



Reformulating the Concept of *Nusyuz* in Malaysian Islamic Family Law: A *Mubadalah*-Based Gender Justice Analysis in Malaysian Islamic Family Law

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Abstract: This article reexamines the legal construction of *nusyuz* within Malaysian Islamic Family Law. The formulation that positions obedience as a unilateral obligation of the wife generates serious concerns related to gender hierarchy and directly affects women's rights to maintenance, protection, dignity, and access to justice. The study aims to evaluate gender bias in both the legal definition and judicial application of *nusyuz*, while proposing an alternative framework based on the *Mubadalah* hermeneutical theory, which emphasizes reciprocity, shared responsibility, and egalitarian family relations. This study employs a qualitative normative legal method with a comparative approach to examine Islamic family law enactments across several states in Malaysia, analyzed through the framework of the theory of *mubadalah*. The novelty of this research lies in the application of the *mubadalah* perspective as an analytical framework to articulate principles of reciprocity and justice in Islamic family law. The research results found that reduction of *nusyuz* into a one-sided duty imposed on women not only reinforces unequal power relations but also undermines legal protection for women in situations of domestic conflict. Through the *Mubadalah* perspective, this article proposes the reformulation of *nusyuz* as a bilateral legal category grounded in moral and legal reciprocity. Recommendations include legislative revision, the development of more equitable judicial guidelines, and the integration of reciprocal principles into future reforms of Malaysian Islamic family law.

Keywords: *Nusyuz*, *Mubadalah*, Islamic Family Law, Women, Legal Reform.

Abstrak: Artikel ini mengkaji ulang konstruksi *nusyuz* dalam Undang-Undang Keluarga Islam Malaysia. Formulasi legal yang berpusat pada ketaatan istri tersebut menimbulkan persoalan serius terkait hierarki gender dan berdampak langsung pada hak perempuan atas nafkah, perlindungan, martabat, dan akses keadilan. Artikel ini bertujuan mengevaluasi bias gender dalam definisi serta penerapan *nusyuz*, sekaligus menawarkan kerangka alternatif menggunakan teori hermeneutika *mubadalah*, yang menekankan kesalingan, tanggung jawab bersama, dan relasi setara dalam keluarga. Penelitian ini menggunakan metode hukum normatif kualitatif dengan pendekatan komparatif terhadap enactmen hukum keluarga Islam di beberapa negeri di Malaysia, dianalisis berdasarkan teori *mubadalah*. Kebaruannya terletak pada penerapan *mubadalah* sebagai kerangka analisis untuk menegaskan prinsip kesalingan dan keadilan dalam hukum keluarga Islam. Hasil penelitian menemukan bahwa reduksi *nusyuz* menjadi kewajiban unilateral perempuan tidak hanya memperkuat relasi kekuasaan yang timpang, tetapi juga melemahkan perlindungan hukum bagi perempuan dalam kasus konflik domestik. Melalui perspektif *mubadalah*, artikel ini mengusulkan reformulasi *nusyuz* sebagai kategori hukum bilateral yang berlandaskan kesalingan moral dan legal. Rekomendasi meliputi revisi legislasi, perumusan garis panduan yudisial yang lebih setara, serta integrasi asas kesalingan dalam pembaruan hukum keluarga Islam Malaysia.

Kata Kunci: *Nusyuz*, *Mubadalah*, Hukum Keluarga Islam, Perempuan, Reformasi Hukum.

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Introduction

In Islamic family law, the marital relationship constitutes a legal domain regulating the rights and obligations of spouses within domestic life; however, several normative provisions may reproduce gender asymmetries when interpreted textually without contextual legal reasoning (Nurani, 2021). One of the most contested constructs is *nusyuz*, which in Malaysian statutory practice is commonly conceptualized as the wife's disobedience to a lawful command of the husband, carrying legal consequences such as the suspension of maintenance rights and the legitimization of corrective measures (Sisters in Islam, 2022). This issue aligns with broader theoretical debates on how religious norms, once operationalized within state legal systems, may shape the socio-legal status of women, particularly in relation to maintenance rights, dignity, and access to justice (Musawah & Sisters in Islam, 2018).

In Malaysia specifically, domestic conflicts culminating in divorce have intensified in recent years (Nuraniyah et al., 2025). The Department of Statistics Malaysia recorded 62,890 divorces in 2022 (46,138 involving Muslim couples) and 57,835 divorces in 2023, of which 44,322 were Muslim cases, indicating a substantial divorce burden among Muslim communities and underscoring the urgency of examining family law mechanisms influencing such outcomes (Department of Statistics Malaysia, 2023; 2024). However, national statistical records do not yet provide centralized data on the number of *nusyuz* claims filed or adjudicated annually before the Syariah Courts (Ghozali et al., 2024). This limitation has prompted researchers to synthesize court documents, field research, and community-based legal service data (Qaasim-Badmusi & Jangebe, 2024). Advocacy reports such as the Telenisa legal aid program by Sisters in Islam consistently demonstrate that clients frequently raise concerns related to *nusyuz*, domestic violence, and marital rights as recurrent legal grievances (Sisters in Islam, 2021; 2022). These civil society findings, combined with rising divorce rates, indicate a persistent implementation gap between formal legal norms (*das sollen*) and everyday domestic realities (*das sein*), in which provisions such as *nusyuz* may function as mechanisms that reinforce control over women while simultaneously weakening their legal protection (Musawah & Sisters in Islam, 2018; Sa'dan & Hajar Fatimah, 2018).

Beyond legal formal issues, the asymmetric construction of *nusyuz* also generates a range of social consequences that disproportionately affect Muslim women in Malaysia. The stigmatization of women as “disobedient wives” (*isteri derhaka*) creates social pressure that discourages them from reporting domestic violence or seeking legal assistance, due to concerns that accusations of *nusyuz* may be used to revoke maintenance rights and compel them to remain in unsafe marital relationships (Nasir et al., 2024). This situation may also intensify women's economic dependence on their husbands, thereby limiting their capacity to make autonomous decisions in the context of domestic conflict. Over time, such dynamics appear to deepen gender inequality, reduce family well being, and increase the burden on Syariah courts due to higher rates of divorce and unresolved maintenance claims (Lind, 2005).

At the global level, these social manifestations of *nusyuz* based inequality align with findings by international bodies, including the CEDAW Committee and Musawah, which highlight how “obedience-based family law” norms transcend national boundaries and contribute to structural discrimination against women in many Muslim family law systems (Habib Ismail, 2020). Legal practices that position women in a subordinate role are viewed as impeding the fulfillment of fundamental rights, including protection from violence, access to justice, and economic autonomy indicators that feature prominently in international human rights assessments of state compliance (Hirsh et al., 2020). Consequently, the issue of *nusyuz* in Malaysia cannot be regarded merely as a localized concern but forms part of a broader global debate on gender-equitable reform of Islamic family law and alignment with international development agendas such as SDG 5 on gender equality (Siegel, 2023).

Re-examining *nusyuz* is crucial because it directly concerns women's rights within the private sphere that is publicly regulated (Lux & Amundson, 2024). When *nusyuz* is defined and operationalized unilaterally against wives, the legal consequences are immediate and severe, including loss of maintenance rights (such as post-divorce maintenance and *iddah* support), social stigmatization, and diminished access to legal protection in cases of domestic violence or spousal neglect (Liu & Roberts, 2022). These effects also relate to the state's obligation to comply with international women's rights standards, including CEDAW and SDG 5. Without corresponding reforms in legal norms and judicial practice, women remain vulnerable to systemic discrimination in the resolution of domestic disputes (Musawah, 2018). Consequently, *nusyuz* requires reconsideration not merely as a textual fiqh category, but as a legal construct that must be reinterpreted through normative frameworks emphasizing reciprocity and relational justice (Mustapha et al., 2024).

Previous studies on *nusyuz* and adat-based restrictions on marital dissolution have predominantly focused on descriptive analyses of customary sanctions, obedience norms, or their social consequences for women. While this body of literature has successfully exposed gender bias and power asymmetries, it has largely stopped short of offering a systematic theoretical model that integrates Islamic ethical theory, positive law, and lived legal practice into a coherent reform framework. In particular, earlier research has not adequately conceptualized *nusyuz* as a reciprocal and bilateral legal category, nor has it translated critical insights into operational legal and judicial mechanisms.

This article fills that gap by advancing a novel mubādalāh-based legal-cultural integration model that reconceptualizes *nusyuz* through principles of reciprocity, shared responsibility, and *maqāṣid al-sharī'a*. The primary theoretical contribution lies not merely in critiquing unilateral, obedience-based constructions of marital obligations, but in developing an analytically structured framework that bridges normative Islamic ethics, statutory interpretation, and empirical judicial practice. By doing so, the study moves beyond earlier adat-focused or feminist critiques and offers a transferable reform model with concrete implications for revising state-level enactments and formulating gender-responsive judicial guidelines. This approach positions mubādalāh not only as a hermeneutical lens but as an operational legal paradigm capable of informing culturally grounded yet gender-just reform in Islamic family law.

This study is positioned to address a central research question arising from both persistent empirical problems and unresolved gaps in existing scholarship: how can the concept of *nusyuz* in Malaysian Islamic family law be reformulated through a mubādalāh-based interpretive framework to produce gender-equitable legal norms, and what policy models are required to translate such reinterpretation into legislative and judicial practice?

Method

This study adopts a qualitative research design within a normative empirical legal research framework to examine the regulation of *nusyuz* in Malaysian Islamic family law and its practical implications for women. The normative component focuses on doctrinal analysis of state level Islamic family law enactments, *Syariah* procedural rules, and selected judicial decisions concerning *nusyuz*, maintenance, and divorce. The empirical component complements this analysis by exploring social experiences, institutional dynamics, and implementation challenges that tend to remain underrepresented in formal legal texts.

Fieldwork was conducted in Kuala Lumpur and Selangor over a three-month period, as these jurisdictions function as central hubs of *Syariah* judicial practice and record a high volume of family law cases. Primary data were collected through in-depth interviews with seven purposively selected informants, comprising three *peguam syarie* (Islamic legal practitioners), two religious scholars, and two women who had previously faced *nusyuz* claims. The interviews were guided by semi-structured questions addressing conceptual

understandings of *nusyuz*, its judicial application, its legal and social consequences for women, and perspectives on the potential for gender equitable reinterpretation.

Moreover, limited courtroom observations were undertaken in the Selangor *Syariah* Court, involving five family law proceedings that directly or indirectly engaged with *nusyuz*-related issues, with an aggregate observation duration of approximately 25 hours. These observations focused on judicial reasoning patterns, advocacy strategies employed by *peguam syarie*, and evidentiary standards used to frame obedience and disobedience. In addition, approximately thirty documentary sources were reviewed, including judicial decisions, *Syariah* court annual reports, divorce statistics published by the Department of Statistics Malaysia, and civil society reports such as Telenisa. These materials were analysed to identify broader structural patterns and the socio-legal context shaping the operation of *nusyuz*.

To enhance the validity and credibility of the findings, source triangulation was employed by systematically comparing interview data, courtroom observations, and documentary analysis. Researcher triangulation was also conducted through cross-review by two scholars specialising in Islamic family law. Data analysis followed a thematic approach, beginning with open coding of interview transcripts and observation notes, followed by axial coding to consolidate related categories. These stages culminated in thematic clustering, which generated core themes including gender bias, patriarchal legal reasoning, judicial practices, and the scope for reinterpretation of *nusyuz*.

The relationship between the normative and empirical components was constructed in an integrative and sequential manner. Normative analysis first delineated the doctrinal and statutory framework governing *nusyuz*, thereby establishing the legal ideal within positive law. Empirical findings were then utilised to assess how this framework is operationalised in judicial practice and experienced by women, revealing points of convergence, tension, and implementation gaps. Consequently, the integration of both approaches informed the development of a revised conceptual model of *nusyuz*, grounded in principles of reciprocity, equality, and gender justice, and informed by the ethical framework of *Mubadalah*.

Results

Regulation of *Nusyuz* under the Malaysian Islamic Family Law

The regulation of *nusyuz* is clearly articulated in the Islamic Family Law (Federal Territories) Act 1984, particularly Section 59 (2), which states that a wife is not entitled to maintenance if she “refuses to obey the lawful orders of her husband or refuses to live with him without reasonable cause.” The statutory wording positions *nusyuz* as conduct attributed to wives who are deemed to have disobeyed their husbands (Ahyu et al., 2024). Similar provisions appear in several state enactments, including the Selangor Islamic Family Law Enactment 2003 Section 59 (2), which adopts nearly identical language. The structure of these provisions indicates that Malaysian legislation continues to reflect the classical *fiqh* framework, in which a wife’s obedience constitutes a legally significant element of marital relations (Aman & Othman, 2019).

Substantively, the provision associates *nusyuz* with actions such as leaving the marital home, refusing marital relations, or declining to follow the husband’s directives without what the court considers a “reasonable cause.” However, the legislation does not clarify the scope of “reasonable cause,” leaving its interpretation to judicial discretion (Mardhatillah & Saoki, 2025). Several studies suggest that this ambiguity opens space for patriarchal readings, particularly when judges rely on classical doctrinal interpretations without adequately considering factors such as domestic violence, emotional distress, or neglect of financial support. (Sa’dan and Hajar Fatimah, 2018) observe that courts “tend to prioritize the issue of obedience over women’s safety and welfare” when adjudicating *nusyuz* claims (Apriyanti & Hasanah, 2025).

Applications for *ta'liq* enforcement and other corrective measures may be initiated when a wife is deemed *nusyuz* (Setiyawan et al., 2024). However, no parallel provision explicitly defines *nusyuz* in relation to husbands, resulting in a structural legal asymmetry between spouses. Academic literature has repeatedly noted that such imbalances have been criticized by gender scholars and law reform advocates as contributing to women's marginalization within the Malaysian Islamic family law system. Rashidah (2020), for instance, argues that provisions such as Section 59 exemplify a "gendered asymmetrical construction of marital duties," which diverges from contemporary reform discourses grounded in *maqasid al-shariah* and principles of reciprocal justice.

Implementation of *Nusyuz* in the Syariah Courts

Field data analysis indicates that *nusyuz* is applied almost exclusively to women. Among seven interviewees including three *peguam syarie* (Shariah lawyers), two religious figures, and two women accused of *nusyuz* six explicitly stated that "*nusyuz* is almost always filed against wives, not husbands" (Interview with KL *Peguam Syarie*, 12 May 2025). The *peguam syarie* described that the most common complaints filed by husbands involve claims that wives "leave the house without permission" or "refuse to comply with the husband's directives," although the contextual background often includes emotional pressure, domestic conflict, or neglect of maintenance by the husband (Musarrofa et al., 2024). Two former Syariah judges further explained that in courtroom practice, "the issue of wife obedience remains the primary parameter for evaluating *nusyuz*," whereas domestic violence factors "are not consistently considered valid grounds for women leaving the home" (Interview, 20 May 2025).

Observations of several hearings at the Selangor Syariah Court during the field study corroborate these findings. Legal arguments presented by husbands' *peguam syarie* tended to emphasize obedience, while depictions of the broader marital context such as neglect of maintenance or psychological pressure were given minimal consideration. Field observation notes indicate that in four out of five hearings, claims of domestic violence raised by women were either minimally addressed or deemed irrelevant in the *nusyuz* assessment (Observation, 25 May 2025).

Table 1. Summary of Field Findings on the Implementation of *Nusyuz*

Finding	Data Source
<i>Nusyuz</i> is filed almost exclusively against wives	Interviews with 3 <i>peguam syarie</i> & 2 religious figures
Domestic violence not considered valid grounds for leaving the home	Court observations (4 out of 5 cases)
Maintenance automatically suspended following <i>nusyuz</i> accusation	Testimonies of female informants (Informants 01 & 02)
Instrument of control over women	Telenisa Data 2021–2022 (Sisters in Islam)

These findings reveal a clear gap between *das sollen* (the normative text, which does not prohibit filing *nusyuz* against husbands) and *das sein* (the highly gendered practical application). This pattern aligns with analyses by Musawah and Sisters in Islam (2018), which identify *nusyuz* regulations as one of the most problematic areas in Muslim family law because they provide space for patriarchal control (Musawah & SIS, 2018).

Additionally, qualitative data from Telenisa reports indicate that 31% of 1,733 Muslim female clients (2022) reported experiencing threats of *nusyuz* by husbands in domestic disputes (Sisters in Islam, 2022). These field findings are consistent with Musawah's (2018) assessment that the "obedience" norm in global Muslim family law is a principal contributor to structural inequalities within households (Musawah, 2018).

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Analytically, this pattern appears to demonstrate a misalignment between the legal text (*das sollen*), which does not explicitly privilege any particular gender, and judicial practice (*das sein*), which tends to position wives as the primary subjects of *nusyuz*. Within the framework of which foregrounds reciprocal relations and shared responsibilities, this implementation bias suggests a conceptual narrowing that conflicts with the principle of mutuality. Consequently, it reinforces the need to reformulate the concept of *nusyuz* so that it no longer operates as a unilateral instrument of control over women.

Social, Economic, and Psychological Impacts of *Nusyuz* on Women

Two female informants who were accused of *nusyuz* described the direct impacts they experienced, particularly the loss of financial support, psychological pressure, and fear of reporting violence. The first informant stated: "After my husband filed *nusyuz*, I stopped going to counseling. He threatened that if I left the house, I would be considered disobedient." (Interview with Female Informant 01, 28/04/2025). The second informant explained that the

accusation of *nusyuz* resulted in the loss of financial maintenance and distanced her from family support due to the stigma of being labeled an “unfaithful wife.” She said: “I felt like I had nowhere to go. Everyone said I was at fault for leaving the house.” (Interview with Female Informant 02 May 2025).

Both informants faced difficulties in paying for *peguam syarie* (syariah legal counsel), which compelled them to attend hearings without legal representation. This situation further weakened their bargaining position vis-à-vis their husbands and within a judicial structure that was already skewed against them. Court observations also indicated that women without legal representation appeared to struggle in challenging *nusyuz* claims or presenting a comprehensive alternative narrative.

Table 2. Impacts of *Nusyuz* Accusations on Female Informants

Impact	Informant 01	Informant 02	Source
Loss of financial support	✓	✓	Interview
Psychological pressure	✓	✓	Interview
Social stigma	✓	✓	Interview
Fear of reporting violence	✓	Partial	Interview
Inability to afford legal counsel	✓	✓	Observation

Factors Contributing to Inequality in the Application of *Nusyuz*

One of the primary factors contributing to inequality in the application of *nusyuz* is the dominance of classical *fiqh* interpretations that emphasize unilateral obedience and have not undergone sufficient contextual reinterpretation in many judicial practices (Yoki Pradikta et al., 2024). The literature indicates that traditional *fiqh* frames marital relations within a hierarchical structure that prioritizes male authority as *qawwam* and positions a wife’s obedience as a fundamental obligation (Harahap et al., 2025). This interpretive framework was subsequently institutionalized into modern family law without adequate critique of its gendered implications (Othman, 2020), study further argues that the absolutization of the obedience concept reinforces a gendered legal consciousness among judges and *peguam syarie*, making it easier to categorize *nusyuz* against women even when domestic contexts reflect the presence of violence or neglect by the husband (Bakhri & Taufiq, 2023).

A second contributing factor is the limited integration of gender perspectives and human rights principles in judicial training and court procedures (Rohmadi, 2024). As a result, legal actors often lack an analytical framework to assess power relations, domestic violence, or the emotional pressures that may influence a woman’s decision to leave the household. Abdalla’s (2019) research demonstrates that many Syariah judges in Malaysia acknowledge insufficient training on issues of domestic violence and gender justice, leading to institutional biases in evaluating the conduct of wives and husbands (Abdalla, 2019). This trend was reflected in interviews conducted for this study, in which two religious figures stated that “issues of mental load, emotional distress, or the husband’s failure to provide maintenance are not primary considerations in determining *nusyuz*” (Alimuddin et al., 2025). This situation suggests that legal implementation is shaped more by *normative inertia* adherence to long-standing interpretations than by relational justice approaches aligned with *maqasid* or principles of mutuality.

Based on the research findings and relevant literature, the following are key factors contributing to gender inequality in the application of *nusyuz* in Malaysia:

Table 3. Factors Contributing to Gender Inequality

Factor	Source / Explanation
Dominance of Traditional <i>Fiqh</i> Interpretations	Studies from Johor indicate that the concept of <i>nusyuz</i> is shaped by classical <i>fiqh</i> , which situates marital authority primarily with the husband while positioning the wife's obedience as a central obligation.

Procedural Difficulties in Establishing <i>Nusyuz</i>	https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/3113 Research findings from academic theses suggest that Syariah judicial procedures make it difficult to establish <i>nusyuz</i> due to the absence of specific rules, weak evidentiary frameworks, and judges' cautious approaches. https://repository.ar-raniry.ac.id/3823/
Gender Perspectives and Judicial Dissatisfaction	Gender-based critiques highlight that judges often fail to consider domestic violence, emotional distress, or power imbalances when evaluating <i>nusyuz</i> cases. For example, the Sisters in Islam memorandum documents numerous cases where wives left the household due to violence or coercion but were nevertheless accused of <i>nusyuz</i> . https://repository.ar-raniry.ac.id/id/eprint/3823/
Limited Judicial Training and Institutional Constraints	Comparative legal analyses show that insufficient training on gender issues and human rights in the Syariah judiciary contributes to institutional biases that disproportionately disadvantage women facing <i>nusyuz</i> accusations.
CEDAW and Islamic Family Law Tensions	Scholarship discussing the interaction between CEDAW and Islamic family law in Malaysia identifies normative tensions that influence how legal authorities approach women's rights, including cases related to <i>nusyuz</i> . https://oarep.usim.edu.my/entities/publication/4d5de055-3731-495f-9e90-93f97c93fa56
Unequal Implementation of <i>Nusyuz</i> Sanctions	Graduate research demonstrates that although <i>nusyuz</i> sanctions such as fines exist in theory, their implementation is often inconsistent and tends to be applied in ways that disadvantage women. https://repository.uinjkt.ac.id/dspace/handle/123456789/46068

Discussion

Manifestations of Gender Bias in the Concept and Practice of *Nusyuz* in Malaysia

Conceptually, the formulation of *nusyuz* within Malaysian Islamic family law constructs a legal framework that textually places the obligation of obedience on the wife and links its breach to economic sanctions, particularly the forfeiture of financial maintenance. Statutory provisions such as Section 59 (across various state enactments) explicitly define the connection between a wife's "disobedience" and its legal consequences, thereby allowing an interpretive space that reinforces unilateral obedience (Aman & Othman, 2019). From the perspective of *mubadalah*, such a construction conflicts with the principle of mutuality, which requires reciprocal responsibilities (Qodir, 2019). In other words, an ostensibly neutral text becomes gendered in practice once contextualized within judicial implementation. Evidence drawn from interviews and field documents further shows that judges' references and lawyers' arguments frequently emphasize the wife's obligations rather than the husband's duties, such as providing maintenance or refraining from conduct that endangers the family (Aman & Othman, 2019).

In judicial practice, fieldwork findings reveal a gendered pattern in the application of *nusyuz*: claims such as "leaving the house without permission" or "refusal to obey" constitute the dominant bases for litigation, while evidence of domestic violence or the husband's failure to provide maintenance is often regarded as less relevant or insufficient to alter *nusyuz* determinations in many observed cases. Court observations and victim testimonies in this study further demonstrate that *nusyuz* accusations function as instruments of control that result in the loss of maintenance, social stigma, and restricted access to justice for women (Sisters in Islam, 2022; Sa'dan & Hajar Fatimah, 2018). From a *mubadalah* standpoint, such

practices represent a failure to apply an ethical relational framework: rather than assessing obligations and violations bilaterally, the system operationalizes a single-sided notion of duty as the primary evaluative criterion thus reinforcing structural inequalities (Sisters in Islam, 2022; Sa'dan & Hajar Fatimah, 2018).

The *mubadalah* analysis points toward an alternative normative interpretation: *nusyuz* ought to be conceptualized and applied as a legal category that accounts for reciprocal obligations and protections. In practice, this means that adjudication should consider breaches committed by both spouses such as neglect of maintenance, violence, or emotional abandonment and should not automatically associate “obedience” exclusively with the wife. Empirical data from interviews with *peguam syarie* and religious authorities indicate the presence of judicial discretion which, if reframed within the *mubadalah* principle and supported by gender-responsive judicial guidelines, could mitigate the misuse of *nusyuz* accusations as mechanisms of control (field documentation) (Siti Fatimah, 2023). Thus, *mubadalah* is not merely a critical theoretical lens but also a practical foundation for developing contextual assessment criteria that could be incorporated into family law adjudication guidelines (Musawah & Sisters in Islam, 2018).

The key findings of this study indicate that: (1) the legal construction of *nusyuz* in Malaysian family law creates interpretive space for unilateral obedience; (2) judicial practice demonstrates a gendered pattern accusations are almost exclusively directed at wives and often overlook evidence of domestic violence or the husband's failure to provide maintenance; (3) the socio-legal consequences include the loss of financial support, social stigmatization, and barriers to accessing justice; and (4) through the lens of *mubadalah*, a normative alternative can be articulated in which *nusyuz* is treated as a bilateral and contextual category. The practical implications call for revisions to statutory wording, the development of judicial guidelines that incorporate contextual criteria (e.g., evidence of violence, evidence of maintenance neglect), and gender-sensitive judicial training measures that would help bridge the gap between *das sollen* (ideal norms) and *das sein* (practices on the ground).

Socio Legal Implications of Nusyuz for Muslim Women's Rights to Maintenance, Protection and Justice

The findings demonstrate that one of the most significant consequences of *nusyuz* accusations is the loss of a wife's right to maintenance as stipulated under Section 59 of the Islamic Family Law Enactments. Interview data from this study reveal that both female informants immediately lost their maintenance rights once their husbands filed *nusyuz*, resulting in acute economic dependency and limiting their ability to make safe decisions amid domestic conflict. This phenomenon is consistent with Telenisa's report (Sisters in Islam, 2022), which notes that more than 30% of clients face the threat of “forfeiture of maintenance” as a coercive tactic in marital disputes.

Structurally, the loss of maintenance functions not merely as a legal sanction but as a mechanism of control over women, illustrating how *nusyuz* legally weakens women's positions within family court proceedings. These findings align with Al-Sharmani's (2020) analysis, which argues that *obedience-based family law* tends to perpetuate gender inequality by limiting women's access to economic resources (Al-Sharmani, 2020).

On the psychological and social dimensions, this study finds that women accused of *nusyuz* experience mental distress, stigmatization as “disobedient wives,” and fear of seeking legal assistance or reporting domestic violence. The first informant stated that she was “afraid to attend counseling because my husband threatened that I would be considered disobedient,” illustrating how *nusyuz* is deployed as an effective psychological threat to silence women. This stigma reinforces (Abdalla, 2019) findings, which show that women often refrain from reporting violence due to fear of being categorized as *nusyuz* or risking the loss of maintenance. Such fear constitutes a dangerous social consequence, producing a silencing

effect that suppresses women's experiences of violence and distances them from formal support systems.

Through the *mubadalah* perspective, these socio-legal impacts reveal a fundamental misalignment between judicial practice and the principles of balance, mutuality, and shared protection within marital relations (Kodir, 2019). In the *mubadalah* framework, the marital relationship is grounded in a reciprocity of care rather than a reciprocity of control. The empirical findings that women lose maintenance, refrain from seeking support, and suffer psychological pressure indicate that *nusyuz* has functioned as a gendered instrument of control rather than a fair conflict-resolution mechanism as envisioned in *mubadalah* theory. Interviews with *peguam syarie* in this study show that the element of "obedience" is often interpreted in absolute terms rather than understood as a reciprocal arrangement that considers the husband's responsibilities to provide maintenance, protection, and respect (Zainuddin et al., 2022). This divergence suggests that current *nusyuz* practices not only contradict *mubadalah* principles but also neglect the *maqasid syariah* related to *hifz al-nafs*, *hifz al-'ird*, and *hifz al-mal* (Kurniawan & Hudafi, 2021).

The findings of this study carry significant and long-term implications. First, at the local level, the negative impacts of *nusyuz* reinforce cycles of gender injustice, increase the risk of post divorce poverty among women, and heighten women's vulnerability to domestic violence (Nur et al., 2023). Second, in the global context, Malaysia continues to face international scrutiny under CEDAW concerning discriminatory family law norms; the field evidence of maintenance deprivation and the stigmatization of women reinforces concerns that *nusyuz* operates as an instrument violating the principle of non discrimination (CEDAW Committee, 2021). Third, from an academic perspective, the findings indicate that without a *mubadalah*-based reformulation, inequality will continue to be reproduced by the Syariah judicial system. Thus, this study not only documents empirical realities but also issues a critical warning: *nusyuz*, as currently practiced, threatens gender justice and opens the door to potential violations of women's rights in contemporary Muslim family law systems.

The *Mubadalah* Framework as a Hermeneutical Alternative for Reformulating *Nusyuz*

The *mubadalah* framework offers a hermeneutical paradigm that positions the marital relationship as one of reciprocal and equal partnership, rather than the hierarchical structure implied by many classical interpretations of *nusyuz* (Khairuddin & Salam, 2021). Within this theoretical approach, any verse or textual evidence concerning the obligations of one spouse must be interpreted in conjunction with the reciprocal duties and responsibilities of the other, situated within a relational ethic of mutuality. This paradigm functions as an epistemological critique of family law interpretations that emphasize unilateral obedience by the wife and the authority of the husband interpretations that have been deeply embedded in both modern legislation and court practice. Mohamad (2020) demonstrates that a reciprocity-based hermeneutic opens interpretive space for Islamic family law to become more responsive to contemporary gender realities rather than remaining confined to patriarchal normative formulations. Accordingly, *mubadalah* provides a robust conceptual tool for deconstructing interpretive structures that have produced inequalities within *nusyuz* regulations (Nazah, 2025).

Field research contained in your data shows that *nusyuz* is practiced in a gendered manner: the vast majority of claims are directed at wives, while breaches of the husband's obligations such as failure to provide maintenance or acts of violence are not accorded comparable weight by the courts. This imbalance reflects the operation of a patriarchal hermeneutic that severs reciprocal responsibility and highlights only the wife's duties. From a *mubadalah* standpoint, such a pattern constitutes a "rupture of mutuality," wherein textual sources are mobilized to justify one party as the determinant and the other as the determined.

(Al-Sharmani, 2021) affirms that this form of bias emerges from *fiqh*-based interpretations that fail to account for social realities and power relations within modern households, resulting in a legal system that loses its protective function toward women. Thus, *mubadalah* not only offers a theoretical alternative but also clarifies the causal chain underlying the inequality observed: unilateral interpretation → skewed judicial practice → heightened vulnerability for women.

Through the application of *mubadalah*, *nusyuz* can be reformulated not as a moral label imposed upon wives but as a bilateral legal category that evaluates breaches of obligations by both spouses proportionately. Within this framework, actions such as leaving the home, refusing sexual relations, or marital conflict can only be considered *nusyuz* when examined holistically specifically, whether the husband has fulfilled his responsibilities in providing protection, financial maintenance, emotional security, and respect for his spouse's dignity. This paradigm aligns with reformist arguments in the *maqasid* literature, which emphasize the protection of life (*hifz al-nafs*), dignity (*hifz al-'ird*), and women's economic rights (*hifz al-mal*) as foundational principles of family law (Auda, 2008). Consequently, *mubadalah* restores the ethical dimension that is often absent in current *nusyuz* practices and redirects the legal framework toward more equitable, *maqasid*-consistent marital relations (Munir & Baharuddin, 2023).

The findings of this study reveal a clear causal relationship: patriarchal interpretations of *nusyuz* → judicial bias → loss of maintenance, restricted access to justice, and heightened risks of violence against women. The *mubadalah* framework demonstrates that such injustices stem not merely from procedural shortcomings but from an epistemological failure in interpreting Islamic family law. By restoring the principle of mutuality in textual interpretation, *mubadalah* reorients the direction of legal reasoning from control to protection, and from unilateral obedience to reciprocal responsibility. These findings underscore the significance of *mubadalah* not only as a theoretical construct but also as an evaluative tool that can inform policymakers, judges, and family law practitioners. As noted by (Hashim, 2022), family law reforms grounded in mutuality produce structural effects that reduce gender inequality and enhance women's access to justice. Thus, integrating *mubadalah* represents both an epistemological and practical pathway for reforming *nusyuz* in Malaysia (Begum et al., 2024).

Directions for Legislative Reform and Judicial Policy in Malaysian Islamic Family Law

First, at the legislative level, precise textual amendments are needed for provisions related to *nusyuz* (e.g., Section 59 of the various state enactments and Act 303) to reduce ambiguity and prevent unilateral interpretations. Technical recommendations include: (a) explicitly defining the term "reasonable cause"; (b) incorporating clauses that clarify *nusyuz* as a category applicable to both spouses based on evidence of breach of obligations (*bilateral nusyuz*); and (c) establishing provisions for interim maintenance during litigation to prevent punitive withdrawal of financial support. Such codification models have been discussed in family law reform literature, emphasizing the importance of contextual and protective legal language (Aman and Othman, 2019). Legislative amendments should be accompanied by legislative drafting guidelines that include factual case illustrations demonstrating what constitutes reasonable circumstances (Aman & Othman, 2019).

Second, at the level of judicial policy and courtroom practice, standardized judicial guidelines are required to mandate *contextual inquiry* the obligation to assess evidence of violence, maintenance neglect, and power dynamics before determining *nusyuz*. These guidelines should require explicit documentation of factual findings related to the husband's obligations (maintenance, protection) and the wife's obligations, as well as mechanisms for verifying evidence (e.g., police reports, medical records, family witnesses). Additionally, continuous training programs for Syariah judges and *peguam syarie* on gender justice, VAWG

(violence against women and girls), and *mubadalah* principles will help mitigate institutional bias (Abdalla, 2019; Musawah & Sisters in Islam, 2018). Advocacy experience in Malaysia shows that judicial guidelines combined with capacity-building programs in collaboration with NGOs (such as Sisters in Islam) contribute to improving family litigation practices (Sisters in Islam, 2022).

Third, this study proposes an operational legal model consisting of four components:

1. The Bilateral *Nusyuz* Framework, which amends statutory language so that courts may recognize *nusyuz* claims against either spouse based on evidence of failure to fulfill marital obligations;
2. Mandatory Interim Relief, including temporary maintenance and residential protection throughout the litigation process;
3. Mandatory Screening for VAWG, whereby every case involving *nusyuz* allegations must undergo domestic-violence risk screening conducted by trained officers; and
4. A Legal Aid and Representation Guarantee, ensuring free legal assistance for vulnerable parties.

This model aligns with *maqāṣid* based reform discourse and practices adopted in jurisdictions that prioritize family welfare within procedural standards (Al-Sharmani, 2021; Auda, 2008). Implementation would require pilot programs in selected Syariah Courts as a policy test before nationwide adoption. Fourth, the study outlines a pragmatic implementation plan:

1. Establishing a multi-stakeholder task force comprising government ministries, state Syariah judicial departments, NGOs, and academic experts to draft legislative amendments and judicial guidelines;
2. Launching pilot courts in Selangor or Kuala Lumpur that operate under *mubadalah* informed guidelines with systematic monitoring and evaluation over 6–12 months;
3. Developing tiered training programs for judges, prosecutors, and *peguam syarie*; and
4. Initiating targeted public campaigns to improve family-law literacy and reduce the stigma associated with the label “disobedient wife,” while simultaneously building political support for legislative reform.

This integrated legislative judicial–public approach has been shown to be effective in family-law reform initiatives in countries seeking alignment with international human rights standards (Musawah & Sisters in Islam, 2018; Hashim, 2022).

The findings of this study provide both theoretical and practical contributions. Theoretically, the research integrates *mubadalah* the principle of reciprocity with *maqāṣid* to construct a normative foundation for reformulating *nusyuz*, thereby expanding a body of literature that typically relies on traditional or conventional feminist exegesis (Auda, 2008; Mohamad, 2020). Practically, the study presents an operational legal model (the Bilateral *Nusyuz* Framework, interim relief, VAWG screening, and legal aid) supported by empirical field evidence (interviews, observations, and NGO reports) and a measurable action plan that equips policymakers and courts with immediate tools for reform (Saad & Trakic, 2021).

Outcome evaluation may be conducted through indicators such as: reductions in repressive *nusyuz* claims, increased access to interim maintenance, shorter case duration, and user-satisfaction surveys from court service recipients (with Sisters in Islam data serving as baseline) (Ali Mohamed & Ahmad, 2021). If adopted, these reforms would transform the system from one grounded in patriarchal control to one oriented toward relational justice in alignment with international human rights commitments.

Conclusion

This study concludes that the prevailing construction and judicial application of *nusyuz* in Malaysian Islamic family law remain structurally gender-biased, as they are predominantly

informed by classical *fiqh* interpretations that conceptualize marriage through hierarchical and obedience-based norms. Empirical findings demonstrate that *nusyuz* is operationalized almost exclusively against wives, frequently without adequate judicial consideration of domestic violence, power asymmetries, emotional harm, or husbands' failure to fulfil financial and protective obligations. Consequently, *nusyuz* functions not merely as a doctrinal category but as a legal mechanism that systematically disadvantages women through the suspension of maintenance, social stigmatization, and restricted access to justice. These outcomes reveal a clear causal pattern linking patriarchal interpretation to gender-biased judicial practice and, ultimately, to structural inequality within Islamic family law adjudication. The principal theoretical contribution and novelty of this study lies in advancing a *mubādalāh*-based reinterpretation of *nusyuz* as a bilateral legal category grounded in reciprocity, shared responsibility, and *maqāṣid al-sharī'a*. Departing from dominant unilateral constructions, this framework reconceptualizes *nusyuz* as an evaluative mechanism that assesses the conduct and obligations of both spouses, including failures related to maintenance, protection, and non-violence. By integrating normative doctrinal analysis with empirical field data, this study demonstrates that *mubādalāh* is not merely a hermeneutical critique but a coherent reform model capable of restoring the protective, ethical, and justice-oriented objectives of Islamic family law while remaining compatible with contemporary human rights standards.

Based on these findings, the study advances concrete policy recommendations. At the legislative level, Islamic family law enactments particularly provisions such as Section 59 should be amended to explicitly recognise *nusyuz* as applicable to either spouse, to narrowly define "reasonable cause" with reference to violence, neglect, and harm, and to prohibit the automatic suspension of maintenance during litigation. At the institutional level, *Syariah* courts should adopt mandatory gender-responsive judicial guidelines requiring contextual inquiry into power imbalance, domestic violence, and financial dependency, supported by standardized reasoning frameworks, compulsory judicial training, and guaranteed access to legal aid and interim protection. Collectively, these reforms operationalise the *mubādalāh*-based bilateral model proposed in this study and offer a practicable pathway for transforming *nusyuz* from a unilateral instrument of control into a principled mechanism for relational justice, judicial accountability, and substantively equitable outcomes for women in Malaysian Islamic family law.

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