained this pronouncement of certain words in some terms. The pronouncement is divided into two categories, namely *sarih* (clear) and *kinayah* (figurative).⁴⁷ From the point of view of disclosure, *māddah* 79 explained that talaq divorce can be expressed in spoken or written. If both ways not be applied, it can be expressed with an understandable sign.⁴⁸

Divorce law in Saudi Arabia also regulates the imposition of divorce and must pay attention to the circumstances of the perpetrator and the object of divorce. This is regulated in *māddah* 80 which determines several circumstances where divorce is considered

⁴⁴ ARABIA, "Nizām Al-Aḥwāl Al-Syakḥsiyyah: Qānūn Jadīd Li Tanzīmihi Fī Al-Su'ūdiyyah, Fa Mā Tafāṣīluhu."

⁴⁵ Ḥaddād, "Ḥuqūq Al-Zawjain Fī Nizām Al-Aḥwāl Al-Syakḥsiyyah Al-Jadīd." See also Saudi Press Agency, "Recently-Approved Personal Status Law Stems from the Provisions and Purposes of Islamic Sharia and Comes in Line with the Latest Legal Trends and Modern International Judicial Practices, HRH Crown Prince Says," Saudi Press Agency, 2022.

⁴⁶ Māddah 77 Nizām al-Aḥwāl al-Syakḥsiyyah al-Raḥm : Mim/73 al-Tārīkh : 6/8/1443 H

⁴⁷ Māddah 78 Nizām al-Aḥwāl al-Syakḥsiyyah al-Raḥm : Mim/73 al-Tārīkh : 6/8/1443 H

⁴⁸ Māddah 79 Nizām al-Aḥwāl al-Syakḥsiyyah al-Raḥm : Mim/73 al-Tārīkh : 6/8/1443 H

not to have a divorce, namely; 1). Divorce in a state of senselessness or coercion; 2). Divorce in a state of loss of mind with self-intentional even by consuming prohibited goods; 3). A divorcee is a person who is so emotional that his self-control in his enunciation is hindered by his anger; 4). Divorce is imposed on a wife who is in her menstrual period, in childbirth, or when she is pure, who has had intercourse with her husband, while the husband understands the situation.⁴⁹

Furthermore, *mu'allaq* divorce, or known as divorce is caused by certain acts as revealed in *māddah* 81, unless it is intended as an incentive or deterrence of something or justifies something or denies it as long as no intention of deciding divorce.⁵⁰ For example, when someone says it as an incentive “*in lam utimma dirāsati wa anti ṭāliqun*” [If I do not complete my studies, I shall decide to divorce you]. The utterance is to encourage him to finish his studies quickly, not mean to divorce. But if the utterance is intentional, the divorce may happen. Conversely, if *ta'liq* considers a deterrence to something such “*in kharajti ad-dāra fa anti ṭāliqun*” [If you leave the house, I shall divorce you]. *Ṭāliq* means to prevent the wife from leaving the house, not mean to divorce.

Ṭāliq with other intentions such as justifying something or giving sanctions as explained in the previous *māddah*, shall not fall into divorce. As an example that justifies something when someone uttered “*anti ṭāliqun laqad ḡababa fulānun*” [I shall decide to divorce you, you have to let go] or doubt something such “*anti ṭāliqun lam yaḡhab fulānun*” [I shall decide to divorce you, you have not gone yet]. In *māddah* 81, the second point regarding violation of the oath of divorce or utterances of prohibition such “*anti ‘alayya harāmun*” [You are not allowed to be with me] does not mean divorce unless it is intentional.⁵¹ Besides, *māddah* 82 explains that if the divorce has been recorded based on the legal action so people must not deny any reason and event as referred to in the two previous explanations, *māddah* (80 and 81).⁵² As explained in *māddah* 83 that talaq divorces in some calculations, whether uttered or hinted at or spoken repeatedly in one event, the divorce is deemed to have taken place one time.⁵³ Such as stated in this utterance “*anti ṭāliqun salāsan*” [I shall divorce you three times] or implicitly expressed as “*anti ṭāliqun*

⁴⁹ Māddah 80 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raqm : Mim/73 al-Tārīkh : 6/8/1443 H

⁵⁰ Māddah 81 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raqm : Mim/73 al-Tārīkh : 6/8/1443 H

⁵¹ Māddah 81 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raqm : Mim/73 al-Tārīkh : 6/8/1443 H

⁵² Māddah 82 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raqm : Mim/73 al-Tārīkh : 6/8/1443 H

⁵³ Māddah 83 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raqm : Mim/73 al-Tārīkh : 6/8/1443 H

hakaẓā' [I shall divorce you such this. The gesture shows the number of two fingers or spoken repeatedly “*anti ṭāliqun, anti ṭāliqun anti ṭāliqun*” [I shall divorce you, I shall divorce you, I shall divorce you]. Divorce is not presumed three times but only falls once. The following discussion of *māddah* is representative in divorce, *māddah* 84 point 1 explained that the divorce can be filed by the husband or the wife's representative. Point 2 explains when the wife's representative has recorded divorce, while the husband claims that he has reconciled after the divorce has been imposed by the representative, the claim is invalid or rejected unless the husband claims before the wife's representative filed a divorce lawsuit.⁵⁴

Regarding the classification of talaq divorce, *māddah* 85 discussed the possibility of revoking which is divided into two points. The first explains *ṭalaq raj'i* (revocable repudiation), which means divorce before the expiry of the iddat period of such husband can revoke the pronouncement, while the second is *ṭalaq bā'in* (irrevocable repudiation), which refers to no possibility of reconciliation that the marriage has truly ended. *Ṭalaq bā'in* has two categories, *bā'in sugra* (minor irrevocable repudiation) and *ba'in kubra* (major irrevocable repudiation). *Bā'in sugrā* means the expiry of the *iddah* period so that if the husband wants his wife to return, he must make a new contract marriage and dowry, while *bā'in kubrā* means divorce which cannot reconcile or recontract unless the wife must marry other people first, and she divorced, never has sexual relation and the *iddah* period has expired from the other husband.⁵⁵

Māddah 86 as an additional explanation of *ṭalaq raj'i* and *ṭalaq bā'in* defines divorces that have occurred three times, it includes the explanation of *bā'in kubrā*. Meanwhile, *ba'in sugra* refers to divorce before having sexual relation or known *kehalwah* (seclusion). This point provides a clear explanation for the dispute among scholars regarding the influence of *kehalwah* on the law of remarriage.⁵⁶ *Māddah* 87, 88, and 89 discuss the issue of reconciliation. Briefly, these three materials explain the procedures for reconciliation. *Māddah* 87 explains that *ṭalaq raj'i* allows the husband to reconcile with his wife during the iddat period and the reconciliation is approved.⁵⁷ *Māddah* 88 reveals that reconciliation can be expressed with the pronouncement of certain words in spoken or written, or even

⁵⁴ *Māddah* 84 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm : Mim/73 al-Tārikh : 6/8/1443 H

⁵⁵ *Māddah* 85 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm : Mim/73 al-Tārikh : 6/8/1443 H

⁵⁶ *Māddah* 86 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm : Mim/73 al-Tārikh : 6/8/1443 H

⁵⁷ *Māddah* 87 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm : Mim/73 al-Tārikh : 6/8/1443 H

implied. Meanwhile, having sexual intercourse before the iddah period expires, is considered the reconciliation is valid.⁵⁸ *Māddah* 89 explains that there is no reconciliation unless it is determined by a certain provision.⁵⁹

Māddah 90 and 91 provide the discussion of the recording of talaq divorces. *Māddah* 90 regulates the husband's obligation to record *talaq* divorce with certain parties and is counted in fifteen days since *talaq ba'in* occurred. This obligation does not mean to void a woman's right to submit a lawsuit for divorce.⁶⁰ Whereas *māddah* 91 regulates the consequences of unrecorded talaq divorce as explained previously, the husband must provide restitution to the wife.⁶¹

Step to the next explanation, *māddah* 92 regulates reconciliation, the husband must record reconciliation, nor it gives obscurity to the wife, and if she is married to another husband, the reconciliation is not considered valid. While if the reconciliation is not recorded and the wife realizes that this is reconciled, the wife can ask for living in the previous period.⁶² Then the last one is *māddah* 93 and 94 which regulate divorce and reconciliation claims. The wife has to show a shred of evidence and the “*iddah* period has expired.”⁶³

Positivization of Talaq Divorce in *Nizām al-Aḥwāl* 1443 H:

Modernization but Eclecticism

Family law reform has strong coherence with the state or government system.⁶⁴ As an example of Saudi Arabia, a monarchy system is more difficult to issue a regulation, especially when contradicting the ideology of the kingdom or the ultra-conservative Islamic scholars.⁶⁵ Therefore, Saudi Arabia applies the conventional perspective and Islamic jurisprudence as the main law and tries to apply it in all aspects of life.⁶⁶ Marriage law in

⁵⁸ *Māddah* 88 *Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm* : Mim/73 al-Tārīkh : 6/8/1443 H

⁵⁹ *Māddah* 89 *Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm* : Mim/73 al-Tārīkh : 6/8/1443 H

⁶⁰ *Māddah* 90 *Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm* : Mim/73 al-Tārīkh : 6/8/1443 H

⁶¹ *Māddah* 91 *Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm* : Mim/73 al-Tārīkh : 6/8/1443 H

⁶² *Māddah* 92 *Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm* : Mim/73 al-Tārīkh : 6/8/1443 H

⁶³ *Māddah* 93 *Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm* : Mim/73 al-Tārīkh : 6/8/1443 H

⁶⁴ Wahib, “Reformasi Hukum Keluarga Di Dunia Muslim.”

⁶⁵ Anis Rosida, “Wacana Modernisasi Dalam Tantangan Peradaban, Peran Perempuan Sebagai Tonggak Sejarah Arab Saudi,” *Palita: Journal of Social-Religion Research* 3, no. 1 (2018): 83, <https://doi.org/10.24256/pal.v3i1.195>.

⁶⁶ Atho' Mudzhar, *Membaca Gelombang Ijtihad; Antara Tradisi Dan Liberasi* (Yogyakarta: Titian Ilahi Press, 2000), p. 174-175. See also Linda Firdawaty, “Kontekstualisasi Hukum Keluarga Islam (Telaah Atas

Saudi Arabia is still uncodified and family law mechanisms such as divorce are still handled by local clerics and religious institutions that have authority over religious matters.⁶⁷ However, the emergence of Saudi Arabia's Vision 2030 initiated by Mohammad bin Salman has strengthened Saudi Arabia towards a moderate and modern state. There are three pillars that Saudi Arabia carries to modernize the country, namely a vital society, a thriving economy, and an ambitious nation.⁶⁸ Vision 2030 is a big framework for transforming the country towards modernity.

Vision 2030 is significant for law in Saudi Arabia, especially family law. The presence of family law regulations, *Nizām al-Aḥwāl 1443 H*, reflects the commitment of the authorities to carrying out developments and improvements by taking the latest regulations and judicial practices modern international community, thus creating several changes in certain aspects that maintain and defend individual rights, family status, and strengthening women and rights.⁶⁹ Positivization is a way for Saudi Arabia to implement Vision 2030.

Following the line of positivization thought put forward by Ghofur,⁷⁰ the legal positivization carried out by Saudi Arabia does not only lead to the formalization of normative texts in society but is a mobilization of various sources of law and orients justice and equality in the context of family law. Therefore, an eclecticism of Islamic family law is urgently needed which does not only place the jurisprudence of classical scholars as the only normative source but also expands into modern law on top of Islamic jurisprudence. Azizi explained that positivization uses an eclectic approach, namely reforming schools of thought by making the products of ijtihad schools as knowledge and becoming material in the development of national law. Then also efforts to find relevance to the reality of life that surrounds it.⁷¹

Pembaharuan Hukum Keluarga Islam Di Negara-Negara Muslim),” *Linda Firdawaty* 9, no. 2 (2019): 162, <https://doi.org/10.24042/asas.v9i2.3250>.

⁶⁷ Nurhayati, “Politik Hukum (Legislasi) Hukum Keluarga Di Saudi Arabia”, 77.

⁶⁸ GOV.SA, “Vision 2030,” GOV.SA, 2022.

⁶⁹ ARABIA, “Nizām Al-Aḥwāl Al-Syakhṣiyyah: Qānūn Jadīd Li Tanzīmihi Fī Al-Su’ūdiyyah, Fa Mā Tafāṣīluhu.”

⁷⁰ Abdul Ghofur and Sulistiyono Sulistiyono, “Eklektisisme Dalam Taqīn Hukum Keluarga Di Dunia Islam,” *ISLAMICA: Jurnal Studi Keislaman* 8, no. 2 (2014): 269, <https://doi.org/10.15642/islamica.2014.8.2.261-291>.

⁷¹ Wildani Hefni, *Pemikiran Hukum Nasional A . Qodri Azizy : Eklektisisme Hukum Islam dan Hukum Umum*, vol. 5, no. 2 (2022), 481–511.

The positivization of Saudi Arabian Islamic family law as contained in *Nizām al-Aḥwāl 1443 H* has at least two meanings, namely; positivization regarding the process of family law establishment in some sources of Islamic jurisprudence, and positivization regarding legalization for the binding legal force to establish equal status for men and women at the normative level. First, the process of family law establishment in some sources.⁷² Divorce cases found in *māddah* 77 to *māddah* 94 tend to explain the jurisprudence perspective of the Hanbali school. As one of the discussions is the issue of recording talaq divorces which are stated in *māddah* 90. This provision states that the husband is obliged to register divorce with the competent authority and it aims to guarantee and maintain the rights of the parties in the marriage contract.⁷³ Based on Islamic law, this provision is compatible with some scholars' perspectives which stipulate that a divorce must be witnessed, even if it is carried out after the divorce takes place. These perspectives are stated by Ibn Abbas, Yahya bin Bukair from the Malikiyah, al-Shafii, Ahmad bin Hanbal from Tawus, Abu Qilabah, and Ata'.⁷⁴ The purpose of this witness is to prevent incidents of mutual denial and dispel suspicions. If one partner is still alive so the other partner may claim a marital relationship to obtain an inheritance.⁷⁵

The next social issue is the urgency of maintaining the family by calculating the number of divorces. This issue was responded to by *Nizām al-Aḥwāl 1443 H* in the form of a provision in *māddah* 83 which states, "Each divorce which recorded in a number of words, or gestures, or uttered repeatedly in one assembly is not deemed to take place more than once."⁷⁶ This provision is a form of intervention by the authorities aimed at minimizing and limiting the possibility of divorce. This is a manifestation of Sharia supervision in marriage, it contains many benefits, such as maintaining the dignity of men

⁷² Abdul Ghofur stated that there are at least nine sources of family law with a new orientation, namely 1). Transnational western law, 2). Criminal law in accordance with family life, 3). Citizen rights, 4). Legal statutes of a particular group, 5). Transnational Islamic law, 6). Community norms, 7). Community traditions that have not been codified, 8). Customary law, and 9). Specific group practice initiatives. See Ghofur and Sulistiyono, "Eklektisisme Dalam Taqnîn Hukum Keluarga Di Dunia Islam."

⁷³ Al-Bukhārī, "Taḥqīq Maqṣad Al-'Adl Fī Masyrū' Nizām Al-Aḥwāl Al-Syakhṣiyyah Bi Al-Mamlakah Al-'Arabiyyah Al-Su'ūdiyyah Wafq Ru'yah 2030", 319.

⁷⁴ Abdullah Ibrahim Zaid Al-Kaylani, *Al-Siyasah Al-Syar'iyah Madkebal Ila Tajdid Al-Khitab Al-Islami* (Virginia: al-Ma'had al-Alami li al-Fikr al-Islami, 2019), 240.

⁷⁵ Abū al-Qāsim Maḥmūd bin 'Amr bin Aḥmad al-Zamakhsyari Jārullāh, *Al-Kassayf 'An Haqāiq Gawāmiq Al-Tanzīl Ju'z 4* (Beirut: Dar al Kitab al-'Arabi, n.d.), 555, See Abū 'Abdillāh Muḥammad bin 'Umar bin al-Ḥasan bin al-Ḥusayn al-Taymī al-Rāzī Fakhrudīn al-Rāzī Khaṭīb Al-Ray, *Mafātīh Al-Gayb Al-Tafsīr Al-Kabīr Ju'z 30* (Beirut: Dar Ihyā' al-Turās al-'Arabī, n.d.), 562.

⁷⁶ Māddah 83 Nizām al-Aḥwāl al-Syakhṣiyyah al-Raḥm : Mim/73 al-Tārīkh : 6/8/1443 H

and women and maintaining the integrity of the household and the concerns of the children.⁷⁷ *Nizām al-Aḥwāl 1443 H māddah* 83 response to the issue of calculating divorces, apart from being triggered by the concerns of maintaining family continuity, is also caused by one of the interpretations of Islamic law, which states that three pronouncements of a husband to his wife in are only considered to one divorce. This perspective is stated by Ibn Abbas, Shaykh al-Islam Ibn Taimiyah, and his student, Ibnul Qayyim, Abu Ishaq, Tawus, and Ikrimah.⁷⁸ In addition, this step shows that the positivization of Islamic jurisprudence is not solely based on textual considerations, but also the social needs. Based on the understanding of the statement above, it can be concluded that the paradigm of taking legal sources of *Nizām al-Aḥwāl 1443 H* tends to take the perspective of the jurisprudence of Hanbali paradigm and consider obtaining benefits for the social. The Islamic family law establishment of Saudi Arabia includes the method of intra-doctrinal reform in terms of *takhyīr* and *tarjih* (both eclecticism).⁷⁹

Second, positivization regarding legalization to gain the power of certainty and justice in law. As previously discussed, that effort is a way towards modernizing family law in Saudi Arabia, and the references are taken from several books which apply the perspective of Hambali. The positivization of family law in Saudi Arabia creates some values that develop in society in accordance with the demands of national development laws and the values of Islamic law of the Saudi Arabia community.⁸⁰ The incorporation of Hambali Islamic family law into national law in Saudi Arabia is a political strategy, religion has an important role in changing society towards a moderate nation.⁸¹ Saudi Arabia's Vision 2030

⁷⁷ Zaynab Zakariyya Ali Mu'abadah, "Daur Al-Siyasah Al-Syar'iyah Fi Al-Had Min Al-Talaq Al-Mukhtalaf Fihī," *Al-Jami'ah Al-Urduniyah Fi Dirasah Islamiyyah* 13, no. 4 (2017): 23, <https://doi.org/10.33985/1638-013-004-017>.

⁷⁸ Abdul Fattah. Amru, *Al-Siyasah Al-Syar'iyah Fi Al-Aḥwal Al-Syakhsiyah* (Dar al-Nafa'is: Dar al-Nafa'is, 1998), 148.

⁷⁹ Nasution, *Pengantar Dan Pemikiran Hukum Keluarga (Perdata) Islam Indonesia*, 44.

⁸⁰ The positivization of Islamic law has been carried out by various Muslim countries, one of which is Indonesia which has succeeded in converting Islamic law into state legislation. See Muhammad Shohibul Itmam, "Kedudukan Dan Strategi Hukum Islam Dalam Positivisasi Hukum Di Indonesia," *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 10, no. 1 (2019): 72, <https://doi.org/10.21043/yudisia.v10i1.5512>.

⁸¹ The program in Saudi Arabia's 2030 Vision is the Human Capability Development. The aim of the program is to ensure that Saudi citizens have the capabilities needed to compete globally by instilling values and developing basic and future skills, and enhancing knowledge. The program focuses on developing a solid educational base for all citizens to inculcate values from an early age, while preparing youth for the future local and global labor markets. It also focuses on enhancing citizens' skills by providing lifelong learning opportunities, supporting innovation and an entrepreneurial culture, and

continues to uphold the capability of society to improve the country's economy, therefore Saudi Arabia provides facilities or makes equal rules not dichotomous between men's and women's areas.⁸² Therefore, the positivization of family law in Saudi Arabia continues to be emphasized by Muhammad bin Salman as the vanguard of Saudi Arabia's Vision 2030.

Muhammad bin Salman emphasized once again the clarification of the promulgation of *Nizām al-Aḥwāl 1443 H* is to maintain the integrity of the family and its resilience as a basic component of society and encourage an increase in the status of families and children, as well as controlling the discretionary power of judges which restrict the differences of decisions in family problem.⁸³ On March 8, 2022, the government of the Kingdom of Saudi Arabia approved the *Nizām al-Aḥwāl 1443 H* draft as a new reference that first provides provisions in detail regarding engagement, marriage, and inheritance in the interpretations of Islamic law.⁸⁴ The provisions of *Nizām al-Aḥwāl 1443 H* emphasize several important social issues, including the assertion of recording circumstances related to personal status and the urgency of maintaining the family benefits.⁸⁵ There are still many other additional issues emphasized by this law. However, the most striking issue is guaranteeing and safeguarding individual rights, such as the rights of the parties and women because it is more relevant in the discussion of divorce.

The positivization of the talaq divorce law regarding the provision of law legalization provides justice for legal objects. Bukhārī revealed that the divorce law in *Nizām al-Aḥwāl 1443 H* provides legal certainty for husbands or wives and clear mechanisms in Saudi Arabia.⁸⁶ In the matter of recording divorces, Saudi Arabia determines through *Nizām al-Aḥwāl 1443 H* regarding the obligation for husbands to register divorces in front of certain parties as stated in *māddah* 90 that "Husbands are obliged to register divorces before certain

developing and activating policies and advocates to ensure Saudi Arabia's competitiveness. See Saudi Vision 2030 - Kingdom of Saudi Arabia, "Human Capability Development Program," vision2030.gov.sa, 2022, accessed November 2022.

⁸² Mega Hardiyanti and Sri Yuniati, "Penjaminan Hak-Hak Perempuan Dalam Visi Saudi Arabia 2030," *Journal of Feminism and Gender Studies* 1, no. 1 (2021): 8, <https://doi.org/10.19184/fgs.v1i1.21552>.

⁸³ ARABIA, "Nizām Al-Aḥwāl Al-Syakhṣiyyah: Qānūn Jadīd Lī Tanzīmīhi Fī Al-Su'ūdiyyah, Fa Mā Tafāṣīluhu."

⁸⁴ ARABIA.

⁸⁵ ARABIA.

⁸⁶ Al-Bukhārī, "Taḥqīq Maqṣad Al-'Adl Fī Masyrū' Nizām Al-Aḥwāl Al-Syakhṣiyyah Bi Al-Mamlakah Al-'Arabiyyah Al-Su'ūdiyyah Wafq Ru'yah 2030."

parties according to the acts governing matters and is carried out at the latest (fifteen) days after *talaq ba'in* divorce, and facilitate the right of the wife to propose a divorce claim."⁸⁷

Likewise, in the justice of women, *māddah* 91 explains the neglect of applying for divorce registration and provides obscurity to his wife, so the wife may ask for compensation in appropriate living from the date the divorce falls or when the woman finds out a divorce against him. Thus it can be understood that the positivization carried out by the Saudi Arabian government through *Nizām al-Aḥwāl 1443 H* has the aim of strengthening the divorce mechanism so that it has legal force and safeguards the rights of women when their husbands divorce them.

Conclusion

The reform of Islamic family law as stated in *Nizām al-Aḥwāl 1443 H* is a new form of legal modernization in Saudi Arabia. The emergence of this regulation is the result of Saudi Arabia's Vision 2030 initiated by Muhammad bin Salman. *Nizām al-Aḥwāl al-Syakhsīyah* occurred to maintain the integrity and resilience of the family as a basic component of society and encourage an increase in the status of families and children, as well as avoiding differences in decisions in family matters. These components are coherent with Saudi Arabia's 2030 vision, namely a vital society, a thriving economy, ambitious nation.

Saudi Arabia's Vision 2030 constellation has an impact on *Nizām al-Aḥwāl 1443 H*'s divorce law which explains strengthening individual, family, and women's rights. The researcher found several efforts to positivize divorce law contained in *Nizām al-Aḥwāl 1443 H* *māddah* 77-94. Using the eclecticism approach offered by Azizi, there are two classifications of divorce law positivization, such as; First, positivization regarding the process of family law establishment in some sources of Islamic jurisprudence. It is found that the paradigm of *Nizām al-Aḥwāl 1443 H*'s legal sources understanding tends to take the Islamic perspective of the Hambali school and considers having benefits so that Saudi Arabia applied an intra-doctrinal reform method in terms of *takhyīr* and *tarijīb*. Second, positivization regarding legalization which includes the incorporation of Islamic family law, especially the issue of divorce from the perspective of the Hanbali school of law with

⁸⁷ *Māddah* 90 *Nizām al-Aḥwāl al-Syakhsīyah al-Raḥm* : Mim/73 al-Tārīkh : 6/8/1443 H

national law in Saudi Arabia, thereby creating legal modernity with an insight into justice for both husband and wife and to gain binding legal force.

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