

Domestic Violence in the Perspective of Islamic Law

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Abstract. *This research describes Domestic Violence (Kekerasan Dalam Rumah Tangga/KDRT) and the factors that trigger this violence. This type of research is literary in nature with the approach used in this research being a qualitative approach as the approach used in writing. Data can be obtained from various references such as document studies and research results, national and international journals. The results obtained show that the general public often only understands domestic violence as physical violence, even though domestic violence can take the form of physical, psychological, sexual or domestic neglect. Bullying to carry out treatment, demands or deprivation of freedom that is contrary to the law, is also included in the household scope. Violence can arise due to economic problems, lack of understanding of each party's religion or disharmony between family members. Therefore, it is important to avoid this in order to create a harmonious family.*

Keywords: *Violence, Households, Islamic Law, Harmonious Families*

1. Introduction

Marriage is a sacred command for those who can carry it out immediately. Creating a happy, sakinah, mawaddah and warahmah household is the goal of marriage. As one of the most important teachings of Islam. Therefore, to achieve the stated goals, it is necessary to regulate certain harmony and conditions in marriage. A marriage is considered invalid or called a fasid marriage if the basic conditions of marriage are not met. Because marriage is one of the most important events in life, apart from birth and death. In forming a sakinah family, mawaddah warahmah which is the dream of a husband and wife, many do not meet expectations. This is caused by a number of problems that make the marriage no longer viable. Domestic violence is one of the problems that often arises and triggers disputes.¹

Domestic violence is still a problem in the field of Islamic family law. If their women refuse to fulfill their responsibilities, the majority of clerics allow their husbands to physically abuse them. This view seems to be legitimized by the Al-Qur'an as depicted in Q.S. al-Nisa' [4]: 34

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالصَّالِحَاتُ قَنَاطَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۚ وَاللَّتِي تَخَافُونَ نُشُورَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ ۚ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Which mean:

Men are leaders for women, because Allah has preferred some of them (men) over others (women), and because they (men) have spent part of their wealth. Therefore, a pious woman is one who obeys Allah and takes care of herself when her husband is not around, because Allah has taken care of (them). And those women whose nusyuz you are worried about, then advise them and separate them in their beds, and beat them. Then if they obey you, then don't look for ways to trouble them. Indeed, Allah is Most High, Most Great.

On the other hand, some people believe that hitting your wife is not appropriate at all. According to Law Number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as the *Kekerasan Dalam Rumah Tangga*/KDRT

¹ Aziz, Abdul. (2017). "Islam Dan Kekerasan Dalam Rumah Tangga." *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 16 (1): 177-196.

Law), beatings are a form of violence and are also a criminal act.² Women and children constitute the majority of victims of domestic violence. Domestic violence cases are often experienced by family members who are considered to be abused and lack respect. Economic problems that cannot fulfill their basic needs or emotions of egoism in the family are usually the root causes of perpetrators of domestic violence. Acts of violence against wives are contrary to the purpose of marriage, namely creating a safe, peaceful household and upholding sharia law. This is seen from the perspective of sharia moral ethics which emphasizes the importance of love and trust in the institution of marriage.

Law as regulations and guidelines in social life, aims to maximize benefits and justice. Islamic law was mandated by Allah with the main aim of recognizing and protecting the problems of humanity. Islamic law is a law that applies universally to human existence which is based on human interpretation of the Al-Qur'an and Sunnah. The essence of Islam as a universal religion, the universality of Islamic law is a continuation of the essence of Islam as a universal religion, namely a religion whose teaching substances are not limited by human space and time, but apply to all Muslims wherever, whenever and of whatever nationality.^{3,4} Thus, the problem that arises here is what domestic violence is and how domestic violence is according to Islamic law.

2. Method

Judging from its type, this research is literary in nature, including the type of library research. Library research is research in which data collection is carried out by collecting data from various literature.⁵ The literature studied is not limited to books but can also include documentation materials, magazines, journals and newspapers. The emphasis of library research is to find various theories, laws, postulates, principles, opinions, ideas and so on that can be used to analyze and solve the problems studied.⁶ The approach used in this research is a qualitative approach as the approach used in writing, namely through analysis of a number of articles that raise cases of domestic violence, the causes and factors that occur.

² Syawqi, Abdul Haq. (2015). "Hukum Islam Dan Kekerasan Dalam Rumah Tangga." *De Jure: Jurnal Hukum dan Syar'iah* 7 (1): 68-77.

³ Sukardi, Didi. (2015). "Kajian kekerasan rumah tangga dalam perspektif hukum islam dan hukum positif." *Mahkamah: Jurnal Kajian Hukum Islam* 9 (1).

⁴ Putra, Haris Maiza, and Hisam Ahyani. (2022). "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia." *Jurnal Ilmiah Al-Syir'ah* 20 (1): 68-90.

⁵ Okoli, Chitu, and Kira Schabram. (2015). "A guide to conducting a systematic literature review of information systems research".

⁶ Pilerot, Ola, Björn Hammarfelt, and Camilla Moring. (2017). "The many faces of practice theory in library and information studies." *Information Research* 22 (1).

Data was obtained from various references such as document studies and research results, national and international journals

3. Results

The Big Indonesian Dictionary, violence is defined as something that is violent in nature, the actions of a person that causes injury or death to another person or causes physical damage. Thus, violence is a form of action that is more physical in nature which results in injury, disability, illness or the element that needs to be taken into account is coercion or unacceptable behavior on the part of the injured party.⁷ Meanwhile, according to jurisprudence experts, what is meant by violence is an act that causes bodily harm that does not take a person's life, such as torturing, injuring, squeezing, pulling and hurting parts of the human body.⁸ Egyptian criminal law experts interpret violent criminal acts of wounding and beating, according to them, to include all acts that are delegated to the body which will later have an impact on the human body and soul.^{9,10} Therefore, strangling and pulling someone would be considered hitting someone intentionally. Crimes other than life (violence) are in the form of pain inflicted on a person's body parts, but not to the point of taking a person's life. In Law Number 23 of 2004 Article 1 states domestic violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering and/or domestic neglect including threats to commit acts of coercion or confiscation. independence against the law and within the household.¹¹ Thus, women/wives are required to have great responsibility for the integrity of a household.

Violence can happen to anyone, including mothers, fathers, husbands, wives, children or household servants. However, in general the definition of domestic

⁷ Alnizar, Fariz, Amir Ma'ruf, and Fadlil Munawwar Manshur. (2021). "The Language of Fatwa: Understanding Linguistic Violence in the Indonesian Ulama Council's Fatwa on Ahmadiyah." *AHKAM: Jurnal Ilmu Syariah* 21 (1).

⁸ Imam-Tamim, Muhammad Kamaldeen. (2022). "Islamic Law Perspective on Emerging Issues from Legal Frameworks on Domestic Violence in Nigeria." In *Promoting Efficiency in Jurisprudence and Constitutional Development in Africa*, pp. 119-148. Cham: Springer International Publishing.

⁹ Ambrosetti, Elena, Nisrin Abu Amara, and Stephanie Condon. (2013). "Gender-based violence in Egypt: Analyzing impacts of political reforms, social, and demographic change." *Violence against women* 19 (3): 400-421.

¹⁰ Hamdani, Hamdani, and Sri Wahyuni. (2023). "Islamic Criminal Law Response on Physical Violence in the Household on Law No. 23 of 2004." *GIC Proceeding* 1: 380-386.

¹¹ Rizal, M., & Djannah, F. (2020). Impact of violence against children in the family related to Law Number 23-year 2004 concerning deletion of violence in household. Budapest International Research and Critics Institute-*Journal (BIRCI-Journal)*, 3(1), 348-358

violence is narrowed to mean abuse by a husband against his wife.¹² It cannot be denied that most domestic violence victims are women. Based on the definitions above, it can be concluded that all acts of domestic violence constitute violations of human rights which can be subject to criminal and civil law sanctions. Apart from that, forms of violence that occur in a household, such as beating a wife by a husband, are things that are very difficult to reveal because the issue is considered a private matter. This is also due to the existence of legitimacy that justifies a husband to beat his wife because she is disobedient. So, widely among Muslims, there is a belief that a husband has the right to beat his wife and sometimes a husband feels that he has not committed an act of violence, while the wife feels that this is an act of violence, namely psychological violence or economic violence.¹³

After explaining the meaning of violence above, the next step is the factors that cause violence¹⁴ because it is impossible for someone to commit violence if there are no factors that encourage it. Among the causes are as follows; Low experience and appreciation of religious norms currently occurring in society. Religious values that are increasingly eroded in society or horizontal relationship patterns that increasingly tend to eliminate the role of religion have the potential to encourage someone to do evil and harm others. Our culture encourages women or wives to depend on their husbands. Especially economically. This makes us almost completely under the control of our husbands. One of the consequences is that wives often do whatever they want according to their husband's wishes or mood. Society still raises boys by educating them so that they believe that they must be strong and brave. Men are trained to feel powerful over themselves and those around them. If they deviate from expectations then they are categorized as weak men. The fact that men and women are not positioned in society. We believe that men have more power over women. In this household the husband dominates the wife. The wife is completely the husband's property so she must always be under the man's control. If the wife is wrong, they can do anything to get the wife back on the right path, including committing acts of violence. There are many misconceptions about religion that assume that men can dominate women. This interpretation means that religion also justifies husbands committing violence against their wives in order to educate them. Because husbands have a higher

¹² Perbandingan, Kajian. (2018). "The definition of domestic violence in Malaysia: A cross-national comparison." *Akademika* 88 (3): 77-89.

¹³ Adams, Adrienne E., and Marisa L. Beeble. (2019). "Intimate partner violence and psychological well-being: Examining the effect of economic abuse on women's quality of life." *Psychology of Violence* 9 (5): 517.

¹⁴ Mushtaq, Muhammad, and Muhammad Munir Kayani. (2013). "Exploring the factors causing aggression and violence among students and its impact on our social attitude." *Educational Research International* 2 (1): 10-18.

position than women. An understanding like the one above perpetuates acts of domestic violence against women, if it is straightened out with a more appropriate interpretation then justice is the spirit of Islam. The perpetrator's desire to take out revenge against the victim's attitudes, words and behavior which are considered hurtful and detrimental. From the several factors described above, communication issues are also very important. The division of social roles between men and women causes injustice, one of which is violence against women. Apart from that, domestic violence also occurs because of the customs and assumptions of society which consider that men are in a superior position so that women must submit to men, because the husband is seen as the owner of power, the husband is the breadwinner and fulfills needs, so they feel have more rights over his children and wife. However, basically it is a lack of faith and awareness of peace and love.¹⁵

Basically, the term physical violence is not found in Islamic law. Physical violence is a criminal act (jarimah) and a criminal act against other than the soul in Islamic criminal law.¹⁶ A criminal act other than the soul, as stated by Abdul Kadir Audah, is any act of harming another person that affects their body, but not to the point of taking their life¹⁷ whereas according to Wahbah Suhail, a criminal act other than the soul is any unlawful act against the soul. human body, whether in the form of cutting limbs, wounds, or beatings while the soul or life and life remains undisturbed.¹⁸ The essence of the elements of criminal offenses other than life or acts of abuse, as stated in the definition above, is an act of harm, namely any type of offense that hurts or damages human body parts, such as wounding, beating, strangulation, cutting and sticking.¹⁹ Islam has detailed legal provisions regarding the classification of types of crimes (violence) committed and legal sanctions imposed on perpetrators of violence or crimes.²⁰ One example of the detailed nature of Islamic Law in dealing with violence or crime is the many classifications of fines and victims' body organs that are the object of violence. For every eyeball

¹⁵ Alisah, Siti. (2019). "Kekerasan Dalam Rumah Tangga (Kdrt) Dalam Perspektif Hukum Islam." *Jurnal De Jure Muhammadiyah Cirebon* 3 (2): 1-12.

¹⁶ Sanuri, Sanuri. (2011). "Morality issues in The Islamic Criminal Law and The Indonesian Criminal Code Draft under The Perspective of Maqasid al Shariah." *Al Daulah: Jurnal Hukum dan Perundangan Islam* 11 (1): 75-101.

¹⁷ Shiffrin, Seana Valentine. (1999). "Wrongful life, procreative responsibility, and the significance of harm." *Legal Theory* 5 (2): 117-148.

¹⁸ Faaza, Rahma Nindita Nurul. (2022). "Juridical Analysis of Death Criminal Sanctions against Criminal Acts of Corruption in Indonesia And According to Islamic Criminal Law." In *Proceeding of International Conference on The Law Development for Public Welfare*, 2 (1), 50-66.

¹⁹ Sukardi, Didi. (2015). "Kajian kekerasan rumah tangga dalam perspektif hukum islam dan hukum positif." *Mahkamah: Jurnal Kajian Hukum Islam* 9 (1).

²⁰ Hossain, Md Shahadat. (2013). "Arbitration in Islamic law for the treatment of civil and criminal cases: An analytical overview." *Journal of Philosophy, Culture and Religion* 1, (5): 1-13.

that is hurt there is a fine of 50 camels, and for every toe and hand that is hurt there is a fine of 10 camels.²¹ This proves that Islam regulates the legal provisions regarding violence or crime in detail.

Fuqaha divides criminal acts (jarimah) against humans into three parts; A crime against the soul absolutely. Included in this section are criminal acts that damage the soul, namely murder of various kinds. Criminal acts involving other than life absolutely. Included in this section are criminal acts that touch human body parts but do not take life, namely beatings and wounds (mistreatment). Criminal acts against the soul on the one hand and not the soul on the other hand, namely criminal acts against the fetus. On the one hand, the fetus is considered a soul (animate) but on the other hand it is not considered a soul. It is considered a soul because it is a human child, but it is not considered a soul because the fetus has not been separated from its mother.²² The fuqaha divide crimes other than life, both intentional and unintentional, into five parts. This division is based on the consequences of the perpetrator's actions. These divisions are; Separating limbs or something similar, eliminating the benefits of the limbs, but the limbs remain, Injuring the head and face (syajjaj), injuries other than the head and face (aljirah), and injuries that are not included in the previous four types.²³

The punishment for perpetrators of crimes other than life is: The basic punishment is qishas. Qishas in the linguistic sense comes from the word which means tracing traces. The opinion of the Malikiyah ulama, according to him, is that perpetrators of criminal acts of abuse must still be subject to qishas punishment, especially abuse (al-jarh) that is carried out intentionally as long as it is possible to carry it out in exactly the same way as the convict did and there is no fear that it will result in the death of the perpetrator. Another punishment is Takzir. Imam Malik is of the opinion that the perpetrator of a criminal act of intentional abuse has the right to be punished, whether he has the right to qishas or not, because there are obstacles to qishas, forgiveness or a peace agreement. prevent, deter and deter everyone from committing criminal acts.²⁴ When the qishas penalty cannot be applied, the obligation to pay diat is a form of protection for crime victims, besides that it is also a form of substitute punishment because of the principle of forgiveness which is highly recommended or emphasized in the Al-Qur'an and

²¹ El Fadl, Khaled Abou. (2017). "Islamic Law, Jihad and Violence." *UCLA J. Islamic & Near EL* 16: 1.

²² Yasir, Moh, Joko Widodo, and Ali Ashar. (2022). "Islamic Law and National Law (Comparative Study of Islamic Criminal Law and Indonesian Criminal Law)." *Al Hurriyah: Jurnal Hukum Islam* 6, (2): 167-181.

²³ Bergelson, Vera. (2005). "Victims and perpetrators: An argument for comparative liability in criminal law." *Buffalo Criminal Law Review* 8, (2): 385-487.

²⁴ Sandberg, Sveinung, and Thomas Ugelvik. (2017). "Why do offenders tape their crimes? Crime and punishment in the age of the selfie." *British Journal of Criminology* 57, (5): 1023-1040.

Sunnah.²⁵ Apart from what has been described above, there are still more specific ways of resolving Islamic law to deal with cases of violence within the family, namely talak and talaq for ransom (khulu). Based on this divorce, the District Court showed its support for parties in conflict in divorce cases which contain elements of domestic violence, to be willing to end the case peacefully (mediation). So, the District Court always tries and proposes peace efforts in every divorce case trial process.²⁶ This peace effort is an opportunity for parties in conflict, especially domestic violence, to rebuild marital relationships that were broken before the divorce decision was finally handed down by the judge.

4. Conclusion

Violence can happen to anyone, including mothers, fathers, husbands, wives, children or household servants. However, in general the definition of domestic violence is narrowed to mean abuse by a husband against his wife. It cannot be denied that most domestic violence victims are women. Based on the definitions above, it can be concluded that all acts of domestic violence are acts that violate human rights which can be subject to criminal and civil law sanctions. Apart from that, forms of violence that occur in a household, such as beating a wife by a husband, are things that are very difficult to reveal because the issue is considered a private matter. This is also due to the existence of legitimacy that justifies a husband to beat his wife because she is disobedient. So widely among Muslims there is a belief that a husband has the right to beat his wife and sometimes a husband feels that he has not committed an act of violence, while the wife feels that this is an act of violence, namely psychological violence or economic violence.

References

Adams, Adrienne E., and Marisa L. Beeble. Intimate partner violence and psychological well-being: Examining the effect of economic abuse on women's quality of life. *Psychology of Violence* Vol 9, no. 5 (2019): 517.

Alisah, Siti. Kekerasan Dalam Rumah Tangga (Kdrt) Dalam Perspektif Hukum Islam. *Jurnal De Jure Muhammadiyah Cirebon* Vol 3, no. 2 (2019): 1-12.

²⁵ Jamaa, La. (2013). "Kekerasan Dalam Rumah Tangga Perspektif Fikih." *Ahkam Journal of Sharia* 13, (1): 12380.

²⁶ Triana, Nita. "Progressivity of Judges in Domestic Violence Disputes Settlement in The Case of Divorce in The Religious Court. (2018). "*Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 2, (1): 1-29.

Alnizar, Fariz, Amir Ma'ruf, and Fadlil Munawwar Manshur. The Language of Fatwa: Understanding Linguistic Violence in the Indonesian Ulama Council's Fatwa on Ahmadiyah. *AHKAM: Jurnal Ilmu Syariah* Vol 21, no. 1 (2021).

Ambrosetti, Elena, Nisrin Abu Amara, and Stephanie Condon. Gender-based violence in Egypt: Analyzing impacts of political reforms, social, and demographic change. *Violence against women* Vol 19, no. 3 (2013): 400-421.

Aziz, Abdul. Islam Dan Kekerasan Dalam Rumah Tangga. *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* Vol 16, no. 1 (2017): 177-196.

Bergelson, Vera. Victims and perpetrators: An argument for comparative liability in criminal law. *Buffalo Criminal Law Review* Vol 8, no. 2 (2005): 385-487.

El Fadl, Khaled Abou. Islamic Law, Jihad and Violence. *UCLA J. Islamic & Near EL* 16 (2017): 1.

Faaza, Rahma Nindita Nurul. Juridical Analysis of Death Criminal Sanctions against Criminal Acts of Corruption in Indonesia And According to Islamic Criminal Law. In *Proceeding of International Conference on The Law Development for Public Welfare*, vol 2, no. 1, pp. 50-66. 2022.

Hamdani, Hamdani, and Sri Wahyuni. Islamic Criminal Law Response on Physical Violence in the Household on Law No. 23 of 2004. *GIC Proceeding* 1 (2023): 380-386.

Hossain, Md Shahadat. Arbitration in Islamic law for the treatment of civil and criminal cases: An analytical overview. *Journal of Philosophy, Culture and Religion* Vol 1, no. 5 (2013): 1-13.

Imam-Tamim, Muhammad Kamaldeen. Islamic Law Perspective on Emerging Issues from Legal Frameworks on Domestic Violence in Nigeria. In *Promoting Efficiency in Jurisprudence and Constitutional Development in Africa*, pp. 119-148. Cham: Springer International Publishing, 2022.

Jamaa, La. Kekerasan Dalam Rumah Tangga Perspektif Fikih. *Ahkam Journal of Sharia* Vol 13, no. 1 (2013): 12380.

Mushtaq, Muhammad, and Muhammad Munir Kayani. Exploring the factors causing aggression and violence among students and its impact on our social attitude. *Educational Research International* Vol 2, no. 1 (2013): 10-18.

Okoli, Chitu, and Kira Schabram. A guide to conducting a systematic literature review of information systems research. (2015).

Perbandingan, Kajian. The definition of domestic violence in Malaysia: A cross-national comparison. *Akademika* Vol 88, no. 3 (2018): 77-89.

Pilerot, Ola, Björn Hammarfelt, and Camilla Moring. The many faces of practice theory in library and information studies. *Information Research* Vol 22, no. 1 (2017).

Putra, Haris Maiza, and Hisam Ahyani. Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia. *Jurnal Ilmiah Al-Syir'ah* Vol 20, no. 1 (2022): 68-90.

Rizal, Muhammad, and Fathul Djannah. Impact of violence against children in the family related to Law Number 23-year 2004 concerning deletion of violence in household. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* Vol 3, no. 1 (2020): 348-358.

Sandberg, Sveinung, and Thomas Ugelvik. Why do offenders tape their crimes? Crime and punishment in the age of the selfie. *British Journal of Criminology* Vol 57, no. 5 (2017): 1023-1040.

Sanuri, Sanuri. Morality issues in The Islamic Criminal Law and The Indonesian Criminal Code Draft under The Perspective of Maqasid al Shariah. *Al Daulah: Jurnal Hukum dan Perundangan Islam* Vol 11, no. 1 (2011): 75-101.

Shiffrin, Seana Valentine. Wrongful life, procreative responsibility, and the significance of harm. *Legal Theory* Vol 5, no. 2 (1999): 117-148.

Sukardi, Didi. Kajian kekerasan rumah tangga dalam perspektif hukum islam dan hukum positif. *Mahkamah: Jurnal Kajian Hukum Islam* Vol 9, no. 1 (2015).

Syawqi, Abdul Haq. Hukum Islam Dan Kekerasan Dalam Rumah Tangga. *De Jure: Jurnal Hukum dan Syar'iah* Vol 7, no. 1 (2015): 68-77.

Triana, Nita. Progressivity of Judges in Domestic Violence Disputes Settlement in The Case of Divorce in The Religious Court. *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* Vol 2, no. 1 (2018): 1-29.

Yasir, Moh, Joko Widodo, and Ali Ashar. Islamic Law and National Law (Comparative Study of Islamic Criminal Law and Indonesian Criminal Law). *Al Hurriyah: Jurnal Hukum Islam* Vol 6, no. 2 (2022): 167-181.