

Female Apostasy and Marital Status in Indonesian Marriage Law: Comparing Wahbah az-Zuhaili and Abdullahi Ahmed An-Na'im

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Abstract: *This study analyzes the legal implications of female apostasy for marital status by comparing the thought of Wahbah az-Zuhaili and Abdullahi Ahmed An-Na'im and assessing its relevance to Indonesian marriage law. It uses normative legal research with a qualitative-comparative, library-based design. Primary legal materials include the Qur'an, hadith, the main works of both scholars, Law Number 1 of 1974 as amended by Law Number 16 of 2019, the Compilation of Islamic Law, and relevant court decisions. The analysis combines normative, conceptual, comparative, and historical-sociological approaches and uses munaqashat al-adillah (the critical weighing of legal proofs) as a framework to examine the basis, method, strengths, and limitations of each legal argument. The results show that az-Zuhaili treats riddah (apostasy) as a ground for ending a marriage through fasakh (judicial dissolution), whereas An-Na'im rejects automatic civil consequences of a change of religion and stresses freedom of religion and human rights. The difference stems from two models of legal validity: az-Zuhaili's internal-traditional model grounded in ushul al-fiqh and An-Na'im's historical-critical model grounded in human rights. In Indonesia, az-Zuhaili's view aligns more closely in substance with the construction of Islamic marriage law, although the legal consequences still require a court determination. An-Na'im's perspective, in turn, helps strengthen the protection of women's economic rights, hadhanah (child custody), and the best interests of the child. The study concludes that riddah cases require courts to integrate legal certainty, judicial authority, freedom of religion, and gender justice.*

Keywords: *Abdullahi Ahmed An-Na'im; fasakh; female apostasy (riddah); Indonesian marriage law; Wahbah az-Zuhaili*

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INTRODUCTION

A change of religion within a marriage raises complex legal questions because it involves not only individual freedom of belief but also the continuation of the marriage, the authority of

the courts, and the protection of the civil rights of women and children.¹ The issue becomes more sensitive when the wife in a marriage concluded under Islamic law leaves Islam.² The legal question then extends beyond whether apostasy ends the marriage to how the law constructs the consequences of a change of religion, whether the marriage ends automatically or only by court decision, and how the rights of women and children are protected after the marriage ends.³

Islamic law regards marriage as a solemn covenant (*mītsāqan ghalīẓan*) with both legal and moral-religious dimensions. The Qur'an describes marriage as a relationship built on tranquility, love, and mercy (Q.S. ar-Rum [30]: 21), and Q.S. al-Baqarah [2]: 221 and Q.S. al-Mumtahanah [60]: 10 figure prominently in debates on how religious status affects the continuity of a marriage.⁴ In cases of apostasy, divergent readings of these verses raise questions about the status of the marriage contract, the annulment process, and the authority to declare the marriage ended.⁵ Any analysis of apostasy must take account of religious norms, the construction of Islamic law, and the applicable legal mechanisms.

The issue takes a distinctive form in Indonesia. Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, does not expressly regulate *riddah* as a ground for annulling a marriage.⁶ Article 116(h) of the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), by contrast, lists a change of religion or apostasy that causes household disharmony among the grounds for divorce.⁷ These provisions raise an interpretive question: does apostasy end a marriage directly, or does it produce legal consequences only once disharmony is shown and a court so decides?⁸ This difference in construction may also lead to disparities in the practice of the Religious Courts.

The issue becomes even more complicated when it concerns women's rights after the marriage is dissolved. A wife's apostasy may affect the dowry (*mahr*), maintenance, the

¹ Moch. Bachrurrosyady Amrulloh, "Fikih Pluralisme (Titik Temu Agama-Agama dalam Bingkai Hukum Islam)," *Akademika* 14, no. 1 (2020).

² Roro Fatikhin, "Riddah dalam Perspektif Bahasa, Al-Qur'an dan Hadis (Studi tentang Konsekuensi Hukum Riddah)," *Lisyabab: Jurnal Studi Islam dan Sosial* 1, no. 2 (2020): 179–94, <https://lisyabab-staimas.e-journal.id/lisyabab>.

³ Hanam Atmadja, Lukman Hakim, and Saeful Bahri, "Marital Status of Husband or Wife Who Leaves Islam from the Perspective of Law No. 16 of 2019, Compilation of Islamic Law, and Fiqh," *Journal of Law and Islamic Jurisprudence Development* 1, no. 1 (2026): 25–53, <https://journal.brandamedianusantara.com/index.php/jolid/article/view/4>.

⁴ Zainal Arifin and Amelia Fadilah, "Perkawinan dalam Masa Iddah: Analisis Perspektif Fiqih dan Hukum Perkawinan Indonesia," *SAMAWA: Jurnal Hukum Keluarga Islam* 5, no. 2 (2025): 162–82, <https://doi.org/10.53948/samawa.v5i2.253>.

⁵ Badrian, "Apostasy and Its Legal Consequences in Indonesian Personal Status Law: Human Rights Analysis and Doctrinal Tensions," *El-Aqwal: Journal of Sharia and Comparative Law* 5, no. 1 (2026): 67–86, <https://doi.org/10.24090/el-aqwal.v5i1.15729>.

⁶ Puwi Lestari Handayani, "Sanksi Pidana di Indonesia terhadap Penyimpangan Seksual Sesama Jenis dalam Perspektif Fikih Jinayah," *Integrative Perspectives of Social and Science Journal (IPSSJ)* 2, no. 2 (2025): 3049–74.

⁷ Hasanuddin, "Eksekusi Putusan Pengadilan Agama atas Harta Bersama dalam Perkara Perceraian: Studi Literatur terhadap Konstruksi Hukum Eksekutorial dan Gagasan Fiqih Modern tentang Kepemilikan," *Andrew Law Center* 4, no. 2 (2025), <http://journal.andrewlawcenter.or.id/index.php/ALJ>.

⁸ M. Hidayat, Azhar, and R. Kamaliah, "Analisis Konsep Hirfah sebagai Indikator Kafaah dalam Pembentukan Keluarga Ideal Perspektif Hukum Keluarga Islam," *SAMAWA: Jurnal Hukum Keluarga Islam* 6, no. 1 (2026): 16–32, <https://doi.org/10.53948/samawa.v6i1.396>.

waiting period (*iddah*), child custody (*hadhanah*), and other civil rights.⁹ An analysis of *riddah* cannot stop at whether the contract ends; it must also consider how the legal consequences fall on women and children.¹⁰ Previous research has identified difficulties in awarding economic rights to wives divorced on grounds of apostasy and uncertainty about the position of an apostate mother in custody disputes. These findings show the need to connect questions of religious status with the principles of rights protection and gender justice.¹¹

The debate is most visible in the work of Wahbah az-Zuhaili and Abdullahi Ahmed An-Na'im, who start from different methodological premises. Az-Zuhaili reasons within *ushul al-fiqh* and the tradition of the four Sunni schools and treats the apostasy of either spouse as a condition that can end the marriage through *fasakh*.¹² An-Na'im, by contrast, criticizes the attachment of civil and criminal consequences to apostasy and treats religious freedom and human rights as central to the reform of Islamic law.¹³ Their disagreement reaches beyond legal outcomes to the sources, methods, and criteria that make a legal norm valid.

Previous studies have examined apostasy from the perspectives of Islamic jurisprudence, freedom of religion, human rights, and Indonesian law.¹⁴ One line of scholarship addresses the role of *ijmā'* in the law of apostasy, while Muslih and Ibn Haldun¹⁵ discuss the tension among textual interpretation, legal reform, and human rights. Nafis and Bachri¹⁶ emphasize the freedom to change religion as a human right, and research on Indonesian law describes a negotiation among classical *fiqh*, state law, and human rights considerations.¹⁷

No study has yet systematically compared az-Zuhaili's internal *ushul al-fiqh* reasoning with An-Na'im's historical and human rights approach through the framework of *munaqashat al-adillah*.¹⁸ Nor has previous research adequately tested the strengths and limitations of the two scholars' arguments or linked them to judicial authority and the protection of women's

⁹ Sarli S. Landota, Susi Aryani Manangin, and Sam J. R. Saroinsong, "Tinjauan Yuridis terhadap Hak Waris Anak Murtad dalam Perspektif Hukum Islam," *Judge: Jurnal Hukum* 6, no. 12 (2026): 2829–45, <https://journal.cattleyadf.org/index.php/Judge/article/view/2201>.

¹⁰ Nadya Nurul Ilma, Eka Suriansyah, and Anas Maulana, "Apostasy as Grounds for Divorce by Talak Raj'i (Study of Decision No. 541/Pdt.G/2020/Pa.Bjb)," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 9, no. 1 (2026): 1–19, <https://doi.org/10.33474/yur.v9i1.24574>.

¹¹ Mughniatul Ilma, Khusniati Rofiah, and Asma' Alilatul Barizah Irfani, "Judicial Disparities in Determining Children Born Out of Wedlock," *Legitima: Jurnal Hukum Keluarga* 8, no. 2 (2026): 194–230, <https://doi.org/10.33367/legitima.v8i2.8966>.

¹² Mida Mar, M. Hanafiah, and Ahmad Muhajir, "Dinamika Hukum Islam dan Hak Asasi Manusia dalam Gender dan Hukuman Mati," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 2 (2024): 994–1017, <https://shariajournal.com/index.php/IJJEL/>.

¹³ Marwadi and Mughni Labib, "Islamic Legal Thought of a Modernist Islamic Organization: A Study of Family Law Fatwas According to Persatuan Islam," *Khuluqiyya: Jurnal Kajian Hukum dan Studi Islam* 8, no. 1 (2026): 231–48, <https://doi.org/10.56593/khuluqiyya.v8i1.235>.

¹⁴ Chilyatun Nafis and Syabbul Bachri, "Disparity in Judges' Decisions Regarding Divorce Due to Apostate Husbands," *RechtJiva* 2, no. 1 (2025): 1–15, <https://doi.org/10.21776/rechtjiva.v2n1.1>.

¹⁵ Rahman Muslih and Muhammad Valiyyul Haqq Ibn Haldun, "Strategi Publikasi Karya Ilmiah pada Jurnal Internasional dalam Bidang Hukum Keluarga Islam," *MAQASID: Jurnal Studi Hukum Islam* 14, no. 2 (2025): 24–35, <http://journal.um-surabaya.ac.id/index.php/Maqasid>.

¹⁶ Nafis and Bachri, "Disparity in Judges' Decisions."

¹⁷ Niskaromah Nurjali, Zaenal Abidin, and Maimunah, "Fiqh Controversy Surrounding Jama' and Qasar Prayers in the Modern Era," *ZIJIS: Zabags International Journal of Islamic Studies* 3, no. 1 (2026): 25–33, <https://doi.org/10.61233/zijis.v3i1.70>.

¹⁸ Deris Arista Saputra and Zul-kifli Hussin, "Implikasi Murtad terhadap Keabsahan Perkawinan: Analisis Komparatif Empat Mazhab," *SYAMIL: Jurnal Pendidikan dan Pemikiran Islam* 3, no. 1 (2026): 37–60, <https://doi.org/10.65490/syamil-jpdp.v3i1.55>.

rights in Indonesian marriage law. What remains open, then, is how different bases of argument produce different legal consequences for marital status and women's rights, beyond the threshold question of whether apostasy ends a marriage.

This study addresses that gap with a methodological comparison of az-Zuhaili's internal *ushul al-fiqh* reasoning and An-Na'im's historical, human rights-based approach. It uses *munaqashat al-adillah* as an analytical instrument to examine the textual foundations, contextual considerations, reasoning methods, legal assumptions, and normative consequences of each perspective. It then situates the findings within Indonesian marriage law to assess their compatibility with statutory provisions, judicial practice, and the need to protect the rights of women and children. In this way, the study goes beyond comparing two legal perspectives and examines their methodological and normative relevance to contemporary problems in marriage law.

Accordingly, the study addresses three questions: (1) how Wahbah az-Zuhaili and Abdullahi Ahmed An-Na'im conceptualize women's *riddah* (apostasy) and its implications for marital status; (2) what explains the differences between their arguments when examined through *munaqashat al-adillah*; and (3) which perspective is more consistent with the framework of Indonesian marriage law, and what that perspective implies for judicial authority and gender justice. In answering these questions, the study seeks to contribute to comparative Islamic legal studies and to offer a critical perspective on the relationship among *fiqh*, positive law, religious freedom, and the protection of women's rights in Indonesian Islamic family law.

METHOD

This study is normative legal research with a qualitative-comparative, library-based design. It analyzes the legal construction of women's *riddah* (apostasy) and its implications for marital status by examining Islamic legal sources, the legal thought of Wahbah az-Zuhaili and Abdullahi Ahmed An-Na'im, and Indonesian marriage law. The units of analysis are the legal arguments on the relationship between *riddah* and marital status, the methods of *istinbāt* (legal deduction) used by the two scholars, and the legal norms and reasoning in Indonesian legislation and judicial decisions. A library-based design suits the study because its objects are normative texts and legal thought recorded in written sources.¹⁹

Each approach has a distinct function. The normative approach identifies and interprets the legal foundations of *riddah*, *fasakh* (judicial dissolution of marriage), and marital status in the Qur'an, the Sunnah, *ijmā'*, *qiyās*, and the principles of Islamic jurisprudence. The conceptual approach analyzes the key concepts that serve as instruments of legal argumentation, including *riddah*, *fasakh*, *dilālah lafẓiyyah*, *dilālah isyāriyyah*, *ta'arūḍ zhāhirī*, and *ta'arūḍ haqīqī*. The comparative approach compares the evidentiary sources, methods of *istinbāt*, lines of argument, and legal consequences developed by az-Zuhaili and An-Na'im. The historical-sociological approach is used only to explain the intellectual and social contexts that shaped each scholar's legal orientation.²⁰

¹⁹ Rasyid Siddiq, Sukiati, and Iwan, "Hukum Perkawinan di Timur Tengah," *Jurnal Multidisiplin Ilmu Akademik* 3, no. 4 (2026): 534–42, <https://doi.org/10.61722/jmia.v3i4.11301>.

²⁰ Titing Oting Supartini, Ah Fathonih, and Fauzan Ali Rasyid, "Divorce in the Islamic Legal System, the Continental European System, and the Anglo-Saxon Legal System," *Dialog Legal: Jurnal Syariah, Jurisprudensi dan Tata Negara* 1, no. 3 (2025): 132–42, <https://doi.org/10.64367/dialoglegal.v1i3.64>.

The study draws on primary, secondary, and tertiary legal materials. The primary materials are the Qur'an, relevant hadith, the original works of Wahbah az-Zuhaili and of Abdullahi Ahmed An-Na'im, Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, the KHI, and court decisions on divorce or *fasakh* resulting from a change of religion. The works of the two scholars were selected according to three criteria: (1) they directly address *riddah*, marriage, or the legal consequences of religious conversion; (2) they are original works that represent the scholar's own legal arguments; and (3) they bear directly on the research questions. Secondary materials, including *fiqh* manuals, academic books, journal articles, theses, and earlier studies, provide context and help test the consistency of interpretations of the primary sources. Tertiary materials, such as dictionaries, encyclopedias, and scholarly indexes, help identify and interpret legal terminology.

Legal materials were collected through documentary research in four stages. The first stage identified and selected the principal works of az-Zuhaili and An-Na'im and the relevant Indonesian legal sources according to their relevance to the units of analysis. The second stage involved a critical reading that recorded each scholar's arguments, reasoning methods, legal concepts, and conclusions. The third stage classified the materials by theme: the concept of *riddah*, marital status, the basis of *istinbāt*, judicial authority, and the rights of women and children. The fourth stage cross-checked the readings against secondary literature to ensure that the interpretations of the primary sources were accurate and consistent. This procedure follows the principles of library research, which place the identification, reading, recording, and classification of materials at the core of the research process.

The analysis also proceeded in four stages. First, a descriptive-analytical reading reconstructed the views of az-Zuhaili and An-Na'im, including their evidentiary foundations, reasoning methods, and resulting legal consequences. Second, *munaqashat al-adillah* examined the two scholars' arguments comparatively, considering the relevance of the evidence, the context in which each scholar uses it, the link between the evidence and the legal conclusion, and the strengths and limitations of each scholar's method of *istidlāl*. Third, the findings were compared against common indicators, namely the sources of law, interpretive methods, concepts of legal authority, consequences for marital status, and implications for the rights of women and children. Fourth, conclusions were drawn deductively to identify the methodological differences between the two scholars and their implications for marriage law.

Indonesian legislation and court decisions were analyzed separately and then integrated into the comparative framework. The legislation was examined to identify the applicable norms, particularly on the validity of marriage, divorce, religious conversion, and judicial authority. The court decisions were analyzed to show how judges interpret and apply these norms, particularly where they distinguish *murtad* (apostasy) as a religious status from disharmony as a ground for divorce. The Indonesian legal framework was then compared with the findings on az-Zuhaili and An-Na'im to assess the degree of conformity, divergence, and tension among the three legal constructions.²¹ Indonesian law thus serves not merely as a point

²¹ Muhammad Asrul Syam, "Pernikahan Beda Agama dalam Tafsir Bugis," *Jurnal Moderasi: The Journal of Ushuluddin and Islamic Thought, and Muslim Societies* 1, no. 1 (2021), <http://ejournal.uin-suka.ac.id/ushuluddin/moderasi/index>.

of comparison but as a normative context for testing the practical relevance of both scholars' ideas.

The final stage is an interpretive assessment, not a judgment on the theological truth of either perspective. The assessment rests on three criteria: the methodological consistency of the arguments, their compatibility with the Indonesian marriage law framework, and their implications for the protection of women's and children's rights. On this basis, the study explains why az-Zuhaili and An-Na'im reach different conclusions, how far each argument can be applied in the Indonesian legal context, and what follows for judicial authority and gender justice. In this design, *munaqashat al-adillah* serves not merely as a technique for comparing legal evidence but also as a critical instrument for examining the relationship among texts, methods of reasoning, legal context, and the normative consequences they produce.

ANALYSIS AND DISCUSSION

The Conceptualization of *Riddah* and Its Consequences for Marriage

Wahbah az-Zuhaili and Abdullahi Ahmed An-Na'im hold different views on women's apostasy and marital status. Az-Zuhaili treats apostasy as a change in religious status that ends the marriage bond through annulment (*fasakh*). He distinguishes the consequences of apostasy before and after consummation, especially for the right to the dowry, and allows the marriage to be restored if the apostate spouse repents and returns to Islam during the waiting period.²²

An-Na'im, by contrast, does not regard a change of religion as an automatic trigger for civil consequences. Emphasizing freedom of religion, he argues that apostasy should not cost a person civil rights, including marital status. Where az-Zuhaili maintains a normative link between religious status and the continuation of a marriage, An-Na'im separates freedom of religion from civil consequences.²³

The two scholars differ in their methods of legal reasoning as well as in the evidence they use. Az-Zuhaili works within *ushul al-fiqh* and the classical *fiqh* tradition, whereas An-Na'im takes a historical and human rights approach. Under Indonesian law, az-Zuhaili's view is closer to the Islamic marriage law framework because the KHI accepts apostasy as a ground for divorce, although in Indonesia the consequence still requires judicial proceedings and a court decision.²⁴

An-Na'im's perspective is also relevant to strengthening the protection of the civil rights of women and children after a change of religion. It is consistent with research emphasizing that, under international human rights law, the right to change one's religion is an essential part

²² Fadilah Tianti et al., "Tantangan Regulasi terhadap Fenomena Commercial Surrogacy di Indonesia dalam Perspektif Hukum Islam," *YUSTISI: Jurnal Hukum & Hukum Islam* 13, no. 2 (2026): 251–64, <https://ejournal.uika-bogor.ac.id/index.php/YUSTISI/article/view/22739>.

²³ Himatul Ulya et al., "Perlindungan Hukum terhadap Anak dari Perkawinan Beda Agama dalam Memeluk Agama dari Prespektif Hukum Islam," *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik* 2, no. 3 (2024): 114–26, <https://doi.org/10.51903/jaksa.v2i3.1894>.

²⁴ Evra Willya, Nurlaila Harun, and Afni Anom, "Lawsuits Related to Divorce Due to Apostasy in Bitung Religious Court," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 46, no. 1 (2022): 53–69, <https://doi.org/10.30821/miqot.v46i1.877>.

of freedom of religion.²⁵ An-Na'im's thought offers a critical lens on any restriction of women's civil rights based solely on a change of faith.

The *munaqashat al-adillah* analysis shows that the two scholars differ not merely in their use of evidence but in how they determine the validity of law. Az-Zuhaili builds legal rules on the Qur'an, the Sunnah, *ijmā'*, and the principles of *ushul al-fiqh*, whereas An-Na'im reassesses the applicability of classical doctrines in light of historical context and universal human rights principles. These findings complement studies that emphasize the authority of *ijmā'* in the discourse on the law of *riddah*,²⁶ because they show that disagreements about apostasy also turn on methodological authority in the formation of Islamic legal norms.

In Indonesian marriage law, az-Zuhaili's thought is substantively close to the Islamic law framework adopted in the KHI, especially in treating a change of religion as a ground for divorce. This closeness in substance does not, however, extend to legal mechanisms, because the Indonesian legal system makes the court the authority that determines the consequences for marital status. This finding is consistent with Ilma, Suriansyah, and Maulana,²⁷ who found disparities between the Supreme Court and the Religious Courts in applying *fasakh* to divorces on grounds of apostasy. Saputra and Hussin²⁸ further show that divorce on grounds of apostasy complicates the determination of a wife's economic rights, so court practice must address the protection of women's civil rights as well as marital status.

Women's apostasy and marital status are best understood as a point where *fiqh* norms, legal methodology, judicial authority, religious freedom, and gender justice intersect. Az-Zuhaili provides a normative account of the relationship between religious status and the continuity of marriage, while An-Na'im offers a critical framework for assessing how the application of these norms affects the protection of women's rights. The contribution of this study lies in using *munaqashat al-adillah* to explain the methodological roots of the two scholars' disagreement and to assess its relevance to an Indonesian marriage law that better secures legal certainty, judicial authority, and the protection of women's and children's rights.

Munaqashat al-Adillah as a Framework for Testing Arguments

Munaqashat al-adillah, the weighing of the strength, relevance, and limitations of legal arguments, provides a framework for analyzing the disagreement between az-Zuhaili and An-Na'im. The analysis does not seek to determine theological truth; it examines how each scholar builds legal legitimacy on the question of apostasy. Az-Zuhaili relies on Q.S. al-Mumtahanah [60]: 10, Q.S. an-Nisa' [4]: 89, the maxim *al-'aqd yaqtadhī al-istimrār fī al-syarth*, and *ijmā'* to conclude that apostasy ends the marriage. The strength of this approach lies in its consistency with *ushul al-fiqh* methodology and the classical *fiqh* tradition. Applying Q.S. al-Mumtahanah [60]: 10 to a wife who apostatizes, however, requires additional reasoning, because the verse originally concerned women who migrated to the Muslim community in the context of the Treaty of Hudaibiyyah.

²⁵ Landota, Manangin, and Saroinsong, "Tinjauan Yuridis terhadap Hak Waris Anak Murtad."

²⁶ Fatikhin, "Riddah dalam Perspektif Bahasa, Al-Qur'an dan Hadis."

²⁷ Ilma, Suriansyah, and Maulana, "Apostasy as Grounds for Divorce by Talak Raj'i."

²⁸ Saputra and Hussin, "Implikasi Murtad terhadap Keabsahan Perkawinan."

An-Na'im builds his argument on Q.S. al-Baqarah [2]: 256 and a historical reading of the hadith *man baddala dīnahu faqtulūhu* ("whoever changes his religion, kill him"). He treats freedom of religion as a universal principle and places the rules on apostasy in the sociopolitical context of early Islamic society. In his view, the modern state, which separates citizenship from religious identity, requires a reconsideration of the literal application of apostasy rules. The strength of this approach lies in its ability to relate texts to changes in social context, religious freedom, and human rights. His extension of Q.S. al-Baqarah [2]: 256 to include the right to leave a religion, however, relies on Mahmoud Mohamed Taha's evolutionary framework and in that respect departs from the classical tools of *ushul al-fiqh*.

Weighed through *munaqashat al-adillah*, each view shows strengths and limitations that follow from its epistemology. Az-Zuhaili's view is more internally consistent with the structure of *ushul al-fiqh*, whereas An-Na'im's view better connects religious norms with changes in social context, religious freedom, and human rights. Az-Zuhaili's limitations appear mainly when classical *fiqh* norms are applied in a modern state legal system that vests the authority to determine marital status in the courts; An-Na'im's limitations lie in his reliance on historical and human rights criteria that do not derive from classical *ushul al-fiqh* methodology.

The *munaqashat al-adillah* analysis reveals an epistemological difference between Wahbah az-Zuhaili and Abdullahi Ahmed An-Na'im in their understanding of *riddah* and marital status. Az-Zuhaili relies on Q.S. al-Mumtahanah [60]: 10, Q.S. an-Nisa' [4]: 89, the maxim *al-'aqd yaqtadhī al-istimrār fī al-syarth*, and the classical *fiqh* tradition to hold that *riddah* can end a marriage through *fasakh*. This finding is consistent with Nurjali, Abidin, and Maimunah,²⁹ who distinguish a textual *fiqh* approach from one that emphasizes historical context and human rights in understanding *riddah*. Az-Zuhaili's strength lies in the consistency of his arguments with *ushul al-fiqh*, although applying Q.S. al-Mumtahanah [60]: 10 to apostate wives requires contextual reasoning because the verse concerns women who migrated to the Muslim community at the time of Hudaibiyyah.

An-Na'im, for his part, makes religious freedom the foundation for evaluating the legal consequences of apostasy. Drawing on Q.S. al-Baqarah [2]: 256 and a historical reading of the hadith *man baddala dīnahu faqtulūhu*, he argues that in a modern state a change of religion should not automatically carry civil consequences. This view is consistent with Willya, Harun, and Anom,³⁰ who treat freedom of religion and the freedom to change one's belief as important human rights issues. For this study, An-Na'im's approach is useful for assessing the impact of apostasy on economic rights, custody rights, and women's civil rights. The disagreement between the two scholars is better understood as *ta'āruḍ ṣāhirī*, an apparent conflict arising from different outcomes and reasoning methods, rather than a genuine contradiction between Qur'anic texts.

Viewed through *munaqashat al-adillah*, each approach has its own strengths and limitations. Az-Zuhaili's approach is more internally consistent with *ushul al-fiqh* and the *fiqh* tradition, whereas An-Na'im's better connects norms with changes in social context, religious freedom, and human rights. Az-Zuhaili's approach, however, meets difficulties when classical *fiqh* norms are applied in modern state legal systems, and An-Na'im's relies on historical

²⁹ Nurjali, Abidin, and Maimunah, "Fiqh Controversy Surrounding Jama' and Qasar Prayers."

³⁰ Willya, Harun, and Anom, "Lawsuits Related to Divorce Due to Apostasy in Bitung Religious Court."

readings and reformist frameworks that do not derive from classical *ushul al-fiqh* methodology. How *riddah* is assessed depends as much on the criteria that define its meaning and applicability as on the evidence used.

These findings bear directly on the practice of marriage law in Indonesia. Ilma, Suriansyah, and Maulana³¹ identify disparities between Supreme Court and Religious Court decisions on annulment for apostasy, and Supartini, Fathonih, and Rasyid³² describe difficulties in determining women's economic rights after divorce on grounds of apostasy. These studies reveal a gap between the concept of *fasakh* in Islamic jurisprudence and the Indonesian legal mechanism, which makes the court the institution that decides the legal consequences for the marriage. Az-Zuhaili's view remains substantively closer to the construction of Islamic marriage law in Indonesia, but its application still requires judicial proceedings to ensure legal certainty.

Resolving cases of women's apostasy requires more than deciding whether a marriage ends; it also requires attention to the authority of the court and to the protection of rights after the marriage ends. Az-Zuhaili supplies the normative basis for *fasakh*, while An-Na'im offers a critical perspective grounded in freedom of religion and the protection of women's and children's rights. The two approaches can complement each other in the Indonesian context: az-Zuhaili's construction provides a normative basis and legal certainty, and An-Na'im's perspective provides a check that ensures the application of *fasakh* does not strip women of their civil rights or disregard the best interests of the child.

Two Models of Legal Validity: Internal-Traditional and External-Critical

The *munaqashat al-adillah* analysis shows that the main difference between az-Zuhaili and An-Na'im lies in the model of legal validity each adopts. Az-Zuhaili applies an internal-traditional model that measures the strength of a legal rule against the Qur'an, the Sunnah, consensus (*ijmā'*), analogy (*qiyās*), and the principles of *fiqh*. This approach is consistent with Syam,³³ who shows that Islamic juristic thought on apostasy is heavily shaped by textual readings and the authority of the legal tradition. Fatikhin³⁴ likewise shows that the status of *ijmā'* is a central issue in establishing the legal authority of rules on *riddah*. In the present findings, *ijmā'* does more than reinforce the conclusion: it supplies historical legitimacy that sustains the continuity of a legal construction within the *fiqh* tradition.

An-Na'im, by contrast, applies an external-critical model that evaluates Islamic legal norms in light of historical context, religious freedom, and human rights. This approach is consistent with Ilma, Suriansyah, and Maulana,³⁵ who show that the way apostasy is conceptualized strongly influences how freedom of religion and rights protection are applied in legal practice. Nurjali, Abidin, and Maimunah³⁶ also show that the contemporary Islamic legal debate on apostasy cannot be separated from social, political, and human rights change. For An-Na'im, then, the acceptance of a norm within the *fiqh* tradition does not make it final,

³¹ Ilma, Suriansyah, and Maulana, "Apostasy as Grounds for Divorce by Talak Raj'i."

³² Supartini, Fathonih, and Rasyid, "Divorce in the Islamic Legal System."

³³ Syam, "Pernikahan Beda Agama dalam Tafsir Bugis."

³⁴ Fatikhin, "Riddah dalam Perspektif Bahasa, Al-Qur'an dan Hadis."

³⁵ Ilma, Suriansyah, and Maulana, "Apostasy as Grounds for Divorce by Talak Raj'i."

³⁶ Nurjali, Abidin, and Maimunah, "Fiqh Controversy Surrounding Jama' and Qasar Prayers."

because its applicability must still be tested against context and the principle of human freedom.

The two validity models explain why az-Zuhaili and An-Na'im reach different conclusions even though both draw on Islamic sources. They disagree less about the evidence itself than about the criteria that determine its authority and applicability. Az-Zuhaili upholds the epistemological authority of *fiqh* from within the Islamic legal tradition, whereas An-Na'im evaluates that legal heritage critically through historical and human rights perspectives. Seen through *munaqashat al-adillah*, the debate on apostasy is better understood as a clash of paradigms for determining legal validity than as a simple conflict between Islamic law and human rights.

In Indonesian law, the two validity models also help explain how annulment for apostasy is applied. Ilma, Suriansyah, and Maulana³⁷ find disparities between Supreme Court and Religious Court decisions applying *fasakh* on grounds of apostasy, and Saputra and Hussin³⁸ show how difficult the law is to apply, especially in determining women's rights after divorce. These findings show that the normative construction of *fiqh* is not applied uniformly once it meets positive law and judicial authority. Az-Zuhaili's model provides a normative basis closer to the *fasakh* construction, while An-Na'im's critical approach can be used to assess the effects of its implementation on religious freedom and on the protection of women's and children's rights.

Overall, the two validity models serve different functions and can complement each other. Az-Zuhaili's internal model provides normative consistency and continuity with the *fiqh* tradition, while An-Na'im's external model leaves room to test the relevance of norms against changing social contexts and human rights principles. Beneath the different legal conclusions, *munaqashat al-adillah* reveals a fundamental disagreement about the sources of legal legitimacy. In Indonesia, the two perspectives can be balanced to maintain legal certainty while ensuring that the application of the rules on apostasy and annulment continues to respect religious freedom and the rights of women and children.

Indonesian Marriage Law: Between Religious Norms and Court Authority

Indonesian law occupies a mediating position between religious norms and state legal mechanisms. Article 2(1) of Law No. 1 of 1974, as amended by Law No. 16 of 2019, ties the validity of a marriage to religious law, while Article 116(h) of the KHI recognizes a change of religion or apostasy that causes disharmony as a ground for divorce. Article 75(a) of the KHI further provides that a decision annulling a marriage because one spouse has apostatized does not apply retroactively. Indonesian law recognizes the relevance of apostasy to marriage but, unlike az-Zuhaili's construction, does not provide for automatic dissolution, because the legal consequences must still be determined by a court.

Az-Zuhaili's view and Indonesian law share a substantive premise: a change of religion can affect the continuation of a marriage. They differ in authority and procedure. Az-Zuhaili treats *riddah* as a legal fact that can lead to annulment, whereas Indonesian law makes the court the institution that determines the legal outcome. Despite their common ground in substance,

³⁷ Ilma, Suriansyah, and Maulana, "Apostasy as Grounds for Divorce by Talak Raj'i."

³⁸ Saputra and Hussin, "Implikasi Murtad terhadap Keabsahan Perkawinan."

the two differ fundamentally in how the rule is applied. Indonesian law does not simply follow the classical *fiqh* construction; it adapts that construction to a state legal system that emphasizes legal certainty and judicial authority.

The difference is visible in judicial practice, which still varies in the use of *fasakh* and revocable divorce (*talak raj'i*) and in the award of economic rights to women divorced on grounds of apostasy. Ilma, Suriansyah, and Maulana³⁹ find disparities between the Supreme Court and the Religious Courts in applying *fasakh*, while Saputra and Hussin⁴⁰ show how complex it is to determine women's economic rights after such divorces. Beyond whether *riddah* affects marital status, Indonesian law must settle how its legal consequences are determined and how the rights of women and children are protected. Judicial authority becomes decisive here in bridging *fiqh* norms and positive law and in ensuring that the law is applied consistently and fairly.

In short, Indonesian law integrates religious norms with state legal mechanisms. Law No. 1 of 1974, as amended by Law No. 16 of 2019, ties the validity of a marriage to religious law, and Article 116(h) of the KHI recognizes a change of religion or apostasy that causes disharmony as a ground for divorce. This provision does not, however, make apostasy an automatic ground for dissolving a marriage, because its legal consequences are still determined through judicial proceedings. The Indonesian framework shares common ground with az-Zuhaili's view in recognizing apostasy as a factor that can end a marriage but differs from it in authority and procedure.

Judicial practice also varies in applying annulment on grounds of apostasy. Ilma, Suriansyah, and Maulana⁴¹ find disparities between Supreme Court and Religious Court decisions on the form and basis of divorce for apostasy. *Fiqh* norms, in other words, are not applied uniformly within a positive law system that empowers judges to decide the legal consequences for a marriage. Indonesia's legal position is best described as mediating: the substance of the law still accommodates *fiqh* principles on the effect of a change of religion on marriage, but their application follows the principles of procedural law and judicial authority.

The protection of women's and children's rights after the marriage ends raises further complexities. Saputra and Hussin⁴² show that divorce on grounds of apostasy complicates the determination of women's economic rights, and studies on *hadhanah* point to the vulnerability of apostate mothers in custody disputes. These findings reinforce the relevance of An-Na'im's perspective, which makes religious freedom and rights protection the basis for evaluating the legal consequences of *riddah*. Besides providing a basis for dissolving the marriage, Indonesian law must ensure that the process does not strip away economic rights, civil rights, or the best interests of the child.

Indonesian law stands between az-Zuhaili's *fiqh* construction and An-Na'im's critical approach. It is closer in substance to az-Zuhaili, because both recognize apostasy as a factor affecting the continuity of marriage, while An-Na'im's perspective helps assess how its implementation affects religious freedom and the rights of the parties concerned. In this

³⁹ Ilma, Suriansyah, and Maulana, "Apostasy as Grounds for Divorce by Talak Raj'i."

⁴⁰ Saputra and Hussin, "Implikasi Murtad terhadap Keabsahan Perkawinan."

⁴¹ Ilma, Suriansyah, and Maulana, "Apostasy as Grounds for Divorce by Talak Raj'i."

⁴² Saputra and Hussin, "Implikasi Murtad terhadap Keabsahan Perkawinan."

mediating position, judicial authority becomes the principal means of translating religious norms into concrete legal decisions while securing legal certainty and justice for women and children.

Implications for Gender Justice and Women's Rights

The gender dimension matters because the consequences of apostasy extend beyond marital status to economic and custody rights. In az-Zuhaili's *fiqh* construction, the distinction based on the timing of *dukhul* (consummation) protects the wife's right to the *mahr*: after *dukhul*, she receives the full *mahr* even if the marriage ends because of apostasy. The change of religion dissolves the marriage, but certain economic rights survive.

An-Na'im's perspective approaches the issue more critically, because automatic legal consequences of a change of faith can erode women's rights, including their marital status, custody of their children, and financial support. In Indonesia the issue is even more complex because positive law does not yet specify all the economic and child-rearing consequences of apostasy. The vulnerability of mothers who convert, particularly in retaining custody, shows that An-Na'im's approach remains useful for evaluating potentially discriminatory effects on women, even though Indonesian marriage law cannot adopt his normative framework in full.

Gender justice, then, does not require rejecting the legal consequences of apostasy; it requires that their implementation not automatically erase the basic rights of women and children. Courts should weigh the protection of the dowry, maintenance, custody rights, and certainty of legal status proportionally. The fairness of the process and its avoidance of disproportionate harm to women and children matter as much as the dissolution itself.

The gender dimension shows that the legal consequences of a change of religion must be assessed by their effect on women's economic rights and protection as well as on the continuity of the marriage. In az-Zuhaili's *fiqh* framework, a wife still receives her full dowry after consummation even if the marriage ends because of apostasy, so dissolution does not automatically extinguish all of her economic rights. This finding is consistent with Landota, Manangin, and Saroinsong,⁴³ who argue that a wife's rights after a divorce based on apostasy still require attention because Indonesian marriage law does not yet regulate the post-divorce consequences of *riddah* in detail. Here *fiqh* constructions and contemporary legal needs share common ground: the end of a marriage should be accompanied by a mechanism that protects women's rights.

Custody rights add a further layer of complexity. Tianti et al.⁴⁴ show that courts deciding cases involving apostate mothers do not always treat religious difference as the sole factor in determining custody; in some cases, judges give more weight to morality, caregiving ability, safety, and the child's physical and mental development. Protection for women and children in apostasy cases can move from an approach based solely on religious status to one that considers the best interests of the child. This shift also supports An-Na'im's critique that a change of belief should not automatically restrict a person's civil rights. His perspective can serve as a critical framework for assessing whether the legal consequences of apostasy are applied proportionally and without placing a heavier burden on women.

⁴³ Landota, Manangin, and Saroinsong, "Tinjauan Yuridis terhadap Hak Waris Anak Murtad."

⁴⁴ Tianti et al., "Tantangan Regulasi terhadap Fenomena Commercial Surrogacy di Indonesia."

Beyond economic rights and *hadhanah*, previous research shows that inconsistent law enforcement can undermine the certainty and protection of women's rights. Ilma, Suriansyah, and Maulana⁴⁵ find a disparity between the Supreme Court and several Religious Courts in applying *fasakh* on grounds of apostasy: the Supreme Court opted for *talak raj'i* in two rulings, while several Religious Courts continued to apply *fasakh*, citing the principles of *ultra petita* and *ex aequo et bono*, their understanding of *fiqh*, and judicial independence. Saputra and Hussin emphasize that divorce on grounds of apostasy is a complex matter that requires the Religious Courts to determine its legal consequences concretely. These findings support the conclusion that the issue of *riddah* extends beyond whether a marriage can be dissolved to how the dissolution is carried out while securing the dowry, maintenance, custody, and certainty of legal status. Gender justice in apostasy cases should aim at proportional legal consequences, so that a change of religion does not automatically cost women and children their basic rights.

CONCLUSION

Az-Zuhaili treats apostasy as a ground that can end a marriage through annulment, whereas An-Na'im rejects automatic civil consequences of a change of religion and gives priority to freedom of religion. The difference stems from their models of legal validity: az-Zuhaili's is internal to *ushul al-fiqh*, and An-Na'im's is historical and grounded in human rights. In Indonesia, az-Zuhaili's view aligns more closely in substance with the KHI framework, but its implementation still requires judicial proceedings, while An-Na'im's perspective helps strengthen the protection of women's and children's rights. Courts applying the rules on apostasy should weigh legal certainty, women's economic rights, child custody, and the best interests of the child alongside marital status. Because this study relies on normative and library research, it does not capture the experiences of women and children or judges' actual reasoning in apostasy cases. Future research should use socio-legal or empirical methods, examine a wider set of Religious Court and Supreme Court decisions, and compare them with the thought of other contemporary scholars and with other legal systems, with the aim of developing a regulatory model that better secures legal certainty, gender justice, religious freedom, and child protection.

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