

## **The Stratification Concept of Clear Meaning Nash Text and Its Application in The Field of Family Law**

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**Abstract:** The texts of Qur'an and Sunnah are sometimes formulated in clear form (wadih al-ma'na) and the other times formulated in unclear form (khafiy al-ma'na). The clear forms (wadih al-ma'na) are various levels and should be explained so that prevents a fundamental mistake in the law formulation. The clear forms (wadih al-ma'na) induce argue between Islamic lawyers that determines the law construction. This article is to explain the concept of clear texts stratification and analyze its implementation in the law construction between scholars. This article is normative law research with ushul fiqh approach. The data analyzed are gathered from secondary sources such as classic ushul fiqh books of Hanafiy and Shafii schools as the main source. The other law source such as books and articles OJS-based are involved as well. The data obtained are analyzed within descriptive analysis with reduction, display and verification technique. This research results that different views in the text stratification between scholars is merely redactional (lafziy) not substantive (ma'nawiy). The stratification between scholars does not result a substantive difference in products of law, especially law of marriage and inheritance. Different formulation in the text stratification of sharia enrich literature discussion and knowledge of ushul fiqh for the experts of law in formulating law.

**Keywords:** Word stratification, Hanafiah scholar, Shafiiyah scholar, Istinbath, Ushul fiqh.

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### **Introduction**

The ulama carry out legal istinbath by analyzing the textual redactions of the Qur'an and Sunnah. In the sharia lafaz you will find clear text formulations (wadih al-ma'na) and vague text formulations (khafiy al-ma'na). Clear text (wadih al-ma'na) will make it easier to draw legal conclusions because of the clear indication of meaning (dalalah). However, text that are clear in meaning are also tiered in terms of their straightforwardness. This gave rise to debate among mujtahids which

ultimately had an impact on legal enactment. Stratification text whose meaning is clear has legal consequences. When there is a conflict in the meaning of two texts of the Shari'a, a mujtahid must respond wisely according to the formulation of fiqh principles and the appropriate method of istinbath based on the strata of the Shari'a text.

The classification and text stratification has become a hot topic of discussion among the Hanafiyyah and Shafi'iyyah ulama communities. Hanafiyyah divides text with clear meaning into four levels: al-Zahir, al-Nash, al-Mufassar, al-Muhkam; while the Shafi'iyyah and Jumhur Ulama only divided it into two: al-Zahir and al-Nas. Efforts to classify sharia editorials in the Qur'an and Sunnah have an important influence on the formulation of law. Family Law (*al-Ahwal al-Syakhshiyyah*) which originates from the Qur'an and Sunnah, is also concluded based on analysis of textual pronouncements based on content (dalalah) and level of strength. The Indonesian ulama consensus then codified it in the Constitution and Compilation of Islamic Law. This article aims to explain the concept of stratification in the nash text with a clear meaning and analyze its application in the field of family law.

The author conducted a literature study of classical books on the principles of jurisprudence. Among them is the book *Ushul al-Fiqh al-Islamy* by Imam Wahbah al-Zuhailiy, he explains the classification of sharia text with clear meaning and sharia text with vague meaning in sequence.<sup>1</sup> Imam Muhammad Adib Sholeh in his book *Tafsir al-Nusus fii al-Fiqhiy al-Islamiy* conveys the legal consequences of stratification and describes the heated discussions that took place among the ulama regarding seemingly contradictory arguments, using the basis of lafaz classification.<sup>2</sup> Meanwhile, Imam Ali bin Muhammad al-Amidi, in his book *al-Ihkam fii Usul al-Ahkam*, focuses more on explaining the meaning of al-Zahir and in-depth reasoning regarding the takwil arguments that come in al-Zahir's lafaz.<sup>3</sup> In this article, the author not only presents the classification and stratification of text with clear meaning in the Shari'a, but also its application in the formulation of positive law, especially in the realm of family law.

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<sup>1</sup> Wahbah Al-Zuhailiy, "Ushul Fiqh Al-Islamy" (Damascus: Dar al-Fikr, 1986).

<sup>2</sup> Muhammad Adib Sholeh, "Tafsir Al-Nusus Fi Al-Fiqhi Al-Islamy - Volume 1" (Beirut: al-Maktab al-Islamy, 1993).

<sup>3</sup> Ali bin Muhammad Al-Amidi, "Al-Ihkam Fi Ushul Al-Ahkam -Volume 3" (Beirut: Muassasah an-Nur, 1982).

Furthermore, the author conducted an analysis and observation about consistency of its implementation in the realm of family law such as decision formulation of judges in courts for the cases of inheritance; judges examine the customary law, regarding clear text forms that is stated in the Islamic Law Compilation (KHI) Book II Chapter III about inheritance distribution.

### **Method**

This paper is a qualitative research that focuses in analyzing both classical and contemporary books, especially literatures that widely explore and explain the text stratification concept in Islamic Law. The paper is categorized normative legal study using a fiqh proposal approach. Normative research means research into law which includes norms, principles, rules, philosophy, theories and legal rules with the aim of finding a synthesis of various problems, whether in the form of legal emptiness, or conflict or blurring of norms.<sup>4</sup> The data used is secondary data in the form of books of Islamic jurisprudence from the Hanafi and Shafi'i schools as the main material. Other legal materials were also used in the form of OJS-based books and scientific articles that were relevant to this study. The data obtained was analyzed using descriptive analysis using reduction, display and verification techniques. This article aims to explain the concept of stratification of nas text with a clear meaning, analyze its application in legal istinbath among ulama and its application in the realm of family law.

### **Results and Discussion**

#### **The Concept of Lafaz Stratification with a Clear Meaning According to Hanafiyyah Ulama**

Hanafiyyah classifies sharia text with clear meaning into four levels: al-Zahir, al-Nash, al-Mufassar and al-Muhkam. The clearest lafaz is al-Muhkam which is the opposite of al-Mutasyabih; then al-Mufassar which is opposed to al-Mujmal; al-Nash as opposed to al-Musykil; and finally al-Zahir which is opposed to al-Khafi.

Wahbah al-Zuhaili conveys how to distinguish the four strata of Text Clearly in a simple way: If a text does not accept takwil (transfer of

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<sup>4</sup> Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "NORMATIVE AND EMPIRICAL METHODOLOGY FROM A LEGAL SCIENCE PERSPECTIVE," Indonesian Law Enforcement Journal 2, no. 1 (January 17, 2021): 1-20, <https://doi.org/10.51749/jphi.v2i1.14>.

meaning) or nasakh (change of law) then it is Muhkam. If a text contains a definite meaning and does not accept takwil or takhsis, but it has the possibility of dinasakh; then it is Mufassar. When a text shows one meaning explicitly without other possibilities, but still accepts takwil, takhsis and nasakh; then it is al-Nash. Lastly, if a text has the potential for takwil, takhsis and nasakh; at the same time it contains two meanings: one that immediately comes to mind when you hear it and another meaning that could possibly be the intention; then it is al-Zahir.<sup>5</sup>

#### **al-Zahir**

al-Zahir is any utterance whose meaning is clear to the listener by simply hearing the pronunciation without the need for additional external guidance or analysis, whether it is presented for that meaning, or for another meaning.<sup>6</sup> Imam al-Sarakhsi defines al-Zahir: "Something whose meaning is known when heard without the need for analysis, something that comes to mind and prejudice earlier because of its clarity in meaning."<sup>7</sup> As Allah says in QS al-Nisa' verse 3: "*So marry whoever of the other women you want: two, three or four.*" The verse with its wisdom comes to mind about the permissibility of marriage, but that is not the main meaning that was intended to be conveyed when the verse was revealed, the main purpose of the verse is to explain the permissibility of polygamy.

The legal consequence of al-Zahir is the obligation to do good deeds with the meaning that comes to mind when you hear it, whether it is general in nature and has the possibility of being interpreted or the text has a special meaning, until an external guidance comes which diverts the intention from the meaning that was immediately expressed to a special meaning. Among the signs of al-Zahir is that it has the potential for takhsis (specialization of meaning). In QS al-Nisa' verse 3 which has been explained there is a text "*ma*" (anyone) with a general character who can receive takhsis.<sup>8</sup> An example of Sharia text which has a general character and has been summarized is the word of Allah: "*and Allah has permitted buying and selling*" which is summarized with the hadiths of the Prophet peace be upon him which explain the prohibition of buying and selling transactions of goods

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<sup>5</sup> Al-Zuhaily, "Ushul Fiqh Al-Islamy."

<sup>6</sup> Al-Zuhaily.

<sup>7</sup> Muhammad Al-Sarakhsy, "Ushul Al-Sarakhsy - Volume 1.Pdf" (Hind: al-Lajnah al-'Ilmiyyah li Ihya' al-Ma'arif an-Nu'maniyyah, 1952), 163-64.

<sup>8</sup> Al-Zuhaily, "Ushul Fiqh Al-Islamy."

which are haram, unclear/haram,<sup>9</sup> unclear and contains injustice.

This is also found in the word of Allah in QS. al-Nisa' verse 24: *"and it is lawful for you other than that (namely) to seek wives with your wealth to marry, not to commit adultery"*, *zahir* shows that it is permissible to marry someone who is not a mahram absolutely without restrictions, further limited by QS al-Nisa' verse 3 which only allows marrying up to four people;<sup>10</sup> and also a hadith that explains the prohibition against marrying someone to their aunt.<sup>11</sup> It can be concluded that al-Zahir text is practiced based on its scope. When someone has not studied verses and other legal sources, he cannot immediately use the knowledge of a verse as an absolute legal basis. Al-Zahir text must be practiced - that is, based on the meaning that comes to mind, while paying attention to the special limitations that come in the Shari'a.<sup>12</sup>

### **al-Nash**

al-Nash is a pronunciation that is led directly in conversation towards the desired direct meaning, not just something that comes to mind. Imam al-Sarakhsy revealed that al-Nash was of a higher level than al-Zahir because of the direct instructions that came from the speaker, this happened to al-Khash and al-'Aam. He included an example of Allah's words in QS Al-Baqarah verse 175: *"and Allah has permitted buying and selling and prohibited usury."* This verse contains al-Zahir's Lafaz on 'buying and selling', the finality of which is stated, but contains al-Nash's instructions on the definite legal differences between buying and selling and usury, namely halal and haram; because the verse was revealed as Allah's answer - as a speaker regarding the error of the unbelievers' opinion regarding usury.<sup>13</sup> The opinion that al-Nash includes al-Khash and al-'Aam is agreed by many scholars, including Abu Bakr al-Jasshash.<sup>14</sup>

al-Zahir and al-Nash can come together in one word, a mujtahid just

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<sup>9</sup> Muhammad Nadratuzaman Hosen, "Analysis of Gharar Forms in Economic Transactions," *Al-Iqtishad: Journal of Sharia Economics* 1, no. 1 (February 2009), <https://doi.org/10.15408/aiq.v1i1.2453>.

<sup>10</sup> Anwar Hafidzi and Eka Hayatunnisa, "Criteria for Polygamy and Its Impact through the Alla Tuqsitu Fi Al-Yatama Approach in the Islamic Fiqh Book Wa Adillatuhu," *Sharia Journal of Law and Thought* 17, no. 1 (January 2018), <https://doi.org/10.18592/sy.v17i1.1967>.

<sup>11</sup> Al-Zuhaily, "Ushul Fiqh Al-Islamy."

<sup>12</sup> Ihsan Satria Azhar, "Contradictions of the Koran and Hadith ﷺ," *Al-Fatih Education and Islam I*, no. 2 (2018): 388-402.

<sup>13</sup> Al-Sarakhsy, "Ushul Al-Sarakhsy - Volume 1.Pdf."

<sup>14</sup> Sholeh, "Tafsir Al-Nusus Fi Al-Fiqhi Al-Islamy - Volume 1."

needs to distinguish between the segments of al-Zahir and al-Nash based on the specificity of their meaning. As Allah says in QS al-Nisa' verse 3: "*and if you are worried that you will not be able to do justice to the rights of orphaned women, then marry any of the other women you want: two, three or four*", Zahir said about the permissibility of marriage - because it immediately comes to mind, and the text clearly shows the permissibility of polygamy and its limitation to four people.<sup>15</sup>

Another example of al-Nash can be found in QS Al-Ma'Idah verse 38: "*The man who steals and the woman who steals, have their hands cut off (as) retribution for what they did and as a punishment from Allah.*" Allah explains directly and straightforwardly the determination of the punishment of cutting off hands for thieves,<sup>16</sup> so it falls into the category of al-Nash text. Allah also says about the punishment for adultery in the text in QS al-Nur verse 2: "*A woman who commits adultery and a man who commits adultery, then each of them will be beaten a hundred times.*" The simple thing that differentiates between al-Zahir and al-Nash is that al-Zahir comes with other potential meanings besides the main meaning that comes to mind, whereas al-Nash comes with only one meaning from the speaker which in this case is al-Sya God bless you 'ala.<sup>17</sup> Both are explained by the ulama as still having the potential for takwil, takshis and nasakh (during the time of revelation).

The legal consequences of al-Nash are the same as Al-Zahir: obligatory charity with the demands of the meaning of text, with the possibility of takhsis open when it is still general ('Aam); or the existence of takwil when it has a special form (Khas); and the existence of scriptural potential. If the possibilities mentioned only arise without any basis in evidence then the law of implementing al-Nash is obligatory without doubt. What differentiates it from al-Zahir is that the potential for tawil in al-Nash is further than that in al-Zahir.<sup>18</sup> Al-Nash text position is higher than al-Zahir so that when in a case there is a conflict between al-Zahir and al-Nash, al-Nash takes precedence.

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<sup>15</sup> Beni Ahmad Saebani, "ISLAM NUSANTARA's Perspective on JUSTICE IN POLYGAMY," Ash-Syari'ah 21, no. 1 (July 2019): 1-16, <https://doi.org/10.15575/as.v21i1.4458>.

<sup>16</sup> Syarifah Gustiawati, "The Elasticity of Islamic Criminal Law," Mizan: Journal of Islamic Law 1, no. 2 (June 2018), <https://doi.org/10.32507/mizan.v1i2.125>.

<sup>17</sup> Ihda Shofiyatun Nisa', "The relevance of feminism in promoting gender reform in the context of progressive Islam," Jurnal Anifa: Gender dan Anak, Vol. 4, No.2 (November 2023), <https://journal.iainlangsa.ac.id/index.php/anifa/article/view/7187>

<sup>18</sup> Al-Zuhaily, "Ushul Fiqh Al-Islamy."

### **al-Mufassar**

al-Mufassar is a text that carries a special meaning and it is not global, so it does not require anything else to interpret its meaning. Imam al-Sarakhsy said that al-Mufassar is terminology for something whose meaning is revealed and does not have the opportunity for takwil so it is of a higher level than al-Nash and al-Zahir.<sup>19</sup> He then explained the word of Allah in QS al-Hijr verse 30: "*So the angels all bowed down together.*" Saying all of them (*kulluhum*) eliminates the possibility of takwil that the angels are not all prostrating, then pronouncing them together (*ajma'uun*) eliminates the possibility of tawil that the angels all prostrate but separately. The meaning of the verse is understood directly and excludes other possibilities, so it is called lafaz or kalam al-Mufassar.

Imam Wahbah al-Zuhaily explained that among the criteria for al-Mufassar are verses that talk about numbers because they do not have the potential for transferring meaning (takwil). Allah says in QS al-Nur verse 4: "*and those who accuse good women (of adultery) and they do not incur four pains, then they (those who accuse them) will be beaten eighty times.*" Al-Qur'an QS Al-Nur verse 2 reads: "*A woman who commits adultery and a man who commits adultery, then lash each of them a hundred times.*" Both verses contain instructions in the form of a number of beatings that are required for the perpetrators of the sins mentioned, numbers that do not have the potential for takwil.<sup>20</sup> No one said that 80 meant 8 times or 100 meant 120 times. Al-Mufassar is so far from takwil that there is no potential for differences of opinion in it except for small ones, different from al-Zahir and al-Nash.

Furthermore, among the sharia editorials that fall into the al-Mufassar category are global verses whose meaning is then detailed by other verses of the Qur'an or Sunnah. This also happens with dictions that sound foreign, as in the words of Allah Ta'ala in QS al-Ma'arij verse 19: "*Indeed, humans were created in the condition of Haluu'a.*" The word *Haluu'a* in the verse at first is foreign, but is interpreted by the next two verses, namely QS al-Ma'arij verses 20-21: "*When trouble befalls him he complains. And when good things happen to him, he is very stingy.*" So the word *Haluu'a* here changes to al-Mufassar because the meaning is known through the explanation of another verse.<sup>21</sup>

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<sup>19</sup> Al-Sarakhsy, "Ushul Al-Sarakhsy - Volume 1.Pdf."

<sup>20</sup> Al-Zuhaily, "Ushul Fiqh Al-Islamy."

<sup>21</sup> I Islamiyah, "Mufassar and Mujmal in Tafsir Al-Munir," AL-THIQAHA-Jurnal of Islamic

Imam Wahbah al-Zuhailiy also revealed that all the terms Salat, Zakat and Hajj in the Qur'an are included in al-Mufassar, because they are explained by the hadiths of the Prophet; so that it comes out of its general linguistic meaning (*ma'anin lugawiyyah*) towards the desired specific meaning (*ma'anin syar'iyah*).<sup>22</sup> No one says that the prayer in question is simply prayers without any special movements according to its global linguistic meaning (*dalalah lugawiyyah*); or zakat (literally: to purify) simply by spending a small amount of wealth without nisab regulations and other special provisions; or Hajj (literally: meaning coming) which is simply accomplished by setting foot in the Grand Mosque. The meanings of the Sharia that came as al-Mufassar cannot be interpreted any longer, they can only be changed by legal texts in the prophetic era.

The legal consequence of al-Mufassar is that it is mandatory to do good deeds with the instructions of al-Mufassar text without any takwil or takhsis,<sup>23</sup> just a possible script. If al-Mufassar no longer has nasakh potential, at that time he will have turned into al-Muhkam.<sup>24</sup> Nasakh (replacement of law) only occurs in the age of prophecy, and in the field of law/furu' is not the main principle/origin.<sup>25</sup> When a statement is doubtful as to whether it applies to the nasakh in part due to other sharia arguments, as is the case in QS al-Baqarah verse 180 concerning wills or not, then it falls into the al-Mufassar category.

### **al-Muhkam**

al-Muhkam is a clear language that did not have the potential for takwil, takhsis and nasakh during the life of the Prophet Muhammad peace be upon him and after he died.<sup>26</sup> Covers the main principles of law in religion, such as the belief in Allah, angels, books, messengers and the last day as stated in QS Al-Nisa' verse 136.<sup>27</sup> Likewise, things regarding the

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Sciences 3, no. 2 (2020): 124.

<sup>22</sup> Al-Zuhailiy, "Ushul Fiqh Al-Islamy."

<sup>23</sup> Zahrul Mubarrak, "Istinbath Method of Lughawiyah Rules in Ushul Fiqh" 1 (2023): 70–88.

<sup>24</sup> Al-Zuhailiy, "Ushul Fiqh Al-Islamy."

<sup>25</sup> Ikhsan Intizam, "The Concept of Nasikh and Mansukh in the Al-Quran as Rules for Determining Islamic Law," *Didaktika Islamika* 11, no. 1 (2020): 20–41.

<sup>26</sup> Mustain Yusuf and Munawir Munawir, "New Directions for the Development of Ulumul Quran," *MAGHZA: Journal of Al-Qur'an Science and Tafsir* 4, no. 2 (December 2019): 193–204, <https://doi.org/10.24090/maghza.v4i2.3434>; Zulkarnain Mubhar, "Muhkam and Muta>Syabib Verses in the Al-Qur'an," *Al-Mubarak Journal: Journal of Al-Qur'an Studies and Tafsir* 3, no. 2 (April 2020): 42–55, <https://doi.org/10.47435/al-mubarak.v3i2.218>.

<sup>27</sup> Reza Zaenudin, M Athoillah, and Mohamad Sar'an, "MUHKAM AND MUTASYABIH



great nature of Allah such as All-Knowing in QS Al-Anfal verse 75: "*Indeed, Allah is All-Knowing of everything.*" Including the main points of virtue and morals such as being fair, keeping promises, trustworthiness, birrul walidain and establishing brotherhood; and vice versa, despicable traits such as being unjust, lying, breaking promises and breaking brotherhood.<sup>28</sup> Al-Muhkamat is also defined as verses whose meaning is clear without any ambiguity.<sup>29</sup>

Imam al-Sarakhsy explained: That is why Allah Ta'ala named al-Muhkam text as the Principal of the Qur'an (*Umm al-Kitab*), al-Muhkam as the basic principal which is the main reference for Islamic teachings as a mother to her child; Mecca was named *Umm al-Qura* because it was the place where all people returned to perform the Hajj. The main reference is something that has no possibility of shifting the meaning (takwil) nor of erasing (nasakh) or changing (tabdil).<sup>30</sup> Al-Muhkam text is stated in QS Ali 'Imran verse 7: "*He is the one who revealed the Qur'an to you.*" Among its (contents) are muhkamat verses, these are the main contents of the Qur'an. al-Muhkam is the main reference in Islamic laws and occupies the highest position in the Syariat text which has clear meaning.

The legal consequence of al-Muhkam is that he is obliged to do good deeds with certainty without the slightest doubt; This is because al-Muhkam shows the meaning very clearly without any other potential meaning.<sup>31</sup> Al-Muhkam is the peak, the Arabs say *Bina' Muhkam* means a building that is safe from all attacks and conflict; al-Muhkam was not approached by any possibility because its meaning was very clear.<sup>32</sup> All clear passages in the Shari'a, whether al-Zahir, al-Nash, al-Mufassar or al-Muhkam, result in the obligation to implement existing legal content, whether based on belief (*qath'an*) or strong prejudice (*zhannan*) based on the level of clarity.

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VERSES AND THEIR APPLICATION IN AHWAL ASY-SYAKHSIYAH," Court: Journal of Islamic Legal Studies 7, no. 1 (April 2022): 79, <https://doi.org/10.24235/mahkamah.v7i1.9860>.

<sup>28</sup> Al-Zuhaily, "Ushul Fiqh Al-Islamy."

<sup>29</sup> Diah Rusmala Dewi and Ghamal Sholeh Hutomo, "The Wisdom and Values of Education in the Existence of Muhkamat and Mutasyabihat Verses in the Al-Qur'an," ISLAMIKA 2, no. 1 (January 2020): 63–83, <https://doi.org/10.36088/islamika.v2i1.426>.

<sup>30</sup> Al-Sarakhsy, "Ushul Al-Sarakhsy - Volume 1.Pdf."

<sup>31</sup> Al-Zuhaily, "Ushul Fiqh Al-Islamy."

<sup>32</sup> Sholeh, "Tafsir Al-Nusus Fi Al-Fiqhi Al-Islamy - Volume 1."

For instance, a judge should fully reject all interfaith marriage issues, based on al-Muhkam form stated in Supreme Court Circular (SEMA) Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Applications for Registration of Interfaith Marriages of Different Religions and Beliefs. This regulation is concordant with al-Muhkam form stated in QS Al Baqarah verse 221: *“Do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist woman, even though she might please you. And do not marry polytheistic men until they believe. And a believing slave is better than a polytheist, even though he might please you.”* This decision-making method with stratification judgment becomes a vital principle for a judge in the realm of family law such as polygamy issues, determination of child custody (*hadanah*) by sequence, provisions of idah’s living, etc.

The stratification concept of clear meaning nash text regarding Hanafiyyah School can be described in the following table:

Level	Category	Description
I	al-Muhkam	a clear language that did not have the potential for takwil, takhsis and nasakh.
II	al-Mufassar	a text that carries a special meaning and it is not global, so it does not require anything else to interpret its meaning.
III	al-Nash	a pronunciation that is led directly in conversation towards the desired direct meaning, not just something that comes to mind.
IV	al-Zahir	any utterance whose meaning is clear to the listener by simply hearing the pronunciation without the need for additional external guidance or analysis.

**Table 1**  
**The Stratification of Clear Meaning Nash Text**  
**Hanafiyyah School**

Source: Data is processed from various sources

**The Concept of Lafaz Stratification with a Clear Meaning According to Syafi’iyyah Ulama**

Syafi'iyyah/Mutakallimin and Jumhur Ulama only classify sharia text which have clear meaning into only two: al-Zahir and al-Nash. These two texts are opposite to al-Mujmal and al-Mutasyabih.

### **al-Zahir**

According to Syafi'iyah and the majority of ulama, al-Zahir is a text that accepts the possibility of takwil (shifting meaning), something that shows meaning zhanniy (strong prejudice), either because of language clues (*wadh'un lugawiy*) or habitual clues (*'urfun ishthilahiyy*). al-Zahir includes al-Zahir and al-Nash in the Hanafiyyah stratification. If there are clues (*qarinah*) that indicate another meaning of al-Zahir then it can be interpreted and given the term Mu'awwal. The legal consequence of al-Zahir is that he is obliged to practice the contents of the law, he is not allowed to leave it for other laws unless he relies on correct takwil and in accordance with the provisions.<sup>33</sup> Al-Qufasy revealed that al-Zahir text is the most widely used text in Arabic, and the majority of sharia texts are built on al-Zahir text.<sup>34</sup>

An example from al-Zahir is Allah Ta'ala's words about living in QS al-Baqarah verse 233: "*and the father's obligation is to feed and clothe the mother in a wise manner.*" The word ma'ruf here means in accordance with local customs (*'urf*) and the father's abilities.<sup>35</sup> If the father has a high income then he provides rice and food that is more suitable for his family and nutritious, as well as comfortable clothes according to his financial capabilities. The father must practice the contents of al-Zahir's text and not turn away as long as there is no takwil or shifting of the law of obligation to support from himself to others due to changes in situations and conditions such as divorce and so on.

### **al-Nash**

Al-Nash is a text that does not have the potential for takwil (shifting meaning), or a text that provides definite meaning instructions (*qat'i*), does not contain other meanings. Al-Nash is al-Mufassar in the stratification of Hanafiyyah text. The term al-Mufassar is not very well known among Jumhur Ulama and is rarely used. The legal consequence of al-Nash is that it is mandatory to do good deeds with definite text content as long as there is no *nasakh* (replacement of law). The term al-Muhkam for Syafi'iyah and

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<sup>33</sup> Al-Zuhaily, "Ushul Fiqh Al-Islamy."

<sup>34</sup> Muhammad Abdurrauf Salim Qufasy, "Mawarid Al-Naqdi Wa at-Tajdidi Fi Ushul Al-Fiqhi Mabahits Al-Zahir Wa Al-Nash Namuzajan Dirasatan Ta'siliyatan Taqwimiyyatan," 2019, <https://doi.org/http://hdl.handle.net/10576/11299>.

<sup>35</sup> Mansor bin Sulaiman and Hasan bin Ahmad, "HUSBAND'S LIVING LEVEL TO WIFE AND ITS RELATIONSHIP WITH URUF ACCORDING TO SHARIAH PERSPECTIVE: A DISCUSSION," *International Journal of Humanities Technology and Civilization*, May 2023, 29–34, <https://doi.org/10.15282/ijhtc.v6i2.6977>.

Jumhur Ulama includes al-Zahir and al-Nash itself, text whose meaning is clear (*wadih*) and must be practiced, whether the clarity of the text is at the level of belief (*qat'iy*) as well as strong prejudice (*zhanniy*).<sup>36</sup>

An example from al-Nash of Allah's law regarding adultery in QS al-Nisa' verse 15: "*and for women who commit vile acts, let there be four witnesses among you who are witnesses. Then if they have given testimony, then lock them (the women) in the house until they die.*" This verse clearly explains the law for women who commit adultery in the form of confinement at home until they die. The commands in this verse were practiced by the friends until the legal change (*nasakh*) came in the form of the stoning law. Likewise, other al-Naskh text, must be implemented as long as there is no new sharia that abolishes them, such as the command to be beaten 100 times in QS al-Nur verse 2 and the inheritance provisions in al-Nisa' verses 11, 12 and 176.<sup>37</sup>

The stratification concept of clear meaning nash text regarding Syafi'iyah School and Jumhur Ulama can be described in the following table:

Level	Category	Description
I	al-Nash	a text that does not have the potential for takwil (shifting meaning), or a text that provides definite meaning instructions ( <i>qat'i</i> ), does not contain other meanings. Al-Nash is al-Mufassar in the stratification of Hanafiyyah text.
II	al-Zahir	a text that accepts the possibility of takwil (shifting meaning), something that shows meaning zhanniy (strong prejudice), either because of language clues ( <i>wadh'un lugawiy</i> ) or habitual clues ( <i>'urfun ishthilahiyy</i> ). al-Zahir includes al-Zahir and al-Nash in the Hanafiyyah stratification.

**Table 2**  
**The Stratification of Clear Meaning Nash Text**  
 Source: Data is processed from various sources

<sup>36</sup> Al-Zuhaily, "Ushul Fiqh Al-Islamy."  
<sup>37</sup> Isniyatin Faizah, Febiyanti Utami Parera, and Silvana Kamelya, "The Division of Male and Female Heirs in the Study of Islamic Law," The Indonesian Journal of Islamic Law and Civil Law 2, no. 2 (December 2021): 152–69, <https://doi.org/10.51675/jaksya.v2i2.166>.

## **Application of Clear Meaning Stratification Text in the Field of Family Law**

The implementation of the legal consequences of text which have a clear meaning does not only occur in the celestial and prophetic editorials of the Shari'a. However, in the decision-making process in the courts, the judges apply the same concept to the regulations contained in the Law and the Compilation of Islamic Law (KHI), as codified Islamic law. Positive law, which is the guideline for enforcing law in Indonesia, is structured in terms of words that contain explicit and implicit meaning and are also graded in terms of clarity and straightforwardness.

An example of a clear statement in the KHI is Article 99 which states that a legitimate child is a child born in or as a result of a valid marriage.<sup>38</sup> Text (*lafaz*) in this article can be categorized as al-Zahir; Zahir stipulates that children who are in the womb before marriage, but are born after the marriage bond are considered legitimate children. But there is another possibility which is prejudicial in nature (*marjuh*) that what is meant by the word 'born in a valid marriage' is a child who is born and also exists in a new womb after a valid marriage bond. So in its application, judges can interpret existing meanings based on their material knowledge of other articles or sharia provisions. In this subchapter, we will explain the implementation of the use of text clearly in the realm of family law, both of the editorial board of revelation (sharia) and positive law, which is the guideline for judges in court.

### **Idah's Living After Divorce**

Compilation of Islamic Law (KHI) BOOK I CHAPTER pregnant.<sup>39</sup> This article, with the editorship of al-Nash, indicates that alimony is mandatory, so that the husband is obliged to fulfill his wife's rights in the form of food, shelter and clothing. In order to realize the provisions contained in the KHI, judges have the ex-officio right to determine alimony even if they are not asked to do so; The judge, with his authority, carries out KHI's demands for providing 'iddah, *kiswah* and *mut'ah* support as his sensitivity in protecting women's rights after divorce.<sup>40</sup>

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<sup>38</sup> Supreme Court.

<sup>39</sup> Supreme Court, Compilation of Islamic Law.

<sup>40</sup> Mansari Mansari and Moriyanti Moriyanti, "JUDGES' SENSITIVITY TOWARDS THE PROTECTION OF WIFE'S LIVING POST-DIVORCE," *Gender Equality: International Journal of Child and Gender Studies* 5, no. 1 (October 2019): 43, <https://doi.org/10.22373/equality.v5i1.5377>.

If you look at the KHI law of the Qur'an, you can find that the KHI article is in line with the word of Allah Ta'ala QS al-Baqarah verse 228 regarding divorce which reads: "*and their husbands (divorced women) have the right to refer them during the Idah period if the husband wishes the Idah. And women have rights that are balanced with their obligations in an appropriate manner.*" The redaction of the verse comes with two al-Zahir texts: First, Allah uses the husband's text (*bu'uulatuhunna*) after a divorce occurs; Second, there are the words *lahunna* and *'alaihinna* which mean the rights and obligations of women. These two texts of al-Zahir will be the basis for legal formulation to determine the status of two people who have divorced by divorcing and reconciling, during the *idah* period.

Al-Zahir, in the previous discussion, has the legal consequence of being obliged to carry out the content (*dalalah*) that comes to mind when reading it, until the *takhsis*, *nasakh*, or *qarinah* or other instructions come that shift the birth meaning towards other possible meanings (*takwil*). Al-Zahir text in the verse indicates that two divorced people who reconcile are still husband and wife during the *Idah* period. Syari' uses the word 'husband' for the divorcing party, accompanied by an explanation that the woman still has rights and obligations that must be fulfilled as a wife. From this legal *istinbath* method, legal provisions were born in the form of articles from the Compilation of Islamic Law which require the wife to support herself during the *Idah* period. Article 151 also emphasizes that during the *Idah* period the wife is prohibited from accepting proposals and marrying another man.<sup>41</sup>

The maintenance obligation only applies to talak reconciliation. As for *talak ba'in*, if the wife is not pregnant, there is no obligation on the husband to fulfill the woman's living needs in terms of food, shelter or clothing.<sup>42</sup> This is due to the separation of marital status, whereas the reason why maintenance is mandatory after divorce according to Syafi'iyah is the existence of marital status (*zaujiyyah*).<sup>43</sup> If you look at the KHI legal *istinbath* in this matter, then the basis that can be used as a legal basis is the Hadith

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<sup>41</sup> Supreme Court, Compilation of Islamic Law.

<sup>42</sup> Heniyatun Heniyatun, Puji Sulistyaningsih, and Siti Anisah, "GIVING MUT'AH AND NAFKAH IDDAH IN DIVORCE CASES," *Profetika: Journal of Islamic Studies* 21, no. 1 (July 2020): 39–59, <https://doi.org/10.23917/profetika.v21i1.11647>.

<sup>43</sup> Tiyan Hasanah, "Istinbath Method of Iddah Talak Bain Income Law According to Syafi'iyah," *Nizham Journal of Islamic Studies* 8, no. 02 (December 3, 2020): 171, <https://doi.org/10.32332/nizham.v8i02.2705>.

of the Prophet peace be upon him about Fatimah bint Qais which is narrated in the Sahih Muslim book. Fatimah bint Qais was divorced by her husband three times and wanted to confirm the status of her rights regarding her husband's assets. The Apostle said: "There is no provision for the right to support you or a place to live."

The editorial of the hadith comes with the al-Mufassar text, namely 'no living' and 'no place to live'. The legal consequence of al-Mufassar is that it is mandatory to practice the contents of the text with full confidence, because there is no potential for a shift in meaning (*takwil*) and specialization of meaning (*takhsis*). Al-Mufassar text gave birth to a legal provision that there is no obligation to support a former husband for a woman who has been divorced, as long as there is no sharia argument that cancels it (*nasakh*). Al-Mufassar's editorial closed the potential for the emergence of various doubts, as the main basis for Article 149 point b of the KHI which reads: "a former husband is obliged to provide maintenance, food and kiswah to his ex-wife during the period of idah, unless the ex-wife has been sentenced to *talaq ba'in*".<sup>44</sup>

### **Provisions for Wajibah Inheritance and Wills**

Compilation of Islamic Law Article 171 point c Islam as a condition for heirship. A non-Muslim is prevented from inheriting. The KHI editorial team uses clear al-Nash text, so that a judge cannot determine inheritance for non-Muslims. If you glance at the KHI law's *istinbath* towards the text of the Shari'a, you will find that this provision is as straight as the Hadith of the Prophet peace be upon him: "Muslims cannot inherit unbelievers, and unbelievers cannot inherit Muslims." The editorial of the hadith comes in the al-Muhkam text, directly stating that inheritance is forbidden from an infidel. The legal consequence of al-Muhkam text is that it is mandatory to realize the contents of the text without doubt. So, it is impossible for someone of a different religion to receive inheritance through inheritance.<sup>45</sup>

In order to prevent family disintegration, the solution formulated for non-Muslim children is to give part of the inheritance through obligatory gift and will instruments.<sup>46</sup> KHI BOOK II CHAPTER 5 Wills Article 209

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<sup>44</sup> Supreme Court, Compilation of Islamic Law.

<sup>45</sup> Saifullah Basri, "Islamic Inheritance Law (Fara'Id) and its Application in Islamic Society," Journal of Legal Certainty and Justice 1, no. 2 (2020): 37, <https://doi.org/10.32502/khdk.v1i2.2591>.

<sup>46</sup> Hendri Susilo et al., "INHERITANCE RIGHTS OF CHILDREN WHO HAVE DIFFERENT RELIGION FROM PARENTS BASED ON ISLAMIC LAW," USM LAW

explains that adopted children and adoptive parents who do not accept a will are given a mandatory will of up to 1/3 of the inheritance.<sup>47</sup> The Supreme Court carried out *ijtihad* to explore the law on the basis of Law no. 4 of 2004 and stipulates mandatory wills for non-Muslim family members, in order to realize legal justice.<sup>48</sup> This is stated in Jurisprudence No. 368 K/AG/1995, No. 51 K/AG/1999, No. 16 K/AG/2010 and No. 721 K/AG/2015.

If you look at the KHI law which has been expanded by the Supreme Court jurisprudence, you can find that wills and bequests to adopted children and non-Muslim families are not prohibited by religion. QS al-Mumtahanah verse 8 reads: "Allah does not forbid you to do good and act fairly towards those who do not fight you because of religion and do not (nor) expel you from your country. Indeed, Allah loves those who act justly." The redaction of the verse comes with the word al-Zahir 'do good' to people of different religions. One form of doing good is giving away some of your assets, either by gift or will. The legal consequence of al-Zahir text is to practice its contents until the *takwil*, *takhsis* or *nasakh* have not arrived. So the conclusion is drawn that it is permissible to make wills for non-Muslims.

MUI Fatwa Number 5/MUNAS VII/MUI/9/2005 explains that giving property between people of different religions can only be realized through grants, wills and gifts. The editorial statements of al-Zahir and al-Nash are the basis for judges to realize mandatory wills, in accordance with applicable regulations.

### **Closing**

Syariah lafaz whose meaning is clear has different levels based on the clarity of the meaning it contains (*dalalah*). Hanafiyyah classifies it into four levels: al-Zahir, al-Nash, al-Mufassar, al-Muhkam; while the Syafi'iyah and Jumhur Ulama only divide it into two: al-Zahir and al-Nash. Classical scholars apply basic rules in responding to these pronouncements. When there is a conflict of meaning between the statements of the Shari'a, the language which has a high position in stratification becomes the main basis

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REVIEW JOURNAL 4, no. 1 (June 2021): 175, <https://doi.org/10.26623/julr.v4i1.3409>.

<sup>47</sup> Supreme Court, Compilation of Islamic Law.

<sup>48</sup> Iin Mutmainah and Muhammad Sabir, "Wajibah Wills for Heirs of Different Religions (Analysis of Supreme Court Decision Number: 368K/AG/1995)," DIKTUM: Journal of Sharia and Law 17, no. 2 (December 2019): 188-210, <https://doi.org/10.35905/diktum.v17i2.818>.



for the formulation of the law. The conflict that occurs does not necessarily eliminate the indication of the meaning of the lower pronouncement as a whole, a compromise can be made with special formulas and provisions that have been outlined.

The legal implementation of lafaz stratification is clearly not only found in classical ulama books. However, it is also used as a basis for codifying and formulating laws and compilations of Islamic law. Existing legal provisions refer to the main sources of the Koran and Sunnah, following a comprehensive formulation process as carried out by classical scholars. The judges, in making decisions, also consider the clarity of the language contained in the Law and the Compilation of Islamic Law, comparing it with the language of the Shari'a so that a decision is made that is diverse and in accordance with the provisions.

The debate in formulating a stratification of sharia lafaz with clear meaning among ulama is only editorial (*lafzi*) but not substantive (*ma'nawiy*). Differences in lafaz stratification among ulama have no impact on legal products, especially in the field of family law such as marriage and inheritance law. The differences in the formulation of text levels among ulama enrich the treasures of the study of fiqh principles which serve as guidelines for Islamic legal experts in legal *istinbath*.

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