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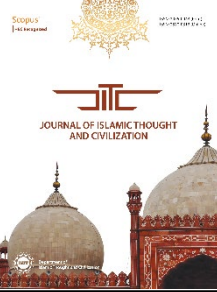
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**Al-Fatani's Perspectives on Islamic Family Law:
Insights from *Hidayah Al-Muta'allim Wa'Umdah Al-Muta'alim***

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Abstract

The evolution of Islamic Family Law in Malaysia is a nuanced amalgamation of Malay customs, cultural influences, and Islamic jurisprudence. Rooted in the history of Malaya, the formation of current Islamic Family Law reflects the fusion of these elements. This study delves into Daud Abdullah Al-Fatani's seminal work *Hidayah Al-Muta'allim Wa'Umdah Al-Muta'alim*, a pivotal contribution to Malaysian Islamic jurisprudence. Comparing Al-Fatani's insights with those of scholars from diverse schools of thought and contemporary Islamic Family Law enactments, the focus remains on key issues such as *Zihār*, *Khiyar*, and *Nusyuz*. The study reveals that Al-Fatani's perspectives transcend strict adherence to the Al-Shafi'i school, while aligning with the Islamic Family Law (Federal Territories) Act 1984. His views on marriage dissolution and wife's disobedience are influenced by Malay culture, while maintaining fidelity to the Qur'ān and *Sunnah* exemplified by his stance on *Zihār*. This resonates in Malaysia's current Islamic Family Law which is not rigidly bound to the Al-Shafi'i school but intricately considers cultural conditions.

Keywords: Daud Al-Fatani, culture, development, history, Islamic Family Law, Malaysia

Introduction

Islamic Family Law, or also referred to as Islamic Family jurisprudence, is a set of laws and regulations which particularly deals with the Muslim family, including matters such as marriage, inheritance, divorce, relationship, childcare, custody, and family maintenance. The Federal Constitution of Malaysia states that Islamic Family Law falls under the jurisdiction of *Shari'ah* courts that operate within the interpretation of Malaysia's Islamic Family Law (Federal Territories) Act 1984. Being the primary legislation, it outlines regulations on matters such as marriage, family maintenance, guardianship, child legitimacy, and penalties. The said Islamic Family Law (Federal Territories) Act 1984 comprises of 10 parts and contains 135 sections.¹ Other states, such as Kelantan, Selangor, Perlis, and Malacca have their own enactment that governs Muslim family matters at the state level. Namely these are, Islamic Family Law (Selangor) Enactment 2003, Islamic Family Law (Kelantan) Enactment 2002, Islamic Family Law (Perlis) Enactment 2006, and Islamic

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¹Arif Sugitanata and Siti Aminah, "Genealogy and Reform of Islamic Family Law: Study of Islamic Marriage Law Products in Malaysia," *JIL: Journal of Islamic Law* 3, no. 1 (2022), <https://doi.org/10.24260/jil.v3i1.556>.

Family Law (Malacca) Enactment 2002. Although governed by separate enactments, most of the provisions do not differ from the Islamic Family Law (Federal Territories) Act 1984.²

In terms of general Islamic jurisprudence, Muslims in Malaysia primarily adopt the Al-Shafi'i school of thought. However, the Islamic Family Law (Federal Territories) Act 1984 does not fully integrate the Al-Shafi'i school of thought into its provisions. To cite an example, while Al-Shafi'i school of thought ruled that fifteen is an eligible age for marriage due to puberty,³ the Islamic Family Law (Federal Territories) Act 1984 only allows marriage for men who are at least eighteen years old and women who are at least sixteen years old. In this case, the Islamic Family Law (Federal Territories) Act 1984 follows the Hanafi school of thought, where it is deemed that the age of puberty of a boy and a girl is eighteen and seventeen years, respectively. The requirement for girls to be above sixteen years old in order to be eligible for marriage is due to the interpretation of natural symptoms of puberty under the Islamic Family Law (Federal Territories) Act 1984 (Annotated Statutes IFLA, 106).⁴ Another example is the case of jointly acquired property (*harta sepencarian*) in Malaysia. The matter of jointly acquired property in the event of divorce is not extensively discussed in the Al-Shafi'i school of thought. However, the Malaysian legislation has a history of upholding women's ownership rights to jointly acquired property in cases of divorce. One example is the case of *Tijah v. Mat Ali* (1888 4 Kyshe 124), where the *Qadi* granted a divorced wife half share of the property, although later it was overruled by the civil courts. In the case of *Teh Rasim v. Neman* (1919 Perak Supreme Court Suit No. 232), the wife was granted ownership of one-third of the property as the result of jointly acquired property. While under the Al-Shafi'i school of thought, women's right to property ownership is not extensively regulated, it is practiced through Malaysian customary law or culture.⁵

These cases demonstrate that in terms of Islamic practice, education, and fatwa, Muslims in Malaysia adhere to the Al-Shafi'i school of thought. However, the Islamic Family Law (Federal Territories) Act 1984 does not fully integrate the Al-Shafi'i school of thought into its provisions. Instead, it is an amalgam between various schools of thought and the Malaysian culture. This research paper intends to explore the nature of amalgams in Islamic Family Law in the late 19th century, based on the views of Daud Al-Fatani (1769-1847 SD), through his book *Hidayah Al-Muta'allim Wa 'Umdah Al-Muta'allim*. It can be argued that the current Islamic Family Law (Federal Territories) Act 1984 echoes the nature of the early Islamic literature in Malaysia, although it is more refined, evolved, and suited for the current situation of Muslims in Malaysia.

The Malaysia's history of Islamic Family Law demonstrates that its current form is an amalgam of Malay customary law, the evolution of previous laws such as Laws of Malacca,⁶ the Ninety-nine

²Raihana Abdullah, "A Study of Islamic Family Law in Malaysia: A Select Bibliography," *International Journal of Legal Information* 35, no. 3 (2007), <https://doi.org/10.1017/s0731126500002481>.

³Mistofa Al-Khin, Mustofa Al-Bugha, and Ali Asy-Syarbaji, *Fiqhul Manhaji 'Ala Mazhabil Imam as-Syafie* (Kuala Lumpur: Pustaka Salam, 2005, 2005).

⁴Azizah binti Mohd, "An Appraisal Of The Application Of Fiqh Al-Hanafi Under Islamic Family Law (Federal Territories) Act 1984," *IJUM Law Journal* 27, no. 2 (2019), <https://doi.org/10.31436/iiumlj.v27i2.459>.

⁵Mohd Syahmil Samsudin et al., "Implied contributions for jointly acquired property based on Islamic family law in Malaysia," *Linguistics and Culture Review* 5, no. S4 (2021), <https://doi.org/10.21744/lingcure.v5ns4.1925>.

⁶M. Siraj, "Recent changes in the administration of muslim family law in Malaysia and Singapore," *International and Comparative Law Quarterly* 17, no. 1 (1968), <https://doi.org/10.1093/iclqaj/17.1.221>.

Laws of Perak,⁷ *Adat Pepatih*,⁸ and *Ahkam Syar'iyah Johor*,⁹ and excerpts from various schools of thought, particularly that of Hanafi and Al-Shafi'i. While the Al-Shafi'i school of thought gained its footing as the primary school of thought in Malaysia, the implementation of Malaysia's own Islamic Family Law does not necessarily reflect that as it also reflects traces of Malay Customary Laws and even the Hanafi school of thought.¹⁰ As the Islamic Family Law in Malaysia is the evolutionary evidence of previous laws, this study seeks to explore the worldview of the Islamic Family Law of Malaysia in the past, whether it can echo its modern brethren or it has been modified and changed to be more suitable to meet the current needs.

Daud al-Fatani was a renowned archipelago scholar. He was a prominent and prolific Patani scholar who produced remarkable works in the field of archipelago during the period of transition between 18AD and 19AD. His great credibility has never been matched by other Islamic scholars in the archipelago until today. He authored books in various fields which covered every Islamic aspect such as *fiqh*, *ibadah*, *'Ilm-al-kalām*, Sufism, daily life guides, Muslims' obligations to fellow Muslims and non-Muslims, general *fiqh*, prayer teaching, business, Islamic inheritance, marriage, and divorce.¹¹ His first work was written in Mecca, namely the book of *Ghayah al-Taqrīb Fi al-Irth Wa al-Ta'sīb* in 1224AH / 1809AD, while his last work was *Al-Bahjah al-Mardiyyah* written in 1259AH / 1843AD.¹²

The researchers have studied Daud al-Fatani's contributions towards the formation of Islamic education that is social and economics as it is known today. In economics, Daud al-Fatani portrayed a preference for using prioritization and *maslahah* for human societal needs. Daud al-Fatani argued that agriculture is the area of priority in building a nation's economy, followed by labor and then business. Daud al-Fatani showed that he understood that the foundation of a nation's economy is built on the nation's capabilities to sustain its own needs and provide resources in terms of workforce.¹³ In education, his books are among the first Malay-written books comprehensively on Islamic laws. He purposely wrote most of his Islamic law literature in the Malay language in order to attract more

⁷Muslihah Hasbullah Abdullah, and Najibah Mohd Zin, "Historical Developments of Financial Rights after Divorce in the Malaysian Islamic Family Law," *Asian Culture and History* 1, no. 2 (2009), <https://doi.org/10.5539/ach.v1n2p148>.

⁸Muhammad Aunurrochim Mas'ad Saleh, Nik Rahim Nik Wajis, and Mualimin Mochammad Sahid, "Perwarisan Tanah Adat / Ulayat di Indonesia dan Malaysia Dalam Adat Perpatih : Satu Tinjauan Syarak [Inheritance of Customary/Ulayat Land in Indonesia and Malaysia Under Adat Perpatih: A Shariah Perspective]," *Malaysian Journal of Syariah and Law* 5 (2017), <https://doi.org/10.12816/0051380>.

⁹Muhammad Najib Abd Wakil, and Che Maryam Ahmad, "The Historical Impact on the Valuation of Dowry (Mahr) Rate: Pre and Post-Colonial Eras in Johor," *Ulum Islamiyyah* 22 (2017), <https://doi.org/10.33102/uij.vol22no04>.

¹⁰Maznah Mohamad, "Feminism and Islamic family law reforms in Malaysia: How much and to what extent?," *Asian Journal of Women's Studies* 4, no. 1 (1998), <https://doi.org/10.1080/12259276.1998.11666204>.

¹¹Francis R. Bradley, "Sheikh Da'ud Al-Fatani's Munnyat Al-Musalli And The Place Of Prayer In 19th-Century Patani Communities," *Indonesia and the Malay World* 41, no. 120 (2013), <https://doi.org/10.1080/13639811.2013.798072>.

¹²Jajat Burhanudin, "The Popularizing of Sunni Doctrine in Southeast Asia: Sifat Dua Puluh in Malay Kitab Jawi in the 19th Century," *Jurnal Akidah and Pemikiran Islam* 24, no. 2 (2022), <https://doi.org/10.22452/afkar.vol24no2.8>.

¹³Ibraheng Saleh et al., "Justice (Al-Adl) In Buying And Selling From Syaikh Daud Al-Fatani's Perspective," *International Journal of Management* 11, no. 6 (2020), <https://doi.org/10.34218/ijm.11.6.2020.042>.

Malay Muslims, most of whom cannot understand Arabic, into reading and studying his works.¹⁴ Daud al-Fatani followed the notion adopted by Hamzah Fansuri in the 16th century for producing his Islamic theology literature.¹⁵

Daud al-Fatani's students contributed to shaping the Islamic environment in Malaysia as it currently stands. One of his students, Ahmad Zain al-Fatani, produced great works on medicine, theology, Arabic grammar, and Islamic jurisprudence. Ahmad Zain was engaged in teaching activities for Malay-speaking students of Javanese origin in Mecca. Some of them later emerged as Muslim leaders in their countries of origin, such as Nik Mahmud bin Nik Ismail (Chief Minister of Kelantan), Haji Ibrahim (Grand Mufti of Kelantan), Shaikh Mahmud Sa'id (Senior Mufti of Negeri Sembilan), Khatib Jabar (Maharaja Imam of Sambas, Kalimantan), and Haji Muhammad Salih (Grand Qadi in Cambodia). It should be noted that Muhammad Yusuf, better known as Tok Kenali (1868-1933), was one of Ahmad Zain's students. He was a leading *'ālim* of the Malay Peninsula at the turn of the century. Besides tutoring his students in a *Pondok* in his hometown and then in Masjid Kota Bharu in Kelantan, Tok Kenali was also actively engaged in journalism, while contributing to the journal *Pengasuh*.¹⁶ In addition, he was also one of the leading figures behind the establishment of *Majlis Ugama dan Adat Isti'adat Melayu Kelantan* (Kelantan Council of Religion and Malay Custom) in 1915, alongside being appointed as the head of Islamic education and assistant to the state mufti of Kelantan.¹⁷

Despite the instrumental role of Daud al-Fatani in shaping the current landscape of Malaysian Islamic Law, a comprehensive examination of his views on Islamic Family Law, particularly involving women's freedom and adherence to the Qur'ān and Hadīth, remains elusive. The purpose of this research is to address this gap by conducting a comparative analysis of Daud al-Fatani's perspectives on Islamic Family Law with classical Islamic Lexicon, Malay Customary Law, and modern Islamic Law in Malaysia. Therefore, this examination aims to highlight a nuanced understanding of the evolution of Islamic Family Law through the lens of one of the Islamic Law pioneer authors, namely Daud al-Fatani.

Considering the vast examination of his works on various disciplines and their impact on shaping the Islamic environment in Malaysia, it is wise to thoroughly explore his works on Islamic Family Law. As discussed before, Malaysian Islamic Law is deeply rooted in the custom and religion and the most comprehensive religious text was written by Daud al-Fatani. Noor and Lee previously explored the views of Al-Fatani regarding the Islamic Family Law in the book *Īdāḥu al-Bāb li-Murīdi*

¹⁴Amilda Sani, Ris'an Rusli, and Dedi Kuswandi, "Kultur Masyarakat Melayu: Studi Etnografi Islam Melayu Nusantara Abad 18 [Malay Society Culture: An Ethnographic Study of Malay Islam in the Nusantara in the 18th Century]," *Reslaj : Religion Education Social Laa Roiba Journal* 6, no. 3 (2023), <https://doi.org/10.47467/reslaj.v6i3.5515>.

¹⁵Verena Meyer, "Translating divinity: Punning and paradox in Hamzah Fansuri's poetic Sufism," *Indonesia and the Malay World* 47, no. 139 (2019), <https://doi.org/10.1080/13639811.2019.1654216>.

¹⁶Mohamad Firdaus Mohamad, Engku Ahmad Zaki Engku Alwi, and Ruhaizan Sulaiman, "Sumbangan Za'ba terhadap Kesedaran Agama Islam dan Pendidikan di Kelantan melalui Majalah Pengasuh antara Tahun 1918 Hingga 1919 [Za'ba's Contribution to Islamic Religious Awareness and Education in Kelantan through the Magazine "Pengasuh" from 1918 to 1919]," *Jurnal Islam dan Masyarakat Kontemporari* 23, no. 3 (2022), <https://doi.org/10.37231/jimk.2022.23.3.694>.

¹⁷Jajat Burhanudin, "Two Islamic Writing Traditions in Southeast Asia: Kitab Jawi and Kitab Kuning with Reference to the Works of Da'ud al-Fatani dan Nawawi al-Bantani," *Al-Jami'ah: Journal of Islamic Studies* 60, no. 1 (2022), <https://doi.org/https://doi.org/10.14421/ajis.2022.601.1-28>.

al-Nikāh bi-l-Ṣawāb. However, the works were mostly presented as a standalone discussion, and they did not cover the opinions of other Islamic Jurists and comparison to modern Islamic Law.¹⁸

2. Methodology

The primary documents under analysis in this study include *Hidayah Al-Muta'allim Wa 'Umdah Al-Muta'alim* by Daud al-Fatani and key legal texts such as the Islamic Family Law (Federal Territories) Act 1984 along with the local state Islamic Family Laws such as the Islamic Family Law (State of Johor) Enactment 2003, the Islamic Family Law (State of Melaka) Enactment 2002, the Islamic Family Law (State of Negeri Sembilan) Enactment 2003, the Islamic Family Law (State of Pahang) Enactment 2005, the Islamic Family Law (State of Selangor) Enactment 2003, Islamic Family Law (State of Pahang) Enactment 2005, Islamic Family Law (State of Kedah Darul Aman) Enactment 2008, Islamic Family Law (State of Pulau Pinang) Enactment 2004, Islamic Family Law (State of Perlis) Enactment 2006 [Amendment 2008], Islamic Family Law (State of Kelantan) Enactment 2002, Islamic Family Law (State of Terengganu) Enactment 2017, Islamic Family Law (State of Kelantan) Enactment 2002, Islamic Family Law (State of Sabah) Enactment 2004, and the Islamic Family Law (State of Sarawak) Ordinance 2001.

The selection of criteria was to understand the relevance and relationship of the Islamic Family Law authored by Daud Fatani and its comparison to the current Malaysian Family Law. A comparison of the works of other major Islamic Scholars, such as *Tahrir Tanqih al-Lubab*, written by Zaynuddin Abu Yahya Zakariya bin Muhammad bin Ahmad al-Anshari al-Sunaiki al-Mishri, under the al-Syafi'i school of thought, *Fath al-Wahhab Bi sharh Manhaj al-Tullab* by Shaykh al-Islam Abu Yahya Zakariyya al-Anshari, a scholar of al-Shafi'i school of thought, and *Tuhfah al-Tullab Bi Sharh Tanqih al-Lubab al-Qadhi* authored by Zaynuddin Abu Yahya Zakariya bin Muhammad bin Ahmad al-Anshari al-Sunaiki al-Mishri was also a scholar of al-Shafi'i school of thought. Such comparison is important in order to understand the influence of al-Shafi'i school of thought on Daud al-Fatani's writings on Islamic Family Law.

The documents were sourced from the Web of Science, Scopus, and Google Scholar repository. The keywords "Daud Fatani" and "Islamic Law" were employed for conducting the searches. LexisNexis directory was used to search for Malaysian legal text, case law (either contemporary or historical), and books that refer to Daud al-Fatani's views on Islamic Family Law. This comprehensive selection was intended to provide a thorough understanding of his perspectives and influence on modern Islamic Family Law in Malaysia.

Women's rights in marriage and adherence to the Qur'ān and *Sunnah* usually demonstrate the rigidity and lack of flexibility of Islamic Family Law as perceived in the modern world. Therefore, issues of *Zihār*, *Khiyar* and wife's disobedience were selected from Daud al-Fatani's book. *Zihār* is considered as an outdated ruling and not applicable to the Malay Customary Law. However, some scholars still adhere to the ruling of *Zihār*, treating it as a constant ruling of *Sharī'ah*, despite the changing of times and location. *Khiyar* and wife's disobedience are primarily the woman-centric issues in Islamic Family Law which in current times appeared to be more lenient towards the women's rights. Meanwhile, some medieval laws are considered as rigid in positioning women's rights in Islamic Family Law. Therefore, it is believed that *Zihār*, *Khiyar* and *Nushuz* enlighten the stance of Daud Fatani and its relevance in the Malaysian modern Islamic Family Law world. The process of data collection involved a systematic analysis of specific chapters, sections, and themes within *Hidayah Al-Muta'allim*. Relevant passages pertaining to *Zihār*, *Khiyār* and wife's disobedience were meticulously extracted for the in-depth examination. The rationale for this

¹⁸Zanariah Noor, and Nazirah Lee, "Dawud al-Fatani's Thoughts on Marriage in Īdāḥu l-Bāb li-Murīdi l-Nikāh bi-l-Ṣawāb," *Hawwa* 21, no. 1 (2021), <https://doi.org/https://doi.org/10.1163/15692086-BJA10019>.

sampling strategy lies in capturing key insights into Daud al-Fatani's thoughts on the above mentioned crucial aspects of the Islamic Family Law.

The extracted text underwent thematic classification to identify the recurring themes, principles, and legal arguments presented by Daud al-Fatani. Classification was assigned based on the relevance of the contents to the research objectives, enabling a structured analysis of the primary text. The classified text was then compared with scholarly works such as *Tuhfah al-Tullab Bi Sharh Tahrir Tanqih al-Lubab, Fath al-Wahhab Bi Sharh Manhaj al-Tullab* both by Shaykh al-Islam Abu Yahya Zakariyya al-Ansari.¹⁹ This comparative approach aimed to elucidate the influence of the al-Shafi'i school of thought on Daud al-Fatani's methodologies in his book. The findings from the analysis of Daud al-Fatani's works were then integrated with a comprehensive review of contemporary Islamic Family Law in Malaysia to provide insights into the lasting impact of his perspectives on the current legal framework.

3. Discussion

3.1. Comparison of Al-Fatani and Other Scholar's Perspectives on Islamic Family Law

In his work, Daud al-Fatani presented the views of *fiqh* scholars in the Shafi'i (*al-Shafi'iyyah muta'akkhirin*) such as Ibn Hajar al-Haytami (909-974 H), Shams al-Din al-Ramli (919-1004 H), and (823-926 H). He also referred to several *fiqh* books such as *Tanqih al-Lubab, Fath al-Wahhab*, and *Tuhfah al-Tullab* by Zakariyya al-Ansari. Besides making references to the *fiqh* books, he also referred to Shafi'iyyah scholars in the chapter on *fasakh* (marriage annulment), Adhra'i in the discussion of *mujbarah* women (women who forced to be married), Mutawalli in the discussion of the law of marriage with *jinn*, and Shaykh Ibn Hajar regarding the law of carving animals on a wall or roof. Upon the content analysis of his book, Al-Fatani has been viewed as an open-minded scholar who was not bound to the Shafi'i school of thought. He referred to the opinion of Imam Hanafi in discussing the law of marrying a child of zina and that of Imam Hanbali in discussing the law of *ruju* (reconciliation). He also expressed contrasting views to those of Imam Shafi'i's in *Khiyar* on the issue of *judham* (leprosy). Imam Shafi'i required *judham mustahkam* (fatal case of leprosy) as a condition for enabling *Khiyar*.

There are many differences between Daud al-Fatani's views and those of Shaykh al-Islam Muhammad bin Zakariyya al-Ansari, Shaykh Ibn Hajar al-Haytami, and also Imam Shafi'i, especially in terms of explaining the reasons that can enable *khiyar* (option to annul a marriage). This is because each of them interprets *khiyar*, based on their own understanding of the Qur'anic exegesis. Al-Fatani also preferred majority opinion among the Shafi'i scholars.²⁰

In the chapter on *nushuz*, Daud al-Fatani held the *asah* (majority opinion of Shafi'i school of Islamic Thought) opinion. There are two scholarly opinions on what should be done if a wife speaks abusively and insults her husband. One is to bring her to the *Qadi* and the second is that the husband should teach her himself. He held the *asah* opinion that the husband should teach her himself which is in line with the *asah* opinion of the Shafi'i sect. For it was believed that if such an issue is brought to the *Qadi*, it would be both troublesome and disgraceful for both the parties.

¹⁹Zakariyyā ibn Muḥammad Anṣārī, *Tuhfat al-tullāb bi-sharḥ Matn taḥrīr Tanqīh al-lubāb fī fiqh al-imām al-Shāfi'ī*, al-Ṭab'ah 1 ed. (Bayrūt Dār al-Kutub al-'Ilmiyah, 1997); Zakariyyā ibn Muḥammad Anṣārī, *Fath al-Wahhab Bi Sharh Manhaj al-Tullab* al-Ṭab'ah 1 ed. (Bayrut: Dar al-Kutub al-'Ilmiyah, 2012).

²⁰Noor and Lee, "Dawud al-Fatani's Thoughts on Marriage in Ḍāḥu l-Bāb li-Murīdi l-Nikāḥ bi-l-Ṣawāb." 3

The same is true of the Islamic legal maxim *al-mashaqqah tajlib al-taysir* (hardship leads to ease).²¹ Scholars have disagreed about the punishment that can be imposed on a *nushuz* wife and showed concern over whether the punishment can be concurrently or individually administered. The opinion chosen is that the punishment should be done one at a time. In the chapter on *Zihār*, there is a slight difference between the books in terms of the definition of the term *Zihār*, though the meaning is the same. The book *Hidayah al-Muta'allim* defined it as *talaq of jahiliyah*, while *Fath al-Wahhab* defined it as a husband equating his wife with a forbidden marriage.²²

There are two opinions of scholars regarding the fourth rule of *Zihār*. The first opinion is known as the *qadim* which says that it is not *Zihār* based on *jahiliyyah* custom. The second opinion is that it is clear in its meaning because it is a sentence that describes the same prohibition as the back.²³ The book under discussion adhered to the second opinion, which is the *jadīd* (latest opinion of Shafi'i school of Islamic thought) opinion. Compared to other issues, discussions on *Zihār* are scarce in religious books available in the market as well as in seminars. This is because *Zihār* does not represent the Malay culture, having its roots from the Arab *jahiliyah* culture where a wife can be divorced by *Zihār*. The Islamic Family Law in Malaysia does not include *Zihār*, and it is seen as irrelevant to the Malaysian community. In the chapter on *'iddah*, there were disagreements amongst scholars about the term *'iddah* for a slave who was freed during her *iddah* period, whereby there were three differing opinions.

The first opinion was to complete the period of *'iddah* for 3 months as the slave is released before the end of *'iddah*. The second opinion was that two months are sufficient. Whereas, the third opinion, stated that if the *raj'iyah* is converted to *iddah bai'nah* (iddah period for case of irreconciliation divorce), then it is sufficient for the period of *'iddah* to be two *quru* (period of menstruation).²⁴ Daud al-Fatani held the third opinion. Based on the study of the three books that Daud al-Fatani referred to, his main reference was to the book *Fath al-Wahhab*, especially in writing the chapter on *'iddah*. This is because there are many similarities in terms of language style and content structure. For example, in discussing the age of a woman who ceases to menstruate he wrote: "Starting from the one whose menstruation has ceased due to menopause, it is considered that she has reached the age of despair, and this continues until, it is said, sixty-two years, some say sixty years, and others say fifty years."²⁵

Meanwhile, in his book *Fath al-Wahhab*, Zakariyya al-Ansari wrote: "Considering women who stop menstruating worldwide, the oldest is sixty-two years old, some say sixty years, some say fifty years."²⁶

²¹Wahbah Al-Zuhaili, *Nazariyyah al-Darurah al-Shariyyah: Muqaranah ma' al-qanun al-wada'i* (Damascus: Dar al-Fikr, 1997).

²²Anṣārī, *Fath al-Wahhab Bi Sharh Manhaj al-Tullab* 320.

²³Muhammed Shareef Muhammed Othman, "Reconciling verses and narratives in Zihar judgment - Study and Analysis," *Zanco Journal of Humanity Sciences* 27, no. 2 (2023), <https://doi.org/10.21271/zjhs.27.2.13>.

²⁴Imam Abi Hamid Muhammad Ibn Muhammad Ibn Muhammad al Ghazali, *Al-Wasit fi al-madhhab* (Bayrut: Dar al Kutub al 'Ilmiyyah, 2001).

²⁵Fathullah Asni, "The Development of Islam and Mazhab Al-Syafi'i during the Post-Arrival of Islam in the Malay Archipelago," *International Journal of Academic Research in Business and Social Sciences* 9, no. 3 (2019), <https://doi.org/10.6007/IJARBS/v9-i3/5789>.

²⁶Muhammad Ikhlas Rosele et al., "Al-Raniri's Contributions in Hukm of Zakah in Malay Worlds," *International Journal of Academic Research in Business and Social Sciences* 8, no. 4 (2018), <https://doi.org/10.6007/IJARBS/v8-i4/4073>.

The age sixty-two years comes under the *ashhar* (majority opinion) opinion of the Shafi'iyyah *madhhab*. Daud al-Fatani also holds an *ashhar* opinion. As an example, in the chapter on *hadanah* (guardianship right), he took the more established view of the Shafi'i school of Islamic thought that *hadanah* is retained and not lost for women who remarried.

3.2. Al-Fatani's Views on Islamic Family Law vs Current Islamic Family Law in Malaysia

3.2.1. Daud al-Fatani on Wife's Disobedience

One of the most debated issues in Malaysia's Islamic Family Law is *Nushuz*. It is defined by Al-Zuhaili as an act of rebellion or disobedience by a partner in marriage, usually a wife, towards the spouse, usually the husband.²⁷ A husband who abandons his responsibility and performs an act of aggression towards his wife is also regarded as *Nushuz*. There were 21,343 reported cases of *Nushuz* in Malaysia from 2000 to 2006.²⁸ This issue in Malaysian law is not stated explicitly, however, it is extracted from an understanding of Clause 59 of the Islamic Family Law (Federal Territory) Act 1984.²⁹ It outlines that a wife is regarded as *Nushuz* when she rejects the responsibility of household management, leaves the matrimonial home without the permission of her husband, and rejects an invitation to have sexual relations with her husband.

A wife convicted of *Nushuz* is prohibited from receiving alimony³⁰ and may be fined by the Shari'ah Court as provided under the Islamic Family Law (Federal Territories) Act 1984, the Islamic Family Law (State of Johore) Enactment 2003, and the Islamic Family Law Ordinance 2001 by the Sarawak State. According to the Islamic Family Law (Perak) Enactment 2004, to produce a *Nushuz* conviction, a husband must provide proof and facts of the wife's disobedience, while the wife must provide new facts and proof to counter the husband's allegation and defend herself against the conviction.³¹ As per the law, before an allegation of *Nusyuz* is presented to the *Shari'ah* court, both spouses need to undergo mediation or therapy sessions moderated by an official from religion Islamic Religious Department of the Federal Territory. A wife who refuses to respond positively to the meditation session will be given a letter of charge by JAWI through the husband. If the wife is unresponsive or retaliate negatively, the letter of charge will then be brought to the *Shari'ah* Court as evidence of disobedience.³² The convicted wife will then be fined 500 ringgits, which serves as a warning. In Malaysia, not all *Nushuz* cases end with divorce. In Johor, the disobedience of wife does not instantly result in a conviction. In fact, the *Shari'ah* Court of Johor provides time for the wife to reconcile with the husband. The impact of the *Nushuz* conviction is significant as the wife would be prohibited from receiving any alimony or maintenance from the husband. Hereby, if the wife is able

²⁷Wahbah Al-Zuhaili, *al-Fiqh al-Islami Wa Adillatuhu* (Syria: Dar al-Fikr, 1985).

²⁸Mariny Abdul Ghani, "Exploring Domestic Violence Experience from the perspective of abused women in Malaysia" (PhD Loughborough University, 2014).

²⁹Sayed Sikandar Shah Haneef, "Women and Malaysian Islamic family law: towards a women-affirming jurisprudential reform." *Journal of Social Welfare and Family Law* 33, no. 1 (2011), <https://doi.org/10.1080/09649069.2011.571470>.

³⁰Michael G. Peletz, "Crime Talk and Male Criminality: Ethnographic and Historical Perspectives on Malaysia, 1978-2018," *Critical Asian Studies* 55, no. 2 (2023), <https://doi.org/10.1080/14672715.2023.2199020>.

³¹Fitriyani Zein, "Kekerasan Dalam Perkawinan dan Nusyuz Dalam Hukum Keluarga di Turki, Malaysia, Sudan, Yordan dan Indonesia [Domestic Violence and Nusyuz in Family Law in Turkey, Malaysia, Sudan, Jordan, and Indonesia]," *SALAM: Jurnal Sosial dan Budaya Syar-i* 4, no. 1 (2017), <https://doi.org/10.15408/sjsbs.v4i3.10290>.

³²Michael G. Peletz, "Are Women Getting (More) Justice? Malaysia's Sharia Courts in Ethnographic and Historical Perspective," *Law & Society Review* 52, no. 3 (2024), <https://doi.org/10.1111/lasr.12346>.

to provide proof of reconciliation at the given time, the *Nushuz* conviction will not be produced by the husband. However, if she refuses to reconcile with the husband, the *Nushuz* conviction will fall upon her. In the book *Hidayah Al-Muta'allim*, Daud al-Fatani regarded *murtad* (abandonment of Islam by a Muslim) as an act of *Nushuz*. He also discussed the topic of *Nushuz* under a polygamous marriage, knowing that a wife who shares her husband with others is more susceptible to *Nushuz*. "There is a conflict if both apostatize, or if the wife apostatizes and there is no husband. Even if the wife returns to Islam during her waiting period ('iddah), there is no financial support due to her disobedience (*nushuz*) through apostasy."; "And if there is an excuse for him with another wife, such as illness or menstruation, then there is no turn for his wife who is in disobedience."³³

Daud al-Fatani adopted a lower threshold in defining the level of disobedience that would count as *Nushuz*. He opined that when the wife refuses her husband's advances and consistently expresses discontent towards her husband, this would be regarded as *Nushuz*. A wife who leaves her home without her husband's permission, but has a valid reason for doing so, will not be considered as *Nushuz*. "And if his wife leaves her place of residence without his permission, except if she leaves due to fear of the collapse of her house or for other reasons, or because she visits her relatives in the absence of her husband, then her leaving is not considered disobedience (*nushuz*)."³⁴

Daud al-Fatani viewed the act of *Nushuz* as temporary, where reconciliation can be made without the involvement of a Qadi or Islamic religion judge. He was against the practice of corporal punishment or vituperation when it does not positively improve the husband-and-wife relationship. He suggested the adoption of a soft approach by reminding the wife about the risk of Allah's wrath due to disobedience. If the wife has well-understood the sins of disobedience and yet still commits it, he recommends discontinuation of communication for a maximum of three days. Despite doing that, if the *Nushuz* persists in the relationship to the point of verbal and physical abuse, the third person interfering with the presence of Qadi is required to function as a mediator for the marriage. If the mediation does not work, then the Qadi can authorize a divorce between the husband and the wife.³⁵

Daud al-Fatani took a more lenient approach in the case of a wife's disobedience. He understood that it is the nature of marriage to have periods of temporary discontentment, disapproval, and negligence between husband and wife. Al-Fatani's act of adopting a lower threshold of the definition of *Nusyuz* can be taken as an outcome of education and awareness and not as the word of law. He also held her husband responsible for being the educator and mediator in the family during the crisis of a higher magnitude. Daud al-Fatani understood that not all marriages can bring happiness. In his view, the relationships of husband and wife which are filled with consistent verbal and physical abuse and cannot be improved even with the help of external mediators, should not last and it would be better of the couple to get separated. The Islamic Family Law Ordinance 2001 by Sarawak State and most of the Islamic Family Law States, echo this notion by offering a mediation or therapy session between a couple in crises.³⁶ This shows that while Daud al-Fatani is strongly

³³Ahmad Sharifuddin Mustapha, "Kitab Hidayah Al-Muta'allim Wa 'umda al-Mu'allim Karangan Sheikh Daud al-Fatani : Kajian Teks Dan Analisis [The Book of Guidance for the Learner and the Essence of the Teacher by Sheikh Daud al-Fatani: A Study of Texts and Analysis]" (PhD University of Malaya, 2013). 232

³⁴Mustapha, "Kitab Hidayah Al-Muta'allim Wa 'umda al-Mu'allim Karangan Sheikh Daud al-Fatani : Kajian Teks Dan Analisis [The Book of Guidance for the Learner and the Essence of the Teacher by Sheikh Daud al-Fatani: A Study of Texts and Analysis]." 254

³⁵Mustapha, "The Book of Guidance," 245.

³⁶Normiwati Binti Barwi, "Njaum-Njaum As A Marriage Proposal Of Kedayan's Ethnic Perspective Sarawak Islam Family Law Ordinance 2001," *Sakina: Journal of Family Studies* 7, no. 3 (2023), <https://doi.org/10.18860/jfs.v7i3.4044>.

bound by a textbook outline of Islamic Family Law, he did demonstrate a more forbearing approach in handling the family crises. "He should advise her without resorting to physical punishment or harsh words. It is said that he should express his fear of Allah and remind her of the rights that are obligatory upon him concerning her, and he should protect her from harm."³⁷ "If both are equally at fault, persisting in insults and physical abuse, the judge should appoint an arbitrator for each of them with their mutual consent."³⁸

3.2.2. Daud al-Fatani on *Zihār*

Zihār is defined as an act of the husband where he verbally compares a body part of his wife to his mother's body part. During the time of the Prophet, *Zihār* was considered a verbal intention of divorce (*talaq*) from the husband to the wife. It is a disgraceful act and considered to be a great sin by the consensus of Islamic scholars. If a husband performs an act of *Zihār*, either intentionally or unintentionally, he must conduct a *kaffarah* (charitable compensation) for the said *Zihār*. It can be made by freeing a slave, fasting for two whole months consecutively, or feeding 60 poor people. This *Kaffarah* will dissolve the implementation of *talaq* as a result of *Zihār*.

Ex-Johor Mufti, Dato' Hj Nooh Bin Gadut, ruled *Zihār* as a non-causative reason for divorce.³⁹ This is because *Zihār* does not exist in the Malaysian custom where typically verbal comparisons made between a husband's wife and his mother are intended to be complimentary and not meant to be derogatory.⁴⁰ *Zihār* is also not included in Islamic Family Law Ordinance (Sarawak) 2001 as well as in all other local states' Islamic Family Laws. This is because the context of *Zihār* during the Prophetic era, which is to degrade and divorce a wife, is different from Malaysia's customary context which mostly offers praise and expresses familiarity and safety.⁴¹

However, *Zihār* is still a part of Islamic Family Law in several Islamic countries. The Law No. 22 of 2006 promulgating 'The Family Law' 22 2006 in Qatar classified *Zihār* as a valid cause for separation or divorce under its Chapter 6, Section 2.⁴² In Turkey, *Zihār* is included in a two-volume catechist book by the Directorate of Religious Affairs in understanding the Islamic Law.⁴³ In India, *Zihār* is considered as an extra-judicial divorce under the Dissolution of Muslim Marriages Act 1939.⁴⁴ Chapter 217 of Islamic Family Law of Brunei also considers *Zihār* as a means of divorce,

³⁷Mustapha, "The Book of Guidance" 223.

³⁸Mustapha, "The Book of Guidance" 211.

³⁹Achmad Kemal Riza, "Contemporary Fatawa Of Nahdlatul Ulama: Between Observing The Madhhab And Adapting The Context," *Journal of Indonesian Islam* 5, no. 1 (2011), <https://doi.org/10.15642/jiis.2011.5.1.35-65>.

⁴⁰Mohd Faez Mohd Shah and Norhidayah Pauzi, "Metodologi Pengeluaran Fatwa di Jawatankuasa Fatwa Negeri Johor [Methodology for Issuing Fatwas by the Fatwa Committee of Johor State]," *Journal of Fatwa Management and Research* 13, no. 1 (2018), <https://doi.org/10.33102/jfatwa.vol13no1.132>.

⁴¹Sadia Mushtaq et al., "Prevalence of Intimate Partner Violence in the Muslim Community of Pakistan and the Fundamental Religious Perspective of Islām (Sharī'ah)," *Qlantic Journal of Social Sciences* 5, no. 1 (2024), <https://doi.org/10.55737/qjss.317943363>.

⁴²Rajnaara C. Akhtar, "Contemporary Issues in Marriage Law and Practice in Qatar," *Hawwa* 20, no. 1-2 (2020), <https://doi.org/10.1163/15692086-12341389>.

⁴³Gokhan Bacik, "Hermeneutics in Contemporary Turkey: An Analysis of Turkish Historicists," *Religions* 12, no. 11 (2021), <https://doi.org/10.3390/rel12111027>. Bacik, "Hermeneutics in Contemporary Turkey: An Analysis of Turkish Historicists."

⁴⁴Rohit De, "Mumtaz Bibi's broken heart: The many lives of the Dissolution of Muslim Marriages Act," *The Indian Economic & Social History Review* 46, no. 1 (2009), <https://doi.org/10.1177/001946460804600106>.

when the husband refuses to pay *kaffarah*.⁴⁵ This indicates that while Malaysian Islamic law practitioners assume *Zihār* to be a non-causative element of divorce, there are other countries outside the atmosphere of Arabic culture which do include *Zihār* as a legal cause for divorce. This indicates that the weight of *Zihār* in determining the dissolution of a marriage is dependent on the interpretation adopted by the country's Islamic Family Law practitioners.

Daud al-Fatani used the term *talaq Jahiliyyah* to refer to *Zihār*, noting that *Zihār* is a form of *talaq* that was practiced during the era of the *Jahiliyyah*. He viewed *Zihār* as a causative statement of divorce either used for derogatory or complimentary purposes. The stance which Daud al-Fatani took on *Zihār* demonstrates his strong adherence to Islamic Law, particularly in terms of acts that can invoke great anger of Allah. He also viewed *Zihār* as a prohibited act, similar to how alcoholic drink, homosexuality, and *riba* are all prohibited in Islam.⁴⁶ Al-Fatani saw the prohibition of *Zihār* as the way it was without requiring any comparison or acclimation to culture, context, and custom.

3.2.3. Daud al-Fatani on *Khiyār*

Khiyār is defined as an option that can be exercised by a husband or a wife to either continue their marriage or end it with *fasakh* along with a selection of reasons. *Khiyār* gives the option for the husband or wife to have the marriage dissolved under the authority of a Qadi or Islamic religion judge, upon the discovery of a major flaw or a disgraceful condition such as impotency, mental illness, leprosy, vitiligo, and complications involving the sexual reproductive organ.⁴⁷ In comparison to *Talaq* where the husband holds the power, *Fasakh* through means of *Khiyār* falls under the authority of the Qadi or Islamic religion judge. Once a dissolution has been made, the spouses cannot get back together as the dissolution carries the same weight as *talaq ba'in kubra* (irreconciliation divorce). It depends on the marriage partner either to accept and live with their partner's major defect or disgraceful condition or to make a report to the *Islamic religion judge* and apply for marriage annulment.

In Malaysia, both *fasakh* and *Khiyār* fall under the same legal provision which is Section 52 of the Islamic Family Law (Federal Territory) Act 1984. This section allows for the dissolution of marriage on the basis of four reasons. The reasons are, husband's imprisonment or missing due to the disgrace and defect of the husband, husband's failure to provide maintenance, *dharar* (harm) onto the wife, and lastly, any valid reason for dissolution of marriage as long as it is recognizable under the Islamic Law.⁴⁸ Due to this broad provision, Section 52 is seen to be flexible and applicable regardless of time, period, and situation. This section also recognizes a nonconsensual marriage and marriage before the age of *baligh* as valid reasons for marriage dissolution. This confers some rights and protection for the suppressed women, providing them with a way to exit a forced or early age marriage. On the subject of *Khiyār*, Daud al-Fatani considered mental illness to be a valid reason for marriage dissolution or *fasakh*.

⁴⁵Putri Nur Hastuti Bima et al., "Fulfillment of Wife and Children's Support: Comparison of Countries in Southeast Asia (Indonesia and Brunei Darussalam)," *al-Afkar, Journal For Islamic Studies* 7, no. 1 (01/29 2024), <https://doi.org/10.31943/afkarjournal.v7i1.1174>, https://al-afkar.com/index.php/Afkar_Journal/article/view/1174.

⁴⁶Mohd Shah and Pauzi, "Metodologi Pengeluaran Fatwa di Jawatankuasa Fatwa Negeri Johor [Methodology for Issuing Fatwas by the Fatwa Committee of Johor State]." 5

⁴⁷Abdurrahman Al-Jaziry, *Al-Fiqhu Ala Madzahib Al-Arba'ah* (Beirut: Dar Al-Kutub Al-Ilmiyah, 2003, 2003).

⁴⁸Dzurrotul Muniroh Ahdaniah, Sri Lumatus Sa'adah, and Muhammad Faisol, "Divorce Due To Apostasy (Study of Differing Decisions in Religious Courts)," *Eduvest - Journal of Universal Studies* 4, no. 3 (2024), <https://doi.org/10.59188/eduvest.v4i3.1087>.

Leprosy during the time of Daud al-Fatani was a major health concern in Malaysia. It was not until the Leper Enactment Act 1926 and the National Leprosy Control Program in 1969 that the problem of leprosy in Malaysia was finally under control and tackled effectively. The rate of infection was calculated as 1.7 cases of infected people per 10,000 people in 1992.⁴⁹ Leprosy sufferers were discriminated against during these times, particularly in 1926 when the British issued isolation warrants and built detention camps for patients infected by leprosy.⁵⁰ Although it was regarded as a major health concern by the Malaysian Health Agency during this time, it was not considered a public health concern by the Saudi government, at least until 1963.⁵¹ Daud al-Fatani judged that the preliminary stages of leprosy should not be considered a legal reason for marriage dissolution, at least not until the disease reaches a critical stage. This reflects the origin of Al-Fatani's Islamic education, which is in Saudi Arabia, and how the perception of leprosy in Saudi Arabia had influenced his views on the matter in relation to *Khiyar*. Meanwhile, due to his cultural, customary, and educational background, Daud al-Fatani regarded vitiligo as a valid cause for marriage dissolution. Vitiligo in Saudi Arabia is a sign of lower social status⁵² and this explains why Saudi Arabia recorded a lower score of Dermatology Quality of Life (DQOL) as compared to other nations with a mean of 14.72, in comparison to other Muslim majority countries such as Iran (7.05) and Tunisia (9.40).⁵³ Malaysia also scored a higher DQOL as compared to Indonesia (4.7) and Singapore (4.40).⁵⁴ Among the races in Malaysia, the Malays scored a higher DQOL (7.5) as compared to other races, while the Chinese and Indians scored 6.6 and 5.0 respectively.⁵⁵ Admittedly, this finding was at a different era from that of Daud al-Fatani's, however the stigma of vitiligo has proven to be prevalent throughout the centuries.⁵⁶ If Daud al-Fatani has originated from Italy where the stigma of vitiligo is not prevalent, vitiligo may not have been regarded as a valid cause for marriage dissolution.

⁴⁹J. F. Dony, J. Ahmad, and Y. Khen Tiong, "Epidemiology of tuberculosis and leprosy, Sabah, Malaysia," *Tuberculosis (Edinb)* 84, no. 1-2 (2004), <https://doi.org/10.1016/j.tube.2003.08.002>, <https://www.ncbi.nlm.nih.gov/pubmed/14670341>.

⁵⁰Jayalakshmi P., "Factors Associated with Perceived Stigma Among Community Members Living Close to Leprosy Centre in Malaysia," *Global Journal of Public Health Medicine* 3, No. 2 (2021): 396-408, <https://doi.org/10.37557/Gjphm.V3i2.89>. P. Jayalakshmi, "Factors Associated With Perceived Stigma Among Community Members Living Close To Leprosy Centre In Malaysia," *Global Journal of Public Health Medicine* 3, no. 2 (2021), <https://doi.org/10.37557/gjphm.v3i2.89>.

⁵¹M. A. Ibrahim et al., "Leprosy in Saudi Arabia, 1986-89," *Leprosy Review* 61, no. 4 (1990), <https://doi.org/10.5935/0305-7518.19900036>.

⁵²Malak A. M. Algarni et al., "Public knowledge and attitude toward vitiligo in Saudi Arabia: A cross-sectional study," *Journal of Dermatology and Dermatologic Surgery* 25, no. 2 (2021), https://doi.org/10.4103/jdds.jdds_134_20.

⁵³Abdulrahman A. A. Amer and Xing Hua Gao, "Quality of life in patients with vitiligo: An analysis of the dermatology life quality index outcome over the past two decades," *International Journal of Dermatology* 55, no. 6 (2016), <https://doi.org/10.1111/ijd.13198>.

⁵⁴Nelva Karmila Jusuf, Imam Budi Putra, and Dina Rizki Utami, "Quality of Life in Vitiligo Patients at H. Adam Malik General Hospital Medan, Indonesia," *Sumatera Medical Journal* 1, no. 1 (2018), <https://doi.org/10.32734/sumej.v1i1.445>.

⁵⁵Su Ming Wong and Roshidah Baba, "Quality of life among Malaysian patients with vitiligo," *International Journal of Dermatology* 51, no. 2 (2012), <https://doi.org/10.1111/j.1365-4632.2011.04932.x>.

⁵⁶George W. M. Millington and Nick J. Levell, "Vitiligo: The historical curse of depigmentation," *International Journal of Dermatology* 46, no. 9 (2007), <https://doi.org/10.1111/j.1365-4632.2007.03195.x>.

3.3. Significance of Al-Fatani's Work on the Discourse of Islamic Family Law in Malaysia

Daud al-Fatani's approach on the issue of *Zihār* demonstrated his adherence toward the principle of the Islamic Family Law from the literal exegesis of Qur'ān and *Sunnah*. Fatani illustrates that the core understanding of the Islamic Family Law must be maintained, regardless of the time, location, and social situation. His strong adherence to the prohibition of such practices highlights his commitment to maintaining the sanctity of familial relationships as ordained by the Islamic teachings.

However, Daud al-Fatani understands that the practice of Islamic Family Law must be grounded and based on the reality of the Muslim communities. Rather than rigidly adhering to a textbook outline of the Islamic Family Law, he exhibited forbearance and understanding, while recognizing the complexities of real-life situations. His approach provided a dynamic solution to the plethora of issues in the Islamic Family Law that cannot be solved from the literal understanding of the primary source of Islamic law alone.⁵⁷

Extracted from the case of *Khiyār*, Daud al-Fatani displays the importance of medical knowledge and perspective in the legislation of Islamic Family Law. He is lenient towards medical concerns that do not require critical attention and showcases his pragmatic approach towards addressing the challenges within the family. However, he understands the strength of negative social perceptions; therefore, he placed extra weight on medical issues that may carry a negative stigma in the eyes of the local community. This demonstrates his awareness of the broader consequences of legal decisions and the need to balance individual rights with communal harmony.⁵⁸

Malaysia's current Islamic Family Law could draw insightful lessons from the perspectives of Daud Fatani. This can be incorporating the issue of *nasab* determination and recognizing women's equity. For instance, the current Islamic Family Law in Malaysia, specifically concerning the status of *illegitimate children*, relies on the criterion of six *Hijri* months.⁵⁹ Beyond this timeframe, the child is deemed legitimate and can be attributed to the father within the confines of a valid marriage contract. In contrast, a child that is born before the criterion time frame is considered as illegitimate offspring and cannot be attributed to the father.⁶⁰ However, due to the advancements in medical science, survival rates for infants at <24 weeks and at complete 24 weeks were 15.4% and 71.6% respectively, with higher survival over the years.⁶¹ This means that children that were born before the time frame of 6 *Hijri* month are not necessarily a product of extramarital affair. This urges a reconsideration of the assumption that children born at less than 6 months after the marriage contract cannot be attributed to their fathers. Sheikh Daud Fatani's approach in integrating medical evidence in the Islamic Family Law could be used in this case by advocating the inclusion of medical examinations to identify the timing of conception. This would help in providing another angle to investigate whether the child is conceived within the marriage contract or not. By acknowledging the

⁵⁷Noor and Lee, "Dawud Al-Fatani's Thoughts on Marriage," 7.

⁵⁸Mustapha, "The Book of Guidance," 113.

⁵⁹Muhamad Syazwan Faiz et al., "Islamic Historical Review on the Middle Age Lunar Crescent Visibility Criterion," *Journal of Al-Tamaddun* 17, no. 1 (2022), <https://doi.org/10.22452/JAT.vol17no1.9>.

⁶⁰Lukman Ab Mutalib and Osama Ibrahim Ayad Sawan, "Pengesahan Anak Tak Sah Taraf - Modul Pengajaran Dan Pembelajaran Perundangan Syariah Menggunakan Metodologi Kajian Kes [Confirmation of Illegitimate Child Status - Teaching and Learning Module of Sharia Law Using Case Study Methodology]," *Malaysian Journal of Syariah and Law* 11, no. 1 (2023), <https://doi.org/10.33102/mjssl.vol11no1.427>.

⁶¹I. Qattee et al., "Hospital Factors Associated with the Survival of Infants Born at Periviable Gestation: The USA National Database," *Children (Basel)* 11, no. 1 (2024), <https://doi.org/10.3390/children11010133>, <https://www.ncbi.nlm.nih.gov/pubmed/38275443>.

medical proof as an additional consideration in *nasab* determination rather than singularly dependent on 6 *Hijri* month criterion, the Islamic religion Court can enhance its assessment of child legitimacy.

In the realm of divorce and marital reconciliation, Sheikh Daud Fatani's emphasis on the role of a mediator during the family crises has proven to be beneficial for the current Islamic Family Law and the issue of women right in marriage and divorce. While traditional Islamic jurisprudence often suggests that women do not have the right to refuse the proposal of divorce reconciliation from the husband,⁶² the Malaysia's Islamic Family Law (Federal Territory) 1984 Act Section 51(2) recognizes the importance of mutual consent in the process of reconciliation after a revocable divorce.⁶³ This approach signifies a departure from the strict traditional Islamic Legal norms and acknowledges the equity of women's rights in the decision-making process. The proposal for the need of a mediator by Daud Fatani has provided the Islamic Family Law with a dynamic change it needed to navigate the plethora of issues in the modern family. This in turn can be presented in the case of Islamic Religious court which brings in consideration the perspectives of both the defendant and plaintiff. Sheikh Daud Fatani resonates in the Malaysia's Islamic Family Law landscape. By recognizing the complexities of familial dynamics and the need for neutral third-party involvement, the Malaysia's Islamic Family Law demonstrates an evolving understanding of family dispute resolution and upholds the gender rights equity in the Islamic Family Law.

4. Conclusion

Daud al-Fatani's contributions on Islamic Family law found to has its impact on the modern iteration of the Malaysia Islamic Family Law. The purpose of his works, *Hidayah Al-Muta'allim* written in a grounded setting, is to ensure it is relatable and understandable to the period, education, culture, and geographical background of the reader. Due to Daud Al-Fatani leadership in Islamic Jurisprudence study, a number of his student, became prominent Islamic scholars and leaders, and subsequently help in the formation of current Malaysia Islamic Law. Daud al-Fatani's approach to Islamic Family Law, particularly his handling of *Zihār*, *Nusyuz* and *Khiyār*, demonstrates his commitment in adhering to Qur'ānic and Sunnah principles while balancing with the cultural, and situation of his Muslim communities. His approach to the medical interplay on the issue of leprosy, and lineage of illegitimate children indicate a trans discipline approach on the Islamic Family Law. He also a propriety of women right, which a departure of his contemporary where most scholars standing on Islamic Family Law.

Conflict of Interest

The authors of the manuscript have no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

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⁶²Al-Zuhaili, *Islamic Jurisprudence and its Evidences*, 231/2.

⁶³Syahrul Adam Mesraini, and Ade Irma Imamah, "Woman Rights to Refuse Rujuk: Gender Equity on Islamic Family Law in Indonesia, Malaysia, and Brunei Darussalam," *Proceedings of the 1st International Conference on Recent Innovations*, 905-912, (2020), 10.5220/0009919709050912.

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