

Domestic Violence (KDRT) in the Perspective of Islamic Criminal Law

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Abstract

Domestic violence is not only experienced by women. However, based on everyday facts, women tend to be more vulnerable and often become victims of violence in their families. Therefore, Islam strictly prohibits and provides strict sanctions against perpetrators of domestic violence. The purpose of this writing is to examine domestic violence (KDRT) according to Islamic criminal law and to correlate it with Indonesian positive law. The method in this research is library research, collecting data sourced from the Al-Qur'an, Hadith, scriptures, books, journals and other library materials that discuss domestic violence. The results of this research show that in Islamic criminal law, acts of domestic violence (KDRT) are considered a form of crime and acts that are prohibited by the Shari'a because they can cause harm and endanger the safety of wives and children. This action falls into the category of jarimah . From a legal perspective, perpetrators of criminal acts of physical violence against women and children can be subject to prison sentences and fines. According to a criminal law perspective Islam regarding domestic violence, in substance the legal action domestic violence crime, especially physical violence against wives in the PKDRT Law is part from the action of jarimah , namely no punishment for other than life. Related with a prison sentence PKDRT Law according to criminal law Islam, so this criminal act is classified as ta'zir.

Keywords: *Domestic violence (KDRT), Islamic Criminal Law, punishment*

Introduction

Family is the most valuable gift that every person has. A family is created and begins with a marriage that establishes a commitment between a man and a woman which includes a promise to be with each other in all circumstances that will color their lives in the future. Because they become a bond in one family. Family harmony can be realized if each other loves and understands each other. However, in the course of a household that is tested on the continuity of the integrity of their household, some are able to overcome and some are unable to overcome the various problems that arise. Every married couple certainly dreams of having a family filled with love. Every family always dreams of a safe, comfortable and happy home life. However, it cannot be denied that family life is not always about love and a happy life. Married couples, and even families, sometimes face complex conflicts as a result of misunderstandings or incompatibilities between each other. Fostering conflict can lead to domestic violence (Alimi & Nurwati, 2021) . Domestic violence perpetrated by the wife against her husband, or actual violence committed by children against their parents It also often occurs in society, but is rarely found and the percentage is smaller than domestic violence committed by husbands against wives or by parents against their children (Jamaa & Rahman, 2022) .

Domestic violence is violence that occurs within the household. This violence is not something that usually occurs, such as daily tensions or conflicts such as differences of opinion, debates, quarrels, mocking each other or cursing for a moment. Domestic violence is even worse. Usually the perpetrator has greater status and power, both in terms of economics, physical strength and social status within the family. In other words, domestic violence is violence that usually occurs in a household where the relationship between the perpetrator and the victim is not equal or equal (Hardani et al., 2010) . Cases of domestic violence are increasing every year, where women and children are the groups most at risk of becoming victims of violence. The number of incidents of violence against women and children fluctuates every year and continues to increase. Based on data collected by the Ministry of Women's Empowerment and Child Protection (KPPPA), there were 544,452 incidents of Domestic Violence (KDRT)/Self Violence (RP) in a period of 17 years, namely from 2004 to 2021. Apparently, in the last five years, since From 2016 to 2020, there were 36,367 cases of domestic violence and 10,669 cases of personal violence. Violence against wives is always the top priority in all cases of domestic violence/RP, consistently reaching more than 70%. Domestic violence (KDRT)/Personal Domain (RP) reached 75% (11,105 cases). In the field of domestic violence/RP, physical violence was the most common type of violence with 4,783 cases (43%), followed by sexual violence with 2,807 cases (25%), psychological violence with 2,056 cases (19%), and economic violence with 1,459 (13%) (Khumaera et al., 2023) .

Apart from the data found above, not to mention other domestic violence cases that have not been revealed, domestic violence victims' lack of courage to report their cases is caused by various reasons, including household privacy and lack of insight into how to deal with domestic violence. From the description of the data above, it can be seen that the rate of domestic violence is very high and this should be of special concern to law enforcers and the public. By looking at this event, the author feels to need to research cases of criminal acts of physical violence in the home stairs in the perspective of Islamic criminal law. So, the implication of this article is to provide understanding to the public and law enforcers about the impact of domestic violence and how to handle domestic violence from the perspective of Islamic criminal law.

Research methods

The research method in this paper is normative legal research. Legal research *is* an activity carried out to solve the legal issues faced (Marzuki, 2013) . This research uses a library research approach *because* it collects data from books, journals, the internet , or other written literature such as the Al-Quran, Hadith and books as a basis for writing. Literature study is a method of collecting data by searching for information through books, newspapers and other literature with the aim of developing theories. Literature study is a theoretical study, references and other literature studies related to culture, values and norms that develop in research (Sugiyono, 2017) .

Results and Discussion

Forms and Factors Causing Domestic Violence

Domestic Violence (KDRT) in Article 1 point 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence provides a definition of domestic violence as any act against someone including threats to commit acts, coercion, or unlawful deprivation of liberty in household environment. The scope of the household in Article 2

paragraph (1) letter a of the PKDRT Law includes husband, wife and children. And in Article 2 paragraph (1) letter b, namely people who have a family relationship with the person referred to in letter a due to blood, marriage, breastfeeding, parenting and guardianship, who live in the household; and/or in letter c Article 2 paragraph (1), namely people who work to help the household and live in the household. Then, Article 2 paragraph (2) states that people who work as referred to in letter c are seen as family members for the period of time they are in the household concerned (Tim Permata Press, 2018) .

Domestic violence is often the victims of children and wives. This matter because the position of children and wife is in a disadvantaged position profitable and high risk of psychological impact (mental), social and physical. Due to economic reasons, originating from remote areas, disabled body conditions or originating from *broken home* family (Damayanti & Haniyah, 2020) . Every person is prohibited from committing domestic violence against people within their household, by means of: (a) physical violence; (b) psychological violence; (c) sexual violence; or (d) domestic neglect. This is as stated in Article 5 of the PKDRT Law (Tim Permata Press, 2018) . The forms of domestic violence as mentioned in Article 5 of the PKDRT Law are very clear, that every treatment carried out by someone against anyone within the household as intended in Article 2 paragraphs (1) and (2) is a criminal act by someone against the victim. Domestic Violence. Victims of domestic violence in question are people who experience violence and/or threats of violence within the household. This is as stated in Article 1 point 3 of the PKDRT Law.

Physical violence as referred to in Article 5 letter a is the action of a person within the household against other family members which results in pain, illness or serious injury. Meanwhile, psychological violence in Article 5 letter c is an act that causes fear, loss of self-confidence, loss of ability to act, a feeling of helplessness and/or severe psychological suffering in a person. Then sexual violence in Article 5 letter c includes forced sexual relations carried out against people living within the household and forced sexual relations against someone within the household with another person for commercial purposes and/or certain purposes.

Furthermore, Article 9 paragraph (1) of the PKDRT Law states that every person is prohibited from abandoning people within the scope of his household, even though according to the law that applies to him or because of an agreement or agreement he is obliged to provide life, care or maintenance to that person. And in paragraph (2) states that the neglect referred to in paragraph (1) also applies to every person who causes economic dependence by limiting and/or prohibiting decent work inside or outside the home so that the victim is under the control of that person (Team Permata Press, 2018) .

Domestic violence is not something new faced by wives, children or husbands, but has existed since the life of humans building households. An honest and sincere understanding of the factors that encourage violence will be a strategic step in finding solutions to the problems faced. Many factors have been empirically proven to contribute to the increase in violence in Muslim households. Among these causes are:

1. Disobedience to obligations in married life. For example, a wife does not want to serve her husband in case of irregularities such as menstruation or illness.
2. Weak understanding or practice of Islamic teachings by individual Muslims. Lack of devotion to individuals, weak understanding of husband-wife relationships in the

household, and temperamental characteristics are also triggers for someone to violate Sharia law, including committing acts of domestic violence.

3. On the other hand, it is also caused by economic factors, low education, jealousy and so on. Domestic violence caused by economic factors can be described as the husband's lack of income to meet household needs. Sometimes there are wives who demand too much to fulfill household needs, both clothing, food and educational needs. That's where the quarrel between husband and wife begins, which ultimately leads to domestic violence. Both parties no longer control each other's emotions (Sukardi, 2015) .

Meanwhile, the factors that cause violence against women in the household, especially by husbands against wives, are:

1. There is an unequal power relationship between husband and wife. Patriarchal culture places men or husbands at a higher level of power than women or wives, so that when married women are often considered to be their husband's property. This creates inequality in the relationship because the husband has more power over his wife than the wife herself.
2. Patriarchal education and culture that has become part of society gives the view that a wife should depend on her husband. This phenomenon often means that some wives are not used to being independent or economically empowered, so that when domestic violence occurs, the wife has to endure. This kind of behavior also makes the husband feel like he has more power over his wife's helplessness.
3. Violence against wives usually occurs due to a mismatch between the husband's expectations and reality. Violence is carried out with the aim of ensuring that the wife can fulfill her expectations without putting up resistance because of her helplessness. This phenomenon is still a cultural basis in society that if a woman or wife does not obey, she must be treated harshly so that she becomes obedient.
4. Competition between husband and wife occurs due to inequality between the two of them in fulfilling each other's desires, both in education, relationships, economic control, working conditions and society, which can give rise to competition which can lead to domestic violence. Culture also creates the view that men should not be inferior or inferior to women, so it is not surprising if violence occurs against women or wives just to fulfill the ego of men or husbands.
5. Violence can also occur due to psychological fatigue which causes self-frustration and the husband's lack of ability *to cope with stress* . Frustration arises due to the mismatch between expectations and reality felt by the husband. This usually happens to couples who are not ready to get married, the husband does not have a job and a steady income that is sufficient for household needs, and their freedom is still limited. In this case, the husband usually seeks escape from drinking and other negative actions which result in violence against his wife, whether physical, sexual, psychological, or even family neglect (Alimi & Nurwati, 2021) .
6. Factors that the PKDRT Law has not yet become public. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) is a relatively new law which of course not many members of the public know about. Therefore, it needs to be socialized so that the wider community knows and understands the content and legal impact of this law (Hanifah, 2007) .

From the description above, it can be concluded that the forms of domestic violence include: physical violence, psychological violence, sexual violence and neglect in the

household. Meanwhile, the causes of domestic violence are caused by several factors, including: factors of inequality between husband and wife, factors of education and patriarchal culture, factors of disagreement between husband and wife, factors that are psychologically tired of the husband or wife, and factors that the PKDRT Law has not yet become public.

Views of Islamic Criminal Law Regarding Domestic Violence

Islam actually prohibits various forms of crime, including domestic violence. Islam strictly prohibits such acts of violence and commands Islam to do good deeds. This is in accordance with the Word of Allah SWT. in Surah Al-Imran/3: 104 which reads:

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْبِرِّ وَهُمْ الْمُفْلِحُونَ

Meaning: *"Let there be among you a group of people who call to virtue, enjoin (do) what is virtuous, and forbid what is evil. They are the lucky ones."* (Qur'an Ministry of Religion, 2022) .

Based on the verse of the Qur'an above, Islam commands its followers to always do good deeds and prevent evil that might occur in everyday life, even within the small circle of a family. Islam also strictly prohibits committing evil acts, this is expressly stated in the hadith of the Prophet Muhammad. narrated by Imam Abu Dawud, namely: *"Faith is refraining from doing evil, so don't let someone do it"* (HR. Abu Dawud).

Islam has detailed legal provisions regarding the classification of types of crimes (violence) committed and legal sanctions imposed on perpetrators of violence or crime. One example of the detailed nature of Islamic Criminal 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 that is hurt there is a fine of fifty camels, and for every toe and hand that is hurt there is a fine of ten camels. This proves that Islam regulates the legal provisions regarding violence or crime in detail.

Islam's firmness in dealing with the problem of violence or crime is proven by the obligation of *qishash* in cases of killing someone. *Qishash* can be exemplified as the death penalty, the punishment for theft being the punishment for cutting off one's hand. The application of a firm Islamic attitude towards cases of violence (*jarimah*) can be proven by the existence of legal sanctions in the form of caning (*jilid punishment*) against perpetrators accused of committing adultery against women without being accompanied by strong evidence for the accusation. Seeing the fact that Islamic criminal law tends to be strict and has heavy sanctions, many opinions have developed in society that Islamic criminal law is an inhumane law. In fact, in the author's opinion, if the Indonesian government implements a strict Islamic criminal law system that has heavy sanctions, then several cases of violence (both in the public and domestic environment) that occur in our country will be resolved optimally and effectively (Alisah, 2019) .

scholars divide criminal acts (*jarimah*) towards humans into three parts: *First* , a crime against the soul absolutely. Included in this section are criminal acts that damage the soul, namely murder of various kinds. *Second* , 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). *Third* , 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.

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: (1) Separating the limbs or organs the like; (2) Eliminates the benefits of limbs, but the limbs remain; (3) Injuring the head and face (*syajjaj*); (4) Injuring other than the head and face (*al-jirah*); (5) Wounds that do not include the four types previously.

Punishment for perpetrators of criminal acts above other than the soul is *qishash*. *Qishash* in the linguistic sense comes from the word " *tattabi'al atsar*" which means tracing traces. The opinion of the Malikiyah ulama, according to him, is that perpetrators of criminal acts of abuse are still obliged to apply *qishash punishment*, especially abuse (*al-jarh*). which is done deliberately as long as it is possible to do it exactly the same as that carried out by the convict and there is no fear that it will result in the death of the perpetrator. Another punishment is *Ta'zir*. Imam Malik is of the opinion that the perpetrator of a criminal act of intentional abuse has the right to *ta'zir*, whether he has the right to *qishash* or not, because there is an obstacle *to qishash*, forgiveness or a peace agreement. prevent, hinder and deter everyone from committing criminal acts. When the *qishash penalty* cannot be applied, the obligation to pay *diyat* 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 Hadith.

The view of Islamic criminal law regarding domestic violence (KDRT), especially physical violence against wives, can be formulated as follows: *First*, that is a criminal act of physical violence towards wives as stipulated in the PKDRT Law, as explained in Article 6 is formulated as follows: Physical violence as referred to in Article 5 letter a is an act that results in pain, illness or serious injury. According to the perspective of Islamic criminal law, the action of a husband who commits physical violence against his wife is a form of crime and an act that is prohibited by the Shari'a because it will cause harm and harm the wife's safety, therefore it is included in the act of *jarimah*. As previously explained, *jarimah* is carrying out prohibited actions or abandoning any prohibited actions ordered, to carry out or abandon actions that have been determined by Islamic law to be haram and punishable. *Jarimah's* actions in this case are a criminal offense against other than life. According to Abd Al-Qadir Audah, a crime other than the soul is any act that hurts another person that affects their body, but does not take their life. *Second*, based on the provisions in Articles 44 to 48 of the PKDRT Law, the threat of punishment for perpetrators of criminal acts of physical violence against wives According to the perspective of Islamic criminal law, the threat of punishment for perpetrators of criminal acts of physical violence in the PKDRT Law is part of the punishment in the form of *ta'zir*, namely a punishment that is handed over to the authorities for implementation. Violations that are subject to *ta'zir punishment* are called *jarimah ta'zir* (Sukardi, 2015).

Based on several previous descriptions, the author can conclude several things related to violence in the family, especially physical violence against wives, namely the relationship between positive law and Islamic criminal law. Regulations regarding criminal acts of physical violence in the PKDRT Law and criminal acts that are not related to the soul in Islamic criminal law (*jarimah*) aim to provide protection to humans,

safeguard the interests and benefits of society, maintain the social system, create a sense of security, avoid immorality, avoid damage, and ensure the survival of the community.

In substance, the criminal act of physical violence against a wife in the PKDRT Law has a formulation that is in line with the criminal act of abuse in the concept of *jarimah*. Physical violence or abuse is a crime against the human body or soul that is prohibited, and perpetrators are threatened with criminal penalties. In terms of punishment, perpetrators of criminal acts of physical violence against wives in the PKDRT Law can be sentenced to prison and a fine. Meanwhile, the punishment for perpetrators of crimes that are not related to the soul in Islamic criminal law is *qishash*. Apart from that, the perpetrator can also be sentenced to *ta'zir* (imprisonment or exile). If *qishash* cannot be carried out, the punishment is replaced by *diyat*.

Conclusion

From the perspective of criminal law in Islam regarding domestic violence (KDRT) as previously described, the author can draw the conclusion that, substantively, the law on domestic violence, especially physical violence against wives under the Domestic Violence Law (PKDRT), is part of the action of *jarimah*, which refers to actions punishable by life imprisonment or other severe punishments. In relation to imprisonment under the PKDRT Law according to Islamic criminal law, domestic violence is classified as *ta'zir*. This means that the punishment for the perpetrator of domestic violence is not specifically prescribed by sharia but is left to the discretion of the judge or authorities to determine an appropriate sanction, with the aim of providing a deterrent effect and upholding justice. In this context, *ta'zir* punishment can include imprisonment, fines, or other penalties deemed effective in preventing the recurrence of such acts. Thus, Islamic law allows for the enforcement of adaptive and responsive legal measures to social dynamics and the need to protect victims, particularly women in the domestic setting. On one hand, this demonstrates the flexibility of Islamic law in accommodating various forms of crimes that may arise, including domestic violence, and emphasizes the importance of protecting individual rights, especially those who are vulnerable to violence and oppression.

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