



Seeking Harmony over Punishment: Restorative Justice Approaches to Domestic Violence in Islamic and Indonesian Legal Frameworks

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Abstract:

Domestic violence in its various forms occurred, yet often victims of violence are reluctant to separate from their perpetrators. Reasons such as social, economic, and religious considerations to maintain the household make some victims of domestic violence withdraw their reports and forgive the perpetrators for the sake of household continuity. This research aims to answer what is the perspective of restorative justice in Islam and Indonesian national law in domestic violence cases? This research was conducted using a literature research method that explores relevant data in relation to this topic. This research used juridical-normative approach, which then analyzes the data using the concept of restorative justice in Islam and Indonesian national law. The results show that based on the restorative justice system, both in Islam and Indonesian national law, both provide opportunities for perpetrators and victims to restore conflict. The difference is that the concept of restorative justice in Islam emphasizes God's rights and human rights. So that the output can be in the form of victim forgiveness, as well as diyat (fine) sanctions for the perpetrator. Meanwhile, in the restorative justice system of Indonesian state law, it no longer focuses on the concept of imprisonment. Furthermore, this regulation aims for preventive, protective, repressive, and consolidative efforts. This article is limited to an overview of the comparison of restorative justice systems in Islam and Indonesian national law in handling domestic violence cases theoretically.

Abstrak:

Kekerasan Dalam Rumah Tangga (KDRT) dalam berbagai bentuknya sering terjadi, namun seringkali korban kekerasan enggan untuk berpisah dengan pelaku. Alasan seperti kebutuhan sosial, ekonomi, dan pertimbangan agama untuk mempertahankan rumah tangga membuat beberapa korban KDRT mencabut laporan mereka dan memaafkan pelaku demi kelangsungan rumah tangga. Penelitian ini bertujuan untuk menjawab bagaimana perspektif restorative justice dalam Islam dan hukum nasional Indonesia dalam kasus kekerasan domestik?. Penelitian ini dilakukan dengan menggunakan metode penelitian pustaka yang menggali data relevan sehubungan dengan topik ini. Penelitian ini mengadopsi pendekatan yuridis-normatif secara umum, yang kemudian menganalisis data dengan menggunakan konsep restorative justice dalam Islam dan hukum nasional Indonesia. Hasil penelitian menunjukkan bahwa berdasarkan sistem restorative justice, baik dalam Islam dan hukum nasional Indonesia, sama-sama memberikan kesempatan bagi pelaku dan korban untuk memulihkan konflik. Bedanya, dalam konsep restorative justice Islam lebih menekankan pada hak Tuhan dan Hak manusia. Sehingga outputnya dapat berupa pemaafan korban, maupun sanksi diyat (denda) bagi pelaku. Sedangkan dalam sistem restorative justice hukum negara Indonesia,

tidak lagi fokus pada konsep pemenjaraan. Lebih jauh, peraturan ini bertujuan untuk upaya preventif, protektif, represif, dan konsolidatif. Artikel ini terbatas pada gambaran mengenai perbandingan restorative justice sistem dalam Islam dan hukum nasional Indonesia dalam menangani perkara kekerasan domestik secara teoretis.

A. Introduction

Domestic violence in the form of physical, psychological, and sexual abuse is dominantly perpetrated by spouses,¹ and lead to the divorce.² The majority of victims of domestic violence are women³ and also children, which then causes them to become quiet, even becoming the object of bullying.⁴ The problem of domestic violence becomes increasingly difficult to handle when the victim does not want the law to be enforced. Many cases of domestic violence have been reported to the authorities, then the report is revoked because the victim of domestic violence feels it is better to forgive the perpetrator for the sake of the integrity of their household.⁵

The dominant reason why victims of domestic violence forgive the perpetrator is socioeconomic, where the victim is very dependent on the perpetrator for their financial needs.⁶ In addition, religious factors also play a role in victims of violence forgiving their perpetrators.⁷ Meanwhile, the presence of children in the household is not a significant factor that causes victims to forgive their abusers.⁸ This means that victims of domestic violence are

¹ Sani, Ana Isabel, and Dora Pereira. "Mothers as victims of intimate partner violence: The decision to leave or stay and resilience-oriented intervention." *Social Sciences* 9, no. 10 (2020): 174.

² Rozak, Abdul, and Diky Faqih Maulana. "Pengaruh Pandemi Covid 19 terhadap Perceraian Masyarakat Rembang Berdasarkan Aspek Sosial dan Angka di Pengadilan." *Al-Ahkam Jurnal Ilmu Syari'ah dan Hukum* 6, no. 2 (2021): 161-181.

³ Brosi, Matthew, Emily Rolling, Christine Gaffney, and Brianna Kitch. "Beyond resilience: Glimpses into women's posttraumatic growth after experiencing intimate partner violence." *The American Journal of Family Therapy* 48, no. 1 (2020): 1-15.

⁴ Karakuş, Cansu, and Aslı Göncü-Köse. "Relationships of domestic violence with bullying, silencing-the-self, resilience, and self-efficacy: Moderating roles of stress-coping strategies." *Current Psychology* 42, no. 16 (2023): 13913-13926.

⁵ Sartika, Dewi, and Nur Fadilah Amalia. "Forgiveness in wives experiencing domestic violence." *International Journal of Social Science and Humanity* 4, no. 3 (2014): 238-241.

⁶ Nasution, Hamidah. "Analisis Faktor-Faktor Dominan Forgiveness Pada Korban Kekerasan Dalam Rumah Tangga (KDRT)." PhD diss., Universitas Negeri Padang, 2022.

⁷ Mangasik, Silva, and Christiana Hari Soetjningsih. "Analisis Forgiveness Istri Terhadap Suami yang Melakukan Kekerasan dalam Rumah Tangga." *Jurnal Bimbingan dan Konseling Indonesia* 7, no. 1 (2022): 54-62.

⁸ Ariyani, Mira, and Maryam Qonita. "Perbandingan forgiveness pada wanita korban kdrt ditinjau dari kehadiran anak." *Jurnal Penelitian dan Pengukuran Psikologi: JPPP* 7, no. 1 (2018): 20-25.

willing to forgive the perpetrator in order to maintain the integrity of the household, the main factors of which are socioeconomic and religious.

Several high-profile domestic violence cases involved the revocation of reports by victims, such as the Lesti Kejora-Rizky Billar case, the wife of a police officer in Pamekasan, a woman in Lebong, Bengkulu,⁹ and a doctor in Banjarbaru, Kalimantan.¹⁰ There was also the case of two wives of police officers in North Maluku.¹¹ However, even though the reports have been withdrawn, it is still a question whether the relationship between husband and wife who experienced domestic violence will be able to return to harmony. These cases are well-known examples that were publicized online, while many other cases may not have received the same media exposure.

Based on the description above, this paper is important to provide a solution to the problem of domestic violence. This paper at least examines two things, First; how is restorative justice in Islamic Law can still be maintained in households where there has been violence against one of the parties. Second, how is the restorative justice in Indonesian law on the choice to maintain the household rather than criminalizing the perpetrator of domestic violence.

The previous research that has a relationship with this research was conducted by Muhammad Zulfa al Faruqi and Endang Sri Indrawati entitled "The Word Sorry, Does It Mean Damat? The Relationship of Husband-Wife Couples in the Vortex of Domestic Violence" The focus of this research study lies on domestic violence is the lack of clarity of thought and psychological discomfort that makes couples jealous of their partners which causes aggressive behavior. This behavior leads the husband to hurt his wife who is considered weaker. Domestic violence occurs repeatedly. The recurrence of domestic violence makes divorce possible.¹²

⁹ Alexander, "Berdamai, Istri Yang Laporkan Suami Hingga Tersangka Resmi Cabut Laporan," RMOLBengkulu, 2022, <https://www.rmolbengkulu.id/berdamai-istri-yang-laporkan-suami-hingga-tersangka-resmi-cabut-laporan/>.

¹⁰ Ricobie al Ghifari, "Berdamai, Istri Yang Laporkan Suami Ke Polisi Cabut Laporan," Kanalkalimantan, 2020, <https://www.kanalkalimantan.com/berdamai-istri-yang-laporkan-suami-ke-polisi-cabut-laporan/>.

¹¹ Ardian Sangaji, "2 Istri Polisi Korban KDRT Cabut Laporan, Ada Apa?," tandaseru.com, 2022, <https://www.tandaseru.com/2022/01/13/2-istri-polisi-korban-kdrt-cabut-laporan-ada-apa/>.

¹² Alfaruqy, Muhammad Zulfa, and Endang Sri Indrawati. "Kata Maaf, Apakah Berarti Damai? Relasi Pasangan Suami-Istri di Pusaran Kekerasan dalam Rumah Tangga." *Insight: Jurnal Pemikiran dan Penelitian Psikologi* 18, no. 1 (2022): 16-30.

Furthermore, research conducted by Hilyatul Maslahah and Riza Noviana Khorunnisa entitled *Resilience in Adolescent Victims of Domestic Violence*. This study describes the ability of adolescents to carry out resilience is not an easy thing. Teenagers who are victims of violence have different views on the problems that have befallen them. In general, adolescents who are able to rise from the domestic violence they have experienced are wiser and behave better because of the difficult events they have experienced.¹³

Shafa Alistiana Irbathy's research entitled *Resilience of Wives of Victims of Domestic Violence Throughout Seven Years of Marriage*. The research shows that research respondents are able to demonstrate resilience abilities that are reflected in the ability to control emotions, desires, optimistic attitudes, empathize, analyze the causes of problems, self-effectiveness and increase positive aspects in respondents. The response in this study focuses on one case that experienced domestic violence at a certain time.¹⁴

Siti Nurhasanah's research with the title *Revocation of Complaints by "Wife for Domestic Violence Committed by Husband"*. The research shows that the factors of violence occur due to economic factors, behavior, jealousy, communication and others. The research also mentions the importance of socializing the rights of victims to report and get protection. Although on the other hand there is Law No. 23/2004 on the elimination of domestic violence, it is not yet considered capable of providing protection.¹⁵

Based on those researchs, this research provides a different definition of the point of view used. In addition, previous research only provides a description of social events related to the resilience of victims of domestic violence who no longer have a relationship with the perpetrator of domestic violence. Meanwhile, this study examines the articles contained in Law Number 23 of 2004 concerning the elimination of domestic violence. In addition, this research specifically discusses the restorative justice promoted by Islamic Law and National Indonesian Law, because victims of domestic violence want to continue living together. The results of this research are expected to contribute to all levels of society and the local government in responding to the facts that occur in society.

¹³ Riza Noviana Khoirunnisa Hilyatul Maslahah, "Resiliensi Pada Remaja Korban Kekerasan Dalam Rumah Tangga," *Character: Jurnal Penelitian Psikologi* 7, no. 2 (2020).

¹⁴ Shafa Alistiana Irbathy, "Resiliensi Istri Korban Kekerasan Dalam Rumah Tangga Sepanjang Tujuh Tahun Pernikahan," *Jurnal Cakrawala Ilmiah* 10, no. 1 (2022): 2421–28.

¹⁵ Siti Nurhasanah, "Pencabutan Pengaduan Oleh Istri Atas Kekerasan Dalam Rumah Tangga Yang Dilakukan Oleh Suami," *Jurnal Ilmu Hukum* 7, no. 1 (2020): 89.

B. Method

This article is a literature research that is analyzed using qualitative methods. The analysis used in this research is broadly juridical-normative, by collecting various theories and literature that are closely related to the problem to be studied. The theory used from the perspective of Islamic law is the theory of restorative justice which consists of God's rights and human rights. Ali Sodiqin explains that there are three types of rights in the Islamic restorative justice system, namely: Allah's rights, human rights, and a mixture of both rights.¹⁶ Meanwhile, in Indonesian law, restorative justice focuses on prevention, protection, repression, and consolidation of perpetrators and victims of domestic violence.

C. Result

The results confirm that restorative justice systems, both in the Islamic context and in the Indonesian national legal framework, jointly provide opportunities for perpetrators and victims to resolve conflicts that occur. The difference lies in the emphasis given by the concept of restorative justice in Islam to God's rights and human's rights. In this framework, the expected output or outcome can be forgiveness given by the victim or sanctions that can be in the form of *diyat* (fines) for the perpetrator as a form of responsibility for his actions. Meanwhile, in the restorative justice system that applies in Indonesian national law, there is a shift in focus that no longer emphasizes correctional. Rather, it is aimed at preventive, protective, repressive, and consolidative efforts to prevent similar incidents, protect victims, deal with perpetrators, and strengthen social integration. Thus, the two systems, although different in emphasis and implementation, have the same goal of restoring balance and peace in society.

D. Analysis and Discussion

1. God's Right or Human Being's Right? Exploring Restorative Justice Principles in Islamic Law

Domestic violence occurs due to several factors, including patriarchal culture and misinterpretation of religion. Patriarch culture is a culture that places men as superior beings so that they can control women. This can then provide opportunities for domestic

¹⁶ Ali Sodiqin, "Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System," *AHKAM: Jurnal Ilmu Syariah* 21, no 2 (2021): 357-378.

violence. Misinterpretation of religious teachings that place the husband higher than his wife. Growing beliefs about religious values that mention that women are allowed to be beaten when they disobey their husbands, including leaving the house without permission from their husbands, are used as an argument that husbands or men are allowed to commit forms of violence against their wives.¹⁷

In addition, Zastrow and Browker in their theory say that there are three main categories of causes of violence, among others:

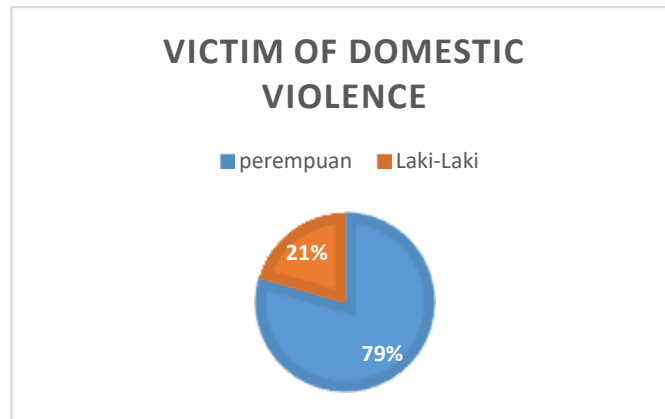
- a. Biological theory which states that humans are incarnations of animals that have aggressive and violent instructions from birth.
- b. Aggressive frustration theory which explains that violence occurs as a method to relieve tension from frustration. When a person is in an emotional or frustrated state, it will make it easier to be aggressive towards others.
- c. Control theory which states that people who have close relationships with others have a tendency to control them implicitly.

This causes cognitive distortions that lead to irrational activities outside of reason. An unfavorable situation triggers apiphany as the beginning of domestic violence. Violence that occurs can be physical, psychological, economic and social violence. Physical violence is violence that can cause injury to limbs such as beating or slapping. Psychological violence takes the form of intimidation or threats against the wife either verbally or in gestures such as the use of children as a threat to fulfill the husband's wishes. Economic violence takes the form of neglecting their spouse's livelihood.¹⁸

In families where violence has previously occurred and has reconciled, it is basically possible to return to harmony, but the harmony will be different. Apologies used after domestic violence cannot restore the same conditions as in the previous period (condition of peace). This condition becomes worse if the husband and wife are trapped in violence that occurs repeatedly until the intensity of violence is higher and threatens the safety of the other party.

¹⁷ Faisyah, Ana Rochayati Nur. "PEREMPUAN DAN KEKERASAN DALAM RUMAH TANGGA." *CONS-IEDU: Islamic Guidance and Counseling Journal* 2, no. 1 (2022): 23-32.

¹⁸ Tanya Wilson Dan Anderberg, Helmut Rainer, Jonathan Wadsworth, "Unemployment and Domestic Violence: Theory and Evidence," *The Economic Journal* 126, no. 597 (2016): 1947–1979.



Based on data obtained from the Ministry of Women's Empowerment and Child Protection, there were 18,261 cases of domestic violence throughout Indonesia with a record 79% or 14,427 victims were women. Meanwhile, the Ministry of Women's Empowerment and Child Protection said that there were 3,838 victims of domestic violence experienced by men. This comparison makes it clear that women are more vulnerable to domestic violence than men.¹⁹

Mashlahah comes from the word *salaha* which means good. Mashlahah can also be interpreted as actions that lead to goodness, provide benefits or avoid harm. The limitations on the concept of *mashlahat* are protecting religion, soul, mind, offspring and property (*al-kulliyat al khams*). Meanwhile, *Mashlahah Mursalah* is a concept in which there is explicitly no text or evidence that allows or prohibits forms of domestic violence. However, the *kemashlahah* to be achieved can be found with some *nash al Qur'an* which has a relationship or connection.²⁰ The purpose of *mashlahah mursalah* is to bring good and in line with *shara'* and to leave bad because it brings *madharat*. *Mashlahah* basically has three levels related to human needs.

Mashlahah daruriyyah is the first level because it is related to the establishment of human rights. The first type of *mashlahah* has two things, namely supporting its realization or leaving it because it is feared that it will damage the order of life. *Mashlahah hajiyyah* is something that becomes a way for someone to facilitate life in certain conditions. If the *mashlahah hajiyyah* is not fulfilled, it will cause difficulties without causing threats to life. *Mashlahah takhsiniyyah* is a way for someone to maintain goodness or beauty alone. If this *kemashlahatan* is not fulfilled, it will not cause difficulties.

¹⁹ Ananda, "Data Kekerasan KDRT," kemenppa, 2022.

²⁰ Alias, Muhammad Nazir. "A Review of *Mashlahah Mursalah* and *Maqasid Shariah* as Methods of Determining Islamic Legal Ruling." *Turkish Journal of Computer and Mathematics Education (TURCOMAT)* 12, no. 3 (2021): 2994-3001.

Based on this, this research examines punishment on the family where occurred domestic violence applies to whom? Does it apply to children or husbands as perpetrators of domestic violence or to wives who choose to maintain family relationships despite being victims of domestic violence? Islam has conceptualized the relationship between men and women as Surah an-Nisa verse 34 which means: The men are the leaders of the women, because Allah has given some of them (men) more than others (women), and because they (men) have spent some of their wealth. Therefore, the virtuous women are those who obey God, and keep themselves in the absence of their husbands, because God has taken care of them. And those women whom you fear may be unfaithful, counsel them, separate them from their beds, and beat them. Then if they obey you, then do not seek to trouble them. Verily, Allah is Most High, Most Great.

The above verse provides an explanation of the status of men who are higher than women because men have the duty to educate women, in this case their wives. In addition, men as husbands are also required to provide for their wives. Therefore, the wife is also required to maintain the honor of her husband and behave well towards her husband. If there is a wife who behaves the opposite, meaning that she is not obedient to her husband, the husband is given the right to teach a lesson by separating himself and hitting without injury. If the wife has not followed how the husband wants in this case the husband is not allowed to find a way to hit the wife with abuse. The interpretation of the verse clearly regulates how the husband treats the wife who disobeys the husband, in three ways, namely:

- a. giving good advice
- b. if the first method does not show any change then the husband is allowed to separate himself
- c. if the second method does not also show change then the husband is allowed to beat the wife without injury

The third way does not mean that there is room for any husband to beat his wife. Especially if the beating experienced by the wife is a violent response to the wife who finds out that her husband is having an affair. For some people, the above verse legitimizes that men have the right to commit acts of anarchy against their wives. Whereas what is meant here is that men (husbands) are leaders who act as protectors, protectors, educators, organizers of life and are responsible for the existence of their wives and children. In addition, Islam requires husbands to have sex with their wives in a good way so that they can create a harmonious and loving family without any form of domestic violence.

The behavior of *maslahah* in the context of beating that is permitted in the Qur'an can be seen in Surah Shad (38):44, where Prophet Job promised to beat his wife with 100 blows. However, Prophet Job was instructed by Allah to collect one bunch of grass (consisting of 100 grasses), then hit his wife with 1 blow. It was a form of *rukhsah* that Allah gave to Job to bridge between the vow he had to make when he recovered, and the benefit of his wife (so as not to be tormented by 100 strokes). If these two verses are connected, we can be concluded that beating that aims to mistreat a spouse is something that is forbidden. In the context of Prophet Job, the beating was ordered because he had vowed to beat his wife, which was a vow that had to be fulfilled. However, in practice, the beating was not an abusive beating, but the aim was for Prophet Job to be freed from his own vow.

Domestic violence is contrary to *mashlahah dharuriyyah* because it violates human rights. Domestic violence that occurs repeatedly can threaten the safety and life of the victim. This means that all forms of domestic violence bring greater *madharat* than *kemashlahlah* for all family members. The child, who in this case is the reason for maintaining a family in which there is violence, allows the child to imitate his father's actions against his mother in the future. The child will also become accustomed to living with violence even if the violence is not experienced.²¹ In addition, the child will also have a bad reaction to his father for hurting his mother. Children should grow up in an environment of peace and love. These negative effects show that domestic violence is against *mashlahah 'ammah* because it relates to the interests of all family members.

To overcome the recurrence of cases of domestic violence, which is caused by the victim forgiving the perpetrator for the sake of household integrity, from an Islamic perspective, it is necessary to see how the relationship between religious law and state power is established. Lisa Hajar divides the relationship into three forms, namely communalization, which is when religious law is separated from national law; nationalization, which is when national law accommodates religious law; and theocratization, which is national law based on religious law.²² In this context, Indonesia belongs to the second model, where the state can accommodate Islamic legal values into national legal legislation.

²¹ E. Katz, "Beyond the Physical Incident Model: How Children Living with Domestic Violence Are Harmed by and Resist Regimes of Coercive Control," *Child Abuse Rev.* 25 (2016): 46–59.

²² Hajar, Lisa. "Religion, state power, and domestic violence in Muslim societies: A framework for comparative analysis." *Law & Social Inquiry* 29, no. 1 (2004): 1-38.

The form of accommodation of Islamic law in state law is the implementation of the Islamic restorative justice system that contains God's rights and human's rights at the same time. As exemplified in the case of Prophet Job, to fulfill the rights of God and Man, God intervened directly through his command to change the Prophet's vow into a smaller punishment. Restorative justice in Islam requires perpetrators of violence and victims of violence to create a space that can bring repair between the two.²³ Ali Sodiqin emphasizes that the classification of restorative justice in Islam aims to maintain a balance of access, obligations, legal protection between the perpetrator and the victim.²⁴

By creating a space between the perpetrator of violence and the victim of violence, the mediator can provide space for both to resolve the problem. Both can agree to reconcile with each other by forgiving each other, or there are requests from the victim to the perpetrator that must be fulfilled. For example, the victim wants the perpetrator of violence to provide a sum of money (diyat) as physical and psychological medical expenses, or with the aim that the victim can start a new life by separating from the perpetrator. Restorative justice, which is a divine right, is usually perpetrator-centered. For instance, we can see the atonement obligation for who broke the Ramadhan fasting by doing spousal intercourse, the perpetrators would be punished by *kaffarah*.²⁵ This means that to uphold justice, only God's authoritative authority has the right to punish him, or based on the rules he has made. Whereas restorative justice, which is a human right, is based on human freedom (ta'auquli).²⁶

Although it is not explicitly explained that the articles contained in the national law in Indonesia take Islamic values, it cannot be denied that the regulations regarding the elimination of sexual violence can be claimed to be in line with the values of benefit contained in Islamic teachings. In Islam, domestic violence is unacceptable and intolerable, because marital relations must be based on the concept of mutual love, compassion, justice and mercy. Mufasirs agree that Q.S. an-nisa 34 is often quoted to justify domestic violence. However, this verse should be interpreted to mean that religion prohibits acts of violence that have the

²³ Andrew Fallon, "Restoration as the spirit of Islamic justice." *Contemporary Justice Review* 23, no. 4 (2020): 430-443. <https://doi.org/10.1080/10282580.2019.1700370>

²⁴ Ali Sodiqin, "Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System," *AHKAM: Jurnal Ilmu Syariah* 21, no 2 (2021): 357-378.

²⁵ Nurdiansyah, Rifqi, and Kaukabilla Alyaparangu. "Kaffārah Rules on Having Intercourse During Ramaḍān: Gender Analysis of Imam Nawāwī and Ibn Qudāmah's Opinions." *Al-Mazaahib: Jurnal Perbandingan Hukum* 9, no. 1 (2021): 43-62.

²⁶ Mohammad Reza Akhzarian Kashani, "An introduction to Concepts of Justice in Islam." *Advances in Social Sciences Research Journal* 5, no. 11 (2018).

potential to damage the marital relationship.²⁷ The interpretation of the verse as a justification for the permissibility of domestic violence behavior can indirectly be interpreted as a benefit that must be canceled (*masalah mulghah*).

Domestic violence cases involving men as perpetrators and women as victims, from an anthropological point of view, are the influence of patriarchal culture and classical fiqh teachings. In fact, more than 30 verses in the Qur'an support the equality between husband and wife,²⁸ which reinforces that the benefit in the old view (men have the right to beat their wives to educate) is a benefit that must be canceled (*mulghah*). As for the benefits that are *mu'tabarah* (in accordance with Islamic values) are benefits that place the safety of the soul on the priority of *dharury* (primary). That way, perpetrators of domestic violence need to be sanctioned for their actions so that the primary benefit value is maintained.

2. Indonesian National Law and Restorative Justice in domestic violence: implementing preventive, protective, repressive, and consolidative

All forms of violence are violations of human rights and are also a crime against human dignity, as is the case with domestic violence. Acts of violence contradict the contents of Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which stipulates that "Everyone has the right to protection of self, family, honor, dignity, and property under their control, and is entitled to a sense of security and protection from threats of fear to do or not do something that is a human right".

So far, domestic violence is a criminal offense that has received less attention among law enforcers because it is considered a domestic problem.²⁹ The understanding that domestic violence is an internal family matter is also a factor in the low awareness of victims to fight for their safety.³⁰ Many victims of domestic violence choose to remain silent rather than report to

²⁷ Hamid, Rafia M. "Domestic violence in Muslim communities." *Religion and men's violence against women*, (New York: Springer, 2015): 319-342. https://doi.org/10.1007/978-1-4939-2266-6_20

²⁸ Zakiyah Munir, Lily. "Domestic violence in Indonesia." *Muslim world journal of human rights* 2, no. 1 (2005).

²⁹ Eko Nurisam, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170–96, <https://doi.org/https://doi.org/10.14710/jphi.v4i2.170-196>.

³⁰ Kevin. R Carriere, "Threats to Human Rights: A General Review," *Journal of Social and Political Psychology* 7, no. 1 (2019): 8–32.

the authorities.³¹ Culture also influences the thinking and behavior of victims who think that domestic violence is a common occurrence in a household, so it should not be a problem.

Indonesia as a welfare state (welfarestate) should take care of its people, which in this case is to provide protection for its people from domestic violence. Apart from being a welfare state, Indonesia is a state of law, meaning that in carrying out all its activities based on rules/laws. Similarly, in providing protection, the state has enacted Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT Law) as the legal basis for providing protection to victims of domestic violence.

Through Law No. 23 of 2004 on the Elimination of Domestic Violence, the state changed the thinking of law enforcers and society in general, that domestic violence is a crucial case that should receive the same attention as other cases (as stated in Article 16 of Law No. 23 of 2004 on the Elimination of Domestic Violence). Article 15 of Law No. 23 of 2004 on the Elimination of Domestic Violence makes victims in particular and the wider community in general aware that domestic violence is not an internal problem, nor a disgrace that must be covered up, nor a prevalence in the household, but domestic violence is a crime that must be combated.³²

Law Number 23 Year 2004 on the Elimination of Domestic Violence as part of criminal law, has two (4) purposes, namely preventive protective, repressive and consolidative functions. The preventive function means that, with the inclusion of severe sanctions for perpetrators of domestic violence, it is hoped that people will be afraid of committing domestic violence so that it can prevent people from committing domestic violence.³³ Meanwhile, in the repressive function, it is hoped that someone who has received severe sanctions when committing domestic violence will not repeat his actions again.

Based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it can be seen that domestic violence is not a complaint offense but an ordinary offense as stated in Article 19 "The police are obliged to immediately conduct an investigation after knowing or receiving reports of domestic violence". A criminal case that can be processed

³¹ Konstantinos Tsirigotis & Joanna Luczak, "Resilience in Women Who Experience Domestic Violence," *Psychiatric Quarterly Journal* 89 (2018): 201–11.

³² Agung Suprojo Emei Dwinanarhati Setiamandani, "Tinjauan Yuridis Terhadap Uu Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," *Reformasi: Jurnal Ilmu Sosial Dan Ilmu Politik* 8, no. 1 (2018), <https://doi.org/https://doi.org/10.33366/rfr.v8i1.924>.

³³ Sularto Sari, Ardila Arumita, "Kebijakan Formulasi Kekerasan Seksual Terhadap Istri (Marital Rape) Berbasis Keadilan Gender Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 117–27, <https://doi.org/https://doi.org/10.14710/jphi.v1i1.117-127>.

without the consent or report of the injured party (victim) then the offense is an ordinary offense not a complaint offense.

In ordinary offenses even though the victim has reconciled with the suspect, the legal process cannot be stopped and continues to run until the court.³⁴ Similarly, domestic violence, even though the victim has forgiven, the legal process is still ongoing.³⁵ This is also what distinguishes between ordinary offenses and complaints. As an ordinary offense, if domestic violence is known by certain parties, and they do not report it, it can be said that there is an omission of criminal acts. The obligation of every person who is aware of the occurrence of domestic violence to take immediate action is regulated in Article 15 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, namely "Every person who hears, sees, or knows the occurrence of domestic violence is obliged to make efforts in accordance with the limits of his ability to":

- a. prevent the perpetration of criminal offense;
- b. provide protection to victims
- c. provide emergency assistance; and
- d. assisting the process of applying for a protection determination".

Restorative justice in Indonesian law has undergone a significant paradigm shift. Rather than focusing on the concept of imprisonment, this approach emphasizes a broader and more sustainable range of aspects. More than just pursuing punishment, the system is now designed with prevention, protection, enforcement and community integration in mind. This signals a shift towards a more holistic system that not only addresses the consequences of criminal acts, but also seeks to prevent crime, protect victims, enforce the law, and strengthen solidarity and reconciliation within communities. This approach not only changes the way we view justice, but also offers a more comprehensive and inclusive platform for addressing crime.

On the other hand, as a criminal law, the use of Law Number 23 Year 2004 on the Elimination of Domestic Violence is *Ultimum Remidium* or as the last remedy. This means that criminal law is only used if other methods cannot solve the problem. This function is used as the basis by investigators when granting the revocation of reports from victims of domestic violence.

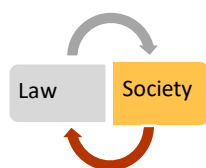
³⁴ Christopher Dowling; Anthony Morgan; Shann Hulme; Matthew Manning; Gabriel Wong, "Protection Orders for Domestic Violence: A Systematic Review," *Informit* 551, no. 1 (2018): 1–19.

³⁵ Elizabeth Siregar Rizky Amalia, Hafrida, "Perbandingan Pengaturan Tindak Pidana Kekerasan Dalam Rumah Tangga Dalam Hukum Pidana Indonesia Dan Hukum Pidana Malaysia," *Pampas: Journal Of Criminal Law* 2, no. 2 (2021).

On the other hand, it becomes a problem when the domestic violence report is revoked, because the repressive function of Law Number 23 Year 2004 on the Elimination of Domestic Violence has not worked. In other words, the sanctions for perpetrators of domestic violence which are quite severe as stipulated in Article 44 have not been felt by perpetrators of domestic violence. Conditions like this make there no deterrent effect, allowing perpetrators of domestic violence to repeat acts of violence again. The actions of victims of domestic violence who easily forgive the perpetrators of domestic violence are also a criminogenic factor in the recurrence of domestic violence against victims. This puts the victim in a threatened position.

The resolution of domestic violence using criminal law is a form of crime prevention using penal policy which is more reactive and repressive. The basic consideration for the use of criminal law according to Shagufta Begum, is if there are several factors that can damage the peace of society. The next consideration is if someone looks like a sane person, but sometimes they behave in such a way that disturbs the peace of society. This should be dealt with in a reactive and repressive manner, namely by the imposition of punishment. Reactive methods occur on matters that are responsive to anything that arises. Meanwhile, repression is an action that aims to control so that the community can behave according to norms and values.

Based on this, it can be seen that the function of criminal law according to Islamic law has a strategic function, in the form of ensuring the realization of human welfare as a whole.³⁶ If the criminal law does not function optimally, then human life will be damaged quickly or slowly. Humans as social beings will continue to interact with each other. For this interaction, certain values are needed so that desires and goals can be created. The growing set of values will indirectly regulate people's lives in order to return to the expectations of society. Therefore, the law will continue to be tied to society as "Ubi Socitas Ibu Ius" which means where there is society there is also law. As the following illustration:



³⁶ Hairul Hudaya, "KEKERASAN PSIKIS DALAM RUMAH TANGGA (Perspektif Undang-Undang PKDRT Dan Hadis)," *Musawa: Jurnal Studi Gender Dan Islam* 16, no. 1 (2017): 53–65.

As explained earlier, the interactions that occur in society allow for friction between one another. This also occurs in the domestic area, such as violence between husband and wife.³⁷ As the case raised in this article that domestic violence is an ordinary offense not a complaint offense, therefore the imposition of punishment on perpetrators of domestic violence is an important thing to do. To find out the importance of giving punishment, it can be studied in the theories of the purpose of punishment.

Retribution theory³⁸ views that punishment is a retaliation for the wrong that has been done so that it is oriented to the act and lies in the occurrence of the crime itself.³⁹ Based on this theory, if criminal sanctions are imposed on perpetrators of domestic violence solely because the perpetrators have committed domestic violence which is a form of crime so that they must be subject to punishment as a form of retaliation. In this case, the imposition of sanctions aims to satisfy the claims of justice. The demands of justice are absolute as stated by Immanuel Kant as follows: "punishment is carried out because there are people who have committed a crime."

The deterrence theory views that punishment is a means of achieving useful goals to protect society towards the welfare of society. Sanctions are emphasized on their purpose, which is to prevent people from committing crimes. This means that if the perpetrator is subject to criminal sanctions it is in order to prevent the community, especially the perpetrator, from committing domestic violence. Through this prevention, it will indirectly protect the community and create community welfare.

Rehabilitation theory teaches that the original purpose of punishment/sanctions is to reform the offender and turn him/her into a law-abiding member and productive member of society.⁴⁰ Based on this theory, if the perpetrators of domestic violence are subject to criminal sanctions, it is hoped that they can change into law-abiding people, meaning that they will not repeat domestic violence again.

³⁷ Anthon Freddy Susanto, "Pendekatan Restoratif Dalam Kekerasan Rumah Tangga Menurut Perspektif Hukum Pidana," *Pagaruyuang Law Journal* 4, no. 2 (2021).

³⁸ Luqman Hakim Ahmad Rusdi Dalimunthe, "Determinan Persepsi Fraudulent Financial Reporting Dalam Fraud Pentagon," in *Prosiding Konferensi Nasional Ekonomi Manajemen Dan Akuntansi (KNEMA)*, 2020, 89–102.

³⁹ 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): 70–83.

⁴⁰ Siti Aminah R. Zainul Musthofa, "Tinjauan Hukum Pidana Terhadap Kekerasan Dalam Rumah Tangga," *Josh: Journal Of Sharia* 1, no. 2 (2022).

Incapacitation theory teaches that it is justified to incapacitate by imposing sanctions as punishment. It refers to the idea that the offender's ability to commit crimes needs to be weakened or removed. "Prison" has separated the offender from society. Therefore, when the perpetrator of domestic violence receives a criminal sanction of imprisonment, it will weaken the ability of the perpetrator to repeat his actions again.

Based on some of these theories, the imposition of punishment on perpetrators of domestic violence is still necessary. It's just that in giving criminal sanctions, it must still be considered that the purpose of punishment for the perpetrator must be able to resolve conflicts, must also be able to restore balance again as a result of the occurrence of criminal acts (domestic violence) which certainly creates an imbalance, and most importantly by giving punishment can create a sense of security & peace for victims in particular and society in general.

Another thing that must be considered is that the people around the victim who prefer to stay under the same roof with the perpetrator must immediately report if domestic violence is suspected, as stipulated in Article 15 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, so that domestic violence will not be repeated. Family conditions like this are certainly far from safe and secure because there may be violations of human rights and no gender justice. It is much different if the victim does not revoke the report, because in fact the enforcement of Law No. 23 of 2004 on the Elimination of Domestic Violence, the ultimate goal is to maintain the integrity of a harmonious and prosperous household.

E. Conclusion

Domestic violence that occurs due to the influence of patriarchal culture and understanding of religious texts is a *maslahat* that must be canceled (*mulghah*). This is because domestic violence is contrary to human rights to live comfortably. Based on research conducted on domestic violence, this article explains that the phenomenon of domestic violence often involves victims who are reluctant to separate from the perpetrator due to social, economic, and religious considerations to maintain the household. This research aims to review the perspective of Restorative Justice in Islam and Indonesian national law related to domestic violence cases. Using the literature research method and juridical-normative approach, the results show that both systems provide opportunities for perpetrators and victims to restore conflict. The Restorative Justice system in Islam emphasizes God's rights

and human rights, resulting in victim forgiveness or diyat sanctions for the perpetrator. Meanwhile, in the Restorative Justice system of Indonesian state law, the focus is no longer on corrections, but on preventive, protective, repressive and consolidative efforts. This article presents a theoretical comparison of the Restorative Justice system in Islam and Indonesian national law in handling domestic violence cases, with the limits of analysis focusing on theoretical aspects.

E. Conflict of Interest Statement

The authors declare that no conflicts of interest could influence the integrity or outcomes of the publication of this article. The writing of this article is based on independent research and analysis, and no external or commercial entities have had any influence or involvement in this article's writing or publication process.

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