



Paradigmatic Transformation of The Qiwamah Interpretation: A Contextual Reading of QS. Al-Nisa' (4):34 and Its Implications for The Reform of Indonesian Islamic Family Law

Transformasi Paradigmatik Tafsir Qiwamah: Pembacaan Kontekstual QS. Al-Nisa' (4):34 dan Implikasinya Bagi Pembaruan Hukum Keluarga Islam Indonesia

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Received: 2026-08-12 | Revised: 2026-09-12 | Accepted: 2026-09-14 | Page: 342-365

Abstract

Gender-based domestic violence remains a serious issue in Indonesia. In this context, QS *al-Nisā'* (4): 34 is still often used as a normative basis for placing men in a dominant position within the family. Previous studies have largely focused on textual and hermeneutic reinterpretations of this verse, while research examining the positivization of *qiwāmah* in Indonesian Islamic family law remains limited. This article traces the evolution of the concept of *qiwāmah* from classical exegesis to the Marriage Law and the Compilation of Islamic Law, and then examines it in light of developments in Indonesian positive law. This study employs a normative-doctrinal method with conceptual, historical, and legislative approaches. Primary legal sources include classical and modern exegeses, Law No. 1 of 1974, the Compilation of Islamic Law, Law No. 23 of 2004, Law No. 12 of 2022, and Supreme Court Regulation No. 3 of 2017. The analysis employs Abdullah Saeed's contextual approach by positioning *qiwāmah* as a legal postulate. The research findings indicate that *qawwāmūn* constitutes an *implementational* value not a *mandatory* one—that arises from specific socioeconomic contexts to meet the needs of and protect economically dependent family members. The study also identified an imbalance in the regulation of *nusyūz* in Article 84 of the Compilation of Islamic Law, as well as tensions between several of these provisions and developments in positive law. This article offers a framework for contextual verification and a roadmap for gradual reformulation through both textual amendments and judicial interpretation.

Keywords: *Qiwāmah*; Contextual Interpretation; Paradigmatic Transformation; QS *al-Nisā'* (4):34; Islamic Family Law Reform.

Abstrak

Kekerasan berbasis gender dalam rumah tangga masih menjadi persoalan serius di Indonesia. Dalam konteks ini, QS *al-Nisā'* (4): 34 masih sering digunakan sebagai dasar normatif untuk menempatkan laki-laki pada posisi dominan dalam keluarga. Kajian sebelumnya banyak berfokus pada reinterpretasi tekstual dan hermeneutis ayat tersebut, sementara kajian yang

menelusuri positivisasi *qiwāmah* dalam hukum keluarga Islam Indonesia masih terbatas. Artikel ini menelusuri perjalanan konsep *qiwāmah* dari tafsir klasik hingga Undang-Undang Perkawinan dan Kompilasi Hukum Islam, kemudian mengujinya berdasarkan perkembangan hukum positif Indonesia. Penelitian ini menggunakan metode normatif-doktrinal dengan pendekatan konseptual, historis, dan perundang-undangan. Bahan hukum primer mencakup tafsir klasik dan modern, Undang-Undang Nomor 1 Tahun 1974, Kompilasi Hukum Islam, Undang-Undang Nomor 23 Tahun 2004, Undang-Undang Nomor 12 Tahun 2022, dan Peraturan Mahkamah Agung Nomor 3 Tahun 2017. Analisis menggunakan pendekatan kontekstual Abdullah Saeed dengan menempatkan *qiwāmah* sebagai postulat hukum. Hasil penelitian menunjukkan bahwa *qawwāmūn* merupakan nilai *implementational*, bukan *mandatory*, yang lahir dari konteks sosial-ekonomi tertentu untuk memenuhi kebutuhan dan melindungi anggota keluarga yang bergantung secara ekonomi. Penelitian juga menemukan ketidakseimbangan pengaturan *nusyūz* dalam Pasal 84 Kompilasi Hukum Islam serta ketegangan sejumlah ketentuan tersebut dengan perkembangan hukum positif. Artikel ini menawarkan rubrik verifikasi kontekstual dan peta jalan reformulasi bertahap melalui perubahan teks maupun penafsiran yudisial.

Kata Kunci: *Qiwāmah*; Tafsir Kontekstual; Transformasi Paradigmatik; QS *al-Nisā'* (4):34; Pembaruan Hukum Keluarga Islam.

1. INTRODUCTION

Violence against women in Indonesia shows no signs of abating. The National Commission on Violence Against Women recorded 376,529 cases of gender-based violence throughout 2025, a 14.07 percent increase from the previous year and the highest figure in the last ten years (Komnas Perempuan 2026). What is more important for the purposes of this study is not the magnitude of the numbers, but their distribution: 337,961 cases, or 89.76 percent, occurred in the personal sphere, and the majority of cases within that sphere took the form of domestic violence, with violence against wives the category that has consistently dominated reports since 2001 (Komnas Perempuan 2026). These figures are presented here as *contextual background* rather than as empirical evidence for the argument developed in this article. The analysis that follows is normative-legal in character; it neither claims nor needs to claim that the legal construction of *qiwāmah* is a demonstrated cause of domestic violence. What the figures establish is more modest, but sufficient for the purposes of this study: the home, which Islamic jurisprudence positions as a space of *sakīnah*, remains statistically the most vulnerable space for Indonesian women reason enough to examine the normative architecture that governs authority within it.

Figures like these are usually interpreted as a matter of law enforcement: authorities lacking a victim-centered perspective, inadequate recovery services, or poor documentation. This interpretation is not incorrect, but it is incomplete, because it does not explain why a hierarchy subordinating the wife to the husband continues to be regarded by perpetrators, and at times by victims themselves as more axiomatic than any statute. One verse occupies a central position within that belief: Surah *al-Nisā'* (4): 34, which opens with the statement *al-rijāl qawwāmūn 'alā al-nisā'*. This *āyah* has been interpreted, in some religious and social discourses, as providing normative support for a hierarchical construction of the husband wife relationship (Sibawaihi 2025) an interpretive fact that this article treats as the normative backdrop against which the codification examined below took place, rather than as a causal claim this article sets out to verify empirically.

The problem, then, is not merely that this verse is invoked in lecture halls. The problem is that a hierarchical reading of the verse has become entrenched as positive law. Article 31(3) of Law No. 1 of 1974 on Marriage designates the husband as the head of the household and the wife as the homemaker (Republik Indonesia 1974). The same formulation is repeated in Article 79(1) of the Compilation of Islamic Law, and is reinforced by a series of subsequent articles

governing the wife's duty of obedience and the legal consequences of *nusyūz* (Tim Pengarusutamaan Gender Departemen Agama Republik Indonesia 2004) What classical exegetes once formulated as an interpretation has thereby been transformed into a binding norm enforced by the courts that today determines a woman's right to maintenance in Indonesia. The pressing question is therefore no longer how the verse should be understood in the abstract, but what happens to those articles once its interpretation changes.

Efforts to reinterpret QS *al-Nisā'* (4): 34 have, in fact, been under way for decades and have produced a substantial body of literature. Amina Wadud reads the particle *bimā* in the phrase *bimā faḍḍala Allāh* as marking a condition rather than a cause, so that *qiwāmah* becomes a conditional function that lapses once the condition is unmet (Wadud 1999). Asma Barlas goes further, rejecting the premise that patriarchy is inherent in the text and positioning it instead as a product of interpretation (Barlas 2002). Fatima Mernissi takes a historical approach, showing how a feudal elite manipulated the sacred text to perpetuate male power (Mernissi 1991). All three are strong at deconstructing inherited assumptions, but their analyses stop at the level of interpretation as a genre; none tests whether the results of their readings can survive the legislative process to become law.

The following generation of scholars refined these methodological tools. Ayesha S. Chaudhry maps the premodern cosmology underlying hierarchical readings and shows that the contemporary debate is, at bottom, a clash between two cosmologies rather than two grammatical readings (Chaudhry 2013). Hadia Mubarak overturns a common assumption by showing that Ibn 'Āshūr in fact arrived at an unprecedented reading of *wadribūhunna* using premodern philological tools rather than any avowedly innovative method (Mubarak 2018); her findings are significant, but their scope is deliberately confined to a single exegete and a single phrase. Zainab Saleem compares the hermeneutical strategies of Muslim feminists with Mahmoud Muhammad Taha's approach and concludes that a verse-by-verse reinterpretive strategy is less coherent than Taha's framework, which distinguishes ethical from legal verses (Saleem 2024); her study, however, is purely hermeneutical-theological and does not engage any family-law system. Nadeem Ahmad and Muhammad Ali Rasheed conduct a comparative survey of premodern and modern commentaries on this verse but stop at mapping opinions, without drawing legislative implications (Ahmad and Rasheed 2018). F. V. Greifenhagen juxtaposes Muslim feminist interpretations with Christian feminist interpretations of the same verse, but her focus is North America and her data end in the early 2000s (Greifenhagen 2004).

The only line of scholarship that treats *qiwāmah* consciously as a legal problem rather than merely an interpretive one is the Musawah knowledge project. Ziba Mir-Hosseini positions *qiwāmah* alongside *wilāyah* as the two concepts that structure Muslim family law from within, and calls for a clear distinction between *sharī'ah* as divine will and *fiqh* as the human understanding of it (Mir-Hosseini 2003). Lynn Welchman shows how these two concepts function as postulates underlying provisions on maintenance, obedience, and divorce across contemporary Muslim family-law regimes (Welchman 2015). This line of research is the closest in spirit to the present article, but the legal corpus it examines is limited to the Arab jurisdictions of Egypt, Morocco, and Jordan, leaving the Indonesian Compilation of Islamic Law with its own distinctive codification largely untouched. Sana S. Al-Mannai addresses misconceptions about the status of women in the Muslim world, but at the level of general discourse, without connecting them to specific legal provisions (Al-Mannai 2010). Tarek Masoud, Amaney Jamal, and Elizabeth Nugent demonstrate experimentally that Qur'an-grounded arguments can shift public attitudes toward women's rights, but their experiment was designed for the domain of electoral politics in Egypt, not for family law (Masoud, Jamal, and Nugent 2016).

What of Indonesia? Domestic scholarship offers one notable exception. Atun Wardatun and Bianca J. Smith show that the Compilation of Islamic Law recognizes only the *nusyūz* of a wife, whereas the Qur'an itself acknowledges the *nusyūz* of a husband in Surah *al-Nisā'* (4):

128, and interpret the prevalence of wife-initiated divorce as a form of feminist *fiqh* thriving within society (Wardatun and Smith 2020). These findings are incisive, but their empirical scope is limited to West Nusa Tenggara and their legal focus to a single institution divorce; neither study undertakes a comprehensive review of the series of articles that operationalize *qiwāmah*. Masruhan documents a contextual reading of misogynistic *ḥadīth* at the reformist Persis Bangil pesantren, though his subject is *ḥadīth* and his scope a single institution (Masruhan 2019). Nikmatullah maps how male Indonesian *ulama* reinterpret gender-related *ḥadīth*, within similar limits (Nikmatullah 2024). Fadhli Lukman analyzes the shifting landscape of Indonesian exegesis in the digital sphere, but his focus is the medium rather than the norm (Lukman 2018). Faqihuddin Abdul Kodir proposes *qirā'ah mubādalāh* as an influential reciprocal reading method that does yield an interpretation of *qiwāmah* as mutual responsibility (Kodir 2019); *mubādalāh*, however, is designed as a method for exegesis and *ḥadīth* studies, and offers no procedure for testing legal provisions.

Indonesian scholarship on this verse is, moreover, dominated by studies comparing Wadud with Zainab al-Ghazālī, examining Riffat Hassan, engaging Muḥammad Ḥusayn Faḍlallāh, or revisiting Rashīd Riḍā all arriving at broadly the same conclusion, that *qiwāmah* is functional and conditional. That conclusion has become close to a scholarly consensus, and its repetition adds little further to the field. The literature reviewed in this study indicates that systematic, clause-by-clause auditing of the codification of *qiwāmah* in Indonesian Islamic family law remains underexplored: a step that would trace how the classical construction of *qawwāmūn* has crystallized into a series of interlocking legal provisions Article 31(3) and Article 34 of Law No. 1 of 1974, and Articles 79, 80, 83, 84, and 152 of the Compilation of Islamic Law and would then re-examine that series to determine which provisions can be reformulated, which have become merely symbolic, and which have in fact already been superseded by more recent positive law. In short, existing literature reinterprets the verse; the codification it produced has not yet been systematically audited.

Given this gap, the article poses three research questions, each addressed to a distinct analytical task and building cumulatively on the one before it. *First*, how is the interpretive construction of *qawwāmūn* built in classical exegesis and deconstructed by contemporary Muslim feminist thought? a question addressed through the genealogical-hermeneutic analysis that opens the Discussion, which supplies the conceptual criteria used in the questions that follow. *Second*, how has the meaning of *al-rijāl*, *al-nisā'*, and *nusyūz* shifted from a textual to a contextual register, and to what extent is that shift reflected or not reflected in the Marriage Law and the Compilation of Islamic Law? a question that applies the criteria established by the first question to a normative audit of positive law. *Third*, how can the contextualization of *qiwāmah* be reformulated into a gender-just norm within Indonesian Islamic family law? a question that builds directly on the audit results of the second question to formulate a differentiated roadmap for reform. The methodological bridge linking the three questions is thus sequential rather than parallel: interpretive reconstruction (Q1) generates the normative criteria used to audit positive law (Q2), and the audit results in turn determine which reform pathway is appropriate for each provision (Q3). These three questions correspond to three objectives: analyzing the formation and deconstruction of the *qawwāmūn* construct, tracing the positivization of its shifting meanings in positive law, and formulating an operationalizable model for the reform of legal norms.

The novelty of this article is tied directly to three concrete outputs it produces, rather than to three loosely related observations. These are presented below as three corresponding contributions.

The *first* is a genealogical contribution: the article traces the process by which *qawwāmūn* migrates from *tafsir* into binding legal norm, and its concrete output is a clause-by-clause audit of the positivization of *qiwāmah* across Indonesian Islamic family law an undertaking attempted neither by the Anglophone hermeneutic tradition (Barlas 2002; Mernissi

1991; Wadud 1999), which stops at the level of interpretation as a genre, nor by the Musawah project, whose comparable audit of *qiwāmah* as legal postulate is confined to the Arab jurisdictions of Egypt, Morocco, and Jordan.

The *second* is a methodological contribution: the article operationalizes Abdullah Saeed's contextualist approach not as an interpretive label but as an instrument for verifying norms. Saeed's five-tiered hierarchy of values is used as the analytic instrument that determines the normative standing of *qawwāmūn* including the claim, substantiated in detail in the Discussion section below (see sub-section "The Construction of Male Authority"), that *qawwāmūn* functions as an *implementational value* realizing the *protective value* underlying *qiwāmah*, rather than as a *mandatory value* in Saeed's own terms (Saeed, 2014). Its concrete output is the contextual verification rubric applied systematically to each audited article in the Discussion, translating the hierarchy of values into operational criteria for normative design rather than leaving it as an interpretive framework alone.

The *third* is a regulatory contribution: the article produces a roadmap that differentiates provisions requiring a change to statutory text from those that can be adequately resolved through judicial reinterpretation, with its concrete output being the tiered reform roadmap presented in the closing sub-section of the Discussion ("Roadmap for Reformulation"). This distinction carries practical weight: the failure of the 2004 Counter Legal Draft of the Compilation of Islamic Law showed that comprehensive textual revision carries political costs that are not always sustainable, which is precisely why a differentiated roadmap rather than a single uniform recommendation constitutes a contribution in its own right. Taken together, these three contributions correspond one-to-one with the three research questions posed above: the genealogical contribution answers Q1, the methodological contribution operationalizes the criteria applied in Q2, and the regulatory contribution delivers the roadmap called for in Q3. The article's theoretical contribution, correspondingly, is to show that a new contextual hermeneutics is complete only once it can be tested against legal texts and yields a genealogy, a verification instrument, and a reform roadmap rather than remaining at the level of interpretive texts alone.

2. RESEARCH METHODS

This study employs normative legal research using statutory, conceptual, and contextual-hermeneutic approaches. (Marzuki 2017) The statutory approach examines the normative construction of husband-wife relations in Indonesian positive law, particularly Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 12 of 2022 on Criminal Acts of Sexual Violence, and Supreme Court Regulation No. 3 of 2017. The contextual-hermeneutic approach reconstructs the interpretation of QS al-Nisā' [4]:34 by examining its textual structure, socio-historical context, normative purposes, and contemporary family relations. The conceptual approach analyses *qiwāmah* as a legal construct through the concepts of *qiwāmah*, *nusyūz*, *maqāṣid al-syarī'ah*, and *mu'āsyarah bi al-ma'rūf*.

Sources comprise primary legal materials, primary Islamic textual sources, including the Qur'an and representative classical and contemporary tafsir, and secondary sources consisting of books, journal articles, and previous studies. Sources were selected purposively according to their relevance to the construction and codification of *qiwāmah* in Indonesian Islamic family law. Analysis proceeded through three stages. First, genealogical analysis compared classical and contemporary interpretations of QS al-Nisā' [4]:34 to identify the normative assumptions underlying the construction of *qiwāmah* as male authority. Second, a normative audit examined Indonesian family-law provisions concerning husbandly status, wifely obligations, *nusyūz*, maintenance, and spousal relations using criteria derived from contextual interpretation, Abdullah Saeed's hierarchy of values, and *qiwāmah* as a legal postulate. Third, the findings informed reform options through statutory reformulation, judicial

reinterpretation, or reinforcement of provisions consistent with equality and protection. Gender-based violence statistics served only as contextual background and were not treated as empirical data. This methodological design allows the study to move beyond a purely textual reassessment of *qiwāmah* by examining how an interpretive construction is translated into legal norms and how those norms can be evaluated against their textual foundations, normative values, and contemporary legal framework.

3. RESULTS AND DISCUSSION

3.1 The Construction of Male Authority: *Qawwamun* in Classical Exegesis and Contemporary Muslim Feminist Critiques

Before it became a legal provision, *qiwāmah* was first an exegetical interpretation. Before that, it appeared simply as a word in a Qur'anic verse. Tracing this movement from word to interpretation and then to legal norm is therefore important. At each stage, meanings were added, developed, and eventually treated as though they had always been part of the original text.

Two points can be established with reasonable textual certainty. They are presented here as findings from the text and its reception history, rather than as the author's normative position, which will be discussed separately. The verse at the centre of the debate states: *al-rijāl qawwāmūn 'alā al-nisā' bimā faḍḍala Allāh ba'dahum 'alā ba'd wa bimā anfaqu min amwālihim*. First, *qawwāmūn* is the plural of *qawwām*, an intensive form (*mubālaghah*) derived from the root *q-w-m*. The root carries meanings such as standing, upholding, managing, and taking responsibility. In classical usage, a *qawwām* over a matter is someone who takes responsibility for it and manages it carefully. Second, the abstract noun *qiwāmah*, which later became a technical term in *fiqh* for the husband's authority, does not occur in the Qur'an. The term was developed later within the scholarly tradition.

Classical exegetes generally understood *qawwāmūn* in terms of authority and responsibility. Al-Ṭabarī explains the term as referring to men who oversee women's affairs and have a role in educating and guiding them. His interpretation therefore places *qawwāmūn* within a framework of authority rather than simple responsibility or service (Al-Ṭabarī 2001). Al-Rāzī develops the argument more systematically. He lists several qualities that he considers advantages possessed by men, including greater knowledge and practical capacity, and uses these qualities to explain the phrase *bimā faḍḍala* (Al-Rāzī 1420). Al-Zamakhsharī similarly compares the position of men in relation to women to that of a leader (*wālī*) in relation to his people. Ibn Kaṣīr then summarizes this general understanding by describing men as leaders, authorities, and educators of women (Al-Zamakhsharī 1998; Ibn Kaṣīr 1999). Read together, these commentaries reveal a gradual movement in meaning. The Qur'anic expression *qawwāmūn* begins with the language of responsibility and management, but classical exegesis increasingly explains that responsibility through supervision, leadership, and authority. The later technical concept of *qiwāmah* can therefore be understood as the result of a longer interpretive process rather than as a term directly stated in the Qur'an. (Ahmad and Rasheed 2018)

Table 1. Genealogy of *Qawwāmūn*: From Lexical Responsibility to Constructed Authority

Interpretive layer	Key formulation	Primary meaning attributed to <i>qawwāmūn</i>	Source of justification	Interpretive development
Qur'anic wording	<i>al-rijāl qawwāmūn 'alā al-nisā'</i>	A form of responsibility, care, management, and support	Lexical meaning of <i>q-w-m</i> and the immediate syntax of Q. 4:34	The verse connects <i>qawwāmūn</i> with <i>faḍl</i> and <i>infāq</i> without using the later technical noun <i>qiwāmah</i>

Interpretive layer	Key formulation	Primary meaning attributed to <i>qawwāmūn</i>	Source of justification	Interpretive development
Al-Ṭabarī	Men oversee and guide women's affairs	Responsibility developed into supervision and authority	<i>Faḍl</i> , <i>infāq</i> , and the social function of men within the household	<i>Qawwāmūn</i> moves from responsibility toward normative authority
Al-Rāzī	Men possess qualities that justify their position over women	Authority grounded in presumed male advantages	Intellectual, physical, and practical capacities associated with men	<i>Faḍl</i> is interpreted as evidence of relatively stable male superiority
Al-Zamakhsharī	Men resemble a <i>wālī</i> in relation to those under his care	Leadership and governance	Analogy between household leadership and political/social authority	Household responsibility is conceptualised through a stronger model of leadership
Ibn Kaṣīr	Men are leaders, authorities, and educators of women	Established male authority within the household	Consolidation of earlier exegetical reasoning	Earlier interpretive elements become a relatively stable exegetical formulation
Later <i>fiqh</i> discourse	<i>Qiwāmah</i> as a husband's authority	A normative status attached to the husband	Cumulative exegetical and juristic reasoning	The Qur'anic verb/adjective <i>qawwāmūn</i> is transformed into the technical concept of <i>qiwāmah</i>
Genealogical finding	From function to status	Responsibility becomes a basis for authority	Repeated association of <i>faḍl</i> , <i>infāq</i> , protection, and leadership	A contextually situated interpretation acquires the appearance of a permanent gender norm

Source: Constructed by the author from the Qur'anic text and the exegetical discussions of al-Ṭabarī (2001), al-Rāzī (1420), al-Zamakhsharī (1998), and Ibn Kaṣīr (1999), with reference to the comparative discussion in Ahmad and Rasheed (2018).

The comparison in Table 1 indicates that the transformation of *qawwāmūn* did not occur through a single interpretive decision. It developed cumulatively. At the textual level, the term describes a function associated with responsibility and management. In classical exegesis, that function was increasingly explained through supervision and leadership. Later, these elements were consolidated into the concept of *qiwāmah* as male authority within the household. The important finding, therefore, is not simply that classical exegetes interpreted *qawwāmūn* differently from contemporary scholars. It is that the meaning itself moved from a functional description toward a more stable normative status.

This distinction between function and status is central to the genealogy reconstructed here. A function normally depends on the conditions that make the function necessary. A status, by contrast, tends to remain attached to the person who holds it regardless of changes in those conditions. Once *qiwāmah* was treated as a status attached to men, the conditions identified in the verse could lose their original importance. Responsibility for provision, protection, and household management could then be understood as consequences of male authority rather than as conditions that help explain it.

This convergence among al-Ṭabarī, al-Rāzī, al-Zamakhsharī, and Ibn Kaṣīr should not be dismissed as arbitrary or careless. Their interpretations made sense within the social conditions of their time. Household economies were largely organised around male provision,

while protection (*himāyah*) was closely connected to social authority. From that perspective, linking *faḍl* and *infāq* to a broader form of male authority followed a recognisable line of reasoning. The point of a genealogical analysis, therefore, is not to claim that these exegetes were simply wrong. Their interpretations were coherent within the social and intellectual framework in which they worked. The issue is what happened afterwards. A reading that made sense within a particular socio-economic context was gradually transmitted as though it represented a permanent and intrinsic meaning of the Qur'anic text. Yet the grammatical structure of the verse allows for a narrower and more conditional reading.

This is where a contextualist approach becomes useful. Its purpose is not to decide whether the classical exegetes were “wrong” by the standards of their own time. Rather, it asks what the verse actually states and what later interpretation added to it. The verse gives two reasons for *qawwāmūn*, both introduced by the same particle, *bimā*. The first is *bimā faḍḍala Allāh ba 'dahum 'alā ba 'd*. The phrase *ba 'dahum 'alā ba 'd* does not itself identify a particular gender-based quality. The second is *bimā anfaqū min amwālihim*, which refers to spending from one's wealth. Unlike an assumed innate quality, expenditure is a concrete and observable action.

Classical exegesis generally gives greater weight to the first reason. *Faḍl* is often read as indicating qualities or advantages inherent in men, while *infāq* functions as supporting evidence. This interpretation is not arbitrary. It is, however, still an interpretive choice. The syntax of the verse places the two reasons alongside one another, while only the second provides a criterion that can be directly observed in particular cases. This distinction matters when considering whether *qiwāmah* should be understood as a permanent status or as a function connected to identifiable conditions.

The immediate context of the verse also supports a more cautious reading. One of the most widely cited reports concerning its occasion of revelation (*asbāb al-nuzūl*) connects the verse to a domestic dispute involving a woman whose husband had struck her. According to the report, the Prophet initially sided with the woman before the verse was revealed. Regardless of how one assesses the authenticity of this report, its narrative setting is significant. The verse appears in the context of a specific domestic problem rather than an explicit attempt to establish a comprehensive hierarchy between men and women.

Reading the verse as a permanent “constitution” governing all relations between men and women therefore extends its scope beyond the immediate problem described in the report. Contextualist scholarship refers to this process as the generalisation of a particular context. The point is not to question the competence of the classical exegetes. It is to identify how a ruling connected to a particular situation can gradually acquire a broader meaning in later interpretation (Al-Ṭabarī 2001; Chaudhry 2013). A similar process can occur when individual verses are treated as independent legal units without first considering the specific problem each verse addresses.

Contemporary Muslim feminist scholarship has focused on precisely this interpretive gap. Amina Wadud argues that *bimā* can function as a conditional marker. On this reading, the verse does not simply state that men *are qawwāmūn*. Rather, *qiwāmah* depends on the conditions identified in the verse. Where financial support is no longer provided, the basis for *qiwāmah* would therefore need to be reconsidered (Wadud 2015). Fatima Mernissi approaches the issue from a sociological perspective. She examines how the interests of social elites influenced interpretations that maintained male authority within Muslim societies (Mernissi 1991). Riffat Hassan goes further by questioning the theological assumption that women were created as secondary beings. She argues that this assumption has no firm basis in the Qur'an and instead developed through later traditions. (Mustaqim 2008)

These interpretations have also attracted substantial criticism. Adian Husaini and Rahmatul Husni raise a basic methodological objection. They argue that a hermeneutical method developed in relation to the Bible cannot simply be transferred to the Qur'an because

the two texts occupy different ontological positions within their respective religious traditions. From their perspective, the differentiation of roles established by God represents justice rather than discrimination (Husaini and Husni 2015). This objection is important and should be addressed rather than dismissed.

Zainab Saleem raises a different concern. She argues that a feminist strategy based on reinterpreting individual verses may lack coherence when compared with an approach that distinguishes between ethical and legal verses. Such a strategy must also deal with verses whose literal meaning remains difficult to reconcile with a more egalitarian interpretation, particularly the phrase *wadribūhunna* (Saleem 2024). Ayesha S. Chaudhry approaches the disagreement at a broader level. In her view, the debate reflects a deeper conflict between hierarchical and egalitarian conceptions of social order. For that reason, grammatical analysis alone cannot settle the issue (Chaudhry 2013).

The discussion so far reconstructs positions already found in the exegetical and scholarly literature. These are findings about the history of interpretation, not yet the author's own normative argument. The author's position, developed below, follows a somewhat different route. The author agrees with the general direction of Wadud's conclusion but does not rely primarily on her reading of *bimā* as a conditional marker. The grammatical debate over whether *bimā* should be understood as causal or conditional does not provide a sufficiently stable basis for resolving the issue.

A stronger basis can be found in the structure of the verse itself. The verse identifies expenditure as one of the reasons for *qawwāmūn*, placing it alongside the first reason. More importantly, expenditure is the only one of the two that can be identified and examined in concrete cases. Treating *qiwāmah* as an inherent gender status would therefore allow an unverified assumption about male superiority to override a condition that can actually be observed.

This reading is also consistent with a basic principle of Islamic legal reasoning. A legal ruling is normally connected to an *'illah*, and the presence or absence of that *'illah* must be capable of being identified. If financial responsibility forms part of the reason for *qiwāmah*, then changes in that responsibility should have legal significance. This does not mean that every change in household income automatically eliminates every form of male responsibility. It does mean that *qiwāmah* cannot be treated as an unconditional status simply because of biological sex.

The objection raised by Husaini and Husni also deserves a distinction. The author agrees that the Qur'an should not be treated as an ordinary cultural artifact and that methods developed in other scriptural traditions cannot simply be transferred without modification. But rejecting biblical hermeneutics does not, by itself, establish the conclusion that men possess a natural superiority over women. Al-Rāzī's argument remains a human act of interpretation. It can therefore be examined according to its own textual and methodological assumptions. This is an interpretive position, not a further finding about the historical tradition.

Saleem's criticism is similarly relevant but needs to be limited to the issue under discussion. Her concern is persuasive when applied to *wadribūhunna*, where the literal meaning presents a substantially different interpretive problem. The same criticism does not necessarily apply to *qawwāmūn*, which is the specific term examined in this section.

A functional reading of *qiwāmah* is also not limited to feminist scholarship. Within the Indonesian Islamic intellectual tradition, M. Quraish Shihab understands the leadership referred to in the verse as a form of managerial responsibility. He does not regard this responsibility as incompatible with equal human dignity. He also argues that the Qur'anic intervention improved the position of women in its historical context (Shihab 2002). This interpretation is significant because it comes from a mainstream Qur'anic exegete rather than from a scholar primarily identified with feminist thought. The disagreement over *qiwāmah*,

therefore, should not be reduced to a simple opposition between Islam and feminism. It is also a debate within the Islamic exegetical tradition itself.

The position developed in this subsection can now be stated more directly. *Qawwāmūn* in Surah *al-Nisā'* (4:34) is better understood as referring to a protective and managerial function connected to the conditions identified in the verse. By contrast, *qiwāmah* as a permanent status of male authority represents a later construction within the exegetical tradition. That construction was coherent within its historical setting, but its historical coherence does not make it the only possible meaning of the revelation. Reconsidering the distinction between a conditional function and a permanent status therefore does not challenge the sanctity of the Qur'an. It examines how a particular interpretation came to be treated as a fixed legal principle.

This distinction provides the basis for the next subsection, which applies the same contextual analysis to two other terms that have played an important role in the development of Islamic family law: *al-rijāl* and *nusyūz*.

3.2 From Attribute to Fuction: The Transformation of The Meaning of al-Rijal, al-Nisa', and Nusyuz

If *qawwāmūn* refers to a function that depends on a verifiable condition rather than an inherent trait, as argued in the preceding sub-section, the next question is straightforward: who actually performs that function? This brings the discussion to the next two terms in the verse, *al-rijāl* and *al-nisā'*, which have generally been translated simply as "men" and "women" in the biological sense.

This translation is not lexically wrong, but it leaves aside an important possibility. The point here should again be treated as a finding, namely a reconstruction of an existing exegetical resource, rather than as an original claim of this article. In Qur'anic usage, *al-rijāl* does not always refer to biological sex alone. In a number of contexts, it identifies a particular social role that, in the circumstances of the time, happened to be performed by men. Rashīd Riḍā, in his *Tafsīr al-Manār*, had already moved in this direction by understanding *qiwāmah* as a form of leadership grounded in justice and family responsibility rather than as a basis for domination. He also stressed that a difference in role does not by itself establish superiority (Riḍā 1947). Ibn 'Āshūr takes the discussion further in *al-Taḥrīr wa al-Tanwīr*. This is where Hadia Mubarak's findings become relevant. Using conventional premodern philological tools rather than an explicitly innovative method, Ibn 'Āshūr reached a reading of *waḍribūhunna* that had not been reached by earlier exegetes (Ibn 'Āsyūr 1984). Mubarak therefore argues that innovation in method does not necessarily produce a progressive interpretation. Renewal can also emerge from a close engagement with the tradition itself (Mubarak 2018).

Taken together, these findings suggest that the meaning of *al-rijāl* should not be treated as a single, self-evident category. At least four layers need to be distinguished, because collapsing them into one another would weaken the argument that follows and turn it into a *non sequitur*:

- a. Lexical meaning in Classical Arabic, *al-rijāl* denotes adult males as a class, without further qualification.
- b. Contextual meaning within the verse Sūrat *al-Nisā'* (4):34 specifically narrows this meaning to men considered in their capacity as those who, in the verse's own terms, undertake *infāq* (expenditure). This is a narrower, functional sense rather than the full lexical meaning.
- c. Social function in seventh-century Arabia men were, as a matter of the prevailing economic structure, the household's economic providers. This made the functional meaning in (2) coincide, in practice, with the lexical meaning in (1). The two meanings were not clearly distinguished because the social structure of the time gave little reason to distinguish them.

- d. Contemporary legal implication this follows only when (2) and (3) are considered together. Because the verse presents *infāq* as the relevant criterion, rather than male sex as such, and because the historical coincidence between male sex and economic provision no longer holds universally in contemporary Indonesian households, the functional criterion should guide the contemporary legal reading of *al-rijāl*, rather than its historical association with biological sex.

This finding has a further implication for the present argument, although the inference here belongs to the author rather than to the literature reviewed. A functional reading of *al-rijāl* and *al-nisā'* does not necessarily require an exegetical theory imported from outside the tradition. It can be developed from within the tradition by bringing together layers (2) and (3) above. The verse connects *qawwāmūn* with the act of spending wealth, and at the time of revelation that responsibility was indeed associated with men because of the prevailing economic structure. *Al-rijāl* in this verse can therefore be read as referring to whoever performs the household's economic function in a particular context, rather than as identifying a quality inherent in the male body.

The second step of Saeed's contextualist framework can now be applied to this finding. This is also where the claim introduced earlier, namely that *qawwāmūn* functions as an *implementational value* rather than a *mandatory value*, needs to be demonstrated rather than simply stated. Saeed's hierarchy distinguishes values according to their relationship with the deeper objectives (*maqāṣid*) served by a ruling. A mandatory value remains valid regardless of the historical circumstances in which a revelation occurred and therefore cannot be replaced without abandoning the underlying objective. An implementational value, by contrast, refers to a historically specific means used to achieve a deeper value that extends beyond that particular context. It remains relevant only insofar as it continues to serve that deeper value (Saeed 2006). Applied here, the deeper protective value of Sūrat *al-Nisā'* (4):34 is the fulfilment of basic needs and the protection of family members who depend economically on others. Identifying men as the bearers of this responsibility was the concrete means available within seventh-century Arabia, where women generally had limited independent access to income. Three considerations support treating this designation as implementational rather than mandatory:

- a. **First**, the wording of the verse makes the designation conditional on an empirically verifiable fact, namely *infāq*, rather than presenting it as an unconditional decree. *Qawwāmūn* is an intensive adjective formed around an act; it is not an ontological title.
- b. **Second**, the verse links this designation to a second reason, *faḍl*, which later exegesis, as discussed in Sub-section 1, often treated as an independent basis for male superiority even though the syntax of the verse gives both reasons comparable weight. Once that later addition is set aside, the conditional and verifiable reason remains.
- c. **Third**, and most importantly, the same objective, namely the protection of economically dependent family members, remains a mandatory value even when the empirical condition of male provision no longer applies. If the designation of men were itself mandatory rather than implementational, the means would undermine the very objective it was meant to serve in households where the wife is now the primary provider, a situation that is increasingly visible in Indonesia. Preserving the historical means under these conditions would therefore work against the protective value that the verse seeks to secure.

This is the specific argumentative step that has not been demonstrated in the literature reviewed in the Introduction. It also provides the basis for the methodological contribution claimed in this article. Saeed's hierarchy is not used here merely as an interpretive label. It is applied as a verification instrument that produces a specific classification based on stated criteria that readers can examine, contest, or reject.

A similar shift can be seen in relation to *nusyūz*, although the claim needs to be made more carefully than a first reading might suggest. Sūrat *al-Nisā'* (4):34 addresses a wife's

nusyūz and sets out a sequence of responses. Yet Sūrat *al-Nisā* (4):128 also addresses a wife's concern about her husband's *nusyūz* and identifies reconciliation (*ṣulḥ*) as a possible remedy. Both verses appear in the same *sūrah* and use the same root. This textual fact supports a limited claim, and only a limited one: the Qur'an presents the possibility of *nusyūz*, or marital discord, arising from either party. It does not justify the stronger claim that the Qur'anic concept of *nusyūz* is identical to the technical legal category later developed in *fiqh*, or to the codified category found in the Compilation of Islamic Law. These are three different registers, and this article keeps them separate. The first is a Qur'anic concept, referring to the possibility of marital discord involving either spouse. The second is a *fiqh* technical category, which, as the next paragraph shows, narrowed this possibility into a term of art applied almost exclusively to wives and attached specific legal consequences to it. The third is a codified legal category, which carried this *fiqh* narrowing into Indonesian law without reopening the question of symmetry. The argument here concerns the second and third registers and the gap between them and the first.

The *fiqh* tradition did not develop the Qur'anic possibility of mutual *nusyūz* into a symmetrical doctrine, and it is important to consider why rather than treating this narrowing simply as an oversight. A husband's obligation to provide maintenance was the main enforceable duty running from husband to wife. A wife's *nusyūz* therefore had a clear legal consequence in the form of forfeiture of maintenance. A husband's failure to fulfil his marital duties, by contrast, was addressed, at least in principle, through other doctrinal mechanisms, including judicial compulsion or the wife's recourse to *khul'*. These mechanisms were not always developed or applied with the same consistency, but their existence shows that the tradition did have ways of addressing male misconduct. From this perspective, the asymmetry reflected the enforcement mechanisms available to the tradition at the time rather than simple indifference to a husband's misconduct. This does not mean, however, that the asymmetry remains defensible once its practical effects are considered under contemporary conditions. *Nusyūz* developed into a technical term applied almost exclusively to wives and carried detailed legal consequences, especially the loss of maintenance, while a husband's *nusyūz* received no equivalent formulation or consequence. Atun Wardatun and Bianca J. Smith show that Indonesian law inherited this asymmetry and interpret the rise in wife-initiated divorce suits, in part, as a way for women to seek recognition of a husband's *nusyūz* that the legal text itself does not provide (Wardatun and Smith 2020). This article treats that interpretation as suggestive rather than as proof of a causal relationship, a caution that is maintained in the audit presented in the next sub-section. Faqihuddin Abdul Kodir offers a methodological response through *qirā'ah mubādalāh*, based on the principle that a provision addressed to one party in a reciprocal relationship may, where the context allows, apply in substance to the other party as well (Kodir 2019). Jumni Nelli and colleagues develop a related argument through Muhammad Syahrur's understanding of *qiwāmah* as a capacity that any person may possess rather than a right attached to a particular gender (Nelli et al. 2024).

This is the author's own assessment rather than a finding taken directly from the sources discussed above: among these approaches, *mubādalāh* appears to be the most operationalizable in the Indonesian context. This is not simply because it is consistent with the idea of equality. It is operationalizable because it works with materials that are already available within the tradition. It does not require acceptance of an entirely new interpretive theory. Instead, it calls for greater consistency in applying texts that are already recognized as authoritative. In a legal system where religious authority is decentralized and accusations of doctrinal deviation can be sensitive, an approach that does not require a prior change in the underlying epistemological framework is more likely to gain acceptance than one that does.

The question that follows is how far these shifts are reflected in Indonesia's positive law. The finding, reported here rather than argued for, is disappointing. The functional reading of *qawwāmūn*, the socially situated reading of *al-rijāl*, and the symmetry of *nusyūz* suggested

by Sūrat *al-Nisā'* (4):128 have left almost no trace in the wording of the relevant legal provisions. What has been codified is closer to the most hierarchical reading among those available. How that happened is the subject of the next sub-section.

This sub-section therefore closes with one position that belongs to the author's own conclusion rather than to another finding from the literature: the transformation of meaning from essence to function is not simply an accommodation to contemporary demands. It is a correction of a reading that elevated a historical means into an eternal end. The distinction between what the text requires unconditionally and what it required because of a particular historical circumstance provides the basis for the audit criterion applied, article by article, in the sub-section that follows.

3.3 The Positivization of *Qiwamah* in the Marriage Law and the Compilation of Islamic Law

The distinction established earlier between values that the Qur'an presents as binding in themselves and measures that were shaped by particular historical circumstances provides a basis for examining the place of *qiwamah* in Indonesian Islamic family law. Two legal instruments are particularly important in this regard. Law No. 1 of 1974 on Marriage applies generally to Indonesian citizens, while the Compilation of Islamic Law, promulgated through Presidential Instruction No. 1 of 1991, serves as an important reference for judges in the Religious Courts in cases involving Muslim parties. Although the two instruments emerged through different legal and political processes, they share an important feature. Both incorporate a hierarchical understanding of Q. 4:34 into positive family law. What was originally a Qur'anic statement situated within a particular social and economic context thus appears in the legislation as a set of legal rules governing the respective roles and obligations of husbands and wives.

Article 31 of the Marriage Law provides the clearest starting point. Paragraph (1) states that the rights and position of the wife are equal to those of the husband in family life and in social relations within the community. Paragraph (2) further recognizes that both parties have the right to perform legal acts. Paragraph (3), however, states that the husband is the head of the family and the wife is the homemaker (Law No. 1 of 1974). Read together, these provisions establish both equality and a division of roles. The division of roles does not necessarily constitute a hierarchy in itself. Its legal significance becomes clearer, however, when Article 31(3) is read alongside the provisions that define the respective obligations of the spouses.

Article 34 provides that the husband is responsible for protecting his wife and providing for the needs of the household according to his ability, while the wife is responsible for managing household affairs to the best of her ability. At the same time, paragraph (3) adopts a reciprocal formulation by allowing either spouse to bring a claim before the court when the other neglects his or her obligations. The statute therefore contains two different tendencies. On one side, it recognizes equality and reciprocal legal standing. On the other, it assigns distinct household roles to husband and wife.

The Compilation of Islamic Law develops this structure in greater detail. Article 79(1) repeats the formulation that the husband is the head of the family and the wife is the homemaker, while Article 79(2) states that the rights and position of the wife are balanced with those of the husband in household and social life. Article 80(1) describes the husband as the guide (*pembimbing*) of his wife and household, although it also provides that important household matters are to be decided jointly. Article 80(4) further specifies the husband's obligation to provide financial support. Article 83(1), by contrast, defines the wife's primary obligation as devotion to her husband, both physically and emotionally, within the limits permitted by Islamic law. Article 84 then attaches a specific legal consequence to the wife's failure to fulfil that obligation. A wife may be regarded as *nusyūz* when she fails to perform the obligation stated in Article 83(1) without a valid reason, and during the period of *nusyūz* the

husband's obligation to provide maintenance for her is suspended, except for matters concerning the children.

The relationship among these provisions is important because it shows that the hierarchical understanding of *qiwāmah* was not incorporated into Indonesian family law through a single provision. Rather, it appears as a connected legal structure. Article 79 establishes the husband's position as head of the family. Article 80 links that position to guidance and financial responsibility. Article 83 defines a corresponding obligation on the part of the wife. Article 84 then attaches a legal consequence to the alleged failure to fulfil that obligation. The result is a structure in which economic responsibility, authority, obedience, and maintenance are legally connected.

The origins of this structure can be traced, at least in broad terms, to the classical *fiqh* tradition. Article 79(1), which places the husband in the position of head of the family and the wife in the position of homemaker, is substantially consistent with the established position found in classical Shāfi'ī works on marriage. Within that tradition, the husband's *qiwāmah* was associated with the wife's obligation of obedience (*tā'ah*), while a wife's failure to fulfil that obligation could be treated as *nusyūz* and could affect her entitlement to maintenance. The formulation of Article 83(1), particularly its reference to physical and emotional devotion, and the maintenance consequence contained in Article 84 closely resemble this doctrinal structure.

The drafting history of the Compilation provides further support for this connection. Published accounts indicate that the drafting process involved a review of *fiqh* literature, much of it associated with the Shāfi'ī school, together with consultations with scholars, consideration of Religious Court decisions, and comparative legal studies. The resulting formulation was discussed at a national workshop in 1988 and subsequently disseminated through Presidential Instruction No. 1 of 1991 (Zayyadi et al. 2023). This history makes it reasonable to regard the classical *fiqh* tradition as an important intellectual source for the provisions concerning marital roles and obligations.

This conclusion should nevertheless be stated with appropriate caution. The available published sources do not provide a complete documentary record showing precisely how each provision was formulated from a particular *fiqh* text. The internal working documents of the drafting process would be needed to establish such a connection conclusively. The argument here is therefore not that Article 79, 83, or 84 can be traced through a documented line from a particular classical text to the final wording of the KHI. Rather, the similarity between the classical doctrine and the enacted provisions, together with the documented reliance on *fiqh* literature during the drafting process, makes the connection historically plausible and legally significant. At the same time, the use of established *fiqh* references was itself a legitimate method of codification. It provided continuity with a legal tradition already familiar to Indonesian Muslim scholars and judges. The problem arises not from the use of that tradition as such, but from treating historically situated formulations as though their underlying conditions were necessarily permanent.

The significance of this process becomes clearer when the provisions are read together. The Compilation does not use the term *qiwāmah*, yet its legal structure reflects the concept. This observation is consistent with Welchman's description of *qiwāmah* as a legal postulate that may operate without being expressly named in legislation. The concept can be identified through the relationship among the husband's obligation of maintenance, the wife's obligation of obedience, and the legal consequences attached to an alleged failure of obedience (Welchman 2015). In the Indonesian context, these elements are distributed across several provisions rather than expressed through a single statutory definition.

The treatment of *nusyūz* reveals an even more significant transformation. The Compilation refers to *nusyūz* in several provisions, including Articles 80, 84, and 152, but each reference concerns the wife. This differs from the Qur'anic presentation examined earlier, where Q. 4:34 addresses the wife's *nusyūz*, while Q. 4:128 explicitly refers to the possibility of

nusyūz on the part of the husband. The movement from the Qur'anic formulation to the codified rule therefore involves a reduction in symmetry. The possibility of marital misconduct by either spouse remains visible in the Qur'an, but the technical legal category of *nusyūz* in the KHI is applied primarily to the wife.

Article 77(5) provides an important qualification. It states that either husband or wife may bring a claim when the other neglects his or her obligations. In this respect, the provision is formally reciprocal. Its legal position, however, is different from that of Article 84. Article 77(5) does not use the term *nusyūz* and does not establish a specific consequence comparable to the suspension of maintenance under Article 84. The two provisions therefore coexist without creating equivalent legal mechanisms. The result is a formal recognition of reciprocal responsibility alongside a more detailed and consequential rule directed specifically at the wife.

The distinction between these provisions is important for understanding the legal consequences of codification. The issue is not simply that the KHI contains an unequal formulation. More significantly, a particular interpretation of the marital relationship has been translated into enforceable legal consequences. The husband's position as head of the family is connected to his economic responsibility, the wife's role is connected to an obligation of obedience, and the alleged failure to fulfil that obligation may affect the wife's maintenance. What was once a doctrinal interpretation within *fiqh* thus acquires a different normative status when incorporated into positive law.

This development also creates tension within the Marriage Law itself. Article 31(1) and (2) establish equality between husband and wife, while Article 31(3) assigns different household roles. It would be possible to reconcile these provisions by understanding Article 31(3) as a division of domestic responsibility rather than a statement of unequal legal status. On that reading, the equality principle in paragraphs (1) and (2) would remain the governing principle, while paragraph (3) would simply describe the traditional organization of household responsibilities.

The difficulty appears when Article 31(3) is read together with the provisions that follow. Article 34 gives the role distinction concrete legal content, while Articles 79, 80, 83, and 84 of the KHI connect that distinction to authority, obedience, and maintenance. The issue therefore cannot be resolved by reading Article 31 in isolation. The question is whether a role division that may have originated as a response to a particular economic and social structure should continue to determine legal consequences after the circumstances supporting that division have changed. This is where the distinction between *mandatory value* and *implementational value* becomes relevant.

From the contextualist perspective adopted in this study, the economic and domestic arrangement reflected in these provisions is better understood as an *implementational value*. The protective purpose behind the arrangement remains important, but the particular distribution of roles through which that purpose was historically achieved cannot automatically be treated as permanent. The husband's responsibility to provide, protect, and sustain the household was closely related to the economic structure of the society in which the Qur'anic verse was revealed and the classical doctrine was subsequently developed. Contemporary Indonesian families, however, do not uniformly conform to that structure. Women may contribute substantially to household income, serve as the principal economic provider, or share financial responsibility with their husbands.

The legal problem therefore does not lie in recognizing responsibility within marriage. It lies in treating one historically familiar distribution of responsibility as the only legally valid form of marital organization. A contextual reading would preserve the underlying concern for the protection and welfare of the family while allowing the legal allocation of responsibilities to respond to actual circumstances.

The issue becomes more serious in relation to *nusyūz*. If Article 83(1) is understood as creating a unilateral duty of physical and emotional devotion and Article 84 is then used to

impose a material consequence for failure to fulfil that duty, the resulting construction may give legal force to an understanding of marital relations that is difficult to reconcile with the contemporary prohibition of domestic and sexual violence. Law No. 23 of 2004 on the Elimination of Domestic Violence establishes protection against physical, psychological, sexual, and domestic violence, while Article 8 specifically addresses sexual violence within the household (Law No. 23 of 2004). Law No. 12 of 2022 on Sexual Violence Crimes further strengthens the legal framework for protecting individuals from sexual coercion and violence.

The point should be stated carefully. Article 83(1) does not expressly authorize sexual violence, nor does Article 84 expressly criminalize or permit coercion. The legal tension arises when the language of physical and emotional devotion is interpreted as establishing an enforceable expectation of sexual availability, particularly when it is combined with the loss of maintenance under Article 84. Under such an interpretation, the same marital relationship would be governed by two different normative orientations: one that places legal weight on the wife's compliance with the husband's demands, and another that protects individuals from sexual coercion within marriage. The tension therefore arises at the level of legal interpretation and application rather than from an explicit statement in the KHI that sexual violence is permissible.

A similar issue appears in the procedural framework governing cases before the Religious Courts. Supreme Court Regulation No. 3 of 2017 requires judges to consider gender equality and nondiscrimination and to pay attention to differences in social position, disparities in legal protection, vulnerability, power relations, and histories of violence. The regulation is therefore significant because it directs judges to consider the actual distribution of power between the parties. This becomes particularly important where substantive family-law provisions may themselves contribute to an unequal distribution of authority within marriage. The coexistence of these norms creates a need for interpretation that does not treat the older provisions concerning marital roles as detached from the broader development of Indonesian law.

Available demographic and judicial data also provide a context in which this issue deserves attention, although they should not be treated as direct proof of a particular causal relationship. In 2024, Indonesia recorded approximately 399,921 divorce cases, with wife-initiated divorce proceedings (*cerai gugat*) continuing to account for a substantial proportion of divorce litigation (Badan Pusat Statistik 2025). These figures cannot by themselves demonstrate that women are seeking divorce because the KHI provides no equivalent category of a husband's *nusyūz*. They are compatible with a number of social, economic, and legal explanations. Nevertheless, Wardatun and Smith (2020) suggest that the asymmetrical construction of marital obligations in Indonesian Islamic family law is relevant to understanding the legal position of women who experience marital problems. The divorce data therefore provide a context for examining the consequences of the existing legal structure, rather than evidence of a direct causal relationship.

The same caution is necessary when considering domestic violence. The persistence of violence against women raises a broader legal question about whether family-law norms can unintentionally reinforce unequal relations of power. This does not mean that the existence of violence can simply be attributed to the wording of the KHI. Domestic violence is produced by multiple social, economic, cultural, and institutional factors. The more limited and defensible claim is that legal norms should not be interpreted in ways that strengthen the conditions under which coercion or unequal power can be legitimized.

This is where the distinction between *sharī'ah* and *fiqh* developed by Mir-Hosseini becomes particularly relevant. Revisiting Articles 83 and 84 of the KHI does not require questioning the authority of revelation. These provisions are human legal formulations produced through a particular process of interpretation and codification. They can therefore be

reconsidered when their underlying assumptions no longer correspond to the social and legal circumstances in which they operate (Mir-Hosseini 2003)

The preceding analysis points to several issues that require different legal responses. The provisions concerning the husband as head of the family raise a question of interpretation because their role differentiation can still be reconciled with the broader principle of equality if they are understood as describing responsibility rather than superior legal status. Articles 83 and 84 present a more substantial problem because they connect a one-sided formulation of marital obligation to concrete legal consequences. Article 77(5) of the KHI and Article 34(3) of the Marriage Law, by contrast, already recognize reciprocal responsibility and therefore provide a stronger foundation for a more balanced construction of marital relations.

The priority for reform should consequently be determined by the legal consequences produced by a provision, not simply by the fact that its wording appears outdated. Article 84 deserves particular attention because it transforms the interpretation of *nusyūz* into a concrete material consequence through the suspension of the wife's maintenance. Article 83(1) is closely connected to this problem because its one-sided formulation supplies the normative basis for Article 84. Reforming Article 84 without reconsidering Article 83 would therefore leave the underlying asymmetry largely intact.

The appropriate response does not necessarily require replacing the entire structure of Indonesian Islamic family law. A more measured approach would distinguish between provisions that require textual amendment and provisions that can reasonably be reinterpreted through judicial practice. Articles 83 and 84 require closer consideration for textual reform because their current formulation creates an asymmetry that cannot easily be resolved through interpretation alone. Articles 31(3) of the Marriage Law and 79(1) of the KHI, meanwhile, can be interpreted in conjunction with the equality provisions contained in Article 31(1) and (2) of the Marriage Law and Article 79(2) of the KHI.

This approach is also consistent with the broader history of attempts to reform Indonesian Islamic family law. The Counter Legal Draft of the Compilation of Islamic Law prepared in 2004 by the Gender Mainstreaming Team of the Ministry of Religious Affairs proposed more extensive changes to several provisions concerning marriage, including the traditional formulation of the husband as head of the family. The proposal encountered strong opposition and was ultimately withdrawn. Its history demonstrates that reform of established family-law norms cannot be separated from the social and religious legitimacy attached to the existing formulation. Legal change is more likely to be accepted when it is presented as a clarification and development of principles already present within the tradition rather than as a rejection of that tradition.

For this reason, reform should involve not only changes to statutory language but also changes in judicial interpretation and legal education. The Supreme Court has an important role in developing a consistent interpretation of marital equality in cases involving women. The institutions responsible for Islamic family law also have a role in reconsidering the formulation and application of the KHI. Equally important is the guidance provided in marriage counselling and premarital education, because legal understandings of marital authority are formed not only in courtrooms but also in the everyday teaching of prospective husbands and wives.

Concerns about legal certainty do not provide sufficient grounds for preserving an asymmetric rule merely because it is explicit. A rule can be formally certain while producing uncertainty and inequality in its application. Article 84, for example, specifies a consequence for the wife's *nusyūz* but does not establish an equivalent legal mechanism for the husband's comparable conduct. The issue is therefore not whether the law should be certain, but whether certainty is being achieved through a rule that distributes rights and obligations fairly between the parties. A more balanced formulation can preserve legal certainty while removing the asymmetry that currently characterizes the provision.

The reform proposed here should not be understood as a rejection of *qiwāmah* or of the Islamic legal tradition. Its purpose is to distinguish the protective objective associated with *qiwāmah* from the particular historical arrangement through which that objective was expressed. The responsibility to protect, provide, and maintain family welfare can remain a legal and ethical concern. What requires reconsideration is the assumption that these responsibilities necessarily establish a permanent hierarchy between husband and wife.

In this sense, the transformation of *qiwāmah* from an assumed attribute into a context-dependent function does not require a departure from Islamic legal reasoning. It requires a more careful distinction between revelation and the human interpretations through which revelation has been translated into legal rules. The provisions of Indonesian Islamic family law can therefore be reconsidered through *ijtihad* without treating such reconsideration as a challenge to the Qur'an itself. The central question is whether the legal formulation continues to serve the protective purpose for which the underlying rule was intended. Where the historical basis has changed, the formulation may legitimately be revised, while the underlying value of justice, protection, and family welfare is retained.

3.4 A framework for Contextual Verification and Directions for Legal Reformulation

The previous discussion highlights several issues that arise when the concept of *qiwāmah* is used as the foundation for formulating the legal relationship between husband and wife. These issues manifest in several ways. First, there is an internal tension that can only be partially resolved through harmonization. Second, there is a narrowing of the concept of symmetry that is actually found in the Qur'an. Third, values that were originally intended to be implementational are treated as if they were absolute values. Fourth, some provisions are at odds with more recent developments in positive law. These findings are insufficient if the analysis stops at merely identifying the problems. Therefore, this section develops a framework to re-evaluate these provisions while determining the form of change most appropriate to the character of each provision.

The contextual verification framework used in this study is based on Saeed's hierarchy of values and integrated with the understanding of *qiwāmah* as a legal construct discussed earlier. Its application is carried out through five questions. First, what is the normative status of the provision? Is it a *mandatory value* that applies across time, or an *implementational value* used to realize the value of protection within a specific historical context? If a provision falls under *implementational value*, then it is open to review when the conditions underlying it have changed (Saeed 2006). Second, is the *'illah* underlying the provision still present in the reality it is intended to regulate? This question stems from a long-established principle in *uṣūl al-fiqh*—namely, the interdependence between the existence of the *'illah* and the applicability of a provision. Third, is the legal formulation narrower than the text on which it is based? This issue is crucial in the discussion of *nusyūz*, because narrowing the meaning cannot be justified merely on the grounds of adhering to the text if the legal formulation itself has already narrowed the scope of that text. Fourth, is the provision still consistent with the development of other legal norms within the same legal system, particularly those of higher standing or enacted later? Fifth, what are the actual impacts of the provision on the parties it governs?

Applying these five questions does not always yield the same conclusion for every provision. Some provisions indeed require a change in their wording; others can be reinterpreted in judicial practice; and still others should be retained because, substantively, they are already in line with the protective values that constitute the objectives of family law. Table 2 shows the results of applying these five questions to the six provisions discussed earlier.

Table 2. Contextual Verification of Selected Family-Law Provisions and Proposed Forms of Reform

Legal Provision	Contextual Assessment	Legal Implication	Proposed Reform
Art. 31(3), Marriage Law	<i>Implementational value.</i> Its underlying economic assumption does not fully correspond to contemporary households in which wives may also be primary or equal economic providers.	No direct conflict, but the provision may reinforce an asymmetrical understanding of marital authority when used to interpret subsequent provisions.	Judicial reinterpretation in light of marital equality and changing household structures.
Art. 79(1), KHI	<i>Implementational value.</i> It reproduces the hierarchical model of the husband as head of the family and the wife as homemaker.	Its application may create tension with Art. 79(2), which recognizes balanced rights and status between spouses.	Judicial reinterpretation, emphasizing Art. 79(2) and reciprocal marital responsibility.
Art. 83(1), KHI	<i>Implementational value.</i> Mutual care remains relevant, but the provision formulates marital obligation primarily as the wife's devotion to her husband.	The formulation is narrower than the Qur'anic principle of <i>mu'āsharah bi al-ma'rūf</i> (Q. 4:19) and may support an unequal construction of marital obligations.	Textual reformulation to establish reciprocal duties of care, respect, and fulfilment of marital rights.
Art. 84, KHI	<i>Implementational value.</i> The concern with serious marital neglect remains relevant, but its application of <i>nusyūz</i> primarily to wives creates an asymmetrical legal mechanism.	It narrows the Qur'anic treatment of <i>nusyūz</i> and may produce material consequences through the suspension of maintenance. It also raises tension with the protective orientation of later legislation.	Priority textual reformulation to recognize <i>nusyūz</i> as serious neglect by either spouse, with proportionate and reciprocal legal consequences.
Art. 77(5), KHI	Consistent with a protective value because it recognizes that either spouse may neglect marital obligations.	No significant normative conflict. The principal issue is limited use rather than substantive deficiency.	Retention and strengthening through judicial practice and legal guidance.
Art. 34(3), Marriage Law	Consistent with a protective value because both spouses have legal standing to respond to marital neglect.	No significant conflict with the reciprocal structure of contemporary family law.	Retention and strengthening through consistent judicial application.

Source: Author's analysis based on Abdullah Saeed, *Reading the Qur'an in the Twenty-First Century: A Contextualist Approach* (London: Routledge, 2014), particularly the hierarchy of values distinguishing context-independent values from context-dependent *implementational values*; Q. 4:19, 4:34, and 4:128; Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019; and the Compilation of Islamic Law (*Kompilasi Hukum Islam*), particularly Articles 77(5), 79, 83, and 84. The assessment of the contemporary legal context also takes into account Law No. 23 of 2004 on the Elimination of Domestic Violence and Law No. 12 of 2022 on Sexual Violence Crimes.

The table shows the results of applying the analytical framework that has been formulated. Based on these results, there are three forms of reform that can be considered. The

three are not placed on the same level because the nature of the issues surrounding each provision is indeed different.

First, a reformulation of the legal provisions. Two provisions require textual changes because the issues they raise are directly related to the scope of the norms, consistency with legal developments, and the resulting legal consequences.

- a. Article 84 of the Compilation of Islamic Law. *Current provision*: A wife may be deemed *nusyūz* if, without a valid reason, she fails to fulfill the obligations referred to in Article 83(1), with the consequence that her right to maintenance is forfeited for as long as the *nusyūz* persists. *Proposed wording*: *nusyūz* is understood as the neglect by either spouse of their respective marital obligations. Legal consequences apply to the party committing such neglect. For a husband, for example, the consequences may relate to the neglect of his obligations regarding maintenance and protection. For a wife, the consequences relate to the reciprocal obligations set forth in Article 83 following its reformulation. *Rationale*: This formulation restores the symmetry of *nusyūz* found in Sūrah *al-Nisā'* (4):128, as demonstrated in the previous section. This formulation is also more consistent with Article 8 of Law No. 23 of 2004 and Law No. 12 of 2022. At the same time, this change does not necessitate the elimination of the concept of *nusyūz*. What needs to be corrected is its application, which has thus far been asymmetrical. The value to be upheld is the seriousness in fulfilling marital obligations, not the imposition of legal consequences on only one party.
- b. Article 83(1) of the Compilation of Islamic Law. *Current provision*: The wife's primary obligation is to be devoted to her husband both physically and emotionally within the limits permitted by Islamic law. *Proposed wording*: Husbands and wives have reciprocal obligations to care for one another, fulfill each other's rights, and conduct their married life based on the principle of *mu'āsyarah bi al-ma'rūf*. *Rationale*: The reciprocal formulation is not merely a response to the demands of modern society. Rather, this formulation is closer to Sūrah *al-Nisā'* (4:19), which explicitly mandates that married life be based on the principle of *mu'āsyarah bi al-ma'rūf*. The new formulation also eliminates the normative basis which, as demonstrated in the previous section, could be used to establish an obligation of sexual compliance when linked to the consequences outlined in Article 84.

Second, reinterpretation through the judiciary. Article 79(1) of the KHI and Article 31(3) of the Marriage Law do indeed raise conceptual issues, as seen in the previous discussion on harmonization. However, these two provisions do not directly give rise to independent legal consequences. Problems arise when they are used as a basis for interpreting subsequent provisions. Therefore, changes to these two articles do not necessarily have to await the legislative process. The courts can provide an interpretation that aligns these two provisions with the principle of equality as reflected in Article 31(1) of the Marriage Law and Article 79(2) of the KHI, taking into account Supreme Court Regulation No. 3 of 2017. This approach is not merely a practical consideration. It is also grounded in Abou-Bakr's finding that *qiwāmah* is not a legal category directly formulated by the Qur'an, but rather a construct formed through interpretation. Therefore, once interpretation has established a legal construct, it can also alter how that construct is understood and applied (Abou-Bakr 2015).

Third, maintaining and strengthening provisions that are already aligned. Article 77(5) of the Islamic Family Law (KHI) and Article 34(3) of the Marriage Law essentially meet the verification framework used in this study. The issue does not lie in the wording of these two provisions, but rather in the fact that they have not been widely used as a basis for resolving cases of negligence by one spouse. Therefore, these provisions can be strengthened, for example, through guidelines or circular letters that affirm both provisions as the basis for assessing a husband's negligence regarding his obligations. In this way, judges gain a clearer normative foundation without having to amend the wording of the law.

This approach to reform must also be viewed within the historical context of Islamic family law reform in Indonesia. In 2004, the Ministry of Religious Affairs' Gender

Mainstreaming Team drafted the *Counter Legal Draft of the Compilation of Islamic Law*, which proposed fairly extensive changes, including the removal of provisions regarding the head of the household and the equal division of inheritance (Republik Indonesia 2004). The draft was subsequently withdrawn after facing widespread opposition. The withdrawal does not in itself indicate that the underlying analysis was entirely flawed. One of the issues lay in the sheer scope of the proposed changes, which were introduced all at once without phased implementation. This experience is important for future reforms. Changes that are too sweeping in a single phase can provoke resistance that actually hinders the implementation of reforms that would otherwise be more readily accepted. Therefore, family law reform must be carried out in stages. Judicial interpretation can serve as a first step since it does not require legislative changes, while acceptance of textual reformulations can be built gradually through the development of legal practice and academic discourse.

Legal reform also cannot be left solely to the legislature or the judiciary. The Supreme Court plays a crucial role in providing guidance to judges of the Religious Courts through policies and technical guidelines, with the Directorate General of Religious Courts serving as a key component in their implementation. Regarding amendments to the Compilation of Islamic Law, the Ministry of Religious Affairs specifically the Directorate General of Islamic Community Guidance also holds a strategic position. Beyond these institutions lies an equally important arena: marriage counseling. Programs organized by the Office of Religious Affairs reach many prospective couples each year. It is within this context that the public's understanding of *Sūrah al-Nisā'* (4):34 is often shaped in practice. Therefore, changes to legal provisions will be less effective if marriage counseling materials continue to rely on outdated understandings of the relationship between husband and wife. Legal reform requires changes not only to written norms but also to the way those norms are explained to the public.

One objection that may arise to this reform is that such changes could undermine legal certainty in the effort to adapt the law to the demands of contemporary society. This objection warrants consideration. However, the legal certainty currently provided by Article 84 essentially fails to function in a balanced manner. For wives, this provision can actually create uncertainty because the loss of the right to maintenance may be based on an assessment of compliance, the criteria for which are not sufficiently clearly defined in the law. Mohammad Hashim Kamali points out that *sharī'ah* actually provides greater scope for women's economic roles than is often assumed in conservative interpretations. Kecia Ali also points out that the structure of rights and obligations in classical marital *fiqh* is largely constructed through transactional analogies, although such analogies are not the only way to interpret the available legal sources (Ali 2016). Therefore, adapting legal formulations to the reality that women in many families now serve as the primary breadwinners does not mean abandoning *sharī'ah*. Rather, this step can be understood as an effort to restore legal provisions to their protective function—the very foundation of their existence (Rahman 1982).

Ultimately, it must be emphasized that the reforms proposed here do not touch upon matters of faith and do not alter the status of revelation. The object of change is the formulation of laws shaped by humans based on their understanding of revelation. This domain is indeed part of the realm of *ijtihād* within the tradition of *uṣūl al-fiqh*. Jasser Auda also positions renewal as a crucial part of the effort to ensure that Islamic law remains capable of responding to changing circumstances (Auda 2008). Within this framework, interpreting *qiwāmah* as a legal construct actually helps maintain the boundary between the text of revelation and the results of human interpretation. Criticism is directed at legal constructs arising from interpretation, not at the text believed to be divine revelation (Welchman 2015).

Thus, the reform of Islamic family law in Indonesia need not begin with an entirely new theory of interpretation. What is more important is consistency in applying a principle already recognized within the Islamic legal tradition: namely, that when the *'illah* of a legal provision has changed, that provision must be reevaluated. Similarly, legal formulations that are narrower

than the *naş* should not be upheld on the grounds of fidelity to the *naş*. From this, conclusions can be drawn regarding what the entire discussion has demonstrated and what its implications are for the development of Islamic family law in Indonesia.

4. CONCLUSION

This article examined what happens to a legal provision when the interpretation underlying it changes. The findings point to three main conclusions. First, genealogically, classical exegesis largely constructed *qawwāmūn* as a permanent form of male authority by giving greater weight to *bimā faddala* while treating *bimā anfaqū* as supporting evidence. A functional reading, by contrast, gives both elements equal weight, consistent with the syntax of the verse. Second, this reading, together with the role-based meaning of *al-rijāl* and the Qur'anic symmetry of *nusyūz*, has had little influence on Indonesian positive law. The audit shows tensions in Articles 31 and 79 that harmonization only partly resolves, a narrower understanding of *nusyūz* in Article 84, the elevation of an implementational value into a mandatory rule, and inconsistencies with Law No. 23 of 2004 and Law No. 12 of 2022. Third, the verification rubric developed in this study produces different regulatory responses rather than one general solution. Articles 83 and 84 require textual reformulation, Article 79(1) and Article 31(3) are better addressed through judicial interpretation, while Article 77(5) and Article 34(3), which already reflect symmetry, mainly require reinforcement. These findings support the article's three contributions. Its genealogical contribution lies in tracing, clause by clause, how *qawwāmūn* moved from tafsir into binding legal norms. Its methodological contribution lies in using Saeed's hierarchy of values as a verification tool, allowing *qawwāmūn* to be classified as an implementational rather than mandatory value on explicit criteria. Its regulatory contribution is a phased reform roadmap that avoids the problems associated with the 2004 Counter Legal Draft. The study remains normative and therefore does not examine how judges actually apply these provisions. Future research should analyze Religious Court decisions on *nusyūz* and post-divorce maintenance to determine whether judges have already applied these principles in practice. If so, reform may focus less on creating new norms and more on formally recognizing an emerging judicial practice.

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