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# Maslahah Evaluation of Judges' Sentences for Domestic Violence Crimes at the Majene District Court

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## Abstract

The study aimed to analyze the factors that contributed to the judge's lenient sentence towards a defendant charged with domestic violence at the Majene District Court. Additionally, the study sought to examine the *maslahah* value inherent in the judge's decision. The study conducted was normative research that involved analyzing the decisions made by judges. Additionally, interviews were conducted with multiple judges to gain insights into their decision-making processes. The study employed a normative *shar'i* approach to examine judges' decisions by utilizing *maslahah* analysis from Islamic legal theory. According to the study's findings, the judge's decision was influenced by the *maslahah* value, which prioritized the restoration of the perpetrator's household. This was due to the perpetrator's expression of regret and the establishment of peace between the involved parties. The statement suggests that there is a comparison between the obligation of maintaining a household and the imposition of prison sentences ranging from 1-10 years on perpetrators who are responsible for victimizing their wives. The imposition of prison sentences can have negative consequences for both the offender and society as a whole, as it impacts their ability to meet basic needs.

**Keywords:** *Maslahah*; Domestic Violence; Complimentary Punishment; Majene District Court.

## Abstrak

Penelitian ini bertujuan untuk menganalisis faktor-faktor yang menyebabkan dijatuhkannya hukuman ringan oleh hakim terhadap terdakwa kasus kekerasan dalam rumah tangga di Pengadilan Negeri Majene. Selain itu, penelitian ini berusaha untuk mengkaji nilai *maslahah* yang melekat pada putusan hakim. Penelitian yang dilakukan adalah penelitian normatif yang melibatkan analisis terhadap putusan yang dibuat oleh hakim. Selain itu, wawancara dilakukan dengan beberapa hakim untuk mendapatkan wawasan tentang proses pengambilan keputusan mereka. Penelitian ini menggunakan pendekatan *syar'i* normatif untuk

mengkaji putusan hakim dengan memanfaatkan analisis masalah dari teori hukum Islam. Menurut temuan kajian, putusan hakim dipengaruhi oleh nilai masalah yang mengutamakan pemulihan rumah tangga pelaku. Hal ini disebabkan oleh ungkapan penyesalan pelaku dan terciptanya perdamaian di antara pihak-pihak yang terlibat. Pernyataan tersebut mengisyaratkan bahwa ada perbandingan antara kewajiban memelihara rumah tangga dan penjatuhan hukuman penjara antara 1-10 tahun terhadap pelaku yang bertanggung jawab atas tumbal istrinya. Penjatuhan pidana penjara dapat menimbulkan konsekuensi negatif baik bagi pelaku maupun masyarakat secara keseluruhan, karena berdampak pada kemampuan mereka untuk memenuhi kebutuhan dasar.

**Kata Kunci:**

**Masalah; Kekerasan dalam Rumah Tangga; Keringanan Hukuman; Pengadilan Negeri Majene.**

## 1. Introduction

Household issues can be intricate and challenging, often resulting in disagreements and disputes.<sup>1</sup> The occurrence of domestic conflict can be attributed to the varying characteristics, education, age, social status, and principles between husbands and wives.<sup>2</sup> The statement suggests that conflict can be managed effectively through wise and mature resolution strategies. Frequent conflicts within a household can sometimes escalate to acts of violence experienced by one partner. Domestic violence is a concerning and distressing reality that married couples face in contemporary times.<sup>3</sup> The primary purpose of marriage is to establish a cohesive and peaceful family unit, characterized by mutual love and affection, known as *sakinah* and *mawaddah*, which ultimately leads to a fulfilling and joyful life.<sup>4</sup>

Domestic violence, also known as KDRT, involves the use of physical, sexual, economic, and psychological harm against a partner. This deviant behaviour can have serious consequences, including the disruption of the household's integrity.<sup>5</sup> Domestic violence is not limited to husbands perpetrating violence against their

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<sup>1</sup> Jamhuri and Rafi'ah, "Upaya Meminimalisi Kasus KDRT Di Aceh: Studi Kasus P2TP2A Provinsi Aceh," *Samarah* 3, no. 1 (2019): 90–115, <https://doi.org/10.22373/sjhk.v3i1.4954>.

<sup>2</sup> Widi Tri Pramesti Ningrum and Siti Mas'udah, "Family Conflicts and the Violence of Unemployed Husbands against Their Wives Acting as the Main Breadwinner," *Jurnal Sosiologi Dialektika* 16, no. 1 (2021): 76, <https://doi.org/10.20473/jsd.v16i1.2021.76-85>.

<sup>3</sup> A. Kumedi Ja'far and Agus Hermanto, "Reinterpretation Of The Rights And Duties Of Contemporary Husbands And Wives," *Samarah* 5, no. 2 (2021): 648–67, <https://doi.org/10.22373/sjhk.v5i2.9124>.

<sup>4</sup> Harwis Alimuddin and Tahani Asri Maulidah, "Implication of Local Wisdom in Islamic Law Compilation Legislation," *Mazahibuna: Jurnal Perbandingan Mazhab* 3, no. 2 (2021): 143–58, <https://doi.org/10.24252/mh.v3i2.24982>.

<sup>5</sup> Natasya Nadia Putri and Heru Suyanto, "Legal Protection for Victims of Domestic Violence: The Pandemic of Covid-19," *UNIFIKASI: Jurnal Ilmu Hukum* 8, no. 1 (2021): 95–104, <https://doi.org/10.25134/unifikasi.v8i1.3876>.

wives. It is important to recognize that wives can also be perpetrators of violence against their husbands, and even children can become victims of domestic violence. Domestic violence is a prevalent issue that disproportionately affects women. The act of domestic violence is in opposition to religious norms, legal norms, and violates the fundamental Human Rights (HAM).

Individuals who desire to start a family typically have aspirations and objectives to establish a cohesive and content household. However, the actual outcome may not always align with the anticipated result. Marital conflicts and quarrels can arise from differences of opinion, even minor issues can trigger conflict between spouses. Protracted problems have the potential to escalate into violent behavior. According to Rochmat Wahab's statement, it can be inferred that:

*"The occurrence of a conflict is caused by a misunderstanding or incompatibility between one another among family members. Unresolved conflicts can lead to domestic violence."*<sup>6</sup>

The act of a husband committing violence against his wife goes against religious, moral, and legal norms. It is also contrary to the purpose of marriage. According to Muhamad Khoiri Ridlwan's thesis titled "Domestic Violence (Analysis of the Provisions of the PKDRT Law, Al-Qur'an and Hadith About Nushūz)," he made a statement:

*"The anti-domestic violence bill emerged because existing laws, such as the Criminal Code (KUHP), are inadequate to protect women. So far violence has only been seen physically. Even though the violence received by women (wives) can be psychological or sexual. In addition, the understanding of law enforcement officials is also still narrow, and there are many assumptions that domestic violence is a private matter."*

The passing of Law No. 23 of 2004 on the Elimination of Domestic Violence has provided a sense of relief for those seeking justice, particularly women who have been subjected to domestic violence.<sup>7</sup> The law is intended to offer safeguard to individuals whose rights have been disregarded, including those who have suffered from domestic violence. The absence of legal protection for women in the Criminal

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<sup>6</sup> Rochmat Wahab, "Domestic Violence: Psychological and Educative Perspectives," *UNISIA*, 29 (2006).

<sup>7</sup> Mahfud Mahfud and Rizanizarli Rizanizarli, "Domestic Violence against Women in Indonesia: The Recent Domestic Violence Elimination Law Analysis," *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 4 (2021): 385–98, <https://doi.org/10.25041/fiatjustisia.v15no4.2276>.

Code necessitates the implementation of a lex specialist that specifically addresses domestic violence and provides protection for women.

Domestic violence is a complex and noteworthy phenomenon in contemporary society, characterized by various forms of violence inflicted by husbands upon their wives.<sup>8</sup> The act of domestic violence is deemed unacceptable and should not be condoned. The mentioned actions are deemed to be in opposition to religious customs and have the potential to undermine the fundamental objective of marriage, which is to establish a peaceful and loving family unit. Domestic violence is a prevalent issue that can cause disharmony within households and result in harm to victims, including wives, children, and husbands. The community's response to the Domestic Violence Law was positive. Sindi Enjelita Sitorus and Hesti Br Ginting, along with their attorney Leonardo Siahaan, have challenged the interpretation of psychological violence in Article 7 of the PDKRT Law, which they believe violates their constitutional rights. According to Article 7 of the PDKRT Law, psychological violence, as defined in Article 5 letter b, is an action that causes an individual to experience fear, a decrease in self-esteem, a loss of agency, a sense of helplessness, and/or significant psychological distress. The individual provides a detailed explanation for their assertion, citing specific reasons to support their claim:

“Article 7 of the PDKRT Law does not provide clear provisions as to what form of psychological violence is meant so that it can be an interpretation that will lead to debate. In addition, this will cause a constitutional loss that will be experienced by the Petitioners. “As an example of the case experienced by Valencya, she was named a suspect on January 11, 2021 for scolding her husband for coming home drunk. Valencya was reported to the West Java Regional Police for a case of psychic domestic violence,”<sup>9</sup>

According to Law No. 23 of 2004, individuals who violate it may face imprisonment as per Article 44 paragraph 1. This article specifies that those who commit physical violence may be sentenced to a maximum of 5 years in prison. According to paragraph 2 of the article, if an act of violence results in the wife becoming ill or sustaining severe injuries, the perpetrator can face a maximum prison

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<sup>8</sup> Amalesh Sharma and Sourav Bikash Borah, “Covid-19 and Domestic Violence: An Indirect Path to Social and Economic Crisis,” *Journal of Family Violence* 37, no. 5 (2022): 759–65, <https://doi.org/10.1007/s10896-020-00188-8>.

<sup>9</sup> MKRI. “Testing the Constitutionality of Forms of Psychological Violence in the Domestic Violence Law.”

sentence of 10 years.<sup>10</sup> According to Islamic law,<sup>11</sup> any form of violence is considered impermissible, regardless of whether it takes place within the household or outside of it. The statement suggests that within the Islamic faith, husbands are permitted to physically discipline their wives as a means of teaching or guiding them, rather than causing them harm.

*"According to as-Shāwī, if the wife disobeys her husband's order, namely an order that is not evil to Allah, then the husband is obliged to give ma'idzah to his wife, then if he still disobeys, the second step is to separate beds, until the third step is to beat the one who does not injure, namely until the bones break or make the limbs non-functioning. The last two steps, according to as-Shāwī, are only carried out when the wife actually commits nushūz."<sup>12</sup>*

As per as-Shāwī's viewpoint, Islam permits only those blows that do not result in any harm or serious injuries. According to Islamic teachings, physical discipline may be used as a last resort in cases of a wife's disobedience towards her husband. The user's text suggests that they believe it is acceptable for a husband to physically harm his wife as a form of punishment for disobedience. The text also implies that the husband has attempted to correct the wife's behavior through various non-violent means before resorting to physical violence. The Islamic faith prohibits any form of violent behavior towards a partner, regardless of whether it is perpetrated by a husband or a wife. Islamic criminal law provides for qisas or diyat sanctions to be imposed on those who commit acts of persecution. In cases where a husband inflicts violence upon his wife, resulting in severe injury, qisas or diyat sanctions may be imposed.<sup>13</sup> In his commentary, Shaykh Ahmad as-Shāwī al-Mālikī provides an analysis of the subject at hand:

*Hāsiyah as-Shāwī 'alā Tafsīr al-Jalālain: Ar-Rijālu Qawwāmūna. The background of the revelation of surah An-Nisa verse 34 is that the wife of Sa'd ibn Rabi', one of the Ansar leaders named Habibah bint Zaid, had nushūz, then*

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<sup>10</sup> Karenina Aulery Putri Wardhani, "Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Dalam Rumah Tangga (KDRT) Pada Tingkat Penyidikan Berdasarkan Undang-Undang No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga (UUPKDRT)," *Jurnal Riset Ilmu Hukum* 1, no. 1 (2021): 21–31, <https://doi.org/10.29313/jrih.v1i1.70>.

<sup>11</sup> Syaifuddin Zuhdi et al., "Domestic Violence as a Consequence of Nusyuz under the Islamic Law and Legislation of Indonesia," *Humanities and Social Sciences Reviews* 7, no. 2 (2019): 340–48, <https://doi.org/10.18510/hssr.2019.7240>.

<sup>12</sup> MUHAMAD KHOIRI RIDLWAN, "VIOLENCE IN HOUSEHOLD (Analysis of Provisions of the PKDRT Law, the Qur'an and Hadith about Nushūz)," 2015. h. 52

<sup>13</sup> Hanafi Hanafi, Hidayatullah Hidayatullah, and Tamjidnor Tamjidnor, "Domestic Violence: Comparison between Islamic Law and Domestic Violence," *International Journal of Social Science, Education, Communication and Economics (SINOMICS JOURNAL)* 1, no. 1 (2022): 1–8, <https://doi.org/10.54443/sj.v1i1.1>.

*slapped him. For this incident, Habibah's father complained to the Prophet and explained to him that Habibah's husband had slapped Habibah. The Prophet then emphasized that Habibah's husband should be qishas.*<sup>14</sup>

The verse was revealed following the husband's act of nusyuz towards his wife.<sup>15</sup> The researcher posits that qisas was not implemented in this particular case due to the fact that Habibah bint Za'id had previously committed Nusyuz against her husband. As a result, Sa'ad ibn Rabi' beat his wife in an attempt to educate her, rather than to inflict harm upon her. This is in contrast to current situations where husbands may beat their wives to the point of causing serious injury. The extent of his injuries prevented him from being able to perform his usual tasks. The user suggests that while some studies claim that domestic violence cases are only subjected to takzir punishments, researchers argue that there are no specific regulations for domestic violence. Instead, the verses about qisas are general in nature until there is a specialized argument for them. The researcher suggests that the law should be adaptable to the current circumstances.

*Asaf AA Fyzee, a thinker and Shia scholar said that "Laws must change and really change when society experiences development and change."*<sup>16</sup>

The rise in domestic violence can be attributed to traditional beliefs that are still prevalent and misunderstandings in the interpretation of classical scholars, leading to incorrect application of the verse Ar-Rijālu Qawwāmūna. It is widely recognized by many individuals that certain verses in religious texts suggest that men hold a position of superiority over women. This belief is often used to justify the idea that men, as the heads of households, have the right to physically discipline their wives if they do not comply with their husbands' wishes. Researchers suggest that qisas diyat should be imposed on perpetrators of domestic violence as a justifiable consequence of their actions, particularly if the victim (wife) has suffered severe injuries and no longer wishes to remain with the perpetrator (husband).

Researchers are concerned about a case of domestic violence that was filed at the Majene District Court and received a legally binding judge's decision. The

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<sup>14</sup> Muhammad Khoiri RIDLWAN, "KEKERASAN DALAM RUMAH TANGGA (Analisis Ketentuan UU PKDRT, Al-Qur'an Dan Hadits Tentang Nushūz)." *Domestic Violence (Analysis of the Provisions of the PKDRT Law, Al-Qur'an and Hadith About Nushūz)*, h. 51

<sup>15</sup> Alfitri, "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia," *Studia Islamika* 27, no. 2 (2020), <https://doi.org/10.36712/sdi.v27i2.9408>.

<sup>16</sup> Asaf AA Fyzee, *A Modern Approach to Islam, Bombay: Asia Publishing House*, 1963.

reason for this is that the judge's ruling does not align with Article 44 paragraph 2 of Law No. 23 of 2004 regarding PK DRT. The husband's violent act resulted in serious injury to his wife. According to Article 44 paragraph 2, it was mandatory for the judge to sentence the defendant to prison, with a maximum sentence of 10 years. Contrary to expectations, the judge issued a prison term of 8 months. The researcher aims to analyze the factors that influence a judge's decision-making process beyond the scope of Article 44 paragraph 2. The analysis of decisions that have permanent legal force is of interest to researchers who aim to investigate the benefits associated with the judge's decision. The judge's decision to grant relief of sanctions to the defendant will be analyzed by researchers using an Islamic legal approach in order to uncover the underlying reasons. The increase in domestic violence in Majene appears to be influenced by economic factors and the prevalence of early marriage. The user suggests that economic factors are a significant background element to consider when analyzing the causes of domestic violence in a judge's decision. The statement was made by Arwan Aras:

He continues to voice that there is serious attention from all stakeholders related to the still high rate of child marriage. Moreover, in West Sulawesi, the number of child marriages is still relatively high, so the local government and the central government need to work together to overcome this problem," hoped Arwan Aras, a young politician from the PDI Perjuangan, West Sulawesi.<sup>17</sup>

## 2. Literature Review

The term "*maslahah*" has its roots in the word "*ṣalaha*" which denotes qualities such as goodness, appropriateness, and suitability. According to the perspective of Al-Gazali,<sup>18</sup> a scholar of *usul al-fiqh*, the term "*maslahah*" refers to the act of avoiding harm. According to Al-Gazali, the concept of *maslahah* involves upholding and implementing the objectives of Islamic law (*maqāshid sharia*). These objectives include safeguarding religion, as well as protecting the individual's soul, intellect, lineage, and property. Al-Ghazali's perspective suggests that any action that seeks to achieve the five objectives of the *maqāshid sharia* can be considered as a

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<sup>17</sup> Iqbal, "Sosialisasikan Hak-Hak Perempuan Di Majene, Arwan Aras Ingatkan Angka Perkawinan Anak Sulbar Masih Tinggi," SULBARONLINE.COM, 2021.

<sup>18</sup> Nur Asiah, "Maslahah Menurut Konsep Imam Al Ghazali," *DIKTUM: Jurnal Syariah Dan Hukum* 18, no. 1 (2020): 118–28, <https://doi.org/10.35905/diktum.v18i1.663>.

component of *maslahah*. The statement suggests that any legal case that aims to prevent harm or damage is considered *maslahah*. As per the quote by Izz al-Din Abd. Al-Salam cited by Asmawi,<sup>19</sup> the term "*maslahah*" can be understood as synonymous with "*khair*," which denotes wisdom, "*al-naf*" which signifies usefulness, and "*al-husn*" which connotes goodness. Najma a d-dina t-Tufi suggests that the concept of *maslahah* can be examined from two perspectives: '*urf*' (customary practices) and '*shar'i*' (Islamic law). According to his perspective, '*urfi*' is defined as something that yields advantages or benefits. The concept of *shar'i maslahah* pertains to the promotion of shariah compliance in both worship and muamalah matters. To clarify, the concept of *maslahah* is a component of *maqāshid sharia*.

The concept of *maqāshid sharia* refers to the objective or direction behind the application of Islamic law. The *Maslahah* theory is the core of *maqāshid sharia*, as it has the potential to generate innovative developments in Islamic law. The sources of Islamic law, namely Al-Qur'an and Sunnah, have limitations in their coverage of human life. The *maslahah* theory has the potential to generate legal provisions that are advantageous and applicable to human beings. Al-Shatibi categorizes human needs into three distinct levels: *hajat dharuiyah*, which encompasses necessities; *hajat hajjiyah*, which includes complementary needs; and *hajat tahsiniyat*, which refers to supporting needs. The concept of *maslahah dharuiyah* pertains to safeguarding various aspects of human life, including religion, personal well-being, mental health, family lineage, and property. The concept of *maslahah hajjiyat* involves the enhancement of the five fundamental human needs outlined in *dharuriyat khams*. This includes acts of charity, zakat, and infaq, which serve to promote the protection of religion. *Hajat tahsiniyat* is a supplementary need that serves to enhance the aesthetic appeal and completeness of fulfilling human needs, following the satisfaction of basic and complementary needs. The user has provided examples of *tahsiniyat*, which are material possessions that are considered luxurious

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<sup>19</sup> 'Izz al-Dīn 'Abd al-'Azīz bin 'Abd Al-Salām, *Al-Qawā'id Al-Kubrā Al-Mawsūm Bi Qawā'id Al-Ahkām Fī Iṣlāh Al-Anām* (Damaskus: Dar al-Qalam, 2000)., p. 269.



and expensive. These examples include clothing, vehicles, and cell phones. The text suggests that the researchers prefer the *maslahah* theory proposed by al-Syatibi.<sup>20</sup>

In the research titled "Domestic Violence (KDRT) Between Defending the Family and Sanctions for Criminal Acts," the author highlights the importance of providing guidance to the community on domestic violence and offering legal assistance to victims in cases of domestic violence within households. The research lacked an explanation for the factors that contributed to the judge's lenient sentencing of domestic violence offenders. The research conducted by Ana Indah Cahyani and Yulia Monita explores the possibility of using criminal fines as a substitute for traditional forms of punishment for domestic violence. The study suggests that implementing fines as a form of sanction can potentially lead to a decrease in divorce rates. In the research titled "Judge Legal Considerations in Settlement of Domestic Violence Criminal Cases Analysis of Decision Number 99/Pid.Sus/2018/PN Bna" by Muhammad Nauval, Soraya Devy, and others, it was found that the researchers disagreed with the lenient sentence given to the defendant. The reason for the leniency was that the victim had forgiven the defendant, and the judge believed that a criminal sanction of 20 days would help the defendant improve his behavior and become a better husband. The text pertains to a research study on the analysis of judges' decisions regarding physical domestic violence crimes. The study is identified by the reference number 80/Pid.Sus/2020/Pn.Liw. The research solely focuses on the criminal penalties imposed on individuals who commit domestic violence, as determined by a judge. It does not delve into the role of *maslahah* in influencing the judge's legal decision. The literature suggests that there is a lack of similarity between the title and results of the study and the references to which they are referred, as reported by researchers. Previous research has concentrated on the objective of implementing sanctions on defendants with the aim of deterring them from committing similar actions in the future. The judge's lenient sentence has been subject to criticism in prior research. This criticism is based on the assumption that the defendant deserved a harsher

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<sup>20</sup> Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah Juz II* (Kairo: Maktabah al-Taufiqiyah, 2003)., p. 121.

sentence than the one given. This research analyzes the leniency shown towards perpetrators of domestic violence by examining the benefits considered by judges when making their decisions. According to researchers, the purpose of punishment is not solely to act as a deterrent. Instead, it should prioritize aspects that benefit the integrity of both parties' households. The researcher provides a thorough analysis of the advantages of the judge's decision by examining the defendant's aggravating and mitigating factors, as well as the judge's considerations.

### **3. Methods**

The article is based on empirical normative research that examines the decision-making process of judges at the Majene District Court. The research includes interviews with a judge who is willing to be interviewed, despite no longer serving at the court. The researcher employs a juridical and normative syar'i approach to analyze the data. The study utilized primary data sources, specifically judges' decisions and interviews with judges. The researcher collected secondary data from various sources such as legal books, legislation, scientific articles, websites, and other relevant references.

### **4. Result and Discussion**

#### **4.1. Majene District Court Judge's Decision Number 56/Pid.Sus/2019/PN Mjn**

The regulation of domestic violence is governed by a distinct law that is separate from the Criminal Code. This law is known as Law Number 23 of 2004. The legal system includes provisions for criminalizing domestic violence and imposing corresponding penalties. This statement highlights that the implementation of the law renders the general crimes outlined in the Criminal Code null and void, in accordance with the principle of *lex specialist derogate lex generalis*.

The process of decision-making for a judge involves the necessity of referring to the relevant legal framework. The verdict of the Majene District Court judges on the case of domestic violence committed by the victim's husband found the defendant guilty of "committing physical violence in the household" as per article 44 paragraph 2 of Law Number 23 of 2004. The panel of judges carefully considered

both the aggravating and mitigating factors before imposing a sentence of sanctions on the defendant. The judge's decision was based on multiple sources of information, including the testimony of the witness, the defendant's account, and the evidence presented during the trial. The decision made by a judge is founded upon their careful consideration of the relevant factors. The panel of judges must consider both mitigating and aggravating factors when making a decision about the defendant. This balance ensures a fair and just outcome. The defendant's aggravation was triggered by the victim's injuries, which included swelling on the arm up to the left wrist, bruises on the right buttocks, and abrasions on the left arm. These findings were determined through a post-mortem examination conducted by a doctor at Majene Hospital. The defendant, who is the husband, is accused of causing harm to his wife, which is considered to be a breach of his duty to protect, love, and respect her. This action is perceived as aggravating due to the expectation that spouses should prioritize the well-being of their partners. The judge's decision was influenced by several mitigating factors. These included the defendant's lack of prior convictions, the presence of remorse on the part of the defendant, and his apology to the victim-witness, who happened to be his wife. Additionally, the defendant promised not to engage in similar behavior in the future. One potential factor to take into account is the legal information that came to light during the trial, specifically that the accused and the victim have since made amends. The determination of the length of a sentence is based on the judge's assessment of both the positive and negative aspects of the defendant's actions, as outlined in chapter 8 paragraph (2) of Law no. 48 of 2009. Additionally, the judge considers aggravating and mitigating factors for the defendant as specified in Criminal Procedure Code article 197 paragraph (1) letter (f).

**1) Aggravating factors:**

- The actions of the defendant as the head of the family should guide the wife and his son will but precisely do deed Which contrary with its obligations;<sup>21</sup>

**2) Factors that reduce punishment :**

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<sup>21</sup> Agung, *Decision of the Majene District Court Judge Number 56/Pid.Sus/2019/PN Mjn* .

- a) The perpetrator regrets what he has done and promises not to do it Again;
- b) perpetrator never got punishment ;
- c) the perpetrator and witness Victim xxxxxxxxx have reconciled and will rebuilding his household;

Based on the facts of the trial in the form of witness explanations and defendant's explanations as well as the evidence presented before the panel of judges, the judge determined that the defendant XXXXXXXXX **was** found guilty and unlawfully committed a criminal act in the form of **“Deeds Physical Violence Against Wife Causing Injury ”** so the judge decided:

- a. Drop imprisonment for the defendant for 8 months **(eight) months.**
- b. The prison term imposed on the defendant is reduced by the prison term and the arrest period. ;
- c. Defendant remains detained;
- d. Goods form of evidence 1 (one) Color Marriage Book the chocolates were returned to the Defendant and 1 (one) color marriage book green d iredturned to witness Victim xxxxxxxxx;
- e. The defendant is required to pay a court fee of Rp. 5000,- (five thousand rupiah);

Based on the judge's considerations, the researcher will analyze the *masalah* aspects contained in the judge's decision by referring to the considerations that form the basis of the judge's decision. So the judge gave a prison sentence of 8 months. In addition to analyzing the judge's decision, the researcher will interview the judge regarding the decision. Even though the judge who decided the case was no longer serving at the Majene State court, the researchers continued to conduct interviews with one of the judges named Mr. Rizal Muhammad Farasyi, to find out the basis for the judge's considerations in deciding a domestic violence case by imposing an 8-month prison sentence which was inconsistent with the sanction crime contained in Law Number 23 of 2004 article 44 paragraph 2. The results of the interview with Rizal stated that:

"In the Domestic Violence Law, the criminal threat for the perpetrators of violence in Article 44 paragraph (2) is threatened with 10 years in prison, the maximum is while the minimum is 1 day, in the Criminal Code at least 1 day

in length, a maximum of 10 years or a fine of thirty million rupiahs. In making a decision, the panel of judges first gave the verdict through deliberation of the three judges. And each judge in the panel will give his opinion and consideration in making a decision, how long the decision may be based on the number of times the trial continues based on the judge's conviction. Likewise, the aggravating circumstances and mitigating sentences for the defendant were considered at trial. I read that one of the mitigating sentences was that he had made peace between the victim and the defendant, maybe this was one of the considerations or could be the panel of judges determining a sentence of 8 months in prison. already separated, moreover there is 1 child and he has made peace. <sup>22</sup>As for the maximum prison sentence for domestic violence, it is a maximum of 10 years in prison and a fine of thirty million rupiahs. Now, how long will it take for the panel of judges to deliberate based on their considerations? . So there is deliberation from the judge before considering the decision."

In decision No.56/Pid.Sus/2019/PN.Mjn the panel of judges gave the defendant a sentence of 8 months in prison, whether this punishment can have a deterrent effect on the perpetrators of violence. According to the judge, Rizal Muhammad Farasyi, he said:

"For the deterrent effect, if in theory everyone has been convicted, they will definitely feel a deterrent effect, especially if they are detained in prison and suppressed their freedom to get a sentence of 8 years, 9 years, 10 years back to the individual defendants, but by taking into account this decision the defendant has committed apology and the victim also forgave and the defendant also admitted his guilt, in his consideration he would not do what he did again, if he was still hitting and being arrested again, it means that yesterday was said to be peaceful.<sup>23</sup>

Furthermore, from the results of an interview with Mr. Rizal Muhammad Farasyi as a judge at the Majene District Court, he said:

"The form of protection for violence against women in judicial institutions, for women who are in court of law whether as victims, perpetrators or as witnesses, is regulated in PERMA No. 3 of 2017 concerning guidelines for trying cases of women dealing with the law, both women as victims and as perpetrators. So in the PERMA, women who are in conflict with the law either as perpetrators or victims of the judge must pay attention to the first showing an attitude or issuing a statement whether in court the judge may not show an attitude or issue a statement that demeans the woman, then the second issue a statement or view that contains stereotypes. gender, continues in PERMA No. 3 of 2017 the judge must also ask whether there are losses suffered by this domestic violence whether material or non-

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<sup>22</sup> Interview with Rizal Muhammad Farasyi, a Judge at the Majene District Court on November 1, 2022.

<sup>23</sup> The results of an interview with Rizal Muhammad Farasyi, one of the Judges at the Majene District Court, on November 1, 2022.

material losses, and also be a consideration in the decision.<sup>24</sup>

In the case of domestic violence that occurred at the Majene District Court and has received permanent legal force, that the perpetrators of violence were found guilty of committing the crime of domestic violence listed in article 44 paragraph (2) of the Law on Domestic Violence.<sup>25</sup> The perpetrator was declared proven to have violated the law, namely committing the crime of domestic violence. Then the perpetrator was sentenced to imprisonment for 8 (eight) months.

#### **4.2. Critical Review of the Majene District Court Judge's Decision**

According to the researcher, the judge's decision to view the husband's role as an aggravating factor for the defendant was incorrect and misguided. The act committed by the defendant resulting in injury to the victim-witness, who is also the defendant's wife, should have been considered as an aggravating factor. The verdict handed down to the defendant was deemed insufficient by the user, who believes that the defendant's actions warranted a more severe punishment. Article 44, paragraph 2 of the Law on Domestic Violence stipulates that individuals who inflict serious injury or illness upon others may face a maximum prison sentence of 10 years. The judge made the decision to sentence the individual to 8 months in prison. The judge considered the defendant's role as a husband to be an aggravating factor, but the defendant views it as a mitigating factor. The judge's decision to grant relief to the defendant may have been influenced by the fact that he is a husband. The judge may have believed that providing the defendant with an opportunity to improve himself would ultimately benefit his household. The goal is for the defendant to fulfill his role as a responsible and caring husband, providing guidance to his wife without resorting to violent behavior. The statement suggests that while the PKDRT Law prohibits acts of violence against wives and mandates punishment for perpetrators to safeguard women from their husbands' oppressive behavior, judges must also weigh other factors to preserve the overall well-being of the household involving the two parties in question. The user's statement suggests that the primary objective of

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<sup>24</sup> Supreme Court, *Supreme Court Regulation Number 3 of 2017 Concerning Guidelines for Trying Cases Against Women Against the Law* (Indonesia, 2017).

<sup>25</sup> The People's Representative Council of the Republic of Law Number 24 of 2004.

marriage is to establish a family unit that embodies the qualities of *sakinah*, *mawaddah*, and *warahmah*. The statement suggests that marriage is a lifelong commitment rather than a temporary arrangement. In addition, when there are children involved in a legal dispute, the judge must carefully weigh their well-being when making a ruling that will impact the entire household.

The act of violence is considered harmful and unacceptable, regardless of whether it takes place within the confines of a household or in a broader community setting. The act of punishing perpetrators of violence serves as a deterrent for potential offenders, as it sends a message that such behavior will not be tolerated. The prevalence of violence in contemporary society is a concerning issue, as it not only affects the wider community but has also infiltrated the domestic sphere, specifically within households. The implementation of the Domestic Violence Law aims to decrease the incidence of criminal activity within households.

#### **4.3. Analysis of the Problem of Releasing Sanctions for Perpetrators of Domestic Violence by Majene District Court Judges**

The defendant's case was evaluated in light of Article 44 paragraph 2 of the Domestic Violence Law, and it was found that the decision made by the Majene District Court judge was not in accordance with this article. The user suggests that the defendant deserves a prison sentence ranging from 1 to 9 years due to the serious injuries sustained by the witness-victim. According to the Law on Domestic Violence, individuals who engage in domestic violence and cause injury may face a maximum prison sentence of 10 years as a consequence. The judge decided to impose a prison sentence of 8 months, which is less severe compared to other possible sentences. The aim is to conduct an analysis of the judge's considerations through the application of the *maslahah* theory found in Islamic law. The judge's decision to impose criminal sanctions was based on a careful consideration of various factors, including aggravating and mitigating factors. The trial's factual basis was derived from witness testimonies, the defendant's statements, and the evidence that was presented. The judge considered certain facts as mitigating factors for the defendant, which led to the decision to sentence him to 8 months in prison.

According to the maqashid sharia theory, marriage serves the purpose of safeguarding both offspring and religion. This is because marriage is considered to be an integral aspect of protecting religion. Marriage serves a dual purpose of protecting both offspring and religion. This is due to the fact that marriage is considered a fundamental aspect of the Prophet's Sunnah and is also viewed as a means of perfecting one's worship. According to previous research, the fundamental principle of maqashid sharia is to attain benefit. The decision must be evaluated based on its potential benefits. Mitigating factors have an impact on how the judge's decision is evaluated. The defendant's situation may be considered in a way that results in a less severe punishment, due to certain mitigating circumstances;

1. Defendant's remorse

During the court proceedings, the judge posed a series of inquiries to the defendant and closely observed their demeanor and authenticity while providing testimony. Based on the exchange between the defendant and the judge, it appears that the judge believed the perpetrator had acknowledged their wrongdoing and was attempting to make amends. The judge took a comprehensive approach to evaluating the case, considering not only the presented evidence but also the defendant's facial expressions and expressions of remorse regarding their actions towards the witness.

2. The accused belongs to the family

The defendant's role as the husband of the victim's witness carries with it the responsibility of providing guidance and support to his wife and children. The judge's decision to impose a lenient penalty was influenced by the defendant's role as the head of the family and their importance as a support system. The judge offered the offender a chance for self-reflection and personal growth, with the goal of preventing future instances of domestic violence. The deprivation of freedom resulting from an 8-month prison sentence is believed to have a deterrent effect on the defendant. Rizal's perspective is that when an individual is detained or imprisoned, their freedom is essentially taken away from them. Imprisonment is commonly believed to serve as a deterrent. The quality of a crime committed is the determining factor for the length of a prison sentence, rather than the quantity of crimes committed. This is the approach taken by judges when imposing sentences. There has been a change



in the nature of prison sentences over time. The prison system offers rehabilitation programs aimed at helping inmates improve themselves and successfully reintegrate into society upon release.

3. The defendant is not a recidivist (first time) convicted

The judge granted prison sentence relief to the defendant because they have no prior criminal record, indicating that they are not a recidivist. The judge's argument appears to be based on a logical premise. Specifically, the argument suggests that a defendant who is being tried for the first time and has received a criminal sanction may have made a mistake by committing violence against their spouse. The defendant's actions towards his wife may have been a result of losing control of his emotions, leading him to hit her unintentionally. When dealing with an accused individual who has a history of repeated offenses, it is likely that the violent acts they have committed are inherent to their character. As a result, it is appropriate to subject them to more severe sanctions, as previous punishments have not effectively deterred them from continuing to engage in violent behavior.

The first-time punishment of an individual who has committed an act of violence can be considered an oversight. The occurrence of oversights, particularly violence, can be attributed to various factors, one of which is the economic factor. The incident involved an argument that escalated into violence, with the defendant physically assaulting his wife. The argument reportedly stemmed from a request for 50 thousand to purchase fish. It is possible that the defendant's financial situation may have had an impact on his mental state during the time in question. The judge reduced the defendant's prison sentence due to the presence of *maslahah* in the decision, which was a first-time occurrence. The judge provided the defendant with a chance to rectify his conduct in order to reduce his frivolousness. The judge's decision regarding the compliance of sentences is based on considerations of *maslahah*, which aims to ensure the sustainability of the defendant's household.

4. The settlement that occurred between the defendant and the victim

The mediation session between the defendant and the victim's witness, who happened to be the wife, was successful. The defendant expressed remorse for his actions and made an apology to his wife. Despite this, the defendant's wife chose to forgive him. After serving 8 months in prison, the defendant attempted to reconstruct

his household. The aforementioned reason holds the most weight in terms of the judge potentially decreasing the defendant's sentence.<sup>26</sup> The severity of the sanctions will depend on whether or not the defendant's wife chooses to forgive him. The act of forgiving the victim as a means of reducing punishment aligns with the principles of Islamic criminal law outlined in the qisas diyat finger. This principle dictates that if the victim forgives the defendant, the latter will not receive qisas sanctions and instead will be subject to a diyat.

The application of Islamic law does not include specific regulations pertaining to domestic violence.<sup>27</sup> Instead, it generally examines and discusses acts of violence that fall under the category of qisas diyat. The absence of specific regulations pertaining to domestic violence means that acts of violence perpetrated by husbands are subject to the general rules outlined in the qisas diyat finger. The statement suggests that the imposition of qisas is only applicable in cases where the perpetrator's child or parent is killed. The rules imply that in cases of domestic violence, the perpetrators may still be subject to qisas or diyat by the victims. The user suggests that while Islamic criminal law is not implemented in Indonesia, it is important to consider the Islamic principles that are present in the country's criminal law. The purpose of implementing sanctions against those who commit acts of violence is to administer the primary punishment, which is typically imprisonment, for the defendant's actions against their spouse. The statement aligns with the principle of qisas punishment, which is the primary form of punishment for individuals who commit acts of violence or persecution. The judge's decision to impose a prison sentence of 10 years was lighter than what is prescribed by the Domestic Violence Law.

The researchers conducted an analysis of the factors that contribute to judges imposing sentences that are less severe than those outlined in the Domestic Violence Law. They discovered that the judges' decision to impose a lighter sentence was motivated by a *maslahah* value. The researcher's analysis yielded multiple

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<sup>26</sup> Risdianto, "Hukuman Terhadap Tindak Pidana Kekerasan Dalam Rumah Tangga Menurut Hukum Islam," *Islamic Review: Jurnal Riset Dan Kajian Keislaman* 10, no. April (2021): 59–76, <https://doi.org/10.35878/islamicreview.v10.i1.266>.

<sup>27</sup> Liky Faizal, "A Transformation of Islamic Law in Legislation of Domestic Violence (PDKRT) Law in Indonesia," *Al-Adalah* 15, no. 1 (2019): 1, <https://doi.org/10.24042/adalah.v15i1.2509>.

findings regarding the impact of the judge's decision on the relief of the accused perpetrator of domestic violence:

- a) Maintaining the integrity of the household from various existing conflicts as long as there is still a chance for repair, then maintaining marriage and keeping away from divorce is an obligation. Based on the judge's decision, the researchers found a strong correlation between leniency and the reasons for maintaining the integrity of the household.
- b) The judge's decision is in line with one of the 5 principles of Islamic law contained in dharuriyatul khams, namely protecting offspring.<sup>28</sup> By maintaining marriage then it is part of maintaining offspring. Because by maintaining the marriage of the two litigants, then that is the way for them to have children, moreover both parties do not have children. Children are the longing and longing for both husband and wife.
- c) In the study of fiqh jinayah, the perpetrators of violence or abuse are mediated first before imposing the main punishment, namely qisas punishment. The judge has reconciled the two parties and the defendant regretted his actions and apologized to his wife. The wife (victim) has forgiven the defendant and wants to accept her husband back in managing his household in a better way in accordance with sharia guidelines. By giving prison sentences that are lighter than the sanctions stipulated in the law, this gives the offender an opportunity to improve his behavior and become a good husband for his wife.
- d) Maintaining marriage is the same as maintaining religion, because marriage is a sunnah of the apostles and sunnatullah that must be carried out by humans if they have reached puberty and are physically and psychologically capable.

Domestic violence in households is widely disapproved by researchers regardless of the underlying reasons.<sup>29</sup> The statement suggests that individuals who commit domestic violence should be subject to the primary forms of punishment, which include qisas diyat in Islamic criminal law and imprisonment in the national

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<sup>28</sup> Ahmad Jalili, "The Maqashid Sharia Theory in Islamic Law," *TERAJU*, 3.02 (2021) <<https://doi.org/10.35961/teraju.v3i02.294>>.

<sup>29</sup> Fathul Djannah and Muhammad Rizal, "Law Enforcement Against Perpetrators of Domestic Violence in Terms of Legislation and Islamic Law," *Britain International of Humanities and Social Sciences (BloHS) Journal* 2, no. 1 (2020): 109–19, <https://doi.org/10.33258/biohs.v2i1.155>.

criminal law. The user suggests that the judge should consider various factors during the trial, including the presence of peace between the husband and wife, the perpetrator's level of remorse, and the victim's willingness to forgive and work towards improving the household. The absence of certain elements can result in judges imposing prison sentences on domestic violence perpetrators, as outlined in the PKDRT Law. This serves as a deterrent for future perpetrators.<sup>30</sup>

## 5. Conclusion

The judge's decision to give a lenient prison sentence to the defendant appears to align with the five fundamental principles of Islamic law outlined in dharuriyatul khams. These principles include safeguarding the welfare of future generations and protecting religious beliefs. The judge's decision appears to prioritize the preservation of the household's integrity for both parties, taking into account the testimony of the victim and witnesses. The judge's decision to reduce the defendant's sentence was motivated by the desire to incentivize the defendant to improve his behavior and resume his responsibilities in caring for his household. The implication of the research is that it can serve as an extra resource for judges when making decisions regarding domestic violence offenses.

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<sup>30</sup> Alang and Soliman.

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