

Handling Domestic Violence from the Perspective of Islamic Law and Positive Law in Indonesia

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ABSTRACT

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The increasing problem of domestic violence has triggered a conflict between the implementation of the Law on the Elimination of Domestic Violence and Islamic values. Differences in interpretation and patriarchal culture hinder law enforcement, making it difficult for victims to obtain adequate protection. Therefore, this study aims to examine the principles of justice, gender equality, and feminist theory using a normative legal method by comparing positive law and Islamic law, as well as a conceptual legislative approach. The data used include primary legal materials, namely the Law on the Elimination of Domestic Violence, the Qur'an, and Hadith, secondary legal materials, including literature and journals, as well as tertiary sources collected through a literature review and analyzed qualitatively. The results showed that domestic violence against women is a violation of human rights, currently recognized as a significant crime through the Law on the Elimination of Domestic Violence. This law provides legal protection for victims and sanctions for perpetrators. Gender-based violence rooted in patriarchal culture perpetuates social inequality and discrimination against women. Islam and feminism make significant contributions by emphasizing the values of equality, justice, and respect in domestic relationships. The synergy between positive law, religious values, and feminist theory can be a strategic step toward eliminating violence and creating a more inclusive society.

Introduction

Domestic violence (KDRT) is a social problem that continues to be a major challenge in Indonesia,¹ This led to the creation or ratification of a law regulating domestic violence, namely the PKDRT Law. Although Indonesia already has a law that states domestic violence, namely the PKDRT Law, as a Muslim majority country, an understanding of Islamic law is needed to regulate it. This can be seen that there is a gap between positive law and Islamic law. With this study, it analyzes the implementation of positive law and Islamic law, whether it can be in line with the elimination of acts of domestic violence in Indonesia. Based on data from the National Commission on Violence Against Women, cases of violence against women, including domestic violence, show a significant increase from year to year, but in 2023 there was a decline. In the 2022 annual report, more than 401,957 were recorded, and in 2023 there were 457,895 acts of violence against women, most of which occurred in the family environment.² The phenomenon of domestic violence refers to acts of violence committed against a person, especially against women who are generally wives, which includes

¹ Martitah Martitah et al., "Insufficient Criminal Justice System Response to the Severity of Domestic Violence during the Pandemic in Indonesia," *Heliyon* 10, no. 14 (2024), <https://doi.org/10.1016/j.heliyon.2024.e33719>.

² Tina Susilawati, "Komnas Perempuan Catat 401.975 Kasus Kekerasan Sepanjang 2023," *detiknews*, 2024.

"Men (husbands) are protectors of women (wives), because Allah has preferred some of them (men) over others (women), and because they (men) have provided support from their wealth. So pious women are those who obey (Allah) and take care of themselves when (their husbands) are not around, because Allah has taken care of (them). For women who you are worried about nusyuz, you should advise them, leave them in bed (separate beds), and (if necessary) beat them. But if they obey you, then don't look for reasons to trouble them. Indeed, Allah is Most High, Most Great." (QS An-Nisa: 34)⁸

The book of Sahih Muslim, based on the history of the friend Jabir, from the Prophet, that the Prophet once said in his farewell pilgrimage:

ضَرْبًا فَاصْرَبُواهُنَّ فَعَلْنَ فَإِنْ تَكَرَّهْنَهُ أَحَدًا فُرِّشْكُمْ وَطِينٌ وَيُيَّ أَلَا عَلَيْهِنَّ وَلَكُمْ، عَوَانٌ عِنْدَكُمْ فَإِنَّهُنَّ، النَّسَاءِ فِي اللَّهِ وَاتَّقُوا
بِالْمَعْرُوفِ وَكَسَوْتِهِنَّ رِزْقُهُنَّ وَلَهُنَّ، مُبْرَحَ عَيْرٍ

"Be fearful of Allah in matters of women, because indeed those by your side are your helpers, and you have a right over them, namely that they must not allow someone you don't like to step on your expanse. And if they do, then hit them with blows that do not cause injury, and for them there is a right to receive sustenance (living) and clothing in a decent way."⁹

From the quote above, it is known that Islam strongly opposes acts of domestic violence and upholds the values of justice within the family. This is in line with the concept of justice that is put forward in legal theory, such as the feminist theory by Simone de Beauvoir which highlights gender injustice.¹⁰ can be a basis for understanding equality in the context of the household. This is relevant to the concept of equality in Islam which teaches husband and wife relations based on the principle of mutual respect and protection. However, the application of Islamic values in cases of domestic violence is often hampered by differences in interpretation among the community and law enforcement. This difference creates a gap in handling domestic violence cases, where perpetrators often manipulate religious teachings to justify forms of violence, while victims often find it difficult to get proper protection. In fact, Islam clearly opposes all forms of violence and emphasizes the importance of affection in family relationships.

In reality, domestic violence, especially that committed by the head of the family or husband against his wife, often goes unnoticed because it occurs in a private space or a closed family environment. Such actions are often considered normal because the husband is considered to have the right to treat his wife according to his wishes as the head of the household, which causes violence against wives to be considered legitimate in marriage over time.¹¹ Various factors trigger domestic violence, one of which is the patriarchal cultural system, namely a system that places the role of men as the highest authority, while women are considered the weaker or lower party.¹² In addition, the implementation of the Domestic Violence Law and Islamic law still faces various obstacles, such as the lack of public understanding of the law, lack of support for victims, and obstacles in the legal process itself.

⁸ Abdul Aziz Abdul Rauf, *AL-QUR'ANul Karim Al-Hafizh* (Indonesia: Cordoba, 2020).

⁹ Kartinah Taheer, "Ta'dib Suami Terhadap Istri (Tafsir QS. An-Nisa' Ayat 34)," *suara mubalighah*, 2022.

¹⁰ Aisyah Chairil and Henri Shalahuddin, "Studi Kritis Feminist Legal Theory Menurut Perspektif Islamic Worldview," *Mimbar Hukum* 33, no. 1 (2021): 188–215, <https://doi.org/10.22146/mh.v33i1.1948>.

¹¹ Andriani Adnani, "Penegakan Hukum Terhadap Tindak Kekerasan Psikis Dalam Rumah Tangga," *Ensiklopedia of Journal* 5, no. 2 (2023): 9–19.

¹² Arie Dyah Astuti, Endang Sri Indrawati, and Tri Puji Astuti, "Hubungan Antara Kemandirian Dengan Sikap Terhadap Kekerasan Suami Pada Istri Yang Bekerja Di Kelurahan Sampangan Kota Semarang," *Psikologi Universitas Diponegoro* 3, no. 1 (2006): 45–54.

As explained in a similar study on domestic violence by Ihsan Nasrudiansyah and Adudin Alijaya (2023) in the MIM journal: Journal of Islamic Law Studies entitled "Legal study of Law No. 23 of 2004 concerning the Elimination of Domestic Violence reviewed based on Islamic law"¹³ The main topic of discussion is analyzing Law No. 23 of 2004 concerning the Elimination of Domestic Violence from the perspective of Islamic law. However, the journal does not discuss further and analyze its implementation and does not include legal theories such as the theory of justice, gender and feminism in the study, so this is a renewal or novelty in this study. This study aims to analyze the provisions in UUPKDRT as a positive legal basis in handling cases of domestic violence, as well as to examine the hadith and verses of the Qur'an that are relevant to understanding the views of Islamic law regarding violence and the principle of equality. In addition, this study also aims to assess the relationship between Islamic law and positive law from a feminist perspective, especially in efforts to create protection for victims of violence based on the principles of justice and gender equality. And this study seeks to compare and analyze the similarities and differences between positive law and Islamic law in handling domestic violence, with the aim of identifying potential integration that can strengthen legal policy in Indonesia.

Research Methods

This study uses normative research because its main focus is to analyze and compare positive law and Islamic law. The approach used includes a legislative approach, to analyze provisions in acts of violence and their normative relevance. In Islamic law, conceptual approaches to understanding the principle of justice in legal theory such as the feminist theory by Simone de Beauvoir, as well as the concept of equality in Islam. This study uses secondary data consisting of primary legal materials, such as the text of the UUPKDRT, the Qur'an, Hadith, and other Islamic legal documents; secondary legal materials, such as literature, journals, scientific articles, and books that discuss the theory of justice, Islamic law, and the UUPKDRT; and tertiary legal materials, such as legal dictionaries, encyclopedias, and indexes that support the analysis of primary and secondary legal materials. Data were collected through literature studies, which involved collecting legal documents, academic literature, and other reference sources relevant to this study, as well as document analysis that included a study of legal texts, fatwas, and interpretations of the Qur'an to understand the principles of justice from an Islamic legal perspective. The data obtained were analyzed qualitatively.

Results and Discussion

1. Relevance and Comparison of Islamic Law with Positive Law in Handling Domestic Violence

Violence against women is any act committed against women, which has the potential to cause physical, psychological or sexual suffering.¹⁴ Violence is a serious issue that not only violates human rights but also has negative impacts on the health and well-being of women and children. Various studies, including those published by the World Health Organization,

¹³ Ihsan Nasrudiansyah and Adudin Alijaya, "Kajian Yuridis Undang-Undang No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Ditinjau Berdasarkan Hukum Islam," *Ihsan Nasrudiansyah & Adudin Alijaya: Kajian Yuridis Undang-Undang* 01, no. 23 (2023): 39-64.

¹⁴ Alhakim Abdurrahman, "Kekerasan Terhadap Perempuan: Suatu Kajian Perlindungan Berdasarkan Hukum Positif Di Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 115-22.

show that women who are victims of violence.¹⁵ Violence against women often occurs in the family environment, with women being victims of various forms of violence by men. Violence within the family has become a hot case that is widespread in various societies, from the lower to the upper classes. Domestic violence includes acts that cause sexual, psychological, physical suffering, and neglect, including threats to commit acts of violence, coercion, or illegal deprivation of liberty in the context of the household.¹⁶ Tohardn in the household not only has profound physical and psychological impacts on the victims, but also hinders women's full participation in the economic and social spheres.¹⁷

At that time, various cases of violence against wives were increasingly rampant, but were only considered domestic problems, meaning that the state was not allowed to intervene in the private affairs of its citizens. In other words, although cases of violence in the family were very serious, the resolution had to be carried out by the family without protection from the state.¹⁸ This results in domestic violence not being viewed as a legal event, but as part of the dynamics of marriage. This causes individuals who are victims of violence from their family members not to receive the right to protection from the state and society. The absence of legal protection systematically makes domestic violence considered as normal and accepted behavior.¹⁹ More than 600 million women live in countries where domestic violence is not recognized as a crime and in 53 countries marital rape is not a form of violence.²⁰ In Islamic teachings, if a husband misbehaves with his wife, such as hurting or hitting her without a valid reason, then the authorities must stop the act, as explained in the explanation of the *Tatimmah* book. If the husband continues to repeat his actions, the government is obliged to provide strict sanctions as a form of appropriate action.²¹

Many cases of domestic violence in Indonesia were not covered by criminal penalties. Many wives suffered both physically and psychologically due to the abuse of their husbands, but violence against women in the family was not regulated in the Criminal Code, so cases like this rarely appeared in court. The Criminal Code did not yet have specific provisions regulating violence against women, especially in the family environment. This was because the relationship between the perpetrator and the victim (husband and wife) was considered inadequate if only regulated in the article on abuse in the Criminal Code.²²

Based on this, seeing the rampant domestic violence in Indonesia at that time, as well as the inadequacy of Article 89 of the Criminal Code and the international agreement CEDAW, this problem has increasingly developed into a more complex issue and is difficult to reach by these articles. In response to this case, a draft law related to domestic violence was drafted based on the Convention on the Elimination of All Forms of Discrimination

¹⁵ Claudia García-moreno and Avni Amin, "The Sustainable Development Goals , Violence and Women ' s and Children ' s Health," no. February (2016): 396-97.

¹⁶ Zainudin Hasan et al., "Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Dalam Rumah Tangga."

¹⁷ Pilar Guaita-Fernández et al., "Analysis of Gender-Based Violence in the Context of the Sustainable Development Goals," *Sustainable Development*, no. August 2023 (2024): 4946-58, <https://doi.org/10.1002/sd.2940>.

¹⁸ Moh. Fahril Tuluki, Dian Ekawaty Ismail, and Julisa Aprilia Kaluku, "Penanggulangan Tindak Pidana Kekerasan Dalam Rumah Tangga," *Jurnal Hukum EGALITAIRE* 1, no. 2 (2023): 219-35, <https://doi.org/10.25072/jwy.v4i1.315>.

¹⁹ Hesti Juli Yanti and Adang Muhamad Nasrallah, "The Problem of Domestic Violence in Indonesia and Effort to Overcome It," *Mawaddah: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024): 125-39.

²⁰ Guaita-Fernández et al., "Analysis of Gender-Based Violence in the Context of the Sustainable Development Goals."

²¹ Imroatus Sa'adah, "KDRT Dalam Prespektif Hadis Imroatus Sa'adah," *El-Nubuwwah : Jurnal Study Hadis* 1, no. 1 (2023): 105-21.

²² Yusuf Saefudin et al., "Police and Law Enforcement of Domestic Violence Crimes Based on Human Rights in Indonesia," *Khazanah Hukum* 6, no. 2 (2024): 134-44, <https://doi.org/10.15575/kh.v6i2.34357>.

Against Women (CEDAW), although this agreement was previously less effective. This draft law was submitted by the Indonesian House of Representatives and then revised by the Minister of Women's Empowerment with the title "Protection of Victims of Domestic Violence." The process of drafting this law underwent several changes, starting with the title "Draft Law Against Domestic Violence," which was then changed to "Draft Law Against Domestic Violence." After going through discussions in the House of Representatives, the draft law finally changed to "Draft Law Against Domestic Violence" and on September 22, 2004, it was finally officially passed into law.

The law in question is UUPKDRT, which is a government policy to protect women's rights. So far, women who are victims of Domestic Violence (KDRT) are often trapped in a misconception regarding religion and culture.²³ After the enactment of the Law on the Elimination of Domestic Violence in 2004, there was a significant change in the way domestic violence issues were handled in Indonesia.²⁴ This law not only provides a firm legal basis, but also confirms that domestic violence is a serious violation of human rights that can no longer be considered a private matter or a family matter. The state must be involved because the incident has violated human rights in it.

This law is based on several important considerations, namely: First, that every woman has the right to feel comfortable and free from all forms of violence by her husband. Second, that all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity and a form of discrimination that must be eliminated. Third, it states that victims of domestic violence, most of whom are women, must have protection from the state and society to avoid and be free from all forms of violence or threats of violence, torture, or treatment that degrades human dignity and dignity. Fourth, that in cases of domestic violence, it often occurs, while the Indonesian legal system has not recorded any protection for victims of violence in the family environment.²⁵

This is as explained in Article 15 of the UUPKDRT which states that "everyone who hears, sees, or knows that domestic violence has occurred is obliged to make efforts according to the limits of his/her ability to: prevent the crime from taking place, provide protection to the victim, provide emergency assistance, and assist in the process of submitting an application for a protection determination." And also, Article 26 also states that victims have the right to report all forms of domestic violence directly to the police, either at the victim's location or at the scene of the incident. In addition, victims can also give power of attorney to family or others to report domestic violence to the police, either at the victim's location or at the scene of the incident. In this case, the UUPKDRT has regulated a number of rights that victims have, which can be used as a basis for demanding accountability from the perpetrator, as stated in Article 10, namely:

- a. protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a protection order issued by the court.
- b. health services according to medical needs;

²³ Emilda Firdaus, "Implementasi Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Di Kota Batam," *Jurnal Hukum Ius Quia Iustum* 21, no. 1 (2014): 139-54, <https://doi.org/10.20885/iustum.vol21.iss1.art8>.

²⁴ Khairani, *Pembentukan Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga Dan Urgensinya Untuk Ketahanan Keluarga*, ed. Muhammad Maulana (banda aceh: LEMBAGA KAJIAN KONSTITUSI INDONESIA (LKKI), 2021).

²⁵ Abdul Haq Syawq, "Hukum Islam Dan Kekerasan Dalam Rumah Tangga," *De Jure: Jurnal Syariah Dan Hukum* 7, no. 1 (2015): 68-77.

- c. special handling related to victim confidentiality;
- d. assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations; and
- e. spiritual guidance services.

Article 16 also regulates in detail the protection for victims, which requires the police to provide protection within 1 x 24 hours after being given a report of domestic violence. This protection is given for a maximum of 7 days from when the victim is received or handled. In addition, within 1 x 24 hours after providing protection, the police are required to submit an application for a protection determination letter from the court.²⁶ The article states that victims need psychological support and rehabilitation to help them recover from the trauma they experienced due to violence. Psychological support aims to restore the emotional and mental condition of victims so that they can return to living a normal life.

As stated in Law No. 23 of 2004 concerning the Elimination of Domestic Violence, there are provisions for sanctions for perpetrators (husbands) who commit serious abuse against victims (wives), which are explained in detail in Article 44 concerning the Policy related to the type of criminal sanctions (strafsort) and the length of the sentence (strafmaat) focusing on the application of criminal sanctions (strafmodus), which involves a rehabilitation approach (treatment) and the institutional system applied in the implementation of the sentence. The emphasis on this underlines the importance of collaboration between legal and rehabilitation aspects to provide a deterrent effect on perpetrators while ensuring protection of the rights of victims of violence.²⁷

The implementation of UUPKDRT adopts an alternative approach that includes the threat of fines or imprisonment. This approach is regulated in Chapter VIII, which includes Article 44 (for physical violence), Article 45 (for psychological violence), Article 46, Article 47, and Article 48 (for sexual violence), and Article 49 (for neglect). Article 44 of the Law on the Elimination of Domestic Violence specifically regulates:²⁸

- 1) Any person who commits an act of physical violence within the scope of the household as referred to in Article 5 letter a, shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of IDR 15,000,000.
- 2) In the event that the act as referred to in paragraph (1) results in the victim falling ill or suffering serious injury, the penalty shall be a maximum of 10 years imprisonment or a maximum fine of IDR 30,000,000.
- 3) If the act as referred to in paragraph (2) results in the death of the victim, the punishment shall be a maximum of 15 years imprisonment or a maximum fine of IDR 45,000,000.
- 4) In the case of acts as referred to in paragraph (1) committed by a husband against his wife or vice versa which do not cause illness or obstacles to carrying out work or daily livelihood or activities, the punishment shall be a maximum prison sentence.²⁹

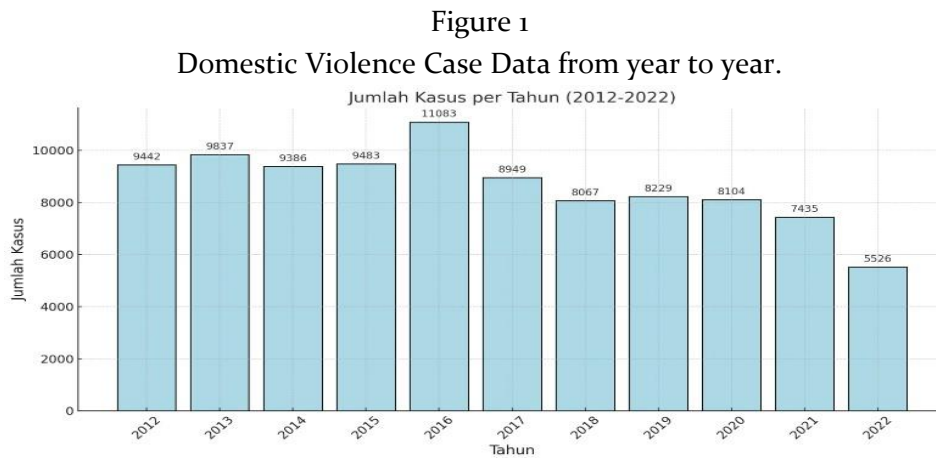
²⁶ Josua Otniel Sondakh Walangitan, "Sanksi Pidana Dalam Pemberantasan Tindak Pidana Kekerasan Rumah Tangga Yang Dilakukan Suami Pada Istri," *Lex Privatum* 8, no. 1 (2020): 78–85.

²⁷ Josua Satria Collins, "Pembahasan RUU PKS: Menilik Proses Dan Permasalahan Legislasi," *IJRS; Indonesia Judicial Research Society*, 2023.

²⁸ Muhamad Kurniawan, Mustofa Kamil, and Putri Hafidati, "Sanksi Hukum Terhadap Pelaku Tindak Pidana Kekerasan Dalam Rumah Tangga Yang Dilakukan Suami Terhadap Istri Studi Kasus Putusan Hakim Nomor: 1914/Pid.Sus/2020/PN Tng," *Jurnal Pemandhu* 4, no. 2 (2023): 97–112.

²⁹ Kurniawan, Kamil, and Hafidati.

With the sanctions given to perpetrators of domestic violence in Indonesia, based on data from the Central Statistics Agency (BPS), there has been a significant decline in the effectiveness of positive laws on domestic violence in Indonesia. The following is a diagram of the level of domestic violence cases in Indonesia:³⁰



Source: Central Statistics Agency (BPS) | DataIndonesia.id

Judging from the data, although almost twenty years have passed since the enactment of the Law on the Elimination of Domestic Violence (UUPKDRT) which is accompanied by sanctions for perpetrators, the number of domestic violence (KDRT) in Indonesia is still relatively high. This can be seen from the continuing occurrence of domestic violence cases every year, although there has been a significant decline in recent years. Also, this decline shows that law enforcement efforts and increasing public awareness are starting to have a positive impact. However, cases of domestic violence still require more serious attention so that they can be fully resolved.

As a Muslim majority, understanding Domestic Violence (DV) should not only be seen from the positive legal perspective, but also from the perspective of Islamic law. However, unfortunately there are still many misunderstandings regarding Islamic teachings regarding DV. This misunderstanding is often used as an excuse to justify acts of violence, by assuming that the wife must always submit to her husband. In fact, in Islam, the relationship between husband and wife must be based on the principles of love, mutual respect, and justice. Islam firmly opposes all forms of violence, including those that occur in the household.³¹

Islam does not explicitly recognize the term or definition of domestic violence (DV). However, in Islamic teachings, Allah desires that family life be filled with love, peace, and a sense of security. Thus, a household that is hit by violence, whether caused by quarrels, disputes, or other factors, is not justified. Islam, as a religion that prioritizes the values of *maslahah* (goodness) and not *kemafshadatan* (damage), certainly has its own perspective on the problem of domestic violence. Ultimately, perpetrators of domestic violence must be faced with firm action and punished according to Islamic law.³² Islamic teachings strictly prohibit all forms of domestic violence, which is emphasized through various verses of the Qur'an and hadith. Islam requires husbands to treat their wives well and with respect

³⁰ febriana sulistya Pratiwi, "Data Jumlah Kasus KDRT Di Indonesia Pada 2022," DataIndonesia, 2023.

³¹ Intan Nuraeni and Tajul Arifin, "Kekerasan Rumah Tangga Dalam Perspektif Hadits Riwayat Abu Dawud Dan Pasal 5 UU Nomor 23 Tahun 2004," *Tashdiq: Jurnal Kajian Agama Dan Dakwah* 4, no. 1 (2024): 1-13.

³² Nasrudiansyah and Alijaya, "Kajian Yuridis Undang-Undang No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Ditinjau Berdasarkan Hukum Islam."

(mu'asyarah bil ma'ruf). This is reflected in the word of Allah SWT, especially in QS An-Nisa verse (34) which states:

“Men (husbands) are protectors of women (wives), because Allah has preferred some of them (men) over others (women), and because they (men) have provided support from their wealth. So pious women are those who obey (Allah) and take care of themselves when (their husbands) are not around, because Allah has taken care of (them). For women who you are worried about nusyuz, you should advise them, leave them in bed (separate beds), and (if necessary) beat them. But if they obey you, then don't look for reasons to trouble them. Indeed, Allah is Most High, Most Great.” (QS An-Nisa: 34)³³

This verse was revealed in response to problems that arose from the Companion of Sa'ad ibn Rābi', who beat his wife, Ḥabībah bint Zayd ibn Khārijah ibn Abī Zuhayr, because he was considered disobedient. Ḥabībah's father did not accept this treatment and reported it to Rasulullah SAW, saying, "How humiliated I am, because my son's husband has slapped him in the face." Rasulullah SAW also said, "Revenge!" However, before Ḥabībah could respond to the slap, the verse in question came down. Rasulullah SAW's decision to allow Ḥabībah to retaliate against her husband's actions received protests from men in Medina. This reflects how strong male dominance was at that time, especially in the context of husband-wife relationships.³⁴

The verse emphasizes that Domestic Violence (DV) is contrary to the basic principles of husband-wife relations in Islam. This verse emphasizes the role of the husband as a protector (qawwam) for his wife, which is manifested in the responsibility to provide a living, maintain honor, and lead the household with justice.³⁵ The emphasis on the differences in rights given to men is not intended to show dominance, but rather to create balance in carrying out roles and responsibilities in the household. Asbabun nuzul from verse (34) of Surah Al-Nisa' tells the story of Habibah binti Zaid who complained about the treatment of her husband, Sa'ad ibn Abi Rabi', who had beaten her to the Prophet Muhammad SAW. The Messenger of Allah then ordered that qishash be carried out, but before that was carried out, the verse was revealed which then canceled the implementation of qishash. Finally, Habibah went home without seeking revenge. This verse provides guidance on the right way to educate a wife.³⁶

This view is in line with the opinion of Asghar Ali Engineer, who stated that the verse only applies in the household realm. According to him, normatively, the Qur'an does place men in a more superior position than women.³⁷ However, the Qur'an does not assume or stipulate that social structures are fixed or normative. Social structures are dynamic and always changing. In situations where women are the main breadwinners in the family or work with men, then women will be in an equal position, or even more superior, than men, and hold a dominant role in the family as is usually done by men.³⁸ Not only is it in verse (34),

³³ "Al-Qur'an Digital," Merdeka.Com, 2022, <https://www.merdeka.com/quran/az-zukhruf/ayat-32>.

³⁴ La Jamaa, "Kekerasan Dalam Rumah Tangga Perspektif Fikih," *AHKAM : Jurnal Ilmu Syariah* 13, no. 1 (2013): 65–80, <https://doi.org/10.15408/ajis.v13i1.952>.

³⁵ Muhammad Yaufi Nur Mutiullah, "Reinterpretation Meaning of Qiwama in Surah An-Nisa' Verse 34 Perspective Hermeneutics of Khaled M . Abou El-Fadl," *Prosiding Konferensi Nasional Gender Dan Gerakan Sosial* 01, no. 01 (2022): 193–209.

³⁶ Alvian Bhakti Pamungkas and Nabila Thyra Janitra, "Analisis Isu Afirmasi KDRT Dalam Islam : Kajian Surat An-Nisa' Ayat 34, 35 Dan 128" 7, no. 4 (2024): 426–39, <https://doi.org/10.31943/afkarjournal.v7i4.1225>. Analysis.

³⁷ Doni Pratama and Ulfi Maulinda Hanum, "Kesadaran Gender Dalam Konteks Perguruan Tinggi : Kajian Kritis Atas Pemikiran Asghar Ali Engineer," *Journal Exact: Mahasiswa Dan Gender* 2, no. 2 (2024): 98–109.

³⁸ Sayyid Muhammad Husain, *At-Tabataba'i, Al-Mizan Fi at-Tafsir, Jilid IV*, jilid IV (Lebanon: al-alami, n.d.).

there is also verse (19) which further emphasizes the prohibition of domestic violence, which states:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضَلُوهُنَّ لِيَتَّخِذْنَ مِنْكُمْ سَعْيَةً وَلَا تَعْلُوهُنَّ لِيَكُنَّ مِنَ الْغَالِبِينَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبِينَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

"O believers! It is not lawful for you to inherit women by force and do not give them trouble because they want to take back part of what you have given them, unless they commit a truly heinous act. And associate with them in an appropriate manner. If you don't like them, (then be patient) because it may be that you don't like something, even though Allah has made it a lot of good."(QS An-Nisa: 19)³⁹

This verse emphasizes the need to interact with women in a good and wise manner. In a marriage relationship, Islam teaches us to live life with our partner properly, respect each other, and understand that patience is the key to dealing with imperfection. Dislike for something may actually hold great wisdom and goodness, as only Allah knows what is best for His servants. This is in line with the Hadith of Bukhari and Muslim which states that "It was narrated from Abu Hurairah radiallallahu 'anhu that the Messenger of Allah said: "Exhort (in goodness) to women, because women were created from a rib, and the most crooked of the rib is its base. If you try to straighten the crooked rib, it will break. But if you leave it alone, it will remain crooked. Therefore, advise women." (Narrated by Bukhari and Muslim)⁴⁰

In the hadith HR Bukhari and Muslim also emphasized that "If a husband invites his wife to have intimate relations, and the wife refuses, then that night the woman will be cursed by the angels until dawn."⁴¹ However, this hadith is often misinterpreted, even misused by some husbands to justify actions that are not in accordance with Islamic principles. Some husbands use the hadith as justification to force their will, without considering the condition of the wife, such as fatigue, illness, or other emotional factors. In fact, Islam emphasizes a relationship based on affection, respect, and mutual understanding between husband and wife. In understanding this hadith, it is important to refer to the teachings of Islam as a whole. The Prophet Muhammad SAW also emphasized the importance of husbands treating their wives with kindness, as stated in his words narrated by HR. Tirmidhi.

"The best of you are those who are best to their families, and I am the best to my family."(HR. Tirmidhi)

This hadith emphasizes that the relationship between husband and wife should be carried out with full love, mutual respect and without coercion or violence. Conflict in the household is often associated with the wife's attitude which is considered as disobedience towards her husband, which in Islamic jurisprudence is called nusyu (nushūz). The concept of nusyu needs to be analyzed further, because sometimes it can cause discrimination against wives. This discrimination arises from the misunderstanding that nusyu only applies to wives as disobedience or disobedience to their husbands, while husbands are not considered to

³⁹ Rauf, *AL-QUR'ANul Karim Al-Hafizh*.

⁴⁰ Abdul Wasik, "Interpretation of the Qur'an in the Perspective of Feminists (The Thought of Asma Barlas and His Contribution to the Development of Islamic Law)," *ICHES: International Conference on Humanity Education and Social 2*, no. 1 (2023): 1-21.

⁴¹ Muhammad Amin, "Hadis Tentang Dilaknat Perempuan Yang Menolak Panggilan Suaminya," *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman 5*, no. 1 (2019): 115-36, <https://doi.org/10.24952/fitrah.v5i1.1810>.

have committed nusyū. This leads to the assumption that husbands are allowed to do things that their wives do not like, because religion is considered not to have a problem with it. In fact, in sharia terminology, nusyū has many more diverse meanings.⁴²

According to Ibn Manẓūr (630-711 H), nusyuz is a feeling of mutual hatred between husband and wife. The wife feels hatred towards the husband, and vice versa, the husband feels the same way towards the wife. Thus, nusyuz does not only apply to wives, but also to husbands. In more detail, nusyuz is divided into two types, namely nusyuz carried out by wives against husbands and nusyuz carried out by husbands against wives.⁴³ Likewise, Wahbah al-Zuhaylī, a professor in the field of jurisprudence and ul-fiqh at Damascus University, defines nusyuz as disobedience or feelings of hatred from one party towards their partner (الزَّوَجَ مِنْ كُلِّ صَاحِبِهَا هَاتِيهِ نُسُوزًا).

The second form of nusyuz (disobedience) is usually done by the husband. Nusyuz done by the husband needs to be analyzed first. If the husband does not fulfill his obligations to his wife, such as in terms of living expenses or division of turns (for polygamy), then the government, in this case the court, has the right to pressure the husband to fulfill his obligations. As explained by scholars, especially Imam An-Nawawi, domestic violence (KDRT) is an act that is contrary to Islamic teachings. If a husband commits violence, such as hurting or hitting his wife without a valid reason, then the government has an obligation to stop the act. In fact, if the violence continues, the perpetrator must be given strict sanctions. Imam An-Nawawi added that in certain conditions, where the husband is allowed to hit, the sharia provides very strict limitations. The beating must be done in a way that does not injure, is not painful, does not hit vital body parts, and is prohibited from touching the face. He also explained that if beatings occur, it must use very light objects, such as handkerchiefs, as stated in the book *Al-Majmu' fi Syarhil Muhazzab*.

Based on the explanation above, Islam strictly prohibits domestic violence (KDRT). In Surah An-Nisa' verse (34), the act of beating called nusyuz is intended only as a step to educate, not to hurt or commit physical violence. In addition, scholars and hadith explicitly condemn all forms of domestic violence. However, many still misunderstand and assume that Islam justifies violence on the grounds that wives must submit to their husbands. Because of this misunderstanding, cases of domestic violence in Indonesia continue to occur. Therefore, the Law on the Elimination of Domestic Violence (UUPKDRT) was passed as a legal step to overcome domestic violence.

2. *The Relationship between Islamic Law and Feminism in Domestic Violence*

Gender issues in society are still a hot topic, because many factors can influence the overlap between gender and social inequality. Gender refers to the differences between men and women that are formed by social and cultural constructions, including roles, behaviors, and characteristics that are considered appropriate for each sex, and are dynamic or can change each other.⁴⁴ The term "gender" was first introduced by feminist activists in London as a sociological concept in the 20th century, precisely in 1977. Since then, feminist activists have begun to use the term gender, replacing issues of patriarchy or sexism. Thus, gender can be understood as the distinction between men and women seen from a social and cultural

⁴² Laras Shesa Yusmita, Iwan Romadhan, "Re-Interpretation Of Leadership And Nusyūz In The Quran To Prevent Domestic Violence In Bengkulu," *Madania* 27, no. 1 (2023): 93-104.

⁴³ Jamaa, "Kekerasan Dalam Rumah Tangga Perspektif Fikih."

perspective.⁴⁵ Gender refers more to the differences in status and roles between men and women that are formed through social and cultural processes that take place over a long period of time.⁴⁶

Ann Oakley argues that gender is a social construct that arises from sex differences, which are institutionalized through the traditions and culture of society. Wilson and Lindsey emphasize more on the reinforcement of these social differences. Wilson views gender as the basis for determining the contributions of men and women to culture and collective life, which creates differences between the two. Meanwhile, Lindsey explains that gender studies include societal rules in determining male or female identity. This shows that gender is a cultural expectation regarding the roles expected of men and women. The patriarchal system, which is often associated with gender inequality, is a culture that practices male domination over women, oppresses and exploits them. The differences in roles that arise as a result of patriarchal domination create the view that men have higher status and rights than women, limit women's roles in various fields, and ultimately lead to discrimination against women.⁴⁷

In an unprecedented global effort, heads of state and government and high representatives at the United Nations (UN) meeting in September 2015 put forward the 2030 Agenda, a global plan for human and environmental well-being structured around 17 Sustainable Development Goals (SDGs). A key goal in the agenda is SDG5, which focuses on achieving gender equality and empowering women and girls worldwide.⁴⁸ SDG5 addresses issues of gender-based discrimination that have long been obstacles to social and economic development, including unpaid work, sexual and reproductive rights, and gender-based violence. Gender equality is not only a human right, but also a key element in creating more just, stable and prosperous societies.⁴⁹ Therefore, achieving SDG5 is a priority that contributes to improving global well-being, in all social, economic and political aspects.

SDG5 includes nine targets that aim to end all forms of discrimination against women and girls everywhere. These targets include eliminating harmful practices such as child marriage and female genital mutilation, providing equal access to economic resources and leadership, and improving policies and legislation that support gender equality. In addition, SDG5 also emphasizes the importance of involving men and boys in achieving gender equality, because social change cannot be achieved without the active participation of all levels of society.⁵⁰

Although much progress has been made, major challenges remain in the implementation of SDG5. Factors such as entrenched social norms, suboptimal policies, and

⁴⁴ Novia Puspa Ayu Larasati, "Gender Inequality in Indonesia: Facts and Legal Analysis," *Law Research Review Quarterly* 7, no. 4 (2021): 445–58, <https://doi.org/10.15294/lrrq.v7i4.48170>.

⁴⁵ Nigora Salieva and Ulugbek Sallev, "Women in Medicine-Gender Aspects," *The American Journal of Science and Education Innovation* 1, no. 5 (2001): 292–95, <https://doi.org/10.1097/00001888-197810000-00009>.

⁴⁶ Hani Hasnah Safitri and Agus Khumaedy, "Gender Equality in the Distribution of Inheritance Property from Al-Qur'an and Mawaris Fiqh's Perspective," *Mutawasith: Jurnal Hukum Islam* 7, no. 1 (2024): 54–63.

⁴⁷ Yehuda Mandacan, "Kesetaraan Pria Dan Wanita Menurut Alkitab," *Jurnal Teologi // Logon Zoes* 2, no. 1 (2018): 42–58.

⁴⁸ Walter Leal Filho et al., "Promoting Gender Equality across the Sustainable Development Goals," *Environment, Development and Sustainability* 25, no. 12 (2023): 14177–98, <https://doi.org/10.1007/s10668-022-02656-1>.

⁴⁹ Mona Nabil Demaidi and Khaled Al-Sahili, "Integrating SDGs in Higher Education—Case of Climate Change Awareness and Gender Equality in a Developing Country According to RMEI-TARGET Strategy," *Sustainability (Switzerland)* 13, no. 6 (2021): 1–21, <https://doi.org/10.3390/su13063101>.

⁵⁰ Ramona Vijayarasa and Mark Liu, "Fast Fashion for 2030: Using the Pattern of the Sustainable Development Goals (SDGs) to Cut a More Gender-Just Fashion Sector," *Business and Human Rights Journal* 7, no. 1 (2022): 45–66, <https://doi.org/10.1017/bhj.2021.29>.

lack of access to education and economic opportunities for women remain major obstacles. Therefore, close collaboration between governments, the private sector, civil society, and international organizations is needed to ensure that the goals of SDG5 can be realized in a real and sustainable manner.

The term gender is always closely related to the concept of equality, justice, and discrimination. Gender equality refers to a condition in which there is balance and equality in the roles and responsibilities between men and women in aspects that are not related to biological differences. Gender equality and justice (GEE) includes the creation of a fair and equal state in terms of rights, opportunities, and cooperative relationships between men and women. Lack of understanding of gender equality can be a trigger for violence. Violence, in this context, includes various forms that can be classified as gender-based violence, according to the views of the faqih. First, violence involving torture of the genitals (genital mutilation). Second, rape, including rape in marriage. Third, physical violence, such as beatings or domestic assault, including torture of children. Fourth, covert violence (sexual harassment), namely the act of touching or holding a woman's body without permission in any situation. Fifth, sexual and emotional harassment. Sixth, sexual exploitation, such as prostitution. Seventh, exploitation through pornography. Eighth, forced sterilization in the Family Planning program.⁵¹

Violence can happen anytime and anywhere, including within the family. A household that should be a place of refuge can turn into a place of fear when the true nature of the partner begins to be revealed. Often, after marriage, the character of the partner who previously seemed kind and patient, changes to become angry and tends to use violence. The husband who used to be kind and patient, now becomes angry and light-handed, resulting in physical violence.⁵² Physical violence is the most obvious form of domestic violence (DV), often in the form of actions such as hitting, kicking, or injuring the victim. Research shows that physical violence in the home can cause serious injuries and even risk leading to death. In addition to the physical impact, victims also often experience deep psychological trauma.⁵³

The high rate of domestic violence (DV) is caused by ingrained societal views, which often degrade women and consider them as inferior or even as "slaves" in the family and social structure. This view not only creates gender inequality, but also becomes the root of various forms of discrimination and violence against women. This ongoing gender inequality has encouraged the emergence of the feminist movement as a response to the injustice experienced by women. Simone de Beauvoir, one of the leading feminist figures, through her work highlighted how social and cultural constructions contribute to the marginalization of women. The feminist movement aims to fight all forms of discrimination, violence, and injustice experienced by women,⁵⁴ both in public and family circles. This movement seeks to achieve gender equality that is not only limited to equal rights between men and women, but also advocates for a profound transformation in the way society understands and treats women. Feminism, which began to gain attention in the field of International Relations in the late 1980s to early 1990s, highlights gender inequality rooted in social construction and patriarchal culture. As explained by Tickner and Sjoberg (2016), gender is seen as a set of socially determined characteristics, where masculinity is often associated with strength, rationality, and freedom, while femininity is associated with weakness, emotionality, and

⁵¹ Naila Salsabila, "Strategi Pembentukan Kesetaraan Gender Dalam Upaya Harmonisasi Keluarga Islam," *Mutawasith: Jurnal Hukum Islam* 5, no. 1 (2022): 1–16.

relationality. This view not only creates role differences in the domestic sphere but also perpetuates gender inequality, including in global political relations.⁵⁵

In cases of domestic violence (DV), the profound influence of patriarchal mindset is very obvious. The patriarchal system that limits women to traditional domestic roles, such as taking care of the household and children, often degrades their position in society. This view fosters the perception that women are weak and inferior, so they are often the target of violence in domestic relationships. As explained by Hannam (2016), this social construction not only limits women's roles in the domestic space but also results in discrimination that is felt in the economic and social sectors, such as lower wages even though the workload is the same as men.⁵⁶ The feminist movement fundamentally opposes this patriarchal system, which is the root of gender inequality, including in the issue of domestic violence. Feminism seeks to eliminate this inequality by placing attention on women's experiences, both in the domestic and public spheres. In domestic violence, feminism views this violence not only as a personal issue but also as a manifestation of widespread gender inequality rooted in patriarchal culture. This is in line with Islamic law which emphasizes that patriarchal culture, which is often the main cause of violence and discrimination against women, is contrary to the basic values of Islam. The principles of Islamic teachings emphasize equality, respect, and affection between men and women. Allah SWT created men and women as partners who complement each other, love each other, and live side by side in harmony, in accordance with the guidelines contained in the Sunnah of the Prophet Muhammad SAW and the Qur'an.

In Islam, marriage is a bond that connects a couple physically and spiritually with the aim of creating a harmonious family, full of love and affection, as regulated in the Compilation of Islamic Law.⁵⁷ Marriage is not only intended to fulfill physical needs, but also emotional needs, such as security, affection, and respect between husband and wife. Therefore, Islam emphasizes the importance of balance and equality in the husband-wife relationship, which is reflected in the concept of kafaah, which is equality and compatibility in marriage. Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law emphasizes equality between husband and wife, both in the household and in society.⁵⁸ This principle rejects all forms of discrimination, violence, or harassment against women in family relationships. Islam teaches that women are not competitors or subordinates of men, but rather complementary partners. However, gender inequality rooted in patriarchal culture often positions women as subordinates, which is one of the main triggers of domestic

⁵² Dudi Badruzaman, "Keadilan Dan Kesetaraan Gender Untuk Para Perempuan Korban Kekerasan Dalam Rumah Tangga (Kdrt)," *TAHKIM, Jurnal Peradaban Dan Hukum Islam* 3, no. 1 (2020): 103–24.

⁵³ M.Chalid and Idul Adnan, "Efektivitas Mediasi Sebagai Alternatif Penyelesaian Kasus Kekerasan Dalam Rumah Tangga," *Al-Balad: Jurnal Hukum Tata Negara Dan Politik Islam* 4, no. 2 (2024): 1–15.

⁵⁴ Yuliani Sridayanti and Anas Ahmadi, "Opresi Terhadap Perempuan Dalam Drama China 'The Little Nyonya' 《小娘惹》/Xiǎo Niáng Rě/ (2020) (Kajian Feminisme Eksistensialis Simone de Beauvoir)," *Jurnal Bahasa Mandarin* 7, no. 1 (2024): 1–14.

⁵⁵ Iqbal Ramadhan and Innesia Ma'sumah, "Mengkaji Peran Un Women Dalam Mengatasi Kekerasan Terhadap Perempuan Dan Mewujudkan Kesetaraan Gender Melalui Perspektif Feminisme," *Jurnal Asia Pacific Studies* 2, no. 2 (2018): 144–60, <https://doi.org/10.33541/japs.v2i2.871>.

⁵⁶ Kevin Hannam, *Gendered Automobilities: Female Pakistani Migrants Driving in Saudi Arabia* (London: Routledge, 2016).

⁵⁷ Hamsah Hudafi, "Pembentukan Keluarga Sakinah Mawaddah Warahmah Menurut Undang – Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam," *Al Hurriyah: Jurnal Hukum Islam* 6, no. 2 (2020): 172–81, <https://doi.org/10.30983/alhurriyah.v5i2.3647>.

⁵⁸ Hudafi.

violence. This view is not only contrary to Islamic values, but also hinders the creation of a harmonious and peaceful family according to the purpose of marriage.

From the above explanation, it can be seen that the topic of gender in society is still an important topic because of the social and cultural construction of patriarchy that continues to strengthen gender inequality and discrimination against women. The patriarchal system tends to place women in a lower position than men and limits their roles to the domestic sphere, which is one of the main causes of domestic violence (DV). The feminist movement emerged as a response to combat this injustice by emphasizing the importance of gender equality and the elimination of discrimination. The principles of feminism are also in line with Islamic teachings, which reject patriarchal culture and emphasize the values of equality, respect, and affection between men and women, as the purpose of marriage is to build a family that is *sakinah, mawaddah, wa rahmah*. Synergy between religious values and feminism is needed to address gender inequality as a whole.

Conclusion

Violence against women, especially in the home, reflects a human rights violation that is often overlooked because it is considered a private matter. This problem is rooted in gender inequality caused by patriarchal culture, which places women in a subordinate position and limits their role in both public and domestic spaces. The enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence is an important step in recognizing domestic violence as a serious crime, providing legal protection for victims, and regulating sanctions for perpetrators. In addition to legal efforts, strengthening religious values, such as Islamic teachings that emphasize compassion and respect in the home, is an important basis for realizing gender equality. The feminist movement has also helped drive cultural change and awareness of the importance of gender equality as a step towards a more just society free from gender-based violence..

Suggestion

It is suggested that further research examine the relationship between patriarchal culture underlying gender inequality and the effectiveness of Law No. 23 of 2004 in reducing domestic violence, and evaluate how legal protection and sanctions against perpetrators can be emphasized more. This research is also expected to integrate the role of religious values, especially Islamic teachings that emphasize compassion and respect in the household, as well as the contribution of the feminist movement in changing the social paradigm towards gender equality. In addition, research suggestions include conducting cross-regional comparative studies to identify contextual factors that influence the success of efforts to overcome domestic violence, so that it can produce a holistic and adaptive intervention model to the social dynamics of society.

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