

Legal Protection of Wives from Domestic Violence Perspectives of Islamic Law and Positive Law

Mutiah *) Andi Satrianingsih **) Anshar ***) Nur Asia Hamzah*****) Nurul Ilmah*****)

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Department of Family Law, Faculty of Islamic Studies, Universitas Muhammadiyah
Makassar, Jl. Sultan Alauddin No.259, Makassar, Indonesia 90221

Abstract

This study uses qualitative methods that aim to: 1). know how the concept of legal protection for wives from domestic violence from Islamic legal perspectives 2). Knowing the concept of legal protection for wives from domestic violence from a positive legal perspective. In answering these problems, researchers use the type of library research (library reseach), which is research conducted using literature (literature), both in the form of books, notes, and the results of previous researchers' reports. Or by studying the hadiths and verses of the Qur'an related to the problem in this study so that conclusions can be drawn. Based on the results of research and discussion, the author concludes that from several forms of domestic violence against wives and punishments applied according to Islamic Law, legal protection for women or wives who are victims of domestic violence is the husband's agreement with his wife during the marriage contract and the wife's right to the husband to ask for divorce (khuluk). The legal protection of wives from domestic violence from a positive legal perspective is in Law Number 23 of 2004 concerning the elimination of domestic violence article 10 by providing protection from the family, police, prosecutors, advocates, social institutions, or other parties both temporarily and based on the government. So the author concludes that committing violence against wives in Islamic law and positive law is not permissible whether the victim is the wife or husband, because in Islam it always teaches gentle behavior and affection between others and domestic violence is an act that is not justified in Islam.

Keywords: Protection, Law, Domestic Violence, Wife

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*)Corresponding Author:

muthiathya5@gmail.com

Introduction

The household is the smallest community of a society, a happy, safe, and peaceful household is everyone's dream. Everyone in the household to exercise his rights and obligations must be based on religion and humanitarian theology. This is important to grow in order to build household integrity, especially in the attitude, behavior and self-control of everyone in the household.¹

The integrity and harmony of the household can be disturbed, if attitudes, behavior, and self-control cannot be controlled. In the end, domestic violence can occur so that insecurity and injustice arise against people within the scope of the household. To prevent, or protect victims and take action against perpetrators of domestic violence, the State must carry out prevention, protection, and action against perpetrators.²

The family was also the first social environment known to man. In the human family learns to begin to interact with others. But in reality, the family is often a place for the emergence of various cases of deviation or other illegal activities, causing misery or suffering committed by family members against one family such as persecution, rape, and murder.

In the Qur'an it is explained in QS ar-Rum/21 about forming a family

that is *sakinah mawaddah wa rahmah*.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Translation:

And among the signs of His greatness is that He created pairs for you of your own kind, that you might be inclined and at ease to him and He made among you affection, indeed in such there really are signs of greatness for God.³

Problems in the family often lead to actions or behaviors that have implications for crimes, both intentionally and unintentionally. For example, the problem of violence (especially in the household) is a form of crime that abuses and tarnishes the dignity of humanity. However, not all crimes contain elements of violence, and not all acts of violence can be said to be components of crime.⁴

Acts of violence against wives can occur because they start from various factors. Besides being caused because it occurs in a relatively personal scope, it is also considered reasonable and believed that treating the wife as the husband wishes as the head of the household who has the

¹ Jupri, *Istri dan Ancaman KDRT*, (www.kompasiana.com, 2012)

² Pasal 11 Undang-Undang Nomor 23 Tahun 2004, *Tentang Penghapusan Kekerasan Dalam Rumah Tangga*

³ Kementerian Agama RI, *Al-Qur'an dan Terjemahannya*, (Jakarta: CV Darus Sunnah, 2019), h. 406

⁴ Alimuddin, *Penyelesaian KDRT di Pengadilan Agama*, (Bandung: CV Mandar Maju, 2014), h. 38

authority of power is a justifiable act.⁵

Law Number 23 of 2004 defines domestic violence as any act against a person, especially women, which results in physical, sexual, psychological, or domestic misery or suffering including threats to commit unlawful acts, coercion, and deprivation of independence within the scope of the household.⁶

Recently, incidents of domestic violence have increased, repeatedly the mass media reported about a husband who tortured and even killed his wife, the father raped the child and others. Although generally violence is committed by husbands against wives, there is also vice versa violence against wives. Events like this are usually caused by various factors, ranging from jealousy, life pressure and various other factors.

Similarly, in the dimension of family law, legal bonds in households involving husband and wife have the same obligation to love each other, respect each other, be faithful and give inner birth assistance to one another. Husband and wife also have balanced rights and goals in life in society and have the right to perform legal actions.

And one of the rights for a wife is to be treated well from a husband, in the Word of Allah QS. An-nisa/4:19

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ
كَرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا
آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ
وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى
أَنْ تَكْرَهُنَّ شَيْئًا ۗ وَيَجْعَلِ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

Translation:

O believers, it is not lawful for you to inherit women by force, and do not trouble them for taking back some of what you have given them, unless they commit manifest heinous deeds, and associate with them in a proper manner. If you don't like them, then be patient because you may not like something when God does him a lot of good.⁷

In this case the Verse explains that a husband is obliged to get along with his wife well and not be stingy to provide for herself and not to scold her with transgressive anger. The household is a place to pour out the love and affection of a husband and wife in order to create a peaceful, prosperous and harmonious family.

However, in fact many households are places of suffering, torture for a family member including the wife due to various factors such as, boredom, economy and so on so that domestic violence

⁵Elli, N. Hasbiyanto, *Kekerasan Dalam Rumah Tangga Sebuah Kejahatan Yang Tersembunyi*, (Bandung; Mizan, 1999) h. 189

⁶ Undang-Undang Nomor 23 Tahun 2004 *Tentang Penghapusan Kekerasan Dalam Rumah Tangga*, Pasal 1 ayat 1

⁷ Kementrian Agama RI, *Al-Qur'an dan Terjemahannya*, (Jakarta: CV Darus Sunnah, 2019), h. 80

occurs both physical, psychological, sexual and other violence.

So that cases of domestic violence in Indonesia have increased, according to data from the National Commission on Violence against Women throughout 2004 until now in 2020 during March-April there were 643 cases recorded by the Ministry of Women's Empowerment and Child Protection (PPPA) with details of 275 cases of violence against adult women and 368 cases of violence against children.⁸

And the data recorded by the Legal Aid Institute of the Indonesian Women's Association was 97 cases of violence, one of which was 33 cases of domestic violence within one month, namely March 16-April 16, 2020.⁹ Violence that exists in the family (especially husband and wife) is a very shameful and heartbreaking matter. The house that is essentially a safe, comfortable place, sharing love, mutual respect, has now changed due to domestic violence.

In this problem many cases that occur in the field are mostly a husband who commits violence against his wife (woman) and the law is passed among the causes is to protect the rights of women who in essence a woman is a weak woman, so it really needs strong protection by the government or state. From the description of the background

above, in order to write the thesis, researchers are interested in raising the theme "*Legal Protection of Women from Acts of Domestic Violence in the Perspective of Islamic Law and Positive Law*."

Research Methods

Research is one of the works of understanding a particular science, a person is considered to understand a science if he has done research. Research is something important to develop certain science and education.

This type of qualitative research has a descriptive nature and tends to use analysis. The process and meaning are more highlighted in this type of research with a theoretical foundation that is used as a guide so that the focus of research is in accordance with the facts in the field. Unlike the type of quantitative research, in this type of research, researchers participate in the event or condition studied. For this reason, the results of qualitative research require depth of analysis from researchers.

While research methodology is a rational, empirical, and systematic way of thinking scientifically used by researchers of a scientific discipline to carry out research activities.¹⁰

Data Collection

To obtain valid data, the author uses the library research method,

⁸ Simfoni PPA, *Peta Sebaran Jumlah Kasus Kekerasan Tahun 2020*

⁹ Zaki Priambudi, *Dinamika Perkembangan Hukum HAM, Hukum Internasional. Dan Pembangunan Hukum di Indonesia*, (UPT

Percetakan dan Universitas Jember, 2021), h. 35-37

¹⁰ Fira Husaini, *Metode Penelitian Kuantitatif dan Kualitatif*, (Yogyakarta: Anak Hebat Indonesia, 2020), h. 1-3

namely literature research is research carried out using literature, both in the form of books, notes, and research reports from previous researchers. This type of research is also very relevant to the field of Islamic Religious Education Studies, for example examining hadiths and verses of the Qur'an related to legal protection of wives from acts of domestic violence according to Islamic law and positive law.¹¹

Data Collection Techniques

The data collection method used by researchers is by collecting books related to the problem under study, both on primary data materials and also on secondary data materials. Then the researcher reviewed books and journals and recorded the materials obtained according to the title of the study.¹² So that the data has meaning to answer problems and is useful for testing hypotheses or research questions.¹³

Data processing is directed to provide arguments submitted in research, based on data or facts obtained. The importance of data processing includes: the data collected needs to be processed first, the aim is to simplify all collected data, present it in a

systematic order, then analyze the data based on the techniques that have been applied.

Data Analysis Methods

This data analysis process is an important stage of a study, because it is used as a basis for answering research questions and drawing conclusions from the research conducted.¹⁴

In this research process, researchers use qualitative methods to analyze the data that has been collected. Qualitative research is based on the philosophy of postpositivism, because it is used to examine the condition of scientific objects. Qualitative research does not use statistics, but through data collection, analysis, then interpretation.¹⁵

Results and Discussion

Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence guarantees that every citizen has the right to feel safe and free from all forms of violence in accordance with the philosophy of Pancasila and the Constitution of the Republic of Indonesia. Year 1945.¹⁶

All forms of violence, especially domestic violence, both physical and non-physical violence are violations of human rights and crimes against human dignity and

¹¹ Mukhtazar, *Proses Penelitian Pendidikan*, (Yogyakarta: Absolute Media, 2020), h. 9

¹² Muh Fitrah dan Luthfiyah, *Metodologi Penelitian*, (Sukabumi: Jejak, 2017), h. 30

¹³ Muhammad Ramdhan, *Metodologi penelitian*, (Surabaya: Cipta Media Nusantara, 2021), h. 91

¹⁴ Mahmud Sholihin dan Puspita Ghaniy Anggraini, *Analisis Data Penelitian*, (Yogyakarta: Andi, 2021), h. 2

¹⁵ Muhammad Ramdhan, *Metode Penelitian*, (Surabaya: Cipta Media Nusantara, 2021), h. 6

¹⁶ Undang-undang Republik Indonesia Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga

forms of discrimination that must be eliminated. Victims of domestic violence, most of whom are women, must receive protection from the state and / or society in order to avoid and be free from violence or threats of violence, torture, or behavior that degrades the dignity and dignity of humanity. The elimination of domestic violence is a guarantee provided by the state to prevent the occurrence of domestic violence, crack down on perpetrators of domestic violence and protect victims of domestic violence.¹⁷

The Ministry of Women's Empowerment and Child Protection (KPPA) revealed that cases of domestic violence (KDRT) in the last three years have increased. Even cases of violence against children who are in trouble with the law are also increasing. In 2018, 9,637 cases of domestic violence were recorded by KPPA. In 2019 it increased with 11,105 cases entering 2020, from February 29, 2020 to June 10, 2020 there were 787 cases of violence against women and 523 cases of domestic violence.¹⁸

To prevent, protect victims, and crack down on perpetrators of domestic violence, the state and society must carry out prevention, protection, and enforcement of perpetrators in accordance with

the philosophy of Pancasila and the Constitution of the Republic of Indonesia. The State is of the view that all forms of domestic violence are violations of human rights and crimes against human dignity and forms of discrimination.¹⁹

Law reform in favor of vulnerable groups, especially women, is needed in connection with many cases of violence, including domestic violence. Therefore, it is necessary to regulate the criminal act of domestic violence separately because it has a peculiarity, although in general the criminal code has been regulated regarding the persecution and neglect of people who need to be provided with a living and life.²⁰

The law on the elimination of domestic violence is closely related to several other laws and regulations that have been in force before, including; Law Number 1 of 1946 concerning the Criminal Code and its amendments. Law Number 8 of 1981 concerning the Code of Criminal Procedure, Law Number 1 of 1974 concerning Marriage, Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (*convention on the elimination off, all forms of discrimination against*

¹⁷ Badriyah Khaleed, *Penyelesaian Hukum KDRT*, (Yogyakarta: Medprees Digital, 2015), h. 11

¹⁸ Kementerian Pemberdayaan Perempuan dan Anak, *Data Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak (KPPA)*, 2020.

¹⁹ Badriyah Khaleed, *Penyelesaian Hukum KDRT*, (Yogyakarta: Medprees Digital, 2015), h. 12

²⁰ Undang-undang No.23 Tahun 2004, *Penghapusan Kekerasan Dalam Rumah Tangga*, h. 38

women), and Law Number 39 of 1999 concerning Human Rights.²¹

The rights of victims of domestic violence according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, are regulated in article 10:

1. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or based on a protection order from the court.
2. Health services according to medical needs
3. Handling is specifically related to the confidentiality of victims
4. Assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations
5. Spiritual guidance ministry.

In addition, the rights of victims of crime are:

1. The right to participate in the criminal justice system
2. The right to obtain funds provided by the government as compensation for victims of crime
3. The right to receive restitution ordered by criminal justice
4. The right to judgment on civil action against criminality

5. The right to be free from intimidation.

The growth and increase in cases of domestic violence that are still rife, apparently not followed by legal protection for victims, will certainly cause a reduced sense of legal assurance and certainty in Indonesia. Therefore, criminal law reform, especially regarding legal protection for victims of domestic violence, was carried out. Both in the revision of the Code of Criminal Procedure, Law Number 23 of 2004 concerning the Elimination of Domestic Violence and the provisions of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims.²²

Conclusion

Based on the description that the author described in the section above, several things can be concluded as follows:

The concept of legal protection of wives from domestic violence from the perspective of Islamic law Domestic violence occurs due to several factors as mentioned in the previous discussion in chapter 2, but whatever the cause, domestic violence has a major influence on future lives. Often victims of domestic violence are unable to continue their lives as usual because of the burden and wounds caused by the abuse they have experienced. Islam states that husbands should protect their wives, not molest or beat them.

²¹ Undang-undang No.23 Tahun 2004, *Penghapusan Kekerasan Dalam Rumah Tangga*, h. 39

²² Undang-Undang Nomor 23 Tahun 2004 *Tentang Penghapusan Kekerasan Dalam Rumah Tangga*, Pasal 1 Ayat 1

So the legal protection for women or wives who are victims of domestic violence in Islamic law is the agreement of the husband to the wife during the marriage contract (sighat taklik talaq) and the right of women to their husbands to ask for divorce (khuluk). Sighat means statement, while taklik talaq means hanging talaq. So the meaning of sighat taklik talaq is a statement of hanging talaq in the event of the case mentioned.

The concept of legal protection of wives from domestic violence from a positive legal perspective

Law reform in favor of vulnerable groups, especially women, is needed in connection with many cases of violence, including domestic violence. Therefore, it is necessary to regulate the criminal act of domestic violence separately because it has a peculiarity, although in general the criminal code has been regulated regarding the persecution and neglect of people who need to be provided with a living and life.

The rights of victims of domestic violence according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, are regulated in article 10:

Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or by order

Protection from the courts

Health services according to medical needs

Handling is specifically related to the confidentiality of victims

Assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations

Spiritual guidance ministry.

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The right to be free from intimidation.

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