



Domestic Violence: Comparison between Islamic Law and Domestic Violence

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Abstract

The purpose of this study was to determine the comparison between Islamic Law and Domestic Violence Law in handling domestic violence in Indonesia. The type of research used is qualitative research with comparative descriptive method. As the only research design, the ethnographic method is the method in this research with descriptive analysis writing techniques, where ethnography itself provides a tool that allows the research process to take place better. The results of this study are from two sources of law, namely Islamic Law and Domestic Violence Law which can be used as a legal basis to punish and limit the arbitrariness of a husband against his wife and family members. In addition, the two sources of law view the need for formal juridical protection of a person's human rights and freedoms, preventing arbitrary acts of violating other people's laws without clear or justified reasons. The conclusion of this study is that there is a relationship between Islamic Law and the Domestic Violence Law, including 1) The views of Islamic law and positive law view that domestic violence or violence against wives is a despicable and promiscuous behavior; 2) Correlation about the purpose of punishment; 3) In terms of punishment, it can be said that punishment in the form of imprisonment is a form of takfir punishment in Islamic criminal law.

Keywords Islamic Law, Domestic Violence Law, Comparison

INTRODUCTION

Everyone desires to build a happy, harmonious, peaceful, sakinah household, a household that loves and cares for each other. However, in this modern era, there are still many cases of violence where most of the victims are women occurs almost every day in various parts of the world, both individually and in an integrated manner. In Indonesia itself cases of violence are one of the crucial problems and need hard efforts to be resolved by all parties, one example of violence that occurs is violence against women or domestic violence (KDRT) (Abdimas, Kdrt, & Perlindungan, 2020).

Domestic violence is a form of global violence which is a crime or not, depending on the positive law of a country both in its form and formulation so that perceptions can differ from era to era or from one country to another (Abdurrachman, n.d.). Article 1 of the PKDRT Law states that an act of domestic violence is "any act against a person, especially a woman, that results in physical, sexual, psychological misery or suffering, and or neglect of the household, including threats to act, coercion, or physical deprivation of liberty, against the law in the domestic sphere (Syariah, Tinggi, Islam, & Tulungagung, n.d.).

The facts of domestic violence (in the household) found by various institutions that care about women show that the numbers are much higher than others. Recently, violence against women has emerged with a 'new' mode called Trafficking or trafficking in women (Dalam et al., 2020). In the Qur'an rejects Violence Against Women Islam, as well as other



religions, has always been a theological belief system that is too sacred to be associated with violence against anyone. This is because religion comes from the Most Merciful and Merciful God, love, and compassion for His servants (Soleman, 2020).

In Islam as revealed by the holy book Al-Qur'an, Allah is deliberately presented through His messenger to liberate humans from oppression to live a prosperous life; "Yukhrijuhum Min Al Zhulumat Ila Al-Nur", and be a mercy to the universe: "Wa Maa Arsalnaka Illa Rahmatan Li Al 'Alamin" (al-Qur'an). This religious vision is also expressed in several different terms and concepts. Among them are justice, honesty, truth, goodness (Al Ihsan, Al-Birr, Al Ma'ruf), public benefit (public good), respect for human dignity (karamah Al Insan), and a number of noble and noble character. values. As the target of the mission and vision of Islam, according to the Qur'an, humans are the most noble creatures of God compared to the rest of His creation; "Wa Laqad Karramna Bani Adam" (Tangga, 2004).

Law as a rule and guideline in people's lives is intended to achieve justice and the greatest benefit. Islamic law is required by Allah with the main purpose of realizing and protecting the problems of mankind. In the terminology of ushul fiqh, shari'ah was revealed by Allah to his servants in order to realize human problems in this world and in the hereafter. This can be realized if the Shari'a can be understood. Once it is understood, it is done with sincere obedience and abstain from the impulse of the pests of lust (M. Amalia, 2011).

THEORETICAL REVIEW

Domestic Violence According to Indonesian Laws

The word violence in the Indonesian dictionary is defined as the nature of violence (certain things), violent activities, coercion, and seizures. The term violence in the Big Indonesian Dictionary is also defined as the act of a person or group of people causing injury or death to another person or causing physical or property damage to another person. The word violence is the equivalent of the word violence in English, although the two have different concepts. Violence in English is defined as an attack or invasion of a person's physical or mental integrity. Meanwhile, the word violence in Indonesian is generally understood to only involve physical attacks (R. Amalia & Siregar, 2021).

Apart from the differences in the etymological meanings of violence and violence mentioned above, nowadays violence is not only defined physically but also psychologically. As is known, violence against wives or domestic violence (hereinafter abbreviated as domestic violence) can be in the form of physical violence, psychological violence, sexual violence, or neglect of the household (Rofiah, 2017). So, based on the descriptions that the author has discussed previously, it can be concluded that based on the verses and hadiths, there are also some legal consequences. First, it seems that these texts actually legalize violence in Islamic law, as in the case of nusyuz. So that later Muslims will experience doubts in their position, on the one hand there are texts that talk about violence in the family and empirically it happened at that time, but on the other hand, it is no longer in accordance with the conditions of the times, especially in a legal state system like Indonesia. Second, in the context of positive law, violence includes violence in physical and psychological/mental



forms, so that violators must still be dealt with in accordance with applicable legal procedures because the state in this case has regulated it in Law Number 23 of 2004 concerning PKDRT (Elimination of Domestic Violence) (Widyastuti, 2007).

Basically the Criminal Code has regulated criminal sanctions for perpetrators of violence which are part of the criminal act of persecution, but these sanctions have not directly accommodated acts of violence in the family. With the criminalization of domestic violence as a crime in Law No. 23 of 2004 concerning the Elimination of Domestic Violence or abbreviated as the PKDRT Law, this law has become part of Indonesia's positive criminal law system. Because legally, all forms of violence against women, especially those that occur in the domestic sphere, must be viewed as crimes against humanity and a violation of human rights (Susanto, 2021).

The PKDRT Law expands the definition of violence not only as an act that causes physical suffering but also psychological suffering. Violence in this case is formulated as a violation of psychological/psychological morals, sexual harassment, and neglect of the household.

The Meaning of Domestic Violence According to Islamic Law

Domestic violence is an act of violence committed in the household either by a husband, wife, or children that has a negative impact on physical, psychological integrity, and the harmony of domestic relations (Sukardi, 2015).

Domestic violence in the household context has forms of violence that often occur, whether it befalls wives, children, housemaids, relatives, or husbands. For example, there is a husband who beats his wife for various reasons, a mother who beats her child for not obeying her parents' orders, a housemaid who is abused by her employer for not completing her duties properly, or a child who dares to do something abused by his parents. All forms of domestic violence basically must be sanctioned because it is a form of crime.

In Islamic law, criminal law is known as Fiqh Jinayah. Etymologically, jinayah is a term for something someone does in connection with a crime or whatever he does. Jinayah is naming through the masdar form of the word janna which means the evil that befell him (Andiko, 2017).

At the time of the Prophet Muhammad S.A.W. His household is a source of role model for other Muslims. Not only the level of motivation that he conveyed, the Prophet Muhammad S.A.W also applied it in his household so that many of the Prophet's companions imitated his character and behavior (Suryanti, 2019).

The teachings of Islam are rahmatan lil alamin, which is to be a mercy for the universe, starting from the individual environment, family, and society. All domestic violence is clearly irrelevant to Islamic teachings. Households are formed with the aim of creating a harmonious, sakinah, mawaddah, and rahmah family. So that if there is domestic violence, it clearly deviates from the goals of Islamic teachings (Adicipta, Pawennei, & Baharuddin, 2020).



Factors Causing Domestic Violence

Domestic violence is not a new thing faced by a wife or husband but has existed since human life has built a household. An honest and sincere understanding of the factors that encourage violence will be a strategic step in finding solutions to the problems faced. Many factors have been empirically proven to contribute to the increase in Muslim domestic violence. Among these causes are (Indah S., S.H., M.Hum., 2014):

1. The nusyuz attitude of the wife or husband is an attitude of defiance towards the obligations of married life, such as the wife not wanting to serve her husband when there is no age, such as menstruation or illness;
2. Weak understanding or practice of Islamic teachings by individual Muslims. Lack of dedication to individuals, weak understanding of husband-wife relationships in the household, and temperamental traits are also triggers for someone to violate sharia law, including committing domestic violence;
3. On the other hand, it is also caused by economic factors, low education, jealousy, and so on. Domestic violence caused by economic factors can be described as a husband's lack of income to meet household needs. Sometimes there are wives who are too demanding to meet household needs, both for clothing, food, and education needs. That's where the fight between husband and wife begins which eventually leads to domestic violence. The two sides no longer controlled each other's emotions.

METHODS

The type of research used is qualitative research with comparative descriptive method (Soendari, 2012). The data collected in this study include data on the protection of women in Law no. 23 of 2004 concerning the Elimination of Domestic Violence in Indonesia and Domestic Violence According to Islamic Law. The data collection technique in this study is the Bibliography method, which is to browse the existing literature and carefully examine the data relating to the problems discussed. To obtain the above data from data sources, namely: Primary Source: Law no. 23 of 2004 concerning the Elimination of Domestic Violence and Domestic Violence according to Islamic law.

Data Management Techniques: Organizing, is a systematic process of collecting, recording, and presenting facts for research purposes. Editing is an activity of editing the truth and determination of data and re-examining all data obtained by selecting and selecting data from various aspects which include suitability and compatibility with each other, authenticity, clarity, and relevance to the problem. This technique is used in research to check the completeness of the data that has been obtained. And the analysis technique is to provide further analysis of the results of editing and organizing data obtained from research sources, using theories and other arguments, so that conclusions can be obtained (Sugiyono, 2017).

As a research design, the ethnographic method is used in this research with descriptive analysis writing techniques, where ethnography itself provides tools that allow the research process to take place better, ethnography is often defined as an attempt to describe culture and cultural aspects. There are also those who interpret it as studying something (culture and



its aspects) by placing and considering the background of the problem as a whole, without avoiding its complexity (Raco, 2018).

RESULTS AND DISCUSSION

Domestic violence is an act of violence committed in the household either by a husband, wife, or children that has a negative impact on physical, psychological integrity, and the harmony of domestic relations. Article 1 of the PKDRT Law states that an act of domestic violence is "any act against a person, especially a woman, that results in physical, sexual, psychological misery or suffering, and or neglect of the household, including threats to act, coercion, or unlawful deprivation of liberty lawful in the household.

Meanwhile, according to Law Number 23 of 2004, domestic violence is any act against a person, especially a woman that results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to take coercive actions or physical deprivation of liberty against the law in the domestic sphere. The scope of the household in question is; husband, wife, and children, people who have family relations with the people mentioned above because of blood relations, marriage, breastfeeding, care, and guardianship, who live in the household, or people who work to help household and live in the household. Within a certain period of time in the household concerned.

The definition of domestic violence according to Law Number 23 of 2004 is broader because it does not only include the relationship between husband and wife but also to everyone who is/lives in the house. Everyone is prohibited from committing domestic violence against people within the scope of his household, either by physical violence, violence, psychological/emotional violence, sexual violence, and neglect of the household. From the description of domestic violence according to Islamic law and positive law. RI Number 23 of 2004 concerning Domestic Violence, tries to compare the two regarding similarities and differences in viewpoints and analysis of domestic violence. The existence of domestic violence experienced by the wife, in the view of Islamic law and the Law of the Republic of Indonesia Number 23 of 2004, is an act that is not justified and is considered to have violated the law, both physically and mentally, and has legal consequences for anyone who did it.

The Domestic Violence Law clearly stipulates that anyone who commits violence in the family environment is subject to criminal sanctions as regulated in Chapter VIII Article 44 which states that: (1) Anyone who commits physical violence in the household as referred to in Article 5 letter a shall be punished with imprisonment for a maximum of 5 (five) years or a fine of a maximum of Rp.15,000,000.00 (fifteen million rupiahs); (2) In the event that the act as referred to in paragraph (1) causes the victim to fall ill or is seriously injured, the person shall be sentenced to a maximum imprisonment of 10 (ten) years or a maximum fine of Rp. 30,000,000.00 (thirty million rupiah); (3) In the event that the act as referred to in paragraph (2) results in the death of the victim, the victim shall be sentenced to a maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp. 45,000,000.00 (forty five million rupiah); and (4) In the event that the act as referred to in paragraph (1) is committed by a husband against his wife or vice versa which does not cause illness or obstruction to



carry out official work or livelihood or daily activities, he shall be sentenced to a maximum imprisonment of 4 (four) years.) month or a maximum fine of Rp. 5,000,000.00 (five million rupiah).

According to Islamic law and the Law of the Republic of Indonesia Number 23 of 2004, domestic violence does not only harm and harm victims physically and mentally, but also family integrity and child psychology. Therefore, it is necessary to have rules that span and regulate these problems in order to foster a harmonious, harmonious, mutual respect and appreciation family, and no party is harmed. From these two sources of law, it can be used as a legal basis to punish and limit the arbitrariness of a husband against his wife and family members. In addition, the two sources of law that view the need for formal juridical protection of a person's human rights and freedoms, prevent arbitrary actions against other people's laws without clear or permissible reasons.

Islam does not condone violence, either in the household or in the public sphere. According to Islamic law and the Law of the Republic of Indonesia Number 23 of 2004, domestic violence is an act that is not justified and is considered against the law, both physically and mentally, and has legal consequences for anyone who commits it. The perpetrators of violence are punished according to their actions. In Islamic law, violent crimes are included in the kisas-diat pattern. Kisasdiat finger is a finger that is threatened with kisas or diat punishment. Qisas punishment is imposed on finger perpetrators in order to get a recompense commensurate with their actions. So if he is killed, he kills or is tortured if he persecutes.

The way to resolve domestic violence according to Islamic law is through the provision of sanctions/punishments where the punishment is applied according to the type of crime committed by the perpetrator. According to the perspective of Islamic criminal law, the act of a husband committing physical violence against his wife is a form of crime and an act that is prohibited by the Shari'a because it will result in loss and endanger the safety of the wife, therefore it is included in the act of touching. Law Number 23 of 2004 concerning the Elimination of Domestic Violence consists of four parts, namely the Obligations of the Government and Society; Rights of Victims of Domestic Violence; Victim Recovery; and Settlement of Domestic Violence through the Application of Legal Sanctions.

Islam provides guidance starting from forming and building a household to its construction, Islam provides demands for the achievement of the goal of establishing a household, including worshiping Allah; Looking for a life partner to share with each other; give birth to offspring; and Providing education to children / descendants of Islam also provides demands for husband and wife rights and obligations between the two, which must be fulfilled by both parties, in order to establish a harmonious relationship between family members (husband, wife, children, etc.) sakinah, mawaddah and mercy. Therefore, domestic violence is an act that is strictly prohibited in Islam. Violence, especially in the domestic sphere, in any form and carried out against anyone, is an act that is contrary to the values contained in Islam. Because Islam itself always teaches to be gentle and compassionate towards others.



CONCLUSION

Islamic law and the Domestic Violence Law can be used as a legal basis to punish and limit the arbitrariness of a husband against his wife and family members. In addition, the two sources of law that view the need for formal juridical protection of a person's human rights and freedoms, prevent arbitrary actions against other people's laws without clear or permissible reasons.

There is a correlation between Islamic Law and the Domestic Violence Law, namely: 1) The views of Islamic law and positive law view that domestic violence or violence against wives is despicable and outrageous behavior. Islamic law and positive law both hold the view that the position of a wife is as high as that of a husband. Four forms of violence are also described in Law Number 23 of 2004, namely physical violence, psychological violence, sexual violence, and economic violence; 2) Relevance regarding the purpose of punishment in the context of maintaining human benefit, harmonization of legal rules regarding physical violence against wives and criminal acts other than soul (persecution), but specifically the PKDRT Law regulates within the family environment; 3) In terms of punishment, it can be said that punishment in the form of imprisonment is a form of takzir punishment in Islamic criminal law.

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