

CHAPTER I

INTRODUCTION

A. Background of The Research

Allah creates everything in this world in pairs, such as good and bad, day and night, land and sea, men and women, etc. They complete each other. It will be no good if nothing is bad. It will be no land if there is not sea. There is no human if man and woman don't become a couple.

Man and woman must be a legal partner through marriage to keep the bloodline of human. In Kamus Besar Bahasa Indonesia, marriage is a bond or a covenant between man and woman that unites them into one based on the provisions of law and teachings of religion.¹ Sulaiman Rasjid in his book *Fiqh Islam*, defined the marriage as legitimizing the intimate relation between a strange man and a strange woman, so it restricts their rights and obligations in their daily life.² All human life is started with marriage. The purpose of marriage itself is to establish a harmonious family based on Islamic principle on household (*sakînah, mawaddah, and rahmah*). As Allah said in Q.S (30): 21

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ (٢١)

¹Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2010), 1003.

²Sulaiman Rasjid, *Fiqh Islam: Hukum Fiqh Lengkap* (Bandung: Sinar Baru Algensindo, 2013), 374.

*And among His signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts) verily in that are signs for those who reflect.*³

Quraish Shihab said that the family is the smallest unit of nation that contributes and supports the growth of nation and society. While the unit can give a positive contribution, the nation will be strong and healthy. So, the family has important role to determine rising up and down of a nation. It must be recognized that the society and nation can influence the state of the family, too.⁴ After all, both of them will impact each other.

Establishing a harmonious family actually is not so easy and simple. In the journey of life, a husband and a wife will confront many obstacles and challenges that threaten their household from many aspects. For example, they disagree about something and have a hard argument, those problems will lead them break up the household. Sometimes the wife triggered some troubles for the husband so the husband will be angry with her, or the opposite. It caused their household like hell. It harms their harmonious life. Islam dislikes this situation. In Islam, all disharmony in the household are called *nusyûz*.

The effect of *nusyûz* as explanation above such as household like hell moreover they making decision to divorce and end their problem. *Nusyûz* itself is one cause of many divorces in Indonesia. The rate of divorce in Indonesia is

³Abdullah Yusuf Ali, *The Holy Quran (Koran)* (ttp: The King Fahd Holy Quran Printing Complex, 1987), 197.

⁴M. Quraish Shihab, *Membumikan Al-Quran Vol. 2* (Jakarta: Lentera Hati, 2011), 400.

among the highest in the world. The increase in the divorce rate reached 16-20% based on data obtained from 2009 to 2016. This divorce is increasing each year, only in 2011, the divorce rate had dropped, as many as 158 119 of 285 184 divorces a year earlier trial. The highest divorce rate occurred in 2012. In that year, the divorce rate reached 372 557. In other words, 40 divorces occur every hour in the country. According to Kasdullah SH, MH, as Deputy Registrar Legal IA Religious Court of Malang, a major cause of divorce that there are five, namely economic factors, domestic violence, disharmony, constants quarrels and one of the parties to run away.⁵

Then, especially in Banjarmasin reseacher found the data in site of the Religious Court Banjarmasin South Kalimantan about causes of divorce:⁶

Data Causes Divorce Religious Court Banjarmasin Month: July 2016		
No	Cause Divorced	Amount
1	Moral	5
2	leaving Obligations	10
3	Mating Underage	0
4	Physical hurt	3
5	Convicted	0
6	Biological disabilities	0
7	Constantly at loggerheads	47
8	Etc	25

⁵Dwi Purnawan, "Tingkat Perceraian di Indonesia Termasuk yang Tertinggi di Dunia", in *www.gulalives.com*, accessed 19 December 2016.

⁶Pengadilan Agama Banjarmasin, "Data Penyebab Perceraian", in *www.pa-banjarmasin.co.id*, accessed 19 December 2016.

The table above shows the most factors of divorce derived from *nusyûz*, such as leaving obligations, physical hurt and constantly at loggerheads are part of *nusyûz*. Then, the problem how the *nusyûz* should no longer be a cause of divorce, is there an error in the handling *nusyûz* up to result in divorce?. Even though as we know The Prophet Muhammad PBUH (Peace Be Upon Him) said about divorce:

حَدَّثَنَا كَثِيرُ بْنُ عُبَيْدٍ الْحِمَصِيُّ قَالَ: حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ، عَنْ عُبَيْدِ اللَّهِ بْنِ الْوَلِيدِ الْوَصَّافِيِّ، عَنْ مُحَارِبِ بْنِ دِثَارٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ الطَّلَاقُ»

*Narrated Katsiir bin 'Ubaid Al-Himshiy, has told us Muhammad bin Khaalid, from' Ubaidullaah bin Al-Waliid Al-Washaafiy, of Muhaarib bin Ditsaar, from 'Abdullaah bin' Umar, he said, the Prophet PBUH said, "the thing that is hated by Allah halal is talaq (divorce)."*⁷

The Quran as the way of Muslim's life provides solutions to handle this problem in its verses. The solution is given in order to restore peace and harmony in the household. In Islamic Law, the discussion of *nusyûz* is more emphasized negatively to the position of women as the wife, but in the Quran itself, it actually refers to a wife and husband.

⁷Ibnu Mâjah Muhammad bin Yazîz al- Qazwînîy, *Sunan Ibn Mâjah* (Beirût: Dâr al- Kutub al- Ilmiyyah,1971), 504.

Allah said about the *nusyûz*'s wife in Q. S. (4): 34

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا (٣٤)

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill- conduct, admonish them (first), (next), refuse to share their beds, (And last) beat them (lightly) but if they return to obedience, seek not against them Means (of annoyance) : For Allah is Most High, great (above you all).⁸

While Allah said about the *nusyûz*'s husband in Q. S (4): 128

وَإِنْ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُخْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا (١٢٨).

If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves and such settlement is best even though men's souls are swayed by greed. But if ye do good and practise self-restraint, Allah is well-acquainted with all that ye do.⁹

In the fact, the treatment has been given for husband who did the *nusyûz* and the wife slightly different. When the wife did the *nusyûz*, the husband must follow three ways to handle her such as giving advice, separating their bed and the

⁸Abdullah Yusuf Ali, *The Holy Quran (Koran)*, 37.

⁹Abdullah Yusuf Ali, *The Holy Quran (Koran)*, 43.

latter is being hit. While the husband did the *nusyûz*, the wife forcibly gave up her rights as a wife. She unfortunately will not receive some money given to her from the husband like always and other unjust treatment.

Based on the explanation above, the researcher needs to revisit the interpretation of *nusyûz* in the Quran. The problem appears when the treatment seems imbalance between the husband who did the *nusyûz* and the wife. It impressed that the position of wife is unprofit when she did the *nusyûz*. This research will use the interpretation of Syekh Muhammad Mutawalli al-Sya'râwî and Amina Wadud Muhsin on the concept of *nusyûz* as basic framework.

Syekh Muhammad Mutawalli al-Sya'râwî was an Imam named as *Imam al-Du'at* and also famous for his expertise to interpret the Quran. His commentary is written in the form dialogue because it is actually a collection of his lectures which interprets something. So, he is more flexible and contextual. He does not bind himself with textual, and he was a contemporary commentators who give more attention to women.

Istibsyaroh said on al-Sya'râwî that he looks moderate on gender relations although there are still things that need to be scrutinized. He did not give a position that is too superior to the man who can lead the inferior position of women. The presence of women rewarded in this life, because it was so closely

with the coaching process of law in society contextually both from the biological and historical.¹⁰

While Amina Wadud Muhsin is a feminist activist who highlighted *nusyûz* problems in her work *Quran and Woman*. She is a Muslim Scholar woman who gives much attention, especially to the woman world which happened many injustice toward them. She want to reinterpret various verses of al-Quran especially verses tend gender in interpreted in a patriarchal by the classical commentators. So, it is interesting to see how Amina Wadud Muhsin as a woman herself understood the concept of *nusyûz* and comparative with al-Sya'rawî as a man and a contemporary commentator.

Both figures above have the different backgrounds of family, education and environment, so any differences of their opinion are natural. After all, it makes this research much interesting that their similarities is about the meaning of *nusyûz* when they associated it with the word of *thâ'a* in Q. S (4): 34. Al-Sya'rawî says that it cannot be interpreted as wife obedience to the husband. His view is different from other interpreters. This opinion is in line with Amina Wadud Muhsin's understanding. Based on this background, the researcher will write a research under title **THE CONCEPT OF NUSYÛZ IN SYEKH MUHAMMAD MUTAWALLI AL-SYA'RÂWÎ AND AMINA WADUD MUHSIN'S THOUGHT.**

¹⁰Istibsyaroh, *Hak-hak Perempuan: Relasi Jender menurut Tafsir al-Sya'rawî* (Jakarta: Teraju, 2004), ix.

B. Problems Statement

The problems statements of this research are:

1. How is the concept of *nusyûz* from Syekh Muhammad Mutawalli al-Sya'râwî and Amina Wadud Muhsin?
2. What are the similarities and differences of their understanding on the *nusyûz*?

C. Objectives and Significances

Based on the main problems above, the objectives of this research are:

1. To know Syekh Muhammad Mutawalli al-Sya'râwî and Amina Wadud Muhsin's concept about *nusyûz*.
2. To know the similarities and differences Syekh Muhammad Mutawalli al-Sya'râwî and Amina Wadud Muhsin's understanding.

Then the significances of this research are:

1. Theoretically, this research will give contribution ideas in order to improved knowledge especially on the *nusyûz*.
2. Practically, this research can provide insight into *nusyûz* good for researchers, academics and the general public so that it can respond the *nusyûz* by taking the point of view the interpretation.

D. Definitions of Key Terms

To avoid misunderstanding of the title, the researcher needs giving definition of key terms. Firstly, the concept is general idea¹¹. In this research mean

¹¹Oxford University Press, *Oxford: Learner's Pocket Dictionary* (New York: Oxford University Press, 2009), 84.

the general idea of *nusyûz* in the Quran. Secondly, *nusyûz* is a state of disharmony between husband and wife. Then thirdly the mean of thought is past participle from think noun of power or process of thinking.¹² The thought in this research is from Syekh Muhammad Mutawalli al-Sya'râwî and Amina Wadud Muhsin.

E. Prior Research

The researcher divided the prior research into four parts as follows: *firstly* *Nusyûz*, *secondly* Syekh Muhammad Mutawalli al-Sya'râwî's thought, *thirdly* Amina Wadud Muhsin's thought and *fourthly* Comparative study between Syekh Muhammad Mutawalli al-Sya'râwî and Amina Wadud Muhsin.

The Researcher found there are some research talk about *nusyûz* generally, *Nusyûz Suami Terhadap Istri Menurut Fiqh Berperspektif Gender dan Hukum Positif di Indonesia: Studi terhadap Suami yang Melakukan Nusyûz di Desa Wates Kabupaten Blitar* by Rifatun Nikmah, *Tinjauan Yuridis Mengenai Perlakuan Suami Terhadap Istri Saat Nusyûz Berdasarkan Hukum Islam* by Dewi Sasmita, *Pendapat Siti Musdah Mulia Tentang Nusyûz dalam Pasal 84 Kompilasi Hukum Islam* by Khoirul Anam. All of these studies talk about *nusyûz* start of studies prove that *nusyûz* not only come from the women but also come from the male and resulted in a double burden for a woman when a man who does *nusyûz* and discussion about the law in Indonesia that yet set on *nusyûz* men and that discussion of this *nusyûz* still be interesting to discuss the talks.¹³

¹²Oxford University Press, *Oxford*, 450.

¹³Read more Rifatun Nikmah, "*Nusyûz Suami terhadap Istri Menurut Fiqh Berperspektif Gender dan Hukum Positif di Indonesia: Studi terhadap Suami yang Melakukan Nusyûz di Desa Wates Kabupaten Blitar*" *Skripsi* (Tulungagung: IAIN Tulungagung, 2014). Dewi Sasmita,

Different from the studies above I want to give the theme of this *nusyûz*, as terms of interpretation of Syekh Muhammad Mutawalli al-Sya'rawî. As for the research on thinking Syekh Muhammad Mutawalli al-Sya'rawî come from Riesti Yuni Mentari and Istibsyaroh that discuss women's right with regard to gender relation.¹⁴ Al-Sya'rawî's thoughts about the *nusyûz* are not mentioned in depth in research that is examined by al-Sya'rawî figure.

Besides al-Sya'rawî, I want to compare his thought with Amina Wadud Muhsin which also makes *nusyûz* as its subject. I found some research about her thought were compared with al-Zamakhsyari and al-Sya'fi'i's thought on the same theme with this research. Then the result al-Zamakhsyari dan Amina Wadud have different definition of *nusyûz* but still have a similarity when they give a treatment of *nusyûz*. While Amina Wadud and al-Syafi'i are different in all aspect from defining the word *qânitât*, give respond about beaten as solutions wife *nusyûz* and *al-shulhu* as a solution when husband did *nusyûz*, both contradictory.¹⁵

"Tinjauan Yuridis Mengenai Perlakuan Suami terhadap Istri saat *Nusyûz* Berdasarkan Hukum Islam," *Undergraduate Thesis* (Jember: Kementrian Pendidikan dan Kebudayaan Universitas Jember, 2014). Khoirul Anam, "Pendapat Siti Musdah Mulia tentang *Nusyûz* dalam Pasal 84 Kompilasi Hukum Islam" *Undergraduate Thesis* (Semarang: Fakultas Syari'ah IAIN Walisongo, 2014).

¹⁴Read more Riesti Yuni Mentari, "Penafsiran al-Sya'rawî terhadap al-Quran Tentang Wanita Karir" *Undergraduate Thesis* (Jakarta: Fakultas Ushuluddin UIN Syarif Hidayatullah, 2011). Istibsyaroh, *Hak-hak Perempuan: Relasi Jender menurut Tafsir al-Sya'rawî* (Jakarta: Teraju, 2004).

¹⁵Read More Siti Khomsiatun "Nusyûz dalam Pandangan al-Zamakhsyari dalam Kitab al-alkasyâf dan Amina Wadud dalam Quran and Women (Study Komparatif)" *Undergraduate Thesis* (Semarang: Fakultas Ushuluddin IAIN Walisongo, 2013). Husni Mubarak, "Nusyûz (Studi Komparatif antara Imam Asy-Syafi'i dan Amina Wadud)" *Undergraduate Thesis* (Yogyakarta: Fakultas Ushuluddin UIN Sunan Kalijaga, 2009).

Then the researcher found the research which is comparing al-Sya'rawî and Amina Wadud with title *Pandangan Amina Wadud Muhsin dan Penafsiran al- Sya'rawi Terhadap Ayat Gender (Studi Komparatif Terhadap Surah Al- Nisa ayat 1 dan 34)* by Usamah.¹⁶ The gender issue in this research is submitted to the creation among men and women who lead injustice right of women. Although came at both figures but the themes is different.

As for the difference of this study from other studies that compare the interpretation yet of the Syeikh Muhammad Mutawalli al-Sya'rawî interpreters of contemporary age with Amina Wadud Muhsin about *nusyûz*, although on the other side Amina Wadud Muhsin has been compared in her interpretation of the problem with the interpreter as al-Zamakhshari and Imam al-Syâfi'î.

F. Theoretically Framework

Etymologically, *nusyûz* from the word *nasyaza-yansyuzu-nasyâzan wa nusyûzan*, it mean rising, prominent, rebellious, defiant, or abusive.¹⁷ According to the terminology, *nusyûz* have some sense of them: Ibnu Manzhûr, an Arabic Linguist, in *Lisân al- 'Arab* defined the *nusyûz* as the hatred happened between husband and wife.¹⁸ As Hanafiyah Saleh Ganim defined either with displeasure that occurred between husbands and wives. Maliki's hold that *nusyûz* is persecute

¹⁶Read More Usamah, "Pandangan Amina Wadud Muhsin dan Penafsiran Al-Sya'rawî terhadap Ayat Gender (Studi Komparatif Terhadap Surah Al- Nisa Ayat 1 dan 34)" *Undergraduate Thesis* (Surabaya: Fakultas Ushuluddin dan Filsafat UIN Sunan Ampel, 2015).

¹⁷Ahmad Warsan Munawir, *Al-Munawir kamus Arab Indonesia* (Yogyakarta: Pustaka progresip 1994),1517.

¹⁸Ibnu Manzhûr, *Lisân al- 'Arab*, 281.

between husband and wife. Meanwhile, Syafi'iyah, *nusyûz* is a dispute between husband and wife, while Hanbaliyyah defined the discontent of the wife or husband who is accompanied by association is not harmonious.¹⁹

Nusyûz divided into *nusyûz* wife and *nusyûz* husband based on surah al-Nisâ verse 34 and 128. There are some act include into *nusyûz* wife such as: wife refuses sex when her husband asked, out of the house without her husband's permission, let go into house someone's that is hated by her husband and fasting without her husband's permission.²⁰ While *nusyûz* husband happens when it does not carry it out on his wife both material and non-material.²¹

According to the Quran facing *nusyûz* wife there is 3 steps: First, be advised. If the advice does not give effect, then the second step of separating beds. Third, if the second step does not work either, then enter the next step is beating his wife. The alquran said on the *nusyûz* husband,: "And if a woman fears ill conduct, or the indifferent attitude of her husband, then why do not they hold for true peace, and peace is better".

The fact *nusyûz* concept always abandoned to wife and solutions to *nusyûz* only take sides men without giving justice to the women. It is still happened until now.

¹⁹Agus Suherjan, "Makalah Penyelewengan (*nusyûz*)" in zanhaolo.blogspot.co.id, accessed on 20th December 2016.

²⁰Fatma Novita Matondang, "Konsep *Nusyûz* Suami dalam Perspektik Hukum Perkawinan Islam" *Thesis* (Sumatera: Sekolah Pascasarjana Universitas Sumatera Utara, 2009), 80.

²¹Fatma Novita Matondang. "Konsep *Nusyûz* Suami dalam Perspektik Hukum Perkawinan Islam" *Thesis* (Sumatera: Sekolah Pascasarjana Universitas Sumatera Utara, 2009), 115.

G. Research Methods

1. Method of Data Collection

This research is a library research, which are used by Syekh Muhammad Mutawalli al-Sya'râwî and Amina Wadud Muhsin's thought about *nusyûz*. This research is a comparative study, so the requirment comparison of thought is presented by both figures in *nusyûz* understanding. The data in this study are categorized into two major groups. The first is primary data took from the *Tafsir al-Sya'râwî* as Syekh Muhammad Mutawalli al-Sya'râwî's work and Quran and Woman's Amina Wadud Muhsin. Then, the secondary data is form all relevant studies that discussed about the theme in this study.

2. Method of Data Process

The steps in this study as follows:

- a. Finding and collecting verses that discussed about *nusyûz*. Firstly the researcher collect the verses about *nusyûz* used *al- Mu'jam al- Mufahras li Alfâzhi al- Qurân al- Karîm* with key "n-sy-z". Then the prior research also helped to find the verses about *nusyûz*.
- b. After finding the verses, it searched them in *Tafsir al-Sya'râwî's* and Quran and Woman's Amina. Then, their undestanding about the verses is collected.
- c. Data about al-Sya'râwî and Amina's understanding are analyzed critically with content analysis method to find their concept about *nusyûz* and then both are compared in term their similarity and differences.

- d. Because this research uses feminist criticism²² as the approach, first thing that must be try to see al-Sya'rawî and Amina's tendency about gender issues with the five principles of equality that is nothing discrimination, subordination, stereotypes, violence and double burden. Then, the researcher can analyze and compare the concept of *nusyûz* both figures according to their tendency of gender.
- e. After getting their whole thought about *nusyûz* , take conclusion from the results of research.

H. Structures

The discussion in this research is arranged to be five chapters as follows:

Chapter I: Explanation about background of research, problems statement, definition of key term, objectives and significances, review of related literatures, framework of the theory and research method.

Chapter II: Introduction the both figures in this research with their biography.

Chapter III: Describes the term of *nusyûz* according to Syekh Muhammad Mutawalli al- Sya'rawî and Amina Wadud muhsin.

Chapter IV: Analyzing Syekh Muhammad Mutawalli al- Sya'rawî and Amina Wadud muhsin's thought with feminist approach (5 indicator gender bias) then finding the similarities and differences their thought about *nusyûz*.

Chapter V: Conclusion, giving final answers from the problems statement and recommendation.

²²Approach that speaks of sex discrimination this notion was quated by Abdul Karim from Norman K. Denzin dan Yvonna S. Lincoln, (ed), Handbook of Qualitative Research (United Kingdom: SAGE Publication, 1994), 162-164.